



Essay

Egypt's Constitution in Question

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Abstract

In well-functioning democracies, constitutions are revered as the unwavering backbones of law and order and permanent reservoirs of fundamental rights. But if longevity is the defining test of a successful constitution, then Egypt's new charter – ratified by popular referendum in December 2012 – is already in danger of failing. This essay, which draws on conversations with Egyptian judges and lawyers in 2013, will argue that the illegitimacy and ambiguity of Egypt's constitution has undermined rule of law by insufficiently clarifying the balance of powers between rival institutions that are now engaged in fierce competition over the uncertain contours. The effect of the resulting power struggle has been a sharp deterioration of public confidence in judicial institutions which are increasingly perceived as partisan actors prioritizing their own interests over the public good.

Keywords

Egypt; Islamic Law; constitutions; Middle East

In well-functioning democracies, constitutions are revered as the unwavering backbones of law and order and permanent reservoirs of fundamental rights. But if longevity is the defining test of a successful constitution, then Egypt's new charter – ratified by popular referendum in December 2012 – is already in danger of failing. This essay, which draws on conversations with Egyptian judges and lawyers in recent months, will argue that the illegitimacy and ambiguity of Egypt's constitution has undermined rule of law by

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insufficiently clarifying the balance of powers between rival institutions that are now engaged in fierce competition over the uncertain contours of the new political order. The effect of this escalating four-way power struggle – involving the executive, legislative and judicial branches of government as well as the powerful center of Sunni Islamic scholarship, Azhar – has been a sharp deterioration of public confidence in judicial institutions which are increasingly perceived as partisan actors prioritizing their own interests over the public good.

The question now confronting observers of Egypt's transition is not *if* the first post-revolutionary constitution will succeed, but how soon it will fail. A senior Egyptian judge who wished to remain anonymous admitted to me in an interview that he does not expect the constitution to last more than five years. Opposition parties have threatened to boycott the next parliamentary elections unless the constitution is amended, among other demands. In a conciliatory gesture, Prime Minister Hisham Qandil announced that a committee of independent constitutional experts would be formed to revise between ten and fifteen articles “that lack general consensus.”¹ However, when names of the purportedly independent experts were leaked to the Egyptian press, the opposition immediately assailed the committee as a tool of the Brotherhood and illegal under the constitution, which states that only the president or Parliament can call for amendments. Regardless of the outcome of the prime minister's proposal, his public acknowledgement of the need for constitutional reform – only five months after the ratification of a charter that was touted as a major achievement of the Morsi administration – is an admission of the frailty and inevitable failure of a constitution that has already lost the respect of Egypt's people as well as their leaders.

Points of Friction in Egypt's New Constitution

The starting point for any analysis of Egypt's constitution must be its dubious legitimacy, stemming from an exclusionary drafting process dominated by Islamists, and confirmed by abysmally low turnout (only 33 percent of eligible voters) in the popular referendum on its ratification.

¹ *Ahram Online*, “PM Qandil Says Experts Will Amend Egypt's Constitution,” April 9, 2013, <http://english.ahram.org.eg/NewsContent/1/64/68826/Egypt/Politics-/PM-Qandil-says-experts-will-amend-Egypt's-constitut.aspx>.

Amid calls for an electoral boycott, graffiti appeared around Cairo and other cities urging citizens to vote, “No to the Brotherhood’s constitution.”² Of those who participated in the referendum, only 64 percent voted to ratify, meaning that only 21 percent of the electorate actually supported the constitution.³ Even before it came into force in December 2012, the constitution was already viewed by significant segments of the population as a deeply flawed and polarizing document. Not only does the public view the constitution with skepticism and even disdain, but Egypt’s leaders have repeatedly demonstrated their disregard for a charter that they are supposedly bound to uphold. In March 2013, a former MP in the now-dissolved People’s Assembly accused President Morsi of disrespecting the constitution by appealing a court ruling that ordered the suspension of parliamentary elections pending revisions to the electoral system.⁴

In Cairo, there is growing anxiety within opposition circles about the current government’s unwillingness to enforce the constitution, but an even greater fear is that the ambiguous text of the constitution is vulnerable to manipulation. Vaguely worded and sometimes contradictory provisions in the 236-article document have created the impression that the document is an empty vessel whose content can only be clarified through usage, and could easily be warped for undemocratic or rights-constraining purposes.

