

New Egypt versus the *Felool*: Struggle for Democracy

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ABSTRACT *What happened in Egypt? The Egyptian regime moved to the offensive prior to the presidential elections, and the military and the judiciary did everything in their power to prevent Mohamed Morsi from becoming president and curtailed his powers and dissolved the parliament. Morsi, however, issued a decree granting himself broad powers and used his new authority to order the retrial of Mubarak. Egypt will continue to struggle between painful democratization and tutelage regime.*

After 29 years and 120 days of the Mubarak regime, Egypt has embarked on a new era. Egypt—a country with the oldest tradition of modernization in the region—had not been governed by a civilian since 1953 until the recent election of its first civilian president, Mohamed Morsi. The military regime, after having kept its cool during the revolution and the parliamentary elections, went on the offensive right before the presidential elections and intervened in politics. Following the military's lead the judiciary dissolved the parliament and the constitutional drafting committee, as well as limiting the powers of the president that would be elected. The actors of

the revolution all of a sudden found themselves facing a judiciary coup. They had two choices. Either they could take to the streets in protest, or they could ignore the judiciary and demand that the presidential election continue as planned. The Ikhwan, as the pioneer of the opposition, opted for the second choice. This did not mean that the struggle against the tutelage of the military-judiciary collaboration had ended. The battle was lost, but the fight was going to be carried on with the first victory to the public in the presidential elections. The expected happened after the elections. The forces of the military-judiciary tutelage and the president-elect embarked on a controversial political

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tug of war for power. It would be useful to remind the reader the history of this struggle.

Post-Revolution: Tutelage versus Democracy

The suspension of the constitutional drafting committee by the Egyptian Administrative Court on April 10, 2012 can be considered the first post-revolution intervention in the democratic system by Egypt's judiciary. The constitutional drafting committee, more than half of which consisted of members from the Freedom and Justice Party (FJP) and the Nour Party, was criticized for having been taken over by the "Islamists". Following this, there was discord between the representatives of the secular segment of the country and the Islamic parties in the committee. These disagreements had resulted in the withdrawal of some liberal, Christian and left representatives. The secularist movements and parties were content with the Administrative Court's decision to suspend the constitutional drafting committee, with the Al-Ah-rar (Liberal Socialist Party), Al-Wafd (Nationalist Liberal party) and the Social Democratic Parties declaring the court's ruling "a constitutional victory". The Islamic parties, however, criticized the court's ruling for violating the separation of powers principle.

The second intervention by the Egyptian judiciary after the ousting of Mubarak concerned the presidential candidates, particularly the disquali-



A supporter of Egyptian President Mohamed Mursi and member of the Muslim Brotherhood holds a Koran and an Egyptian national flag during a rally in Cairo.

REUTERS/Amr Dalsh

fication of Khairat al-Shater from the presidential race, can be considered one the most significant judicial intervention on the path to democracy. Neither the FJP nor any other political movement in the country reacted strongly to the disqualification of the ten candidates from the presidential race at the hand of the judiciary in April. Had Khairat al-Shater's candidacy not been revoked, he would have been the president of Egypt today instead of Morsi. The Muslim Brotherhood accepted this, opting for continuing in the democratic process. Other political groups were secretly content that the most important candidate of the Justice and Development Party was disqualified from the presidential race. However,

the issue at stake was not al-Shater's disqualification but the audacity of the judiciary in intervening in the democratic system so brazenly and the indifference of political actors to such intervention.

The controversial decree issued by President Morsi on November 22, 2012 divided the Egyptian street

After this event, the Egyptian judiciary believed that it could exercise its power with no consequences. In an even more radical step, on June 14, 2012, Egypt's Supreme Constitutional Court announced the dissolution of the People's Assembly, the parliament that consisted of democratically elected representatives. At the end, the "revolutionary parliament" was able to resist for only three months against these three interventions by the judiciary. From this perspective, the Constitutional Court's ruling was only an affirmation of the Administrative Court's previous ruling that the parliamentary elections were against the constitution.

