

Roads to the Rule of Law
The Emergence of an Independent Judiciary
in Contemporary Egypt

by

James H. Rosberg

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Signature of Author _____ ~~James H. Rosberg~~ _____

Certified by _____
~~Nazli Choucri~~
Professor of Political Science

Accepted by _____
~~Barry R. Posen~~
Chairman, Graduate Program Committee

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Dissertation Abstract

The dissertation documents and explains the increasing ability of the Egyptian judiciary to limit the executive's violation of citizens' civil rights. The theoretical problem of the thesis is understanding why the state would submit itself to the rule of law and hence limit its discretionary power. This is especially puzzling in the absence of significant social pressure for political liberalization. The dissertation shows that the re-emergence of the judiciary as a powerful actor in Egypt is a result of presidential attempts to restrain the influence of rival powerful institutions such as the military and security forces, as well as create a more effective monitoring system over the lower rungs of the public bureaucracy. The thesis then shows that the judiciary was able to exploit the presidency's dependence upon it to expand its power and expand the realm of rights effectively protected. This further augmented the judiciary's power by creating allies in civil society that have increasingly formed a constituency supportive of the judiciary.

Thesis Supervisor: Nazli Choucri

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This is the most pleasant part of the thesis to write. I first want to thank the many Egyptians who generously shared their views with me and offered me invaluable assistance in obtaining crucial information. Out of respect for their privacy I will not mention them by name.

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Willard Johnson read my second year paper on political liberalization in Egypt and provided the crucial criticism that led to me to search for a more plausible understanding of Egyptian politics. Samuel Huntington, Philip Khoury, Myron Weiner, and Grace Tasker read initial drafts of the prospectus and gave me great encouragement. Numerous students at MIT, too many to name individually, contributed to this project. Bruce Friedland first encouraged me to do it. Roger Karapin, Clifford Bob, Brian Burgoon, Eric Fernald, Waleed Hazbun, Jonathan Ladinsky, Dale Murphy, Inger Weibust, and Sharon Weiner carefully read sections of the dissertation and offered thoughtful, helpful criticism. I benefitted regularly from Jason Wittenberg's sage counsel and irrepressible irreverence.

My parents, Carl and Elizabeth Rosberg, have provided unqualified support from the beginning of my interest in Egypt, the Middle East, and the profession of Political Science. That is extremely rare. Those who are familiar with my father's work will also recognize an intellectual debt. In many ways, this dissertation answers a question posed at the end of *Personal Rule in Black Africa* (co-authored with Robert H. Jackson), namely, how does a government of men become a government of laws? It is an old question, but one that the vast bulk of political scientists lost interest in during the behavioralist period. As the rule of law re-emerges as a central political issue, the work of the few who kept alive a concern with legality and institutions in the 1960s, 1970s and 1980s becomes more important to all of us.

Despite the considerable support I received from my family, professors, and peers, this project involved a large amount of challenging solitary work. It required the analysis of complicated legal issues in a difficult foreign language and

the study of an institution about which extremely little is known in the West. During this work, I accumulated many debts to scholars such as Raymond Baker, Raymond Hinnebusch, Marc Neal Cooper, Clement Henry, Robert Springborg and John Waterbury who sifted much of the material before me and made my work much easier. They also set an example for me to follow. But in trying to persevere in the isolation and uncertainty of a dissertation I also came to the realization that members of my family had paid an extremely high price for democracy and freedom, and that the difficulties I encountered paled in comparison to those they had faced. Because these thoughts carried me through the most difficult phases of the thesis, I resolved to dedicate it to my mother and father and to the memory of my uncle, Nils Rosberg, who died on the Bataan Peninsula in the Phillipines in April of 1942 as a prisoner of war.

The last acknowledgement is the most difficult to write because the person I wish to thank has contributed in every way imaginable to this thesis. I would not have completed and probably would not have begun this project without the indefatigable support, care, tolerance, and honest criticism of my wife Sarah.

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Chapter One

The Development of the Rule of Law in
Highly Bureaucratized Repressive States

1.0 The Problem

The rule of law is commonly believed to emerge as a result of conflict between the state and strong social forces. Yet there are numerous historical cases of trends toward the rule of law in the absence of strong social demands. Mikhail Gorbachev's attempt to create a "rule of law state" in the USSR in the late 1980s is the most recent and most dramatic occurrence of this phenomenon. How can we explain the development of a more liberal political order in states which lack strong adversarial civil societies? What might lead capricious and unrestrained authoritarian regimes to submit to the rule of law despite the absence of strong societal demands for legal protection of civil and political rights? This dissertation presents a theory of the development of the rule of law in states with weak civil societies and limited private economies, or more specifically, states with a high degree of bureaucratization of social, political and economic life and extensive state control over or demobilization of political and civic associations. I describe these states as being hyper-bureaucratized and repressive.

These questions are important not only because answers to them will extend our understanding of the development of the rule of law. The questions are also important because answering them requires reformulating a common conceptualization of political liberalization: the idea

that political liberalization emerges from conflict between the state and social forces.

The dissertation considers the proposition that political liberalization - in this case the transition from unrestricted personal or official discretion to the rule of law - emerges as a result of conflict between the ruler and his officials for control of the state. In short, the ruler seeks to control his officials by improving the quality and quantity of information he has about their activities. He encourages the protection of civil liberties such as freedom of speech and association, so that groups and individuals will raise complaints about official malfeasance. The courts evaluate these complaints so that the ruler knows whether a violation has occurred or not. Thus the ruler seeks to control the state bureaucracy by empowering individuals and groups to complain about officials' behavior and by empowering the legal system to evaluate these complaints. This improves the quality and quantity of information available to him regarding official behavior. In the struggle to control the state the key political resource is information about administrative behavior; the ruler empowers civil society and the legal system to mobilize and evaluate this information. The development of the rule of law is a result of struggles between ruler and official over information vital to controlling the state. The consequence of this struggle is a freer and legally more

secure public realm of association and discussion and a strengthening of individuals' and groups' rights vis a vis the state.

The thesis considers these propositions through the study of the development of the relationship between the Egyptian judicial and executive powers. Since the early 1970s, the autonomy and jurisdiction of the Egyptian judiciary has increased significantly. The most significant components of the judiciary's jurisdiction that have increased are in the realms of administrative, criminal and constitutional law. Almost all administrative acts have been subject to judicial review since the early 1970s, whereas many administrative acts could not be appealed before a court during the 1960s. The judiciary has also received much wider latitude to supervise the operations of the police. Since 1979 an independent constitutional court has had jurisdiction over all legislation. The widening of the judiciary's jurisdiction has been accompanied by incremental increases in its autonomy. As a result, in the 1980s and 1990s the Egyptian judiciary became an increasingly independent and influential force resisting arbitrary rule, protecting human and civil rights and liberalizing the political system.

The development of an independent judiciary capable of ruling against the interests of the Egyptian state is surprising. Circa 1971, when the Presidency increased the

autonomy and jurisdiction of the judiciary, organized opposition demanding the rule of law and protection of civil liberties was weak and ephemeral. The weakness of civil society was due in large part to the highly bureaucratized and repressive nature of the Egyptian state: Most sectors of the national economy, including the media, were either under direct or indirect state control, opposition parties were outlawed, and interest groups were controlled by the state.

Existing theories suggest that the rule of law should not develop under conditions of low levels of political mobilization and a highly bureaucratized, repressive state. These theories predict that the rule of law is a result of struggle between the state and relatively powerful social interests rooted in a private economy. These powerful, autonomous social interests force the ruler to concede a system of rights with independent arbiters in order to peacefully regulate relations between state and society.¹ However, through most of the period in which the judiciary's independence and autonomy was developing, Egypt's civil society and private economy were too weak to constitute centers of power autonomous of the state. Rather, during the 1960s and 1970s, and to a lesser extent the 1980s, Egypt

¹ Phillippe Nonet and Phillip Selznick, Law and Society in Transition, (New York: Octagon Books, 1978); Roberto Mangabeira Unger, Law in Modern Society, (New York: The Free Press, 1976).

was marked by a high degree of state control over the polity, economy, and society.

The divergence between theoretical expectations and the Egyptian experience is not surprising given that theories of the development of the rule of law have not been tested in a wide range of contexts and on different values of the independent variable. Rather, these theories have extrapolated from the English experience without testing their hypotheses in other political contexts. Thus our understanding of the development of the rule of law in other political contexts, especially those typified by a highly repressive and bureaucratized state is weak. This is an important gap to fill. There are numerous historical cases of the development of the rule of law in such cases. Moreover, there remain numerous highly bureaucratized repressive states, especially in the Middle East. Foremost among these are Iraq, Syria, and Algeria. Understanding how the highly bureaucratized repressive state in Egypt turned toward the rule of law can indicate how other states might make a similar transition in the future.

The dissertation argues that the Egyptian Presidency promoted the rule of law in order to improve the Presidency's ability to control and direct the state bureaucracy. A more independent judiciary with a wider jurisdiction would serve the purpose of improving the

Presidency's control over the state by increasing the quality and quantity of information available to the ruler about the activities of the bureaucracy and policy options. While the institutional structure of the Egyptian state in the 1960s - repression of dissent and hyper-bureaucratization - inhibited political opposition, it also inhibited the President's ability to control the state. Repression of dissent meant the President could not rely on the reports of newspapers, interest groups, or citizens about the malfeasance of officials. Rather, the Presidency became reliant on the transfer of information between state agencies in order to monitor the state apparatus. This transfer of information was inhibited by corruption, distortion of information, and suppression of criticism. Furthermore, the high degree of control exercised by the state over the national economy in the 1960s dramatically increased the President's need for accurate information about state agencies in order to exercise control over them.

The Presidency sought to solve its monitoring and control problems by empowering the judiciary to protect civil rights and review the legality of administrative acts. This would solve monitoring and control problems in three ways. Protecting the rights of citizens to complain, inform about abuses, and suggest alternate policies - as members of interest groups, as journalists, or as individuals - would increase the amount of information about policy

implementation and policy alternatives. Improving the courts' protection of civil rights would also increase their ability to monitor the activities of the police and security forces, a potential source of opposition to the Presidency. Increasing the independence and broadening the jurisdiction of the administrative court system would also improve supervision and regulation of bureaucratic agencies. These courts would evaluate complaints about official malfeasance and so improve the quality of information regarding the activity of state officials. Finally, empowering a constitutional court to review the constitutionality of laws would allow the President to delegate more decision making to subordinates. If the subordinates wrote laws which violated his conception of national interests, as codified in the Constitution, the court would block the legislation. This court in effect would provide information about the law-writing activity of the ruler's subordinates.

Thus the main hypothesis of the dissertation is: The Presidency promoted the rule of law in order to mobilize and evaluate the information he needed to increase his control over his bureaucracy. The Presidency increased the autonomy and jurisdiction of the judiciary in order: 1) to protect civil rights of association and speech to induce individuals and associations to make information about bureaucratic malfeasance public; and 2) to rule on the legality of administrative acts and the constitutionality of laws in

order to evaluate the information mobilized from individuals and interest groups. Thus the development of the rule of law in Egypt was part of a strategy of centralizing and maintaining state power in the hands of the Presidency.

A second hypothesis is that the judiciary has used its power of interpretation to expand its jurisdiction and broaden the protection of civil liberties beyond the extent initially authorized by the Presidency. This has in turn strengthened civic associations which have formed a constituency for the further development of judicial independence and authority. These arguments are developed in greater detail in the remainder of the chapter.

In addition to contributing to an understanding of the development of the rule of law in hyper-bureaucratized repressive states, the analysis will also broaden our understanding of political liberalization and democratization. First, the development of judicial independence and the rule of law is an important and heretofore neglected component of political liberalization. Second, existing theories of political liberalization and democratization have no explanation for political liberalization in hyper-bureaucratized repressive states. These theories argue that a powerful and autonomous civil society², or a legitimation crisis threatened by a

² This view is common to the work of Robert Dahl, Polyarchy, (New Haven: Yale University Press, 1971); Dankwart Rustow, "Transitions to Democracy: Toward a Dynamic Model",

mobilizable civil society, prompt authoritarian elites to liberalize and democratize.³ But in states where economic assets are publicly owned and political associations are repressed, civil society has very few autonomous resources

Comparative Politics, April 1970, 2:337-364; Barrington Moore, Social Origins of Dictatorship and Democracy (Boston: Beacon, 1966) who emphasizes the autonomy of landed and industrial classes from the state; John D. Stephens and Dietrich Rueschemeyer, Capitalist Development and Democracy, (Chicago: University of Chicago Press, 1992); and Samuel Huntington, The Third Wave: Democratization in the Late Twentieth Century, (Norman, OK: University of Oklahoma Press, 1991).

³ Some who have written on political liberalization have stressed the extent to which political elites have liberalized despite the absence of social mobilization. Indeed a common pattern is for social mobilization to follow liberalization. However these authors still stress legitimation, rather than control of the state, as the major concern of political elites. O'Donnell and Schmitter argue: "What turns [authoritarian elites] into soft-liners is their increasing awareness that the regime they helped to implant, and in which they usually occupy important positions, will have to make use, in the foreseeable future, of some degree or some form of electoral legitimation". Guillermo O'Donnell and Philippe C. Schmitter, Transitions from Authoritarian Rule, (Baltimore: Johns Hopkins University Press, 1986), pg. 16. Similarly, Samuel Huntington stresses the "legitimacy problems of authoritarian systems", the expansion of the middle class, pressure from the Catholic Church and the United States, and the European Community's insistence that new members have democratic governments. Samuel P. Huntington, The Third Wave: Democratization in the Late Twentieth Century, (Norman, OK: University of Oklahoma Press, 1991), pp. 45-46. Similarly, discussions of political liberalization in the Middle East have focused on the legitimacy problems of authoritarian states. Such views typically argue that Middle Eastern states begin to liberalize when other sources of legitimacy, in particular patronage resources, run low or that states require more legitimacy as a result of an increased need to extract resources. These explanations are similar in nature to those based on the mobilization of civil society in that they implicitly refer to a threat from an already existing or potentially mobilized civil society which can destabilize the regime. As a consequence they shed little light on systems where a resurgence of civil society is not immanent.

and virtually no bargaining power with the state. Though these states' legitimacy may not be great, they are not in danger of a significant challenge from society. Certainly in the cases of liberalization which occurred in Egypt in the 1970s and the USSR in the 1980s there was very little plausible threat from civil society. Therefore, theories which emphasize civil society as a force of political liberalization and democratization are incomplete.

This dissertation contributes to a theory of political liberalization in such hyper-bureaucratized repressive states. It shows how political liberalization, through the development of the rule of law, was a consequence of the Presidency's attempt to centralize power. This political liberalization gave new opportunities for social organizations to develop. Indeed, such a development was encouraged by the Presidency to increase its access to information. The argument then shows how the judiciary has used its powers of interpretation to strengthen the protection of civil society and broadened the scope of political participation. Thus in highly bureaucratized repressive states political liberalization is dialectical. The first moment is the Presidency's attempt to centralize state power in his hands. The second moment is then the jurisprudence of the judiciary and the activity of social organizations. Civil society does not initiate the process. Rather, its existence is an effect of the Presidency's

struggle for information about bureaucratic activity and hence to control the state.

2.0 Some Concepts: The Rule of Law and Judicial Independence

My primary objective is explaining the institutionalization of an independent judiciary capable of protecting civil liberties. There is little written about the institutionalization of independent judiciaries. However, there does exist some literature on the emergence of the rule of law. I will situate my analysis within this literature. Drawing on this literature makes sense because the existence of an independent judiciary is a necessary condition for the existence of the rule of law. More importantly, in the meaning of the writers I draw on, the rule of law does imply the existence of an independent judiciary.

The rule of law obtains when a legal order meets with the following precepts:⁴

- 1) ought implies can; or legal settlements cannot exceed the ability to perform.
- 2) similar cases are treated similarly;
- 3) there is no offense without a law;
- 4) natural justice, or:

⁴ John Rawls, A Theory of Justice, (Cambridge, MA: The Belknap Press of Harvard University Press, 1974), pp. 236-239.

The rule of law requires some form of due process: that is, a process reasonably designed to ascertain the truth, in ways consistent with the other ends of the legal system, as to whether a violation has taken place and under what circumstances. For example, judges must be independent and impartial, and no man may judge his own case. Trials must be fair and open, but not prejudiced by public clamor.⁵

The effective protection of civil liberties requires all four of the precepts subsumed under the idea of the rule of law. Without each of these precepts, no right is effectively guaranteed. Without each precept individuals would not be sure if certain actions were actually protected, and hence would reasonably fear for their safety if they undertook these actions. In effect, then, civil liberties would not be protected. The effective guarantee of liberties requires the rule of law.

But does the rule of law require the protection of civil liberties? Law may rule but not provide protection for rights of association, expression, political participation and all the other rights we associate with liberal politics. Therefore, this study focuses more precisely on the rule of law in the realm of civil liberties. This does not do violence to the writers I draw on as their meaning of the rule of law also implies the protection of civil liberties.

One question remains: why should I draw attention to the judiciary's independence over the other three precepts

⁵ John Rawls, A Theory of Justice, (Cambridge, MA: The Belknap Press of Harvard University Press, 1974), pg. 239.

of the rule of law? First, there is a strong positive correlation between judicial independence and the protection of civil rights⁶. Also, judicial independence is the hardest won and most important of the four precepts. Once judicial independence is in place, and professional judges committed to the idea of a legal ordering of social relations administer trials, it is far more likely that ought will imply can, that there will be no crime without a law, and that similar cases will be decided similarly.

3.0 Civil Rights in Egypt in Comparative and Historical Perspective

This section places the development of an independent judiciary in the context of the process of political liberalization in Egypt. The military government that came to power in 1952 severely curtailed most political liberties. It also limited the jurisdiction and autonomy of the judiciary, especially with regard to the regulation of the relationship between citizen and state. After 1971, Anwar Sadat began to experiment with political liberalization. He also returned much of the judiciary's autonomy and jurisdiction. Thus political liberalization and judicial autonomy and jurisdiction have closely paralleled each other.

⁶ Kathleen Pritchard, "Comparative Human Rights: Promise and Practice", in David Louis Cingianelli, Human Rights: Theory and Measurement, (New York: St. Martin's, 1988) pp. 139-153.

Prior to the military coup in 1952, Egypt had a vibrant parliamentary politics, with strong political parties, a well developed labor movement, active professional societies and a fairly free press. Political participation was nevertheless fairly narrow, limited to urban groups and large land owners. During this period the judiciary enjoyed substantial independence and played a role in regulating elections and other political processes.

After the military coup of 1952 (which brought the free officers to power) the political parties were abolished and the labor unions and professional societies were subordinated in varying degrees to government control. The government created new political institutions that were designed to facilitate political participation, but in a way which was much more subject to state control than it was during the liberal period. The judiciary's autonomy was repeatedly violated and its jurisdiction with regard to civil rights and government oversight was severely narrowed. This state of affairs lasted until 1971 when Anwar Sadat began to experiment with political liberalization.

Sadat's first moves were to give the judiciary a broader jurisdiction, issue a constitution which protected a much wider range of rights, allow the press greater freedom, and tolerate the student movement's revival. This initial opening was followed by a period of repression in which the

newspapers were brought back under control and the student movement repressed.

In the mid-1970s another opening was permitted, this time led by the dissolution of the single party, the Arab Socialist Union (ASU), and the formation of three platforms (which later became parties) from the remnants of the ASU. This opening was far less adventurous given that the new political parties were closely related to the government. Yet this opening was pushed farther open by the formation of the New Wafd Party. The New Wafd was the descendant of the Wafd party, the most powerful of the pre-coup parties. The government responded with harassment sufficient to encourage the leaders of the New Wafd to dissolve the party. During this period the press was also liberalized, leading to extensive debate and criticism of government policies. But even this limited liberalization was too much for Sadat, who in the summer of 1981 had over 1,500 of the most prominent Egyptian politicians and intellectuals arrested.

Shortly after the mass arrest, President Sadat was assassinated, and Hosni Mubarak assumed control. Under Mubarak there has been a more sustained liberalization without the abrupt reversals of the Sadat period. There has been far less use of the heavy handed tactics Sadat used to harass the opposition. There has been an expansion of the boundaries of public debate: Opposition parties that emerged from the dissolution of the ASU have been replaced

by the reformed New Wafd and the Muslim Brotherhood as the leading opposition parties. The freedom of the press is well established and has not been seriously challenged under Mubarak. However, serious barriers to democratization continue to exist. The right to strike is not guaranteed, administrative detention is common, torture of the more radical opponents of the government is reported to be systematic, there are numerous restrictions on the types of parties that may form, outdoor political rallies are prohibited, and electoral fraud is common. Beginning in the late 1970s, the judiciary has increasingly become an important institution regulating conflict between the state and the social groups and political parties that have emerged under the policies of political liberalization.

The trends in respect for civil rights and judicial independence I have described are mirrored in Raymond Gastil's ratings of protection of civil liberties.⁷ On Gastil's scale, protection of civil rights in Egypt improved from a norm of "6" in the early seventies to a norm of "4" in the mid-1980's, with improvement in the mid-1970's, a worsening in the late 1970s and a return to a norm of "4" in the Mubarak years in the mid-1980s.⁸ In many areas of civil rights - freedom of association and speech in

⁷ from Raymond Gastil, Freedom in the World, (New York: Freedom House, 1978 to present).

⁸ "7" is the worst possible score while "1" is the best possible score.

particular - there has been significant improvement since the mid-1960's.

Egypt is liberal in comparison to other Middle Eastern countries and the rest of the developing world. By The Economist's assessments of the civil and political rights situation in Middle Eastern states in 1986 Egypt is one of the most liberal⁹. According to Gastil's categorization of countries by respect for civil rights Egypt has an above average score for the developing world. As such it makes a good case for studying how such regimes might liberalize.

Finally, in regards to the level of institutionalization of the judiciary, it appears that Egypt is uniquely advanced in the developing world. Egypt is one of the few developing countries with both extensive due process regulations and regular observance of those regulations. The fact that highly rigorous rules meet with compliance suggests a high degree of institutionalization of the judiciary.¹⁰

4.0 Models of the Development of the Rule of Law

The thesis addresses the theoretical puzzle of the emergence of an independent judiciary in the absence of

⁹ World Human Rights Guide, (The Economist, 1986).

¹⁰ Kathleen Pritchard, "Comparative Human Rights: Promise and Practice", in David Louis Cingianelli, Human Rights: Theory and Measurement, (New York: St. Martin's, 1988) pp. 139-153.

significant social opposition demanding it. The literature that discusses the rule of law, and by implication the development of an independent judiciary, emphasizes the importance of social opposition to the state. However, in Egypt social opposition has been weak. Mass movements calling for greater political liberalization and the protection of human rights have emerged but have been easily repressed. They have either taken the form of small elite professional organizations demanding greater respect for civil rights or sudden and ephemeral street protests. In general the mass population is more drawn to calls for "bread and butter, law and order, Allah and paradise" than to calls for democracy and civil rights.¹¹

¹¹ Ahmed Abdalla, "The Structure of Political Participation in Egypt", paper presented at the 25th Annual Meeting of MESA, Washington DC, 23-26 November, 1991. A poll conducted by the Al Ahram organization in 1991 found that 56 per cent of Egyptians wanted Egypt to have a democratic government. (Al Ahram, May 29 and 30, 1991). Marsha Posusney argues that labor protest in Egypt has concentrated on defending labor's access to state patronage and has eschewed struggles supporting a change in regime ("Irrational Workers: The Moral Economy of Labor Protest in Egypt," World Politics, vol. 46, # 1, (October 1993)). Diane Singerman finds that political activity in Cairo's lower middle class is focused on securing resources from the state bureaucracy. (Diane Singerman, Avenues of Participation: Family, Politics and Networks in Urban Quarters of Cairo, (Princeton: Princeton University Press, 1995)). Outside of the Lawyers' and Journalists' Syndicates it is difficult to find organized activism in support of democratization.

The weakness of opposition in Egypt is rooted in the state's hyper-bureaucratized repressive nature¹². By hyper-bureaucratized I mean that the state has established control over most social and economic political resources through nationalizing the modern sector of the economy. By repressive I mean the existence and enforcement of severe controls over interest groups and other associations and the suppression of dissent. Much of Egypt's modern economy has been controlled by the state since the early 1960's when the government nationalized most major businesses. Although the government has encouraged the development of a private sector since the early 1970's this private sector has been highly dependent on the state for subsidies, contracts, protection and other forms of support.¹³ Also, the state effectively decapitated the large landholders through a succession of land reforms in the 1950's and 1960's. The government replaced the landlord as supplier of credit and

¹² The Egyptian state has forcibly corporatized and subdued most of the country's interest groups. It has also extended control over large parts of the modern economy and agricultural sector. For discussions of the extent of corporatization and bureaucratization, see Nazih Ayubi, Bureaucracy and Politics in Contemporary Egypt, (London: Ithaca, 1980), and Robert Bianchi, Unruly Corporatism: Associational Life in Twentieth Century Egypt, (Oxford University Press, 1989).

¹³ See Yahya Sadowski, Political Vegetables? Businessman and Bureaucrat in the Development of Egyptian Agriculture, (Washington DC: The Brookings Institution, 1991), and John Waterbury, The Egypt of Nasser and Sadat: The Political Economy of Two Regimes, (Princeton: Princeton University Press, 1983), especially pp. 171-187.

fertilizer and purchaser of outputs, effectively extending its control over the countryside. The state also corporatized and subdued what was formerly an active labor movement. The government gave the unions job security, better working conditions, support for further unionization, and participation in management. In exchange, the labor movement accepted political domination and control.¹⁴

Social organizations other than trade unions such as private development organizations have their autonomy considerably reduced by Law 32 of 1964 which requires associations to register with the Ministry of Social Affairs and allows the government to dissolve the associations' councils and veto proposed candidates to these councils.

Opposition is emerging within these associations, notably within the professional syndicates. Yet, during the period of the re-emergence of an independent judiciary in Egypt, from the late 1960s to the early 1970s, levels of organized opposition to the government were very low. Given this low level of opposition to the state, how can we explain the development of an independent judiciary?

I first review theories of the development of the rule of law and an independent judiciary that emphasize the

¹⁴ See Joel Bienen and Zachary Lockman, Workers on the Nile (Princeton: Princeton University Press, 1987); Joel Bienen, "Labor, Capital and the State in Nasserist Egypt, 1952-1961", International Journal of Middle Eastern Studies, Vol 21, #2, pp. 71-90; and Ellis Goldberg, "The Foundations of State-Labor Relations in Contemporary Egypt", Comparative Politics, January, 1992, pp. 147-61.

importance of social opposition to the state. I then show that these views do not give enough weight to the ruler's interest in the development of the rule of law, which stems from his conflicts with other parts of the state apparatus. Other elements of the theoretical accounts that I review, particularly the strategic calculations of rulers vis a vis their staff¹⁵, and qualities of law itself such as its complexity and its status as a vocation will play an important role in the model I then present for the development of the rule of law in hyper-bureaucratized repressive states. This new model emphasizes the role of conflicts within the state, especially between ruler and staff, rather than conflicts between the state and social groups, as the major dynamic propelling the development of the rule of law.

4.1 The English Model

The English model of the development of the rule of law as understood in the works of as diverse a group of individuals as Adam Smith, Roberto Unger, and Carl J.

¹⁵ In the following discussion, I use ruler and staff in the same way Max Weber does in Economy and Society, (Berkeley: University of California Press, 1978). A staff is the assortment of officials identified with the ruler who assist him in ruling the territory over which he claims sovereignty. They are people the ruler considers his legitimate representatives or agents. In the remainder of this paper the ruler will be the President and his close advisors. Officials, bureaucrats and agencies are all parts of the staff.

Friedrich begins with a significant decentralization of de-facto power between rural barons commanding their own military forces and a central ruler who is little more than the most powerful of the barons. In Smith's model, the King grants significant autonomy to the nascent towns so that they may develop the wherewithal to defend themselves from the barons, and serve the king as a counterweight to the barons¹⁶. The towns' autonomy allows them to organize their social relations based on what we would now call the rule of law. The predictability of the law and the protection of basic liberties it affords allows the towns to develop economically. The growth of manufactures in the towns leads to the weakening of the independent military power of the barons as they spend their wealth on the goods produced in the towns rather than retaining their followers. Personal dependence in the countryside becomes converted into fixed contracts with clearly defined exchanges, rather than diffuse relations of personal subservience. The weakening of the barons' military power reduces their ability to interfere in trade and the administration of justice.

Unger continues this analysis by arguing that the rule of law emerges between the tripartite struggle between

¹⁶ Adam Smith, Wealth of Nations, (Penguin Classics, 1974) pp. 496-516.

lords, merchants and the king¹⁷. The rule of law, argues Unger, is a compromise amongst the three groups with each accepting external regulation of its affairs in exchange for predictable relationships and rights. Such an exchange of external regulation for predictable relationships can only come about in a situation of relatively equal power, where each can damage the other's interests but can not dominate the other. The contending parties convert de facto equality into de jure equality in the interest of predictability and stability¹⁸. Friedrich's account of the rise of the rule of law also stresses the role of urban groups - first the mercantile interests and later organized labor - as the major social forces supporting responsible government¹⁹.

Common to these accounts is a starting point of de facto political pluralism deriving from the significant concentration of political and economic resources outside

¹⁷ Roberto Mangabeira Unger, Law in Modern Society: Toward a Criticism of Social Theory, (New York: The Free Press, 1976), pp. 66-86.

¹⁸ Unger also argues that political pluralism could not in itself result in the rule of law without some pre-existing ideological conception of natural right. Without this tradition, interest group pluralism would not result in a stable legal order but in continuously shifting rights and obligations in response to shifts in de facto power. Hence the traditions of rights and law have an autonomous contribution to the rule of law, a view I adopt in my later discussion. Unger, op. cit., pp. 83-86.

¹⁹ Carl J. Friedrich, Constitutional Government and Democracy, (Ginn and Company, 1950), pg. 27._

the state²⁰. While this account is historically accurate for the cases it claims to explain, it is less useful for a variety of cases in which the state faces few countervailing social forces. Hyper-bureaucratized repressive states such as Egypt, Mexico, the Soviet Union, and some Eastern European regimes have experienced varying degrees of liberalization without significant opposition from social forces. In these states, the dominant party and/or bureaucracy monopolize most political resources and coopt or repress all independent political and social movements. Hence if there is to be political liberalization, its impetus must come from within the state, rather than from social opposition to the state.

4.2 Historical and Theoretical Adequacy of the English Model

Is a concentration of social power decisive in the emergence of the rule of law, and in particular, the protection of civil rights? The following analysis of reflections on theoretical accounts of the rise of the rule of law suggests that actors within the state might have an interest in promoting the development of the rule of law without pressure from social groups.

²⁰ This perspective is at the core of Dahl's account of liberalization and democratization in Polyarchy: Participation and Opposition, (New York: Yale University Press, 1971).

Max Weber has written that it was not always the case that the cause of citizens' rights against the state were championed by the bourgeoisie:

The guaranty of rights which would be independent of the discretion of the prince and his officials was by no means ... within the unqualified interest of the capitalist groups ... The very contrary was the case with respect to those essentially politically oriented forms of capitalism which we shall have occasion to contrast, as a special type of capitalism, with its specifically modern "bourgeois" type. Even early bourgeois capitalism itself showed this interest in guaranteed rights either not at all or to a slight extent only, and sometimes it pursued even the very opposite end.²¹

The social groups which favored rights were small merchants, who wanted protection against the prince and the monopoly capitalists whom the prince licensed²². But small merchants in opposition to monopoly capitalists and princes do not constitute a very strong social base upon which to build a rule of law.

Though Weber writes that "most prominent among the [interest groups advocating "rights"] were the bourgeois interests" who demanded an "unambiguous and clear legal system" that would be free of "irrational disturbance by concrete privileges," and that offered firm guarantee of contracts, he also writes that bourgeois interests often lagged behind the prince in pushing for a rule of law:

²¹ Max Weber, Economy and Society, pg. 847.

²² *ibid.*

The fiscal interests of the prince drove him to prepare the way for capitalistic interests to a far greater extent than was actually demanded at the time by those interests themselves.²³

The initiative for guaranteeing rights may have come from the state, and was only gradually supported by bourgeois interests after they realized the value of the state's new initiatives. These considerations lead us to look for other roads to the rule of law, rooted in conflicts within the state, rather than in conflicts between state and society.

Weber's discussion of the rise of the rule of law suggests that rulers' concern with controlling officials may also be a route to the rule of law:

The interest in the precise functioning of the administrative machine through the establishment of legal security, alongside the prestige needs of the monarch, especially in the case of Justinian, were the motives for the compilations of the late Roman empire down to the code of Justinian, as well as the monarchical Roman law codifications of the Middle Ages ...²⁴

The limitation of bureaucratic discretion is not the same thing as the protection of rights. Bureaucratic authority may be limited, but still interfere with the civil rights and privacy of individuals; regulating bureaucracies effectively may simply create a more effective police state. How might it be possible that a ruler's intent to limit

²³ All quotes from Max Weber, Economy and Society, pg. 847.

²⁴ Max Weber, Economy and Society, op. cit., pg. 851.

bureaucratic discretion would converge with protecting civil rights?

Roberto Unger explores this question and concludes that the desire of the ruler to regulate the bureaucracy will not yield protection of civil rights²⁵. Unger writes that officials and princes would have only an interest in limiting their powers vis a vis each other, and not against their subjects. The prince, in particular, would not want to limit the officials' power against the subjects, since this would limit his own power.

This argument has three problems. First, the ruler may become more powerful if the arbitrary power of officials is limited. He may gain the respect of the subjects, as well as promote trade and industry by guaranteeing the sanctity of property and other rights. These two features may then allow the prince to tax the population and hence wage war more effectively.

Second, rulers might use civil liberties as a way of restraining agencies that would otherwise be beyond their control. Recent writing on liberalization in Brazil and the USSR suggests that conflicts of interest between the ruler and the staff are at the root of the expansion of civil liberties. Hosking and Jowitt suggest that liberalization has been a strategy used by the Soviet leadership to control

²⁵ Roberto Mangabeira Unger, Law in Modern Society, op. cit., pp.

the bureaucracy²⁶. Stepan argues that liberalization in Brazil was a strategy employed by the military high command to reduce the power of the security forces, which were growing too powerful to control²⁷.

Less recent authors make a similar point. In the nineteenth century, the Russian Tsars developed "a state unique in political history, where the judicial power was based on democratic principles, whereas the legislative and executive powers remained completely autocratic."²⁸ Alexander II introduced reforms which gave the judiciary greater autonomy after the Crimean war, when it became obvious that the bureaucracy was completely ineffective.²⁹ Weber argues that the ruler faces his bureaucratic subordinates as a dilettante faces an expert, and hence lacks the information necessary to control them.³⁰ Therefore, he argues, more liberal political regimes improve rulers' control over the state by improving

²⁶ Geoffrey Hosking, The Awakening of the Soviet Union, op. cit., pp. 120-1. Ken Jowitt, New World Disorder: The Leninist Extinction, (Berkeley, CA: University of California Press, 1992), pg. 235.

²⁷ Alfred Stepan, Rethinking Military Politics: Brazil and the Southern Cone, (Princeton: Princeton University Press, 1988), pp. 25-29, 35-40.

²⁸ Samuel Kucherov, Courts, Lawyers, and Trials under the Last Three Tsars, (New York: Praeger, 1953).

²⁹ Bernard Pares, Russia and Reform, (New York: E.P. Dutton and Company, 1907).

³⁰ Max Weber, Economy and Society, pg. 991.

the level of external expertise brought to bear on officials:

A constitutional king, whenever he is in agreement with a socially important part of the governed, very frequently exerts a greater influence upon the course of administration than does the absolute monarch since he can control the experts better because of the at least relatively public character of criticism, whereas the absolute monarch is dependent for information solely upon the bureaucracy.³¹

This argument echoes Hegel's description of the role of parliament in the Rechtsstaat. In Hegel's view, the parliament performed two functions: it increased the information available to senior officials regarding the activities of their subordinates, and provided incentives for officials to serve the general interest:

The Estates are a guarantee of the general welfare and public freedom. A little reflection will show that this guarantee does not lie in their particular power of insight, because the highest civil servants necessarily have a deeper and more comprehensive insight into the nature of the state's organization and requirements. They are also more habituated to the business of government and have greater skill in it, so that even without the Estates they are able to do what is best, just as they also continually have to while the Estates are in session. No, the guarantee lies on the contrary (alpha) in the additional insight of the deputies, insight in the first place into the activity of such officials as are not immediately under the eye of higher functionaries of state, and in particular into the more pressing and more specialized needs and deficiencies which are directly in their view; (beta) in the fact that the anticipation of criticism from the Many, particularly of public criticism, has the effect of inducing officials to devote their best

³¹ Max Weber, Economy and Society, pg. 993.

attention beforehand to their duties and the schemes under consideration, and to deal with these only in accordance with the purest motives.³²

Thus for both Hegel and Weber, freedom of speech protected by parliament aids those who manage the state by providing information about their subordinates and by improving the incentives for officials to perform well. Therefore, the devolution of rights, protected by an independent judiciary, may allow the ruler to improve his control over state agencies.

The third problem with Unger's argument is that it down plays the autonomous power of law. To the extent that law becomes practiced by professionals, the rulers and the officials lose some control over how that law develops and is applied. For example, Weber writes that the development of the law did not always coincide with the interests of its political supporters:

The consequences of the purely logical construction [of legal rules in new fact situations] often bear very irrational or even unforeseen relation to the expectations of the commercial interests ... [the] logical systemization of the law has been the consequence of the intrinsic intellectual needs of the legal theorists and their disciples, the doctors, i.e. of a typical aristocracy of legal literati.³³

³² Hegel's Philosophy of Right, T.M. Knox, translator, (New York: Oxford University Press, 1952), pg. 196.

³³ Max Weber, Economy and Society, pg. 855.

Hence rulers may have concrete interests in protecting rights stemming from their concern with regulating the bureaucracy. Moreover, the legal profession may expand its influence to create new legal rules that do not correspond to the most powerful "objective" constellation of interests.

In the next section, I depart from this line of reasoning to develop a model that specifies more clearly how the concern of a ruler of a bureaucratic corporatist state to regulate his staff may lead to the establishment of an independent judiciary, and how this judiciary may expand its power so that it is capable of protecting civil rights by virtue of its purely legal powers.

4.3 Sources of Judicial Independence and Power in a Bureaucratic-Corporatist State

A model explaining the emergence of an "independent judiciary capable of protecting civil rights" must be able to account for the following separate developments:

- 1) the constitutional guarantee of civil rights;
- 2) the legal establishment of an independent judiciary;
- 3) the independent judiciary's effective ability to protect existing civil rights;
- 4) The power of judicial review of the constitutionality of laws as they pertain to civil liberties.

My theoretical presentation will consider why an independent judiciary would be established, why rights are

granted and, finally, how an independent judiciary could gain effective power to protect civil rights and review the constitutionality of laws, and therefore begin to constrain the government's decision-making.

4.4 Establishing an Independent Judiciary: Evaluating Information about Implementation

Courts have historically developed their authority from the need of two parties to settle disputes peacefully³⁴. The earliest Roman courts were not imposed by the state, but were informal arrangements constituted when two disputants sought a third party to mediate their dispute.

The English model of the development of an independent judiciary follows this logic by arguing that courts became powerful arbiters of political life when social groups outside the state became powerful enough to effectively veto the state's decisions. As a result, state and opposition submitted their disputes to courts. However, in a hyper-bureaucratized repressive state such as Egypt of the 1960's, it is difficult to imagine what countervailing power outside the state might force the state to accept a court as a resolver of disputes.

³⁴ Martin Shapiro, Courts, (Chicago: University of Chicago Press, 1981), pp. 1-16.

The theory begins with the assumption that in hyper-bureaucratized repressive states the crucial political struggle occurs within the state. Rulers' pre-occupations are as much focused on control of their officials as they are on their political opponents in opposition movements. This assumption is plausible because officials control the resources that make a change in government or regime possible. They can also act autonomously to build power bases and subvert institutions through patron-client ties. At the limit this assumption yields the following abstraction: Politics in highly bureaucratized states with weak civil societies are bureaucratic politics. The contradictions which provide the impetus for political reform are contradictions that arise from the struggle for power within the context of bureaucracies.

This observation leads to the hypothesis that steps toward the rule of law are a consequence of the ruler's attempt to control his bureaucracy. But why would protecting citizens' rights through independent courts be an attractive solution to this problem? I argue that rulers empower courts to protect citizens against arbitrary state action in order to increase the quality and quantity of the information they have regarding a) the behavior of officials and b) policy alternatives. Greater access to accurate information about the behavior of officials and

policy alternatives enables rulers to exercise greater control over state agencies.

Accurate information regarding the behavior of officials allows the ruler to discipline those who do not serve his interests and reward those who do.³⁵ And information regarding policy alternatives allows the ruler to direct the state to behave in ways that serve his interests. Officials, however, may have an incentive to hide or distort information. On the whole, they would rather not be monitored; they prefer to pursue their own interests. If they are monitored, they may provide misleading information regarding their own behavior. Also, they would rather monopolize or distort information relevant to policy alternatives so that they may shape the policy decisions to their advantage. Whether the state serves the interest of the ruler or his officials depends on the quality and amount of information available to the ruler. Hence a critical political struggle between ruler and officials is over access to information regarding the

³⁵ Prominent analyses of relations between principals and agents in bureaucracies are: Gordon Tullock, The Politics of Bureaucracy, (Washington DC: Public Affairs Press, 1965); Anthony Downs, Inside Bureaucracy, (Boston: Little, Brown and Company, 1967) and Terry Moe, "The New Economics of Organization," Gordon Tullock, Autocracy, (Boston: Kluwer Academic Publishers, 1987) applies this analysis to the study of authoritarian regimes.

behavior of officials and information relevant to policy alternatives.³⁶

McCubbins and Schwartz discuss two basic methods available to a principal (in this case, the ruler) for gathering information about his agents (in this case, state officials): "Police Patrols" and "Fire Alarms".³⁷ The Police Patrol method, or centralized monitoring, relies on investigative agencies responsible to the ruler to gather information regarding bureaucratic officials and their actions. The Fire Alarm method, or decentralized monitoring, relies on reports from those who have a vested interest in the behavior of the officials or agencies such as clients or third parties outside the state. These reports may take the form of complaints, appeals, policy proposals, etc. Thus with the Fire Alarm method, instead of relying on a government agency to provide information, the ruler relies on information supplied by the clients of the

³⁶ Note that this argument does not require any controversial assumptions about human psychology. The kinds of conflicts described above could occur whether the officials were egoists or altruists, strategic or non-strategic. If they were all altruists, but had different goals than the ruler, there would still be a conflict of interest. Furthermore, officials do not have to strategically avoid monitoring. They might simply furnish poor information out of habit.

³⁷ Matthew D. McCubbins and Thomas Schwartz, "Congressional Oversight Overlooked: Police Patrols versus Fire Alarms", American Journal of Political Science, vol. 28, #1, February, 1984.

official or agency, or those who are affected by the actions of the official or agency.³⁸

Centralized monitoring has significant incentive problems that tend to reproduce, rather than solve, the principal's monitoring problems. In centralized monitoring systems the central investigative institutions are in the same principal-agent relationship with the ruler as are the agencies and officials they are investigating. Hence the same problem of conflict of interest may develop between the ruler and the central investigatory institutions. The effect of this is that monitors can report false positives and false negatives, i.e. they may fail to report actual violations or they may report violations that never occurred. False negatives may occur because the monitoring agencies lack incentives to aggressively pursue violations. Or, if they are given incentives by the ruler, the monitoring agencies may misrepresent the extent to which they actually monitor. Also, the monitored agencies may bribe the monitors to not report any malfeasance. False positives may result from political conflicts between

³⁸ Robert Klitgaard develops a model of the control of corruption which relies on "Fire Alarm" style monitoring. Robert Klitgaard, Controlling Corruption, (Berkeley: University of California Press, 1987). Herbert Kaufman with Michael Couzens, Administrative Feedback: Monitoring Subordinates' Behavior, (Washington D.C.: The Brookings Institution, 1973), analyzes the role of clients and other third parties in providing information to public managers about the activity of subordinates.

monitors and agencies. In order to deal with the problem of false negatives - the non-reporting of violations - rulers need to either add monitors or find monitors with stronger incentives to report the truth. In order to deal with the problem of false positives, rulers need a system that reliably evaluates reports of violations.

One solution to the problem of insufficient or distorted incentives on the part of investigative agencies is for the ruler to create multiple monitoring institutions. These institutions compete with one another and check up on each other. This is, however, ultimately counterproductive. Intensive monitoring by multiple monitors increases the amount of work devoted by managers to providing information and decreases the amount of time they devote to managing. Also, if the multiple monitors use different criteria of evaluation, officials become increasingly reluctant to act. They become so afraid that they may be suspected of violating a rule that they vet even the most trivial decisions to the highest levels of the bureaucracy. Decisions become poorer in quality because the higher levels lack both the information and time to make good decisions. As a result the bureaucracy becomes paralyzed. It is counterproductive in another way: if a monitored agency can be monitored by other agencies, then the official who is being monitored gains an advantage over the monitoring agencies. In exchange for not pointing out flaws in the

monitoring agency's monitoring, it can keep the monitoring agency quiet. And finally, since the ruler would still need to evaluate which monitor is telling the truth, multiple monitoring does not solve the problem of evaluation of information. The incentive problem is reduced, but this is paid for by increased bureaucratic fear. And the problem of evaluation remains.

Due to problems with centralized monitoring, authoritarian rulers may rely on "Fire Alarms". In an authoritarian system that does not protect the freedom of speech, this will take the form of anonymous complaints. One possible advantage of using fire alarms is that those who suffer the consequences of official misdeeds or bad policy - citizens affected by the actions of the agency - have strong incentives to report the violation. But many complaints may be spurious or made with malicious intent. Such complaints are useless or even counterproductive, as they may result in the disciplining of loyal officials. Thus the system still requires some institution that will filter and ascertain the validity of complaints.

One solution to the problem of evaluation would be to allow prosecutors to investigate complaints and present them to be tried before an independent court. The advantage of a judiciary independent of the administrative hierarchy is that it would evaluate complaints without reference to the political alliances and conflicts within the bureaucracy.

This independence is vital to limit the kind of collusion that hampers centralized, "Police Patrol" monitoring. Thus the ruler has an incentive to grant and protect judicial independence in order to have a politically neutral evaluator of reports of violations.

But this solution leaves two problems. The first is prosecutorial collusion and shirking. If prosecutors, like monitors, form collusive relationships with the agencies they are supposed to supervise, the anonymous complaints may never result in a trial. Similarly, judges might also collude with agencies. The second problem is that prosecutors that do want to stop violations will be overwhelmed by a large number of potentially spurious complaints. They will have few criteria to differentiate accurate complaints from spurious ones.

A solution to the problem of prosecutorial shirking and collusion is to let citizens themselves prosecute administrative violations in the courts by allowing them to sue for injunctions and compensation. This system would make use of the antagonistic interests between wronged citizens and the agencies that have wronged them. This solution will not work, however, in the absence of protection of citizens rights of expression. Unlike a system of anonymous complaints, in this model citizens publicly pursue their accusations of administrative violations. Unless they feel sure that they will not be

intimidated and harassed by police forces and other powerful agencies that might collude with administrative agencies, they will not pursue the prosecution of violations.

The specific set of rights that would require protection include the rights of freedom of speech and freedom from false imprisonment. The need to protect these rights underscores the importance of an independent judiciary protecting individuals' rights against security forces. Also, the right of association would be justified. Individuals alone might find the task of pursuing a suit beyond their means. More such suits might be brought if individuals could form associations for the purpose of protecting their rights. In such a case, the right to publish would also strongly facilitate bringing such suits because it would facilitate the recognition of mutual interests and the coordination of action.

The encouragement of citizens to pursue legal remedies in court for administrative violations and the protection of the right of publication would also improve the quality of complaints. Courts filter out spurious complaints in that a) they tend to require complainers to pay a filing fee, and b) if the complainer loses, he must pay court costs and c) courts generally reject cases without firm legal grounding. The protection of the right of publication can be regulated with libel laws, which create incentives to publish only what can be substantiated. Thus protecting the right to

complain publicly can also improve the accuracy of those complaints.

To this point, I have shown why rulers of hyper-bureaucratized states have interests in a) establishing an independent judiciary, b) giving that judiciary the right to review the legality of administrative acts based on appeals from citizens, and c) protecting basic rights of individual security, expression, association, and publication. In short, these institutional innovations improve the quality of information available to the ruler regarding the activity of his officials. These innovations accomplish this by making use of antagonistic interests, creating incentives for accuracy, and by creating an institution that is insulated from political alliances and conflicts in the bureaucracy. The value of an independent judiciary to the ruler is its neutral evaluation of competing claims about the behavior of officials.

Rulers of hyper-bureaucratized, repressive states also have an interest in empowering a court to review the constitutionality of laws. Rulers often have to delegate the writing of laws to subordinates. The complexity of legislation means that the interaction of seemingly unrelated clauses can produce outcomes that are not obvious. Therefore the ruler faces the same problem of monitoring those subordinates who write laws as those who implement policy. A constitutional court can therefore alert the

ruler to laws which violate his intentions, as codified in a constitution.

One weak point in the system of court supervision is the court itself. Judges may be bribed or intimidated by administrative agencies. But because the system of decentralized monitoring relies on antagonistic interests and permits greater circulation of information through a freer press, it is more likely that such malfeasance will be noticed and publicized, thus reducing the likelihood of its occurrence. Furthermore, the greater openness of court proceedings makes such malfeasance easier to detect. Finally, making courts the final arbiters of cases involving administrative agencies allows the ruler to focus his monitoring on a single small and significant group of individuals, namely judges. Monitoring can thus become more cost effective and more reliable.

A second weak point in court supervision is the enforcement of rulings. Courts do not have "power" in the sense that they can use the threat of coercion to compel a party, especially a state agency, to obey their rulings. So how could a system of monitoring based on court supervision constrain officials? The answer is that court rulings function as information. When they are disobeyed, there is a high degree of certainty that the official that has disobeyed them is guilty of a violation. Thus courts do not

discipline agencies. Rather, they ascertain the location of persistent and problematic violations.³⁹

The ruler's concern with better information about policy alternatives will also lead to support for rights of expression and association. Freedom of the press, freedom of academic research and discussion, and protection of speech all facilitate citizens' inquiries and complaints about the activities of officials. If the press is free to investigate official abuses, and citizens (and disgruntled employees) are sure that they can speak freely, then the amount of information available to the ruler about the activity of his officials will increase substantially. Of course, the quality of this information may not be high. However, public debate can contribute to the refinement of the quality of the information. Also, if intellectual groups and academics are free to discuss and research issues, the extent of information concerning policy options will also increase. Finally freedom of association will allow individuals to communicate more efficiently and coordinate their efforts. This will contribute to an improvement in the amount of policy-relevant information.

³⁹ This idea is adopted from James W. Bailey, Utilitarians, Institutions, and Justice, (Ph.D. Dissertation, Princeton University, 1994), pp. 260-1. Bailey argues that for utilitarians, rules have value as rules of thumb. When broken they indicate a high likelihood of behavior which diminishes overall utility.

The press, watchdog groups, citizens, and intellectuals will not inquire, discuss, and publish if they do not have firm guarantees that such activities will be protected. And they will not feel protected if the rights to engage in such activities are subject to administrative discretion. Rather, they will only feel secure if interested parties - the objects of inquiry and discussion - have no influence over the protection of civil rights. This means that if the ruler is going to generate the information useful for evaluating policy, he will have to empower an independent judiciary capable of protecting rights of association and expression.

The ruler may also want to strengthen the protection of civil liberties in order to reduce the power of the security forces. Security forces are potentially extremely powerful organizations. If they are allowed to operate without restraint they can amass significant autonomy and power by confiscating property and intimidating officials. Hence, the ruler may have an interest in empowering a judiciary capable of protecting civil rights in order to counter a growing security force⁴⁰. This is a special case of the ruler using courts to control administrative agencies.

⁴⁰ Indeed, it should not be surprising to observe the judiciary become more powerful and autonomous precisely as the security forces engage in an intense campaign of repression, as the ruler tries to ensure that the repression does not spill over the proper boundaries.

Would the ruler's needs to supervise officials or gather information about policy alternatives prompt him to extend rights of political participation as well? Political participation can serve two purposes. First, representative councils can investigate and publicize the performance of government agencies. Second, the substitution of election for appointment as a method of appointing administrative positions such as mayors can defeat patronage based appointment, and so weaken the grasp of cliques on the state apparatus.

The Timing of Reform

There is a tendency for elites to tinker with monitoring systems as they realize that they are not working effectively. New central monitoring institutions may be added, the powers of one may be enhanced and the powers of another reduced, there may be marginal improvements in the freedom of speech, or brief campaigns may be conducted in which one narrow sector of the state may be investigated and criticized. A more radical change to de-emphasize centralized monitoring and empower courts and citizens with a broad array of rights requires a major signal that the existing regime cannot achieve the goals its leaders feel it must achieve. Events such as humiliating defeats in war and intractable economic crises may indicate to rulers that the

state as currently organized is not capable of meeting the ruler's minimal objectives.

Patterns of Reform

Granting rights and institutional autonomy has potential political costs: opponents of the regime may be protected by these new rights and institutions. Furthermore, since rulers have an interest in combatting passivity and fear on the part of citizens they must, for their strategy to work, respect the new courts and rights they have created. Thus the pattern of reform we would observe if this dynamic is in fact occurring should be distinguished by a legal framework which increases information flow without significantly increasing the capability of the society to challenge the government politically. Thus we should observe reforms which give strongest protection to individuals and individual complaints, weaker protection to associations, and even weaker protection to rights of participation.

We can conceive of rulers trading off gains in control over the state for losses in control over society. Any given ruler will have an indifference curve over gains in control over the state and loss of control over society for a given mix of need of information and underlying political threat posed by social forces. Rulers will adopt those

reforms that give them the greatest feasible amount of combined control over state and society. If, at the margin, they can gain more control over the state than they lose over the society, they will adopt liberalizing reforms. Of course, the number of reforms is not infinite and therefore rulers will rarely be able to achieve a position on their indifference curve.

4.6 Judges' Vocational Commitment

One question remains. Can the judiciary expand the existing range of civil rights protected beyond those that are in the interest of the ruler?

My answer to this question depends on the notion of a judicial vocation⁴¹. This section discusses the origins of the sense of vocation, what power the sense of vocation gives the judiciary, and how this power can be used to secure a more effective protection of civil rights.

The value of the judiciary to the ruler as a regulator of bureaucratic behavior is based on the judiciary's integrity. If the judiciary is easily corruptible, then neither bureaucrats nor the ruler can be assured of a fair trial, even if judicial independence exists formally. Hence the ruler has an interest in cultivating and protecting a judicial cadre that is committed to the application of the law as a matter of fundamental duty and honor. This commitment is what is meant by the term vocation.

However, the importance of the judiciary's vocational commitment to the ruler's goals of bureaucratic control may

⁴¹ For a discussion of vocation see "Science as a Vocation" and "Politics as a Vocation", in From Max Weber, H. H. Gerth and C. Wright Mills, eds., (New York: Oxford University Press, 1958). A vocation in Weber's sense can be most closely defined as a lifetime commitment to a profession built upon a set of normative commitments that are beyond one's conscious control. The lack of personal discretion over one's most basic commitments is what Weber means when he suggests that one must "find and obey the demon that holds the fibers of his very life", *ibid.* pg. 156.

be the achilles heel of autocracy. Judges imbued with the values of a liberal legal system and confident of its claim to comprehensive regulation of relations between citizen and state may seek a stronger protection of civil rights than the ruler had in mind. Given the judiciary's vocational commitment, a number of judges may attempt to expand their jurisdiction and rule against the ruler's interests. Hence the judiciary may take an active role in protecting opponents of the ruler and limiting the ruler's powers in areas the ruler had not anticipated.

