

RESEARCH ARTICLE

Independence and constitutionalism in Egypt 1919–1922

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Abstract

This paper aims to provide a new constitutional perspective on the Egyptian political process from the end of World War I to its independence in 1922. Egyptian historical research on the same period has been conducted mainly from a nationalist perspective. However, as Egypt had a long history of constitutionalism that had developed in unison with nationalism since the 1870s, Egyptian nationalists simultaneously desired to establish a constitutional system after achieving independence. Eventually, Britain unilaterally declared the independence of Egypt in 1922, which, despite its concern, included the introduction of a constitutional system into the country. The declaration was the product of secret negotiations between the British Special High Commissioner Allenby and Tharwat, an Egyptian nationalist politician. However, the idea of introducing the constitutional system was first publicly proposed in the preceding negotiations between Colonial Minister Milner and Zaghlūl, which facilitated Tharwat's negotiations with Allenby on this subject. While Zaghlūl, the leader of the Wafd, and the group including 'Adlī and Tharwat were increasingly antagonistic, the establishment of a constitutional system had long been a common desire of all Egyptian nationalists who transcended their differences.

Key words: Britain; colonialism; constitutionalism; Egypt; independence; nationalism

Preface

The purpose of this paper is to review the political process of Egypt from the end of the World War I to the independence in 1922 from the perspective of Egyptian constitutionalism, which had begun to develop in the latter half of the nineteenth century. A series of political negotiations between Britain and Egypt in 1920–1922 resulted in the British unilateral declaration of Egypt's independence. At the same time, Britain allowed Egypt to establish a constitutional system after independence. I will examine how the idea of the constitutional system in Egypt was incorporated into the declaration of its independence by Britain and what background in Egypt helped to realize it.

Studies of Egyptian political history dealing with the same period have mainly focused on the independence movement led by Sa'd Zaghlūl from a perspective of nationalism. Nevertheless, despite its importance, the Egyptian search for a post-independence political system inextricably linked to nationalism has been sidelined in most studies.

As an exception, Kedourie (1968) was one of the few scholars who focused on this subject in his article. He attributed the creation of the 1923 constitution, which embodied a liberal constitutional system after Egypt's independence, to the negotiations between Special High Commissioner Edmund Allenby and 'Abd al-Khāliq Tharwat from late 1921 to early 1922. However, this study argues that the agreement between Allenby and Tharwat can be traced back to preceding negotiations between Alfred Milner and Zaghlūl. Egyptian nationalists were united in the common goal of establishing a constitutional government, despite the increasing rivalry between Zaghlūl on one side and 'Adlī Yakan and Tharwat on the other.

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Since 1921, Zaghlūl's criticism of 'Adlī and Tharwat had intensified because of their independent actions, which he thought betrayed the true nationalist cause of achieving complete independence. Reflecting Zaghlūl's view, Egyptians supporting Zaghlūl and the Wafd regarded them and their supporters as the enemies of Egyptian nationalism. This perception has persisted and influenced many scholarly works on post-World War I (WWI) Egyptian politics. This study revises the conventional view of this group by highlighting that the cause of constitutionalism was shared by Egyptian nationalists across the political spectrum.

The conventional view believes that the 1923 constitution was a product of either Britain or pro-British Egyptians because it originated from Britain's unilateral declaration and was drafted by the pro-British Tharwat government. For example, Vatikiotis (1980), in his comprehensive book on modern Egyptian history, suggested that the 1923 constitution stemmed from the British unilateral declaration of 1922,¹ without referring to the active involvement of 'Adlī and Tharwat in the process. Terry (1982) also held that Allenby's determination produced a democratic constitution in Egypt. Botman (1998) further stated that the constitution was drafted by those who were sympathetic to the British and the king.

All these works disregard the fact that the British declaration incorporated Egyptians' aspirations for liberal constitutionalism against the British officials' persisting doubts about the Egyptians' ability to manage their country. Egyptian nationalist leaders, including Zaghlūl, pushed to establish a constitutional government in Egypt during their negotiations with Britain in 1920–1922. Their endeavors finally bore fruit in Tharwat's negotiations with Allenby, who included this point in the British declaration. It is true that Zaghlūl vehemently attacked the constitution's drafting by the committee appointed by Tharwat, which, he claimed, should be done by an elected constituent assembly. Nevertheless, Zaghlūl respected the liberal constitutional principles, such as popular sovereignty, embodied in the draft constitution even during his second deportation² (Deeb 1979, p. 60) and eventually participated in the first general elections held under the 1923 constitution.

In a different approach, Maghraoui's (2006) book on liberalism in post-WWI Egypt also regarded the 1923 constitution as a colonial product, one influenced by European political and cultural values. Analyzing the constitution from a cultural studies perspective, he attributed the failure of Egyptian liberals' constitutionalism to their identification with European culture and values, which alienated their native ones. Although his approach is unique, he trivialized the complex, sometimes self-contradicting thoughts of Egyptian liberals toward their own and European culture and values. They hardly lost themselves in European culture; their yearning for it coexisted with their attachment to their native one. A close examination of the drafting of the 1923 constitution indicates that the committee members did not blindly copy Western constitutions. On the contrary, they took pains to adjust them to Egypt's local social and religious conditions, as Sato's work (2018) demonstrated, drawing on the proceedings of the drafting committee.

In contrast to the works discrediting the Egyptian nationalists' role in realizing the 1923 constitution, some works regard the constitution as a genuine Egyptian achievement. Among others, al-Sayyid-Marsot (1977) not only referred to Tharwat's contribution having a constitution in Egypt but also considered it as the sole value of the British declaration of 1922. Deeb (1979) regarded the 1923 constitution as a product of popular demand. He rightly stated that the British government accepted the constitutional system in Egypt to satisfy Egyptian public opinion.³

From a methodological perspective, this study intends to locate constitutionalism in the mainstream of Egyptian political history. Despite the primacy of constitutionalism in Egyptian nationalist

¹Contrary to Vatikiotis's remark that the declaration did not mention the form of government to be established in independent Egypt (Vatikiotis 1980, p. 272), it was included in a separate document attached to it. This paper discusses it later.

²Although Fu'ād modified the original draft under the supervision of Tharwat for his advantage, the final version of the constitution retained liberal principles, such as popular sovereignty and ministerial responsibility.

³For similar views, Matsumoto (2009) argued that the constitution was a product of Egyptian liberals, who strove to achieve a parliamentary government in their strife with Britain and the king. Hilāl (1977) also asserted that the constitution sprang from the 1919 Revolution and opened the door to parliamentary life for the Egyptian people.

politics since the 1870s, historians have mentioned it only sporadically. This treatment deprives us of an accurate understanding of constitutionalism's continuity and its organic relationship with the country's politics. While the field of legal studies is centered on analyzing constitutions, it tends to disregard the actual political settings in which they emerged and evolved. The insufficient attention to constitutionalism in historical studies is not exclusive to Egypt, as Elangovan (2019) explains with respect to India. Thus, this study is not only relevant to the Egyptian history of constitutionalism but also raises this issue in political history in general.

This study also contributes to exploring the relationship between nationalism and constitutionalism, on the one hand, and colonialism and constitutionalism, on the other, in the colonial context of constitutional history. The study reveals that the relationship between the principles of nationalism and constitutionalism were closely connected in Egypt during the period under consideration. Constitutionalism was perhaps the most attractive form of government in Egypt and other newly independent states in the early twentieth century.

