ARAB UPRISINGS

The Battle for Egypt's Constitution

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PROJECT ON
MIDDLE EAST POLITICAL SCIENCE

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The Project on Middle East Political Science

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On December 26, 2012, Egyptian President Mohamed Morsi signed off on a new constitution. It was not a cheerful occasion for many politically active Egyptians, following one of the most intensely, dangerously polarized months in recent Egyptian history. The bitterly controversial two-round referendum approving the constitution revealed the depth of the political and social chasm which had been torn through the political class. I offered my own thoughts on the meaning of these events late last month in my "Requiem for Calvinball," but that was only one part of the wide range of coverage on the **Middle East Channel** of coverage of the crisis. So I'm pleased to announce here the release of *POMEPS Briefing #17: The Battle for Egypt's Constitution*, collecting our articles on the constitution and the political landscape left in the wake of this explosive crisis.

The constitutional drafting process, as Nathan Brown pointed out just before the explosion of the crisis, had been a shambolic mess for over a year and little resembled academic conceptions of how a constitutional process should unfold. There was little high-minded public discourse here, little search for wide national consensus, little attempt to reach beyond political interest to seek a higher dimension of political agreement. Rebuilding a ship at sea, in Jon Elster's endlessly evocative phrase, never looked so perilous. Complaints about Islamist domination of the constituent assembly had led to mass resignations by non-Islamist members and excoriating commentary in the Egyptian public sphere. Backroom battles over the powers of state institutions intersected with principled arguments over matters such as the role of Islam and public freedoms. This was not the heady stuff of the great constitutional assemblies celebrated in the history textbooks — even before the surreal, late-night, non-deliberative ratification process.

Those byzantine battles might have continued indefinitely had Morsi not seen the opportunity to act more forcefully. His diplomatic success in brokering a ceasefire between Israel and Hamas (see Brumberg's essay, and mine) brought him unprecedented international acclaim, and perhaps emboldened him to press his advantage at home. He first issued a presidential decree of breathtaking scope (see Revkin's essay) which in principle (though of course not in in reality) placed him above all oversight and accountability. His brazen power grab succeeded where almost everything else had failed — it got Egyptians back out into the streets protesting. But those protests quickly turned ugly and violent, revealing intense polarization rather than societal unity, as Muslim Brotherhood supporters attacked protests and Brotherhood offices were burned to the ground across the country (see Goldberg's essay).

The diagnosis of the nature of the crisis is itself controversial. Indeed, Hamid points out, the Islamists and their opponents seemed to be living in almost entirely different conceptual worlds. Was this the unfolding of an Islamist scheme to consolidate theocratic rule, or the ungainly and poorly executed endgame of a horribly mismanaged transition? Was it a renewal of the January 25 revolution or the dividing of that revolutionary unity into two hostile camps? Hanna's essay incisively argues that Morsi and the Brotherhood appeared to aspire to domination

rather than to building a consensual political system, taking their electoral victory as a mandate for majoritarian politics. I pointed to the greater analytical significance of the absence of any institutional constraints, which made the fears of such alleged Brotherhood ambitions difficult to contain. With the Brotherhood and Morsi seeming to repeatedly break their word and escalate the situation, and with blood in the streets and furious words everywhere, no consensus seemed remotely possible.

The constitutional referendum set the stage for exceptionally important parliamentary elections, now scheduled for April. For the first time in ages the divided and weak opposition sees the possibility of pushing back against the Brotherhood through the unification and mobilization of a new coalition united mainly by fury over the rule of the Brotherhood (see Hill and Yaqoub). The referendum results, with a strong showing for the opposition in Cairo, low turnout overall, and a failure to reach the symbolic 67 percent threshold, offered some grounds for optimism among the various opposition forces (see Massoud's essay). The renewed political divisions and bickering of the opposition over the last few weeks are not reassuring in this regard.

Whatever the elections bring, the Brotherhood is now facing more public scrutiny and political pressure than ever before, and seems unable or unwilling to reach out to mend the shattered relationships. It has dealt poorly with this new political arena, struggling to adapt to its new power and responsibilities (see Anani). The crisis has generated a tremendous wave of antagonism toward the Muslim Brotherhood among parts of the Egyptian political class Brotherhood's opponents now warn of the "Brotherhoodization" of all sectors of political and social life. They see Islamists pushing to deepen their control not only over elected bodies such as the Shura Council and the parliament, but over local government, the bureaucracy, labor unions (see Bishara) and the media (Mabrouk). That anti-Brotherhood rhetoric can go to such absurd extremes that it sometimes resembles the silliness of Western anti-Islamist conspiracy theorists (two spheres which are regrettably increasingly feeding upon each other). But broadly speaking, the pushback against the Brotherhood and the challenges it faces in governing and its badly dented reputation speak well for a more balanced Egyptian political arena in the coming years.

And what of the constitution itself? It isn't the worst constitution in the world, but it's not very good (see Hellyer). It is not the blueprint for theocracy or for renewed dictatorship described by its most extreme critics, but nor does it lay out a clear and forward leaning political architecture. Its treatment of Islam (see Lombardi and Brown) potentially opens the door to significant changes in the relationship between religion and state. More broadly, the ambiguous wording of the constitution and its frequent references to important issues being determined through legislation worry those who fear that such loopholes will be exploited.

Lurking behind this political drama lies Egypt's accelerating and truly frightening economic collapse. Morsi and the IMF were reportedly close to a deal, but talks broke down in the face of the political instability (see Wills). Attempts to deal with the cost of subsidies were quickly withdrawn in the face of the political turbulence, and won't be easy for the Brotherhood to implement (which should be another source of optimism for the opposition). But this isn't just politics. With the Egyptian pound collapsing, tourism and exports in an abyss, and Qatari loans only a stopgap, the crisis is acute. Last year, Muslim Brotherhood Deputy Supreme Guide Khairat al-Shater told me that attracting foreign investment and rebalancing the Egyptian economy had to be the country's top priority — but what rational investor would take a stake in Egypt as it has been for the last two years? Perhaps the political respite will reassure investors and the IMF, but it seems unlikely that this polarized political arena will remain calm for long.

Analysis of Egyptian politics over the last year, much like Egyptian politics itself, has tended toward hyperbole and polarization. It also tends to be too Egyptian-centric, seeing everything there as unique and neglecting the lessons of other difficult transitions from authoritarian rule. Economic struggles, political polarization, resentment at the opportunism of parties which surge into power, dissatisfaction with the fruits of revolution, disappointing constitutions — these are not unique to Cairo. Analysts should perhaps spend less time trying to decipher the true Islamic inclinations of the Muslim Brotherhood and responding to the daily Egyptian political churn, and more time with the political science transitions literature. And, of course, with POMEPS Brief #17: The Battle for Egypt's Constitution.

Marc Lynch, Director of POMEPS
January 11, 2013

Egypt's state constitutes itself

By Nathan J. Brown, November 19, 2012

The bargaining among Egypt's political forces over the content of the country's constitution has been noisy, public, stormy, and dramatic. Indeed, over the past week, that tussle has brought the entire constitution drafting effort into crisis. It is still not clear whether that bargaining can still lead to a consensual document or whether the Constituent Assembly will collapse or produce a star-crossed constitution.

But there has been another bargaining process that has drawn far less attention and commentary, even though much of it has been carried out in clear public view. Even those parts of this second process that have taken place behind closed doors still have left unmistakable footprints in the various drafts. And while not devoid of drama, the slightly quieter process seems more likely to produce successful outcomes. This is the bargaining among various structures of the Egyptian state.

The reason this second process — every bit as important as the first — has attracted less attention is because it cuts completely against the grain of most of our images of constitution writing. Few observers know to look for it. Constitutions are supposed to constitute political authority. They are written by the nation — or at least by its representatives — assembled; they are presented to the entire people for ratification. But in Egypt, political authorities are helping draft the constitution from which they will draw their own future authority.

Of course, in the past, the reality in the Arab world has generally been that regimes have carefully written documents to serve their own purposes, mimicking only the forms of popular participation. In Egypt today, however, it is not the regime but significant and powerful state bodies — often enjoying much more autonomy than they did under the old regime and partially freed of presidential domination — that are stepping forward to instruct Egypt's drafters on what to say. Some such bodies (such as al-Azhar) have formal representatives in the Constituent Assembly, but others make their voices heard by directly negotiating with assembly leaders, airing their opinions in the press, issuing statements, and even occasionally suggesting that they might resort to strikes or demonstrations.

So the Egyptian Ministry of Defense has objected to a constitutional provision barring military trials of civilians. It remarkably described a draft clause as "unacceptable." The State Cases Authority — a body that defends state agencies in litigation — has noisily insisted on its designation as a judicial body. Senior military officers have resisted civilian oversight of the military budget; al-Azhar has informed the assembly that it wishes to have its independence guaranteed but does not wish to have its teachings and interpretations given more than moral force. The Supreme Constitutional Court has insisted that constitutional provisions not contradict the current law that makes the court a self-perpetuating body. Other judicial bodies have pressed their own demands. The Judges Club has threatened a strike unless it gets the clauses it wants.

It is as if the United States decided to write a new constitution and allowed the Federal Reserve Board, the FBI, the Joint Chiefs of Staff, the Government Printing Office, and the Federal Judicial Center all to draft provisions affecting their work.

What do these various state bodies want? They seek the first two thirds of what other Egyptians wanted when they demonstrated in the 2011 revolution for "Freedom, dignity, and social justice." The state actors want freedom or, more precisely, autonomy. They wish to know that they will be able to govern their own affairs, make their own judgments, appoint their own members, select their own leaders, and spend their budgets freed of the heavy hand of presidential control that weighed so much on them in the

past. And they wish for autonomy from the parliament as well, mindful that the body will likely be a bit less pliable than the People's Assemblies that met under Mubarak and his predecessors.

The dignity that they seek is sometimes surprisingly important; it often takes the form of demanding a distinct constitutional article in an already busy and loquacious text. Sometimes the placement of a provision is important: military judges and members of the State Cases Authority wish to be mentioned in the chapter on the judiciary (with regular judges sometimes huffily insisting that such personnel are not their colleagues and belong elsewhere in the document). The Supreme Constitutional Court, by contrast, insists on maintaining the privilege it had in the 1971 constitution of having its own chapter, forcefully resisting inclusion in the judicial chapter.

The Constituent Assembly, named by an elected parliament and answering to the people (in the form of a referendum on its work), might be expected to dismiss such claims as *chutzpahdik*. But it does not, and that is not simply because the predominantly Islamist members do not know the word. The assembly in general, and the Muslim Brotherhood's Freedom and Justice Party (FJP) in particular, have found that reaching a bargain with such bodies is generally possible and the effects likely salutary.

Indeed, since Mohamed Morsi was elected in June, the president and the FJP have generally paid far more attention to their relations with important state actors than they have with the relatively feckless "civil" political forces who occupy a minority of seats in the Constituent Assembly. In August, Morsi found that he could carefully negotiate a relationship with senior generals; after overplaying his hand with some judicial actors he has generally backed off and opted for a similar approach.

The Brotherhood generally has no problem with these various bodies as institutions, though it is often very suspicious of leading individuals within their ranks (such as Prosecutor General Abd al-Magid Mahmud or Justice Tahaney al-Gabali of the Supreme Constitutional Court). Where full frontal confrontation does not work, therefore, time might be of assistance; the Brotherhood and the president likely hope that over the long term these institutions might gradually pass into more genial hands. Optimistic about how well politics has served them thus far, and sanguine about their electoral fortunes, Brotherhood leaders can easily see compromises with these state bodies as a small price to pay for a working constitution in which Islamists will play a leading role.

This is thus a cagey approach for the Brotherhood, but is it a good one for Egypt?

It may have some real short-term benefits, particularly given the untested nature of the coming constitutional order. In Egypt's emerging political system, the mechanisms of vertical accountability (popular oversight over officials through the electoral process) may provide only an Islamist echo, particularly if non-Islamists turn in another underwhelming performance in parliamentary balloting. Mechanisms of horizontal accountability — in which various state bodies keep a check on each other — might provide a good temporary stand-in to prevent presidential despotism.

But this is no long-term solution. It rests in part by awarding critical institutions more autonomy from external oversight than is appropriate in a democratic system. So the short-term problem may be too much autonomy for these bodies. Over the long-term, there may be the precise opposite problem: the autonomy of many bodies will rest on implementing legislation (for instance, the provisions for the Supreme Constitutional Court allow the current law to be maintained but do not prevent future changes in that law). A series of Islamist majorities might chip away at the freedom that state bodies now seem to think they may be achieving through the constitution.

So in the end, if things work badly, the result might look a bit more like the Mubarak regime than anyone now wants. Mubarak's authoritarianism was presidential and despotic to be sure, but it was not based on having the presidency micro-manage the affairs of various state

bodies. Instead it was based on placing those bodies in reliable hands, coopting key members, and reining them in if they suddenly discovered ways to act too autonomously of presidential will.

If Egyptians are not careful they will slip back into that pattern. In the end, there is simply no substitute for healthy democratic competition.

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Morsi's Moment on Gaza

By Daniel Brumberg, November 21, 2012

To be the peace broker or the war enabler, that was the question facing President Mohamed Morsi and his colleagues in the Muslim Brotherhood. But if in the midst of this Shakespearian moment Morsi chose wisely, the bigger choices are yet to come: Will Egypt become the regional leader pushing for a comprehensive solution to the Palestinian-Israeli conflict? Or will Egypt's elected leaders forfeit this opportunity and chose the path of ambiguity and mixed signals? The November 21 pre-Thanksgiving announcement of a Hamas-Israel ceasefire brokered in part by Egypt only raises the stakes on these fateful questions.

The challenge facing Morsi derives not merely from the obvious fact that he has to balance the desire of the Egyptian populace to confront Israel and the U.S. wish to have Cairo press Hamas into a ceasefire. The bigger problem is structural: the legacy of a 30 plus year cold peace premised on the fiction that it would create the strategic framework for Palestinian-Israeli peace. With Cairo's foreign policy now conducted in the cauldron of a fractious democratization, Egypt's leaders will feel ever greater pressure to put aside — or at least substantially revise — the Camp David Treaty. But there is far more to this equation than that for Egypt's Muslim Brotherhood and its president.

In many respects, Camp David was a good deal for Egypt. Having expelled the Soviets and cast his lot with Washington, the late President Anwar Sadat was able to extract Egypt from the snare of a periodic military conflict with Israel, as well as from a relationship with Moscow that promised no future. Over time, Egypt's huge professional middle class — secular and Islamist alike — came to view the peace treaty with Israel and the related U.S. financial assistance as the quid pro quo for excluding the possibility of achieving even a fig leaf of sovereignty for the Palestinians. But for the Palestinians and the wider Arab world, Sadat's move was a strategic disaster: in one fell swoop, he blocked any future recourse to conventional war by a meaningful alliance of Arab states. It was this fact — and not only his trip to Jerusalem or "abject surrender" (as nearly all Arab leaders called it) that infuriated the Arab world.

Looking back, that strategic vision appears acute. Although in the Camp David accords the late Israeli Prime Minister Menachem Begin actually promised to "recognize the

legitimate rights of the Palestinians," this did not happen. On the contrary, the removal of Egypt from the strategic-military equation positioned Begin to vastly expand Israeli West Bank settlements. It is no coincidence that settlement building rapidly accelerated after the Camp David Accords, or that Israel's effort to smash the Beirut-based PLO unfolded three years later. That ill-fated effort to win "Lebanese sovereignty" by dint of Israeli force helped pave the way for the emergence of Hezbollah. But from Jerusalem's vantage point, it seemed (at least at first) like a tremendous strategic success, and one that the Camp David Accords helped make possible.

Egyptians generally took a dim view of the peace treaty, which quickly settled into a "cold peace" limited to strategic relations. But in a political system that could tolerate no vestiges of real democratic practice, Egypt's leaders felt unconstrained by popular and elite opinion. Thus having held a reasonably open election in 1976, in 1979 Sadat engineered a fake election that removed his critics from the parliament. His successor, Hosni Mubarak, enjoyed a brief political honeymoon in the 1980s. But with the escalation of Islamist terrorism in the early 1990s and the related expansion of the internal security forces, he became increasingly dictatorial and thus immune to public opinion. One consequence of this unfortunate dynamic was that in the minds of Egypt's middle classes, peace with Israel came to be equated with autocracy. If Israel's relationship with Arab leaders recast this relationship in terms of state-to-state relations, it also helped to reinforce the widespread perception in Egyptian civil society that the survival of autocracy and the failure of Palestinian-Israeli peace making were somehow linked.

