

NOAH FELDMAN

The Fall of the Arab Spring

*Noah Feldman is Bemis Professor of International Law at Harvard University and a Senior Fellow of the Society of Fellows. These remarks were delivered on October 8, 2013 as part of the Dallah Albaraka Lectures on Islamic Law and Civilization. The views expressed in this lecture are solely those of Professor Feldman. © 2014 Noah Feldman*

The topic I would like to address is the trajectory of events in what has come to be known as the Arab Spring. My title—The Fall of the Arab Spring—is deliberately ambiguous as between two different meanings. In one sense, the optimism of spring has turned to the realism, and perhaps pessimism, of autumn. In another sense, the Arab Spring is in danger of having fallen, and thus my title self-consciously parallels the title of a book I wrote called *The Fall and Rise of the Islamic State* (2008). I see this lecture as an opportunity to begin to sketch some of the ideas that will eventually appear in a sequel to that volume, which was itself the second book in a series that began with *After Jihad: America and the Struggle for Islamic Democracy* (2003). Taken together, I hope that these books will form a trilogy that follows the arc of a historically significant movement to incorporate Islamic and democratic values into a workable system of government. The first book was written in an optimistic spirit. The second tempered that optimism with its attempt to achieve greater historical depth and identify some of the chief challenges the democratic Islamic state would face going forward. The third will, I fear, be more depressing than the first two.

Before I turn to the focus of this talk, I want to note that the broader story of political transition in the Arab world is not without its bright spots. In Tunisia, where the Arab Spring began, the leading Islamic-democratic political party, Ennahda, has governed in a coalition and participated in a lengthy constitutional process that has led to a liberal democratic constitution informed by Islamic principles. The Tunisian Constitution is one that guarantees equality for men and women, Muslims and non-Muslims without any mention of Shari'a or Islamic law.

In an early proposed draft, Ennahda had expressed a preference for a statement that Shari'a would be a source of law. This proposal, however, led to public protests by Tunisian secularists, and the party, after a lengthy internal debate, officially retracted the proposal. This concession was instrumental in signaling the Islamists' willingness to accommodate and compromise. The result was that, in Tunisia, a democratically elected constituent assembly was able to draft, negotiate, and ultimately ratify the first genuinely democratic constitution in the aftermath of the Arab Spring. While Tunisia faces a raft of serious challenges, ranging from economic to sociocultural, it is on a plausible course to stable government and democracy. This is good and important news, and I have no wish to minimize it. Indeed, it deserves to be the subject of its own lecture or lectures.

Today, however, I want to focus on events in Egypt, which have not gone nearly as well. If Tunisia represents the most successful Arab spring country, and Syria, now fully enmeshed in civil war, represents the extreme worst-case scenario, Egypt is somewhere in between. In Egypt, I will suggest, democracy has stalled and almost certainly failed; a type of dictatorship seems well on the way to being reintroduced. Perhaps the only silver lining is that, despite the many hundreds, perhaps thousands of people killed (primarily by government forces but also by anti-government terrorists), Egypt has not yet fallen into civil war.

Speaking about Egypt at this point poses a difficult problem in an academic context. Events in Egypt have not yet run their course. I find myself relying overwhelmingly on journalists' accounts or personal anecdotes to piece together the course of events. The facts, in other words, are not yet well understood or well known. In Egypt, I do not think that we can say that we even have a first draft of history. At best, we have the first draft of the first draft of history. As a result, we must be wary of efforts to theorize in advance of the facts—what Arthur Conan Doyle's Sherlock Holmes called the worst error an investigator can make. Yet at the same time, events in Egypt are of such enormous importance to the future of democracy in the Arabic speaking world that silence also seems irresponsible.