The most polarizing provisions in the new constitution – those dealing with the role of Sharia, the status of women, freedom of expression, emergency powers and judicial independence – are also ambiguous, leaving ample room for interpretation by the legislature, and fueling fears that a Brotherhood-led government and Islamist-dominated Parliament will seek to fill in textual gaps with Islamizing social reforms. Although the lower house of Egypt’s parliament was dissolved in June 2012, the partially appointed upper house – in which Islamists hold 80 percent of the seats – has already debated draft legislation that would lower the minimum age of marriage for women from 18 years to as young as nine years; decriminalize

² AP Photo, *BBC News*, December 24, 2012, <http://www.bbc.co.uk/news/world-middle-east-20554079>.

³ Associated Press, “Egypt Constitution Passes With 63.8 Percent,” *Yahoo! News*, December 25, 2012, <http://news.yahoo.com/egypt-constitution-passes-63-8-percent-181120349--finance.html>. 63.8 percent of voters approved the constitution out of the 32.9 percent of total eligible voters who participated in the constitutional referendum.

⁴ *al-Dostor*, “Abu Hamad: The President Does Not Respect the Constitution or the Law” [Arabic], March 13, 2013.

Female Genital Mutilation (FGM), which former President Hosni Mubarak had outlawed in 2008; and rescind a 2000 law that grants women the right to a no-fault divorce without a husband's consent.

Islamists believe that the enhanced status of Islamic law in the new constitution provides ample justification for these and other conservative reforms. Article II – which identifies “the principles of Islamic Sharia as the main source of legislation” – was preserved word-for-word from the Mubarak-era constitution, but with an important addition, Article 219, which for the first time in Egypt's constitutional history clarifies the definition of “principles” of Islamic law to include more specific rules and evidentiary standards. Furthermore, Article 219 specifically refers to the jurisprudential doctrines of Sunni Islam, making this the first constitution in Egypt's history with an explicitly sectarian dimension. The non-Islamist opposition has criticized the new definition of Islamic legal “principles” as vague and potentially subject to expansive interpretation by future parliaments that might invoke Article 219 as justification for the codification of the Sharia in Egypt's civil code and family laws.

The overall effect of Article II combined with the new Article 219 and also a new Article 4, which entitles a council of Islamic scholars at al-Azhar to advise Parliament on draft legislation for Sharia-compliance – is to create a constitutional framework that is expected to facilitate the Islamization of Egyptian law by future parliaments. The non-Islamist opposition is particularly wary of the possibility of Islamizing reforms in areas of law – such as those regulating the construction of houses of worship and personal status matters – with significant implications for the rights of women and religious minorities.

A Recalibrated Balance of Powers

While the ambiguity of the religious clauses leaves ample room for interpretation, the constitution has simultaneously recalibrated the institutional balance of powers in ways that will give rise to competing claims for interpretive authority. For example, Article 4's cryptic stipulation that Azhar “be consulted in matters pertaining to Islamic law” – which the constituent assembly confusingly framed in the passive tense – appears to authorize the Islamic scholars to review draft laws for Sharia-compliance but does not specify whether or not Parliament is obligated to adopt these recommendations. The ambiguous wording has already raised tensions

between Parliament and Azhar, which recently chastised the legislature for failing to submit a draft law on Islamic bonds to its council of Islamic scholars for review. Bolstered by Article 4, Azhar will likely continue to assert its authority to review all laws that implicate the Sharia and could emerge as a powerful constraint on the legislature.

