

Electoral Reform in Egypt

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Egypt is at a constitutional crossroads – multiple crossroads, actually, given the number of choices that its people can hopefully make now that the time of Hosni Mubarak is over. This essay addresses only one of the many issues that will have to be resolved in the course of the next few months: the choice between a majoritarian election system² and a form of proportional representation (PR). As suggested below, this is a particularly important decision given that majorities in the first People’s Assembly and Shura Councils that emerge from the September elections are to determine the composition of the body that will draft the new constitution³ and hence influence substantially the political future of the country. It could be a transformative moment for Egypt.

By way of introduction to the subject, readers should consider the following preliminary points.

Voting systems, first, are complex and require more attention to detail than many other areas of constitutional law. Even smaller and more technical aspects of a system, such as the drawing of constituency boundaries, can influence the outcome. Election law, second, is like blood in the human body – it connects (and affects) everything else. For these two reasons alone, election systems should be chosen with great care in any country. This requires time.

Two additional factors complicate the situation in Egypt.

Societies emerging from authoritarian rule may be tempted to discard too quickly laws and institutions of the past simply because these are seen as part of the previous (now defunct) regime and discredited regardless of any merits they might objectively have. There is a risk that the majoritarian approach to elections, used by many leading democracies across the globe, will experience this fate in Egypt. This is *not* to say that the country should *not* change to some form of PR. What *is* necessary, however, is that *all* options (including the many possible variations of the current system) are given careful consideration in the light of the particular circumstances that characterize the situation in Egypt today. The choice between a majoritarian system and PR should be made with an open mind.

Even more important is the process of constitutional reform. The Constitutional Declaration places the September elections *ahead* of negotiations and the drafting of a new settlement. This sequence of events magnifies the importance of the first post-Mubarak elections and, in turn, the impact of the voting system used on that occasion. Regime change is a complex process of its own and cannot be addressed in any detail here.⁴ There is, however, a crucial difference between *regular* elections for a legislative chamber in a politically ‘settled’ situation and elections that (even indirectly) *impact on the drafting of a new constitution*. For reasons of legitimacy, the latter should be as inclusive as

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² Often called ‘individual’ system in Egypt.

³ Article 60 of the Constitutional Declaration issued on March 30, 2011.

⁴ This author would have recommended a phased transition more akin to the South African model (1990-1997) rather than an approach which combines regular elections with a vote on the composition of a constitutional assembly (as in Iraq in January 2005).

possible of all societal interests and stakeholders, while other considerations – such as an effective legislature or, depending on the political system, the timely formation of a new government – can weigh in favor of less inclusive approaches in other cases. PR tends to be more representative of the wide spectrum of political ideas that usually exist in modern societies today, and may therefore be preferable in the case of elections that impact on the drafting of a new constitution. The best choice for all subsequent elections might be a different one, however, and could potentially be postponed. It is entirely conceivable that Egyptian election law could undergo some change during the first few election cycles of the new era. This has also happened in other countries following regime change. Germany after World War II is one example.⁵

A third preliminary point is of a more general nature. This contribution will draw, *inter alia*, on comparative experience from Germany and South Africa (countries which use forms of PR) as well as the United Kingdom, France and the United States (which generally rely on majoritarian election systems). The underlying notions of democracy and the constitutional rules and traditions that shape political reality are very different in each of these societies. Their voting systems reflect this. Egypt is equally unique and will have to find its own way. Foreign models can provide valuable guidance but are no substitute for the careful analysis of local experience, values, and needs.

Finally, this author will disclose his own preference at the outset. As a *German* citizen, it lies with PR. The main advantage of the system is its equal treatment of voters not only on election day but throughout the term of the elected body: the views of the ‘minority’ in a particular constituency, lost in a majoritarian system once the votes are counted, are represented under PR. As a comparative lawyer, however, this author is deeply aware of the fact that both majoritarian election systems and PR have their specific advantages and downsides. It is important to consider these features carefully, and to weigh them in the light of local circumstances. PR might not always be the best solution.

The following list of issues may be of interest in the Egyptian context. Most of them were raised on occasion of discussions with the author at two events in Cairo on April 6, 2011. Many more could be added.

1. Egypt *has* a choice.

This first point may seem obvious to most readers but nevertheless deserves some attention. The provisions of the Constitutional Declaration that deal with the election of the President of the Republic⁶ and the Peoples’ Assembly and Shura Councils⁷ do not prescribe a particular voting system. The upcoming elections can therefore be held under the majoritarian system that was used in the past or any other formula that the various political stakeholders can agree on.

This constitutional flexibility is not unusual. The national constitutions of France, Germany and the United States all deal with elections in varying degrees of detail but do not require the use of any particular voting system. The United Kingdom does not even have a written and entrenched constitution, and thus offers absolute freedom in the choice of its national election law.

