



MIDDLE EAST INSIGHTS

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EGYPT: NO CONSENSUS IN SIGHT

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Egypt's political transition has been a mess ever since president Mubarak stepped down in February 2011. At every stage, decision-makers have lurched from one stopgap measure to another, more preoccupied with increasing their own power and weakening their rivals than with mapping out a clear process for dismantling authoritarian rule and establishing a coherent, accountable political system. Each new interim "constitutional declaration" has created additional confusion about how the transition is supposed to proceed and about the roles and prerogatives of the various political actors. The result has been constant uncertainty about what is happening and what can be expected. Meanwhile, the everyday practices of authoritarian rule, such as military trials of civilians, armed attacks on protesters, torture, and deaths in police custody, have continued. Few of those responsible for the violent repression of dissent have been held accountable. And little has been done to address the economic problems of ordinary Egyptians, such as rising unemployment, increasing poverty, crumbling infrastructure, and dismal public schools and hospitals.

The Muslim Brotherhood clearly see the post-Mubarak era as their chance to rule Egypt, and they take their victories in the parliamentary and presidential elections of 2011 and 2012 as a demonstration that the Egyptian people are on their side. Yet it has been unclear to what extent they will be able to exercise power. On one hand, in June 2012, the Supreme Council of the Armed Forces (SCAF) officially handed power to an elected president, Mohammed Morsi, and in August, Morsi sent the two top SCAF officers into retirement. The draft constitution, which is due to be submitted to a referendum starting on 15 December, was written by an Islamist-dominated Constituent Assembly. On the other hand, during the same period, the Brotherhood has been engaged in a bitter conflict with the judiciary. An administrative court dissolved the first Constituent Assembly last spring on the grounds that it was unconstitutional; a new one was formed, but was also

threatened with dissolution by court order. Just before Morsi took office, the Supreme Constitutional Court dissolved the parliament.

The work of the second Constituent Assembly has been marred by the resignation of many non-Islamist members, who accuse the Brotherhood of ignoring their concerns. The Brotherhood feel, with some justification, that the opposition has taken every opportunity to obstruct the process.¹ Given the election results, they also feel that there is a limit to how much they should be expected to compromise. On 22 November, fearing that the judiciary would dissolve the second Constituent Assembly before it could finish drafting a constitution, and perhaps even restore power to SCAF, Morsi issued yet another constitutional declaration, giving himself unlimited powers, forbidding any legal challenges to his decisions and preventing the judiciary from dissolving the second Constituent Assembly. This was met by a large protest against Morsi and a large counter-protest in support of him. The country's highest courts went on strike, and the Judges' Club called on Egypt's judges to refuse to supervise the referendum on the constitution. While the Brotherhood suspect a judicial conspiracy that might remove Morsi from power and restore military rule, the internal dynamics of the judiciary are difficult to read.² Different judges have different political sympathies, and concerns about the independence of the judiciary have certainly played a role. At the same time, the Brotherhood's liberal opponents accuse them of having cut a deal with the military and the deep state, pointing out that Morsi's government includes Mubarak-era figures accused of grave human rights violations.³ Indeed, the army, apparently content with the Brotherhood's efforts to protect its interests, seems reluctant to interfere, unless violent street clashes cannot be controlled otherwise.

In response to the outcry against Morsi's declaration, the work of the Constituent Assembly was rushed. The final draft contains worrying gaps and ambiguities.⁴ It does not specify how the branches of government will carry

¹ International Crisis Group, "A Way Out of Egypt's Transitional Quicksand," 26 November 2012, <http://www.crisisgroup.org/en/publication-type/alerts/2012/egypt-alert.aspx>.

² Nathan Brown, "The Revolution in Crisis," *Egypt Independent*, 27 November 2012, <http://www.egyptindependent.com/opinion/revolution-crisis>.

³ Karim Ennarah, "In Translation: Dismantling the Brothers' Revolutionary Self-image," *The Arabist*, 1 December 2012, <http://www.arabist.net/blog/2012/12/1/in-translation-dismantling-the-brothers-revolutionary-self-i.html>.

⁴ Nancy A. Youssef, "Egypt's New Constitution Short of the Specifics of Government, Long on Loopholes," *McClatchy*, 1 December 2012, <http://www.mcclatchydc.com/2012/12/01/176091/egypts-new-constitution-short.html>.

out their responsibilities, fails to protect a variety of human rights,⁵ and leaves legislators with unlimited power to restrict basic rights and freedoms. It also allows military trials of civilians and forbids civilian oversight over the military budget.⁶ Like Egypt's previous constitution, it places no real limits on the power of the executive.⁷ Rather than draw on the state of the art in constitutional law and on the experiences of other countries, the members of the Constitutional Assembly have produced a document that differs from its authoritarian predecessor mainly in its additional references to religion. Sixty years of dictatorship in Egypt seem to have left deeply ingrained attitudes and expectations, in some quarters, about the nature of political authority.

