

EGYPT'S JUDGES IN A REVOLUTIONARY AGE

Nathan J. Brown

MIDDLE EAST | FEBRUARY 2012

CARNEGIE ENDOWMENT

FOR INTERNATIONAL PEACE

WASHINGTON DC ■ MOSCOW ■ BEIJING ■ BEIRUT ■ BRUSSELS

EGYPT'S JUDGES IN A REVOLUTIONARY AGE

Nathan J. Brown

MIDDLE EAST | FEBRUARY 2012

CARNEGIE ENDOWMENT

FOR INTERNATIONAL PEACE

WASHINGTON DC ▪ MOSCOW ▪ BEIJING ▪ BEIRUT ▪ BRUSSELS

© 2012 Carnegie Endowment for International Peace. All rights reserved.

The Carnegie Endowment does not take institutional positions on public policy issues; the views represented here are the author's own and do not necessarily reflect the views of the Endowment, its staff, or its trustees.

No part of this publication may be reproduced or transmitted in any form or by any means without permission in writing from the Carnegie Endowment. Please direct inquiries to:

Carnegie Endowment for International Peace
Publications Department
1779 Massachusetts Avenue, NW
Washington, D.C. 20036
Tel. +1 202-483-7600
Fax: +1 202-483-1840
www.CarnegieEndowment.org

This publication can be downloaded at no cost
at www.CarnegieEndowment.org/pubs.

Contents

Summary	1
Striving for Judicial Independence	3
Trying to Turn the Tables	5
Pursuing Judicial Independence in a Society in Turmoil	6
Political Cases and an Apolitical Judiciary	6
Finding Ways Around the Judiciary	7
Are Courtrooms Safe?	8
Divisions Within the Judiciary	8
A New Law of Judicial Organization	10
Balkanization of the State—for Good and Ill	11
Notes	15
About the Author	19
Carnegie Endowment for International Peace	20

Summary

Egypt's tumultuous uprising of 2011 was about many things, but among the most central was a demand by legions of political activists and large crowds of mobilized citizens that public authority in the country be reconstructed to operate in a clearly accountable manner, fully governed by the rule of law. Egyptian judges might therefore be expected to look upon the post-uprising environment as a time when they can finally realize a vision that they have been articulating for a generation in the face of an imperious and impervious presidency: A state ruled by law in which they will be insulated from political pressures and private interests, providing full autonomy to individual judges and to the judiciary as a body to issue decisions that will be respected and implemented by all the agencies of the Egyptian state.

Eventually everybody might get what they want. But in the short run, judges have hardly found themselves in a sacrosanct position in the wake of the Egyptian revolution. Instead, they are politically exposed and uncertain of their future, with some concerned not only for their institutional autonomy but even for their physical security. An effort to legislate the demands for an independent judiciary in the form of a new judicial law has embroiled them in internal battles and external rivalries.

Over the long term, the effort will nevertheless bear some fruit, since support for judicial independence now reaches the whole length of the political spectrum. Judges will likely obtain some version of the autonomy they seek. But the political implications of this step are far less clear than its proponents anticipate: the independence of the judiciary—as proposed legislation currently conceives it—may form part of a trend toward balkanizing the Egyptian state in a manner that will provide for a more liberal and pluralistic order but also one that is less coherent and democratic than Egyptians currently realize.

Striving for Judicial Independence

Egypt's authoritarian presidents hardly fostered the rule of law, but they operated in a legalistic environment and indeed used legal tools with abandon. A powerful and independent judiciary would have hemmed them in, but they constantly shifted tactics in their efforts to use the law without empowering independent judges.

For some time after the 1952 coup that brought Egypt's authoritarian system into being, the bulk of the judicial apparatus was left alone. When Egypt's authoritarian rulers wanted a verdict, they constructed special tribunals or moved outside the judicial structure altogether rather than subordinating the regular judiciary to their political will.

