

A New Emergency Law Model for Egypt

By Michelle A. Liguori*

INTRODUCTION

Among the demands of protesters who brought about the resignation of former president Hosni Mubarak in February 2011 was the lifting of the state of emergency that was in place in Egypt throughout Mubarak's nearly 30-year presidency and an end to abuses that occurred pursuant to the country's 53-year-old emergency law.¹ Throughout most of the ensuing military-led transition, the state of emergency and the 1958 Emergency Law remained, at least partially, in place,² and human rights groups reported continued abuses.³ The state of emergency expired in May 2012, though the 1958 Emergency Law has not been repealed.⁴

A constituent assembly is currently in the process of drafting a new constitution for Egypt,⁵ while protesters and politicians have continued to call for changes to the country's emergency powers.⁶ Taking into account Egypt's history and the types of emergencies the country is most likely to face in the near future, this paper proposes a new emergency law model that could be incorporated into Egypt's new constitution.

THEORIES OF EMERGENCY POWERS

Modern emergency powers have their origin in Ancient Roman law.⁷ The Roman Constitution provided for the Senate (legislative branch) to declare a state of emergency for a period of up to six months, during which executive authority would be transferred from the Consuls (executive branch) to a dictator, appointed by the Consuls.⁸ The dictator was chosen from among men outside the ordinary governmental apparatus known for their skill and virtue.⁹ The purpose of such powers was to enable the dictator to eliminate extraordinary threats to the Republic by authorizing him to take extraordinary actions for the duration of the emergency.¹⁰ However, once the threat was eliminated, the dictator would step aside and the republican form of government, with the Consuls as executives, would resume unaltered.¹¹ The fact that the ordinary system of government returned when the

state of emergency expired shows that its *raison d'être* was to bring about a return to the normal constitutional order.¹²

The Ancient Roman model has been resurrected in modern times such that many modern constitutions, including those of France, Turkey, South Africa, and Afghanistan, authorize states of emergency. In fact, international law authorizes

countries to derogate from their treaty obligations, if faced with a "public emergency which threatens the life of the nation," provided that the emergency is officially declared.¹³ However, it designates certain rights non-derogable, even during an emergency, including, *inter alia*, the right not to be discriminated against solely on the grounds of race, color, sex, language, religion or social origin; the right to life; the right to be free from torture and cruel, inhuman, or degrading treatment or punishment; the right not to be

convicted under retroactive criminal laws or to receive a more severe retroactive sentence; and the right to freedom of thought, conscience, and religion.¹⁴

Nonetheless, differences of opinion exist as to the optimal system modern democratic states should use to deal with emergencies, with most scholars falling into one of three camps.

The first camp advocates what is sometimes referred to as the neo-Roman model.¹⁵ Its theoretical basis was articulated, in modern times, by the controversial German political theorist Carl Schmitt.¹⁶ Schmitt argued that the rule of law has no place during an emergency and that an emergency, by its nature, requires the suspension of democratic constitutional order.¹⁷ Many scholars and politicians, however, have recognized that constitutionalized emergency powers run the risk that government will resort to such powers more often than is necessary, jeopardizing the rule of law and the constitutional order, itself.¹⁸ Critics of the neo-Roman model can point to, *inter alia*, the fall of the Weimar Republic to Nazi dictatorship after the former declared several states of emergency¹⁹ and the use of emergency measures to silence political opposition in Egypt during its prolonged state of emergency.²⁰

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However, the notion that emergencies require extraordinary measures that are outside the normal legal system and that it is best to provide a *prescribed, limited, and temporary* set of emergency measures to be used to deal with such emergencies continues to be embraced by many.²¹ The advantage of such a model is that, at the end of the emergency, the normal constitutional system can be restored intact.