Another radical step of the judiciary was another ruling that concerned who could run for office in the country. The court ruled that the "Political Exclusion Law" passed by the parliament the previous month banning se-

nior former regime figures from running for office was unconstitutional. Thus, the court effectively allowed Ahmed Shafiq, who had been dubbed a *felool*, a remnant of the Mubarak regime, to remain in the presidential race. This decision would have a direct influence on the presidential elections. The court in its twin decisions not only dissolved the first democratically elected parliament merely two days before the second round of the presidential election was to take place on June 16-18, but also cleared the Mubarak regime's representative Ahmed Shafiq's path to presidency. In fact, in the second round, Ahmed Shafiq, with 12,347,380 votes, was a close second to Morsi, who had received 13,230,131 votes—a difference of merely 882,751 votes.

The military and judiciary interventions in Egypt's democratic system continued immediately after the second round in the presidential election by the Supreme Council of the Armed Forces (SCAF). On June 17, SCAF issued an addendum to the March 30 version of the Constitutional Declaration, effective immediately. The declaration not only limited the powers of the incoming president but also expanded the military's role in the writing of the country's next constitution.

The First Civilian President's Response to the Military-Judiciary Tutelage

President Morsi, since the day he came to office on June 30, 2012, has

served as a president whose powers had been curtailed. The attack that took place in Sinai on August 5, 2012, which resulted in the death of 15 Egyptian border guards, led to a serious disagreement between Morsi and the military. While Egypt's military

tutional declaration issued by SCAF. With these moves, Morsi put an end to the 60-year military regime that came to power in 1952 following the coup organized by Gamal Abdel Nasser and his friends against King Farouk, and he took a huge step towards the democratization of the country. Mohamed Morsi, by forcing the top names of the SCAF and intelligence to resign, squeezed decades of the Turkish political calendar into a single month. From now on, in its battle against the tutelage regime, he would struggle not only to come to power but also to be in power.¹

Proponents of the old regime, taking advantage of the current crisis, are using the violent groups of the revolution, known as the *baltagiya* (axe men), to provoke violent protests

leadership called for a state of emergency in the Sinai Peninsula, the Morsi administration did not find such a radical measure to be necessary. Taking advantage of the situation, which made the tensions between his administration and the military leadership visible, Morsi moved to get rid of the country's double-headed method of governance.

The first response to the de facto intervention of the judiciary and military in the political process came on August 8, 2012 when Morsi removed the chief of the intelligence service, Mourad Mowafi, from office. Following this radical step, Morsi reclaimed the executive powers that were curtailed when the military council had dissolved the parliament by ordering some of the country's top military chiefs into retirement and canceling the addendum to the earlier consti-

These steps brought a second spring to post-revolution Egypt. The military-judiciary regime reacted to Morsi's radical moves by supporting the country's bureaucracy in a continuous de facto state of strike. Particularly in the intensifying economic crisis, Morsi lost his room for maneuver. Until he received a \$2 billion economic aid package from Turkey, Egypt had not been able to secure the confidence of the international markets. With Turkey's aid package, Egypt was able to take slow but initial steps towards boosting its economy. These small steps are clearly not adequate for an economy of this size to regain the trust of the international markets. Even in the field of economics and finance, in its attempts to negotiate a loan with the IMF Egypt ran into the obstacle of the judiciary.

On October 12, 2012 President Morsi called for Egypt's Prosecutor General Abdel Meguid Mahmoud's resignation from office and appointed him

Egypt's ambassador to the Vatican. The Egyptian Judges' Club, which hosts a number of pro-Mubarak jurists, along with other opposition groups, reacted strongly to the news. Abdel Meguid Mahmood refused his re-appointment and stated that according to Egyptian law, a judicial body could not be dismissed by executive authority and that Morsi's call for his resignation exceeded the president's mandate. He also said that he would remain in office in defiance of Morsi's orders.