Only in the late 1960s, in the last years of Gamal Abdel Nasser's presidency, did the regime mount a concerted effort to bring the judiciary under firm presidential control: A new "Supreme Court" was created by decree and staffed by presidential appointments. A "Supreme Council of Judicial Organizations" was given authority over administrative matters as well as appointments and promotions within the judicial ranks and effectively placed under executive oversight. And a group of over 100 judges who had used a long legally recognized but hitherto largely social organization called the Judges Club to support calls for political reform were dismissed.

Yet over the next decade and a half, Nasser's two successors, Anwar Sadat and Hosni Mubarak, rolled back many of Nasser's moves. To be sure, the regime retained the old ways of moving outside of the judiciary with a series of special courts and extrajudicial procedures. But it allowed much of the court system to regain its autonomy. The Supreme Court evolved into a more independent Supreme Constitutional Court that actually issued a long series of rulings quite politically inconvenient for the regime from the mid-1980s until the early 2000s, in some years striking down more laws than it upheld. For instance, Egypt's current highly idiosyncratic election system was built not intentionally but instead developed by accretion over the years as the Court insisted on implementing the vague provisions of the 1971 constitution in ways that necessitated constant revision—to the steady annoyance of the regime.

The Supreme Council of Judicial Organizations was deprived of most of its jurisdiction, and leading judicial bodies—the administrative court systems, for instance, as well as the regular court system—were given considerable autonomy in their own affairs. Most of the dismissed judges were rehired. And the judiciary was given some ancillary responsibilities, when the regime needed a seemingly neutral actor to perform various tasks, such as supervising elections

or administering professional associations that had been wrested from opposition activists.

But some judges, activists, and intellectuals chafed at the remaining elements of executive influence over judicial affairs. In a variety of structural ways, the Ministry of Justice and the presidency retained some influence. The ministry, for example, had a degree of control in some administrative matters, and the presidency retained some appointment powers. For instance, the chief justice of the Supreme Constitutional Court was a presidential appointment. When the court became overly independent, President Mubarak abandoned his practice of turning to the most senior justice and instead brought in presidents from outside the Court who helped tame the body.

And there were some indirect ways for the executive to exert influence that were harder to measure but seemed quite effective. A more pliant leadership of the Judges Club, for instance, was awarded with a series of significant material benefits, such as higher salaries and a later retirement age. Plum assignments could also be doled out to judges who did not buck the regime's wishes.

By Mubarak's presidency, military courts and a complex of state security courts could be called upon when needed—and were indeed used.

Perhaps most noxious was the way the half-century-old technique of avoiding the judiciary when politically convenient lived on even as Egypt's presidents boasted of their respect for the rule of law. Egyptian presidents could

refer individual cases to military courts, and the host of "exceptional courts" that had grown up over the years to harass or incarcerate politically troubling people and organizations could be used as well. Major political changes or purges might be followed by "revolutionary tribunals" or the like, which variously tried Muslim Brothers or old regime figures in the 1950s and losers in an internal power struggle in the 1970s. By Mubarak's presidency, most of these had been abolished, but military courts and a complex of state security courts could be called upon when needed—and were indeed used.

When the Supreme Constitutional Court interpreted the constitutional mandate for judicial observation of elections to mean that a judge had to oversee every ballot box, the regime honored the ruling—but merely moved its blatant manipulation of elections outside the polling station. In fact, sometimes they moved merely a few feet, as security forces arrested opposition activists or prevented their supporters from voting.

In a series of private conversations over the years, I came to the conclusion that judges varied greatly in their attitudes to these problems. Some were outraged. Others were quietly resigned if disgusted. One very senior judge once told me, "If we could stop torture, we would. But if we tried, that would be the end of us." When I met another senior judge during his visit to the United States, I asked if he wanted to meet some human rights nongovernmental organization leaders. He declined by responding, "They'll just want to ask about torture, and we don't have anything to do with that." And some judges were

occasionally supportive of the regime's methods. Another very senior judge once spoke of the 2005 election campaign and the perceived necessity to prevent the Muslim Brotherhood from seizing control at that time: "It is not good to prevent people from voting. But this was a mission of state."

