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Egypt's Ambiguous Transition

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In the eighteen months since they forced their long-serving president to resign, Egyptians have lived through a confusing and contested series of political changes. In the middle of Ramadan this year, the balance of forces in Egyptian politics became clearer with the Mohamed Morsi reasserting the power of the presidency in dramatic fashion. However, if the actors are clearer, the process is not. Indeed, to describe it as a "process" is flattering a very much unplanned sequence of events. Egypt's transition may be lurching toward a more pluralist democracy, prolonged instability, renewed authoritarianism, or toward a kind of delegative democracy in which a leader with a popular mandate is able to rule without much oversight and accountability.

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What certainty there now is comes from a very surprising turn of events. Egypt's newly elected president first tried to assert his authority by reconvening the parliament, but the courts turned him back and he was widely criticized across the political spectrum. He tried again with the military, and succeeded, encountering much less political opposition than might have been expected. It has therefore been judges, more than generals, who have stood in his way.

President Morsi now stands in firm control, with almost limitless legal authority on paper. And that is a very mixed triumph for democracy. For over half a century, the dominating political structure has been the presidency. That office was vacant from February 2011 until June 2012. Now the question is whether a domineering presidency is reemerging.

If so, it would be by accident. Nobody designed Egypt's current transition sequence such as it is. The current president was the second choice of a movement that had originally planned not to run a candidate, and the elections themselves were held before a new constitution was adopted and with the parliament dissolved, a sequence few wanted. Despite initial handicaps, President Morsi is beginning to free himself of some of the strong legal and political checks on his authority. And Egyptians are now paying attention to what the president is doing. I saw this firsthand in Egypt when riding in a cab with a friend and the news came on, starting (as it has for decades) with a turgid list of the president's meetings—and for the first time ever in my experience in the country, the driver happily turned up the volume.

There are mixed signals for those hoping for some kind of democratic outcomes. The problems lie less in the intentions of the most important actors, and far more in the unhealthy political environment and transition process—that undermine consensual approaches where they are needed, and reward quiet deals when they are not. In this commentary, I will review where the pitfalls and the promises are in a number of areas including: President Morsi's unchecked legal authority; the struggle over the bureaucracy; the détente (or perhaps even entente) between the presidency and the military and security apparatus; the poisonous civilian state of political debate; and the prospects for political party development.

A Legally Unchecked Presidency: How Much Will Morsi Do?

The executive powers of the president have always been extensive and the Supreme Constitutional Court's decision to disband the elected parliament together with Morsi's own constitutional declaration of August 12 have put legislative power in his hands until a new parliament is elected, probably next year. How he uses this authority may determine whether Egypt moves toward delegative democracy or a more pluralistic system with autonomous state institutions.

There is much in the Egyptian legal order that needs to be changed if the political system is to be reformed. Among the issues that seem to be attracting the president's attention are NGOs, the judiciary, the Supreme Constitutional Court, and al-Azhar, Egypt's main Islamic center of learning (for more details click here). In all the areas on the agenda there are solid reasons for change and a history of proposals on which the drafters of laws can rely. But there will be severe long-term repercussions if the president moves on them ambitiously or precipitously. Morsi runs the risk of making decisions by fiat and being seen as a benevolent dictator—a bad way to start a democracy.

One problem is procedural. In theory, if a civics book were to describe how a bill becomes a law in Egypt today, the process could hardly be portrayed as rigorous or accountable: it happens whenever the president decides to have his will written up in the *Official Gazette*. In practice, the process may not be quite so autocratic: he is likely to do so only when the matter is developed

within the cabinet and key ministries and, in some matters, negotiations with key stakeholders. But this is still a dictatorial and opaque process. There is no structure to consult with political forces, no requirement for public debate and discussion, and no oversight by any other body save perhaps the courts—which themselves feel very much in the crosshairs of the current drafting efforts.

And the list of potential pitfalls goes beyond nascent authoritarianism: lawmaking by presidential fiat can exclude vital actors; a process based on dusting off old proposals may be appropriate only for fighting the past war against Mubarak rather than the current battle for pluralist democracy; key decisions over wording may lie in the hands of specific individuals who operate without public oversight; and a pattern of making permanent choices about institutional design in an interim period may undermine the legitimacy of those structures.

Many will want to have a voice in addressing critical long-term issues such as how the judiciary should be restructured, how the Supreme Constitutional Court should operate in a democratic rather than authoritarian environment, and what degree of autonomy and authority should be granted to al-Azhar. The Supreme Council of the Armed Forces (SCAF) moved precipitously on some of them when it had legislative authority for a year and a half; President Morsi has more democratic legitimacy but he still may be seen as moving precipitously himself.