This perception enjoyed a brief vacation during the hay day of the Oslo Peace Process. The inspirational image of late Prime Minister Yitzak Rabin and PLO leader Yasir Arafat shaking hands not only revived hopes for a two-state solution, it also took pressure off Mubarak. But in the ensuing years, a lethal combination of terrorist violence targeted Israeli civilians in a manner calculated to provoke Israeli retaliation, and a process of settlement building or expansion, undercut the trust necessary for moving beyond Zones "A, B, and C" to two states. Indeed, the failure to clearly identify the end goal of the entire exercise — i.e. Palestinian statehood alongside Israel — and even more so, *to quickly move toward it*, empowered spoilers on all sides. If we are now staring at the abyss in Gaza, and preparing for the possible emergence of Hamas as the dominant force on the West Bank, this development is partly a consequence of policies that have stripped pro-peace West Bank leaders of popular credibility.

The absence of successful Palestinian-Israeli peace-making — or the presence of Palestinian-Israeli conflict making — had similarly deleterious effect on Egypt's internal political scene. During the late 1990s and beyond, the only thing that Egypt's fractious opposition could regularly agree on was opposition to Israel. In the context of a non-peace process that did not present the possibility of a two state solution, Egyptian activists who might have otherwise supported such a solution had little choice but to make common cause with forces that opposed such a solution on principle. This logic became ever more compelling with each outbreak of hostilities between Israel and Hezbollah, or Israel and Hamas. Fury with Mubarak's seeming complicity in the blockade on Gaza and Israel's wars contributed to the overall rejection of his regime.

Egypt's January 25 Revolution may have brought to an end the luxury of indulging in endless populist sloganeering without prospect of real policy change. Morsi and the Brotherhood now are faced with the daunting prospect of making hard choices. The specter of a democratically elected president who comes from an organization that articulates elemental discomfort with the legitimacy of Israel and the very idea of a two state solution is disquieting for Israel and the United States. But it could be a real opportunity, albeit one full of dangers.

It is surely one of Hamas's goals to make sure that an Egyptian government beholden to the Muslim Brotherhood embraces Hamas and in so doing takes the first steps to effectively (if not formally) breaking its peace treaty with Israel. If Morsi cannot accept this smothering embrace, neither can he afford to broker a compromise

that simply reinstates another fragile truce and puts Egypt again at risk in a few months. Instead, in the coming months he must clearly signal that a democratic Egypt will now take the lead in pushing all key regional parties toward making an enduring peace.

This will be a very hard pill for Egypt's Muslim Brotherhood to swallow. But if the idea of Egyptian-Israeli peace as a bridge to Palestinian-Israeli peace once seemed little more than a bad joke, it does not have to remain so. Nor does it have to be replaced with a new fiction, and that is of a democratic Egypt that seizes the mantle of Arab regional leadership by fudging rather than confronting the peace issue. If it fudges, Cairo will certainly make Tehran happy, and even more, it will invite further competition from Turkey, some of whose leaders are trying to outflank Egypt by echoing Hamas's own violent rhetoric. Egypt cannot afford to indulge this reckless outbidding, which only lets both Palestinians and Israelis indulge in the fantasy that a combination of force, time, valiant endurance, and God's favor will deliver them from disaster.

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Morsi's Mixed Moves

By Marc Lynch, November 24, 2012

Egypt has had quite a week, even by its inimitable standards. President Mohamed Morsi brokered a ceasefire between Hamas and Israel, returning Egypt to the regional political balance and proving to be the pragmatic, realistic leader for which many had hoped. Almost immediately afterward, his government announced a preliminary deal with the International Monetary Fund for a desperately needed $4.8 billion loan. But then, just as Morsi stood poised to bask in the international acclaim, he suddenly released a presidential decree granting himself extraordinary powers and triggering a surge of popular mobilization protesting his decisions.

Morsi's move should be seen in the context of Cairo's intensely polarized, gridlocked politics rather than as some pure expression of Islamist intent. His power is more impressive on paper than in reality. But there is no real question that Morsi went too far: decrees changing the rules of the game and placing the executive above any appeal were dangerous and wrong when done by the Supreme Council of the Armed Forces (SCAF), would have been dangerous and wrong if done by a President Shafiq, and they are dangerous and wrong when done by Morsi. They should be reversed. But that will no more solve the underlying problems than last week's Israel-Hamas ceasefire will solve the enduring problems of Gaza.

Morsi's decree raises some truly troubling issues for Egypt's transition. It sparked large protests, violent clashes, judicial backlash, resignations from his administration, rare unity among opposition politicians, and severe new doubts about Morsi and the Muslim Brotherhood's political intentions. Cairo is bracing itself for dueling protests scheduled for Tuesday, with few signs yet that either side is preparing to back down. But the last year should have taught us to be less inclined to see the sky falling at the first sign of outrage on Twitter than we used to be. The political crisis has been exacerbated by the now familiar pattern of exaggeration, hyperbole, and false rumors spreading like wildfire through the media and the internet to a polarized

public primed to believe the worst. And it has been fueled by the deeply unfortunate polarization which has poisoned Egyptian politics over the last year, for which both the Islamists and their rivals bear their share of responsibility.

The surge of popular and institutional mobilization against Morsi's move are positive signs, since these are the only way to push back against executive overreach in the absence of a parliament, a constitution, or *any* institutionalized avenues of political contestation. Will the mobilization against Morsi's decree be another January 25 (unlikely), another round of the violent, pointless chaos of November and December 2011 (hopefully not), or — in the best case — a return to the unified, politically focused, and effective shows of popular force like those in the spring and early summer of 2011? Or will the mobilization and counter-mobilization succumb to the poisonous dynamics of an escalating existential battle between Islamists and their enemies that could destroy any hope of finding a shared foundation for a new constitutional order?

Morsi's Gaza triumph has rapidly faded from the Egyptian public arena in the face of the political crisis sparked by his power grab. But it remains an important part of the puzzle of Egypt's new politics. The eruption of Israel-Hamas fighting was rightly seen as the first real test of Morsi and his elected Egyptian Islamist government. Many thought he would seize the moment to escalate against Israel, tear up the Camp David Treaty, engage in reckless rhetoric to demonstrate radical credentials, or reveal the true extremism lurking behind a mask of moderation. Instead, he behaved as every bit the pragmatic statesman. It is too soon to know whether the ceasefire will hold, the Gaza blockade will be lifted, or precisely what responsibilities Egypt has now taken on as guarantor of the agreement. But in the short term, Egypt emerged looking a more effective diplomatic player than at any time in a decade of the long twilight of the Mubarak regime or the chaotic post-revolutionary transition.

He did so by positioning Egypt as an important mediator between Hamas and Israel and winning the confidence of Washington while also expressing pro-Palestinian views in line with those of the Egyptian and broader Arab public. Moves such as sending his prime minister to Gaza to express sympathy won political points even as he pursued a cautious, fairly traditional set of Egyptian interests toward Gaza. The Muslim Brotherhood helped keep the streets relatively quiet, whatever its members felt privately, giving him space for diplomacy. And he showed that he could use both the Muslim Brotherhood's ties to Hamas and the Egyptian intelligence service's ties to Israel to become an effective broker. In short, on the regional stage Morsi's Egypt proved the adept practitioner of *Realpolitik* inflected with tactical appeals to Arab and Islamic identity. This is the role which Erdogan's Turkey played so effectively over the past few years — and which Morsi's Egypt is now bidding to fill.

Had Morsi stopped there, there would have been a clear narrative of a pragmatic, effective new Egyptian government. But of course, he did not. Instead, he made his unprecedented bid to centralize power in the office of the presidency, a bold Calvinball move redefining the rules of the game in mid-play which immediately ignited a new political crisis. Opposition politicians ceased their bickering for the moment to unify around a denunciation of the power grab. A larger than normal crowd descended on Tahrir and protest broke out around the country, along with depressingly familiary violent clashes between security forces and the opposition. Meanwhile, Muslim Brotherhood supporters mobilized in counter-demonstrations. Rumors ran wild about coming moves to prosecute political enemies, purge the media, and more.

A case could have been made for Morsi's constitutional decree had he not pushed it too far. The judiciary has played an erratic, unpredictable, and politicized role throughout the transition, with its controversial decisions such as the dissolution of parliament. Its Calvinball approach to the rules, in the absence of either a constitution or a political consensus, introduced enormous and unnecessary uncertainty into the transition and badly undermined the legitimacy of the process. Morsi was not the only one who despaired of Cairo's political polarization and institutional gridlock. But none of that can justify

his assertion of executive immunity from oversight or accountability, declaring his decisions "final and binding and cannot be appealed in any way or to any entity." And then there was Article VI, asserting the power to do literally anything "to protect the country and the goals of the revolution." That Morsi was elected has nothing to do with his attempt to place himself above the law. Nor does the expiration date of his extraordinary powers (after parliamentary elections and the constitutional referendum) reassure in the slightest.

The pushback which is now taking place on the streets and in the courthouse and in the public sphere is exactly what needs to happen, even if the increasing turn toward existential opposition to the Muslim Brotherhood rather than toward specific political issues is disturbing. For all the polarization and ugliness of the street clashes, this intense engagement with politics and unwillingness to accept Morsi's *diktat* are positive signs of the vitality of Egypt's vibrant, ornery, and contentious new politics. It shows yet again that there is no going back to the old patterns of Egyptian or Arab politics. The dissolution of parliament, failure to produce a constitution, and politicization of the judiciary has left Egyptians with no legitimate institutional channels by which to contest executive power. The ability of other political forces to push back through such extra-institutional means is crucial to maintaining *de facto* checks and balances on the president. *De jure* would be better.

Both Morsi and his rivals seem determined to push this fight toward what could be a truly ugly conflict rather than to seek the grounds for compromise. There is such a compromise to be had, however. Morsi has to back away from his claims of executive immunity, but the judiciary and other power centers need to stop blocking any political development. Morsi has to accept the urgent need for yet another try at putting together an inclusive and representative constitutional assembly, abandoning once and for all the odd notion that an electoral majority should entitle Islamists to majoritarian dominance of the drafting of a foundational document. But his opponents need to be willing to actually sit on such an assembly rather than quitting at the first sign of trouble to register their symbolic dissent. The cycle of violent repression of protests has to stop, with the security forces showing more restraint and protesters doing more to police their own ranks. I think it's important (though I suspect I am in a distinct minority on this) to get a legitimate parliament back in place — whether by reinstating the dissolved one in its entirety, holding by-elections for the seats deemed unconstitutional, or holding entirely new elections.

Overall, at its core, both the Brotherhood and its opponents need to take steps to break the cycle of polarization and start to somehow build the common ground on which a successful transition will depend. They have not been good at this throughout the transition; in particular, I still believe that the Brotherhood blundered badly in breaking its promise to not seek the presidency, and that both Egypt and the Brotherhood would have been better off had they kept their word. There are a million other poor decisions by all actors along the way. But there's no going back to fix those mistakes, only the opportunity for both sides to seize this crisis to change direction. I don't think anyone is optimistic that such an accord will be reached. We will see this week whether either side wants to find one and is willing to take the first steps to repair the deep ruptures in Egypt's transitional politics.

Egypt's untouchable president

By Mara Revkin, November 25, 2012

If Egyptian President Mohamed Morsi is ever in the market for a presidential theme song, he should consider, "U Can't Touch This." American rapper M.C. Hammer's infectiously arrogant refrain aptly sums up a stunning power play by the Egyptian president on November 22 — a unilateral constitutional declaration that immunizes his decisions from judicial oversight and preempts legal challenges to an Islamist-dominated constitutional process. In short, the declaration makes Morsi's decisions legally untouchable. If this were Zimbabwe, we would call it dictatorship. But in Egypt, it's just business as usual in a dysfunctional democratic transition.

Morsi, who was elected Egypt's president in June on a platform pledging to purge remnants of the former regime from state institutions, is now taking cues straight from the playbook of his authoritarian predecessor, Hosni Mubarak. The president has attempted to justify the declaration as a necessary intervention to alleviate political gridlock, with the aim of achieving "revolutionary demands and rooting out remnants of the old regime." A senior advisor in the president's Freedom and Justice Party (the Muslim Brotherhood's political wing), Gehad El-Haddad, took to his Twitter feed to defend the decision in less tactful terms. "Someone needs to get real," El-Haddad tweeted dismissively to critics who suggested that the president had less radical alternatives at his disposal.

But while Morsi's paternalistic rationale might have passed muster a year ago, the Egyptian public has long since lost patience with the notion that repressive means are permissible in the pursuit of revolutionary ends. It's worth recalling that Morsi's margin of victory in the presidential election was a razor-thin 3.5 percent — hardly the sweeping popular mandate needed to legitimize a power grab of this magnitude. Public backlash to the declaration has been swift and scathing. Prominent political figures have mobilized against Morsi and three of the president's own advisors have stepped down in protest. Mohamed ElBaradei branded Morsi "the new Pharaoh," as tens of thousands of protesters called for Morsi's resignation in Cairo and cities across Egypt, at times clashing violently with the president's supporters. As of November 25, at least 227 injuries had been reported. Dozens of anti-Morsi protesters have been arrested thus far, and hundreds more have been detained on the infamous Mohamed *Mahmoud* Street, where a demonstration was staged last week commemorating the anniversary of a deadly crackdown on peaceful protesters at the same place last year.

Whether or not the violence continues to escalate depends on if, and how quickly, Morsi is willing to make concessions. A full-blown retraction of the decree might be seen as an unbearable blow to Morsi's credibility, but he may be persuaded to scale back some of its more problematic provisions. Much also depends on whether protesters are willing to back down from their bottom-line demand — Morsi's removal — and settle for a more realistic compromise. Lurking in the shadows is Egypt's military, unceremoniously ousted from power and perhaps eyeing an opportunity for a comeback. ElBaradei warned on November 25, "You cannot exclude that the army will intervene to restore law and order if the situation gets out of hand."

This is not Morsi's first power grab, but it is certainly his most brazen. On August 12, less than six weeks after his inauguration, the new president took his first step toward eviscerating constitutional limitations on executive power with a decree that jettisoned the Supreme Council of the Armed Forces (SCAF) from the political scene and gave Morsi sweeping legislative powers that arguably exceeded those held by Mubarak. In a bait-and-switch maneuver, Morsi rescinded an existing SCAF declaration designed to curb the powers of the incoming civilian leader and replaced it with one that authorizes the president to legislate in the absence of an elected parliament and intervene in the constitutional process. Adding insult to

injury, Morsi strong-armed the ruling generals into early retirement just hours after abrogating martial law.

Even when Egypt had a permanent constitution, Mubarak had no trouble finding and writing new loopholes to justify the abuse of executive power. But in today's fluid transitional legal environment, where rule-by-decree is the new rule of law, it's that much easier for the president to overstep the traditional bounds of executive authority, as Morsi did so flagrantly on August 12 and November 22.

In the context of a murky constitutional interregnum that invites unilateral decision-making, it's not all that surprising that Morsi would try to stabilize a floundering democratic transition by rewriting the rules of the game yet again. But what is remarkable about Morsi's latest decree is not the powers it gives the president, but those it has taken away from the judiciary. The seven-article constitutional declaration radically recalibrates the balance of power in an already fragile political system by stripping Egypt's highest courts of their authority to challenge executive decisions. Not only does the declaration bar courts from contesting any presidential decrees passed since Morsi assumed office in June, it also preempts lawsuits seeking the dissolution of the constituent assembly and the upper house of parliament. Legal experts believe that the declaration could provide a basis for reinstating the Islamist-dominated lower house of parliament, which was dissolved by court order on June 15.