Countries using the neo-Roman model often adopt a number of safeguards to prevent overuse of constitutional emergency powers by giving authority over different aspects of the powers to different branches of the government.²² In practice, emergency laws vary in the branch that has responsibility for: declaring the state of emergency (usually the executive²³), enacting emergency measures (usually the executive), executing emergency measures (usually the executive), extending and/or terminating the state of emergency (usually the legislature), and reviewing actions taken in response to the emergency (usually the judiciary, if any). Some countries spell out certain rights, usually those identified as non-derogable under international law, that may not be restricted in order to deal with the emergency.²⁴ Many countries also provide in their constitutions or supplementary legislation that emergency measures expire once the state of emergency is terminated.²⁵

The second camp is uncomfortable with creating a secondary legal system to be used during times of emergency, on the grounds that authorizing periods during which the government is not subject to normal checks and balances presents too great a threat to the rule of law. The United States is, to some extent, an example of this second model, sometimes called the “legality” model.²⁶

A prominent adherent of the legality model is David Dyzenhaus. Dyzenhaus accepts that the executive will have to take decisive action during an emergency, but he calls on the legislature and judiciary to ensure that the response to the emergency is not outside the rule of law.²⁷ Dyzenhaus argues that the courts, in particular, should scrutinize executive emergency actions,²⁸ whereas scholars such as Posner and Vermeule argue that courts are ill-equipped to determine appropriate responses to emergency situations and should defer to the executive, at least during the heat of the emergency.²⁹

In fact, most advanced democracies, even those whose constitutions follow the neo-Roman model, rarely declare states of emergency in response to threats to their national security.³⁰ Because of the rule of law concerns raised by states of emergency, such countries tend to use ordinary legislation that delegates exceptional powers to the executive branch; however, this legislation does not suspend the constitutional order and is subject to judicial review, like ordinary legislation.³¹ Along these lines, Dyzenhaus emphasizes that for the legality model to work, all branches of government, and the general public, must have a firm commitment to the rule of law.³² Others have noted that it also requires a legislature capable of quickly agreeing on legislation authorizing the executive to take decisive action.³³



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The danger with the legality model is that actions taken in response to an emergency will permanently transform the constitutional system in a less rights-protective manner.³⁴ A number of scholars have expressed this concern about legislation passed in the United States after the terrorist attacks of September 11, 2001, some of whom have proposed a new model of emergency powers.³⁵

The third camp, sometimes called the “extra-legal measures model,”³⁶ is skeptical both of prescribed emergency powers and of relying on courts to serve as a check on extraordinary measures on the grounds that both threaten to constitutionalize the exception. Adherents of this view believe that political, rather than judicial, checks on the executive are the best way to prevent executive overreaching through emergency actions.³⁷

Oren Gross, a member of this camp, proposes a constitution that authorizes the executive to take whatever actions he or she deems necessary to deal with an emergency situation, provided that, after they go into effect, the executive’s actions will be put up for a popular referendum, either directly or through the people’s legislative representatives.³⁸ If the people determine that the actions cannot be supported by the constitution, they can subject the executive to legal and/or political sanction.³⁹ As with the legality model, for the extra-legal measures model, with its reliance on a political check, to work, the people, or at least their representatives in Gross’ model, must have a firm commitment to the rule of law.⁴⁰

HISTORY OF EMERGENCY POWERS IN EGYPT

The emergency powers in Egypt’s 1971 Constitution, as amended, which governed the country until March 2011, largely followed the neo-Roman model. Article 148 gave the president authority to declare a state of emergency.⁴¹ Article 148 further provided that the state of emergency would last 15 days, after which approval by the legislature was required.⁴² The Article did not specify a time limit for the state of emergency, other than to say that it would be limited, and that any extension required legislative approval.⁴³ The state of emergency is further regulated by Law No. 162 of 1958 (which has not been repealed),

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which, *inter alia*, authorizes the president to restrict freedom of assembly, detain suspects for up to six months without a hearing, and conduct searches without a warrant during a state of emergency.⁴⁴