Overall, the president has many opportunities to use his tremendous legislative authority to make significant reforms in Egyptian political life. But there are great fears that lofty goals will disguise partisan implementation even if he does so. Judicial reform is one example. All Egyptian political actors ostensibly agree on the need for an independent judiciary, but at present two major actors calling for such independence are at loggerheads. Ahmad Makki, the minister of justice made a name for himself pushing the issue under the Mubarak regime while the Supreme Constitutional Court has shown itself willing to dissolve parliament if it finds the electoral law unconstitutional (it has struck down the law four times over the past quarter century).

The battle for judicial independence is not only about legal changes (though it certainly is legal in part); it also has taken the form of personal rivalries. There is clearly fear among some senior judges that Makki is actively considering recommending a legal change that has so far only been publicly discussed in the form of rumors: having the president use his authority to lower the retirement age for judges. Such a step could lead to an early end for the career of many senior judges. What would be presented as a legal step to encourage new judicial blood would be seen (not at all unreasonably) by its critics as a massive bloodletting akin to the 1969 "massacre of the judiciary" in which a large number of judges were suddenly dismissed for political reasons.

Thus far, the president's claim of authority has been expansive, but he has actually used his boundless legislative prerogatives quite modestly. And he has promised that he will not rush forward. He did act to cancel pre-trial detention for journalists accused of crimes, but backed off offering more extensive changes in Egypt's authoritarian press laws. In that sense, he has sought to reassure critics that he will not abuse his authority.

Transition in the Trenches: Guiding and Reshaping the State

President Morsi may be supreme on paper, but he is not in practice. Most of the bureaucracy and judiciary have remained unchanged and any moves by the president to reshape them or appoint Islamists provoke charges of the "Ikhwanization of the state" (from *Ikhwan*, the Arabic term for "Brotherhood"). And indeed, there are signs of ongoing contest throughout the state apparatus.

The presidency has dominated all state institutions since the 1950s, but in the Mubarak years a surprising number were able to establish a measure of autonomy. When push came to shove, they would support the presidency, but push rarely came to shove on a daily basis. Instead, the Mubarak regime relied on a few key reliable individuals and a measure of cooption to maintain a loose degree of control. (There was considerable variation across these institutions and over time in the closeness and effectiveness of presidential control.)

The resistance to change of some state institutions since 2011 has given currency to the concept of the "deep state." The concept is helpful in understanding the deeply conservative nature of many institutions and their unwillingness to distinguish between their own institutional interest and the

broader public interest. But it also makes the state sound more coherent than it is, and leads observers to overlook the degree to which there are multiple voices within state institutions.

After February 2011, internal battles took place in all state institutions—with some people advocating greater autonomy, others gravitating toward the SCAF, and old leaders hanging on. And it became safer to express differences that had been kept under wraps: a minority (but not always a small one) of senior leaders in key structures had some sympathy with the Islamists. Thus, many critical Egyptian institutions are still undergoing slow but portentous internal struggles, generally away from the headlines.

The struggle is a bit more public in the courts and al-Azhar. The political showdown between the Supreme Constitutional Court and the presidency has led most judicial institutions to take a dark view of the Brotherhood's electoral ascendency. However, the post-revolutionary atmosphere has also made clear what was only whispered about in the past: the presence of a substantial number of judges with vaguely Islamist inclinations. The al-Azhar's sheikh's office has positioned the institution as a bulwark against Salafism and even the Brotherhood in some ways, but there are some Salafis and an even larger number of Brotherhood-sympathizers within the ranks of al-Azhar's scholars.

Media

The battle is already raging in the state-owned media, with a round of editorial appointments to state-owned enterprises inspiring criticism at home and internationally because of the professional standing of some appointees and the Islamist inclinations of others. A few of the new appointees quickly demonstrated that the breathtaking sycophancy of state media could lead some outlets to pander to the new leader with an alacrity that would even have pleased a pharaoh. In the most notorious example, the old regime *October* magazine, founded under Sadat and named after the 1973 war, startled its small number of readers with a cover showing President Morsi dressed as a jockey leaping ahead on a dashing steed with the caption "The Revolution Takes Off."

The problem is not simply confined to state-owned media, however. The appointments were followed by legal moves against two privately owned concerns that had arguably crossed over the edge from criticism to inciting violent action. This was followed by a series of lawsuits being threatened and even prosecutorial questionings of other editors for media content that was more insulting than threatening.

The moves have led critics to charge that the Morsi presidency might quickly eerily resemble the Mubarak presidency. The presidential reply—that the appointments were the responsibility of the still-seated upper house of the parliament and the legal moves the responsibility of the public prosecutor—reassured few, partly because they echoed similar explanations from the authoritarian era. And indeed, the battle for free expression in Egypt is likely to be a difficult one.