⁵ The first three federal elections (1949, 1953 and 1957) were each held under slightly different rules, though always under PR. Further changes were introduced in 1965, 1972, 1980, 1987, 1990, 2002 and 2008.

⁶ Articles 26-29.

⁷ Articles 32-36.

This need not be so. South Africa in 1993/1994 moved away from the majoritarian system inherited with independence from the United Kingdom and today prescribes a system of PR directly in its Constitution of 1996.⁸ The German Constitution of Weimar (1919) also prescribed PR.⁹

Constitutional entrenchment insulates election law from short term opportunistic change by those in power.¹⁰ Depending on the rules for the amendment of a constitution, changes remain possible but require wider consensus. Flexibility is reduced in favor of a more stable playing field. This approach may be worth consideration in Egypt if a strong preference for one or the other election system emerges during the constitutional negotiations.

2. Elections and regime change.

Apart from tradition, there is no compelling reason to conduct the upcoming elections under the old formula. The Constitutional Declaration does not prescribe a particular voting system, and (as indicated above) PR might indeed be preferable on *this* occasion given the impact that these elections will have on the constitutional future of the country. PR systems simply reflect political diversity more accurately and will help bolster the legitimacy of a new constitutional settlement by giving a voice to many more parts of society than a majoritarian voting system is likely to do.

A referendum on a draft constitution is no adequate substitute. A draft text can only be accepted or rejected on that one occasion; approval by a (simple!) majority – as envisaged by Article 60 of the Constitutional Declaration – gives much less legitimacy to the new settlement than broad representation of all parts of society *in the drafting process itself*. Iraq, still struggling with the consequences of a widespread Sunni boycott of the first post-Saddam Hussein election in January 2005 (*despite* the use of PR!), is a good example in this context. The drafting of the 2006 Constitution was extremely difficult given that Sunnis were not adequately represented in the new National Assembly's Constitutional Committee. The draft was eventually passed by referendum – but only at the price of including Sunni representatives in the negotiations (contrary to the mechanism set out in the Transitional Administrative Law of 2004) and the addition of an opening clause which promised a *post-referendum* review of the whole text and created the possibility of amending parts of it via a simplified procedure.¹¹ Recommendations that were made on occasion of this review have yet to be implemented years after the Constitutional Review Committee submitted its report in 2009. Regime change in Iraq, a difficult project on any count, thus became more complex due to the (self-imposed) exclusion of important stakeholders and interests from the process. Any election system that inherently carries a risk of such exclusion should be avoided in Egypt.

The increased legitimacy that PR can provide may, however, come at a price. Three consequences of PR that can impact on regime change should be highlighted here.

Absent the use of thresholds which require political parties to gain a certain minimum percentage of votes in order to qualify for seats in the elected body, PR will increase the chances of smaller

⁸ Article 46(1)(d) Constitution of the Republic of South Africa Constitution (1996): The electoral system must result, "in general, in proportional representation".

⁹ Article 22 Constitution of Weimar (1919).

¹⁰ This happened, for example, in France when the increasingly unpopular left majority in the National Assembly switched to PR for the general election of 1986. The party lost this election – though not as badly as it would have under the majoritarian system traditionally used in France. The new conservative majority promptly switched back to the old majoritarian system.

¹¹ Article 142 Constitution of the Republic of Iraq (2006).

movements to win seats and can hence lead to a more fragmented – if politically diverse – legislature. This can also happen under majoritarian systems. The current House of Commons in the United Kingdom (elected by simple majority) and the National Assembly in France (elected by a two-round runoff similar to the one used thus far in Egypt) each feature more than 10 political parties or independent candidates. The distribution of seats, however, is usually different under majoritarian election systems. Larger parties tend to win the vast majority of mandates while smaller parties have little or no impact on legislation. Under PR, smaller parties can become much more influential.

While desirable in term of inclusiveness, political fragmentation usually requires more compromise between the various stakeholders. Majorities are more difficult to find. This has at least two important effects. On a very practical level, it can take substantial time and effort to reach a compromise on a particular issue. This is especially true, of course, if the stakes are high – as in the drafting of a new constitution.¹² In substantive terms, compromise can affect the coherence of legislation. Given the very tight time frame envisaged by the Constitutional Declaration for the writing of a draft constitution,¹³ the use of PR could create substantial difficulties down the line.

