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Constitutional Innovation and Animal Protection in Egypt

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This article examines constitutional innovation through the case study of the emergence of animal protection in Egypt's 2014 Constitution. Egypt's provision, which is a state obligation to provide al-rifq bi-l-hayawan *(kindness to animals), was adopted in Article 45 as part of the country's second constitution following the 2011 revolution that ousted President Hosni Mubarak. Three aspects proved crucial to the adoption of the provision: a decision by animal protection activists to influence the constitutional process; the ability of citizens to convey their ideas to the constitutional drafters, albeit in a limited way; and, most importantly, the use of frame bridging. The activists and then the constitutional drafters presented the new cause of constitutional animal protection in terms of well-established areas of social, and constitutional, concern in the country, including Islamic law, women's rights, human rights, and the protection of the environment.*

INTRODUCTION

How do new ideas become part of constitutions? Scholars have devoted considerable attention to the migration and globalization of constitutional provisions (see Choudhry 2006; Law 2008; Tushnet 2009), but we know very little about the preparatory steps that lead to new ideas gaining constitutional acceptance (see Ginsburg, Melton, and Elkins forthcoming). These early developments are crucial because adoption is a necessary step prior to diffusion or migration, and when a constitutional idea achieves a certain level of pervasiveness it starts to garner attention from scholars, international organizations, and constitutional drafters. At some point of critical mass, a new idea is considered "on the list" of provisions that are standard or even expected in constitutions. What accounts for the emergence, and adoption, of new constitutional ideas? Which new ideas succeed, which fail, and why? Can we develop a theory of constitutional innovation? This article contributes

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to our understanding of constitutional innovation using the emergence of animal protection in Egypt's 2014 Constitution as a case study.

Animal protection is an ideal substantive area of the law through which to study constitutional innovation. Concern for animal welfare is growing worldwide, and legislation and regulation, at all levels of government, along with ballot initiatives by citizens, continue to add legal protections for animals. Despite this increased support for the interests of animals, to date, only a few countries provide protections for animals in their constitutions, namely, Austria, Brazil, Egypt, Germany, India, Luxembourg, Slovenia, and Switzerland, along with the European Union (see Eisen and Stilt 2017, para. 10).[1] Although few in number, these countries are evidence of a broad and diverse phenomenon: they are located in the Northern and Southern Hemispheres, in the East and the West, and in the developed and developing world, defying a simple narrative that concern for animal protection is a project of only established and prosperous democracies. These countries also encompass a wide range of religious beliefs, including significant Christian, Hindu, and Muslim populations. Activists in other jurisdictions are also presently engaged in efforts to amend their constitutions to provide protections for animals.[2]

Egypt's provision, which takes the form of a state obligation to provide for *al-rifq bi-l-hayawan*, loosely translated as "kindness to animals," was adopted in Article 45 as part of the country's second constitution following the 2011 revolution that ousted President Hosni Mubarak.[3] As this article shows, three aspects of the process proved crucial to the adoption of the provision in the 2014 Constitution: a decision by the animal protection activists to attempt to influence the constitutional process; the ability of citizens to convey their ideas to the constitutional drafters, albeit in a limited and flawed way; and, most importantly, frame bridging, or the use by the activists and then the constitutional drafters of a series of frames that presented the new cause of constitutional animal protection in terms of well-established areas of social, and constitutional, concern in the country.

Public participation has been suggested as an important factor in constitutional innovation (see Gluck and Brandt 2015; Ginsburg, Melton, and Elkins forthcoming). As Ginsburg, Melton, and Elkins argue, constitutional drafters have little incentive to innovate, and thus the impetus for innovation will most likely come from social movements or elites, making the ability of the public to influence the drafting process essential. This Egyptian case allows for an exploration of this hypothesis, and shows animal protection advocates seeking to affect the drafting process and to convince the drafters to accept a new provision that had not only

1. Constitutional animal protection is defined as "textual provisions that assign constitutional significance to the experiences of individual nonhuman animals (hereafter simply 'animals'). This category includes provisions that reference the 'welfare' or 'dignity' of animals, the 'protection' of animals, 'compassion' for animals, or 'cruelty' towards animals as matters of constitutional concern. These provisions . . . treat individual animals as legitimate beneficiaries of constitutional protection—rather than merely as resources or symbols" (Eisen and Stilt 2017, para. 1).

2. There is a current effort in the Netherlands, for example, to gain constitutional protection for animals.

3. Technically, the 2014 Constitution represented amendments to the 2012 Constitution, but in actuality it was a new constitution.

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no precedent in Egyptian constitutional history but also little precedent in constitutions worldwide.

The usefulness of frame bridging, "the linkage of two or more ideologically congruent but structurally unconnected frames regarding a particular issue or problem" (Snow et al. 1986, 467), for understanding constitutional innovation has yet to be fully examined (see Evans 2010). Animal protection activists in Egypt relied heavily on Islamic legal arguments in their advocacy work prior to the revolution. Continuing in this pattern, in the first constitutional process after the revolution, they were unsuccessful in championing constitutional animal protection on the basis of its support in Islamic law. In the second constitutional process, they framed animal protection as a matter of women's rights and human rights more generally. The constitutional drafting commission then engaged in further frame bridging when it connected animal protection to environmental protection in producing Article 45, which is mostly about the environment.

This article provides an account of the Egyptian constitutional process that resulted in the inclusion of constitutional animal protection and highlights the three aspects that were crucial to its success. To present the narrative of the adoption of the new constitutional provision, the article is organized chronologically. It first introduces the animal protection movement in Egypt and discusses the activists' historical reliance on Islamic legal arguments prior to the 2011 revolution. Second, it turns to the constitutional process, and discusses the strong Islamic framing used in the 2012 constitutional process, which was unsuccessful. Third, it turns to the successful effort in 2014, and the frames of women's rights, human rights, and environmental rights, alongside an updated version of the Islamic frame, each of which played an important role. The conclusion returns to the issue of constitutional innovation and suggests that these factors should be considered in studies of constitutional innovation beyond the Egyptian context.

METHODOLOGY

This article is the result of my involvement with animal protection organizations and advocates in Egypt, beginning in 2000 when the first such organization, the Society for the Protection of Animal Rights in Egypt (SPARE), was in its initial stages of development, and continuing to the present. I was residing in Cairo in 2000–2001 and again for five months in 2002, and made frequent and sometimes extensive trips thereafter until 2014. I participated in and observed many of the events discussed in this article, and I have relied on interviews or published or unpublished written sources for the events I did not observe. I served on the board of SPARE and then on the board of the Egyptian Society for Mercy to Animals (ESMA), and in those capacities, I attended board meetings of both organizations. I interacted with Ahmed Shirbiny of the Egyptian Society of Animal Friends (ESAF) on many occasions, including individual meetings, conferences, and other larger settings. I also participated in many meetings and conferences with Egyptian animal activists generally and with government officials, including two conferences in Cairo of the Middle East Network of Animal Welfare, a network that has not met since the 2011 revolution. Conversations took place in either colloquial Egyptian

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Arabic or in English. I spent significant amounts of time at the SPARE and ESMA shelters working with rescued animals, and I wrote a booklet, *Animal Welfare in Islamic Law*, at the request of the leaders of several of the Egyptian animal protection organizations, as discussed below.

