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Toward a New Egypt: A Special Presentation by Dr. H.A. Hellyer

As an academic, I have often researched moments of history and written about them. As a political commentator, I analyse contemporary instants that I feel might be of interest to people around the world. But invariably, while I might be in the midst of a fascinating general election in the UK, or certain controversies in the Muslim world, I've never had the opportunity to be at the centre of something that history records as deeply significant.

From mid December 2010 till mid January 2011, I was in Cairo, Egypt; around 20 minutes or so away from Tahrir Square. Tahrir means 'liberation' in Arabic, and the 'Square of Liberation' was a fitting place for the January 25th revolution of Egypt to take place.

Over the course of my life, I have spent many years living in Egypt. Some consecutively, most not — and I, like most people who lived or visited Egypt, had little expectation of their being any propensity for change in the political arena. Even after Ben Ali fled Tunisia, I was extremely skeptical that Egypt would change. In fact, the day before, on January 24th, I published an article in a newspaper in the Arab world, where I argued that the region did not need revolution, but vision. My reasoning was fairly simple — a huge state, whether it is dictatorial in nature or not, causes civil society to disengage at best, and to disintegrate at worst. This was certainly the case in Egypt, and as such, I believed that if the state just disappeared overnight, there would likely be chaos. Moreover, I never believed a protest movement could actually protest for so long without violence erupting all over the country — whether due to the protestors or to the security forces that refused to give in.

I think most people in Egypt would have agreed with me on January 24th. Within a few days, I changed my mind. I still think my concerns were correctly placed. But something extraordinary happened in Egypt — something that no one, not even those who went out onto the streets on the 25th of January, really thought possible. And within a few days, I believed that Tahrir Square could change Egypt — and the region — forever. Tahrir Square was a movement for many people — and everyone had their own concerns. But there were some things that were clear, which are extremely pertinent to students and scholars of law alike. One has to remember that Egypt is the country where we have the first records of law-making in human history. As far back as 3000 B.C., the country had a civil code that was broken up into probably a dozen books.

The first is that the law can be an oppressive as well as a coercive procedural force, but its ultimate aim can never, *a priori*, be an unjust one. The rights to protest and gather were rights granted by the Egyptian constitution, and this was something that numerous legal authorities pointed out during the uprising. The state had, and has, the responsibility to limit such right under certain circumstances, but they would have to justify them appropriately —

and the manner in which the state did in Egypt left nothing to law, and all to arbitrary political power.

The second is that all societies do, in fact, need laws — and that the desire to have laws and regulations, as a part of social order, is a natural aspect of civilised societies. Eventually, Tahrir Square was so full of people, who were there over a consistent period of time, that a mini, almost autonomous zone existed therein. The military did control access points — but beyond those access points, the protestors were in charge. The mini-state they set up within Tahrir Square was one that called for no arms, (and so they patted down everyone coming in) insisted on social justice (and thus people were feeding each other), and required respectful relations between all people, regardless of religion or class. Interestingly enough for students of libertarianism and the philosophy of law, none of this was compulsory, except for the no arms rule, and where respectful relations were transgressed in a way that caused danger, the Square would cordon off the offending party, peacefully, but quickly.

There were other autonomous zones in Egypt during the uprising. The government had called for the police to go home and institute martial law. At the same time, thugs aligned with pro-government forces were loose on the streets, terrorising people — and suspiciously, prisoners had been let out of jail. I remember that first night very clearly, and how surprised I was when I went out onto the street, instinctively to protect my family by standing guard — and finding that I was not alone. There were many of us. Most able-bodied men descended onto the streets around their homes and within their neighbourhoods and began to institute new laws, to protect themselves. We formed checkpoints and established teams who would check cars coming into the neighbourhoods or onto our streets — some of whom would check the drivers' licenses, and others who would search the cars. We had no legal authority to do this, but we deemed ourselves to be acting in accordance with natural law, and no one whom we stopped objected in the slightest. No one was threatened in any way — on the contrary, everyone acted with good manners — but everyone knew that for the benefit of all of us, whether at the checkpoints or in the cars, it was in the interest of everyone that we assume positions of authority. We were not chastised for these extra-legal actions — we were applauded by everyone who came into our streets and districts.

Law is usually enforced and devised through a set of institutions in a society, which are designed to mediate relations between people when they disagree. Those institutions in Egypt had broken down long before January 25th — the rule of law had been systematically degraded through corruption, brutality and political repression. The judiciary's impartiality and independence had been damaged a long time ago, and it was not getting much better. The legislature was hardly a representative one, as the ruling party repressed alternative voices, and used corrupt means to ensure their voice was heard above all others. As for the executive, no one could consider that it was accountable. The rule of law in such a situation was, one could argue in hindsight, an unsustainable concept. The consistent and continuous rule of law requires certain institutions that have popular consent to be in operation. Particularly after the uprising of January 25th, with the response of the state against the protestors, it became clear that these institutions had neither independence nor popular consent — and that a major obstacle to them regaining such characteristics was the presence

of the regime of Hosni Mubarak. For the rule of law to endure in Egypt after the popular but peaceful uprising, it seemed unavoidable to have him step down.

Fortunately for the people of Egypt, unlike the people of Libya, that was possible through the intervention of the army. The military also has a code of law — a military code, which forbids the targeting of unarmed civilians. The widely held suspicion in Egypt was that the regime ordered the military to open fire on the protestors. When they refused, the regime's days were numbered — it was no longer a question of if, but when. That military force forced Hosni Mubarak to step down on February 11th, 2011 — and a new era for Egypt began, under military rule and martial law.

The first major policy step of the military was a legal-related one — it convened a group of legal experts to formulate amendments to the constitution that would pave the way for the election of a new president (the previous constitution had essentially made that impossible). One of the most controversial clauses for the liberals of Egypt has been the clause that identifies Islam as the 'religion of the state' — in other words, establishing the principles of Islamic jurisprudence as 'natural law' — again, bringing law and jurisprudence into the real world in a way that would have been unthinkable only months ago. It's a clause that has immense popularity in this religiously conservative country, even while political Islamism is not likely to take control of any executive. Egypt is very Muslim — but not entirely enamoured with Islamism.

But regardless of all of that, on February 11th, Hosni Mubarak, the president of Egypt since 1981, stepped down — and on the 19th of March, the people of Egypt had a free and democratic referendum on constitutional amendments — the first they had ever had. The Egyptian revolution continues, and one hopes that wherever it ends up, the rule of law is a fundamental characteristic of the new Egypt.