

Egypt's dilemma: Democracy without democrats

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This article discusses the post-revolutionary crisis that has been haunting contemporary Egyptian politics since the downfall of the Mubarak regime in February 2011. It argues that the constitutional process has failed to achieve a political consensus among Egypt's political elite. Instead of trying to achieve a compromise, Egyptian political actors have tried to coerce their counterparts into accepting their values and political ideologies. Consequently, the current crisis is understood as a crisis of trust, which may cripple Egypt's political institutions for a long time to come.

On November 29, 2012, Egypt's indirectly elected Constituent Assembly completed the drafting of a new constitution. Even if only a minority of eligible voters showed on election days in December (voter turnout was officially at 32.9 percent), it was passed by a majority of 63.8 percent in a two stage referendum. While neither the constitution, nor the process of its development, nor the referendum approached Western standards of transparency and fairness, the democratic and liberal aspects of the constitution be difficult to challenge. Yet, Egypt is in a deep political crisis. The new constitutional order is challenged by liberal-secular protests, many of whom appear to have boycotted the election and therefore refused to endow legitimacy to the constitutional project. This situation raises questions about the viability of the transition to democracy that the downfall of the Mubarak regime two years ago heralded.

In fact, the current Egyptian crisis reveals a number of post-authoritarian concerns that have haunted Middle East scholars for more than 20 years. Over the past two years Egypt consistently appeared in a state of disorder with extraordinary levels of street participation. From the original election schedule, over the role of the supreme Field Marshal Mohamed Tantawi, to the constitutional project and presidential decrees that gave extra-judicial powers to President Mohamed Morsi, there does not appear a single issue that the new state institutions can authoritatively decide. Tens of thousands of Egyptians regularly protest in the streets of Cairo, and hundreds have been killed in post-revolutionary violence, adding to the 840 victims of the Feb 25, 2011 revolution. Such clashes are not only taking place between security forces and protesters, but also between Egyptian civilians of Coptic, secular, leftist and Islamist orientations.

The Constituent Assembly

The constitutional process was meant to draft the first democratically legitimated constitution in the history of the Arab world. A Constituent Assembly was elected by the democratically elected parliament, from which members of the old guard and the former single party National Democratic Party were excluded. In November 2011 and January 2012, Egyptians voted a two-third majority of Islamists from both the Muslim Brotherhood under Mohamed Morsi (Freedom and Justice Democratic Alliance) and a new Salafi party called Al Nour into the parliament, with 37.5 and 27.8 percent of the popular vote respectively. Very soon thereafter, the parliament elected the Constituent Assembly that was to draft the new constitution. The constituent assembly reflected the new political landscape that the parliamentary election created. A majority of Islamic conservatives dominated the assembly. A minority of secular and leftist individuals led by Mohamed Elbaradei, Amr Moussa, as well as Hamdeen Sabahi opposed this majority, and feared an incremental transition to, and implementation of Islamic inspired law and legislation.

Both groups and their supporters in the streets invariably took strength from being the legitimate inheritors of the Egyptian revolution, which the opposing group was

trying to undermine. Islamists correctly claim to represent a majority of Egyptians that the Mubarak regime had suppressed; secular liberals correctly claim that it was primarily due to the liberals' protests that the Feb 25 revolution was successful. Given the emotional attachment of Egyptians to the overthrow of the ancient regime, this explains some of the emotional outbreaks and violence that have characterized street protests over the last months.

At the political level, the struggle over the content of the constitution made the constituent assembly contested from its inception by members of the non-Islamist parties in parliament. Liberal, i.e. non-Islamist members in the Constituent Assembly, as well as members of the judiciary and judges with access to the supreme council of the armed forces (SCAF) also opposed the Islamist-dominated 100 member Constituent Assembly. An early boycott of the Constituent Assembly led to the dissolution of the first Assembly in April 2012 by the Supreme Court, officially because half of its members of the constituent assembly were also members of parliament, and because it was 'unrepresentative'. For example, it only included six women and five Copts. A new Assembly was swiftly negotiated, in which 50 seats were freely elected by members of the parliament, and the remaining 50 seats distributed to members of the Al Azhar Mosque, the Coptic Church, members of the judiciary, and the armed forces amongst others. This was to guarantee a more representative character, especially because the quota of parliamentarians was reduced to 39. Yet, even this compromise proved fragile, when the content of the constitutional project became known. It became clear that the different groups would be unwilling to reach a consensus on especially the Islamic content of the constitutional draft. Consequently, the liberal-secular-leftist groups engaged in a power struggle with the Islamists, using as a threat to dissolve the constituent assembly for a second time by using the courts, again due to the double-membership of parliamentarians in the Constituent Assembly. In turn, Islamists threatened to draft a constitution using majority voting and to represent it to the Egyptian people in a referendum, believing correctly that it could secure a majority of yes votes. As it turned out, both groups were not issuing empty threats. Mohamed Morsi's majority quickly drafted and presented the referendum on November 29 before a new court ruling on the Constituent Assembly was to be made. Meantime, members of the secular-liberal opposition around Mohamed ElBaradai, as well as the Constituent Assembly's Coptic members boycotted the meetings, depriving the constitutional draft the legitimacy that its writers sought.