The Egyptian legal framework is still riddled with authoritarian rules; the press itself sometimes edges into threatening territory (the two offending media outlets likely would not be prosecuted in most democratic systems because they were vague in their threats and could not reasonably be held responsible for specific acts of violence). While the two prosecutions drew tremendous attention, much less noticed were legal moves against a pair of Brotherhood lawyers who had suggested justices on the Supreme Constitutional Court had forged the date on their ruling dissolving the parliament in order to hide their alleged prejudgment of the case. The Brotherhood is victim as well as offender.

But the problems are far deeper than those posed by the president, the parliament, and the prosecutor. The problem for Egypt today is how to work out boundaries to distinguish between shrill and seditious; between vitriol and violence; between loose talk and libel; and among professionalism, patronage, and politics in state-owned media. Initial indications are that such boundaries may be imposed more than negotiated.

A Republic of Quiet Understandings and Noisy Disagreements

Of course, in any democracy, there is supposed to be a mix of competition and cooperation. In that sense, this description of Egyptian politics might seem almost genteel—there are quiet negotiations and gradual changes; tussles do occur but are generally bloodless. But there is still something quite unhealthy about the process.

Civilian political actors are numerous but have little incentive or opportunity for reaching across divides and agreeing on the rules of political life. Rather than competing in some areas and figuring out how to come to terms in others, the normal kind of democratic politics is pushed aside. Instead, key institutions—the military, security apparatus, bureaucracy, and now the presidency—are quietly negotiating the reconstruction of Egypt's political order. It makes no sense to criticize one actor (even President Morsi) for creating this system; the situation almost seems structured to encourage him to see the military and security apparatus rather than a collection of feckless civilian political actors, as his main concern.

But if that is where incentives lie, the effects can undermine the possibilities for democratic transition. It encourages ineffectual noisy political debates among political forces and opaque backroom deals among the real wielders of authority. Not only are the deals opaque, but key political actors themselves seem like black boxes. The military, the security apparatus, and the country's largest movement, the Muslim Brotherhood, are all fairly closed and top-heavy in their decision making. They also have a marked aversion to airing their internal debates in public. The result is that their intentions and decision making processes are not at all clear. Even a basic issue like the precise composition of the SCAF has been a matter of surprising and continuous conjecture since February 2011.

Similarly, President Morsi's relationship with the Brotherhood is disputed. Press reports have routinely claimed that he has resigned from the Brotherhood but neither the Brotherhood nor Morsi have made such a statement. I heard from two Egyptians in a position to know that Morsi remains an ordinary member of the Brotherhood even though he resigned his leadership position.

Since there is no parliament, there is no legislative body to offer checks and balances. The upper house of the parliament does still sit, but its power is meager and its own viability is threatened by a legal challenge that is still before the courts. The next ballot on the horizon is a yes-or-no constitutional referendum, so only the presidency and weak upper house remain as elected structures.

Oddly, some political parties actually applauded the dispersal of the parliament as a way to keep political control out of the hands of the Islamists. But their political miscalculation became clear when President Morsi issued his supplementary constitutional declaration to their surprise after quiet negotiation with some members of the SCAF and took the parliament's powers into his own hands.

In Egypt's interim constitutional order ministers do not need to have the confidence of the parliament, since there is none. But they do seem to need a measure of confidence (or more often the acquiescence) of the generals and the bureaucracy.

Those who charged that the SCAF and the Brotherhood had a secret understanding were overstating the collusion in 2011. But there is now a very obvious modus vivendi between them. There are many places where the slow process of negotiation is evident. Most remarkable, perhaps, were the decrees establishing a committee to review those sentenced in military courts since the beginning of the revolution and a fact-finding commission into protester deaths occurring from January 25, 2011 to June 30, 2012. (Presidential decisions five and ten of 2012).

The decrees seemed to fall fully within the president's prerogative even before Morsi's constitutional declaration, and they were remarkably bold. Not to put too fine a point on it, the second committee seats colleagues of suspected perpetrators next to advocates of the victims. But at least one knowledgeable observer, NGO activist Hossam Bahgat, described the decree's text and the committee's membership to me as extremely carefully negotiated, with an assertive presidency pursuing an enormously sensitive issue and the SCAF giving way in a bounded manner.