The upshot of the decree is absolute immunity for Morsi's political agenda, including the process of drafting a new constitution. The 100-member constituent assembly, tasked with writing the new charter, was on the verge of imploding for a third time last week, when at least 12 liberal and Christian members resigned their seats over complaints that their recommendations were being ignored by the Islamist-dominated assembly. The walkout — which included such prominent figures as former presidential candidate Amr Moussa — underscored the dubious legitimacy of a constitutional process that has been repeatedly assailed for its underrepresentation of political and religious minorities as well as women. By shielding the constituent assembly from pending legal challenges seeking its dissolution, Morsi's decree virtually guarantees that the current constituent assembly will survive long enough to complete a draft, however flawed.

In an apparent effort to paper over the declaration's authoritarian implications and preempt critics, the text is littered with concessions to revolutionaries and non-Islamists. Morsi's extension of the deadline for drafting a new constitution by two months seems designed to appease liberals, who have accused Islamists of railroading over their concerns in an effort to conclude the messy process as quickly as possible. In another gesture to revolutionaries, the decree reopens the trials of Hosni Mubarak and other members of his regime, in addition to dismissing Egypt's prosecutor general, a Mubarak-appointee who has been pilloried for his role in the relatively lenient sentencing of the former president — to life in prison — last June.

Ironically, a declaration whose stated intent is the eradication of the former regime and fulfillment of the revolution's goals, has actually turned the clock back to Mubarak's era — a time when Egyptian society was held hostage by an executive branch that operated above the law. In seizing dictatorial powers in the name of safeguarding Egypt's democratic transition, Morsi is starting to look more and more like a reincarnation of his deposed predecessor.

Even the jingoistic rhetoric Morsi has employed to rationalize his power grab reeks of Mubarakisms. "Those who are trying to gnaw the bones of the nation" must be "held accountable," Morsi said on November 23. The tactic of scapegoating unspecified threats to national security is reminiscent of one of Mubarak's favorite metaphorical devices — the "foreign fingers" he blamed for instigating unrest in the early days of the revolution.

Egypt's president has declared himself legally untouchable. Now the question is, what will his opponents do about it? There's never a good time to drop the dictator bomb, but Morsi appears to have picked the best possible moment.

As Nathan Brown pointed out, Morsi's credibility is at an all-time high, as he rides a wave of international goodwill and praise for Egypt's critical role in negotiating a cease-fire between Israel and Hamas this week. On the economic front, Morsi has had a similarly monumental week. On November 20, Egypt reached a preliminary agreement for a badly needed $4.8 billion International Monetary Fund loan, and the finance ministry insists that the deal will not be jeopardized by the latest unrest. Did the prospect of new financing for his cash-strapped government embolden Morsi to test the limits of his power? In a cryptic comment on Twitter, FJP advisor El-Haddad said those curious about the timing of the decree should "follow the money trail." Whatever that means, the timing is no coincidence.

Morsi may have hoped that synchronizing the declaration with the two biggest good news stories that Egypt has seen since the revolution would dampen criticism. But the tens of thousands of protesters rallying in Tahrir Square on November 24 suggest that Morsi may have miscalculated the public's fatigue with the all-too-familiar style of unilateral decision-making that many Egyptians hoped would end with the removal of the SCAF.

Besides the groundswell of public outrage, the biggest victim of the declaration — Egypt's judiciary — will not go down without a fight. The Muslim Brotherhood already has an antagonistic relationship with Egypt's Supreme Constitutional Court (SCC), a body that includes judges appointed by Mubarak, some of whom are believed to harbor an anti-Islamist bias. The judiciary has been attacked by Islamists before, and thus far has prevailed in every confrontation. In June, after Islamist MPs opened fire on Egypt's highest criminal court for its lenient sentencing of Mubarak, the SCC retaliated by dissolving the lower house. When Morsi issued an executive decree reinstating parliament on July 9, the SCC promptly overturned it the same day.

This latest assault on the powers of the judiciary will likely be met with similar hostility. On November 24, the Supreme Judicial Council, Egypt's highest judicial authority, took the remarkable step of ordering a freeze on activity in all courts and prosecution offices until Morsi agrees to reverse his decree. The powerful Judges Club also endorsed a nationwide judicial strike after condemning Morsi's "tragic" decision as "an assault on the independence of the judiciary" and called on Egypt's courts to stage a nationwide strike, already in progress in Alexandria, Damanhur, and Assiut. Meanwhile, the SCC is reportedly exploring the possibility of impeaching Morsi.

In a constitutional no man's land where power flows from revolutionary legitimacy, not law, Morsi's declaration is toothless without buy-in from the street, and more importantly, the judges who will make or break its enforcement. Picking fights with the arbiters of justice is usually a losing battle, and Morsi's assault on the judiciary is no exception. As Egypt's judicial authorities mobilize to defend their territory from executive overreach, Morsi is about to find out how untouchable his powers really are.

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Morsi's majoritarian mindset

By Michael Wahid Hanna, November 27, 2012

Egyptian President Mohamed Morsi turned Egyptian politics on its head on Thanksgiving eve with his now familiar style of governance: a unilateral, surprise decree, the fourth of its kind since Morsi assumed his position in June. Each of these decisions has proceeded with little to no consultation and, regardless of their intent, each proclamation was notable for carving out further and broader authorities for the executive. The common thread linking these decisions is the majoritarian lens though which the Muslim Brotherhood understands political life and democratic politics — one which bodes ill at this foundational moment when Egypt is attempting to refashion its social compact and establish a sustainable constitutional and political order.

Morsi's majoritarian mindset is not anti-democratic per se, but depends upon a distinctive conception of winner-takes-all politics and the denigration of political opposition. Winning elections, by this perspective, entitles the victors to govern unchecked by the concerns of the losers. This chronic overreach has cemented the divide between Islamists and non-Islamists and heightened suspicions of the Brotherhood's ultimate intentions.

The latest constitutional declaration included defensible measures such as victims' compensation and the reopening of cases related to the violent repression of protesters. But they came with a poison pill, namely, the granting of unlimited and unreviewable presidential authority. In plain terms, Article VI of the declaration enshrined immunity for any and all presidential decisions and an ostensibly temporary form of unchecked one-man rule. Needless to say, for a deeply divided country that had risen up against the authoritarian rule of Hosni Mubarak not two years past, these steps were shocking and ominous for many outside the Islamist political fold (and perhaps even some within it). These measures set the stage for potential repressive actions by an unchecked executive in response to any form of opposition

Morsi's defenders presented the move as a natural response to obstructionism by figures from within the old regime. Gehad el-Haddad, a senior Brotherhood spokesman, argued that "[t]his president saw a clear danger that can derail Egypt's transition, and he acted within his legal bounds to protect the transition against that danger." But such unstinting support seemed divorced from the political realities that have limited the scope and pace of reform since the fall of Mubarak. That transition has been marked by fragmentation that has diffused the energy behind the original uprising, and double-dealing by all political factions that has imbued political actors with justifiable paranoia. The majoritarian mindset has so clouded the judgment of the president and his insular advisors that they were either wholly unaware of the potential backlash his edict would engender or wholly dismissive of the opposition that would articulate that rejection.

As opposed to engaging in constructive dialogue and coalition building with reformist forces, the Muslim Brotherhood has eschewed broad-based politics since the fall of Mubarak. While all political factions have been guilty of such irresponsible behavior, the onus for this state of affairs falls disproportionately on the Brotherhood. The group chose to maximize its political power at each critical juncture and now dominates affairs of state. The group has instead only engaged seriously with the Egyptian military, an institution with credibility and popularity that made it a potential hurdle to the Brotherhood's agenda. The pacted transition which emerged from that tumultuous and adversarial process sheds light on how the Brotherhood understands Egyptian politics and its place within it. While the group and its political wing enjoy deep-rooted support and organizational advantages, the Brotherhood seems oblivious to the fluidity and shallowness of political allegiance or the possibility of its own fall from dominance.

Among the true tragedies of the current crisis is that the institutions and bureaucracy of the former regime

— including the judiciary — are in dire need of reform. Judicial reform, including removal of the ineffectual prosecutor general, was in fact a core and unifying goal of the revolutionary movement. The courts have acted in politicized and obstructionist fashion at various junctures and have appeared to defend the old regime's interests. But the judiciary's record on reform is mixed, with numerous decisions supporting the early tide of reform, and the more politicized stances of the courts have been enabled by the country's polarized politics.

The actions of the Supreme Constitutional Court (SCC), which controversially dissolved the country's democratically-elected parliament in June, have received the most attention, particularly as it stood poised to pass judgment on the reconfigured Constituent Assembly drafting a new constitution. While the move was suspect and problematic when considered within the broader context of the transition process, it was defensible based on legal precedent. More importantly, however, the move was driven by the convergence of institutional self-interest, with the SCC concerned by heavy-handed parliamentary threats to neuter the court, and justified fears of unchecked majoritarianism by the ascendant Islamist forces. This political cover is the key to understanding activist judicial behavior, and can be remedied by a broader conception of the transition process to include meaningful minority input and protections where the courts are not the sole check on executive authority.

It is striking that Morsi has evinced no comparable interest in reforming acquiescent institutions of state, including the ministry of interior, which was the primary tool for state repression under Mubarak. This spotty commitment to reform suggests Morsi's moves were more a function of securing unobstructed authority. Many of the goals iterated as the cause of the president's abrupt decision could have been secured through negotiation and consensual means.

Considering the limited nature of the stated goals, the audacity and breadth of the declaration present an incongruous picture. Within Egypt's polarized and contested politics, worst-case assumptions regarding ultimate intentions are inevitable in light of ambiguous and dangerous language allowing the president to "take the necessary actions and measures to protect the country and the goals of the revolution." In a deteriorating political environment and faced with implacable opposition, abuse of such presidential authority would be nearly inevitable. Even if one were to assume good faith on the part of Morsi, the president appears woefully out of touch with the country he governs. In fact, Morsi seemed to have a better grasp of the lenient international political climate in the wake of his diplomatic efforts on Gaza than the depth of opposition to his rule. With mass mobilization and limited political violence a continuing fact of life, there is no guarantee that destabilizing steps will not escalate beyond the current norms that have typified and bounded the scope of conflict. Serious and broad-based civil strife remains unlikely, but not impossible. Such an eventuality will only seem inevitable in retrospect.

Even if the declaration is annulled or scaled back, it seems clear that President Morsi will attempt to use the threat of the declaration to coerce acceptance of the unrepresentative and dysfunctional constitutional-drafting process. This is particularly unfortunate as the drafting process has been a microcosmic reflection of the broader ills that have undermined post-Mubarak transition and reform. It is also the arena least suited to the majoritarian impulse, with a constitution expected to provide a sustainable foundation for the emerging political order. With serial resignations of the assembly's non-Islamist representatives, the current process is likely to further political conflict and is unlikely to establish sustainable divisions of power that can steer the country away from instability and violence.

As opposed to mustering a more durable and broad-based consensus for change and reform, Morsi's fateful step ensured that the divisions that have marred the post-Mubarak era will only be heightened and more irreconcilable. More broadly, this recurrent pattern raises fundamental questions about the Brotherhood's commitment to an inclusive democratic process in which

compromise and consensus are necessary ingredients. At root, the Muslim Brotherhood believes that it represents the authentic voice of Egyptian society and that its years of repression and its impressive electoral victories have invested it with the right to implement its agenda. As opposed to undertaking the arduous and difficult task of negotiating consensus outcomes, the Brotherhood now seems intent on eschewing the give and take of democratic politics and monopolizing political power. Egypt may step back from the brink yet again, but Morsi's ill-conceived gambit will have poisoned the body politic and exacerbated the chronic and manifest flaws of the country's transition. At a moment when a consensus outcome is most needed, that possibility will have been foreclosed.

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Egyptian labor between Morsi and Mubarak

By Dina Bishara, November 28, 2012

While few noticed in the midst of an intense political crisis, Egypt's President Mohamed Morsi issued another controversial decree recently: Decree no. 97 of 2012, introducing a few important amendments to Egypt's long-standing 1976 labor law. The highly controversial law has already garnered significant opposition from a wide array of labor activists especially as it threatens to extend a long history of state control over labor affairs. While this may not be directly linked to the battle over Morsi's decree claiming unlimited Presidential power, many Egyptians see it as part of a broader bid for executive and partisan power.

The most controversial amendments include a provision to remove any Egyptian Trade Union Federation (ETUF) union board member who is over 60 years of age. The ETUF has been historically close to Egypt's rulers and most of its current top leadership is comprised of loyalists to the Mubarak regime. The current leadership was elected in 2006, a year that many activists claim was particularly marred with state intervention to prevent reformist candidates from running and ensure the success of loyalist candidates. According to the law, removed unionists would be replaced by candidates who had received the second largest number of votes in the last union elections (2006). Importantly, however, the law authorizes the highest authority (in this case the minister of manpower — currently also a member of the Freedom and Justice Party (FJP), the political arm of the Muslim Brotherhood, Khaled al-Azhari) to fill any remaining posts that could not be filled for whatever legal reason. Another amendment entails extending the current electoral term for ETUF leaders for an additional six months or until a new trade union law is enacted, whichever comes first.

These amendments raise two key questions: what implications does the content have for the future of state-labor relations in Egypt; and what is the significance of the timing of these amendments?

In terms of content, the amendments have already caused significant rumblings within and outside the Egyptian Trade Union Federation. Several office holders within the ETUF, most notably President Ahmed Abdul Zahir, will lose their position as a result of the proposed changes. Abdul Zahir described the amendments as "void" and "illegal," arguing that they violate the 1976 labor law,

according to which the ETUF must be consulted before changes are made to the trade unions law. Abdul Zahir also argues that the amendments violate international labor agreements to which Egypt is signatory.

For their part, independent unionists (in the Egyptian Federation of Independent Trade Unions, EFITU, and the Egyptian Democratic Labor Congress, EDLC) as well as reformists within the ETUF charge that the amendments reflect a plan to "Brotherhoodize" the resource-rich ETUF. Although independent unionists have long called for the need to remove ETUF office holders past the age of 60, they raise serious concerns regarding the procedure according to which these office holders would be replaced. The fact that most federation-level unionists elected in 2006 won by default (as a result of government interference in those elections) means that very few of them will be replaced by those who won the second largest number of votes (as stipulated in the amendments). This gives the minister of manpower de-facto authority to select replacement candidates, a measure that independent unionists argue gives the executive undue power over internal union affairs. Finally, both the EFITU and the EDLC lament that Morsi has used his legislative authority to exert further control on the ETUF rather than issue a new trade unions law that would guarantee pluralism and independence from state control.

At this point, it is not clear precisely how many ETUF office holders will be affected by those changes. Estimates indicate that the changes are likely to unseat up to 150 leaderships among a total of around 500 at the federation level and up to 14 out of around 24 leaderships in the ETUF's executive board. Notably, however, al-Azhari has tried to downplay these estimates during a press conference discussing the amendments. What is clear, however, is that the changes will be implemented swiftly. The remaining members of the ETUF executive board have already met without the excluded members and announced the ETUF's endorsement of the proposed amendments. They also named a new ETUF president and began drawing up lists of members that will need to be replaced.

For his part, al-Azhari argues that the amendments will offer much needed turnover in the ETUF's leadership positions thereby revitalizing the organization. The move will also ensure that fewer unionists affiliated with, or sympathetic to, the old regime will have a say over the conduct of upcoming union elections.

Ironically, however, the move upholds — rather than breaks — with some of the core authoritarian practices of the past, namely extensive government interference in union affairs. The amendments thus lend further evidence to the claim that the Muslim Brotherhood is trying to bolster its currently weak standing in the ETUF. Not only has Morsi's prime minister offered one of the few FJP cabinet posts to the minister of manpower, MB unionists have also tried to push a new trade unions law that many critics charge violates the tenets of union pluralism.

The timing of these amendments is also highly controversial given Morsi's constitutional declaration last week. Al-Azhari rejects any connection between the two and insists on a logistical interpretation of the timing. Logistically, the timing is closely tied to the imminent expiration of the current electoral term of ETUF unionists only two days after the amendments were passed. Trade union elections have already been postponed twice since Mubarak's ousting in February 2011, primarily as a result of disagreements over the content of a new trade union law. Independent unionists oppose the law proposed by the current minister of manpower, arguing that it does not allow for trade union pluralism. Instead, they prefer a version of the law negotiated and widely discussed during the tenure of former Minister of Manpower Ahmed Hassan al-Borei. The dissolution of parliament in June has stalled further discussions on which version of the law would be adopted. The extension of the current electoral term for ETUF leaders until a new law is passed ensures that new elections will be held under new rules, a demand upon which most unionists agree.