The 1971 Constitution also contained several provisions that gave the president extraordinary powers to deal with exigent situations, but which did not require the declaration of a state of emergency. Article 74 authorized the president to take “urgent measures” necessary to deal with threats to national unity, the safety of the nation, or the constitutional role of state institutions, after consulting the prime minister and the speakers of both houses of the legislature.⁴⁵ Article 74 required the president to hold a public referendum on any such actions within 60 days.⁴⁶ Similarly, Article 108 of the 1971 Constitution provided that the legislature could delegate power to the president to enact decrees having the force of law, “in times of necessity,” subject to the approval of the prime minister.⁴⁷

Historically, the emergency clause in Article 148 has been the most important. In fact, Egypt was in a nearly continuous state of emergency from 1967 through May of this year. In 1967, the first president of the Egyptian Republic, Gamel Abd Al-Nasser, declared a state of emergency during the 1967 Arab-Israeli War.⁴⁸ It was briefly lifted by Nasser’s successor, Anwar Al-Sadat, but was reinstated by Mubarak after Sadat’s assassination in October 1981.⁴⁹ The state of emergency was repeatedly renewed by the legislature, most recently in May 2010.⁵⁰

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Following Mubarak’s resignation in February 2011, the Supreme Council of the Armed Forces (“SCAF”) assumed control of the country.⁵³ The SCAF suspended the 1971 Constitution, leaving the state of emergency in place,⁵⁴ however, it

issued a Constitutional Declaration in March 2011 (after input from a popular referendum) that replaced the 1971 Constitution and revised its emergency provisions.⁵⁵ As under the prior constitution, the Constitutional Declaration gives the president authority to declare a state of emergency, though he or she must first consult the cabinet.⁵⁶ The Declaration also provides that the state of emergency must be approved by the legislature within seven days and that it is limited to a period of six months, after which it can only be extended in a national referendum.⁵⁷

Despite frequent exhortations against the state of emergency and the 1958 emergency law by Egyptian demonstrators,⁵⁸ human rights organizations,⁵⁹ and foreign governments,⁶⁰ the SCAF left both, at least partially, in place after Mubarak’s resignation. In September 2011, the SCAF issued a decree that expanded the state of emergency, approved by the People’s Assembly to cover terrorism and drug trafficking in March 2010, to a number of additional threats, including internal disturbances, public system disruption and its financing, ownership and trading of weapons, bullying, obstructions to transportation, broadcasting false information, and spreading rumors.⁶¹ However, in January 2012, the SCAF lifted the state of emergency for all offenses other than “thuggery,” a term the



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SCAF left undefined,⁶² and in May it let the state of emergency completely expire for the first time in over 30 years.⁶³

DIAGNOSIS OF EGYPT'S PRIOR EMERGENCY LAWS

In diagnosing Egypt's emergency powers, the typical division of powers over neo-Roman states of emergency discussed earlier should be kept in mind. Under this framework, Egypt's emergency laws, both under the 1971 Constitution and the 2011 Constitutional Declaration do not appear terribly problematic. One notable deficiency in the 1971 Constitution (which has been modified in the Constitutional Declaration) is the absence of a specified time limit for states of emergency. Another is the lack of an explicit grant of jurisdiction to the judiciary to review executive emergency actions. Unsurprisingly, the Egyptian Supreme Constitutional Court, since its creation, largely declined to review the executive's exercise of emergency powers by upholding the president's authority to prosecute offenses related to the state of emergency in Emergency State Security Courts, which were presided over by a mixed panel of judges and military officers and did not provide a right of appeal.⁶⁴

In addition, as mentioned, many countries' constitutions specify that certain fundamental rights may never be restricted, even during states of emergency. Neither Egypt's 1971 Constitution nor its 2011 Constitutional Declaration specify non-derogable rights, and reports have shown that the Egyptian government systematically violated rights regarded as non-derogable under international law, such as the right to be free from torture and cruel, inhuman or degrading treatment or punishment.⁶⁵