Furthermore, the ruler will have an incentive to respect adverse rulings and allow the judges to continue to hear cases which may adversely affect his interests. There are two basic reasons for this: the ruler's own uncertainty about the nature of future cases and his desire to retain the loyalty of the judges. Since the ruler is uncertain about what future cases will appear before the judiciary, limiting its jurisdiction might protect his enemies rather than his friends. Also, if the ruler violates the immunity of the courts too much, he will risk losing the respect of the judges. This might result in a significant decline in the willingness of judges with a high level of integrity to serve in the judiciary - their replacements might be opportunists who will not neutrally evaluate the evidence before them. If this occurs, the value of the judiciary as a mechanism of controlling the state is lost. Thus, the

main hypothesis considered in this section is that there is a price to relying on a group of neutral evaluators of information: in order to retain their respect, and hence their service, the ruler must often make concessions to their sense of professionalism or their ideological commitments.

An important boundary condition on this argument is the availability of other cadres. By cadre, I mean an identifiable and organized group of individuals who are motivated by a shared commitment to a transcendent value or set of values. Potential examples of cadres are Leninist parties and elite civil servants. If other cadres exist, the ruler may prefer to rely on them instead of a judiciary to evaluate claims about bureaucratic malfeasance. Nevertheless, the same condition will apply: the cost of relying on a cadre may often be devolving some discretion to its members.

4.6.1 Vocation and the Expansion of Protection of Civil Rights

There are two reasons to believe that the ruler may have no alternative but to rely on a judicial cadre whose value commitments are at odds with basic features of his rulership. First, it is important that judges are honest. A precondition of them being honest is that they have a vocational commitment to their profession. However,

individuals do not develop fundamental commitments to arbitrary sets of rules. The rules individuals commit themselves to serve must plausibly reflect a social order, an enterprise, or a tradition they feel to be worthy of a life's work. Hence the ruler may have to rely on a cadre that is committed to an ideology not wholly consistent with his style of rule. Moreover, individuals with such a sense of vocation do not always restrain their commitments at arbitrarily defined boundaries. Amongst a group so committed, there will exist a number who will not rest content with the existing institutional expression of the rules, but will seek to test the boundaries. Hence if the ruler wants a cadre on which he can rely to enforce rules honestly, he may be narrowly constrained by a limited set of cadres to choose from and he may have to tolerate some challenges to his authority.

Second, rulers are constrained by the availability of traditions of law they can call upon. Unless they are willing to engage in a long term project of codification of laws, and train a new judiciary capable and, more importantly, committed to administering these laws, the ruler will have to settle for traditions already existing within the country, in existing schools of law. Given that the British and French imperial powers imposed their legal systems on their colonies and trained indigenous lawyers, judges and scholars to administer and propagate these

systems, it is very likely that in many developing countries at least one of the dominant legal traditions will be liberal in character.

Also, codification runs the risk of breaking with tradition in ways that may have dangerous yet unforeseen consequences⁴². It also runs the risk of not being able to elicit the kind of vocational commitment from judges that a successful legal system requires. Training a set of judges to administer new laws faithfully will require establishing new schools complete with faculty who can both teach the law and impart a reverence for it. These programs must be rigorous, as rigor is probably the most effective method of ensuring commitment: an arduous training will weed out the candidates motivated solely by wealth or power and hence purify the profession. Given considerations of codification and training, a long time, at least a decade, will pass between the initial project of codification and the establishment of a well trained, committed judiciary. Few rulers will be far-sighted enough to embark on such a long term project; few will feel they have ten years to wait⁴³.

⁴² Max Weber, Economy and Society, pg. 855.

⁴³ Rulers in the early age of state building in Europe relied extensively on existing Roman law and scholars of Roman law to execute it. Relying on a pre-existing system of laws gave the rulers a power they had not enjoyed before: a cadre of committed officials coordinated under a single system of rules. Hence the adoption of Roman law significantly increased the power of the ruler and laid the base for the emergence of the absolutist state in Europe. (Perry Anderson, Lineages of the Absolutist State, (Verso,

Many rulers will have to be content with already existing legal traditions and cadres. This means that the outcomes of the autonomous intellectual development of legal communities will have a practical impact.

If law is meant to legitimate domination, we should also expect legal outcomes that defy the interests of elites. Law can only be a source of legitimacy if it plausibly applies "logical criteria with reference to standards of universality and equity."

Most men have a strong sense of justice, at least with regard to their own interests. If the law is evidently partial and unjust, then it will mask nothing, legitimize nothing, contribute nothing to any class' hegemony. The essential precondition for the effectiveness of law, in its function as ideology, is that it shall display an independence from gross manipulation and shall seem to be just. It can not seem to be so without upholding its own logic and criteria of equity; indeed on occasion, by actually being just ... In the case of an ancient historical formulation like the law, a discipline which requires years of exacting study to master, there will always be some men who actively believe in their own procedures and in the logic of justice.⁴⁴

If judges do possess some sort of vocational commitment to liberal values, and/or if the legal system guarantees some liberal rights, then a number of judges may attempt to expand the range of rights that they can protect, against the immediate interests of the executive. If the judiciary

1974), pp. 28-29.)

⁴⁴ E. P. Thompson, Whigs and Hunters: The Origin of the Black Act, (Penguin, 1990), pp. 262-263.

does attempt to expand its jurisdiction, the ruler and bureaucratic agencies have four ways of responding:

- 1) The ruler can tolerate the rulings;
- 2) The ruler can "intervene at will to pull particular cases out of the courts and into [his] own hands."
- 3) The ruler can "systematically withdraw from the legally defined competence of the judiciary all matters of political interest" to himself, or those cases that involve rights he does not have an interest in protecting.
- 4) The ruler can "create systems of judicial recruitment, training, organization, and promotion that ensure that the judge will be relatively neutral as between two private parties but will be the absolutely faithful servant of the regime on all legal matters touching [his] interests."⁴⁵

The last four responses solve the problem of judicial activism. However, they all have costs to the ruler. Given that they have costs, the ruler may calculate that judicial activism is the least of two evils. One cost that applies to all responses is the loss of the judges' respect for the legal system. If the ruler encroaches on the autonomy of the legal system he will alienate the judges. They may leave the judiciary and the profession may no longer attract those strongly committed to the law. Thus the judiciary

⁴⁵ The preceding four responses are from Martin Shapiro, Courts, op. cit., pg. 32.

will lose its capacity to neutrally evaluate information.

More specific costs for each response are as follows:

Response # 2: Pulling cases of a political nature out of the courts. This response limits the value of the judiciary's management of the ruler and staff's relations in that it threatens the judiciary's independence. The limitation of the judiciary's independence can have the effect of either encouraging bureaucratic malfeasance, or increasing the level of fear of officials to dangerous levels. Also, as argued above, the ruler has an interest in protecting a range of political rights. Therefore since he wants some rights protected, he may be uncertain as to whether the case in question concerns a right he has an interest in protecting.

Response # 3: Restricting the jurisdiction of the judiciary. This response has fewer problems in that it limits the area of bureaucratic power that is unaccountable. The shortfall of judicial monitoring may be replaced by extensive executive monitoring. Nevertheless, this significantly increases the power of the exempt agencies. If the exempt agencies can use this limited accountability to develop alternate sources of funds, then they may become autonomous of executive power. The exempt agencies may then pose more

of a threat to the ruler's interests than the limitations posed by the judiciary.

Response # 4: Training new judges. This is a less costly solution to the problem in terms of losing control over the administration but it may require considerable time to develop. In the mean time the ruler may rely on a less cooperative judiciary, which may lay the basis for significant organized opposition to autocracy by protecting civil rights. Hence by the time more suitable judges are ready to take over, it may be politically infeasible to employ them. Also, given the ruler's interest in protecting some rights, there may be a wide range of cases in which the ruler's political interest is unclear. Also, as argued above, the ruler has interests in protecting some political rights. Finally, if judges are politically pliant, the ruler runs the risk of recruiting sycophants who will serve the highest bidder. The ruler is less interested in subservience than he is in neutrality. Neutrality, however, requires recruiting independent judges committed first and foremost to the judiciary.

In addition to relying on the ruler's calculation of self interest, the judiciary can also employ several proactive tactics and strategies to enhance its jurisdiction and ensure that agencies comply with adverse rulings. There are four such strategies and tactics:

- 1) If the judiciary has a capacity for collective action it can agree not to rule in cases in which the government is a plaintiff unless the government accepts adverse rulings⁴⁶.
- 2) The judiciary may repeatedly bring cases to trial which result in adverse rulings for a certain agency. Continuous failure to comply, if publicized, may erode the regime's support amongst the public. This may then force the ruler to ensure compliance.
- 3) The judiciary may form alliances with groups in civil society who have an interest in judicial independence and civil rights. These groups may mobilize to protect judicial autonomy and the expansion of its jurisdiction, as well as focus attention on recalcitrant agencies⁴⁷. In this way judicial activism can reinforce itself by protecting groups with which it then forms alliances.

In summary, the extent to which the strength of vocational commitment will allow the judiciary to expand its jurisdiction depends on a number of contingent factors:

⁴⁶ This is a strategy that was employed by the mixed courts in Egypt against the Khedive, Farhat Ziadeh, Lawyers, The Rule of Law, and Liberalism in Modern Egypt, (Stanford: Hoover, 1968), pg. 27.

⁴⁷ This was a strategy employed by the parlements of the old regime in France. See Louis Gottschalk "The French Parlements and Judicial Review," Journal of the History of Ideas, #5, 1944, pp. 110-111; and Alfred Cobban, "The Parlements of France in the Eighteenth Century," History, 35 (1950).

- 1) First there must exist a cadre of judges vocationally committed to a liberal, established and well defined legal code. If the judges are not committed to liberal ideas of rights, they will not be terribly zealous in attempting to expand their jurisdictions and protect rights.

- 2) There must not be a rival and equally committed cadre capable of monitoring that is more congenial to the ruler.

- 3) The ruler must calculate that the loss in control over administrative agencies is more costly than the judiciary's protection of rights. I have tried to indicate above why the costs of protection of rights may be less than the costs of limited control of administrative agencies.

Conditions one and two imply that the ruler must face a rather stark choice. It must be the case that the cadre he can trust is a cadre committed to liberal values. The ruler will have to find himself in an all or none kind of situation: If he wants to establish greater control over the bureaucracy he will have to live with a cadre committed to liberal values.

This kind of situation is not necessarily a rare one. I have tried above to indicate the difficulty a ruler faces in tailoring a legal tradition to his needs. To some extent he will have to live with existing traditions; the question

is which. A liberal legal system will often be a system on which he can draw. Liberal ideology institutionalized in legal establishments exists in many developing countries, partly as a result of European colonialism, partly as a result of its pretensions to universalism and rationality. Moreover, liberal legal systems may have other attractions beyond controlling bureaucracies. Liberal legal systems have the further attractiveness of their rationalization of property rights, and their formal universalism and equality which makes them relatively easy to impose throughout a country. Also, a well founded liberal legal establishment fosters a country's integration with the world economy.

Liberal judges are a functional equivalent of other kinds of politically reliable cadres such as an ideological party or a set of bureaucrats loyal to and committed to the ends of the state.

This reasoning prompts the following proposition: The long term development of a regime will reflect the ideological commitments of the cadre the ruler can trust with regulating the bureaucracy⁴⁸.

⁴⁸ The failure of liberalism in Germany may be understood within this kind of logic. The early development of a disciplined bureaucracy in many ways limited the desirability of placing constraints on its actions. The lack of institutional constraints on the bureaucracy in addition to its discipline meant that creation of a Nazi police state was relatively unimpeded. The German rulers of the 17th and 18th century cultivated the berufsmensch, a man of vocation to serve as administrator (Hans Rosenberg, op. cit.). The judicial institutions remained weak; they served primarily as a source of representation for landed

4.7 Summary and Hypotheses

The argument I have presented above can be summarized in the following hypotheses:

H1a) The ruler will empower the judiciary to protect civil rights in order to generate and evaluate information about implementation of policy and to generate information relevant to the formation of policy if he receives a major indication that his loss of control of state agencies threatens his personal security or the security of the state;

H1b) The ruler will choose to empower the judiciary if he believes that it is more politically reliable than any other cadre that can achieve the goal of regulating the bureaucracy;

interests. The rulers relied on the status consciousness, career aspirations and ideological commitment of the officials for discipline rather than independent supervisory institutions. The trend of ceding discretion to administrative agencies continued under the Weimar Republic (Roberto Mangabeira Unger, Law in Modern Society, op. cit., pp. 216-220). When the Nazis seized power, they found need for the courts to lend predictability and certainty to areas of social life such as trade necessary to maintain the state (Ernst Fraenkel The Dual State, (Oxford University Press, 1941), pp. 62-63). But in a series of court decisions, the judiciary ceded wide discretionary powers to the Gestapo, in accord with legislation enacted during the Weimar Republic (George C. Browder, Foundations of the Nazi Police State, (University Press of Kentucky, 1990), pp. 194-5, 214, 215). Hence a combination of parliamentary abdication, a tradition of judicial deference to administrative agencies, and the fact that the Nazis could rely on a disciplined bureaucracy all eviscerated what "weapons of the weak" German officialdom might have brought to bear on the police state.

H2a) The judiciary will attempt to expand its jurisdiction to protect civil rights to the extent that it possesses a vocational commitment to a liberal understanding of the rule of law;

H2b) The judiciary will be able to expand its jurisdiction to protect civil rights if the ruler's cost of tolerating greater civil rights are lower than the costs of losing control of his officials and if the judiciary can cultivate alliances in civil society;

H2c) The judiciary's capacity to raise the costs of the ruler's attempt to prevent or failure to comply with adverse rulings depends on:

- i) its capacity for collective action,
- ii) the extent of press freedom.

The next two chapters evaluate the hypothesis that the Presidents of Egypt believed that the system of centralized monitoring attempted by the Egyptian state failed and that this belief induced an adoption of a system of decentralized monitoring. Chapter 4 tests the hypothesis that the Egyptian judiciary was able to use its new autonomy and jurisdiction to expand the range of civil liberties beyond the scope originally envisioned by the Presidency. Chapter five tests the first hypothesis in two critical cases: Cases in which rulers sought to centralize their control of the state. It shows that in two cases -- the USSR from 1952

onward, and especially 1986 onward, and Egypt in the first half of the nineteenth century -- an important part of rulers' strategy of state control was the devolution of rights to citizens (or subjects) in order to improve the monitoring of officials. Chapter six evaluates three main rival explanations of political liberalization in Egypt during the 1970s and 1980s. It argues that these rival explanations leave significant amounts of variance in political liberalization unexplained. Chapter seven returns to the theme of the use of political participation to discipline state agencies. It argues that properly constructed democratic forms of monitoring of state agencies can improve the performance of state agencies in an important range of contexts found in developing countries. And therefore, democratic participation can aid in promoting economic development. More abstractly, the argument here is that rights of participation can support the capacity of the state to act as a purposive and coherent organization.

Chapter 2

The Failure of Centralized Monitoring

This chapter analyzes the evolution of the practice and conception of strategies of bureaucratic regulation pursued by the President of Egypt, Gamal Abd ul Nasser, during the 1960s. In the early 1960s, faced with the problem of controlling a civil bureaucracy that either directly owned or supervised almost all of the national economy, and of controlling a large military force and internal security apparatus, the President experimented with different forms of centralized monitoring. The institutions of centralized monitoring exhibited most of the problems associated predicted in the analysis of chapter one. The accumulation of evidence of the failure of centralized monitoring to adequately control and direct the civilian and military bureaucracies prompted the President to begin to consider de-centralized forms of monitoring, especially an expansion of the autonomy and jurisdiction of the judiciary.

The subsequent chapter demonstrates that the defeat in the Six Day War of 1967 further convinced the President of the desirability of a decentralized system of monitoring and that the failure of centralized monitoring eventually led his successor, Anwar Sadat, to adopt the reforms which expanded the judiciary's jurisdiction and autonomy. This chapter focuses on the major problems of control faced by the President until 1967, the forms of centralized

monitoring he adopted, and his growing frustration and rethinking of his monitoring strategy.

The President faced two mutually reinforcing problems of bureaucratic control during the 1960s. The first was manifested in bureaucratic corruption, inefficiency, and abuse of power. The second was manifested in the Presidency's struggle to control the military, the police, intelligence services, and later, the single party, the Arab Socialist Union (ASU), over issues of control over the bureaucracy. During the 1960s, the military and its associated security agencies were able to achieve significant amounts of autonomy from the President. Military and security forces used their autonomy to interfere in the affairs of the public sector. Thus these control problems reinforced each other: The military used its autonomy to overstep its jurisdiction and gain control over some public sector affairs, further hampering the bureaucracy's efficiency. Thus the central monitoring problems facing the Egyptian Presidency were the delimitation of jurisdiction and the design of supervisory mechanisms to report on the violation of jurisdiction and other forms of official malfeasance.

The root of both these problems of control were deficits in the Presidency's access to accurate information about the activities of his subordinates. The President could not control the military or the rest of the

bureaucracy because he did not have access to information regarding their activities.

In the early 1960s the Presidency sought to improve bureaucratic surveillance and control through a "police patrol" or centralized monitoring method, relying on institutions such as auditing agencies and administrative investigators.¹ Police patrol methods did not work well and may have actually worsened bureaucratic effectiveness through excessive supervision and intervention in management. Responding to the failure of these methods, and to the growing power of the military, the President initially attempted to intensify "police patrol" monitoring of the bureaucracy and the military through the development of a single political party, the ASU. This party also ultimately had negative effects on the bureaucracy's efficiency.

By 1966, faced with little success in centralized monitoring and the growing power of the military and the party as well as the intelligence services and police, a strain of thought developed among the President and some of

¹ I adopt the terms "police patrol" and "fire alarm" from Matthew McCubbins and Thomas Schwartz, "Congressional Oversight Overlooked: Police Patrols versus Fire Alarms" American Journal of Political Science, vol 28, #1, February, 1984. Police patrols and fire alarms represent two different styles of monitoring bureaucracies. Police patrols are regular, centrally directed auditing mechanisms. Fire alarms are spontaneous complaints and investigations undertaken by independent citizens and agencies who are concerned about the activities of a particular government agency and complain about and publicize the government agencies alleged misdeeds.

his advisers emphasizing the importance of clearly defining the jurisdictions of agencies and empowering independent supervisory institutions, including courts, to monitor state institutions. The clearer delimitation of jurisdictions would define responsibilities and limit the boundaries of legitimate action for state agencies. The independent supervisory institutions would report on the violation of these boundaries and the failure to perform responsibly. As indicated above, a central issue in the effective control of state agencies was ensuring that the military and security forces remained within their jurisdictions.

The idea of the rule of law became attractive to the Presidency as a way of clearly defining the powers and jurisdictions of state agencies such as the military, the police, the intelligence services, and the party. The judiciary came to be viewed as an institution that could aid in monitoring these powerful agencies. In addition, the Presidency came to view limited protection of civil rights such as freedom of speech as a means of encouraging citizen monitoring and challenging of bureaucratic agencies, adding to the institutional repertoire at the President's disposal to supervise and hence control state agencies.

Although there was still considerable support within elite circles favoring an intensification of "police patrol" methods, the more liberal "fire alarm" approach was at least partially implemented by the early 1970's. The fire alarm

approach succeeded partially for purely contingent reasons: After a period in which the single party - the ASU - was in ascendancy, the military supported a move toward clearer delimitation of bureaucratic jurisdiction, external regulation by law, and greater transparency of bureaucratic operations. However, we might also say that the fire alarm approach won out because it represented an institutional arrangement roughly corresponding to the power resources of the participants in the contest. The military opposed the first, more centralized solution, fearing the empowerment of the party and encroachment on its autonomy and perquisites. The second position, representing greater institutional autonomy within the boundaries of the rule of law, more closely corresponded to the military's interests.

The rest of this chapter details the Presidency's evolving strategies of bureaucratic control. It discusses how attempts with centralized monitoring yielded increasing frustration and how, subsequently, the President and his advisers began to contemplate a tighter delimitation of jurisdictions of state agencies and the use of decentralized forms of monitoring. I first discuss the emergence of the problem of bureaucratic control and the Presidency's concern with corruption. Then I describe the increasing power of the military and the problems this caused for bureaucratic effectiveness.

The following section analyzes the shortcomings of some centralized attempts to monitor the bureaucracy more closely. The chapter subsequently focusses on the attempt of the Presidency to develop a Leninist-type party that could monitor the bureaucracy. I find that the single party compounded already existing problems due to its proclivity to interfere in administration. I then show how the combination of concern over bureaucratic effectiveness, problems with centralized monitoring, and increasing direct intervention of institutions such as the ASU and military into the affairs of other agencies led to the President's adoption of a view of state organization which emphasized clearer separation of bureaucratic responsibilities and powers, the importance of law in regulating bureaucratic actions, monitoring of the bureaucracy by independent institutions such as the judiciary, parliament, universities and the press, and the protection of some civil liberties to protect this new monitoring role.

In short, I show that by the late 1960's the Presidency thought that bureaucratic regulation had become a serious problem and that centralized methods of accomplishing this were failing, leading to a consideration of a new method of bureaucratic regulation based on the rule of law, limited civil rights, and supervision and regulation by independent institutions, including the judiciary.

2.1 Corruption

During the 1960s, the Egyptian state had become highly autocratic and had come to control vast portions of the national economy. Almost all real power had become concentrated in the hands of the President, Gamal Abd ul Nasser, and his closest associates. The main sources of social opposition, the trade unions, political parties, the Muslim Brotherhood, and the professional syndicates, had either been abolished or brought under the control of the state.² In addition, newspapers and other media came under state ownership. The state controlled most of the urban economy (except trade and construction) and exercised significant influence over the rural economy through a system of cooperatives which monopsonistically purchased outputs and monopolistically sold inputs.³

The Presidency faced a significant problem with monitoring and controlling the huge bureaucracy responsible

² Robert Bianchi, Unruly Corporatism (New York: Oxford University Press, 1989); Ellis Goldberg, "The Foundations of State-Labor Relations in Contemporary Egypt", Comparative Politics, January 1992, 24: 147-61.

³ Studies of this period in Egyptian politics include: John Waterbury, The Egypt of Nasser and Sadat: The Political Economy of Two Regimes (Princeton: Princeton University Press, 1983); R. Hrair Dekmejian Egypt under Nasir: A Study in Political Dynamics, (Albany: State University of New York Press, 1971); Raymond Baker Egypt's Uncertain Revolution under Nasser and Sadat, (Cambridge, Harvard University Press, 1978); Anouar Abdel Malek Egypt: Military Society (New York: Random House, 1968); P.J. Vatikiotis, Nasser and his Generation (New York: St. Martin's Press, 1978); Mark Neal Cooper, The Transformation of Egypt, (Baltimore, MD: Johns Hopkins University Press, 1982).

for managing the economy. In the 1950s, before extensive nationalization, the Presidency had relied on appointing close associates to important new public sector agencies such as the Suez Canal and the High Dam.⁴ This strategy was of limited value for two reasons. First, the new government lacked a cadre of committed administrators who could take over the bureaucracy. The government was made up of a group of officers who seized power in a coup d'etat in 1952. They recruited themselves and junior officers with whom they had close personal relations to serve as administrators. But as time progressed political infighting among these officers resulted in purges, further limiting the number available. At any rate, their number was limited and so, though the regime purged many old officials from the bureaucracy, it still had to rely on officials not closely connected or committed to the new government.⁵

In addition to these problems, the large expansion of the public sector in 1961 through nationalization enlarged the number of agencies which needed direct supervision by the center of the state. These agencies not only multiplied the requirements for supervision. The government's suspicion of the bureaucracy it inherited from the old

⁴ Muhammed Hasanein Heikal, "A Discussion of Renewing the Internal Work and its Problems, part 6," Al Ahram, December 25, 1964.

⁵ Muhammed Hasanein Heikal, "A Discussion of Renewing the Internal Work and its Problems, part 5," Al Ahram, December 18, 1964.

regime led it to create rival agencies which would assume tasks that fell within the old bureaucracy's authority. The creation of the new agencies touched off a struggle with older agencies which felt threatened by the new agencies' overlapping authorities. This led to a crisis of cooperation within the bureaucracy. The old agencies issued new regulations which they used to protect their authority and restrain other agencies. This bureaucratic competition reduced the bureaucracy's effectiveness and the ability of the government to control it. In addition to the bureaucratic competition, the creation of new agencies led the government to recruit large numbers of people who had privately worked in the private sector, and who brought with them an orientation toward private enterprise and profit which exacerbated the problem of embezzlement.⁶

As a result of these problems corruption and inefficiency in the public sector and the civil service became a common concern of the government during the 1960's. By and large the government could not effectively curtail corruption, mostly because of its extensiveness and poor systems of control and monitoring. Since the public sector had so many dealings with the private sector, it was fairly common for private sector firms to make deals with public sector firms and administrative agencies. For example, a

⁶ Muhammed Hassanein Heikal, Al Ahram, December 18th, 1964.

private sector firm might bribe the manager of the public sector firm in order to receive a lower price on the goods he was selling. Rent seeking activities of all kinds such as the bribing of government officials to secure import licenses proliferated in Egypt during the 1960's.⁷

Although a large part of the Egyptian economy had been nationalized, substantial portions of the economy remained in private hands in the mid to late 1960's allowing for a large number of opportunities for illicit public sector-private sector exchanges.⁸

The state was generally unable to control the extent of corruption. Nasser complained to members of the Arab Socialist Union (ASU) General Secretariat - the supreme political body in Egypt - about the proliferation of corrupt deals between public and private sectors and the state's powerlessness before it. According to Nasser, once "capitalists" had "begun to find their way to high office" it was impossible to "solve this by the police office,

⁷) See Mahmoud Abdel Fadil, The Political Economy of Nasserism, (Cambridge: Cambridge University Press, 1980), pg 111; Mahmoud Hussein, Class Conflict in Egypt: 1945-1970, (New York: Monthly Review Press, 1977), pp. 195-202; Muhammad Abd al Salem, Critical Years: The Memoir of a Public Prosecutor, (Arabic) (Cairo: Dar al Sharuq, 1975).

⁸ 40 percent of manufacturing, 86 percent of domestic trade, and 4 percent of transport and communications were operated by the private sector during this period. Abdel - Fadil, The Political Economy of Nasserism, pg. 111.

administrative control, or administrative parquet. There is no use in doing this because the operations are endless."⁹

Tahrir province offers an example of corruption and a stark presidential admission of the center of the state's inability to control it. Tahrir province was an agricultural development area, where the state sought to reclaim land from the desert. However, the Tahrir province project was a perennial money loser and was always behind schedule. As Nasser said:

The problem was in thefts, everything was stolen. There is a gang in Tahrir province that I do not know how to arrest. The state spends and things get stolen. And how can we arrest the 'gang' unless we arrest everybody there and replace them with other people and this is impossible. I have found the guards steal and those responsible for order and security steal.¹⁰

In addition to corruption, the political elite were concerned about efficiency in the public sector. This concern became extremely pronounced in the middle 1960's as economic performance declined and the first signs of mass discontent emerged. One of the first symptoms of concern with the public sector's efficiency was in 1962 when a new

⁹ Mab'uthin Conference, cited in Ayubi, Nazih, Bureaucracy and Society in Contemporary Egypt, pg. 284. Transcripts of the Mab'uthin conference were also printed in Al-ahram, August 8, 9, and 10, 1966.

¹⁰ Ayubi, 284-285, Nasser speaking at an ASU General Committee meeting, 12 February, 1969, printed in Al Ahram 9/28/72. Translation in Ayubi.

civil service code was issued.¹¹ Two years later the civil service department became the Central Agency for Organization and Administration, giving it higher status and greater powers to oversee the bureaucracy.¹² In a speech to the National Assembly in 1965 Nasser criticized the bureaucracy's lack of efficiency:

Despite the quantitative increase in the volume of public services, there have been no equal qualitative increases on the same level, and despite the fact that complaint about the administrative problem in Egypt is long standing, this complaint has reached the stage in which it cannot be accepted in a socialist society in which the state takes over ever increasing work.¹³

In 1964, in a series of articles published in Al Ahram (a government owned newspaper), Muhammed Hassanein Heikal, the editor of Al Ahram, argued that the bureaucracy's corruption, inefficiency, and recalcitrance was one of the major obstacles to achieving the goals of the revolution. In Heikal's view, the main problems were the lack of selectivity in choosing personnel, the vagueness with which bureaucratic responsibilities were delimited, the over-centralization of authority within bureaucracies, and the lack of effective supervision. On the last point, he argued that supervision was only reactive, in the sense that it

¹¹ New York Times, September 23, 27:1, 1962.

¹² Mansfield, Peter, Nasser's Egypt, pg. 158.

¹³) Speech to National Assembly, 1/25/65, Arab Political Encyclopedia, 1965-66, pg. 67.

only came into play after violations have been committed. This was due to the lack of direct popular supervision of the agencies. If those directly affected by bureaucratic inefficiency and corruption had means to hold officials accountable, information about administrative deviations would reach the investigatory agencies much more quickly, before the situation reached crisis proportions.¹⁴

¹⁴ Muhammed Hassanein Heikal, Al Ahram, December 4, 1964.

2.2 The Development of Autonomous Centers of Power

In addition to the problems of bureaucratic control, the Presidency also faced the problem of controlling the activities of state agencies such as the police, the military, and the party that could build up an independent base of power and impinge on the decision making prerogatives of the Presidency and even threaten the President's right to rule. This overstepping of jurisdiction had strong implications for bureaucratic effectiveness, as the military and other institutions gained powers over appointment to the public sector. Here I describe the development of the military's political autonomy and growing influence over the administration of the state.

The military was originally managed on the same basis as the other agencies of the state. The basic formula of the President was to place individuals he could personally trust in positions of authority. These individuals would then select persons whom they trusted to staff subordinate positions, and so on, to create a structure from top to bottom based on personal trust and reliance.¹⁵

To oversee the military Nasser selected his close friend 'Abdul Hakim 'Amer. 'Amer was especially capable of creating a loyal following and he proceeded to create an

¹⁵ This system was criticized by Khaled Muhy el Din, "Le Parti Qu'il Nous Faut Construire", Democratie Nouvelle, February, 1968, pg. 117-122.

extensive patronage network in the military through his control of promotions.¹⁶ In addition, the military's high level of influence in the state gave it a large amount of resources which 'Amer could use to build up patronage networks.¹⁷

Until 1962, Nasser was able to keep the military subordinate to him. However, after the secession of Syria from the UAR, Nasser came into conflict with 'Amer over the control of the military. Nasser sought to increase his control over promotions and replace 'Amer as effective commander in chief. 'Amer opposed this and most of the military high command sided with him. In short, 'Amer was able to demonstrate that he had more influence over the military than Nasser did, and in a confrontation the military would side with 'Amer.¹⁸ By demonstrating that

¹⁶ Vatikiotis, P. J., Nasser and His Generation, pg. 160.

¹⁷ Vatikiotis, P. J., Nasser and His Generation, pp. 160--164.

¹⁸ Nasser ordered 'Amer to fire several high ranking officers who had been involved in the Syrian secession and 'Amer refused. Nasser wanted to gain greater control over promotions, believing that the loss of Syria was tolerated by the military. Greater control of promotions and the internal affairs of the military would allow the President to affect the military's political character. He also wanted to diminish 'Amer's influence in the military and create a more professional army by making promotions less contingent on loyalty to the commander in chief and selecting a more technically competent commander. The plan was to improve the military's performance without sacrificing its political subordination. To this end, Nasser established the Presidential Council, an institution of collective leadership in which 'Amer's responsibility would be the military. The members of the Presidential Council sought to increase their

the military as an institution would act cohesively when threatened by threats to its autonomy from outside forces, and by displaying the military's high level of loyalty to 'Amer himself, 'Amer had effectively improved his bargaining power in the councils of government.¹⁹

'Amer used this power to gain influence over important areas of the state such as public sector appointments, and, as described below, the operation of Administrative Supervision. Anwar Sadat writes in his memoirs that 'Amer was able to impose his choice to replace Prime Minister Zakaria Muhy el Din. He used this influence to then gain appointments of his loyalists to powerful positions in the public sector. Ahmad Hamrush, an important Egyptian journalist in this period and a leading leftist intellectual associated with the ASU, writes that 'Amer was able to "influence government at the ministerial level. Many of the

collective control over the military by assuming the power to approve promotions above the battalion level. In protest 'Amer resigned. His resignation was followed by the resignations of several high ranking officers in the army, navy and air force. In order to mend fences with 'Amer and the military command Nasser persuaded the Presidential Council to withdraw their proposal concerning promotions. He also agreed to allow 'Amer to remain as deputy supreme commander. Hence 'Amer had effectively parried the government's attempt to exert greater control over the military leadership. (see Stephens, Nasser, pg. 361; and Henry Clement Moore, Images of Development: Egyptian Engineers in Search of Industry, (Cambridge: MIT Press, 1980), pg. 55.)

¹⁹ Ali Sabri later described this situation as one of "equilibrium", where Nasser and 'Amer shared equal amounts of power. Ali Sabri Yatadhakkar, pg. 100.

big appointments in the executive managerial agencies were 'Amer's candidates."²⁰ 'Amer took on further responsibilities as the chair of two powerful commissions with almost unaccountable executive power. The first of these, the Committee to Liquidate Feudalism, was responsible for confiscating lands from individuals who were in violation of the limits on land ceilings imposed by the agrarian reform. This committee confiscated around 200,000 feddans and imprisoned around 100 people without due process of law.²¹ The committee also disbanded dozens of boards of cooperative societies and local ASU committees.²² 'Amer chaired the Supreme Control Committee which was responsible for improving productivity and reducing corruption in the public sector. This committee was responsible for firing and appointing 220 chairmen of companies (out of 382) and 38 board chairmen of organizations (out of 48) over a six month period in late 1966 and early 1967.²³ Hence via the Supreme Control Committee, 'Amer was able to appoint his candidates to direct many public sector organizations. Less dramatically, the military gained more control over its

²⁰ Ahmad Hamrush, "When the Field Marshall Ruled Egypt," Ruz al Yusuf, 2458, 21 June 1975, pg. 56. Also, see Ali Sabri, Ali Sabri Yatadhakkar, pp. 103-104.

²¹ Middle East Record, 1967, pp. 545-547.

²² Middle East Record, 1967, pp. 546.

²³ Middle East Record, 1967, pg. 550.

internal affairs in 1966, when a law was passed that gave the military exclusive jurisdiction over trials of military personnel if the accusation is in connection with the performance of their duties or even if it just took place on military property even if the accusation is made by a civilian.²⁴

'Amer's powers gave him large amounts of influence over the day to day administration of the state. But other coercive state institutions such as interior and the intelligence services also exercised extensive influence over state administration. On the Supreme Control Committee and the Committee to Liquidate Feudalism, 'Amer shared power with the leaders of such powerful organizations as the ASU, the Intelligence Services, and the Ministry of the Interior. The daily administration of the state, by the mid 1960's, had come to be strongly influenced by political considerations stemming from the desires of top politicians, especially 'Amer, to place their candidates and loyalists in important positions.

2.2.1 Surveillance of the Military

Nasser's response to the growing intervention of the military and the politicization of the military was threefold. His first response was to increase surveillance

²⁴ Ahmad Hamrush, "When the Field Marshall Ruled Egypt", Ruz al Yusuf 245C, 21 June 1975, pg. 57.

of the military by intelligence agencies in order to forestall coup attempts. His second and most developed response was to increase the power of competing organizations such as the single party, the Arab Socialist Union (ASU), which effectively competed with the military to control and influence the state administration. And his final response, which was never adequately developed, was to attempt to use the legal system to disentangle the various strands of the bureaucracy and maintain a greater separation of the military, the party, and the administration. I consider the latter two strategies in subsequent sections.

Nasser's displeasure with the activities of the military and other agencies can be seen in some remarks he made and actions he took in the mid 1960's. He personally rescinded a number of the confiscations made by the Committee to Liquidate Feudalism. In January of 1967 Nasser decreed the release of 68 persons detained by the committee, and issued two more decrees in March 1967 revoking the confiscation of lands.²⁵ These actions indicate that Nasser believed that the committee had gone too far and needed to be restrained. He indicated his displeasure with the growing power of unaccountable institutions within the state in July of 1966, when he for the first time discussed the problem of "power centers", a

²⁵ Middle East Record, 1967, pg. 547.

term which referred to institutions and individuals within the state who illegitimately usurped power and ruled unaccountably. Though Nasser did not specify the institutions he was referring to, I shall argue below that he was referring primarily to the military.

The first response Nasser took was to increase his ability to watch the military's activities. In 1961 he began to increase the number of intelligence services at his disposal.²⁶ The development of large intelligence networks created their own problems. The President could not be sure that the intelligence agencies were telling him the truth, or even if they were participating in a ploy to depose him. Nasser countered these possibilities by adopting a strategy of insuring that he alone would be at the intersection of the various information networks. Hence he would have the best information of anyone concerning the activities of the intelligence networks.²⁷

To counter independent action by the intelligence networks, he encouraged the various intelligence agencies to compete with and watch one another.²⁸ When certain individuals became too powerful, he would isolate them politically and then depose them. After deposing Muhi el

²⁶ Stephens, Nasser, pg. 55

²⁷ Edward Sheehan, "Who Runs Egypt?", New York Times, November 29, 1970, VI, pg. 136.

²⁸ Sheehan, "Who runs Egypt?" pg. 136.

Din as prime minister, Nasser appointed Sharawy al Goma'a as Minister of Interior, with the responsibility of cleansing the intelligence services of Muhi-el Din's followers. Sharawy el Goma'a used his power to form an alliance with the directors of the other intelligence agencies. Nasser subsequently broke this alliance by depriving the other two intelligence directors, Amin Huweidi and Sami Sharaf, of their offices and making them ministers of state without portfolio.²⁹

The establishment of more intelligence agencies aided in informing the Presidency of potential plots against it, but also added another set of institutions capable of opposing the Presidency. The continuous turnover at the highest levels show that Nasser had little trust in his officers. And the subsequent replacement of subordinates must have had deleterious effects on the intelligence ne'works' effectiveness. As a consequence, the establishment of intelligence networks to monitor the military was of limited value: their political power made them threats as well as assets, and the need to control them sapped their effectiveness.

In summary, the growing autonomy of the military posed two problems to the Presidency. It threatened the Presidency with subversion. It also complicated the problem of bureaucratic control through its intervention in the

²⁹) Sheehan, pg. 135.

affairs of the public sector. In succeeding sections I show how the military's autonomy also allowed it to frustrate the Presidency's attempts to monitor the rest of the bureaucracy.

2.3 Attempts at Centralized Monitoring

In order to improve and regulate bureaucratic performance, the Egyptian government developed approximately five centralized monitoring agencies. In this section I discuss some of these institutions. The purpose here is not to provide a thorough catalogue of these institutions. Rather, it is to show how the absence of restraint on powerful state institutions such as the military, the security forces, and the ASU subverted the functioning of the centralized monitoring institutions. I also show that these monitoring institutions, even when they worked as they were supposed to, had effects which reduced the bureaucracy's effectiveness. The multiplicity of control agencies induced passivity on the part of public sector managers.

The Presidency attempted to improve its monitoring and control capabilities in numerous ways. One method employed by the center of the state to discipline and control its agencies was surveillance through intelligence operatives. The report on the control system in the bureaucracy cited earlier mentions that there were secret investigations of public officials (which they found to be destructive of morale).³⁰ Other agencies were established to monitor the bureaucracy but with limited effectiveness. The planning

³⁰ Gullick and Pollock, pg. 3.

agency, for example, which was set up with the large scale nationalizations in 1961, was not very effective.³¹ The planning ministry had an ambiguous legal status. It never had much executive power. Nor could it check the accuracy of the information it received from firms. The ministry had little binding authority over units in the fields of direction, follow up, and control. In short, the ministry of planning was more like a technical agency without organic links with units of production.³² Moreover, in the early 1960's planners lacked basic information about the functioning of the economy, such as input-output coefficients.³³ Similarly, the Supreme Council for National Planning did not have the power to control firms or organizations.³⁴ The planning machinery was so underdeveloped in the 1960s that the second five year plan was only a framework for investment, giving a total figure for investment and its initial distribution.³⁵ The state budget, and not the plan, was the major "tool of direction of the economic system."³⁶ Furthermore, planning at the

³¹) New York Times, D17, 21:2

³² Ayubi, 232-233

³³ Issawi, Charles, Egypt in Revolution, pg. 69.

³⁴ Ayubi 233.

³⁵ Ayubi, 232

³⁶ Ayubi, 234

firm level was almost non-existent. "Companies, for example, were not asked to prepare their proposals for the second five year plan, and from 1966/67 they were functioning virtually without a plan."³⁷

The absence of a strong planning agency meant that the central government had little effective control over the activities of the various public sector agencies. Gullick and Pollack's independent study conducted in the early 1960's argued that a difficulty facing the government was the "failure to weave national planning into the fabric of government." The report continued,

...this failure is a defeat for the top command. They make the decisions, they issue the commands, but somewhere the battle is lost. That which was decided fails to happen. Instead of a single national plan, each agency still tends to go off on its own, with a different set of private objectives.³⁸

2.3.1 Effectiveness of Centralized Monitoring

Ironically, the problems of corruption and inefficiency in the public sector stood side by side with a plethora of controls that hampered bureaucratic effectiveness. The extent of these controls became an important issue of contention within the government and between the government

³⁷ Ayubi, 234.

³⁸ Gullick, Luther, and James Pollack, "Government Reorganization in the UAR" A Report submitted to the Central board for the reorganization of the machinery of Government, Cairo, June, 1962, pp. 6-7.

and the public sector managers. The risk involved in the large number of controls was that they would paralyze public sector managers. Afraid to be punished for overstepping their jurisdictions or taking the wrong decisions, managers either did not act or vetted minor decisions all the way to the top of the administrative hierarchy. An outside evaluation of the system of control in Egypt concluded:

We strongly suspect from our observations that there are too many, and in some cases the wrong kinds of controls now in force. We have found many symptoms of delay, avoidance of responsibility, over elaborate passing around of documents for "approvals" and, especially, the passing of the smallest decisions up to very high officials for final approval.³⁹

Another independent report issued in 1970 reached the same conclusion.⁴⁰

A debate about the place of controls in the Egyptian public economy highlights the extensive controls' deleterious effect on efficiency and the conflict these controls produce between the center of the state and its agencies. This debate took place between the Prime Minister, Zacharia Muhieddin, and chairmen of the public sector firms in a meeting between them in the Congress of Production in 1965. This meeting was held during a time of

³⁹ Gullick, Luther, and James Pollack, "Government Reorganization in the UAR" A Report submitted to the Central board for the reorganization of the machinery of Government, Cairo, June, 1962.

⁴⁰ Saleh Farid, Top Management in Egypt: Its Structure, Quality, and Problems, RAND Report P-4291 (Santa Monica, CA: The RAND Corporation, 1970), pp. 35-36.

economic retrenchment when the government viewed higher levels of productivity in the public sector as essential. The Prime Minister issued a comprehensive analysis of the problems facing the public sector and an equally comprehensive set of policy prescriptions for its reform and improvement. The chairmen of the public sector firms responded to the recommendations by approving almost all of them. However, they took exception to the recommendations concerning controls or, in the language of this study, monitoring institutions and procedures. While the Prime Minister had requested maintaining and improving the existing set of controls, the public sector managers recommended centralizing and simplifying the existing set of monitoring procedures. The managers argued that the proliferation of controls created insecurity and inefficiency amongst managers:

The committee finds that the multiplicity of control bodies and their control methods lead to impeding work and to a feeling of insecurity among workers, especially in the higher planes... The committee recommends that all organs occupied with collecting data, surveying and analyzing of potentialities should be unified in order to ensure the adoption of sound resolutions and reduce the efforts exerted in setting up planning and control bodies ...⁴¹

The Prime Minister had anticipated these objections, cajoling the public sector chairs by saying:

⁴¹ Reply of the National Assembly to the Statement of the Government, December 4, 1965, in Arab Political Encyclopedia, 1965-1966, Cairo: Ministry of National Guidance.

I have heard much talk about the numerous bodies of control which accordingly leads to a constant state of anxiety and instability. It is natural that some mistakes might occur, but the extreme sensitivity against control cannot be accepted and is incomprehensible. It should not lead to passivity and fear because reform is the duty of control, not the fishing for mistakes, and everything can be reformed or rectified, with the exception of deviation.⁴²

These two passages highlight the pervasiveness of public sector managers' fear of punishment and consequent passivity. An independent report completed in 1970 also argued that the large number of centralized monitors induced passivity amongst public sector managers.⁴³ Based on the evidence above, we can conclude that the "police patrol" system of controls in the public sector were not only inadequate (section 2.1) but also productive of inefficiency and a certain degree of paralysis among public sector workers.

2.3.2 The Riqaba Idariya: The Limits of Centralized Supervision

Centralized monitoring managed by the executive branch was not a very effective way of monitoring state agencies since political elites were able to use their influence over the monitoring agencies to limit their investigations. The strength and capability of an investigative agency depends

⁴² Arab Political Encyclopedia, 1965-66, pg. 202.

⁴³ Saleh Farid, Top Management in Egypt: Its Structure, Quality, and Problems, RAND Report P-4291 (Santa Monica, CA: The RAND Corporation, 1970), pg. 49.

on its independence. If it is subject to outside interference, its efforts at investigating corruption may be limited by governmental agencies and officials seeking to protect themselves or their clients.

A major agency responsible for investigating corruption in Egypt in the 1960's, the Riqaba Idariya, or Administrative Supervision, was not able to maintain its independence and hence its ability to investigate corruption was limited. The way in which the Administrative Supervision lost its independence points to the kinds of actors and political pressures institutions would need to be able to withstand if they were to be able to maintain their independence. The fact that the riqaba idariya could not operate independently meant that other agencies more independent of powerful institutions would be required to monitor corruption.

Administrative Supervision (Riqaba Idariya) was formed in 1958 as the result of a presidential decree which split the Administrative Prosecutor (Niyaba Idariya) into two halves, the Investigative Division (Qism al Tahqiq) and Administrative Supervision.⁴⁴ Nasser originally conceived Administrative Supervision to be an independent agency, subject only to his control. In 1960 a law was passed which

⁴⁴ The following account of the Riqaba Idariya is based on 'Abd al Sitar Tawiila, "The secret massacre in the riqaba al idariya twelve years ago", (Arabic) Ruz al Yusuf, Feb 17, 1976. pp. 32-33.

made it impossible to transfer a member of the administrative prosecutor (of which Administrative Supervision was a part) except by decision of the President based on the advocacy of the director of the administrative prosecutor. This meant that the President would be the only person outside the agency able to influence the work of Administrative Supervision and that only the director of the Niyaba Idariya would be able to pressure for a change in personnel. At this stage, then, Administrative Supervision was a powerful monitoring tool for the President⁴⁵.

However, other elites in the government were able to encroach on the independence of Administrative Supervision. With the guarantee of independence and impunity, the staff of Administrative Supervision was set free to investigate corruption at all levels of the state. Their investigations led to findings of corruption on the part of the Prime Minister, Ali Sabri, and his associates. By virtue of his power as Prime Minister, Ali Sabri was able to obtain copies of the report implicating him in corruption. As a result, when he later became head of the executive council (Majlis al Tanfiidh), Sabri attempted to suppress the information by transferring the staff members who had implicated him.

⁴⁵ The surveillance nature of Administrative Supervision is highlighted by the administrator's choice of police and military officers as staff members.

However, such a maneuver was prohibited by law so Sabri set out to change the laws. He convinced the President to issue a new decree in 1963 that changed the old law regulating the Niyaba Idariya. Under the new law, the prime minister would have the right to request the President to transfer members of the Niyaba Idariya to other employment within the public sector. Under this new law, the decision to transfer personnel would not have to take into account the opinions of the director of the Niyaba Idariya and did not have to begin with the President himself. Under this new law Sabri was able to pass a continuing resolution through the President's council which would transfer the director and 36 staff members of Administrative Supervision to other positions in the administration. Since the ruling was in the form of a continuing resolution, individuals could not vote on it, even though Kamal Rifa'at, the minister of state and supervisor of the niyaba idariya opposed it.

The circumstances under which Nasser approved the new law enabling the prime minister to transfer personnel is not clear. From the evidence available it is not possible to tell whether Nasser was seeking to protect his prime minister, or was tricked, or was forced to change the law against his will. This is disconcerting because the intentions of the President matter for the argument of the thesis. The strongest evidence for the argument of the

thesis would be if Nasser changed the law against his will, or if he was misled by Sabri when he changed the law. Then we could argue that the lost independence of the agency was contrary to Nasser's interest, and that an important lesson for Nasser from the experience of Administrative Supervision would be that the investigation of corruption required even stronger measures of independence. However, if Nasser knew of Sabri's purpose for changing the new law, then the basic assumption that the ruler has a strong interest in limiting corruption is challenged.

While no direct evidence is available to answer these questions, we might speculate about the answers. I think the possibility of Nasser changing the law in order to protect Sabri is of limited plausibility. Why would the President cede power to the prime minister for the sake of protecting the prime minister? Nasser could have protected the prime minister simply by forbidding Administrative Supervision from acting on the information it had. It is far more likely that Nasser was persuaded by Sabri to change the law regarding the independence of the Niyaba Idariya because the President felt that there should be some outside accountability of the Niyaba Idariya in case the director of the Niyaba Idariya was protecting corrupt elements within Administrative Supervision. If the second hypothesis is valid, we can preserve the assumption of ruler's interest in preventing corruption.

The second case of intervention in the activities of the Administrative Supervision more directly supports my thesis. During the middle 1960s the head of the Egyptian Army, Field Marshall Adb ul Hakim Amer, became very influential by getting his candidates appointed to important positions within the Egyptian bureaucracy. These office holders were investigated by Administrative Supervision. Nevertheless they were able to keep their positions by virtue of the protection of the Field Marshall⁴⁶. Thus the military was able to both intrude into civilian affairs, and protect its appointments from supervision by the President's centralized monitoring institutions.

2.3.3 Conclusion - Limits on Centralized Monitoring

The evidence presented in this section of the chapter suggests that the Presidency faced severe problems in mobilizing accurate information concerning the activities of the public sector and civil service. Political interference hampered the effectiveness of independent agencies and a proliferation of control agencies resulted in a paralysis among public sector managers. In addition, the limited power of some critical agencies such as the planning ministry impeded the collection of accurate information.

⁴⁶ Ahmad Hamrush, "When the Field Marshall Ruled Egypt," (Arabic) Ruz al Yusuf, 2458, 21 June 1975, pg. 56.

2.4 Attempts at Decentralized Monitoring

The Nasserist government experimented with several forms of decentralized monitoring in order to improve its control over state agencies. One of these was journalistic supervision of the bureaucracy.⁴⁷ Press monitoring failed for two reasons. First, because the press was nationalized, it was not really that decentralized. Rather it was subjected to the same kinds of administrative intervention as was Administrative Supervision. Second, because the military and security forces were not constrained by law, they were able to intervene to punish individual journalists and editors who criticized them or investigated their interests. Moreover, the military's wide powers allowed it to strongly influence the administration of the press. In short, rival state agencies subverted each other's functions and compromised the ability of the press to assist the Presidency in monitoring the state.

The government subjected the press to its supervision in 1959 by transferring its ownership to the government party that existed at that time, the National Union.⁴⁸ After the ASU was created and the National Union dissolved the control of the press was transferred to the ASU. The

⁴⁷ Nasser also encouraged the National Assembly to serve as an agency for oversight and control of the public sector. For example, see the speech given by Nasser on May 1, 1965, in Arab Political Encyclopedia, 1965-66.

⁴⁸ John Waterbury, The Egypt of Nasser and Sadat, pg. 345.

new statute regulating the press declared that among its purposes was the investigation of corruption.⁴⁹ However, the superior power of the military, security forces, and the ASU itself limited the ability of the press to investigate and criticize administrative performance.

The press was able to investigate corruption in the bureaucracy. The magazine Ruz al Yusuf publicized mismanagement and embezzlement of funds in agricultural cooperatives and other public sector agencies. Indeed, press investigation led directly to government action in a number of cases.⁵⁰ However, several features of the political system limited the effectiveness of the press' investigation. First, the editors were appointed politically and were responsible for supervision of articles. The implicit meaning of this was that if the editors allowed articles to be published that antagonized high members of the ASU, the government, or people who had influence over these people, they risked losing their jobs. During the 1960s, editors had a very high rate of turnover. This induced caution in criticism among editors, for fear of angering someone with influence. Also, journalists could lose their jobs for writing the wrong article and so engaged

⁴⁹ Adnan Almaney, UAR Gvot Press, pg. 345.

⁵⁰ Ahmed Hamrush, In Search of Democracy, pg. 141.

in self-censorship.⁵¹ Only those journalists who had political cover could take risks.⁵²

In addition to the threat of dismissal, journalists and editors were subjected to the threat of direct intervention by military and security officers. Ahmed Hamrush, who was an editor of Ruz al Yusuf, and who otherwise maintains that Nasser's government tolerated press criticism, reports that even well connected journalists refrained from criticism for fear of arrest.⁵³ Some journalists who were arrested died from torture.⁵⁴ Nasser tolerated these practices "for fear of the counterrevolution, which he believed required active police intervention" to counter.⁵⁵ Field Marshall 'Amer intervened to influence the press as he had done in other institutions controlled by the state. 'Amer used his influence to have Hilmi Salaam, one of his proteges, appointed to the position of editor in chief of the publishing house Dar al Tahriir which supervised the newspaper Al Jumhuriya. Amr gave him 250,000 Egyptian Pounds to run the publishing house despite the President's

⁵¹ Adnan Almaney, "Government Control of the Press in the UAR," pp. 345-346.

⁵² 'Awatif Abd al Rahman, The Contemporary Egyptian Press, (Arabic) pg. 545.

⁵³ Ahmed Hamrush, In Search of Democracy, pp. 142-143.

⁵⁴ *ibid.*

⁵⁵ *ibid.*

instructions to avoid aiding press organizations.⁵⁶ Salaam then transferred 150 journalists to non-journalistic employment.⁵⁷ He also brought in the Military Criminal Investigation agency to investigate embezzlement in the newspaper.⁵⁸ He was dismissed by Nasser only after the newspaper published transcripts of secret meetings between the President, heads of the press, and heads of the military.

The use of the press as a watchdog was compromised by the President's concern for security. This concern led the President to delegate a significant amount of autonomy to the military and security forces. These agencies then overstepped their bounds and subverted the press's watchdog function in order to protect and advance their interests. The President also delegated authority to the military in order to maintain its loyalty. This in turn resulted from the President's inability to directly supervise the military. Thus poor monitoring capacity in one area, the military, had the effect of further weakening the supervisory capacity of the Presidency by weakening the press. Thus, fire alarm supervision was subverted by unrestrained security forces and military officers. The subversion of press supervision highlighted the need for

⁵⁶ Ahmed Hamrush, The Society of 'Abd al Nasser, page 249.

⁵⁷ Ahmed Hamrush, In Search of Democracy, pp. 143-4.

⁵⁸ Ahmed Hamrush, The Society of 'Abd al Nasser, pg. 249.

clearer delimitation of jurisdictions and a system to ensure that these jurisdictions were respected.

2.5 The Arab Socialist Union

As mentioned before, Nasser developed the ASU as part of a strategy to control the military. He also intended it to function as a centralized monitor of the public sector and the rest of the bureaucracy. This section shows that the ASU as a system of centralized monitoring suffered from similar deficiencies as other centralized monitors. Specifically, instead of restricting itself to monitoring it also attempted to influence administration, which had deleterious consequences for administrative efficiency. In addition, its influence over administration gave it power over appointments. It thus politicized appointments in the public sector, worsening the problem of patron-client relations rather than ameliorating it.