EGYPTIAN ANIMAL ADVOCACY

The modern animal protection movement in Egypt is relatively new.[4] The oldest existing animal protection group is the Brooke Hospital for Animals, which was founded by a British woman, Dorothy Brooke, in 1934 as the Old War Horse Memorial Hospital. She was concerned about the welfare of the horses left behind in Egypt by the British, Americans, and Australians after World War I. The Brooke Hospital for Animals in Egypt is part of Brooke, an international animal welfare charity that focuses on working horses, donkeys, and mules around the world. Brooke's approach is to recognize that "the lives and welfare of people and animals are intertwined." Brooke believes that when families can rely on healthy working horses, donkeys, and mules, they can feed their children, send them to school, and build better futures (Brooke n.d.).[5]

In the late 1990s, an increasing awareness of animal issues developed in Egypt, and in Cairo in particular, for reasons that have not been fully explored, and a number of groups began to emerge in the 2000s, a trend that continues to the present throughout the country.[6] In the early 2000s, three new major Egyptian NGOs were formed, each focused on a common set of goals: sheltering cats and dogs in urgent need of medical attention, supplementing the Brooke Hospital's work with equines, and advocating for legal and societal changes regarding the treatment of animals. In 2001, former journalist Amina Abaza founded SPARE, an Egyptian NGO that operates a shelter for cats and dogs and a small donkey sanctuary. SPARE's priorities have changed over time, and it now focuses on education, advocacy, and trap-neuter-release rather than sheltering. ESAF, established as an Egyptian NGO in 2002 by a group of Egyptians and non-Egyptians, mainly British, opened a small cat and dog shelter. Over time, the involvement of non-Egyptians has decreased, and the society is now headed by the Egyptian lawyer Ahmed Shirbiny. ESAF also operates a mobile clinic for working equines. ESMA was founded as an Egyptian NGO by a mostly Egyptian group of people in 2004 and it runs a large cat and dog shelter; its chairperson is the television journalist Mona Khalil.[7]

4. This short summary begins with the period historians typically refer to as modern Egypt. Organized efforts in the cause of animal welfare existed long before this period. Medieval Cairo was a dense urban city at that time and included places, often established as pious endowments, reserved for the needs of animals, such as stables and water troughs. Covering this early period is beyond the scope of this article.

5. For a history of the Brooke Hospital in Egypt and of Brooke, see Brooke (n.d.).

6. One reason for the emergence of animal protection organizations around this time, not only in Egypt but across the Arab Middle East, was likely the increasing access to the Internet and the ability of activists to gain information about animal advocacy from other parts of the world.

7. ESMA's Facebook page serves to connect its many volunteers across Cairo and other parts of the country. On any given day, several volunteers will post pictures and locations of animals injured by cars or otherwise, and call for someone to assist in the capture and transport of the animal to a nearby vet or the ESMA shelter. These posts attract dozens of comments, until someone is usually ultimately able to rescue the animal. The ESMA shelter is the largest in Egypt.

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In addition to these NGOs, Dina Zulficar, a long-time activist, typically works on her own and has focused mainly on the Giza Zoo in Cairo and captive wildlife generally.[8]

In world surveys of animal welfare, Egypt places very poorly, receiving an "F" on an "A" to "G" grading scale in 2014 from the organization World Animal Protection. While there are laws that include provisions dealing with animals, notably the Penal Code of 1937, the Agricultural Law of 1966, and the Environmental Law of 1994, these provisions are outdated, inadequate, and underenforced. The abuse of animals often takes place in the public view: dogs, cats, and working animals are frequently harmed in the streets through intentional and negligent acts, for example. In the years leading up to the 2011 revolution, the activists wanted to change both personal and governmental behavior toward animals. They sought an animal welfare law that would cover individuals and institutions such as the government and its ministries, but they were never able to attract the attention of the Mubarak regime to their cause, and they had become very pessimistic about change on a governmental level. Therefore, they directed most of their efforts toward individuals in an attempt to improve the treatment of animals, and this involved Islamic arguments.[9]

In Egypt, in which approximately 90 percent of the population is Sunni Muslim, Islam is an important frame of reference on a societal level, and it has some relevance on the level of laws and governance generally. In terms of the constitution, Article 2 provides that the principles of the Islamic Sharia are the main source of legislation. This provision was included in the 1971 Constitution, as amended in 1980, and was included in both the 2012 and 2014 Constitutions after the revolution. This language may sound as if it has significant impact on the substantive laws of Egypt, but as it has been interpreted by the Supreme Constitutional Court (SCC), its effect is relatively minor. The SCC has determined that it will deem legislation unconstitutional under Article 2 only if it contradicts source texts of Islamic law that are "of definitive meaning and unquestionable authenticity" (Vogel 1999, 529). Such a text, according to the SCC, does not need interpretation, nor is interpretation permitted, because the meaning is already absolutely clear. Since very few rules in source texts would pass this test, the legislature and executive have wide discretion when dealing with legislation that implicates Islamic law in some way. As a result, very few laws have been struck down by the SCC on the basis of Article 2 (see Vogel 1999, 543).

The limited SCC view does not mean that the Islamic compatibility of national laws is ignored in legislative deliberations or in Egyptians' conversations more generally. To the contrary, Islamic legal norms are highly valued in society, and a large majority of Muslim Egyptians would likely say that they try to live their lives in an Islamic manner. The animal protection activists turned to arguments based in Islam because they believed that these would be the most effective and persuasive; in many cases, individuals whom they encountered in their work would give Islamic arguments for why they were treating an animal in a particular way,

8. Author's observations.
9. Author's observations.

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calling for an Islamic response. Further, religious beliefs are what motivate some of the activists, and they believe that they have a personal obligation to God to help the animals in their community. However, Islamic arguments create both opportunities and difficulties for the activists. There is significant attention to animals in Islamic law, but Islamic legal arguments quickly become complicated, and none of the animal activists is a religious scholar. And while many arguments support their cause, others do not. By making Islamic arguments, the activists can encounter difficulties when Islamic arguments are in turn used against them.[10]

The activists relied heavily on Islamic instructional materials that spoke directly to the requirements of Islamic law toward animals. The Quran, held by Muslims to be the direct word of God transmitted to the Prophet Muhammad in the Arabian Peninsula in the seventh century, does not explicitly speak to the issue of how humans should treat animals. The Quranic verse the activists cite most frequently is 6:38: "There is not an animal in the earth, nor a flying creature flying on two wings, but they are peoples like you. We have neglected nothing in the Book (of Our decrees). Then unto their Lord they will be gathered." The activists point specifically to the phrase "peoples like you" as evidence that animals should be treated humanely. Invoking a Quranic verse does not entangle them in complicated arguments about the Quran as a source, since the Quran is agreed upon as authentic; there are many differences of opinions about the interpretation of Quranic language but no argument is acceptable that challenges its authenticity. Yet the verse only goes so far—it does not say how humans and animals are alike nor does it say what this means in terms of human obligations, if any, toward animals.[11] In that sense, it gives the activists a powerful tool but one with little specific content.

The Quran is a text of limited length, and while in some areas of the law it provides extensive rules, in most areas it does not, including, as noted, in the area of animal welfare. The Prophet's normative practice as expressed in reports (sing. *hadith*, used here also in the collective) about his words and actions came to be agreed upon as the second textual source of Islamic law, after the Quran. Unlike the Quran, the hadith are open to differences of opinion about both interpretation and authenticity. Also unlike the Quran, the hadith are voluminous, with digital databases of thousands of hadith providing new tools for modern researchers. In terms of authenticity of the hadith, there is a fairly standard understanding of a ranking within Sunni Islam, ranging from sound to weak, gradations intended to indicate the probability of the hadith's authenticity (see Robson 1986). Using a hadith for support, then, requires that the activist be willing and able to engage in a discussion about both authenticity and interpretation, a very difficult task, especially since two hadith can seem to convey contradictory messages.

When Amina Abaza of SPARE first started working on animal issues, she obtained a copy of the short book *Al-rifq bi-l-hayawan fi-l-shari'a al-islamiyya* (Animal Welfare in Islamic Law), written by Hasanayn Muhammad Makhluf (d. 1990)

10. Author's observations.

11. Sarra Tlili summarizes the commentary on this verse: "Our exegetes came up with many propositions in this respect, identifying similarities between humans and other species. Nonetheless, one can still discern a tendency to minimize the significance of this similarity, emphasize humans' distinction, or even interpret this verse in terms that are unflattering to nonhuman animals" (2012, 139–41).

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and published in 1964. Makhluf served as the Grand Mufti of Egypt, one of the two highest religious positions in the country, from 1946 to 1950 and again from 1952 to 1953. Abaza photocopied the book and routinely carried hundreds of copies in the back of her car, passing them out whenever she had an opportunity.[12] Overall, the book indicates that there is a strong requirement in Islamic law for kindness to animals and as such it is a valuable resource to activists. However, it mostly contains quotations of hadith with little commentary or other discussion that would help explain to the average reader the very difficult language of the hadith. It also does not connect the hadith to the contemporary situation or explain how a hadith's message might apply in a modern context. The first hadith of the book, for example, enjoining Muslims to be as merciful as possible when slaughtering an animal, is an important one for the activists, especially when on the holiday of the Sacrifice, Eid al-Adha, many Muslims in Egypt (as elsewhere) slaughter their own animals.[13] But the book does not explain how this requirement should be understood in practice or what kinds of actions cause an animal pain.