Trying to Turn the Tables

In the middle of the first decade of the twenty-first century, the critics seemed to gain the upper hand within the judiciary. While some judges thought the judicial reformers were grandstanding, overly political, or unnecessarily confrontational, the dissident activists emerged triumphant in Judges Club elections. They used that platform as a way to draft their own law of judicial organization, one that would remove the remaining tools of executive involvement in judicial affairs.

In protest over the way their prestige was used to legitimate sham elections, they first threatened to refuse to monitor the voting and then decided instead to document the ways official manipulation continued despite judicial oversight. Some leading judges began to speak to international media about their demands, and the dissidents even launched a brief silent protest outside the High Court Building.

Groups of opposition activists rallied around the judges. After the 2005 parliamentary elections, a Muslim Brotherhood parliamentarian introduced a version of the Judges Club draft law in parliament. The regime responded with its own law, which it pushed through the same parliament with ease, giving the judges far less autonomy. It refused to transfer to the Supreme Judicial Council some areas of judicial administration that the judges had demanded and resisted pressure to have judges elect some members of the Council as dissidents had proposed.

Watching such a confrontation, I had the impression that Egypt's judges were like tennis players entering the boxing ring. When I shared that metaphor in one workshop in Cairo in 2006, one of the leading dissident judges who was present picked up the image but insisted that, armed with his integrity and sense of justice, he would not be easily defeated. In the short run, he proved to be overly idealistic. The regime responded to the judicial challenge with a mixture of harassment, character assassination, stonewalling, and mollification of judges' material complaints, such as raising low salaries or the doling out of benefits through the Ministry of Justice rather than the dissident-controlled Club. The eventual result was that the Judges Club was retaken by less confrontational judges, some of the leading dissidents retired or found work outside the country; and the controversy died down.

In a series of constitutional amendments in 2007, the regime took steps to ensure that the liberal loopholes the judges had found in Egypt's authoritarian

In the heady early days of Egypt's revolution, Egypt's judiciary often was touted by revolutionaries as an island of integrity rather than a co-opted group.

order were closed. Election monitoring, for instance, was handed to electoral commissions. And the authority of the president to refer suspected terrorists to the military courts, which was constitutionally dubious though quite common prior to the amendments, was enshrined in the amended text.¹

Yet over the longer term, my idealistic interlocutor may have been a better political analyst than I was—the dissident judges had given Egypt's system a black eye. The image of a regime as a closed circle of corruption and of abuse of power was one that proved fatal in 2011; the contest with the judges had helped contribute to the regime's increasingly brutish reputation. And in the heady early days of Egypt's revolution, Egypt's judiciary often was touted by revolutionaries as an island of integrity rather than a co-opted group. Full judicial monitoring of any elections, for instance, was a central demand of all participants in the Egyptian uprising.

In the months following Mubarak's forced departure, the presidency of the Supreme Judicial Council passed into the hands of Husam al-Ghiryani, a quiet but very active participant in the earlier judicial movement. Another senior judge, Hisham al-Bastawisi, one of the leaders of the rebel movement, returned to Egypt from his refuge in Kuwait and announced a presidential bid. Even those who had shied away from the earlier confrontation with the regime swung into line; one judge who had sided against the dissidents in the middle of the decade told me in the summer of 2011, "We are all with the revolution."

Pursuing Judicial Independence in a Society in Turmoil

But Egypt's post-revolutionary environment is proving to be less congenial and more complicated than judges may have expected last spring; solving persistent problems is not as simple as passing a new law. The judiciary has confronted four unexpected challenges to realizing the judicial vision of full independence and professional integrity.

