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6

Legal Reforms, the Rule of Law, and Consolidation of State Authoritarianism under Mubarak

Nathalie Bernard-Maugiron

Demonstrators standing in Tahrir Square and all over Egypt in January and February 2011 were calling for Mubarak to step down from power and for his presidential powers to be curtailed. The 1971 Constitution as well as illiberal political laws regulating political parties, elections, NGOs, the press, or trade unions were blamed for increasing the president's powers. In his last speech to the nation, on February 10, 2011, Hosni Mubarak seemed to remain fully confident in law and its legitimating power when he addressed his people's calls for resignation and for genuine political reform by enumerating a list of constitutional provisions to be amended. Two days after assuming power from Hosni Mubarak on February 11, 2011, the Supreme Council of the Armed Forces decided to suspend the 1971 Constitution, dissolve the parliament and appoint a Constitutional Amendment Committee to reform the constitutional provisions dealing with parliamentary and presidential elections. On March 19, 2011, the constitutional amendments were adopted by referendum and on March 30, 2011, a constitutional proclamation was adopted for the transitional period. There was a general consensus among opposition forces and civil society not to reinstate the 1971 Constitution, considered as an instrument of repression of the former regime. However, although liberal and secular forces were pushing toward drafting a constitution ahead of the parliamentary elections, the Supreme Council of the Armed Forces decided to stick to the time frame set out by the constitutional amendments and to hold the parliamentary elections

before drawing up a new permanent constitution. The Supreme Council of the Armed Forces, which seized power by mounting an unconstitutional military coup d'état,[1] seems anxious to show its respect for the rule of law, in the same way that its predecessors, and in particular president Hosni Mubarak, have always done. However, the council is accused of not having dismantled the autocratic legacy of the Mubarak regime and of reproducing similar authoritarian laws and practices to maintain power (Amnesty International 2011).

Egypt's leaders and its Constitution have constantly proclaimed their fealty to the "rule of law" (*siyâdat al-qânûn*). Turning away from the socialist and Arab nationalist themes that dominated official discourse in the 1960s and part of the 1970s, Egypt's rulers increasingly buttressed their claim to legitimacy by reference to formal legality and constitutional texts.

And, in recent years, leaders had added a second claim: that they were working to reform the political system to make it more democratic and accountable. For instance, until 2011, the official Web site of Egypt's State Information Service was offering an entry for "political reform," which advanced bold claims:

> Egypt has been a scene of a series of landmark steps to introduce political reforms for promoting democracy in Egypt and paving the way for a new phase of political work going in line with the economic, social and cultural developments in Egypt and world approach on democracy, freedoms and human rights.[2]

The statement followed this boast by listing a series of legal amendments adopted between 2005 and 2007 to enhance that new trend toward political reform. And indeed, the issue of reform had moved to the center of the political debate in Egypt. The official discourse claimed that political liberalization was in process and that laws had recently been revised to reflect this commitment to democracy.

Observers were skeptical. Was Egypt really a society in which the rule of law was prevailing, and where the march of political reform was leading the country to a more liberal, democratic future? In *Beyond the Facade. Political Reform in the Arab World,* Marina Ottaway wondered how important these changes were in the Arab world:

> Are they meaningful reforms, as the governments claim, or are they simply placebos offered by authoritarian regimes in an attempt to pacify domestic and international public opinion, as the opposition often argues? In other words, are the reforms significant or cosmetic? (Ottaway 2008, 2)

This chapter argues that the claims to the rule of law could not be completely dismissed, but they were taking on a very different meaning when the content of the prevailing laws was examined with care. It argues, as well, that changes of a sort were occurring, though they were hardly democratic in spirit or effect. Instead, the legal changes touted as providing for political reform had the precise opposite effect: they were writing authoritarian practices more deeply into the Egyptian constitutional, legal, and political order. Each change seemed carefully designed to accomplish two goals: to mimic the general language and conceptual categories of liberalizing political reforms and to use specific provisions to undermine any moves toward more liberalized political practice. Each challenge to the regime as it had come to operate, each center of opposition, each gap in existing authoritarian practice was being met with a legal response. When Egyptian state actors were following the law, they thus were doing so not in any manner that moved the country toward greater democracy; the "rule of law" had become an instrumental tool in the hands of the rulers.

Legal reform and respect for the rule of law are a prerequisite to safeguarding individuals from arbitrary rule, but, as the Egyptian case illustrates, the supremacy of law is not sufficient to guarantee democracy. In Egypt, law was referred to by rulers with utilitarian purposes. The government was claiming to be promoting the rule of law and legal reform but, in fact, was only seeking ways to increase its internally and externally challenged legitimacy and its hold on power. Before the fall of Hosni Mubarak in February 2011, in what was considered as a transition phase, with an aging president facing the prospect of releasing his grip on power, the regime tried to increase its command over all the levers of control to deter possible challengers and allow the new president—the president's son?—to confront a possible period of instability and challenge to its own legitimacy.

Setting aside the discrepancies between legal provisions and practice (which did occur, to be sure, but became far less necessary when the law was thoroughly authoritarian in its detailed provisions), this chapter focuses on the use of the rule of law by rulers to increase their hold on power. It will also highlight the real agenda of the regime hidden behind the official discourse. Through an analysis of antidemocratic legal reforms adopted at the end of the Mubarak regime in the political field, of the official discourse supporting them, and of the surrounding debates, it will show how law formally ruled in Egypt, particularly in the political field, but only to assert

through an allegedly political reform the government's powers. It should also help better understand the calls of the Egyptian people for Mubarak to step down and for his authoritarian powers to be curtailed.

For that purpose, I analyze the legal amendments to political laws mentioned on the SIS official Web site that allegedly introduced political reform: multicandidate presidential elections (under the 2005 constitutional amendment and presidential elections law); the amendment of the Law on the Exercise of Political Rights; the amendment of the People's Assembly Law; of the Consultative Council Law; of the Political Parties Law; and the constitutional amendments of 2007. I analyze this package of legal reforms to assess whether the commitment to political reform was real or whether it was only cosmetic. Since laws have to be implemented, it is particularly important for authoritarian rulers to control those in charge of supervising their implementation: judges. I therefore add to the analysis a study of the amendments introduced to the Judiciary Law in 2006, which, though not listed on the SIS Web site, were also presented officially as part of the process of democratization to ensure a better separation of powers, though they allowed the Executive Authority to retain the means to interfere in the affairs of the judiciary.

The Double Face of Constitutional Changes

Two sets of constitutional amendments adopted under Mubarak—the first issued in 2005 and the second in 2007—can be studied together.[3] They were officially justified by the need to modernize the Constitution and to re-establish balance between the state powers. A careful reading of the changes that were introduced offers another perspective.[4] Not only did the amendments not alter the distribution of power, but they even increased the authoritarianism of the state.