The few hadith on dogs that are presented in the book are positive, providing examples of people who either received a heavenly reward for treating a dog with compassion or were punished for treating a dog cruelly. Significantly, however, the book does not try to address the many hadith that are negative toward dogs, the ones that activists hear repeated as justification for cruelty. Moreover, Makhluf also left out cats completely, even though there are many hadith on cats and the cat is viewed positively. In general, Abaza did not believe that the book was achieving the goal of providing education to individuals about the kind treatment of animals in Islamic law. She thought that the language was too difficult for most Egyptians and it did not connect the source texts to the contemporary realities of their daily lives.[14]

Realizing the limitations of this short book, the three main Egyptian animal groups, SPARE, ESAF, and ESMA, then sought to cooperate to produce a booklet of their own to address the main areas of their concern: farm animals, working animals, and companion animals. The production of the booklet itself was not easy, however. They had initially hoped to commission a religious scholar to write a treatise on animal welfare that would address the key issues they face in their work, but they were unable to find one. Instead, they asked if I, a foreign scholar of Islamic law, would write the main text; a professor at al-Azhar, the famous university of traditional Islamic learning in Egypt, offered to write an introduction. The activists were not concerned about the involvement of a non-Egyptian and non-Muslim scholar because the purpose of the booklet was to show the animal-friendly content in Islamic legal texts and history. Unlike the context of, for example, a human rights report criticizing Egypt, the goal of the booklet was to show positive messages in Islamic law, and they thought that Egyptians would appreciate that a foreigner

12. Author's observations.

13. The Eid al-Adha holiday commemorates Abraham's willingness to sacrifice his son upon God's command. Before Abraham could kill his son, God sent an animal to be sacrificed instead. Every Muslim who can afford to purchase an animal for sacrifice is expected to do so (see Mittwoch 1986).

14. Author's observations and conversations with Amina Abaza.

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was bringing positive attention to an issue related to Islamic law rather than the typical construct of foreign criticism.[15]

The booklet, which was published in 2009 in both Arabic and English, was given the same title as the Makhluf text in order to connect it to the same genre, but it contained updated and socially relevant content (Stilt 2009).[16] As a preliminary matter, the booklet seeks to show that attention to animal welfare is not new in Egypt. In an effort to provide the activists with some protection from the often-heard claim that they are dealing with a frivolous topic and simply imitating the West, the booklet provides a brief overview of historical institutional concerns for animal welfare in Egypt. It discusses, for example, that pious endowments were established in the medieval period to provide watering troughs for animals; these troughs were typically attached to mosques, schools, and palaces. There is also some evidence that endowments were established to provide food for stray dogs and cats.

In terms of Islamic legal content, the booklet praises the many positive injunctions in Islamic law to be kind to animals to show that these concerns are indigenous to the Islamic legal tradition, such as the prohibition against perpetrating a cruel act against an animal (Bukhari 1997, hadith 5515, 5516). Another hadith gives a more specific example of the kind of cruelty that the Prophet objected to: "We were with the Prophet on a journey, and he went out to relieve himself. We saw a red-headed sparrow that had two chicks with her, and we took her chicks. The red-headed sparrow started to flap her wings. The Prophet came and said: 'Who has upset her by taking away her children? Give her children back to her'" (Sijistani 2008, hadith 5268).

On the topic of slaughter, the activists were concerned about two major problems: the slaughter process in official slaughterhouses and the slaughter undertaken by individuals. Individual action is an issue on the holiday of Eid al-Adha in particular. Since the booklet is aimed at individuals, the focus is on those who might undertake the slaughter of an animal on this holiday, although it does also suggest that consumers should be concerned about whether the country's slaughterhouses really do produce *halal* meat.

For the activists, the treatment of dogs is a major concern. Islamic law deals with dogs in ways that are often conflicting and problematic. The issue of dogs arises in several different societal contexts. One is the general treatment of dogs on the street, and the activists have seen countless instances of abuse. The other concerns keeping a dog, either at home or in the proximity of a home, such as in front of an apartment building. Given the prevailing attitude, it is unusual for a Muslim Egyptian to acquire a dog, but it does happen occasionally. The owner might then be told by a family member or neighbor that there is a religious prohibition against dog ownership, whereupon the dog is kicked out of the home into the street or is abandoned at one of the shelters, which are overflowing with similar cases. The

15. Author's conversations with Amina Abaza (SPARE), Mona Khalil (ESMA), and Ahmed Shirbiny (ESAF).

16. Abdullah Mabruk al-Najjar, Professor of Law and Sharia at al-Azhar University, wrote the introduction. Other contemporary books on this topic do exist, but the activists did not believe that they directly addressed the issues they encountered most frequently.

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activists wanted the booklet to try to change the way readers understand—and act upon—the Islamic legal texts that can be read to have an antidog meaning.

One area of Islamic law with potential antidog rulings is ritual purity, which pertains mainly to prayer. Islamic law requires that a Muslim's body, clothing, and space for prayer be free and washed clean of any impure substance (*najasa*) before acts of worship requiring purity are performed. Thus, the body, clothing, or space must be washed before prayer if touched by a substance that is considered impure. "The main impure substances recognized by most schools of Islamic law are blood, bodily wastes (of humans and some animals), alcohol, carrion (that is, the dead bodies of animals that have not been ritually slaughtered), and the living or dead bodies of pigs and dogs" (Katz 2002, 2).

For dogs, there are some important variations to this general rule. It is mainly the Hanbali and Shafi'i schools of law that hold that dogs are impure, so that touching a dog or being licked by a dog requires washing that portion of the body or clothing. The Maliki school, however, does not consider dogs impure, and scholars of the Hanafi school generally consider only the saliva of dogs to be impure, so only the part of the body or clothing that the dog's saliva touched needs to be washed (al-Mawsu'a al-fiqhiyya 1995, 35:129). The Shafi'i school is prevalent in Egypt, and adherents to it might not even know that other schools take different views, although Muslims are not obligated to follow one school exclusively. The booklet provides the range of views in an effort to show that the dog is not uniformly viewed as impure. It also emphasizes that many substances are considered impure and need to be washed away before prayer; even if a Muslim believes the dog to be impure, it is not such an unusual concept.

As a practical matter in Egypt, however, the issue with dogs is much bigger than just that of purity. The purity rules have often been generalized into a larger statement about the undesirability of dogs, and are linked with two separate negative reports about dogs present in the hadith. The first relates to the "washing of the bowl." There are many versions of this hadith, the most common of which reports the Prophet as saying: "If a dog drinks from the utensil belonging to any of you, it is essential to wash it seven times" (Bukhari 1997, hadith 172). Other versions contain different numbers of washings and some say to also wash it with sand (Nasa'i 2007, hadith 337; Tirmidhi 2007, hadith 91; Ibn Majah 2007, hadith 365). The activists often hear people cite this hadith as evidence that dogs are dirty and dangerous and that treating them badly is justified. The booklet explains that the hadith can be read merely as a matter of hygiene: if a dog drinks from *your* bowl, rather than a bowl specifically designated for the dog, wash it well. This hadith can also be read to indicate that dogs were such a part of human life in the Arabian Peninsula in the earliest days of Islam that they even had access to the bowls of humans. The booklet asserts that the hadith should not be interpreted to suggest anything more about dogs than the basic commonplace rule of not sharing a drinking bowl with dogs.