The purpose of the ASU has been interpreted in many different ways in western writings on Egyptian politics under Nasser. John Waterbury describes it as a political counterweight to the military.⁵⁹ Shimon Shamir has described it as an organization within which the left could

⁵⁹ Waterbury also lists four other goals: 1) to combine universal adult membership with a vanguard elite; 2) to contain and "melt" class differences; 3) to mobilize the dispossessed in order to isolate "reactionary" enemies of the revolution; 4) To carry Egypt's socialist experiment to other Arab countries. Waterbury, John, The Egypt of Nasser and Sadat, (Princeton: Princeton University Press, 1983) pg. 314.

be co-opted and contained.⁶⁰ Raymond Hinnebusch argues that Nasser's government was motivated to build the ASU because it was "convinced of the need for a mechanism to control the ballooning bureaucracy and the covert sabotage of its reforms by local elites."⁶¹ The exact range of activities and roles undertaken by the ASU was never definite and was a matter of contention throughout the 1960's. It included, among other things, mass political mobilization, supervision of political enemies and public agencies, political training and inculcation of values, monitoring of prices, distribution of food stuffs, and organization of voluntary collective action.

However, I focus on the ASU's role as an institution the Presidency sought to use to increase the efficiency of the public sector through mobilizing information about its activities and inculcating a sense of purpose among civil servants and other functionaries. The documentary evidence I review demonstrates the importance of this function to the political elite as well as the contradictions and shortcomings experienced by the ASU in pursuit of this task.

In the eyes of the Presidency, the major reasons for relying on the ASU to address the problems of corruption and

⁶⁰ Shimon Shamir, "The Marxists in Egypt: The Licensed Infiltration Doctrine in Practice" in The USSR and the Middle East, edited by Confino and Shamir (Jerusalem: Israel Universities Press, 1973).

⁶¹ Raymond Hinnebusch, Egyptian Politics Under Sadat, pg. 19.

inefficiency were a lack of reliability on the part of bureaucrats and the insufficient effectiveness of other monitoring agencies. Thus the President identified two major problems facing effective state regulation: one, the lack of a cadre or an ideologically committed group of individuals loyal to the President, and two, the relative ineffectiveness of centralized monitoring. The ASU can be interpreted as an attempt to resolve these two problems by moving towards a "fire alarm" method. While the ASU remained a system of centralized monitoring, it had features of a more decentralized, "fire alarm" type monitoring system.

The evidence I discuss here focuses on the ability of the ASU to act as an effective monitor. The ASU was not successful for several reasons. First, it was not able to develop a cadre of ideologically committed activists who would loyally serve the government. Second, it tended to impair management of the public sector and other agencies through excessive intervention and, in some cases, corruption in its own ranks.

2.5.1 The Organization of the ASU

The President delimited two distinct methods for the ASU to use to monitor the bureaucracy. One method was to involve the public at large in monitoring the bureaucracy. The second was to form a secret network of informers within

the ASU to monitor the bureaucracy and other sections of the ASU - this part of the ASU was known as the Vanguard or secret organization. The strategy of public monitoring of the bureaucracy was to be achieved through elected ASU councils that would oversee the activities of public sector firms, regional and local government, and the delivery of some public services. These local organizations had little actual authority over the activities of the bureaucracy. However, they could inform superior levels of the ASU about the activities of local bureaucrats and managers, who would then discuss matters with the bureaucrat's or manager's superiors. After the appointment of 'Ali Sabri as Secretary General of the ASU, there was a drive to institutionalize the party and strengthen its supervisory capacity. There was an emphasis on recruiting and training new cadres, and the establishment of appointed executive offices to replace the elected committees. The executive offices would be staffed by full time paid cadres appointed by the top leadership or their subordinates. In January of 1965 the Communist party formally disbanded itself and its cadre merged with the ASU.⁶² This new personnel, combined with other new cadres trained by the ASU in its ideology at ASU training schools, provided the personnel for the executive

⁶²) New York Times, April 26, 16:3, 1965.

offices.⁶³ The adoption of paid, appointed, politically trained personnel represented a shift from local supervision to supervision by representatives of the center of the state. The ASU was being transformed from an organization capable of reconciling diverse social interests to a centralized party capable of implementing a central line.

Such a shift may have represented an attempt to improve the ASU's ability to supervise the bureaucracy by focussing on more technical and sophisticated criteria of monitoring. Indeed, Sabri had argued that one of the goals of the new form of organization was "political control to ensure the strict observance of high standards of efficiency, and technical and administrative knowledge in all spheres of political work."⁶⁴ Thus the ASU would possess both the political loyalty and the expertise necessary to supervise the bureaucracy.

The transformation of the ASU into a centralized party occurred simultaneously with internal discussions of and external attempts at expanding its control over various organs of the state. In 1966, in its journal Al-Ishtiraki

⁶³ 38,830 public sector workers were trained by the ASU in the period from February 5, 1966 to April 30, 1967. Middle East Record, 1967, pg. 541.

⁶⁴ Middle East Record, 1967, pg. 537; The Arab Observer reported Ali Sabri as saying that the supervision of public bodies was a major task of the ASU, and that the ASU could fully assume this responsibility by 1968 (Arab Observer, pp. 6-7. August 8, 1966).

(The Socialist), the ASU argued that it should act as an agent of control over the public sector.⁶⁵ One of Sabri's goals for the ASU, which he subsequently recounted in 1967, was "to place the direction of the public sector and the administration under the ASU in order to evict the 'reigning bureaucracy'."⁶⁶ Sabri also wanted worker participation in the management of the factory via the local ASU committees to aid in the implementation of the plan.⁶⁷

The actual activities of local level ASU units were multifaceted. Their major roles seem to have been to encourage the population to tolerate the government's austerity policies, to raise productivity through better and more labor, and to supervise local level bureaucrats so that official power was not misused. In the factories, for example, the success of ASU cadres were judged by their ability to motivate workers to work overtime without pay, to increase productivity by encouraging workers to use resources more conservatively, etc.⁶⁸ To some extent, then, the ASU was an organizational response to the problems of organizing production in large scale firms: it was

⁶⁵ Al Ishtiraki, #43, 3 September, 1966. Cited in Ayubi, pp. 184-85.

⁶⁶ cited in Waterbury, The Egypt of Nasser and Sadat, pg. 323; cited from Al-Ahram, April 26, 1967.

⁶⁷ Ali Sabri, Ali Sabri Yatadhakkur, pg. 95.

⁶⁸ Middle East Record, 1967, pg. 542.

involved in monitoring and encouraging workers, as well as attempting to smooth over relations between management and labor during a period when material incentives, performance-based wage rates, and growing wage differentials were being introduced by management to increase productivity.⁶⁹ In the villages, the ASU was involved in such activities as pest control, supervising local level bureaucracies, and monitoring the role of large landowners in cooperative societies and local governments.⁷⁰ In conjunction with this task, the ASU supplied information to the Committee to Liquidate Feudalism.⁷¹ In Cairo, the ASU launched a campaign to explain the rise of meat prices and to aid in controlling these prices through monitoring the prices in cooperatives and private shops.⁷² There was even some discussion of the ASU establishing a centralized system of retail distribution of basic goods.⁷³ Nasser also praised the ASU for its work in exposing corruption in the public sector.⁷⁴

⁶⁹ On the introduction of new wage systems, see Arab Political Encyclopedia, 1965-66, on the Congress of Production.

⁷⁰ Middle East Record, pp. 540-1, 1967.

⁷¹ Arab Observer, pp. 8-9, May 30, 1966.

⁷² Middle East Record, pp. 540-1, 1967.

⁷³) Arab Observer, pg. 13, June 6, 1966.

⁷⁴) Al Ahram, July 23, 1966.

The second element of the ASU was the Vanguard apparatus. This was a secret organization within the ASU led primarily by former intelligence and police officers, with links to Sabri.⁷⁵ Although it might be that the original idea for the organization of the Vanguard was for it to be a mobilizer of administrative energies, it performed mostly as an information network concerning the activities of various state agencies.⁷⁶ Sabri described the ASU Vanguard's role as being the "active agent" within various executive agencies.⁷⁷ To protect its ability to function effectively, the ASU Vanguard sought to remain a secret organization. Secrecy was supposed to minimize conflict within the various executive agencies that the ASU sought to penetrate, which would presumably be torn between conservatives who opposed the Vanguard-inspired activism and progressives who supported the new measures.⁷⁸

However, secrecy probably also aided the Vanguard in its mission of information gathering regarding the activities of the bureaucracy. The Vanguard's pre-eminent role as a

⁷⁵ 'Izz al Din, Ahmad, and Ahmad Kamil, Min Awraq Ra'is al Mukhabarat al Asbaq: Ahmad Kamil Yatadhakkur, (Cairo: Dar al Hilal, 1990) pg. 108. Middle East Record, 1969-70. pp. 1274.

⁷⁶ 'Izz al Din, Ahmad, and Ahmad Kamil, Min Awraq Ra'is al Mukhabarat al Asbaq: Ahmad Kamil Yatadhakkur, (Cairo: Dar al Hilal, 1990) pg. 108.

⁷⁷) Ali Sabri Ali Sabri Yatadhakkur, pg. 37.

⁷⁸ Ali Sabri, Ali Sabri Yatadhakkur, pg. 37.

gatherer of information is revealed in the testimony of one of its former members, Ahmad Kamil, who says of the Vanguard's secretary, Sha'rawi Gum'a:

He had been secretary of the Vanguard since its beginning in 1964. He used to work in General Intelligence and he used the same methods in the Vanguard such that his concern was to make it a source of information, no more, no less. And the whole thing boiled down after some years to members that had no role other than passing on information and receiving directives.⁷⁹

The Vanguard probably also allowed Nasser and his ally Sabri to be more sure of the loyalty of key office holders by virtue of the fact that they could place loyalists in important positions.⁸⁰

The functions of surveillance and staffing of loyalists were reported by the newspaper al Jadid. According to al Jadid Sami Sharaf, a member of the ASU Vanguard and former intelligence officer, was responsible for watching over

ASU bodies, including the socialist youth organization, and kept provincial governors and directors of government departments and public sector companies under surveillance ... all nominations to positions of importance were first screened and approved by Sharaf.⁸¹

The intelligence gathering function of the ASU Vanguard was heightened by the fact that the intelligence agencies

⁷⁹ Waterbury, pg. 336, citing Fu'ad Matar, What has Become of Nasser in the Republic of Sadat?, Beirut: Dar al Nahar lil Nashr, 1972.

⁸⁰ Stephens, Nasser, pg. 374.

⁸¹ Middle East Record, 1969-70. pg. 1272.

had close contacts with the leadership of the Vanguard and hence gained access to their intelligence.⁸²

2.4.2.2 Nasser's view of the Purpose and Functioning of the ASU

A major reason for Nasser's support for the development of the ASU was his frustration with bureaucratic inefficiency. He had come to the conclusion that he would not be able to improve bureaucratic performance through administrative means alone. What was missing was not only technical skills and adequate systems of incentives and supervision, but also a sense of commitment and responsibility, a source of internal motivation on the part of bureaucrats. Nasser thought the ASU could improve bureaucratic performance through two means: supervision, or gathering and relaying information to the political leadership concerning the activities of public agencies; and through inculcating a sense of purpose and commitment in bureaucratic work founded on socialist ideals.

In the following passage, from a discussion with leaders of the ASU Vanguard in 1966, Nasser demonstrated his frustration with previous centralized attempts at improving bureaucratic performance, and his hope that the ASU would improve matters through inculcating values:

⁸² 'Izz al Din, Ahmad, and Ahmad Kamil, Min Awraq Ra'is al Mukhabarat al Asbag: Ahmad Kamil Yatadhakkur, (Cairo: Dar al Hilal, 1990) pg. 109.

In fact, we are not able to solve [the problem of bureaucratic behavior] through the use of executive power. We are able to reform regulations, but we will never be able to solve the issue of the behavior of employees. What will solve this problem is political organization. In the past meeting we talked about how to mingle with employees and meet with them and encourage a feeling of responsibility so that the employee feels that he is delivering a service to people before he is taking a salary, but this is hard to implement through executive power or through changing regulations.

But the ASU can accomplish much, not by way of discipline and police. We tried this in the consumer coops and those who lack a sense of responsibility steal - they are people who have not been reached by the message. For if the message had reached them, then they would respond nine times out of ten before stealing. Therefore we are responsible for spreading the word to them. I will not be able to spread the word through ministries, but we can do so through political agencies ... this will take a long time because the imperialist ideas are still with us and we have lived in a reactionary society for a long time.⁸³

In another part of the same discussion, Nasser emphasized the importance of cultivating a sense of purpose among a political cadre: "I say we are politically capable of success when everybody has a sense of mission." In addition Nasser stressed that the ASU should be selective in the recruitment of staff to ASU positions. The most important thing was that these people were committed to

⁸³ Gamal Abd ul Nasser, Organization and the Movement: The Private Discussions of the Vanguard Organization (Al Tandhiim wa al Haraka: Al Muhadarat al Khasa biltandhiim al Tali'ii), (Beirut: No Date), pg. 32. (March 5, 1966).

socialism and that they had a sense of mission.⁸⁴ This commitment would assure their loyalty to the government's program and thus make them effective monitors.

Nasser also saw the ASU as an agency that could mobilize the energies of employees and ordinary citizens to help improve the efficiency of the state by supplying it with information about the activities of its agencies and its enemies. However, Nasser also feared that giving the ASU too much influence would result in it overstepping the boundaries of information mobilizer and inculcator of values, and becoming a political movement that might interfere in the execution of public policy. Nasser's conception of the ASU as information mobilizer, and his fears that the ASU would overstep the bounds of information mobilizer and indoctrination are evident in his discussions with the leaders of the Vanguard section of the ASU:

I would like us today to proceed with [public] agencies by methods of persuasion (al da'wa) and cooperation. This is more successful by far than direction. States that have before us established party direction work to reduce this direction, because they have found that direction increases bureaucratic work. But this does not prevent us from practicing supervision without power ... you tell the Secretary General [of the ASU] that the Governor of Giza did such and such and is in conflict with the ASU, and I or the secretary representing the two powers of the executive and

⁸⁴ Gamal Abd ul Nasser, Organization and the Movement: The Private Discussions of the Vanguard Organization, (Al Tandhiim wa al Haraka: Al Muhadarat al Khasa biltandhiim al Talii'ii), (Beirut: No Date), pg. 30. (March 5, 1966).

the people have the power to solve these issues.⁸⁵

The Effect of the ASU on the Bureaucracy

For a number of reasons, the ASU complicated bureaucratic administration as much as it improved surveillance. From the remarks of leading political figures in the mid to late 1960's there is evidence that the ASU's role in the public sector generated conflict which diminished the effectiveness of these agencies. Ali Sabri, secretary general of the ASU, remarked that the executive councils, which were organized by the ASU with a view to supervising public sector firms, produced conflict with managers. Workers' groups would ally with them to press their advantage, which would in turn anger management.⁸⁶

Nasser attempted to define the role of the ASU when speaking with a group of members of the ASU Vanguard. He emphasized the intelligence gathering function of the ASU and remonstrated against the ASU's direct intervention into administrative decisions: "The ASU is to supervise, but not

⁸⁵ Gamal Abd ul Nasser, Organization and the Movement: The Private Discussions of the Vanguard Organization, (Al Tandhiim wa al Haraka: Al Muhadarat al Khasa biltandhiim al Talii'ii), (Beirut: No Date), pg. 44. (March 5, 1966).

⁸⁶ Ali Sabri, Ali Sabri Recalls, (Arabic) pg. 38. See also Ahmed Hamrush, In Search of Democracy, (Arabic), pg. 145.

enter into administrative decisions."⁸⁷ More elaborately, Nasser argued that the ASU had an important role to play in generating information concerning the real nature of the activities of public agencies, but that it should keep a low profile and refrain from attempting to exercise power and participate in policy decisions. Rather, the ASU was supposed to be a mobilizer and conduit of information concerning the inefficiency, evasiveness and corruption in public agencies:

There is no prohibition on telling me that the Eastern Cigarette Company has more workers than necessary, but you should not go to the executive council of the company and tell it to submit to supervision because you will come into conflict this way,⁸⁸

Rather the ASU was supposed to recruit informers by persuading them of the virtue of socialist ideas:

but you can through persuasion and recruitment (da'wa wa tajniid), through the members you recruit in the company, learn that there are more workers than necessary or find that there is patronage and inform us and we will establish indirect supervision.⁸⁹

⁸⁷ Gamal Abd ul Nasser, Organization and the Movement: The Private Discussions of the Vanguard Organization (Al Tandhiim wa al Haraka: Al Muhadarat al Khasa biltandhiim al Talii'ii), (Beirut: No Date), pg. 44. (March 5, 1966).

⁸⁸ Gamal Abd ul Nasser, Organization and the Movement: The Private Discussions of the Vanguard Organization (Al Tandhiim wa al Haraka: Al Muhadarat al Khasa biltandhiim al Talii'ii), (Beirut: No Date), pg. 45. (March 5, 1966).

⁸⁹ Gamal Abd ul Nasser, Organization and the Movement: The Private Discussions of the Vanguard Organization (Al Tandhiim wa al Haraka: Al Muhadarat al Khasa biltandhiim al Talii'ii), (Beirut: No Date), pg. 45. (March 5, 1966).

Similarly,

You can inform us that a company's accounts really show a loss when they reported a profit, and we can profit very much from this information... Securing this information will not be by demonstrations of power but through recruitment and persuasion. In this way you can clean out the governorate ...⁹⁰

In the Congress of Production of 1967, which grouped together heads of the public sector firms, the chairmen complained of ASU interference in production.⁹¹ In an address to this meeting, Nasser said that the ASU

is to involve itself in public sector operations only to the extent that it can contribute to implementation of plans and smooth relations between workers and management. In no way is the ASU to interfere in the production process itself.⁹²

There were also numerous articles in Al-Ishtiraki, the journal of the ASU, regarding the problem of ASU intervention in public sector administration.⁹³

In the fall of 1967, possibly in response to this concern about ASU intervention in public sector management,

⁹⁰ Gamal Abd ul Nasser, The Organization and the Movement: The Private Discussions of the Vanguard Organization, (Al Tandhiim wa al Haraka: Al Muhadarat al Khasa biltandhiim al Tali'ii'), (Beirut: No Date), pg. 45. (March 5, 1966).

⁹¹ Middle East Record, 1967, pg. 551. (Al Ahram and Al Gumhuriya, 20 and 21 March, 1967).

⁹² Waterbury, Egypt of Nasser and Sadat, pg. 99. citing Middle East Record, 3, [1967] 550-51. Speech given March 18, 1967.

⁹³ Al Ishtiraaki, February 6, 1965, pg. 13; February 20, 1965, pg. 20; April 17, 1965, pg. 17; May 15, 1965, pg. 20; March 5, 1966, pp. 8-11; January 22, 1966, pp. 18-20.

the ASU began to change the membership of executive offices to include more technocratically oriented and less politically oriented staff. Members of the Maglis al Umma (the national parliament), representatives of professional societies, university professors, and high level managers, including technical specialists, were to be appointed to executive councils. The ASU cited two reasons for this change in policy: 1) "to achieve unity of thought between these groups and the ASU" and 2) "to avoid useless conflicts between ASU and executive agencies or between professional societies and the ASU or between the ASU and universities."⁹⁴ In order to maintain the popular character of the ASU, and to prevent the executive offices from becoming too heavily influenced by the elite institutions of universities, public sector firms, etc., the ASU would set up an experimental school to acquaint the new appointees with "needs of the people."⁹⁵

While the political organization of the ASU complicated bureaucratic administration, the Vanguard organization also had problems. It could not operate as a successful monitor of the bureaucracy because the President could not fully trust it. As discussed above, Nasser feared that the ASU might attempt to become an independent political force. This was especially true after the elections of 1968, in

⁹⁴ Al Jumhuriya, October 14, 1967.

⁹⁵ Al Jumhuriyah, October 14, 1967.

which a number of leftist Vanguard members stood for election. After this election, in 1959, Nasser is reported to have remarked to the editorial board of al-Tali'ah, a leading leftist journal, that

You are authorized to preach socialism like St. Peter preached the Gospel [but] ... you are not authorized to build a constituency for yourselves at my expense.⁹⁶

Also, the Vanguard apparatus was never given over to a committed cadre, thus weakening an important source of its effectiveness. The communists were arrested in 1966 and the Institute for Socialist Studies, a center for training of political cadres, was closed. Instead of being staffed by ideologically committed staff, the ASU General Secretariat and Higher Executive Committee continued to be dominated by military officers.⁹⁷ The reliance on intelligence personnel rather than ideologically committed cadre led to the infusion of opportunists which in turn led to corruption.⁹⁸

2.5 The Beginnings of the Idea of the Rule of Law

⁹⁶ Reported by Mohammed Sid Ahmed, in "Cairo Report" MERIP: Middle East Report, #150, January-February, 1988, pg. 30.

⁹⁷ Shahrugh, Akhavi, "Egypt: Neo-Patrimonial Elite", pg. 88.

⁹⁸ Ali Sabri, Ali Sabri Yatadhakkur, pg. 38.

As has been argued above a major feature of Egyptian politics during the 1960's was the penetration of state agencies by the ASU and the military, and the accumulation of autonomous power by these two institutions. The almost unrestricted ability of these institutions to penetrate state agencies began to concern Nasser, and this led to his initial thoughts about supporting the rule of law. The fear of the power of unrestrained executive agencies became even stronger in Sadat's thinking, and led to his stronger support for empowering the judiciary and establishing the rule of law.

Nasser himself was not ideologically committed to the idea of an independent judiciary or to the rule of law. In 1963, at the tripartite unity talks, Nasser said:

I am against the principle of the separation of powers, and I consider the carrying out of this separation an enormous illusion.⁹⁹

By a similar token Nasser did not have an ideological predilection for popular participation. Rather, he saw this as a method to improve surveillance of the bureaucracy:

The forthcoming stage must be faithful to the idea that public services should be placed under the direct control of the citizens' representatives. This is not just a democratic practice, but more importantly (qabl zalika), it effectively guarantees the greatest improvement of public

⁹⁹ cited in Waterbury, The Egypt of Nasser and Sadat, pg. 343.

services in terms of their capability and
responsiveness... ¹⁰⁰

Nasser's adoption of the idea of the rule of law was not grounded in any ideological concern. As the quote above demonstrates, he was, if anything, ideologically opposed to the idea of the rule of law, in so far as it implied an independent judiciary. Rather, like his advocacy of popular participation, it was driven by pragmatic concerns of monitoring and controlling the bureaucracy and maintaining his power.

Nasser's first statements about the law were driven by a concern with the law's power to obstruct implementation of government policy. In several speeches he blamed the existence of outdated laws and their implementation by the judiciary for slow progress in development projects such as irrigation.¹⁰¹ He also argued that the bureaucracy's efficiency had been hampered by the existence of old regulations.¹⁰² These problems of legal obstruction led him to call for the "codification of the revolution" to

¹⁰⁰ Majmu' khutub wa tasrihaat wa biyanat Gamal Abdul Nasser, part 5, July 1964-June 1966, pg 457. In English: Speech to National Assembly, November 25, 1965, Arab Political Encyclopedia, 1965/66, pg. 68.

¹⁰¹) Arab Political Encyclopedia, 1965/66, pg. 62.

¹⁰² Arab Political Encyclopedia, 1965/66, pg. 74.

replace the offending laws with new ones that would realize the state's goals.¹⁰³

In 1966 Nasser convened a constitutional convention to write a permanent constitution. He told the delegates to this convention that its purpose was to "codify the revolution" (Taqniin al Thawra). However, in addition to setting up institutions capable of revising old laws, Nasser also wanted to use law as a force capable of restraining the powerful institutions of the military and the party. These thoughts were developing at roughly the same time that he was advocating the codification of the revolution. In the context of arguing for codification of the revolution, Nasser argued that:

it is our obligation in the next stage to continue building the official and popular institutions of the state and to specify their limits and relationships. The state is not the desire of individuals or an individual, but is an official and popular institution which transmits the general and public interest.¹⁰⁴

More succinctly, Nasser said, "We want to build institutions and limit their activities."¹⁰⁵

In these lines Nasser was articulating a concern with the excessive power and influence of key individuals and institutions. Evidence presented in the next chapter

¹⁰³ The first mention of the idea of the codification of the revolution is in a speech of July 22, 1966 (Al Ahram, July 23, 1966).

¹⁰⁴ Al Ahram, July 23, 1966.

¹⁰⁵ Al Ahram, July 23, 1966.

suggests that these were most probably 'Amer and the military, and the ASU group centered in Sabri and Sharawy Goma'a. At this point, Nasser was concerned with the importance of limiting the influence individuals had, and in limiting the influence of certain institutions. Nasser turned to the rule of law as a solution to this problem less than a year later. In a speech before the Bar Association, he argued that the main purpose of developing the constitution was to use law to restrain powerful institutions and individuals:

The codification of the revolution is a guarantee of peaceful constitutional development to ensure that law is more powerful than centers of power and greater than the desires of individuals.¹⁰⁶

Despite his earlier ideological aversion to the separation of powers, Nasser had begun to shift toward viewing law as an important regulating force within the state. This shift in Nasser's view had been stimulated by the rise of powerful institutions such as the military and the party which had become increasingly unrestrained during the four year period since 1963 when Nasser firmly opposed the separation of powers. The tendency to emphasize law as a mechanism to prevent the expansion of power of individuals and institutions became even more pronounced after the crisis of 1967.

¹⁰⁶ Al Muhamah, February, March, April 1967, pg 3.

As discussed in the following chapter, the defeat in June of 1967 led Nasser to believe that the problems of monitoring could not be resolved within the context of Egypt's repressive authoritarianism. Rather, he came to believe that limited rights of participation and expression, and an expansion of judicial supervision of the state were necessary to reimpose his control over the state.

Chapter Three

From Centralized to Decentralized Monitoring

Following the defeat of 1967 the debate over the effective management of the state intensified. The military's poor performance prompted a debate over whether the system as it was currently structured should be retained. The debates that ensued at the highest level of power revealed the self-destructiveness of the repressive and bureaucratized authoritarianism that existed in Egypt. This self-destructiveness was not rooted in the failure of the authoritarian regime to legitimate itself to the public. This was a concern, but not a primary concern; authoritarianism was not seen to be inherently illegitimate. Rather, there were structural features of authoritarianism that inhibited the system from performing the functions that allowed it to keep the sympathies of the population.

The real problem of authoritarianism was that the repression, the lack of accountability, and the fear that sustained and resulted from the repression and lack of accountability had the effect of undermining the Presidency's ability to monitor the state. Coordination in the centralized Egyptian polity was based on trust among a set of oligarchs who administered the pillars of the state. They were not accountable to broader public institutions. Rather, their actions were scrutinized informally by their peer oligarchs alone. Thus trust among oligarchs substituted for effective monitoring of their actions.

This trust was abused. Oligarchs built up patron-

client relations in order to secure their positions of power and advance their careers and the careers of their followers. These patronage networks had the unintended effect of undermining the performance of state institutions that the regime depended on for political stability and security. The fear the repression generated inhibited complaints about the abuses and inefficiencies resulting from the patronage networks, which further reduced the accountability of the oligarchs. This fear affected the oligarchs themselves who, uncertain of their relative power position in a conspiratorial polity where political resources and alliances were veiled, refrained from criticizing one another for fear of being conspired against. Thus the system of trust among oligarchs lacked any reliable form of monitoring.

In addition to undermining the functioning of the state, the development of patronage networks and the weak monitoring system made the government susceptible to subversion by the oligarchs themselves. The lack of information regarding oligarchs' activities meant that they could conspire more easily. This became evident when the survival of the regime came into question at the end of the war and some oligarchs sought to take advantage of the situation.

In order to counter the negative effect that fear and patron-client networks had on monitoring and state

efficiency, Nasser proposed a liberalization of the political system. The centerpiece of this program was the creation of a two party system. He argued that the creation of a second party would reduce fear because of the protection it afforded for political opposition. He also argued that it would reduce the debilitating effects of the patron-client networks. Competition among parties would force the various factions in the state to cooperate. If they failed to cooperate, they would lose power to the rival party. The second party also had advantages in that it would uncover mistakes of the government, and hence force the government to perform better.

While Nasser wanted reform, he also feared its consequences. Having arrived at the conclusion that the regime needed more political competition in order for it to perform more effectively, he hesitated to introduce political competition. He and his closest advisors retreated from the idea of mass participation in national politics to a more limited system of participation. This system borrowed the checks and balances of liberal polities but left out the mass participation. Independent institutions would supervise each other and uncover corruption and error, but these institutions would ultimately be accountable to the state rather than the populace.

Among these institutions was the judiciary. The appeal

of the judiciary was its combination of independence and isolation from popular demands. However, reform of the judiciary was also dangerous. It was believed to harbor opponents of the government. Therefore steps were taken to ensure its loyalty by first purging it and then imposing a politically responsive set of institutions to supervise it.

In 1971 Anwar Sadat took a decisive step toward decentralized monitoring through significantly increasing the judiciary's jurisdiction and improving its autonomy. Sadat wanted the judicial reform to solve the two main monitoring problems discussed in Chapter Two: Military interference in the public sector and the press and poor performance in the public sector. He sought to solve these problems by clearly defining jurisdictions of state agencies and establishing decentralized monitoring systems, including an independent judiciary, to ensure that these jurisdictions were not violated. The protection of rights of publication would alert the Presidency to attempts by the military to interfere in the operations of the press. And civilian complaints raised before administrative courts would alert the President to poor performance and military interference in the public sector.

Furthermore, Anwar Sadat wanted the judicial reform to solve two new problems: the dismantling of the ASU - one of the key centralized monitoring agencies - and the power of

the intelligence services. Sadat felt that these agencies threatened his power: he organized a coup in 1971 to remove their directors from their positions. He subsequently disbanded the ASU. This left him with the need for an effective monitoring system. The courts would fill this new vacuum. He also used courts to place new constraints on the operation of the intelligence services: he required that courts approve wire taps and other forms of surveillance. He also gave courts the power to review all sequestrations of property. Military and security services had appropriated property with relative impunity under Nasser. Sadat's major innovation was to more tightly delimit jurisdictions and empower institutions autonomous of administrative agencies to monitor those jurisdictions.

The judicial reform taken under Nasser reveals two important dynamics. First, creating a larger role for the judiciary was driven by an inability of top policy makers to gain sufficient information necessary to design adequate policy and discipline officials. The judiciary served as a system which could make up for this information gap by hearing appeals of administrative acts and legislation. Second, the judiciary was able to force an augmentation of its authority by the refusal of its members to implement laws it found unconstitutional. Consistent refusal created the need for a system of constitutional supervision of laws

so that constitutionality could not be invoked as a reason for judgement. Ultimately, the second dynamic comes to rest on the question of authority.¹ In the absence of authority, judges would not conform. The government, if it were to rely on the judiciary as a check on the state, had to persuade judges of the legitimacy of its laws. And it could only persuade the judges of this by conceding the power of judicial review of legislation. Under such circumstances, lower judges would defer to the authority of higher judges.

Thus the information constraints of autocrats force them not only to delegate authority to monitors, they also have to make structural concessions to ensure the loyalty and obedience of the monitors. Efficiency requires legitimacy: as a consequence, the structure of an authoritarian state is importantly influenced by the values of the people who organize it. In Egypt, this meant that the government, in order to govern the state, had to make concessions regarding its submission to law adjudicated by professional, respected judges.

The rest of this chapter discusses changes in the Egyptian Presidents' views of monitoring and participation after the defeat of 1967 and reforms undertaken to augment

¹ I follow Hannah Arendt's conception of authority. Arendt conceives of authority as a relationship lying between pure hierarchy and pure equality. It is deference based on respect for superior merit. Arendt, "What is Authority?" in *Between Past and Future*, (New York: Penguin, 1961).

the independence and jurisdiction of the judiciary. It first reprises debates among the Egyptian leadership following the war and judicial reforms which followed it. It then discusses Anwar Sadat's succession to the Presidency in 1970 and his decisive shift to a system of decentralized monitoring in the early 1970s.

The Debates Following the War of 1967

The debate over the use of liberal institutions to improve control over the functioning of the state was the main topic of discussion in a series of meetings between Nasser and the most powerful figures in the Egyptian state after the defeat of 1967. Nasser was convinced that the failure of the Egyptian military was symptomatic of more pervasive shortcomings in the Egyptian state. Specifically, Nasser felt that the state was fragmenting into fiefdoms that he could not control, and that the leaders of those fiefdoms were more concerned about advancing their clients and tearing down their rivals than they were about advancing the interests of the Egyptian state. He argued that the personal cliques were encumbering the state to the point that it could not function effectively. Furthermore, he felt that the fear created by the police state had become so pervasive that nobody, not even the most senior figures in the state, felt comfortable stating their opinion. As a consequence, mistakes could neither be discovered nor

rectified, and the center of the state could not intelligently set policy.

In order to counter these tendencies, Nasser proposed the formation of a second party that would compete for power with the ASU. This party would also have a newspaper with which it could advance its program and critique the policies and performance of the existing government. In Nasser's view, a second party would aid in limiting the factionalism of high state officials by raising the cost of non-cooperation. Since factionalism would reduce the quality of the government's performance, state officials would cooperate in order to hold onto their positions.² The new party's newspaper would also add to the flow of information about policy and performance. In addition, the problem of fear would be reduced by the new freedoms enjoyed by an opposition party.

In the first of these meetings, Nasser prefaced his argument by telling a story about the betrayals of some of the senior figures of the government which threatened the existence of the Egyptian state. This story established the theme that the old system, which was based on trust among oligarchs, had failed. Nasser recounted how in early June 1967 he told the Field Marshall of the Egyptian Army, Abd al Hakiim Amer, to redeploy forces from the Southern Sinai to

² It is interesting to observe that a game-theoretic analysis would suggest that this solution would not work, and yet Nasser advocated it anyway.

protect the Northern coast road from Rafah to El Arish, which had been left undefended. The Field Marshall agreed, but later redeployed these forces southward to Nakhl without informing the President before it was too late. Nasser then went on to describe how after his resignation and appointment of Zakariya Muhy el Din as his successor, Shams Badran had sought to rally support among the officers corps to have himself appointed President and to return Abd al Hakiim Amer to the position of Field Marshall.³ These stories established the theme that the chain of command had ceased to function in the Egyptian state, the President could not control his subordinates, and that this was the cause of the Egyptian defeat. The stories also established the theme that personal ambition was so strong and unrestrained that these officers were willing to sacrifice the country's basic interests. The argument that personal trust among oligarchs was no longer an adequate basis of state organization was strengthened when Nasser said that he was extremely close to Amer and that Badran was from the 1948 duf'a (class), a group of officers who had fought against the new State of Israel. Nasser was a part of this group, and membership in it was thought to constitute a special bond among the officers ruling Egypt.

Nasser concluded these stories by arguing that since he

³ Meeting of the High Executive Committee of the ASU, July 3rd, 1967, Al Ahaly, July 27, 1983, pg. 6.

was betrayed by those who had been close to him, the regime itself had to be changed.

What comes out of this story is that the closed system will head us in the end to a regime that is a burdensome inheritance (nizaam al tawriith) ... the regime is eating itself, and the future will be very dangerous, and so it is my opinion that we work right away to change the system that we are working with because it necessarily makes mistakes.⁴

In the next meeting, Nasser elaborated on the theme of the need for a new system:

My opinion is that we need a new system, because the one we have necessarily produces mistakes. It is well known that the one party system always has within it conflicts at the peak of power ... I believe that most of us will not live longer than ten more years - especially with my illness and the pressure on me. And so I believe in the necessity of changing our system so that the new system will not permit any person or shilla [personal clique] without conscience or political understanding to rule the country.⁵

Thus at this point, Nasser's major concern was with rivalry at the peak of power, and the absence of any mechanism to link the outcomes of power conflicts to pursuit of the national interest.

The discussion among the leaders then turned to mistakes the government made in the past, prominent amongst which was the Committee to Liquidate Feudalism. The political lieutenants who opposed reform, such as Ali Sabri

⁴ Meeting of the High Executive Committee of the ASU, July 3rd, 1967, Al Ahaly, July 27, 1983, pg. 6.

⁵ Meeting of the High Executive Committee of the ASU, July 3, 1967, Al Ahaly, July 27, 1983, pg. 6.

and Anwar Sadat, argued that these were individual mistakes, and hence not an indictment of the system as a whole.

Zakaria Muhy el Din argued that shillas were a problem in any society, implying that it was not something that justified radical action. Nasser responded to these arguments by saying that although these people may have recognized that the Committee to Liquidate Feudalism and other abuses of power were mistakes, they did not raise any criticism of them at the time.⁶

Nasser then developed the theme of how the system itself had inhibited honest discussion of policy and implementation:

Like what happened in the famous Soviet story we say the truth, but only for three minutes. It appears that we are the greatest political body in the country, but our number was only seven and we did not talk. We did not say the facts at the time, including the president of the Committee to Liquidate Feudalism, who was sitting with us in this chair. This means that the system was failing and falling to the extent that we were feeling afraid to talk, we feared to say the truth.⁷

Nasser goes on to lay out proposals for reform aimed at changing the system: "First, I personally, as the highest political authority, will free us from fear, and then we will free the

⁶ Meeting of the High Executive Committee of the ASU, July 3, 1967, Al Ahaly, July 27, 1983, pg. 6.

⁷ Meeting of the High Executive Committee of the ASU, July 3, 1967, Al Ahaly, July 27, 1983, pg. 6.

entire country from fear."⁸ He then lays out his proposal for a two party system and his justifications for it:

If we really want to spread security and safety ... we should permit the presence of an opposition in the country. Of course, I do not believe in the formation of this opposition in that Zakaria represents one point of view and Ali Sabri represents another ... if we did this there would be only theatrical opposition. The real opposition is if we respond to the opponents at this time like Baghdady and Kamal Hussein - both of the them agreed to the Covenant⁹ and are basically part of us - and allow them to form an opposition party and allow them a newspaper that expresses the opinion of the party... When the current parliamentary session ends we hold new elections in the month of December of this year on the basis of lists for two parties. The one that wins the election forms the government and the second one forms the opposition and the army remains as a professional agency as well as the police.

I believe that if we implement this proposal we will heal from all illnesses among us in a short time. It will free everyone of us from the fear that is among us from the grandest agency to the smallest. I am against the single party system because the single party leads usually to the establishment of the dictatorship of a certain group of individuals.

My last word on this issue is that if we do not change our current system we will soon walk on an unknown road and we will not know who will control the country after us. If we come to the point where we are shy about speaking the truth or receiving criticism, that will lead us to a dark

⁸ Meeting of the High Executive Committee of the ASU, July 3, 1967, Al Ahaly, July 27, 1983, pg. 6.

⁹ The Covenant (Al-Mithaaq) was one of the basic documents of the Egyptian Revolution. It enunciated the reciprocal obligations of state and society and set forth the basic social, economic, and political principles of the Nasserist government.

future.¹⁰

The following day, Nasser's political lieutenants presented criticisms of the two-party proposal. There were two kinds of objections. The first kind of objection centered on the question of whether an opposition could be trusted. Nasser responded to this kind by arguing that since the people who were to be allowed to form the second party were people already trusted by the group ruling Egypt, there was little to fear: "It is my opinion that they are men and that they will behave like men because they are with us since the Revolution."¹¹

The second objection centered on the possible damage a more open politics might inflict on policy making and the regime's stability. Zakaria Muhy el Din objected that the country faced numerous challenges that were of a higher priority, including the economy, and that politics would interfere in policy making if there was no way to insulate planning from party controlled ministers. Also, Muhy el Din wanted to know who would hold the planning system accountable. He suggested that a committee formed of representatives of both parties oversee planning and

¹⁰ Meeting of the High Executive Committee of the ASU, July 3, 1967, Al Ahaly, July 27, 1983, pg. 6.

¹¹ Meeting of the High Executive Council of the ASU, July 4, 1967 (Al Ahaly, August 3, 1983, pg. 6.)

implementation.¹²

Nasser responded by suggesting that Muhy el Din had missed the point of his presentation, which was to use political participation to inject incentives for good performance into the polity:

Whoever assumes the power of governing is responsible for the success of all the institutions as he is also responsible for any failure ... any failure in the management of the institutions will lead to the fall of the government ... And do not forget that the goal of any party is to reach power and to stop the other party in front of it, hunting for mistakes it makes in implementation. So how do you say that the opposition party would participate with the government agency to supervise economic plans? Whoever has the power has the responsibility, and he is the one who supervises and faces all issues, including the economic plans.¹³

Nasser also argued that criticism of leaders was already going on in peoples' homes, and that it was better that they do it in the open.¹⁴

Nasser continued to argue for the uses of outside criticism on the basis that it would contribute to better government:

I ask myself, where is this old regime going? Before the aggression of June 1967 I met with Sadat, speaker of the Parliament and I told him that there are many issues that are difficult to solve within the framework of this regime, and

¹² Meeting of the High Executive Council of the ASU, July 4, 1967 (Al Ahaly, August 3, 1983, pg. 6.)

¹³ Meeting of the High Executive Council of the ASU, July 4, 1967 (Al Ahaly, August 3, 1983, pg. 6.)

¹⁴ Meeting of the High Executive Council of the ASU, July 4, 1967 (Al Ahaly, August 3, 1983, pg. 6.)

that there is no escape from there being an open system and no escape from there being an opposition and we have to open the door to newspapers writing openly because I believe that revolutionary integrity after 15 years has been damaged a lot, even the intellectual unity between us is gone.¹⁵

He then introduced a new argument: that competition from another

party would force the main power holders to cooperate more:

If there were a second party and there were a real opposition then there would be challenges before us and all our colleagues, which would stop the talking about our colleagues and put aside the pulling down of their work because in this situation ... the other party would be ready to criticize them and the colleagues of their party.¹⁶

Nasser then elaborated on how a two party system would strengthen the state rather than weaken it by forcing the factions within the state to unite:

The RCC was a place of strong discussion with the final decision going to the majority. But the situation developed after that and the state fissured into a number of informal parties. The party of Abd ul Hakiim [Field Marshall], the party of Zakaria [The Prime Minister], the party of Sadat [Speaker of the Parliament] ... in this way the regime broke into fragments. Every quarter in it wanted to vanquish the other quarter. And so that is why I proposed the necessity of real challenges of us so that it would become clear to all that any activity to tear down the regime from within would bring down the entire regime on our heads.¹⁷

¹⁵ Meeting of the High Executive Council of the ASU, July 4, 1967 (Al Ahaly, August 3, 1983, pg. 6.)

¹⁶ Meeting of the High Executive Council of the ASU, July 4, 1967 (Al Ahaly, August 3, 1983, pg. 6.)

¹⁷ Meeting of the High Executive Council of the ASU, July 4, 1967 (Al Ahaly, August 3, 1983, pg. 6.)

In summary, Nasser had come to the conclusion that the old system based on trust among oligarchs no longer functioned. The mechanism on which the system rested, repression, was destroying it. Oligarchs exploited the fear and consequent lack of social information to build up patronage networks. The polity became conspiratorial and this in turn enhanced fear to the point that the oligarchs themselves would no longer criticize each other. To counter the fear, the lack of information, and the shillal that fed on and reinforced the fear and lack of information, Nasser advocated a return to a liberal form of politics with some controls to ensure that the basic policies of his government would not be challenged. These proposed reforms presaged the controlled liberalization introduced by Anwar Sadat in the 1970s.

Public Sector Effectiveness

A second major issue that Nasser broached was the performance of the public sector. This was most prominently discussed in the meetings between Nasser and the Council of Ministers. The importance of this topic to the President was clear: Nasser argued that if the public sector failed to deliver jobs, goods, and housing to the population, the regime would lose popular support. Hence reform of the public sector to improve its performance was of overriding importance because as Nasser saw it, the government's

stability depended on it. These discussions reveal a major contradiction within the Egyptian state. On the one hand, the regime required decentralized decision making in order to function. On the other hand the President did not trust his subordinates enough to make decisions. As a result the state became paralyzed.

According to Nasser, the major problem of the public sector was a failure to implement decrees issued by the government and the inability to resolve pressing administrative questions:

There are many problems in the country that need a quick solution. But most of the problems are not due to a lack of resources ... the problem is that we pronounce decrees and we promise the people things and do not implement them ... the authority of resolution in the government has been shaken (kaan sulta al bat fii al hukuma asbahat mahzooza).¹⁸

Nasser elaborated on this point by arguing that in the last four years shillal had developed within the public sector, and by implication this had a negative effect on the sector's productivity.

Zakariya Muhy El Din, the Prime Minister, responded to Nasser with two points. First, he argued that a system of appeal of administrative acts should be set up:

We must delimit an agency of the regime to which every individual from every sector of society can complain. The day we are able to grant justice to every oppressed one of the thirty million, we will have the necessary protection and security for our

¹⁸ Council of Ministers Meeting, December 24, 26, 27, Al Ahaly, August 3, 1983, pg 6.

regime.¹⁹

The second argument Muhy El Din advanced was that there had to be a clearer separation between production activities and the ASU. This argument was echoed by another minister. Nasser replied to these views by arguing that criticism and activism by workers within the public sector was inevitable. The only choice was whether this activism was channeled through the ASU or was organized by the communists or the Muslim Brotherhood.

The question of how to achieve resolution of administrative decisions was not resolved in the discussions. Sidqy Suleiman, a former Prime Minister, noted that one reason why there was no resolution was that the President did not delegate enough authority to ministers. He also argued that excessive monitoring of ministers made them fearful of acting. Nasser responded angrily by saying that he was not responsible for making the decisions the government made or failed to make because he had so little time to review the proposed laws and decrees sent to him.

The conjunction of the discussion of shillal and the inability of the government to generate decisions because of lack of delegation pointed up a significant contradiction in the organization of the Egyptian state. On the one hand, the sheer physical limitations on the President required him to delegate in order to generate the stream of decisions,

¹⁹ Al Ahaly August 3rd, 1983, pg. 6.

such as appointments to key offices, etc., that kept the state functioning. On the other hand, his lack of trust in his ministers, which was fairly rational given the plots and subterfuges he described in these and earlier meetings, inhibited this delegation. Though it was not said in the meeting, the conflict between the need to delegate and the justified lack of trust in subordinates cried out for resolution if the state was to function effectively and deliver the goods to the population necessary to stabilize the government's hold on power. It underlined the need for creating decision making structures in which power was delegated but observable and hence trustable. In short, it underlined the need for more open and accountable decision making. The two party system which Nasser discussed earlier was a plausible solution to this problem.

Political Reform After the War

Though Nasser did not pursue a two party system for fear of the political challenges it might unleash, he did initiate several reforms designed to utilize popular energies to discipline officials. 1968 was a year of important demonstrations in Egypt. Students and workers protested against lenient sentences for air force officers involved in the defeat of 1967. The Bar Association and the Judges' Club sought to capitalize on student and worker unrest to liberalize the political system by issuing a

declaration in support of civil liberties.²⁰ Nasser responded by issuing his own declaration.²¹ However, from remarks made to his Council of Ministers he never meant to implement it. Rather, he meant merely to diffuse opposition.²² He became convinced that the benefits that would accrue from a multi-party polity would be outweighed by the level of social conflict that would emerge. He especially feared conflict between the government and the working class.²³

The retreat from the use of mass participation in

²⁰ See Abdullah Imam, Massacre of the Judiciary (Arabic), (Cairo: Maktaba Madbouli, 1976), pp. 49-55; Mumtaz Nassaar, The Battle for Justice in Egypt (Arabic) (Cairo: Dar al Shuruk, 1974), pg. 20.

²¹ Mumtaz Nassar, The Battle for Justice in Egypt, (Arabic) (Cairo: Dar al Shuruk, 1974).

²² Nasser said: "What happened in June [1967] caused a situation of disaster and a disequilibrium between the people and the leaders ... even among supporters of the revolution ... the war lasted only five days, and after that the defeat, and then what the people heard during the trials, and then what was publicized about the corruption in the intelligence agencies ... all of that shook the people's view of the government ... it also caused them to ask important questions - like couldn't such a thing happen again? And so I think the March 30th declaration is a beginning and not an end. We have to gain the people and take them with us before they leave us.

"All of the people's feelings and demands are recorded in the [March 30th] program. And with that I have silenced the opposition forces and isolated them." Council of Ministers Meeting, April 15, 1968, Al Ahaly, August 31, 1983, pg. 6.

²³ Nasser said: "I believe the more suitable thing right now is an alliance of working forces of the people [i.e. coercive corporatism], because if we entered a liberal system we would be exposed to a bloody struggle with some of the factions like the workers" Meeting of the Council of Ministers, March 24, 1968, Al Ahaly, August 17, 1983, pg. 6.

politics to a less participatory approach to regulation of the state was suggested by a series of articles published by Mohammed Hassanein Heikal, editor of Al Ahram, and a close associate of Nasser's. These articles were published at the end of 1968 after two rounds of anti-government demonstrations. In Heikal's view, monitoring and accountability would be accomplished by a multiplicity of rival and competing organizations and not through one centralized organization as had existed in the past. Heikal attributed the defeat of 1967 to the rise of "power centers" within the Egyptian state and the inability of political institutions to discover and rectify shortcomings within the bureaucracy.²⁴ Power centers were unaccountable and hence irresponsible institutions and individuals. Though he did not make it explicit, it is generally understood that these power centers were the military and intelligence agencies. These were the agencies Nasser characterized as being unaccountable and responsible for the defeat in his private discussions with his political advisers (discussed above). Heikal argued that dealing with the power centers and making the state more effective would require a more accountable state which was more open to supervision and criticism by external bodies. Administrative agencies would become more responsive and effective if their powers were limited and

²⁴ Al-Ahram, November 15, 1968.

their responsibilities were limited by law.²⁵ Heikal did not argue for political democracy because, in his view, parliaments were not good at discovering mistakes and did not have the technical information to act as effective monitors. Rather, the institutions with this kind of capability were those with good information, such as interest groups and universities.²⁶ Heikal envisioned a state of competing institutions supervising and checking each other and openly discussing public affairs, but not a politics of mass participation. Participation would be limited to persons and institutions with special competencies to monitor government activity. So, for example, the government ministers would be overseen by university faculties, and the police would be overseen by the courts.²⁷

Heikal's article is an important political document for two reasons. First, Heikal was a close friend of Nasser's and so he was probably familiar with the President's opinion. Second, the article described a novel kind of state that had some of the virtues of liberal democracy - its greater openness and accountability - but without popular mobilization. This was a step away from bureaucratic rule, in so far as bureaucrats would now either

²⁵ Al Ahram, November 15, 1968.

²⁶ Al Ahram, November 15, 1968.

²⁷) Al Ahram, November 15, 1968.

be held accountable to technical specialists outside the government or be independent of the particular agencies exercising authority. In many ways Heikal's vision of a competitive bureaucratic polity with autonomous checks and balances was the kind of state Egyptian political leaders attempted to develop in the 1970's and 1980's. In other words, his vision was eventually the dominant one in Egyptian politics, resulting in greater power for the judiciary and other independent institutions charged with monitoring and checking state agencies.

Reforms taken after the 1967 war reflected the view that Heikal advanced in that they attempted to introduce independent checks on the agencies of the state while limiting mass participation in politics. Elections to the ASU and reform of the judiciary were two steps Nasser took to use citizen initiative to discipline officials in the period 1968-1969. The ASU elections were the first in its history; ASU positions had previously been filled by appointment. In private meetings in the Council of Ministers, Nasser indicated that his purpose in holding these elections was to reduce the influence of shillal in the ASU that the appointment process had fostered.²⁸ He

²⁸ Nasser said: "What unsettles me and causes me troubles is the conflict among shillas within our political organization. And so I rejected continuing the principle of appointment within the organization because everyone advances his shilla. As for elections at all levels of the ASU I think this will defeat these shillas." (Council of Ministers Meeting, March 25, 1968, in Al Ahaly, August 24, 1983). And at the meeting of March 24, 1968,

also wanted to diminish the influence of the military and intelligence agencies in choosing ASU members.²⁹

Using the judiciary as a check on the power of avaricious state institutions had been discussed at the highest levels of power following the defeat of 1967.³⁰ As discussed in the next chapter, during the 1950s the judiciary had lost most of its capacity to monitor state agencies. The government had stripped the courts of jurisdiction over a wide range of administrative acts.³¹ Also in response to a campaign of government intimidation, the administrative courts had issued a series of decisions in which they voluntarily limited their jurisdiction over

Nasser says: "The whirlpool of selections by shillas (ikhtiyyarat shilaliya) among some of the leaders and the Field Marshall's group, and interference of the intelligence agencies made me decide to form [the ASU Central Committee] by way of elections with the condition that the elections be among those who were committed to our general plan." (Al Ahaly, August 17, 1983, pg. 6.)

²⁹ ibid.

³⁰ For example, during the discussions of reforming the political system, Sidqy Suleiman, then a member of the Supreme Executive Council of the ASU, suggested: "I think what we can do right now is introduce some reforms to the current system like accepting criticism and doing away with fear by granting the right to appeal any ruling in front of a judicial body and clearly specifying the relationship between the ASU and the government." (Meeting of the ASU Supreme Executive Committee, July 4, 1967, Al Ahaly, August 3, 1983, pg. 6.) Similarly, in articles in Al Ahram, Muhammed Hassanein Heikal, editor of Al Ahram and a close adviser of President Nasser, argued for the empowerment of courts as a method of supervising state agencies. (Al Ahram, October 18, 1968.)

³¹ Doctor Farooq abd ul Bur, The Role of the Maglis al Dawla in Protecting Public Rights and Freedoms, part 2: 1955-1971 (Arabic) (Cairo, 1991), pp. 97-99.

many actions of military and security forces.³²

Nasser hesitated to introduce reforms designed to empower the judiciary. The President became increasingly concerned about the infiltration of the Muslim Brotherhood and other opposition into its ranks.³³ He believed that the Muslim Brotherhood was in alliance with the United States and sought to overthrow him.³⁴ As a consequence, liberalizing reforms which would empower the judiciary were politically risky. However, in August of 1969, Nasser made a number of important changes in the judiciary. The government established a new kind of criminal court that would try officials for failure to implement decrees.³⁵ Nasser purged the judiciary of judges he believed to be sympathetic to the Muslim Brotherhood or otherwise counter-

³² Doctor Farooq abd ul Bur, The Role of the Maglis al Dawla in Protecting Public Rights and Freedoms, part 2: 1955-1971 (Arabic) (Cairo, 1991), pp. 24-74.

³³ Meeting of the Council of Ministers, April 28, 1968, Al Ahaly, August 31, 1983, pg. 6. Nasser says: "I am calm that the counter-revolutionary elements are limited and I am not disquieted about the political situation in the internal front - it is easy to deal with the counter revolutionary elements among the teaching agencies and colleges and institutes and it is simple to discover the true positions of the students - as for the opposition elements in the judiciary, we absolutely must definitively stop them."

³⁴ Council of Ministers meeting, March 25, 1968, in Al Ahaly, August 24, 1983.

³⁵ This was called the Court of Implementation (Mahkamat ul Tanfiiz). Ahmed Abu al Hassan, The State of Institutions, (Arabic) (Cairo: ARE Ministry of Information, 1985) pg. 43.

revolutionary.³⁶ He also created a new council to supervise the judiciary more closely.³⁷

At the same time as the purge and imposition of the new council, the government created a new constitutional court that was empowered to issue rulings on the constitutionality of legislation binding on all lower courts.³⁸ This court's independence was limited because judges held three year renewable terms.³⁹ Nevertheless, this was the first time since the 1950s that a court would have the authority to rule on the constitutionality of laws.

The clarifying document of the law establishing the constitutional court gave two rationales for the creation of a new court. First, the new Supreme Court would issue decisions binding on all courts as to the interpretation of laws. Previously, the highest courts served only as final courts of appeal and the principles established in their rulings had no binding force. Courts had been issuing contradictory rulings, especially in such politically important areas as agrarian reform and relations between public institutions and labor organizations. Furthermore, different courts had different views about the

³⁶ Ahmed Abdullah, Massacre of the Judiciary, op. cit., pg. 70.

³⁷ Law 82 of 1969, published in Al Ahram, September 1, 1969.

³⁸ See text of Law 81 of 1969, published in Al Ahram, September 1, 1969.