However, the relationship between colonialism and constitutionalism is not straightforward. The British officials' view of Egyptian constitutionalism was negative and, at times, even antagonistic because they discredited the Egyptians' ability to rule themselves. Whenever they saw the Egyptians overstepping their designated roles by exercising their constitutional rights, the British suppressed them. Meanwhile, the British sought to spread their tradition of political liberalism to their colonies. They felt that it was their duty to educate the supposedly uncivilized indigenous people and lead them toward the "superior" civilization – the Western civilization. Thus, they allowed the Egyptians to participate in colonial administration such as consultative councils within a limited capacity. Over the three decades of British rule, the Egyptians elected to the consultative bodies gained practical knowledge and skills to manage quasi-legislative institutions and internalized the ethos of representative governance. Thus, the British unwittingly empowered the Egyptians to rule themselves. While Egyptians were aware of constitutionalism before the British occupation of Egypt, the British policy of creating the consultative bodies, along with the relatively free atmosphere to express one's opinions, enhanced their conviction in constitutionalism.

Background

Historical development of constitutionalism in Egypt

Constitutionalism first appeared in Egypt in the 1870s, following the establishment of the Consultative Assembly of the Delegates, *Majlis Shūrā al-Nuwwāb*, by Khedive Ismā'īl of the Muḥammad 'Alī dynasty in 1866, which was composed of Egyptian notables elected indirectly. Although Ismā'īl did not grant it any power beyond the advisory, he formally imitated Western parliaments. For example, two written laws stipulated the rules for the composition and operation of the parliament, including the rights of the assembly and the methods for electing members, deliberating, and voting on bills. Ismā'īl inadvertently laid the foundation for constitutional movements.

At the same time, Ismā'īl pursued extensive and rapid modernization and Westernization policies, which led to Egypt's financial collapse in the mid-1870s. European powers quickly intervened and began to control financial and political affairs. Facing a national crisis, Egyptians launched the first nationalist movement in Egypt, in which members of the Consultative Assembly of the Delegates played a major role. By then, they had already gained enough experience in parliament to understand the true roles of European parliaments and came to declare themselves representatives of the Egyptian people (Schölch 1981, p. 79). The constitutional movement and the enactment of the constitution in the Ottoman Empire also inspired them. In circumstances where Ismā'īl's power was relatively weakened, some members of the Consultative Assembly wanted to strengthen their own power to the extent to which European parliaments enjoyed dealing with financial and internal affairs; they also demanded the establishment of the principle of ministerial responsibility for the Assembly (al-Rāfi'ī 1987a, p. 201). In this way, Egyptian nationalism merged with constitutionalism.

The Egyptian nationalist movement was set back in 1879, when Britain and France deposed Ismā'īl through the Ottoman Sultan, and the assembly, which had been renamed the Assembly of the

Delegates, *Majlis al-Nuwwāb*, in the same year, was suspended. However, it was revived soon after, when a national revolution led by the Egyptian officer Aḥmad ‘Urābī took place in 1881. This revolution brought Egyptians – including soldiers, intellectuals, and members of the assembly – together and forced the cabinet under the influence of Britain and France to resign and reopen the assembly. The assembly passed the Basic Law of 1882, which granted it a degree of autonomous power and is often called the first “constitution” of Egypt. Constitutionalism again occupied a central role in the nationalist movement; however, the ‘Urābī Revolution ended soon because of the British occupation of Egypt the following year.

At the beginning of British rule, Egyptian nationalism lurked in the shadows, but it showed signs of a revival in the 1890s. At the beginning of the twentieth century, the nationalist movement rekindled in earnest, and intellectuals and journalists founded many political parties, including the Umma Party and the Waṭan Party. At the same time, constitutionalism was revived, once again becoming the core of the national movement, and each political party competed to campaign under the slogan “Demand for a Constitution, *al-muṭālaba bi-l-dustūr*” (Rizq 2007, p. 133). The members of the two assemblies newly created under the British occupation, namely the Legislative Council, *Majlis Shūrā al-Qawānīn*, and the General Assembly, *al-Jam‘īya al-‘Umūmiya*, were again a leading part of the nationalist movement and demanded the expansion of their powers and the establishment of a parliamentary government in Egypt.⁴ Faced with the nationalist and constitutionalist demands, the British authority in Cairo set up a new assembly called the Legislative Assembly, *al-Jam‘īya al-Tashrī‘īya*, in 1913, merging the existing two bodies, and granted it new powers, such as the right to vote on new taxes. However, soon after the outbreak of WWI, the British suspended the new assembly⁵ and made Egypt a protectorate, suggesting the possibility of self-government in the future (Lissauer 1975, p. 26; Vatikiotis 1980, p. 251). However, the assembly produced many prominent figures who led the Egyptian national movement after the war, including Sa‘d Zaghlūl,⁶ who served as deputy speaker of the Legislative Assembly. Later, these figures became the core members of the Wafd, the dominant political organization in postwar Egypt. Thus, Egyptian constitutionalism held a tradition of about half a century and had walked a difficult path alongside the nationalist movement. Constitutionalism in post-WWI Egypt should be viewed in the context of this historical evolution.

The revolution of 1919

Immediately after the end of WWI in November 1918, Zaghlūl and two other members of the assembly met with the High Commissioner in Cairo, Reginald Wingate. They asked for permission to visit London to discuss the status of Egypt after the conflict. They believed that Egypt, which had sacrificed so much during the war, deserved independence instead of a protectorate and planned to submit their case to the Paris Peace Conference. They were encouraged by the principle of national self-determination proposed by US President Wilson and by the possibility of the independence of the Arab regions under the Ottoman Empire. However, the British government refused Zaghlūl’s plea. Not only was it busy with the Paris Peace Conference, but it also did not intend to change the status of Egypt as a protectorate. With the defeat of the Ottoman Empire, Egypt became ever more strategically important to the British Empire.

The pretext of the British government was that they were not official representatives of the Egyptian government; however, Zaghlūl and his associates considered themselves representatives of the

⁴For example, in debates in the Legislative Council on October 31, 1908 (*Majlis Shūrā al-Qawānīn: Majmū‘at Mahāḍīr Jalsāt* 1908, pp. 63–70).

⁵In October 1914, the opening of the second-year session for the Legislative Assembly was postponed to January 1915, but it had never been reopened (Muḥammad, al-Namnam, and ‘Abd al-‘Āl 2016, p. 136).

⁶Zaghlūl had become the Minister of Education in 1906 and the Minister of Justice in 1910. After resigning from the governmental position, he became a member of the new assembly and a sharp critic of government policies. He was the elected second deputy speaker, while the Council of Ministers nominated the speaker and the first deputy speaker (Landau 1953, pp. 55, 57).

Egyptian nation as they were elected members of the Legislative Assembly – albeit suspended – and Zaghlūl, the only elected deputy speaker. In response to British refusal, they immediately formed an organization called the Wafd to send a delegation to the Peace Conference. At the same time, they vigorously launched a signature campaign to receive commission from the people. Many influential Egyptians, including members of the Legislative Assembly, joined the Wafd, traveling throughout the country and using their extensive contacts to solicit public support. A wide range of people from all over the country responded to the campaign, signed the petition, and helped fund it.

On March 8, 1919, the British authorities in Egypt arrested Zaghlūl and four other Wafd members and deported them to Malta. This event led to the revolution of 1919, which was an unprecedented protest movement in Egypt. Egyptians stood up for the release of Zaghlūl and for independence – a protest transcending differences in region, class, occupation, and religion. Students started the demonstrations in Cairo, which spread to local cities and rural areas, and were joined by workers, government employees, and other people. Muslims and Copts cooperated, and women also took to the streets to participate. The British government appointed General Edmund Allenby, who had made a name for himself on the Palestinian front during WWI, as Special High Commissioner to Cairo to quell the revolt. He saw the seriousness of the protests and persuaded the home government to release Zaghlūl and colleagues and allow them to go to Paris; once in Paris, Zaghlūl and colleagues began diplomatic activities but soon faced a harsh reality. Talks with the heads of state were slow to materialize, and it became clear that President Wilson, who had been their only hope, approved the continuation of the British protectorate over Egypt.