The second negative report related to dogs concerns their presence in a home. There are many versions of a hadith relating that the Prophet restricted possessing a dog, saying that a person will lose one or two *qirat*s (a monetary unit of measure) daily if he keeps a dog other than for certain purposes. Various versions of this

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hadith give different lawful purposes, with the typical ones being those of guarding, herding, hunting, and for assistance with agriculture (Bukhari 1997, hadith 2322, 2323). The booklet argues that these reports simply want the person keeping the dog to have a good, beneficial purpose for the dog. At the time of the Prophet, the most common reasons people kept dogs were for guarding, herding, hunting, and protecting agriculture from birds, wild animals, and theft. The stated purposes are intended to protect dogs from abuse and to penalize humans who did not treat dogs properly. In addition to addressing these most commonly cited hadith about dogs, the booklet goes into a little more depth about the ways in which they can be interpreted most beneficially for dogs. It does not go into too many details, mainly to stay both accessible to the general reader and within the comfort zone of the activists' own knowledge about Islamic law.

Because the activists also deal routinely with abuse of working animals, the booklet includes a section on them, advocating for their protection. Horses and donkeys pulling carts of fruit, trash, or gas canisters are still a common sight in Egypt. The animals are frequently in poor condition and overburdened by their loads. The hadith do contain substantial evidence of concern for donkeys, horses, and camels. For example: "The Prophet passed by a camel whose stomach was taut, and he said, 'Fear God in regard of these animals. Ride them when they are in good condition, and consume them when they are in good condition'" (Sijistani 2008, hadith 2548). Another hadith also relates to the treatment of a camel: "[The Prophet] said that once he entered the garden of a man ... where he found a camel. When it saw the Prophet it began crying and its tears flowed. The Prophet came to it and stroked the back of its head and it became silent. He then said: 'Whose camel is this?' A young boy from the Ansar came forward and said, 'It belongs to me!' He said: 'Do you not fear God regarding this animal, which God has put in your possession? It complained to me that you keep it hungry and overburden it, causing fatigue'" (Sijistani 2008, hadith 2549).

The treatment of cats is also of concern to the activists. While cats are treated better than dogs, there is certainly cat abuse and also occasions of mass poisonings of cats. Yet the cat has a special status in Islamic law and history. One of the best-known companions of the Prophet was given the nickname of Abu Hurayra, meaning "father of the little kitten," apparently because he was fond of kittens. The Prophet would use water from which cats drank for washing before prayer. Further, the Prophet and his wife Aisha ate food after a cat had eaten from it, and there are reports of him saying that the cat is not impure (Sijistani 2008, hadith 75, 76; Tirmidhi 2007, hadith 92; Ibn Majah 2007, hadith 367). Other hadith emphasize the penalty for harming a cat: "A woman went to hell because of a cat that she had tied up; she neither gave it food nor set it free to eat from the vermin of the earth" (Bukhari 1997, hadith 3318).

Finally, the booklet addresses the issue of when it might be permissible or necessary to take the life of an animal. The activists hoped to provide an extra level of protection for animals, especially ones, such as dogs, that people routinely try to kill. They also wanted to establish the idea of humane euthanasia in the case of seriously injured animals who are suffering and have no chance of recovery. The idea of merciful killing is found in the hadith, "God has decreed kindness (*ihsan*) in

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everything. So when you kill, then do the killing well, and when you slaughter, then do the slaughtering well. Let one of you sharpen his blade, and let him comfort his animal" (Tirmidhi 2007, hadith 1409; Nasa'i 2007, hadith 4410, 4416, 4417, 4418, 4419; Sijistani 2008, hadith 2814; Ibn Majah 2007, hadith 3170).

The booklet asserts in particular that this applies in the case of stray dogs, such as dogs in the neighborhood whom people might think are dangerous. It argues that untrained individuals do not have the ability to decide if a dog is such a threat that it needs to be killed and certainly do not have the means and expertise to know how to carry out humane euthanizing. This is both an injunction to readers and an implicit criticism of the government, as well as of some private actors who poison and shoot cats and dogs. And to make clear that the existence of one dangerous dog does not legitimate a wide-scale killing, the booklet cites a hadith about the collective punishment of ants: an ant bit one of the prophets and he ordered that the ant colony be burned. God sent the message, "Wouldn't it have been sufficient to burn that single ant?" (Bukhari 1997, hadith 3319). The relevance of the hadith for the contemporary period is that even if one dog is dangerous, it does not allow for a mass killing, either by individuals in a neighborhood or the government.

The activists handed out thousands of copies of this booklet to show individuals that kind behavior toward animals is a requirement of Islamic law and also to provide a different interpretation of Islamic legal texts on issues that have been problematic for animals. They believed that it communicated the necessary ideas in a readable and straightforward way, although there is no way to measure the effectiveness of the booklet. Even the activists who did not give extensive weight to religious arguments in other aspects of their lives believed that engaging in religious arguments in the case of animal issues was very helpful. They did not prepare instructional materials that argued for the principle of kindness to animals from other perspectives, such as ethical or scientific ones, because the Islamic arguments were the most familiar to them and they believed that Islamic arguments were the most likely to resonate with the Egyptian population. On the eve of the revolution, the activists' strategy was to try to improve the treatment of animals at the level of society.[17] The extensive use of and commitment to this strategy led them to continue it after the revolution in the 2012 constitutional process; this commitment also highlights how unexpected the turn to the frames of women's rights and human rights, and then environmental rights, was in the 2014 constitutional process.

THE 2012 CONSTITUTIONAL PROCESS

The ouster of President Hosni Mubarak in 2011 ushered in a period of hope for the animal activists, many of whom were involved in the mass public demonstrations in Tahrir Square and throughout the country. They thought that a new climate of openness would be beneficial for their cause. And, indeed, that has been the case in terms of individual activism: the organizations saw a major increase in the number of Egyptians interested in volunteering in a hands-on way at the

17. Author's observations.

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shelters and also a general increase in interest in the work of the organizations, similar to the general increase in civic issues overall during and after the revolution.[18] The activists also hoped that a transparent and responsive government would be receptive to their cause and finally address the problems they had been working on for years.

When the first constitutional drafting commission was formed, some of the activists thought of appealing to it; since they had not been able to get an animal welfare law adopted and there was no assurance that a new government would take interest, why not go straight to the constitution, they thought. Activist Dina Zulficar, working on her own, began these efforts with a personal vigil in front of the Shura Council (*Majlis al-Shura*, the upper house of parliament) where the drafting commission was meeting (Dina Zulficar, interview by author via Skype, March 17, 2014). She based her appeal on Islamic arguments, and the large green placards she held while standing in front of the Shura Council contained the well-known Quranic verse, "There is not an animal in the earth, nor a flying creature flying on two wings, but they are peoples like you" (Quran 6:38) (Dina Zulficar, interview by author via Skype, March 17, 2014).

The selection of drafters for the drafting commission that prepared the first new constitution was heavily influenced by the first People's Assembly elected after the revolution. The People's Assembly was dominated by the combination of the Muslim Brotherhood's Freedom and Justice Party and the Salafist Nur Party, and they were able, to a large extent, to direct the course of the drafting (see Hellyer 2012). Dina Zulficar approached the Nur Party and found several receptive members; she held meetings with them, the Freedom and Justice Party, the Wafd Party, and anyone else she could gather. Brooke Hospital, which is focused on working animals in general, and the Egyptian presence of the UK organization Donkey Sanctuary, which is focused on donkeys in particular, also participated (Dina Zulficar, interview by author via Skype, March 17, 2014).

Zulficar and her allies looked at examples from other countries, notably India, but thought that the language was vague. They drafted their own proposed article:

> The state confirms that animals are creatures with rights as living beings; they are not things. To preserve animal resources of different kinds, the state through its legislation ensures the availability of basic rights to animals. This is done in a way that will fulfill human benefits from them while also providing protection, care, and kindness (*al-rifq*) in dealing with them, according to what the relevant laws provide and according to the Islamic Sharia and international treaties and agreements. (provided to author by Dina Zulficar [on file with author])

This draft provision reflects the range of interests of its authors, with an Islamic element to its frame. Animals are recognized as living creatures with their own rights, but they are also explicitly recognized as instruments that humans may use, as work animals, for example, as long as they are used humanely. The proposal rests

18. Author's conversations with Mona Khalil and author's observations, Cairo, November 2014.

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on three standards for the treatment of animals: Egyptian laws (referring to the few existing relevant laws and laws that, hopefully, would be drafted in the future), Islamic law, and unspecified international agreements.