A Consolidation of the Balance of Powers?

One of the main criticisms directed at the 1971 Constitution by its opponents before and after Mubarak's fall was its extreme centralization of powers in the person of the President of the Republic. In his request for constitutional amendments dated December 26, 2006, the President of the Republic claimed that the amendments would consolidate the balance of power between the branches of the government through a redistribution of the competences within the executive authority and an increase in the

powers of the parliament. He added that the independence of the judiciary would also be enhanced. He maintained that the purpose of the amendments was to modernize the Constitution and "strengthen our constitutional framework, deepen our process of democratic development and support our democratic process."[5]

Reallocation of Powers within the Executive

Some of the 2007 amendments were presented as aiming to establish a better allocation of powers within the executive authority "by expanding the competencies of the Council of Ministers and the extent to which it participates with the President in the exercise of the executive authority."[6] Thus, the President of the Republic now needed the approval or the opinion of the government before making some important decisions.[7] Similarly, the powers of the prime minister were also strengthened by the fact that he would replace the president in case of the latter's temporary incapacity to exercise his functions and if no vice-president had been nominated.[8] The President of the Council of Ministers would also be consulted before adopting exceptional measures in the framework of Article 74 of the Constitution. Finally, the President of the Republic would have to consult the President of the Council of Ministers upon nominating or dismissing members of his government.[9] However, the head of government would simply give an opinion.

If a few of the powers of the president had decreased following these amendments, he was still keeping the most important ones, be it in the executive, legislative, or even judicial fields. He was still the one who assumed the executive power,[10] declared the state of emergency,[11] and served as commander-in-chief of the armed forces.[12] He could still propose laws to the parliament[13] and even enact laws by decree.[14] He promulgated the laws and could use his right of veto.[15] He also nominated the general prosecutor, the presidents of the Court of Cassation and of the Supreme Constitutional Court, and served as the head of the Council of Judicial Bodies. In the prevailing political context, in addition, it was doubtful that the prime minister, nominated and dismissed by the President of the Republic, would venture to refuse to support his decisions.

Strengthening the Legislative Authority

According to President Mubarak, another objective to be achieved through constitutional reform was "reorganizing the relationship between both the

legislative and executive powers in order to achieve greater balance between them and enhance the Parliamentary supervision."[16] In that spirit, the assembly could now adopt a motion of no confidence without submitting the conflict to the people through a referendum.[17] However, the President of the Republic retained his right not to accept the government's resignation. In such a case, the People's Assembly could vote again, with a two-thirds majority, for confidence withdrawal, and the president would then have to accept the government's resignation.

Practically speaking, the seeming increase in the ministerial accountability to Parliament had little meaning; no parliament has ever withdrawn its confidence from any government in all of Egypt's modern history. And, with the president head of the majority party in the parliament, it seemed unlikely that deputies would now decide to use a tool that their predecessors had lacked the will to employ. In the unlikely event that they would have moved against the ministers, Article 136 was also amended to authorize the dissolution of the People's Assembly without a referendum[18] (making it far less burdensome for the head of the state to do away with a parliament that bucked his will.)[19]

According to the new Article 133, the President of the Council of Ministers was to submit to the People's Assembly the program of his cabinet within sixty days of the date of its formation, or at its first meeting should the assembly not be in session. If the assembly did not approve his program by the majority of its members, the president could accept the resignation of the cabinet. Should the assembly not approve the program of the new cabinet, the President of the Republic could dissolve the assembly or accept the resignation of the cabinet. Previously, the President of the Council of Ministers used to submit the program to the assembly after its formation, at its ordinary inaugural session. The latter debated the program, without a specification in the Constitution of the possibility of rejecting it. According to President Mubarak, this reform was adopted with the objective "to strengthen the role of the People's Assembly by giving it the right to give or refuse confidence in the Government selected by the President."[20]

The financial powers of the People's Assembly were strengthened and the chamber was now authorized to modify the expenditures contained in the draft public budget.[21] Its power of control over the final account of the state budget had also been increased.[22] The 2007 amendments equally strengthened the powers of the second parliamentary assembly, the Consultative Council, whose approval and not only opinion was now required on certain occasions.[23]

If the constitutional amendments had increased the powers of the parliament it is difficult to imagine, however, that in the political context of

the Mubarak regime, the two assemblies dominated by the ruling National Democratic Party (NDP) would have withdrawn confidence from the government or brought substantial modifications in the draft budget. Besides, even though some powers of the parliament had been increased, the regime had the means to control the parliamentary elections and therefore the composition of the assembly, as we will see.

Enhancing the Independence of the Judiciary

The President of the Republic also promised, during his electoral campaign in 2005, to strengthen the independence of the judiciary and abolish some exceptional courts. He stressed the need, in his speech of December 26, 2006, to enhance "the independence of the judiciary through the dissolution of the Supreme Council of Judicial Bodies, and the office of the Socialist Public Prosecutor, and consequently the Courts of Values."[24]

In June 2008, more than a year after the adoption of the constitutional amendments, the office of the Socialist Public Prosecutor[25] was finally abolished and its powers were transferred to the Ministry of Justice's Illicit Gains Office (IGO) and the General Prosecutor. The Courts of Values, a quasi-judicial body established by President Sadat as part of a wave of deliberalization, were to disappear as soon as they had ruled on all the cases pending before them.[26] The transfer of competence from the Socialist Public Prosecutor and the Courts of Values to the ordinary judiciary strengthened the right to a fair trial and the right to be judged before one's natural judge.

Yet these concessions were less than they initially appeared. The real impact of the abrogation of the Socialist Public Prosecutor, for instance, was limited, since after having been deprived in 1994 of most of his powers, his only remaining sphere of authority had been the investigation of high-profile corruption cases and sequestration of funds to finance compensation for families of victims. Removal of this last function from the Socialist Public Prosecutor was not a victory for the judiciary; the task was taken on by the Illicit Gains Office, which is not a judicial body.

Besides, other exceptional courts were still in existence in Egypt and new exceptional jurisdictions were even to be created with the adoption of an antiterrorist law, or the field of competence of military courts might have been enlarged. State Security Courts (emergency) still existed. Manipulation of the status of special "security" courts had been a longstanding technique to feint in liberalizing directions while maintaining authoritarian tools. The State Security Courts (emergency) could be established when a state of emergency was declared and disappeared when the state of emergency was lifted. There was no appeal or cassation against their decisions. In May

1980, when the state of emergency declared in June 1967 was lifted, the State Security Courts (emergency) disappeared. On the same day, though, President Sadat created new, permanent security courts (unlinked to the state of emergency). They worked until they were abolished in 2003 after a public announcement made by Gamal Mubarak, the son of the ruling president, who failed to mention, however, that the emergency State Security Courts, even more dangerous for individual liberties, were still in place.