A second hurdle for the introduction of PR in September lies in the role that political parties usually play in the selection of candidates. The standard form of PR is based on candidate lists – open or closed – which are submitted by the parties standing for elections. Depending on the share of votes that these parties receive, candidates are then selected top-down (closed lists) or according to voter preference (open lists). Given the very limited freedom that the Mubarak Regime allowed for civil society in general and political organizations in particular to develop and participate in the life of the nation, and the short period of time that elections in September leave for the formation of any new parties, it is questionable whether a traditional form of PR could be used successfully on this occasion. Meaningful party-based candidate lists might simply not be available on such short notice. More complex systems such as the Single Transferrable Vote (STV), which achieves a roughly proportional outcome *without* party lists by offering voters the choice between (party-affiliated) individual candidates, might provide a way out.¹⁴

The complexity of a voting system, however, is a third problem in and of itself. The legitimacy of elections depends to a considerable degree on how well citizens understand the mechanics of the ballot and the effect their votes have on the overall result. This is where Egypt's old 'individual' system has a strong advantage over PR – it is one of the simplest election systems around and voters are very much accustomed to it. Elections become much more complex under the various forms of PR – from fairly simple closed lists (as in South Africa) to open lists (as in some German regions) to mixed systems that combine features of a majoritarian vote with list-based PR (as on the national level in Germany and in regional elections in Wales) to the Single Transferrable Vote mentioned above. There is a risk in choosing a system which has the potential of creating too much confusion. Voters might hesitate to cast their ballot in the first place; they might make mistakes and inadvertently invalidate their vote; or they might even question the result of the count for lack of understanding how votes translate into seats and, ultimately, power. This is, again, *not* a reason *not* to change the voting system. Changes need to be explained well to the electorate, however, and this may require more time than is available under the current schedule.

¹² The stakeholders in South Africa took more than two years to draft the (final) Constitution of 1996.

¹³ 6 months with no apparent extension mechanism; see Article 60.

¹⁴ Systems that use some form of STV include Ireland, Malta, Northern Ireland, Scotland, India (Upper House), Australia (Senate and some regions), New Zealand (local government), and Iceland.

3. Particular forms of government and election systems.

It is sometimes said that certain forms of government are inherently linked to particular election systems. This is not entirely true. Parliamentary democracies utilize both majoritarian systems (as the United Kingdom for the House of Commons) and PR (as Germany for the Bundestag¹⁵). Systems with powerful presidents who are determined by the legislature (such as South Africa) are more akin to parliamentary democracies and can again use either voting system. And countries with presidents that are directly elected by the people can still select the members of the legislature via a majoritarian voting system or PR. France, which traditionally uses a majoritarian system for elections to the National Assembly but switched to PR on a single occasion in 1986, is a good example of the latter.

There is less choice once it comes to the direct election of a president itself, of course, simply because a single individual who holds an office cannot be divided up proportionately in the way a multi-member body can. That is *not* to say, however, that there is *no* choice.

The crucial concern in the design of a presidential election is that the winner represents the majority of the electorate. Presidential elections in France achieve this aim via a two-round system in which successful candidates require more than 50% of the vote in the first round; if no-one crosses this threshold, the two best-placed candidates then face a run-off. Egypt adopted this formula in 2005. The system works well in most circumstances. Difficulties can arise due to the reduction of the field to two candidates in the second round.¹⁶ The following simple hypothetical involving five candidates illustrates the point. Imagine that two politically 'conservative' candidates receive 25% and 21% of the votes in the first round. Three 'progressive' candidates receive 20%, 20% and 14% respectively. The majority of the electorate has expressed a 'progressive' preference at this point (with a combined share of 54% of the votes) but the country will nevertheless end up with a 'conservative' leader – no matter who wins the run-off. This situation, in essence, occurred in France in 2002 due to the splintering of the left-wing vote between several candidates. Jacques Chirac won the run-off against Jean-Marie Le Pen. The more candidates participate in a presidential election, and the more fragmented the political spectrum in a country at the time, the more likely it is that this problem emerges. Given the popularity of Le Pen's daughter, Marine Le Pen, in current opinion polls and the continuing infighting between left-leaning parties, the problem could resurface in France in 2012.

An entirely different approach is used in the United States, which elects the U.S. President indirectly via an Electoral College. The 538 votes in the College are distributed among the 50 States according to population, with each State (plus the District of Columbia) receiving at least 3 votes. 48 of the 50 States use a majoritarian system to determine which candidate receives their votes in the College.¹⁷ The winner, even by the margin of a single vote, takes all. One of the problems with this system is that it does *not* ensure a U.S. President who represents the nation-wide majority of the popular vote. Rutherford B. Hayes (1877-1881), Benjamin Harrison (1889-1893) and George W. Bush (Term

¹⁵ The federal legislature directly elected by the people. The 16 German States are involved in federal legislation via a second chamber, the Bundesrat.