Zulficar (2012) gave a television interview on the program *al-Mihwar* on November 14, 2012, during the drafting process, in which she emphasized the Islamic justifications for such a provision. Zulficar is not a religious scholar, and a traditional religious scholar would consider her secular-oriented and not trained to deal in matters of Islamic law. She seems to have sought to deploy religious arguments without getting trapped by the complexity of the hadith. The interviewer first asked her: "What do you want from the Egyptian constitution concerning animal rights?" She replied:

> We are speaking with the Quran and nothing else. The Quran says: "There is not an animal in the earth, nor a flying creature flying on two wings, but they are peoples like you." We aren't inventing things, nor are we saying something borrowed from abroad or from home. The source of the Sharia is the Quran. I won't give an example from the hadith so that no one says that the hadith is reliable or not reliable. The Quran in 6:38 is completely clear [on the point that animals are peoples like you].

When asked what she was hoping to achieve in terms of the new constitution, she responded: "The state must issue laws and regulations that preserve all living organisms, and protect them from all the harms that threaten their lives. Just like the state must make available all that living organisms need to sustain their lives. This is according to the Islamic Sharia and international treaties and documents." She clearly tried to avoid becoming involved in a discussion of the hadith, which could have taken a technical turn, but the Quran provided her with only general support. She also added that her request was consistent with international documents and treaties, but did not explain what she meant in the interview.

This proposal was submitted on Brooke letterhead to the drafting commission, but ultimately no language reflected animal interests in the 2012 Constitution, which was adopted in a public referendum and went into force on December 26, 2012. Article 15 of the 2012 Constitution referenced the state's role in the growth of animal stocks, but without any mention of animals deserving protection for their own sake. Dina Zulficar commented on this result: "We are in a crisis and what has happened is a joke. . . . How can a country want to advance and write a respectful constitution and not pay attention to a matter of this importance?" (Luway 2013). She attributed the failure to the lack of enthusiasm by the Muslim Brotherhood's Freedom and Justice Party. In her view, the Freedom and Justice Party was more interested in pushing through the constitution in a short timeframe and did not want to include a clause that might slow down the process. Further, it did not see the value of such a clause to its own political agenda. She commented that the Nur Party members were much more enthusiastic because they believed animal welfare to be required by Islamic law (Dina Zulficar, interview by author via Skype, March 17, 2014).

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THE 2014 CONSTITUTIONAL PROCESS

The 2012 Constitution did not last long. The Egyptian military ousted President Morsi in July 2013 after extensive public demonstrations against him, and installed Adly Mansur, at that time the Chief Justice of the SCC, as the new interim president. Mansur issued a declaration containing a roadmap for an amendment process of the 2012 Constitution. He appointed a technical committee of ten judges and constitutional law experts and charged them with proposing amendments, which would then be presented to a committee of fifty individuals, who were supposed to represent all components of Egyptian society, but they did not—the committee excluded members of the Muslim Brotherhood. The technical committee worked without public consultation. The Committee of Fifty, as it became known, assumed fairly wide discretion for itself in terms of the drafting process. It also accepted proposals and suggestions from the public, although there were criticisms that the process for receiving public comments was ineffective and not transparent (see Gluck and Brandt 2015, 9).

With the new constitution, the animal protection activists saw another chance to influence the process. Dina Zulficar's group again submitted its proposal to the committee, and heard nothing more than an acknowledgment that it had been received (Dina Zulficar, interview by author via Skype, March 18, 2014). Amina Abaza, founder and chairperson of SPARE, had not been involved in the previous constitutional process due to her opposition to the Muslim Brotherhood. Abaza is a Muslim and had passed out thousands of photocopies of the Makhluf book and then the *Animal Welfare in Islamic Law* booklet commissioned by the animal protection organizations. Once the Muslim Brotherhood was in power and she thought that the country might adopt Islamic laws as national law, however, she became very concerned. Abaza has strong views on the need for equality for women and religious minorities, and she became active on both issues in the face of the Muslim Brotherhood's political dominance. The ouster of the Muslim Brotherhood prompted her to become involved in the new constitutional process but, initially, she was not thinking about a constitutional provision for animals (Amina Abaza, interview by author, Cairo, November 16, 2014).

Her activities related to the new constitution began with the issue of women's rights. After the revolution, women's rights activists had sought better and clearer protections than under Mubarak's constitution, which provided in Article 40: "All citizens are equal before the law. They have equal public rights and duties without discrimination between them due to race, ethnic origin, language, religion, or creed." While the first sentence implies full equality for women, the second sentence notably does not mention gender. Further, Article 11 of Mubarak's constitution sent mixed signals about the equal treatment of women under law: "The state shall guarantee harmonization between the duties of the woman toward the family and her work in society, ensuring her equality status with man in the fields of political, social, cultural and economic life without violation of the rules of Islamic jurisprudence." As noted above, Article 2 of the constitution provided that the principles of the Islamic Sharia are the main source of legislation, but in the Mubarak era, it had been interpreted by the SCC to have minimal effect.

In particular, in the Mubarak era none of the laws in the area of the regulation of the family—laws that had been adopted to improve the status of women vis-à-vis

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their husbands and ex-husbands—had been struck down as unconstitutional by the SCC on the basis of Article 2. Women's rights activists have particular reason to be concerned about Egyptian family law and its relationship to Islamic law. In most Muslim-majority contexts, including Egypt, family law for Muslims is presented by the state and generally understood by the population to be Islamic law in the form of national law. Further, family law is often understood as the only area of Islamic law to have successfully resisted secularization and Westernization. As a result, maintaining an Islamic framework for family law continues to be highly valued by religious scholars, lawmakers, and large segments of society. In the Mubarak era, piecemeal family law measures to improve the status of women included limiting a husband's unilateral right to declare his wife divorced, raising the minimum age of marriage, expanding a wife's access to divorce, and extending a mother's right to child custody. Women's rights activists had worked to improve the status of women further in these and related areas, and they wanted better laws after the revolution; they certainly did not want to lose any of the existing protections (see Stilt, Waheedi, and Gandhavadi Griffin forthcoming).

Women's groups were concerned that many of the constitutional drafters in the Morsi regime were members of the Muslim Brotherhood and the Islamist Nur Party or influenced by them. Because it had been an unofficial political party in Egypt, with some of its members elected to parliament as independent candidates, Egyptians had a sense of the Muslim Brotherhood's political agenda from the past (see Stilt 2010). The 2012 drafting commission did not adopt a provision similar to Article 11 of the Mubarak constitution, and thus, with regard to only those provisions that specifically mention women, the 2012 Constitution might appear better from the perspective of women's rights. However, the concerns came as a result of the broadening of the scope and impact of Islamic law within the Egyptian legal system overall in Article 219, creating the potential that existing family law could be struck down and new developments prevented. Further, in Article 4, the constitution seemed to reduce or even remove the power of the parliament and the SCC to legislate or review legislation that involved matters of Islamic law, giving that authority to a council of Islamic scholars instead, who would be expected to take a more conservative view.

Women's groups were eager to get their agenda back on the table after President Morsi's ouster. Due to Abaza's political involvement with issues including rights for women and Coptic Christians, she was invited by a member of the Committee of Fifty, Mervet El-Talawy, who was also the chairperson of the National Council for Women, to speak at a conference on women's rights. At that time, Abaza was very upset by murders that had taken place outside of Cairo near SPARE's animal shelter. She had worked for more than a decade to stop the animal abuse she constantly witnessed in the area and to teach people about kindness to animals, and she was very invested in the welfare of the community surrounding her shelter (Amina Abaza, e-mail message to author, March 8, 2014).[19] In that same area, on June 23, 2013, four male Shi'i Muslims were attacked and killed in an act of sectarian violence. According to reports, "a large group of villagers

19. Also author's observations.

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surrounded the house of local Shia Muslim resident, Farahat Ali Mohamed ... where a religious ceremony was being held.... According to eyewitnesses, villagers forced their way into the house, breaking down the roof, doors and windows. Using sticks and knives, they beat and stabbed some individuals, dragged them along the ground and attempted to set the house on fire" (Amnesty International 2013).

