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Egypt needs independent judiciary

By: Bartholomew L. McLeay – January 17th, 2013

The Great Sphinx of Egypt may have stood as guardian to the Pyramids for the past 4,500 years, but the Egyptian judiciary is most in need of protection today.

A Jan. 11 World-Herald editorial properly rebuked the Egyptian executive branch and President Mohamed Morsi for “blatant abuse” of basic freedoms in placing an Egyptian comedian under criminal investigation for mocking Morsi as a “pharaoh.”

Morsi acknowledges he has no “right to interfere” in matters “addressed in the judicial system.” Truer words could not be spoken.

An independent judiciary is vital to Egypt. America has a clear interest. Egypt is one of the most populous countries in Africa, with a strong geopolitical influence in the Sinai Peninsula, and is a once reliable supporter of Israel.

Egypt's young democracy is continuing to experience political chaos, secular uprising and an economy in crisis. Most worrisome, however, despite Morsi's reassuring words, is the executive branch's overly aggressive action in undermining judicial authority and chilling freedom of expression.

The facts speak for themselves.

On Nov. 22, Morsi declared his decisions immune from judicial review. Morsi's declaration was swiftly met with violence. The judiciary announced a strike. Morsi later vaguely reduced his own immunity to “acts of sovereignty.” A controversial Egyptian constitutional referendum later narrowly passed.

Then came the shameful Jan. 1 announcement of a criminal investigation against an Egyptian satirist, known as the Jon Stewart of Egypt, for allegedly mocking Morsi.

The judiciary has yet to speak on the matter. The court's decision, and the executive branch's response to the ruling, could be transformational for Egypt.

The same may also be true for any executive branch response following the new trial recently granted to Egypt's former dictator — an order reportedly sought by both prosecutors and the defendant.

Egypt's constitution refers to Islam as the “religion of the state” and notes “principles of Islamic Sharia” are the “principal source of legislation.” These provisions are regrettable

to any freedom-loving country, but fortunately Islamic Sharia was not given the force of “law;” its “principles” serve to guide judges presumably in the same way that expert opinions guide American judges but are not binding as law.

Certain provisions of Egypt's constitution can be read to protect basic freedoms, including guarantees for “freedom of thought and opinion,” “freedom of creativity” and “freedom of press.” Egypt's constitution further grants “independence” and “immunity” to judges and renders “interference with the judiciary” a crime.

These provisions provide ample flexibility for a truly independent judiciary to whisk down the Nile River and beyond any absurd attempt by prosecutors to bring criminal charges against Egyptian comedians or others similarly situated.

Iran offers a useful contrast. Iran's constitution includes freedom of expression except when it infringes on “basic tenets of Islam.” Iran empowers a supreme leader to whom the judiciary is beholden and, according to Freedom House, its judiciary “has functioned as a tool for silencing critics.”

The relatively young democracy in the African nation of Benin offers a different lesson. The U.S. State Department praised Benin, nearly one-third Muslim, as a “model democracy.”

One legal scholar determined that Benin passed the democracy test early when the judiciary found Benin's president acted “against the law” and “the president adhered to the court's ruling.” The same author concluded: “For Egypt to progress in democracy, it must follow Benin's example.” (Source: The Texas International Law Journal.)

(Benin's independent judiciary is about to be tested again as a result of recent questionable defamation charges brought by prosecutors against a television station. Hopefully, Benin's judiciary will pass the test again.)

An independent judiciary can ensure that a constitutional democracy survives in Egypt. As the Cato Institute presciently noted a few years ago, “the future of Egypt and of all the Arab people is at stake in the struggle over judicial independence.”

Egypt is counting on billions of dollars in U.S. aid. Research suggests (<http://www.wider.unu.edu>) only small amounts of “democracy aid” are necessary to give some help to protect institutions like a foreign judiciary. A Senate bill, S. 3241, conditions funding on Egypt's implementing policies to protect freedoms, including judicial independence.

Pharaohs ruled Egypt for thousands of years. For Egypt to be ruled by democracy today, an independent judiciary must thrive. The United States should remain as unmovable as the Great Sphinx in withholding foreign aid until it does.