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Thinking About Ethical Leadership: Judicial Independence in Revolutionary Times

By Janice Gross Stein and Ron Levi

Revolutionary politics in Egypt often seems to be a pitched battle between the protection of legal institutions and a brutal struggle for social change. Missing from this story is the prominent role played by the Egyptian judiciary in safeguarding its position and, indeed, in advancing its interests within these revolutionary politics.

The judicial elite has successfully embedded itself, along with the courts, within the power struggles between the warring Muslim Brotherhood and the Supreme Council of the Armed Forces. The result, we suggest, will be greater judicialization of Egyptian politics and ever greater autonomy for the courts in organizing the state.

Over time, however, this judicialization of politics is likely to evoke antipathy from the Egyptian public, and suspicion from rank and file lawyers who may well come to distrust the decisions of the courts.

The enhanced role of the judiciary was obvious very quickly. Immediately after Morsi's removal from power, General al-Sisi appointed Adly Mansour—the newly appointed Chief Justice of Egypt's Supreme Constitutional Court—as Interim President. In the turbulent days that followed, Mansour wore his judicial robes when he appeared in public.

Surprising legal and political analysts worldwide, an Egyptian court in August released Hosni Mubarak from prison pending his retrial for corruption and murder charges.

Even though local judges claimed they were following the timelines of domestic criminal procedure, the symbolic politics were stunning.

With no appeal from Egypt's state prosecutor, Mubarak was soon released from Cairo's Tora prison, which now houses senior members of the Muslim Brotherhood. Mubarak is awaiting trial in a military hospital, with media blackouts recently ordered for key stages of the trial.

Just a few days after Mubarak's release, a panel of Egyptian judges recommended that the Muslim Brotherhood be dissolved and that its Cairo headquarters be closed.

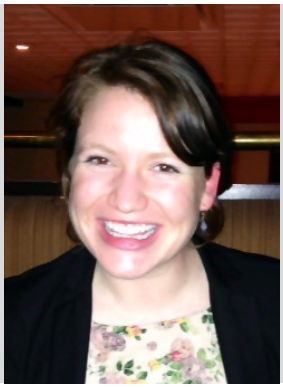
Echoing the views of a judicial panel earlier this year, these judges indicated to Egypt's administrative court that the Brotherhood violates the rules for non-governmental organizations, given the lack of clarity between its religious activities and its political program.

The decision of the administrative court, expected later this year, is far from technical: it would encourage the interim government to ban Egypt's most powerful political organization from the political process going forward.

How can we understand the willingness of the judiciary to step directly into a political process that is fraught with competing claims of legitimacy?

Egypt's judges position themselves defensively in part because they have so often found themselves under attack. In the well known "massacre of the judiciary" by President Gamal Abdel Nasser in 1969, he dismissed over 200 judges, forced the board of the Judges' Association to disband, and gave himself greater authority over judicial appointments.

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A UNESCO lens for merging human rights and climate change law

By Daphne Rodzinyak

In the summer of 2013, I had the unique and exciting opportunity to work with the UNESCO Research Chair at the Technische Universität Dresden's Law Faculty. Dresden is a beautiful city with over 800 years of history, blending both splendour and tragedy, all while remaining a European crossroads of culture, economy, science and technology.

During my internship, I researched the links between human rights, ethics, climate change and cultural heritage.

In recent history, Dresden has twice experienced how extreme climatic conditions can pose a threat to the cultural and natural heritage of not just a city, but of an entire region. In both August 2002 and June 2013, the Elbe River flooded.

In 2002 many of Dresden's cultural landmarks were put at risk. Amongst others, the famous Zwinger Palace, the Semper Opera House and the Pillnitz Palace suffered damages.

When the banks of the Elbe swelled again this past June, much of Dresden's Altstadt ("old town") remained dry due to flood-prevention construction that the city undertook a decade ago; however, many cities downstream suffered major flooding.

A political debate ensued concerning whether the Dresden city government owed monetary compensation to the affected cities downstream. The debate involved both ethical and economic questions. I pursued my research framed against the backdrop of both Dresden's rich culture and the importance of UNESCO's mandate to bring together education, science and culture.

During my internship, I explored the existing academic and practical discourse and considered future research questions. My work centered on the successful planning, running and subsequent journal publication of the conference titled, "Climate Change as a Threat to Peace: Impacts on Cultural Heritage and Cultural Diversity," which we hosted on May 31, 2013.

The conference panellists provided a refreshing and holistic view to the discussion of preserving culture in the face of "more pressing" environmental and economic challenges.

Hypothesized solutions acknowledged that at any given time, each generation is both custodian and beneficiary of the planet. This gives us a certain right to use it, but also obligations to protect it. Transforming these obligations into customary international law makes them enforceable, such as UNESCO's four main conventions:

1: The 1972 World Heritage Convention links the concepts of nature conservation and preservation of cultural properties. It recognizes the way in which people interact with nature, and the fundamental need to preserve the balance between the two. This convention focused on the tangible aspects of preserving culture.

2: The 2001 Convention on the Protection of the Underwater Cultural Heritage attempts to bring the often underestimated importance of underwater artifacts to the forefront of cultural protection, remedying the lack of State regulation addressing looting and destruction of underwater shipwrecks and cities.

3: The 2003 Convention for the Safeguarding of Intangible Cultural Heritage highlights that Cultural heritage does not end at monuments and collections of objects, but also includes oral traditions, performing arts and inherited social practices.

4: The 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions ensures that artists, cultural professionals, practitioners and citizens worldwide can create, produce, disseminate and enjoy a broad range of cultural goods, services and activities.