Another constitutional provision that has altered the balance of powers is Article 177, which requires that Egypt's Supreme Constitutional Court (SCC) exercise prior judicial review over draft laws governing all presidential, parliamentary, and local elections. The mechanism of prior review – never before codified in an Egyptian constitution – has the potential to dramatically expand the SCC's influence over the legislative process. The drafters of Article 177 intended the provision to prevent courts from invalidating electoral laws after the completion of polling, a scenario that led to the dissolution of Egypt's Parliament in June 2012. Article 177 makes clear that once the SCC has approved a draft electoral law, it is immune to post-election challenges. But the article does not state whether or not the SCC is entitled to a final round of constitutional review after submitting initial recommendations on the draft law to parliament – an ambiguity over which the judiciary and presidency have already clashed sharply.

In February 2013, the SCC returned Egypt's draft parliamentary election law to the Shura Council for revisions to five articles deemed unconstitutional. After making the recommended changes, the Shura Council refused to send the draft back to the SCC for final approval and instead sent it to President Morsi for promulgation. The maneuver, which the opposition immediately criticized as an assault on judicial independence and subversion of the SCC's fundamental role as final arbiter of constitutionality, immediately provoked more than a dozen lawsuits. In March 2013, Egypt's Supreme Administrative Court issued a ruling that canceled elections and ordered the Shura Council to refer its second version of the electoral law back to the SCC for final review. But the presidency has contested the validity of the decision, and rather than wait for the SCC to review the law, Parliament is drafting an entirely new electoral law – a show of defiance toward the judiciary. The dispute makes clear that Article 177 has opened a fault line in the already antagonistic relationship between Egypt's high courts and the Brotherhood-controlled presidency and parliament.

Another controversial area of the constitution with implications for the separation of powers is a provision that has altered the composition

of the SCC, which critics have condemned as a direct attack on judicial independence. According to Ragab Saad, a researcher with the Cairo Institute for Human Rights Studies, the constitution was “specifically crafted to serve the interests of the ruling party” by tilting the balance of powers away from the judiciary and in favor of a strong executive.⁵ The constitution was similarly criticized by the UN Human Rights Commissioner for “giving the Executive excessive power over the judiciary” and marked a “serious step backwards” for judicial independence.⁶ Proponents of judicial independence have criticized Article 176, which reduced the size of the Supreme Constitutional Court (SCC) from 18 judges to 11 and grants the president the power to directly appoint new justices.⁷ This provision has been a disappointment to judges who had hoped that the constitution would give them exclusive control over appointments to the SCC. The reduction in the size of the SCC, which has been described as “court-packing in reverse,” had the effect of removing several judges noted for their opposition to the Brotherhood.⁸

Egypt's constitution has shifted the balance of powers in a system that is already strained by intense polarization. The new constitution has insufficiently defined the distribution of authority between rival institutions that are now competing fiercely to defend their own interests. The resulting power struggle is damaging the prospects for the long-term durability of Egypt's constitution, while simultaneously accelerating the loss of public confidence in rule of law. The following section will provide a theoretical framework for assessing how constitutional ambiguities in the allocation of decision-making powers are undermining the overall stability of the political system.

⁵ Phone interview with Ragab Saad, March 11, 2013.

⁶ UN News Service, “UN Official Voices Alarm at Egypt Violence, Cites ‘Major’ Problems with Draft Constitution,” *UN News Centre*, December 7, 2012, <http://www.un.org/apps/news/story.asp?NewsID=43706&Cr=egypt#.UTzIkNFVQ5g>.

⁷ Omar Halawa, “The Court’s Last Breath,” *The Daily News Egypt*, December 31, 2012, <http://www.egyptindependent.com/news/court-s-last-breath>.

⁸ Chibli Mallat, “Reading the Draft Constitution of Egypt: Setbacks in Substance, Process, and Legitimacy,” *Ahram Online*, December 2, 2012, <http://english.ahram.org.eg/NewsContentP/4/59606/Opinion/Reading-the-Draft-Constitution-of-Egypt-Setbacks-i.aspx>.