On 4 December, a protest against Morsi's new powers and against the draft constitution filled Cairo's Tahrir Square. Tens of thousands of demonstrators stormed the presidential palace in Heliopolis after riot police retreated. Morsi left by the back door, recalling Mubarak's departure for Sharm el-Sheikh as protesters marched on the palace on 11 February 2011. However, Morsi was back to work the next day. Some liberals would like to see Morsi removed from the presidency; others feel that overthrowing an elected president would set a bad precedent. The National Salvation Front, a newly formed alliance of certain non-Islamist political figures and groups, called for Morsi to rescind his constitutional declaration, cancel the referendum, and organize a new constitutional drafting process. On 5 December, Morsi supporters armed with shotguns and tear gas and protected by riot police attacked anti-Morsi protesters in front of the presidential palace. Nine people were killed and nearly 700 injured in the ensuing street battles. Five of Morsi's advisers and the head of Egyptian state television resigned in protest, and Al-Azhar University, Egypt's highest Islamic authority, urged Morsi to withdraw his constitutional declaration.

In a speech on 6 December, Morsi blamed the violence on a "third party" involving corrupt allies of the old regime and perhaps foreign interests bent on destabilizing the country. He showed little interest in making concessions.

⁵ "Egypt's New Constitution Limits Fundamental Freedoms and Ignores the Rights of Women," Amnesty International, 30 November 2012, <http://www.amnesty.org/en/news/egypt-s-new-constitution-limits-fundamental-freedoms-and-ignores-rights-women-2012-11-30>.

⁶ "Constituent Assembly Preserves Army's Privileges," *Egypt Independent*, 28 November 2012, <http://www.egyptindependent.com/news/constituent-assembly-preserves-army-s-privileges>.

⁷ Amr Hamzawy and Intissar Fakir, "Drafting Egypt's Constitution," Carnegie Middle East Center, 15 November 2012, <http://carnegie-mec.org/events/?fa=3867>.

He offered to talk with opposition leaders, but the latter refused to meet him unless their demands were met. Meanwhile, Muslim Brotherhood offices in Cairo were set on fire. On 8 December, an army statement urged opposing factions to settle their differences through peaceful dialogue, threatening to intervene to restore order if violent protests continued. That evening, Morsi issued a new decree retracting the absolute powers he had granted himself, while maintaining the schedule for the constitutional referendum. Liberals are not satisfied, and both sides have carried out further protests. It seems that most judges will refuse to supervise the referendum, but it is not certain that this will seriously disrupt the process unless the vote is very close and substantial evidence of fraud is produced.

If the referendum takes place on schedule, most observers think a majority of voters will probably approve the draft constitution. If the referendum returns a no vote, Morsi has promised a new, directly elected constitutional assembly. However, his Islamist supporters (particularly the far-right Salafis) are likely to reject more substantial compromises with non-Islamists. Moreover, the army would surely resist any attempt to reduce its power enough to satisfy liberals. If the referendum returns a yes vote and legislative elections proceed as planned shortly afterwards, it could well become more difficult for the opposition to mobilize large protests. A US\$4.8 billion IMF loan is likely to help the Brotherhood implement policies that increase its own power.⁸ With opposition groups divided and poorly organized, it will probably also be difficult for them to pose a serious electoral challenge to the Islamist parties.⁹ However, given the center-left candidate Hamdeen Sabbahi's surprisingly strong third-place showing in the presidential elections, the possibility that his Karama (Dignity) party will emerge as a credible opposition force should not be discounted.

The deeper issue is whether Egyptians can agree on what kind of state they want.¹⁰ There is a long history of conflict over this issue, but in practical terms the debate was largely put on hold after the military coup of 1952. Only two years ago there was hardly any discussion about what the Egyptian

⁸ Joshua Stacher, "Five Notes on Egypt's Crisis," *MERIP Blog*, 6 December 2012, <http://www.merip.org/five-notes-egypts-crisis>.

⁹ Nathan Brown, "Egypt's Constitution Conundrum: The Good, the Bad, and the Unruly in Cairo," *Foreign Affairs*, 9 December 2012, <http://www.foreignaffairs.com/articles/138495/nathan-j-brown/egypts-constitution-conundrum>.

¹⁰ Shadi Hamid, "Is There an Egyptian Nation?" *Foreign Policy*, 4 December 2012, http://www.foreignpolicy.com/articles/2012/12/04/is_there_an_egyptian_nation.

constitution should say. During the long years of authoritarian rule, the positions of Islamists and liberals became highly polarized while remaining very vague. It is therefore no surprise that few seem to be well prepared for a nuanced discussion of how the country should be run. Moreover, the fact that both factions use slogans that claim to express what “the people want,” and that Morsi tends to blame clashes between Egyptians on plots against Egypt, suggests the persistence of the myth (which the military dictatorship promoted) that there is a single national will, that conflict is inherently a sign of treason. This does not bode well for a consensual resolution of the issues at stake.

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