

## **Military Electoral Authoritarianism in Egypt**

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## I. Introduction

Authoritarian regimes hold elections not to democratize, but to maintain the status quo.<sup>2</sup> Egypt is no exception. As far back as the 1970s, Egypt’s multiparty electoral system has been a democratic façade.<sup>3</sup> As President Anwar Sadat shifted Egypt’s external alliance from the Soviet Union to the United States and marginalized Abdel Nasser’s socialist base, he proclaimed his commitment to political liberalization. In holding Egypt’s first multiparty elections—albeit tightly controlled through an electoral scheme that always guaranteed his party’s victory—Sadat transitioned Egypt from one party into multiparty electoral authoritarianism.<sup>4</sup>

The neoliberal business class would dominate Egypt’s political elite for the next forty years, with the military holding sway behind the scenes. In exchange for loyalty to the authoritarian state, this neoliberal elite was allowed to siphon off state resources.<sup>5</sup> Elections became the elite’s mechanism for rent seeking. As such, parliamentarians had privileged access to government ministries to expediently obtain licenses, permits, and public contracts for themselves and their constituents.<sup>6</sup> They engaged in corruption while immune from criminal prosecution due to their elected official status.<sup>7</sup> An interdependency thus arose between the political elite and the executive.

President Hosni Mubarak continued Sadat’s legacy with a few key differences. The most important being that the influence of the military in political affairs waned as domestic security forces became the primary coercive arm of the authoritarian state. Moreover, Mubarak pruned his son Gamal to become the next president, and as a result, elevated Gamal’s business cronies to key executive and legislative positions. Over time, the military, while still a key political stakeholder, was marginalized from the center of power.

After three decades of Mubarak’s authoritarian rule, millions of Egyptians took to the streets on January 11, 2011 to protest rigged elections, corruption, police abuse, poverty, and political repression. After one of the most fraudulent parliamentary elections in Egypt’s history took place in 2010, Egyptians

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<sup>2</sup> Barbara Geddes, *Why parties and elections in authoritarian regimes?*, Paper Presented at the Annual Meeting of the American Political Science Association, Washington, D.C. 10 (Sept. 1, 2005) (unpublished manuscript, on file with the American Political Science Association), [http://convention2.allacademic.com/one/apsa/apsa05/index.php?click\\_key=1&obf\\_var=9030533&PHPSESSID=9kk8lq768ek95ldcea8q7d0p0](http://convention2.allacademic.com/one/apsa/apsa05/index.php?click_key=1&obf_var=9030533&PHPSESSID=9kk8lq768ek95ldcea8q7d0p0); Jennifer Gandhi & Ellen Lust-Okar, *Elections Under Authoritarianism*, 12 *Ann. Rev. Pol. Sci.* 403, 413 (2009).

<sup>3</sup> Lisa Blaydes, *Authoritarian Elections and Elite Management: Theory and Evidence from Egypt*, Paper Presented at the Princeton University Conference on Dictatorships 5–6 (Apr. 25–26 2008) (unpublished manuscript on file with Princeton University), <https://www.princeton.edu/~piirs/Dictatorships042508/Blaydes.pdf>; Daniel L. Tavana, *Party proliferation and electoral transition in post-Mubarak Egypt*, 16 *J. N. AFRICAN STUD.* 557 (2011) (noting that Sadat signed Egypt’s first law, Law 40 of 1977, establishing the right of Egyptians to create political parties).

<sup>4</sup> Blaydes, *supra* note 3, at 6; Hala G. Thabet, *Egyptian Parliamentary Elections: Between Democratization and Autocracy*, 31 *AFR. DEV.* 12 (2006) (noting Egypt held its first multiparty elections in 1976).

<sup>5</sup> Blaydes, *supra* note 3, at 8.

<sup>6</sup> Gandhi & Lust-Okar, *supra* note 2, at 410.

<sup>7</sup> Gandhi & Lust-Okar, *supra* note 2, at 410; Blaydes, *supra* note 3, at 1.

called out electoral authoritarianism as a façade. Merely holding elections was no longer good enough to satisfy their desire for democracy. They sought systemic reforms that granted them meaningful self-governance, in the hope of stopping the mass embezzlement of state resources by the political elite.<sup>8</sup> Their demands were ultimately defeated when another former general, Abdel Fattah Al Sisi, took office as the president of Egypt.<sup>9</sup> Further undermining the mass uprising’s objectives, the military returned to the helm of governance under Sisi, reverting Egypt back to military electoral authoritarianism.

In the heady days after the 2011 uprisings, the military exploited Egypt’s populist uprisings to replace Mubarak’s business and domestic security elite with a military ruling elite. While multiparty elections remained a component of the authoritarian system, the military opted not to create a new dominant political party to manage intra-elite conflict and safeguard the military’s supremacy. Instead, Sisi has adopted a strategy of dividing Egypt’s parliament into hundreds of individual, self-interested candidates who could be easily coopted, bribed, or coerced into supporting his regime. It remains to be seen, however, whether this strategy will work in the long run as the economy deteriorates and populist discontent grows.<sup>10</sup> Without a political party to do its bidding, the military is likely to depend more on brute force against emerging opposition groupings.

This Article argues that the current regime under President Abdel Fatah Sisi has established a military electoral authoritarian state with a non-dominant party electoral system.<sup>11</sup> Coupled with Egypt’s long tradition of nepotism, cronyism, and patronage networks, the new election laws perpetuate a fragmented, depoliticized parliament wherein no mobilized opposition can take shape to challenge the military state. The cause of Egypt’s current depoliticization, however, is not a weak central party beholden to the presidency – as was the case under Sadat and Mubarak – but rather hundreds of rent-seeking parliamentarians with no party affiliation. Sisi intentionally structured the parliament to consist of over four hundred individual, self-interested actors who are vulnerable to bribery or coercion to keep them depoliticized and compliant. This strategy facilitates purging any parliamentary figures that emerge to challenge the executive.<sup>12</sup>

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<sup>8</sup> Eva Bellin, *The Robustness of Authoritarianism in the Middle East: Exceptionalism in Comparative Perspective*, 36 COMP. POL. 139, 148 (2004) (noting that spending on security was disproportionately higher than spending on education, welfare, and infrastructure at a time when Egypt was experiencing an economic crisis) [hereinafter Bellin, *The Robustness of Authoritarianism*].

<sup>9</sup> See Sahar F. Aziz, *Bringing Down an Uprising: Egypt’s Stillborn Revolution*, 30 CONN. J. INT’L L. 1, 17 (2014) [hereinafter Aziz, *Bringing Down an Uprising*]; Sahar F. Aziz, *Independence Without Accountability: The Judicial Paradox of Egypt’s Failed Transition to Democracy*, 120 PENN. ST. L. REV. (forthcoming 2016) [hereinafter Aziz, *Independence Without Accountability*].

<sup>10</sup> Valerie J. Bunce & Sharon L. Wolchik, *Defeating Dictators: Electoral Change and Stability in Competitive Authoritarian Regimes*, 62 WORLD POL. 48, 49 (2009) (arguing that poor economic performance decreases support for the regime, resulting in a heightened risk of populist revolt).

<sup>11</sup> Larry Jay Diamond, *Thinking About Hybrid Regimes*, 13 J. DEMOCRACY 21, 29, 32 (2002); Axel Hadenius & Jan Teorell, *Pathways from Authoritarianism*, 18 J. DEMOCRACY 143, 147–48 (2007).

<sup>12</sup> See, e.g., Declan Walsh, *Egypt’s Parliament Expels Lawmaker Who Dined With Israel’s Ambassador*, N.Y. TIMES (Mar. 2, 2016), <http://www.nytimes.com/2016/03/03/world/middleeast/egyptsparliamentexpelslawmakerwhodinedwithisraelsambassador>.

Unlike his three predecessors, President Abdel Fattah El Sisi has opted not to create a central party to manage elites and channel social opinion. Instead, he is relying on the military as the foundation of his elite coalition to manage intra-elite conflict, co-opt new elites, and suppress populist opposition. This shift has transformed Egypt’s political landscape in three ways. First, the military now overtly dominates in political and economic affairs. Second, fractured and weak political alliances are composed of small parties with divergent ideologies and self-interested individuals. Third, a coopted and conservative judiciary legitimizes the regime’s structure.

This Article begins by providing a theoretical framework for examining the specific ways in which Egypt under Sadat and Mubarak experienced electoral authoritarianism. It analyzes how election laws and the electoral system were changed after the mass uprisings of January 2011 to liberalize Egypt’s political system. Finally, it focuses on the Sisi era to demonstrate the specific ways election laws have been manipulated to produce a military electoral authoritarian state. Despite the elimination of the former dominant National Democratic Party (NDP) from political life, the executive in Egypt continues to control the political system, but this time the military is overtly at the helm of the ruling elite.

## II. Electoral Authoritarianism

An examination of contemporary politics in Egypt prompts the question: why would a dictator bother to hold multiparty elections? A robust political science literature discusses multiple typologies of authoritarian regimes that hold elections.<sup>13</sup> Electoral authoritarians systematically use elections as instruments in furtherance of their authoritarian rule, not to transition toward democracy.<sup>14</sup> While a full exposition of the literature is beyond our scope here, a brief discussion of hybrid regimes, including electoral authoritarianism, provides a theoretical lens for analyzing Egypt’s electoral system today.<sup>15</sup>

Elections in authoritarian regimes do not change who rules the nation. Rather, they determine membership in the dictator’s elite coalition.<sup>16</sup> As Lisa Blaydes’s work highlights, competitive parliamentary elections are the regime’s mechanism for distributing rents and promotions in exchange for political loyalty and obedience.<sup>17</sup> Elections preempt the inevitable conflicts that arise between individuals and groups competing for coveted access to state resources.<sup>18</sup> As a result, candidates spend

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<sup>13</sup> See Andreas Schedler, *The Logic of Electoral Authoritarianism*, in ELECTORAL AUTHORITARIANISM: THE DYNAMICS OF UNFREE COMPETITION 3 (Andreas Schedler ed., 2006) (summarizing the various typologies of authoritarian regimes).

<sup>14</sup> *Id.*; Seeberg, *Authoritarianism and Elections during the Third Wave*, 15 *Statsvetenskaplig tidskrift* 313, 322 (2013) (noting the two sub-types of electoral authoritarianism: non-competitive and hegemonic).

<sup>15</sup> Diamond, *supra* note 11, at 23, 33 (defining hybrid regimes as possessing a mix of democratic and undemocratic features).

<sup>16</sup> Bunce & Wolchik, *supra* note 10.

<sup>17</sup> Blaydes, *supra* note 3, at 1.

<sup>18</sup> Blaydes, *supra* note 3, at 10.

millions of Egyptian pounds from personal funds for a seat in parliament in anticipation of reaping hundreds of millions in return.<sup>19</sup>

Military electoral authoritarianism constitutes a type of hybrid regime where the military upholds the façade of elections, but places current and former military officials at the helm of the elite selectorate.<sup>20</sup> Civilians are disposable surrogates who implement policies that are created by the military elite and take the blame when policies fail. As a result, the military effectively controls the executive branch, which in turn manipulates the legislative and judicial branches through fringe benefits and coercive measures.