Meanwhile, although the severe crackdown by the British authorities in Egypt caused many casualties and arrests, the demonstrations and strikes continued after the liberation of Zaghlūl. In response, the British government decided to send a commission headed by the Colonial Minister Alfred Milner to Egypt for inquiry. Upon arriving in Egypt in December 1919, Milner encountered fierce boycotts from almost all Egyptians, who responded to Zaghlūl's call from Paris for non-cooperation with the commission; moreover, since meetings with Egyptian government officials were no exception, the talks with them were only informal. These experiences prompted Milner to realize that it was no longer realistic to keep the status quo of the country and that the British must discuss with Egypt to determine the future relationship between them. In addition, he realized that any negotiations without Zaghlūl would fail (Lissauer 1975, p. 326). Fortunately, the chance to meet with Zaghlūl came through 'Adlī Yakan, a prominent Egyptian politician. Zaghlūl, who had been frustrated with his diplomatic impasse in Paris, considered Milner's recognition of his presence in the negotiations as a significant step forward. Thus, informal talks between Zaghlūl and Milner began in London in June 1920.

The Milner–Zaghlūl negotiation and the constitutional question (June–November 1920)

The negotiations between Zaghlūl and Milner for defining the future status of Egypt and the relationship between the two countries encountered difficulties from the outset.⁷ There was an unreachable gap between Milner, who was inclined to reassess the protectorate over Egypt against the official position of the home government, and Zaghlūl, whose goal was to gain complete independence. Both sides submitted their proposals, but there was still no room for compromise by either of them. In response, 'Adlī, who had supported the negotiations behind the scenes, mediated between them to produce the Memorandum of August 18, 1920; although it was often called the “Milner–Zaghlūl Agreement,” it was not an agreement strictly. Zaghlūl returned to Paris without expressing his definite view on the memorandum, claiming that the public should judge its terms, and sent his delegates to Egypt to gather such opinions.

Simultaneously, the British home government severely criticized the memorandum for Milner's reassessment of the British position on his own and the unacceptable compromises he offered to

⁷For the details of the negotiations, see the following sources: *Parliamentary Papers*. “Report of the Special Mission to Egypt.” Egypt No. 1 (1921) [Cmd. 1131] (III. Proceedings of the Mission after Leaving Egypt. A. Discussions with Egyptian Delegates in London, pp. 21–23) (Lissauer 1975, pp. 367–98; Ramaḍān 1998, pp. 274–92; Terry 1982, pp. 127–32).

Egypt. Under such circumstances in both countries, the two sides resumed a meeting in November, and Zaghlūl asked Milner for further amendments to the memorandum. As Milner refused it, the negotiations finally broke down.

The memorandum of August 18, 1920

As a result of the breakdown of the negotiations between Milner and Zaghlūl, the Memorandum of August 18, 1920 became invalid. Moreover, Zaghlūl had reportedly expressed his negative view of the memorandum during a Wafd meeting, and the Egyptian public, whose judgment he trusted, could not accept it without significant modifications (Ramaḍān 1998, pp. 293–98). However, the memorandum was the first in which Britain publicly mentioned the issue of Egypt's independence – albeit unauthorized by the home government. In addition, Britain specified the Egyptian governance after independence. This clarification was particularly relevant, considering the subsequent development of the Egyptian constitutional issues discussed between the two countries.

Regarding the system of Egyptian governance after independence, Article 3 of the memorandum defines it as follows: “As between Egypt and Great Britain a Treaty will be entered into, under which Great Britain will recognise the independence of Egypt as a constitutional monarchy with representative institutions”⁸ A constitutional monarchy with representative institutions reflected the principles of constitutionalism that Zaghlūl and many other Egyptians had aspired to for a long time. Following this statement, Articles 5 and 6 describe the specifics of the constitutional system. Article 5 states that “[t]his Treaty will be submitted to the approval of a Constituent Assembly.” Article 6 further specifies: “This Constituent Assembly will also be charged with the duty of framing a new Organic Statute, in accordance with the provisions of which the Government of Egypt will in future be conducted. This Statute will embody provisions for the Ministers being responsible to the Legislature.”⁹

Thus, the Memorandum of August 18, 1920 stipulates the constitutional system under a monarchy, which includes representative institutions, the ratification of treaties by a Constituent Assembly, the enactment of the constitution by this assembly, and the principle of ministerial responsibility under the constitution. Although the form of government adopted by post-independence Egypt must have been a critical matter for both countries, there is no evidence that they discussed this issue in their negotiations.¹⁰ However, Milner and Zaghlūl may have reached a tacit agreement on this matter before the negotiation started. As a clue to this, in the early stages of the negotiation, they had exchanged with each other a virtually identical proposal to establish a constitutional monarchy as the post-independence political system in Egypt, which we will discuss later.

Concerning the need for ratification of the treaty by the Constituent Assembly, Milner had already clarified it in his interim report entitled “Provisional Conclusions arrived at in Egypt,” which he had written during his stay in Egypt. In the report, he pointed out that the conclusion of a treaty between the two governments alone would be insufficient because the Egyptian people did not trust their government. He explained:

It might always be said afterwards that the Egyptian Government was not a free agent, but was bound to accept any terms that Great Britain chose to impose, and that in any case it was an autocratic Government, not really representing the Egyptian people. For these reasons it had

⁸*Parliamentary Papers*. “Report of the Special Mission to Egypt,” Egypt No. 1 (1921) [Cmd. 1131] (III. Proceedings of the Mission after Leaving Egypt. B. The Memorandum of August 18, 1920, p. 24).

⁹*Parliamentary Papers*. “Report of the Special Mission to Egypt,” Egypt No. 1 (1921) [Cmd. 1131] (III. Proceedings of the Mission after Leaving Egypt. B. The Memorandum of August 18, 1920, p. 25). The memorandum also specified that the Statute should guarantee religious toleration for all persons and the protection of the rights of foreigners.

¹⁰Ramaḍān denied Muṣṭafā Amin's claim in the newspaper *al-Aḥbār* that there had been a debate between Milner and Zaghlūl during the negotiations regarding the choice between a constitutional monarchy and a republic, pointing out that the law of succession to the throne had been issued in April 1920, shortly before the negotiations (Ramaḍān 1998, pp. 284–88).

always been a fundamental point in our plan that the Treaty should not be allowed to come into force unless it had been approved by a genuinely representative Egyptian Assembly.¹¹

Milner went on to say that it was up to the Egyptian people to decide which assembly would approve the treaty, whether the existing Legislative Assembly or a newly elected one. However, he stressed that the assembly should be perfectly representative and autonomous to deliberate in perfect freedom and vote without any pressure. He also predicted that in such an assembly, “Zaghlūl Pasha and his associates would command a substantial, if not an overwhelming majority.”¹² Thus, during his stay in Egypt, Milner had already envisioned an Egyptian representative assembly to ratify the treaty and saw the subsequent domination of Zaghlūl and his supporters.

Milner and the constitutional question

As we saw in the previous section, in the Memorandum of August 18, 1920, Milner specified the establishment of a constitutional system as a form of governance after independence. Why did he do this? First of all, it is worth mentioning that Milner by no means thought that a constitutional system was appropriate for Egypt; it was a general view of British officials who served in Egypt since the British occupation. In a report sent in May 1920 to Foreign Minister Curzon after his return from Egypt, Milner wrote: “Owing to the backwardness of the mass of the people, of whom ninety per cent are quite illiterate, it will be many years before any elected Assembly is really representative of more than a comparatively limited class.” He predicted that the parliamentary government under the present conditions would be oligarchical government and disregard for the interests of the Egyptian people and added that individual freedom and respect should be guaranteed for the interests of the people in the constitution (Kedourie 1970, pp. 123–24). In a personal letter to Foreign Minister Curzon, he expressed his view more bluntly, going so far as to say, “Any country less capable of self-determination than the Egypt of today would be difficult to imagine” (Lissauer 1975, pp. 303–04).