However, the standard neo-Roman emergency law discussed above is designed to work in a republic that is based on the separation of powers; whereas, since the founding of the Egyptian Republic in 1953,⁶⁶ power has historically been concentrated in the executive branch.⁶⁷ In fact, prior to Mubarak's resignation in 2011, Egypt was widely regarded as a *de facto* single-party state, with the executive controlling access to the legislature and judiciary.⁶⁸ However, while it had limited room to maneuver, the judiciary, in particular the Supreme Constitutional Court, has been able to exercise a significant degree of independence, and has, at times, served as a constitutional check on the executive.⁶⁹

Given these institutional characteristics, in particular the legislature's weakness, it becomes apparent that Egypt's prior emergency powers suffered from the absence of a meaningful check on the decision to declare, extend, and/or terminate the state of emergency, the most used emergency power in the 1971 Constitution. They also suffered to the extent that the judiciary, the branch best placed to serve as a check on the executive, was

not given explicit authority to do so. While the existence of a *de facto* single-party state may have made the creation of a meaningful check on the executive impossible,⁷⁰ explicit constitutional authority for the judiciary to review executive emergency actions would have been the most likely to succeed.

A NEW MODEL FOR EGYPT

The emergency law contemplated in this paper will be the product of a new constitution, which is expected to reshape the balance of power among the three branches of the Egyptian government.⁷¹ In contemplating the best model for Egypt moving forward, it is useful to consider the types of challenges the country is likely to face in the near future.

Throughout the military-led transition, the role of the SCAF and the progression of the transition, itself, have been ardently contested in street protests, which have, on a number of occasions, escalated into violent confrontation between protesters

and security forces, resulting in scores of deaths.⁷² In addition to the danger of rioting sparked by further protesting, the most cited threats to the new constitutional order include terrorism, drug trafficking, and sectarian violence.

Terrorism has historically been regarded as a serious threat within Egypt, as is evidenced by the 2007 Amendment to the 1971 Constitution, authorizing the legislature to restrict fundamental rights in measures designed to combat terrorism.⁷³ Terrorism was also cited, along with drug trafficking, as one of the reasons for the state of emergency renewal in 2010,⁷⁴ and it was included in the list of reasons for the SCAF's

state of emergency degree in September 2011.⁷⁵ In addition, since former President Mubarak resigned in February 2011, several terrorist attacks were launched in Egypt's Sinai Peninsula, most of which were directed at the Sinai gas pipeline.⁷⁶

The third often cited danger is sectarian violence between Muslims (roughly 90% of the population) and Christians (roughly 10%),⁷⁷ which has increased in recent years,⁷⁸ and which some fear could intensify in the future.⁷⁹ Egypt may also have to deal with urban rioting, along the lines of clashes that occurred in February of this year in a Port Said soccer stadium, in which more than 70 people were killed, and which were followed by several days of rioting in Cairo.⁸⁰

Professor Victor V. Ramraj, a noted scholar on emergency powers, observes that nascent democracies must work to channel political disagreements into political processes and institutions in a way that makes the resolution of such disputes seem legitimate to the disputing parties.⁸¹ He notes that developing

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democracies are likely to confront violent opposition during this channeling process and argues that, though emergency powers, by their nature, entail derogation from constitutional rights and procedures, their proper use can help governments demonstrate their commitment to constitutional checks and the rule of law.⁸²

In Egypt's case, Ramraj's advice counsels for a system of emergency powers that sufficiently enables the government to deal with serious threats to its legitimacy while visibly limiting its actions and providing accountability. Along these lines, it would be beneficial for Egypt's new emergency powers to look significantly different from the old ones in order to signal a change in the government's approach to dealing with emergencies, especially given the extent of opposition expressed to the previous regime's use of emergency powers, both before, during, and after the protests that forced Mubarak to resign in early 2011.