In contrast to the predictable rules and unpredictable political outcomes found in democracies, an authoritarian system produces certain and reliable outcomes in a political process based on uncertain rules and procedures.<sup>21</sup> The more authoritarian a regime, the more power is centralized and personalized.<sup>22</sup> Presidents surround themselves by trusted men who manage the bureaucracy, intelligence services, a single government party that manipulates popular sentiment in favor of the president, and a police force to coerce the population into submission.<sup>23</sup> The regime often allows weak opposition parties to operate on the margins to appease international pressures to liberalize.<sup>24</sup> A centralized political system dominates institutions such that agents rely on the presidency for their political survival, and do so at the expense of their institutional mission.<sup>25</sup> Thus, institutions are weak by design and incapable of incorporating social demands<sup>26</sup>

Coopting elites through a dominant party becomes a crucial mechanism for maintaining the authoritarian regime. The dictator methodically mobilizes and incorporates individuals into the state apparatus to develop a patron-client and corporatist relationship.<sup>27</sup> The ruling elite divide and dominate society by selecting new agents who then become vested in the political system.<sup>28</sup> Individuals accept cooptation for the material and status benefits as well as the security protections in a system where the rule of law is arbitrary. The result is an intricate ruling coalition composed of an elite and middle elite class that suppresses populist demands for democratic governance.<sup>29</sup>

A combination of exogenous and endogenous factors incentivizes dictators to hold elections. Internal pressures arising from the elite’s competition for special access to state resources also necessitates elections to manage such conflicts. Dictators leverage elections to determine which elites are insiders

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<sup>19</sup> Thabet, *supra* note 4, at 16; Gandhi & Lust-Okar, *supra* note 2, at 410.

<sup>20</sup> See generally Bruce Bueno de Mesquita, *PRINCIPLES OF INTERNATIONAL POLITICS* 79-87 (5<sup>th</sup> ed., 2014) (describing the selectorate theory of international politics wherein leaders build a coalition of supporters among the selectorate).

<sup>21</sup> ADAM PRZEWORSKI, *SOME PROBLEMS IN THE STUDY OF THE TRANSITION TO DEMOCRACY. TRANSITIONS FROM AUTHORITARIAN RULE: COMPARATIVE PERSPECTIVES* 56–61 (1986).

<sup>22</sup> JOSHUA STACHER, *ADAPTABLE AUTOCRATS: REGIME POWER IN EGYPT AND SYRIA* 173 (2012).

<sup>23</sup> ROGER OWEN, *THE RISE AND FALL OF ARAB PRESIDENTS FOR LIFE* 28 (2014).

<sup>24</sup> Vickie Langohr, *Too Much Civil Society, Too Little Politics?*, in *AUTHORITARIANISM IN THE MIDDLE EAST: REGIMES AND RESISTANCE* 202–03 (Marsha Pripstein Posusney & Michele Penner Angrist eds., 2005).

<sup>25</sup> STACHER, *supra* note 22, at 38.

<sup>26</sup> STACHER, *supra* note 22, at 35.

<sup>27</sup> STACHER, *supra* note 22, at 40–41.

<sup>28</sup> STACHER, *supra* note 22, at 40–41.

<sup>29</sup> STACHER, *supra* note 22, at 79.

and which are outsiders based on loyalty to the regime and their willingness to diffuse populist grievances.<sup>30</sup> In turn, elites seek personal enrichment through elected office or political appointments.<sup>31</sup> As the insider elites become more dependent on the regime for (unjust) self-enrichment, they depoliticize governance away from policy priorities that serve the public interest. Elections are also a source of information for the centralized regime. In collaboration with governorate-level security, presidentially appointed governors purge individuals who are underperforming or whose loyalty is in question.<sup>32</sup> Thus, elections are turned into intra-elite competitive clientelism divorced from democratization.<sup>33</sup>

Although liberal and established democracies are not immune from uneven playing fields, the authoritarian regime’s party has far more access to media, state resources for campaigning, and coercive means for obtaining votes than its opposition.<sup>34</sup> The public is demobilized by design as citizens lack freedom of speech, assembly and association; and civil society is circumscribed to non-political activities.<sup>35</sup> Any meaningful opposition to the regime is met with state violence.<sup>36</sup> Ultimately, the underlying distribution of power in favor of the executive is unaffected by elections.<sup>37</sup>

Election laws play an important role in preserving and legitimizing electoral authoritarian systems. Asli Bali insightfully highlights three means by which the Mubarak regime shaped electoral laws to further its political agenda: through the rules governing the formation and activities of political parties; through the impact of electoral rules on the ability of political parties to compete in contested elections; and through the constitutional balance between the executive and legislative power.<sup>38</sup> The Sadat and Mubarak regimes deployed these strategies for over forty years to maintain the status quo. Today, Sisi is using similar tactics to establish a military electoral authoritarian regime in Egypt.

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<sup>30</sup> Gandhi & Lust-Okar, *supra* note 2, at 495, 507.

<sup>31</sup> Blaydes, *supra* note 3, at 3–4.

<sup>32</sup> Blaydes, *supra* note 3, at 17.

<sup>33</sup> Gandhi & Lust-Okar, *supra* note 2, at 507; Bunce & Wolchik, *supra* note 10, at 48.. Meanwhile, Western patrons and international banks require dictators to hold elections in exchange for economic and military aid. See JASON BROWNLEE, DEMOCRACY PREVENTION: THE POLITICS OF THE U.S.-EGYPTIAN ALLIANCE 68, 92 (2012) (discussing the use of “limited multipartyism” to appease foreign creditors).

<sup>34</sup> See Lucan A. Way, *Authoritarian Failure: How Does State Weakness Strengthen Electoral Competition?*, in ELECTORAL AUTHORITARIANISM: THE DYNAMICS OF UNFREE COMPETITION 169–70 (Adreas Schedler ed., 2006) (noting that “authoritarian states are defined by the conflation of state and regime” resulting in the state apparatus at the service of safeguarding the regime rather than serving the public).

<sup>35</sup> Bunce & Wolchik, *supra* note 10, at 74; Javed Maswood and Usha Natarajan, *Democratization and Constitutional Reform in Egypt and Indonesia: Evaluating the Role of the Military*, in ARAB SPRING IN EGYPT: REVOLUTION AND BEYOND 227 (Bahgat Korany & Rabab El-Mahdi eds., 2012) [hereinafter ARAB SPRING IN EGYPT].

<sup>36</sup> Diamond, *supra* note 11, at 29; Bellin, *The Robustness of Authoritarianism*, *supra* note 8, at 143; BROWNLEE, *supra* note 33, at 92–94 (discussing Mubarak’s use of hired thugs to beat up opposition voters); Mona El-Ghobashy, *The Dynamics of Elections Under Mubarak*, in THE JOURNEY TO TAHRIR: REVOLUTION, PROTEST, AND SOCIAL CHANGE IN EGYPT 143 (Jeannie Sowers & Chris Toensing, eds., 2012) (noting the crackdown on the Muslim Brotherhood after their electoral success in the 2005 elections where they obtained twenty percent of the seats).

<sup>37</sup> Asli Ü. Bâli, *From Subjects to Citizens? The Shifting Paradigm of Electoral Authoritarianism in Egypt*, 1 Middle East L. & Governance 38, 41–42 (2009) ; Gandhi & Lust-Okar, *supra* note 2, at 495.

<sup>38</sup> Bâli, *supra*, note 37 at 41.

### III. Elections Under Sadat and Mubarak

Despite a history of elections dating back to the 1920s, Egypt has yet to experience democratic governance.<sup>39</sup> Under the monarchy, tightly controlled elections were the means by which the dominant Wafd Party served as the intermediary between the state and citizens in a patron-client relationship. Liberal proponents of the 1952 revolution that overthrew the monarchy were disappointed when General Gamal Abdel Nasser imposed one-party elections to establish a military dictatorship. The Arab Socialist Union was the only political party allowed to operate, and all Egyptians were expected to join it.<sup>40</sup> A coercive police state harshly punished individuals and entities that challenged Nasser’s rule, and by extension the military. When Nasser died in 1971, Sadat found himself surrounded by a distrusting leftist elite seeking to continue Nasser’s socialist agenda.<sup>41</sup> Sadat strategically used political liberalization as a pretext to marginalize this elite and form his own elite coalition.

#### A. Sadat Introduces Multiparty Elections

Sadat, also a military general, changed the face of the regime but not the underlying authoritarian means by which it operated.<sup>42</sup> To appease his new American patrons and attract foreign investment, Sadat initiated political liberalization with multiparty elections as his regime’s cornerstone. But like other authoritarians, Sadat proved masterful at using political liberalization as an adaptation strategy to prevent rather than produce democratization.<sup>43</sup> Most notably, Sadat tolerated the Muslim Brotherhood and allowed it to field individual candidates in parliament. As Jason Brownlee points out, Sadat created the NDP to mobilize grassroots support, quash local opposition, and enhance the coercive capacity of the regime.<sup>44</sup>

The NDP managed conflict within the regime and blocked the emergence of autonomous societal agents that could challenge his rule.<sup>45</sup> No institutions had the autonomy to compete with the president’s substantial power.<sup>46</sup> The Egyptian parliament was merely a décor devoid of meaningful power to shape policy. As such, the president’s prerogatives were consistently rendered into formal legislation by a docile parliament controlled by the NDP.<sup>47</sup> The NDP operated without any pretense of independence from the presidency. Political elites joined the NDP not for ideological reasons, but rather to gain access

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<sup>39</sup> Shahjahan H. Bhuiyan, *Can Democratic Governance Be Achieved in Egypt?*, 38 INT’L J. PUB. ADMIN. 499 (2015).

<sup>40</sup> Tavana, *supra* note 3, at 556–57.

<sup>41</sup> Bruce Rutherford, *EGYPT AFTER MUBARAK: LIBERALISM, ISLAM, AND DEMOCRACY IN THE ARAB WORLD* 141-42 (2008).

<sup>42</sup> STACHER, *supra* note 22, at 159–60.

<sup>43</sup> HOLGER ALBRECHT, *RAGING AGAINST THE MACHINE: POLITICAL OPPOSITION UNDER AUTHORITARIANISM IN EGYPT* 17 (2013); Amel Ahmed, *Revolutionary Blind-Spots: The Politics of Electoral System Choice and the Egyptian Transition*, 3 MIDDLE EAST L. & GOVERNANCE 3, 5 (2011).

<sup>44</sup> See JASON BROWNLEE, *AUTHORITARIANISM IN AN AGE OF DEMOCRATIZATION* 92–93 (2007); STEVEN LEVITSKY & LUCAN A. WAY, *COMPETITIVE AUTHORITARIANISM: HYBRID REGIMES AFTER THE COLD WAR* 62–63 (2010).

<sup>45</sup> ALBRECHT, *supra* note 43; STACHER, *supra* note 22, at 112.

<sup>46</sup> STACHER, *supra* note 22, at 39.

<sup>47</sup> NINETTE S. FAHMY, *THE POLITICS OF EGYPT: STATE-SOCIETY RELATIONSHIP* 52 (2002); Blaydes, *supra* note 3, at 25; LEVITSKY & WAY, *supra* note 44, at 63–64.

to scarce government resources as well as protect their business monopolies.<sup>48</sup> Any politician that emerged with an ideological commitment was easily shed from the ruling elite.<sup>49</sup> Thus, parliamentarians had little to gain and much to lose by challenging the centralized executive-driven political system.<sup>50</sup>

To ensure NDP victory, Egyptian elections were consistently riddled with election rigging and voting fraud.<sup>51</sup> Candidates campaigned on promises to deliver government services to voters as intermediaries between the citizens and the state. And in return, the few Egyptians that bothered to vote (or were bribed to do so) did so for services and jobs, not for ideology or policy changes.<sup>52</sup>

## B. Mubarak Promotes Civilian Electoral Authoritarianism

Mubarak, the fourth military leader to rule Egypt, expanded on Sadat’s multiparty electoral authoritarian system through extensive co-optation of civilian crony capitalists.<sup>53</sup> Presiding over his dominant NDP party firmly in control of parliament, Mubarak established a hegemonic electoral authoritarian regime.<sup>54</sup> Presidential elections were more national referendums than competitive elections. Parliamentary elections were merely political theater to appease the regime’s Western benefactors.<sup>55</sup>

Further reinforcing Mubarak’s centralized grip on power was the military aid from the United States. Despite the plethora of democracy promotion rhetoric, Western security interests always trumped.<sup>56</sup> Mubarak exploited this reality by paying lip service to the importance of elections while taking the \$1.5

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<sup>48</sup> STACHER, *supra* note 22, at 99.