¹⁶ Successful candidates in France have always gone through the run-off phase.

¹⁷ Maine and Nebraska allocate one of their state-wide votes in the Electoral College to each congressional district. The winner of a district is awarded that district's electoral vote in the College, and the winner of the state-wide vote is then awarded the two remaining electoral votes. In the 2008 election, votes in Nebraska were split for the first time, with Barack Obama winning the 2nd District and John McCain winning the 1st and 3rd Districts as well as the state-wide vote.

1: 2001-2005) each represented only a *minority* of voters. A distribution of votes in the College according to the share of votes received by candidates in each State – PR, as proposed (but rejected) by voters in Colorado¹⁸ – would address this issue. Reform is not likely to happen in the United States, however, for lack of federal competence to regulate the matter and, more importantly, the political dynamics of federalism: States which enjoy much influence under the current system (for example California, New York or Florida) fear to lose some of the advantage that their high populations give them in presidential campaigns if they moved to PR (thus often sharing their weight fairly evenly between candidates) while others do not. ‘Swing states’ – highly competitive battlegrounds that attract disproportionate attention by candidates – would also recede into the background. A second issue with this system is how to resolve a deadlock between two or more candidates in the College. Currently, the decision to elect one or the other candidate reverts to the legislature,¹⁹ which brings the system closer to a parliamentary democracy. The tie-breaking mechanism also fails to ensure that the successful candidate represents the majority of voters.²⁰

Yet a third way in which a presidential election can be organized is by Alternative Vote (AV). Under AV, voters can rank candidates on the ballot in order of preference. If no candidate is able to cross the 50% mark in a first round of counting, the least successful name is struck from the race and the second preferences of voters that placed this candidate as their first choice are redistributed among the remaining field. These votes are likely to go to candidates with a similar political outlook as that of the first choice. This mechanism is repeated, using lower preferences if necessary, until a candidate crosses the 50% line. Presidential elections in France and the United States would have a very different dynamic under AV, which comes close to PR despite the election of a single individual. The system retains the direct element of presidential elections found in France, ensures that the successful candidate *does* represent a majority (at least if first and lower preferences are combined), and is thus likely to return a candidate who reflects the overall sentiment of the electorate. Jacques Chirac and Nicolas Sarkozy might not have been elected in France in 2002 and 2007.

Other systems for presidential elections could be mentioned here but the key message is already clear at this point. *Particular forms of government do not predetermine particular forms of voting.* Considerable flexibility exists in the design of *both* parliamentary *and* presidential elections.

4. Compromise.

A point already mentioned above deserves further emphasis: *PR requires compromise.*

The fragmentation of a legislature elected by PR will usually make it very difficult for single parties to gain the absolute majority of the seats. Political stakeholders must therefore be able to co-operate in order to form a government (in a parliamentary democracy) and pass laws on a regular basis. A good example is Germany. Only once since 1949 has a single party won the absolute majority of the seats in the federal legislature and been in a position to form a government alone; 15 of the 16 German States are currently led by coalitions of two or even three parties. This is not inevitable. The African National Congress (ANC) in South Africa has won absolute majorities in each of the four post-

¹⁸ By referendum in 2004.

¹⁹ The House of Representatives elects the President from the three candidates who received the most electoral votes. Each State delegation has one vote. The Senate elects the Vice President from the two Vice Presidential candidates with the most electoral votes. Each Senator casts one vote.

²⁰ John Quincy Adams (1825-1829) was elected via the route. Adams did not win the majority of the nationwide popular vote.

apartheid national elections and has formed a single-party government in Pretoria since 1999;²¹ single-party governments are also more frequent on the regional level in Germany.²² Comparative experience from other systems such as Italy or Israel, however, suggests that single-party rule is clearly the exception under PR. A country considering PR must be aware of the consequences.

Coalition governments require compromise on several levels.

In substantive terms, the partners must engage in a give-and-take – the ‘program’ of a coalition (a legally non-enforceable ‘contract’ in Germany) will see parties prevail on some points, concede others, and seek mutually acceptable ground with the bulk of issues. It can be difficult to balance demands and expectations between potential partners that have just emerged from a fierce electoral confrontation. Clear political messages, sometimes developed over many years and publicized widely by parties during their respective election campaigns, are usually diluted in negotiations. This can become a problem for voters, who might feel ‘betrayed’ by the party of their choice once it enters into a coalition with others and makes important concessions in the process. In objective terms, compromise might not even be the best solution to some of the problems that a modern societies faces. Finally, as already indicated above, the need for compromise will often make coalition governments slower to act than their single-party counterparts. The partners in a coalition must develop formal mechanisms to exchange views – often on a daily basis – and chart a careful course between the need to support the political ally (who will be an opponent in the next election) and the temptation to play to their own audience. This becomes more difficult as the number of parties needed to form a majority increases.