Given the desirability of such limits and the relatively immature state of democracy and demonstrated commitment to the rule of law in Egypt, it seems most appropriate that Egypt include a neo-Roman emergency law, which spells out permissible emergency actions, and procedures to be followed to activate them, before an emergency is declared. While this model risks overuse if it lacks appropriate safeguards, it seems more appropriate than either a pure legality or extra-legal measures model, both of which require internalization of a system of constitutional limits on government action.

However, Egypt's history with long-term states of emergency during which human rights abuses were systematically committed also counsels for retaining a form of exceptional powers for the president in the new constitution. Mubarak's successors may have strong political reasons not to declare states of emergency, even if faced with situations that call for extraordinary measures. Such was the case in Indonesia, where, as in Egypt, massive street demonstrations caused a long-serving authoritarian president to resign and ushered in a transition to a democratic form of government.⁸³ President Habibie, the first Indonesian president after the transition, refused the military's request for a declaration of martial law in Indonesia's Aceh region because of the history of systematic human rights abuses committed there.⁸⁴ As such, it would be beneficial to provide the Egyptian president with another option for taking immediate action in response to an emergency situation, without having to officially declare a state of emergency, provided that the alternative option also has political and judicial checks.

Finally, the competencies of different branches of government should be kept in mind, both in regards to Egypt, specifically, and more generally. Egypt's institutional history, as discussed

above, counsels *against* relying on the legislature to check the executive's emergency actions and *for* giving the Supreme Constitutional Court a significant role. However, scholars such as Posner and Vermeule counsel against judicial review of emergency actions, on the grounds that judges are ill-equipped to gather information and make judgments about what national security requires,⁸⁵ which counsels against relying on the Supreme Constitutional Court as the primary or exclusive check on the executive.

It is also useful to note the use of popular referenda to check the Egyptian president's emergency actions, both in Article 74 of the 1971 Constitution and the emergency provision of the 2011 Constitutional Declaration. While, to the author's knowledge, the provisions that require popular approval have never been used, they suggest that the Egyptian people may be well placed to serve as an effective check on the executive branch, given the right circumstances.

Nonetheless, there are a number of drawbacks to relying on referenda, including cost and time concerns and the history of sectarian violence in Egypt, which counsels against relying too heavily on a popular check to protect minority rights during an emergency. The possibility of a sectarian emergency also counsels against overreliance on the legislature as a check, especially given the fact that self-identifying Islamists controlled a majority of seats in the country's first post-Mubarak parliament (which has since been dissolved).⁸⁶ Altogether, the possibility of a sectarian emergency also counsels for a role for a counter-majoritarian institution, namely, the Supreme Constitutional Court.

Along these lines, some have expressed concern that Egypt is on the way to becoming a single-party state once again, this time with power concentrated in the hands of the Muslim Brotherhood's Freedom and Justice Party, which controlled nearly a majority of seats in the country's first post-Mubarak parliament and now occupies the presidency.⁸⁷ If this scenario does come to pass, it may be impossible to create meaningful checks on the executive's use of emergency powers, given that the ruling party in a single-party state, by its nature, controls access to the governmental institutions that could serve as a check. This paper proposes a model that is most likely to succeed, keeping in mind that its suggestions may be of limited effectiveness should a single-party system emerge again.

PROPOSAL

This paper proposes that Egypt adopt two types of emergency powers in its new constitution: one based on the neo-Roman model, with a formal declaration of emergency and prescribed

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emergency measures that may restrict ordinary constitutional norms, and the other largely based on the legality model, allowing the executive to take actions outside the normal constitutional *procedure* in the face of an emergency situation without declaring a state of emergency, provided that such actions are subject to immediate ratification by the legislature and judicial review for compliance with ordinary constitutional norms.

