

Book Review

Saïd Amir Arjomand and Nathan J. Brown, eds.
The Rule of Law, Islam, and Constitutional Politics in Egypt and Iran
Albany, NY: State University of New York, 2013

Reviewed by Lexy Smith-Doughty

Democracy as theory and practice is currently seen mainly as an outgrowth of the eighteenth-century European Enlightenment. It has several essential parts including the Rule of Law, Majority Rule, Minority Rights and a system of free and fair elections. Most modern democracies also have some declaration of individual rights and some associate democratic governance with the development of a capitalist economy.

Democracy is strongly associated with Western societies, high levels of economic and technological development, a generally secular culture, and equity with respect to the rights of all citizens to equal treatment under the law and equal opportunities for education and employment. In short, it seems a natural outgrowth of liberalism both in its early form as a revolutionary ideology aimed at the transformation from feudal to modern society and also in its more contemporary form of promoting social programs to alleviate problems of poverty and promote the health, education and social well-being of all citizens.

As long as liberal democracy was largely limited to European or settlement societies such as Australia, Canada, New Zealand and the United States, its meaning was reasonably clear and its common practices were well enough understood. In the past half-century, however, geopolitical realities have changed.

Firstly, the former colonies of countries such as Spain, which won their independence mainly in Latin America in the nineteenth-century, have transitioned from economically backward countries to truly developing nations. Decades of authoritarian regimes, often run by military dictatorships and comprador capitalist elites, have become full-fledged democratic countries with bright futures.

Secondly, decolonization of the British Empire and the independence of numerous countries once controlled by France have resulted in dozens of new nations, many of which have developed their own unique forms of government which are often called democratic by their new leaders, but which often fail to meet the standards set by the wealthy liberal democracies having, in some cases, only one political party. Thirdly, over the past very few years, revolutions have taken place in largely Islamic countries in which popular demands for “democratic” change have had uncertain results. Old authoritarian systems have been overthrown but, in some cases, they have been replaced with governments that look to Western eyes to be not much better than the governments they replaced. In some cases, they appear to have exchanged one sort of dictatorship for another—some with strong religious commitments and a practical theocracy.

One of the main problems with the new regimes is, of course, that certain interpretations of Islam are applied with the result that women are regularly subjected to systemic oppression under so-called *Islamist* leadership. In *The Rule of Law, Islam, and Constitutional Politics in Egypt and Iran*, the authors deal with the fundamental democratic premise of the rule of law as it exists in two chiefly Islamic countries—Egypt and Iran.

In Iran, the American CIA, acting on behalf of British and other petroleum interests organized a *coup d'état* in 1953. The democratically elected government of left-leaning Prime Minister Mohammed Mossadegh was then replaced by the dictatorial monarch Muhammad Reza Pahlavi, who was subsequently overthrown by Islamic fundamentalists who installed the Grand Ayatollah Khomeini as “Supreme Leader.”

In Egypt, the Americans were also implicated in the establishment of the virtual dictatorship of Hosni Mubarak, who ruled for almost thirty years following the assassination of Anwar Sadat and are suspected of having a hand in the overthrow of Egypt’s democratically Mohamed Morsi, whose political party, the Muslim Brotherhood, has now been labeled a “terrorist” organization.

In both countries, the present has been shaped by democratically elected leaders being ousted by non-democratic means, but means that nonetheless won the approval of Western liberal democracies.

Westerners cannot easily appreciate the idea of a <i>non-liberal</i> democracy. To the Western mind, “liberal” and “democracy” were so intertwined that neither could be contemplated without the other.
--

Saïd Amir Arjomand and Nathan J. Brown render a valuable service by taking us behind the headlines and the passions of the moment. They and their contributors delve deeply into the complex judicial structures and the much disputed question of what, in fact, forms the basis of the legal systems in both countries. This is an important job because Westerners know very little about the long history of the law in Muslim nations and, far too often, allow their ignorance to combine with their hostile feelings about Islamic extremists to produce the hasty judgement that centuries-old institutions and traditions are nothing more than historical evidence that Islam is a religion that is both barbaric and hostile to the West. Under such circumstances, people in nominally Christian nations react too often with hatred toward people whom they do not and generally do not want to understand.

It was hard for liberal democrats to understand the possibility that African one-party states such as in Julius Nyerere’s Tanzania or that a Marxist nation such as the former East Germany (German Democratic Republic) or the former North Vietnam (Democratic Republic of North Vietnam) could sincerely regard themselves as democratic because they attended to questions of economic equality more than free political choice. That is because Westerners cannot easily appreciate the idea of a *non-liberal* democracy. To the Western mind, “liberal” and “democracy” were so intertwined that neither could be contemplated without the other. Prejudice against Islam makes the task even harder.

In his generally favourable review of this volume, Aaron Hagler (2013) suggests that this ought to have been two books, because Egypt and Iran are so different. Egypt is a predominantly Sunni nation, whereas Iran overwhelmingly Shi'ite. Egypt is ethnically Arab, whereas Iran is largely Persian. Though their histories are long and initially formed in ancient empires, the two have evolved in quite different ways. So, says Hagler (2013), "there are glaring differences between the two countries that should have been given greater weight"; moreover, "the variety of distinctions between Sunni and Shi'ite Islamism is not discussed." He therefore criticizes the editors for not clearly dividing the book between Egyptian and Iranian components. Doing so "would also properly have highlighted the impermeability of Egypt's constitutional and Islamic experiences with Iran's and vice versa." In short, the differences are greater than the similarities and the contrasts are more important than the comparisons. This is a fair and important point, but the benefits readers can obtain outweigh the problems.