Egypt's Constitution as Incomplete Contract

Analyzing Egypt's constitution as the product of a bargaining process – or what economists describe as “incomplete contracting”⁹ – helps to explain why points of friction and ambiguity in the text are inducing competition between state institutions competing over vaguely defined powers. Scholars of comparative constitutional law have analogized constitutions to contracts: both require a process of negotiation and compromise between interest groups that are willing to make short-term compromises in exchange for input in configuring the rules of a system from which they hope to secure long-term political gains.¹⁰ Unlike *complete contracts*, described as hypothetical agreements that exhaustively define in advance every decision that should be taken in the event of all possible future contingencies, constitutions operate in the real world of evolving conditions and unpredictable outcomes, and therefore are necessarily *incomplete contracts*.¹¹

In the ideal theory of complete contracts, conflicts over the allocation of powers never arise, since the constitution would have specified in advance the appropriate decision to be taken. But under the rules of incomplete contracting, constitution drafters – constrained by the unpredictability of future contingencies – can only define the allocation of *control rights*, meaning the rights of contracting parties to make decisions under given circumstances without defining the content of those decisions.¹²

Constitutions deal with uncertainty about future circumstances by partitioning domains of decision-making among various branches of government and instituting mutually constraining checks and balances. A successful constitution will broadly frame the relationship between governing institutions and set outer limits on acceptable behavior, but no constitution can perfectly clarify the separation of powers.

⁹ See Oliver Hart and John Moore, “Incomplete Contracts and Renegotiation,” *Econometrica* 56, no. 4 (1988): 755–785.

¹⁰ See Alec Stone Sweet, *Constitutional Courts and Parliamentary Democracy*, in *Politics of Delegation*, ed. Alec Stone Sweet & Mark Hatcher (2002).

¹¹ See Benjamin E. Hermalin, Avery W. Katz, and Richard Craswell, “Contract Law” in *Handbook of Law and Economics*, ed. Alan Mitchell Polinsky and Steven Shavell (Amsterdam: North-Holland, 2007), 75.

¹² See Sanford J. Grossman and Oliver D. Hart, “The Costs and Benefits of Ownership: A Theory of Vertical and Lateral Integration,” *Journal of Political Economy* 94 (1986): 691–719.

Vagueness in incomplete contracts “threatens to undermine rationales for contracting in the first place,” writes Alec Stone Sweet.¹³ To guard against the implosion of the constitutional order as a result of conflict over the inevitable gray areas in the allocation of control rights, it is necessary to establish secondary procedures and institutions capable of resolving – through law rather than violence – disputes over power. Stone Sweet has described modern constitutional courts and the practice of constitutional review as one such adaptation to the problems of uncertainty that arise from incomplete contracts.¹⁴

All constitutions, as incomplete contracts, contain the potential for instability and conflict over ambiguities in the distribution of control rights, but the creation of decision-making procedures and institutions like constitutional courts function as safety valves to facilitate the resolution of conflicts within the parameters of the legal system. These mechanisms prevent disputes from devolving into violence and posing a serious threat to the long-term stability of the constitutional order.

But what happens when the procedural safeguards responsible for resolving constitutional uncertainties are themselves lacking neutrality or credibility? Such is the case in Egypt, where the task of resolving substantial ambiguities in the constitutional framework has been delegated to a Supreme Constitutional Court (SCC) whose own legitimacy is under attack by the executive branch and Muslim Brotherhood. In a remarkable incident that reflects the embattled legitimacy of the SCC, a member of Egypt’s upper house of Parliament, the Shura Council, claimed that the court “did not respect the Constitution” when it challenged several provisions of the draft electoral law in February 2013.¹⁵ The fact that Egypt’s Parliament is openly questioning the constitutional interpretation of the SCC – a court created in 1979 for the very purpose of issuing independent and binding rulings on the constitutionality of legislation¹⁶ – signals an unprecedented crisis in the balance of powers between the three branches of government.

