Caught in the Cross Fire:  
Egypt’s Judiciary in a Revolutionary Age  

Nathan J. Brown*

Egypt’s tumultuous uprising of 2011 was about many things, but among the most central was a demand by legions of political activists and large crowds of mobilized citizens that public authority in the country be reconstructed to operate in a clearly accountable manner, fully governed by the rule of law. Among the political battles in the years leading up to the 2011 revolution, Egypt’s authoritarian rulers had won a tactical victory in the middle of the decade against a group of dissident judges and their many political backers—but in 2011, those same rulers suffered a strategic defeat. Critical judges and their allies in the political opposition had their attempt to bring about a judicial law to their liking deflected in the middle of the preceding decade and dissident judges were marginalized. But the image of leading judicial figures protesting regime behavior certainly undermined the regime’s image both internationally and domestically. And the struggle placed rule of law issues in the center of political discussions. Demands for an independent judiciary, implementing court judgments, ending exceptional courts, and terminating the use of military courts to try civilians have been nearly consensual demands across the political spectrum in Egypt. And when a neutral agency is needed for a critical state function (most notably for oversight of elections), it is often the judiciary that Egyptian political forces have become accustomed to turn to. The Egyptian judiciary is shown in poll after poll to be among the state’s most trusted institutions.

Egyptian judges might therefore be expected to look upon the post-uprising environment as a time when they can finally realize a vision that they have been articulating for a generation in the face of an imperious and impervious presidency: a state ruled by law in which they will be insulated from political pressures and private interests, providing full autonomy to individual judges and to the judiciary as a body to issue decisions that will be respected and implemented by all the agencies of the Egyptian state.

But rather than finding themselves in a sacrosanct position, in the wake of the Egyptian revolution, judges are politically exposed, uncertain of their future, with some concerned not only for their institutional autonomy but even for their physical security. An effort to legislate the demands for an independent judiciary in the form of a new judicial law has embroiled them in internal battles and external rivalries. Over the long term, the effort will nevertheless likely bear fruit, and ultimately judges will likely obtain some version of the autonomy they are pressing for. But the political implications of this step may be far less clear than its proponents anticipate: the independence of the judiciary—as proposed legislation currently conceives it—may form part of a trend toward balkanizing the Egyptian state in a manner that will

* Professor of Political Science and International Affairs George Washington University.
be provide for a more liberal and pluralistic order but also one that is less coherent and democratic than Egyptians currently realize.

1 STRIVING FOR JUDICIAL INDEPENDENCE

The regime that Egyptians are now attempting to dismantle was built in the years after 1952 in a thoroughly authoritarian manner that placed all levers of control in a series of presidents who ruled Egypt for just short of six decades.

For some time after the 1952 coup that brought that system into being, however, the bulk of the judicial apparatus was left alone. When Egypt’s authoritarian rulers wanted a verdict, they constructed special tribunals or moved outside the judicial structure altogether rather than subordinating the regular judiciary to their political will. Only in the late 1960s, in the last years of Gamal Abdel Nasser’s presidency, did the regime mount a concerted effort to fold the judiciary under firm presidential control: a new “Supreme Court” was created by decree staffed by presidential appointments, a “Supreme Council of Judicial Organizations” was given authority over administrative matters as well as appointment and promotion (and effectively placed under executive oversight), and a group of over 100 judges who had used the Judges Club (until then largely a social organization) to support calls for political reform were dismissed. Yet over the next decade and a half, Nasser’s two successors, Anwar Sadat and Husni Mubarak, rolled back many of Nasser’s moves.

The regime retained, to be sure, the old ways of moving outside of the judiciary with a series of special courts and extrajudicial procedures. But they allowed much of the court system to regain its autonomy. The Supreme Court evolved into a more independent Supreme Constitutional Court that actually issued a long series of rulings quite politically inconvenient for the regime from the mid-1980s until the early 2000s. The Supreme Council of Judicial Organizations was deprived of most of its jurisdiction and leading judicial bodies (the administrative court systems, for instance, as well as the regular court system) were given considerable autonomy in their own affairs. Most of the dismissed judges were rehired. And the judiciary was given some ancillary responsibilities (such as supervision of balloting in the country’s 1971 constitution).

But some judges, activists, and intellectuals chafed at the remaining elements of executive influence over judicial affairs. In a variety of structural ways, the Ministry of Justice and the presidency retained some influence—the Ministry, for instance, in some administrative matters, and the presidency through some appointment powers (the chief justice of the Supreme Constitutional Court, for instance, was a presidential appointment; when the Court became overly independent, President Mubarak abandoned his practice of turning to the most senior justice and instead brought in presidents from outside the Court who helped tame the body).1