THE PEOPLE, THE ARMY, AND THE  
BROTHERHOOD

Begin with the fall of Hosni Mubarak in February 2011. In my view, it would be simplistic to say that the popular protests in Tahrir Square and across Egypt brought down the president. Rather, these popular protests, largely dominated by secularists, substantially weakened Mubarak. They also presented a unique opportunity for an Egyptian Army—Mubarak’s most important power base—that was already apprehensive about a post-Mubarak transition. Gamal Mubarak, the president’s son, had some support among business elites as a potential successor, but he was not a military man; in fact, the elite entrepreneurial class that he championed actually threatened the Egyptian Army’s extensive business interests. Beyond Gamal, there was no obvious heir apparent.

Faced with public expressions of opposition to Mubarak, the Army had a choice. It could support Mubarak, risk alienating the public, and squander its remaining legitimacy or it could remove the president and present itself as the only institution in Egyptian society capable of saving the state from crisis. One of these choices was clearly better than the other. Mubarak, of course, did not go willingly. He appeared on television one evening insisting that he would remain president; the next morning, the commander of the Egyptian forces, Field Marshal Tantawi, announced that Mubarak was no longer the president. The Supreme Council of the Armed

Forces (SCAF) openly entered the political sphere as a caretaker. In less than two weeks, Egypt had experienced a coup d’état carried out by the Army in the name of the people.

At the time of the coup, the Muslim Brotherhood was the other organization in Egypt to have a measure of legitimacy. The Brotherhood had not yet been elected to anything. Indeed, the organization had been outlawed for most of its history, stretching back some three-quarters of a century. Yet the Brotherhood’s legitimacy derived simply from the fact that it had been, for as long as any living person could remember, the one organization in Egyptian life to have resisted the series of dictatorial governments that stretched from Gamal Abdul Nasser to Mubarak. No one knew exactly how much public support the Brotherhood could garner in a free election but no one doubted that it would be substantial.

In the months that followed, the Army and the Brotherhood engaged in a long and complicated dance that sometimes resembled a rule-bound, elaborate minuet, and sometimes a passionate, fiery tango. The Army would have likely preferred not to hold elections, or if it must, to exclude the Brotherhood to the extent possible from participation. The Brotherhood, for its part, wanted the Army to retreat from political life in order to make room for its triumphant ascendance into public life. Crucially, neither the Army nor the Brotherhood had initiated the protests in Tahrir Square and elsewhere. Neither was an institution responsible for the

Arab Spring; both were institutions committed to winning the spoils in the aftermath of Mubarak's rule.

This is not the place for a detailed account of how the dance involving the army and the Brotherhood proceeded. Instead, let me say simply by way of summary that the Brotherhood was able to create sufficient pressure on the Army to force elections in which the Brotherhood would be allowed to participate. Through this process, the Egyptian Supreme Constitutional Court, which had for sometime enjoyed a modest reputation as the most independent in the Arab world, acted essentially as an ally of the Army. While it invalidated some of the Army's decisions, it largely sought to constrain the Brotherhood. A report in the *New York Times* quoted sitting judges of the Court acknowledging that they were in communication with the Army over the entire transition period.<sup>1</sup>

The Muslim Brotherhood emerged from this process with a near majority of the legislature (235 of 508 seats or 46.25%) and then, in a multi-stage presidential election, the presidency (with a 52% turnout, Morsi won 51.73% of votes in the runoff). Its candidate, Mohamed Morsi, was originally meant to be a backup. But after the Supreme Constitutional Court invalidated the candidacy of the Brotherhood's Deputy Supreme Guide Khairat el-Shater, Morsi entered history.

<sup>1</sup> David Kirkpatrick, "Egypt Military Moves to Cement a Muscular Role in Government," *New York Times*, July 17, 2011, New York Edition, A1.

Once elected, Morsi attempted to continue the complicated negotiations with the Army. During this period, each side enjoyed gains and setbacks. In a victory for the Army, the Supreme Constitutional Court retrospectively invalidated the legislative elections and dissolved the National Assembly. This decision opened Morsi to the charge that he was governing as a dictator. Of course, it is a little difficult to determine how a president without an elected legislature could govern as anything else. Yet in a victory for the Brotherhood, Morsi took advantage of the Army's public failure in Sinai during the summer of 2012 to purge most of the most senior general officers of the Army, including Field Marshal Tantawi. In his place Morsi named General Abdel Fattah El-Sisi who, while not a Brotherhood sympathizer, was at least perceived as a pious Muslim whose wife, unlike those of most senior officers, wore the hijab.