¹³ Alec Stone Sweet, “Constitutional Courts and Parliamentary Democracy (Special Issue on Delegation),” *West European Politics* 25 (2002): 77–100, 78.

¹⁴ *ibid.*

¹⁵ Aly el-Malky, “Shura Council Accuses SCC of Undermining Lawmakers,” *Egypt Independent*, February 19, 2013, <http://www.egyptindependent.com/news/shura-council-accuses-scc-undermining-lawmakers>.

¹⁶ Tamir Moustafa, “Law and Resistance in Authoritarian States: The Judicialization of Politics in Egypt” in *Rule by Law: The Politics of Courts in Authoritarian Regimes*, ed. Tom Ginsburg and Tamir Moustafa (Cambridge: Cambridge University Press, 2008), 139.

This crisis was confirmed in March 2013, when President Morsi refused to implement a court ruling ordering the dismissal of the Morsi-appointed Public Prosecutor and reinstatement of his predecessor, claiming that the appointment was constitutionally protected and therefore irrevocable.¹⁷ These examples of non-judicial branches trespassing in the domain of constitutional interpretation suggest that textual ambiguities in Egypt's new constitution are fueling a power struggle to clarify the uncertain distribution of authority in an evolving political system. Meanwhile, the politicization of the judiciary has compromised the ability of judicial institutions to function as neutral arbiters of inter-branch conflicts.

Theories of incomplete contracting would suggest that uncertainty in constitutions is not fatal in the presence of institutional mechanisms capable of resolving inter-branch disputes over the allocation of control rights. However, Egypt currently lacks neutral institutional mechanisms for clarifying ambiguities in the balance of powers, thus inducing a seemingly lawless vacuum in which rival institutions are engaging in a mutually destructive battle over the meaning of the constitution.

Lawlessness Under a Weak Constitution

Continued controversy surrounding Egypt's constitutional framework is contributing to an overall climate of lawlessness and doubts about the political neutrality and independence of judicial institutions that are failing to enforce order and deliver justice. In the aftermath of a controversial court ruling on March 9, 2013 that sentenced 21 hardcore soccer fans to death by hanging for their role in a deadly stadium rampage last year, the cities of Cairo and Port Said were rocked by violent riots verging on urban warfare.¹⁸ Protesters immediately condemned the verdict as politicized and accused the court of being too lenient in its sentencing of police officers who failed to intervene to stop the violence.¹⁹ This latest incident in a

¹⁷ Associated Press, "Egypt Court Challenges Morsi Over Top Prosecutor," March 27, 2013, <http://news.yahoo.com/egypt-court-challenges-morsi-over-top-prosecutor-193243489.html>.

¹⁸ *Al Jazeera*, "Death Sentences Upheld Over Port Said Riots," March 9, 2013, <http://www.aljazeera.com/news/middleeast/2013/03/201339895791188.html>.

¹⁹ *BBC*, "Egypt Court Backs Port Said Football Riot Death Sentences," March 9, 2013, <http://www.bbc.co.uk/news/world-middle-east-21722946>.

seemingly unbreakable cycle of nationwide protests signals a profound loss of faith in the judiciary and a desperate need for internal reform within the state security apparatus.

A pervasive climate of lawlessness has been compounded by a wave of police strikes condemning the policies of the Interior Ministry and slow pace of internal security reform – one of the core demands of the revolution.²⁰ In response to the withdrawal of uniformed security personnel from urban centers in March 2013, the Salafi Nour Party and al-Gama'a al-Islamiyya's political wing announced the formation of private militias known as "popular committees" to fill the security vacuum. Egypt's Interior Ministry has denounced these groups, insisting that private citizens are not authorized to infringe on the law enforcement functions of the state. The rise of vigilantism reflects deteriorating confidence in the government's capacity to guarantee law and order.