STATE OF EMERGENCY

Egypt's constitution should authorize the declaration of a state of emergency, in the event of a threat to the constitutional order that cannot be managed through the ordinary constitutional process, during which constitutional rights may be temporarily restricted. However, it should categorically prohibit the restriction of rights deemed non-derogable under international law,⁸⁸ including the right to be free from torture and cruel, inhuman or degrading treatment or punishment.

The new constitution should also provide for both civil and military states of emergency, as do French⁸⁹ and Turkish law.⁹⁰ The option for a military emergency is desirable, especially given the current weakness of the Egyptian police force, due in part to its violent response to anti-government protests that brought about Mubarak's resignation.⁹¹ The measures that may be used in response to an emergency situation should, pursuant to the neo-Roman model, be specified, either in the constitution, or in new supplementary legislation that would displace the 1958 Emergency Law. Given Egypt's history, it may be beneficial to include in the legislation a provision regarding when security officials are authorized to fire on protesters, as does Turkish law.⁹² The prescription of emergency powers will serve both to limit the restriction of constitutional rights and to provide a guideline by which actions actually taken can be evaluated. Should additional authorities be required during the state of emergency, supplementary legislation would have to be promulgated by the legislature, using the normal legislative process.

All three branches of government, and the population at large, should be given a role in managing states of emergency. A breakdown of the recommended division follows.

Declaring states of emergency

The power to declare a state of emergency should be given to the president.⁹³ The state of emergency should require the approval of a simple majority of the legislature within fourteen days.⁹⁴ The legislature, as a political branch that is likely to have access to information about existing threats to the nation and can be convened relatively easily (compared to a national

referendum), is well placed to serve as the first check on the president's invocation of emergency powers. The initial state of emergency should terminate after three months, unless renewed. While not all countries explicitly limit the duration of an initial state of emergency, many, such as South Africa and Turkey, limit it a period of 21 days⁹⁵ and six months,⁹⁶ respectively.⁹⁷ This paper recommends an initial duration of three months, given

Egypt's history with extended states of emergency, but keeping in mind the desirability of giving the executive flexibility to act.

Extension and termination of the state of emergency

After the initial three months, the president should be able to request further extension of the state of emergency. Renewal in three-

month intervals, a period also used by South Africa,⁹⁸ is recommended, again, as a middle ground between the desire for both time limitation and preserving flexibility of action.⁹⁹ The first renewal should be by a simple majority of the legislature, given that legislatures, in general, have relative competence in serving as a check on executives' use of emergency powers. However, given Egypt's institutional history, the second renewal should require approval by the Supreme Constitutional Court, which should be given jurisdiction to determine whether the factual conditions for a state of emergency continue to exist. The Supreme Constitutional Court, which, as noted, has a history of serving as a check on Egypt's executive branch, will also serve as a counter-majoritarian check that will help to protect rights of minorities during emergencies.

Also keeping in mind the role of constitutional referenda in Egypt, the third and all subsequent extensions should require approval of the people in a referendum. While referenda may be costly, they are not novel in Egypt, and they would help to ensure that the president is accountable to the people in his or her use of emergency powers. The fact that the second extension requires the approval of the Supreme Constitutional Court also ensures that the people will have available to them a judicial determination that the state of emergency was appropriate before they are called on to vote to extend it.

Oversight of emergency actions

Egypt's constitution and supplementary emergency legislation should explicitly provide a right of action and a right of compensation for actions taken in violation of the prescribed emergency measures and constitutional guarantees of non-derogable rights.¹⁰⁰ Such provisions would ensure that, while the president may authorize actions consistent with the extraordinary



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powers granted in emergency legislation, his or her actions are limited and can be challenged in a court of law. In addition, the constitution should provide that, should the executive branch choose to try defendants in military or security courts, convicted defendants have a right to appeal their convictions in an ordinary civilian court. Such a provision (similar to the right of *habeas corpus* in the American Constitution¹⁰¹) would balance preserving the president's ability to use military or security courts, to the extent they may be necessary, with defendants' internationally recognized human right to a fair trial before an impartial tribunal.¹⁰²