Similarly, military courts still existed, and their law was amended in April 2007. The amendments provided for an appeals court to decide on appeals filed by the military prosecution or by individuals sentenced by military courts. This appeals court, however, was made up of a board of military judges and stripped ordinary courts of their powers. On top of this, the 2007 amendments left the door wide open for the referral of civilians to these military courts.

According to the constitutional amendments, a new judicial council was to be established, to replace the former Supreme Council of Judicial Bodies.[27] In November 2007, a first draft was prepared by the minister of justice, defining the composition, competences, and rules of procedure of that council. In the face of the unanimous criticisms addressed to that text, including the fact that it would have questioned the immunity of judges, the President of the Republic requested its withdrawal in the end of November 2007. A new draft was prepared and adopted in June 2008.[28] As was the case with the previous draft, the minister of justice sat as a member of the council and was its deputy president, meaning he was to preside over the council in the absence of the President of the Republic. Besides, the law did not delineate clearly the council's powers, which could lead to an extension of its competencies.[29]

Although, according to the official rhetoric, the 2007 constitutional amendments were introduced to ensure a better balance of powers, in the end they did not bring major change in the distribution of powers within the executive authority and between the executive and the legislative, nor did they really limit the competences of the President of the Republic. The structure of the regime was not affected and the executive branch still dominated. Even worse, some constitutional amendments had increased authoritarianism.

Or Reinforcement of State Authoritarianism?

Indeed, the constitutional amendments were not limited to the cosmetic. Some of them actually strengthened the authoritarian character of the regime

by devising legal tools to marginalize politically two groups that had caused headaches for Egypt's rulers in the first decade of the twenty-first century: the Muslim Brothers and judges. And they further paved the way for adoption of an unconstitutional antiterrorist law.

The End of Judicial Supervision of the Elections

The 1971 Egyptian Constitution had placed supervision of elections under the judiciary, but the meaning of the provision was contested and most aspects of electoral administration remained within the executive branch. But starting in 2000, following a landmark decision of the Supreme Constitutional Court,[30] the electoral process was placed under the supervision of members of judicial bodies and not of ordinary state employees any more.[31] After the 2000 elections, which they supervised fully for the first time, judges denounced a series of problems: Voters in certain constituencies had been physically prevented by security forces from reaching polling stations; voters' lists included many irregularities; and heads of polling stations had been prevented from announcing the results in their constituencies and from delivering a copy of the voting results to the candidates.[32] In 2005, judges entered into open conflict with the government, threatening to boycott the supervision of the 2005 presidential and parliamentary elections if a minimum guarantee of electoral transparency was not given.

In 2007, the constitutional provision that provided for full judicial supervision of the elections was amended, to get rid of judicial supervision. The new Article 88 provided that the main polling stations should be headed by members of judicial bodies, whereas nothing was specified concerning auxiliary polling stations where the balloting was taking place. These stations were therefore placed under the supervision of state employees, as had been the case before 2000. Moreover, it was now stated in Article 88 that balloting should be conducted in one single day, "in order to avoid the problems associated with a drawn out election observed during past experiences,"[33] a matter that rendered the spreading of elections over several weeks, as had been the case in 2000 and 2005, impossible. An electoral commission was also established to supervise the whole balloting process. It was to be chaired by the president of the Cairo Court of Appeals and to be comprised of active and retired judges and four independent persons, not affiliated to any political party, chosen by the two parliamentary assemblies.[34]

President Mubarak justified this reform by claiming that it would "facilitate the management of the ongoing increase in the size of the electorate, and the concomitant increase in the number of polling stations."[35] Besides, judges' participation in the electoral supervision was allegedly at the

expense of their main responsibility, which is to decide cases.[36] Similarly, the amendment would be intended to protect judges' dignity from the verbal and even physical aggression they had been subjected to in 2005.[37] It was also highlighted that judicial supervision of auxiliary polling stations had not prevented accusations of electoral fraud from being raised.[38]

Reformist judges replied that the stance they had taken during the balloting, far from hurting their dignity, had enabled them to secure the support of public opinion.[39] They suggested reducing the number of polling stations and underlined that elections only take place every five years and that their participation would therefore not have negative consequences on the promptness of examining litigation. Moreover, the disruption to the judicial calendar could be minimized by scheduling elections during a holiday or during the summer judicial recess. Judges feared that the amendments would bring about a relapse to the past fraudulent practices such as stuffing the ballot boxes, collective voting, or voting by others. And these fears were borne out in the 2010 parliamentary polling, in which all the old abuses, predictably, returned.

Toward an Unconstitutional Antiterrorist Law

In his 2007 request for amendment of the Constitution, President Mubarak called for the adoption of a new provision "in order to establish a legal framework to combat and uproot terrorism, and to act as a legislative alternative to the state of emergency."[40] The new Article 179 of the Constitution allowed the legislature to adopt an antiterrorist law, specifying that the legislators would not be restricted by three fundamental constitutional guarantees, dedicated respectively to the prohibition of arbitrary arrests, requirement of a judicial warrant for home visit, and the protection of communications.[41] This meant that a person accused of being a terrorist could be arrested and imprisoned, his communications could be spied on, his mail opened, and his home violated without any prior judicial authorization.

The measures were to be submitted to judicial supervision, but a posteriori. In addition, according to new Article 179 the President of the Republic would be able to choose the court before which a suspect would be tried, as long as it was mentioned in the Constitution or in the law. It could be an ordinary one but it would most probably be an exceptional jurisdiction, such as military courts, state security courts created by the government under a state of emergency, or even new courts created by the upcoming antiterrorist law. The regime was thus able to continue to try civilians before exceptional courts, as was the case under the state of emergency.[42]

If lifting the state of emergency, in force since 1981, had been among the main demands of civil society, NGOs feared that this new measure would

enshrine current practices in law even if the state of emergency was formally ended. Indeed, if the state of emergency had been lifted, the antiterrorist law would simply have taken its place and would have been equally as threatening to individual liberties, if not more so, as the 1958 Law on the State of Emergency. Moreover, this new law would be permanent, whereas the state of emergency was supposed to be only temporary, prone to be lifted one day or the other. And nothing prevented the state of emergency from being declared again in the future.

Since the Constitution expressly authorized the legislature to violate its own Articles 41, 44, and 45, challenging the constitutionality of the antiterrorist law on such grounds would not have been possible. The opposition, NGOs, and even judges[43] feared that the adoption of a wide interpretation of the concept of "terrorism" may have brought about the application of the law against all political opponents to the regime.[44] The state maintained that it was following the example of several Western states such as the United States, France, and Great Britain who, after September 11, 2001, had all adopted antiterrorist laws.[45]

Legal Means to Marginalize the Muslim Brotherhood

Three constitutional amendments aimed, in one way or another, to marginalize the Muslim Brotherhood politically.