But there are reasons to question this logistical interpretation. Al-Azhari presented these amendments to the government over a month ago, which raises the

question of why he waited until November 25 to pass them. Critics, primarily independent unionists, contend that the timing is closely tied to President Morsi's constitutional decree, which ensures that there would be no legal avenue for those opposed to the amendments to contest them. As a result, independent unionists in the EFITU and the EDLC vowed to voice their opposition through their participation in protests against Morsi's declaration on Tuesday November 26. Both EFITU and EDLC had sent pleas to President Morsi over the past month urging him not to agree to the amendments.

Morsi's approval of these amendments — and the likely role that the minister of manpower will play in implementing them — signals the continued politicization of trade union affairs in the post-Mubarak period. Ironically, however, it was Minister of Manpower al-Azhari who charged opponents of the amendments of dangerously mixing unionism and political activism. Speaking at a press conference on November 26, al-Azhari hinted that those who oppose the amendments need to give preference to the national interest over their political interests.

Regardless of the scope of the changes in the ETUF leadership composition as a result of the amendments, the law sets a dangerous precedent for state-labor relations in post-Mubarak Egypt. Rather than break from a pattern of state interference in internal union affairs, the law upholds that tradition, at least for the time being. But the decree has sharpened the divisions among labor activists in Egypt, further polarizing that community into pro- and anti-Muslim Brotherhood camps.

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Politicizing Egypt's economic reform

Emily Wills, November 29, 2012

While the gradual meltdown of the Egyptian constitution-drafting process has been at center stage in Cairo over the past few months, the negotiations between the Egyptian government and the International Monetary Fund (IMF) for a $4.8 billion loan have rapidly become central to political conversations in Egypt. Egypt has a checkered past with the IMF. While it views Egypt as a success story for structural adjustment and privatization during the infitah, Anwar Sadat's economic liberalization, and the Hosni Mubarak-era transition away from state ownership, the Egyptian public associates the IMF with the human downside of structural adjustment policies: unemployment, rising prices, and increasing poverty. Even the IMF's own policy papers on Egypt now admit that the "social outcomes were unsatisfactory" during the 1990s and early 2000s.

President Mohamed Morsi's government has a real economic problem: a budget deficit around 11 percent of gross domestic product (GDP), falling tourism revenue, and difficulty encouraging international investment. Bilateral financial support has been forthcoming over the past few months, particularly from the Gulf states, but the IMF loan would be a key international indicator of approval for the regime, and would provide critical support for Egypt's position in the world market. In fact, the loan has been supported by both the Muslim Brotherhood and some Salafi leaders, despite concern among other Islamists that the

interest on the loan counts as usury and that the loan has been rendered haram. (The counterargument is that the low interest rate counts as a fee, and that no profit is being made; this is less than convincing to Islamist opponents, but serves as effective ideological cover for the Brotherhood.) The IMF had expressed a willingness to offer a loan package, provided that the Egyptian government drafted an economic plan that met with its approval.

The loan was not only opposed by Salafis. Left-wing political parties, economic and social rights groups, and socialist activist groups stated their objections and led small demonstrations in August when IMF Managing Director Christine LaGarde visited Egypt and preparations for the loan began in earnest. However, the opposition became much more prominent and sustained in November when the IMF's technical team arrived. Opposition was mobilized on three fronts. First, there was a court case brought up by the Egyptian Coalition for Economic and Social Rights to the High Administrative Court demanding that the government reveal all the details of the economic plan. (Although the court postponed a final ruling on the case, it did require that the government release relevant data to the public.) Second, there were a number of public policy papers and statements, including a letter signed by a collection of political parties, civil society organizations, and independent trade unions, the ECESR's position paper on the loan, and a trenchant critique by "Comrades in Cairo." Finally, there were street protests, again organized by left-wing parties, civil society organizations, and activist groups, rejecting the loans.

The objections to the loans from non-Islamist civil society centered around two issues. The first criticism focuses on the policy implications of an IMF loan. While the IMF no longer has strict conditionality requirements — that is, directly dictates the conditions that a government must implement in order to qualify for a loan — it does require that the government submit an economic plan that the IMF deems conducive to stability. In practice, this means that governments must cut subsidies and enact measures to make their economies more attractive to international business. Advocates for strong protections for economic and social rights argue that these policies will not help Egypt's many poor, and may only serve to support its upper classes.

The second major objection is based in concern about transparency. With the dissolution of the parliament, the executive is the only democratic representative of the Egyptian people; the judiciary is capable of serving as a check on executive power, but not as a force for reasserting democracy. Therefore, the diversity of opinion in Egyptian society goes unrepresented, and Morsi — who here is both the strongman in the mold of Mubarak, and the representative of Islamist forces in the framings of leftwing opponents — can act without restraint. That the content of the economic plan that was negotiated with the IMF was not publicly available until after the deal was agreed to only reinforced this worry: that Morsi would act unilaterally in ways that the Egyptian public would not support, but would be powerless to oppose. As Mahinour El Badrawi of the ECESR told me, "The end result is that the Egyptian public is denied access to any knowledge about the loans, and hence denied access to a real and informed decision towards an agreement that will govern the economic and social future of the people and the coming generations."

These criticisms are tightly linked. The argument about transparency is based in an argument that, if the Egyptian people were asked to evaluate further borrowing from the IMF, the necessary policy changes to secure it, and the consequences of those policies, they would reject it. However, these worries also represent two very different sets of political concerns. Specific objections to the nature of the economic plan are policy concerns, and are a part of ongoing political contention which would have existed under any regime. In particular, both the Egyptian Center for Economic and Social Rights and the Egyptian Initiative for Personal Rights were involved in policy work in opposition to Egypt's international borrowing well before the revolution, and arguments critical of the effects of the infitah are hardly new on the Egyptian political stage.

The concern about transparency, however, reflects a new set of anxieties that are specific to the post-revolutionary

environment. The fall of Mubarak's regime and the gradual attempts to transition toward a functioning democratic system represent an opportunity for drastic change in Egyptian political life. But the story of the past two years has been one of gradual steps toward, and sharp regressions from, the democratic ideal, from the tenacity with which the Supreme Council of the Armed Forces (SCAF) held on to power, to the dissolution of the first freely elected parliament, to the gradual implosion of the Constituent Assembly and the lack of consensus over the draft constitution, to the extreme contention over the presidency and Morsi's regular attempts to extend executive authority. Egyptians are justifiably worried that they threw a revolution and nothing happened: that an Egypt run by the Muslim Brotherhood will be just as non-responsive as one run by Mubarak's secular business elite.

The policy concern as framed by groups like the ECESR, about whether IMF borrowing and the policies that accompany it are good for human well-being in Egypt, is not universally shared among the Egyptian political classes. There are many Egyptians who believe that the loan is necessary, and even among those working in poverty alleviation there is a strong belief that some of these changes to subsidy and fiscal policy are worth doing anyway. But this concern about transparency crosses over the lines of specific policy concerns, and cuts to the heart of the problem of post-revolutionary Egypt. How easily can a country transition to being genuinely responsive to its people and their concerns, if the structural incentives throughout the system continually encourage it not to be?

The Egyptian government and the IMF reached a technical agreement on November 20, although the loan won't be official until the December meeting of the executive board. The policy measures mentioned include reforms to energy subsidies, an increase in income taxes on the wealthy, and an increase in sales tax and a transition to a value added tax (VAT). Interestingly enough, they also include an emphasis on transparency: specifically, the transparency of government budgeting and spending, and a business environment that's less prone to cronyism and connections.

It is possible that this emphasis on transparency is a response to civil society demands. However, this form of transparency does not have the same connotations as the one upon which public demands are focused. For the IMF, transparency is a tool in the service of the proper functioning of a free economy: the informational tools that business leaders, investors, and governments need to make rational economic decisions. But for Egyptians who are worried about the Morsi government's lack of transparency, it isn't a tool for rational decision-making, but a tool for debate and contestation, for multiple actors to have different positions on a given topic. The IMF's transparency assumes that once data is transparently available the decisions will be obvious. The opposition's transparency believes that once positions are transparently available decisions will be contested.

Ultimately, the IMF deal has become less pressing in Egyptian domestic politics over the past week, since Morsi's declarations of executive power have brought many Egyptians back into the streets. But the concerns that protesters are expressing now are exactly the same concerns that anti-IMF protesters have been expressing: that political power is too concentrated in a single location in the political system, and that there is not enough access to that position for those in opposition. Meanwhile, the IMF is worried about the Morsi government's ability to implement its economic plan, given the current unrest, which puts the executive board's approval into question. The challenge for Morsi's government now is to manage demands for both kinds of transparency at once — which is made more difficult in that desire for one is often coupled with critique of the other.

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Bringing Down the Muslim Brotherhood

By Ramy Yaacoub, November 30, 2012

Egypt's Tahrir Square is once again making headlines all over the world. Protesters have filled Cairo's downtown to the brim twice in the past week — just as they did last year, during the heady 18-day revolution that toppled Hosni Mubarak. This time around, however, the square was packed with Egyptians opposed to a power grab by the country's Islamist movements.

The message was clear: There are movers and shakers on the Egyptian political scene, and they are not Islamists. At long last, Egypt's non-Islamist opposition has a chance to get in the driver's seat — building a powerful political machine of their own and changing the direction of their country.

How did it come to this?

On Nov. 22, President Mohamed Morsi issued a constitutional decree that turned Egypt's balance of power on its head. Two of the declaration's six articles may ostensibly address the demands of Egyptians: One orders a retrial of those implicated in the killing of protesters during the revolution, and another sacks the prosecutor general — a remnant of Mubarak's regime. Both actions, however, only served to sugarcoat the rest of the articles, which effectively transform the president into an omnipotent leader.

The declaration not only gives Morsi, a longtime leader in the Muslim Brotherhood, the authority to issue any necessary decision or legislation without overview from any other branch of government, it paves the way to set up revolutionary courts. This "revolutionary protection" law essentially gives the president the power to put on trial anyone deemed to be enemy of the revolution, state, or regime. The ambiguity of its language is dangerous — as tens of thousands of ordinary Egyptians saw immediately.

The response was an immediate uproar by Egypt's infamously fragmented opposition — and within a few hours, that well-known fragmentation was giving way to unity. The Nov. 27 marches and protest in Tahrir were the largest since the revolution's heyday, and were followed by another huge protest on Nov. 30 after Morsi refused to retract his decree. Disturbingly, many Egyptian provinces have also seen violent clashes between supporters and opponents of the Brotherhood. Clashes led to the burning of several offices belonging to the Brothers' political wing, and the death of a few protesters from both camps.

Many skeptics, including the Brotherhood, are convinced that the current unity between Egypt's opposition forces will be short lived. This could not be further from the truth.

Emergency constitutional decrees and similar measures are in themselves not foreign to democracies, and have been exercised successfully across the globe at numerous points in history. Egypt, however, is different: Egyptians well remember the country's disastrous experience with them during the previous dictatorship. Lest we forget, a major motivator for last year's revolution was the long-standing emergency law, which was in effect for 30 years straight and suspended Egyptians' constitutional rights. In fact, this was one of the common grievances that all factions of the revolution could agree upon.

But since Mubarak fell, Egypt's fractious non-Islamist groups have had a hard time maintaining that unity. Unlike the decades-old institutionalized Muslim Brotherhood and the hard-line Salafi movements, these groups only gained the space to operate freely less than two years ago. They have had to learn how to structure their political institutions, build their ground operations, and develop their policies — not to mention negotiate their electoral alliances and navigate the various crises of Egypt's post-revolutionary landscape.

Initially, these new parties splintered into many small groups, failing to provide a united vision for Egypt's future.

They feared successful alliances, worrying it would dilute their influence and blur their ideological message. Today, these concerns do not exist — instead, these groups fear marginalization and political annihilation if they don't unite against Morsi's power grab.

It's not only secular voices that are joining the opposition to the Muslim Brotherhood and its allies. Many unaffiliated Egyptians who previously voted for Islamist candidates are bitterly disappointed by the performance of the short-lived Parliament, and by Morsi's inability to address the country's real problems in the first five months of his presidency.

What's more, the ranks of the opposition are increasing. Egyptians who had previously seen figures of the old regime as the sole bulwark against the Brotherhood, or Islamist radicalization of society more broadly, are slowly coming to the side of new opposition leaders like liberal Mohamed ElBaradei, Nasserist Hamdeen Sabbahi, or even former top diplomat Amr Moussa.

The Brotherhood and its politically-subservient Salafi allies, represented by the Nour Party, have strong-armed their rivals and excluded them from political decisionmaking. Nowhere has this been clearer than in the Constituent Assembly, which was tasked with drafting Egypt's new constitution. The Brothers and the Salafis set the rules of the game in the assembly, and ensured that they occupy enough seats to make any debate futile. Many opposition members quit in protest.

Opposition parties are quickly learning that the Brotherhood and Salafis' behavior in the Constituent Assembly is not an isolated event, but a defining aspect of how they plan to govern Egypt. With religious rhetoric, military-like obedience from its members, and seemingly unlimited funds, the Brotherhood and Salafis' "Holy Alliance" has marched onward, convinced it has a mandate to impose its agenda and giving little thought to opposing points of view.

With all democratic channels of communication effectively shut down, the only venues left to the opposition are peaceful protests and civil disobedience. This dynamic culminated in the massive protests on Nov. 27 — it was simply the only way for the opposition to break the political bottleneck and make its voice heard in the new Egypt.

Islamists were always bound to enjoy a political honeymoon after the revolution, but recent events show that initial support is fading. At first, the Brotherhood was ascendant not only because its political message was popular, but because it was able to present itself as the only organized alternative to the old regime — a legacy of Mubarak's old divide-and-rule tactics. With or without Morsi, the non-Islamist opposition would have united as part of the normal evolution of post-revolution political development. The president's miscalculations merely hastened the process.

The watershed protests in Tahrir Square challenge the conventional wisdom of an Islamist tide washing across the region. Finally, there is late-blooming proof that the promise of the Arab Spring is real: We are not a homogenous entity demanding Islamist rule.

This is nothing less than a wakeup call for Egypt and the world. As the Egyptian opposition increasingly gets organized, the international community must better understand the evolving Egyptian political scene — and make sure it is on the right side of history. Our revolution is far from over. Indeed, it may just be beginning.

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Is There an Egyptian Nation?

By Shadi Hamid, December 4, 2012

In the latest round of Egypt's current crisis — once again pitting Islamists against non-Islamists — demonstrators gathered at the presidential palace in Cairo to protest President Mohamed Morsi's stunning decision to claim authoritarian, albeit temporary powers and his subsequent moves to rush through a controversial constitution. In a grim reminder of the country's precarious state, police clashed with protesters and fired tear gas.

But this isn't really about Morsi and his surprise decree — though to be sure, parts of the decree employ language straight out of Orwell and seem almost designed to provoke and polarize. However, neither the decree nor the draft constitution are quite as bad as Morsi's opponents insisted. The opposition's sometimes bizarre comparisons to Adolf Hitler, Benito Mussolini, the 1933 Enabling Act, and the French Revolution suggest a legitimate fury (and an intriguing fascination with fascism), but make little sense as historic analogies.

Morsi could have read his Friday shopping list on national television, and it might have made little difference. The decree, after all, was only the latest in what Morsi's opponents see as a long list of abuses. Egypt's "original" revolutionaries are one such group that blast the Brotherhood's compromises small and large with the old state bureaucracy, lamenting how their revolution was sacrificed on the altar of expediency and gradualism. And it is true that the Brotherhood-appointed leaders of the Ministry of the Interior, the military, and the intelligence apparatus include men who were complicit in some of the worst human rights abuses of the Hosni Mubarak era — and have gone unpunished to this day.

But these mostly younger revolutionaries, whose critiques have been admirably consistent, are a small minority. The rest of the opposition is an odd assortment of liberals, socialists, old regime nostalgists, and ordinary, angry Egyptians, each whom have their own disparate grievances and objectives. The liberals and leftists in the equation, led by figures such as Mohamed ElBaradei, Hamdeen Sabbahi, and Amr Moussa, have little in common with each other — besides a fear that their country is being taken over, and taken away, by Islamists. While they may be "liberal," in the sense of opposing state interference in private morality, their attachment to democracy is mercurial at best. Many of them welcomed the dissolution of Egypt's first democratically elected parliament, called on the military to intervene and "safeguard" the civil state, and even cast their presidential ballot for Ahmed Shafiq, Morsi's opponent and Mubarak's last prime minister.