By and large, however, Morsi's term in office went badly. Above all, was Morsi's failure to create a governing coalition that included strong and credible opposition members. Whether this was possible in Egypt is subject to dispute, but in Tunisia Ennahda made a virtue of necessity and formed exactly such a coalition. Morsi, by contrast, either did not try hard enough or perhaps the opposition feared and hated his government so much that they would not enter it. Both may well be true.

Looking back on that period, it seems that Morsi and other Brotherhood members operated on the mistaken assumption that winning a majority in a democracy means the government can rule with a free hand. In reality, constitutional democracy is a set of institutions devoted in large part to preserving the rights and capacities of the losing minority. Majoritarianism is only capable of facilitating effective government if the minority believes that it will have an opportunity itself to govern in the future. If it does not, the minority is likely to seek alternative means to protect itself and acquire governing authority—means it is likely to seek outside the electoral system. A newly elected democratic government that fails to convince the losers to participate in democratic politics has very little prospect for long-term success.

I would be remiss if I failed to point out that Morsi faced enormous challenges, many of which were outside his control. One was economic. Another was the Supreme Constitutional Court's decision to invalidate the elections that formed the National Assembly and its strong signal that it was also preparing to invalidate the National Assembly's formation of the Constituent Assembly—the body tasked with drafting the new constitution. In response to this possibility, Morsi unilaterally declared that the Supreme Constitutional Court lacked the authority to invalidate the Constituent Assembly, and that president would assume some emergency executive powers to assure that the Constitution could be drafted.

This act, broadly perceived as overreaching, brought Morsi enormous local and international condemnation.

Trying to recover from this misstep, Morsi announced that he would disclaim these extra-constitutional powers as soon as a new constitution was drafted and proposed for ratification. Under conditions of pressure and crisis, the Constituent Assembly, controlled by Brotherhood appointees, forced a draft constitution through the Constituent Assembly in a series of all-night sessions. The draft was ill-conceived and the procedure was highly irregular, even if it was driven by the desire for Morsi to shrug off the emergency powers he claimed in order protect the democratically selected assembly from the Army-controlled Supreme Constitutional Court. The entire episode was badly managed but it did end with a new draft constitution that was ratified by a majority of voters in December 2012 (with a 32.9% turnout, 63.83% voted yes). This was the third popular vote since the Arab Spring—the National Assembly, the presidency, and now the Constitution—and its results were consistent with the previous two. In all three cases, the position or candidates associated with the Brotherhood won or nearly won slight majorities of the popular vote.

#### REBELLION

Until this point, events in Egypt were characteristic of messy transitions to democracy. Elections had happened quickly

and struggles between existing powers in society had continued apace. Competence was in short supply and consensus building or bipartisanship were missing completely. Nevertheless, roughly democratic-looking procedures had been used on all sides. The Army had acted through the Supreme Constitutional Court and Morsi had acted through the Constituent Assembly and a national referendum on the constitution. Then an extraordinary thing happened.

At the end of 2012 and into the spring of 2013, a popular movement began to develop that called for the ouster of Morsi. The movement's name, *tamarrud*, means in Arabic rebellion. Its favored mechanisms were collecting signatures and organizing public protests. Tamarrud was not a movement that simply opposed Morsi or called for the creation of new political parties to oppose the Brotherhood. Rather, it was a movement aimed at forcing Morsi out of office—voluntarily if possible, but if not, by any means necessary.

By many accounts, the participants in Tamarrud largely resembled the participants in the initial Arab Spring protests in 2011 that enabled the Army to bring down Mubarak. Tamarrud organizers were young, tech savvy, and largely secular. They had wide popular support and, as it turned out, they could put as many as one million protesters on the streets—protesters who were motivated, brave, and committed to change. These protesters might not have been the same people who protested Mubarak—indeed, we do not

fully understand as of this writing the composition of *either* movement, and some reports suggest that the crowds supporting Tamarrud included many more people associated with the military or the former regime. Nevertheless there was one spectacularly significant distinction between the movement to bring down Hosni Mubarak and the movement to bring down Mohamed Morsi: Mubarak was Egypt's dictator, Morsi was its first democratically elected president.