At the conference on women's rights, Abaza began her talk with the news of this attack and went on to link abuse against humans to abuse against animals. To tie this to the topic of the conference, she highlighted that women and children are the most common victims of abuse in Egyptian society. She said: "We are an animal welfare organization. We have worked for years in this street, helping the poor farmers, giving out religious books, speaking about God and the Prophet and how the Prophet was kind to animals, trying to send a message of compassion, trying to talk to people about kindness and religion, and this is the result! The same people who tortured animals in our area and our street did the same to the four Shi'is." She went on to blame herself: "It seems we had not been courageous enough to deliver our message [of compassion] strongly. Cruelty towards animals ended up with humans" (Amina Abaza, e-mail message to author, March 8, 2014).

The reaction to Abaza's speech was so positive that she was invited to speak at a larger and more formal event on women's rights soon thereafter. Mona Munir of the al-Masryeen al-Ahrar (Free Egyptians) Party asked her to give the same presentation as the one at the smaller conference. Even though the first presentation had been well received, Abaza was worried about being ridiculed for discussing animals alongside women's rights in this more august context, especially at a time when there were so many problems in the country. Nonetheless, she gave the same speech, emphasizing that "it is time to teach people and kids to respect life." According to Abaza, the reaction to her speech was very positive, with the exception of the head of a woman's association. Amina told this skeptic afterward: "Remember El Torbini who raped and killed more than sixty homeless kids? He started with cats—he was a cat abuser" (Amina Abaza, interview by author, Cairo, November 16, 2014).

In this speech, Abaza did not invoke Islamic arguments on the treatment of animals. She had relied routinely on Islamic arguments in the past, prior to the revolution, but she took a different approach at this juncture. She based her talk on the idea that there is a link between abuse of humans and abuse of animals. There are studies that show this link, although Abaza spoke at a level of generality and without reference to any particular empirical evidence.[20] Significantly, she "did not want to be a part of the Islamic hysteria that we lived in with Morsy and the Muslim Brotherhood," she said (Amina Abaza, e-mail message to author, March 7, 2014). In the past, in the Mubarak era, she had tried to influence individual behavior toward animals with Islamic arguments. Few in Egypt before 2011 would have thought that the Muslim Brotherhood could reach the position of controlling the presidency, legislature, and constitutional drafting commission. Even though their time in power after the revolution was short, and they were under physical repression by the new regime at the time of the second drafting process, Abaza sought to

20. For a summary of these studies, see Wagman, Waisman, and Frasch (2014, 155–63).

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distinguish her interests and goals clearly from theirs and thus did not rely on Islamic arguments in her appeal for attention to the interests of animals. Instead, she presented concern for animals within the framework of women's rights and human rights more generally.

With her success at the women's conference, Abaza then began to think about a constitutional amendment protecting animals in hopes that the Committee of Fifty would be receptive in a way that the drafters in 2012 had not been. Working with volunteers attached to her organization, she produced several versions of suggested language. They did not engage the work of a lawyer, nor did they look at other constitutions, although Abaza assumed that many countries had constitutional protections for animals (Amina Abaza, interview by author, Cairo, November 16, 2014). Her group used its judgment as to what was needed in Egypt and what kinds of arguments might be successful. The group prepared a petition and sought to collect signatures of Egyptians. The petition stated:

> We request that the state be required to implement all of the international agreements concerning kindness to animals (*al-rifq bi-l-hayawan*).
> We request the criminalization and intensification of punishment for violence toward God's creatures, both those that are owned by people and those that are not owned.[21] Violence toward them is simply the first step taken by someone who will become a sadistic person and a threat to society, known for brutality to humans and animals alike. We request the implementation of Penal Law 58, which refers to the kind of destruction, torture, and injury present today.[22]
> For if someone comes across the spectacle of blood it becomes easier for him to see it and it will subsequently cause him to take action such that he will become a criminal. Therefore we request the inclusion of a provision dealing with violence against animals in the article on violence to humans in the new constitution so that generations to come will be distinguished by mercy, tolerance, and accepting others. (document provided by Amina Abaza [on file with author])

Abaza framed the need for constitutional animal protection in terms of the need for the protection of human lives, even requesting that animal protection be located in the same article as general human rights. At the bottom of the petition was a place for the name, identification card number, and signature of the Egyptian citizen. Volunteers collected the names of thousands of supporters for the petition,

21. This language is meant to refer to feral dogs and cats.

22. This law provides in Article 355: An individual guilty of any of the following acts is punished by penal servitude: (1) The intentional and unnecessary killing of, or causing great harm to, a riding animal, an animal used for carrying or pulling loads, or any type of livestock. (2) The poisoning of an animal that is mentioned in (1) or the poisoning of a fish of a kind that is found in rivers, canals, swamps, or ponds. This act will put the perpetrator under police supervision for a period of at least one year and no greater than two years. An individual who attempts the above-mentioned crimes at night will be punished by hard labor or penal servitude for a period not to exceed one year or by a fine not to exceed 200 L.E. Article 357 provides: An individual who intentionally and unnecessarily kills, poisons, or causes great harm to a domesticated animal that is not mentioned in Article 355 is punished by imprisonment for a period no greater than six months or by a fine not to exceed 200 L.E.

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mainly through Facebook.[23] Abaza explained that it is very difficult to get an Egyptian to provide his or her identification card number and that she was amazed by the work that the volunteers did, which resulted in a tall stack of petitions (Amina Abaza, interview by author, Cairo, November 16, 2014).

Even with these petitions, Abaza was initially not sure how to capture the attention of the drafters (Amina Abaza, interview by author, Cairo, November 16, 2014). Drawing on her contacts, Abaza turned to a long-time friend and employee in the Shura Council, the building where the Committee of Fifty was meeting, who said that if she gave him the relevant documents, he would deliver them to the desks of the drafters. Abaza prepared copies of the petitions for her contact, who later reported that he had delivered them to each committee member. At that point, Abaza felt that she had done all she could do. She intentionally remained silent during this time. She did not seek out media interviews for fear that her cause would be made light of, jeopardizing her chances of success (Amina Abaza, interview by author, Cairo, November 16, 2014).

Abaza then heard from the Committee of Fifty spokesperson Mohamed Salmawy, who informed her the day the drafting was completed that the Committee had included a provision in Article 45 requiring the state to provide for *al-rifq bi-l-hayawan*:

> The state shall protect its seas, shores, lakes, waterways, and natural reserves. Trespassing, polluting, or misusing any of them is prohibited. Every citizen has the guaranteed right to enjoy them. The state shall provide for the protection and development of green space in urban areas; the preservation of plant, livestock, and fish resources; the protection of endangered species and species threatened by extinction; and the kind treatment of animals (*al-rifq bi-l-hayawan*), all according to law.

The language of Article 45 concerning animals was much shorter and less detailed than the petitions and proposals that the activists had prepared. The phrase *al-rifq bi-l-hayawan* is often translated as the prevention of cruelty to animals because this is a common English formulation, as in the "Society for the Prevention of Cruelty to Animals," but this is not precisely accurate. It connotes both kindness to animals and humane treatment of animals—the promotion of something positive—as well as the prevention of harm. The activists' petitions and proposals had used the phrase but they had also used language like *huquq* (rights) and more specific kinds of obligations, such as the obligation to comply with international treaties and organizations concerning animals of which Egypt was a signatory or member.[24]

The phrase *al-rifq bi-l-hayawan* was not coined by the drafters, but instead has roots in Islamic legal texts. The medieval Muslim author al-Sakhawi (d. 1497), for

23. The role of social media tools such as Twitter and Facebook in the Egyptian revolution has been extensively discussed, with one protestor tweeting: "We used Facebook to schedule the protests, Twitter to coordinate, and YouTube to tell the world" (Shearlaw 2016).

24. The Brooke Hospital proposal used the term *rifq* in the sense of kindness in dealing with animals, but began its proposed article with the stronger assertion that animals have rights (*huquq*); Abaza's use of the phrase was within the same context of achieving animal rights.