First, it was now forbidden by the Constitution to establish political parties or even conduct political activities on a religious basis. A new paragraph was added to Article 5 for that purpose:

> Citizens have the right to form political parties in accordance with law. It is not permitted to pursue any political activity or establish any political parties within any religious frame of reference (*marja'iyya*) or on any religious basis or on the basis of gender or origin.

President Mubarak justified this amendment, declaring:

> It is inappropriate that a state whose history is characterized by national unity and which boasts of the cohesion of its people should distribute benefits and permit political and national action on any basis other than citizenship exclusively and without discrimination on the basis of religion, gender or origin.[46]

It was also maintained that the amendment did not aim at diminishing the role of religion in society or at adopting a secular perspective. The

Muslim Brotherhood accused the regime of closing all avenues to their legal recognition.

Legally speaking, this prohibition was not new, since it was already provided by Law No. 40/1977 on Political Parties, as amended by Law No. 177/2005.[47] The difference rested in the fact that, so far, only the formation of political parties on religious bases was banned, although now the prohibition targeted any political activity and was extended to simply any "reference" to religion. In addition, the prohibition was raised one rank in the hierarchy of norms since it was now included in the Constitution.

A second constitutional amendment could prevent the Muslim Brotherhood from running as candidates in the parliamentary elections. President Mubarak had requested that Article 62 of the Constitution be amended

> with a view to empowering the legislature to devise an electoral system which will permit the greatest representation of political parties in the People's Assembly and the Consultative Council, and that will promote women's effective participation in political life and in both houses of Parliament.[48]

The new Article 62 of the Constitution authorized the parliament to adopt an electoral system combining the individual and the party list systems, at such a ratio as may be specified by the law. The People's Assembly could then decide to leave out, entirely or partially, the two-stage single candidate majority system, in force since 1990, and replace it with a proportional voting system. The assembly could also decide to reserve to political parties the right to submit lists of candidates. The Muslim Brotherhood, not being recognized as a political party, would then not have been able to enroll in elections, although they had won nearly 20 percent of the People's Assembly seats in 2005. They would have had to build alliances with opposition parties in order to be included in their party lists.[49]

Finally, if the Constitution was amended in 2005 and 2007 and now provided multiparty presidential elections, the conditions for entering candidates into presidential elections were such that no candidate from the Muslim Brotherhood could have run.[50] Article 76 of the Constitution had been amended in 2005, to establish presidential elections by direct ballot for the first time in order to "revitalize our political life and strengthen pluralism and political parties, with a view to promoting strong and effective parties that would enrich our political experience."[51] It put conditions on the candidacy for presidency, establishing a distinction between political party and independent candidates. According to Article 76, independent candidates, that is,

persons not affiliated with any political party, needed the support of at least 250 elected members from among the People's Assembly, the Consultative Council, or regional councils in the governorates. Besides, this support had to include at least sixty-five members of the People's Assembly, twenty-five of the Consultative Council, and ten of the regional councils in at least fourteen governorates. In 2005, not a single independent candidate could fulfill such conditions and enroll for the presidential elections. The Muslim Brotherhood had won eighty-eight seats in the People's Assembly during the 2005 parliamentary elections; hence, they would have been able to have secured the sixty-five required signatures. But they did not have any elected member to the Consultative Council and very few in the regional councils.[52] They would therefore not have been able to secure the required signatures and run a candidate for the presidential elections that were due in 2011.

Besides, if the conditions established for candidates representing political parties were eased in 2007,[53] those for independent candidates were not revised.

Nathan Brown and Michele Dunne (2007) consider that

> taken together, the amendments and process by which they were passed constitute an effort by the Egyptian regime to increase the appearance of greater balance among the branches of government and of greater opportunities for political parties, while in fact limiting real competition strictly and keeping power concentrated in the hands of the executive branch and ruling party. (1)

A similar conclusion could be drawn from recent amendments to political laws, which, too, were considered as mainly window dressing.

Cosmetic Character of Legal Reforms

Several political laws, enacted prior to Mubarak's regime, were amended at the end of his reign, allegedly to enforce political reform. Most of the amendments, however, were devoid of democratic content.

Control of Political Parties through the Political Parties Law

Law 40 of 1977, on political parties, regulates their formation. It was amended in July 2005, after the adoption of the constitutional amendment to Article 5.[54] The amendments addressed the establishment and operation of parties.

In Egypt, under Mubarak's regime, political parties could not operate legally without a license from the Political Parties Committee (*lajna shu'un al-ahzâb al-siyâsiyya*). The 2005 amendments allegedly lightened the criteria that political parties were required to meet to achieve government recognition. They removed the condition that a new party had to be in line with the principles of the 1952 Revolution and the May 1971 Revolution and that it adhere to the socialist gains. These changes were in line with the suppression two years later of all references to the socialist character of the Egyptian economy in the 2007 constitutional amendments, following the privatization process and open door economic policy launched by Egypt after the 1970s.

The requirement that the party conform to the principles of the Islamic *shari'a* was also deleted. It was now requested that any political party, in its principles of platforms, in practicing its activities, or in selecting its leadership or members, not be based on religious grounds, in addition to the class, sectarian, categorical, and geographical grounds previously forbidden. The 2005 amendment added that the party should not be based on manipulating religious feelings. This amendment was clearly directed toward political groupings relying on a religious basis, such as the Muslim Brotherhood.

The law had previously required the party to show that its program differed substantially from those of existing ones (*tamyiz zâhir 'an al-ahzâb al-ukhra*). This condition was abrogated. It was replaced by a requirement that the party platform constitute "an addition to political life" (*tumaththil idâfa li-l-hayâ al-siyâsiyya*), according to specific methods and goals. The difference between constituting "an addition to political life" and having a program "substantially distinct from other political parties" was rather narrow, and both were subject to the subjective assessment of the committee.

The conditions to be fulfilled to establish a party remained vague and general and therefore open to interpretation by the members of the Political Parties Committee, making it easy to reject any demand for the creation of a new party, on political grounds.

A request for licensing had to be supported by a certain number of citizens. Since 2005, it was to be signed by at least one thousand constituent members, drawn from at least ten governorates with no fewer than fifty members from each. The law had previously requested fifty founding members and required that half of them be peasants or workers. The government justified this amendment by the fact that it would ensure that emerging parties be serious and based on far-reaching levels of public support. The law also required that the names of the founding members be published in at least two daily newspapers, which meant a substantial amount of money.

The 2005 amendments also reshaped the composition of the Political Parties Committee. It was made up of the Speaker of the Consultative Assembly, the ministers of Interior and Parliamentary Affairs, three former heads or deputy heads of judicial bodies, and three public figures not affiliated with any political party, chosen by the President of the Republic for three renewable years. While there were thus some changes—the law increased the number of committee members from seven to nine and removed the minister of justice from the committee—its composition still included high personalities of the ruling party (the Speaker of the Consultative Assembly, two ministers) and the six other members were chosen by presidential decree. All of them, as before, would most probably be close to the ruling party.