Morsi was forced to reconsider² his decision over the reappointment only 48 hours he made the announcement. This marked Morsi's second unsuccessful attempt against the judiciary. Morsi had made his first move after only eight days in office when he issued a decree that reversed the SCAF decision to dissolve the parliament. Morsi called for the parliament to reconvene and continue its duties. However, he was forced to back down from this decision amid strong reactions from the judiciary and the opposition. It was after this retreat that the Egyptian bureaucracy went on de facto strike. Egypt literally went idle in the following weeks. Morsi, with his newly earned momentum, intervened in the tutelary powers of the judiciary in the aftermath of Gaza truce between Israel and Hamas.

The controversial decree³ issued by President Morsi on November 22, 2012 divided the Egyptian street. On the one hand, Morsi supporters claimed that this edict was issued in

the same spirit as the moves that sent the military back to their barracks in August 2012 and that it was issued with the aim of realizing the goals of the revolution. The opposition, on the other hand, considered the edict harmful both to democracy and the stability of the country as it violated the principle of separation of powers and opened the door for a "new dictatorship to emerge". Morsi called a "halt" to the tutelage regime in a language it understands. In other words, he stopped the de facto state of coup that had been maintained by the military and judiciary. Every single political actor in Egypt knows this was so. They also know that courageous decisions made against the establishment by a leader without a parliament, constitution, bureaucracy, intelligence service, police, military or functioning economy are made out of necessity, not out of choice.

Not all of Morsi's decisions had such strong reactions. In fact, the first article in the November 22 declaration that called for the punishment of violence against protestors during the uprisings was approved of by the majority of the people and the revolutionaries. Among the articles that caused the reaction and the subsequent crisis were ones that widened the powers of the executive and exempted presidential decrees from judicial review until a new parliament was convened and the constitution was ratified. In addition to the liberal, secularist and leftist groups, the Strong Egypt Party, led by Abdel Moneim Aboul Fotouh, as well as the church reacted strongly to these arti-



Supporters of Egyptian President Morsi and members of the Muslim Brotherhood chant slogans during rally in Cairo. REUTERS/Amr Dalsh

cles in the decree. Moreover, the opposition reacted strongly to articles five and six of the edict that stated (respectively):

No judicial body can dissolve the Shura Council [upper house of parliament] or the Constituent Assembly.

The President may take the necessary actions and measures to protect the country and the goals of the revolution.

In an unlikely effect, the reaction against Morsi's decree united the revolutionary and reformist movements that had ousted the Mubarak regime

two years ago with the remnants of the Mubarak regime, the *felool*. The Morsi administration was accused of a "lack of experience and foresight and miscalculation of reactions" as well for pushing the revolutionaries into an alliance with the supporters of the former Mubarak regime.

Another article that stirred strong reactions by the proponents of the Mubarak regime was the article that called for retrials of Mubarak and his cohort. Following strong backlash, this article was qualified to "cases where new evidence can be present-

ed". The second article was also modified. The second article previously stipulated that all decrees issued by the president will be "final and binding and cannot be appealed by any way or to any entity. Nor shall they be suspended or canceled and all lawsuits related to them and brought

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before any judicial body against these decisions are annulled". The phrase "acts of sovereignty" was added to this article in the modified version of the decree.

During this period, Mubarak supporters managed to infiltrate the revolutionaries and attempted to reverse the revolution. These proponents of the old regime, taking advantage of the current crisis, are using the violent groups of the revolution, known as the *baltagiya* (axe men), to provoke violent protests. The simultaneous attacks on the offices of the Ihkwan and the Al-Wafd Party during the

December 15, 2012 referendum were organized by these groups.

Morsi's meeting with the top officials from the Supreme Judicial Council and his step back on the issues mentioned above were considered "positive steps" and have served to calm the crisis. The crisis revealed the potential conflict between the president of the Supreme Judicial Council and the opposition members of the judiciary. However, the modifications Morsi made on the two articles⁴ were not sufficient to mollify the opposition.

In the hopes of ending the political crisis that had split the country, the Egyptian government agreed to hold the referendum on the new constitution as soon as possible. Egypt's constituent assembly adopted a draft constitution, consisting of 234 articles, after a marathon all-night session that began on November 29, 2012. The text was sent to President Morsi and it was agreed that it would be presented for referendum on December 15, 2012. The chairman of the Freedom and Justice Party, Saad Al-Katatni, expressed his expectation that the crisis would end with the public approval of the new constitution. The Brotherhood had also expressed their belief that the referendum would put an end to the crisis in the country.