Thus, Milner was quite skeptical about the constitutional system in Egypt, but contrary to his intentions, he offered it in his negotiations with Zaghlūl. A document by Milner dated December 29, 1919 and published in the *British Official Journal* as well as in newspapers reveals his ostensible change. At this time, Milner faced a strong boycott by the Egyptians against his inquiry team, and he was keenly aware that there was no solution to the problem, except reviewing the protectorate. In the document, he proposed a new relationship through negotiations between the two countries and the introduction of self-governing institutions into Egypt. In it, he stated the following:

It is the sincere desire of the Mission to see the relations of Great Britain and Egypt established on a basis of friendly accord which will put an end to friction and will enable the Egyptian people to devote the whole of their energies to the development of their country under self-governing institutions.¹³

Behind the document written by Milner were Egyptian politicians such as ‘Adlī, Tharwat, and Ḥusayn Rushdī, who were in private contact with him (Lissauer 1975, pp. 315–22); in particular, in a meeting before the publication of the document ‘Adlī had informed Milner that he could meet with Zaghlūl if the content of the document were liberal (Lissauer 1975, p. 324). After the initial reluctance, Milner believed that only contacting Zaghlūl could resolve the situation and began to explore the possibility of meeting with him through ‘Adlī. Around this time, Milner conceived the idea of

¹¹*Parliamentary Papers*. “Report of the Special Mission to Egypt.” Egypt No. 1 (1921) [Cmd. 1131] (II. Provisional Conclusions arrived at in Egypt, p. 21).

¹²*Ibid.*

¹³*Parliamentary Papers*. “Report of the Special Mission to Egypt,” Egypt No. 1 (1921) [Cmd. 1131] (I. Work of the Mission in Egypt, p. 5) (Lissauer 1975, p. 323).

establishing an assembly with the right to approve a treaty and later included it in the aforementioned provisional conclusions and the Memorandum of August 18, 1920 (Lissauer 1975, pp. 332–33).¹⁴

At the same time, ‘Adli actively persuaded Zaghlūl to negotiate with Milner. Zaghlūl and ‘Adli shared the desire to establish a constitutional system in Egypt, together with national independence. In his letter to Zaghlūl, ‘Adli clarified the meaning of self-governing institutions in Milner’s document on December 29. He said to Zaghlūl that this was not self-government – *al-ḥukm al-dātī*, as Zaghlūl erroneously understood it – but that Milner referred to the constitutional government, *al-ḥukūma al-dustūriya*, adding that he had received confirmation of this from Milner himself. Zaghlūl’s resistance to a face-to-face meeting with Milner continued for a while, but these words from ‘Adli prompted him to reconsider it (Ramaḍān 1998, pp. 251–52). Although Milner was highly skeptical about the suitability of a constitutional system in Egypt, one could assume that he suggested the idea of a constitutional government as an option to bring Egyptian liberals, including Zaghlūl, to the negotiating table.

Thus, Milner initiated negotiations with Zaghlūl, ready to propose a constitutional government in Egypt (Ramaḍān 2002, p. 231). In July 1920, a month after the negotiation started, Milner sent Zaghlūl his draft proposal for a mutual agreement, in which he stipulated that Britain would guarantee a constitutional monarchy with a representative government in independent Egypt (Shafiq 2010, vol. 1, p. 722). Zaghlūl returned the proposal to Milner. His proposal on Egypt’s future government was almost identical with Milner’s, despite many critical differences on other issues, such as Britain’s declaration about terminating its protectorate over Egypt and the status of the British military forces in Egypt.

Zaghlūl, the Wafd, and the constitutional question

The Wafd, led by Zaghlūl, aimed to achieve not only the abolition of the British protectorate and the attainment of full independence for Egypt but also a constitutional regime. As in the ‘Urābī Revolution in the early 1880s, nationalism and constitutionalism were two pillars of the Wafd (Aḥmad 1987, pp. 168, 171). For example, in December 1918, immediately after its formation, the Wafd drafted a memorandum to submit to the Paris Peace Conference, in which it stated that Egypt should achieve full independence and a constitutional system (Quraishi 1967, p. 48). Moreover, the Wafd owed its initial strength in the signature campaign to winning the support of the people, which in itself is congruent with the constitutionalist principle of promoting a representative government.

We see the constitutionalist tradition of the Wafd in the career of Zaghlūl, who edited the Egyptian Gazette in the early 1880s and published an article criticizing tyranny from an Islamic perspective (Kedourie 1970, pp. 82–83). Zaghlūl was also a supporter of the Umma Party founded in 1907, of which the primary pillar was the demand for a constitution. In addition, as the deputy speaker and the oppositional leader in the Legislative Assembly – albeit short-lived – he contributed to the further development of Egyptian parliamentary politics (Landau 1953, pp. 57–58; al-Sayyid-Marsot 1977, p. 47).

As noted earlier, at the early stage of the negotiations between Milner and Zaghlūl, Zaghlūl proposed a constitutional government for independent Egypt, one congruent with Milner’s proposal. In the first of the sixteen clauses of his proposal, Zaghlūl demanded that the British recognize Egypt’s independence and terminate its protectorate and military occupation over Egypt. This move, he explained, would help Egypt “recover a complete internal and external sovereignty and establish a monarchical state with a constitutional system” (Shafiq 2010, vol. 1, pp. 725–26).

After Zaghlūl sent his delegates to Egypt to gather public opinion on the Memorandum of August 18, 1920, various Egyptian groups, including professional associations, political parties, religious groups, and the former Legislative Assembly, discussed it and submitted their views to the delegates.

¹⁴According to Lissauer, Milner proposed the National Assembly’s approval of the treaty as an alternative to Zaghlūl’s suggestion that the powers and the League of Nations should approve the agreement between the two countries, which for Zaghlūl was a condition for the talks to take place.

While many groups accepted it as a basis for the negotiation, they strongly demanded modifications on some critical issues (Shafiq 2010, vol. 1, pp. 769–70).¹⁵ Shafiq summarized these demands into thirteen points, of which one concerned the future government of Egypt. Even if Egyptians supported the establishment of a constitutional monarchy in Egypt, they further demanded popular sovereignty and ministerial responsibility to the representative bodies (Shafiq 2010, vol.1, p. 771).

The views of the Egyptian Democratic Party, *al-Hizb al-Dimuqrāṭī al-Miṣrī*, represented the constitutionalism of one group of Wafd's supporters. The party also compiled a report with its views and recommendations on the memorandum and sent it to the Wafd. The Egyptian Democratic Party was a political party founded by intellectuals such as Maṣṣūr Fahmī and Muḥammad Ḥusayn Haykal and was active between the end of 1918 and 1923. In its report, while avoiding making an overall assessment of the memorandum because of its ambiguities (al-Shilliḡ 1997, pp. 153–54),¹⁶ the Egyptian Democratic Party generally supported the constitutional system proposed in the memorandum, stating that “the proposal [for introducing the constitutional system] is in line with the idea of the present generation in Egypt.” This statement shows that not only the Democratic Party but also many Egyptians supported the proposal of the constitutional system presented in the memorandum. However, the report was critical of its concrete definition, a point uniquely raised by the party. First, by rephrasing the constitutional system of the memorandum as “a constitutional monarchy with representative bodies to which a cabinet holds responsibility,” the report claims that such specified provision is a kind of interference in internal affairs from the point of view of national independence and that it is sufficient to express that Egypt is “independent and democratic.” It argues that this in-depth provision stems from Britain's desire to avoid despotism or socialism in Egypt (al-Shilliḡ 1997, pp. 160–61).