The long standing demand of opposition parties was that the committee be scrapped or, at least, that its membership be balanced by the addition of representatives of opposition parties, even more since the powers of the committee had not decreased after the 2005 amendments. The committee was examining the requests for establishment of new parties. A refusal of establishment had to be supported with reasons. Since 2005, the committee was to issue its decision within ninety days following the date of submission of the request. The expiry of that period without a decision of the committee was deemed a meaning of no objection to its establishment. Previously, the committee had had to release its decision within four months of presenting it, and if no decision was issued it was considered an objection. Now, parties would be considered automatically licensed if the committee did not object within ninety days. The committee could also freeze and dissolve a party.

If the amendments made it easier for new parties to be established, opposition parties and groups, however, were calling for the committee to be dismantled and for the right to be granted to establish political parties simply by notifying the government. Submitting the creation of political parties to the authorization of the regime was a clear restriction on the freedom to form parties.

The amendments also changed the composition of the appeals court ("Party Circuit Court") that heard appeals against refusals by the Committee. It was to be made up of five counselors of the first circuit of the Supreme Administrative Court of the State Council joined by five public figures (*shakhsiyyât 'âmma*). These latter were now to be selected by a decision of the minister of justice, subject to the endorsement of the Supreme Council for Judicial Authorities, from among a list of public figures known for their efficiency and good reputation, aged no less than forty years. They could not be members of the legislative authority. Previously, the five public

figures had been appointed by the Ministry of Justice and tended to be drawn from the NDP.

Political parties still had the right to issue newspapers to express their opinions, but following the 2005 amendments, they would no longer be entitled to publish more than two papers. The law previously had not stipulated a limit. This restriction was justified by the minister for parliamentary affairs as necessary "to prevent some parties from selling or renting their previously unlimited number of press licenses to outlawed organizations like the Muslim Brotherhood."[55]

Three Other Legal Amendments to Political Laws

In July 2005, the 1956 Law on the Exercise of Political Rights was also amended.[56] The amended law established a Supreme Electoral Commission (*lajna ʿulya li-l-intikhabât*) to supervise parliamentary elections. This commission was abrogated and replaced by a High Commission (*lajna ʿulya*) following the 2007 constitutional amendments and a new amendment to the 1956 law.[57]

The 2005 amendment also required that voters dip their finger in an ink removable only twenty-four hours after balloting and put their signature or fingerprint on the voters' roster. However, the law did not require secrecy of the ballot or the presence of curtains in the polling stations. It only requested: "The voter shall take aside to one of the assigned places for balloting within the same election room."[58] Also, the law did not provide for the results to be announced by the heads of auxiliary polling stations; they were to be announced only on the level of the constituency, by the head of the general election committee, and the final results of the elections were to be announced by the chairman of the Supreme Electoral Commission.

The law also stipulated penalties for using violence against members of the electoral commission with the intention of preventing them from performing their assigned duties or forcing them to do so in a special way, and any other practices that might affect the election process. Any person whose name was listed on the election rosters, who failed without excuse to cast his vote in the election or referendum, was to be penalized with a fine. However, this penalty had never been implemented in practice.

The People's Assembly[59] and Consultative Council laws[60] were also amended in 2005 to "enhance the democratic practice of the citizens to guarantee full freedom of expression for the citizens and re-regulate the election propaganda to guarantee fairness of the elections."[61] The amendments established conditions regarding electoral campaigns, among them: commitment to maintain national unity and abstention from using religious slogans; refraining from using or threatening to use violence; prohibition of offering gifts or promising to offer directly or indirectly donations, aid in cash or in kind, or any other benefits; prohibition of using state-owned, public sector, or public business sector–owned buildings, facilities, and means of transportation in the election propaganda in any form.

The requirement to abstain from using religious slogans was clearly directed against the Muslim Brotherhood and their slogan "Islam is the solution" (*islam huwa al-hall*). In practice, members of the ruling NDP were accused by opposition groups as well as NGOs and observers of having themselves violated many of these prohibitions.

Since Egyptian rulers were claiming they were in a process of political reform and governed by law, they needed to keep a tight control on those in charge of implementing legal provisions: judges.

Respect for the Rule of Law and Judicial Independence

Egyptian judges have always been loyal to the state and applied the laws adopted by the legislative power, even if they personally disagreed with their content. This appeared clearly, for instance, in 2005 when the State Council implemented the new Article 76 of the Constitution, even though they criticized the amendment.[62] Egyptian judges are also traditionally politically liberal and most of them reject any interference by the executive authority in judicial affairs, as the conflict with the Judges Club that took place in the end of Mubarak's regime showed.

Reformist judges launched a protest movement in 2005, calling for free elections and real judicial independence. Their movement ended up pushing the authorities to amend the Judicial Authority Law No. 46/1972 in June 2006. However, the amendments were far from meeting judges' expectations. If actual changes were introduced to diminish the powers of the minister of justice regarding court supervision, or the rights to address warnings and discipline judges, and if the law now attributed an independent budget to the judicial authority, the executive power, however, kept the means to intervene in the affairs of the judiciary. The composition of the Supreme Council of the Judiciary, in charge of supervising the entire judicial system (judicial promotions, salaries, transfers, and disciplinary actions) was not amended and its seven members continued to sit ex officio because of the position they held in the judicial hierarchy.[63] Moreover, some of them

remained appointed by a decision of the President of the Republic, such as the President of the Court of Cassation and the General Prosecutor.

Reformist judges demanded that the President of the Court of Cassation be selected by secret ballot by the General Assembly of that court. They also wanted the Judicial Inspection Department to be placed under the control of the Supreme Council of the Judiciary and not the Ministry of Justice. This department, in charge of proceeding with the technical evaluation of judges and presidents of courts of first instance as well as members of the prosecution, prepares the annual judicial "movement" project (rotation of judges). Having this department under the control of the Ministry of Justice left the door open to possible abuses, since a judge reticent toward ministerial instructions would have risked a negative evaluation that might have had harmful consequences on his career.