It is no exaggeration to say that Tamarrud treated this as a distinction without a difference. Its rhetoric, organization, and tactics assumed that Morsi was not simply an incompetent leader, but an illegitimate one. The movement openly expressed its goal of paralyzing Cairo and the country. Not far below the surface lay an invitation for the Army to reprise its role of 2011 and save the country from chaos.

The phenomenon of Tamarrud brings me to the central question of this lecture: what were the protesters thinking? Their predecessors in 2011 had sought an end to dictatorial government. Now, the goal was to bring down an unpopular and unsuccessful president who was just a single year into his elected term of office. In 2011, it was possible, though by no means certain, that removing the dictator would lead to democratic elections. In 2013, however, the consequences of removal were far less clear. What, exactly, would follow the removal of the democratically elected president? Would it be another election? If so, what would make that election

democratically legitimate? Would all candidates be allowed to run for office? If so, would those candidates include Morsi?

Let me propose three possible answers to the question of what motivated the Tamarrud leadership and its ranks to take to the streets. While there will undoubtedly be some overlap between my suggestions, and individual protestors may have acted with mixed-motivations, I am trying to puzzle through what was the central animating principle. The first possibility is what I will call the democratic hypothesis. The idea here is that Tamarrud consisted of staunch democrats who hoped for a replay of 2011. They believed that Morsi had shown himself to be an aspiring autocrat. As such, they hoped that their protests would weaken Morsi and encourage the Army to escort him from office without bloodshed. They assumed that there would be another popular election, and this time the electorate would not select the Brotherhood's candidate. A more secular government would be elected, and Egypt would continue on the road to democracy.

This explanation is naïve. If anyone believed this scenario—and no doubt some did—he or she would have to ignore the fundamental structural differences that existed between 2011 and 2013. In 2011, after Mubarak was removed, there were two institutional powers in Egypt, the Army and the Brotherhood. Because the Brotherhood existed to counterbalance the Army, elections had to occur, and those

elections had to be open to all participants. In 2013, by contrast, if the Army were to remove the Brotherhood under cover of popular discontent, there would be no national institution left capable of counterbalancing the Army. The Egyptian Army would remain in control of the field as the only functioning institution within Egypt. Without pressure from the Brotherhood, there would be no incentive to institute free elections or restore democracy in any meaningful form. Instead, the Army would act on its natural impulse to consolidate its own power under the leadership of a general who could then become president.

This analysis required no particular insight or genius. The entire history of modern Egypt is one of dictators who came from the military. In no way did the events of 2011 suggest a transformation in the military's ideology. To the contrary, the military had simply made a judgment that the protests had rendered Mubarak an ineffective dictator who needed to be replaced. To believe that, in 2011, the Egyptian army had suddenly undergone an ideological transformation to supporting democracy would not simply have been naïve but delusional.

Given this analysis, it is difficult to see how Tamarrud's leadership, or indeed many of its ordinary members, could have believed that the Army would simply remove Morsi, call for new elections, and return to the barracks. This is even



more apparent when one recalls that in December 2012 the constitutional referendum had produced what was essentially a narrow vote of confidence in the Morsi government. If free elections had been held in the latter part of 2013, that is after Morsi was removed from office, a Brotherhood candidate might not have won, but it is also far from clear whether a non-Brotherhood candidate could have prevailed. In either case, this was not a risk the Army would bear.