A second area that requires compromise is the distribution of ministerial positions. Professional knowledge, political influence and personal ability must be matched with the number of portfolios and the relative weight of single partners in a coalition government. This very practical but highly political aspect of coalition politics is often underestimated. It can take substantial time and effort to put together a list of cabinet members that all partners of a coalition can comfortably sign up to.

A third point which is of high potential relevance both in Egypt and elsewhere is the wider need of all political stakeholders to be willing, *at least in principle*, to form a coalition with all others. Absent such willingness, PR can produce results that make the formation of a government or – in a presidential system – the passing of legislation very difficult or even impossible.

The federal elections of 2005 in Germany provide a good illustration of the issue. Five parties gained seats in the Bundestag on that occasion – the Conservative Party (35.2% = 226 seats), the Social Democratic Party (34.2% = 222 seats), the Liberal Party (9.8% = 61 seats), the Left Party (8.7% = 54 seats) and the Green/Environmental Party (8.1% = 51 seats). Neither the Conservatives with their preferred partner, the Liberals, nor the Social Democrats with their former coalition partner, the Greens, had secured an absolute majority (308 out of 614 seats). The two blocks were deadlocked at 287:273. The fifth party that had gained 54 seats and could have pushed either side across the line, the Left Party, was deemed an unacceptable coalition partner by the other four due to its historical, personal and ideological ties with the former Socialist Party (SED) that had ruled the German Democratic Republic prior to German reunification. The Liberal Party had categorically rejected an alliance with the Social Democrats and Greens. Negotiations between the Greens and the

²¹ The first post-apartheid executive was a forced coalition between the three strongest parties that had emerged from the 1994 election (Government of National Unity).

²² There is currently one such government in the (City) State of Hamburg.

Conservative-Liberal block failed for lack of consensus on fundamental social, economic and environmental questions. With all other options exhausted, and only after protracted and difficult discussions, the two largest parties (and main opponents) formed a so-called 'Grand Coalition' which subsequently ruled Germany for a full legislative term of four years.

These post-election difficulties offer some valuable insight to the practical realities of PR: 1) The whole process of forming a new government took well over two months. Given the pressing day-to-day work that requires the full attention of an executive even in the best of times, such a long phase of political uncertainty is highly undesirable in any country. 2) The solution – a co-operation between left and right – *did* work surprisingly well for Germany but might not have been a possibility in societies less capable of (or accustomed to) coalition politics. 3) Note should also be taken of the fact that this particular coalition was certainly *not* the one that *any* German citizen had voted for on the day of the election. 4) The result, finally, was the only remaining option given the pariah status of the Left Party, the unequivocal rejection by the Liberals of an alliance with the Social Democrats and Greens, and the breakdown of negotiations between the Greens and the Conservatives and Liberals. These substantial incompatibilities reduced the number of possible alliances to a single one. Without the 'Grand Coalition,' the country would have been paralyzed.

An interesting comparison can be drawn to the United Kingdom, which elected a new House of Commons that very same year. The Labour Party of Prime Minister Tony Blair won a resounding victory and gained 355 of the 646 available *seats* (= 55%) – an absolute majority with the usual consequence of a single-party government. Note, however, that Labour won only 35.2% of the *votes* on this occasion – exactly the same percentage that the Conservative Party received in Germany a few months later. *The difference between PR and a majoritarian system could not be more obvious.*

The 2010 House of Commons election should also be mentioned in this context. Confronted with a 'hung' Parliament in which neither of the two largest parties had gained the absolute majority of the seats, an aberration in the United Kingdom, the Conservative Party and the Liberal Democratic Party entered into a coalition. Not surprisingly, the alliance was formed in a very short period of time – it was the only real option given the distribution of seats in the House of Commons. Labour and the Liberal Democrats were arguably closer in terms of political outlook but would have needed a number of smaller parties to secure a majority. This was never seriously considered. The *really* interesting aspect, however, is that these two parties together had actually won 52% of the *votes* but nevertheless fell 11 *seats* short of an absolute majority in the House.

One last example – geographically closer to Egypt – comes from Iraq. The Council of Representatives was elected in 2010 under PR with open lists. 9 alliances – each of them composed of several movements or parties – and a number of minority candidates gained seats in the Council. None of the leading blocks – al-Iraqiyya, the State of the Law Coalition, the National Iraqi Alliance, or the Kurdistan Alliance – could claim a decisive victory. Subsequent negotiations about the formation of a government focused more on the role of individual politicians than substantive issues. *They lasted for over eight months.* The new government under Prime Minister Nouri al-Maliki is, in effect, a government of national unity. It received unanimous approval by the Council of Representatives.