As for the Egyptian National Assembly, *al-Jam'īya al-Waṭaniya al-Miṣriya*, which the memorandum instead called the Constituent Assembly, the report approves its roles of ratifying a treaty and writing a constitution, attaching to its report a draft organization law and election law for the assembly proposed by the party. At the same time, it asserts that the assembly should be dissolved after the formation of a new parliament under the new constitution (al-Shilliḡ 1997, pp. 119–20, 177).

In short, Zaḡhlūl was in tune with the Egyptian constitutionalism developed in the nineteenth century and was instrumental in its realization during the British occupation. The Wafd inherited the spirit of constitutionalism during the prewar period. The Memorandum of August 18, 1920 was a crucial turning point for Egypt to fulfill constitutionalism as it publicly revealed the constitutional system in Egypt for the first time. The Democratic Party's report confirmed that the wider Egyptian public supported it.

The Curzon–‘Adlī negotiation and the constitutional question (July–November 1921)

Although the informal negotiations between Colonial Minister Milner and Zaḡhlūl broke down in November, 1920, in February of the following year, the British proposed the opening of formal negotiations to the Egyptian government. By this time, the British government had finally shifted to accept the review of the protectorate.¹⁷ Sultan Fu‘ād appointed ‘Adlī as prime minister in March, 1921 to be

¹⁵Abd al-Muṭṭalib (1990, p. 137) categorized Egyptians into four groups based on their public opinion about the memorandum. The first group was represented by the Watan party, which categorically rejected it because it did not focus on the complete independence of Egypt. The second group comprising members of the royal family also objected to it because it diminished the Sultan's power. The third group comprised moderates who accepted it, while the fourth group consisted of the general public, who approved of the memorandum in principle but expressed reservations on Sudan and other critical issues.

¹⁶al-Shilliḡ's book includes the party's platform and the drafts of organization law and election law for the National Assembly.

¹⁷Since the review of the Egyptian protectorate was made explicit in the Memorandum of August 18, 1920, it was difficult for the British government to change its position significantly. In a cabinet meeting in February 1921, the government finally accepted it and decided to negotiate a new relationship between the two countries (Kedourie 1970, pp. 136–38; Lissauer 1975, pp. 401–13).

responsible for negotiations with the British Foreign Minister Lord Curzon. Initially, ‘Adlī offered Zaghlūl to join the talk as a member of the Egyptian delegation; however, Zaghlūl refused it unless he, as the representative of the Wafd, led the negotiations. Some Wafd members insisted otherwise, which contributed to a growing rift within the Wafd and prompted Zaghlūl to be distrustful of ‘Adlī.

The negotiations between Prime Minister ‘Adlī and Foreign Minister Curzon began in July and continued intermittently until November, although they ultimately failed. On November 10, toward the end of the negotiations, Curzon presented ‘Adlī with a draft of the British-Egyptian Convention, which ‘Adlī rejected outright in his reply five days later, stating that the content of the draft was virtually the same as the proposal Egypt had refused at the beginning of negotiations. Among others, ‘Adlī resented the unrestricted presence of British military forces in Egypt under the British acceptance of the independence of Egypt. He expressed that “[t]his constitutes occupation pure and simple, destroys every idea of independence and suppresses even internal sovereignty.” Although the premise of negotiations was the abolition of the protectorate, the proposal was inconsistent with it, and it was nothing but “for one of them a permanent pact of subjection.”¹⁸

It is not clear how Curzon and ‘Adlī discussed Egyptian governance after independence, which is the subject of this study. However, a clue may be found in the first part of the November draft agreement presented by Curzon. The section entitled “Termination of Protectorate” states that “[t]he Government of His Britannic Majesty agree...to terminate the Protectorate declared over Egypt on the 18th December, 1914, and thenceforth to recognise Egypt as a Sovereign State under a constitutional monarchy.”¹⁹ This excerpt suggests that Curzon defined the Egyptian polity after the abolition of the protectorate as a constitutional monarchy, which followed the Egyptian system set out in the Memorandum of August 18, 1920. ‘Adlī, a constitutionalist and mediator for the meeting between Milner and Zaghlūl, would have had no objection to this.

What sort of constitutional system did ‘Adlī envisage in concrete terms at that time? To answer this question, we will examine his acceptance of the decree of March 16, 1921, in which the Sultan ordered him to form a cabinet before negotiations began. In this document, ‘Adlī stated that his task was to negotiate with the British for the independence of Egypt and that the final approval of the negotiations would be given to the National Assembly, *al-Jam‘īya al-Waṭaniyya*. He went on to say:

This National Assembly will also assume the role of a constituent assembly [jam‘īya ta’sīsiyya], and for that matter, the cabinet will be in charge of preparing a draft constitution based on the modern principles of the constitutional systems. For the elections of this assembly, we will guarantee complete freedom of election and the election reflecting people’s will. (al-Mursī 2009, pp. 113–14; Karam 1994, p. 220; Shalabī 1974, p. 311)²⁰

Thus, at the time of his appointment as Prime Minister, ‘Adlī followed the proposal of the Memorandum of August 18, 1920 concerning the National Assembly, which was to ratify the treaty and issue a constitution. At the same time, he asserted that it was the cabinet, rather than the Assembly, that should draft the constitution. He also emphasized that the constitution should follow the “modern principles of the constitutional systems [al-mabādi’ al-ḥadītha lil-anzīma al-dustūriyya]”²¹ and that the elections for the Assembly should be strictly free and fair. In contrast to ‘Adlī’s reference to the National Assembly in March 1921, allusions to the National Assembly disappeared in the

¹⁸*Parliamentary Papers*. “Papers Respecting Negotiations with the Egyptian Delegation.” Egypt No. 4 (1921) [Cmd. 1555] (No. 2. Reply of the Egyptian Delegation to the Proposals of His Majesty’s Government, ‘Adlī to Curzon, November 15, 1921).

¹⁹*Parliamentary Papers*. “Papers Respecting Negotiations with the Egyptian Delegation.” Egypt No. 4 (1921) [Cmd. 1555] (No. 1. Memorandum of Clauses of Suggested Convention between Great Britain and Egypt on November 10, 1921).

²⁰In his acceptance letter to the Sultan, ‘Adlī called on the Wafd led by Zaghlūl to join the negotiations.

²¹The preamble of the 1923 constitution contains a similar expression, “the most modern and advanced constitutional regime [niẓām dustūrī ka-ḥdath al-anzīma al-dustūriyya fi al-‘ālam wa-arqāhā],” as the regime to which Egypt should aspire. “al-Dustūr.” *al-waqā’i’ al-Miṣriyya* 42 (April 20, 1923), p. 1.

November draft of Curzon's agreement, which most likely reflected the deteriorating relationship between 'Adli and Zaghlūl since the start of the negotiations with Curzon.

The negotiations between 'Adli and Curzon ultimately failed. However, at their last meeting on November 19, after the breakdown of the negotiations had become definite, 'Adli made an important proposal. He suggested that Britain carry out the plan submitted to him based on its initiative, albeit it included contending points (al-Mursi 2009, pp. 332–33; al-Rāfi'i 1987b, pp. 67–68).²² Britain had already declared that the maintenance of the protectorate was not desirable in the relations between the two countries and was ready to accept, in part, the Egyptian demands. If this was the case, 'Adli maintained, why did Britain not first confer to Egypt what the draft of the Convention had offered while leaving unsolved matters to future negotiations? To this suggestion, Curzon did not answer. However, this suggestion was eventually implemented as Britain's unilateral declaration of independence for Egypt the following year.