This analysis leads to a second possibility, which I will call the liberalism hypothesis. According to this view, expressed succinctly in an essay in the *New York Times* by Samer Shehata, those who went to Tahrir and brought down Morsi were not democrats but liberals.<sup>2</sup> They were not in favor primarily of free elections, which after all brought the election of Islamists, but of fundamental liberal values, most notably free expression and the separation of government from religion. According to this story, the election of Morsi and the ratification of the religiously oriented Brotherhood-drafted constitution galvanized the liberals into action. They feared that the Morsi government would abolish liberalism, and had indeed already begun that process with its constitution. Tamarrud went to the streets to defeat this threat to liberal values the only way it could be defeated, namely outside the system of democratic politics. This view echoes

<sup>2</sup> Samer S. Shehata, "In Egypt, Democrats vs. Liberals," *New York Times*, July 3, 2013, New York edition, A25.

Fareed Zakaria's warning, published in *Foreign Affairs*, that elections in new democracies can lead to illiberalism.<sup>3</sup> It also draws upon an analogy to the revolutions of 1848 where the failure to produce liberalism led at least some liberals in Prussia to back an authoritarian government that they hoped would promote liberalism and suppress Communism.<sup>4</sup>

Yet despite this pedigree and the appealing historical analogy, the theory that Tamarrud is a liberal movement against the illiberal politics of the Brotherhood raises more questions than it answers. It too is naïve. If the Egyptian Army had ever shown any impulses in the direction of liberalism, perhaps—just perhaps—it could have been imagined that it would make common cause with the liberal bourgeoisie in the manner of the Prussian Kaiser. Needless to say, however, no such impulse in the direction of liberalism existed for the very simple reason that the Army has always been seen as a competing source of power, not a natural partner to liberals. There is also the inevitable fact that, after removing the Brotherhood from power, the Army would have to undertake a crackdown to ensure that their coup d'état remained successful. Under these conditions, which were certain to follow the coup, the army would have no incentive to allow freedom of speech, which could be used to protest the new coup d'état.

<sup>3</sup> Fareed Zakaria, "The Rise of Illiberal Democracy," *Foreign Affairs*, Vol. 76, No. 6 (1996): 22-43.

<sup>4</sup> Sheri Berman, "Marx's Lesson for the Muslim Brothers," *New York Times*, August 11, 2013, New York edition, SR6.

It would not refrain from arbitrary arrests or even torture since they would be necessary to establish control. It would have no incentive to allow freedom of association, which could be used to organize the new opposition. It would have no incentive to allow freedom of assembly, which could be used to form new protest marches. And it would certainly have no incentive to allow freedom of religion, which could be used as a basis for the Brotherhood to organize.

If I have left out any basic liberal rights, I am sure you will let me know what they are. The central point is, I hope, obvious: in order to take control, the Army had to suppress liberalism, not fulfill it. While we now have the benefit of hindsight, this should have been obvious to the Tamarrud activists. If they were in fact liberals, they would have been the most naïve liberals in recent memory. They must have believed, against all the evidence and every shred of logic, that the Army would feel beholden to respect them because they had done the Army the favor of weakening the Brotherhood to the point where it could be ousted from power.

This brings me to a third explanation, one which I very much hope is not true, but which I increasingly worry may have been. According to this view, those who went into the streets in the hopes of bringing down Morsi knew perfectly well that the Army would consolidate its own power after arresting Morsi. They knew that the next elections would not be free and that liberal rights would be suppressed as part

of the inevitable crackdown against the Brotherhood. They knew all this but they did not care. According to this hypothesis, which I will call the secular hypothesis, Tamarrud activists took to the streets simply because they hated and distrusted Morsi and the Brotherhood so much that they preferred rule by the Army. Democracy had failed not because it led to bad policies but because it led to Islamist rule. The solution was to roll back the clock and return the country to the status quo ante.

On the surface, this cynical view seems bizarre. Given that countless brave individuals had risked their lives in Tahrir Square in the name of democracy and liberalism, why would a successor movement, however differently constituted, want to go back to a system of government very much like the one that had been rejected the first place? Why would Tamarrud expect that Abdel Fattah El-Sisi would be any different than Hosni Mubarak, Anwar Sadat, or Gamal Abdel Nasser?