<sup>49</sup> STACHER, *supra* note 22, at 84–85.

<sup>50</sup> STACHER, *supra* note 22, at 142.

<sup>51</sup> Tamir Moustafa, *Law and Resistance in Authoritarian States: The Judicialization of Politics in Egypt*, in *Rule by Law: The Politics of Courts in Authoritarian Regimes* 148 (Tom Ginsburg & Tamir Moustafa eds., 2008); Samer S. Shehata, *Understanding the Muslim Brotherhood’s participation in semi-authoritarian elections*, in *ISLAMIST POLITICS IN THE MIDDLE EAST: MOVEMENTS AND CHANGE* 122 (Samer S. Shehata ed., 2012); ALBRECHT, *supra* note 43, at 7; Samer Shehata & Joshua Stacher, *The Muslim Brothers in Mubarak’s Last Decade*, in *THE JOURNEY TO TAHRIR: REVOLUTION, PROTEST, AND SOCIAL CHANGE IN EGYPT* 160 (Jeannie Sowers & Chris Toensing, eds., 2012); LEVITSKY & WAY, *supra* note 44, at 350.

<sup>52</sup> Shehata, *supra* note 51, at 124–25; David M. Faris, *Constituting Institutions: The Electoral System in Egypt*, 19 *MIDDLE EAST POL’Y* 142 (2012); Thabet, *supra* note 4, at 16 (noting voters were given chickens and promises of government jobs in exchange for votes).

<sup>53</sup> Bhuiyan, *supra* note 39, at 500; NADIA RAMSIS FARAH, *EGYPT’S POLITICAL ECONOMY: POWER RELATIONS IN DEVELOPMENT* 1–2 (2009). Former presidents Mohamed Naguid, Gamal Abdel Nasser, and Anwar Sadat were all military leaders prior to becoming president.

<sup>54</sup> Diamond, *supra* note 11.

<sup>55</sup> See Mustapha K. Sayyid, *International Dimensions of Middle Eastern Authoritarianism: The G8 and External Efforts at Political Reform*, in *DEBATING ARAB AUTHORITARIANISM: DYNAMICS AND DURABILITY IN NONDEMOCRATIC REGIMES* 215–30 (Oliver Schlumberger ed., 2007).

<sup>56</sup> See Eberhard Kienle, *Democracy Promotion and the Renewal of Authoritarian Rule* 231–250, in *DEBATING ARAB AUTHORITARIANISM: DYNAMICS AND DURABILITY IN NONDEMOCRATIC REGIMES* (Oliver Schlumberger ed., 2007); Eva Bellin, *Coercive Institutions and Coercive Leaders*, in *AUTHORITARIANISM IN THE MIDDLE EAST: REGIMES AND RESISTANCE* 32 (Marsha Pripstein Posusney & Michele Penner Angrist eds., 2005).



billion of foreign aid to entrench his coercive regime.<sup>57</sup> Indeed, Mubarak did not believe Egyptians were ready for democracy, much less political pluralism.<sup>58</sup> He permitted carefully controlled political space for electoral politics and civic engagement as a means for the citizenry to blow off steam and stymie mobilization against his regime.<sup>59</sup> Meanwhile, it was common knowledge that Mubarak would resort to repression, either through the police or the military, against anyone who challenged the regime.<sup>60</sup>

Mubarak’s multiparty electoral regime was inherited in large part from Sadat.<sup>61</sup> Law 140 of 1977, also known as the Political Parties Law, created the Political Parties Affairs Committee (PPAC) charged with overseeing the registration of new parties. Chaired by the presidentially appointed head of the Shura Council (now defunct) and composed primarily of NDP partisans, the PPAC served as a gatekeeper to safeguard the NDP’s hegemony.<sup>62</sup> New parties with the potential of mobilizing the public to compete with the NDP were denied registration based on pretextual procedural technicalities.<sup>63</sup> New political parties, for example, had to prove their platform was not similar to an existing party, affirm their principles did not contradict the 1952 revolution, support the Camp David Agreement, and show how they contributed toward national unity.<sup>64</sup> Moreover, political parties based on religion were categorically rejected—a rule intended to keep the Muslim Brotherhood out of party politics.<sup>65</sup> These restrictions gave ample grounds for PPAC to delay and reject most new party registrations.<sup>66</sup> As a result, most opposition candidates ran as independents.<sup>67</sup>

Parliamentary election laws were amended multiple times over Mubarak’s three decade tenure. While a full explication of the legislative history is beyond the scope of this Article,<sup>68</sup> a summary of the key components of Egypt’s electoral system post-2011 informs the political implications of the current parliament under Sisi. Egyptians elect parliamentarians in a mixed-system from 1) closed list party seats

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<sup>57</sup> See Bellin, *The Robustness of Authoritarianism*, *supra* note 8, at 148, 152 (noting foreign aid to Egypt and explaining that regime change is unlikely with foreign aid); see also Eva Bellin, *Reconsidering the Robustness of Authoritarianism in the Middle East: Lessons from the Arab Spring*, 44 *Comp. Pol.* 127, 143 (2012) (reaffirming her framework, arguing that foreign aid, among other factors, contributes to regime entrenchment, despite the need for some nuance in the framework in light of the Arab Spring).

<sup>58</sup> Bhuiyan, *supra* note 19.; ALBRECHT, *supra* note 43, at 7 (noting that Egyptian elections were consistently not fair or free under Mubarak).

<sup>59</sup> Mona El-Ghobashy, *supra* note 36, at 21.

<sup>60</sup> Milan W. Svobik, *Contracting on Violence: The Moral Hazard in Authoritarian Repression and Military Intervention in Politics*, 57 *J. CONFLICT RESOL.* 765, 766 (2012).

<sup>61</sup> See Sahar F. Aziz, *Revolution Without Reform? A Critique of Egypt’s Election Laws*, 45 *GEO WASH. INT’L L. REV.* 1 (2013), for comprehensive summary of the legal changes since during the last ten years of Mubarak’s rule.

<sup>62</sup> Tavana, *supra* note 3, at 556–57.

<sup>63</sup> Hadenius & Teorell, *supra* note 11, at 148 (noting that in electoral authoritarianism, the regime decides which groups are excluded and which are included in elections).

<sup>64</sup> Tavana, *supra* note 3; Law No. 177 of 2005 (Law on the Political Parties System), *al-Jarīdah al-Rasmīyah*, 6 July 2005 (Egypt), eliminated some of these requirements.

<sup>65</sup> Manar Mohsen, *Constituent Assembly bans formation of political parties on religious grounds*, *DAILY NEWS EGYPT* (Sept. 25, 2013), <http://www.dailynewsegypt.com/2013/09/25/constituent-assembly-bans-formation-of-political-parties-on-religious-grounds/>.

<sup>66</sup> Bhuiyan, *supra* note 39, at 503.

<sup>67</sup> Thabet, *supra* note 4, at 15.

<sup>68</sup> See Aziz, *Revolution Without Reform?*, *supra* note 61.

and 2) first-past-the-post independent candidate seats. Egypt’s 27 governorates are divided into two-seat districts for electing independent candidates and a legislatively specified number of party list districts. The 2014 constitution changed Egypt’s bicameral parliamentary system to a unicameral system by abolishing the Shura Council, making the People’s Assembly the sole parliamentary body.<sup>69</sup>

Law No. 38 of 1972 established a 454-member People’s Assembly. Ten candidates were appointed by the president and 444 were elected in 222 two seat electoral districts.<sup>70</sup> Because rural areas tended to be NDP strongholds, they were purposely granted more voting power than urban areas where social mobilization is higher.<sup>71</sup> Electoral districts were strategically shaped to allow for rural areas with small populations to receive the same representatives as larger urban areas with multiple times more citizens.<sup>72</sup> When opposition parties challenged such gerrymandering, the government responded with the pretext that they were preserving the integrity of historical communities.<sup>73</sup>

In 2000, the Supreme Constitutional Court (SCC) mandated judicial supervision of elections thereby restricting NDP-aligned security forces from engaging in electoral fraud inside voting polls.<sup>74</sup> As a result, the NDP won only 177 out of 444 parliamentary seats in the 2000 election.<sup>75</sup> To retain its majority, the NDP persuaded (primarily through corruption) over 200 independent candidates to join the NDP after their election victories.<sup>76</sup>

The election laws also ensured that fielding a presidential candidate was impracticable. Prior to 2005, a presidential candidate had to obtain no less than 250 written endorsements from elected members of the People’s Assembly, the (now defunct) Shura Council, and local councils in multiple governorates. Moreover, a candidate’s political party must have been “founded at least five years before the starting date of candidature and have been operating uninterruptedly for this period,” and its members must “have obtained at least 5% of the elected members of both the People’s Assembly and the Shura Council.”<sup>77</sup>

Due in large part to international pressure from the United States as part of its democracy promotion policies, these insurmountable obstacles were changed in 2005.<sup>78</sup> Law 174 of 2005 now allowed a candidate to run if: 1) his party had at least five percent of the seats in both houses; 2) he obtained

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<sup>69</sup> CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, arts. 101, 245.

<sup>70</sup> al-Maḥkamah al-Dustūriyah al-‘Ulyā [Supreme Constitutional Court], case no. 37, session of 19 May 1990, year 9.

<sup>71</sup> Ahmed, *supra* note 43, at 9–10; Faris, *supra* note 52, at 152 (noting Cairo residents were disproportionately under-represented).

<sup>72</sup> Ahmed, *supra* note 43, at 9–10 (noting that South Sinai with 19,000 voters per district was given the same voting power as Aswan with 200,000 voters); Faris, *supra* note 52.

<sup>73</sup> Ahmed, *supra* note 43, at 9–10.

<sup>74</sup> Thabet, *supra* note 4, at 13. Bhuiyan, *supra* note 39, at 500.

<sup>75</sup> Bhuiyan, *supra* note 39, at 500.

<sup>76</sup> Thabet, *supra* note 4, at 17; See Mark R. Thompson and Philipp Kuntz, *After Defeat: When Do Rulers Steal Elections?*, in ELECTORAL AUTHORITARIANISM: THE DYNAMICS OF UNFREE COMPETITION 113–127 (Andreas Schedler ed., 2006) (describing the various means in which authoritarian incumbents steal elections when results do not produce an easy victory).

<sup>77</sup> Law No. 174 of 2005 (Regulating the Presidential Elections), *al-Jarida al-Rasmiyya*, 2 July 2005, art. 2 (Egypt).

<sup>78</sup> Kienle, *supra* note 56, at 232–33.

endorsement from 90 parliamentarians and 140 members of local councils; or 3) he was a senior board member of a political party with at least one seat in parliament.<sup>79</sup> The latter option resulted in an unprecedented eight candidates entering the 2005 presidential elections. Even though the regime legalized running for president against Hosni Mubarak, it did not make it politically cost free. Soon after coming in second in the presidential elections, Ayman Noor was prosecuted on trumped up fraud charges, and sentenced to five years in prison.<sup>80</sup> This sent a chilling message to prospective candidates that they could run, but they could not compete.