Judges also stressed the need to reform the conditions of temporary assignment and secondment abroad, which they considered threatening to their independence. One of the means to sanction an intractable judge was to transfer him to nonjudicial functions. Conversely, one of the means of rewarding a judge particularly compliant with the regime was to nominate him to administrative functions in a ministry, where his salary was far beyond comparable to his colleagues working in courts. Upon returning to judicial functions, such a judge would support, quite often, the best interests of the ministry where he had served. Similarly, judges could be seconded to a foreign government or to international organizations.[64] Work in a foreign country, in particular Gulf countries, is very lucrative for Egyptian judges whose stipends are low. A judge in the Emirates, for instance, will earn in one month what he would get in one year in Egypt. These assignments were distributed to judges in return for compliance with government interests.[65]

The independence and autonomy of judges also assumes the absence of internal pressures in decision making. Respect for such a principle requires guarantees of autonomy vis-à-vis the hierarchy, particularly court presidents. Besides addressing warnings to judges under their jurisdiction, court presidents could advise the general prosecutor to activate disciplinary action against them. Moreover, while Law No. 46/1972 entrusted the composition of the different circuits and the allocation of judicial matters among them to the general assemblies of the courts, that same law authorized the assemblies to delegate all or part of their powers to their presidents. In practice, every year general assemblies of all courts, regardless of their degrees, used to extend an absolute delegation of authority to their presidents, delegating fundamental attributions such as the composition of the circuits or the distribution of cases among them. According to judges, this allowed the assignment of a specific judge to decide on a specific case, though the distribution of cases should have been mandated according to general and abstract rules.

In April 2007, the Law on the Judiciary was amended again, to postpone the age of mandatory retirement of judges from sixty-eight to seventy, a measure the Judges Club had already opposed several times. Reformist judges accused the government of tailoring this amendment to reward and maintain in their powerful positions some pro-government judges who had neared retirement age, including the presidents of the Court of Cassation, of the Cairo Court of Appeals, of the State Council, and of the Supreme Constitutional Court.[66] At the same time, the amendment prevented young reformist judges from occupying high-ranking posts within the judiciary.[67] The revision was justified by the government as benefiting from the experience of veteran judges[68] and speeding up the flow of court cases. Reformist judges replied that the older one gets, the less active his mental capacities.[69] Besides, most senior judges exercise administrative and leadership responsibilities, and do not sit on the bench any more.

Secondment to administrative bodies and ministries also gave the state the means to keep control over counselors of the State Council, the court in charge of ruling on the legality of administrative acts. As to the Supreme Constitutional Court, after having enjoyed a "golden age" in the nineties, it had taken less and less bold positions in deciding on the constitutionality of laws. The chief justice of that court was appointed directly by the President of the Republic and starting from 2001, the head of the state had been choosing presidents from outside the Court. For instance, in 2006 he appointed the former general prosecutor to that position. Besides, after the constitutional amendments of 2005, the chief justice headed the Presidential Electoral Commission, in charge of supervising presidential elections. This very political position could not but infringe upon his independence. The appointment in 2006 of the then chief justice as minister of justice, after his controversial role as head of the Electoral Commission during the 2005 presidential elections, was considered by reformist judges as a way to thank him for the positions taken by the commission.

When the executive authority did not manage to get the judicial decisions they were expecting, they still had a way to obstruct their execution, particularly those of the State Council. They used legal devices instead of refusing openly to enforce the decisions. They resorted to the procedure of *ishkâl*, or stay of execution, which suspends temporarily the execution of a ruling. The decision of the State Council, given against the interest of the government, was challenged before ordinary courts, and pending the decision of that ordinary court the execution of the ruling was suspended.

When the ordinary court decided on the case, it declared itself incompetent, since ordinary courts cannot examine challenges against rulings given by the administrative ones. But in the meantime, the decision of the State Council had been suspended. This legal device was used particularly in times of elections, when the State Council denied to certain candidates the right to stand for election. The ruling of the State Council was challenged by the government before ordinary courts and, pending the decision of incompetence of that court, the ruling was suspended, allowing the candidate to run for election. Once elected, he became a member of the People's Assembly and it was up to that assembly to decide on the validity of his election.[70]

An Elusive Reform That Consolidated State Power

The government had embarked on an effort to project a reformist image through legal reform. On the surface, some constitutional or legal amendments may have appeared to be part of a liberalization experiment and to have given the impression of political change. This was the case, for instance, with the election of the President of the Republic by the people. The limited increase in the power of the government and of the parliament, though, had not seriously limited the dominance of the president. The constitutional reforms had not affected the reality of the political system, where real power remained with the head of the state. They produced the impression of change without altering the centralization of power.

These reforms had generated more debate than actual democratization and had not opened up Egypt's political system. They had been more cosmetic than consequential, and the distribution of power had remained unaltered. They had not produced any dramatic change in political life. The government pretended that these reforms were significant components of a process of democratization. Yet, it had embraced the idea of political reform to increase its legitimacy but in reality was not committed to any change. As stated by A. Hawthorne (2004), "They introduce measures that they believe will benefit their image in the outside world and may buy them time domestically but that do not infringe on their own power and prerogatives" (15).

Actually, to describe the reforms as purely cosmetic does not go far enough. While the process of legal and constitutional change did not result in democratic change, it served to reinforce the regime's power. Orchestrated from the top, the changes consolidated political power in the executive and increased authoritarian hegemony over political life.

Genuine political reform would have tackled other legal provisions. For instance, several constitutional provisions should have been amended, to render democratization promises a reality, such as Article 77, which placed no limits on the number of presidential terms,[71] or Article 93, which entitled the People's Assembly, in case of challenge against the manner in which a candidate had been elected to that body, the right to decide on the validity of the mandate of that member.[72]

The reform allowed the regime to stop the emergence of new centers of powers that were becoming a potential threat. Judges and Muslim Brothers were the main victims of the constitutional amendments. The press was next, with the amendment of the press law and confirmation of the right to jail journalists for press offenses. The NGO law, adopted in 2002, was probably on the row to increase state control further. There was no urgent need to amend the law on professional syndicates, since the amendments that took place in 1993 and 1995 already allowed paramount control of these other centers of powers.[73] In the transition of power period Egypt was going through, the government wanted to close all avenues before the emergence of new centers of powers.

The adoption of an antiterrorist law would probably have confirmed that trend. Official discourse would have emphasized the fact that the state of emergency would be lifted after twenty-five years, but probably no emphasis would have been put on the adoption at the same time of a dangerous antiterrorist law.

These laws and others of a repressive nature were not necessarily implemented, and similar cases were not always treated similarly. Some journalists could cross the red line without being prosecuted. Others could cross it several times and then suddenly charges would be brought against them. Human rights NGOs could write strong reports denouncing violations of human rights in Egypt, until some of them were suddenly closed. Some reformist judges could be referred to the disciplinary council for having criticized the government in newspapers and on satellite channels, while no disciplinary procedures were taken against others. This succession of tolerance followed by sudden application of the law also represented a great threat to civil society, which never knew what to expect.

Conclusion

Egypt's political system under Mubarak's regime was legalistic by nature and respected the formalist conception of the rule of law. Egypt had a

Constitution that promoted separation of powers, established a parliament, and organized elections to choose its members. The state avoided violating laws openly, and, rather, amended them when they became inappropriate to achieve its purposes. In that case, however, repressive new provisions were often hidden behind official political statements based on political reform and the rule of law to increase the state's internal and external legitimacy.