It is possible that the 2013 movement differed so much in composition from that of 2011 that no continuity should be assumed. On this view, the initial movement might have been democratic and Tamarrud non-democratic or even anti-democratic. But another possibility—one that assumes rough continuity between the movements—is that the initial uprising of the Arab spring in Egypt in 2011 may not have been an uprising committed to democracy or liberal rights.

These strands were certainly present and fair and open elections did follow the protests. But perhaps the essential desire of the 2011 protesters was simply for regime change. Mubarak was doing badly as president, had broken the social contract by failing to deliver economic improvement, and could not be removed by elections. Public protests presented new technology for facilitating the removal of an unpopular president, and after some experimentation, it proved to be dramatically effective. In 2013, the same technology was by now familiar and available. Morsi was doing badly as president, had not improved the economy, and had shown poor judgment and perhaps dictatorial impulses by forcing through the draft constitution. Most important, Morsi presented a vision of Islamic democracy in Egypt—and for Tamarrud, it was a dark vision indeed. Public protests could be used to weaken him just as they had been used to weaken Mubarak, and those protests would likely lead to the Army removing Morsi as it had Mubarak before him. The time had come, once again, for a regime change.

This third hypothesis that I have proposed has the virtue of not condescending to Tamarrud by assuming its members were wildly naïve. It also has the benefit of not assuming that a Western preference for democracy and liberalism *vel non* is necessarily a preference shared by all members of the Egyptian public. This hypothesis, however, has the demerit of denying that liberal democracy was universally sought

after by Egyptian protesters in 2013, and perhaps even by those of 2011. It amounts to the claim that, at least for many secular Egyptians, military dictatorship is politically preferable to a system of governance that empowered Islamists.

#### A GRIM FUTURE FOR DEMOCRACY

In reflecting on the events of 2013, no doubt some would like to claim that the Brotherhood was by definition not only illiberal but fundamentally undemocratic, and that removing the Brotherhood was an act in favor of democracy. I want to be very clear that I consider such a view indefensible because it is internally contradictory. Mohamed Morsi was elected president, the Brotherhood won majorities in multiple legislative elections, and the majority of Egyptians ratified the Brotherhood's hastily drafted constitution. There were, in short, at least three separate public manifestations of democratic support for the Morsi government in the year and a half of its existence. Morsi himself had not taken any major steps that permanently threatened democracy, especially not when compared to the Supreme Constitutional Court which had dissolved the Legislative Assembly and threatened to dissolve the Constituent Assembly and perhaps to invalidate Morsi's very election.

The 2013 Tamarrud protests and the coup d'état that they invited were, therefore, fundamentally anti-democratic. They removed the democratically elected government and

suppressed essentially all constitutional, liberal rights in the aftermath. If this was democracy because it somehow protected Egypt against some future suspension of democracy by the Brotherhood, then black is white and up is down and language has lost its meaning. In this episode, the Islamists were the democrats, and the secularist protesters were the anti-democrats. And anti-democracy won.

If this is so, then our first draft of our first draft of history should say something like this: Over the nearly quarter-century stretching roughly from the Algerian elections of 1990 until the ratification of the Tunisian Constitution in January 2014, political Islamists associated with the transnational Muslim Brotherhood gradually came to embrace democracy as a system not only compatible with Islam, but desirable for improving the governance of their countries. Crucial to this historical process of development was the Islamists' belief that, if given the chance, they would in fact win free elections in Arab countries. This expectation of theirs was correct. In every even slightly free election in the Arab world from 1990 until the present, Islamic democrats have won pluralities or majorities of the votes cast.

Egypt was no exception. But in Egypt, for the first time in 2013, the secularist Arab opposition to Islamic democracy, which had previously been restricted to the iron fist of dictatorial regimes, manifested itself in popular support. Not simply the remnants of the old regime or the soldiers of the

Army, but unaffiliated members of the public rose up against democracy and in favor of relatively secular military dictatorship. They may not have represented the majority of the population, but that did not matter because the Army was on their side. They have gotten what they wanted: secular military dictatorship restored to power. As of this moment, it seems unlikely that a popular democratic alternative will return in the foreseeable future. And when the Islamists return the next time, it will not be by the ballot.