When the Muslim Brotherhood won over twenty percent of the parliamentary seats by running independent candidates in the 2005 parliamentary elections, the Mubarak regime felt sufficiently threatened to take the extraordinary step of amending the constitution.<sup>81</sup> Article 88 was amended to eliminate the one judge for every ballot box rule for judicial supervision of elections.<sup>82</sup> Instead, a purportedly independent electoral commission composed of sitting and retired judges would supervise judicial elections.<sup>83</sup> An expansive definition of judicial authority allowed prosecutors and administrative judges who are technically members of the judiciary but beholden to the executive branch to supervise elections.<sup>84</sup> Article 62 was also amended to decrease the number of independent candidate seats, with the purpose of reducing the Muslim Brotherhood’s ability to participate in elections.<sup>85</sup> Amendments to Article 136 allowed the president to dissolve the parliament based on necessity, which critics interpreted as a mechanism to eliminate prospective parliaments without an NDP majority.<sup>86</sup> Article 179 was amended to grant the state expansive anti-terrorism authorities, including reference of any terrorism case to military court. And Article 5 imposed a constitutional prohibition of parties based on religion – a direct affront on the Muslim Brotherhood’s desire to start a party.<sup>87</sup>

Combined with the coercive security practices of the December 2010 elections, these legal changes resulted in the NDP controlling ninety-seven percent of the parliament. The level of election fraud and gerrymandering in 2010 was unprecedented. The government systematically cracked down on opposition media by shutting down television channels and blocking websites. Security forces pressured

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<sup>79</sup> Law No. 174 of 2005 (Regulating the Presidential Elections), *al-Jarida al-Rasmiyya*, 2 July 2005, art. 2 (Egypt). Brownlee, *supra* note 44, at 124.

<sup>80</sup> Issandr El Amrani, *Controlled Reform in Egypt: Neither Reformist nor Controlled*, in *THE JOURNEY TO TAHRIR: REVOLUTION, PROTEST, AND SOCIAL CHANGE IN EGYPT* 157 (Jeannie Sowers & Chris Toensing, eds., 2012).

<sup>81</sup> Bhuiyan, *supra* note 39, at 502 (noting the regime’s systematic repression of the Muslim Brotherhood through closing their businesses, revoking licenses, and arresting members as a means of debilitating their organizational capacity).

<sup>82</sup> Nathan J. Brown, Michele Dunne, & Amr Hamzawy, *Egypt’s Controversial Constitutional Amendments, 2007* CARNEGIE ENDOWMENT INT’L PEACE 1, 12, [http://carnegieendowment.org/files/egypt\\_constitution\\_webcommentary01.pdf](http://carnegieendowment.org/files/egypt_constitution_webcommentary01.pdf).

<sup>83</sup> Shehata & Stacher, *supra* note 51, at 174.

<sup>84</sup> OWEN, *supra* note 23, at 71.

<sup>85</sup> Shehata & Stacher, *supra* note 51, at 174.

<sup>86</sup> Brown, Dunne, & Hamzawy, *supra* note 82, at 4.

<sup>87</sup> Shehata & Stacher, *supra* note 51, at 174; Brown, Dunne, & Hamzawy, *supra* note 82, at 3; CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 179.

private businessmen to silence critical editors, opinion writers, and talk show hosts.<sup>88</sup> Opposition activities at universities and professional syndicates were systematically quelled.

This time, however, Mubarak’s regime had gone too far in engineering its monopoly.<sup>89</sup> The aftermath of the 2010 parliamentary elections ultimately fissured the political elite to the breaking point, setting the nation on the path toward the mass uprisings of January 2011.<sup>90</sup>

#### IV. From Revolution to Military Coup: General Sisi Becomes President

The electoral landscape was in flux during the three years between Egypt’s mass uprisings in January 2011 and the 2014 election of General Abdel Fatah Al Sisi. Egyptians went to the polls seven times to vote on an interim constitution in 2011, on two constitutions in 2013 and 2014, for two parliaments in 2012 and 2015, and for two presidents in 2012 and 2014.<sup>91</sup> Initially, the euphoria from the populist removal of Hosni Mubarak motivated Egyptians to vote in the tens of millions. For the first time in their lives, Egyptians believed democratic governance was attainable and authoritarianism could be a relic of the past. But with each new election, it became clearer that electoral results were reversible through non-democratic means.

Whether it was as a result of the Supreme Constitutional Court’s June 2012 ruling that dissolved Egypt’s first democratically elected parliament or the July 2013 military coup deposing Mohamed Morsi and nullifying the 2012 constitution, many Egyptians regressed back to their pre-2011 disillusionment with elections.<sup>92</sup> Put in perspective, over 50% of Egyptian voters turned out to vote in 2011 and 2012 elections compared to only 27% in the 2014 presidential elections and 28% in the 2015 parliamentary elections—the same low voter turnout rate as under Mubarak.<sup>93</sup> Egyptians’ disillusionment with politics arose from their realization that the military had effectively kept in place the same authoritarian system, but now the generals were at the helm.<sup>94</sup>

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<sup>88</sup> OWEN, *supra* note 23, at 5; Schedler, *supra* note 13, at 9 (noting “[t]he logic of distrust that prevails under authoritarian rule would make us uphold the suspicion that the worst may be hidden from our eyes”).

<sup>89</sup> OWEN, *supra* note 23, at 175 (noting that Arab authoritarian regimes failed to provide basic services to their burgeoning youth populations while having limited capacity to respond to domestic political crisis).

<sup>90</sup> Mona El-Ghobashy, *supra* note 36, at 133.

<sup>91</sup> Nicolas Heliotis, *A Textual Analysis of Presidential Power under the 2014 Egyptian Constitution*, 48 INT’L LAW. 127 (2014).

<sup>92</sup> Dina Shehata, *Youth Movements and the 25 January Revolution*, in *ARAB SPRING IN EGYPT*, *supra* note 35, at 108 (noting only 16% of eligible young Egyptians participated in elections in 2005 and 85% had never participated in a parliamentary election).

<sup>93</sup> Hassan Nafaa, *Parliamentary elections and the future of the political system in Egypt*, 9 CONTEMP. ARAB AFFS. 163, 177 (2016); *Election Guide: Democracy Assistance and Election News, Arab Republic of Egypt*, USAID (last visited May 10, 2016), <http://www.electionguide.org/countries/id/65/>; ALAA AL ASWANY, *ON THE STATE OF EGYPT: WHAT MADE THE REVOLUTION INEVITABLE* 62 (2011) (noting 38% showed up for the 2014 constitutional referendum).

<sup>94</sup> Jan Völkel, *Why almost nobody participated in the Egyptian parliamentary elections*, OPENDEMOCRACY (Oct. 23, 2015), <https://www.opendemocracy.net/arab-awakening/jan-v-lkel/why-almost-nobody-participated-in-egyptian-parliamentary-elections>.

Pent up internal demand for political and legal reforms caused the administrative court to dissolve the NDP and issue a lustrations decree banning NDP members from running for elected office.<sup>95</sup> Meanwhile, dozens of new political parties were registered.<sup>96</sup> Law 40 of 1977 was amended to change the composition of the PPAC from regime loyalists to judges from various judicial institutions.<sup>97</sup> No longer did new parties have to wait months or years for the PPAC to affirmatively approve or reject their applications. Instead, a party provided notice of its registration which was presumed valid unless PPAC filed a case in the Supreme Administrative Court within ninety days of the application.<sup>98</sup> Moreover, the parliamentary election law was amended to shift seat allocation from 50% party list seats and 50% independent candidate seats to 2/3 party lists seats and 1/3 independent candidate seats.<sup>99</sup> Many Egyptians viewed this change as a means of limiting the ability of former NDP loyalists from obtaining parliamentary seats as independent candidates at the expense new parties.<sup>100</sup>

Over forty new political parties were registered in 2011 and 2012.<sup>101</sup> Among them were the Muslim Brotherhood’s Freedom and Justice Party (FJP), which for the first time in decades was permitted by law to engage in party politics. The new secular parties maneuvered to fill the political void created by the dissolution of the NDP. Liberal political leaders proved collectively inept at developing cohesive policy plans or managing interpersonal conflicts, leading to defections and party spinoffs.<sup>102</sup> Meanwhile, the Muslim Brotherhood’s strong organizational skills, internal discipline, established records of providing social services, and deep roots in rural areas contributed toward their electoral success in the 2012 parliamentary elections.<sup>103</sup> That two-thirds of the new parliament would be comprised of party list candidates further facilitated the Muslim Brotherhood’s and FJP’s victory.

No longer limited to independent candidate slots, the Muslim Brotherhood leveraged the party list system to field thousands of candidates.<sup>104</sup> In the 2011-2012 parliamentary elections, the People’s Assembly was composed of 508 seats, of which 332 were filled by a proportional representation vote for

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<sup>95</sup> Ahram Online, *Military Council Issues Long Promised Lustration Law, Days Before Elections*, JADALIYYA (Nov. 21, 2011), <http://www.jadaliyya.com/pages/index/3226/military-council-issues-long-promised-lustration-l>. The issue of lustrations has been hotly contested in Egyptian courts. Ultimately, the courts lifted any bans on NDP leaders from running for office paving the way for their participation in the 2015 parliamentary elections as individual candidates. *Court lifts ban on NDP members running in elections*, MADA MASR (July 14, 2014, 3:54 PM), <http://www.madamasr.com/news/court-lifts-ban-ndp-members-running-elections>.

<sup>96</sup> Evan Hill, *Explainer: Egypt’s crowded political arena*, AL JAZEERA ENGLISH (Nov. 17, 2011), <http://www.aljazeera.com/indepth/spotlight/egypt/2011/11/2011111510295463645.html>.

<sup>97</sup> Law No. 40 of 1977 as amended by Law No. 177 of 2005 (Law on the Political Parties System), *al-Jarīdah al-Rasmiyah*, 6 July 2005, art. 8 (Egypt); Bhuiyan, *supra* note 39, at 504.

<sup>98</sup> For example, parties no longer had to distinguish themselves from existing parties. Tavana, *supra* note 3, at 558.

<sup>99</sup> Eric Trager, *Egypt’s New Elections Formula to Yield Familiar Results*, WASHINGTON INSTITUTE FOR NEAR EAST POLICY (Oct. 16, 2015), <http://www.washingtoninstitute.org/policy-analysis/view/egypts-new-elections-formula-to-lead-familiar-results>

<sup>100</sup> Tavana, *supra* note 3, at 558; Brown, Dunne, & Hamzawy, *supra* note 82, at 6–7.

<sup>101</sup> Tavana, *supra* note 3, at 556.

<sup>102</sup> Holger Albrecht, *Authoritarian Transformation or Transition from Authoritarianism? Insights on Regime Change in Egypt*, in *ARAB SPRING IN EGYPT*, *supra* note 35, at 267.

<sup>103</sup> Tarek Masoud, *COUNTING ISLAM: RELIGION, CLASS, AND ELECTIONS IN EGYPT 2-12* (2014).

<sup>104</sup> Tavana, *supra* note 3, at 560; Faris, *supra* note 52, at 143.

closed party lists; 166 seats were elected by first past the post independent candidate elections; and 10 seats were presidentially appointed. Reformers actively lobbied for the two-thirds party list allocation to impede former NDP members from obtaining parliamentary seats as individual candidates, as one could not appear on a party list and run as an independent candidate at the same time<sup>105</sup> Reformers found that more party list seats would incentivize voting based on national policy platforms rather than individual charisma.<sup>106</sup> In contrast, the 2015 People’s Assembly would be comprised of one-third proportional representation party list seats and two-thirds individual candidate seats.