³⁹ See text of Law 81 of 1969, op. cit.

constitutionality of laws. The new court would serve to standardize judicial interpretation of laws. A second problem was that arbitration boards established to settle disputes among public sector agencies (in the Law on Public Institutions of 1966) had begun to develop a body of law that the political leadership felt, in some cases, frustrated the implementation of the economic plan. These disputes themselves arose from ambiguities of the plan and poor foresight in planning. The new legislation empowered the public prosecutor to appeal to the Supreme Court decisions of the arbitration boards which he felt harmed the economic plan.⁴⁰

The argument of the clarifying paper is paralleled by accounts of judicial behavior prior to the issuing of the new law in 1969. Judges resisted the implementation of laws which restricted freedoms by enforcing only the letter and not the spirit of these laws. Furthermore, since there was no authoritative source for constitutional interpretation, lower courts would make constitutional interpretations themselves and refuse to implement laws they found unconstitutional.⁴¹ And after the defeat of 1967, the regular judiciary sensed the turn of public opinion against the special courts, and began to widen their jurisdiction in

⁴⁰ Al Ahram September 1, 1969, pg. 1.

⁴¹ Farouq abd ul Bur, The Role of the State Council in Protecting Public Rights, (Arabic), pg. 22.

an inconspicuous way. They began to discuss the lack of constitutionality and legality of some of the steps the government had previously taken.⁴²

The creation of the Supreme Court was due to the problems of regulating a system of decentralized monitoring. The government relied on courts to make up for shortfalls of information relevant to policy implementation and design. The government had, in the 1950s, removed the power of constitutional interpretation from the courts as a way of centralizing power. It also restricted its reliance on courts in general by limiting their jurisdiction. Nevertheless, in order to cope with the informational constraints of centralized planning, the regime returned to court-like regulation with the establishment of administrative tribunals to adjudicate contract disputes in the public sector. In other words, courts settled disputes among public sector firms arising from inadequacies of the economic plan. Moreover, other courts were relied upon to handle other matters regarding appeal of administrative acts and legislation. Once the government came to rely on courts, it faced dilemmas about what to do when the courts began to use their delegated authority in ways contrary to its interests. One option was to retrieve the delegated authority, but then the government would be back at the first problem. A second option was to create institutions

⁴² Farouq abd ul Bur, Role of the State Council, pg. 76.

to which the lower courts would defer. This imposed some central control over the lower courts. However the price of this imposition was delegating authority over the constitutionality of laws to a semi-autonomous constitutional court.

Despite these reforms Nasser did not dispense with centralized monitoring. The augmentation of the power of the system of centralized monitoring was argued for and justified in some sectors of the official media. Ahmad Hamrush, a leading member of the communist party and editor of the leftist magazine Ruz al Yusuf, argued that what was needed was a party that could penetrate the ranks of the military and other bureaucratic agencies and mobilize their energies through political activism.⁴³ Similarly, Khaled Muhy el Din argued for the subordination of the state to the supervision of an ideological, yet popularly accountable party. Muhy el Din's analysis paralleled Nasser's and Heikal's in that he argued that the state had become captured by unaccountable personages, and that this had inhibited the circulation of accurate information about state activities, with devastating implications for performance. However, his solution differed in that he argued for the subordination of the state to an ideological

⁴³ "La Tariq Ila al Hizb", Ruz al Yusuf, August 14, 1967.

party.⁴⁴ Nasser developed both strategies.

Indeed, Nasser's overall political strategy in the late 1960s was to rely on an intensification of centralized monitoring in order to restore his control over the state. As he described it, this meant first restoring control over the military, then reorganizing the ASU, and finally, developing the ASU's control over the military.⁴⁵ The ASU

⁴⁴ Khaled Muhy el Din, "Le Parti Qu'il Nous Faut Construire", Democratie Nouvelle, February, 1968, pg. 117-122. Muhy el Din argues: "We have delegated enormous responsibility to some individuals without creating a permanent system of exercising over them a conscious, effective and real supervision capable of verifying the information furnished by these individuals." pg. 117. Muhy el Din goes on to argue that in the absence of a party capable of collective leadership (direction collective), a "mandate" system had been imposed, by which is meant the delegation of all responsibility to one person who enjoys power that is not subject to effective supervision. "This phenomenon is reproduced in a number of domains. The supreme political leadership in many cases is not able to deal with the details of every problem. And despite the capacity of some of the leadership, the system of 'mandate' has degenerated into an individualism of powers and responsibilities and degraded eventually into a plurality of semi-independent autocracies in which each man is ready to defend and camouflage the faults of the 'mandatory' and to struggle against all rival forces." pg. 117.

⁴⁵ At the March 25, 1968 meeting of the Council of Ministers, Nasser says: "There are some that believe that raising their voices against the revolution will cause the army to shake and be unstable - they are dreaming because the first thing we did after the June defeat was to secure the army's backing and then we sought the support of other sectors." (Al Ahaly, August 24, 1983, pg. 6.) Nasser says that the military must become part of the ASU in the March 31, 1968 sitting of the Council of Ministers (Al Ahaly, August 24, 1983, pg. 6). At the April 28, 1968 meeting, he says: "In the past year we have succeeded in putting the army in order and now we will work to put the political organization in order, after that we will work to put together the army and the political organization." (Al Ahaly, August 31, 1983, pg. 6.)

became more powerful after the election of 1968.⁴⁶

Relations with the population would be consolidated through continuing to deliver the "gains of the revolution", i.e. a basic social wage including cheap food and housing.⁴⁷ As a consequence of the central importance of the public sector in legitimating the government through the provision of cheap wage goods, its performance remained of central concern to the President.

Toward a More Accountable State

The decisive shift to decentralized monitoring came after President Nasser passed away in 1970. Anwar Sadat, Nasser's constitutional successor, significantly expanded the role of the courts, press, and parties in monitoring the state. The reason for this was his comparative weakness vis a vis the central monitoring institutions. Sadat weakened these institutions and replaced them with a system of

⁴⁶ Middle East Record, 1969-70, pg. 1272. See also, Al Jadid, 7 May, 1971; Nahar, 17 Sept. '71; Al Hawadith, 8 February, 1974; Muhammad Hassanein Heykal, The Road to Ramadan, pg. 134.

⁴⁷ In response to a warning from a minister that the Muslim Brotherhood is infiltrating the labor unions, Nasser responds that the loyalty of the workers is not something to fear, as they wish to keep the gains of the revolution. (Meeting of the Council of Ministers, April 28, 1968, in Al Ahaly, August 31, 1983, pg. 6.) Nasser, however, berates his ministers for not making the public sector function more effectively. He tells them that it is crucial for the support of the regime that the public sector fulfill the people's hopes: cheap food and apartments so that they can get married. "If we forget and ignore the hopes of the people then we will lose them forever and we will distance ourselves from them and they will get rid of us." (Meeting of the Council of Ministers, December 24, 26, 27, 1968, Al Ahaly, August 3, 1983, pg. 6.)

decentralized monitoring to consolidate his control over the state.

Unlike Nasser, who had strategically placed himself at the intersection of the network of the ASU Vanguard and intelligence agencies, Sadat was marginal to these institutions. Having had no real influence within these institutions he had few reliable allies within them. Moreover the state was increasingly controlled by the ASU and intelligence services. Unable to control these "power centers", he sought to reduce their power and create institutions which would check the rise of autonomous powers within the state. Sadat was able to cultivate allies in the military who were anxious to limit the ASU's encroachment on the military's and other institutions' autonomy. In addition Sadat felt it important to improve his control over the state through improving his sources of information. Not able to rely on the centralized monitoring institutions, he tried to cultivate allies in the press and judiciary through giving these institutions more freedom and power. Hence I explain the victory of a more liberal, "fire alarm" approach to state regulation by arguing that it was a response by powerful state institutions - the military and the Presidency - to institutional expansion on the part of other state institutions and an attempt to replace these expansionary institutions with other institutions capable of generating reliable information.

The first part of this section discusses Sadat's consolidation of power. It shows how encroachment by the ASU on the military's autonomy helped to form a coalition opposed to the central monitoring institutions of the ASU and intelligence agencies. The second part reviews Sadat's views about how the state should be organized and the reforms he initiated. I show that he was concerned with using law and limited political participation to generate information and regulate bureaucracies. The third part discusses the first major departure of Sadat's presidency, the adoption of the first Permanent Constitution since the coup d'etat of 1952. The discussion of the Constitution shows that it was a document that embodied the use of limited political participation and greater autonomy of institutions such as the judiciary to enhance control of the bureaucracy.

During a period of debate over the future shape of the state, the balance of power was shifting toward the first, more centralist view, in favor of the ASU and against the military. After the 1967 war Field Marshall 'Amer had been arrested and subsequently died. Nasser took control over the military personally. Hence surveillance of the military was effectively imposed by Presidential will. In addition, the military became increasingly influenced and controlled by Soviet advisors, who became more and more important during the war of attrition. The power vacuum

left by the military was filled by the ASU, which quickly expanded its control over the bureaucracy. The Vanguard apparatus of the ASU was said to have "taken control of the country."

Its members infiltrated production units, clubs, universities, the ASU, the National Assembly, and the police. They even checked on the activities of politicians, ministers, and the President himself. According to Heikal, Mamduh Salem (a provincial governor) had the particular function of keeping watch on the police force.⁴⁸

In addition, the ASU became more vigorous and vociferous in its campaign to exercise influence over the military. Leaders and leftist intellectuals publicly discussed establishing ASU control over the military. Ali Sabri, the general secretary of the ASU, published a series of articles in early 1967 arguing that since the ASU already had participation of the military in the form of Field Marshall 'Amer's position in the Higher Executive Council of the ASU, lower ranks of the military should also be contained within the ASU.⁴⁹ This contradicted a basic ASU policy, that the military would not be included within the ASU.⁵⁰ Similarly, Ahmad Hamrush and Khaled Muhy el Din, in the articles mentioned above, argued that the military would

⁴⁸) Middle East Record, 1969-70, pg. 1272. See also, Al Jadid, 7 May, 1971; Nahar, 17 Sept. '71; Al Hawadith, 8 February, 1974; Muhammad Hassanein Heykal, The Road to Ramadan, pg. 134.

⁴⁹) Ali Sabri, Al Jumhuriya, Weekly Columns, February, March and April, 1967.

⁵⁰ United Arab Republic, National Charter, 1962.

only become capable of defeating the Israelis if the ASU were able to mobilize the nationalist sentiments within it.⁵¹ In addition the ASU played a role in mobilizing demonstrations against the leniency of sentences given air force officers after the 1967 war.⁵² The ASU was also privately and publicly active in penetrating the judiciary, the other institution heretofore excluded from ASU influence.⁵³

It was under circumstances of increased debate over how to manage the state, increased ASU penetration of the bureaucracy, public sector, and judiciary, discussions of infiltrating the military, and a series of demonstrations for greater protection of civil rights that Sadat came to power. Having been the Vice President, he succeeded constitutionally to power in the fall of 1970. However, his power was limited as he agreed to rule collegially with the leaders of the intelligence services, the ASU and the military. This situation lasted until May of 1971, when,

⁵¹ Ahmad Hamrush, "La Tariq Ila al Hizb", Ruz al Yusuf, August 14, 1967; and "Man Yahmi al Thawra?", Ruz al Yusuf, July 31, 1967; and Khaled Muhy el Din, "Le Parti Qu'il Nous Faut Construire", Democratie Nouvelle, February, 1968, pg. 117-122.

⁵² See Ahmad Kamil, Min Awraq, . . . pg 108., and Facts on File: Egypt and Nasser, pg. 74.

⁵³ Sabri discussed the need for greater "politicization of the judiciary in his weekly columns in February and March of 1967 in Al Jumhuriya as did Ahmad Hamrush in "La Tariq il al Hizb" Ruz al Yusuf, August 14, 1967. Mumtaz Nasaar and Abdullah Imam discuss secret ASU operations within the judiciary; Mumtaz Nasaar, The Battle For Justice in Egypt, (Arabic) pg. 72, and Abdullah Imam, The Massacre of the Judiciary, (Arabic) pg. 43 and pg. 90-92.

with the support of senior military officers, Sadat ordered the arrest of the leaders of the ASU and intelligence services and numerous high ranking military officers on the pretext that they were organizing a coup d'etat. This event has since been known as the "corrective movement" (and subsequently the "corrective revolution").⁵⁴

After (and to a limited extent before) the corrective movement Sadat took a number of steps to implement the vision of a more accountable state that, through a system of relatively decentralized institutional checks and balances, would be capable of regulating itself without excessive central intervention. Sadat's commitment to this form of state is evinced in a number of concrete reforms he undertook, his rhetoric after the corrective movement and the Permanent Constitution he promulgated later that year.

Among the reforms Sadat undertook were increasing the President's ability to supervise public policy by creating a number of technical bureaus, forbidding the confiscation of land without a court order, reinstating judges that had been dismissed by Nasser, forbidding the use of wiretaps without a court order, and a number of bureaucratic reforms, including encouraging ministries to disclose more

⁵⁴ See John Waterbury, The Egypt of Nasser and Sadat, pp. 349-353.

information to the press.⁵⁵ He also liberalized the press, allowing it to report on a number of scandals in government ministries.⁵⁶ Sadat requested that the ASU national council make it a priority to make the operation of the executive branch completely transparent.⁵⁷ Before the corrective movement, Sadat also tried to limit the extra-legal power of the intelligence services and ASU. For example, shortly after the plebiscite that ratified Sadat's ascension to the Presidency in October of 1970, Goma'a and Sabri submitted a list of 200 politically prominent people who opposed the police state methods of Nasser's era and asked Sadat to order their arrest. Sadat refused to approve the arrests and said that there would be no more illegal arrests.⁵⁸

An analysis of Sadat's rhetoric after the May 15

⁵⁵) These bureaucratic reforms also included streamlining the bureaucracy and reassigning responsibilities; reforming the government-owned sector of the economy to give enterprises more autonomy; and increasing the salaries of the lowest paid government workers. New York Times, September 12, 1971, pg. 12.

⁵⁶ New York Times, 9/26/71, pg. 2. Al-Ahram, a newspaper tightly controlled by the government, began to reveal stories of corruption in land reclamation projects and the ministry of culture.

⁵⁷) Al-Ahram, 8/29/71, pg. 1; see also Al Ahram, July 24, 1971, pg. 1. Further action taken by Sadat was asking the People's Assembly in 1973 to formulate legislation that would regulate the public sector's reception of illegal commissions from the private sector.

⁵⁸ Middle East Record, pg. 1292, 1969-70.

corrective revolution and the Constitution promulgated later in 1971 demonstrate the tight knit relationship between gradual liberalization and the President's desire to increase his power by limiting the powers of individual officials through improving information flows concerning agency activities and strengthening legal discipline. Sadat himself, reflecting on those years, noted that the basic flaw of an autocratic government was the President's inability to control his subordinates due to lack of information:

I believe that a one man rule is fraught with dangers. Because no one can really know everything, some of his assistants will concentrate power in their hands and, so to speak, run amok - creating power bases just as had happened in Nasser's case.⁵⁹

In his rhetoric and in his discussion of the 1971 Constitution, Sadat emphasized the point that the new directions in state organization would be focused on restraining the power of individuals and specific agencies in the state by strengthening popular supervision of state agencies, carefully delimiting the authority of state agencies, and strengthening legal institutions.

At this point, it is worth reviewing how the reforms Sadat described in these speeches relate to the problems of state monitoring discussed earlier. As described in the previous chapter the Egyptian state faced problems of

⁵⁹ Sadat, Anwar, In Search of Identity, pp. 205-206.

military encroachment into the public sector, of administrative interference in the operation of monitoring institutions, and of inefficiency and corruption in the public sector and civil service. In addition, Sadat faced the problem of monitoring in the absence of the ASU - which he was in the process of disbanding - and of more closely monitoring the intelligence forces, which he believed harbored potential enemies.

Sadat proposed two main solutions to these problems: 1) the tight delimitation of jurisdiction of state agencies; and 2) the delegation of authority to decentralized monitors, including courts and popular assemblies, to monitor infringement of these jurisdictions. Appeals to courts and investigations and complaints by assemblies would generate information about who was committing the violations. This would allow the President to focus his attention on problem areas. Specific reforms taken in this regard were granting courts the power to review all sequestration of property and wire taps. Sequestration of property and surveillance were two major instruments that intelligence agencies -- military and non-military -- used to intimidate and influence individuals and public sector agencies during the 1960s.

In a speech given May 20th, 1971, shortly after the corrective movement, Sadat outlined his program for reforming the state. In this speech, he stressed the

importance of improved surveillance over the state:

There should be a constant control and surveillance of all the governmental bodies and the people should be referred to in all the important issues which concern their interests and the interests of the entire socialist community through a plebiscite...⁶⁰

He reiterated this proposal in a speech given June 10th, 1971 on the future of the ASU, arguing that an important goal was:

Asserting the control of the elected people's councils at all levels and widening the range of this control to include government organs, general organizations, and establishments, as well as ensuring that these councils perform their role in working out and supervising the execution of the plans for development.⁶¹

A second theme Sadat developed in this period was the clear limitation of the authority of government agencies. In a discussion of the Constitution he argued that one of the purposes of the new order was to limit the jurisdictions of state agencies:

The Constitution should also stipulate that government responsibilities be undertaken by institutions which have definite and clear cut functions. Also, that the authority should be linked to the officials and such a responsibility must be clearly and explicitly defined so as to enable the people's working powers to hold every official responsible for his functions.⁶²

He made this point again when discussing the future of the ASU, emphasizing that government agencies should not

⁶⁰ Sadat, Speeches, May 20, 1971, pg. 326.

⁶¹) Sadat, Speeches, June 10, 1971, pg. 355.

⁶²) Sadat, Speeches, May 20, 1971, pg. 327.

interfere in the activities of other government agencies:

Government responsibilities shall be undertaken by political constitutional, scientific and social institutions which have definite, clear cut functions and which are linked by close ties of cooperation without any interference on the part of any of them in the function of the other -- interference inverting responsibility or causing the loss of responsibility -- provided that all this takes place within the framework of the alliance, and under the complete and total control of the people.⁶³

The third theme Sadat developed was that state agencies should be constrained by law. He made this point in his discussion of the future of the ASU:

... the state must be ruled by law as are individuals. Authority should be coupled with responsibility; no decision or procedure may be taken, whatever the authority issuing it, apart from the supervision of the law.⁶⁴

Like Nasser, Sadat understood the growing importance of law in the regulation of the state as a way of countering factionalism and personal power within the state:

Every procedure in the new state should be subject to the law and everything should have its particular jury ... but, as I told you, no group, community, or individual should ever take the authority of the state in their or his hands.⁶⁵

Sadat's view of a state of institutions more effectively regulated by law and other forms of oversight implied a diminished role for the President. The President would no longer be involved in day to day management of the

⁶³) Sadat, Speeches, June 10, 1971, pg. 355.

⁶⁴ Sadat, Speeches, June 10, 1971, pg. 355.

⁶⁵ Sadat, Speeches, September 16, 1971, pg. 456.

state. Rather, the President would intervene in critical policy discussions, and set the overall direction of state policy. This idea was exemplified by Sadat's use of the term 'arbiter' to describe the President's role. Instead of being a manager of the state, the President would be the final balancer in the constitutional system:

The Constitution will be the basis of "A state of institutions, not of individuals at all ... institutions which have powers, and among which the relation is clear. Then, as the Constitution states, the President is an arbiter among the whole. He is not a party either with or against anybody. No ... he is an arbiter among them all."⁶⁶

In summary the list of reforms in judicial and bureaucratic practice, as well as the rhetoric after the 1971 corrective movement all indicate that Sadat believed in the importance of creating a state with more independent sources of power capable of regulating, monitoring, and checking the activity of bureaucratic agencies, including the police, party and security forces. One important step forward that Sadat took was greater reliance on law and the judiciary as institutions capable of regulating the bureaucracy. After the corrective movement Sadat moved beyond Nasser and broke with the idea of a centralized system of monitoring, relying far more heavily on a system of regulation through law. This seems to be motivated by a mistrust of the security and party apparatus, perhaps due to

⁶⁶ Sadat, Speeches, September 16, 1971, pg. 459.

the fact that Sadat had very little influence over these institutions. This in turn was due to his lack of a career within them. The next section considers the Permanent Constitution as a document embodying Sadat's concept of the rule of law. It emphasizes the Constitution's description of a political order designed to limit and channel political participation into greater control over state agencies.

The Permanent Constitution of 1971

The 1971 Constitution was a major step forward in Egypt's constitutional development. Prior to 1971, Egypt was governed by a national charter with no legal force and a highly autocratic temporary constitution. With the adoption of the 1971 Constitution, the respective powers of president, legislature, and judiciary became spelled out with rigor for the first time since the assumption of power by the Free Officers in 1952.

The Constitution's specification of the rights and powers of individuals, associations, the People's Assembly (the parliament), and the judiciary indicated that the increased power and freedoms granted to institutions besides the executive branch were not intended to create a liberal political system. Rather, the new Constitution can be interpreted more persuasively as an attempt to formulate a political system made up of institutions more capable of supervising and checking each other. The Constitution did

not give the judiciary and People's Assembly much of a role in guiding policy. Rather, they were given the power to monitor and restrain the bureaucracy and police.

The Constitution's authors' concern with control of the bureaucracy is evident in a number of clauses, but is most significant in areas dealing with civil rights. The Constitution's treatment of civil rights displayed a fear of association and publication. But the Constitution also displayed a commitment to empowering the courts to restrain the power of the police to violate individual rights. The freedom of the press could be curtailed by a state of war or emergency, which the President could declare, and the article discussing freedom of association outlawed associations that were "hostile to the social system".

By contrast, individual rights were protected more stringently. Part II of the Constitution empowered the judiciary in a number of ways to prevent the security forces from abusing individual rights.

Article 41 reads:

Individual freedom is a natural right. It is protected and inviolable. Except in the case of flagrante delicto, it is impermissible to arrest, search, imprison, or restrict the freedom and movement of any person except by a judicial order necessitated by the need for investigation and protecting society. Such an order will be issued by a competent judge or the public prosecution in accordance with the rules of the law. The law specifies the period of imprisonment pending

investigation.⁶⁷

Article 44 reads:

Houses are inviolable. They may not be entered or searched except with a judicial order in the manner prescribed by the law.

Article 45 reads:

The private life of the citizens is sacred and protected by the law. The sanctity and privacy of postal and telegraphic correspondence, telephone conversations, and other means of communication are guaranteed. It is impermissible to confiscate, read, or censor them without a judicial order and then only for a fixed period prescribed by law.

All these rights are significant in that they were among the few in the Constitution that were guaranteed without significant proviso. Other rights, including press freedom, public gathering, and forming organizations were subject to the restrictions of the law. Moreover, only individual rights were supervised by the judiciary.

The more rigorous protection of individual rights, as opposed to the more flimsy protection of rights of association among individuals, or communications between individuals through the press, indicates that the Constitution's authors' primary concern was enhancing judicial control over the security forces, rather than creating a more open political system. It appears that the authors of the Constitution wanted to strike a balance between controlling the activities of the security forces

⁶⁷ All quotes are from "The Constitution of the Arab Republic of Egypt" published in the Middle East Journal, vol. 26, 1972, PD 55-69.

and unleashing the social flood gates of dissent. They accomplished this by protecting individuals from unrestricted harassment, while severely restricting the possibilities of communications between individuals and the activities of groups of individuals.

The system by which the Constitution sought to shape the flow of information also displays the authors' instrumental conception of civil liberties, and repeats the authors' attempt to use some political openness to monitor the bureaucracy but not allow civic opposition to develop. For example, article 27 reads:

"beneficiaries of services projects benefitting the public will participate in the management of projects and control them according to the law."

This article provides for an extra source of discipline over the bureaucracy by opening a part of the political system to public participation.

The powers of the People's Assembly indicate that this body was designed primarily to supervise the activities of the bureaucracy. The Constitution gave the People's Assembly powers to gather information about bureaucratic agencies, but did not otherwise give it significant power over legislation and the budget. Article 131 states:

The People's Assembly may form a special committee or charge one of its committees to examine the activity of a specific administrative department, general establishment, executive or administrative machinery, or a general project with a view to finding facts and informing the assembly about their financial, administrative, or economic

conditions, or to investigate any question related to any of the above actions. To carry out its task, the committee may gather whatever evidence it considers necessary and listen to the statement of whomever it wishes. All the executive and administrative quarters must heed its request and place at its disposal all the documents, records, and anything else it asks for. The other principal power of the People's Assembly is to approve the budget.

However, Article 115 states that "The People's Assembly may not amend the draft budget except with the approval of the government." If the new budget is not approved, the old budget remains in place. Hence the People's Assembly's powers are not very strong. The People's Assembly may also propose laws, which may be vetoed by the President, which can be overridden by a 2/3 vote. However, since the president in practice has been able to strongly influence the complexion of parliament, the People's Assembly's legislative function has been extremely limited.

Finally, Article 68 of the Constitution forbade the protection of any administrative act from judicial supervision. This clause made unconstitutional a large set of laws which had prohibited the appeal numerous kinds of administrative acts to any kind of court. As a consequence, this clause significantly expanded the role of courts in supervising state agencies.

In summary, the 1971 Constitution is notable for its greater specificity in regards to the powers of institutions such as the Presidency and the judiciary, while at the same time significantly circumscribing politics so that it is

channeled into mobilizing information about the bureaucracy and toward restraining powerful state agencies such as the security forces. There was real political liberalization, but it was done in such a way that the new political freedoms were oriented toward generating information about the bureaucracy, and not towards developing a political opposition capable of effectively challenging the government's policy. To this extent the 1971 Constitution conforms to the argument of the thesis: that political liberalization in general, and empowerment of the judiciary in particular, is a result of the Presidency's desire to mitigate principal-agent problems with state agencies by mobilizing information through "fire alarm" means and creating independent institutions capable of monitoring and restraining agencies.

Conclusion

The previous two chapters demonstrate that the emergence of the idea of the rule of law and the empowerment of the judiciary were a result of the Presidency's concern with corruption and conflicts with other state institutions such as the military, the single party, and the intelligence services. The previous chapter demonstrated that corruption was a major issue facing the presidency, and that Nasser felt frustrated with standard "police patrol" methods of dealing with the problem. He felt there was a lack of

commitment on the part of bureaucrats and that without instilling a greater sense of purpose corruption would continue. He also needed better sources of information. The ASU was meant to accomplish the goals of instilling a sense of purpose among bureaucrats as well as aid in mobilizing information. This "political agency" (jihaz siyasi) would solve the problems Nasser was not able to solve through administrative means, by relying on the good will of citizens and on secretly placed loyalists within the state bureaucracy.

The ASU, however, created additional problems, as citizens took advantage of the political opportunity it afforded and sought to gain advantages for themselves in the work places and local administrative districts organized by the ASU. This led to interference in production and administration, which, judging from the reaction of political elites, hindered bureaucratic efficiency. In addition, the Vanguard organization, the secret organization of loyalists, became ossified and corrupt, as it had little accountability.

The ASU was also a possible solution to Nasser's problem of controlling an increasingly autonomous military. However, the military was able to keep the ASU out, and hence the ASU did not become an effective instrument of controlling the army.

Failing the solution of the problem of bureaucratic

control by the ASU, Nasser began turning to other methods of bureaucratic control. The idea of the rule of law emerged in response to the problem of regulating the relations between the Presidency and the military. The President was becoming concerned with the increased power of the military, and especially individuals such as Field Marshall 'Amer, and wanted to restrict its power by clearly delimiting the authority of institutions in a constitution. However, Nasser's development in this direction was only partial and weak, since he still relied heavily on the intelligence services and the ASU.

The major transition occurred when Anwar Sadat came to power. As soon as he consolidated power he rapidly moved to promulgate a constitution that would more clearly specify the relations between institutions and would also empower the judiciary to protect individual liberties, and, to some extent to protect the rights of association and speech. This movement may be interpreted as a reaction by Sadat against the ASU and intelligence agencies. Instead of relying on these agencies, which he considered politically suspect, he attempted to increase his ability to secure adequate information concerning the functioning of the state by giving greater autonomy and authority to courts, the press, and social organizations. He also sought to protect individual freedoms, in order to improve the level of criticism and opinion and to restrain state agencies such as

the police. The fact that during this period Sadat took other steps to improve his access to information indicated that this was a major objective of his in the early seventies.

In conclusion, the first steps toward political liberalization in Egypt in the seventies can be interpreted as an attempt to improve the Presidency's regulation of the state's activity by securing better information and by creating institutions that could regulate powerful executive agencies like the police. This fire alarm method was chosen for a number of reasons. One reason was the ineffectiveness of centralized monitoring systems. The second reason was the military's suspicion of the complex of institutions engaged in centralized monitoring, and its preference for a more decentralized system of monitoring which respected separate spheres of activity and did not require the military's submission. Out of the presidency's need to improve monitoring and the military's desire for autonomy emerged the beginnings of political liberalization and the empowerment of the Egyptian judiciary.

Chapter Four

Egypt's Administrative Judiciary and the Protection of Civil Liberties

This study makes two claims about the development of judicial independence. First, the judiciary was given autonomy in order to improve monitoring of the state apparatus. It would accomplish this goal by protecting limited freedoms of expression and association and by acting as an evaluator of information generated by decentralized monitors. Second, the judiciary would exploit the Presidency's structural dependence upon it by issuing rulings that increased protection of rights beyond the extent originally envisioned by the Presidency. Furthermore, it would use its mastery of the law to subvert the intentions of the Presidency through its powers of interpretation.

These claims are tested by examining evidence regarding the growing role of the Egyptian judiciary in the protection of citizens' rights in Egypt. The focus in this analysis is on the State Council (Majlis al Dawla), the administrative judiciary, which has jurisdiction for examining appeals of state actions raised by citizens and other non-state bodies. It tests the first claim by examining a) changes in the kinds of cases the State Council is allowed to adjudicate; b) changes in the formal autonomy of the State Council as reflected in its organizing legislation; and c) trends in access to administrative justice as measured by the number of administrative courts and the number of cases that are decided in which a state agency is a defendant. The

expectation is that the jurisdiction of the State Council since the early 1970s would change in two ways: a wider range of administrative acts would be subject to judicial review; and a wider range of civil liberties would be protected. We also expect a significant improvement in the legal autonomy and institutional capacity of the State Council since the early 1970s.

The second claim is tested by examining a) the jurisprudence of the Supreme Administrative Court (SAC), the highest court of appeal of the State Council, regarding political and civil rights, and b) trends in rulings issued by the State Council's lower court of first instance (Court of the Administrative Judiciary). The expectation is that the State Council would protect a range of civil liberties that exceeds those tolerated by the Presidency and that its jurisprudence would enlarge the range of rights protected.

The findings discussed below can be summarized as follows. First, since the early 1970s, there has been a significant growth in the kinds of state actions over which the State Council has jurisdiction. There has also been an improvement in the State Council's formal autonomy since the early 1970s. The volume of cases and number of courts have expanded significantly since the early 1970s. Finally, the jurisprudence of the Supreme Administrative Court (SAC) has been marked by an increasing willingness to limit the ability of the executive branch to restrict Egyptian

citizens' civil and political rights. In summary, the capacity of the State Council to supervise state agencies and protect citizens' rights has steadily improved since the early 1980s. Moreover, as demonstrated by the analysis of the jurisprudence of the SAC, the State Council has used its power of interpretation to extend its capacity to protect citizens' rights beyond what was originally intended by the Presidency. In short, the State Council has become an important conduit for citizen-initiated supervision of the state.

This is not an exhaustive inventory of the potential evidence bearing on the role of Egyptian courts in protecting civil liberties. Other kinds of courts (constitutional, criminal, security and civil) have jurisdiction over actions with important bearings on civil liberties.

4.1 The State Council's Jurisdiction, Autonomy, and Institutional Capacity

Since the early 1970s, the jurisdiction of the State Council has significantly widened, its capacity to hear cases has expanded, and its formal legal autonomy has improved.

4.1.1 Contraction and Expansion of the State Council's Jurisdiction

The State Council's jurisdiction significantly

contracted during the 1950s and 1960s and then widened again in the 1970s and 1980s. Three legal mechanisms have affected the State Council's jurisdiction: successive laws of the State Council, laws enacted by the government prohibiting classes of administrative acts from being appealed before administrative courts, and the rulings of the State Council itself regarding its jurisdiction. The successive laws of the State Council have not altered the administrative judiciary's jurisdiction significantly. The sole major changes came in the legislation of 1959. This law stripped the State Council of the right to hear appeals of presidential decrees transferring or retiring public employees. This provision was subsequently removed in the 1972 legislation, which stated merely that sovereign acts were immune from appeal to the State Council. The 1959 law also dropped the rule immunizing the following kinds of acts from administrative appeal:

Decisions involved with organizing relations between the government and the parliament, regulations specific to internal and external security of the state, and the political relations or questions related to acts of war, or sovereign acts.

Though the law of 1959 did not prohibit the State Council from hearing appeals of these sorts of acts, a governmental campaign of intimidation against the State Council led the administrative courts to issue a number of decisions which effectively nullified its jurisdiction in questions of

security and politics.¹

During the 1950s and 1960s, the government significantly restricted the jurisdiction of the administrative judiciary by issuing a number of laws which prohibited appeals of specific administrative acts. Inter Alia, the kinds of acts in which appeal was prohibited included those connected with land reform, non-disciplinary appeal of employees, university students, military rule, promotions from the second administrative grade and above, dismissal of umdas and sheikhs,² sequestration of finances, transferring public employees to pension, and state security.³ In addition, while the 1956 Constitution gave courts the power to supervise confiscation of property (article 56) and gave citizens the right to complain to state agencies (article 63), the 1964 Constitution omitted both these clauses and made no provision whatsoever for complaints or judicial supervision. In addition, the 1956 Constitution forbade the appeal of any decree issued by the Revolutionary Command Council, which governed Egypt from 1952 to 1956.

The 1971 Constitution effectively reversed the

¹ Doctor Farooq abd ul Bur, The Role of the Maglis al Dawla in Protecting Public Rights and Freedoms, part 2: 1955-1971 (Arabic) (Cairo, 1991), pp. 24-74.

² Umdas and Sheikhs are village heads.

³ Doctor Farooq abd ul Bur, The Role of the Maglis al Dawla in Protecting Public Rights and Freedoms, part 2: 1955-1971 (Arabic) (Cairo, 1991), pp. 97-99.

restriction of judicial review of administrative acts through the inclusion of article 68 which forbade any administrative act or decision from being protected from appeal to a court. The sole remaining exceptions were the rulings of the Revolutionary Command Council which the 1956 Constitution had protected from appeal. The Supreme Court and the SAC had earlier ruled that this clause could not be annulled by subsequent constitutions. Despite these rulings the 1971 Constitution expanded the scope of judicial review of state actions.

Growth of Formal Autonomy of the State Council

Since 1949, four different laws regulating the State Council have been promulgated.⁴ A comparison of these laws indicates that there was a decline in the formal autonomy of the State Council after 1959 and an improvement since 1972. Since 1972 there has been growth in the extent to which the judges themselves control the process of promotion, appointment, transfer, and discipline within the State Council, and there has been growth in the level of protection of judges from dismissal. These trends are summarized in Table 1 and their interpretations are presented in the text below.

⁴ These laws are: Law 9 of 1949, (Majalla Majlis al Dawla, January, 1950); Law 55 of 1959, (Jariida Rasmiya, # 33, February 21, 1959); Law 47 of 1972, (Jariida Rasmiya, # 40, May 10, 1972); Law 136 of 1984, (Jariida Rasmiya, # 31, August 2, 1984).

TABLE 1

COMPARISON OF LAWS ORGANIZING THE STATE COUNCIL

Major Provisions Concerning Judicial Autonomy	LAW		
	1959	1972	1984
Level Protected From Dismissal	Assistant Councillor and above	Down one rank Deputy and above (naa'ib)	Down one rank Delegate and above (mandoob)
Rules Governing Appointments			
President of the S.C.	PoR appoints, takes opinion of General Assembly of the S.C.	Appointed by PoR, takes opinion of HCJB	PoR appoints, takes opinion of GA
Nuwaab and Wakalaa	PoR appoints, takes opinion of General Assembly of the S.C.	PoR appoints, GA nominates, HCJB approves	PoR appoints, GA approves
Other Members	Proposed by AC, approved by PoR	PoR appoints, HCJB approves	PoR appoints, AC approves
Rules Governing Transfers	PoR decides, AC approves	PoSC decides, HCJB approves	PoSC decides, AC approves
Disciplinary Procedures	PoR decides, disciplinary committee must agree	PoR decides, disciplinary committee must agree	PoR decides, disciplinary committee must agree

Key:

PoR: President of the Republic.

PoSC: President of the State Council

GA: General Assembly of the State Council, made up of the councilors and judges of the State Council.

AC: Administrative Affairs Committee of the State Council, made up of the PoSC, six of his deputies and six councilors from the high administrative court.

HCJB: High Council of Judicial Bodies, a committee, whose members are the PoR, Minister of Justice, Presidents of the High Court, Court of Cassation, State Council, Cairo Court of Appeals, and other senior court officials and

Under the 1949 legislation, only the President and his deputies were protected from dismissal. They could be transferred to pension by a decree of the Minister of Justice that met with agreement of the General Assembly of the State Council. Members above the rank of assistant councillor could be dismissed by a decree of the Minister of Justice as long as the General Assembly of the State Council agreed. With regard to appointment of the President of the State Council, the 1949 legislation stipulated that the Minister of Justice propose two candidates and the General Assembly choose among them. Councillors were appointed in the following manner. If the candidates were already members of the State Council, the General Assembly proposed twice as many candidates as there were positions, and the Minister of Justice chose among them. If the candidates were not members of the State Council, the Minister of Justice proposed twice the number of candidates and the General Assembly chose among them. There was no provision for transfers.

The 1959 legislation increased some aspects of judicial autonomy, especially protection from dismissal, and decreased other aspects, especially appointments. On the whole, the law significantly increased President's ability to personally interfere in the administration of the State Council. Appointment of the President of the State Council and senior judges of the State Council was entrusted to the

President of the Republic with the only constraint being that he take the opinion of the General Assembly of Judges of the State Council. The State Council gained some autonomy in that positions from the level of Assistant Councillor and above were protected from dismissal. Nevertheless, these positions could be transferred to pension by a decree of the President of the Republic and agreement of the Committee on Discipline and Complaints, which was made up of the eight most senior judges. Similarly, the law enabled the President of the Republic to transfer judges to non-judicial employment as long as a committee of judges agreed.

The 1972 legislation governing the State Council returned some autonomy to the institution.⁵ First, the State Council gained greater control over the appointment of senior judges. Whereas in the previous legislation the President of the Republic controlled nomination and appointment decisions, in the 1972 legislation the nomination of judges was left to the General Assembly of Judges of the State Council, with the appointment left to the President of the Republic. This meant that while the President of the Republic still appointed, his breadth of choice could be considerably narrowed by the State Council. In regards to appointment of President of the State Council,

⁵ The 1972 legislation followed the promulgation of the 1971 Constitution, which it self followed the highest peak of presidential concern over control over the state apparatus.

there was no real change in the State Council's level of autonomy. Judges no longer had the legal right to an opinion in the appointment of the President of the State Council. This, however, cannot be seen as a loss of autonomy in that the President of the Republic had no legal obligation to heed the opinion of the judges under the previous legislation. In regards to disciplinary procedures, the State Council also gained some autonomy. Cases were initiated by President of the State Council rather than President of the Republic. Also, the rank at which judges were protected from dismissal was lowered by one notch.

With regards to transfers, the State Council lost autonomy. Under the previous legislation transfers were decided by the President of the Republic but required the approval of a committee of State Council judges. Under the 1972 legislation transfer decisions were made by the President of the State Council, but approval became the right of the High Council of Judicial Bodies.⁶ This body was chaired by the President, but largely made up of heads of the various high courts of appeals. On balance the 1972 legislation gave the State Council greater influence in the conduct of its own affairs. It gained

⁶ Made up of the President of the Republic, Minister of Justice, Presidents of the Supreme Court, Court of Cassation, State Council, Cairo Court of Appeals, and other senior court officials and their deputies.

autonomy in the realms of appointment of senior judges and discipline, but lost it in the realm of transfers.

The legislation of 1984 granted further autonomy to the State Council, particularly in the realms of appointment of senior judges and in transfers. The level at which judges were protected from dismissal moved down another notch. Appointment of senior judges remained in the hands of the President of the Republic, but for the first time since the revolution of 1952 such appointments required the approval of the General Assembly of Judges of the State Council. Similarly, approval of transfers returned to the control of judges of the State Council in 1984. There was no change in rules governing disciplinary actions or transfers. The appointment of the President of the State Council remained in the hands of the President of the Republic.

These three pieces of legislation indicate that beginning with the legislation of 1972 there has been steady growth in the formal autonomy of the State Council.

Growth in Access to Administrative Justice

The growth of access to administrative justice is measured here in three ways: Legal standing, the number of administrative courts, and the number of cases in which a state agency is a defendant. Legal standing was constant in all four laws of the State Council. Each law required that for an appeal of an administrative act to be

Table 2

Establishment of Courts of the State Council

<u>Type of Court</u>	<u>Date</u>	<u>City</u>
Lower Court of Appeal ^a	Feb 15, 1973	Alexandria (1)
Court of 1st Instance ^b	Feb 26, 1973	Asyut (2)
Court of 1st Instance	May 12, 1973	Mansoura (3)
Court of 1st Instance	May 12, 1973	Tanta (4)
Lower Court of Appeal	1978	Mansoura (5)
Lower Court of Appeal	Sept 29, 1988	Mansoura (6)
Lower Court of Appeal	Sept 29, 1988	Alexandria (7)
Lower Court of Appeal	Sept 7, 1989	Asyut (8)
Lower Court of Appeal	Sept 23, 1990	Mansoura (9)
Two Lower Courts of Appeal	Dec 17, 1990	Cairo (10)
Lower Court of Appeal	Sept 30, 1991	Port Said (11)
Court of 1st Instance	Sept 30, 1991	Port Said (12)

a) Court of the Administrative Judiciary b) Administrative Court

Jurisdictions

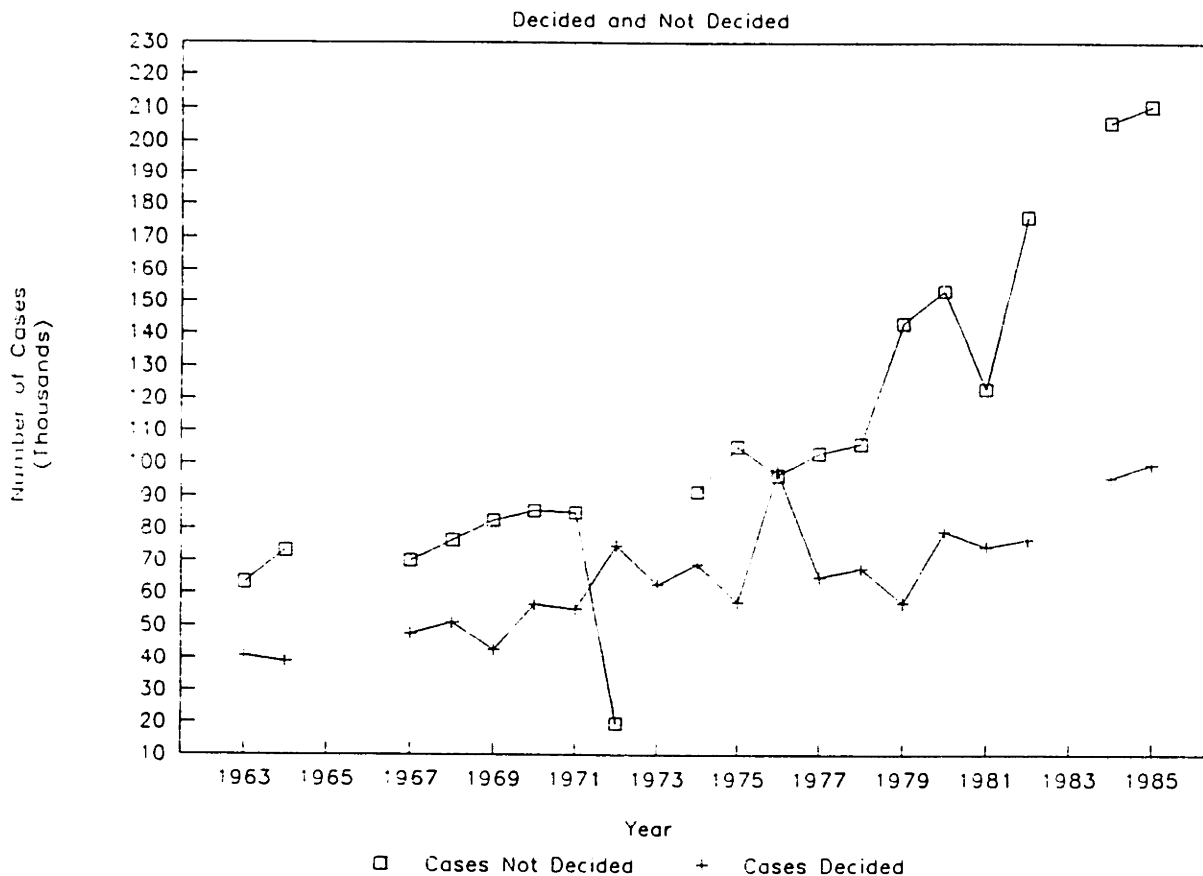
- 1) Governorates of Alexandria, Buhaira and Matrouh
- 2) Governorates of Asyut, al Minya, Suhag, Gena, Aswaan, Wadi el Gediid.
- 3) Governorates of Daqhaliya, Dumiyat, Sharqiya, Isma'iliya, Port Said.
- 4) Governorates of al Gharbiya, Kafr al Sheikh, Qalyubiya, and Manufiya.
- 5) Data not available.
- 6) Contracts, individuals and compensation, and exceptional appeals.
- 7) Contracts, individuals and compensation, and exceptional appeals.
- 8) Branches of public institutions and local government.
- 9) First district/Mansoura now has jurisdiction over Daqhaliya and Sinai; Second district:Port Said and Isma'iliya; Third District: Sharqiya and Dumiyat.
- 10) First district divided into three districts
- 11) With jurisdiction over governorates of Port Said, Suez, Dumiyat, and North and South Sinai.
- 12) With jurisdiction over governorates of Port Said, Suez, Dumiyat, and North and South Sinai.

justiciable, the person who appealed the act had to have a personal interest in the act. Table 2 summarizes the dates of founding of new courts of the State Council.⁷ The growth of administrative courts can be divided into three distinct periods of expansion. The Court of the Administrative Judiciary was formed in 1946 and the Supreme Administrative Court was formed in 1955. In 1973, two years after Anwar Sadat's corrective movement, a new Court of the Administrative Judiciary (functioning as a lower court of appeal and court of first instance) and three Administrative Courts (courts of first instance) were added. Finally, in the late 1980s and early 1990s eight new courts were added throughout Egypt.

Egyptian judicial statistics show that access to administrative justice was significantly higher in the 1970s and 1980s than in the 1960s. The number of cases decided in which the state was a defendant grew at higher rates in the 1970s and 1980s than in the 1960s. This is borne out by regression analyses that show that the number of cases decided grew exponentially during the 1960s, 1970s and 1980s. Also, since the 1971 Constitution was issued the average number of cases decided per capita each year has been higher than before the Constitution was issued. These two findings indicate that administrative justice has grown

⁷ Sources: Wagaai' Misriya, #34, 1973; #104, #146 1973; #275, 1978; #220, 1988; #203, 1989; #222, #226, 1990; #220, 1991.

Figure 1
Cases of the State Affairs Admin.



Source: Egyptian Judicial Statistics, Ministry of Justice

All Cases Received by SAA

Equation	R ²	X Coefficient	X Coeff S.E.	T statistic
Linear	.817	8661.011	994.001	8.713
Exponential	.849	.021	0.00214	9.788

All Cases Decided

Equation	R ²	X Coefficient	X Coeff S.E.	T statistic
Linear	.692	2365.425	372.03	6.358
Exponential	.738	.016	0.00228	7.117

All Cases Not Decided

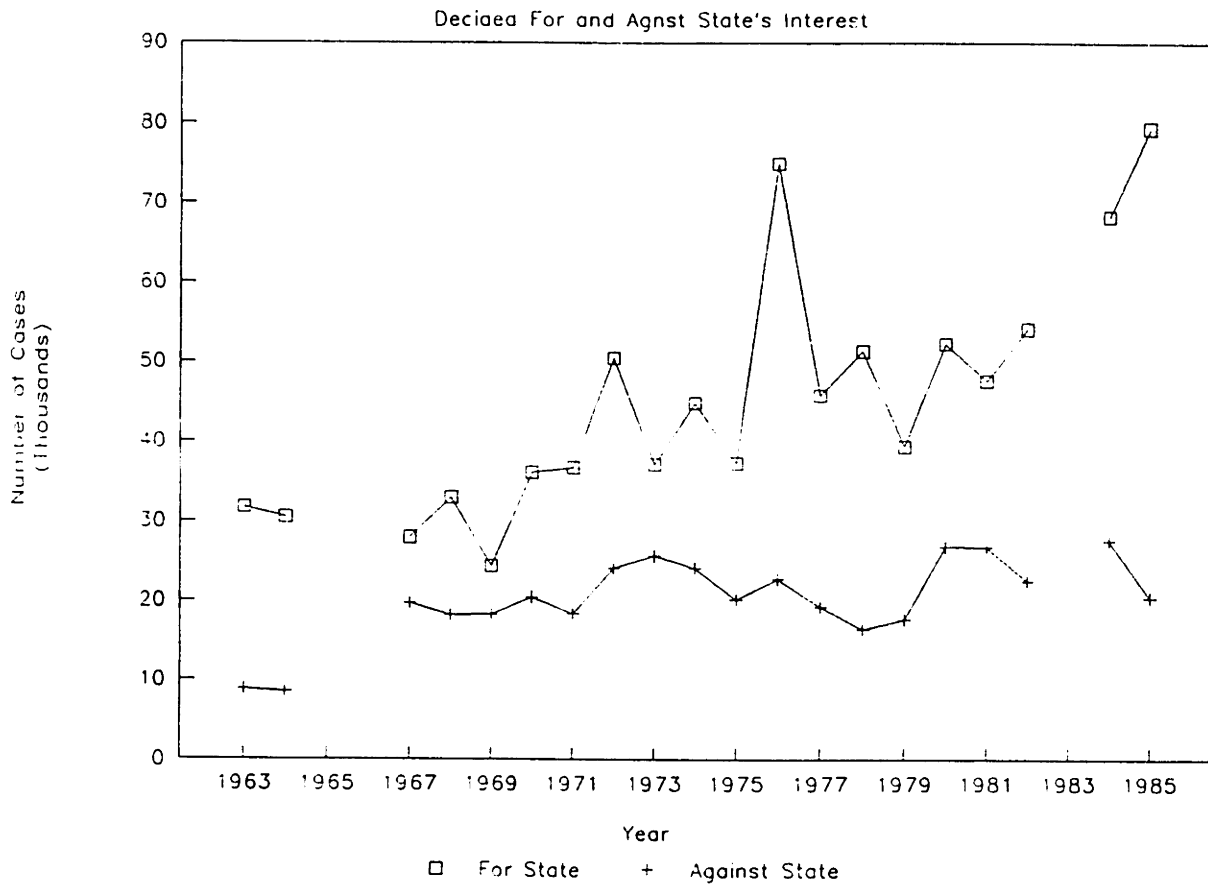
Equation	R ²	X Coefficient	X Coeff S.E.	T statistic
Linear	.704	6294.476	989.356	6.362
Exponential	.495	.0244	0.00598	4.086

in importance as a form of regulating relationships between citizen and state in Egypt since the 1960s.

The volume of cases was measured by the cases handled by the State Affairs Administration (SAA) or Idarat Qadaya al Dawla, which is responsible for defending the state's interests in appeals raised against it. The volume of cases handled by the SAA between 1963 and 1985 shows exponential growth. The data for number of cases in which the state is a defendant that were decided and not decided between 1963 and 1985 is displayed in Figure 1. Regression analyses were performed on each time series. An exponential equation fitted the series for Cases Decided better than a linear model.⁸ A linear equation fit the series of Cases Not Decided better than an exponential equation. However, when the 1972 outlier was taken out of the series, the exponential model fitted better. The regression analyses presented below the figure indicate that while the number of cases decided each year was growing exponentially, the number of cases not decided was also growing exponentially, but at a faster rate. Figure 2, which presents trends in numbers of cases decided for and against the interest of the state indicates that most of the growth in the number of cases decided has not resulted in an increase in judgements

⁸ In both models the year was the independent variable and the number of cases was the dependent variable. The exponential model was estimated by taking the logarithm of the number of cases.

Figure 2
Cases of the State Affairs Admin.