Upon his return to Egypt in early December, 'Adli immediately took responsibility for the breakdown in negotiations and informed the Sultan of his intention to resign as prime minister. The attempts made by Britain and Egypt to find an agreement reached a complete deadlock. An extremely humiliating British letter sent by the Special High Commissioner Allenby to the Sultan on December 3 further deteriorated the relationship between the two countries. The letter was Britain's response to 'Adli's rejection of the Curzon proposal in November; it condemned Egypt, which refused Curzon's "liberal" proposal with maximum concessions from the British government. It asserted that Britain had saved Egypt from chaos and that Egypt had forgotten how it benefited from British leadership.²³

The Allenby–Tharwat negotiation and the constitutional question (December 1921–January 1922)

After a series of unsuccessful negotiations with Egypt led by the British government, the main stage of the talks moved from London to Egypt. The failure of the negotiations, the resignation of Prime Minister 'Adli, and the British letter to the Sultan all left no Egyptian to succeed him in the cabinet and left Egypt in a state of anarchy. Allenby, the Special High Commissioner of Egypt, was immensely concerned about the situation and decided to take matters into his own hands. In a telegram to Foreign Minister Curzon dated December 6, 1921, Allenby proposed to "terminate the protectorate by a unilateral declaration on their part" and requested that he be granted the authority to communicate this to the Sultan.²⁴ The home government, led by Prime Minister Lloyd George, strongly opposed this proposal; however, Allenby's determination outweighed the opposition.

Allenby had been working on the proposal for some time. However, it was not his own, and its origins lay both in Egypt and Britain. On the Egyptian side, it was 'Adli, as we have seen, who had proposed it in the final negotiation with Curzon, and Allenby repeated 'Adli's proposal to his telegram to Curzon on December 6. On the British side, there were people who had a similar view, namely British officials who supported Allenby in Egypt. Through their daily duties, they were acutely aware of the predicament Britain found itself in and repeatedly made similar claims.²⁵ Foreign

²²See also al-Miliji (1989, p. 175); Haykal (1977, pp. 127–28); Ramaḍān (1998, pp. 345–46); *Parliamentary Papers*. "Correspondence Respecting Affairs in Egypt," Egypt No. 1 (1922) [Cmd. 1592] (No. 4. Allenby to Curzon, December 6, 1921).

²³*Parliamentary Papers*. "Papers Respecting Negotiations with the Egyptian Delegation," Egypt No. 4 (1921) [Cmd. 1555] (No. 3. Communication from His Majesty's High Commissioner for Egypt and the Soudan to His Highness the Sultan of Egypt, December 3, 1921). Allenby signed the letter, but the actual author was allegedly Edward Grigg, private secretary to Prime Minister Lloyd George. A British official who had worked in Egypt for many years read the letter and said, "It might have been written in the early '80s, just after our occupation of Egypt, but one rubs his eyes to see it dated 3rd December 1921... It will leave us without a single friend in Egypt or a single Egyptian who will ever believe a word we say" (Lissauer 1975, pp. 490–91).

²⁴*Parliamentary Papers*. "Correspondence Respecting Affairs in Egypt," Egypt No. 1 (1922) [Cmd. 1592] (No. 4. Allenby to Curzon, December 6, 1921).

²⁵For example, in a memorandum written in June 1921, William Hayter, legal adviser to the Residency, stated that it was unthinkable for Egypt to sign any treaty other than complete independence and suggested a ten-year provisional agreement.

Minister Curzon objected to Allenby's proposal of December 6, but Allenby countered that no one in Egypt would sign a treaty that fell short of complete independence²⁶ and decided to take the initiative in negotiations.²⁷

Allenby's negotiating partner was 'Adli's confidant, Tharwat, who had been made interior minister in 'Adli's previous cabinet and had remained in the country as acting prime minister during his stay in London. The purpose of the negotiations between Tharwat and Allenby was to determine the terms on which Tharwat would accept the formation of a cabinet, on the implicit assumption that Britain would declare the independence of Egypt on its own. The negotiations took place from mid-December 1921 to January 1922 in two stages, which we call the "first-round negotiation" and the "second-round negotiation."²⁸ While the first-round negotiation, which took place on December 11, immediately failed, the two sides reached an agreement in the second-round negotiation. Tharwat's demand for a constitutional government was a crucial issue in both negotiations.

The first-round negotiation and the constitutional question

In the first-round negotiation on December 11, Tharwat visited Allenby and presented his conditions for accepting the cabinet. These conditions concerned the British "undertaking" of terminating the British protectorate and granting the independence of Egypt, the establishment of a constitution and constitutional reform in Egypt, and the restoration of the Egyptian Foreign Ministry.²⁹ Allenby reported them to Curzon by telegraph the following day. The telegraph did not specify when Tharwat would form a cabinet – before the termination of the protectorate, or vice versa. Curzon received Tharwat's acceptance of premiership favorably because of Allenby's explanation that Tharwat did not expect the abolition of the protectorate to take place "so immediately" but "in the near future."³⁰ Nevertheless, Curzon objected to Tharwat's description of "undertaking of [the] British government to terminate protectorate and recognise Egypt as a sovereign State." He argued that the British government did not promise any "undertaking" but only "offered" an idea "as part of bargain." His objection reflected the British unchanged policy that Egypt must first sign a treaty to achieve independence (Kedourie 1970, p. 152).

As for the constitutional question, which was one of the important issues for Tharwat to accept to form a cabinet, Allenby quoted it in his report as follows:

[Tharwat's] Ministry are persuaded that there will be no obstacle in the near future to restoring a normal regime in Egypt, which will permit of granting of constitution to the country assuring an effective and serious co-operation between the Government and the country's elected representatives.

If that were not accepted, he continued, Britain would have no choice but to make the declaration unilaterally. While completely agreeing with the idea of Hayter, Gilbert Clayton, interior adviser, even argued that the maintenance of a British military force outside the Canal was not necessary for safeguarding British interests (Paris 2016, pp. 338–39). Kedourie notes that Allenby was under the influence of Clayton rather than that of the Foreign Office; other British officials in Cairo, such as Sheldon Amos and Walford Selby, held similar views (Kedourie 1970, pp. 146–48).

²⁶*Parliamentary Papers*. "Correspondence Respecting Affairs in Egypt," Egypt No. 1 (1922) [Cmd. 1592] (No. 7. Allenby to Curzon, December 11, 1921).

²⁷Allenby likely made the first approach as Šidqī, who took part in the negotiations, supported this view in his biography (Šidqī 1991, p. 58; al-Mursī 2009, p. 336). In his memoir, however, Haykal states that it was from Tharwat (Haykal 1977, p. 128).

²⁸Many studies have dealt with the negotiations between Tharwat and Allenby, but few are aware of the two stages of the negotiations. The exceptions are Kedourie (1970, pp. 151–52); Lissauer (1975, pp. 496–505); Wavell (1944, pp. 64, 68).

²⁹The Foreign Ministry was abolished when Egypt became a protectorate, and Egyptian diplomacy became under the control of the British authorities in Cairo.

³⁰*Parliamentary Papers*. "Correspondence Respecting Affairs in Egypt," Egypt No. 1 (1922) [Cmd. 1592] (No. 9. Allenby to Curzon, December 12, 1921). It was unknown how the discussion on this point between Allenby and Tharwat on December 11 proceeded. Lissauer, however, states that Tharwat was ready to form a government before the abolition of the protectorate (Lissauer 1975, p. 496).