5. The most successful party might not be part of the government under PR.

Contrary to the situation in Iraq, where "(T)he formation of [a] (...) government (...) is a difficult and hard task because we need to find [a] place (...) for all those who participated and won in the

elections,”²³ even the most successful party in other countries using PR can end up in the role of the opposition. This is far less likely to happen under a majoritarian system and a consequence that voters unaccustomed to PR might have some difficulty accepting. Germany, again, offers many examples of this phenomenon. Three out of the 17 federal governments that have ruled the country since 1949 were formed by coalitions of two smaller parties. A striking example can be found on the regional level. Elections in the State of Baden-Württemberg recently returned the following result: 39% for the Conservative Party, 24.2% for the Green/Environmental Party, 23.1% for the Social Democratic Party, and 5.3% for the Liberal Party. A coalition between the Greens and Social Democrats holds an absolute majority of seats in the legislature (35 and 34 out of 138). The much more successful Conservative Party (60 seats) is forced to take on the role of the opposition together with the Liberal Party (7 seats).

6. The link between voters and representatives.

An important question in the choice of an appropriate election system for Egypt is the relevance of close ties between the people and their representatives. The ‘individual’ (majoritarian) system seems to fare better on this count than most forms of PR. Based on single-member constituencies, it gives a strong incentive for candidates (who must regularly reside in the area) to campaign locally and to seek out the views of citizens in their constituency quite regularly once they are elected. Much of the time of MPs in the United Kingdom House of Commons is devoted to such constituency work. Some of the downsides of this system are that it might make representatives less focused on the national interest and leave too little time for their (national) legislative responsibilities. List-based PR, by contrast, loosens the link between voter and representative. Seats in the legislature are distributed according to the success of political parties rather than individual appeal, and voters will rarely – if ever – know more than a few candidates of each party. That said – much will depend on the size of these constituencies. List systems can be national, regional or even local – or some combination of the three. The smaller a multi-member PR constituency, the more voters will know of the candidates that a political party places on its lists. The most common form of list system seems to have a regional design. Parties in Germany submit lists on the State level. South Africa has a dual system of nine regional and a national list, and divides the seats in the National Assembly equally between the two. Whatever the design of PR constituencies, however, the election will be fought more along party lines than between individual candidates. This is the reason why Germany combines single-member constituencies – in which candidates are elected by simple majority – with PR. It is an attractive approach but has its own difficulties – it is more complex for voters to understand and creates two types of representatives with potentially different degrees of legitimacy (directly elected ones and those chosen from party lists).

7. The size of constituencies and apportionment.

The drawing of constituency boundaries can be a decisive factor for the outcome of an election and is – again – an important difference between majoritarian systems and PR. Put simply, the distribution of voters among constituencies under PR is of little consequence for the final result (though it does influence strongly where representatives of a particular political party come from geographically); under a majoritarian system the distribution of voters is crucial.

²³ Prime Minister al-Maliki after the confirmation of his cabinet by the Council of Representatives in December 2010; Al Jazeera (English) of 21 December 2010.

A national PR list system is the best starting point to develop this thesis. Seats in the legislature are simply allocated according to the percentage of votes that parties receive across the country. Different mathematical formulae can be used in the distribution process. All voters live in what could be called a single 'constituency.'

Regional lists are more complex and PR can be achieved in different ways.

South Africa allocates 50% of the seats in the National Assembly to candidates from the nine regions. The distribution depends on the size of the voting population in each region. These regional seats will be divided among all parties participating *in the relevant region* according to their *regional* share of votes on election day. Successful candidates are drawn from *regional* party lists. Then the total number of seats that parties should receive based on their *country-wide* success is calculated. The regional seats won by each party are subtracted from this total, and the remainder (if any) is filled with candidates from the *national* lists. This step serves as a 'top-up' to achieve a PR outcome. In terms of the overall result, it does not really matter so much if the number of seats allocated to the regions fails to reflect the actual size of the nine voting populations. The *total number* of National Assembly representatives from each party is still accurate, though their *distribution across the country* may be flawed.

Germany, which uses a mix between PR and single-member constituencies, achieves PR by first allocating to each political party its *national* share of seats. These are then distributed geographically according to the number of votes the party received in each of the 16 States. There are no national lists. In a third step, the number of seats won by a party *directly* (in single-member constituencies located within each State) is subtracted from this share. Finally, the rest (if any) is again 'topped up' by candidates drawn from (State) party lists. Here, the exact size of the 16 (State) PR constituencies is again of no relevance. The geographical distribution is achieved simply by counting the number of votes received by each party in each State. More troubling in terms of the equality of the vote is the design of the single-member constituencies. This majoritarian element is only a subset of an overall PR system, however, included to foster a closer relationship between half of the representatives in the federal legislature and their voters. Under regular circumstances, it does not affect the outcome of elections. Confronted with legal challenges focusing on differences in the number of voters across these 399 single-member constituencies, the Federal Constitutional Court – while emphasizing the desirability of equal-sized units – allowed differences of up to 25% between the 399 voting populations. This degree of tolerance would be problematic if the legislature were to consist only of directly elected representatives.