Source: Egyptian Judicial Statistics, Ministry of Justice

All Cases Decided in State's Interest

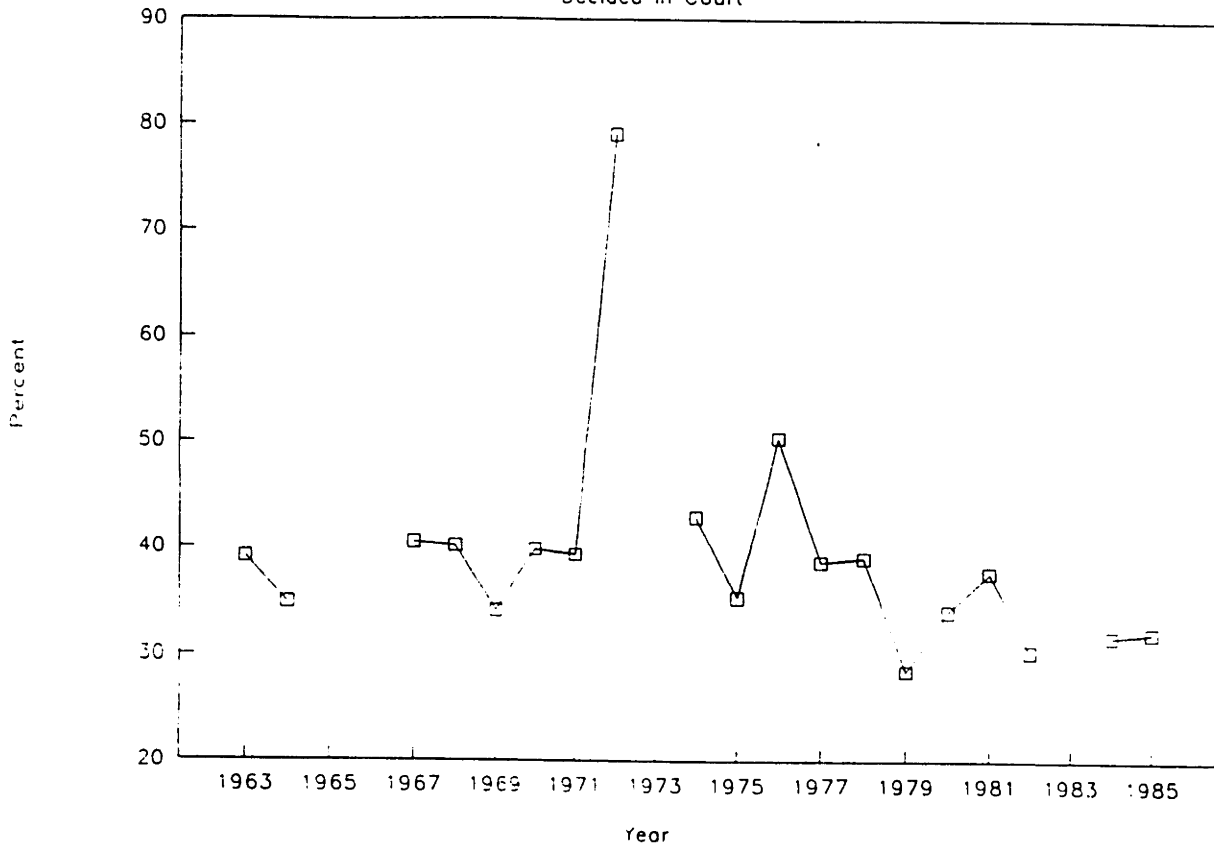
Equation	R ²	X Coefficient	X Coeff S.E.	T statistic
Linear	.603	1839.731	351.416	5.235
Exponential	.657	.017	0.00299	5.878

All Cases Decided Against State's Interest

Equation	R ²	X Coefficient	X Coeff S.E.	T statistic
Linear	.425	525.693	144.107	3.647
Exponential	.431	.014	0.00378	3.698

Percentage of Cases Involving the State

Decided in Court

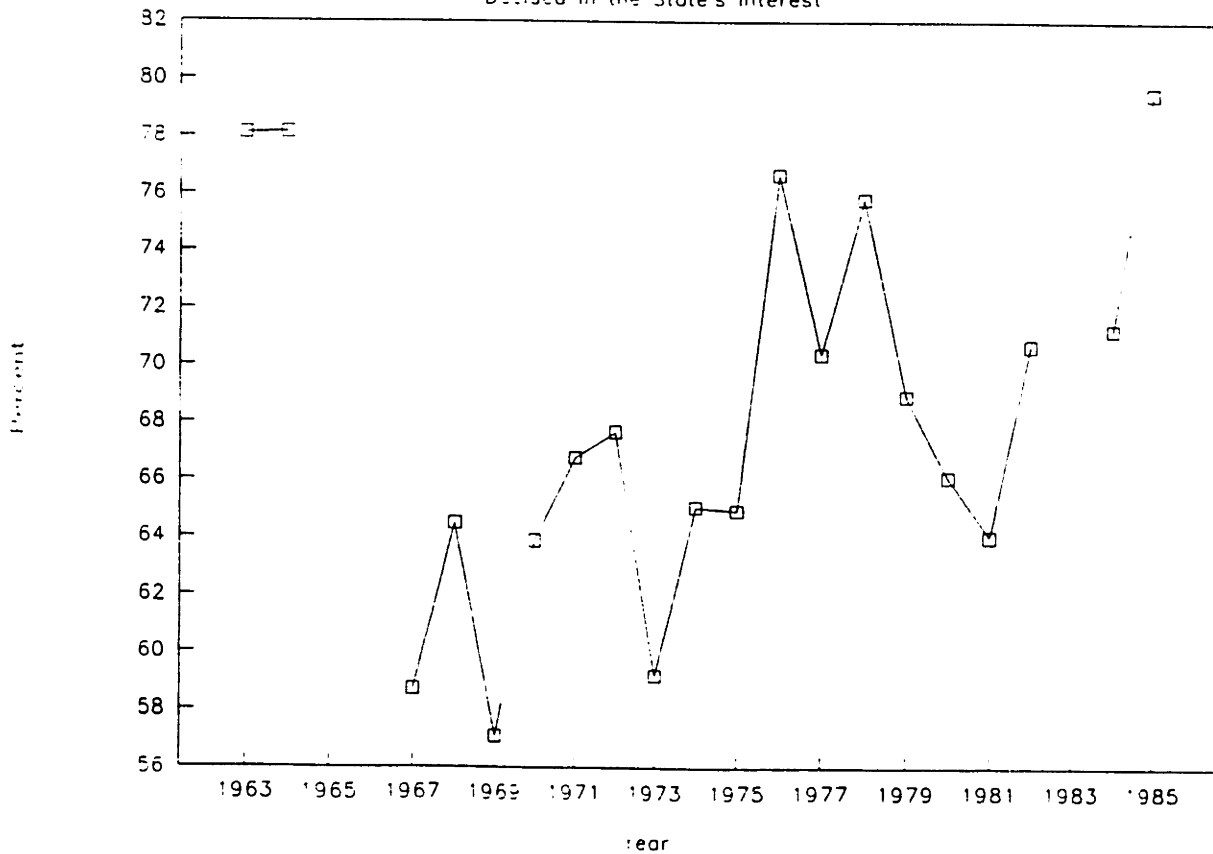


Source: Egyptian Judicial Statistics, Ministry of Justice

Figure 4

Percentage of Cases Involving the State

Decided in the State's interest



Source: Egyptian Judicial Statistics, Ministry of Justice

against the interest of the state. Rather, exponential growth in the number of cases decided in the interest of the state has accounted for most of the increase in number of cases decided. Figure 3 shows that the percentage of cases received each year that are decided has remained constant despite a growth in the number of cases. Figure 4 shows that the percentage of cases decided in the interest of the state has on the whole increased.

When examining the number of cases decided per capita, it is evident that there has been a qualitative shift in Egyptians' access to administrative justice since the promulgation of the 1971 Constitution. The year 1971 is an important watershed because that year marks the decision to turn to a decentralized system of monitoring. Thus, given the hypothesis of the study, we should expect a growth in access to administrative justice following 1971. Table 3 shows the distribution of cases decided per capita decided before and after the promulgation of the Constitution. Figure 5 displays these data in time series form. In nine out of the twelve years for which data is available since 1971 (1972-1982, 1984), the number of cases decided per capita was higher than in the period preceding the promulgation of the Constitution. A t-test was performed to test the null hypothesis that the means of the two distributions were drawn from the same population (Table 3b). This test indicated that the null hypothesis could be

rejected with a certainty of 99.995% (i.e. the probability that the two means came from the same population was less than 0.005%). In order to test the hypothesis that these two distributions were part of the same upward secular trend regression analyses were performed on the two time series, 1963-1971 and 1972-1984 (Table 3c). The coefficients were not statistically different from 0. In other words, the best model describing each time series is a horizontal line. This indicates that we can be reasonably certain that there was no increasing trend of cases decided per capita before 1971 or after 1971. Rather, there was a shift upwards in the access to administrative justice per capita in 1971. These data strongly suggest that 1971 was a break point in Egyptian's access to administrative justice: The Presidency's decision to turn to a system of decentralized monitoring was accompanied by a real improvement in Egyptians' ability to hold state agencies accountable through the use of administrative courts.

Table 3a

Distribution of Cases Decided Per Capita by Period

Number of Cases Decided Per Capita	1963 to 1971	1972 to 1984
< 1401	2	1
1401 - 1500	1	
1501 - 1600	1	1
1601 - 1700	3	1
1701 - 1800		4
1801 - 1900		2
1901 - 2000		
2001 - 2100		1
2101 - 2200		1
2201 - 2300		
> 2301		1
Average:	1514	1835

Sources: Egyptian Judicial Statistics; IMF, International Financial Statistics Yearbook, various years.

Table 3b

Results of T Test comparing means of Cases Decided Per Capita

1963-1971 and 1972-1984

	1963-1971	1972-1984
Mean	1514.086	1834.99
Variance	20597.3	95859.14
Observations	7	12

Degrees of Freedom	16.494
t	-3.0695
P(T<=t), one tailed test	.003667

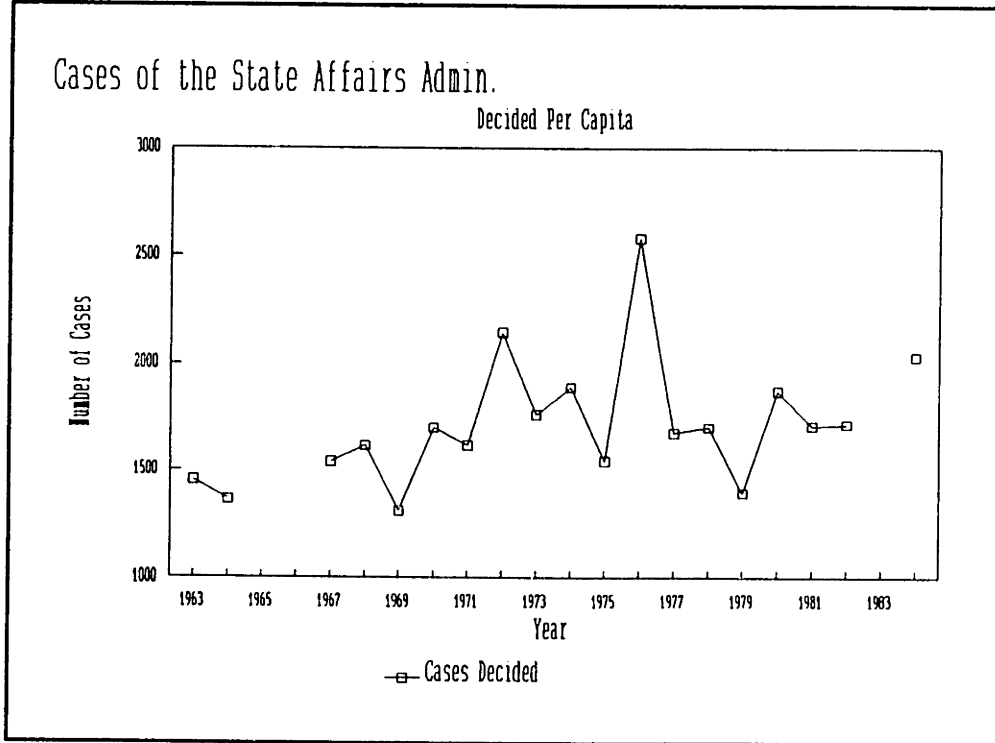
Table 3c

Regression Analyses of Time Series

Time Series

	1963-1971	1972-1984
Constant	-48070.4	29950.17
Std Error of Y	133.8	319.9
R Squared	0.276	.0297
Observations	7	12
Degrees of Freedom	5	10
X Coefficient	25.203	-14.217
S.E. Coefficient	18.252	25.699
T Statistic	1.381	-0.553
p	.25 > p > .1	p > .25

Figure 5



Source: Egyptian Judicial Statistics

In summary, access to administrative justice has increased significantly in Egypt in absolute terms due to the increase in the number of administrative courts and their distribution throughout the country. This is reflected in the exponential growth of the number of cases decided in these courts and in the increase in the mean of number of cases decided per capita after 1971. However, this has not resulted in a large growth of judgements against the interest of the state. In addition, there has been a widening in the jurisdiction of the State Council and an improvement in its autonomy.

The Jurisprudence of the Supreme Administrative Court of the State Council: Jurisdictional Assertion and the Protection of Political and Civil Rights

Sadat's "state of institutions" combined a decentralized system of monitoring with a set of political guidelines and supervisory institutions which limited the extent to which the new freedoms could be used by a political opposition. During the 1970s, 1980s and 1990s, the conjunction of a newly empowered judiciary and a constitution guaranteeing basic freedoms with these repressive laws and institutions created significant conflict over the extent to which the freedoms would actually be respected. In particular friction was especially strong between the Supreme Administrative Court (SAC) and two sets of repressive laws and institutions.

Below these conflicts are summarized and subsequently discussed in detail.

The first institution the State Council came into conflict with is the Socialist Prosecutor, which was empowered to prosecute individuals before "Courts of Values", whose members were directly appointed by the President of the Republic, for violation of a large number of poorly defined crimes against public morality of a political nature. In addition, the Socialist Prosecutor was empowered to disqualify candidates for local and union elections who violated public morality as defined in various laws. Existing law allowed those candidates who were prohibited from contesting an election to appeal the decision to a "Court of Values". However, the SAC defended the right of the courts of the State Council to review these decisions and supported rulings of lower courts of the State Council striking down the Socialist Prosecutor's disqualification of candidates.

The second major locus of institutional conflict was between the State Council and the National Democratic Party. The Constitution of 1971 gave the right to determine the correctness of a person's membership in the People's Assembly to the People's Assembly itself. This meant that the dominant party, the National Democratic Party (NDP), had the right to determine whether or not its members or the members of opposition parties were valid members of the

People's Assembly. The NDP had construed this widely to mean that any questioning of electoral procedures was under the People's Assembly's jurisdiction. However, the SAC repeatedly narrowed the People's Assembly's jurisdiction and widened the scope of electoral cases appealable to the courts of the State Council.

The third area of conflict concerned the edicts associated with military and emergency rule. With only a brief interlude in the early 1980s a state of emergency has been in effect in Egypt since 1958. The law of emergency powers gave the President and his deputies wide powers of arrest, detention, and confiscation of property. The State Council has, since the early 1970s, sought to limit and define the circumstances in which the emergency law could be used. Though it could not intervene to stop arrest, detention, and seizure, as the immediate review of such acts was the purview of the State Security Courts, it established norms under which compensation was justified.

The SAC, the Socialist Prosecutor and Labor Elections

In 1979, a new law empowered the Socialist Prosecutor to disqualify candidates to labor union elections.⁹ The Socialist Prosecutor was an investigative and prosecutorial agency designed to aid the President in repressing his

⁹ The People's Assembly also argued that the Socialist Prosecutor was an administrative agency and hence subject to its supervision. See Al Ahram, January 22, 1975, pg. 1.

opponents. The crimes the Socialist Prosecutor was charged with investigating and prosecuting were of a political nature: incitement to deny or act in violation of heavenly injunctions; encouraging youth to abandon religion; and publication or spreading news or false rumours with evil intent. These crimes were meant to target communists. Moreover, the Socialist Prosecutor was not an independent legal institution: The Prosecutor was appointed by the President with the agreement of the People's Assembly and answerable to the People's Assembly. Finally, the court before which the Prosecutor tried accused criminals, the Court of Values, was only partly independent: It was composed of the President of the Court of Cassation,¹⁰ four councilors of the Court of Cassation, and four public figures who were appointed by the Minister of Justice. Decisions of the court were taken by majority vote.

In 1979, the Socialist Prosecutor disqualified 58 candidates, a number of whom appealed the decisions to the Court of the Administrative Judiciary, the lower court of the State Council. These disqualifications were sustained by the Court of Values. However, twelve of the disqualified candidates appealed the rulings of the Court of Values to the Court of the Administrative Judiciary (CAJ). The CAJ overturned all the decisions of the Socialist Prosecutor

¹⁰ The Court of Cassation (Mahkama al Naqd) is the highest court of appeal in civil cases.

appealed to it.¹¹ The administrative court's decisions overturning the Socialist Prosecutor's disqualifications were appealed to the Supreme Administrative Court, the highest court of the State Council, which upheld the Council of State's jurisdiction.¹² Subsequent disqualifications in labor elections were appealed to the State Council and overturned in the 1983, 1987, and 1991 elections.¹³

The logic of the Supreme Administrative Court's decision illustrates the discretion judges could exercise in the use of their power of interpretation. In the ruling, the court argued that in the text of the law of the Socialist Prosecutor the legislator distinguished between "complaints" and "suits", implying that they were distinct legal actions. Furthermore, the legislator granted the

¹¹ See Al Sha'ab Sept 4, 1979, pg. 9; Al Ahaly, 1983; Rulings of cases 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 127, 128, 130, 131, 142, 146, of Judicial Year 34 of the Court of the Administrative Judiciary, State Council Archives, for these and other cases pertaining to appeals of disqualifications from elections by the Socialist Prosecutor.

¹² Appeals 396 and 470 of Judicial Year 30, Supreme Administrative Court, Sitting of March 16, 1985, summarized in The Modern Administrative Encyclopedia: Principles of the Supreme Administrative Court and Opinions of the General Assembly, 1946-1985, (Arabic) prepared under the supervision of Na'iim 'atiya and Hassan Fakahany, (Cairo: Al Dar al Arabiya lil Mausua'at, 1986-1987), pp. 539-541. The State Council had ruled in an earlier decision that the Socialist Prosecutor was an administrative agency, and hence its decisions were subject to judicial review by the administrative courts.

¹³ Al Ahaly: May 7, 1986, pg 1., October 7, 1987 pg. 1., Dec 16, 1987 pg. 5., October 3, 1991, pg. 1, October 23, 1991, pg.4, October 30, 1991, pg. 1, November 13, 1991, pg. 4, November 20, 1991, pg. 4, November 27, 1991, pg.4; Al Ahram: Oct. 28, 1991, pg. 8., Sept. 29, 1991, pg. 8.

right to "complain" to the Court of Values. Given that complaints and suits were distinct actions, this implied that the complainer had not exhausted his right to sue by complaining before the Court of Values. Furthermore, because the Socialist Prosecutor was an administrative agency and his decisions were administrative decisions, and because the State Council had jurisdiction over administrative disputes, it had jurisdiction over suits which arose from actions of the Socialist Prosecutor.

Other jurisprudence by the Supreme Administrative Court has narrowed the conditions in which the Socialist Prosecutor and Courts of Values could take actions which infringed on personal liberties. One case annulled a decision to deny the right of candidacy to a person on the basis that he was charged with and found guilty of communist activity twenty years earlier. The court found that neither a criminal sentence passed twenty years earlier nor arrest and subsequent release without charge were sufficient grounds for denial of the right to candidacy.¹⁴ Similarly, in a case involving the sequestration of property, the court placed restrictions on the effects and methods of sequestration.¹⁵

¹⁴ Appeal 220, JY 26, March 2, 1981.

¹⁵ Appeal 1285, JY 28, June 1, 1985.

The SAC, People's Assembly Elections and the National Democratic Party

Though the Court of the Administrative Judiciary (CAJ), the lower court of appeals of the State Council, had an extensive jurisprudence regarding the conduct of elections prior to 1952, judicial activity in this domain fell into abeyance after the Free Officers came to power. The Constitution of 1971 sought to restrict the role of courts in reviewing electoral procedures by making the People's Assembly the sole determinant of the correctness of membership in the Parliament. However, in 1977 and 1985, the SAC laid the jurisprudential basis for the State Council's review of electoral procedures. In the first ruling, the SAC argued that since the agency reviewing the eligibility of candidates for People's Assembly elections was an administrative agency, its decisions were administrative acts and consequently appealable to the State Council.¹⁶

The second ruling laid down a more comprehensive rule specifying which electorally-related administrative acts were subject to judicial review. The ruling distinguished between electoral decisions expressing the will of an administrative agency and decisions expressing the will of the electors. Actions expressing the will of an administrative agency were, in the view of the SAC, subject

¹⁶ Appeal 15, JY 23, issued April 9, 1977.

to review by the State Council. This distinction allowed the SAC to identify a number of administrative decisions relevant to the conduct of elections that are susceptible to appeal to the State Council. In particular, decisions concerning the eligibility of candidacy, the placing of candidates in particular electoral categories,¹⁷ the counting of votes, the determination of which parties have won enough votes to hold seats in the People's Assembly, the distribution of seats among parties, and the announcement of electoral results are all susceptible to appeal.¹⁸

The expansion of the State Council's jurisdiction resulted in a broadening of the opportunities for political competition in Egypt. In 1989 the Supreme Administrative Court upheld a decision of the Court of the Administrative Judiciary finding that some 39 members of the ruling party were incorrectly given seats in the People's Assembly and that they should be replaced by members of opposition parties.¹⁹ The leadership of the People's Assembly rejected this decision and refused to obey it. A

¹⁷ Egypt's electoral law requires that half of the members of the People's Assembly be workers or peasants. Therefore, candidates must legally establish their class status as either peasant, worker or neither.

¹⁸ Appeal 3096, JY 30, issued May 25, 1985.

¹⁹ Al Ahram, April 30, 1989, pg. 1.

constitutional crisis ensued.²⁰

The constitutional crisis was only broken by a decision of the Supreme Constitutional Court (SCC) which found that the electoral law which governed the People's Assembly elections was unconstitutional. As a consequence all further acts of the People's Assembly were null and void and a new People's Assembly had to be elected. This was the second SCC ruling to find that the electoral law was unconstitutional. The first ruling was issued in May of 1987, and found that the system of proportional representation of party lists was unconstitutional because it prohibited individual candidacies. The report of the State Ombudsman (mafawad al dawla) of the SCC²¹ was issued at the end of 1986 and argued that the law was unconstitutional. Anticipating that the SCC ruling would follow the Ombudsman report, the President and the leadership of the ruling National Democratic Party (NDP) in the People's Assembly issued a new law providing for a combined system of individual candidacies and party lists. The President then dissolved the People's Assembly and set

²⁰ For a description of this situation, see Enid Hill, "Majlis al Dawla: The Administrative Courts of Egypt and Administrative Law", in Islam and Public Law, Chibli Mallat, ed., (Norwell, MA: Kluwer, 1993), pp. 226-228; Arab Strategic Report, 1990, (Arabic) (Cairo: Al Ahram Center for Political And Strategic Studies, 1991), pp. 408-409.

²¹ A body of legal councilors attached to the court responsible for offering opinions on all cases.

new elections for April of 1987.²²

The Ombudsman's report argued that the electoral law violated the principle of equality before the law because it prohibited non-party members from competing in elections to the People's Assembly. The new law passed at the end of 1986 maintained the party list system, but provided that in each of the 48 electoral districts one independent candidate would be elected to the People's Assembly.²³ The second SCC ruling, issued in May of 1990, found that this compromise also violated the principle of equality before the law since independents did not have the same opportunity to win seats as party members.²⁴ The second revision of the electoral law provided for the election of 222 independent candidates, greatly expanding the potential scope of political opposition.²⁵

The result of the 1990 parliamentary election indicates that the SCC's ruling significantly expanded the potential for political opposition in Egypt. All of the opposition

²² Arab Strategic Report, 1987, pg. 326; Text of the SCC decision published in The Supreme Constitutional Court: Rulings The Court Issued from 1987 to 1990 (Arabic) (Cairo), Issue 131, of Constitutional Judicial Year 6, Sitting of May 16, 1987.

²³ Arab Strategic Report, 1987, (Arabic), op. cit., pg. 326. Text of the law is published in Al Ahram, Dec 31, 1986, pg. 6.

²⁴ Text of the SCC decision published in The Supreme Constitutional Court: Rulings The Court Issued from 1987 to 1990 (Cairo), Issue 37, of Constitutional Judicial Year 9, Sitting of May 19, 1990.

²⁵ Text of revisions printed in Al Ahram,

parties with the exception of Tagamm'u²⁶ decided to boycott the election. Nevertheless, the NDP won far fewer seats than it had in any previous election. In 1984 it won 391 (87%) of the seats and in 1987 it won 73% of the seats. In 1990, with only the weakest opposition party running against it, it won 253, or 57% of the seats. Ninety-five of the victorious independent candidates were affiliated with the NDP but ran independently because they did not receive their party's nomination. The NDP was able to bring these 95 members back into the party and thus increase its parliamentary majority from 253 to 348 members giving it 79.1 percent of the seats.²⁷ Although its formal control of parliamentary seats was equivalent to past parliaments, nearly a hundred of those seats were held by candidates who ran independently of the NDP. Because they ran independently, their power was derived from their alliances within their electoral districts as well as from their access to the NDP's patronage. This means that the party itself may have to tolerate more pluralism, resulting in an opening of the political system within the context of the party. Growing pluralism in the party was also indicated by the willingness of some NDP-affiliated governors to campaign

²⁶ Tagammu' was the party which emerged from the left wing of the ASU in the 1970s. Its activists include communists, Nasserists, and socialist Islamists.

²⁷ Electoral data are from Gehad Auda, "Egypt's Uneasy Party Politics," Journal of Democracy, vol 2, # 2, Spring, 1991, pp. 74-76.

against NDP candidates.

The SAC's jurisprudence has been ambiguous concerning the question of whether accusations of electoral fraud falls within its jurisdiction. The ambiguity stems from the court's ruling that decisions which nullify an expression of the peoples' will remain the jurisdiction of the People's Assembly. In practice, this has come to mean that accusations of electoral fraud have been referred to the People's Assembly. Under article 93 of the 1971 Constitution, the Court of Cassation (Mahkamat ul Naqd), the highest court of appeal in criminal and civil cases, is charged with investigating these accusations but its findings are not binding on the People's Assembly. By the end of 1993, the Court of Cassation had found that 69 deputies (out of 444) were incorrectly seated in the 1990 People's Assembly elections.²⁸ Though the Court's findings are not binding, a recent decision has held that those who lost seats to illegally seated deputies are entitled to compensation. In August, 1994, the sixth district of the South Cairo Court for Compensation ordered the first award for a total of LE 30,000 (roughly \$10,000).²⁹

²⁸ Arab Organization for Human Rights, Human Rights in the Arab World, 1994 report, (Cairo, 1994), pg. 261.

²⁹ Al Ahaly, August 3, 1994, pg. 1.

The Formation of Parties

The question of the establishment of new parties is the second issue in which the State Council has challenged the NDP and the People's Assembly. Here the jurisdictional question is clear: the law governing the establishment of new parties requires that permission be sought from the Committee of Party Affairs, which is formed among various government officials, which have tended to be drawn from the NDP. The law allows a special court - The Party Circuit Court - formed from councilors of the State Council and public personalities appointed by the President of the Republic to hear appeals of the decisions of the Committee of Party Affairs. Five members of the court are regular State Council judges. The President appoints four additional "public personalities".

In general the Party Circuit has granted permission to form parties where the committee has not. In so doing the court has issued a number of rulings which narrow the grounds for rejecting the application of a prospective party. This is especially true of the clause which requires that new parties have programs which are distinct from existing parties. The court has granted legalization to the environmentalist Green Party, the Democratic Unity Party, and the Misr al Fattat Party and the Nasserist Party.

Several insignificant parties have been denied legalization.³⁰ The court originally rejected the Nasserist Party's appeal because it did not support democracy or the plurality of parties.³¹ This decision was later reversed.

In the rulings accepting the formation of parties, the court rejected arguments of the People's Assembly Party Committee that would have narrowed the scope for political opposition. The Law on Political Parties required that new parties have programs that are distinguishable from existing parties. In the case of the Green Party, the court rejected the Party Committee's argument that the programs of all existing parties constitute one program, and that each new party must distinguish itself from that program, rather than from the program of each existing party individually.³² If the Party Committee's argument had been upheld, then any new party's program could not share elements with any other existing parties. The court upheld a less restrictive interpretation of the law, namely, that the new party's program could not be the same as the program of any existing party. In the case of the Misr al Fattat Party, the court

³⁰ Including the "New Civilization Party." This party's program included proposals to ban street vending in Egypt and put the displaced labor to work digging a second Nile Valley from the Aswan Dam to the Mediterranean. Appeal 2278, JY 31, March 21, 1987.

³¹ Appeal 777, JY 20, April 14, 1990.

³² Appeal 1175, JY 35, April 14, 1990.

ruled that sharing positions with other parties was not sufficient grounds for rejection.³³ And in the case of the Democratic Unity Party, the court rejected the argument that sharing the basic principals of other parties, as opposed to not having a distinct program, was grounds for denying a party's legalization.³⁴

The most significant decision regarding party formation came from the Supreme Constitutional Court. The Law on Political Parties originally stipulated that a party could not advocate the abrogation of the Camp David Accord. In 1988 the SCC ruled that this was unconstitutional because it constituted an unwarranted restriction on the freedom of speech.³⁵ This appeal was raised by the Nasserist Party.

The SAC and Exceptional Regimes

The jurisprudence of the Supreme Administrative Court has passed through three phases with respect to the exceptional regimes of military rule and the state of emergency. In the first phase, roughly 1948 - 1958, the SAC adhered to the doctrine that since the emergency law and military rule were exceptional regimes, a narrow interpretation of their powers was necessary. This was superseded in the late 1950s and 1960s by a more permissive

³³ Appeal 3282, JY 24, April 14, 1990.

³⁴ Appeal 45, JY 35, April 14, 1990.

³⁵ SCC Issue 44, JY 7, May 7, 1988.

set of rulings. These rulings made the standards that had to be met for the decrees taken under these laws to be legitimate more vague. Finally, in the 1970s and 1980s, the SAC returned to the doctrine of a narrow construction of the powers granted by the legislation governing military rule and the state of emergency legislation. It also asserted its jurisdiction to review acts of the state security courts, which were charged with hearing appeals of acts taken under the state of emergency legislation.

The more restrictive interpretation of emergency powers and military rule was illustrated in a ruling of the Supreme Administrative Court issued in 1957. This ruling placed the following restrictions on the violations of public freedoms during a state of emergency: The measure had to be necessary to confront specific conditions of great danger that threatened security and order; the measures taken had to be the sole means capable of preventing harm to security and order; and all such measures could be annulled by the administrative judiciary if they were not adequately justified.³⁶

In the early 1960s, the Supreme Administrative Court retreated from this position when it issued a decision granting wide latitude to exceptional acts of the government. Though this ruling retained the conditions mentioned above, it added that the measures taken need not

³⁶ Appeal 1517, JY 2, April 13, 1957.

comply with the law. Rather they only had to meet the condition of achieving the public interest.³⁷ This legitimated a wide range of arbitrary state actions. Other decisions from the early 1960's provided very loose conditions for arrest under the state of emergency. These decisions legitimated arrest based solely on suspicion, which was defined only as being named in a report of a state agency.³⁸ Previous rulings had adhered to a stricter definition of suspicion. Another decision relaxed the rather stricter meaning of suspicion in the case of arrests ordered by the border guard.³⁹ A third ruling found that a prior ruling of innocence in a criminal trial did not justify regarding an individual as being above suspicion.⁴⁰

Beginning in 1978 the Supreme Administrative Court began to issue rulings which placed stricter guidelines on the implementation of the emergency law and increased the scope of its jurisdiction with regard to acts taken under the emergency law. In 1978 the SAC issued a ruling which re-imposed the more restrictive definition of suspicion, thus limiting the kinds of persons who might legitimately be arrested under the state of emergency law.⁴¹ This ruling

³⁷ Appeal 1956, JY 5, April 14, 1962.

³⁸ Appeal 187, JY 6, June 30, 1962.

³⁹ Appeal 1720, JY 6 March 23, 1963

⁴⁰ Appeal 1315, JY 7, December 14, 1963.

⁴¹ Appeals 675 and 797 of JY 22, May 27, 1978.

also clearly established the right to compensation - adjudicated by the State Council - of those who were arrested illegally. A decision in 1985 further narrowed the scope for legitimate arrest under the state of emergency law by requiring that the person arrested be in a state of suspicion or constitute a danger to the regime at the time of arrest.⁴² Individuals could no longer remain on a list of those considered suspicious or dangerous indefinitely. Rather, new facts would have to be adduced justifying the consideration of the person as being suspicious or dangerous for each arrest. Furthermore, the ruling found that a criminal conviction could not justify a person being considered suspicious or dangerous if the person had performed the punishment. A similar decision issued on the same date found that evidence had to show that individuals actually performed acts dangerous to the regime to be considered dangerous or suspicious.⁴³

The ruling issued in 1985 is a good example of the use of the interpretive powers of the judiciary to lay down legal principles that protect civil liberties to a greater extent than envisioned by the original drafters of the legislation.⁴⁴ The government challenged the 1978 ruling

⁴² Appeals 1435, 1310, 1271, 126 and 810, JY 28, March 12, 1985.

⁴³ Appeals 1260 and 1320, JY 28.

⁴⁴ Appeals 810, 162, 1271, 121, 1435, JY 28, March 12, 1985.

which narrowed the definition of suspicion. The government argued that the ruling contradicted an earlier ruling of the SAC which adopted a wider definition of suspicion and did not give sufficient reason for doing so. In the ruling of 1985, the court gave a more elaborate argument. It argued that the term for suspicion used in the emergency legislation was the same as that used in the 1945 legislation which laid down a restrictive definition of suspicion. It rejected interpretations issued in the 1960s because they glossed over the precise phrasing of the term suspicion used in the emergency legislation which allowed them to justify a wider definition of suspicion. In 1985, the SAC argued that the narrower definition was superior for two reasons. First, it corresponded precisely to the language in the emergency legislation. Second, the court invoked the rule that exceptional regimes must be interpreted as narrowly as possible.

In addition to restricting the conditions of legitimate arrest, the SAC also extended its jurisdiction to supervise implementation of the emergency law. In 1979, the SAC ruled that cases heard by the Supreme State Security Court, the highest court of appeal for cases brought under the state of emergency law, could also be heard by the State Council. The court argued that since the Supreme State Security Court was not constituted entirely of judges (the president appoints several non-judicial members), it was not in fact a

judicial agency, and so did not effectively protect citizens' rights. Therefore, an appeal to this court did not require an individual to forfeit her right to appeal to a regular court.⁴⁵ In 1981, the SAC issued a ruling establishing its jurisdiction to hear appeals concerning the placement of individuals' names on the list of those considered dangerous to security.⁴⁶ In this case, the court argued that placing a name on the list was an administrative act and so fell within the jurisdiction of the State Council.

By contrast, a significant area in which the State Council has failed to uphold norms of the rule of law and public freedoms is the transfer of trials to military courts. In 1983, the SAC ruled that the president could transfer any criminal case to a military court. It argued that this ruling was consistent with the ruling of the Constitutional Court in 1970 that upheld the constitutionality of the law that allowed the president to transfer cases to military courts. It also argued that the advent of the 1971 Constitution did not require that the case be heard again since the court had already heard all the relevant arguments.⁴⁷ In a recent case, the State Council did challenge the constitutionality of the provision

⁴⁵ Appeals 871 and 830, JY 20, Dec. 29, 1979.

⁴⁶ Appeal 997, JY 25, December 12, 1981.

⁴⁷ Appeal 964, JY 27, November 12, 1983.

allowing the president to transfer cases to military courts. This was later struck down by the Supreme Constitutional Court.

The SAC and Freedom of Religion

The area of jurisprudence in which the State Council has been least supportive of classical liberal ideas of liberty is in the area of freedom of religion. But even here it has done its best to protect dissent given the nature of existing laws. A number of rulings involving persons considered to be apostates by Sunni Islam have, since the late 1950s, upheld the denial of these peoples' rights. The Bahai, a sect considered apostate by Sunni Islam, have been especially prominent in these cases. Apostates and Bahai's were not granted the same legal rights as Christians, Muslims, and Jews in areas governed by the Islamic Sharii'a. However, the State Council's jurisprudence has not discriminated against Bahai beyond that required by the Sharii'a. The areas most closely regulated by the Sharii'a, inheritance and personal status, are consequently the areas in which Bahai and apostates have been discriminated against.

In 1957 the State Council issued a legal opinion stating that a marriage contract issued by the Bahai spiritual center could not be recognized by the regime.⁴⁸

⁴⁸ Fatwa 271, May 19, 1957.

In 1977, the State Council issued a legal opinion stating that Bahai Faith was not one of the heavenly religions, and as a consequence its practice was in violation of the public system. Belief in Bahai Faith and practice of its rites was considered to be dangerous.⁴⁹ In 1981, reasoning that Bahai were apostates, that apostates could not inherit property since inheritance was governed by law specific to each religion, and that apostates were not considered to belong to a religion, the SAC ruled that Bahai could not inherit property from one another. In the same ruling, the court argued that a Christian woman who became Muslim to marry a Muslim man, and then reverted to Christianity to marry a Christian after being widowed by the previous husband, had become an apostate by rejecting Islam and was therefore ineligible to inherit her husband's pension.⁵⁰

In contrast to these cases, which involved questions of marriage and inheritance, cases involving questions not regulated by the Islamic Sharii'a have been decided in favor of religious tolerance. In 1952, prior to the beginning of military rule, the SAC issued a legal opinion that disciplinary action could not be taken against a public employee because he is a Bahai.⁵¹ In 1983, the SAC overruled a lower court decision to expel a Bahai student

⁴⁹ File 22/2/37, June 1, 1977.

⁵⁰ Appeal 599, JY 19, January 25, 1981.

⁵¹ Fatwa 156, March 5, 1952.

from teachers' college. He was expelled because he did not have an identification card, which was proof of his performing military service. His application for the card was denied by the agency responsible for issuing it because it refused to state on the card that the student was Bahai. The lower court ruled that this was a legitimate basis for denying the issuance of the card. The SAC overturned this ruling, arguing that the student could not deny the fact that he was Bahai. As a consequence the SAC annulled the decision to deny the student the identification card and also annulled the decision to expel him from the teachers' college.⁵² In another case decided in 1980, the State Council ruled that since churches were governed by public law, their decisions regarding excommunication were subject to review by the administrative judiciary. The SAC ruled that excommunication violated the principle of freedom of worship and hence was illegal.⁵³

A common pattern emerges in the four areas of the SAC's jurisprudence reviewed here. During the 1960s, after the government's campaign of intimidation against the State Council, the SAC issued rulings which gave executive agencies wide latitude to restrict the freedoms of Egyptian citizens. Since the middle of the 1970s, the SAC has increasingly used its power to interpret law to expand its

⁵² Appeal 1109, JY 25, January 29, 1989

⁵³ Appeal 1190, JY 20, December 20, 1980.

own jurisdiction and restrict the freedom of executive agencies responsible for constraining the political freedom of Egyptians.

The Protection of Parties and Interest Groups

This section evaluates the extent to which the State Council has used its power to expand political competition beyond the scope intended by the Presidency. It examines the rulings of the State Council regarding the reversal of administrative decrees ordering the dissolution of parties and associations. It considers three such cases: the appeals of the Wafd Party, the Muslim Brotherhood and the Train Drivers' League to reverse dissolution orders issued against them. These cases are considered because they are the sole cases involving appeals raised by existing parties or associations concerning dissolution considered by the State Council. The Party Circuit Court of the State Council reviews cases relevant to the establishment of political parties and acts taken against political parties under the Law on Political Parties. The rulings of this court are presented later. The cases considered here are those taken by the regular courts of the State Council.

Before assessing the impact of the State Council's rulings, it is important to first determine the extent of pluralism the Presidency was prepared to allow in the 1980s. After determining the amount of pluralism the President is

willing to tolerate, it is possible to show that the State Council ruled in favor of expanding participation beyond the limits set by the President. This does not mean that the State Council inevitably rules against the regime. In two of the cases the State Council refrained from pushing back the limits of pluralism when that is what the law required. Nor does there appear to be any ideological bias on the part of the courts. Rather, the best predictor of the State Council's rulings were the requirements of the law itself. The consequence of this is that repressive laws have some effect. As discussed previously, this effect is mitigated by the State Council's capacity to interpret these laws.

I first compare the treatment by the State Council of the cases presented by the Muslim Brotherhood and the secular liberal Wafd Party for legalization. While the State Council upheld the rights of the Wafd⁵⁴, it rejected the appeal of the Muslim Brotherhood to overturn the 1954 decree of the Revolutionary Command Council (RCC)⁵⁵ which

⁵⁴ In 1983 and 1984 the State Council returned decisions that overrode decrees of the party committee and the Socialist Prosecutor that stood in the way of the Wafd's operations. In October, 1983 an administrative court ruled that the party is entitled to submit lists for elections to local councils and elections to the People's Assembly. (FBIS Nov 1, 1983 D2) In February 1984, an administrative court ruled to stop the implementation of the Socialist Prosecutor's decision to politically isolate two leaders of the party. A presidential decree had already been issued granting the two leaders amnesty. (FBIS, Feb 15 1984, D5)

⁵⁵ The RCC governed Egypt from 1952 to 1956. It was composed of the military officers who led the coup d'etat in 1952.

dissolved it.⁵⁶ I then discuss the ruling in favor of the Train Drivers' League reversing its dissolution.

⁵⁶ The question of the legality of the Muslim Brotherhood has been before the administrative judiciary since October 27, 1977. 'Umar Tilmisaany, the head of the Muslim Brotherhood, raised a case against the decision of the Revolutionary Command Council (RCC) to dissolve the Muslim Brotherhood in 1954. He sought to reestablish the legality of the Muslim Brotherhood and to recover the property that was confiscated.

The case was first sent to the Mafawad al Dawla, a body of the State Council which writes opinions on the justiciability of cases and the appropriate judgements. The report of the Mafawad al Dawla was delayed for two years. The postponement of the report was due to the body's decision to acquire more papers documenting the assets of the Muslim Brotherhood, and to wait for the government to present its opinion of the case.

The Mafawad al Dawla eventually decided in a report issued July 5, 1980 to disallow the standing of the Muslim Brotherhood in this case. This is the ruling that the government had requested.

This opinion was non-binding, and the court was still permitted to decide to hear the case. The government lawyer, from the Government Affairs Administration, argued that the court should not hear the case since it was issued by the RCC in order to defend the revolution, and as a consequence was protected by Article 191 of the 1956 constitution, which forbids appeal of decrees of the RCC. The Muslim Brotherhood argued that since the organization's newspaper had been published after the January 1954 decree, the decree was in fact void.

The court continued to postpone its decision until 1983, when the personnel of the court changed. The new court then decided to re-initiate the entire appeals process. Further postponements occurred in 1983 as the result of various requests from the government. Again, in June, 1984, the Court of the Administrative Judiciary postponed the case until October 16, 1984. On June 25, 1985 the Court of the Administrative Judiciary postponed the case to change the name of the plaintiff after 'Umar Tilmisaany died. The court returned the case to the Mafawad al Dawla to prepare a new opinion on the case in October of 1986. The case was then postponed again in February of 1984 to wait for the report of the Mafawad al Dawla. The case was then postponed at least three more times until the State Council finally decided in 1992 that the decree of the RCC is constitutional and that no appeal in the case was possible.

"Al Ikhwaan al muslimun imam al Maglis al Dawla" (The Muslim Brothers Before the Council of State) Al Wafd, April 19, 1984, pg. 3; Al Ahram June 7, 1984, pg. 8; June 25, 1986, pg. 8; October 9, 1986 pg. 8; Feb 24, 1988, pg. 8; May 11, 1988, pg. 8; February 14, 1990, pg. 10; April 11, 1990, pg. 10.

Guidelines Regarding Political Competition

Over the first two years of his government, Hosni Mubarak gave a number of speeches in which he discussed his understanding of democracy and the role of parties and interest groups. Like previous conceptions of democracy and the rule of law held by Egyptian presidents discussed earlier in this study, this conception was highly instrumentalist. In the principles Mubarak enunciated, participation was valued for and justified by its contributions to the realization of "national" goals. It was neither valued for its intrinsic worth nor justified on the basis of a natural or inalienable right. Participation that was divisive or motivated by purposes other than achieving the goals laid down by the President was not valued. The kind of participation that was valued was that which provided ideas for new policies, constructive criticism of existing policy or practice, and control and supervision of the implementation of policy. Hence Mubarak, like Sadat before him, welcomed participation so long as it was restricted to furthering the Presidency's goals by providing information about policy alternatives and implementation.

In the period just after the assassination of Sadat, Mubarak offered a description of what he expected from political parties: "The opposition is capable of

contributing to national progress by presenting a well thought out view and honest criticism devoid of innuendo and by participating with the government in the overall confrontation of the problems of the masses."⁵⁷ Mubarak went on to more precisely emphasize the information gathering function of political participation:

I wish to declare before you that I intend to follow a fixed tradition of dealing with urgent major problems. After seeking the opinion of and consulting with all who have expertise, knowledge, and impartiality, I will ask the executive and legislative institutions to draw up the necessary plans for dealing with these plans ...

Announcement of these plans and programs will not begin until they have already entered the stage of implementation. The aim of the announcement will then be to urge the masses to play their role in implementation and control.⁵⁸

Several years later Mubarak, in a discussion of democracy in Egypt, further elaborated on the role of citizens in implementation of policy:

Our resources are limited, you know that. If there are resources that are not being spent properly, we are a free democratic country and everyone can say the truth. Criticize constructively in the people's interest. We will accept this and not be annoyed by it.

This is one of the characteristics of Egyptian democracy. Everything is in the open. Public work is in the open. If there is a mistake, it must be corrected - there are many eyes.⁵⁹

⁵⁷) FBIS Nov 9, 1981, D4

⁵⁸ FBIS Nov 9, 1981, D4

⁵⁹ FBIS, November 8, 1983, pp. D1-D10.

From these quotes, it is evident that the Presidency welcomed participation to the extent that it remained within the framework of constructive criticism of means toward already defined ends. Debate over the ends of policy was not welcomed. The role of the citizenry was clearly defined as watch-dogs, as eyes of the Presidency where the Presidency could not see. Furthermore, there was a division of labor among experts, parties, and masses. Experts would be consulted on the details of policies while they were being prepared. Masses would be excluded from the formation of policy but would be encouraged to play a watch dog role while it was implemented. Parties were to be free floating sources of constructive criticism regarding policy options and implementation.

Mubarak indicated one important boundary of public debate during a speech in November of 1983. Mubarak said that he had no problem with the operation of the Wafd party as long as it obeyed the law.⁶⁰ But he also indicated his displeasure with the Committee to Defend Freedoms:

What is strange is the recent appearance of the Committee for Defense of Freedoms ... My God, what is this, I said to myself. There should not be things like this: defending freedoms at a time when there are freedoms? What more can we do? People accuse me of failure to maintain control. I can not get a break, but I am patient.⁶¹

⁶⁰ FBIS, November 8, 1983 pp. D1-D10

⁶¹ FBIS November 8, 1993, pp. D1-D10.

This distinction allows us to firmly locate a boundary of public debate along the line that separates constructive debate around already established policies from further elaboration of policies which might threaten the power of the regime. The Wafd party was an advocate of free enterprise deregulation, the development of the private sector, and had a positive view of the United States, the Mubarak regime's major patron. As a consequence, a vast swath of its policies were congruent with the Presidency's. The Committee to Defend Freedom existed outside the boundary of offering constructive advice. First, it was an alliance of opposition parties, and hence was far more threatening than a single party. Second, it was specifically focused on broadening rights of association, speech and participation and hence posed a direct threat to the power of the regime, with little compensating benefit of either offering political support or constructive criticism. Although the Wafd also advocated the rule of law and democracy and criticized the repressive practices of the government, it had the compensating benefit of offering support on a wide range of the government's more controversial policies. Hence although legalization of the Wafd might lead to a criticism of the regime, its participation would also lend support to critical elements of the government's policy. So the State Council's decision in favor of the Wafd can not be considered a court mandated expansion of the bounds of

pluralism.

In the ruling against the Muslim Brotherhood, the State Council missed an opportunity to exceed the bounds of participation laid down by the government. However, its ruling cannot be considered a consequence of political interference. Rather, the ruling was consistent with the law and legal principles established in prior court rulings.

The Brotherhood clearly posed far more of a threat to the Mubarak regime than the Wafd. It differed with the Presidency on fundamental issues: secularism, the clientage with the United States, and the peace with Israel. Furthermore, the Muslim Brotherhood posed the danger of weakening Egyptian society by accentuating a cleavage between Egypt's Muslim majority and Coptic minority. Finally, the Muslim Brotherhood operated within a much larger scope than the political parties tolerated by the Presidency. It was more than a competitor for votes and a participant in dialogue. It sought a cultural, social, economic, and political reconstruction of society: it built enterprises and banks, it provided social services, and it sought a re-organization of the state in accordance with Islamic law, a change that would address basic constitutional issues.

Nevertheless, the Muslim Brotherhood had been tolerated by both Presidents Sadat and Mubarak. Its counsel of a gradualist, peaceful evolution toward an Islamic State had

been viewed as useful in combating both the left and extremist Islamists. It held seats within the People's Assembly and campaigned openly in elections. Nevertheless, while the government invited opposition parties to the National Conference held in June 1994 to discuss political reform, it excluded the Brotherhood, arguing that it was not a legitimate organization.

During the 1970s and 1980s, the Brotherhood followed a two pronged legal strategy. First, it petitioned to challenge the constitutionality of the clause in the Law on Political Parties that forbade the formation of religious parties. The State Council rejected this petition on the grounds that it did not meet the legal requirements for a constitutional appeal. In order for the State Council to refer a case to the SCC, there had to be an appeal of an administrative act, and the resolution of that appeal had to require the resolution of a question regarding the constitutionality of the law under which the administrative act was taken. However, since the Brotherhood was not appealing an administrative act, and was merely appealing the constitutionality of the clause itself, the court ruled that it could not pass on the case to the SCC.⁶² If the Brotherhood had first applied to form a party and then appealed after this appeal was rejected, it would have had a

⁶² Appeal 132, JY 32. Report of the State Ombudsman, State Council Archives, No Date.

better case. But the Brotherhood did not make such an application.

The Brotherhood also appealed the decree dissolving it issued by the RCC in 1954. This second strategy was attractive for two reasons. First, if it was re-established through a dissolution of the decree, it would be able to operate more freely than if it was established as a party. Second, given the clause in the Law on Political Parties forbidding the establishment of parties based on religion, the Brotherhood stood a good chance of having its application to form a party rejected.

The legal basis of the appeal of the RCC's decree was questionable. Upholding the appeal would require the courts to strike down a decree of the RCC. Article 191 of the Constitution of 1956 forbade the appeal of decrees of the RCC and the Supreme Court had ruled that this clause was implied in the 1971 Constitution. Furthermore, after the Brotherhood filed the appeal, the Supreme Administrative Court in another case accepted the Supreme Court's ruling regarding article 191 of the Constitution of 1956.⁶³ The SAC made an exception in the case of passive rulings.⁶⁴ These are rulings that are implied by administrative inaction, rather than explicit administrative acts, i.e. acts of omission rather than commission. This means that

⁶³ Appeal 144, JY 26. March 27, 1982.

⁶⁴ Appeals 905, 915, JY 25. May 25, 1985.

legal personalities who have had their property confiscated, for example, can not have their property returned, but can gain control over the interest earned by that property. However, the legal personality of the Brotherhood was abolished by the RCC decree, and so regaining control over the interest earned on assets was not legally possible.

It is possible that had the Muslim Brotherhood appealed for status as a political party it may have met with greater success. However, the Brotherhood did not seek status as a political party. Rather, it sought a reversion to its previous status as a social movement. However, the kind of organization the Brotherhood envisioned did not have a place in Egyptian law, which limited activities to the specific categories of political party, social service organization, religious organization, economic organization, professional organization, etc. The Brotherhood sought to evade this compartmentalization by not applying for a specific status. Rather, it appealed a decree which dissolved it. A decision to overturn this decree would have returned the Brotherhood to its prior legal status, which in turn would allow it to operate with a scope the Presidency opposed.

The third case considered here concerns the dissolution of the League of Train Drivers. This association of train drivers was dissolved following its role in a strike conducted by train drivers in 1986. Striking was illegal in Egypt and the association was dissolved. In terms of the

criteria outlined by Hosni Mubarak, striking was quite inconsistent with achieving national goals. It was not primarily focused on helping to implement policy at the top (though it might act as a "fire alarm"). Therefore, it was not a kind of pluralism consistent with the Presidency's interest. Nevertheless, the State Council overturned the decision dissolving the Train Drivers' League.⁶⁵

In summary, the State Council has operated within the political framework laid down by the Presidency in regards to party activity and interest groups. However, it has not been constrained by the Presidency's more narrow conception of the boundaries of desirable pluralism. As such, it has been able to protect some forms of expression of social interest which exceeded the immediate interests of the Presidency.

Routine Justice in the Court of the Administrative Judiciary

The presentation so far has focused on the State Council's organizational design, its institutional capacity and trends in its jurisprudence, and its role in politics. The institutional features suggest its growing autonomy, and the discussion of cases and jurisprudence suggest a growing role in politics. But what are the implications for administrative justice at lower, less politically salient levels? What kinds of cases are appealed and how effective

⁶⁵ Al Ahram, January 14, 1987, pg. 11

are the courts in protecting rights on a routine basis?

The following analysis is based on a sample of 75 cases from the archives of the Court of the Administrative Judiciary. This court functions as a court of first instance in appeals of individuals raised against administrative agencies. The cases are all appeals of decrees of the Minister of Interior. Cases were sampled from appeals filed in judicial years 25, 26, 38, and 40. These years correspond to the periods of October 1971 to September 1973, October 1983 to September 1984, and October 1985 to September 1986. These periods were chosen in order to measure the impact of changes in judicial independence on the routine administration of justice. Decrees of the Minister of Interior were chosen because they had the highest likelihood of impinging on civil liberties.

In analyzing these cases two questions were asked. First, to what extent do they concern civil liberties? Second, in civil liberties cases, do courts function quickly enough to actually protect rights in jeopardy? Third, has there been a change in the nature of cases and effectiveness of courts since the early 1970s?

The purpose of the analysis is to measure changes in the nature of decrees appealed, and the proclivity of the court to find in the interest of the applicant. Based on the sample, there has been a strong growth in the civil liberties content of the appeals raised before the court.

Table 3 groups cases according to the nature of the decree they are appealing. The cases are ordered according to their approximate civil rights significance, with those at the top most significant. For example, the most significant are appeals of election procedures and results, while the least significant are cases involving pensions, transfers, and seniority of officials of the Ministry of Interior. Since it is possible that any administrative sanction has civil liberty significance, these rankings must be considered approximate. For example, the illegal imposition of fines for use of irrigation water may be motivated by a desire to harass a political opponent. Moreover, it is possible that denial of a liberty such as travel may have no political significance. Therefore, the cases have been closely examined for evidence that there were political motivations.

The cases regarding compensation were ranked relatively low on the index of civil liberty significance since the goal is to test the ability of the State Council to protect rights. Compensation does not protect the ability of a person to engage in politics. Rather, it improves his private existence in compensation for a restriction of his public role. Moreover, compensation does not deter administrative agencies from engaging in false imprisonment. Therefore, compensation is not an effective protection against violation of civil liberties.

Table 3

Civil Rights Significance of
Cases of the Court of the Administrative Judiciary

		JY 25-26	JY 38, 40	
1	Election	1	5	Highest Degree of Civil Rights Significance
2	Residence Restriction	3	0	
3	False Imprisonment	1	0	
4	Passport Freedom to travel	5	3	
5	Compensation for imprisonment	0	25	
6	Citizenship	1	2	
7	Weapons License	2	1	
8	Miscellaneous	4	5	
9	Breach of Contract	0	1	
10	Pension Transfer Seniority	12	4	Lowest Degree of Civil Rights Significance
Total		29	46	

Miscellaneous Cases: JY25-26: Right of store to sell alcohol, compensation for injury, compliance with Court of Cassation ruling, irrigation fines, right to build barbed wire fences, stop implementation of passive decree not arresting someone in Khartoum, annul decree closing an apartment, change name of a person in a court ruling, compensation for destruction of doors on an apartment by police.

Source: State Council Archives

Appeal of election results was the most significant category regarding civil liberties. In these appeals the Court of the Administrative Judiciary acted on the cases quite quickly. As indicated by Table 4, either a ruling was issued or a quick session was held within two months of the filing of the appeal. Moreover, in three of the five cases, the court's hearing or final ruling was issued so that, if implemented, the ruling would have a direct impact on the conduct of the election.

In the first case (Appeal 291 of Judicial Year 38), a candidate in an election to select representatives on the administrative council of a labor union appealed his disqualification from candidacy. The election was scheduled to be held in October of 1983 and the appeal disqualifying him was issued on September 12, 1983. The candidate appealed the disqualification on September 14, 1983, but the court did not hear the case until November 15, 1983, thus missing the election. The candidate thus declined to contest the quick hearing. A final ruling was issued on September 12, 1986. The court annulled the decree disqualifying the candidate.

The candidate had been a member of the committee since 1964 and was president of it from 1979 to 1983. The committee responsible for supervising labor union elections disqualified him after someone informed it that in 1979 the candidate had been convicted of writing a check with

Table 4

Time to Decision in Electoral Cases of the
Court of the Administrative Judiciary

Case	Date of election	Date of decree	Date of Appeal	Date of Quick Ruling	Date of Ruling	Ruling in Favor of
38/291		09/12/83	09/14/83	11/15/83	09/12/86	applicant
38/2236		05/24/79	02/06/84	02/28/84	12/02/86	state
40/2198	05/27/84		02/15/86		04/01/86	applicant
38/3955	05/27/84		05/08/84		05/16/84	state
40/5898		08/06/86	09/22/86		09/30/86	state

Source: State Council Archives

insufficient funds when he was president of his company's workers' cooperative association. The CAJ ruled that he was not responsible for the check since he left the presidency of the association before the check was cashed. Thus although the candidate could not run in the elections of 1983, his name was cleared in order to be a candidate in subsequent elections.

In the second case (appeal 2236 of judicial year 38), a candidate for a People's Assembly election appealed the decision of an electoral committee to place him in the workers' category. He wanted to be placed in the non-workers' category. The initial decision was issued in 1979 but the candidate did not appeal until February 6, 1984. The court held a quick hearing on February 28, 1984. The election was scheduled for April of 1984. The court did not issue an order to stop implementation of the decree, but transferred the case to the State Ombudsman⁶⁶ (mafawad al dawla) to write an opinion on the case. In 1986, the court accepted the opinion of the State Ombudsman, which argued to reject the case because the appeal was filed later than the law permitted.

The third appeal (appeal 2198 of judicial year 40) was filed by a candidate in the 1984 People's Assembly

⁶⁶ The State Ombudsman is part of the State Council. It writes opinions in all appeals accepted by the State Council. If the court does not follow the State Ombudsman's opinion, the State Ombudsman can appeal the ruling.

elections. Earlier, this candidate had been denied a seat and then appealed this to the CAJ (appeal 5234 of judicial year 38). The CAJ ruled that the seat in question had been incorrectly allocated to a member of the National Democratic Party, and that it rightly belonged to the applicant. The applicant was filing a complaint that the appeal had not been implemented by the Minister of Interior, and sought the continuation of the ruling. After a period of six weeks the court issued a ruling ordering the implementation of its original decision.

