

Writing the New Rules of the Game

In Egypt, the next important battles over the political future will be waged with law books and computer keyboards.

BY DONALD L. HOROWITZ

THE FLEDGLING DEMOCRACIES IN EGYPT AND Tunisia that emerged from the Arab Spring face extraordinary challenges in the months and years ahead. In democratizing countries, the institutions you start out with and the process you use to reform them can take on inordinate importance. The electoral system, the method of revising the constitution, and the sequencing of the reform agenda all affect which forces will be advantaged and which disadvantaged, and whether the outcome is likely to be democratic or not.

The prospects are much brighter in Tunisia, where the transitional regime has been consulting widely with the country's contending political groups as it charts a way forward. Egypt, the largest Arab country and traditionally the center of the Arab world, is the cause of far more anxiety. The Egyptian military has been calling the shots since jubilant crowds cheered President Hosni Mubarak's departure in Tahrir ("Liberation") Square in February, and it is off to an inauspicious start. It has made important decisions without consulting with parties and people from the full political spectrum, scheduling legislative elections for September, with presidential elections to follow in November.

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The short timetable, protested by the liberal-democratic forces that helped bring down the Mubarak dictatorship, virtually ensures that the well-organized Muslim Brotherhood and some reconstituted version of the old regime's National Democratic Party will win a large share of the 508 seats in the all-important lower house of parliament, the People's Assembly. The more democratically oriented parties are probably too young and poorly organized to compete strongly. (In Tunisia, their counterparts won a significant delay in the electoral timetable.) To make matters worse, the New Wafd Party, a rare survivor of the Mubarak years and one of the strongest organizations in the center, announced in June that it was forming a coalition with the Muslim Brotherhood's Freedom and Justice Party.

Yet the strength of political parties and the timing of elections are not the only important factors that will influence the fate of Egyptian democracy. That is why the smaller parties are furiously contesting the rules that will govern how the elections are structured. The elections are crucial because the new parliament will select a 100-member committee to draft the constitution. Here, in crafting the rules of the game, is where the die will largely be cast for the future of Egyptian politics. Choose one electoral system, and the small and poorly organized democratic parties will likely be doomed to insignificance. Choose another, and they will have a fighting chance.

Many countries have written new constitutions in the past several decades, and the political scientists who study and often help draft them have learned a great deal about how different choices can shape the politics of new democracies. In those experiences, there are important lessons about what to look (and hope) for as Egypt crafts its fundamental institutions.

At this writing, Egypt's interim military government seems poised to announce that the September parliamentary elections will be governed by a modified version of the country's existing electoral law. This is bad news. The law provides for a common variation on the first-past-the-post system familiar to American voters: In the Egyptian system, candidates from various parties compete in each district, and if no candidate wins a majority, a runoff is held between the top vote-getters.

In many cases, that kind of system is a boon to democracy, since it often forces candidates to reach across group and party lines to build a majority. But the Egyptian story is different. The two largest parties may well be the least inclined of the serious contenders to secular, liberal democracy, and they face a fragmented liberal-democratic opposition. The bigger parties would likely be able to win a large number of seats without reaching out to liberal voters. The result of 50-percent-plus-one elections is that the larger parties get a seat bonus. In each contest, those in the minority—whether it is a minority of 100 voters or a near majority of 50 percent minus one—are effectively denied representation. If the bigger parties win runoff elections again and again, they could receive, say, 70 percent of the seats while receiving only 55 percent of the votes.

There is, however, a bit of good news in the modified electoral rules: Thanks to one of the military government's alterations, some of the seats in parliament will be filled

through what is called a list system of proportional representation. There are many possible variations in the design of such a system, but essentially each party puts up a list of candidates, with its most preferred at the top. Voters cast a ballot for one party list, and that fraction of the list is elected that corresponds to the fraction of votes the list received.

Ordinarily, proportional representation has a centrifugal effect, because it allows many parties, some of them extreme, to win a few seats and enter the legislature. Israel, with its fragmented party system and a contingent of extremists in the Knesset, is the classic example of the pitfalls of such a system. In Egypt, however, the small parties are concentrated in the liberal, secular center. This kind of system (or at least



A grim electoral past: Egyptian authorities whisked away ballot boxes after the polls closed last year.

most versions of it) would help them in two ways: It would allow them to win a level of representation they could not achieve in individual, majority-runoff constituencies, and it would confine the Muslim Brotherhood and remnants of the old regime to a share of seats proportional to the fraction of votes they win, denying them a seat bonus.