The United States, a majoritarian election system with single-member constituencies, deals with this question very differently. The U.S. Supreme Court will allow the population of voting districts to differ only within very narrow margins. The Court has invalidated a plan which allowed a difference of 4.2% between the most populous and least populous congressional districts in Texas. A plan in New Jersey that would have allowed differences of only 0.7% was also struck down. This is the logical and necessary consequence of the principle of voter equality. Members of the House of Representatives should all represent the same number of voters or – put differently – the same number of voters should be necessary to elect a representative (disregarding, of course, differences

in voter turnout on election day).²⁴ This requires adjustments after each census (apportionment).²⁵ Note should be taken, however, of the considerable leeway that State legislatures enjoy in the drawing of congressional district boundaries. While the total number of voters in each district may vary only within very narrow limits, their exact geographical demarcation is to a large extent flexible. This opens the door to politically motivated changes, and both governing parties (Republicans and Democrats) engage in ‘gerrymandering’ – the careful manipulation of constituency boundaries with the aim of creating the best possible conditions for their respective candidates. The inclusion or exclusion of certain areas can make a huge difference. This phenomenon is not found in PR systems.

Given the importance of constituency size for the outcome of elections in majoritarian voting systems, it is surprising that other countries with dynamics similar to those found in the United States pay much less attention to the issue. The voting populations of constituencies in the United Kingdom, for example, vary between 45,006²⁶ and 110,924.²⁷ This means that one MP in the House of Commons may represent nearly 2.5 times the number of citizens than another. Their votes in the House, however, count the same. Despite recent reform efforts, differences between constituencies in France are nearly as substantial.²⁸ The situation in neither country would survive constitutional challenges either in the United States or Germany.

8. Accountability.

Once an electoral term ends and new elections approach, voters will want to assess the achievements of an outgoing executive. This is much more difficult in the case of coalition governments despite the allocation of specific portfolios to particular – party affiliated – cabinet members. Due to the spirit of compromise and joint decision-making that often characterizes politics in countries using PR, responsibility for past events and developments can be blurred – both with respect to failure and success. For this reason, parties in a coalition government might be tempted to move apart in the final stages of an electoral term, and to present the work of the coalition in a light most favorable to them – even at the expense of tensions with the other partner(s). It may nevertheless be difficult for voters to attribute responsibility to single parties and hold them accountable on election day. A single-party government, by contrast, clearly bears full responsibility for any ups and downs that may have occurred in any policy field during the past term.

9. Representation of minorities and women; the special case of experts.

Egypt’s current election law, including the Constitutional Declaration, makes efforts to secure adequate representation of farmers and workers. Increased involvement of women in politics (if not entrenched by a particular quota) is also a concern – as is the representation of minorities. There is little empirical evidence that either majoritarian election systems or PR improve the impact of these sections of society on politics *per se*. Women, for example, are as underrepresented in the United

²⁴ This principle is *not* applied to the Senate. Here, every State is represented by two Senators regardless of the considerable differences between the number of voters that live, say, in California or Alaska. This is a tribute to federalism.

²⁵ Every 10 years.

²⁶ Dwyfor Meirionnydd in Wales.

²⁷ Isle of Wright.

²⁸ Council of Ministers, Communiqué of 29 July 2009: “The differences in population size between constituencies in France’s departments are markedly reduced, from a ratio of 1:6 to a departmental average of 1:1,9. Within single departments, the population size of [single] constituenc[ies] differs from the departmental average by more than 17%.

States or the United Kingdom (both majoritarian voting systems) as they are in Italy (PR). All three systems lag far behind the number of female representatives on the federal level in Germany (PR). The use of STV and open PR lists, on the other hand, may work in favor of women or minority candidates.