Liberals' problem with Morsi's decree is not so much its authoritarian overtones, but that its authoritarianism is (or could be) in the service of an ideology — Islamism — that they view as an existential threat to Egypt. While Morsi has been extremely polarizing in power, the Muslim Brotherhood insists, so far correctly, that it has not actually overseen the imposition of any "Islamic" laws on the population.

But the Brotherhood too is missing the point here. Liberals, and so many others, fear Morsi and the Brotherhood not for what it has done, but for what it might do. Such fears, based on worst-case projections well into the future, are difficult to engage and impossible to disprove. To assuage them, trust is required — and the heart of the problem is that there is little to go around Egypt these days.

Islamist distrust of the other side, justified or not, is what led Morsi to issue his Nov. 22 decree, people close to him insist. The Brotherhood saw an existential threat on the horizon: Looming in the near future were court rulings that would dissolve both the Constituent Assembly and the upper house of parliament. Brotherhood and FJP officials told me that they knew from sympathetic judges that rulings revoking Morsi's Aug. 12 decree, which established

civilian control of the military, and even possibly annulling the presidential election law, were in the cards. Another prominent Brotherhood member, who has privately been critical of Morsi's presidency, went so far as to suggest to me that, if the president didn't act preemptively now, the closing of Brotherhood offices could be next in a new campaign of repression, followed by the dissolution of the group itself.

At the same time, the Brotherhood was well aware just how bad Morsi's decree looked. As one senior FJP official admitted: "Yes, the decree isn't democratic and it's not what you would expect after a revolution," but he claimed there was simply no other choice. The message was clear: The Brotherhood is in an existential fight and, as a result, the normal rules of politics would be suspended. One Brotherhood member I spoke to likened it to "shock therapy that runs the risk of leaving the patient dead."

In short, the Brotherhood sees its opponents — whether liberals, the judiciary, elements of the military and state bureaucracy — as fundamentally anti-democratic. Among other things, it points to the failure of someone as prominent as Mohamed ElBaradei — a "liberal dictator" in the words of one Brotherhood official — to stand up against the judiciary's dissolution of parliament, and blasts his recent warnings that the military may need to intervene "to restore law and order."

The irony of non-Islamists' antipathy toward the Muslim Brotherhood is that the current version of the organization happens to be the moderate, reconstructed version. For all its considerable faults, the Brotherhood of today is not the Brotherhood of the early 1980s, when calls for *tatbiq al-sharia* ("application of Islamic law") were its core demand. This was not just rhetorical: As the Islamic revival intensified, the formal effort to synchronize Egyptian law with sharia won the support of Egypt's most powerful men, such as Sufi Abu Talib, the speaker of parliament and a close associate of President Anwar Sadat. By 1982, Abu Talib's committees had painstakingly produced hundreds of pages of draft legislation (which were for the most part never implemented), including 513 articles on tort reform, 443 on the maritime code, and 635 articles on criminal punishments.

Back then, the Muslim Brotherhood was more a sharia lobby than a political party, with a seemingly obsessive focus on Islamic law. The 1987 electoral program of the "Islamic alliance" — a coalition of the Brotherhood and two smaller parties — allowed little room for dissent on such a fundamental matter: "Implementation of sharia is a religious obligation and a necessity for the nation. This is not something that is up for discussion; it is incumbent upon every Muslim to fulfill God's commandments by governing by his law." The push for sharia would be, the program says, "a massive national undertaking that will require experts to devise how to apply Islamic law in a variety of realms."

The Brotherhood took steps to smooth over the hard edges of its political program during the next two decades, culminating in its 2005 electoral platform — the centerpiece of the group's effort to rebrand itself and offer a vision for political and institutional reform. Democracy, rather than sharia, was the new call-to-arms. Much of the program focused on how to establish a workable system of check and balances and ensure the independence of local government from the central executive. Interestingly, one of the program's longest sections is on "financial and administrative decentralization," where the Brotherhood calls for "transferring powers and the authorities of the ministries to the governorates," including the ability to impose and collect taxes. Indeed, if there is a dominant theme that runs throughout the 2005 platform, it is the notion that the executive branch has too much power, which it abuses at will. (It makes for dispiriting reading in light of today's top-heavy constitution, which enshrines a too powerful presidency.)

After the revolution, the Brotherhood and its political wing, the Freedom and Justice Party (FJP), made a major flip-flop — they are now apparently believers in a strong president, at the expense of parliament and local government. But they still seem to genuinely think that they are democrats, and their rhetoric, perhaps today more

than ever, is replete with references to electoral legitimacy and the will of popular majorities. As for the constitution, they insist it is a moderate, consensus-driven document. From the Brotherhood's perspective, the constitution's Islamic content is minimal: In a stark contrast to the 1980s, the Brotherhood actually pushed back against Salafi demands that the "rulings" rather than the "principles" of Islamic law be the primary source of legislation.

Liberals would tell an almost completely different story, and their disagreements are based on process as much as substance. Recently, at the Brookings Doha Center, we held our third "Transitions Dialogue," where we brought together Islamists and liberal representatives along with U.S. officials to seek out areas of consensus. Depending how you looked at it, the participants were either very far apart or surprisingly close together. It was hard to tell, since they seemed to have different interpretations of reality and often couldn't even agree on what they disagreed on. Some of the differences were on procedure — including the decision to appoint 50 Islamists and 50 non-Islamists to the Constituent Assembly, which one human rights activist called the "birth defect" of the process.

From the very beginning, liberals have complained of an assembly "dominated" by Islamists, where each camp became entrenched in its position and voted as a bloc. And they were right: Islamists set the assembly's agenda and led and oversaw the constitution-drafting process. Brotherhood and Salafi representatives, however, felt that the 50/50 agreement was, in fact, a major concession on their part. If the assembly was elected, rather than appointed, Islamists pointed out that they would likely have taken at least 70 percent of the seats. As for content, they were only calling for the "principles" of sharia, rather than its "rulings," as the Salafis had wanted, to be the main source of legislation. The constitution has a few Islamically flavored articles, but for the most part it is a mediocre — and somewhat boring — document, based as it was on the similarly mediocre 1971 constitution. This, too, Islamists treat as a concession to their opponents, arguing they could have had stronger Islamic clauses but instead compromised with liberals — angering many Salafis in the process.

Indeed, it sometimes seems that Brotherhood and Salafi representatives viewed the very presence of "liberals" on the assembly as a gesture of goodwill and magnanimity. The Brotherhood's disdain for liberals is nothing new and is, at least in part, a product of the Mubarak years, when many liberals tolerated the Mubarak regime as the lesser of two evils. But it runs deeper than that: Islamists generally don't see liberals as having any natural constituency in Egypt. Moreover, they represent an ideology that is foreign to Egypt and, worse, morally subversive. To the extent that Egyptians ever support "liberals," it's only because they don't want to vote for the Brotherhood, not because they're liberal or even know what "liberalism" means. In my interviews with Brotherhood leaders both before and after the revolution, I usually got the sense that, despite occasionally trying, they simply couldn't bring themselves to take liberals seriously. They were almost always more concerned about those on their right flank, the Salafis.

Lack of respect aside, when you look at what each side says they believe, there seems to be room for consensus. After all, the major liberal parties say they support a role for sharia in public life (Egypt's most "liberal" party has been known to campaign with banners saying "The Quran is Our Constitution"), while the Muslim Brotherhood says all the right things, calling for a "civil state." Even the Nour Party, the political arm of the largest Salafi organization, says that "the state should be far from the theocratic model."

But these groups are acting more moderate than they actually are. Liberals are trying to be more responsive to the popular mood, which is both conservative and religious. Meanwhile, the Brotherhood and Salafis are eager to portray themselves as "responsible" actors, particularly in the eyes of Western governments, whose support is necessary for Egypt's economic recovery. But such ostensibly conciliatory gestures have also led each group to believe that the others are acting insincerely. It is understandable that liberals, being the weaker party, fear that the Brotherhood will use its increasing powers to undermine and exclude them. But the Brotherhood, too, fears its opponents are out to destroy it, using any tools at their disposal to reverse the group's electoral victories.

As Brookings Institution scholar Khaled Elgindy astutely observed, "a persecution complex is the backbone of authoritarianism." He may be right, but that doesn't make the Brotherhood's persecution complex any less real. The memory of 1954 looms large, when President Gamal Abdel Nasser banned the Brotherhood, rounded up its members en masse, and executed many of its leaders. More recently, the Algerian tragedy of 1991 — where the staunchly secular military aborted an election Islamists were poised to win, plunging the country into civil war — remains a defining moment in the Islamist narrative.

For the Muslim Brotherhood, another Algeria is always around the corner. Winning one election after another is no guarantee of political survival, just like it wasn't in 1991. For the Brotherhood, the dissolution of parliament last June offered yet more evidence that the liberal opposition and international community would not stand up for democracy when it was Islamists who suffered.

These betrayals — and each side has their own long list — are now etched in memory, making reasoned dialogue a challenging task. To be sure, the mistrust is amplified by a terribly mismanaged transition, but it also draws from something real and deep, if often unstated. Behind all the accusations and the seemingly minor procedural objections lies something more basic: Egyptians simply may not agree on the fundamental attributes of the modern nation state. Should the state be ideologically neutral, or should it be an enforcer of morality, intent on creating virtuous families and virtuous individuals? Egyptians, and most of the Arab world for that matter, haven't really had this conversation until now.

In the short term, there can and will be at least some consensus. The Brotherhood is constrained not only by an increasingly vocal opposition, but also by external actors. The economy is teetering on the brink and stabilization will only come through the economic support of the United States and Europe. There is only so far Morsi and the Brotherhood can go — for now. Their focus is on stability, security, and the economy, not on applying Islamic law or creating the mythical Islamic state.

That said, Islamists are Islamists for a reason. They have a distinct ideological project, even if they themselves struggle to articulate what it actually entails. The Brotherhood has already been developing something called the "Nahda Project," a sort of dream for Islamist would-be technocrats. While some of the project's ideas on institutional reform, economic development, and urban renewal are impressive, they shouldn't be taken as the end point of what Islamists are trying to do.

Islamists have a core constituency that, naturally, wants to see sharia implemented. Democracy does not necessarily moderate such ambitions: According to most polls, the Egyptian public wants to see more Islam and Islamic law in their politics, not less. And then there are the Salafis, the second-largest electoral bloc in the country, who are likely to do whatever they can to drag the Brotherhood — and everyone else, if possible — further to the right.

A manufactured consensus may, in fact, be easier to forge now, in this early stage of Egypt's democratic transition. "Islamists" and "non-Islamists" may hate each other, but, on substance, the gap isn't currently as large as it might be. In the longer run, however, the consensus that so many seem to be searching and hoping for may not actually exist.

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A better Egyptian constitution

By H.A. Hellyer, December 6, 2012

With the violence that broke out in front of the presidential palace in Egypt yesterday, one can no longer describe the constitutional draft produced under the Mohamed Morsi government, as just "flawed." In process, the draft is abysmal. In context, it revises history. In content, it is silent, vague, and problematic. In consequence, it is bloody. It isn't just that Egypt can do better. Ratifying this constitution would reward, and deepen, polarization — and the goals of the January 25 revolution would be that much further away from being achieved.

The most obvious problems with the constitutional draft are procedural. The process was supposed to deliver a representative constituent assembly, which would produce a consensus-based document that the overwhelming majority of Egyptians would sign up to, and feel invested in. The first assembly was dismissed in April, after the supreme administrative court pointed out members of parliament could not elect themselves onto the assembly, and that the assembly involved too few women, young people, and representatives of minority groups.

Most hoped that the next assembly would be more representative. It was, initially, but it was still overwhelming Islamist, and still included members of parliament. With the dismissal of parliament shortly thereafter, President Morsi had the legislative ability to reappoint a new assembly altogether, which he could have done in conjunction with other political forces, ensuring a popular consensus. Instead, the president protected the Islamist-dominated assembly for months despite widespread criticism and the resignations of the majority of non-Islamist political forces.

In his recent decree allocating himself freedom from judicial oversight, Morsi declared the assembly had three more months to complete its work. A few days later, he ignored his own decree. Instead of three months, the assembly was directed to complete its work in a matter of hours, in a process even more dominated by Islamists after the overwhelming majority of non-Islamists withdrew in protest. If the first assembly was unrepresentative, this one was even more so.

That procedural disaster extends to the referendum, which is scheduled at the end of next week. It's likely a majority of Egyptians will not even understand the draft, considering the time frame: and rather than being a force for consensus building, the draft, by virtue of the process that produced it, is a force for deepening polarization in Egypt.

Beyond the process, the context of the draft makes things more bizarre. It is clear in the past two years the transition has been, to put it politely, less than smooth owing to the decisions of the Egyptian military leadership. Yet, the draft implies that they protected and upheld the revolution. That will be news to the protest movement that directed its ire against the military for the past two years. Then again, the constitution also protects the right of the military to try civilians in military courts — so perhaps there is more than enough strange news to go around.

The content of the constitution does not make for absolutely awful reading, it should be said. It is not totalitarian, although it provides an incredible amount of power to the executive, without according a sufficient check from the legislative. Nor does it create a conservative Islamist theocracy, even though it does vest the state with powers to enforce and preserve "morality."

But the people of Egypt did not engage in a popular revolution for a constitution that was not "awful." No constitution was ever going to be perfect: but this constitutional draft is mediocre at best. At worst, it is open to incredible abuse — a problem in a society increasingly riven by mistrust and damaging splits. It privileges the state above and beyond civil society in so many ways, giving the state powers to intervene in areas where it should

have no competency. Moreover, it provides the executive with such power that autocracy is incredibly tempting, if not mandatory. Considering that the revolution owes its very existence to civil society, and Egyptians revolted largely against the dictatorship of former President Hosni Mubarak, that is hardly an encouraging affirmation of the revolt. Protection and encouragement of civil society should have been at the core of this constitution — it almost seems barely tolerated, instead.

And finally, in consequence: it is bloody. This draft, as far as the supporters of Morsi are concerned, must go through. It must be put to a referendum. Opposition to him, his decree, and his draft, is no longer simply a political disagreement that can be rationally disputed. Rather, it is a sign of a more existential battle against the Muslim Brotherhood (MB). It is that worldview that unfortunately led to some of Morsi's supporters descending upon a peaceful protest in front of the presidential palace yesterday, resulting in a predictable conflict that led to 6 people dying. Their blood stains this constitutional draft.

If the referendum does go through, it will not be one on the articles of the constitution, and it is not going to be treated as such in the aftermath. Rather, it will be a referendum on Morsi and his leadership thus far. If it passes, the MB will insist that it is a validation of Morsi's decree in November and the MB at large. If it fails, the opposition will insist it is a clear rejection of Morsi's track record. None of this is what Egyptians should be focusing on in their first free constitution.

If the draft is passed, one thing should be very clear: the dynamism of the revolution will be reduced, and schisms will deepen even further. The MB's insistence on trying to approve a new constitution in the middle of a political crisis will forever weaken the constitution's credibility, as well as the MB's moral standing. Revolutionary activism will not end — but it will be dealt a blow. That cannot be good for Egypt, and perhaps is one thing that might give both the MB and its opposition pause for thought.

Morsi can still be a president for all Egyptians, in deeds as in words. It is still possible for him to make that historic choice. Those who supported him against Mubarak's last prime minister, Ahmed Shafiq, in the presidential elections, who now oppose him in front of the presidential palace and Tahrir Square, are not irreversibly lost. The MB that supports him can still support him if he decides to change course, and works with the opposition in a critical time for Egypt's transition. There are forces within the "deep state" that want to derail Egypt's nascent democratic transition — and the MB, as well as the opposition, knows it. But the MB's best partners in tackling them are, in fact, the opposition — which it needs to realize.