Political Cases and an Apolitical Judiciary

The way that the judiciary has been pulled into ongoing political debates has provoked some unease. There is a general ethos among Egyptian judges that they should remain above daily politics, but there is much less of a consensus about what that means in terms of public statements and how relevant that general principle can be in revolutionary times. As a result, some judges have felt free to engage in public discussions while others have harshly criticized outspoken colleagues as departing from judicial norms. One administrative court judge provided legal advice to the revolutionaries in Tahrir Square, even

joining the revolutionary coordinating committee. A move by his colleagues to discipline him fizzled in a wave of post-revolutionary enthusiasm.

Other major public tasks—such as oversight of elections or running sequestered economic enterprises—have fallen in the laps of judges. While both proud of these roles and confident in their ability to carry them out, judges cannot deny that the burden is a heavy one, especially with Egypt’s seemingly interminable rounds of voting. Indeed, it is precisely the insufficient number of judges that forces the parliamentary elections to be held over three rounds. Egypt’s revolution has so far produced fifteen days of voting in less than a year, and the remaining presidential and constitutional balloting processes promise to add at least another two.

And there is some concern not merely about the political role of judges but also about politicization of court judgments. Egyptian judges are insistent that what has been termed “transitional justice” in other societies that have undergone revolutionary changes needs no new judicial structures in Egypt. All cases of corruption and abuse—even those involving top officials of the old regime—can be handled by the courts without assistance, they believe.

Former president Mubarak, his sons, and his last interior minister are now being tried in an ordinary criminal court, but not in an ordinary courtroom or in ordinary circumstances. The police academy is being used to provide a secure setting and the trial seems at times a media spectacle as much as a legal proceeding.

For all their confidence in their own impartiality, judges have certainly been affected by the wave of revolutionary fervor. The administrative court ruling dissolving the formerly ruling National Democratic Party was based on a sweeping political judgment that the party had corrupted Egyptian political life—true enough from a political perspective, but also a very ambitious legal precedent. The invalidation of sales of public enterprises that have cascaded from the same administrative courts are hard to understand apart from the wave of economic populism and the reaction to the economic liberalization policies of the late Mubarak years.

Finding Ways Around the Judiciary

While Egypt’s judges seem to feel that they are capable of bearing all the burdens placed on them, there is no denying that Egypt’s interim military rulers do not share the same feeling. Wanting to maintain order and not wishing to rely on Egypt’s dawdling court system, the generals have continued to use their own military courts with abandon, sparking rage among many of the groups that fomented the January 25 revolution. They have also insisted that the state of emergency declared by the Mubarak regime is still in effect until June 2012.

Solving Egypt’s persistent problems is not as simple as passing a new law.

The Egyptian legal and political order has lived for so long under emergency rule that it now seems normal. The emergency was originally declared pursuant to Egypt's treaty obligations to Great Britain when the latter declared war on Germany in 1939; the various renewals over the years were justified by equally forgotten historical circumstances. There have only been brief interruptions—one before the 1952 revolution and the other toward the end of the Sadat presidency.

The Egyptian legal and political order has lived for so long under emergency rule that it now seems normal.

This enables a host of legal and extralegal devices that obviate the legal and even constitutional protections promised Egyptian citizens. And the regular judiciary thus finds itself sidelined in matters most judges insist properly fit within their purview.

Are Courtrooms Safe?

Courtroom security has also been a concern. Egyptian judges pride themselves on the very light—almost invisible—security presence in their courtrooms. There are no metal detectors or security procedures for entering buildings, and the phalanx of security forces that surrounds many public buildings is simply absent from courthouses.

During the revolution, however, one of Cairo's major court buildings was burned. In the following months, some criminal cases have been disrupted by supporters of the accused or relatives of victims. In one incident, a group of angry lawyers physically blocked the entrance to a courthouse. And the judiciary found itself involved in a very public tangle with the bar association over some provisions in a proposed new judicial law that involved strikes and demonstrations by lawyers—a kind of confrontational politics for which the judges were not prepared.