EXCEPTIONAL POWERS OF THE PRESIDENT

A number of countries' constitutions, in addition to authorizing states of emergency, authorize the chief executive to take extraordinary actions, in certain situations, without declaring a state of emergency. Article 16 of the French Constitution authorizes the president to take any measures he or she deems necessary, in the event of a "serious and immediate threat" to the nation, its institutions, or its international commitments. After thirty days, such measures are reviewable by the *Conseil Constitutionnel*.¹⁰³ As referenced above, Indonesia's constitution provides an exigency power for the president that may be exercised outside a state of emergency, and which is, at least partially, judicially reviewable.¹⁰⁴ In addition, Article 74 of the 1971 Egyptian Constitution authorized the president to take "urgent measures" in the event of "[danger threatening] national unity or the safety of the motherland or [obstructing] the constitutional role of the state institutions."¹⁰⁵

Egypt's history with abuse of emergency powers counsels for providing an alternative to a neo-Roman state of emergency.

Egypt's "exceptional powers" should be modeled on Indonesia's exigency power, which allows the president to issue decrees having the force of law, which are immediately submitted to the legislature for ratification.¹⁰⁶ The use of exceptional powers should, as in Indonesia, be subject to judicial review.¹⁰⁷

However, Egypt's new constitution should explicitly provide for judicial review of the exceptional powers, and it should explicitly state that the exercise of such powers does not permit the president to derogate constitutional rights. As such, the exceptional powers would give the president a degree of flexibility to act in response to an emergency situation, without triggering an official state of emergency, while giving the judiciary jurisdiction to protect the constitutional rights of citizens. Presumably, the judiciary would have discretion to defer to the political branches, per Posner and Vermeule.

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CONCLUSION

The process of drafting a new democratic constitution with a more robust separation of powers is currently underway in Egypt. Since before the massive protests that brought about former President Mubarak's resignation in February of last year, pro-democracy activists have been calling for changes to the emergency powers that gave the Egyptian president extensive authority to restrict constitutional rights. Keeping in mind Egypt's experience with states of emergency in the past and emergencies the country may face in the future, this paper proposed an innovative emergency law model that would allow the newly constituted Egyptian state to combat serious threats to its vitality while maintaining a commitment to the rule of law.

Endnotes: A New Emergency Law Model for Egypt

¹ Rana Khazbak, "Despite Revolution, Emergency Law Remains in Force," *Egypt Independent* (July 17, 2011), available at <http://www.egyptindependent.com/node/478097>.

² *Id.*; "Military Head Ends State of Emergency, Except in Thug-Related Cases," *Egypt Independent* (January 24, 2012), available at <http://www.egyptindependent.com/node/617036>.

³ See e.g. "Broken Promises: Egypt's Military Rulers Erode Human Rights," *Amnesty International* (November 22, 2011), available at <http://www.amnesty.org/en/library/info/MDE12/053/2011/en>.

⁴ Dalia Othman, "State of Emergency Ends, Military Council Says Will Not Renew," *Egypt Independent* (May 31, 2012), available at <http://www.egyptindependent.com/news/state-emergency-ends-military-council-says-will-not-renew>.

⁵ Heba Afify, "Pulled From All Ends, Assembly Rushes to Draft Constitution," *Egypt Independent* (July 18, 2012), available at <http://www.egyptindependent.com/news/pulled-all-ends-assembly-rushes-draft-constitution>. A lawsuit challenging the assembly's membership is currently pending. *Id.*

⁶ See e.g. "Amr Moussa: If President, I'll Abolish Emergency Law Immediately," *Egypt Independent* (January 23, 2012), available at <http://www.egyptindependent.com/node/616221>; Heba Afify, "Rights Group Says Egypt Still Needs More Change," *Egypt Independent* (June 7, 2011), available at <http://www.egyptindependent.com/node/465795>.

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