In the fourth case (appeal 3955 of judicial year 38), a candidate of the labor party for the People's Assembly appealed the decision of the electoral committee (Lajnat ul I'tiradaat) to accept the list of the NDP for the district. The candidate's argument was that since the combined total of workers and peasants on the NDP's list was smaller than the number of non-workers and non-peasants, the list was illegal. The NDP's list was originally composed of equal numbers of both, but the electoral committee changed the status of two workers and peasants to non-workers and peasants. The NDP subsequently appealed this decision to the committee, which reversed its decision. Because the numbers were again in balance, the court rejected the appeal of the Labor Party candidate. The appeal was filed on May 8, 1984 and the ruling of the CAJ was issued May 16, 1984. The election was held May 27, 1984.

In the fifth case (appeal 5898 of judicial year 40), a citizen who was not a candidate or affiliated with a party filed an appeal challenging the decision of Committee to Investigate Applications for Candidacy in Elections for the Consultative Council to accept the list of the NDP. The applicant argued that the NDP did not follow its own rules regarding the selection of candidates for its list, and therefore the list was illegal. The appeal was filed on September 22, 1986 and the decision of the CAJ was issued September 30, 1986. The court found that the citizen did not have standing to contest the decision of the NDP since he was not a member of the NDP. Moreover, the member of the NDP who joined him in the case did not have standing because he had not been a member for a full year and hence did not enjoy the rights of membership. The ruling was significant however, in that the court rejected the argument of the NDP's lawyer that it did not have jurisdiction. The court could rule on the NDP's violation of the laws which organize it and require participatory methods of selecting candidates. Thus full NDP members have the legal standing to challenge non-democratic methods of selecting candidates.

In the set of cases from judicial year 25 and 26 (1971-1973), several of the cases had a political content. The electoral case (appeal 2988 of judicial year 26) was an appeal of a passive decision of the Pope of the Coptic Church and the Ministry of Interior not to hold elections to

the council (Majlis al Milly) of the Coptic Church. One of the three appeals of decrees restricting residency (number 99 of judicial year 25) was closely connected with elections to the ASU and Majlis al Umma (the name of the national parliament until 1971). As far as can be seen however, the other appeals related to more routine criminal and civil cases. In the two cases mentioned above the length of time from appeal to decision was roughly a year.

These cases suggest that the CAJ can rule quickly on issues regarding elections. The exception to this was the case of the candidate for a labor union council. In the other cases the CAJ responded quickly, before the holding of the election.

Conclusion

Since the early 1970s, the Egyptian Presidency has expanded the autonomy of the State Council, vastly widened its jurisdiction, and increased its capacity to hear appeals. In addition to the broadened jurisdiction granted to the judiciary since 1971 by the executive branch, judges of the State Council have augmented their jurisdiction by using their power to interpret legislation. This has resulted in a broader protection of liberties and rights than was originally intended by the Presidency. The expansion of the protection of rights is most striking in the realm of elections, especially elections to the People's

Assembly and labor union councils.

The increased willingness of judges to issue rulings that increased their jurisdiction followed the expansion of the State Council's formal autonomy. As judges' careers became less dependent on decisions issued by the Presidency, they became more willing to issue rulings which contradicted its interests. But the question remains, why did the Presidency not issue laws which superseded the decisions? For example, after judges exploited imprecise language in existing legislation, why did the executive branch not issue new laws which were more legally sound?

There are four possible reasons. First, the government may have come to believe that it had staked its legitimacy on its adherence to the rule of law and so could not afford to violate the rulings of judges. But, it could issue laws in a way that respected the rule of law and reversed the decisions. Second, it could have concluded that it could not afford to alienate the social interests that benefitted from the judges' decisions. This is less than likely, because as discussed in Chapter Six the government has repeatedly harmed the interests of social groups by rescinding their political rights.

A third possibility is that the government believed that any new law issued would also be overturned by the judiciary. Judges' skills were so great that if they wanted to rule in a certain way, there was no way to avoid it.

This is not very plausible. Judges have been willing to accept a large number of laws that they found distasteful.

The best answer comes from a combination of two considerations. First, if a new law was passed that was legally sound, it might not be overturned, but judges might become recalcitrant in other areas. For example, in protest over what they believed to be the unconstitutionality of a new divorce law issued in the late 1970s, judges refused to rule in divorce cases. Judges have a capacity for collective action which can undermine the state's need to have justice administered. Second, the Presidency has an interest in retaining the most professional judges and not recruiting those who are simply career minded. Not conceding points to judges on questions they consider to be a matter of professional interest can subvert the incentive structure of judges the government wants to retain. Instead of attracting those who believe in the law, the judiciary will attract opportunists who will sell themselves to the highest bidder. Only by respecting the professional judgements of judges will the government maintain the judiciary's integrity.

The main argument of this dissertation holds that the government has an interest in improving the status of the judiciary as an information evaluator by widening its jurisdiction and improving its neutrality by augmenting its autonomy. This chapter has shown that after the crisis of

state monitoring described in chapters two and three, the government improved the administrative judiciary's autonomy, widened its jurisdiction, and increased its capacity to hear appeals. The judges of the State Council have responded to these new policies by further expanding their jurisdiction and cultivating the rule of law in the realm of civil liberties.

Chapter Five

The Development of the Rule of Law in Comparative Perspective

The main argument of this study is that the re-emergence of judicial independence was part of a broader strategy of the Presidency to reassert its control over the state agencies -- and that the problems of control faced by the Presidency were created by the structure of the state itself. A highly centralized form of rule, with little opposition and a highly circumscribed press limited the quality and quantity of the information available to the Presidency about the activities of officials. As a consequence his ability to monitor and discipline those officials was weak. Empowering the judiciary to evaluate information about officials and to protect groups and individuals that provided information about official malfeasance would help resolve that problem.

If this argument is valid, then we should be able to observe similar reforms in other political systems with similar institutional features. It is not the case, however, that all systems with the institutional features of Egypt of the 1960s should manifest the same solutions to the problem of control. Other solutions clearly exist, and so we should be able to observe a variety of attempted solutions. Also, for some rulers, political liberalization will be more costly than for others, because of the nature of underlying social conflicts. Nevertheless, there should be a significant number of cases of liberalization which

parallel the Egyptian case.

This chapter shows that a number of political systems with institutional features similar to that of Egypt's in the 1960s have taken similar reform measures with regard to the administrative judiciary. Furthermore, reforms empowering the administrative judiciary have been part and parcel of broader reform efforts to strengthen central control over state agencies by empowering citizens to monitor these agencies.

I discuss reforms taken during the early 19th century in Egypt and in the second half of the 20th century in the USSR. These cases were chosen with three criteria in mind. First, the states shared the same institutional features as the Egyptian state did in the 1960s. Second, their rulers were concerned with centralizing power. Third, they allow to control for two variables: culture and international context. The USSR is culturally distinct from Egypt, especially with regard to religion, and therefore an analysis of the case allows us to control for that variable.

The analysis of the early Egyptian case permits us to control for the effect of the international environment. One explanation of political liberalization in Egypt argues that Sadat was attempting to curry favor with the United States. While the view is not very plausible given that political liberalization began in Egypt in 1971, before

Sadat ended the relationship with the USSR, it is still worth attempting to control for the effect of the international environment. During the first half of the 19th Century Egypt's relationships with the West were quite weak, and Europe's espousal of democratic values were much more uncertain than was the United State's during the 1970s. Thus the analysis of the early 19th Century Egyptian case allows us to control for the effect of international influences.

19th Century Egypt

At the beginning of the 19th century Egypt came to be governed by a highly ambitious modernizing ruler, Muhammed 'Ali. Muhammed 'Ali was an Albanian formally in the service of the Ottoman Sultan, but operating independently. He used his control over Egypt to develop an independent military power capable of controlling the Eastern Mediterranean. As part of this project, Muhammed 'Ali undertook a large scale reform of the Egyptian state and economy, introducing many new policies that together are taken by modern historians to signal the birth of modern Egypt. These new policies included sending Egyptians to study science and engineering in Europe, improving irrigation and taking other steps to improve agricultural productivity, and developing an industrial infrastructure.

In order to modernize Egyptian society and reap the

benefits of greater production, Muhammed 'Ali sought to centralize authority in his hands. In short, his ambitions led him to put a high value on efficiency and centralized control. These concerns with efficiency and control led him to devolve rights to peasants and others in order to improve his control over the state and improve its efficiency.

Muhammed 'Ali issued new laws designed to impose peace in the cities and countryside and extract resources from the agricultural economy. These new laws both imposed exacting requirements of efficiency and economy on his subjects and gave them rights to appeal the acts of the ruler's officials. These laws demonstrate the tight relationship between state centralization, concern for efficiency, and the use of "fire alarm" style monitoring.

One of the new laws was the Qanuun al Filaha (law of cultivation). The law specified specific offenses and punishments for peasants and others regarding cultivation, or acts that impinged on cultivation. "Bedouin were to be punished if they took their cattle through planted fields."¹ Peasants, for example, could be punished for neglecting plowing or planting, not paying taxes, not performing obligatory labor on public works, fleeing from their land, or slaughtering young animals.² Shaykhs could

¹ Janet Helleman Elmusa, "Law, Social Change and Political Order: Legal Reform in Egypt," (Harvard University Ph.D. Thesis, 1975), pg. 198.

² *ibid.*

be punished for failing to send the correct amount of taxes, labor levee, or conscripts.³

In addition to prohibiting acts which would reduce productivity, the law also used "fire alarm" methods to reduce waste and abuse committed by officials. These measures were designed to ensure that higher officials saw to it that:

...no official under them meted out unrestrained punishment or used his position to treat others with injustice. The populace was to know and be assured of limitations on what government officials could do to them, and peasants were given the right of petition and redress. Specifically, officials were commanded to punish shaykhs who violated virgins; who expropriated the best land for themselves . . .; who distributed the burden of taxes, conscription, or labor on public works unequally among his villagers or forced them to work excessively on his land. Any shaykh or higher official who beat people more than the amount allowed in set penalties was himself to be punished, as was likewise anyone who cheated the peasants in financial matters.⁴

From the point of view of the argument of this dissertation, the significance of this law is the use of legal protection of subjects vis a vis officials to promote the efficient functioning of the state administration. It would be wrong to say that Muhammed 'Ali granted peasants rights protected by the rule of law since these were not inalienable rights. Rather the protection of peasant interests depended on the discretion of higher officials. Nevertheless, these

³ *ibid.*

⁴ Elmusa, *op. cit.*, pp. 198-199.

measures constituted a movement in the direction toward granting peasants legal protection.

Moreover, these laws had a real impact on the Egyptian administration. Afaf Lutfi al-Sayyid Marsot, who has examined the archives pertaining to Muhammed 'Ali's governance of the countryside, reports that during Muhammed 'Ali's "many trips round the countryside, any fallah [peasant] with a petition was allowed to present it."⁵ Marsot goes on to say that "[w]e can tell that" Muhammed 'Ali's directives regarding the treatment of peasants "were taken seriously from the number of appeals that we have in the sijillat [records], and from the fact that the complaints were investigated".⁶ This rudimentary system of redress resembles the beginning of the modern English judicial system, in which circuit courts emerged from the practice of first the king and then his agents riding "circuit" through the countryside to hear petitions from peasants and other aggrieved parties⁷.

In addition to his innovations in the governance of the countryside, Muhammed 'Ali also created a more accountable system of policing in the cities. This was encapsulated in

⁵ Afaf Lutfi al-Sayyid Marsot, Egypt in the Reign of Muhammed 'Ali, (Cambridge: Cambridge University Press, 1984) pg. 110.

⁶ *ibid.*

⁷ Martin Shapiro, Courts. The interesting question becomes, why does a system that is dependent on the discretion of officials become or not become transformed into a system of stable rights adjudicated by independent courts?

a new law issued in 1837 called the Qanun as Siyasa al Malakiya (Law of Property Policy). "It provided punishment for those who patently neglected their work, disobeyed orders, took bribes, damaged state property, embezzled state funds, or willfully deprived others of property."⁸ The traveler Edward Lane noted the impact the new effort to control officials:

...the zabit or agha of the police used frequently to go about the metropolis by night, often only accompanied by the executioner or the "shealegee" ... and he had an arbitrary power to put any criminal or offender to death without trial ... and so also had many inferior officers ... but within the last two or three years, instances of the exercise of such power have been very rare, and I believe they would not now be permitted⁹.

Instead, suspected criminals were taken to the office of the chief magistrate of the police and formally charged, and then taken to court for trial¹⁰.

Needless to say there was no significant civil society in Egypt to press for these reforms. Egypt was a poor backwater of the Ottoman Empire at the time. Rather, these modest improvements of subjects' position vis a vis officials were a result of the independent initiative of a ruler seeking to exercise greater control over his

⁸ Elmusa, pg. 199.

⁹ Edward Lane, An Account of the Manners and Customs of the Modern Egyptians Written in Egypt During the Years 1833-1835, (London: East-West Publications, 1978) pg. 120, quoted in Elmusa, pg. 200.

¹⁰ *ibid.*

officials. As Marsot argues, Muhammed 'Ali understood that the peasant was the backbone of the Egyptian economy. Much like one would protect a cow that was vital to your household income, you would also protect your peasants from exploitation that did not serve your immediate interests¹¹. In effect, Muhammed 'Ali had given his peasants the right to complain when they were being exploited in a way that was not in the ruler's interest, and he specified punishments for the errant exploiters. Muhammed 'Ali's interest in state efficiency led him to devolve rights to peasants.

The USSR

The USSR is a critical case for this dissertation. It fits the major criterion for a critical case: The independent variable is unambiguously present in the USSR. In other words, we should be able to observe similar patterns of reform stemming from concerns similar to those that motivated Egypt's rulers.

The USSR was, when it existed, the archetypal centralized autocratic state with a highly bureaucratized economy and no civil society to speak of. Therefore, the problems that the dissertation hypothesizes should be

¹¹ Marsot, op. cit., pg. 109. Marsot argues that Muhammed 'Ali and his Turco-Circassian administrators despised the "Egyptians and looked upon them as an inferior race of dirty peasants created to work for the benefit of their masters, the rulers ... A man may look upon his cow as a beast, but he will nonetheless treat it in a humane fashion if only to be able to milk it better."

observable in the Soviet Union: lack of centralized control over bureaucracies manifested in corruption and lack of deference to the center. Furthermore, we should be able to observe the predicted cycle of reforms in the USSR that we observed in Egypt: an initial concentration on centralized monitoring followed by disillusion with these instruments and an increasing reliance on decentralized forms of monitoring, including various forms of citizen participation, press freedom and judicial supervision of administration and protection of civil rights. There should be an emphasis in these reforms on improving the quality of information available to the ruler. Also, individual routes of complaint should be emphasized over collective methods, and political activity should be channelled into supervision of the state.

To a large extent, the USSR from the late 1950s onwards exhibited these patterns and tendencies. After the death of Stalin, the Soviet system became more reliant on law as a means of administrative control. Moreover experiments in decentralized monitoring using administrative courts were initiated. The inadequacy of the monitoring system, which was still highly centralized, led in the 1980s to a large scale expansion of the earlier experiments in decentralized monitoring.

During the initial phase of the Soviet dictatorship,

during the nineteen thirties, forties and early fifties, there was an almost exclusive reliance on centralized monitoring, especially the NKVD (later to become the KGB). The almost exclusive reliance on centralized monitoring during Stalin's era created a situation where these institutions became extremely powerful, even more powerful than the CPSU. The overwhelming power of the NKVD and the rest of the secret police apparatus created strong resentment and fear among the party elite.¹²

After Stalin's death, the fear of unregulated repression and the concentration of power in one individual's hands prompted party elites to turn toward a more constitutional and legal regulation of state power. The roles of the party and the Procuracy, an institution responsible for investigating and prosecuting violations of administrative law, in supervising the security apparatus were enhanced.¹³ Laventi Beria, the head of the KGB and one of Stalin's closest associates, was deposed and the party's control over security forces was re-established.¹⁴ The security forces were further hemmed in by the imposition of stricter criminal procedure, in particular the

¹² Philip G. Roeder, Red Sunset: The Failure of Soviet Politics, (Princeton, NJ: Princeton University Press, 1993), pg. 62.

¹³ Merle Fainsod, How Russia is Ruled, (Cambridge, MA: Harvard University Press, 1963), pg. 448.

¹⁴ Fainsod, pg. 125.

prohibition of the exclusive reliance on confessions for conviction in state security cases.¹⁵ Judicial independence was increased.¹⁶ In addition, popular participation in the administration of the state was broadened and new experiments in administrative decentralization were undertaken.¹⁷ Despite these reforms, the instruments of central rule retained the last word. The new legal restraints on the operation of the security forces could be swept away in order to deal with enemies of the state, and the party remained in control of the new avenues of popular participation.¹⁸

The adoption of reforms designed to create more balance in the relations between central state institutions parallels those taken after the death of Nasser. Like Nasser, Stalin centralized rule in his hands by operating at the center of an information network that allowed him to control the careers of his rivals. Such a state of affairs created a high level of insecurity among their subordinates, who then sought to restrain those institutions capable of destroying them when they came to power. These reforms were

¹⁵ *ibid.* See also Harold J. Berman, Justice in the USSR: An Interpretation of Soviet Law, (Cambridge: Harvard University Press, 1963), pg. 70.

¹⁶ Berman, pg. 75

¹⁷ *ibid.*

¹⁸ Merle Fainsod, How Russia is Ruled, (Cambridge: Harvard, MA, 1963). pg. 125.

of two kinds. First, the institutions were brought under central supervision, so that they would be less able to attack the elite directly. Second, the institutions were hemmed in by procedural constraints vis a vis the subjects, so that they would not be able to accumulate autonomous power bases through the abuse of less powerful individuals. Thus struggles within the state yielded steps toward constitutionalism at the top and steps toward the rule of law at the bottom.

The next section discusses the system of monitoring that emerged from the reforms taken during the 1950s and 1960s, and the inadequacies that remained within it. It concentrates on the new increased use of the legal system as an instrument of administrative control. This system had three components. Citizens could directly complain to an agency, they could appeal a limited set of decisions before a court, or they could file a complaint with an investigative agency, the Procurator. The new law based system of monitoring was an improvement over the old one. But the centralized and repressive character of the system retained many problems, especially poor incentives for monitors and low quality of information. These problems led to the enhancement of incentives for monitors through decentralization, and the enhancement of the role of courts and rights of expression to improve the quality of information available to the center of the state. In the

next section I show that the court-based system of monitoring was more effective than the centralized Procurator system, and the decentralized system in the absence of rights, or the complaint procedure. In the following section I show that under Gorbachev the court-based system was given much greater scope as part of a strategy to reassert central control over the state.

The Procuracy

The most significant reform of the Khrushchev era was the improvement in the status of the Procuracy. The Procuracy was the main instrument employed by the Soviet regime to ensure the compliance of subordinate agencies with the laws of the center of the state.¹⁹ The Procuracy was a combination of a general inspector and a public prosecutor. It monitored state agencies to ensure that they were in compliance with the law and sought to encourage those agencies in violation to become compliant. It was a distinctive form of monitoring for compliance with the law in that it was wholly a part of the executive, and not independent from the executive in any way. Though it was as independent as any Soviet institution could be from the

¹⁹ This discussion draws on Gordon B. Smith, The Soviet Procuracy and the Supervision of Administration, (Alphen aan den Rijn, Netherlands: Sijthoff and Noordhoff, 1978) and Merle Fainsod, How Russia is Ruled, pp. 411-413.

CPSU, and pains were taken to make it independent of local and lower level agencies, it was ultimately responsible to the central state power, and not to citizens.

The Procuracy's main methods of work were to monitor agencies for violations and then encourage them to come into compliance. Procurators monitored press reports, complaints by citizens, and reports from state officials, as well as directly investigating agencies. If a violation was suspected, an investigation was conducted. The result of the investigation was treated as reasonably conclusive, i.e. it was not simply that there was enough evidence to go to trial, but that guilt was ascertained. If the investigation concluded that a violation had taken place, the Procurator took one of two actions. If a criminal law had been violated, the official could be prosecuted in a criminal court. Otherwise the Procurator was legally empowered to seek administrative discipline for the official. Most often, the Procurator lodged a protest with the agency itself or its supervisory agency.

Procuracy as an Effective Agent of Monitoring for the Central State

On the whole Western analysts of the Procuracy have concluded that the it was a relatively effective agent of monitoring for the central state. The main piece of evidence in this regard was the high rate at which agencies complied with Procurators' protests. Glenn Morgan reports

that a delegation of British lawyers found that in 1954 "in 99 percent of cases, the official to whom the protest is issued accepts the protest and corrects his mistakes ...

"²⁰ More recently, Gordon Smith reports that "more than 96 percent of all protests and representations [of the Procurator] are accepted by administrative organs, economic enterprises and social organizations in the first instance."²¹ Though most violations the Procurator protested were corrected, we cannot be so sure that the Procurator uncovered most violations.²²

A major problem facing the Procuracy was the sheer amount of supervision that was required. As law was the major organizer of the Soviet administration (including local government, economic enterprises, central and regional administration, etc.), and since even the normative performance of these agencies was legislated, there was a huge range of activities that required supervision.²³ Problems within the Procuracy arose from inadequate legal training of Procurators, with consequences such as the

²⁰ E. L. Johnson, "Some Aspects of the Soviet Legal System," Soviet Studies, VI #4 (April, 1955), 351-358, cited in Glen Morgan, Soviet Administrative Legality: The Role of the Attorney General's Office, (Stanford, CA: Stanford University Press, 1962) pg. 209.

²¹ Gordon B. Smith, The Soviet Procuracy and the Supervision of Administration, (Alphen aan den Rijn, Netherlands: Sijthoff and Noordhoff, 1978), pg. 106.

²² Morgan, Soviet Administrative Legality, pg. 178-179.

²³ Glen Morgan, op. cit., pg. 173.

filing of spurious protests, or failure to file well grounded protests. Other consequences were overstepping of jurisdictional boundaries. For example, Procurators went beyond evaluating the legality of specific acts of administrative organs to evaluating such things as how wages were allocated.²⁴ However, Morgan makes the point that since criminal law was a major instrument used to discipline state officials in the Soviet Union, jurisdictional trespassing of this kind could only be expected.²⁵ The lack of an established tradition of administrative courts in the Soviet Union, and the legal right of an administrative agency to reject the protest of a Procurator, meant that the only method for a Procurator to enforce a non-criminal violation was to send the protest to the next higher level of the administrative apparatus.²⁶ This meant that the violations in question, to be corrected, had to be important enough for the higher levels of the administrative apparatus to have an interest in and spend time pursuing. The lesser violations might be neglected altogether.

The Procurator's effectiveness also suffered from its lack of accountability to citizens. Although at the lower levels roughly two thirds of Procurator investigations were

²⁴ Glen Morgan, Soviet Administrative Legality, pp. 165-170.

²⁵ pg. 173.

²⁶ Gordon, pp. 194-195.

prompted by citizen complaints,²⁷ the citizen had no legal rights to force the Procurator to conduct an investigation. On the positive side, once a Procurator did take up an investigation, the citizen's complaint succeeded at a much higher rate than it otherwise would. In Leningrad, citizens who complained to departments of Social Security had, during the mid-1960s, on average 1 percent of their complaints resolved in their favor.²⁸ In contrast, reports from Procurators' offices of the percentage of complaints received resolved in the favor of the complainant range from 8 percent to 44.4 per cent.²⁹ It is nevertheless worth being skeptical of the efficacy of the Procurator, as only one percent of Leningrad pensioners sent their complaints to the Procurator or the courts.³⁰

In summary, while the Procurator system did generate information about administrative malfeasance (in the press

²⁷ Walter Gelhorn, Ombudsmen and Others, (Cambridge: Harvard University Press, 1966), pg. ., cited in Gordon Smith, The Soviet Procuracy, pg. 359.

²⁸ D. M. Chechot, Administravnaia iustitsiia (Leningrad: Leningrad State University, 1973), pg. 104., cited in Gordon B. Smith, The Soviet Procuracy and the Supervision of Administration, (Alphen aan den Rijn, Netherlands: Sijthoff and Noordhoff, 1978), pg. 70.

²⁹ Gordon B. Smith, The Soviet Procuracy and the Supervision of Administration, (Alphen aar den Rijn, Netherlands: Sijthoff and Noordhoff, 1978), pg. 65.

³⁰ D. M. Chechot, Administravnaia iustitsiia (Leningrad: Leningrad State University, 1973), pg. 104., cited in Gordon B. Smith, The Soviet Procuracy and the Supervision of Administration, (Alphen aan den Rijn, Netherlands: Sijthoff and Noordhoff, 1978), pg. 70.

or through citizen complaints), and though the Procurator's protests did meet with administrative compliance, the system left a lot of room for administrative violation. The most pressing issue from the point of view of the state was the large amount of discretion in the hands of the procurator and the lack of real authority vis a vis the monitored agencies. This, coupled with the influence of Party and corrupt relations among procurators and state agencies meant that a large number of violations might be tolerated. As Smith notes:

For an individual citizen with a common, politically unsensitive problem arising from administrative action, procuratorial supervision is free of either extensive administrative or party interference. Of course, questions having important political or economic consequences are subjected to many intervening political pressures which may erase any trace of impartial administrative justice.³¹

Thus the Procurator system was vulnerable to corruption. Other shortcomings were weak incentives to pursue violations, little force in protests if superior administrative agencies wanted to ignore them, a tendency to interfere in the administration of the agencies it was monitoring, and probably the worst flaw, little publicity in its functioning so that its negligence was relatively difficult to uncover.

³¹ Gordon Smith, The Soviet Procuracy and the Supervision of Administration, pg. 105.

Judicial Review of Administrative Acts

Among the most significant reforms during the Khrushchev period from the perspective of the dissertation were the empowerment of courts to supervise the administrative agencies. Under Stalin in the 1930s citizens were given the right to appeal a limited set of fines administered by local agencies.³² During the Khrushchev period, as part of a broader campaign to establish central control over subordinate state agencies, Soviet citizens were given the right to appeal a broader set of administrative decisions to courts. In 1961, Soviet citizens were given the right to appeal a new set of fines issued by administrative commissions of local municipal councils.³³ In addition the RSFSR Civil Procedural Code issued in 1961 permitted court review of a number of administrative acts, including: "errors in electoral rolls" and "cases involving the seizure of property to cover defaults on government and local taxes, mandatory wage insurance and self-taxation."³⁴ The Code of Civil Procedure and other codes listed some 15 types of cases in

³² Gordon Smith, The Soviet Procuracy and the Supervision of Administration, pg. 48.

³³ Berman, pg. 76, Donald D. Barry, "Administrative Justice and Judicial Review in Soviet Administrative Law", in Donald D. Barry, George Ginsburgs, and Peter B. Maggs, eds., Soviet Law After Stalin, Part II, Social Engineering Through Law (Sijthoff and Noordhoff: Alphen aan den Rijn, Netherlands, 1978), pg.249.

³⁴ Barry, pg. 249.

which citizens could resort to courts.³⁵

However, the more open nature of the proceedings, and the fact that the monitors - the citizens lodging appeals - had a direct stake in the outcome, meant that judicial review was a more effective instrument of oversight than the Procurator. Gordon B. Smith reports that complaints of pensioners directed to the courts succeeded at a rate of between 50 and 90 percent.³⁶ By contrast, those handled by the Procuracy succeeded at a rate of between 20 and 35 percent.³⁷ Complaints sent directly to the agency succeeded at a rate of about one or two percent.³⁸ However, given that courts were not independent (party officials and others with good connections could influence court decisions in the infamous system of "telephone law"), even if an appeal was based in fact it might not result in a favorable judgement.

The judicial reforms were minor in scope though significant in their innovation. They signified an attempt to establish centralized control over state officials through the use of courts. To emphasize these reforms' role in a broader strategy of the development of central control over subordinate bureaucracies, it is important to note that

³⁵ Barry, pg. 249.

³⁶ Smith, pp. 41-42.

³⁷ Smith, pg. 65.

³⁸ Smith, pg. 70.

in 1961 the Soviet state adopted a series of draconian penalties for administrative malfeasance: the death penalty was adopted for those convicted of stealing large amounts of state resources. In 1962, "the taking of bribes under aggravating circumstances by an official who holds a responsible position or who has been previously tried for bribery or has taken bribes repeatedly" became a capital offense.³⁹

Complaints to Administrative Agencies

The Soviet system had always relied on citizen action to discipline its officials. Complaints, and as indicated, a circumscribed right of appeal, had been an enduring part of this system. Nonetheless, this system left much discretion in the hands of officials. The administrative agency was a judge in its own case in that it decided whether or not to satisfy a complaint raised against it.⁴⁰ Acts outside of court supervision had very small chances of being changed through appeal.⁴¹

On the whole, the administrative system of the Soviet Union in the period after the Khrushchevian reforms lacked a rigorous system of oversight. This gave rise to widespread

³⁹ Berman, pp. 85-86.

⁴⁰ Gordon B. Smith, The Soviet Procuracy, pg.72.

⁴¹ Gordon B. Smith, The Soviet Procuracy,

malfunctioning of the administrative mechanism. Because no single monitoring agency could be trusted with effective monitoring, the number of monitoring systems proliferated. This gave rise to negative tendencies in the administrative system itself. Speaking of the proliferation of control mechanisms, Merle Fainsod writes:

In order to escape the heavy burden of distrust which the system imposes on those who are involved in it, both controlled and controllers not infrequently cover up for each other's sins and omissions in discharging the tasks for which they are held jointly responsible. The urge to find a peaceful sanctuary is deep seated among Soviet administrators, and it comes into sharp conflict with the Hobbesian war of all against all upon which the ruling group relies in order to maintain its own control and security. The literature of Soviet administration is filled with criticisms of administrators who enter into so-called family relations with each other and with the control organs that surround them.⁴²

The corruption and bureaucratic malfeasance tolerated by the family relations and their imperviousness to a system of central monitoring became a cancer on the Soviet state. It was this malfunctioning that provided the major impetus for Glasnost and Perestroika and the experimentation with an increase in judicial independence and an increased scope of judicial review of administrative acts. In the next section, I show how Gorbachev in the period 1985-1988 linked the malfunctioning of the administrative system to a greater need for information about its functioning and decentralized supervision of its operations. An important part of the

⁴² Merle Fainsod, How Russia is Ruled, pg. 388.

decentralized system of monitoring was court supervision of administrative agencies.

Rationales for Perestroika and Glasnost

In his major speeches beginning in April of 1985, Gorbachev repeatedly focused on a single theme: The major internal crisis was economic stagnation that could be cured by the intensive development of resources, i.e. by increasing the efficiency of production. An increase of efficiency would be achievable by improving technical and scientific development, by the application of this development to industry, and by making the economic system more efficient by increasing accountability within it.

Over the period of 1985-1988 Gorbachev became increasingly disillusioned with the idea that minor reforms in the system could improve its performance. He became more convinced that the system could only be reformed by making agencies more accountable to clients of those agencies. In 1985, Gorbachev argued that the two key problems in the organization of work were "on-time and good-quality delivery" of goods and "wastefulness and losses".⁴³ In both these cases he said that individuals should be held accountable for these mistakes, but he did not indicate who should do so.⁴⁴

⁴³ Current Digest of the Soviet Press, vol 37, # 17, pg. 4.

⁴⁴ Current Digest of the Soviet Press, vol 37, # 17 pg. 4.

In 1986, Gorbachev was more forthright when he argued for the direct participation of the population.

To convince broad strata of the working people of the correctness of our chosen path, to give them a moral and a material interest, to restructure the psychology of cadres -- these are highly important conditions for accelerating our growth. Progress will be faster as discipline, organization and the responsibility of each person for the work entrusted to him and for its results become higher.⁴⁵

One of the top priorities of the party was to "open the scope for the initiative and creativity of the masses".⁴⁶

The main arena within which this activity would take place would be at the local level, in local soviets and administrative agencies. The soviets would play an

⁴⁵ Current Digest of the Soviet Press, vol 38, # 8, pg. 12.

⁴⁶ One of the fascinating aspects of this position, and a theme repeated through out Gorbachev's later speeches, is the tight relationship between increasing individual responsibility and retrieving the moral or spiritual aspects of life. Gorbachev was aware of the collective efficiency losses of a self-seeking, unspiritual society. He was also aware of how a system which allowed individuals to shirk responsibility corroded trust and faith and turned individuals away from the public realm and into highly egoistic self-seekers, which then reinforced the dynamic in a vicious circle. At their most ambitious, Glasnost and Perestroika were about creating a new citizen who would take an interest in public affairs, from the standpoint of contributing to the commonweal. But it was recognized that in order for there to be individuals who would contribute to the public, the private had to be protected and secured. The parallels between this analysis and the analysis presented by Anwar Sadat in his autobiography, In Search of Identity, (New York: Harper and Row, 1978) are striking. Sadat repeatedly stresses the loss of human dignity and consequent demoralization of Egyptians under Nasser's quasi-totalitarianism. Like Gorbachev, Sadat emphasized not only the application of advanced science and technology and careful decentralization, but also the re-injection of faith into public life as a way of building citizens.

important role in solving the problems of citizens and supervising administrative agencies.

The essence of these proposals is to make every soviet a complete and responsible master with respect to everything having to do with satisfying peoples' daily needs, using allocated money, local possibilities and reserves, and coordinating and supervising the work of all organizations in the area of service to the population.⁴⁷

This responsibility included other agencies as well:

The times are making increasingly severe and strict demands on the level of the administrative apparatus's work. But there are a good many shortcomings here, and one often encounters departmentalism, parochialism, irresponsibility, red tape and an attitude of bureaucratic indifference toward people. One of the principal reasons for these phenomena is lax supervision over the apparatus's work on the part of the working people, the soviets themselves and public organizations.

Taking this into account, the Party sets the task of putting into motion all the instruments that give every citizen a real opportunity to actively influence the working out of managerial decisions, verify their fulfillment, and obtain necessary information on the activity of the apparatus. A system of regular reports by all administrative agencies to labor collectives and meetings of the population should be geared to this task. People's Control committees, groups and posts, trade unions' public inspectorates and the mass news media can do a great deal here.⁴⁸

While he called for greater participation to discipline state agencies, Gorbachev did not indicate that the system was completely bankrupt. However, in 1987, he gave a more thorough-going critique which indicated that some of the fundamental principles of the organization of the Soviet

⁴⁷ Current Digest of the Soviet Press, vol 38, #8, pg. 24.

⁴⁸ Current Digest of the Soviet Press, vol 38, # 8 pg. 25.

state had to go. His main theme was that the socialist system had become immune to change, owing to a rejection of innovative thinking in the social sciences. The Soviet system became unproductive because the resistance to organizational innovation allowed state agencies and officials to advance their interests over the interests of the center. This was evident in the fate of socialist property:

A serious slackening of control over who manages it and how took place. It was frequently eaten away by departmentalism and parochialism and became "no one's," as if it were free of charge, with no real master-and in many instances it came to be used to derive unearned income.⁴⁹

Planning also suffered from the assertion of the interests of the state agents over the principal:

The authority of the plan as the main instrument of economic policy was undermined by subjectivist approaches⁵⁰, imbalance and instability, a desire to encompass everything, even trivia, and abundant decisions of a branch and regional nature ...⁵¹

In a later speech in 1988, Gorbachev argued that the excessive domination of decision making by state agencies was a main cause of economic retardation and that this was a consequence of the organization of the political system:

The existing political system proved incapable of protecting us from the growth of stagnant phenomena in economic and social life in recent decades and doomed the reforms undertaken at that

⁴⁹ Current Digest of the Soviet Press, vol 39, #4, pg. 4.

⁵⁰ i.e. self interest.

⁵¹ Current Digest of the Soviet Press, vol 39, # 4, pg. 4.

time to failure ... During the period of stagnation, the managerial apparatus, which had grown to almost 100 Union and 800 republic ministries and departments, to all intents and purposes began to dictate its will in the economy and in politics. It was departments and other managerial structures that had charge of the execution of adopted decisions, and, through their actions or inaction, they determined what would be and what would not be. The Soviets, and in many respects the Party agencies as well, proved unable to control the pressure of departmental interests. It became a universal rule that the agency making decisions bore no economic responsibility for the consequences of its actions.⁵²

Gorbachev then went on to argue that the dominance of state agencies had to be remedied by the expansion of political participation.⁵³

Gorbachev also argued that the lack of effective control gave way to excessive self-seeking manifested in various forms of corruption in state enterprise, the party, and elsewhere. This in turn led to a corrosion of values, especially in the link between effort and labor, and the value of contribution to the public good:

The inevitable consequence of this was a falloff in interest in public affairs, manifestations of spiritual emptiness and skepticism, and a decline in the role of moral incentives to labor. The stratum of people, including young people, whose goal in life came down to material well-being and personal gain by any means increased ... Instances of a scornful attitude toward laws, hoodwinking, bribe taking, and the encouragement of servility and glorification had a pernicious effect on the moral atmosphere in society ... An atmosphere of all forgivingness took shape, while exactingness,

⁵² Current Digest of the Soviet Press, vol 40, # 26, pg. 12.

⁵³ *ibid.*

discipline and responsibility declined.⁵⁴

It is also significant that Gorbachev indicated his disillusion with the Party. The Party had served as the most important monitor of state agencies and enforcer of the will of the center of the state. Gorbachev accused the Party of failing to combat the stagnation of the 1970s and 1980s. Many Party organizations "were unable to hold to principled decisions ..."⁵⁵ Party executives "abused their authority, stifled criticism, or repaid personal gain, while some of them even became accessories to, or organizers of, criminal actions."⁵⁶ Hence the main supervisory institution was unable to deal with the problems facing Soviet society. New methods of supervision needed to be worked out.

It is against this backdrop that reforms to the judicial system must be understood. The basic strategy of Perestroika and Glasnost was to improve the effectiveness of state agencies through increasing the circulation of information about their functioning and about policy options, and to create a new set of incentives for citizens to actively participate in this by giving them rights to participate politically and to protest official decisions.

⁵⁴ Current Digest of the Soviet Press, Vol. 39, #4, pg. 5.

⁵⁵ Current Digest of the Soviet Press, vol 39, #4, page 5.

⁵⁶ *ibid.*

I will now discuss the key reforms of the judicial system under Gorbachev, and show how they constituted a part of this broader strategy of creating a more effective state.

A further enhancement of the powers of the legal system was one of the methods by which an improvement in state effectiveness would be achieved. In particular, strengthening the Procuracy, giving judges more independence and widening the scope of judicial review were the major reforms envisioned for the legal system.⁵⁷ Thus, the legal reforms of Perestroika and Glasnost were extensions of experiments within the Soviet system initiated thirty years earlier.

The inadequacy of the information gathering system which relied heavily on official discretion was more than apparent in the 1980s, when corruption was rampant. As indicated above, in Gorbachev's assessment of the state of the state in his speech to the Plenary Session of the

⁵⁷ Gorbachev presenting the Political Report of the CPSU Central committee to the 27th Congress of the CPSU, Current Digest of the Soviet Press, vol. 38 #8, 1986, pg. 5; Gorbachev speaking to the Plenary Session of the CPSU Central Committee, Current Digest of the Soviet Press, vol. 39, #5, 1987, pg. 11; Gorbachev speaking on the Communist Party's Theses of the 19th All-Union Party Conference, Current Digest of the Soviet Press, vol. 40, #21, June 22, 1988, pp. 8-9; Resolutions of the 19th Party Conference on Legal Reform, Current Digest of the Soviet Press, vol. 40, #38, 1988, pp. 15+. Contrast these arguments with earlier views of the Central Committee of the CPSU, which emphasized greater party "militancy" or activism in legal institutions, rather than greater autonomy of legal institutions: Current Digest of the Soviet Press, vol. 38, # 41, 1986, pp. 8-9.

Central Committee of the CPSU in 1987, corruption, official malfeasance, and state inefficiency were the central concerns.⁵⁸ An early sign of the regime's understanding of the inadequacy of the information gathering system was a reform of the RSFSR Criminal Code in 1985 issued by the Presidium of the Russian Republic Supreme Soviet. This reform at the same time criminalized both slander in an anonymous letter and persecution of citizens for criticism.⁵⁹ This simple reform sums up an important dimension of Glasnost and Perestroika. It was an attempt to improve both the quality and quantity of information regarding the activities of officials. The law was meant to make citizens feel more secure in publicly criticizing official actions by giving them more legal protection. It was also meant to increase the veracity of complaints by providing for the punishment of slander.

The most significant reforms gave citizens stronger legal rights in confronting administrative agencies so that the complaints procedure would be more effective in disciplining officials. The idea of using citizen appeals to discipline officials was discussed continuously among legal circles in the Soviet Union after the introduction of the reforms in the early 1960s. The new Soviet constitution of 1977 stated in article 58 that "Acts of government

⁵⁸ Current Digest of the Soviet Press, Vol 39, #4, pg 1.

⁵⁹ Current Digest of the Soviet Press, Vol 38, #4 pg. 21.

officials which infringe on the rights of citizens, and are unlawful, or exceed [their] power, can be appealed to the court in accordance with procedure provided by the law."⁶⁰

A set of Fundamental Principles of Administrative Law followed in the early 1980s. The legislation which would govern appeal of administrative acts to courts was discussed within the Soviet legal community in the subsequent years. A draft was submitted to the Presidium of the Supreme Soviet in the early 1980s, where it languished.⁶¹ It was not until Gorbachev came to power that significant augmentation of judicial review of administrative acts came to pass in the form of a new law governing the complaints procedure.

This new complaints law departed from past Soviet practice by significantly increasing the jurisdiction of courts in reviewing the legality of administrative acts. In discussions of the law one axis of debate had been whether the clause defining the acts susceptible to appeal would be "enumerative", which would specify the precise kinds of acts susceptible to appeal, or "general", which would in principle allow any act to be appealed.⁶² In December

⁶⁰ Hiroshi Oda, "Judicial Review of Administration in the USSR" in A.J. Schmidt, ed., The Impact of Perestroika on Soviet Law, (Kluwer Academic Publishers: Netherlands, 1990). pg. 159.

⁶¹ Oda, pg. 162.

⁶² This distinction is explained in Hiroshi Oda, "Judicial Review of Administration in the USSR" in A.J. Schmidt, ed., The Impact of Perestroika on Soviet Law, (Kluwer Academic Publishers: Netherlands, 1990).

1986, the Legislative Proposals Committee of the Supreme Soviet adopted a general clause. However, the committee significantly limited the scope of acts susceptible to appeal by allowing only individual acts to be appealed. Decisions of collegial bodies were not susceptible to appeal to a court.⁶³ The law further constrained judicial review by excluding matters of national defense and state security. Nevertheless, the adoption of a general clause expanded the number of administrative acts susceptible to judicial review to a number far beyond what had obtained in the USSR up to that point.

The law had two other revealing features which indicated its purpose as a method of generating information on bureaucratic malfeasance. First, the law waived fees for filing cases. Thus the cost of filing a complaint was reduced. The possibility of spurious complaints was countered by making complaints for slanderous purposes liable to punishment. Second, the law empowered courts to issue a supplementary ruling if it found evidence that "the established procedure for examining citizens' proposals, requests and complaints was violated, or that red tape, suppression of criticism and persecution of criticism, or other violations of legality"⁶⁴ occurred. The court was then supposed to send this ruling to a higher authority,

⁶³ Oda, pp. 162-163.

⁶⁴ Current Digest of the Soviet Press, vol. 39, # 29, pg. 13.

which had to report to the court within one month on the measures it had taken.

After this law was passed in July of 1987 (coming into effect January 1, 1988), the law was revised to further extend judicial review. The original law allowed appeals to a court only after the decision had been appealed to the appropriate higher level administrative agency. The law had also restricted appeals of the court decision to protests by the Procurator. The revisions to the law did not require an appeal to a higher level administrative agency. Plaintiffs could go straight to the court. Also, appeals of court decisions were somewhat liberalized in that they became governed by the Law of Civil Procedure⁶⁵. This meant that appeals could be raised by the Chief Justice of the USSR Supreme Court, chief justices of the union republic courts and their deputies, and presidents of the intermediate courts as well as the Procurator⁶⁶. The revision of the law took place after the views of deputies of the USSR Supreme Soviet were heard⁶⁷. That such comments would be heard and reviewed was a novel exercise in Soviet law making, adopted for the consideration of the law on

⁶⁵ Current Digest of the Soviet Press, volume 39, # 47, (1987) pg. 14.

⁶⁶ Oda, pg. 163.

⁶⁷ Current Digest of the Soviet Press, *ibid.*

appeals⁶⁸. That some of the views were acted upon indicates the leadership's desire to circumvent the power of the Party, which had played a major role in the preparation of the new law⁶⁹.

The limitations on appeals suggests the intentions of the drafters of the law. This was not an attempt to create the rule of law. Rather it was an attempt to put some added pressure on lower level bureaucrats by creating another supervisory mechanism. Liberal institutions were adopted toward this end, but not for liberal purposes. The law on appeals was carefully hedged to prevent the citizen to pursue protection of political rights by excluding appeals in the case of threats to state security. Also, the law prevented the higher levels of the state from challenge by citizens. This was the purpose that was served by limiting appeals to acts of individual officials, and excluding acts of collegiate bodies. It was the individual "street level" bureaucrat⁷⁰ with discretion over housing allocations, drivers' licenses, access to health care, etc., that was being challenged, not higher level policy making bodies which were more often than not collegiate in nature. The complaint law's focus on lower level bureaucrats and the

⁶⁸ Oda, pg. 169.

⁶⁹ Oda, pg. 162.

⁷⁰ The phrase belongs to Michael Lipsky, Street-Level Bureaucracy: Dilemmas of the Individual in Public Services, (New York: Russell Sage Foundation, 1980).

attempt to exclude appeal of law-like acts is a good illustration of the predicted type of reform: creating accountability that is low in political costs relative to the gains in information.

Nevertheless, the drafting of the clause limiting appeals to individual acts left room to expand the judiciary's jurisdiction. There remained some important issues that could be argued to be the acts of individuals. Creative lawyers and judges were able, on the basis of this law, to extend judicial review to higher levels of the state. In 1988, the year the law came into force, the Supreme Court of the USSR issued a resolution that "the actions of any officials, personally carried out by them on their own behalf or on the behalf of the agency they represent (including a collegial body) can be appealed in the courts."⁷¹ Thus the court expanded the scope of judicial review by drawing a distinction between decisions and actions. Collegial decisions would in effect become appealable if carried out by individuals.

A second complaints law superseding the first was passed in 1990. This law significantly modified the system of appeal. Two of the most important changes were 1) the

⁷¹ Current Digest of the Soviet Press, vol 40, # 52, pg. 29.

extension of appeals to acts of collegiate bodies,⁷² 2) the exclusion of "acts of state administration and officials which [were] of a normative nature" from judicial review,⁷³ and 3) the prohibition of the use of the complaints law to appeal decisions "if another procedure for complaint [was] provided by the laws of the USSR and the union republics."⁷⁴

The exclusion of normative acts and the inclusion of collegial decisions appears to be oriented toward fine-tuning some ambiguities in the previous law, which, in conjunction with interpretation of the Supreme Court, appeared to allow appeal of legislative decisions. Normative acts were acts of a general nature, i.e. not oriented to a specific individual or case, but "oriented toward regulating a certain kind of social relations and [were] applied repeatedly."⁷⁵ Hence the prohibition of the appeal of normative acts made laws unappealable. Rather, specific mis-application of laws would be subject to appeal, whether those mis-applications were committed by individuals or collective bodies. Thus these two reforms fine-tuned the

⁷² Helsinki Watch, Toward the Rule of Law: Soviet Legal Reform and Human rights Under Perestroika (Helsinki Watch, 1989), pg. 20.

⁷³ Helsinki Watch, Toward the Rule of Law: Soviet Legal Reform and Human rights Under Perestroika (Helsinki Watch, 1989), pg. 24.

⁷⁴ Helsinki Watch, Toward the Rule of Law: Soviet Legal Reform and Human rights Under Perestroika (Helsinki Watch, 1989), pg. 24.

⁷⁵ Helsinki Watch, Toward the Rule of Law: Soviet Legal Reform and Human rights Under Perestroika (Helsinki Watch, 1989), pg. 21.

ability of the center of the state to bring citizens' discontent to bear on administrators while excluding judicial review of legislation and policy. The clause prohibiting appeal in cases in which another route of appeal exists also reserved discretion in the hands of law makers regarding the extent of judicial review of administrative acts. Judicial review could now be abolished in policy areas that the political elite wanted to focus on, while other more routine areas could be delegated to courts.

Several other clauses indicated that the law was still meant to encourage appeals. First, the new law allowed "suits to be heard even if the plaintiff or the official [failed] to appear in court 'without a valid reason.'"⁷⁶ Under the previous law, cases had been dropped because the official in question did not appear in court.⁷⁷ Second, the clause which provided for the susceptibility of those filing complaints to libel charges was removed from the law. In the new law spurious cases were discouraged by a) requiring the plaintiff to pay a court filing fee and b) requiring the loser to pay the court costs.⁷⁸ These clauses taken together reduce the downside risk to plaintiffs and increased the likelihood of the case being

⁷⁶ Helsinki Watch, Toward the Rule of Law: Soviet Legal Reform and Human rights Under Perestroika (Helsinki Watch, 1989), pg. 25.

⁷⁷ Helsinki Watch, Toward the Rule of Law: Soviet Legal Reform and Human rights Under Perestroika (Helsinki Watch, 1989), pg. 25.

⁷⁸ *ibid.* pg. 27.

heard.

In summary, the complaints law significantly expanded the scope of judicial review of the legality of administrative acts. It did so in a way that sought to gain information about officials without making significant political concessions. The second complaints law exemplified the emphasis on gain in information with minimum political cost in that it excludes the appeal of laws. The purpose of these laws was also to improve the quality of information by imposing penalties on complainants in the event that their complaint was not upheld in court.

In addition to the law on complaints, new legislation on the Status of Judges was passed. The intent of this legislation was to strengthen judicial independence, primarily by limiting the influence of the nomenklatura system on the selection of judges. People could become candidates for positions as judges on the basis of a recommendation from the workers' collective of the person's workplace and the recommendation of a qualification committee. Judges would then be chosen by the Ministry of Justice and the Supreme Court of the Republic. Candidates were required to have legal training, to have worked in the legal profession for two years, and to have passed an

examination.⁷⁹ Candidates would be elected, though in practice there were no opponents. Nevertheless, constituencies could reject candidates. The system minimized Party influence by making the legal profession and the local population the major actors in choosing judges. The qualification committees were made up of judges. Oda notes that the Party might have been able to intervene in the selection process by choosing among candidates nominated by workers' collectives to the qualification committee.⁸⁰ Nevertheless, committees could select other candidates and could reject those proposed by the Party. At face value, the law significantly enhanced the independence of judges.

Openness and the Press

The new laws on appeals and the status of judges were part of the broader campaigns of Glasnost and Perestroika. Fundamentally these campaigns were designed to improve the administrative efficiency of the state by improving the circulation of information in society regarding policy implementation and policy options and by creating more checks on officials by making them more accountable to citizens. Glasnost can be translated as "publicity" in

⁷⁹ Hiroshi Oda, "Recent Developments in Party Control over the Courts and the Procuracy", in F.J.M. Feldbrugge, ed., The Emancipation of Soviet Law, (the Netherlands: Kluwer Academic Publishers, 1992) pg. 245.

⁸⁰ Oda, *ibid.*, pg. 247.

English, in the sense that knowledge is made part of the public sphere. In Gorbachev's speeches, it is clear that he saw publicity as a solution to the widespread problem of bureaucratic corruption, inefficiency, and immunity to central control.

Gorbachev's idea of publicity resonated strongly with Anwar Sadat's idea of transparency, a central idea in his corrective movement which culminated in the issuance of the reformist Constitution of 1971 and the beginnings of judicial empowerment and the rule of law. For Gorbachev, the essence of Glasnost was to shine light on the illicit activities of Soviet bureaucrats and party members. This came across clearly in speeches he made on the role of the press in Restructuring (Perestroika) and on the rationale for Glasnost. In his concluding remarks to the Plenary Session of the Central Committee of the CPSU in January, 1987, Gorbachev summarized his rationale for openness:

The Communist Party is firmly in favor of the people knowing everything. Openness, criticism, and self criticism, control by the masses -- these are guarantees of the healthy development of Soviet society ...

The people need the whole truth ... now as never before, we need more light, so that the Party and the people can know everything, so that we will no longer have any dark corners where mold can grow ...⁸¹

⁸¹ Remarks of Gorbachev to the Plenary Session of the CPSU Central Committee on January 28, 1987, reported in Current Digest of the Soviet Press, Vol 39, #6, pg. 14.

In a speech in 1988 to the press, Gorbachev reiterated this point:

Openness and criticism are means by which the masses, by which the society, monitors all processes. They are also means of generalizing experience, detecting the main trends in society, and warning against mistakes.⁸²

Gorbachev clearly outlined the role of the press during Perestroika in a speech he gave on the topic in February, 1987. Gorbachev exhorted the press to not focus on the resistance to Perestroika, but to write about those who were making it work, in order to teach those that did not understand the new system and new ideas. He argued against discussion of the pros and cons of Perestroika. Rather, he urged the press to engage in sustained criticism of the state bureaucracy: "The press is called upon to be even more active, to give no rest to idlers, self seekers, timeservers and suppressors of criticism, and to more actively help those who are fighting for restructuring."⁸³ Nevertheless, he also urged that the press be moderate in tone, to merely report facts rather than humiliate people. "Dialogue is more appropriate here, and any kind of condescending lecturing, didactic exhortation or, worse yet, prosecutorial tone is completely unacceptable."⁸⁴ Rather, criticism should be oriented toward positive change: "In

⁸² Current Digest of the Soviet Press, vol 40, #2, pg. 4.

⁸³ Current Digest of the Soviet Press, vol 39, #7, pg. 7.

⁸⁴ Current Digest of the Soviet Press, vol 39, #7 pg. 7.

criticizing what is improper, they should, through their entire mindset, convey a positive charge, a charge of movement, a charge of life ... "85 Gorbachev not only asked the press to adopt a specific tone in its criticism, he asked it to focus on particular state agencies. He noted that the government wanted to minimize the role of the Party in administration. So he asked journalists to not blame shortages on party officials, but rather to focus their analysis on state agencies: "Everything should not be laid at the door of the Party Committees. We do have people and agencies that are responsible for specific matters ... stricter demands must be made on everyone for his own work sector. Do not cover everyone with a party umbrella. Then acceleration will proceed faster in our country."86 Hence one critical role of the press was to support restructuring both through education of the people about what it meant and by turning the spotlight on the inadequacies of state agencies and officials. In Gorbachev's view, an important purpose of press freedom was making state agencies more efficient.

Two important laws were issued during the late 1980s aimed at promoting a more open society. The first of these

⁸⁵ *ibid*, pg. 8.

⁸⁶ *ibid*. pg. 7.

was the "Law on Public Discussion of Major Issues".⁸⁷ This law provided for the public, as individuals or members of associations, to comment on drafts of laws. There was no provision that required their comments to be heeded, and the law itself provided no specific punishment for not holding the discussion. The text of the law was ambiguous as to whether discussions must be held. For example, while it said that "draft laws and other important questions of the state life of [a] Union republic may be submitted for public discussion"⁸⁸, it also stated that "USSR citizens are guaranteed free participation in the discussion of important questions of state and public life."⁸⁹ Furthermore, the penalties for violation of the law were left for later legislation.⁹⁰ As such this law can only be taken as an indication of the preferences of some of the political elite, and not a real policy departure.

In 1990, a new law on the "Press and Other Media" was issued. Prior to this time, informal guidelines regarding the press had been indicated by the political leadership through speeches and interviews. This new law codified the limits of what the press could print, but also took steps to

⁸⁷ Text of the law was published in Pravda, July 1, 1987. Translation in Current Digest of the Soviet Press, vol 39, # 28, pp. 13-14.