Rule by law and formal respect for the principle of legality do not necessary lead to democracy and protection of civil liberties. The state may rule through law, be subject to law, but still not be a democratic state. The rule of law can be promoted in order to improve the state apparatus' ability to control social and political movements. Instead of limiting the powers of the rulers, the law may even, on the contrary, strengthen their control over individuals and the society. For the rule of law to really limit state power and increase civil freedoms, the substance itself of the law has to be democratic. A substantive, not merely formal, concept of the rule of law should therefore be adopted.

Through its promises for change, the government recognized implicitly that political reform was necessary and that the regime was not democratic. On February 11, 2011, Vice President Omar Suleyman announced that President Hosni Mubarak had decided to step down from the office of president and to transfer its powers to the Supreme Council of the Armed Forces. After suspending the 1971 Constitution, the council decided to appoint a commission to amend Articles 76, 77, 88, 93, 189, as well as any article it saw fit, to guarantee democracy and the integrity of presidential and parliamentary elections, and to abrogate Article 179 of the Constitution. On March 19, 2011, a national referendum ratified the constitutional amendments drafted by the commission The conditions to stand for presidency were lightened, so that only thirty endorsements from members of elected bodies are required for presidential candidacy, instead of 250, or the endorsement of thirty thousand voters. Parties with at least one elected seat in Parliament may also nominate one of their members in presidential elections (Article 76). The Presidential Elections Commission remains headed by the president of the Supreme Constitutional Court and its decisions are still final and not subject to any kind of appeal. Article 75 established the conditions to run for presidency: being Egyptian from Egyptians parents, not holding or having held another nationality, and not being married to a foreign wife (and what about a female candidate married to a foreign husband?). Article 77 was amended to limit the presidency to two four-year terms. Article 88 re-established full judicial supervision of the elections. Article 93 stipulated that complaints against elections be referred

to the Supreme Constitutional Court (whose president is nominated by the President of the Republic and chairs the Presidential Elections Commission) instead of the Court of Cassation and that the court will issue final and binding decisions. Article 148 was amended to limit the duration of a state of emergency. Article 189 provided that the newly elected parliament should appoint a one-hundred-member commission to amend the Constitution but did not specify whether these members should be chosen from within the parliament. Article 179 providing for an antiterrorism law was abrogated. A few days later, on March 24, 2011, the Supreme Council of the Armed Forces issued a law banning protests, strikes, and sit-ins that "damage the economy," which will remain in force as long as the state of emergency applies. The political parties law was also amended. Parties can now be legally registered by notifying the Political Parties Committee. If the committee does not raise objections within thirty days, the party can continue its activities. If it raises objections, they must be referred within eight days to the Supreme Administrative Court. The Political Parties Committee shall now be formed of seven judges.

The amendments increased the minimum number of potential members required to form a political party from one thousand to five thousand, which means it will be difficult for new political movements to gain that much support before the parliamentary elections, and requested that party founders publish their names in two widely circulated dailies, which can be extremely expensive. The prohibition of the establishment of political parties on the basis of religion remained, but did not prevent Muslim Brothers and Salafists from establishing political parties. Only a very few provisions of the Political Parties Law were amended and its illiberal spirit remained. On March 30, 2011, the 1971 text was replaced by a temporary constitutional proclamation consisting of sixty-two articles, most of them reproducing provisions of the 1971 Constitution. That constitutional proclamation, which included the nine previously amended provisions submitted to referendum, was not submitted to a public referendum itself. It gave constitutional legitimacy to the Supreme Council of the Armed Forces, which was not mentioned in the 1971 Constitution, by giving it presidential and legislative powers until a new parliament and president are elected. If constitutional and legal provisions remained central in the political struggle after the fall of Mubarak (Moustafa 2011; Bernard-Maugiron 2011), the constitutional and legislative amendments adopted by the transitional government failed to address and reform structural issues in either the Constitution or political laws.

"Down with Tantawi," and, "Down with the military rule," chanted the demonstrators in Tahrir Square in November 2011, demanding a

power handover and calling for the withdrawal of the head of the Supreme Council of the Armed Forces, protesting against its mismanagement of the transitional phase and against the return of prerevolutionary practices. The Supreme Council of the Armed Forces is accused of reproducing the old regime's repressive practices to rule the country and keep control on power, of placing restrictions on freedom of expression, association, and demonstration, of extending the scope of the state of emergency, trying civilians before military courts, resorting to torture and unfair trials, and abstaining from prosecuting policemen accused of killing protestors. Besides, by trying to enshrine a special status for the military in Egypt's new Constitution through the adoption of supra-constitutional principles, the council is using law for authoritarian purposes. The Supreme Council of the Armed Forces is blamed for not having fulfilled its promises to protect the goals of the revolution and for having committed numerous violations of human rights and freedoms. Will the success of Islamist parties in the parliamentary elections allow for the rule of law to replace the rule by law? But the questions now are: What rule? And for what law?

Notes

1. According to Article 84 of the Constitution of 1971, in case of the vacancy of the presidential office or the permanent disability of the President of the Republic, the Speaker of the People's Assembly, or the Chief Justice of the Supreme Constitutional Court, in case the People's Assembly was dissolved, was to assume temporarily the presidency.

2. http://www.sis.gov.eg/En/Politics/reform/040600000000000001.htm (hereafter SIS).

3. For a detailed analysis of the 2005 and 2007 constitutional amendments, see Bernard-Maugiron 2008.

4. Amnesty International described the 2007 amendments as the "greatest erosion of human rights" since the declaration of the state of emergency in Egypt in 1981 (Amnesty International 2007).

5. Request for constitutional amendments addressed to the parliament by President Hosni Mubarak, December 26, 2006 (hereafter "Request for constitutional amendments"). For an official English translation, see http://constitution.sis.gov.eg/en/bul01.htm.

6. Request for constitutional amendments, n5.

7. Article 138 of the 1971 Constitution as amended in 2007.

8. Article 82 of the 1971 Constitution as amended in 2007.

9. Article 141 of the 1971 Constitution as amended in 2007.

10. Article 137 of the 1971 Constitution.

11. Article 148 of the 1971 Constitution.

12. Article 150 of the 1971 Constitution.

13. Article 109 of the 1971 Constitution.

14. Article 108 of the 1971 Constitution.

15. Articles 112 and 113 of the 1971 Constitution.

16. Request for constitutional amendments, n5.

17. Article 127 of the 1971 Constitution as amended in 2007.

18. According to Article 136 of the 1971 Constitution, the People's Assembly could be dissolved by the President of the Republic in case of necessity. Until 2007, the people had to be consulted by referendum.