Westerners would probably be surprised to learn that legal norms in both Egypt and Iran have not been *entirely* at odds with other Western legal values.

In the first place, the contributions are uniformly of high academic caliber. They deal with critical issues not only of interest to legal scholars, but to anyone with a concern for politics in both countries, with the relationship among the law, the courts and the political authorities and with the persistent difficulties that these societies experience in trying to locate and define themselves in the rapidly evolving geopolitical world—a world in which predictions of future events on a national or regional basis are an invitation to embarrassment. As former American Secretary of Defense Donald Rumsfeld admitted: "Stuff happens"; he had no idea then and no sensible person would make claims to know in advance what "stuff" could happen at almost any moment to alter outsiders' perceptions and even more so the lives of people living in these and near-by countries.

In addition, the chapters make clear that there is no such thing as Islam, if the term is meant to describe a monolithic religious doctrine. This much, of course, has long been known to any observer with even a vague understanding of the historical breach between the Sunni and Shi'ite traditions. What *The Rule of Law, Islam, and Constitutional Politics in Egypt and Iran* shows, however, is that even these broad categories contain immense differences of opinion within them. In fact, the legal system in Egypt is not merely semi-autonomous, but the Islamic judiciary applies Shari'a law in a manner that would astonish Western jurists. Even legal decisions involving such central issues as human rights are made without what many outsiders might call due regard for *stare decisis*, the Common Law doctrine which insists that decisions be made with due regard for precedent and that previous decisions be considered authoritative in cases in which the facts at hand are substantially the same. In Islamic jurisprudence, however, judges are often permitted to apply their own interpretation of the law, a principle that can make for extraordinary variation and, to some people, obviates the Rule of Law itself.

Next, Westerners would probably be surprised to learn that legal norms in both Egypt and Iran have not been *entirely* at odds with other Western legal values. Co-author Nathan Brown (Lombardi & Brown, 2013) has been one of the scholars who has pointed out that the Supreme Constitutional Court in Egypt has interpreted Islamic legal norms to be consistent with

democracy, international human rights, and economic liberalism and has tried to put that principle into practice. Brown (2002: 168–71) has also made the point that Iranian Islamists have been making concerted efforts to reinterpret classical Shari'a law and to adapt it to modern circumstances. So, despite anxiety in the West, portents of modernization are visible. In this collection of essays by regional experts, a far more nuanced view is available than could be imagined by people looking in from the outside. This opinion is reinforced in many of the contributions to the book under review.

What lies in the future of Egypt and Iran is unknowable; however, when change occurs (and *some* kind of change certainly will), it is obvious that people living outside those countries and outside the region will not understand it ... unless ...

Finally, the contributors describe and explain the enormous influence that religion has on the whole of (especially Iranian) civic life. No branch of government is exempt and all of them must implicitly and explicit bow to the theocratic culture if not to the formal demands of particular religious leaders. In the process, it is revealed that the independence of the Iranian, as contrasted with the Egyptian, judiciary is extremely limited. Dramatic changes, however, have occurred in the recent past and there is no reason to presume that other changes will not come in the near future.

What does this mean for democracy? On the one hand, there may be cause for guarded optimism. Arjomand and Brown succeed in presenting a valuable background that helps explain both the Iranian Green movement that arose in 2009 and the events and aftermath of the Egyptian revolution of 2011. Though the future is unsettled, popular dissent—already potentially explosive in Egypt despite the post-Morsi repression by the military authorities and only suppressed with difficulty in Iran—could lead to changes that might resemble a modified Western version of democracy. At the very least, from Tunis to Tahrir Square to Tehran, there has been a growing sense of popular interest in both stability and change, with the former two witnessing uprisings that have toppled governments and released anguished cries for freedom that have sounded locally and echoed globally. What lies in the future of Egypt and Iran is unknowable; however, when change occurs (and *some* kind of change certainly will), it is obvious that people living outside those countries and outside the region will not understand it and will not know how to respond properly to it unless they become acquainted with some of the fundamental characteristics of their evolving political cultures.

We have already seen the tragic results of opportunistic Western governments making poor decisions and engaging in covert actions and overt wars in the North Africa, the Near and the Middle East. Arjomand and Brown have given us an excellent introduction to some of the major issues associated with law and democracy regarding two of the most important nations in the area. More such volumes are urgently needed in order to comprehend what is taking place in this part of the world. It is said that a thriving democracy depends on a well-informed public. Learning how to assess and respond to changes that may (or may not) be part of a democratizing process elsewhere requires at least as much knowledge among our political and administrative decision makers.

About the Author:

Lexy Smith-Doughty holds a Bachelor of Health Sciences degree from Western University in London, Ontario, a Master of Public Health degree from the University of Toronto and is currently a Juris Doctor candidate at the University of New Brunswick Law School in Fredericton, Canada. She can be reached at lexysmithdoughty@yahoo.com.

References

Brown, Nathan. 2002. *Constitutions in a Nonconstitutional World: Arab Basic Laws and the Prospects for Accountable Government*. Albany: State University of New York Press.

Hagler, Aaron. 2013. Review of Arjomand, Saïd Amir and Nathan J. Brown (Eds.). *The Rule of Law, Islam, and Constitutional Politics in Egypt and Iran*. Retrieved December 7, 2013 from www.h-net.org/reviews/showrev.php?id=39960.

Lombardi, Clark and Nathan Brown. 2013. Do Constitutions Requiring Adherence to Shari'a Threaten Human Rights? How Egypt's Constitutional Court Reconciles Islamic Law with the Liberal Rule of Law, *American University International Law Review* 21(3): 379-435.