The increasing tension and unrest led to the Egyptian military issuing a statement that urged dialogue between the feuding factions in order to avert a catastrophe. The army's declaration, which interrupted the

state radio and television broadcasts, stated:

The armed forces affirm that dialogue is the best and only way to reach consensus. The opposite of that will bring us to a dark tunnel that will result in catastrophe and that is something we will not allow.

On December 8, 2012, after a nine-hour meeting with 54 representatives from diverse groups at the Presidential Palace, President Morsi rescinded the November 22 decree that had caused the crisis. Morsi advisor, former presidential candidate Salim Al-Awwa, in his announcement rescinding the decree, said that efforts towards a new decree were already in place. That the announcement came after the army's statement has been interpreted as a military intervention in the political life despite claims to the contrary. Egypt has managed to hold the referendum amidst controversy. The voter turnout was low both due to disagreements on the draft of the constitution and the fact that this referendum was the fourth time in two years that citizens were expected to show up at the voting booth. The results revealed that Egyptians had opted for the continuation of consolidating democracy. This was a clear defeat for the proponents of the old regime as well as the liberals.

Egypt's Political Landscape and Debates

The debates and political analyses in Egypt since the ousting of Mubarak

have all tended to make the same mistake in that they fail to see the difference between the ousting of Mubarak and the collapse of the Egyptian establishment. This error is sometimes intentional and sometimes not. The Egyptian regime that derives its domestic power from the military-judiciary-industrial complex, and its regional power from the Camp David order that revolves around Israel, did not perceive Mubarak's ousting as a regime change. On the contrary, they all agreed that the Mubarak regime, which lasted for 29 years and 120 days, had outlived its political life. The army especially did not understand this stepping down as a systemic change. The Egyptian army, with its substantial share in the Egyptian economy, is an important actor in creating employment in the country. In this way, it is not a power with a strong ideological agenda that perceives itself a uniquely fit savior of the nation like the Turkish military. We could say that the Egyptian army has demonstrated its lack of an ideological stance when it refused to stand against the public during the revolution due to its complex position within Egyptian society and political economy.

That the Egyptian army does not have an ideological structure at odds with the average Egyptian's world view has made it easier for Morsi since he has not had to face an ideological camp in addition to the administrative problems in his decision to remove Tantawi from his post. In that case, the judiciary, which had grouped along certain ideological and class

interests, reacted more strongly and their extensions urged the people to take to the streets with the following declarations only a few weeks after Morsi's elections:

Saving Egypt from the coming destruction will not happen without the unity of the army and the people, the formation of a national salvation front consisting of political and military leaders, and the upholding an unequivocally civil state with military protection, exactly like the Turkish system... If this does not happen in the next few days, Egypt will fall and collapse, and we will regret [wasting] the days that remain before a new constitution is announced... The people's peaceful protest is imperative and a national duty, until the army responds and announces its support for the people.⁵

The above discourse, heavily favored by the remnants of the Mubarak regime, is useful in understanding the political polarization in Egypt. We can talk of three main currents in the Egyptian political map. While these political approaches can be analyzed from different perspectives, an assessment made on the patterns of the coalitions they made during this process seems to be the way. The first political trend is one that follows the remnants of the Mubarak regime such as Ahmed Shafiq and Amr Musa. As mentioned above, this group has been dubbed the *fellool* by Egyptians in the aftermath of the revolution. The presidential elections revealed that the old regime has a strong voter base within Egyptian society. In addition the political movement led by Ahmed Shafiq,

who went head to head with Morsi in the presidential elections, enjoys a more diverse support base than the Ikhwan. A group of Salafis and Sufis, Christians, seculars, bourgeoisie, media and bureaucracy have maintained relations with this political front "led by the old regime". It would, however, be a mistake to dismiss the entirety of this group as supporters of the old regime. Nevertheless, Shafiq, who directly represents Mubarak, would not have found support in the presidential elections had it not been for these diverse groups.