19. The assembly was not, however, to be dissolved twice for the same reason.

20. Request for constitutional amendments, n5.

21. Article 115 of the 1971 Constitution as amended in 2007.

22. Article 118 of the 1971 Constitution as amended in 2007.

23. Articles 194 and 195 of the 1971 Constitution as amended in 2007.

24. Request for constitutional amendments, n5.

25. Sadat had established the position of Socialist Public Prosecutor in 1971, and Law No. 95/1980 on the Protection of Values against the Shame had instructed it with the persecution of anyone who would endanger the "fundamental values of society." Since the amendment of that law by decree-law No. 221/1994, his chief responsibility consisted of instructing and accusing before the courts of values any violations that would justify imposing sequestration, in other words, matters basically related to corruption. For a study of exceptional courts in Egypt, see Bernard-Maugiron 2007.

26. Article 4 of Law No. 194/2008 abolishing Law No. 95/1980 on the Protection of Values.

27. The Supreme Council for Judicial Bodies was created in 1969 by Presidential Decree No. 82, as a retaliatory measure against judges who had been highly critical toward Nasser's anti-liberal governmental policy and reluctant to adhere to its one-party Arab Socialist Union. It was chaired by the President of the Republic and composed of the Minister of Justice and the presidents of all judicial bodies.

28. Law No. 192/2008 adopted on June 22, 2008.

29. See for instance Arab Center for the Independence of the Judiciary and the Legal Profession, "Egypt: the Draft Law on the Council of Judicial Bodies is a New Violation of Judicial Independence," Cairo, June 11, 2008.

30. Supreme Constitutional Court (SCC), Case No. 11/13, 8 July 2000, *Collection of Decisions of the Court*, Vol. 9, 667ff, decided that Article 88 of the Constitution according to which "the ballot shall be conducted under the supervision of members of judicial bodies" meant that all polling stations had to be presided over by a member of a judicial body, not only the main ones where the counting of the votes was taking place at the end of the day, but also auxiliary ones where the voting itself was organized.

31. Many NGO reports denounced either active or passive participation of those small employees in electoral frauds.

32. For an analysis of the consequences of judicial supervision on the 2000 parliamentary elections, see Ben Néfissa and Arafat 2005.

33. Request for constitutional amendments, n5. Since the 13,000 members of judicial bodies were not sufficient to head more than 50,000 auxiliary polling stations, the territory had been divided into three groups of governorates, and parliamentary elections in 2000 and 2005 took place in one group after the other, over several weeks.

34. Law No. 73/1956 on the Exercise of Political Rights as amended in May 2007.

35. Request for constitutional amendments, n5.

36. *Al-Dustur*, January 17, 2007.

37. *Ruz al Yusif*, November 15, 2006.

38. *Uktubir*, January 28, 2007.

39. Vice-President of the Court of Cassation, *Al-Ahram Weekly*, January 25–31, 2007.

40. Request for constitutional amendments, n5.

41. Article 179, as amended, stipulated: "The State shall seek to safeguard public security to counter dangers of terror. The law shall, under the supervision of the judiciary, regulate special provisions related to evidence and investigation procedures required to counter those dangers. The procedure stipulated in paragraph 1 of Articles 41 and 44 and paragraph 2 of Article 45 of the Constitution shall in no way preclude such counter-terror action. The President may refer any terror crime to any judicial body stipulated in the Constitution or the law."

42. In accordance with Article 6 para. 2 of Military Law No. 25/1966. The President of the Republic sent not only extremist and violent Islamist groups before military courts, but also members of the Muslim Brotherhood accused of participating in the activities of a prohibited organization.

43. President of the Alexandria Club of Judges, *Nahdat Misr*, March 21, 2007.

44. *Al-Musawwar*, March 23, 2007.

45. Ibid.

46. Request for constitutional amendments, n5.

47. Article 4 prohibited the recognition of political parties founded on a religious basis or on the manipulation of religious feelings.

48. Request for constitutional amendments, n5.

49. As similarly had been the case in the 1980s when, for the first time, the proportional party list system had been established.

50. Besides, the Constitution established a very controversial Presidential Elections Commission headed by the Chief Justice of the Supreme Constitutional Court, whose decisions could not be challenged before any court, in flagrant contradiction of Article 68 of the Constitution, according to which no administrative decision may be given judicial immunity.

51. Request for constitutional amendments, n5.

52. Local elections set for 2006 were postponed for two years. They took place in March 2008. The NDP won about 95 percent of the seats. The Muslim Brotherhood decided to boycott the elections to protest against the fact that most of their candidates were denied the right to run in the elections.

53. Political parties having effectively exercised their activities for five consecutive years before the opening for candidacy could submit a candidate chosen among the members of their supreme council, in conformity to their internal regulations, provided that such a candidate had been seated at the council for at least one consecutive year. The party, however, had to have obtained at least 3 percent of the parliamentary seats in the People's Assembly and Consultative Council, or the equivalent number of seats in one of both, to be able to run a candidate (instead of 5 percent of parliamentary seats in both the People's Assembly and the Consultative Council, as originally stated in 2005) in the latest elections. Exceptionally, parties that had obtained at least one seat in the People's Assembly or Consultative Council at the last elections were allowed to designate a candidate for all presidential elections that would take place between 2006 and 2016.

54. Law No. 177/2005 of July 2005, amending some provisions of Law No. 40/1977 regulating the political parties system.

55. "A Controversial Law," *Al-Ahram Weekly*, July 7–13, 2005.

56. Law No. 173 of July 2, 2005.

57. Article 62 of the 1971 Constitution, as amended.

58. Article 20 of Law No. 73/1956 Law on the Exercise of Political Rights, as amended.

59. Law No. 175 of 2005 amending some provisions of Law No. 38 of 1972 on the People's Assembly.

60. Law No. 176 of 2005 amending some provisions of Law No. 12 of 1980 on the Consultative Council.

61. SIS, n1.

62. In High Administrative Court (September 6, 2005), the court vigorously criticized new Article 76 of the Constitution, which it deemed in contradiction to Articles 68 and 172 of the Constitution and strongly urged the constitutional legislator to reexamine this provision in order to bring it into conformity with the established principles pertaining to the prohibition of depriving an administrative decision from the control of the administrative judge.

63. According to Article 77 bis of Law No. 46/1972, as amended in 1984, that Council was composed of the President of the Court of Cassation, the President of Cairo Court of Appeals, the general prosecutor, the two most senior vice-presidents of the Court of Cassation, and the two most senior vice-presidents of the courts of appeals.

64. Upon a decision of the President of the Republic, with the advisory opinion of the general assembly of the court to which the judge belongs or of the general prosecutor and with the agreement of the Supreme Council of the Judiciary.

65. *Al-Dustur*, May 10, 2007.

66. *Al-Misri al-Yawm*, February 2, 2007. Five members out of seven of the Supreme Council of the Judiciary would have reached the retirement age in 2007 (*al-Dustur*, April 26, 2007).

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Legal reforms, the rule of Law, and consolidation state authoritarianism under Mubarak

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