Nowhere is the absence of security more acute than in the Sinai Peninsula, a 23,000-square-mile desert overrun with arms dealers, jihadists, and human traffickers, where Egypt's army declared a state of emergency in early March 2013 in anticipation of planned terrorist attacks on government targets. In the economically destitute and politically disenfranchised governorates of North and South Sinai, the need for rule of law has never been more urgent, yet public confidence in the central government is at an all-time low. After decades of economic mismanagement and a misguided counter-terrorism crackdown that resulted in the mass incarceration of thousands of Bedouins – whose twenty-some odd tribes²¹ account for roughly 70 percent of the population of the North and South Sinai governorates – the Egyptian state is associated not with security, but with incompetence, repression, and predatory corruption.

In a region where government officials are an object of public disdain and anger, it is unsurprising that residents of Sinai are looking elsewhere for security and justice. Increasingly, they are turning to a growing number of informal Islamic courts, which are steadily displacing an official justice system viewed as corrupt and inefficient.²² Since the revolution, informal

²⁰ Patrick Kingsley, "Egyptian Police Go On Strike," *The Guardian*, March 10, 2013, <http://www.guardian.co.uk/world/2013/mar/10/egypt-police-strike>.

²¹ Nicolas Pelham, "In Sinai: The Uprising of the Bedouin," *New York Review of Books*, December 6, 2012, <http://www.nybooks.com/articles/archives/2012/dec/06/sinai-uprising-bedouin/?pagination=false>.

²² Mara Revkin, "Islamic Justice in the Sinai," *Foreign Policy*, January 11, 2013, http://mideast.foreignpolicy.com/posts/2013/01/11/islamic_justice_in_the_sinai.

Islamic courts claim to have absorbed an estimated 75 percent of the case-load once handled by the official justice system.²³ These courts – which operate on shoestring budgets in basements and school classrooms after hours – have successfully capitalized on the fragility of the state in their campaign to promote Sharia law as the only legitimate alternative to what would otherwise be a legal vacuum.

The Sharia judges of North Sinai have no formal legal training and they implement a body of customary tribal law known as *urf*, based on orally transmitted precedents that have no basis in Egyptian civil law. Given their isolation from the official justice system, I have been surprised by the extent to which Sharia judges emphatically cite Egypt's new constitution and its strengthened Islamic provisions as providing justification for the establishment of informal courts, as long as the state fails to discharge its constitutional obligation to fully implement Islamic law. Sheikh al-Beik, who presides over a Sharia court operating in the North Sinai city of al-Arish, noted, "The constitution is supporting us in stating that the principles of Sharia are the main source of legislation, but the [state] laws have not yet been updated according to Sharia."²⁴

Al-Beik's implication is that Egypt's new constitution has reconfigured what Hans Kelsen described as the "grundnorm" of a legal system – the ultimate norm from which all other rules follow and derive their validity.²⁵ Sheikh al-Beik sees the function of the Sharia courts as fulfilling a constitutional obligation to Islamize Egypt's legal system in compliance with the new grundnorm. Al-Beik's frustration with the official justice system is two-fold. First, as explained above, Egypt's laws have not yet been updated to reflect the enhanced status of Islamic law defined in the new constitution, and therefore the legitimacy of the legal framework itself is suspect from the perspective of Sharia judges and other proponents of Islamization. Second, aside from the legitimacy of the laws, the official justice system is utterly failing to enforce them. As long as Egypt's constitution is perceived as illegitimate, rule of law will continue to deteriorate as non-state actors – including vigilantes and unauthorized Sharia courts – continue to absorb law enforcement functions that the official justice system is failing to discharge.

²³ *Wall Street Journal*, "Makeshift Islamic Courts Fill Void in the Sinai," November 2, 2012, <http://online.wsj.com/article/SB10000872396390443493304578034041459095444.html>.

²⁴ Phone interview with Sheikh Assad al-Beik, January 27, 2013.