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example, wrote a book on the rulings of *al-rifq bi-l-hayawan* in the hadith. According to ESMA chairperson Mona Khalil, the Committee of Fifty was persuaded that some mention of protection for animals should be in the constitution, and they took the least controversial path of doing so. "Since *al-rifq bi-l-hayawan* has a clear religious connotation, no one can object to it," she said. By using this language, the Committee of Fifty was immunizing itself against attacks of adopting Western priorities or frivolous concerns, she speculated. Khalil also commented that the Committee was careful to place attention to animals on a far lower scale than humans by using *rifq* for animals and *huquq* for humans in the constitution (Mona Khalil, interview with author via Skype, March 18, 2014).

In addition to serving as the spokesperson for the Committee of Fifty, Salmawy also drafted several of the articles, including Article 45 and a set of articles on culture. Salmawy said that he did not look to other constitutions when drafting Article 45 to see how they might provide for animals, nor were other constitutional provisions on this topic discussed in the Committee of Fifty. He said that he thought that the language of *al-rifq bi-l-hayawan* was religious in a general sense, but he was not aware of a long history in Islamic legal texts. Instead, what was most relevant to him was his belief that the phrasing had been used in modern Egyptian laws and that the first animal welfare organization in Egypt that he could remember was called the Society for the Prevention of Cruelty to Animals, or the society for the promotion of *al-rifq bi-l-hayawan* in its Arabic formulation. Significantly, he did not believe that he was importing a concept—rather, it was locally authentic (Mohamed Salmawy, interview with author, Cairo, November 17, 2014).

For Salmawy, including the animal welfare language was not a difficult choice; he thought that it was consistent with Egyptian law, culture, and history as well as with Islam. He was familiar, for example, with the hadith in which a woman went to hell because she locked up her cat inside without food or water, causing the cat's death, and referred to it as evidence that animal welfare is an Islamic value. Further, an encounter with Amina Abaza many years earlier, when he had been worried about his neighbors' treatment of their dog and suspected animal abuse, had already planted the idea that animal welfare was not just a foreign concern, but also part of Egypt's legal system. He learned of Amina Abaza and her organization, and asked her advice, and she had told him about the penal law, while explaining that although in theory cruelty to animals was illegal, in practice the authorities would not respond to such a complaint. They did not have any further conversations after that, but he recalled this conversation when, as the spokesperson of the Committee of Fifty, he saw Abaza's proposal. The fact that the penal code protected animals in any way made him believe that animal welfare is consistent with Egyptian legal history and that there is precedent in Egyptian law, if not in practice, for concern for animal welfare (Mohamed Salmawy, interview with author, Cairo, November 17, 2014).

In a television interview after the drafting of the constitution was completed, Salmawy spoke positively of Abaza's suggestions regarding animals. This interview provides important evidence of his motivations and justifications for including the language:

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> [Abaza] was among the thousands who sent us suggestions for the constitution. Her suggestion was very good and was signed by 10,000 citizens. It said that there should be an article in the constitution on kindness to animals (*al-rifq bi-l-hayawan*), which the three monotheistic religions all endorse. And the point of view of Amina and her group is very good because they say that violence in society—and as we are now combatting violence and terrorism—begins with treating animals with cruelty. For people become used to cruelty this way. If people get used to treating animals kindly, they will be kind to humans also. So, this article was included in the constitution. (Salmawy 2013)

In this interview, Salmawy emphasized that *al-rifq bi-l-hayawan* was not something unique to the Islamic tradition, but was endorsed by all three monotheistic religions. By characterizing it that way, he was benefiting from the Islamic resonance while also implicitly stating that its Islamic authenticity itself was not the sole reason for including it in the constitution. Salmawy's comment placed *al-rifq bi-l-hayawan* in the most strategic position possible: it was a value shared by all three religions, and these were the three religions endorsed in the Egyptian constitution as legitimate.[25]

He did not end with monotheistic support for the phrase. He also provided a human-centered justification, adopting the "link" theory, by stating that violence toward animals leads to violence toward humans. More specifically, he referred to Egypt fighting "violence and terrorism" at that particular time. At the time of the constitution's adoption in a nationwide referendum on January 14–15, 2014, the regime was engaged in combating violence in the Sinai that had increased after Morsi's ouster. That conflict, which became linked to the Islamic State, or ISIS, continued to intensify (Kingsley and Abdo 2015). When Abaza spoke of violence to animals leading to violence against humans at the conferences of women's organizations, the violence to humans that she referred to was at the level of individual encounters—the way that a child may harm animals and then grow up to harm his peers or his wife, for example. Salmawy took the concept and applied it on a much larger scale, suggesting that the country's national security interests were served by animal protection.

Salmawy embraced Abaza's framing of animal protection as the protection of humans, and picked up the religious, and even Islamic, frame that had been a part of the constitutional conversation about a provision protecting animals dating back to the 2012 constitutional process, even if Abaza had not framed animal protection in terms of Islam herself. He further bridged animal protection to yet one more issue: environmental protection. Salmawy made the decision to put the animal welfare language in one of the articles addressing mainly the environment rather than dedicating a separate article to it. As he explained, someone looking to dismiss the issue of animal welfare would have found it easier to do so if it had been contained in a separate article; the whole article could have been treated as irrelevant or frivolous by someone doubting its importance. Placing it within an article that dealt

25. Article 3 of the Constitution of Egypt of 2014 recognizes that Christian and Jewish law regarding personal status governs the Egyptian adherents to those religions.

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with the environment and natural resources meant that animal welfare was put on the same level as issues that are more deeply entrenched in Egyptian law and are considered a matter of national pride and even national security (Mohamed Salmawy, interview with author, Cairo, November 17, 2014).

The concept of constitutional protection for the environment was also relatively new in Egypt, but by 2014 it had become fairly well established. In 2007, President Mubarak initiated a set of thirty-four constitutional amendments, the last amendments to the 1971 Constitution before the revolution. The amendments dealt with the "presidential election process and also reached into the areas of state ideology, political party formation, parliamentary elections, military courts, the distribution of power within the executive branch, and the power of the People's Assembly vis-à-vis the executive" (Stilt 2014, 126). The 2007 amendments also included Article 59: "Environmental protection is a national duty and the law shall regulate the measures necessary to safeguard a good environment." While it is not possible to conclude with certainty why Mubarak included this provision among a set of amendments intended mainly to entrench his rule further, a few explanations seem plausible. Of the thirty-four amendments, some were inconsequential and some "appeared, in the abstract, to be democratic developments"; the inclusion of these was likely an effort to dilute the ones that were most authoritarian and to detract attention from them (Stilt 2014, 130). Article 59 could be considered among the amendments intended to provide "window dressing" (Stilt 2014, 130). Mubarak was also attempting to present himself as a modern ruler to the international community, and some recognition of the environment, however minimal, was a low-cost way to contribute to that effort at a time when constitutions worldwide were increasingly including environmental protections of some kind (see May and Daly 2014, 55–84).

Attention to constitutional environmental protection grew after the 2011 revolution, which called attention to the hollowness of many of Mubarak's constitutional promises. Environmental groups, political parties, and journalists within Egypt called upon the 2012 drafting committee to increase environmental protections beyond the 2007 constitutional formulation. One press report in 2012, for example, called for constitutional environmental protections, listed countries with exemplary environmental provisions (including Norway, Germany, Brazil, El Salvador, and Kenya), and reported that eighteen Egyptian political parties had called for the protection of the environment (Wahba 2012). Another asked if Egypt in its constitution would follow the examples of modern constitutions worldwide, which include environmental protection (Diwan 2012).

The drafters of the 2012 Constitution included, in Article 63, language that had become very common in constitutions worldwide by that time: "All individuals have the right to a healthy environment" (see May and Daly 2014, 64–72). Article 63 continued: "The State shall safeguard the environment against pollution, and promote the use of natural resources in a manner that prevents damage to the environment and preserves the rights of future generations." The language recognizing the rights of future generations is less common worldwide than the right to a healthy environment, but it continues to spread (see May and Daly 2014, 68–69). The inclusion of these provisions strongly indicates that the drafting committee

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looked to best practices and trends in constitutions worldwide. The 2012 Constitution also referenced the environment in several other provisions, the most relevant of which to the animal protection provision that would emerge in 2014 was Article 20, providing that "[t]he State shall protect its coasts, seas, waterways and lakes, maintain monuments and nature reserves, and remove any encroachments."