Critics complained of inequitable suffrage caused by the overrepresentation of sparsely populated rural districts known to be strongholds of the Mubarak regime and the under-representation of densely populated urban areas where liberal parties had a larger constituency. The root cause of this suffrage inequity appeared to be partly a consequence of “a worker and farmer quota” mandating that fifty percent of each governorate’s parliamentary seats be filled by a worker or farmer – a remnant from Nasser’s socialist policies.<sup>107</sup> For these reasons, the Carter Center recommended that Egypt’s authorities consider removing the worker and farmer quota and reapportion seats to electoral districts in a way that enhanced equal suffrage. These quotas were not removed until the 2014 constitution passed under Adly Mansour, the interim president from 2013 to 2014.<sup>108</sup>

The Freedom and Justice Party, like other parties, ran its members for the 166 seats in the individual candidate elections.<sup>109</sup> Independent candidates competed for two seats in each of the 83 districts. A candidate receiving over 50% of the total vote won a seat and the other two highest vote recipients would then face a run off for the second seat.<sup>110</sup> The FJP won 235 parliamentary seats, resulting in their control of 47% of parliament in total.<sup>111</sup> Coupled with the far right Salafi Nour party’s 121 seats, over 70% of the 2012 parliament was controlled by political Islamist parties.<sup>112</sup>

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<sup>105</sup> *Egypt political parties threaten poll boycott*, ALJAZEERA (Sept. 28, 2011), <http://www.aljazeera.com/news/middleeast/2011/09/2011928234830274426.html>.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *New Egyptian constitution scraps parliamentary quota for workers and farmers*, AHAM ONLINE (Nov. 18, 2013), <http://english.ahram.org.eg/NewsContent/1/64/86851/Egypt/Politics-/New-Egyptian-constitution-scraps-parliamentary-quo.aspx>

<sup>109</sup> Tavana, *supra* note 3, at 560.

<sup>110</sup> THE CARTER CENTER, FINAL REPORT OF THE CARTER CENTER MISSION TO WITNESS THE 2011–2012 PARLIAMENTARY ELECTIONS IN EGYPT 25 (2012), [https://www.cartercenter.org/resources/pdfs/news/peace\\_publications/election\\_reports/egypt-2011-2012-final-rpt.pdf](https://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/egypt-2011-2012-final-rpt.pdf); IFES, ELECTIONS IN EGYPT: THE ELECTORAL FRAMEWORK IN EGYPT’S CONTINUING TRANSITION: FEBRUARY 2011 – SEPTEMBER 2013 24 (2013), [http://www.ifes.org/sites/default/files/egypt\\_briefing\\_paper\\_sept\\_2013\\_final.pdf](http://www.ifes.org/sites/default/files/egypt_briefing_paper_sept_2013_final.pdf).

<sup>111</sup> David D. Kirkpatrick, *Islamists Win 70% of Seats in the Egyptian Parliament*, N.Y. TIMES (Jan. 21, 2012), [http://www.nytimes.com/2012/01/22/world/middleeast/muslim-brotherhood-wins-47-of-egypt-assembly-seats.html?\\_r=0](http://www.nytimes.com/2012/01/22/world/middleeast/muslim-brotherhood-wins-47-of-egypt-assembly-seats.html?_r=0); *Interactive: Full Egypt election results*, ALJAZEERA (Feb. 1, 2012 1:43 PM), <http://www.aljazeera.com/indepth/interactive/2012/01/20121248225832718.html>.

<sup>112</sup> *Egypt's Islamist parties win elections to parliament*, BBC NEWS (Jan. 21, 2012), <http://www.bbc.com/news/world-middle-east-16665748>.

The sudden rise of the Muslim Brotherhood from repressed opposition to the dominant party in parliament rang alarm bells among Egypt’s liberal elites, business elites, security elites, and most notably the military. Rumors spread that the Muslim Brotherhood would turn Egypt into a theocracy along the lines of Iran. Security personnel, who just a few years back had detained and tortured the same Muslim Brotherhood leaders now in political office, fretted at the prospect of political retaliation. State officials, including judges, worried they soon would be replaced with Muslim Brotherhood loyalists in Egypt’s patronage system. The military viewed the Muslim Brotherhood as suspect outsiders who may not acquiesce to military political supremacy behind the scenes. Meanwhile, Egypt’s external allies in the region and in the West were concerned with how the Muslim Brotherhood would change Egypt’s foreign policy moving forward.<sup>113</sup>

When FJP candidate Mohamed Morsi eked out a victory against former Mubarak loyalist Ahmed Shafiq in the 2012 presidential elections, the deep state mobilized Egyptians to oust the Muslim Brotherhood from power.<sup>114</sup> The first step came when the SCC issued a ruling in June 2012 dissolving the Muslim Brotherhood-dominated parliament. Without a parliament, Morsi was unable to legislate his party’s policy agenda. Instead, he relied on presidential decrees with dubious political legitimacy. For the next year, Morsi’s regime struggled to govern as multiple state institutions, ranging from the judiciary and police to state regulatory bodies, actively undermined his presidency.<sup>115</sup> Even the Republican Guard refused to protect Morsi when protesters broke into the presidential palace, causing him to call in Muslim Brotherhood members to help him escape. Nevertheless, like his predecessors, President Morsi used elections as a means to legitimize a controversial constitution. Putting the document before a rushed national referendum in December 2012 after he issued a decree placing him above judicial scrutiny allowed Morsi to ride to a political victory.<sup>116</sup>

At this point, the Egyptian public had come to view Morsi and the FJP as the Islamist version of Mubarak’s authoritarian regime—a regime they had sacrificed much to overthrow in 2011.<sup>117</sup> Adding to the public’s grievances were a worsening economy and stagnating tourism revenue.<sup>118</sup> During the first half of 2013, the multiple stakeholders, including the military, that benefited from Mubarak’s authoritarian patronage system exploited populist anger to create the Tamarrod movement, which

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<sup>113</sup> David Kirkpatrick, *Egyptian Leader Adds Rivals of West to Syria Plan*, NY TIMES (Aug. 26, 2012), [http://www.nytimes.com/2012/08/27/world/middleeast/egyptian-president-seeks-regional-initiative-for-syria-peace.html?\\_r=0](http://www.nytimes.com/2012/08/27/world/middleeast/egyptian-president-seeks-regional-initiative-for-syria-peace.html?_r=0); Abdel Monem Said Aly, *Post-Revolution Egyptian Foreign Policy*, BRANDEIS UNIVERSITY MIDDLE EAST BRIEF NO. 84 (November 2014), <http://www.brandeis.edu/crown/publications/meb/MEB86.pdf>

<sup>114</sup> Aziz, *Bringing Down an Uprising*, *supra* note 9, at 25.

<sup>115</sup> Aziz, *Bringing Down an Uprising*, *supra* note 9, at 25.

<sup>116</sup> M. Patrick Yingling & Mohamed A. ‘Arafa, *After the Revolution: Egypt’s Changing Forms of Corruption*, 2 UNIV. BALTIMORE J. INT’L L. 23, 43–44 (2013).

<sup>117</sup> Mirette F. Mabrouk, *The View From a Distance: Egypt’s Contentious New Constitution*, in MIDDLE EAST MEMO 2013 at 1, 1–2 (Saban Ctr. Brookings No. 28, 2013), [http://www.brookings.edu/~media/Research/Files/Papers/2013/1/31-egypt-mabrouk/0131\\_Egypt\\_Mabrouk.pdf?la=en](http://www.brookings.edu/~media/Research/Files/Papers/2013/1/31-egypt-mabrouk/0131_Egypt_Mabrouk.pdf?la=en).

<sup>118</sup> Gwyn Topham & Terry Macalister, *Egypt crisis hits tourism and economy*, GUARDIAN (Aug. 16, 2013 1:49 PM), <http://www.theguardian.com/world/2013/aug/16/egypt-crisis-hits-tourism-economy>.

aimed to remove Morsi.<sup>119</sup> Tamarod, which means rebellion in Arabic, was led by youth activists disaffected by the Morsi regime and funded by some former Mubarak business elites such as Naguib Sawiris.<sup>120</sup> The movement was ultimately successful when Field Marshall Abdel Fattah Al Sisi announced on national television, with the Supreme Constitutional Court Justices standing behind him, that Morsi had been removed from office, arrested, and detained in an undisclosed location.<sup>121</sup>

Egypt’s short-lived experiment with democracy was officially over. The military had successfully ensured no civilian president would rule Egypt in the near future.

## V. Egypt’s Shift to Military Electoral Authoritarianism

Four decades after Egypt’s first multiparty elections, President Abdel Fattah Al Sisi is the latest in a line of elected authoritarians arising from the military. But in contrast to his predecessors, Sisi does not have a political party to manage the status quo. Nor is he limiting the military’s role to operating its shadow economy. Accordingly, Sisi has pivoted Egypt toward military electoral authoritarianism.

In the heady days after the January 2011 uprisings, few Egyptians appreciated the long term consequences of the military’s move to become the highest authority in the country.<sup>122</sup> Feigning a reluctance to rule, Egypt’s generals agreed to shepherd the nation through their demands to transition toward democracy. As events unfolded, however, the revolutionary activists realized the military had no intention of returning to their barracks. Mubarak had structured civil-military relations to facilitate military influence in politics and granted the military economic autonomy. This made it easier for the generals to quickly take on the mantle of governance – first through the Supreme Council for the Armed Forces (SCAF) and later through General-turned-President Sisi.<sup>123</sup> Replacing Mubarak’s crony business elite with a crony military elite, Egypt’s generals transformed Egypt from a civilian electoral authoritarian system to a military electoral authoritarian system.<sup>124</sup>

Although Sisi’s presidency appears to be a continuation of Egypt’s sixty-year-tradition of former generals becoming president, three key differences distinguish his reign thus far. First, civilians under Sisi have much less control over governance or the national economy than under Mubarak. Second, the military

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<sup>119</sup> SHANA MARSHALL, CARNEGIE MIDDLE E. CTR., *THE EGYPTIAN ARMED FORCES AND THE REMAKING OF AN ECONOMIC EMPIRE* 19 (2015), [http://carnegieendowment.org/files/egyptian\\_armed\\_forces.pdf](http://carnegieendowment.org/files/egyptian_armed_forces.pdf).

<sup>120</sup> *Profile: Egypt’s Tamarod Movement*, BBC NEWS (July 1, 2013), <http://www.bbc.com/news/world-middle-east-23131953>.

<sup>121</sup> *Egypt crisis: Army ousts President Mohammed Morsi*, BBC MIDDLE E. (July 4, 2013), <http://www.bbc.com/news/world-middle-east-23173794>.

<sup>122</sup> Hazem Kandil, *Back on Horse? The Military Between Two Revolutions*, in *ARAB SPRING IN EGYPT*, *supra* note 35, at 176. *But see* Aziz, *Bringing Down an Uprising*, *supra* note 9, at 19–27.

<sup>123</sup> Holger Albrecht & Dina Bishara, *Back on Horseback: The Military and Political Transformation in Egypt*, 3 *MIDDLE EAST L. & GOVERNANCE* 13, 18 (2011). I disagree with Albrecht and Bishara that the Egyptian military was reluctant to govern. The SCAF’s tenacious fight to stay in power couple with the military coup against Sisi evince the generals’ desire to rule Egypt.

<sup>124</sup> Yezid Sayigh, *Inducing a Failed State in Palestine*, 49 *SURVIVAL* 7, 10 (2007).



elite control a parliament composed primarily of individual rent-seeking individuals and weak, disunited small parties with divergent ideologies that can easily be purged should they mobilize the citizenry against the regime. Third, a coopted judiciary is willing to legally sanction the regime’s authoritarian laws and practices.<sup>125</sup> The military is entrenched in the Egyptian economy such that it has multiple incentives to be spoilers in Egyptians’ quest for democracy.<sup>126</sup> Meanwhile, Sisi’s regime has deployed elections as a tool in its toolkit to pivot Egypt into a military electoral authoritarian regime.

