Constitution-Making, Political Transition and Reconciliation in Tunisia and Egypt: A Comparative Perspective

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Abstract The political changes that have taken place in recent years in several Arab countries have necessitated changes in the political structure of these countries, mainly because of the political tensions between the different groups in these societies. In such a reality, the constitution-making process can serve as a political tool for redefining the political framework and for ending conflicts and achieving reconciliation between conflicted communities. This article examines how the constitution-making process can become a reconciliatory constitution-making process in two cases: Tunisia and Egypt. These two cases differ in terms of the success of the constitution-making process in solving political disputes. In Tunisia, the constitution-making process contributed to a great extent to the reduction of disputes and conflicts and the achieving reconciliation. However, the constitution-making process in the Egyptian case did not succeed in this matter. It even caused a battle between the different groups regarding the establishment of the new constitution.

1 Introduction

This article deals with the process of constitution-making in conflicted societies and how such a process may contribute to solving conflicts and achieving reconciliation between different communities. The article will examine this issue regarding constitution-making processes in Tunisia and Egypt that were conducted as a result of the political uprising in these two states in 2011 and after the collapse of the political regimes in these two states. This matter is of particular because the world that is continually changing historically, socially, economically, and politically, has created a situation characterized by deeply divided societies. Various countries are facing inner conflicts between their communities and need coping with many challenges. This situation is even aggravated in cases where these communities are conducting
struggles and claim constitutional recognition as “unique” communities. It may lead to the problematization of the constitutional identity of the society since these claims present the identity of the society as something problematic. There are several ways to handle this situation: to promote a kind of status quo, with or without constitutional changes, or promote different types of recognition by changing the constitutional identity. In this context, the constitution-making process may be one of the political strategies needed to cope with a conflicted reality.\(^1\) It is particularly true because, during the last decades, we have witnessed a growing international interest in constitutional design, especially in societies where different communities are in conflicts that generally result from ethnic, cultural, and national differences. Countries in different regions of the world, in Eastern Europe, in Latin America, in Africa, and recently also in the Middle East, are going through a process of constitution-making or constitutional amendments.

In general, the constitution plays an important regulatory role aiming to regulate decision-making processes through a series of government agencies, distribution of power, determination of laws allowing government authorities to work, and the definition of their interaction. Besides, the constitution plays a vital role in shaping the identity of different communities and in defining their rights and duties. The importance of this role is growing, and it gets an additional signification in conflicted societies, since in such societies, because of the nature of the conflict or the lack of co-existence, constitution-making can be used as a tool to strengthen the political identity, which is crucial for the very existence of the regime.\(^2\) It should be outlined that dealing with the process of constitution-making is not disconnected from the constitution itself, from its nature and character. It is worth stressing the relation between “process” and “constitution” as a fundamental and inherent relation. The process itself has a significant impact on both the content and the essence of the constitution. Therefore, it is crucial to deal with the different aspects of this process. The features that characterize it, how it is conducted, the conditions needed for it to succeed, and who participate in this process. In conflicted societies, the constitutional process has a more important significance because of its implications on various communities in society.\(^3\)

Within this context, an approach is developing stressing the importance of establishing a constitution in order to achieve reconciliation among conflicted groups. This fact raises many questions regarding the extent to how the process of constitution-making allows reconciliation between these groups: How may this process be reconciliatory, and what prevents it from playing such a role? What makes the debate preceding the establishment of the constitution based on principles and values of reconciliation, tolerance, and mutual recognition? How does it affect the content of the constitution, the recognition of cultural diversity, and the rights of different groups in society? These questions are essential, because constitution makers usually try, through the creation of a constitutional document, to build a national identity.