The second current in the political map consists of members of the Muslim Brotherhood, the ex-Ikhwan and other Islamist groups. For instance, the main opposition party, Nour, was founded by Islamists or Salafis such as Abdel Moneim Aboul Fotouh, an ex-Muslim Brotherhood leader, and can be considered the Islamist stream

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of this wing. The strongest movement in the Egyptian political map is the Muslim Brotherhood with its 80-year tradition. Organized around the Justice and Development Party, the Brotherhood is the only actor that came out of the two referendums and two elections held since the revolu-

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tion with relative victory. The third political camp consists of the secularists and the liberals. Although in Egyptian political language liberal and secular are used interchangeably, those that are secular need not be liberal, nor do liberals need to be secular all the time.

Egypt will determine its political future based on the outcome of the competition between the three trends described above. Expecting those who still act in the name of the old regime to have a positive role in Egypt's democratic future seems rather difficult. Thus, Egypt's political trials will be defined through these three trends, the remnants of the old regime, the liberals, and the diverse Islamist groups and the Ihkwan.

It is difficult to argue that secular political groups have made a successful democratic performance since the revolution. These groups, which have taken anti-democratic stances on such issues as the dissolution of the parliament,⁶ refrained from playing a reasonable role in the drafting of the constitution. As long as the liberals, secularists, Christians and Islamists

other than the Brotherhood continue to talk about the “Muslim Brotherhood” instead of talking about Egypt and its future, the formation of Egypt's much needed democratic political wing will be delayed. In the same way, unless the Ihkwan learns to respond to criticism against it and the opposition differently than the old regime, Egypt's growing pains will continue. In other words, Egypt will be sentenced to a painful period of democratization and to Mubarakism without Mubarak.

The liberals, who have completely ignored the existence and continuation of the old regime in Egypt, assume that Morsi is acting in a mature and consolidated democracy with established institutions and therefore do not offer a constructive discourse. The debate at the center of this painful period in Egypt is not a debate over content, but rather a struggle for power. In the end, Morsi, who has been the president for a mere six months, is governing a country that does not have a parliament, constitution or effective bureaucracy, and whose economy is on the brink of a collapse. It is not possible for the secularists to resort to fear tactics such as “are you aware of the danger”—a tactic that has been tried many times in Turkey—to find the support they want from the people. The leading liberals who declared Morsi a “pharaoh” after the decree that widened presidential powers are the very same liberals that applauded the military and judiciary when the parliament was dissolved. The liberals can be considered a legitimate political movement in Egypt that has

popular support to the extent they can distance themselves both from the old regime and the tired Western clichés of “Islamic threat”.

Similarly, in the struggle against the forces of the military-judiciary tutelage, the FJP will continue to create a vicious political cycle as long as it remains on the defensive and fails to develop a discourse that would appeal to the liberals. The Freedom and Justice Party has to decide on the type of the relationship it wants to maintain with its unofficial organ, the Ikhwan, in the upcoming period. In the same way, the liberals, the old regime and the secularists have to decide on their relationship with the West. How the Salafis’ problematic relationship between the Gulf and the Egyptian reality will play out in the days to come will also have an important role in the shaping of Egypt’s future. In addition to all these issues, the role Egypt chooses to play in the Camp David order and the outcome of the newly established Turkey-Egypt axis will become important factors that shape Egypt’s future.

What is being experienced are the political tensions Egypt needed to live through during the revolution that was in the end realized by apolitical discourse. What those who experience these tensions, the Ikhwan and some liberals, have in common is their inexperience. And the most determining characteristic of the old regime remnants are their decades-long political experience. Unless the two inexperienced parties soon realize that they are playing with fire, we

may suddenly find Egypt in the middle of a de facto coup.