#### A. The Military as Spoilers of Democracy

Scholars Holger Albrecht and Dina Bishara argue the Egyptian military intervened in February 2011, not out of disposition but out of opportunity. They proffer the military’s motivation was primarily to preserve their economic interests and privileged status.<sup>127</sup> This conclusion, however, is not supported by the military’s behavior during the past five years. Since Sisi led the movement to overthrow Morsi in July 2013, the military has leveraged its ubiquity in the economy, state and local government, and the upper echelons of the civil service to take de facto control of the executive branch. Civilians have become merely technocrats and subcontractors subordinate to the military’s agenda.<sup>128</sup>

After Egypt’s 1973 war with Israel over the Sinai Peninsula, Egypt entered a time of peace that continues until the present day. No longer the bulwark against the threat of war with Israel, the military needed a new role that would retain its status and privileges.<sup>129</sup> Otherwise, a rudderless military was a recipe for a coup.<sup>130</sup> Sadat, therefore, granted the military autonomy to run its large multi-million dollar shadow economy, in what has come to be known as “Military, Inc.,”<sup>131</sup> in exchange for political quiescence.<sup>132</sup>

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<sup>125</sup> Aziz, *Independence Without Accountability*, *supra* note 9; Sahar F. Aziz, *Theater or Transitional Justice: Reforming the Judiciary in Egypt*, in TRANSITIONAL JUSTICE IN THE MIDDLE EAST (Chandra Lekha Sriram ed., forthcoming Aug. 2016) [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2543313](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2543313); Sahar F. Aziz, *(De)Liberalizing Judicial Independence in Egypt*, in EGYPT AND THE CONTRADICTIONS OF LIBERALISM: ILLIBERALISM, INTELLIGENTSIA, AND THE FUTURE OF EGYPTIAN DEMOCRACY (Dalia Fahmy & Daanish Faruqi eds., forthcoming 2016), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2659554](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2659554).

<sup>126</sup> Svulik, *supra* note 60, at 786.

<sup>127</sup> Albrecht & Bishara, *supra* note 126; Holger Albrecht, *Authoritarian Transformation or Transition from Authoritarianism? Insights on Regime Change in Egypt*, in ARAB SPRING IN EGYPT, *supra* note 35, at 270.

<sup>128</sup> See MARSHALL, *supra* note 119. “In every government authority now, there is a military officer. You deal with him,” said Abdel Wahab Mustafa, who imports satellite receivers through the country’s ports, where he said military control — and corruption — have come to permeate every aspect of the bureaucracy.” Abigail Hauslohner, *Egypt’s military expands its control of the country’s economy*, WASH. POST (Mar. 16, 2014), [https://www.washingtonpost.com/world/middle\\_east/egyptian-military-expands-its-economic-control/2014/03/16/39508b52-a554-11e3-b865-38b254d92063\\_story.html](https://www.washingtonpost.com/world/middle_east/egyptian-military-expands-its-economic-control/2014/03/16/39508b52-a554-11e3-b865-38b254d92063_story.html).

<sup>129</sup> Hicham Bou Nassif, *Wedded to Mubarak: The Second Careers and Financial Rewards of Egypt’s Military Elite, 1981–2011*, 67 MIDDLE EAST J. 509, 514 (2013).

<sup>130</sup> Svulik, *supra* note 60, at 785 (positing that dictators “contract violence” to their military in exchange for meeting their demands for influence over policies that affect their interests).

<sup>131</sup> Shana Marshall & Joshua Stacher, *Egypt’s Generals and Transnational Capital*, 42 MIDDLE EAST REPORT 12, 12 (2012).

<sup>132</sup> Holger Albrecht, *Does Coup-Proofing Work? Political–Military Relations in Authoritarian Regimes amid the Arab Uprisings*, 20 MEDITERRANEAN POL. 36, 41 (2015); Svulik, *supra* note 60, at 768.

During active service, officers were temporarily assigned to military owned businesses, military academies, the Ministry of Defense, or as attaches at Egyptian embassies abroad that came with supplemental income.<sup>133</sup> The highest echelon of the armed forces received commissions from U.S. arms deals and funds from security related projects that amounted to loyalty bonuses.<sup>134</sup> Throughout his thirty year tenure, Mubarak maintained this arrangement so as to keep the military out of the executive branch and to sustain the military’s political loyalty.<sup>135</sup>

Over the past forty years, the military has developed a massive business enterprise comprised of hundreds of factories, hundreds of thousands of hectares of land, and a growing service industry.<sup>136</sup> Military personnel and their families purchase discounted consumer goods from the supermarkets, cooperatives, and gas stations operated by the armed forces.<sup>137</sup> The military economy grew so large and diverse under Mubarak that it operated like a commercial sector, partnering with local and foreign private firms and conducting business abroad.<sup>138</sup> With cheap labor from conscripts, tax exemptions, and ownership of vast swaths of public land, the military’s enterprise in 2012 reportedly generated \$200 million dollars in revenues - all of which remained within the military’s budget and undisclosed to the public.<sup>139</sup>

Appointing retired officers to lucrative high level positions in the civil service was another means of keeping the military loyal to the regime.<sup>140</sup> Officers who remained loyal throughout their careers are rewarded handsomely after retirement. They sat on boards of state-owned enterprises that control public utilities, infrastructure, and other public services.<sup>141</sup> Military retirees also worked in government ministries and agencies with jurisdiction over housing, real estate management, agricultural development, and tourism.<sup>142</sup> Where they worked in the armed forces determines where they went after retirement. For example, Air Force officers served on boards related to civil aviation and airport; Navy officers were appointed to positions relating to shipping, seaports, and the Suez Canal; the Signal Corps went to telecommunications and information technology; and Army officers worked in construction, land, transport or public works.<sup>143</sup> One scholar estimated that “173 major generals, 30 brigadier generals and colonels occupied undersecretary, general director, and other leadership positions in the Egyptian bureaucracy.”<sup>144</sup>

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<sup>133</sup> Sayigh, *supra* note 124, at 19.

<sup>134</sup> Nassif, *supra* note 129, at 527–28; Albrecht, *supra* note 132, at 46.

<sup>135</sup> Albrecht, *supra* note 132.

<sup>136</sup> STACHER, *supra* note 22, at 4–5.

<sup>137</sup> Sayigh, *supra* note 124, at 20.

<sup>138</sup> Nassif, *supra* note 129, at 529.

<sup>139</sup> MARSHALL, *supra* note 119, at 3; Nassif, *supra* note 129, at 529.

<sup>140</sup> Nassif, *supra* note 129, at 526; Albrecht, *supra* note 132, at 47.

<sup>141</sup> Sayigh, *supra* note 124, at 6.

<sup>142</sup> Sayigh, *supra* note 124, at 16.

<sup>143</sup> Sayigh, *supra* note 124, at 17.

<sup>144</sup> Nassif, *supra* note 129, at 524.

Local and state government is another destination for retired officers. According to one analyst, Mubarak appointed sixty-three officers as governors out of a total of 156 governors.<sup>145</sup> A disproportionate number of the most senior officers were appointed governor, including four out of the seven commanders of the Republican Guard and eleven of the twenty-one officers who commanded the Second and Third Field Army.<sup>146</sup> Underneath the officer-turned-governor is a hierarchy of deputy governors, heads of cities, and heads of boroughs to which he appoints subordinate retired officers.<sup>147</sup> For example, at one point fourteen of Cairo’s twenty five boroughs were headed by officers. Similarly, eleven officers in Giza, eight in Alexandria, eight in the Suez, and nine in the Red Sea governorates held high level government positions.<sup>148</sup>

All of these post-retirement opportunities provide significant income to supplement an officer’s modest monthly pension. A major general, for example, earns approximately \$500 per month and a lieutenant approximately \$350 per month. Contrast those amounts with political appointments in the civil service or state and local government that pay from \$16,000 to \$160,000 per month depending on the rank of the position.<sup>149</sup> Officers also use their positions to engage in corrupt business and real estate deals that yield them millions more Egyptian pounds.<sup>150</sup> The military had a lot to lose should the post-2011 regime pursue reforms that upended this civil-military structure.<sup>151</sup>

As a longtime member of Egypt’s feeble political opposition under Sadat and Mubarak, the Muslim Brotherhood was fully cognizant of the military’s ability to sabotage its ambitions to govern Egypt. For this reason, the FJP courted the SCAF to reassure the generals that their benefits and privileges would be preserved by a prospective FJP government.<sup>152</sup> Upon his election, and in opposition to the revolutionary youth’s demands, Morsi kept the military’s enterprise in place, acquiesced to the generals’ demands to keep the military budget a state secret, and did not change the military courts’ jurisdiction over cases that otherwise belonged in civilian criminal court.<sup>153</sup>

But the military did not trust that Morsi would keep this commitment over the long run, particularly after he allied with Qatar to build the Suez Canal corridor and relegated the military to sub-

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<sup>145</sup> Nassif, *supra* note 129, at 517.

<sup>146</sup> Nassif, *supra* note 129, at 517.

<sup>147</sup> Nassif, *supra* note 129, at 519 (stating the number of former officers in administrative posts in local government reaches into the several thousands); Sayigh, *supra* note 124, at 14.

<sup>148</sup> Nassif, *supra* note 129, at 519.

<sup>149</sup> Sayigh, *supra* note 124, at 19.

<sup>150</sup> Nassif, *supra* note 129, at 518.

<sup>151</sup> Sayigh, *supra* note 124, at 8; Svolik, *supra* note 60, at 787 (noting military interventions are more likely in democratic transitions in countries whose militaries had acquired substantial autonomy).

<sup>152</sup> Daron Acemoglu, Davide Ticchi, & Andrea Vindigni, *A Theory of Military Dictatorships*, 2 AM. ECON. J. MACROECONOMICS 1, 1 (2010); *Is a Second Egyptian Revolution on the Way?*, AL-MONITOR (Jan. 29, 2013), <http://www.al-monitor.com/pulse/politics/2013/01/egypt-new-revolution.html>.

<sup>153</sup> MARSHALL, *supra* note 119, at 9–10; *No to Military Trials for Civilians*, MADA MASR (Apr. 25, 2016 12:48 AM), <http://www.madamasr.com/tags/no-military-trials-civilians>; Sherif Tarek, *Egypt’s Muslim Brotherhood and ruling military: Deal or no deal?*, AHRAM ONLINE (Sept. 28, 2011), <http://english.ahram.org.eg/NewsContent/1/64/22042/Egypt/Politics-/Egypts-Muslim-Brotherhood-and-ruling-military-Deal.aspx>.

contractors.<sup>154</sup> Coupled with Morsi’s attempts to normalize relations with Hamas as part of a new strategy to decrease violence in the Sinai, the military’s patience with the nascent democratically elected government had run out.<sup>155</sup> Morsi was decisively removed from office on July 3, 2013 and whisked to an unknown location, only to reemerge as a defendant charged with espionage and other felonies.<sup>156</sup>

Despite having just orchestrated a coup, Sisi still had to pay homage to democracy to satisfy the youth and the secularists who supported his coup against Morsi and his Western backers who needed to save face as they supported yet another military general in Egypt.<sup>157</sup> Holding formal elections after he amended election laws to produce his desired outcome met both goals.

