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## Book Reviews

Scott Barclay, Editor

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*The Struggle for Constitutional Power: Law, Politics, and Economic Development in Egypt.* By Tamir Moustafa. Cambridge, United Kingdom: Cambridge University Press, 2007. Pp. 338. \$85.00 cloth.

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The first years of the twenty-first century witnessed the surprising emergence of a new vanguard driving sociopolitical transformation: high-court judges. In Pakistan, judges led the struggle against the military dictatorship of President Pervez Musharraf, while in Venezuela the high courts supported nationalizations and the charismatic authority of President Hugo Chavez. In Argentina and Peru, bold judges revived the prosecution of former dictators and torturers; while in Turkey, high court judges assumed the mission of the authoritarian military establishment and threatened to dissolve a popularly elected civilian government.

Moustafa's important book provides a thorough analysis of the case of Egypt's high court judges and their struggles with authoritarian rule, offering groundbreaking insights into how the principles and institutions of legality have been deployed in an effort to reconcile the push for market liberalization with the deepening of political exclusion. This study will be essential reading for four groups: political sociologists interested in state institutions or social movements in repressive contexts; critical legal scholars who examine the law and its imbrications in social and economic forces; policy makers and journalists who want to make sense of the emergence of judges and lawyers as agents of change; and Middle East specialists who understand that the character of authoritarianism in the region cannot be reduced to personality cults or to "balancing acts" between Islamism and imperialism.

The book opens with a provocative question: "Why would an entrenched authoritarian regime establish an independent constitutional court with the power of judicial review?" (p. 1). The first two chapters offer a review of the literature on courts—from China to Chile—that have asserted independence in authoritarian contexts, as well as on courts that have been sidelined in democracies. "Until now, however, the same nuanced understanding that comparative law scholars bring to bear on courts as contested sites

in democratic polities has largely been missing from our knowledge of legal struggles in authoritarian polities” (p. 3).

Moustafa argues that judicial actors find space for maneuver as authoritarian regimes struggle to overcome four institutional contradictions. First, authoritarian regimes (prone to nationalize private assets or politicize property relations) cannot credibly protect private property and thus are deserted by the private investors needed to fuel economic growth. Moustafa draws upon the work of “new institutionalists,” including scholarship by Olson, Weingast, and Yingyi, to demonstrate that legal and regulatory institutions with power of judicial review must be brought in to reassure global investors, develop national assets, and stop capital flight. Second, Moustafa asserts that without legal regulation and transparency, bureaucratic-authoritarian institutions become hopelessly corrupt and undisciplined, making the exercise of authority and maintenance of legitimacy difficult. Moustafa is less concerned with the normative cohesion or charismatic animation of state institutions, and instead draws upon post-Weberian political sociology, including scholarship by Migdal, Kohli, Shue, and Shapiro, demonstrating how authoritarian regimes move instrumentally to promote independent legal regulation of their own bureaucracies to assure that their plans are not derailed by corruption and entrepreneurialism. Third, Moustafa reviews the recent work of sociolegal scholars, such as Graber, Whittington, and Lovell, who argue that authoritarian rulers need to have the option of deferring politically polarizing decisions to courts. Similarly, Moustafa’s fourth argument is that authoritarian systems without some court and constitutional independence can only draw legitimacy from success in the realms of policy (or, one might add, by diverting attention to war, fear, or security); so, particularly when policies are failing, authoritarians back the reassertion of court independence hoping that the judiciary can supervise procedural mechanisms that generate trust in the system regardless of policy outcomes.

The author’s analysis is supported by case-study evidence from the last 30 years of court politics in Egypt, with the primary focus on the first and third arguments from above. These arguments are most immediately relevant to the book’s interest in Cairo’s efforts to implement unpopular structural-adjustment policies, attract investment, and dismantle the legacies of the socialist era. There are certain analytical tensions that arise from Moustafa’s exploration of clashing methodologies. In certain sections, his “new institutionalist” analysis of struggles for autonomy in the judicial sector absorbs the private-sector discourse of “political risk analysis” and its hyperbolic biomedical metaphors. He labels Egypt’s socialist and redistributive policy traditions as pathologies, perversions, mala-

dies, and dysfunctions. This language risks naturalizing market liberalism and privatization policies, and may degrade those who would resist them.

At other moments, Moustafa leans toward a kind of methodological rationalism that revives the myth of the authoritarian state as an expression of one man's will—posing the dictatorial President Hosni Mubarak as a strategic actor who is choosing to activate or sideline legality in order to maximize investor income. In this focus on the triangular struggle between capital, law, and dictator, other collective social forces, public actors, and socialist legacies tend to be analytically marginalized. Given the thoroughly socialist principles of the Egyptian Constitution, and the Nasserist and nationalist ideological legacies still alive in the press, on university campuses, in some syndicates, and among the urban and rural poor, can the story of the struggle for constitutionalism be limited to a face-off between pro-investor liberals, illiberal state officials, and Shari'a-advocating counter-elites? Is this, as the book's title asserts, about the "Struggle for Constitutional Power," or is this the story of the emergence of *liberal legalism* creating a remarkable legacy of autonomy, not just against authoritarianism, but also explicitly *against* constitutionalism, which, in the letter of the law, remains a socialistic, public-oriented, and revolutionary tradition in Egypt?

The book becomes more innovative as the analysis unfolds, and as the author leaves behind methodological rationalism and institutionalism. "It is this lack of attention to the broader political context that leads new institutionalists to greatly underestimate the challenges of sustained effort toward institutional reform in developing countries" (p. 236). To respond to this lack, Moustafa adopts a Charles Tilly-style "contentious politics" approach. In the second half of the study, the author immerses the agency of the authoritarian executive within socio-structural spaces, in historically and geographically complex matrixes of struggles, and in fields of intersection and autonomy. Moustafa's most inspiring work is here, in Chapters five and six, when the three categories of agency (investors, president, and law) are interrupted by a fourth set of actors: the people. In these chapters Moustafa gives more space to nonmarket actors: peasant groups, urban tenant collectives, professional organizations, anti-privatization activists, and human rights groups. In these final two chapters we witness Moustafa's move toward broader openness to social geography and history, and beyond the limitations of neoliberal reform agendas. He launches a bottom-up approach to the Egyptian people's relationship to legality, liberalism, and constitutionalism.