If Egypt has to choose between the “growing pains of democratization” or the “military-judiciary tutelage,” it should not hesitate to pick the first option. There is, in fact, a strong possibility that the first option offers an exit out of what we may call “political turbulence.” The second option, on the other hand, which we may call “bureaucratic oligarchy,” may clear the path to a Mubarakism that Egypt would be sentenced to for years to come. ■

Endnotes

1. Two years ago this first was experienced in Turkey when the four highest ranking commanders of the Turkish Armed Forces who could not get Prime Minister Recep Tayyip Erdoğan to comply with their demands resigned. For the first time in history, the military officials resigned at an impasse and not the elected civil incumbents.

2. President Mohamed Morsi has been forced to retract his decrees several times since he has been in power. The major decisions that Morsi made and later retreated on are his decision to reinstate the dissolved People’s Assembly, his appointment of former Prosecutor General Abdel Meguid Mahmoud as ambassador to the Vatican, the decision to force stores and restaurants to close by 10 pm, his November 22 constitutional declaration that protected the constituent assembly from dissolution, and, most recently, his decision to raise taxes on a number of commodities. “In five months, five retreats on major presidential decrees,” *Egypt Independent*, December 10, 2012, retrieved from <http://www.egyptindependent.com/news/five-months-five-retreats-major-presidential-decrees>.

3. 1.) All investigations into the killing of protesters or the use of violence or brutality against protesters will be re-conducted. Political and executive officials from the former regime who are implicated in these cases will be retried, according to the Law on the Protection of the Revolution and other laws. 2.) All constitutional declarations, laws

and decrees made since Morsi assumed power on June 30, 2012 cannot be appealed or canceled by any individual, or political or governmental body until a new constitution has been ratified and a new parliament has been elected. All pending lawsuits against them are void. 3.) The public prosecutor will be appointed by the judiciary for a fixed term of four years, must be aged at least 40 and meet the general conditions required for appointment in the judiciary. 4.) The Constituent Assembly's timeline for drafting the new constitution has been extended by two months. Article 6 of the Constitutional Declaration of March 30 declared that the assembly would finalize the draft within six months of its formation, but that has now been changed to eight months. 5.) No judicial authority can dissolve the Constituent Assembly or the Shura Council. 6.) The president is authorized to take any measures he sees fit in order to preserve and safeguard the revolution, national unity or national security.

4. President Mohamed Morsi's constitutional declaration issued Saturday December 11, 2012: 1.) The constitutional declaration issued on November 22, 2012 is void starting from today [December 9, 2012] and all its consequences remain in effect. 2.) If new evidence arises, new investigations will be conducted into the killing, attempted killing, injury or terrorizing of citizens between January 25, 2011 and June 30, 2012 if these crimes were related to the revolution. If the investigations find new evidence related to the above-mentioned crimes, the general prosecution is to refer the case to court of legal jurisdiction, even if there is a final acquittal in the case or if the court rejected the prosecution-general's appeal on the acquittal. 3.) If the people vote

against the draft constitution in the referendum on Saturday, December 15, 2012, the president is to call for the direct election of a new Constituent Assembly of 100 members within three months. The new Assembly is to finish its task within six months from its election date. The president is to then call for a referendum on the new draft presented by the Assembly within 30 days of receiving it. 4.) All constitutional declarations, including the current one, are immune from any challenge in any court and all related lawsuits are considered void.

5. The above lines are taken from the front page of the daily newspaper, *Al-Dustour*, dated August 11. This was how the "Are you aware of the danger?" campaign got started barely a month after the presidential elections, but the campaign that aimed to mobilize "one million people in Tahrir" against Morsi was not successful.

6. Some so-called liberal actors commented on the dissolution of the elected Egyptian parliament by the judiciary. Mohamed ElBaradei, who called Morsi the "new pharaoh," showed his support for this dissolution with the following statement: "The verdict that confirmed the dissolution of parliament is a first step for those in power to understand that legislation is the main pillar for building the country." Amr Moussa, a politician left over from Mubarak era, said "Respect for the rule of law is a main principle that must be upheld to ensure stability in the political arena and respect for the state and people". Liberal presidential candidate Hamdeen Sabahi also applauded the dissolution of parliament despite his "liberal stance" – all of a sudden declared Morsi the new pharaoh.

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