Thus, when the Committee of Fifty began its work, it inherited significant environmental provisions from the 2012 Constitution that seemed to have domestic support and be consistent with the growing trend in constitutions worldwide. The Committee of Fifty retained the environmental protections from the 2012 Constitution, and developed them further in several ways, including expanding the 2012 Constitution's Article 20 into the 2014 Constitution's Article 45. The following article, Article 46, covers the right to a healthy environment and includes the national duty language of the 2007 amendment to read:

> Every person has the right to a sound healthy environment. Environmental protection is a national duty. The State shall take necessary measures to protect and ensure not to harm the environment; ensure a rational use of natural resources so as to achieve sustainable development; and guarantee the right of future generations thereto.

Along with Article 43's focus on protecting the Suez Canal and Article 44's focus on the Nile and access to water generally, this section of the 2014 Constitution contains a cluster of provisions related to the environment. Embedding the provision on kind treatment of animals in the middle of these explicitly environmental provisions served, as Salmawy intended, to frame the protection of individual animals as a matter of environmental law and policy, a topic that he believed had become a mainstream and widespread concern.[26]

Salmawy was able to convince his colleagues on the Committee of Fifty to adopt the language of Article 45; he faced little resistance (Mohamed Salmawy, interview with author, Cairo, November 17, 2014).[27] The ease with which it was accepted by the other drafters was likely due to the combination of the phrasing's religious connotation, its environmental framing, and the fact that it is not clear what the language actually requires the state to do. The language could be read to require the state to adopt laws promoting animal welfare, but even that reading is not completely clear. In other contexts, such as in the United States and Europe, large agricultural interests watch carefully for any sign of new laws that might add new protections for animals because they worry that their practices could be affected. In those contexts, factory farming is one of the most significant animal welfare issues and any new law could potentially affect it. In the Egyptian context, there are also large agricultural interests, most specifically the Ministry of

26. For a discussion of the distinction between environmental law, and its concern at the level of species, and animal law, and its concern with individual animals, see Eisen and Stilt (2017) and sources cited therein.

27. The voting record in the Committee of Fifty shows that forty-eight drafters voted on Article 45 with forty-four voting in favor, two voting against, and two abstaining. For the neighboring articles on the environment, Articles 43, 44, and 46, all forty-eight drafters voted in favor.

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Agriculture, which oversees the slaughterhouses, but these interests did not mount an objection. They may not have felt threatened due to the vagueness of the language, alongside the fact that it would be difficult to object to general language with a religious resonance.

The constitutional process has been criticized for not allowing sufficient public participation, and it is difficult to know which individuals and groups might have submitted proposals that were not accepted by the Committee of Fifty. In terms of distributing the draft prior to the referendum, commentators have criticized that "there was no organized effort to reach the broader public" (Gluck and Brandt 2015, 9). A public referendum was held on January 14–15, 2014, and voters were given the option of approving or rejecting the constitution as a whole, so there is no way to know the level of support for any one particular article. The constitution was adopted by a 98.1 percent vote in favor. Voter turnout was 38.6 percent, comparable to the turnout for the 2012 Constitution (Gluck and Brandt 2015).

The activists all view Article 45 as a victory even while they recognize that the language is weak and that it is not clear what it will mean in practice. More generally, there is no guarantee that any constitutional provision will be enforced in practice, beyond the specific context of Article 45. But their cause has been endorsed in the constitution, and that gives them a new argument when talking about their work in any context. Although the provision certainly does not translate into immediate change, the activists believe its inclusion is a major victory because their cause has been legitimized. They are now using the new constitutional language in nonlegal and legal contexts, in both developing new legal strategies to advance the cause of animal welfare and in conversations with governmental officials and individual citizens.

Prior to the revolution, Amina Abaza and Mona Khalil, in particular, were invited for radio or television interviews, and they rightly expected that the interviewer might take a condescending or sarcastic tone and insinuate that they were prioritizing the needs of animals over the needs of humans in a country in which the needs of humans are so significant. Over time, they were able to establish themselves as serious activists with worthy goals, but there was always the possibility that denigrating their project would be the interviewer's aim. Now, Abaza says, "our cause cannot be ridiculed anymore" (Amina Abaza, interview by author, Cairo, November 16, 2014). The Islamic arguments they deployed were powerful and often persuasive on the level of individual encounters, but the constitutional provision gives them an additional level of support from within Egyptian national law. It also speaks to Egyptians who are less inclined to accept religious arguments as reasons to modify their own behavior or even more generally to give an issue consideration.

Most activists agree that the next step after the adoption of Article 45 is to press for a comprehensive animal welfare law with meaningful enforcement provisions. Abaza is part of a group of Egyptian women who formed a Women's Government, which is intended to serve as a shadow government to the government formed by current President Abdul Fattah al-Sisi. Abaza serves as the Minister of the Environment and Animal Welfare (in the Egyptian government, the ministry is only the Ministry of the Environment). She is currently translating the model animal welfare law provided by the international organization World Animal Net into

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Arabic (Amina Abaza, e-mail message to author, May 20, 2017). However, like the revolution more broadly, the potential of Article 45 has not yet been fulfilled, and significant cruelty to animals, including that perpetuated by the government, continues on a regular basis.[28]

CONCLUSIONS

In the constitutional process after the 2011 revolution, the animal protection activists found themselves operating on the national scene in a new way, working with political parties and seeking to build partnerships and coalitions around their cause. The instructional Islamic arguments that worked well in conversations with individuals encountered on the street were not well suited for broader conversations about a new legal system and for the wide range of constituents who wanted a place at the constitutional table. Relying mainly on Islamic arguments, they failed to achieve constitutional animal protection in the first postrevolutionary constitution. The military's ouster of the Muslim Brotherhood's regime created another constitutional process, and activist Amina Abaza framed the cause to encompass the needs of humans, and particularly women's rights. The constitutional drafters embraced the human rights frame, layered in a religious, and even lightly Islamic, frame, and added the new frame of environmental protection. These frames were connected to established social and constitutional values, and the bridge created between them and animal welfare was essential to the adoption of Article 45.

The opportunity to use frame bridging was made possible by the turn to the constitutional process by the activists, for both the 2012 and 2014 Constitutions, and the ability of Egyptians to communicate ideas, albeit in a limited and flawed way, to the drafters. The turn to the political process dated back to the Mubarak era, and to the belief of the animal activists that the production of laws was a necessary component of their strategy. In the Mubarak era, however, their efforts to convince Mubarak and his National Democratic Party were not successful. The regime was not receptive to their requests for an animal welfare law and, as a result, they focused their efforts on influencing the behavior of individual Egyptians toward animals. After the revolution, with the new potential of democratic lawmaking, they saw a new opportunity. However, the Egyptian political and legal transition focused on the constitutional level first; particularly after Morsi's ouster, a new constitution was the first step toward new parliamentary elections, which would take place at some point in the future. With the constitution as the only viable avenue to influence the production of law, activists focused on the constitutional drafting process and the members of the drafting committees.

This case study suggests that the three factors discussed—a decision by activists to attempt to influence the constitutional process; the ability of citizens to convey their ideas to the constitutional drafters, albeit in a limited way; and, most importantly, frame bridging—are worthy of consideration in the study of constitutional innovation beyond the particular context of animal protection in Egypt. Ginsburg,

28. Author's observations.

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Melton, and Elkins (forthcoming) have noted that constitutional drafters are usually not innovators, for reasons that include time constraints and lack of knowledge and experience. Drafters often look to existing lists of typical provisions in constitutions, rather than starting from a blank slate, and this phenomenon likely explains at least in part the new environmental provisions in 2012 and 2014. As a result, new constitutional ideas will most likely come from outside of the drafting committee, such as from "social movements or from elite bargains" (Ginsburg, Melton, and Elkins forthcoming).

The Egyptian case study supports this hypothesis, and future studies of constitutional innovation should look at social movements and individual advocates as potentially important sources of innovation. Further, framing, and frame bridging in particular, proved to be important in the Egyptian process, especially in the way that the new idea of animal protection was framed in terms of accepted constitutional and societal values and concerns. Further studies of constitutional innovation that investigate the use of frame bridging may be able to develop a more comprehensive sense of why some new ideas, and not others, become part of constitutions.

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