The Constitution

The constitution's content is controversial on at least four accounts. First, Article 219 provides that "the principles of Sharia include general evidence and foundations, rules and jurisprudence as well as sources accepted by doctrines of Sunni Islam and the majority of Muslim scholars." Islam is often used as a legislative principle even in allegedly secular Muslim states, such in Egypt's preceding constitution or in Iraq's in which Article 3 stipulates that "no law may be enacted that contradicts the established provisions of Islam." Yet, the precision with which Article 219 elaborates on "rules and ju-

risprudence" may well mean that in the new Egypt Islamic texts will be given more preeminence than in the more casual mentioning of Islam elsewhere. Second, while the 51 articles devoted to personal freedoms may be in line with a new liberal spirit, these appear counterbalanced by explicitly outlawing any "insults to prophets and messengers" (Article 44), reinforced by an elevated position of Al Azhar Islamic scholars on questions of Sharia. Third, although democratic principles are assured through elections, these are not the only sources of state power. Instead, Shura, i.e. Islam-based advice, is equally seen as a source of state power. Fourth, women's rights and equality are not explicitly mentioned in the constitution, opening the door for more restrictive, Islam-based interpretations of women's rights by a conservative, Islamist-dominated legislative body and presidency.

It needs to be pointed out that even without these constitutional principles, an Islamist-dominated parliament and government will still be able to elevate Islamic forms of morality to a higher level than under the preceding government. Yet, these constitutional provisions underscore the power of conservative Egyptian parts of society and their political forces. Even a more liberal-minded judiciary will have difficulties to contain this political force with these constitutional principles. As a result, the doors are wide open for more restrictive laws that can no longer be viewed as anti-constitutional.

In this context, it is probably not so much the contentious content of some of the articles that has fed the struggle in the streets. In fact, a liberal reading of the constitutional articles may not worry constitutional lawyers too much. Rather, it is the willingness of the opposing groups to force a particular point of view onto the other group that is a cause for concern. In this regard, the courts have in the past been used by opposition groups to force a more liberal constitution onto the majority of Islamist parties. The same means are now being used by the governmental parties: The opposition leaders Mohamed ElBaradai, Amr Moussa and Hamdeen Sabahi have recently been accused of planning to overthrow the government by the newly appointed chief persecutor. Given the low voter turnout in the referendum, the opposition will very likely continue the power struggle by calling for new protests, prolonging the governmental crisis for much more time to come.

Conclusion

The past two years of political disorder are indicative of the social splits that go far beyond the apparent liberal vs. Islamist division with the army serving as a king maker. Clearly, this alone reminds observers of the Turkish para-democratic experience over the past 50 years. Yet, the role of Islam in politics is an issue that masks many others: From the protection of religious minorities, women's rights, and liberal values, over social equality and welfare, to questions of social order and morality. These are all issues on which there appears to be little if no consensus at all among the Egyptian public. In addition, due to political maneuvering and struggles, the potential for political flexibility is fast diminishing and the fronts are fast hardening. Taken together with the long-term implications of the outcome of the current crisis, politics appears to be unable to find compromises and resolve conflicts. Rather, these conflicts are being ac-

centuated by the current elected majority of Islamists as decisions may in the long run impose some values over those of others. Ironically, this is what the liberal opposition is seeking as much as the Islamist-led presidency under Mohamed Morsi.

Consequently, this short analysis suggests that as long as the Egyptian political elite is as divided as it is and without any trust in their political opponents, the core problem of post-authoritarian attempts to create a legitimate political order is likely to linger for a lot more time to come. While such divisions could be functional in creating a new pluralistic order, under the current circumstances this lack of trust may soon end any hopes for a new democratic Egypt. This problem is a continuation of what some twenty years ago Middle East scholar Richard Waterbury called the problem of "democracy without democrats", i.e. how the democratic rules of the game are undermined by actors that have neither democratic ambitions nor a liberal culture.¹ While in the past, "democracy without democrats" remained a hypothesis, the current struggle over constitutional rights and the rules of the game reveals a clarification and ways in which indeed, there appears a lack of committed democrats in the current struggle for power. Yet, it would be too simple to relate this to the role of Islam. The post-authoritarian democratic transitions in Eastern Europe saw populist-nationalists often win electoral contests with very few democratic ambitions either. The democratic transition in Egypt faces similar uncertainties.

¹ Waterbury, Richard: 'Democracy without Democrats. The Potential for Political Liberalization in the Middle East' in Salame, Ghassan (ed): *Democracy without Democrats. The Renewal of Politics in the Muslim World* (London and New York, IB Tauris, 1994).