Ministry intend forthwith, strengthened by approval of your Highness, to work out scheme of constitutional reform in order that in their political task they may rely upon a true national representation and may bring to a successful issue a whole series of urgent reforms which moral and economic progress of the country demands.³¹

While Curzon's draft agreement in November mentioned the introduction of a constitutional system, Tharwat went further by specifying his intention of establishing an assembly of "elected representatives" and calling for the constitution under the principle of "co-operation between Government and the country's elected representatives," which implied granting parliament a degree of power over the government. However, the wording was ambiguous. Furthermore, there was no reference to the National Assembly, which had been mentioned in 'Adli's acceptance of the cabinet in March but had been deleted in the Curzon proposal in November. It was little wonder that Tharwat dismissed the idea of the National Assembly, which Zaghlūl, who was increasingly antagonistic to 'Adli, would most likely dominate.

However, the first-round negotiation suddenly came to a standstill, and in a telegram dated December 20, Allenby informed the home government that Tharwat was unable to form a cabinet.³² At that time, Allenby and Tharwat were wary of the movements of Zaghlūl to obstruct their negotiation, eventually arresting him on December 23 and deporting him for the second time to the Seychelles Islands, in the Indian Ocean, with other Wafd members (Lissauer 1975, pp. 499–500).

The second-round negotiation and the constitutional question

The second-round negotiation resumed immediately after the first round failed, and it proceeded until early January, virtually unknown to the British government. It was not until January 12 of the following year that Allenby first disclosed it to the government; at the time of the report, all negotiations ended between Tharwat and Allenby. In addition to Allenby's reports sent to Curzon on January 12,³³ which we will examine later, a brief account by Ismā'il Ṣidqī, who accompanied Tharwat for the negotiations, reveals their process.³⁴ According to Ṣidqī, Tharwat and Ṣidqī negotiated with Allenby, but both were in close contact with 'Adli and asked for instructions. Meanwhile, Allenby had three trusted British advisers who supported him.³⁵ After negotiations were over, they prepared a draft of the letter to the Sultan to be sent upon the British proclamation of Egypt's independence. Ṣidqī claimed that it was Ṣidqī himself who had drafted it in French (Ṣidqī 1991, pp. 57–60).

Tharwat's terms, which had been agreed in the talks, were written down in the draft of the letter to the Sultan mentioned above. It consisted of four main points.³⁶ The first was Britain's abolition of the protectorate and the acceptance of the independence of Egypt "without waiting for conclusion of a treaty," which sharply contradicted the conventional policy of the British government toward

³¹*Parliamentary Papers*. "Correspondence Respecting Affairs in Egypt," Egypt No. 1 (1922) [Cmd. 1592] (No. 8. Allenby to Curzon, December 12, 1921).

³²*Parliamentary Papers*. "Correspondence Respecting Affairs in Egypt," Egypt No. 1 (1922) [Cmd. 1592] (No. 11. Allenby to Curzon, December 20, 1921).

³³Allenby's report on January 12 describes the second-round negotiation as having been "protracted," with Tharwat and his entourage having made extensive contact with Egyptians and having proceeded on the advice of 'Adli, whose assistance has been "disinterested and valuable."

³⁴Allenby's personal telegram to Curzon on December 27 informed that the second-round negotiation had begun with the help of Walford Selby, the first secretary, and, while Tharwat had accepted the cabinet by that time, he said that he needed three weeks to a month to do so. This telegram did not contain anything contrary to the policy of the home government (Lissauer 1975, p. 502).

³⁵They were Amos, Clayton, and Reginald Patterson, a financial adviser. Under Allenby's direction, they sought out influential Europeans who would support the outcomes of the negotiations with Tharwat. Then, they found Firmin Van Den Bosch, a Belgian public prosecutor in the Mixed courts in Egypt, who had the confidence from the Sultan (Badrawi 1996, p. 27; Ṣidqī 1991, p. 59).

³⁶*Parliamentary Papers*. "Correspondence Respecting Affairs in Egypt," Egypt No. 1 (1922) [Cmd. 1592] (No. 24. Allenby to Curzon, January 12, 1922).

Egypt. Other terms included the restoration of the Foreign Ministry, establishment of a parliament, and abolition of martial law.³⁷

Concerning the constitutional issues finalized in the second-round negotiation, the draft of the letter to the Sultan states that “[a]s regards internal administration of Egypt, His Majesty’s Government will view with favor creation of a Parliament with right to control the policy and administration of a constitutionally responsible Government.” Here the word *parliament* was mentioned for the first time in the documents related to postwar negotiations between Britain and Egypt. Furthermore, while the relationship between the government and the representative body had been vaguely worded as a “cooperative relationship” in the first-round negotiation, the agreement in the second-round negotiation clarified that the government would be responsible for the constitution and that the parliament would have the power to control the government. However, looking back at a series of negotiations between Egypt and Britain, the Memorandum of August 18, 1920 had already referred to the principle of ministerial responsibility to the legislature. Although the memorandum did not specify the control of the government by parliament, it laid the foundation for the definite powers of parliament that Tharwat won in the second-round negotiation.

British declaration of the independence of Egypt and the constitutional question

On January 12, 1922, Allenby broke a long silence by reporting to Foreign Minister Curzon on his agreement with Tharwat. The report mainly consisted of a draft of a letter to the Sultan informing him of the new British policy and Allenby’s supplementary explanation of the draft.³⁸ Allenby sent it to Curzon with a firm resolution in the belief that Britain had no other policy but his own. The country became dysfunctional after ‘Adli’s resignation as prime minister, further aggravated by a surge of anti-British sentiment in Egypt upon Zaghūl’s renewed exile.

Unsurprisingly, Allenby’s proposals provoked a strong reaction within the British government, which denounced it as an “ultimatum” and a “violent metamorphosis.”³⁹ However, Allenby refused to back down, saying that he would resign if the proposal were not accepted. Prime Minister Lloyd George ordered Allenby to return home and met with him on the morning and evening of February 15, where he finally persuaded the prime minister. The latter asked Allenby to make some minor amendments to the draft, which he completed before the ministerial meeting the following day.⁴⁰

³⁷Martial law was imposed on November 2, 1914, immediately before the British declaration of war against the Ottoman Empire. al-Rāfi’i lists Tharwat’s eleven terms agreed with Allenby in the negotiations: (1) rejection of Curzon’s proposal; (2) abolition of the British protectorate and declaration of Egyptian independence; (3) restoration of the Foreign Ministry and diplomatic missions; (4) establishment of parliament and ministry’s responsibility to it; (5) prohibition of interference in internal affairs by other countries; (6) limitation of the powers of British advisers; (7) abolition of British advisers other than financial and legal advisers; (8) appointment of Egyptian officials in place of foreign officials; (9) abolition of martial law; (10) commencement of treaty negotiations with Britain following the establishment of parliament; (11) British government’s recording of its acceptance of the above conditions in an official document. The wording of clause 4 is as follows: “The establishment of a bicameral parliament (the Senate and the Chamber of Deputies), which shall have the power to control acts of the government, and the government shall be responsible to parliament” (al-Rāfi’i 1987b, pp. 57–58). Unfortunately, al-Rāfi’i quotes no source. Badrawi also quoted almost the same conditions as those of al-Rāfi’i’s lists above in his book (Badrawi 1996, p. 27).

Shafiq cited Tharwat’s four conditions as mentioned in an article in the newspaper *al-Muqaṭṭam* dated January 17, 1922. These are: (1) opposition to the British proposal [the Curzon plan] but support for the abolition of the protectorate [mentioned in the plan] and the independence of Egypt; (2) restoration of Egypt’s diplomatic powers and the appointment of an Egyptian Foreign Minister and diplomatic missions; (3) establishment of a constitution for Egypt providing for the establishment of representative assemblies to which the government would be responsible for its acts; and (4) abolition of martial law (Shafiq 2010, vol. 2, pp. 691–92). These terms are identical to those indicated in the draft letter to the Sultan, except for Shafiq’s specification of the establishment of a constitution.