A key question is how many of the People's Assembly's seats will be filled through proportional voting. One-third is the proportion currently being proposed, but the parties of the democratic center are protesting loudly. They have been demanding that the entire legislature be elected in this

fashion. If that were to occur, and if competing lists were to run for seats in provincial-level districts, as the military has proposed, rather than the smaller districts of the past, small parties would benefit. As a rule, the more members a district can elect, the more proportional the outcome. Perhaps 10 to 20 members may be elected in some of Egypt's larger provinces.

Another feature of proportional systems is the threshold of exclusion: Each party is required to win a certain percentage of the national vote before it is awarded any seats. It would obviously help the smaller parties if Egypt's threshold were set at a low level, perhaps even one percent.

Of course, the smaller parties could help themselves a great deal by amalgamating and urging their followers to vote for a new consolidated democratic party. The problem is not merely that these parties have been slow to get organized. Several of them are led by men who would like to run for president. These parties are reluctant to merge because it might prevent them from nominating their favored presidential candidates.

A list system of proportional representation with a low threshold could, however, carry some risk for the liberal-democratic parties. It could encourage splits among them—and among Islamists, too. In the worst-case scenario, Egypt could be left with a parliament so fragmented that both forming governments and governing would be very difficult for any party. In other words, even the best system one could design would still be full of risks for democrats and for Egypt.

One final lesson that has emerged from the experience of constitution makers around the world, however, is that design is not everything. How a constitution is written can sometimes matter almost as much as what it contains.

Consider the success of Indonesia. In 1998, when it emerged from decades of authoritarian rule under Suharto, it had important similarities to contemporary Egypt. Its political elites did not know or necessarily trust one another. There were significant divisions among secularists, observant Muslims, and Islamists. The country was home to a Christian minority equal to roughly 10 percent of the population, as Egypt is today, with its Copts. And the old regime's political party still enjoyed popular support.

Indonesia's new democratically elected parliament took

the task of constitution writing upon itself, involving all of the country's major groups in the process: militantly secular nationalists and non-Muslim minorities, secularists with some ties to observant Muslims, explicitly Muslim parties, and avowed Islamists. Over the course of several years, they thrashed out a new constitution through endless back and forth, with hardly a vote taken. Since the revised constitution was put into effect, Indonesia has held two successful national elections, including one in which an incumbent president was defeated and peacefully handed over power to her successor. Indonesians tell pollsters they are quite satisfied with their democracy even as they object to corruption and other flaws.

The Indonesians had a unique incentive to reach a consensus. The old constitution could only be amended by a two-thirds vote, and the party most wedded to it held enough seats to veto changes. So the other parties were forced to talk and bargain. Yet there is also a lesson here for Egypt. If a majority on the committee selected to draft the constitution believe they can ride roughshod over other members, the resulting sense of exclusion will bode ill for acceptance of new institutions.

The lessons from Indonesia and other emerging democracies are clear. The greater the number of individuals and groups involved in drafting a constitution, the higher the resulting level of democracy, the greater the constitutional constraints on government, and perhaps the greater the durability of the resulting constitution. Both the constitution and the everyday politics that come in its wake are improved by the long simmering of a new fundamental law.

In Egypt, some political activists now argue that the new constitution should be completed before legislative elections are held. But a strong case can be made for not rushing this process, particularly as the military has already, by decree, abrogated some of the more authoritarian features of the Mubarak-era constitution. No matter what kind of system the Egyptians design, it will probably work better if the constitution-drafting process is used to create understandings among secular liberals, Islamists, former supporters of the old regime, the Christian minority, and other groups about their intentions, their fears, and their aspirations.

To accomplish this large objective, it is important to get the technical aspects of elections and the constitutional process right. These seemingly small details are likely, in the end, to have a large formative influence—one that may well determine whether a democratic Egypt emerges. ■