Reports of courtroom violence have begun to recede, but they leave deep scars. In conversations with judges I found great variation over the past year in how seriously they viewed the ongoing threat to their own safety, but the widespread concern over a perceived deterioration of public security in Egypt certainly finds its reflection in judicial circles.

Divisions Within the Judiciary

A final concern in the post-revolutionary era is that the rivalries within the judiciary—over the past, present, and future—seem very much alive. With regard to the past, calls have emerged to purge the judiciary of those implicated in the abuses of the old regime. There are, to be sure, judges who played various roles in the old system, but precisely what represents an offense is unclear: Service in an exceptional court? A politically incorrect ruling from a revolutionary perspective? Turning a blind eye to past abuses? There are a multitude of definitions.

A group of judges dismissed prior to 2011 gained national attention by setting up a protest at the country's High Court building in downtown Cairo, claiming to have been purged for political reasons. They have very publicly called for measures to be taken to "purify" the judicial ranks of any old-regime holdovers. Yet, while the issues of future dismissals and reversals of past dismissals have provoked some public debate, judges in general have resisted rehiring the protesting former judges or purging current judicial ranks. A purge for political offenses under the old regime carries overtones of Nasser's 1969 dismissals of dissident judges. The protesting former judges at the High Court are not regarded as political victims by their erstwhile colleagues.

Though there may be little appetite among judges for politically vetting their own ranks, the battles of the past decade, some of them with roots back to the 1970s and 1980s, have left their mark; those rivalries live on even if the causes that gave rise to them have been forgotten. In the mid-2000s, the dissidents were ensconced in the Judges Club and their opponents, who were less confrontational with the old regime, dominated the Supreme Judicial Council; now positions have been reversed. Al-Ghiryani, a leader of the judicial dissidents before the revolution, took over the chairmanship of the council in the summer of 2011. In Mubarak's final years, the majority of the board of the Judges Club had fallen into the hands of their former opponents. While the principled differences between the two factions have narrowed close to the disappearing point, personal resentments based on past perceived misdeeds remain.

Another current division among judges—and one that may grow in the future—concerns general ideological orientation. Members of, and even those suspected of sympathizing with, Islamist groups were unlikely to have been hired as judges under the old regime; the security apparatus would have blocked their appointment. But socially conservative and highly religious judges did join the judicial corps, and some seem to have developed general but marked Islamist inclinations as their careers progressed.

The dissident group of the mid-2000s was actually ideologically diverse and included some Islamist-inclined members, though the ethos of nonpartisanship was sufficiently powerful to make formal affiliation with any movement unthinkable. Several prominent members of the current judiciary—including al-Ghiryani himself—are sometimes whispered about because of their supposed Islamist tendencies. The suspicions are difficult to verify until after retirement. After retiring from judicial work, Mahmoud al-Khodeiri, one of the leaders of the dissidents, was elected to the 2012 parliament with strong support from the Muslim Brotherhood and was placed in charge of the parliament's legal committee.

And whatever political order the future holds for Egypt, it is likely to be one in which the strict security vetting of past decades loosens considerably. Islamists have a widespread presence in Egyptian public life, but there have been considerable portions of the Egyptian state that have been off limits—the

diplomatic corps, the security apparatus, and the upper military ranks. Yet with Islamists having been able to slip through the cracks into judicial positions even in the old order, an Islamist tendency may increase considerably in future years. The kind of ideological diversity already found in the Egyptian judiciary is likely to grow as a result—not in the form of naked partisan jockeying (a taboo among judges) but in terms of contending orientations toward and reading of Egypt's legal and constitutional framework.

A New Law of Judicial Organization

The rivalries within—and the political exposure of—the judiciary have been on full display over the last year in the struggle over what should be the crowning achievement of the post-revolutionary judiciary: the writing of a new law of judicial organization that will institutionalize the judiciary's own conception of full independence. The struggle over this law is an old one, stretching back into last decade and even further. Judges have pressed for a series of reforms that will remove executive branch involvement in their affairs and institute a far more extensive separation of powers.