Representatives with particular expertise may be a special case. Communicative skills, personal connections, family background, religious affiliation, financial resources and even physical appearance are among the factors that determine the success of candidates in single-member constituencies. Political parties will be tempted to nominate individuals that are able to connect to voters and win constituencies even under difficult circumstances. Expertise in particular policy fields is by no means incompatible with the profile of a winner; on the contrary – knowledge and experience in crucial fields of governance should be an inherent part of the package. Experts, however, are not always the best in fighting election campaigns, and might find less support when it comes to the nomination of constituency candidates. A closed PR list system, by contrast, can offer parties the opportunity to identify individuals who are invaluable to the daily work of a legislature once election day is over, and to place them on list positions that are likely to succeed. There seems to be at least some potential for closed PR lists to enhance the composition of the legislature in terms of expertise. The downside of this potential is the risk that safe list positions could be reserved for influential but ineffective candidates. Majoritarian election systems encounter the same phenomenon in the guise of ‘safe’ seats.

10. Three issues in closing – narrow majorities, selective campaigning, and expatriates.

The choice of an appropriate election system is a crucial decision that Egypt is facing in the next months. This essay has tried to address at least some of the issues that should be taken into consideration at this important juncture. The chosen items could have been explained in far greater detail; many other important questions relating to elections (such as campaign financing or the use of electronic voting machines) have been set aside completely. Lack of time – not disregard for the subject – has prevented this author from exploring the complexities of electoral systems and more technical aspects of voting in greater depth. Three important points should, however, be made in closing. All are related to themes presented earlier in this contribution.

PR systems have a tendency to produce narrow election outcomes; majoritarian systems, by contrast, often provide the winning side with a comfortable majority of the seats. This is a phenomenon that the stakeholders in Egypt should bear in mind when making their choice. Smaller – often tiny – majorities change political dynamics considerably. Single parliamentarians or particular groups within a coalition become much more powerful – as does the legislature as a whole vis-à-vis the executive. A PR system might thus on balance be a little less stable than one characterized by solid majorities and single-party governments. It might also be the more attractive way for Egypt after so many years of suffocating Mubarak rule.

Majoritarian systems, second, invite selective campaigning. Because many constituencies tend to be firmly in the hands of one or the other political party, election campaigns often focus on ‘swing’ seats or regions that could go either way. This may not be a decisive factor in the choice of an election system. It does, however, affect the political dynamics quite considerably given that key constituencies might be in a position to extract important concessions from candidates during a campaign while ‘safe’ constituencies become political backwaters with little influence. PR works against this trend due to the fact that every vote counts – no matter where the voter lives.

A final question is whether Egyptians living permanently outside the country should be eligible to vote. Most Egyptians seem to answer in the affirmative, and there is at least one strong reason why this instinct could be right – expatriates contribute quite considerably to the development of Egypt by transferring money and supporting their families and friends back home. This author would nevertheless argue for a different approach. Citizens relinquish their right to live as they please and subject themselves to the authority of their government because this government secures peace and the rule of law – and because citizens can exercise their right to vote and thus hold their representatives accountable, and determine their political future, at regular intervals. *The right to vote becomes to some extent a payback for the submission of citizens to rules established by their elected representatives.* Someone living outside the country makes a conscious (and perfectly legitimate) choice *not* to be subjected to these rules to the same extent as those that stay. They might, of course, again be affected by the laws of their country once they return (if indeed they do); and some laws might actually affect them even while they live abroad. The fact that the vast majority of decisions that a national legislature takes does *not* apply to citizens that live abroad, however, should be taken into consideration. Germans that permanently live outside their country immediately lose their right to vote in municipal and regional elections. They retain voting rights on the federal level for 10 years. After that, they *remain* German citizens but *cannot* participate in elections on any level. This solution reflects well the rationale outlined above. Local and regional laws in Germany have no or very little effect on German expatriates – so why should they participate in the selection of lawmakers and determine the fate of people who live in these municipalities or regions? Federal law *does* affect Germans living outside the country to a larger extent – hence their right to vote on the national level for a considerable period of time. Germans who have chosen to live abroad for more than a decade, however, have loosened their ties to their country to such an extent that the right to vote is put on hold. It is given back to them as soon as they decide to return to Germany.

11. Conclusion.

Several points made in the course of this contribution deserve much more emphasis than was possible given the limitations of space and time. Some statistical evidence was presented but more could have been offered. And the particular circumstances that characterize contemporary Egypt – so important for the choice of an appropriate election system – were alluded to at best. This author nevertheless hopes that the ideas presented here can be of some assistance in the difficult task that lies ahead. The stakes are incredibly high. Election law is a key to gain authority and power. It should also ensure full accountability of those in power.

Two of the thoughts presented above serve as a conclusion.

‘Democracy’ seems to be a clear concept. It is not. Different societies believe in very different notions of democracy. Differences between election laws reflect this clearly. Egypt must determine its own approach in the light of its local history, values, and contemporary challenges, and design carefully a voting system that is best capable of reflecting what democracy means for its *own* people.

This will take time. Revolutions do not usually think and reflect. The *real* revolution in Egypt would be to do just that.