If Morsi makes the argument that in order to not only tackle Egypt's "deep state," but also to uphold Egypt's societal unity he needs to take drastic steps, he can still turn this crisis into an opportunity. A new decree that rescinds his supra-legal power, cancels the referendum, and builds a revolutionary legislative council made up of the key political forces of Egypt is still an option. It is no more extraordinary than the decree that he issued giving himself freedom from judicial oversight — and would be far better received.

The opposition also has a choice. They need not accept the argument of the MB that the president should simply be trusted not to abuse his power: the MB would never advocate such an approach were it Shafiq, Hamdeen Sabahi, Aboul Futouh, or Amr Moussa in power. But it would not go amiss for the opposition to reaffirm that their goal is not to get Morsi out of his job: just for him to do his job. Moreover, they need to do theirs, which is to hold the government to account effectively and constructively. Regardless of how one feels about the opposition's patriotism, one cannot deny their lack of strategic thinking is tremendous. The opposition runs the risk of just running out of steam — continuous protests without a strategic vision are unsustainable. They would not be failing only themselves: they would be failing Egypt at a critical time in its transition.

No legal historian can consider modern Arab law without the direct intervention of Egyptian jurists: Arab law almost

owes its existence to them. Egypt could still produce a constitution worthy of that heritage, and earn the admiration of many in the region and worldwide. A revolt of 18 days, in comparison, is easy: that would be a lasting achievement.

Yet, if Egypt cannot avoid having a mediocre constitution, it can avoid having one that plunges Egypt exponentially deeper into rifts and polarization, causing Egyptians to retreat into their respective silos. But for that to happen, this constitutional process has to stop. Now.

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Egypt's political Crisis

By Ellis Goldberg, December 10, 2012

President Mohamed Morsi and his advisors cannot have expected that his November 22 constitutional declaration would throw Egypt into a renewed state of turmoil. That it has speaks volumes to the immense changes that have occurred in the country during the past two years. Morsi's support for President Barack Obama's truce initiative during the fighting in Gaza clearly reassured the U.S. president that under a Muslim Brotherhood (MB) president Egypt would keep the peace with Israel. Because this has been the dominant concern within the U.S. foreign policy elite about the Egyptian revolution, Morsi had good reason to believe that the United States and the Egyptian Armed Forces would not object to his domestic decisions.

That Morsi's move has proven, in a deeply divided country, to have been a serious error of judgment is worth reflection. Early responses, especially in the United States, have either been self-satisfied sighs of recognition that the MB have finally revealed their true nature or, alternatively, sharp criticism of a westernized liberal minority that refused to accept gracefully the verdict of democracy mandating a stronger role for Islam, the MB, and Morsi himself.

Divisions among U.S. commentators mirror divisions in Egypt. Many Morsi supporters argue that the new constitution is the most democratic one ever produced on Egyptian soil. It guarantees the right to start parties and open newspapers without prior approval; it bans torture and espouses the dignity of the prisoner. Opponents argue, in contrast, that it is an extremely bad constitution. It gives unelected religious figures the right of prior review of legislation and it allows the Armed Forces to function independently.

Let us, if only for argument, grant some truth in each of these pictures. The question still is why has there been such a vast outrush of anger at Morsi and the Muslim Brotherhood, whose candidate he was, and why has it been sustained now for more than a week and a half. There have been demonstrations not only in Cairo and Alexandria but in most of the large provincial cities, with protesters numbering in the tens of thousands. Morsi rescinded his original constitutional decree on Saturday, issuing a new one, which addressed some issues of contention. Regardless, protests have raged, with calls for fresh demonstrations on Tuesday.

For the moment we can only go on impressions, however the political divisions appear, for the first time, to be linked to social conflict. Reports from the textile capital, Mahallah, in the middle of the Egyptian Delta, are that protesters took over the city hall and declared themselves independent of what they called "the Muslim Brothers government." Leaders of the insurgent trade union movements there have long evinced opposition to the MB, which has sought to gain control of their movement. In 1981 Assiut was the scene of an uprising designed to create an Islamic emirate by supporters of Abbud al-Zumr, one of the organizers of the assassination of Anwar Sadat and today a prominent Salafi politician. On December 6, thousands of people there marched to protest against Morsi behind a banner calling for Muslim-Christian unity. In Port Said, as elsewhere, already a week ago there were pitched battles between youth opposed to the MB and their members.

So a useful question is why, not quite two years after massive and sustained demonstrations led to the ouster of former President Hosni Mubarak, are hundreds of thousands, and possibly millions, of Egyptians out on the streets again? If the opposition politicians are shallow and self-interested, why is anyone heeding their calls? And yet why, if the Brotherhood represents the overwhelming majority of Egyptians — whether democratic or authoritarian in their inner beings — are they faced with such massive anger? Observers of attacks on their offices and members agree that — regrettable as such attacks may be — they are largely spontaneous. The police, it is true, often do not protect the MB but they seem long since to have decided to vanish whenever violence threatens anywhere.

The answer no longer lies in a draft constitution that very few of the demonstrators, on either side, are likely to have read. Egyptians along with the citizens of a great many other places have learned what is on paper is only a part of the constitution. The other, most important, part lies in the institutions that give the constitutional language presence in everyday life. To some degree this means the habits and choices of low level officials and to some degree it means the courts. And the simple and sad reality for the Brotherhood is that a great many Egyptians distrust, dislike, or fear them and worry that, having come to control the legislature and central executive, they plan to take over the courts as well as staff many of the lower levels of the government.

President Morsi has been unable to allay this distrust, fear, and dislike and over the last week he and his allies have, through words and actions, intensified it. This may be unfair and its results may be tragic, but it remains a profoundly political issue with which he and any Egyptian politicians who aspire to lead the country will ultimately have to deal.

Morsi and his advisors also seem to believe that they can use any stratagem, as long as it remains formally valid, to accomplish their substantive ends. In this they are, regrettably, all too like Egyptian governments of the last 60 years. One of Morsi's advisors admitted that, having been unable to remove former Public Prosecutor Abdel Meguid Mahmoud by ordinary means, Morsi simply changed the constitution to make it feasible (this was supposed to be one of the sections of the declaration that rendered it palatable to the public). Equally remarkably, the MB members of the Constituent Assembly even overrode the advice of the assembly chair and ally, Hosam al-Gheriani, to deny former leaders of Hosni Mubarak's National Democratic Party political rights for a decade and to grant members of the government's prosecutorial staff judicial immunity. Al-Gheriani was reduced to leaving the dais of the assembly in protest against these provisions. He described the one as political vengeance and the other as an assault on the rights of citizens.

There are probably very few sections of Egyptian society that the Brotherhood and its allies in the Salafi movements have not antagonized. The Brotherhood promised that it would run for only 30 percent of the seats in parliament; then only 50 percent; but finally it competed for nearly 70 percent. The Brotherhood asserted that it would not run a candidate for the presidency and expelled one of its prominent members, Abdel Moneim Aboul Fotouh, when

he announced his plans to compete. Finally they selected Morsi to run. In the wake of the March 2011 referendum on revising the 1971 constitution, some of their members asserted that the nearly 25 percent of Egyptians who voted "no" could emigrate to Canada if they didn't want to live with the outcome, namely an Islamic state.

The vision of an Islamic society voiced by members of the MB is no more attractive. In 2011 Sobhi Saleh, a prominent appellate attorney and member of the MB, announced that Muslim Brothers should marry within the group rather than outside. Other Muslim women, he intimated, were not worthy.

Morsi made his own case in a televised address to the country December 6 and although everyone heard the same words they sounded very different to his supporters and his opponents. He can, on occasion, be animated in television interviews but he is not a warm personality when giving formal speeches. He offered little in the way of compromise. He did distinguish between honest demonstrators who disagree and the minority who, he claimed, had committed murder and mayhem and he invited members of the opposition to join him at the presidential palace to discuss the post-referendum future. This they promptly rejected as irrelevant to the crisis at hand.

He is either unaware or unwilling to admit that Egypt is now passing through a major political crisis that requires extraordinary political skill he does not seem to possess. Instead, having discovered that the imposing but ultimately insufficiently numerous or well-armed young men of the MB cannot restore order, he has decided to return the armed forces to the street, giving them the authority to arrest civilians. If, as Morsi's supporters have long claimed, he brought the army under civilian control, this is a time of unpleasant awakening for he is the same man who will now shelter under martial law. This is a martial law of a weakened army trying to keep watch over a society whose divisions are increasingly raw. But, it is martial law nonetheless, despite what Morsi and his supporters, including those in the White House, choose to call it or to excuse it.

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Islam in Egypt's new constitution

By Clark Lombardi and Nathan Brown, December 13, 2012

If a student of constitutional texts sat down to read the draft Egyptian constitution from beginning to end, he or she would find much of it familiar — the language, structure, and institutions would seem to bear resemblances to constitutions in many other countries, even if the particular choices made or terms used were products of domestic political debates. He or she might pause at Article 4, promising that al-Ahzar will be consulted in matters of Islamic law. But the observer would likely be totally flummoxed upon arriving at Article 219, defining the principles of the Islamic sharia in technical terms from the Islamic legal tradition not used outside of scholarly circles: there has been nothing quite like this language adopted anywhere else. What does this mysterious clause say? How did it get there? And what impact would it have? These are three important questions, but each is more difficult to answer than the previous one.

What does Article 219 say?

Let us start with the first question: the wording of the clause itself. It does no good to translate each technical term when they make little sense outside of the original Arabic. The entirety of the clause reads: "The principles of the Islamic Sharia include its *adilla kulliya*, *qawa`id usuli* and *qawa`id fiqhiyya* and the sources considered by the Sunni *madhhabs*." The italicized words are technical terms rarely used outside of scholarly circles. In order to understand the meaning of Article 219, let us start with the "principles of the Islamic sharia," which Article 2 of the 1971 constitution (as amended in 1980 and reproduced in the 2012 draft) proclaimed as "the main source of legislation."

The interpretation of that phrase fell to the country's Supreme Constitutional Court (SCC). It was not an easy task — it is not simply that the "Islamic sharia" has engendered a diverse set of intellectual inquiries stretching over more than a millennium; it is also that little in that tradition presents itself authoritatively as its "principles." Ultimately, Egypt's Supreme Constitutional Court (SCC) embraced a distinctive modernist approach that acknowledged scholars and their traditions but treated them a bit roughly and even as unimportant. Instead, the court interpreted Islamic law *de novo* using its own distinctive, somewhat idiosyncratic, version of modernist reasoning.

State law would be measured against two different types of Islamic principles: The first were those clearly and explicitly announced in the Quran and that small number of *hadith*s (accounts of the sayings and actions of the prophet Muhammad) whose authenticity was not merely presumptively true but was *entirely* beyond doubt — which the SCC found very few in number. The second were overarching principles that could be induced from a study of the scriptures as a whole. Among these induced principles, some of the most important were principles of utility and justice — and the court did not automatically defer to traditional Sunni scholar's understandings of these terms. Rather it measured laws against its own quite liberal understandings, often arriving at results inconsistent with traditional pre-modern Sunni interpretations of Islamic law.

Those more schooled in traditional understandings of Islamic law found the SCC's approach a bit too freewheeling, not so much because of the results but because the court refused to anchor itself in the legal precedents developed over the centuries by Islamic jurists. Salafis have been far more willing to dive past all those precedents and rely directly on original texts (Quran and hadiths). But even they were dismayed by the court's refusal to accept many hadith as binding. And that brings us to the second question.

How Did Article 219 Get There?

Article 219 provides firm evidence, if any was needed, that there were many Islamists in the room when this document was drafted. But the clause was not simply a result of their imposing their will. Instead a far more complex process was at work, with Islamists of different stripes and non-Islamists wrangling over the religious provisions. Brotherhood members of the Constituent Assembly insist that they were not behind this language and indeed that it was non-Islamists who pushed al-Ahzar into the document. There is reason to give some credence to some of these claims: the drafting process may have played into Brotherhood hands, but on these issues there was no need for them to be heavy-handed.

The wording was the product of intense bargaining inside and outside of the 2012 Constituent Assembly. The assembly was able to develop a consensus adopting the old wording of Article 2 for the new document. But when they abandoned attempts to tinker with it, they set off contests over defining the principles of sharia principles. And the outcome of that struggle produced Article 219. In order to understand that bargaining, let us review three intellectual camps on the Islamic sharia prominent in these debates. It is in the context of these discussions that the technical terms of Article 219 reveal some of their meaning.

First is an approach often termed "neo-traditional" since it is very respectful of centuries of scholarship. Some Egyptians believed that Islamic law should be interpreted according to the methods that had traditionally been used by pre-modern jurists associated with the four Sunni "*maddhabs*" — schools of law not in any physical sense but instead transnational associations of scholars who used a common methodology to develop interpretations.

Most of Article 219's technical terms come form this traditional Sunni methodology, as taught by the madhhabs, which trained jurists in how to derive Islamic laws from scriptures — the Quran, the hadith literature, and the records of scholarly consensus. (Later jurists would come to call these general scriptural sources of God's law as *adilla kulliyya*.) Traditional methodology said that scholars who derived law from these sources should be informed by the interpretations previously established by the great sages of their school. Working from slightly different precedents, each school elaborated a slightly different interpretation of God's law. Each nevertheless accepted the other schools' competing interpretations as plausible.

Scholars associated with the four Sunni schools wrote texts in a variety of genres. One set of texts explored questions of *how* to derive law from scripture (*usul al-fiqh*). Another elaborated *what* answers particular scholars had reached about God's law (*fiqh*). A third set of texts described *underlying principles* beneath the rulings that Sunni scholars had reached when resolving questions of Islamic law. Derived through a process of inductive reasoning, these principles (the so-called *qawa`id fiqhiyya*) were thought to be generally applicable principles of law. When resolving a legal question, scholars would often look first to the *qawa`id fiqhiyya* and see whether the principles found there dictated a particular answer to the question. If not, the scholars might have to go back to scripture and, using the tools of *usul al-fiqh* must try to come up with a new rule.

Needless to say, traditional Sunni Islamic legal reasoning was complex and required considerable training. In 20th century Egypt, those who were considered qualified to do it tended to be associated with the mosque-university of al-Azhar.

A second approach — exemplified by the SCC — rejects the idea that Islamic law can properly be interpreted only by scholars trained in a hyper-complex, arguably "medieval" method of legal reasoning. These so-called "modernists" grew out of an intellectual movement that appeared all over the Sunni Muslim world during the 19th and 20th centuries. Modernists developed new methods of interpreting Islamic law — some highly influenced by utilitarian thought. Many utilitarian modernists took the position that Muslims should not feel constrained by traditional Sunni interpretations of Islamic law. Rather, they should derive new interpretations of Islamic law directly from scripture. At the same time, they insisted that scripture contained very few clear rules. It did, however, contain clear commands that Muslims should act to promote social utility and justice. Modern Muslims were thus permitted, and sometimes required, to depart from traditional Islamic rules of behavior. Based on their different views of utility, different modernists might champion progressive or reactionary social regulations. And they turned their back on much traditional vocabulary — when they wrote books about interpretive method they rarely referred to *usul al-fiqh*. One of the most influential such scholars, the great Egyptian jurist Abd al-Razzaq Sanhuri, was more schooled than most later modernists in traditional understandings. But even when his works used inductive reasoning in new ways, nobody referred to them as explorations of *qawa`id fiqhiyya*.

A third group of thinkers are often called "Salafis" for their insistence on focusing on the practices of the earliest Muslims (*al-salaf al-salih*). Salafis are scripturalists who share elements of traditionalism and modernism. Salafis relied heavily on traditional Sunni methods of scriptural analysis — methods discussed in the *usul al-fiqh* literature. Like traditionalists, therefore, they found in the scriptures considerable numbers of clear rules that had to be followed. Like modernists, however, they were skeptical about the ways in which traditional Sunni thinkers used logic to develop laws for situations about which scripture

was silent. And they were just as skeptical about the interpretations of God's law that had developed in the four Sunni madhhabs and recorded in the *fiqh* literature and *qawa`id fiqhiyya* literature.

But the Constituent Assembly was not a seminar room. Salafis and modernists have some common intellectual roots but their current representatives eye each other with bitterness and deep suspicion. For Salafis, modernists have abandoned their Islamic roots to cloak their personal preferences in religious garb. For modernists, Salafis show a mindless obsession with ancient practice on marginal issues and an inability to understand timeless truths in a modern context.