A similar process took place over the formation of the cabinet. Key positions seem to have been quietly negotiated with the military and security apparatus. And many other state bodies also demanded consultation and even sometimes veto over particular choices. The strength of the judiciary made it unthinkable to appoint anyone other than a judge the minister of justice. Even the choice of minister of religious endowments was a matter where the first Muslim Brotherhood president was far from free. When a leading Salafi was offered the position, the sheikh of al-Azhar was quite clearly outraged—according to press accounts, admittedly of uncertain reliability even on relatively innocuous matters, he lobbied with the SCAF and successfully had a reliable figure from within his own institution named to the post.

Poisonous Public Politics

A poisonous political atmosphere has developed that seems almost designed to foster polarizing rhetoric over constructive coalition building. There is no incentive in the system to cooperate, and there are no checks on those who wield power. The only thing that could make a difference is the constitution, but that is a long-term process weighed down by its own problems. So the political arena has devolved into partisan bickering, score settling, and overwrought charges.

A democratically-oriented movement has nowhere to turn to make its voice heard, except the streets and the press—leading to a shrill tone to public debate. Most political actors simply have no options other than complaining in the media to pursue their agendas.

Most of the acrimonious political debates in Egypt today are deeply aggravated by the absence of any tacit understandings among political actors. When Islamists had a clear parliamentary majority, there was not even a vague set of understandings about what the majority could and could not do. They regularly found themselves charged with "overreaching" simply because they voted in favor of their own motions. Nor was it clear what the prerogatives of minority groups were; as in many Arab parliaments the speaker played a very strong role in determining the agenda, and the speaker at the time, while a fairly conciliatory figure, was still a Brotherhood member. Rather than slowly building traditions of majority-minority relations, the parliament seemed to be a breeding ground for charges and countercharges.

Perhaps had it been given more time—and especially if attention had been diverted from the plenary to the quieter work of its committees—such trust and traditions could have been built.

Wild charges are now the staple of Egyptian political discussions. No matter what any actor does at this point, its actions can be cast in lurid terms by its critics. This goes for the United States, which has accumulated quite a body of critics over the years. American diplomats have reacted with some wonder how a U.S. policy approach that they see as designed to communicate that they have no favorites in Egypt is quickly seized upon so that every political actor sees the United States not simply as hostile but as largely responsible for turning events in Egypt in their opponents' direction.

In an interview with Mohamed Morsi a few years ago, I heard him put forward a conspiratorial explanation of the September 11, 2001 attack on the World Trade Center. I can take no solace in the poetic justice that he himself is now regarded—by sophisticated political actors—as a figure who stole the presidency through vote fraud abetted by the United States. But U.S. diplomats need not flatter themselves here: suspicions involving Qatar, Saudi Arabia, Israel, and other international actors are bandied about in a similar manner. The underlying problem is not a cultural penchant for conspiracy theories or an unnatural appetite for histrionics but a political environment that offers few rewards or even possibilities for reaching across ideological divides.

There are many political figures in Egypt who have impressed me with their ability in private conversation to take a more charitable view of opposing political leaders and search for common ground. And they occasionally venture forth with public initiatives designed to build on common ground. But such leaders have few footholds in the current political structure.

There is simply little incentive or even venue for workmanlike cooperation and consensus with parliament disbanded, the presidency and the Brotherhood more focused on the military than on building relations with other civilian political actors, those other actors shut out of top state institutions, and a cabinet of unknowns in which observers are sometimes reduced to guess political

inclinations of ministers based on their facial hair. Lines of command, responsibility, and accountability are either opaque or absent.

Will Egypt's civilian politics continue to consist of ineffectual flailing and overheated rhetoric? There are two possible areas where this pattern may be broken. The first is the constitutional process—one which is proceeding with a surprising degree of speed and consensus. Second, Egypt's new political actors are themselves undergoing significant change. Both the Brotherhood and the Salafis made the transition to electoral politics fairly quickly. The movements are simply more political than they were in the past. The question is how much that will affect their long term structures and goals.

Quiet Transitions Among Egyptian Political Actors

If it is difficult to argue that there is a clear "democratic transition" underway in Egypt. It is still the case the society and the political order are certainly undergoing quite significant long-term changes. In addition to those occurring within the state, Egyptian social and political actors are evolving. The Brotherhood, Salafis, liberals, the military, the security apparatus, and other affected groups are seeking to participate in the reshaping of the basic institutions. And because Egyptians are likely to continue to be summoned to the polls, trends in Egypt's political actors and their likely electoral performance bear close watching. It may be seen as a hopeful trend that major actors are learning to cast their demands in political form, but it is still uncertain that they can do so in such a way that makes democratic politics (with its combination of coalition building and bare-knuckled competition) more likely.