After the revolution judges set to work drafting a law that would likely have support of all political forces. They worked to legislate a more powerful Supreme Judicial Council, rendering it freer of executive oversight and transferring to the council functions that currently belong to the Ministry of Justice. Even the indirect ways of influencing judges, such as doling out attractive secondments, would be placed in judicial rather than executive branch hands. The effect would be to make the judiciary as a body far more autonomous in terms of administration, budgeting, and personnel. This is a goal that nobody would question in the post-revolutionary atmosphere.

But the road has been a rocky one nonetheless. First, the judges pursued two separate efforts to draft a law. One was undertaken by the Judges Club; the other one was entrusted by Chief Justice al-Ghiryani to a committee headed by Ahmad Makki, one of the leading dissidents of the mid-2000s. The versions they developed separately had only minor differences, but the bitterness of past rivalries led to harsh sniping throughout the two drafting processes.

And both drafts stepped on an unexpected mine when they included provisions to allow judges to sanction lawyers who violated courtroom order and decorum. Lawyers, who claimed their law governing the legal profession gave them immunity in the courtroom, protested the judicial proposal. Bar association leaders embroiled in their own elections saw a battle worth fighting, and they went so far as to call a strike and organize demonstrations to defend themselves against what they saw as a judicial effort to police their ranks in an authoritarian manner more appropriate to the old, discredited order than Egypt's new democratic age. And judges used to feeling waves of public support

for their battles for independence seemed flat-footed politically when suddenly cast in the role of heavy-handed pursuer of special privilege rather than virtuous defender of justice.

The rush to a new judicial law ran into a further political problem: If it was to be issued as soon as possible, the only route would be a decree law promulgated by unelected military rulers. Nasser's 1969 measures against the judiciary—labeled since as the “massacre of the judges”—was also accomplished through a series of decree laws rather than parliamentary legislation, a precedent few judges would want to follow. But if the judges waited instead for an elected parliament, there was no telling when their legislation could be placed on the docket or what its fate would be.

Stung by external criticisms and divided by internal battles, al-Ghiryani backed off. He announced to his judicial colleagues that the whole matter would be postponed until the parliament could be seated. His decision was sensible on some levels, but it also left his colleagues puzzled—if the issue was to wait for the parliament, why had there been all the urgency about drafting the law?

Al-Ghiryani raised some eyebrows as well when his letter to colleagues worked to flatter lawyers by referring to them as the “standing” part of the judiciary to distinguish them from “sitting” judges on the bench. Implying that lawyers are equal in authority and status in courtroom matters to the judges who actually preside was offensive to some members of the judiciary. Some even quietly speculated that his decision to defer the matter to parliament stemmed from his Islamist sympathies because the statement was made on the heels of news of a sizeable Islamist electoral victory. One of the heroes of the mid-2000s movement now found himself on the defensive in front of his own colleagues.

With judicial independence a consensus demand, the coalition supporting reform will probably get what it wants. But it might also get more than it bargained for.

Balkanization of the State— for Good and Ill

The political messiness of the struggle for a new judicial law will likely make the process of legislating more judicial independence more protracted and complicated. But with judicial independence a consensus demand—and with the Brotherhood itself committed since the 2005 parliament to a version of a judicial law designed to remove executive branch influence from judicial affairs—the coalition supporting reform will probably get what it wants. But it might also get more than it bargained for.

Indeed, in a little noticed change, it already got a taste of what it wanted—and the implications of that change are worth considering as a portent of things to come. The country's Supreme Constitutional Court, a potentially critical

body that is separate from the rest of the judiciary, lost much of the feistiness it showed in the 1980s and 1990s when President Mubarak appointed a series of chief justices less likely to cause the regime any trouble. Yet the Court, less bashful than the regular judiciary, secured a decree law in June 2011 from the ruling military council that got little attention in the wave of post-revolutionary exuberance. It restricts the president's choices for the position of chief justice to the Court's three most senior members and requires the agreement of the General Assembly of the Court's justices for the appointment to proceed. The brief decree also requires precedence be given to the Court's "Commissioner's Body," a group attached to the court that helps prepare cases and opinions, for appointment to the Court's main bench. The result will be a remarkably self-perpetuating Court and one that may be very difficult to check.