Article 219 was produced not simply by intellectual debates but by hard politics. Salafis were very suspicious of Article 2 as the SCC had deployed it. They wished to ensure that the sharia's principles were defined and placed in the hands of scholars they trusted. Non-Islamists felt at ease with Article 2 as long as they could be assured that the SCC's modernist approach could survive.

The Brotherhood's positions are more ambiguous: it has elements of modernism, neo-traditionalism, and Salafism within its own ranks. But oddly for an Islamist movement, it did not have an enormous stake in this debate. The movement cared deeply about the questions raised but looked elsewhere to pursue its answers. The reason was that it controlled the presidency and looked forward to a strong parliamentary role. In addition, it was happy to pursue Islamization of the Egyptian legal order slowly — by legislation, for instance, or by gradually reshaping the SCC. Brotherhood members of the Constituent Assembly focused far more on simply getting a text — any text — in front of the voters.

And so an odd compromise developed. Those with little stake in the outcome won the most; the two most antagonistic parties (in political terms — Salafis and non-Islamists) took strong positions but had to compromise. Article 219 adopts neo-traditionalist language. Salafis had to content themselves with the assurance that Article 2's principles were at least being nailed down in some ways, even if it was done in a manner overly deferential to the scholarly tradition. And non-Islamists had to content themselves that if the Islamic sharia's principles were being defined, at least they were not being handed to Salafis. In their terms, they might be saddled with a bit too much medieval thinking but at least they were not brought back to the seventh century.

So Article 2 is unchanged, Article 4 gives an interpretive role to al-Azhar, and Article 219 produces its jumble of phrases that seems to tie Egypt's constitution to traditional Islamic jurisprudence.

What Impact Would Article 219 Have?

The provisions of Article 219 are likely to be interpreted by anyone familiar with Islamic thought as requiring that law be measured for consistency with legal principles found in the four traditional "sources" of Sunni Islamic law — the Quran, Sunna (the sayings and deeds of the prophet), qiyas (reasoning by analogy), and Ijma (the consensus of scholars) — and interpreted in a manner informed by a study of texts considered exemplary within the Sunni tradition. Among these texts, must be the traditional Sunni texts dealing with the subject of *usul al fiqh* and *qawa`id fiqhiyya*.

What would happen if Egypt actually adopted a constitution containing those provisions? That is not entirely clear. To begin, it is not clear that outside of Islamist circles, Egyptians read the provisions as neo-traditionalists might expect them. Some Egyptians may not be familiar with the technical terms embedded in the language. And those who do recognize them may be disinclined to give them full effect.

Choice of one methodology over another does not inevitably lead to particular substantive outcomes. Scholars using traditional methods of legal interpretation often disagree with each other on important questions of Islamic law. Admittedly traditional methods tend to lead to less strikingly liberal interpretations than did the SCC's

modernist method, but some traditional scholars have embraced quite liberal positions.

Ultimately then, the adoption of Article 2 may change the mode in which the legitimacy of laws is debated, in legislative bodies, in the press, and in the courts. If a proposed law is arguably inconsistent with a *hadith* found in a widely respected *hadith* collection, those who wish to adopt the law will have to engage openly and seriously with that *hadith*, and may have to line up scholarly authority to help question that *hadith* or re-interpret it. To see what such engagement might look like, consider the question of whether the principles of Islam permit a woman to be head of the Egyptian state. In 2007, Egypt's official mufti weighed in on the question of how to interpret a *hadith* that appears to preclude women from being head of state. He argued that the *hadith* does indeed confirm that women could not be heads of certain types of state, but clarifying that the rule did not apply to modern nation states such as Egypt. He has elaborated on this position in an official website.

If the draft Article 219 is included in the Egyptian constitution the marshaling of arguments such as this may become a regular feature of legislative debate and judicial opinion-writing. As such, traditionally trained scholars will play a more visible role in setting the bounds of constitutionally permissible legislation. Nevertheless, on issues in which traditionally trained scholars disagree about the implications of scripture (and this is, in fact, most issues) regulators, law-makers, and judges will have discretion about how to regulate society.

Whether this new rhetorical mode in law making and constitutional adjudication leads to any significant change in law depends on who is making law or reviewing its constitutionality. Four structures will deserve particular attention.

First, most Egyptian legislation is drawn up in the executive branch — in ministries and offices attached to the cabinet — with some help from a judicial body, the Maglis al-Dawla (State Council). Who is in those bodies will likely shape how seriously take Article 219's charge and how they interpret it.

Second, the parliament has ultimate authority in passing legislation, and the balance of political power there, determined by election returns, will help determine Article 219's practical meaning.

Third, al-Azhar as an institution may feel authorized by Article 4 to institutionalize itself as the Islamic conscience of the country. That will hand a critical role to its Body of Senior Scholars, a 40-person council recently created by a very controversial law.

Finally, the SCC itself is likely to continue to be called upon to play a major role. The constitution allows the more senior justices on the SCC to retain their positions, and these are precisely the figures who helped apply the SCC's old approach. They may not feel compelled to bend despite the provision's fairly precise language. But as they are replaced — and as a new law is written to govern appointment to the SCC — the court's stance might change to one friendlier to neo-traditional understandings.

In short, Article 219 is likely to change the types of argument that competing forces will have to use when arguing Article 2 cases, but there will continue to be fierce argument about what types of law are permissible in a self-styled Islamic state and, of course, about which are wise.

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Beating the Brotherhood

By Evan Hill, December 17, 2012

CAIRO - Egyptians went to the polls on Dec. 15, nearly two years after forcing Hosni Mubarak from office, faced with the momentous choice of whether to adopt a controversial draft constitution that could define public and private life in the Arab world's most populous country.

The result will not only represent a verdict on the constitution — it will be seen in part as a referendum on President Mohamed Morsy and the Muslim Brotherhood, which dominated the drafting process. It may also deliver a verdict on the historically fractious opposition, which for the first time since the revolution seemed to have an opportunity to reverse the gains of the Islamist forces that currently dominate Egypt's political scene. But the Brotherhood's foes had the chance to muster an even larger "no" vote — if only they had organized sooner.

Opposition figures interviewed by Foreign Policy before the voting, which will continue with a second round on Dec. 22, painted a picture of a movement that had corrected some of its major flaws — but whose leading lights still disagreed about the basics of participating in Egypt's shaky democracy.

"Irrespective of the problems we may have had ... people realize at the end of the day that we can push our limitations farther out," said Naguib Abadir, a founding member of the Free Egyptians, a leading liberal party that pushed for a boycott. "Reality is imposing itself, and some egos have been deflated after the failures of the past few months."

"I see light at the end of the tunnel. I see a president who is extremely weak," Abadir said. "We'll see if he survives this."

For the first time since Mubarak fell, a broad coalition of non-Islamist parties calling themselves the National Salvation Front (NSF) banded together before a vote. But the coalition's leadership hesitated at the decisive moment: Stalled by internal debate over whether to boycott a process many believed would be rigged, they issued a public call to vote "no" just three days before the referendum.

Even on the night of Dec. 15, after the media began reporting results that showed the referendum leading, party chiefs still debated whether to pull out, only to decide against it, NSF operatives said. The front now alleges that systematic fraud and illegal voter suppression artificially swung a vote that they claim they won by 65 percent.

Unofficial results reported by independent media outlets and the Muslim Brotherhood showed that 56.5 percent of those participating in the first round of voting supported the referendum. The prospects for a "no" victory seem grim, as the remaining 17 governorates set to vote in the second round are Brotherhood strongholds.

It could have been even closer: The referendum came at a moment when the Muslim Brotherhood had been knocked off balance, after dueling protests and street violence erupted in the last week of November. Morsy had issued a decree declaring both himself and the constitutional assembly immune from judicial oversight, infuriating the opposition and causing the media to hammer the president for his power grab. Meanwhile, two private polls commissioned by opposition forces showed a nation almost evenly divided on the constitution.

But a fundamental disagreement emerged within the NSF: The Free Egyptians and prominent liberal Mohamed ElBaradei's Constitution Party argued for a boycott, while the leftist Social Democrats and others wanted to try to rally the "no" vote. The front ended up adopting a middle path, calling for "escalating" protests in the hope that labor unions would join in with major strikes. While protests gripped Tahrir Square and the streets outside the presidential palace, the strikes never materialized and Morsy decided to wait out the unrest.

On Dec. 7, as Tahrir Square began to fill with a demonstration, Constitution Party member and NSF spokesman Khaled Dawoud sat in a café, juggling calls from aides to ElBaradei and other party leaders. A former U.S.-based correspondent for the state-owned *Ahram* newspaper and later Al Jazeera Arabic, Dawoud said the constitution had been drafted improperly and did not guarantee "the freedoms that we fought for in Tahrir one year ago."

"We have no option but to continue with demonstrations and escalation and hope they will see the light," he said.

Dawoud grimaced at the prospect of discussing the political maneuvering required to beat the referendum, or what its result might indicate for the future of the opposition coalition.

"I'll give you an answer when we get there," he said.

But across the Nile, on the second floor of a shabby downtown high-rise, the Social Democrats were already there. Three days earlier, Mohamed Arafat, the party's chief field organizer, had listed off the governorates in the Delta region where his officers had already been campaigning for a "no" vote.

Arafat believed, like Dawoud, that Morsy had lost his slim majority through strong-arm tactics and poor governance. But unlike Dawoud, he thought it was possible to turn these into an opposition electoral victory.

"A lot of people are talking about boycotting.... If ElBaradei says boycott, it will make a big problem for us, but I believe this time we must say no," he said.

Even if the constitution passed, Arafat argued, participating would give the opposition an opportunity to rally supporters. He was already looking ahead to parliamentary elections, which would follow two months after a "yes" vote on the constitution.

"If 40 percent or more say 'no,' those voters can vote for us in the next election," he said.

But the disagreements within the NSF made it difficult to either rally these voters or organize a boycott. The day after Morsy called the referendum, the Salvation Front put together a team of high-powered marketers, fundraisers, and producers to prepare a "no" campaign. They produced advertisements critiquing the constitution's articles, filmed chatty man-on-the-street interviews, and built a website called LaLelDostour.com ("No to the Constitution") and a Facebook group called the Popular Move to Reject the Constitution.

For more than a week, however, the NSF kept the campaign in its pocket. On Dec. 11, without discussion, the advertisements suddenly appeared on television bearing a Social Democrats tagline, according to one of the team members. The party had pushed out the material by itself.

Hesitancy is nothing new for Egypt's opposition, which has lacked a killer instinct and effective command structure from the beginning, said Robert Becker, a Cairo-based political consultant who advised Egyptian parties for the National Democratic Institute. (Becker and dozens of employees of NDI and other civil-society groups are currently on trial for their work.)

"Statistically it's there, but to win this [referendum] they need message and organization," he said. "Organically, it's happening, but it's not because of the direction of any of these liberal parties."

Unofficial results show that the Dec. 15 poll had perhaps the lowest turnout of any vote since the revolution. Earlier mobilization could have made the difference in getting more "no" voters to the polls.

The NSF's "no" campaign team received the results of two opinion polls on Dec. 13 and 14, too late to be of use. The polls, each involving phone or personal interviews with around 1,200 mostly male subjects across the country, showed roughly 30 percent of those surveyed remained undecided.

"This [vote] can go anywhere based on our polling in the first 10 governorates," the team member said.

The opposition's hard line — no negotiations and continued protests — was intended to give them political leverage, but when the decision finally came to get out the "no" vote, "It was too late ... to increase the effectiveness of the marketing campaign."

Egypt's opposition leaders may be facing an existential moment: If they can't exploit cracks within the Muslim Brotherhood's dominance now, after the Islamist organization has stumbled so publicly, they risk being marginalized in another Islamist parliament — one that is unlikely to be dissolved like its predecessor. But the political diversity that makes the opposition a formidable Brotherhood foe also hinders its ability to coordinate.

Egypt's new opposition not only contains longtime revolutionaries, but also those who supported Ahmed Shafiq, Mubarak's last prime minister and Morsy's foe in the presidential election, as well as others with ties to the former regime. Some inside the coalition are uneasy with their new friends — not only Shafiq, who is persona non grata, but also figures like Mubarak's former foreign minister, Amr Moussa.

"I refuse Moussa," said Mamdouh Salah, a 32-year-old civil engineer and chief of the Social Democrats' street campaign in Mahalla. The industrial city of some half a million people in the Delta is known for its restive labor movement, and the governorate as a whole joined Cairo in voting against the constitution.

On the wall of the third-floor office, just above a women's beauty salon, nobody had removed a sticker showing Moussa's face next to those of Shafiq and feared former intelligence chief Omar Suleiman. A relic of the May presidential campaign, it stated "they can't rule," and below, "we're not going to vote for the old system or their supporters."

Salah said he wouldn't blame the Salvation Front's leadership for working with the "remnants" of Mubarak's regime and that he would try to win over voters of all factions, but he said that they would not be his political partners.

"Here in Mahalla, we have a revolutionary perspective," he said.

For him, the battle for the referendum was far from the main event — his goal was nothing less than to defeat by almost any means a Brotherhood regime that he believed had committed the same sins as Mubarak.

"Voting up or down won't solve the problem from its roots," he said. "Egypt is not a stable country."

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Rethinking the Muslim Brotherhood

By Khalil al-Anani, December 17, 2012

What happened to Egypt's Muslim Brotherhood? Variants of this question have consumed the international media, academics, and policymaking circles over the last few weeks. Many Egyptians have equally given voice to unprecedented rage against the MB during the crisis sparked by President Mohamed Morsi's moves to push through a controversial new constitution. Bloody clashes between the MB followers and protesters in front of the presidential palace and the provocative discourse of some of the MB leaders took many by surprise, as did the outrageous actions of the MB and what is said to be torture chambers that were allegedly run by some of the MB members against peaceful protesters who were beaten and terrified at Morsi's presidential palace.

The Brotherhood's behavior seems bewildering to many observers who have followed the organization for many years. The recent crisis seems a profound setback and a retreat from its "moderate" character and longstanding "reformist" agenda. Some Egyptian politicians now accuse the MB of adopting a "fascist" propensity in dealing with its opponents. Many western commentators go farther, using the crisis as an excuse to cast profound doubts on the MB ideology and to question its democratic credentials. What does this crisis really say about the "nature" and the true "color" of the MB? Has it changed its ideology after taking power, or revealed its reformist rhetoric as a lie?

As someone who has been studying the Muslim Brotherhood intensely for decades, I would argue that any attempt to fathom the MB behavior should take into account two key points: the impact of ideology on behavior and the role of internal dynamics in shaping the MB strategy and decisions.

First, despite its importance, it is problematic to assume that the MB's ideology directly shapes its actions and behavior. Ideology can inform behavior, but political reality forges and guides it. The MB has a significantly loose and broad ideology that fits with different contexts and circumstances. Indeed, the vagueness and elastic character of the MB ideology enabled it to last for more than eight decades without significant schism or fissures. Historically, the pragmatism of the MB, in many instances, superseded its ideology. Moreover, the MB took power in Egypt not primarily because of its ideology but mainly because its unrivaled organizational and moblizational capabilities. The chief role of ideology in the MB is mainly to recruit new members and foster their commitment and loyalty to the movement.

The MB has always calculated its moves and decisions based on interests rather than its ideological or ontological views. Therefore, it is highly misleading to contend that the MB ideology was behind the recent events. Likewise, it would be imprecise to argue that the MB has changed its ideology after taking power. In fact, it is quiet the opposite. The inability of the MB to modify its ideology to adapt with the new environment in Egypt after the revolution has created many problems and distorted its image. This is in part because ideologies don't change overnight. They take years, if not decades, to be internalized within a movement's structure and embraced by its members and leadership.

The crucial question then becomes: if the MB wasn't changed and its ideology doesn't shape its behavior, how could we construe the recent actions and attitude of the MB? One short way to answer this question is to reconsider the functionality in an open and fluid context. The MB has struggled to reconcile its internalized ideology with Egypt's rapidly changing political reality. The MB was created and operated for decades as an "opposition" movement. Over decades, it developed a tradition of how to "protest" not how to "rule." After the revolution, the movement couldn't make the required shift from an opposition movement to a ruling party. In other words, the MB is still unable to restructure itself as a normal political

party instead of a semi-clandestine movement with vexing and multi-faceted agenda.