⁸⁸ Article 2, *ibid.* Emphasis added.

⁸⁹ Article 6, *ibid.*

⁹⁰ Article 11, *ibid.*

allow the press to function as an independent monitoring agency. The law illustrates the close connection between press liberalization, increased judicial power, and the state's search for better information about bureaucratic performance. It also illustrates how protection of the freedom of publication (and expression) is used to improve not only the quantity but also the quality of information. The law gave extensive protection of the press to publicize activities of state agencies, and put teeth into this protection by empowering the press to appeal to courts for their protection. But the law also criminalized slander, thus creating incentives for accurate reporting.

The law placed restraints on the press by criminalizing the dissemination of information "that does not correspond to reality and defames the honor and dignity of a citizen and organization."⁹¹ It also required registration of news organs and other publications. The law had an elaborate legal structure so that responsibility for violations of the rules of publications was clearly delineated. The law also forbade publication of state secrets or other secrets protected by law.⁹²

However, these restrictions were tempered by the requirement that decisions regarding registration would be

⁹¹ Current Digest of the Soviet Press, "Law on the Press and Other Media," Article 35, pg. 18.

⁹² *ibid.*, pg. 17.

appealable to a court. Furthermore, the law also explicitly forbade censorship and courts were empowered to protect the media from censorship:

The prevention of the legal dissemination of the output of a media outlet, including the confiscation of a press run or part of it, is not allowed, except on the basis of a court decision that has entered into legal force.⁹³

Thus the restrictions regarding information corresponding to "reality" would be tested in court.

In addition to court protection in regards to censorship and registration, the law also provided that journalists would have the right to information regarding the activities of state agencies, and could appeal to a court to obtain that information in accordance with the complaints law:

A refusal to provide requested information may be appealed by a representative of a media outlet to a higher level agency or official, and then to a court, in accordance with the procedure stipulated by law for appealing unlawful actions by bodies of state administration and officials that infringe the rights of citizens.⁹⁴

Thus the center of the Soviet state sought to increase its control over state agencies by using judicial independence and a regulated right to expression to improve the monitoring of its subordinate officials.

The Press law fits a broader pattern of reform under Perestroika: the shaping of public participation for the

⁹³ *ibid.*, Article 22.

⁹⁴ *ibid.*, Article 24.

purposes of the center of the state. The law closely regulated the formation of media outlets, and guarded against fabrications, thus encouraging a higher quality of information and diminishing "noise". Moreover, it established clear procedures based on already existing legislation to generate access to information about state agencies. Even more significant from the point of view of the dissertation is the close relationship between court supervision of administrative action and the generation of reliable information about the actions of officials.

Glasnost and Perestroika had other dimensions as well, but it is notable that they were all aimed at improving the efficiency of the state. First was a calling into question of the past which served to discredit what the leadership called the "old command administrative methods" of governing. Second was a general improvement of the circulation of information that might affect policy, such as scientific, scholarly, and technical information. Third, and perhaps most intriguing, was a concern with the spiritual formation of citizens, and an improvement in public values. Like Anwar Sadat, Gorbachev believed that totalitarianism had (ironically) stripped people's consciousness to pure self-seeking. He wanted Soviet subjects to become citizens: individuals with an interest in public affairs, an orientation toward improving the

commonweal, and armed with the information and skills necessary to contribute to public management. Perestroika included various forms of democratization at the local, plant, regional, republic, and union level. It also involved the restructuring of property relations. Nevertheless, a central theme of the reforms was improving state efficiency. The creation of a more powerful legal system and judicial independence were central features of these reforms.

Conclusion

This chapter has shown that rulers of states with similar institutional structures adopted similar reforms in order to improve their control over their officials. The rulers of Soviet Union in the 1950s and 1960s, and especially in the 1980s, and of Egypt in the early 19th century both relied on "fire alarm" methods to improve the quantity and quality of information available to them regarding their officials' activities. The concern with quality of information was especially pronounced in the case of the Soviet Union. Indeed, in the USSR, the quantity of information available to the ruler about his officials' activities was not a serious constraint. Complaints offered an abundance of information. The problem in utilizing them effectively was that the quality of that information and the incentives for monitors within the state to investigate were

weak. Glasnost and Perestroika were meant to rectify the problem of quality of information by liberalizing expression and hence making it more responsible, and making independent courts responding to citizens' appeals, rather than complaints, the main evaluators of information. Thus liberalization and judicial empowerment were strategies designed to improve the quality of information.

Chapter Six

Evaluating Rival Hypotheses

This chapter evaluates three competing explanations of political liberalization relevant to the Egyptian case. These three explanations can be summarized by the following propositions:

- 1) Rulers grant rights to subjects in order to make them more willing to pay taxes. In other words, rulers grant rights when the value of increased revenues exceeds the costs of tolerating an opposition.
- 2) Some rulers rely on providing state largesse to maintain popular support. However, the costs of a given level of expenditure on largesse may exceed the costs of tolerating a certain level of political opposition. Rulers grant rights when the costs of providing patronage increase relative to the costs of tolerating an opposition.
- 3) Social groups can impose costs on the ruler through protests and other forms of political disruption. Political liberalization is a concession to civil society when the ruler judges that the costs of tolerating opposition are less than the costs of repressing it.

The following chapter assesses the empirical validity of each of these propositions in the Egyptian case, 1971-1985. More specifically, it assesses the extent to which changes in the dependent variable, political liberalization, follow changes in the independent variable (increased need for revenue, reduced capacity to provide state largesse, higher costs of repression, or reduced costs of toleration).

The chapter begins with a description of political liberalization in Egypt. I argue that there have been three phases of political liberalization. The subsequent three sections assess the extent to which each of these three phases was preceded by the predicted value of the independent variable for each proposition.

The main finding of this section is that none of the three propositions holds convincingly for the first two phases of political liberalization (1971-1972, 1974-1978). A strong case, however, can be made that in the last phase of political liberalization (1983 onwards) that the third proposition holds, namely that the costs of repression exceeded the costs of toleration. But even in this latter phase, the Presidency attempted to channel political participation in order to contribute to effective state monitoring.

Thus in all three phases of political liberalization, the need of the Presidency to improve the monitoring of state agencies remains a plausible explanation of political liberalization.

Phases of Political Liberalization in Egypt.

Political liberalization in Egypt can be divided into

alternate phases of de-compression and re-compression.¹ The first period of decompression occurred between roughly June of 1971 and February of 1972. During this period the 1971 Constitution was issued, the police forces were reined in, the press began to write more freely, and the first Parliamentary elections were held.² This period ended in February of 1972 with the jailing of student activists,³ the passage of a law that forbade the formation or joining of other parties,⁴ and a new repressive law, the Law to Protect National Unity.⁵

The regime did not undertake any new initiatives in political liberalization until 1974, when the second phase of decompression began. During this phase of liberalization, press censorship was again considerably relaxed (1974), a new local government law de-centralized

¹ This language is borrowed from the Brazilian case of liberalization and democratization (1974-1985). De-compression refers to the broadening of opportunities for political expression, association and participation. Re-compression refers to the reduction of these opportunities.

² John Waterbury, The Egypt of Nasser and Sadat: The Political Economy of Two Regimes, (Princeton: Princeton University Press, 1983), pg. 365.

³ Raymond Hinnebusch, Egyptian Politics under Sadat: The Post-Populist Development of an Authoritarian-Modernizing State, (New York: Cambridge University Press, 1985) pg 51.

⁴ The Times (London), August 17, 1972, pg. 5.

⁵ Amir Salim, "The Authoritarian Legal Foundation and the Human Rights Movement in Egypt," in Human Rights in Egypt: Proceedings of the First Conference, December 8-9, 1988, (Arabic) (Arab Organization for Human Rights), (Cairo: Dar al Mustaqbal al Arabi, 1990), pg. 43.

some powers (1975), the ASU was divided into competing platforms (1975), and then into three separate parties (1976), and finally, the formation of parties outside of this framework was legalized (1977). The legalization of opposition parties included authorization for these parties to publish party newspapers. Al Ahaly (belonging to the leftist Tagammu' Party) and al Ahrar (belonging to the conservative Liberal Party) began publication in 1977⁶, followed by al Sha'ab in 1978 (belonging to the Socialist Labor Party). Also, the Muslim Brotherhood began publication of al Da'wa in 1977.

The second phase of decompression ended in 1978. The New Wafd Party gained authorization on February 4, 1978.⁷ The party dissolved itself in May of 1978, following the passage of a referendum which denied political rights to members of the old regime who had been convicted of corruption in 1953. The leader of the New Wafd, Fu'ad Serrag El Din, was one of those who had been convicted.⁸ The newspaper Al Ahaly could no longer be sold publicly after 1978 because of repeated government confiscation.⁹ The leftist Tagammu' had great difficulty operating due to

⁶ Hinnebusch, pg. 182.

⁷ Waterbury, pg. 369.

⁸ Waterbury, pg. 369.

⁹ Hinnebusch, pg. 194; NYT

increased police harassment.¹⁰ In addition, new repressive legislation was passed in 1977 through the use of the referendum. Some gains in liberalization were not lost however. The opposition Socialist Labor Party gained 29 seats out of a total of 390 in the 1978 parliamentary elections, and its leader, Ibrahim Shukri, was able to perform some of the functions of a loyal opposition.¹¹ Al Da'wa continued to publish. In 1981, however, the limited scope for opposition was narrowed further. After growing opposition from Egypt's intelligentsia, Anwar Sadat ordered the arrest of over 1500 of the most prominent of his opponents. In addition many newspapers and magazines were closed down. It appeared that Egypt's liberal experiment was over.

The third phase of decompression began in 1982 with the publication of Al Ahaly. This was followed in 1983 by the re-emergence of the New Wafd Party. The New Wafd, Tagammu', Socialist Labor, the Liberals, and the Muslim Brotherhood (in alliance with the New Wafd) contested the Parliamentary elections of 1984. Since 1984 more opposition parties have formed and the boundaries of debate in the press have increasingly widened. There is ample freedom to talk, associate, and publish, though there has not been any progress on the principle of the alteration of power.

¹⁰ Hinnebusch, pg. 194.

¹¹ Waterbury, pg. 371.

The three phases of liberalization and two phases of retreat are paralleled by Freedom House's assessment of civil liberties in Egypt (Table 1).

Before proceeding to an analysis of the extent to which political liberalization can be explained by the three competing independent variables, I first raise a general objection. All three rival hypotheses are rooted in the proposition that political liberalization is a method of legitimating state domination, and therefore political elites liberalize in order to gain legitimacy. It is highly plausible that immediately preceding Sadat's strongest and longest period of liberalization, 1974-1978, he had greater legitimacy than at any other time during his tenure. The Egyptian military had performed well along the Suez Canal in 1973, and furthermore, the vast bulk of the Egyptian public was not (and is still not) aware that Israeli forces had crossed the canal and encircled Egypt's Third Army.

Is Political Liberalization an Exchange for Higher Taxes?

This proposition states that a government will grant rights of participation in order to raise tax revenue.¹² The intuitive idea is that individuals will be more willing to part with their money if they have some influence over

¹² Robert H. Bates and Da-Hsiang Donald Lien, "A Note on Taxation, Development, and Representative Government," Politics and Society, Volume 14, #1, (1985), pp. 53-70.

Table 1

RATINGS OF CIVIL LIBERTIES

Egypt, 1973-1986

1 = Free, 7 = Not Free.

Year	Rating
1973	6
1974	6 Phase Two Begins
1975	4
1976	4
1977	4
1978	4 Phase Two Ends
1979	5
1980	5
1981	5
1982	6
1983	5 Phase Three Begins
1984	4
1985	4
1986	4

Source: Raymond Gastil, Freedom in the World,
(New York: Freedom House, 1978-).

how it is spent. Before moving onto the empirical analysis, I will present some logical objections to the argument.

First, although it may be rational to fight for rights if one is being taxed, it is not as logical to believe that once granted rights a population will be more willing to part with its income. It is just as likely that most people will go on not paying their taxes because the government's ability to force them to pay taxes has not increased. Thus the argument hinges on the question of why people pay taxes. If they are more likely to pay taxes if they are compelled to do so, then liberalization will not increase the tax yield. If people are more likely to pay taxes if they feel they have some influence over how the taxes are spent, then political liberalization will also have a little or no impact. Even in a well-functioning democracy, a person's vote is only one among millions.

If, however, they are more willing to pay taxes if money is well spent, and they believe that something about political liberalization improves the performance of public expenditure, then they will be more willing to pay taxes. But even under this condition, tax payers will still have an incentive to free-ride. If people are more likely to pay taxes if they feel the collection of taxes serves a legitimate purpose, democratization will increase tax collection if those people believe that something about democracy makes the collection of taxes more legitimate.

If, however, they have a different view about what makes tax collection legitimate, democratization may be unnecessary and/or have no effect. Hence, only under two narrow conditions will people be more willing to pay taxes after political liberalization.

I test the argument empirically by examining trends in the state's access to resources. If the hypothesis is correct, political liberalization ought to follow a growth in the gap between what the government needs to spend and the access it has to resources. Also, if the hypothesis is correct, the taxes in question should be hard to collect and derived from the general population. Granting rights to the population as a whole is an inefficient method to collect taxes if the taxes are levied on a specific group and do not require a high level of voluntary compliance.

I show that during the periods prior to and during political liberalization the government had ample access to resources. Indeed, there is a stronger positive relationship between repression and shortage of resources. Second, I show that the kinds of taxes which formed the largest part of the total tax take and grew the fastest during periods of political liberalization were specific to certain groups and not dependent on high levels of voluntary compliance.

The best measure of the gap between needs and resources is the budget deficit. Unfortunately, data on the budget

deficit are unavailable for the years before 1975. Therefore, second-best measures must be relied upon. The next-best measure is trends in government revenue. However, this is available only from 1973 onwards (and not available for 1979 and 1980). Values of government consumption and government investment are available for almost the entire period in question. Figure 1 shows trends in government consumption and investment between 1966 and 1987.

Figure 1

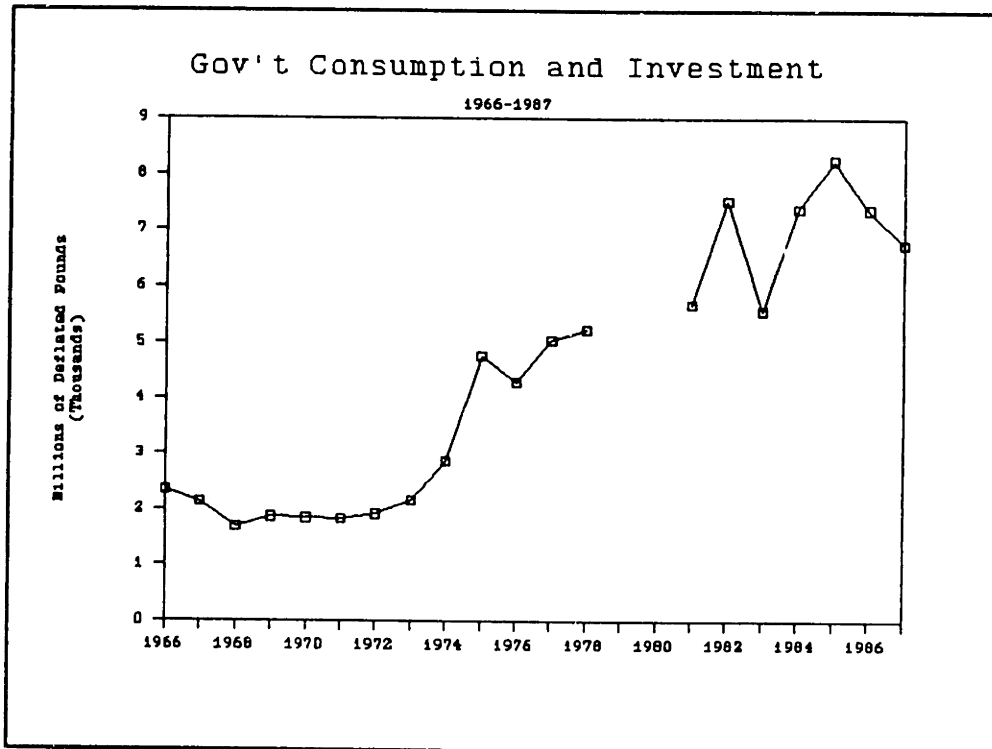
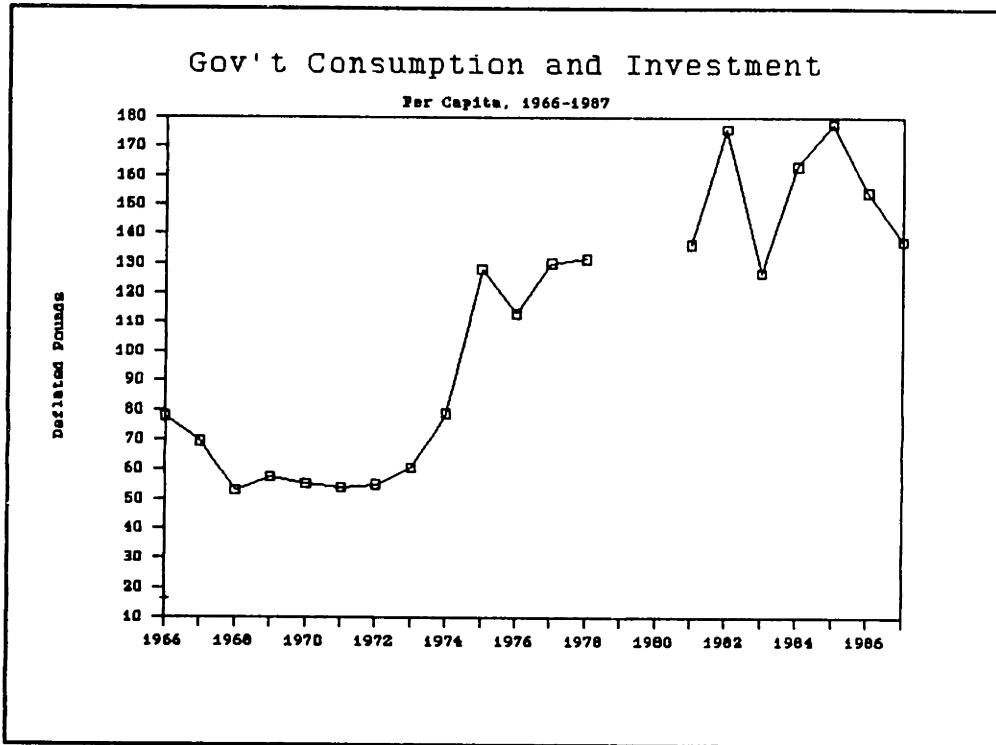


Figure 2 shows government consumption and investment on a per capita basis.

Figure 2



In the period prior to the first period of liberalization, 1970-1971, government resources were constant. In the second period, 1972-1974, government resources were rapidly expanding.

Government resources in 1975 were two and a half times what they were in 1972. One major cause of this expansion was a massive inflow of foreign capital from the West and from the Arab Gulf.

Figure 3 breaks down government investment and consumption and shows that both grew extremely rapidly during this period.

Figure 3

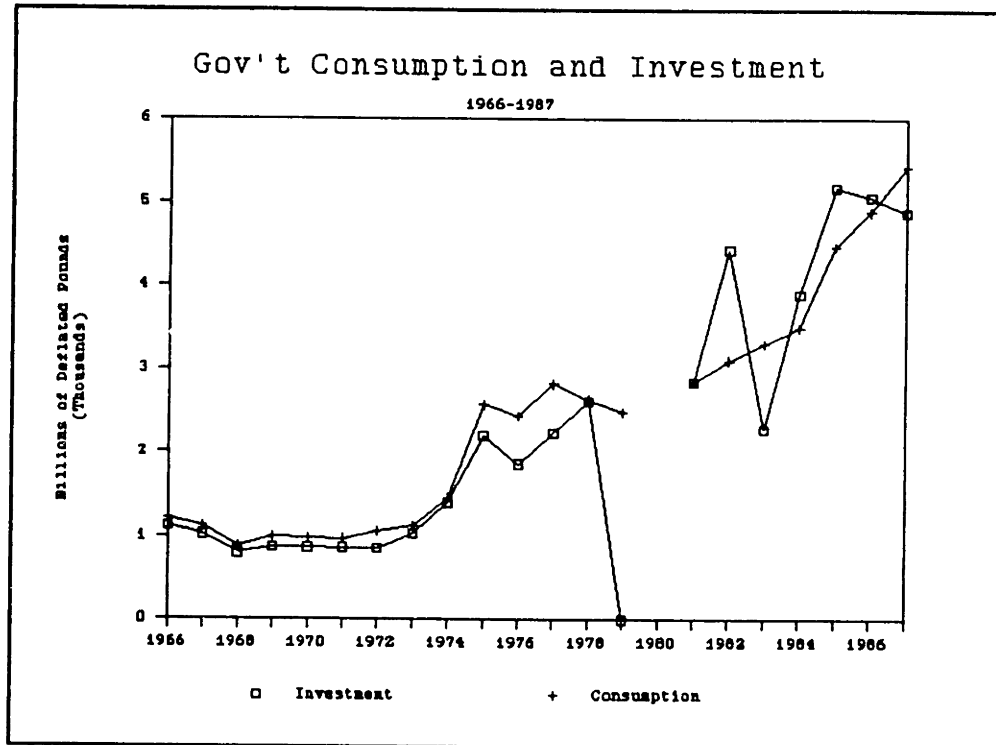


Figure 4 shows World Bank estimates of public and publicly guaranteed capital inflows during this period.

Figure 4

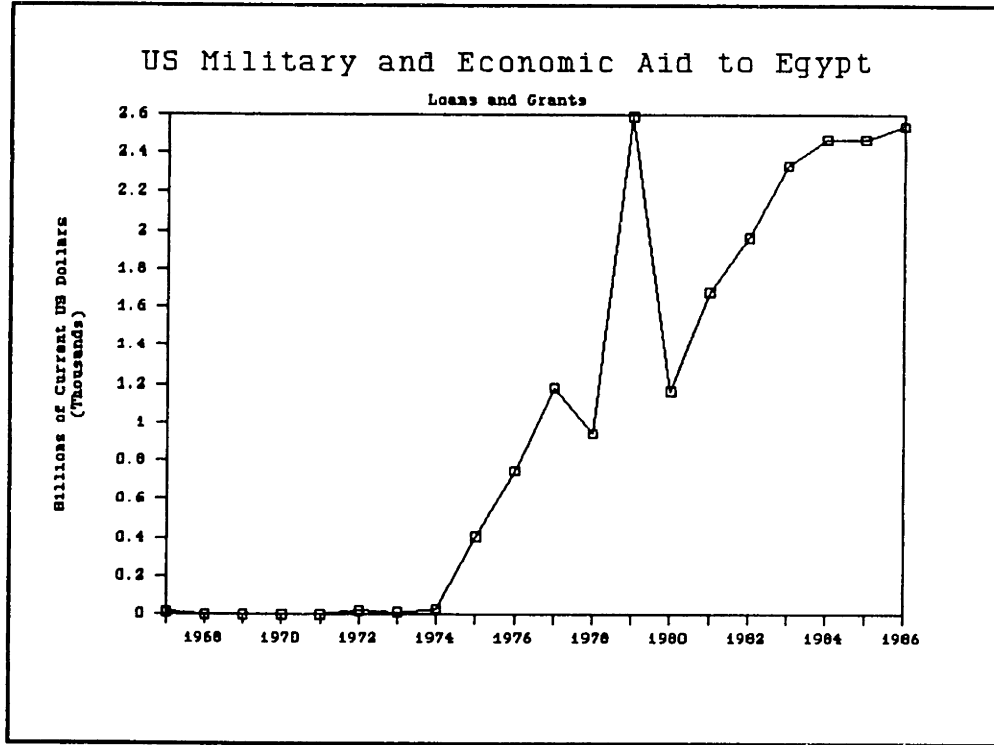
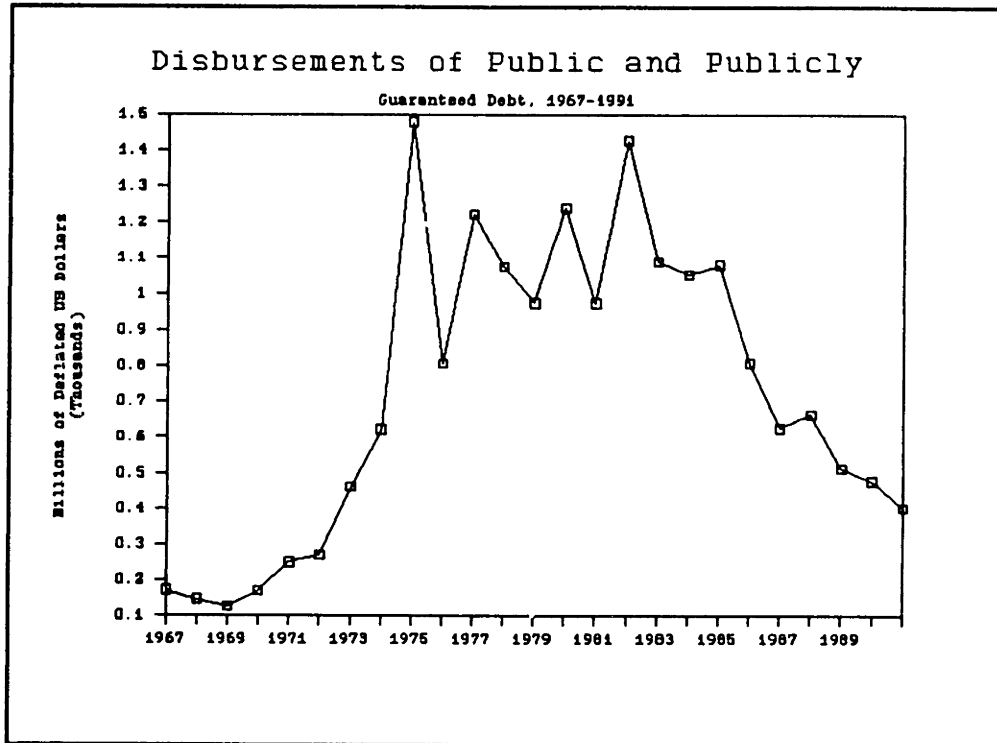


Figure 5 shows the large expansion of United States foreign aid to Egypt.

Figure 5



These graphs indicate that during the period leading up to the second phase of political liberalization the government had ample access to foreign resources. This calls into question the extent it had to rely on domestic resources.

Thus government access to resources as measured by government consumption, government investment and access to foreign capital was growing rapidly in the years leading up to and during the most innovative phase of political liberalization, 1974 - 1978. During the years leading up to

the first phase of political liberalization, resources were stagnant. And from the period between 1981 and 1984, government access to resources was highly variable, but nevertheless grew significantly in real terms. Thus based on these data, the proposition has little validity for the second and third phases and only marginal plausibility for the first phase of political liberalization.

But the heavy reliance on foreign capital may have prompted liberalizing reforms in order to improve tax collection and reliance on domestic resources.

Figure 6

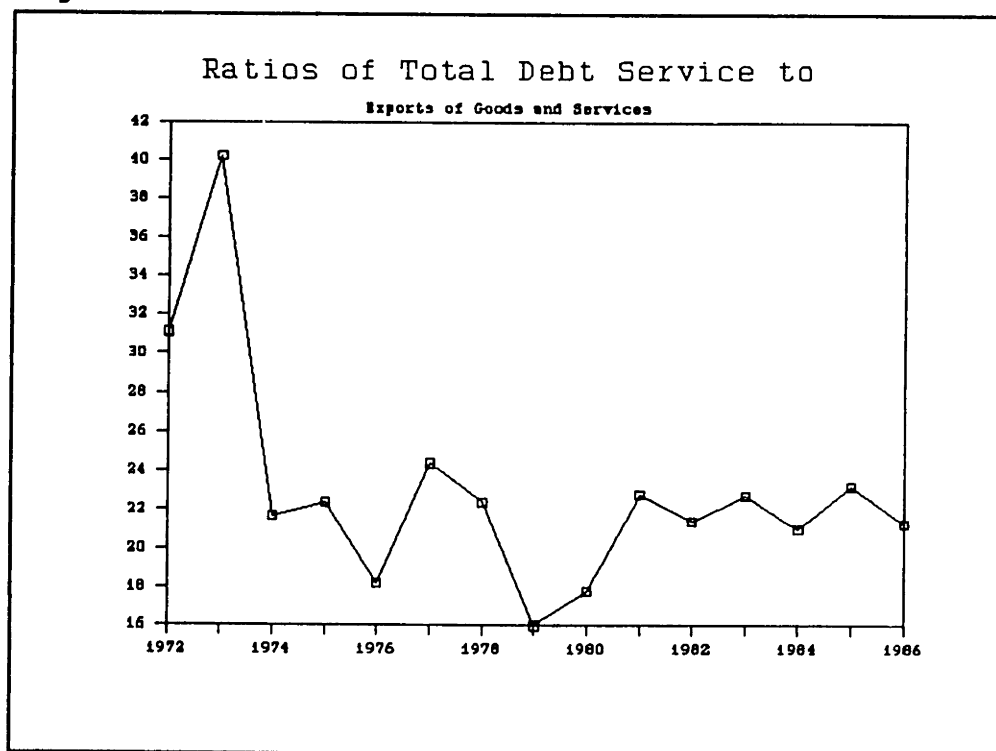


Figure 6 shows that the ratio of total debt service to exports was very high in the early 1970s prior to the second phase of political liberalization. Debt service ratios are

used as indicators of the likelihood that a government will repay its debts. Thus when debt service ratios increase, the terms of private capital worsen for the debtor country, and pressure is put on the government's access to resources. Repaying the debt or reducing borrowing would require either increasing taxes or foregoing expenditure. Thus the persistence of a high debt to export ratio could constitute strong support for the taxation thesis. However the pressure on the debt to export ratio was reduced by a large infusion of capital after the 1973 war.

The debt service ratio was also high in 1977 and 1978. However, the main method the government used to reduce its reliance on external resources was reduction of food subsidies, which consumed a large amount of foreign exchange. This strategy resulted in threatening riots in Cairo and elsewhere in Egypt in January of 1977. The main government response to these riots was repression. Thus the main domestic political response on the part of the government to a shortfall of resources was an intensification of repression, rather than liberalization.

The crisis of resource scarcity was short lived, however. The Egyptian government was able to arrange for balance of payments support under the IMF Extended Fund Facility¹³ and Western creditors re-scheduled their claims. As a result, the debt service ratio fell in 1979 and 1980

¹³ John Waterbury, The Egypt of Nasser and Sadat, pg. 410.

and pressure on the government's resources fell. And although Arab contributions fell after the signing of the Camp David accord in 1979, the rise in oil prices following the Iranian Revolution left Egypt with considerable foreign exchange.¹⁴

By the early 1980s the ratio of total debt service to exports was again increasing to very high levels. Concern over the government's ability to continue to gain access to foreign capital may have contributed to the government's decision to liberalize the polity. But by the early 1980s the meaning of the debt service ratio in Egypt had changed. The large amount of guaranteed aid and concessional public debt made available by the West after Camp David made the government's access to foreign capital far less dependent on its propensity to repay. Far more important was the government's political relations with Washington. Also important was the degree of coordination among major public sector donors. In the 1970s, the World Bank undercut the IMF's demands for austerity policies when it disbursed loans to Egypt regardless of the policies the government adopted.¹⁵ When creditors maintain a united front, they can more easily put pressure on the government's resources by making it face hard policy choices. Under these conditions access to foreign capital has domestic political

¹⁴ John Waterbury, The Egypt of Nasser and Sadat, pg. 41.

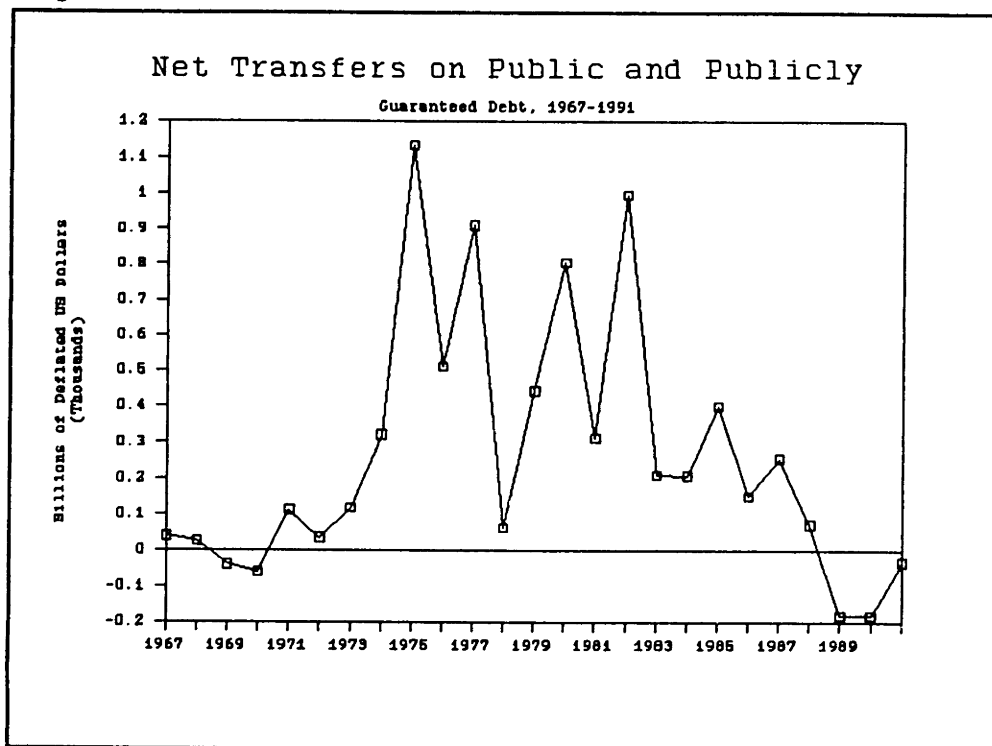
¹⁵ Waterbury, pg. 413.

costs bound up with the imposition of unpopular austerity and adjustment policies.

But coordination among creditors had not been achieved by 1983. Therefore, it is hard to argue that the rising debt service ratio imposed a constraint on the government's actions. In other words, the government did not face a fiscal crisis requiring it to raise taxes or reduce expenditures. This is apparent from the continuation of high levels of disbursements and commitments throughout the early 1980s (See Figure 4), despite the shocks to the international financial markets following the Mexican rescheduling in August of 1982. It is interesting to note that private supplier credit became an increasingly important component of foreign lending. Since purchases were financed by public sector capital private supplier credit did not fall off in the early 1980s despite the rising debt service ratios.

The major financial constraint on the government was the growth in debt service relative to new disbursements of loans. Net transfers (Figure 7) declined steadily after 1978. Despite this decline, gross fixed capital formation remained constant and the sum of government consumption and investment was increasing.

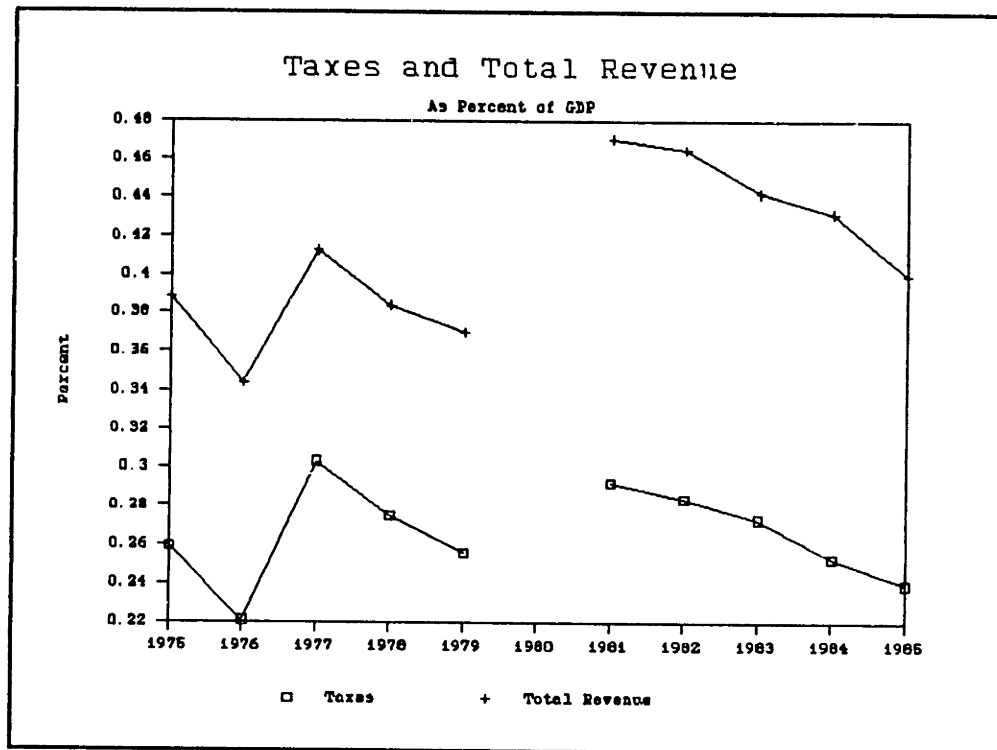
Figure 7



Investment as a percentage of GDP declined slightly, but it was still above 20%. There were definitely signs that the policy of reliance on foreign savings to finance high levels of growth through public sector investment was reaching its limits. However, the crisis had not yet hit. The growth rate in GDP was still high, averaging about 5% in the years running up to 1983. A far sighted ruler may have experimented with political liberalization in order to improve tax revenues. But a reluctant ruler would not have been forced into such a policy by economic constraints. Moreover, if any specific policy were to be followed, reduction in expenditure would be the most likely one. Government revenue as a percentage of GDP was over 40% by

the early 1980s. Taxation as a proportion of GDP was around 25%. The marginal returns to increased tax effort had to be very low.

Figure 8



level of voluntary compliance and a high level of generality. Table 2 shows that the Egyptian tax structure was quite the opposite. Customs duties and other taxes on trade, which are relatively easy to collect due to the small number of ports, formed a large proportion of the tax structure. The largest tax was tax on businesses, which is a tax on a specific group. Moreover, these were the fastest growing categories of taxes during this period. The growth in these taxes was due to their intimate relationship to the growth in trade and the economy. During this period a large import trade developed as a result of tariff and quota reduction. This trade was also financed by foreign savings. And as shown above, the economy was growing extremely rapidly which improved tax revenues.

Table 2

Tax	Development of Tax Structure 1952-1979		
	1970-71	1975	1979
Business Profits	115.3	189.3	572
Personal Income	28.2	31.1	47.3
Real Estate and Inheritance	31.6	17.2	NA
Stamp Tax	36.1	52.2	154.7
Commodity Taxes	367.4	623.8	1602.3
Other	6.3	52.5	94.5

Source: John Waterbury, *The Egypt of Nasser and Sadat*, (Princeton: Princeton University Press, 1983), pg. 224.

In short, the Egyptian state did not face a fiscal crisis before or during political liberalization in any of the three phases. The availability of large amounts of foreign capital at concessional terms made up for whatever shortcomings there were in the state's tax collection. Moreover, the increased trade financed by foreign savings expanded tax collection based on tariffs and business profits. The most plausible case for the argument from constrained resources is the phase from 1983 onward. During this phase the government was running a large deficit, its net transfers from foreign capital were falling, and it was already taxing the society at a very high rate. However, this set of constraints would call for budget reduction, not an expansion of taxation.

Is Political Liberalization A Substitute for the Social Wage?

The second proposition is that political liberalization is a substitute for the provision of welfare rights. This argument holds that authoritarian states can legitimate themselves by supplying a social wage. When the state must reduce the social wage because of financial constraints, it substitutes political rights in order to maintain its legitimacy.¹⁷

It is clear that Egyptian rulers believed that a, if not the, major pillar of their popular support was the provision of a social wage.¹⁸ However, the first two phases of political liberalization can not be explained with reference to the provision of the social wage. Indeed,

¹⁷ In the context of the Middle East, this position is argued in Alan Richards, "Economic Imperatives and Political Systems," Middle East Journal, vol. 47 #2, Spring 1993. A more acute, though less empirically tractable, formulation of the proposition might read as follows: as the opportunity cost of alternate uses of the government's budgetary resources increases relative to the costs of tolerating a political opposition, the government will be more likely to grant rights. With this formulation, the proposition could not be falsified with the observation of a correlation between political liberalization and increasing government access to resources. It could only be falsified if government resources were rising, political liberalization occurred, and there was no obvious alternate claim on government resources that was growing in importance. I use the formulation in the main text because it corresponds most closely to that conventionally used.

¹⁸ In a discussion of economic policy in December, 1968 in a Council of Ministers meeting, Nasser rejected plans that called for raising prices of goods. He argued, "Our first responsibility must be to achieve for the people their goals and to always give them hope for a better life . . . because if we lose and ignore the hopes of the people we will lose the people, and they will move from us." Al Ahaly, August 3, 1983 pg. 6.

prior to the most innovative period of political liberalization, 1974-1978, the social wage was increasing rather than decreasing. On the other hand, during the third phase the social wage was not declining but there was evidence that the set of policies which sustained the social wage could not be continued.

Before proceeding to the empirical analysis, I will note several logical problems with the social wage hypothesis. First, there is no clear explanation for why the state must turn toward liberalization. Why can it not increase repression? The hypothesis must assume that the state can only apply so much repression, and beyond that social quiescence must be maintained through patronage. But it is not clear why there are limits to the amount of repression the state can apply.¹⁹ Second, it is not clear why liberalization would be the means of legitimation chosen. In a country like Egypt, with competing leftist, Islamist, and liberal trends, political liberalization, as well as the economic liberalization which accompanied it, is

¹⁹ The argument of this study suggests a political logic for limits to the application of repression. The application of high levels of repression typically requires high levels of discretion for the repressive agencies. In other words, legal constraints on the deprivation of freedom, property and life are considerably relaxed. In the absence of these restraints, however, the repressive forces are no longer closely monitored, because the "fire alarm" monitoring of courts no longer exists. Police then have a free hand to engage in various forms of corruption that may even subvert the state, such as the selling of weapons to the forces they are supposed to repress. Thus because of the constraints on the ability of the central authority to control its repressive forces, there are limits to repression.

bound to be controversial. Why not Islamization? Third, the hypothesis is paradoxical. Political liberalization would give rights to those whose real income is eroding. Is this not political suicide? The groups suffering from the decline of the social wage might use their new rights to increase it. The analysis presented below shows that political liberalization occurred when the social pact was strongest, and ended when the social pact deteriorated.

The best measure of the social wage is the real income of urban groups. The theoretical roots of the social pact argument is political economy analysis of urban politics in developing countries which holds that urban groups are the most influential elements in the polity.²⁰ This view holds that these groups augment their income by threatening political disruption. Hence an analysis of the trends in real income or purchasing power of these groups will indicate the performance of the social wage. A second indicator will be government expenditure on subsidies, since this is a major policy tool used by governments to maintain the social wage.

In all three periods leading up to political liberalization, the purchasing power of urban consumers was increasing. During the period leading up to the first phase of liberalization, 1970-1971, the real costs of food and

²⁰ See, for example, Robert Bates, Markets and States in Tropical Africa: The Political Basis of Agricultural Policies, (Berkeley: University of California Press, 1981).

Table 3

Prices and Wages

	Price of Food Basket	Price Index	Price of Clothing	Price Index	Urban Money Wages	Wage Index
	14.52	100	28.27	100	494	100
1971	13.92	96	28.31	100	503	102
	14.87	102	27.53	97	540	109
1973	15.76	109	28.67	101	566	115
	17.69	121	28.32	100	653	132
1975	20.08	138	28.29	100	662	134
	20.87	144	28.17	100	757	153
1977	23.98	165	28.02	99	917	186
	28.4	196	28.42	101		
1979	35.36	244	28.76	102		
	35.62	245	56.02	198		
1981	43.6	300	72.77	257		
	50.55	348	80.34	284		
1983						

Source: Myrette Ahmed El Sokkari, "Basic Needs, Inflation and the Poor of Egypt, 1970-1980," AUC:Cairo Papers in Social Science, vol. 7, no. 2, June 1984.

Table 4

**Evolution of Prices of Selected Subsidized Food Commodities
in Egypt (1973-1979)**

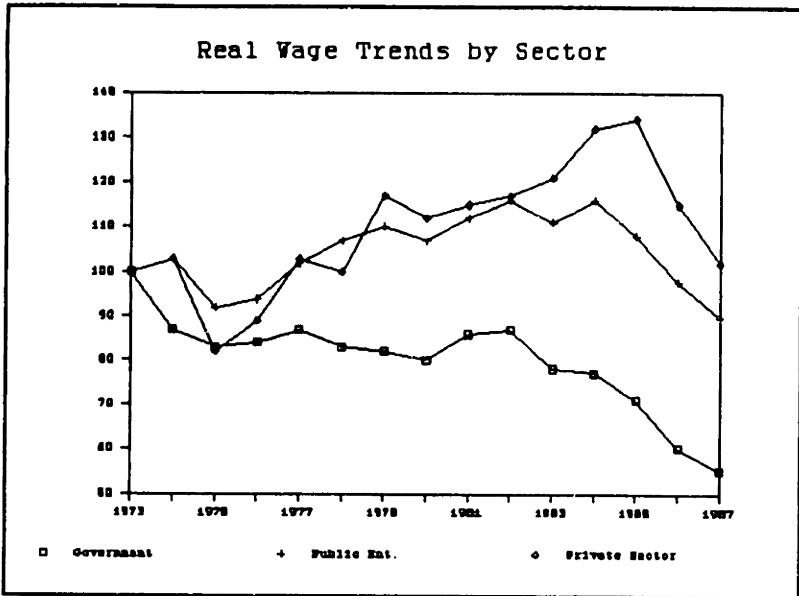
(Egyptian Pounds per Ton)

	1973	1974	1975	1976	1977	1978
Wheat- Selling Price to Flour Mills	30	30	30	30	30	24.7
Refined Flour- Selling Price to Producers	67.8	67.8	67.8	67.8	67.8	67.8
Beans-Selling Price to Consumers						
Whole Beans:						
Ration Card Price	-	-	60	60	-	-
Free Market Price	60	70	100	100	100	100
Broken Beans	70	90	125	125	125	125
Lentils-Selling Price to Consumers:						
Whole Lentils	100	100	100	100	100	100
Broken Lentils	110	110	110	110	110	110

Source: Karima Korayem, "Distributing Disposable Income and the Impact of Eliminating Food Subsidies in Egypt," Cairo Papers in Social Science, vol.5, monograph 2, April, 1982, (Cairo: AUC, 1982).

clothing, the two basic commodities for the urban poor, declined for urban groups (Table 3). During the period leading up to the second phase of liberalization,

Figure 10



prices increased at a rate between six and ten percent. However, money wages increased at approximately the same rate (Table 3). The government responded strongly to price increases in food by increasing subsidies. The price at which the government sold wheat to retailers stayed constant during an inflationary period (See Table 4). Moreover, the price of clothing remained constant despite growing money wages (Table 3). In the period 1972-1974, real wages increased at a rate of about 3% a year in the public and private sectors. They declined, however, in the government sector. Thus the social wage did not deteriorate in either of the two periods leading up to phases of political liberalization in the 1970s.

In the period 1980-1982 leading up to the third phase of liberalization, real wages on the whole were increasing in all three sectors. If one extends the period to 1983,

real wages increased in the private and public sectors and fell in government employment. Thus in at least two of the three categories, real wages were increasing. Thus it appears that declining real wages did not precede political liberalization.

It is interesting to note that during the second and third phases of political liberalization real wages fell in the private, public, and governmental sectors. In both these periods inflation was high and reduced consumers' purchasing powers. The social pact hypothesis might be salvaged with the argument that liberalization continued in order to legitimate the government during a period of declining real wages. On the face of it, this argument has two problems. First, in 1975-1976, the political liberalization was closely associated with the economic liberalization program (al-Infisah), which was blamed for the inflation and growing differences among the classes. Second, this argument would not explain why political liberalization was initiated.

Another set of data, standard measurements of the quality of life, also cast doubt on the social pact proposition. The social pact hypothesis holds that rights are granted in order to compensate for a declining standard of living. If the hypothesis holds then we should observe a decline, or at least stagnation, in the quality of life during the 1970s and 1980s. Standard measures of quality of

Table 5

Quality of Life Indicators

	GDP Growth (%)	Daily Calorie Supply	Infant Mortality	Life Expectancy
1973	0.8	2611	92.4	53
1974			89.8	54
1975	9.1	2750	87.2	54
1976			84.6	54
1977	13.5	2760	82	55
1978			79.6	56
1979	6.2	2870	77.2	57
1980			74.8	57
1981	3.8	2941	72.4	59
1982			70	59
1983	7.6	3163	64.9	60
1984			59.9	60
1985	6.7	3275	54.8	61
1986			49.7	61
1987	2.5	3390	44.7	62

Source: World Bank, Egypt: Alleviating Poverty during Structural Adjustment (The World Bank, 1991).

life - measurements of life expectancy, daily calorie supply, and infant mortality - all show steady improvement during the 15 years between 1973 and 1987 (Table 5). Thus the social pact hypothesis has little empirical support.

The remaining possibility is that given the financial constraints looming in 1982 and 1983 discussed in the previous section, the government anticipated future financial problems which would inhibit it from meeting its social guarantees and liberalized politics to bolster its legitimacy. This proposition would be plausible if the evidence showed that after political liberalization (1983-1984), the government reduced expenditure on its social guarantees. But it did not. Rather, the government increased expenditure by allocating a greater percentage of the budget to the social guarantees (see Table 6). Not only was a greater portion of the national budget allocated to social expenditures, but spending per capita in this category increased dramatically in the 1980s (see Table 7). The vast bulk of the increases went into salaries, suggesting that few benefits were delivered to clients (see Table 8). However, increased expenditure on salaries might translate into real improvement of services in the areas of health and education. If political liberalization had any effect on the social pact, it facilitated re-directing the government's priorities to support the social pact by increasing the power of the social wage's constituency.

Table 6

Fiscal Year Ending	Social Expenditures as Percentage of Government Budget				Total
	Education	Higher Education	Health	Social Affairs	
1981	5.1	2.5	2	1.4	11
1982	7.1	3.2	2.8	1.2	14.3
1983	7.5	3.8	3	1.3	15.6
1984	7.2	3.9	2.8	1.1	15
1985	7.7	4.6	2.8	1.2	16.3
1986	7.9	4.4	2.6	1.1	16
1987	8.6	4.6	2.7	1.1	17
1988	8.7	4.9	2.9	1.1	17.6
1989	8.7	4.8	2.6	1.1	17.2
1990	8.8	5.1	2.8	1.1	17.8

Source: Egypt: Alleviating Poverty During Structural Adjustment, (Washington, DC: The World Bank, 1991).

Table 7

Fiscal Year Ending	Total Expenditure Per Capita/Per Student (in 1980 LE)			
	Education	Higher Education	Health	Social Affairs
1981	3.52	2.37	51.48	331.06
1982	4.77	2	69.1	405.34
1983	5.11	2.1	73.57	467.87
1984	5.86	2.17	88.98	573.45
1985	6.42	1.23	100.53	735.63
1986	6.88	2.59	119.71	834.23
1987	8.04	2.98	146.13	1038.16
1988	10.27	3.67	184.62	1436.04
1989	11.14	4.24	205.96	1684.98
1990	13.02	4.81	230.66	1951.36

Source: Egypt: Alleviating Poverty During Structural Adjustment, (Washington, DC: The World Bank, 1991).

Table 8

Breakdown of Expenditure in Social Services

Millions of LE, Real Terms

Fiscal Year Ending	Health			Education			Fiscal Year Ending
	Salaries	Subsidies & Supplies	Total	Salaries	Subsidies & Supplies	Total	
1981	95.5	52.9	148.4	320.6	51.6	372.2	1981
1982	144.9	61.6	206.5	469.3	56.5	525.8	1982
1983	162	65.6	227.6	539	53.9	592.9	1983
1984	211.1	57.2	268.3	709.8	50.6	760.4	1984
1985	252.1	50.8	302.9	860	49.5	909.5	1985
1986	287.0	45.9	333.8	1102.1	45.3	1147.4	1986
1987	361.1	38	399.1	1444.9	35.2	1480.1	1987
1988	474.2	46.6	520.9	1910.5	36.2	1946.7	1988
1989	547.6	30.7	578.3	2199.2	30	2229.2	1989
1990	666.2	29.2	691.4	2538.5	26.3	2564.8	1990

Fiscal Year Ending	Social Affairs			Higher Education			Fiscal Year Ending
	Salaries	Subsidies & Supplies	Total	Salaries	Subsidies & Supplies	Total	
1981	26.6	73.2	99.8	100.7	80.1	180.8	1981
1982	42.3	45.9	88.2	143.5	93.3	236.8	1982
1983	50.3	43	93.3	194.1	95.4	289.5	1983
1984	67.8	31.5	99.3	264.2	99	363.2	1984
1985	81.5	33.1	114.6	368.8	109.7	478.5	1985
1986	96	29.8	125.8	438.3	103.1	541.4	1986
1987	124.7	22.9	147.6	558.5	82	640.5	1987
1988	465.7	20.9	186.6	775.9	85.2	861.1	1988
1989	201.2	19.2	220.4	928.4	66.3	994.7	1989
1990	238	17.6	225.6	1078.2	73.1	1151.3	1990

Source: Egypt: Alleviating Poverty During Structural Adjustment, (Washington, DC: The World Bank, 1991).

Is Political Liberalization A Response to Social Protest?

The third proposition is that liberalization is a concession to social protest. The general problem with this proposition is its lack of specificity. The most acute formulation of the proposition states that rulers will liberalize when the costs of repression exceed the costs of toleration.²¹ The measurement of those costs, however, has not been addressed by any of the large number of publications on democratization and political liberalization. Another problem of the proposition is that it does not specify the lumpiness of reform measures. Do rulers liberalize incrementally at the margin, always keeping costs of toleration and costs of repression equal? Or do they wait until the costs of repression far exceed the costs of toleration and introduce sweeping reform packages?²²

A major -- and most measureable -- indicator of costs of repression is protest. Therefore the basic interpretive rule I will follow is that protest only explains reform if reform is preceded by protest. Four additional rules

²¹ Robert Dahl, Polyarchy: Participation and Opposition, (New Haven: Yale University press, 1971).

²² To some extent Samuel Huntington addresses this problem by distinguishing among different kinds of transitions - transformations, transplacements and replacements - which can be arrayed along a continuum starting at highly incremental reform to highly lumpy reform. Samuel Huntington, The Third Wave: Democratization in the Late Twentieth Century (Norman: University of Oklahoma, 1991).

follow:

1) We can attribute liberalization to civic mobilization if it is a plausible response to the demands raised by the opposition. For example, if the opposition demands free speech and the regime grants some reforms in the regulation of expression, we can attribute the reform to civic mobilization. If however the regime undertakes far more significant reforms, then it is less plausible to explain the reforms with reference to the civic opposition.

2) Another measurement problem is bound up with the question of lags between displays of civic mobilization and reforms. Suppose the government responds to demonstrations for freedom of expression with repression, and then permits greater freedom of publication of newspapers a year later? How do we assess the contribution of the protest to the decision to make the reform? To address this problem, I follow the following rule: the extent to which reforms are explained by protest declines proportionately to the length of time that has elapsed since the protest.

3) Since protest is an indication of the cost of repression, the explanatory power of protests increases proportionately to the number of protests demanding the reform.

4) The explanatory power of protest is reduced if the government has already taken similar reforms in the absence of protests. If the government has taken similar reforms

prior to protest, then we can assume that it has an interest in reforms independent of responding to protest.

Thus protests would have the greatest explanatory power in the case of a series of protests followed by unprecedented reform proportional to the demands of the protest within the next six months. Protests would have the least explanatory power if they were few in number, followed by a reform that exceeded demands of the protest taken several years later that was only an extension of reforms previously taken.