And the rest of the judiciary will eventually become similarly self-perpetuating—assuming the parliament passes a version of the law everyone agrees they want. This will certainly be a step toward judicial independence of a kind that Egypt's past authoritarian rulers would never have permitted.

The unasked question in Egypt is whether this is an appropriate path for an aspiring democracy. While the judiciary needs insulation from political pressures, these measures may make judges accountable only to each other in a manner that few democracies have dared to adopt.

Indeed, this may mark a new and wholly unanticipated direction for the Egyptian political system—not in the direction of liberal democracy but instead toward an odd kind of corporatism or even syndicalism. "Corporatism" refers to a social and political system in which various parts of the society are hierarchically and separately organized; their actions are either coordinated or commanded by the state. "Syndicalism" refers to a system in which groups, generally labor or class based, are organized and act for themselves without such state supervision. Egypt may be constructing a system that falls between these two. The terms, from late nineteenth and early twentieth century Europe and largely forgotten in public discussions today, do not completely apply in the Egyptian case—it is, after all, not merely social segments but the state itself that is being carved up into a series of autonomous actors.² But they are instructive nonetheless.

To understand how the system might operate, it helps to describe its evolution. Egypt has been a state of strong institutions for a considerable period, but under Nasser's leadership they were robbed of all autonomy and placed under direct presidential control. The country had only one political party (not coincidentally headed by the president) which owned the press, controlled labor unions, and induced all Egyptians to sing the same ideological tune.

That system was gradually dismantled under Sadat and replaced with one where institutions were granted considerable internal autonomy but placed in the hands of trusted individuals—and those individuals were replaced if they

proved less than trustworthy. That pattern was considerably deepened under Mubarak with the remarkable, but often unnoticed, result that each institution was headed by an individual drawn entirely from the institution's own senior ranks. The minister of defense was a leading general; the minister of interior a leading officer in the security forces; the minister of religious affairs a leading religious scholar; and even the minister of culture was an artist. The minister of justice in such a system was a leading judge. In all these cases, the individual chosen was fully loyal to the system in general and the president specifically but was often given considerable freedom in his own realm.

What Egypt is moving toward is a system in which those institutions will now select their own leaders rather than have the president designate a favorite. It would still be a shock if the ministry of defense or interior were to be headed by a civilian, but in the new system, it may be that senior officers will go further to insist on a say in who of their own ranks is chosen. This path was already followed by Egypt's current cabinet when a minister of interior was chosen after consultation with leading security officers.

Al-Azhar, the country's premier religious institution, successfully pressed for a system in which its scholars will select the leader of the institution.³ In universities, faculties are insisting on electing not only department chairs but also deans and presidents, and they are not waiting for a legislative change to follow that practice. Instead, the professoriate has simply held elections and presented the victors to the Ministry of Higher Education, which has not dared to stand against the democratic wave.

Egyptian judges may begin to enjoy a similar—and quite considerable—degree of autonomy. And much of this will likely be legislated by a parliament that will thereby be signing away a portion of its ability to exercise oversight over state institutions.

A slightly uncharitable but hardly inaccurate way to characterize the likely course of events would be to term it the “balkanization” of the Egyptian state. Such a term is uncharitable because the result will not be wholly unhealthy from a political point of view. Institutions that have been distorted by sycophantic and opportunistic leaders seeking to curry the favor of the president will be able to rebuild themselves in accordance with standards that they find reflect their professionalism and expertise.