Dresden. Photo credit: Daphne Rodzinyak

While these conventions cover a range of topics, climate change is not specifically mentioned in any of them. The only reference to climatic factors can be found on the List of World Heritage in Danger, in the most recent version of the Operation Guidelines for the Implementation of the World Heritage Convention, from July 2012. This raises the questions of whether the List of World Heritage in Danger is the only legal tool available to address issues of climate change and cultural preservation and what other tools should be developed.

In legal terms, the issues of dealing with climate change and protecting world heritage have many traits in common. Many academics are researching how the stronger human rights international law regime may provide a legal framework for the climate change and cultural heritage dichotomy.

A frequent criticism of the UN is that it often suffers international failures and institutional gaps in enforcing agreed-upon norms. The current UN treaties are not sufficient to deal with climate change and the preservation of culture. However, it is a humbling realization that changing the UNESCO conventions is unrealistic. We must work within the present legal and political reality to address both the cultural and environmental concerns exacerbated by climate change.

Most people attending the conference were supportive of UNESCO, but outside of this bubble many people put the economy first when it comes to discussion of mitigating the impacts of climate change. Yet, I don't see the issues as a confrontation between the economic cost of addressing climate change and the need to preserve culture. Instead, we must explore the connections between market and culture.

We live on an earth with limited space—with a finite carrying capacity—so it is important to preserve our cultural heritage. Our cultural values are very important because they are part of how we live and what is essential to us. If we consume the human substance of our societies in the interest of economic development, then we are vulnerable to not just environmental but also cultural loss and decreased peace.

In order to convince people that they should care about the impact of climate change on culture, we must first convince them that we should care for our cultural heritage. This is difficult to do in a society where economic activity is often seen as paramount—even if it comes at great environmental, social or cultural cost.

Thus, the preservation of "intangible heritage" was another research focus for the UNESCO Chair. Not as simple as protecting a monument, "intangible cultural heritage is where you find the experience of what it means to be a human being" said conference panelist Prof. Dr. Federico Lenzerini of the University of Siena. This insight moves us towards understanding climate change as one of the many threats to peace and cultural heritage as well as cultural diversity. Preserving heritage must be viewed holistically, with a case-by-case approach.

Another area of interest was the common theme that climate change is a global threat, but preservation is a local challenge.

Discussions concerning peace and ethics have become increasingly integrated within the climate change discourse. How to appropriately address these issues is currently one of the main challenges facing the international community.

Preventative and adaptive strategies to both limit and indemnify anthropogenic global warning requires international cooperation and presents a highly specialized international challenge. Climate change will have broad implications on global peace and security but also for the preservation and furtherance of culture.

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Dresden flood 2013. Photo credit: Daphne Rodzinyak

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Tamir Moustafa, an expert on Egypt, has shown that the judiciary gained power during the Mubarak era, taking up human rights cases, granting opposition party status to several groups, and monitoring the 2000 Parliamentary elections.

These same judges nevertheless remained acutely aware of the limits to their autonomy, the constraints imposed by emergency laws and military courts, and the appointment in 2001 of a regime loyalist directly to the Chief Justice position.

Most recently, under the Muslim Brotherhood, the largely Mubarak-appointed judiciary was directly threatened with a purge through a combination of forced retirements and reductions in the number of judicial seats, and sidelined through Morsi's attempt to insulate presidential decisions from judicial review.

It is little wonder that Egypt's judges are almost reflexively defensive.

Although often attacked, the judiciary is nevertheless an elite institution that wields significant political influence and prestige.

Among the public, decades of legal skirmishes with the state built the trust judges enjoy. Professional struggles between reformists and conservatives in the Egyptian Judges' Club enhanced their popular legitimacy during the Mubarak era. Indeed, in 2005, some judges struck rather than certify parliamentary elections that they considered fraudulent.

Some autonomy for the judges is not only in their interest, but serves the state as well. Any government in Egypt must preserve some independence of the bench to successfully attract foreign capital.

The elite status of Egypt's judges is consistent with the very small number of Islamists on the bench. Even though they are members of the Egyptian Bar, the security apparatus has kept Islamists out of the judiciary. Not only state security but judges themselves have excluded Islamists. Recently, members of the Judges' Club filed complaints against 75 judges from competing syndicates whom they accused of taking part in politics by siding with Morsi and the Muslim Brotherhood.

The Egyptian judiciary is an elite institution with power, prestige, and a history of adapting to attacks on its independence.

The judges working in the shadow of the military continue today to do what they have always done: preserve as much autonomy as they can.

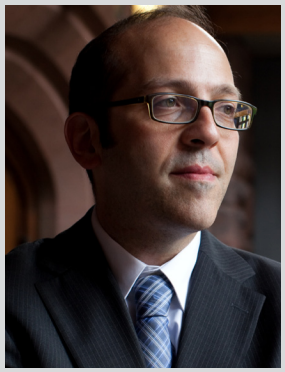
Yet in the current moment, these judges face a challenge of ethics and leadership.

Even though they have captured political and symbolic authority in the post-Morsi era, they must now be careful not to jeopardize their legitimacy and credibility among the public and the broader legal profession.

How Egypt's judges protect themselves, while negotiating with this new state and its shifting alliances, is a test of the role law can play in unsettled times.

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ANNOUNCEMENTS

SYRIA AND THE R2P DOCTRINE: WHAT IS THE FUTURE OF "RESPONSIBILITY TO PROTECT?"

Co-sponsor: Munk School of Global Affairs, University of Toronto

Speakers: Michael Ignatieff, Janice Stein, Jutta Brunnee

Wednesday, November 13, 2013

Live at the Munk School in TORONTO, 4:00 - 6:00 EST

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