In Egypt, the first set of liberalizing reforms taken were the issuing of the Constitution of 1971 and the limitation of police powers. Though these reforms did meet the demands of protests in 1968, they followed these protests by three years. The student protests of February and November 1968 demanded, among other things, a more open form of government.²³ Nasser's government tried to assuage these demands and the growing activism of the Judges' Club by issuing the March 30th Declaration (1968) which promised among other things, an independent judiciary and basic political freedoms.²⁴ As discussed in Chapter 3, Nasser had no intention of making good on these promises. The government did not begin to enact these reforms until 1971

²³) See Ahmed Abdalla, The Student Movement and National Politics in Egypt, (London: Al-Saqi Books, 1985), pp. 149-175, especially pg. 152.

²⁴ The Battle for Justice in Egypt (Arabic)

and did not make good on most of the promises of the March 30th Declaration until 1984. Also, the reforms initiated in 1971 were also not unprecedented, as they had been discussed by the political elite since 1966.²⁵ Nasser's other response to the protests was to retreat from his earlier idea of a two party system for fear of the underlying social turmoil.²⁶ Given the pre-existing elite support for these kinds of reforms and the long period of time passing since their adoption, the most protest could have contributed was the knowledge that there was a constituency for the reforms and some political benefits would be reaped from their introduction. It should also be noted that political costs were also entailed, as leftists generally opposed liberalizing reforms that were seen to give the right more power.²⁷ Thus the net effect of the 1968 protests was to a) indicate that a constituency existed for reform and b) convince the President that the time was not yet ripe for liberalization.

The next period of liberalization began in 1974. This

²⁵ An independent judiciary was discussed at the conference on the constitution held in 1966. Arab Observer, July 18, 1966, pp. 6-7.

²⁶ Meeting of the Council of Ministers, March 24, 1968, reported in Al Ahaly, August 17, 1983, pg. 6.

²⁷ A strike in the Helwan steel plant in August of 1971 was attributed to leftist discontent with the trial of 'Ali Sabri and other opponents of Anwar Sadat. These figures were the political losers in the transition to a more constitutional politics. The Times (London) August 31, 1971, pg. 5.

period began with press liberalization, expanded to the division of the ASU in 1976, and ended with the formation of parties and publication of opposition newspapers in 1977. Protest leading up to this period began in January of 1972. Students at Cairo University protested the failure of the President to resolve the conflict with Israel on the battlefield and demanded an end to the search for a negotiated settlement. They also demanded a re-alignment of economic policy to devote more resources to the war effort and impose a greater burden on Egypt's wealthy.²⁸ Thus the main issue was the Arab-Israeli conflict, not political liberalization. However, the process of protest and the dialogue with the government that the students demanded raised questions about the boundaries of public debate. The Lawyers' and Journalists' syndicates supported students on the question of free speech and a freer press but the question of multi-party politics was not raised.²⁹ The protestors did not confine their activism to the university; 8,000 fought government riot police in Midan al-Tahriir in the heart of Cairo. However, the students failed to broaden their movement to include other groups.³⁰

²⁸ Ahmed Abdalla, The Student Movement and National Politics in Egypt, 1923-1973, (London: Al Saqi Books, 1985), pp. 189-191.

²⁹ Ahmed Abdalla, The Student Movement and National Politics in Egypt, 1923-1973, (London: Al Saqi Books, 1985), pg. 191. The Times (London), January 27, 1972, pg. 9.

³⁰ The Times (London), January 27, 1972, pg. 9.

The government brought an end to the protests by arresting between 1,000 and 1,500 students.³¹ The rest of 1972 was a year of political turmoil. Small, short strikes and sit-ins punctuated the year. Student protest and other expressions of discontent were common. Sadat allowed students to continue their activism on campus and refused to return to the Nasserist policy of stationing security forces on university grounds.³² President Sadat threatened in May to clamp down on his opposition.³³ But the opposition was divided among workers who were defending the rights they had won from Nasser, rightists who wanted a more Islamic state, leftist-nationalists who insisted on prosecuting the war with Israel and imposing more of a burden on the wealthy, and liberals who advocated a freer press. In order to counter the defection of members of the political class, the government passed a law criminalizing the formation or joining of parties other than the ASU.³⁴ The press continued to be censored.

Thus in the short term, the protests of January, 1972 did not result in liberalizing reforms. Rather the government responded to these reforms by adopting economic

³¹ The Times (London), January 26, pg. 8; Facts on File, 1972, pg. 49.

³² New York Times, December 26, 1971, pg. 3.

³³ The Times (London), May 9, 1972, pg. 6.

³⁴ The Times (London), August 17, 1972, pg. 5.

policies resembling what the students had demanded.

Social protest broke out again at the end of 1972. This wave focused more clearly on civil liberties. Following a wide ranging and unprecedented debate in the People's Assembly regarding the government's economic policy, the Journalists' Syndicate risked petitioning for an end to press censorship in all but military affairs. A week later Cairo University students protested the arrest of 100 of their colleagues and the refusal of the government to hold elections for the Student Union. The police's clumsiness led to the arrest of students from competing movements and thus created a good reason for these different tendencies to form a united front. The students set their demands for the release of their fellow students in the context of broader demands for an armed confrontation with Israel and the expansion of freedom and democracy.³⁵

The immediate response of the government was repression. In February of 1973, 64 writers and journalists were purged from the ASU, thus prohibiting them from practicing their profession.³⁶ Leaders of the student movement were arrested and detained.³⁷ The President took over the position of Prime Minister, thus increasing his powers. The repression of the students was moderated by an

³⁵ Abdalla, The Student Movement, pp. 200-203.

³⁶ New York Times, February 4, 1973, pg. 7.

³⁷ New York Times, February 1, 1973, pg. 1.

attempt to meet them half way: the students' demands were published in government newspapers.³⁸ However, the government did not introduce any further reforms liberalizing the political system until 1974. The immediate consequence of protest was a purge of the press.

In February of 1974, more than a year after the last outbreak of protest, censorship of all but military affairs was relaxed in the government-owned newspapers.³⁹ Anwar Sadat attempted to assure the press's loyalty by removing Nasser's associate, Hassanein Heikal, from his position as editor of Al Ahram.⁴⁰ The dismissal of Heikal and the prior purge of leftist journalists had made the press safe for liberalization. Those journalists who remained and who were appointed to fill the vacant editorships (the Amin brothers) supported Sadat's policy directions of liberalization and opening to the West.

This liberalization did have a relationship to prior demands: it corresponded to students' demands for a freer press. But like the previous liberalization, it had precedents in the freer press of 1972 and it was delayed for more than a year. Moreover, the small number of protests and their isolation among students and journalists cast doubt on the protests' overall significance. Also, the

³⁸ New York Times, February 15, 1973, pg. 3.

³⁹ Facts on File, 1974, pg. 93.

⁴⁰ New York Times, February 3, 1974, pg. 1.

press liberalization followed a purge of the press. It was a press basically sympathetic to Sadat that was liberalized. Finally, press liberalization was only one among many demands of the students. The students' major demand was a war with Israel. Not only had the President authorized an attack, but the war resulted in an improvement in Egypt's strategic position. Thus the contribution of protest to liberalization must be judged as quite weak. Again, it is hard to conclude that the impact of protest was more than the confirmation that a political constituency existed for reforms that were already envisioned.

The major reforms of the second phase of liberalization - the dissolution of the ASU into competing platforms in 1975, the subsequent transformation of these platforms into parties, and the authorization of opposition parties and an opposition press - can not be explained by social protest. The protests of 1972 and 1973 did not demand a multi-party system. This issue was first broached by the government-owned press in the Fall of 1974.⁴¹ Moreover, a long period of time had passed - two and a half years - since the protests of early 1973, and no more protests had occurred. There had been a major strike in 1975 in Mahalla al Kubra. But this strike was not tied to demands for democracy.⁴²

⁴¹ New York Times, October 8, 1974, pg. 2.

⁴² Marsha Pripstein Posusney, "Irrational Workers: The Moral Economy of Labor Protest in Egypt," World Politics, vol 46, (October, 1993) pp. 93-120. See pp. 106-107.

Indeed, trade union representatives had objected to the splitting of the ASU into competing platforms.⁴³ There were few precedents for the reforms. The only real precedent was the discussion of a multi-party system by the High Executive Council of the ASU in 1967. Given the sparse number of protests, their distance in the past, and the lack of proportion between the demands of the protests and the reforms, it is very unlikely that the party liberalization was a response to social demands.

During the period leading up to the final phase of liberalization, social protest was again quite weak. But hanging over the head of the President, Hosni Mubarak, was a disaffected intellectual class that had been arrested and detained by Anwar Sadat in 1981. Also in the background was the Iranian Revolution of 1979. The Revolution was made by a alliance of classes and sectors which shared a common resentment of the arbitrariness, autocracy, and remoteness of the Shah. It is highly likely that Hosni Mubarak concluded that Egypt could no longer be governed without the creation of a state more responsive to and respectful of the social forces that emerged during Sadat's reforms. Such a state would work to fragment and co-opt political forces. It is highly plausible that this was the major consideration in his decision to permit the re-emergence of the social forces that had operated relatively freely before 1978.

⁴³ John Waterbury, The Egypt of Nasser and Sadat, pg. 358.

Instead of following Sadat's practice of periodic campaigns of repression, Mubarak chose the path of organizing and regulating these forces' participation in a way that augmented his control rather than weakened it. As discussed in Chapter Four, he articulated a vision of participation that aided the state's attainment of "national goals" through constructive criticism and monitoring by social forces. This participation would also give a sense of membership in the system that would reduce the likelihood of a multi-class revolutionary coalition. Anwar Sadat's alienation of all significant social forces and Hosni Mubarak's prudence led to the third phase of political liberalization.

It should be noted, however, that the Presidency retained the role of rule maker in this new system. As rights were granted they could also be taken away. As one element of the multi-polar Egyptian political system, the Islamists, began to gain hegemony in the 1990s by using the avenues of participation created by the state in the reforms of the 1970s and 1980s, the Presidency retracted the rights it had granted. The electoral system for professional syndicates was revised in order to reduce the influence of the Islamists in 1993.⁴⁴ In 1994, laws which provided that deans in universities and umdas, or village mayors, would

⁴⁴ Civil Society and the Democratic Transition in the Arab World (Arabic), vol 3, # 15, (March 1993) pp. 4-8.

gain office by election were replaced by laws which gave ministers the right to appoint incumbents to these positions.⁴⁵ The liberalization of 1983-84 was thus not compelled by social forces. It was a prudent reform designed to improve the Presidency's control over the political system. When elements of the participatory system no longer served that purpose, they were shut down.

Conclusion

Tables 9 and 10 summarize the main findings of this chapter. In the case of the taxation proposition, government revenues were constant or increasing prior to political liberalization, casting serious doubt on the validity of this argument in the Egyptian case. Also, the social pact seemed to be at its most robust in the periods leading up to political liberalization in Phase I and Phase II. By the beginning of Phase III it was evident that the social pact would come under serious strain due to the reduction of net transfers on foreign capital. But instead of reducing social expenditure, the government increased it. This finding casts serious doubt on the idea that political liberalization is a substitute for government provision of goods and services.

⁴⁵ Reuters World Service, April 10, 1994; The New York Times, June 12, 1994.

Table 9a

Predicted and Observed Status of Government Access to Resources (GAR)

Period Preceding Phase	Predicted Status of GAR	Observed Status of GAR
I	Decreasing	Constant
II	Decreasing	Increasing
III	Decreasing	Constant

Table 9b

Predicted and Observed Status of Real Wages

Period Preceding Phase	Predicted Status of Real Wages	Observed Status of Real Wages
I	Decreasing	Increasing
II	Decreasing	Constant
III	Decreasing	Constant

Table 10

Predicted and Observed Status of
Criteria for Evaluating the Impact of Protest on Reform
Decisions

I. Predicted Status of Criteria

Criteria	Strong Case	Weak Case
Reforms Proportional to Demands?	R=D	R>D
Delay between Protest and Reforms	6 Months	3 Years
Incidence of Protest	Hi	Lo
Prior Similar Reforms?	No	Yes

II. Observed Status of Criteria

Criteria	Period Preceding Phase		
	I	II	III
Reforms Proportional to Demands?	R>D	R>D	R>D
Delay between Protest and Reform	3 Years	1 1/2 Yrs. 3 Yrs.	NA
Incidence of Protest	Lo	Lo	None
Similar Prior Reforms?	Yes	Yes	Yes

The third proposition has a little more validity. Protest preceded the first two periods of political liberalization. But, as indicated in Table 10, in each case the reforms taken a) had already been discussed or experimented with by the government, b) exceeded the demands of the protestors, and c) were promulgated a considerable amount of time after the protests. On this basis I conclude that the effect of protests on the decision to undertake reform was weak. The impact of protest was probably to convince the government that a constituency for the reforms existed, and hence there would be some added political benefit if the reforms were taken. It is very likely, however, that the demonstration effect of the Iranian Revolution prompted the re-liberalization of 1983-1984 (Phase III). But even with this reform, President Mubarak sought to channel the new political participation into monitoring of state agencies (as discussed in Chapter 4).

In summary, the three rival propositions tested here leave a large amount of political liberalization in Egypt unexplained. Particularly in Phases I and II, there is considerable scope for the argument put forth in this study. The most plausible interpretation is that political liberalization in Phases I and II was driven by concern over management of the state. This liberalization unleashed new social forces and political organizations. Hosni Mubarak

extracted from the Shah's experience the lesson to incorporate new forces within the political system so that they would not unite in opposition to his rule. He re-oriented the state budget in the early 1980s in order to maintain social peace while liberalizing the system. The state's extraordinary access to economic resources (around 45% of GDP) facilitated his management of the re-incorporation of domestic forces into the political system. Thus while the three rival hypotheses have little purchase on Phases I and II, the third rival hypothesis contributes significantly to explaining the onset of Phase III.

Chapter Seven

Conclusion

The argument presented in the dissertation has at its core four propositions. First, the extent of rulers' control over their officials depends on the accuracy and quantity of information they have about their officials' activities. Second, political systems differ according to the quality and quantity of information they make available to rulers concerning the activities of state officials. Third, in liberal political orders the quality of information available to rulers is very often superior to that available to rulers in illiberal political orders. Fourth, therefore rulers of illiberal political orders face incentives to liberalize the polities they govern in order to improve their control over their subordinate officials.

Thus a central claim of the thesis is that the power of the ruler vis a vis his bureaucracy is in part a function of his ability to mobilize and utilize the information available in society, be it articulated by individuals or by associations.

A further claim is that the protection of rights of association and speech enhances the accurate evaluation of this information. Thus a ruler's ability to control his bureaucracy, and hence dominate his society, can be enhanced by political liberty.

This chapter first reviews these propositions in greater detail, and then draws out their implications for our understanding of the relationship between liberty and

the power of the ruler or the sovereign.

The quantity and quality of information¹ generated by different political systems varies according to those systems' institutional arrangements. Liberal systems are distinguished from all other systems by the quality of the information they generate, but not necessarily by the quantity of information. The quantity of information varies according to the presence or absence of opportunities for expression. As discussed in the chapter on the Soviet Union, the regime provided opportunities for expression through the anonymous complaint and many citizens took advantage of these opportunities. Authoritarian regimes also provide opportunities for expression, and sometimes association. Thus it is difficult to argue that liberal polities generate a higher quantity of information than authoritarian and totalitarian systems. Political systems that do not provide opportunities for expression, such as an ideal-typical traditional polity in which the ruler is surrounded by courtiers and no institutionalized channels of expression exist, will face a problem of lack of information. Such systems may rely on spies and informants, but these channels are small in number.

With respect to the quality of information, liberal systems have advantages over totalitarian and traditional

¹ From this point forward I use the term information as shorthand for information about subordinates' actions and policy alternatives.

polities. Totalitarian systems lack several features (freedom of speech and association and professional autonomy), discussed in greater detail below, that improve the quality of information. Since the quantity of information in the traditional system is low, the question of the quality of information is to some extent moot. Thus liberal systems have advantages vis a vis totalitarian systems with regard to the quality of information, and have advantages over traditional polities with regard to the quality and quantity of information.

Liberal political systems generate a higher quality of information regarding the activities of subordinate officials than do illiberal systems for three reasons. First, because they protect independent social organizations, whether they be newspapers, interest groups or other advocacy groups, liberal systems tolerate a high level of critical debate. Public debate can often debunk clearly absurd propositions. Nevertheless, many distortions exist within contemporary liberal polities that limit the evaluative capacity of public debate.²

Secondly, liberal political systems create incentives for truth telling and therefore promote honesty in the evaluation of information. By protecting public expression, liberal political orders also impose costs on those who lie

²) See Joshua Cohen and Joel Rogers, On Democracy: Toward a Transformation of American Society, (Penguin, 1983), pp. 62-63.

or distort the truth. Those who lie may suffer reputational costs. They may also expose themselves to charges of libel and hence suffer legal costs. Also, because of the wealth of public expression, anonymous expression, which is less constrained by the sanctions of reputational and legal costs, is not taken as seriously. Thus freedom of expression encourages truth telling.

Third, liberal political orders also tolerate the professional autonomy of those who specialize in evaluating information. Professionalization is in part the establishment of orthodox sets of procedures for the evaluation of information. In other words, professionalization is the inculcation of norms of thought designed to eliminate considerations of a private nature from the evaluation of information. Professionalization promotes an evaluation of information which is relatively unbiased or neutral with respect to pre-established procedures³. Professional autonomy from politics enhances the likelihood that those procedures will be followed. Autonomy encourages meritocracy: with higher levels of autonomy promotion is at least in part determined by competence in the utilization of the procedures of the profession. Professional autonomy also protects discrete acts of evaluation from political interference. Thus the

³ Though the procedures themselves may include bias. See Thomas Kuhn, The Structure of Scientific Revolutions, (New York, New American Library, 1970)

combination of public debate, sanctions against lying, and professional commitment to neutral, technical evaluation of information significantly improves the quality of policy-relevant information in liberal political orders.

It is important to recognize that factors other than institutions account for the ability of a society to evaluate information. The research of Robert Putnam and his colleagues suggests that the extent to which citizens trust one another is strongly affected by the nature of social relations and that the level of trust affects the quality of information that circulates. Relatively egalitarian social relations are associated with higher levels of interpersonal trust than are hierarchical social relations. The degree of trust affects both the circulation and evaluation of information. Information is more likely to be circulated if individuals trust one another.⁴ And if information is more widely circulated, reputations for information evaluation will be more accurate and hence dishonesty will face more severe sanctions. Thus the accuracy of evaluation will be greater where social relations are horizontal. Since Putnam's research touches only peripherally on the question of information, and since the study is conducted within one country, Italy, it is not possible to assess the extent to which hierarchical social relations completely

⁴ Robert Putnam, Making Democracy Work: Civic Traditions in Modern Italy, (Princeton: Princeton University Press, 1993), pg. 174.

nullify the contributions of liberal institutions to the evaluation of information.

This chapter draws out some implications of the dissertation's focus on the relationship between liberty protected by liberal rights and the ruler's access to information about his subordinates. The most important implication is that liberty protected by rights contributes to the ability of the Presidency to control the state. This means in turn that political liberty can make the state a more coherent and purposeful organization. Therefore, the power of the Presidency to affect the behavior of individual citizens and their associations can increase as a result of political liberalization. This proposition contrasts with a more commonly held view that the expansion of liberty implies a reduction in the power of the state: Rights are viewed as limitations on the power of the state. On this view, rights and state power are mutually diminishing. Another view holds that order (or state power) and liberty are orthogonal to one another. This is exemplified by Samuel Huntington's dictum that there is a logical priority of order to liberty. Before power can be dispersed, it must first be created and concentrated.⁵ On this view liberty does not empower the ruler. Rather, the ruler must create

⁵) Samuel Huntington, Political Order in Changing Societies, (New Haven and London: Yale University Press, 1968), pp. 7-8.

power before he disperses it. The argument of the dissertation suggests that rights and state power are mutually reinforcing: Liberty protected by rights can contribute to the centralization of power in the hands of the sovereign and hence allow the state to become a purposive and coherent organizational actor.

I will discuss the proposition that rights and the power of the sovereign are mutually reinforcing in an empirical context: the management of economic development. My objective in this discussion is two-fold: first, to show that contemporary accounts of the political requisites of economic development follow the view that rights and state power are mutually diminishing; second, that there are good theoretical reasons to believe that rights and state power are mutually reinforcing and that there is empirical evidence to support this view. Contemporary arguments hold that states with bureaucracies that are well insulated, i.e. unaccountable to and not influenced by social groups, are most effective in promoting economic development. By contrast I shall argue that bureaucratic accountability to social organizations can promote economic development.

In other words liberty, and the participation it protects, can, under the right circumstances, expand the capacity of the state to transform social relations. Indeed, under conditions of cultural pluralism that hold through vast parts of the developing world, unaccountable

and insulated bureaucracy is not a feasible option. More participatory systems of public coordination are the most attractive choices available. In short, then, the proposition I will defend in this chapter is the following:

Rather than weakening the power of the state, rights of association, expression and participation can strengthen it by increasing the Presidency's control over the state apparatus and hence supporting its operation as a coherent and purposeful organization separate and distinct from the individuals and associations in its environment.

Information, Liberty and Power in Economic Development

The remainder of this chapter questions political scientists' troubling retreat from democratic, participatory institutional solutions to the problems of managing economic development. The state of the debate can be summarized as follows. While democratic regimes do not produce high levels of economic growth, they generally are not associated with failure either.⁶ Rates of economic growth in authoritarian regimes exhibit a much higher variance: some economies grow extremely rapidly, others shrink, and others perform reasonably well. These results are interpreted to mean that democracies do poorly what successful authoritarian regimes do well. At the macro-level, democratic regimes divert a higher proportion of national resources to consumption than do authoritarian regimes in

⁶ Whether this is because democracy has built-in safeguards against poor economic performance or because democracies cannot survive sustained economic stagnation is unclear.

order to satisfy the demands of interest groups. At the micro-level, democratic regimes are more easily captured by special interests and so cannot impose the policy changes that economic development requires. Nevertheless, democratic regimes resolve conflicts, protect most property rights and invest in education and health. Therefore they provide the framework for a reasonable level of investment and growth.

The implication of this view is that there are two routes out of poverty: a risky but potentially faster route with an authoritarian regime or a safer but slower route with a democratic regime. These are real choices: they are debated every day in many developing countries. And the choices are very difficult. The worth of many liberties under conditions of poverty is dubious and so the loss of these liberties under authoritarian rule may be of little concern.⁷ What I want to suggest is that the debate as it

⁷ The instrumental value of liberty in poverty reduction is dubious. Freedom of association and expression permit the expression of specific needs poor people may face and also allow them to form organizations to address these needs and form a constituency for policy makers. (Amartya Sen, "Liberty and Poverty", The New Republic, May 1994.) Nevertheless, those same liberties are available to elites whose interests may be adversely affected by poverty reduction itself or policies aimed at poverty reduction. The most successful land reforms have been implemented by authoritarian states and foreign powers. Of course such elites may enjoy substantial political influence in the absence of such liberties, and so the net effect of liberalization might plausibly be a reduction of their power vis a vis the impoverished. Thus the question of the instrumental value of liberty turns to a large extent on the nature of the status quo ante.

stands ignores some major contributions of democratic institutions to economic development. More specifically, I will show that participatory systems can facilitate a crucial state operation promoting economic development: the subsidization of external economies and the provision of public goods.

An external economy is the sum of benefits that redound to others that result from a person's activity for which that person is not rewarded. A classic example of an external economy is the pollination of a neighbor's crops by a beekeeper's bees. The beekeeper benefits from the honey the bees produce, but he is not rewarded for the service of pollinating his neighbor's corn field. The implication of the beekeeper not being rewarded for the service of pollination is that pollination will not be provided at the economically optimal level. The service is not provided at the level at which the marginal costs of the provision of the service equal the marginal benefits because there is no market for pollination. If a market for pollination existed, then the beekeeper would provide pollination at the level where his marginal costs equalled the marginal benefits of his neighbor because he would be directly rewarded for it. But since he is not rewarded, he may provide less pollination than his neighbor would be willing to pay for. In the absence of a market for pollination, the government could increase the amount of pollination by

subsidizing beekeeping.⁸ This subsidization would be justified because the public expenditure supporting beekeeping would be offset by the public gains of more abundant, and hence cheaper corn.

The idea of the public subsidization of external economies underlies most of development economics. Rosenstein-Rodan and Albert Hirschman advocated the subsidization of pecuniary externalities.⁹ Alice Amsden's work on Korea continues this tradition by describing Korean industrialization as a form of subsidized technological learning.¹⁰ Other forms of development policies that are not commonly thought of as the subsidization of external economies also plausibly fall under this rubric. Most forms of poverty alleviation are often justified with reference to their subsidization of external economies. Providing free education and health care to the poor will increase their productivity and hence raise the economy's overall level of

⁸) Actually, there are firms that specialize in pollination by hiring out beehives. This anticipates the neoclassical fundamentalist view that there are no incomplete markets.

⁹) Paul N. Rosenstein-Rodan, "Problems of Industrialization in Eastern and South-Eastern Europe," Economic Journal, June September, 1943; Albert O. Hirschman, The Strategy of Economic Development, (New Haven: Yale University Press, 1958), pp. 100-104, 109-113. A pecuniary externality is: "A situation where the profits of a firm depend not only on its own inputs and outputs but also on the inputs and outputs of other firms." MacMillan Dictionary of Modern Economics, David Pearce, ed., third edition (London: Macmillan Press, 1986).

¹⁰ Alice Amsden, Asia's Next Giant: South Korea and Late Industrialization, (New York: Oxford University Press, 1989).

production. Land reform will increase the well-being of poor agricultural workers and increase their incentives to work, both of which increase their productivity and reduce the price of food. Thus a wide range of development policies are captured within the framework of the subsidization of external economies.

The importance of external economies is that they describe a crucial input into economic development: technological change. There are good reasons to believe that technological change is under-provided by the market. Uncertainty about the rewards of investment in technological change inhibits investment in research. Uncertainty results from both uncertainty about the capacity of a particular line of research to generate commercial applications and uncertainty about the capacity of the investors to capture the benefits of whatever commercial applications might arise. Similarly, learning of all kinds - on the job, in school - requires foregoing current income for future gains under conditions of future market uncertainty. These risks must be assumed by either workers or employers. Thus in the absence of markets for risk for investments in learning and research - which is the empirical state in most developing countries - technological change - an essential element of economic development - will be under-provided by markets. Public subsidization of technological change can be justified on the basis of incomplete markets for risk.

Furthermore, public subsidization of technological change would allow more rapid diffusion of technological progress. The patent system creates incentives for individuals to make risky investments. But society pays a cost by giving patent holders monopoly profits. Also, investors' must trust that their patents will be respected. It is reasonable to believe that patents will not be respected in conditions of under-development.

The flip side of subsidization is expropriation. Subsidization requires that wealth and property must be taken from some and given to others. The state is an agency capable of this, by virtue of its capacity to deploy coercion. There are cooperative, non-coercive forms of subsidization of external economies. The rotating credit fund, common to poor Cairene women and high tech Italian firms, is a good example. But in lieu of large scale cooperative endeavors, and against the backdrop of class antagonism and fear, the coercive power of the state is often necessary to promote the subsidization of external economies. Alexander Gerschenkron's work on the development of banking is instructive here. How, in a poor peasant society, can capital be mobilized to fund industrialization? Gerschenkron's answer is taxation and public allocation of funds to industrial firms.¹¹ Combine this with borrowing

¹¹ Alexander Gerschenkron, Economic Backwardness in Historical Perspective, (Chicago: University of Chicago Press, 1952).

from international financial markets, and you have a synopsis of the early financing of Korean industrialization.

Thus the provision of public goods and the subsidization of external economies requires that the state mobilize and deploy resources. The successful delivery of subsidies requires that the monies allocated by the government actually be spent on the purposes they are designated to be spent on. And the extraction of resources requires that those who are eligible for taxation are the ones who are indeed taxed. Thus successful mobilization and deployment of resources requires that the agencies of the state obey central directives of the government or sovereign. It is often argued that bureaucracies in authoritarian states are better at mobilizing resources and providing subsidies than their counterparts in democratic regimes. This is because bureaucracies in authoritarian states are less susceptible to the corrupting influence of social groups than are their democratic counterparts. In the following section I will argue that properly organized democratic institutions can mobilize and deploy resources effectively as well. Moreover, there are good reasons to believe that democratic institutions will perform better than authoritarian institutions in an important range of cultural and political environments. In short, properly constructed forms of

political participation extend the democratic state's ability to implement policy.

Bureaucracy and Development

The source of the current faith in the "insulated" bureaucracy is Weber's view of bureaucracy as the most powerful form of social organization. Bureaucracy is the coordination of human action through hierarchical command. Among the critical features of bureaucracy that Weber identifies are: the separation of the official from the means of production or administration, absence of appropriation of the office by the official, a continuous rule-bound conduct of official business, and clear delimitation of jurisdiction of different offices.¹²

The main condition of bureaucratic effectiveness in the Weberian model is the official's commitment to some transcendental value. This commitment strengthens loyalty to the organization, discipline and coordination. The loyalty and discipline of officials makes bureaucracy more powerful than any other form of social organization. Weber's belief that bureaucracy is an effective agent of social change has been recapitulated in much current writing about economic development. These authors explain success and failure in economic development as a function of the

¹² Max Weber, Economy and Society, (Berkeley: University of California Press, 1968), pp. 218-221.

degree to which bureaucracy approximates the Weberian ideal-type. But the Weberian model, if correct, suggests that many states will not be able to effectively promote economic development. The transcendent commitment integral to the Weberian faith in bureaucracy is unrealistic in many contexts. However, more reliable forms of coordination are available for such contexts. These forms of coordination rely on more participatory forms of disciplining state agencies. I will illustrate my claims with references to examples from Korea, Kenya, Uganda and India.

The Weberian Model

In Weber's view bureaucracy is the most effective form of social organization: bureaucracy crystallizes rationality in a coordinated set of human actions. The ideal-typical bureaucratic action is the coordinated human expression of a single rational will. This crystallization allows bureaucracy to overcome all other forms of social organization.

Bureaucracy is the means of transforming social action into rationally organized action. Therefore, as an instrument of rationally organizing authority relations, bureaucracy was and is a power instrument of the first order for one who controls the bureaucratic apparatus. Under otherwise equal conditions, rationally organized and directed action is superior to every kind of collective behavior and also social action opposing it.¹³

¹³ Economy and Society, pg. 987.

Since bureaucracy is capable of overcoming other social action, it follows that bureaucracy, more than any other form of social relationship is able to transform and control other forms of social relationships. Thus modern political scientists have come to see bureaucracy as the most effective agent of "development" or the destruction of old patterns of behavior and the creation of new ones.

The strength of bureaucracy derives from the unification of its officials under a commitment to a transcendental value. Office holders share a commitment to some transcendental value, a fundamental duty, which provides the basic ethos of the organization. The fact that they share this commitment facilitates cooperation and subordination in the hierarchy. Also, the fact that the commitment transcends loyalty to any particular individual makes the bureaucracy resilient in the face of the comings and goings of the political world. Finally, the sharing of this commitment separates the bureaucrats from the rest of the society, making them loyal to the organization and the purpose that it serves and resistant to appeals for special favors.

Legally and actually, office holding is not considered ownership or a source of income, to be exploited for rents or emoluments in exchange for the rendering of certain services, as was normally the case during the Middle Ages and frequently up to the threshold of recent times, nor is office holding considered a common exchange of services, as in the case of free employment contracts. Rather, entrance into an office, including one in private economy, is considered an acceptance of a

specific duty of fealty to the purpose of the office in return for the grant of a secure existence. It is decisive for the modern loyalty to an office that, in the pure type, it does not establish a relationship to a person, like the vassal's or disciple's faith under feudal or patrimonial authority, but rather is devoted to impersonal and functional purposes. These purposes, of course, frequently gain an ideological halo from cultural values, such as state, church, community, party or enterprise, which appear as surrogates for a this-worldly or other-worldly personal master and which are embodied in a group.¹⁴

By virtue of both the material dependence of the bureaucrat and his spiritual investment in his profession, bureaucracy is also indestructible.

The professional bureaucrat is chained to his activity in his entire economic and ideological existence. In the great majority of cases he is only a small cog in a ceaselessly moving mechanism which prescribes to him an essentially fixed route of march. The official is entrusted with specialized tasks, and normally the mechanism cannot be put into motion or arrested by him, but only from the very top. The individual bureaucrat is, above all, forged to the common interest of all the functionaries in the perpetuation of the apparatus and the persistence of its rationally organized domination.¹⁵

Thus in the Weberian model, a bureaucracy founded on some conception of duty to a higher purpose is the pre-eminent form of social organization from the perspective of exercising power. This model has been extremely persuasive in political science. I illustrate this claim by showing that economic success has pervasively been explained by the

¹⁴ Max Weber, Economy and Society, pg. 959.

¹⁵ Economy and Society, 988.

presence of a bureaucracy approximating the Weberian ideal-type and that economic stagnation has been explained by its absence.

The Weberian Ideal and Economic Development

In the 1960s, and later in the 1980s and 1990s, political scientists adopted the Weberian faith that a bureaucracy autonomous of society was the most reliable and effective agent of economic development. Such bureaucracies could mobilize and deploy resources in order to promote development. Political scientists of the 1960s saw the state's "penetration" of society as an essential precondition of development. The "rigid", "hard", or "strong" bureaucratic apparatus would extract resources from society and deploy them in the service of development. The state, through its bureaucratic agencies, would make a barren society, one in a "low level equilibrium", fertile or dynamic by capturing resources and deploying them in the right way. "Weak" or "soft" states were not capable of penetrating society and capturing and deploying its resources. Rather, they suffered the ultimate indignity of having their own bureaucracies "penetrated" by social groups.¹⁶

¹⁶ The origins of the male/female duality that seems to permeate discussions of relations between state and society may have its origins in Machiavelli's The Prince. In The Prince Machiavelli characterizes fortune, the variable environment the Prince must master, as a woman. The Prince's act of mastering

The same ideas, somewhat stripped of their provocative imagery, resurfaced in the 1980s. Numerous political scientists argued that states effectively promoted economic development if they had two features:

- 1) policy makers are "insulated" or "autonomous" from the pressure of social interests;
- 2) policy implementors are "insulated" or "autonomous" from social interests.

For example, Chalmers Johnson argues that MITI was able to impose its will on Japanese firms because of the high degree of professionalism of its officials, which put the agencies' goals first and foremost in their minds, and the insulation of policy making from social interests.¹⁷

Thomas Gold, in his analysis of the development of the Taiwanese economy, stresses the importance of the shock of the Kuomintang's massacre of Taiwanese.¹⁸ This massacre

fortune is described as a man's forcible domination of a woman:

.. that as fortune is changeable whereas men are obstinate in their ways, men prosper so long as fortune and policy are in accord, and when there is a clash they fail. I hold strongly to this: that it is better to be impetuous than circumspect; because fortune is a woman and if she is to be submissive it is necessary to beat and coerce her. Experience shows that she is more often subdued by men who do this than by those that act coldly. Niccolo Machiavelli, The Prince, George Bull, trans., (Penguin Classics, 1981).

¹⁷ Chalmers Johnson, MITI and the Japanese Miracle: The Growth of Industrial policy, 1925-1975, (Stanford: Stanford University Press, 1975).

¹⁸ Thomas Gold, State and Society in the Taiwan Miracle, (Armonk, N.Y.: M.E. Sharpe, 1986).

inhibited subsequent political mobilization and allowed the government to impose its will on the society. Similarly the leninist style organization of the KMT allowed it to implement the government's directives without being captured by the society. Alice Amsden, in her analysis of Korea's economic development, stresses the importance of a state that faced no strong social forces, and a bureaucracy whose professionalism facilitated the implementation of the government's directives.¹⁹ Atul Kohli, in his comparative work on third world states, argues that those bureaucracies which are most insulated from society are most effective at promoting economic development.²⁰

The Weberian Ideal Subverted

While those who study East Asian economic successes stress the importance of the bureaucracy's autonomy from society, those who study the economic failures of the 1970s and 1980s, especially those in Africa, argue that poor economic performance is due to the violation of one of the two key elements of the Weberian ideal-type. Either policy makers are "captured" by social interests or policy implementation has been hijacked by society. I will present a synopsis of both views. However, my analysis will focus

¹⁹ Amsden, op. cit.

²⁰ Atul Kohli, "Where Do High Growth Political Economies Come From? The Japanese Lineage of Korea's "Developmental State", " World Development, vol 22, # 9.

on how participatory institutions can solve the problem of policy implementation.

Robert Bates makes the most persuasive argument based on the capture of policy making by social groups.²¹ Bates' theoretical analysis relies heavily on Mancur Olson's Logic of Collective Action.²² On Olson's view, the constraints and opportunities for collective action lead to a bias in the spectrum of interests that is represented by organized groups. Groups that are smaller tend to be organized, while groups that are larger tend not to be. As policy is a function of the bargaining among groups, policy will be skewed in the interests of these smaller groups. Furthermore, these groups use their influence over policy to introduce barriers to entry in their industries and other price distortions which inhibit technological change and hence slow down the rate of economic growth. Those societies in which such groups are less numerous have higher rates of economic growth. Robert Bates combines this view with economists' analysis of the deleterious economic consequences of import substituting industrialization policies to explain the poor economic performance of Sub-Saharan Africa.

²¹ Robert Bates, Markets and States in Tropical Africa, (Berkeley: University of California Press, 1981).

²² Mancur Olson, The Logic of Collective Action: Public Goods and the Theory of Groups, (Cambridge, MA: Harvard University Press, 1973).

Bates' view focuses on the way in which groups violate the first component of the autonomous state, the insulation of policy makers. The next two views focus on the way in which groups work to violate the insulation of policy implementors. Robert Price and Goran Hyden, in their work on African bureaucracies, argue that poor administrative performance is due to the greater power of norms of allegiance to groups which transcend the bureaucracy. Hyden argues that the "peasant mode of production" gives rise to an "economy of affection" which subverts bureaucratic impartiality.²³ The "economy of affection" is based on reciprocal obligations among members of kin-groups, which conflict with and take precedence over the obligations officials have to their positions. Officials make exceptions for and favor members of their kin groups rather than implement the government's policies. Thus the Tanzanian state's attempt to reshape Tanzanian social relations through the Ujamaa program of villagization was defeated by the "economy of affection".²⁴

Robert Price, in Society and Bureaucracy in Ghana, presents a useful analysis of the conditions of effective administration and how these conditions are violated in

²³ Goran Hyden, No Shortcuts to Progress: African Development Management in Perspective, (Berkeley: University of California Press, 1983).

²⁴ Goran Hyden, Beyond Ujamaa in Tanzania, (Berkeley: University of California Press, 1980).

contemporary Africa.²⁵ He argues that for administrative effectiveness to obtain two requirements must be met. First, officials must perform their duties honestly and competently. Price calls this "dependability of role performance". Second, officials must be spontaneous, or capable of taking the initiative to solve problems that were not anticipated in the instructions and regulations provided by their superiors. Price calls this quality "spontaneity".

Officials' "dependability of role performance" and "spontaneity" follow from the same source: the officials' commitment to a value or set of norms that the bureaucracy plausibly embodies. The main threat to coordination, or "dependability of role performance", is conflict between roles internal to the bureaucrat's official position and roles external to his position. In the African context, such conflict is common, as officials' obligations to "corporate kinship groups" often conflict with and take priority over their obligations to their official duties. One solution to this problem is the weakening of such kinship obligations and the psychic strengthening of the official's sense of duty to the state. The main threat to spontaneity is the lack of identification with some transcendent moral or social goal. In the absence of such an identification, officials will merely work to rules, not

²⁵ Robert Price, Society and Bureaucracy in Ghana, (Berkeley: University of California Press, 1975).

taking risks or putting in the extra effort that is required to make administrative action effective.

Price's analysis of the causes of administrative weakness in Ghana is a useful development of the Weberian paradigm of the analysis of bureaucracy. He isolates two basic problems: 1) the problem of accountability of officials to their official duty (or role dependability) and 2) the enthusiasm or spontaneity with which officials approach their work. He follows Weber by arguing that both these problems can be resolved if officials identify with some transcendent value. For Price, nationalism or some form of public morality - a civic identity - can be the basis of such a commitment. The problem, however, is that in most African states, national identity and public moralities are extremely weak.

Administration in Poor Plural Societies

As Price argues, most African states lack what he considers to be the most important determinant of administrative strength: A transcendent norm or public morality with which officials might identify, and hence reduce role conflict and facilitate spontaneity. African "states, and many other states"²⁶, lack the basic consensus

²⁶ Clifford Geertz, "The Integrative Revolution: Primordial Sentiments and Civil Politics in the New States, in The Interpretation of Cultures, (New York: Basic Books, 1973); Nadav Safran, Egypt in Search of Political Community, (Cambridge: Harvard University Press, 1981).

on national identity and purpose that provide officials in other states with a transcendent ideal to which they might commit themselves. The question that follows is, what if any alternate strategies for providing accountability and spontaneity in public bureaucracies exist in these states?

The argument presented in the dissertation suggests an alternative to the Weberian reliance on nationalism or a civic identity. This alternative is the strategic use of professionals or ideological cadre to evaluate information regarding bureaucratic behavior generated and circulated by individuals and groups. Professionalization and encadrement are partial substitutes for nationalism. Both promote identification with purposes that transcend the self. But in the model presented here they are not complete substitutes. Professionals and cadre are likely to be in short supply so their utilization must be conserved. They regulate the state not by directly implementing all policy, but by evaluating the claims of official malfeasance raised by those affected by bureaucratic action or inaction.

As suggested in the dissertation, valuable and under-utilized sources of information about bureaucratic performance are the complaints and other messages offered by clients and other third parties affected by administrative action or inaction. It was also argued that the quality or accuracy of such information is suspect. While a liberal regime of speech encourages accuracy by de-valuing anonymous

complaints and imposing reputational and legal costs on those who mis-represent the truth, further evaluation is often desirable. Professionals and others often specialize in the evaluation of information. They both feel a duty to perform that evaluation professionally, i.e. according to impersonal rules specified by their profession ("methodology", "procedures"), and their livelihood is often based on their ability to accurately and reliably evaluate information. They also often face special legal sanctions and ostracism for violating norms of impartiality in the evaluation of information. Hence professionals' training, material situation and spiritual life make them likely candidates as reliable and neutral evaluators of information.

Similarly, the cadre of ideological parties can also serve as neutral evaluators of information. Members of ideological parties selected for their loyalty to the purposes of the party may serve the same function as professionals. They share with professionals a commitment to a purpose that transcends the self. As a result their evaluation of complaints and other forms of information will be less affected by personal considerations than it would be by other individuals.²⁷

²⁷ The idea of the functional equivalence of cadre and professionals is strongly suggested by Lenin's concept of the "professional revolutionary". V.I. Lenin, What is to be Done? (New York: International Publishers, 1969). I am indebted to Tracey Strong for this point.

These considerations - the desire for accountability, and professionals' and cadre's special status as evaluators of information - suggest a form of state organization that might solve the problem of administrative accountability and effectiveness in poor states. This form of state would achieve bureaucratic accountability by allowing local grassroots oversight of bureaucratic performance evaluated by neutral professionals or ideological cadre. Professionals would either form independent institutions, such as a judiciary, or would be senior staff in the bureaucracy itself or both. In either case, small numbers of them would be necessary. They would be called upon to regulate and supervise the system as a whole, rather than intervene in every dispute. They could focus their attention on those disputes which suggested widespread patterns of violations of the norms which guide the bureaucracy.

This system of supervision can reduce problems of accountability and spontaneity. Regarding accountability, the system increases the quantity of information. It also increases the quality of information by providing for neutral evaluation and by imposing costs on fabrications. The system also has the potential for improving bureaucratic spontaneity in two ways. A system of democratic oversight may provide officials with a sense of moral purpose that service to a state with little ethical content does not. If

agencies are supervised through democratic participation and the purposes of agencies are in some way determined by such participation, and officials value democracy (either because they are democrats, or because they feel an allegiance to the groups participating), then the moral purpose Price and Weber suggest is necessary for spontaneity may obtain.

Similarly, democratic oversight may also function to tightly define the objectives of the local agencies and thereby contribute to their spontaneity. If objectives are clarified, then officials will have greater confidence in taking initiatives. Thus democratic oversight can increase the spontaneity of bureaucratic action.

This form of state organization has another virtue: it economizes on a scarce resource - professionals. Most poor states do not enjoy the circumstances within which one would expect a widespread sense of professionalism or vocation to develop. First, they often lack well developed educational facilities, especially at the university level, which train professionals. A second potential problem is the class bias of professionals. Given that access to education is determined by ability to pay, unless there is a strong state commitment to education, a strong class bias may permeate the professions. Similarly, if publicly supported education is allocated based on ethnic lines, or if certain ethnic groups are wealthier than others, an ethnic bias may permeate the bureaucracy. This may also be true of religion

or other ascriptive identities. Any of these biases may significantly reduce the objectivity of the professions. Finally, the lack of availability of educational facilities locally may induce aspiring professionals to study abroad, which may result in a de-nationalization of the professions. While this may encourage a more cosmopolitan identity among professionals, it may also encourage suspicion and distrust toward the professions. Finally, the temptations of economic gain may lead professional administrators into corruption.

Given these constraints on the availability of trustworthy professionals or cadre, it is imperative that the labor of such individuals be deployed strategically. The form of state organization outlined above meets this criteria. It relies on a large number of individuals whose commitment to abstract rules of information evaluation may be non-existent to generate and publicize information. It then strategically deploys the normatively bound and technically trained personnel to evaluate the information in strategic locations within the state. Thus the scarce resource - individuals with a normative commitment to neutrality - is conserved. Note also that the model does not rely on a commitment to the "public good" or the "national interest". Rather, it relies solely on professional training and commitment. As suggested above, while professionals may be in short supply, a non-

controversial definition of the public or national interest is likely to be non-existent in many countries of the developing world.

Experience of Developing Countries

The next section illustrates the model of oversight developed above. It makes three main points. First, the successful use of bureaucracy to promote economic development in Korea can be understood within the informational framework: bureaucratic success was due to a system of information gathering and evaluation that accurately informed the ruler about the activities of his agents. This suggests that the salient issue in the management of economic development is not the degree of bureaucratic insulation or state autonomy, but the quality of the system of information gathering and evaluation. Second, cases of economic success in Africa and India are distinguished by participatory methods of information generation and evaluation by professionals or ideological cadre. Third, African rulers that have been most successful in reconstructing states that have lost their ability to control their own territories have relied on a combination of grassroots supervision and regulation by autonomous professionals. Together these examples strongly suggest that state capacity to intervene successfully to promote

economic development turns on the nature of the system of information gathering and evaluation. Moreover, in countries lacking strong national traditions, democratic forms of monitoring strongly contribute to strengthening state capacity.

It might be that high levels of bureaucratic performance in South Korea may have as much to do with a well designed system of monitoring as it does with a bureaucracy insulated from social pressures.²⁸ South Korean industrialization was built on state subsidy of learning. The state subsidized the large industrial firms, the chaebol, on the condition that they improved their ability to compete in international markets. The subsidies facilitated adoption of new technologies and the learning necessary to master these new technologies. The basic problems this sort of industrialization faces are assuring a) that the subsidies are actually invested in learning and b) that the state officials administering the subsidies and monitoring their usage do not cut a deal with the subsidy consumers. Thus both the subsidy providers and subsidy consumers must be accurately monitored by the principal, or ruler. The Koreans were able to deal with the problem of monitoring by limiting the number of subsidy recipients. The South Korean economy was dominated by 10 large firms or chaebol. Thus the number of subsidy users that needed to

²⁸ This discussion is based on Alice Amsden, op. cit.

be monitored was very small. Second, the President directly supervised the subsidization through participation at monthly trade meetings in which the performance of the chaebol was reviewed. Third, rather simple criteria were used to evaluate the performance of the chaebol thus facilitating monitoring. Finally, the criteria used were closely related to a reasonable measure of economic development: competitiveness on the international market.

Thus it is plausible that Korean economic development was in part a consequence of a system of monitoring that successfully conveyed accurate information to the ruler regarding the activity of his subordinates. The Korean system did not depend on third party sources of information, for at least one reason: the number of subsidy recipients was low. Most states, however, face the problem of monitoring thousands of subsidy recipients and thousands of other kinds of agents. In such cases dependence on third party informants is more attractive.

A good example of a system of state accountability that approximated the strategy discussed above and met with relative success in public policy is the Kenyan state under Jomo Kenyatta.²⁹ Success in Africa is relative. The

²⁹ The following discussion is based on David Leonard, African Successes: Four Public Managers of Kenyan Development (Berkeley: University of California Press, 1991) and Joel Barkan, "The Rise and Fall of a Governance Realm in Kenya," in Goran Hyder and Michael Bratton, eds., Governance and Politics in Africa, (Boulder: Lynne Rienner Publishers, 1991).

Kenyan state has succeeded along two dimensions on which many African states have failed: First, it has not disintegrated into some form of "state failure", i.e. the complete collapse of central state authority due to ethnic conflict (as, for example, in Liberia) or the gradual erosion of centralized control of the administration (as in Zaire). Second, the Kenyan state during this period oversaw a rate of growth in per capita income equalling 1.9 % per year. Though this figure is not overwhelming, compared to the rest of African states it is quite good. It is even more remarkable when one considers that the population growth rate during this period was between 3.6% and 4.1%. The rate of growth of GDP during Kenyatta's tenure was 6.4% a year, which is above average for low and middle income economies.³⁰

The Kenyan administration had two critical features. First, there was a cadre of highly professional committed administrators that oversaw the functioning of the bureaucracy. There was also an independent judiciary, which acted as a check on the administration. The autonomy of the judiciary and the administration were respected by the president. As a result, political pressures did not compromise the professionalism of the administrators, nor did favoritism on the part of the administrators compromise

³⁰ Growth and Population Statistics are from The World Bank, World Development Report, 1989, (New York: Oxford University Press, 1989).

the respect and loyalty their subordinates felt for them.

The second crucial element of the Kenyan state was accountability to the grassroots. Kenyatta enforced a one party system. However, within the confines of KANU, the single party, vigorous competition and debate were the norm. The range of policy options that could be debated were narrowly constrained. However there was intense competition over the representation of interests to the state for the purposes of capturing patronage and providing public goods to local communities. Thus the constraint on policy competition focused competition on implementation. The representation of local interests in parliament, and parliament's political powers placed another check on the functioning of the bureaucracy. However, the professionalism of the top administrators was a counterweight to pressures on the local administration to be captured by local interests. Thus the Kenyan state's "strength", or ability to form a context for economic development, was built on a combination of professional integrity and grass roots participation.

It is instructive to note that precisely those leaders most in need of asserting some administrative coherence in Africa are turning to the Kenyan model. Leaders attempting to reconstruct the failed states of Uganda and Ghana combine competition within a single or no-party framework with administrative supervision by committed cadre. Yoweri

Museveni, leader of the National Resistance Movement (NRM) which governs Uganda, learned about the usefulness of grass roots participation during his period fighting with the Marxist anti-colonial resistance in Mozambique. As part of a program of reconstructing state authority in Uganda after 1986, the NRM organized decentralized forms of political participation called resistance committees with the objective of using these participatory institutions to monitor and discipline the state bureaucracy.³¹ The creation of participatory institutions at the local level "undoubtedly strengthened state capacity".³² The resistance committees have become

Cost-effective mechanisms for settling disputes, maintaining security, improving infrastructure and, at the district level, making policy, managing local revenue, and supervising the work of the district administration.³³

The Resistance Councils were not given control over local administration or finances. Rather, they

were expected to work as self-help community development organizations, and to "resist" tendencies to corruption and repression in the administration ... Many representatives accepted these obligations and put in hundreds of hours of voluntary community service and exposed cases of corruption or negligence ...³⁴

³¹ E. A. Brett, "Rebuilding Organisation Capacity in Uganda Under the National Resistance Movement," Journal of Modern African Studies, 32, 1, (1994), pp. 53-80.

³² Brett, pg. 67.

³³ Brett, pg. 67.

³⁴ Brett, pg. 68.

The NRM combines grass roots supervision of local administrative agencies with a bureaucracy overseen by the NRM. Thus the new Ugandan state, which is recreating political order in a country devastated by civil war, is built on a combination of grass-roots supervision of administration and the evaluation of policy and administrative information by an ideologically committed cadre.

Atul Kohli in The State and Poverty in India describes a similar combination of grassroots participation and committed cadre working to implement policies aimed at changing social relations. In this case the supervision of grass roots action was undertaken not by legal or technocratic professionals but by an ideologically committed cadre of a "disciplined left of center party", the Communist Party - Marxist (CPM) of West Bengal. As part of a broader effort to improve the welfare of the rural poor through public works programs and tenancy reform the CPM encouraged the election of its followers to local government councils. These "Red Panchayats" were given powers to perform some of the former functions of the local administration as well as supervise the local bureaucracy. These Panchayats were in turn supervised by cadre of the CPM to ensure that they complied with the CPM's norms of honesty and full accountability: a concerted effort was made to make the activities of the Panchayats as open to public scrutiny as

possible. Moreover, a strong effort was made to make the files of the local administration accessible to the public. Thus a fundamental aspect of the CPM's strategy of transforming social relations was to mobilize grass roots participation in order to make the activity of policy implementation public and hence supervisable by the CPM's cadre. This strategy of poverty alleviation met with moderate levels of success.³⁵

Conclusion

State power and rights of association, expression and participation can be mutually reinforcing. The other side of this proposition is that the rights we consider to be instruments of liberation are also instruments of domination. Public purposes might be served by an expansion of rights. But, skilled sovereigns might also use rights to pursue policies which have little relationship to any reasonable conception of the public interest. Furthermore, while rights might discipline state agencies, they can also isolate groups or individuals to bear the full force of state terror. Roberto Unger writes:

Not only can the legal order embody a well-arranged

³⁵ Atul Kohli, The State and Poverty in India: The Politics of Reform, (New York: Cambridge University Press, 1987). See especially pp. 36-51, 95-145.

authoritarianism, but it can coexist indefinitely with the use of pure terror to crush the enemies of the regime by individualized violence. Indeed, the fact that liberal society is one in which the specialization of roles impresses upon everybody the deepest gaps among the different spheres of social life may make the coexistence of law and terror all the easier to accept.³⁶

Egyptian history bears out this proposition. While Egyptian politics has undoubtedly become more participatory and liberal since the early 1970s, the incidence of serious human rights violations committed by state agencies has dramatically increased. This may be due to the coincidence of the emergence of a revolutionary opposition in Egypt. But if the logic of the dissertation is correct, the creation of a more liberal political order has enabled the government to unleash its forces of repression on its revolutionary opposition with little fear of their irresponsible behavior. The courts and rights the Presidency has established encourage the security forces to use their authority to violate only the rights of the revolutionaries. Security forces are less likely to abuse their authority as they did under Nasser - even to the point of threatening the Presidency. Rights therefore have the function of concentrating the state's use of violence on a small minority. Thus the paradox of rights and the rule of law: what liberates some facilitates the abuse of others.

³⁶ Roberto Unger, Law in Modern Society: Toward a Criticism of Social Theory, (New York: The Free Press, 1976), pg. 191.

Rights do not merely constrain power. They organize and channel it. Terror has not disappeared under the rule of law in Egypt. Rather, the Presidency has become more capable of using it efficiently.

The capacity of rights to organize terror efficiently is not a feature specific to the Egyptian political system. Consider Heinrich Boll's novel The Lost Honor of Katharina Blum.³⁷ Boll's novel describes the way in which the liberal order in the Federal Republic of Germany facilitated the humiliation and ostracism of a defendant in lieu of a trial. The more focused, predictable and specific violence of liberalized politics holds out the hope of a society in which legitimate punishment replaces terror. This work has suggested that that is indeed a possibility. But one is still left wondering whether the terror that occurs in the interstices of the rule of law is of a smaller order of magnitude than that which occurs in authoritarian regimes, or whether it is simply more efficiently organized.

³⁷ Heinrich Boll, The Lost Honor of Katharina Blum, (New York: McGraw Hill Publishers, 1975).

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