The bewildering behavior of the MB reflects the complexity of its internal structure and dynamics. And here we come to the second point. By internal dynamics I mean two things: the internal coherence and balance of power within the MB. For decades, preserving the MB's survival and unity was a key objective to the movement's leadership. The indoctrination and socialization process within the MB is deliberately designed to serve this goal above all else. However, maintaining the integration of the MB came at the expense of modernizing the movement's organizational structure to become more democratic and transparent. The decision-making process within the MB is strict and exclusionary, and the line of leadership doesn't allow real participation from the lower levels particularly in the strategic decisions. The organizational norms of allegiance (*bay'a*), obedience (*ta'ah*), commitment (*iltizam*), etc. enable leaders to act on behalf of all members without real accountability or checks on their power. Despite the new environment, these norms still operate and manifest in the MB's behavior and decisions. Thus, when the leadership calls for protest or marches, members do nothing but obey their leaders — or else, as with a number of youth leaders, leave the organization.

Former President Hosni Mubarak's repression interacted with the internal dynamics of the MB to shape this organizational ideology. It entrenched the sense of victimhood among members and created a subculture of ordeal and tribulation (*mihna*) that bound members and dominated them over the past three decades. However, after the downfall of Mubarak and the extraordinary political openness, the MB's leadership couldn't (and may be doesn't want to) develop a different subculture or mechanisms that could maintain members' unity and loyalty in a more participatory and inclusive manner. It was the "external" threat or enemy that preserved the integration of the MB and continues to ensure member commitment. Therefore, when President Morsi and Mohamed Badie, the Supreme Guide of the MB, or any other senior leaders talk of "conspiracy," plot, or "hidden hands" that "seek to subvert the revolution," their eyes are on their followers not opponents. It is the language that resonates with the hearts and minds of *Ikhwan*. In other words, the MB's embedded anxiety about unity and coherence makes it hard for members to act as normal political actors.

The other internal element is the balance of power within the MB. The MB organization is currently under the control of conservatives. Since the end of the 1990s onwards, the conservative leaders managed to solidify their grip on power within the MB. After two decades of a relatively balanced relationship between the so-called reformists and the conservatives, the latter became more powerful and were able to dominate the MB organization and decision-making process. This was the case until the 2011 uprising, when the entire organization came under the control of the conservatives. The conservatives, led by Khariat El-Shater, Deputy of the Supreme Guide, Mahmoud Ezzat, the former Secretary General of the MB from 2001-2010 who was promoted to Deputy of the Supreme Guide two years ago, and Mahmoud Ghozlan, the Spokesperson of the MB and member of the Guidance Bureau as well as Shater's brother-in-law, were able to alienate the reformists and expel them from the movement. They restructured the influential bodies of the MB, the Guidance Bureau and the Shura Council, to become more obedient and loyal to them. Not surprisingly, after the revolution, the reformist current within the MB faded away. Prominent figures like Abdel Moniem Aboul Fotouh, Mohamed Habib, the former Deputy of the Supreme Guide, Ibrahim El-Za'farani, Khaled Dau'd, and Hitham Abu Khalil, were excluded and had to leave the MB. Even the young reformists who took part in the uprising from the outset, such as Islam Lotfi and Mohamed El-Qassas, were unashamedly expelled and left the movement.

Furthermore, the domination of the conservatives on the MB became more visible when Shater and then Morsi were selected to run for the presidency. While the former is a heavyweight leader within the MB due to his financial and organizational capabilities, the latter was an utter

example of how conservatives "craft" their loyal cadres and leaders within the MB. As I explained elsewhere, Morsi was selected for the presidency not due to his political skills (indeed he lacks a lot of them) but mainly because of his commitment and loyalty to the conservative leadership. His record of trust, obedience, and commitment over the past two decades made him an ideal candidate for the job. Therefore, when Morsi speaks, acts, or behaves, he reflects the conservative face of the MB. Since he took power, Morsi became the mouthpiece of the conservatives who have captured the MB over the past two decades. For them, he is their man in the presidential palace and his throne should be protected at any cost.

Over the past two years, the MB has been preoccupied with taking power at the expense of restructuring and modernizing its ideology and organization which has led to its current baffling and confusing behavior. It has so far won power, however, at the expense of its image and credibility.

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Egyptian liberals' soft defeat

By Tarek Massoud, December 18, 2012

On Saturday, Egyptians voted in a national referendum on the country's new constitution, drafted over the course of six months by a largely Islamist-dominated Constituent Assembly. Opponents of the new document say it restricts freedoms, inflates the powers of the presidency, and makes second-class citizens out of Egypt's Coptic Christian minority. Mohamed ElBaradei, leader of the National Salvation Front (NSF), a loose coalition of opposition figures, including former presidential candidates Hamdeen Sabahi and Amr Moussa, declared that the constitution did not represent a majority of Egyptians, and urged his followers (after some dithering about a boycott) to vote no.

One could be forgiven for thinking that the results of the first phase of the referendum (conducted in 10 of Egypt's most populous governorates, with the remaining 17 to vote on December 22) were a blow to ElBaradei's narrative. The new constitution passed comfortably, with an estimated 57 percent voting yes. The Muslim Brotherhood's Freedom and Justice Party (FJP) has "hailed" the poll, describing the result as a rebuke to "politicians and collaborators who ignored the will of the people."

On the face of it, the Brotherhood's narrative seems sound. In fact, a greater share of voters in each governorate voted for President Mohamed Morsi's constitution than had voted for the man himself last June (see figure). In fact, only in Cairo and Alexandria did Morsi's constitution do more poorly than Morsi had, and even then only barely. This result has been interpreted by some as a strengthening of Morsi's mandate, and a repudiation of the notion that the president's controversial actions over the past few weeks have lost him the goodwill of many of the Egyptians who supported him.

But this is misleading. Though Gamal Heshmat (the former parliamentarian from Damanhour and a senior FJP figure) declared that the "long queues" at polling stations

indicated "heavy turnout," the reality was precisely the opposite. Turnout was slightly over 30 percent, much lower than the 52 percent turnout in the June presidential runoff, or the 43 percent turnout in the presidential election's first round, or even the 40 percent turnout in the March 2011 constitutional referendum (a waste of time in which Egyptians voted to amend a constitution that the military then went ahead and abolished). The chart below compares turnout by governorate in the referendum to the presidential election. If turnout were the same, the dots would all appear on the dashed line. If referendum turnout were higher than presidential election turnout, the dots would all appear above the dashed line. As you can see, they're all comfortably below it — an arresting visual representation of how many Egyptians seem to have checked out of the political process in the last six months.

In fact, a better way of gauging whether the Muslim Brotherhood and Morsi picked up steam or lost it during this referendum would be to compare how many raw votes Morsi got in June versus how many raw votes his constitution got on Saturday. The chart below shows that, in every governorate except South Sinai, North Sinai, and Aswan (where roughly the same number of people came out for both Morsi and his charter), fewer people cast ballots for Morsi's constitution than they had for him. In other words, some who voted for the president six months ago decided not to do so on Saturday. Whether those former supporters stayed home or defected to the other side is hard to know, but this result cannot be spun as a victory for the president.

But what does this mean for the opposition? How can it capitalize on the president's newly-demonstrated vulnerability?

One suggestion that emerges from the data is that the opposition should reach out to supporters of former presidential candidate Ahmed Shafiq. If we assume that all of the "yes" votes were cast by people who had voted for the president in June, and all of the "no" votes cast by people who had voted against him, the results of the referendum suggest that more Shafiq voters than Morsi voters stayed home this time. Of course, this assumption is likely not 100 percent true in the real world —some Shafiq voters certainly voted "yes," while some Morsi voters said "no," but if you believe it's a fair assumption in general, the results are striking. The chart below plots the estimated number of Shafiq voters in each governorate who failed to vote "no" against the estimated number of Morsi voters who failed to vote "yes." In every governorate save Alexandria, the anti-Morsi side lost more votes between June and today than the pro-Morsi side did. What this suggests is that there is a large bank of voters, alienated from the political process, and proven in its opposition to the president, just waiting to be tapped.

The referendum isn't over, and a surprise in the second round is possible (but not likely). If current patterns persist, Morsi's constitution is going to pass, and Egypt's liberals are going to need to begin preparing for the inevitable parliamentary elections. And to win in those contests, they are going to have to figure out a way to overcome their distaste at canvassing for the votes of erstwhile supporters of Shafiq (and, by extension, Mubarak).

This will be a bitter pill to swallow. After all, Egypt's liberals did not overthrow Mubarak merely to have to scramble after the votes of his orphans. But as the results of this referendum suggest, the greatest beneficiary of the political marginalization of the *fulul* is Mohamed Morsi.

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Reflections on Egypt's Latest Crisis

By Marc Lynch, December 31, 2012

or ... a requiem for Calvinball

With the passage of its controversial constitution through a referendum marred by low turnout, a deeply dysfunctional process, and bitter recriminations on all sides, Egypt's latest crisis has finally moved on to a new stage. This offers an opportunity to take a step back from the intensity of crisis, the polarized rhetoric, mutual dehumanization and feverish speculation that has dominated the last month. What has unfolded in Egypt is not a morality play, with good and evil clashing by night. Nor was it the unfolding of an Islamist master plan. This was the worst kind of Calvinball politics: hardball, strategic power plays by sometimes obtuse and occasionally shrewd actors in a polarized political environment with no clear rules, unsettled institutions, high stakes, intense mutual mistrust, and extremely imperfect information.

As bad as the last few weeks in Egypt have been, there is a somewhat optimistic counter-narrative to be told. I have the same sense now that I did this May in my "Egypt's Brilliant Mistakes" post: for all the horrible political decisions on all sides, the stunningly mismanaged transition, and the mandatory mass panic of the analytical community, Egypt still has a chance to muddle through and end up in a pretty decent place by this coming spring. It would not be the worst outcome for a chaotic transition if Egypt emerges in March 2013 with a constitution establishing institutional powers and limiting the powers of the presidency, a democratically elected but weakened president, a Muslim Brotherhood in power but facing unprecedented levels of scrutiny and political opposition, the military back in the barracks, a mobilized and newly relevant political opposition, and a legitimately elected parliament with a strong opposition bloc. The costs may have been too high and the process a horror movie, but getting a constitution in place and parliamentary elections on the books puts Egypt just a bit closer to that vision.

My guarded optimism comes in part from my diagnosis of the problem. For a while now I've been arguing that the core of Egypt's political problem is the institutional vacuum and absence of rules, which creates radical uncertainty about the future. This was the point of my "Calvinball" analogy, of a political game in which actors made up the rules as they went along without referee or limits other than the response of other players. This, as Professor Watterson points out above, "lends itself to certain abuses." Morsi's, for instance.

When Morsi made his move in late November, the presidency was operating in an extremely dangerous institutional and political vacuum, with no parliament, no constitution, disorganized and fragmented political opposition, a politicized and erratic judiciary, diminishing returns on street mobilization, mounting economic problems, and rising social and political polarization. An overheated information environment combined with the effects of this extreme institutional uncertainty to produce a truly toxic political environment. That's why simply getting a constitution in place, even if it isn't a perfect constitution, could have significant positive effects. This would for the first time since the revolution establish the rules of the game, addressing this core institutional void.

The institutional void inevitably drove polarization and fear. Whether or not the Muslim Brotherhood aspires to hegemony, Morsi *could* claim unchecked power because of the absence of a constitution, the judiciary's dissolution of parliament, and the deficiencies of the opposition. Egyptians *had* to worry about the possibility that Morsi would create a theocracy because there was nothing to definitively prevent him from doing so, and those fears of the possible were fueled by the reckless moves and rhetoric of a wide range of Islamist figures from the Brotherhood and beyond.

Morsi's claiming unlimited power did not make it so, however. In the face of popular pressure, he quickly abandoned his outrageous immunity decree, dropped his controversial new prosecutor general, and withdrew planned changes to food subsidies in a matter of hours. The political opposition is more relevant and the street more mobilized than it has been for a long time, while the Brotherhood is under greater popular pressure than ever before. What's more, the crisis rapidly eroded the international goodwill he gained through his mediation of the Gaza ceasefire, and has complicated his pursuit of desperately needed economic assistance. The rapidly spiraling economic crisis, and the measures which Morsi's government will need to take to meet it, will likely further cut into his and the Brotherhood's popularity. The costs of this informal pushback — the dead citizens, the intense social polarization, the lost trust — were too high, though.

Morsi's appalling decree granting himself unchecked powers and his subsequent move to rush through a hastily completed constitution showed poor political judgment. But it isn't as if there were a better constitutional process realistically on offer, given Egypt's fragmented political class, absence of social consensus or trust, and horribly mismanaged transition. As valuable as a "good" constitution which commanded real consensus might have been, nothing in the record of the last year and a half suggests that it was in the cards. Morsi's power grab was not a particularly "Islamist" one, and the sharp response to his initiatives demonstrates the limits of his powers more than it shows his ability to act as some sort of absolute dictator. It may be a mediocre constitution full of worrying ambiguities, but Egypt has not been remade as either a theocracy or a new dictatorship.

A remarkable number of key constitutional clauses refer back to interpretation by law. I hope that the Shura Council, elected at a time of political exhaustion and apathy, doesn't do anything significant on those before the election and seating of a new parliament. I also hope that the opposition sticks to its stated plans to form a unified electoral list for those elections, doesn't get sidetracked by debates over boycotting, and is able to convert its political energy into electoral success. Even those who would prefer a boycott should recognize the high stakes. An Islamist sweep two months from now could allow for some truly alarming legislative encroachments on personal freedoms and civil rights. But a strong electoral performance by the opposition could also — finally — create meaningful checks on presidential authority for the first time in modern Egyptian history. The best case here would be that the opposition can build on the energy of its protests, its newfound unity and the strongly felt antipathy toward the Muslim Brotherhood, to compete effectively two months from now in parliamentary elections. That would position it to legislate more liberal interpretations of the constitution, and to block any presidential efforts to impose a more autocratic or more Islamist agenda.

Finally, what lessons should be learned about the Muslim Brotherhood from this crisis? The Brotherhood's enthusiastic embrace of quite nasty street politics and sectarian rhetoric understandably frightened and outraged a wide swathe of the Egyptian public. But the crisis has revealed little new about the Muslim Brotherhood's "true nature," other than that its years in opposition prepared it poorly for the absence of the political limits which shaped its ideology, strategy, and internal organization over decades. It suffers from the departure of many key reformist leaders and most creative, driven youth who had been so crucial to the evolution of its political thought and practice in the previous decade. Faced with a radically new political environment and with its conservative wing internally ascendant, the Brotherhood has become increasingly rigid internally, more high-handed and defensive, and less willing to compromise or treat its political rivals respectfully. Its decision to seek the presidency after promising to not do so continues to be revealed as a great strategic blunder. The mediocre turnout at the constitutional referendum suggests that they will be punished at the ballot box for these failings — if their political opponents can work effectively to capitalize on the moment.

I do think that most analysts have read too much about the Brotherhood's ideology into its political behavior

over the last month. Just consider the counter-factual. Morsi's frustration with this stalemated, overheated political scene would have likely been shared by any other president who had emerged from that intensely contested June election. A President Shafiq or Moussa or Abou el-Fotouh or Baradei would likely have become equally frustrated with judicial obstruction, failed dialogues, and institutional paralysis. If, like Morsi, this president had tried to then govern through *force d'majeur*, it would have (and should have) produced great concern and condemnation. When Muslim Brothers and Salafis then took to the streets to denounce liberal overreach and a new Mubarakism and call for a renewed revolution, their critics in Egypt and abroad would have leaped to portray this as decisive evidence as the inability of the Brotherhood to accept democracy. In that counterfactual debate, many shoes would be on different feet.

I realize that this is a perhaps overly optimistic reading of Egyptian politics. I recognize the intensity of the political passions unleashed during this crisis, the legitimate doubts over the intentions of the Brotherhood and the military, and the many possible ways in which things could go horribly wrong. But I also think it's important to visualize a pathway towards a more successful transition. What Egypt needs now is a roadmap towards completing the Egyptian transition to an institutionalized democratic system, and to head off the polarization and alienation rather than fan the flames. Let's hope that Egypt can once again muddle through and get there.