³⁸On the same day, Allenby also sent Curzon a list of ministers submitted by Tharwat and a personal telegram.

³⁹CAB/24/132 (No. 1. Telegram to Allenby, January 26, 1922).

⁴⁰CAB/23/35/42 (Memorandum of a conversation at 10 Downing St., February 15, 1922). CAB/23/36 (Memorandum of a conversation held at 10 Downing St., February 15, 1922). Clayton and Amos, who also had returned to England, accompanied Allenby to the meeting with the prime minister. Amos was instrumental in persuading the prime minister on the day.

Although the debate over the report of January 12 in the home government centered around the security of British interests in the post-independence period, it also extended to the establishment of a parliament in Egypt – a topic that Allenby had already discussed in his communication with Curzon on January 20. Allenby had expressed his concern that a parliament in Egypt might strengthen the Egyptian government's opposition to Britain, while warning that it would be difficult to oppose the establishment of a parliament. To ease this concern, he added that Tharwat and his colleagues had conceived the parliament with great care and would avoid any extreme tendencies.⁴¹

During the discussions between the prime minister and Allenby on February 15, Foreign Minister Curzon expressed similar concerns, questioning whether the agreement with Tharwat would be honored if the establishment of an Egyptian parliament led to the emergence of a government unfriendly to Britain. In response, Amos, the legal adviser who was present with Allenby, explained that this was the wisest option under the present circumstances, albeit not without risk.⁴² The following day, at the cabinet meeting, Foreign Minister Curzon himself defended the establishment of a parliament in Egypt, stating that the Egyptian government would not be at the mercy of the parliament because Egypt would set up an “old-fashioned Constitution with two Chambers, one of which would be composed of nominated members.”⁴³ By that time, it was no longer practical for the British government to oppose the internal affair of establishing an Egyptian parliament, hoping that a moderately designed constitution would control the power of the parliament.

The letter to the Sultan was finally handed over to him on February 28, the day of the Declaration of Independence, with minor changes under the prime minister's request. Upon comparing the final draft to the original one that Allenby had sent to Curzon on January 12 one notices a change in the format of the letter. While the original consisted of one document, the final draft contained two: “Communication to be addressed to the Sultan by the High Commissioner” and “Declaration to Egypt.”⁴⁴ The “Declaration” set out the main points of the original draft, namely the abolition of the British protectorate of Egypt, the declaration of Egypt as an independent sovereign state, the abolition of martial law, and the maintenance of the four areas of British interest⁴⁵ in Egypt pending an agreement between the two countries. On the other hand, “Communication” included the revival of the ministry of foreign affairs and the introduction of a parliament.

The final draft also made a partial change in the content of the establishment of parliament. As we have seen above, the original draft indicates “creation of a Parliament with right to control the policy and administration of a constitutionally responsible Government.” However, in the final draft, it reads, “The creation of a Parliament with a right to control the policy and administration of a constitutionally responsible Government is a matter for your Highness and the Egyptian people to determine.” The Sultan, the future king, was mentioned for the first time in the final draft of the constitutional system. Although there is no commentary by the British government on the amendment, we infer that Britain, being concerned about the growing power of parliament, brought the Sultan, who disliked the establishment of parliament in Egypt (Kedourie 1968, p. 347), to stop it from running amok.

Britain declared the independence of Egypt on February 28, 1922. On March 1, the next day, the Sultan issued a decree to order Tharwat to form a cabinet; in it, the Sultan stated that Egypt would have a constitutional system of cooperation between the people and the government and that the first task of the new government would be to draw up a constitution (Karam 1994, p. 229). Egypt

⁴¹CAB/24/132/43 (Telegram from Allenby, January 20, 1922). Almost the same content but with different wording can be found in the following source. *Parliamentary Papers*. “Correspondence Respecting Affairs in Egypt,” Egypt No. 1 (1922) [Cmd. 1592] (No. 29. Allenby to Curzon, January 20, 1922).

⁴²CAB/23/36 (Memorandum of a conversation held at 10 Downing St., February 15, 1922).

⁴³CAB/23/29/10 (Conclusions of a meeting of the Cabinet, February 16, 1922).

⁴⁴*Parliamentary Papers*. “Correspondence Respecting Affairs in Egypt,” Egypt No. 1 (1922) [Cmd. 1592] (No. 35. Curzon to Allenby, February 21, 1922, Enclosure 1: Communication to be Addressed to the Sultan by the High Commissioner; Enclosure 2: Declaration to Egypt).

⁴⁵The four areas of British interest were as follows: defense of Egypt, security of British imperial communications in Egypt, protection of foreign interests and minorities in Egypt, and control of Sudan.

officially became an independent sovereign state on 15 March, and Sultan Fu'ād became the first King of Egypt. The following month, Prime Minister Tharwat inaugurated a constitutional committee headed by Rushdī to start drafting the constitution under the decree of March 1.

Concluding remarks

Egypt became an independent state by the British unilateral declaration on February 28, 1922 owing to the negotiations between Allenby and Tharwat. Zaghlūl heavily criticized the Britain's declaration of Egypt's independence, which was short of complete independence and allowed Britain to maintain its critical interests over Egypt. After the breakdown of negotiations with Milner, he remained outside the negotiations for independence with Britain. His relations with 'Adlī and Tharwat, who led the subsequent negotiations, continued to deteriorate. The conflict between the two groups culminated in Allenby's second deportation of Zaghlūl during negotiations with Tharwat.

However, the post-independence constitutional regime defined by the agreement between Tharwat and Allenby did not contradict what Zaghlūl envisaged for the internal political system in Egypt in principle. Rather, as this study has shown, the Memorandum of August 18, 1920 resulting from the negotiation between Zaghlūl and Milner had already contained the constitutional demands made by Tharwat to Allenby. 'Adlī and Tharwat followed and developed the memorandum despite the intensifying rivalry between the two groups.

It was also in negotiations between Milner and Zaghlūl that Britain publicly proposed a constitutional system in Egypt after independence. When Allenby disclosed his negotiation with Tharwat to the home government, British officials expressed their concern about an Egyptian parliament for fear of its defiance to the British government. However, it was no longer practical for Britain to deny the establishment of a parliament because of Milner's acceptance of it in the previous year and the strong reactions anticipated from Egypt. Thus, after a series of negotiations that began with the talk between Zaghlūl and Milner, the Egyptian constitutional system finally came to fruition in a letter sent to the Sultan on February 28, 1922, the day of the proclamation of independence. It was a great victory for the Egyptians, who had long wished for a constitutional system. With all the setbacks of the 'Urābī revolution and the subsequent retreat of the constitutional movement under British military rule, the establishment of a constitutional system in Egypt became an unwavering goal of Egyptian politicians and intellectuals, along with the achievement of independence.

After Tharwat took office in March 1922, he appointed a committee to draw up a constitution, contrary to the idea of a National Assembly elected by the people that had been proposed in the Memorandum of August 18, 1920. Zaghlūl was critical of the Tharwat-led constitutional process. However, the constitution of 1923 was one of the most advanced in the non-Western world at that time, enshrining national sovereignty and the separation of powers. After being allowed to return home shortly before the promulgation of the constitution in April 1923, Zaghlūl decided to participate in parliamentary elections. The Wafd won a landslide victory, and Zaghlūl became the first prime minister after the independence of Egypt.

Conflict of interest. None.

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