

# The Devil is in the Lack of the Details: Expert Panel discusses pros and cons of referendum

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By Maha El Gazzar

Last night, I had the pleasure to attend a panel discussion hosted by the School of Global Affairs and Public Policy at the American University in Cairo (AUC). Titled "Political Strategies on the Transitional Constitutional Period: Before and After the Referendum," the panel included Tahani El Gebaly, judge and deputy head of Egypt's Supreme Constitutional Court; Fathi Fikry, professor of constitutional law at Cairo University; Rabab El Mahdi, assistant professor of political science at AUC; Sobhy Salah, member of the constitutional amendments committee and Nasser, a member of the Youth Revolution Coalition. Moderator Gianluca Parolin, assistant professor of law at AUC, underlined the importance of the transitional phase in Egypt, which he views to be paradoxical. "The idea of U-turn seems to prevail," Parolin explained. "There are a couple of contradictory signals when the Supreme Council of Armed Forces (SCAF) accepts to change the constitution, yet speeds up the date of the referendum."

Though most of the panel was in accord to draft a new constitution rather than amend the old one – dubbed by most experts as a 'carte blanche' to dictatorship – Salah felt different. He believes the amendments will put the new president in his place. Moreover, article 189 stipulates the new president is to draft a new constitution once he takes office, he explained. "Yet, the article does not use the phrase 'must' which in the law world sets the difference between black and white," refuted El Gebaly. She stressed the importance of terminology and lingo in the constitution; something she believes is not given enough details in the suggested amendments. "The article states the new president would draft a new constitution, but he mustn't do so – which makes all the difference," El Gebaly continued.

Nasser also endorsed the idea of a new constitution, "The revolution's main demand was to bring down the regime; that meant its president, its constitution and even its reporters," he declared as the hall broke out in applause and cheers. "When the president stepped down, it automatically disabled the old constitution. Hence, for the SCAF to suggest amendments to a disabled constitution is to give legitimacy to an illegitimate matter." He also recalled the meeting that took place between the Youth Revolution Coalition and the SCAF on the morning after Mubarak was ousted to demand a new constitution. "President ousting equals constitution ousting," affirmed El Gebaly, as another round of applause filled the Ewart Hall.

The bottom line is that Nasser deems the notion of electing a parliament before the president as a huge mistake. "Maybe a new constitution will abolish the Shura Council? Maybe it would integrate the Shura with the People's Assembly, so how can we hold the parliament election first?"

El Mahdi agreed with Nasser and signified the inclusion of all social classes in the constitution, something she doesn't see happening with the referendum. "Amending the old constitution does not represent the people that cannot reach the media and that do not have a voice," she said. "I don't see anyone now focusing on minority groups like the women and the Copts. No one is asking them what they want and how we can incorporate their demands in drafting Egypt's new democracy."

She spoke about how the same people – those of minority groups and low social class – were key figures in the revolution. Yet, she views the media now as turning to activists and political figures while shutting them out.

"Conflicts and dilemmas surround the amendments," continued El Gebaly. "There shouldn't be a gray area when creating laws that will govern us." The judge recalled how 25 members (including her) of the Supreme Constitutional Court sent a memorandum to Yehia El Gamal, deputy prime minister, expressing their refusal to the amendments.

Agreeing on the constitutional amendments proposed would mean having parliament election in about two months, explained El Gebaly, the only female judge in Egypt's Supreme Constitutional Court. "How

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