## B. Using Elections to Maintain Military Authoritarianism

Upon taking power, informally through Justice Adly Mansour as interim president, Sisi was in no rush to hold elections. The regime’s repressive campaign focused on the Muslim Brotherhood and the secular youth opposition was still actively engaged in advocating for a new constitution that restrained presidential powers.<sup>158</sup> The youth did not realize the military had tricked them into installing a military regime until Sisi announced his run for president in March 2014.<sup>159</sup> Meanwhile, the Adly regime aggressively prosecuted the FJP, quashed anti-coup protests, and issued presidential decrees that legalized an anti-democracy agenda.<sup>160</sup> Its most controversial measure involved an anti-protest law passed in April 2014 that curtailed freedom of assembly.<sup>161</sup> The law required citizens to obtain

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<sup>154</sup> MARSHALL, *supra* note 119, at 11–13; Acemoglu, Ticchi, & Vindigni, *supra* note 152 (noting that nascent democratic regimes face a commitment problem wherein militaries do not trust the regime’s promises not to engage in reforms that will harm the military’s interests).

<sup>155</sup> Acemoglu, Ticchi, & Vindigni, *supra* note 152 (noting the risk of a military coup against a nascent democratic reform); Sahar Aziz, *Sinai’s Role in Morsi’s Ouster*, CARNEGIE ENDOWMENT INT’L PEACE (Aug. 20, 2013), <http://carnegieendowment.org/sada/?fa=52715>.

<sup>156</sup> Peter Hessler, *Morsi’s Chaotic Day in Court*, NEW YORKER (Nov. 6, 2013), <http://www.newyorker.com/news/news-desk/morsis-chaotic-day-in-court>.

<sup>157</sup> LEVITSKY & WAY, *supra* note 44, at 40–42; <http://www.mei.edu/content/us-foreign-aid-and-morsis-ouster>

<sup>158</sup> Nafaa, *supra* note 93, at 166.

<sup>159</sup> Yasmine Saleh, *Activists who backed Mursi’s fall turn against military*, REUTERS (Feb. 20, 2014), <http://www.reuters.com/article/us-egypt-politics-tamarud-idUSBREA1J1E420140220>; Tom Perry & Mahmoud Mourad, *Egypt’s Sisi to run for president, vows to tackle militancy*, REUTERS (Mar. 26, 2014 7:50 PM), <http://www.reuters.com/article/us-egypt-sisi-idUSBREA2POXE20140326>; Sahar Aziz, *Authoritarians return to run Egypt*, CNN (Sept. 19, 2013 10:16 AM), <http://globalpublicsquare.blogs.cnn.com/2013/09/19/authoritarians-return-to-run-egypt/>.

<sup>160</sup> Khaled Mansour, *The new parliament’s heavy legislative inheritance*, MADA MASR (Dec. 6, 2015, 1:38 PM), <http://www.madamasr.com/opinion/politics/new-parliaments-heavy-legislative-inheritance>; *President Mansour leaves office with a legislative bang*, AHRAM ONLINE (June 5, 2014), <http://english.ahram.org.eg/NewsContent/1/64/103023/Egypt/Politics-/President-Mansour-leaves-office-with-a-legislative.aspx>.

<sup>161</sup> Patrick Kingsley, *Egypt’s interim president Adly Mansour signs ‘anti-protest law’*, THE GUARDIAN (Nov. 24, 2013 11:27 AM), <http://www.theguardian.com/world/2013/nov/24/egypt-interim-president-anti-protest-law>; Law No. 107 of 2013 (For organizing the right to peaceful public meetings, processions and protests), *al-Jaridah al-*

permission from police to organize protests or face up to two years in prison. The police had discretion to deny the application for a permit and legal appeals to a clogged court system could take months, if not longer, to resolve, thereby making the protest moot.<sup>162</sup> In light of the police’s notorious record of repression, civil society had good reason to suspect the law was merely a ruse for quashing freedom of assembly and expression.<sup>163</sup> And as expected, few public protests have been held since its passage.

On January 18, 2014, Interim President Mansour held a referendum for a new constitution after Morsi’s constitution was suspended on July 3, 2013.<sup>164</sup> Due in large part to the youth activists’ advocacy, checks on presidential powers exist in the current constitution that did not exist under Mubarak. For instance, Article 159 was added to allow for impeachment of the president, to avoid having to resort to a military coup or other extra-legal mechanisms to oust a president suspected of treason or a felony.<sup>165</sup> Similarly, Article 161 allows a parliamentary vote of no confidence in the president, which triggers new presidential elections.<sup>166</sup> Both mechanisms require a motion signed by a majority of parliament and approved by two-thirds of its members. The 2014 constitution retained the provisions from the 2012 version that restricted the president to two four year terms and did not include a provision for appointing a vice president.<sup>167</sup> While the parliament must approve any new cabinet, the president can reshuffle the cabinet without cause.<sup>168</sup> Notably, the new constitution mandated that all decrees issued by the president, which totaled 430 under Mansour and Sisi, had to be approved by the parliament within fifteen days of their first session. Otherwise, the presidential decrees are void.<sup>169</sup>

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*Rasmīyah*, 23 Nov. 2013 (Egypt); Mohamed Abdeaal, *Egypt’s Public Protest Law 2013: A Boost to Freedom or a Further Restriction?*, 11 U.S.-CHINA L. REV. 1114 (2014).

<sup>162</sup> *Egypt: Draft Law Would Effectively Ban Protests*, HUMAN RIGHTS WATCH (Oct. 30, 2013), <https://www.hrw.org/news/2013/10/30/egypt-draft-law-would-effectively-ban-protests>; Mohamed Abdeaal, *Egypt’s Public Protest Law 2013: A Boost to Freedom or a Further Restriction?*, 11 U.S.-CHINA L. REV. 1121 FN 14, (2014).

<sup>163</sup> REUTERS, *Egypt activists rally against anti-protest law*, AL ARABIYA (Apr. 27, 2014), <http://english.alarabiya.net/en/News/middle-east/2014/04/27/Egypt-activists-rally-against-demonstrations-law-.html> ; See LEVITSKY & WAY, *supra* note 44, at 58 (discussing the use of low intensity coercion to quell dissent through low profile physical harassment on opposition activists, use of security forces or paramilitary thugs to break up meetings, and detention of journalists).

<sup>164</sup> Patrick Kingsley, *Egypt’s new constitution gets 98% ‘yes’ vote*, THE GUARDIAN (Jan. 18, 2014), <http://www.theguardian.com/world/2014/jan/18/egypt-constitution-yes-vote-mohamed-morsi>.

<sup>165</sup> CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan, 2014, art. 159.

<sup>166</sup> CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan, 2014, art. 161.

<sup>167</sup> CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan, 2014, art. 140.

<sup>168</sup> CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan, 2014, art. 147.

<sup>169</sup> CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan, 2014, art. 156; Safiaa Mounir, *Can Egypt’s new parliament review 330 laws in 15 days?*, (Jan. 23, 2012), <http://www.al-monitor.com/pulse/originals/2016/01/egypt-parliament-review-laws-controversy.html#> (reporting “[t]he laws to be considered include 42 decree laws issued by Mansour and 289 items issued by current President Sisi, including 115 new pieces of legislation or legislative amendments, 158 decree laws consolidating the economic bodies’ budgets and 16 decrees that have yet to be published in the official gazette.”); Khaled Mansour, *The new parliament’s heavy legislative inheritance*, MADA MASR (Dec. 6, 2015 1:38 PM), <http://www.madamasr.com/opinion/politics/new-parliaments-heavy-legislative-inheritance>.

Nearly a full year after Morsi was deposed, presidential elections were held on May 26, 2014. The 2014 constitution increased the total number of signatures needed to be on the ballot from 20,000 to 25,000. The number of governorates from which at least 1000 signatures had to be obtained was increased from ten to fifteen out of Egypt’s 27 governorates.<sup>170</sup> Obtaining twenty endorsements from members of parliament remained an alternative to getting on the presidential ballot. In stark contrast to the presidential elections of 2012 when nine candidates vigorously competed for the presidency, only one opposition candidate, leftist Hamdeen Sabahi, ran against Sisi to create the appearance of competition.<sup>171</sup>

Most Egyptians recognized the replication of the Mubarak era, but a different former general was now guaranteed to win the presidency. That the Muslim Brotherhood had been criminalized as a terrorist organization and that over 16,000 people, both Islamists and secularists, were imprisoned, further evincing the fate of Egypt’s democracy.<sup>172</sup> Moreover, the administration of elections was controlled by the Presidential Elections Commission, a body comprised of presidents and senior members of the judiciary who aligned with Sisi in overthrowing Morsi, and the media’s bias in favor of Sisi was obvious.<sup>173</sup> Sisi had secured the presidency, but with the newly expanded powers of parliament, he would also need to guarantee a compliant parliament.

It is likely no coincidence that the new election law—passed just before Adly Mansour stepped down—increased individual candidate seats to two-thirds of parliament while shrinking seats selected through party lists to one-third of parliament.<sup>174</sup> The 2015 parliamentary elections filled 596 seats of which 448 are individual candidates; 120 seats are elected by party list, and 28 seats are appointed by the president. Egypt’s 27 governorates were divided into two sets of districts. One set is comprised of 224 districts for the individual candidates, most of which elected two representatives to parliament (though in some districts the number was three or four); and the second set of four districts from which political party list candidates are chosen.<sup>175</sup> In the independent candidate districts, each voter could vote for two candidates.<sup>176</sup> The candidate with more than 50% of the votes in the district obtained a seat. The remaining seat(s) was filled by a run off between the top two vote getters to fill the second seat. The party list seats were contests in four districts in total. Two of these districts were allocated 45 seats and

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<sup>170</sup> CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan, 2014, art. 142.

<sup>171</sup> See Amro Hassan, *It’s official: Sisi wins Egyptian presidential election by landslide*, L.A. TIMES (June 3, 2014 1:11 PM), <http://www.latimes.com/world/middleeast/la-fg-egypt-election-sisi-20140603-story.html>.

<sup>172</sup> Paulami Sanyal, *Egypt: Presidential Elections, 2014*, 2 CONTEMP. REV. MIDDLE EAST 289, 298 (2015).

<sup>173</sup> Sanyal, *supra* note 175, at 300, 302; CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan, 2014, art. 228 (noting that the powers of the high election commission and presidential election commission transfer to a unified national election commission upon completion of the presidential and parliamentary elections under this constitution); Aziz, *Independence Without Accountability*, *supra* note 9, (manuscript at 37) (on file with the author).

<sup>174</sup> Scott Williamson & Nathan J. Brown, *Egypt’s New Law for Parliamentary Elections Sets Up a Weak Legislature*, ATL. COUNCIL (Jun. 24, 2014), <http://www.atlanticcouncil.org/blogs/menasource/egypt-s-new-law-for-parliamentary-elections-sets-up-a-weak-legislature>; Law No. 46 of 2014 (Law on the House of Representatives), *al-Jarīdah al-Rasmiyah*, 5 June 2014 (Egypt).

<sup>175</sup> Int’l Foundation for Electoral Systems, *Elections in Egypt: 2015 House of Representatives Elections Frequently Asked Questions* 1-2 (Oct. 14, 2015),

[http://www.ifes.org/sites/default/files/2015\\_ifes\\_egypt\\_hor\\_elections\\_faq\\_final.pdf](http://www.ifes.org/sites/default/files/2015_ifes_egypt_hor_elections_faq_final.pdf)

<sup>176</sup> *Id.*

two districts had 15 seats. In the proportional representation districts, voters voted for a particular party. If a party received over 50% of the votes, it obtained all of the seats in that district and distributed the seats to the members listed on its party list.<sup>177</sup>

The individuals elected to the independent candidate seats could easily be coopted and depoliticized to ensure the regime’s continuity.<sup>178</sup> If any defected for altruistic reasons or on principle, they would be expelled as exemplified as in the case of Tawfik Okasha in May 2015.<sup>179</sup> Only 120 seats were allocated to party list seats, and these were selected from four districts throughout the country. These seats were not limited to political parties, but also available to independents should they choose to form their own lists. Ultimately, this structure facilitated the return of powerful local figures and depoliticized rent seekers who used to be the backbone of the NDP.<sup>180</sup> Instead of Mubarak as their patron, it was now Sisi.