Most significant here is the Brotherhood itself. The movement, cautious and cumbersome as it is, has made the transition to the post-revolutionary politics with surprising speed. But those who led the Brotherhood's plunge into the political arena may have only the vaguest knowledge about how to steer where the organization is going. Accounts of splits and fissures in the movement are generally greatly exaggerated, but the Brotherhood will necessarily change deeply because it is operating in a very different environment than the one it had so laboriously adapted to in the last century.

When the movement reemerged in the 1970s and 1980s, it took the tight organizational bonds and broad social engagement of its original model and forged them into an organization that could operate in a semi-authoritarian environment. It ran in elections knowing it would lose them; it maintained a balance between its political and nonpolitical activities; and it built a set of governing structures that could maintain movement discipline and sustain it through the repressive bouts that it suffered periodically.

All this has changed. The Brotherhood now has a primarily political profile; it controls the presidency; its performance in parliamentary and professional association elections has been impressive; and it can pursue many of its political objectives in an open and legal manner. But the movement insists that it has never simply been about governing and politics. It has always valued disciplined and loyal cadres over mass membership and the top levels of the movement have been dominated by those who insist on taking a long-term and cautious view rather than tacking to the political opportunities of the moment. Will the Freedom and Justice Party (FJP) eventually supplant the Brotherhood as the locus of energy and dynamism? Will the necessary compromises of politics dilute the Brotherhood's ideological mission and goals?

The Brotherhood's current powerful position has led to the widespread talk of the "Ikhwanization" of the Egyptian state—certainly a hyperbolic term to use for what is likely to be a protracted political battle in the years ahead. The presence of multiple political and ideological orientations in many institutions suggest that any "Ikhwanization" of the Egyptian state that does take place will occur less through invasion from the presidency and more through internal struggles.

Other political forces face different but equally significant long-term pressures. Liberal political forces have to worry about how to build mass constituencies for the first time, a manner of thinking and organizing that does not come easily to them. And politics is already having some effects on Salafi movements. The ease with which they built electoral machines, crafted party platforms, and sketched out a political agenda may lead to overlooking the ways in which such sudden,

intensive,and relatively successful, participation can work unintended effects on a movement founded on study of and fidelity to core religious texts.

Already, a Salafi leader has been forced to lecture his fellows on the necessity to accept what is possible instead of insisting on what is desirable in the constitution drafting process—the kind of compromise that Salafi scholars and self-contained movements never had to make. And some Salafi leaders have also shown some initial signs of disenchantment with the political realm, though they do not seem to speak for the body of the movement.

For non-Islamists, the challenges are very different: they have yet to find a way to build electoral organizations or organize their constituents. In the parliamentary elections they were dealt a series of defeats. In the presidential elections they fared much better, but not by forging organizations that appear to be equipped for the long slog of regular elections.

Even if Egyptian politics continues to be characterized by strong authoritarian residues, lurking military and security forces, and weak mechanisms of accountability, the election of a new parliament should make a substantial difference in how the system operates.

Things Could Be—and Should Be—Worse

On a trip to Egypt in the middle of Ramadan, I was struck by the strong sense of frustration combined with deep suspicions that had set in across the political spectrum. Egyptians tend to speak of Ramadan in two ways. On a spiritual level, in Egyptian homes and hearts, it is a month of religiosity, reflection, and forgiveness. On a practical level, in Egyptian offices—especially in the summer time when days are hot and long—Ramadan can be a time of inefficiency, exhaustion, and orneriness. I have no doubt that the more elevated sense of the month was present in many Egyptians' lives. But it was close to invisible in the political realm.

Real change is still afoot in Egypt, and a full authoritarian reversion is unlikely. While the country is not following a linear transition to democracy, for all the uncertainties, dark suspicions, and irresponsible rhetoric of Egyptian politics today, there are still some reassuring elements. Few countries undergoing such profound struggles would be able to do so without even more people getting hurt; certainly few revolutions have generated more lawsuits over fundamental issues.

Libyans dragged their former leader's body throughout the streets; Egyptians dragged their former president on a stretcher into court. Russian president Boris Yeltsin turned tanks on his parliament; Egypt turned its judges on the country's People's Assembly. Syrians fight each other neighborhood by neighborhood for control of the country; Egyptians fight each other clause by clause over their country's constitution.

Much of the promise of the January 25 revolution has been squandered and the threat of a hollow democracy is real—with an elected president (perhaps eventually supported by a sympathetic parliament) slowly bargaining out the terms of his program with army generals, security officers, and senior civil servants, operating out of the public eye and without real democratic accountability. Yet it is still very far from inevitable. In Egypt's transition, much that could go wrong has gone wrong and still the country's basic institutions and its politics march on. Perhaps democracy can still follow.