

## Comments

IKEDA Misako

(Research Fellow, Toyo Bunko; Professor, Nagoya University of Commerce and Business)

Two papers presented in Session 2, one by Dr. Ahmed and the other by Mr. Sato, coincidentally addressed the same basic thesis. Both challenged conventional scholarship in each field—Dr. Ahmed on late Ottoman political history and Mr. Sato on early twentieth-century Egyptian political history. Both claim that their fields had been dominated by the secularist discourse and often ignored positive political roles and the inner dynamism of religion and those who represented it. Both successfully make strong cases to support their critical points.

I shall give comments on each paper, starting with Mr. Sato's. His paper, if I am correct, is based on his master's thesis submitted to the University of Tokyo. I believe that this paper of his has already made notable contributions to the study of the 1923 constitution and early twentieth-century Egyptian history in general. I would like to point out his two major contributions. The first is his basic thesis that I mentioned earlier. He introduces the religious perspective to the study of the 1923 constitution, which hitherto had been dominated by the secular and liberal approach. He convincingly shows that the separation between religion and politics was not self-evident in the process of drafting the constitution, as was perceived, and that in fact, politics and religion were deeply intertwined.

The second is the methodology he adopted in this paper. To prove his basic contention, Mr. Sato focuses on analyzing the constitutional committee's deliberations instead of the final text of the constitution. For this purpose, he used a valuable primary source, which contains the extensive committee proceedings in drafting the constitution. This source is called *al-Dustur* (the Constitution), compiled into eleven volumes, published in Egypt in 1940. As far as I know, Mr. Sato is the first person to utilize this material; I have not known any other work, even by Egyptian scholars, referring to it.

Next, I would like to make some suggestions to supplement Mr. Sato's paper. He has carefully chosen three themes (the relationship between religion and the nation-state, religious minorities, and freedom of religion) to prove his argument, and, in the end, presented two general ideological trends observed among the committee members. While this is sufficient to fulfill the purpose of his paper, I would like to see further analyses of the text he has used. For example, I would like to see more careful analyses on who voiced certain opinions and what they said, especially for those who expressed ambiguous, sometimes contradictory opinions, such as al-Badawi and Ali Mahir. I would also like to see the analysis of the relationships between the final text of the constitution and internal committee arguments, rather than simply focusing on the latter. After all, the final text is the reflection of the collective thinking of the committee members. For example, Article 149 "Islam is the religion of the state" would be a suitable case for this analysis.

Finally, I would like to ask some questions particularly on Draft Article 6, which concerned the rights of religious minorities. This issue is slightly different from the other two, which focused on the religion of the majority. I would like to know the drafters' intention behind bring this article into the first draft and why it was ultimately deleted from the final text.

Moving on to Dr. Ahmed's paper, it is quite eloquent and thought-provoking, utterly fascinated me. It is carefully composed to convey nuanced meanings. Unfortunately, I am not an expert in Ottoman history. By asking the following questions I would like to clarify some of his main arguments.

Dr. Ahmed first raises the issue of the lack of the conceptualization of Islam in the historiography of the late Ottoman Empire and presents his basic contentions on his paper topic. Then, he moves on to the issue of the Ottoman Ulema in the context of Pan-Islamism or Islamism. He introduces interpretations of two different scholars on Islamism, which

is interesting. However, without assessing these interpretations, he briefly refers to Talat Asad's framework on this issue: "Islamism can be argued as part of Islamic discursive tradition." I assume that this is not far from Dr. Ahmed's own interpretation. Not knowing the inner debates among scholars of Late Ottoman history, I do not understand how he brought the issue of Islamism before getting into the specific topic of the political roles of the Ulema. I would like to know the implications of addressing these interpretations on Islamism in this section of the paper, Dr. Ahmed's own interpretation, and the relationship of Islamism with the political roles of the Ulema in the late Ottoman period.

Next is the notion of *Din-u-Devlet*. It seems that this is a central notion for understanding the nature of the political role of the Ottoman Ulema. I would like Dr. Ahmed to explain its precise meaning and the background against which it arose. I also would like to know whether this notion had been self-evident and unquestionable in the minds of the Ottoman Ulema, regardless of their hierarchical positions and geographical locations. If the answer is yes, how were they educated to acquire it? If the answer is no, how did their perceptions of the notion differ among themselves?

### Session 3: Justice and Society

#### Changes of the Judicial System and the Law in the Modern Egypt: Through the Codification Process of the Waqf Law

TAKAIWA Nobutada

(Lecturer, Hitotsubashi University)

In the late 19th century Egypt, enactment of law and reform of the judicial system were enforced under the growing European political and financial pressure. Civil laws that were based on the Code of Napoléon, commercial laws and the others had been established. The judicial system was divided into five organizations: the Mixed Courts which tried civil cases involving foreign nationals protected by the Capitulations, the National Courts which tried civil and criminal cases involving Egyptian nationals, the Consular Courts which tried criminal cases involving foreign nationals, the Sharī'a Courts or the Islamic Courts which heard cases involving marriage, divorce, child custody, waqf, and other matters most apt to affect the Egyptian Muslims, and the Millet Courts which heard cases in matters of personal status involving Jews, Orthodox Christians, Armenians living in Egypt.

According to the Treaty of Montreux (1937) that would provide for the abolition of the Capitulations in Egypt, foreigners were made subject to Egyptian law in all matters. Explicit provision was made, however, for the maintenance of the Mixed Courts until 1949, and during that period (twelve years) their organization and jurisdiction was to be governed by an Egyptian law annexed to the treaty. In addition, the jurisdiction of the Consular Courts was abolished, except that in certain cases the signatory powers could, if they so desired, maintain existing Consular Courts to hear matters of personal status only. That is to say, jurisdiction over civil cases and criminal cases had been transferred to the Egyptian Civil Courts. These were reconstituted as the National Courts under a new law on judicial organization.

As for the Sharī'a Courts, being based on the Islamic law which had not been codified, statutes containing rules of marriage, divorce, and some related matters were passed by the parliament that was established under the Constitution in 1923 and their organization and rules of procedure were reformed. It was not until 1943, however, that any comprehensive legislation was passed governing entire segments of the law of personal status, such as inheritance, waqf and so on.

The legal system was changed drastically in the Modern Egypt, as stated above. I am especially interested in waqf issues during the structural change because waqf is one of the most important institutions in Muslim society: it is