To rally the divided candidates, Sisi sent his colleague, Major General Samih Seif El-Yazal, to create an unnatural alliance between divergent political parties from the left, right, and youth movements under an alliance called “For the Love of Egypt.”<sup>181</sup> Seventy-two independent candidates and forty-eight party candidates received official support from the state and security apparatus.<sup>182</sup> Likewise, former Mubarak loyalists running under the Wafd Party and the Free Egyptians Party became vocal Sisi loyalists.<sup>183</sup> Egypt’s most pressing economic and policy issues were notably absent from the campaign discourse as independent candidates relied instead on their personal charisma to solicit votes.<sup>184</sup>

Members of political parties were permitted to run for individual candidate seats. Because this was the very basis on which the SCC dissolved the parliament in June 2012, this provision makes the election law vulnerable to legal challenge in the future.<sup>185</sup> Specifically, the SCC (with Adly Mansour as the Chief Justice) reasoned that this practice violated the constitutional provision guaranteeing equal opportunity between independent and party candidates to participate in politics. As such, the SCC declared that some political parties had violated the law by running their members for individual seats and declared the election law unconstitutional.<sup>186</sup> The SCAF swiftly dissolved the parliament before Morsi took

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<sup>177</sup> *Id.*

<sup>178</sup> STACHER, *supra* note 22, at 42–43.

<sup>179</sup> *Egypt parliament expels MP Okasha after Israel meeting*, AL JAZEERA (Mar. 2, 2016), <http://www.aljazeera.com/news/2016/03/egypt-parliament-expels-mp-okasha-israel-meeting-160302174630146.html> (explaining that “Okasha has been expelled from parliament after meeting Israel’s ambassador to the country”).

<sup>180</sup> Williamson & Brown, *supra* note 174.

<sup>181</sup> Nafaa, *supra* note 93, at 171.

<sup>182</sup> Nafaa, *supra* note 93, at 174.

<sup>183</sup> Christopher J. Cox, *The State of Alliances in Egypt’s Elections*, CARNEGIE ENDOWMENT INT’L PEACE (Oct. 20, 2015), <http://carnegieendowment.org/sada/?fa=61688>.

<sup>184</sup> Völkel, *supra* note 94.

<sup>185</sup> Nancy Messieh, *One Year Later: Legislation Issued since Morsi’s Ouster*, ATL. COUNCIL (July 3, 2014), <http://www.atlanticcouncil.org/blogs/menasource/one-year-later-legislation-issued-since-morsi-s-ouster>.

<sup>186</sup> JASON BROWNLEE, *supra* note 44, at xi–xii.

office.<sup>187</sup> It is, thus, a possibility that the SCC could strike down the election law again, resulting in the dissolution of the parliament elected in 2015.

Further weakening political parties are diversity quotas imposed exclusively on the party lists. The 120 list seats have to be filled by fifty-six women, twenty-four Copts, sixteen workers and farmers, sixteen youth, eight Egyptians abroad, and eight Egyptians with disabilities.<sup>188</sup> While this increases representation of these historically under-represented groups, it comes at the expense of smaller political parties who cannot compete in the party list because they do not have sufficient numbers of members with these characteristics willing and able to run for parliament.<sup>189</sup> That said, the upside to the quotas is the historic number of seats that have gone to women (88), youth (45), and Copts (36) in 2015, of which a portion were obtained through individual candidate elections.<sup>190</sup> But these are not the only constituencies that increased their parliamentary representation. A historic number of former army officers, police, businessmen and bankers also obtained seats. Seventy-five parliamentarians are former army or police officers and approximately one hundred and forty are from the private commercial sector.<sup>191</sup>

Predictably, no political party obtained enough seats to create a majority. The Free Egyptians Party obtained the most seats at sixty five, the Nation’s Future obtained 50 seats, and the Wafd Party secured 46 seats.<sup>192</sup> Combined, political parties obtained approximately forty percent of the total seats.<sup>193</sup> For the Love of Egypt obtained only one hundred and twenty seats. Thus, the likelihood that the divergent individual candidates would be able to form a united parliamentary bloc able to shape policy was slim. This left Sisi and his military elite with the weak and fragmented parliament the election laws were designed to produce.<sup>194</sup>

## VI. Conclusion

From a comparative perspective, Egypt’s experience is unexceptional. Similar to other electoral authoritarian regimes, its dictators set up an institutional landscape where constitutions, elections,

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<sup>187</sup> Maswood, *supra* note 35, at 244.

<sup>188</sup> Ahmed Morsy, *The Egyptian Parliamentary Elections 101*, MIDDLE EAST INST. (Jan. 26, 2015); Cox, *supra* note 183; *Egyptian Women in 2015 Parliamentary Elections*, EGYPTIAN CTR. WOMEN’S RIGHTS (Jan. 17, 2016), <http://ecwronline.org/?p=6788>; Nafaa, *supra* note 93, at 169.

<sup>189</sup> Völkel, *supra* note 94; Nafaa, *supra* note 93, at 176 (noting that a historic 88 seats were obtained by women, 36 by Copts, and 45 by youth).

<sup>190</sup> Völkel, *supra* note 94; Nafaa, *supra* note 93, at 176 (noting that a historic 88 seats were obtained by women, 36 by Copts, and 45 by youth).

<sup>191</sup> Nafaa, *supra* note 93, at 180 (noting that most of the businessmen parliamentarians are members of the Free Egyptians party, the Future of Nation party, and the New Delegation party).

<sup>192</sup> Mounir, *supra* note 169.

<sup>193</sup> Nafaa, *supra* note 93, at 179.

<sup>194</sup> Marsha Pripstein Posusney, *Multiparty Elections in the Arab World: Election Rules and Opposition Responses*, in *AUTHORITARIANISM IN THE MIDDLE EAST: REGIMES AND RESISTANCE* 94 (Marsha Pripstein Posusney & Michele Penner Angrist eds., 2005).



parliaments, courts, state agencies, and local governments create a fictitious representative democracy.<sup>195</sup> Elections are the centerpiece on which this fiction is built. At the same time that authoritarians and their cronies manipulate election laws and procedures to retain their grip on power, they point to elections and calls for democratization when faced with international criticism or internal dissent. Thus, elections are both the sword and the shield that preserves authoritarian rule.

Electoral authoritarianism is not a new development in Egypt. Both Sadat and Mubarak manipulated multiparty elections to sustain the status quo. Elections allowed the regime to manage intra-elite conflict, reward loyalists, and appease Western benefactors’ expectations of political liberalization. What is new, however, is the sudden move of the military from influencing events behind the scenes to governing out in the open. Harking back to the Nasser era, military generals are now openly controlling the economy and state apparatus. More former military officers are taking on high level civil service positions; major state infrastructure projects are managed by the military with civilian businesses as the subcontractors; and the number of generals appointed to governorships has increased.<sup>196</sup> These former officers are trusted to maintain the status quo by working with the intelligence services to eliminate any political threats to the regime.

This new normal makes the military’s survival intrinsically linked to the survival of the regime. Domestic intelligence services under the jurisdiction of President Sisi work with his former subordinates at the military intelligence agencies to monitor and quash civilian dissent and prevent the formation of politicized groups that act based on policy or principle rather than self-interested rent seeking.<sup>197</sup> Indeed, the crackdown on civil society, prosecution of revolutionary youth, and criminalization of the Muslim Brotherhood is consistent with this agenda.

Another new development is Sisi’s decision not to form a dominant party to do his regime’s bidding in parliament.<sup>198</sup> Instead of creating his own version of the NDP, Sisi structured parliament so that it is now comprised of over four hundred individual, self-interested actors who are vulnerable to bribery or coercion to keep them depoliticized and compliant. The remaining 120 party members are weak by virtue of the fragmented political party landscape, while a host of restrictions impede opposition parties from competing effectively.

The result is a highly fractured political landscape comprised of over one hundred political parties.<sup>199</sup> The criminalized Muslim Brotherhood leadership is in jail or on the run.<sup>200</sup> Egypt’s liberal parties are weak, disorganized, and under-funded.<sup>201</sup> And Mubarak’s old guard is eager to re-enter parliament to

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<sup>195</sup> Schedler, *supra* note 13, at 12.

<sup>196</sup> David D. Kirkpatrick, *Appointment of 19 Generals as Provincial Governors Raises Fears in Egypt*, N.Y. TIMES (Aug. 13, 2013), (“Of the 25 provincial governors named, 19 are generals: 17 from the military and 2 from the police.”); *Egypt’s new provincial governors: Who’s who?*, AHRAM ONLINE (Dec. 26, 2015), (stating that of the eleven 2015 appointees, “five . . . are from police ranks, four from the Armed Forces and two are civil engineers”).

<sup>197</sup> Svulik, *supra* note 60, at 767–68.

<sup>198</sup> Nafaa, *supra* note 93, at 169.

<sup>199</sup> Nafaa, *supra* note 93, at 174.

<sup>200</sup> Nafaa, *supra* note 93, at 181.

<sup>201</sup> Cox, *supra* note 183.

collect rents in exchange for policy acquiescence.<sup>202</sup> The same political rivalries and personal conflicts that facilitated the FJP’s electoral victory also prevent a dominant party from taking shape.<sup>203</sup>

At the same time, the underlying populist grievances—rampant corruption, increasing poverty, and harsh coercive security abuse—that triggered the January 2011 mass uprisings persist.<sup>204</sup> Thus, Sisi’s military electoral authoritarian state is far from stable.<sup>205</sup> Should populist anger reach a tipping point, the elite may decide their survival depends on mobilizing against his regime. While the security and military apparatus will not hesitate to use force to suppress opposition, they may find themselves overwhelmed by the millions of Egyptians fed up with another corrupt dictatorship.<sup>206</sup> And this time, Egyptians will not be cajoled to go back to the ballot box. They learned the hard way that new elections do not produce a democratic transition.

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<sup>202</sup> Ahmed Morsy, *Individuals Before Parties in Egypt’s Elections*, CARNEGIE ENDOWMENT INT’L PEACE (July 15, 2014), <http://carnegieendowment.org/sada/?fa=56157>.

<sup>203</sup> Nafaa, *supra* note 93, at 170. *But see* Hadenius & Teorell, *supra* note 11, at 152 (arguing that the majority of transitions from non-dominant party, limited multiparty regimes result in democracy).

<sup>204</sup> Max Bearak, *1 in 3 people in the Arab world had to pay a bribe for basic needs, survey reveals*, Wash. Post (May 4, 2016), <https://www.washingtonpost.com/news/worldviews/wp/2016/05/04/as-if-the-arab-spring-never-happened-corruption-rampant-in-arab-nations-says-report/> (noting that 1 in 3 people in the Arab world had to pay a bribe for basic government services). *See* M. Patrick Yingling and Mohamed A. Arafa, *After the Revolution: Egypt’s Changing Forms of Corruption*, 2 U. BALT. J. INT’L L. 23 (2013-2014).

<sup>205</sup> *See* Bunce & Wolchik, *supra* note 10, at 49, 56 (explaining that “economic performance affects regime survival”); *See* LEVITSKY & WAY, *supra* note 44, at 77 (same).

<sup>206</sup> Albrecht & Bishara, *supra* note 126; MARSHALL, *supra* note 119, at 2.