But the term “balkanization” is not inaccurate because in the process of establishing their own autonomy, these institutions will constitute islands of authority that are not easily held accountable to the constitutional and democratic structures of the Egyptian state. In most democratic systems there is a way—sometimes indirect—for elected officials to play some general oversight role, even over bodies that enjoy considerable autonomy. Central bank officials, for instance, or Supreme Court judges are given long appointments and freed

What Egypt is moving toward is a system in which institutions will now select their own leaders rather than have the president designate a favorite.

from the requirement that they clear all their actions with the cabinet or the parliament. But there is still a democratic voice in their appointment. In post-revolutionary Egypt, by contrast, these figures seem to wish to free themselves even of that level of oversight. The result will be self-perpetuating institutions that answer only to their own ranks.

Much of the political focus in Egypt in the year after the January 25 revolution was on the tension between the military council and the Brotherhood; between Islamists and non-Islamists; between civilian political structures and the institutions of the security state; and between older authoritarian ways and newer more participatory ones. Such contests are vital and real. But they should not lead us to overlook another likely contest that is apt to grow even as the other ones diminish: between the forces of politics, popular sovereignty, and democracy on the one hand and bureaucracy, expertise, and professionalism on the other.

Notes

- 1 See Nathan J. Brown, Michele Dunne, and Amr Hamzawy, “Egypt’s Controversial Constitutional Amendments,” Web Commentary, Carnegie Endowment for International Peace, March 2007, http://carnegieendowment.org/files/egypt_constitution_webcommentary01.pdf.
- 2 I explored this idea earlier in “Egypt’s Syndicalist Future?” Middle East Channel, March 8, 2011.
- 3 See my Carnegie Paper, “Post-Revolutionary al-Azhar,” Carnegie Endowment for International Peace, September 2011, http://carnegieendowment.org/files/al_azhar.pdf. The ruling military council did rush through a new law governing al-Azhar, issuing it by decree a few days before the parliament assumed legislative authority. That law allows the current shaykh heading the institution to appoint forty senior scholars to a “Senior Ulama Body” (which then becomes self-perpetuating by selecting its own members); the body will elect future shaykhs.

About the Author

NATHAN J. BROWN is a nonresident senior associate in the Carnegie Endowment's Middle East Program. He is a professor of political science and international affairs at George Washington University, and a distinguished scholar and author of six well-received books on Arab politics. Brown brings his special expertise on Islamist movements, Palestinian politics, and Arab law and constitutionalism to the Endowment. Brown's latest book, *When Victory Is Not an Option: Islamist Movements and Semiauthoritarianism in the Arab World*, was published by Cornell University Press in early 2012. His current work focuses on Islamist movements and their role in politics in the Arab world.

Carnegie Endowment for International Peace

The **Carnegie Endowment for International Peace** is a private, nonprofit organization dedicated to advancing cooperation between nations and promoting active international engagement by the United States. Founded in 1910, its work is nonpartisan and dedicated to achieving practical results.

As it celebrates its Centennial, the Carnegie Endowment is pioneering the first global think tank, with flourishing offices now in Washington, Moscow, Beijing, Beirut, and Brussels. These five locations include the centers of world governance and the places whose political evolution and international policies will most determine the near-term possibilities for international peace and economic advance.

The **Carnegie Middle East Program** combines in-depth local knowledge with incisive comparative analysis to examine economic, sociopolitical, and strategic interests in the Arab world. Through detailed country studies and the exploration of key cross-cutting themes, the Carnegie Middle East Program, in coordination with the Carnegie Middle East Center, provides analysis and recommendations in both English and Arabic that are deeply informed by knowledge and views from the region. The Carnegie Middle East Program has special expertise in political reform and Islamist participation in pluralistic politics throughout the region.

WASHINGTON DC ■ MOSCOW ■ BEIJING ■ BEIRUT ■ BRUSSELS

THE GLOBAL THINK TANK

CARNEGIE ENDOWMENT

FOR INTERNATIONAL PEACE

[CarnegieEndowment.org](https://www.CarnegieEndowment.org)