²⁵ Hans Kelsen, *The Pure Theory of Law* (California: University of California Press, 1967), 209.

Conclusion

The Egyptian government's inability to enforce law and order – whether in Sinai or Cairo – is at the heart of its spiraling legitimacy crisis. In a stunning demonstration of despair over injustice and a lack of economic opportunity reminiscent of Mohammed Bouazizi's self-immolation in Tunisia, an unemployed plastic factory worker threatened to jump off of the roof of Cairo's High Court on March 10 with his son in his arms, unless Egypt's Attorney General would agree to take action to reopen a factory closed two years ago.²⁶ A similar incident occurred in February, when an accountant at Banque Masr tried to throw himself from the roof of the High Court building to protest the Public Prosecutor's refusal to hear a lawsuit he filed accusing former officials of corrupt dealings with the bank.²⁷ Both men were persuaded to back down, but the incidents are symbolic of a growing sense of frustration among Egyptians with judicial institutions they feel are failing to uphold the law.

In recent months, the Muslim Brotherhood has repeatedly reiterated its commitment to “rule of law”²⁸ and to maintaining a “separation of powers.”²⁹ But even if the Brotherhood were genuinely committed to these goals, the intense politicization of the judiciary and law enforcement agencies makes their achievement impossible. Egypt's new constitution has further destabilized the political system by embroiling its rival institutions in a power struggle over the allocation of authority under the reconfigured legal framework. All constitutions can be understood as incomplete contracts that partition decision-making authority between different branches of government. But whereas well-functioning constitutions create procedural mechanisms that facilitate the resolution of inter-branch disputes, Egypt's constitution has served to obfuscate the separation of powers

²⁶ Ahmed Mutawally, “Plastic Factory Worker Attempts Suicide from High Court” (Arabic), *al-Youm al-Saba'a*, March 10, 2013, <http://www2.youm7.com/News.asp?NewsID=974138>.

²⁷ Khaled Mattar, “Banque Masr Employee Threatens Suicide in Protest of Refusal to Prosecute Bank's President” (Arabic), February 27, 2013, <http://shorouknews.com/news/view.aspx?cdate=27022013&id=15210441-8afb-4ff1-bb28-75b59be4f2ae>.

²⁸ *IkhwanWeb*, “Freedom and Justice Party: Rule of Law Must Prevail,” March 10, 2013, <http://www.ikhwanweb.com/article.php?id=30719>.

²⁹ *Ahram Online*, “Egypt Presidency Respects Court Ruling, Refers Electoral Law to Constitutional Court,” March 6, 2013, <http://english.ahram.org.eg/NewsContent/1/64/66296/Egypt/Politics-/Egypt-presidency-respects-court-ruling-refers-ele.aspx>.

without creating channels for the adjudication of institutional conflicts – thus provoking a mutually destructive power struggle between rival institutions. Only five months after its ratification, Egypt's government is already entertaining proposals for amending a constitution that is widely perceived as dysfunctional and illegitimate. In order to correct these flaws, the amendments will need to clarify ambiguities in the distribution of powers. Until they do, Egypt's fragile constitution will remain a battleground for inter-branch conflicts and an impediment to rule of law.

Postscript

On July 8, 2013, Egypt's constitutional order was yet again upended as newly installed interim president Adly Mansour issued a 33-article declaration outlining a procedure for amending the 2012 constitution and timetable for new elections following the removal of Islamist President Mohamed Morsi in a popularly backed military coup. Like the 2011 revolution, the mass protests that culminated in Morsi's removal in 2013 were driven in large part by popular frustration with a constitutional order that had failed to hold Egypt's government accountable to the people. The legitimacy of the 2012 constitution, which survived a mere six months, was undermined not so much by controversy over its content, but by outrage over the exclusionary and opaque process through which it was drafted. If Egypt's next constitution is to escape the same fate, the interim government will need to design a drafting process that is sufficiently inclusive to prevent undue influence by any single interest group.



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