



Policy Alert

In Egypt, Rule by Constitution or Fiat?

[*David Schenker*](#)

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This weekend, Egypt's Islamist president Muhammad Morsi unilaterally amended the interim constitution that had been approved by 77 percent of voters during a public referendum in March 2011. Although these changes may eventually be challenged in the High Constitutional Court (HCC), the absence of a parliament and military leaders capable of intervening means that there are few if any checks on Morsi's powers at the moment.

In addition to axing long-serving Defense Minister Muhammad Hussein Tantawi and Chief of Staff Sami Anan, thereby weakening the military's authority, Morsi amended the constitution to give him powers that had been the sole purview of the Supreme Council of the Armed Forces since Hosni Mubarak's ouster. First, he abrogated the SCAF's June 17, 2012, constitutional addendum, which had stipulated no civilian oversight of the military and allowed the council to appoint the next Constituent Assembly to draft the constitution.

More significantly, Morsi assumed powers granted to the SCAF under Article 56 of the interim constitution, including the right to "legislate" (i.e., set down new laws), to "issue public policy for the state and the public budget and ensure its implementation," to "sign international treaties and agreements," and to "appoint civilian and military employees and political representatives." Egyptians had given these powers to the SCAF via the March 2011 referendum.

The HCC's initial reaction might suggest a future constitutional challenge to Morsi's maneuver. Several judges on the court have already condemned his overreach -- as Tahani al-Gebali told *Ahram Online*, "A president does not have the power to abrogate a constitution, even a temporary one." The HCC's current head was appointed by the SCAF in July, and less than three months ago, the court declared the results of the earlier Islamist-dominated parliamentary elections unconstitutional. Another momentous decision along those lines could be forthcoming.

Essentially, Morsi has changed Egypt's constitution by fiat and, in the process, afforded himself control over the military, all legislative powers, and the makeup of the assembly that will write the new constitution. Although the SCAF's management of the transition was

inept and halting, it was at least seemingly guided by some constitutional principles. Morsi's maneuver, if it stands, threatens to undercut the legitimacy of the constitutional transition process and the foundations of Egypt's fledgling democracy. While curtailing military power may prove popular in Tahrir Square, the constitutional ramifications will likely prolong instability in a country already beset by significant economic, security, and political challenges.

David Schenker is director of the Program on Arab Politics at The Washington Institute.