\(^1\)Magnet (2004), 2–3; Tully and Gagnon (2001), 10.
\(^2\)Choudhry (2008).
\(^3\)Kymlicka (2003), 147–169.
Therefore, the success of the constitutional project of such societies depends on the ability of policymakers to create a common political identity, which can bridge the gap between the identities of the various groups.\footnote{Williams and Hanafin (1999), 2–3.}

Dealing with these issues leads us to think about constitution-making processes held in several Arab states recently. Different Arab countries, such as Tunisia, Egypt, Syria, Libya and, Yemen, witnessed a massive popular mobilization that has brought about dramatic changes in the political structure of these societies. Some of these states have deteriorated into a problematic situation characterized by a struggle between groups regarding several issues. Notably the management of the transitional period, the identity of the new regime, the rights of different groups, and the establishment of a new constitution. The disagreements on these issues have led to violence, and even civil war. However, other states have tried to overcome these disagreements, avoided violence, and maintained the differences between various political forces within the frame of the political process. In such a reality, the constitution-making process served as a political tool that aimed on one the hand to build a new regime, a shared identity, and a constitution that is acceptable to all groups and on the other hand, aimed to achieve reconciliation between the conflicted groups.

In this context, a research examination of the constitution-making process is especially important when it examined alongside the reconciliation process. The process of constitution-making in conflicted societies can significantly contribute to conflict’s reduction, especially when this process goes hand in hand with other social and political processes, such as reconciliation. However, it should be noted that the theoretical literature usually deals with constitution-making and reconciliation separately, without thoroughly exploring the relationship between them. While in recent years researchers have been exploring the contribution of constitution-making processes in conflicted societies to reducing conflicts and achieving reconciliation, the literature focuses on the positive influence of constitutional process, without genuinely exploring the nature of the relationship between these two processes or defining the conditions which would make the constitution-making process a process of reconciliation as well. Therefore, in previous research, I developed a theoretical model that aimed at overcoming these limitations by presenting a new theoretical model—“Reconciliatory Constitution-Making Process”. It is important to emphasize that this is an analytic model meant to explore the nature of the relationship between the process of constitution-making and reconciliation. Moreover, to explain the circumstances in which the process of establishing a constitution can become a process of reconciliation. Such a process would aim not only to establish a constitution but also to end a long term conflict and achieve reconciliation and appeasement between groups in conflicted societies.\footnote{Mahmoud (2014).}

According to this model, a constitution-making process can be a reconciliatory constitution-making process when it entails four sets of conditions:
1. Structural conditions, including:
   A. Transforming the nature of the regime and moving from a hegemonic regime to an inclusive regime that includes the different communities.
   B. Transforming the political culture from a hegemonic culture that denies the culture and identity of the different communities to an inclusive culture that includes their culture and identity.

2. Constitutional regulation of the cultural differences between the different communities.

3. Participation of the communities in the constitutional making process.

4. Means to achieve reconciliation: such as national dialogue based on principles of mutual respect, inclusivity, deliberation, and justice; dealing with past wrongs; Truth and Reconciliation Commissions, the forgiveness of crimes and injustice committed before the starting of the constitutional process, or in the transitional period; and abandonment of perceptions of retributive justice.

This article will examine this argument through a comparative historical analysis of two different case studies: Tunisia and Egypt. The article will focus on constitution-making processes conducted in these two states as a result of the political uprising in 2011. The analysis will be based on the model—“Reconciliatory Constitution-Making Process”. These two cases are different in terms of the constitutional process’s success in bringing reconciliation for these societies. By analyzing the two cases, the article aims to improve our understanding of the conditions that may help a constitution-making process to become a reconciliatory one, specifically, because of the similarities and differences between these two cases. It is important to note that this article is part of more extensive research that deals in depth with the two cases and examines all sets of conditions mentioned above. This article will not deal with the four sets of conditions but will focus only on two sets of conditions: structural conditions and means to achieve reconciliation. The emphasis on these conditions stems from the fact that a change in structural aspects, such as the nature of the political regime and political culture, is an initial stage in turning the process of establishing a constitution into a reconciliatory constitution-making. Moreover, the article will relate to the constitution-making process in these cases during a specific period of time: Tunisia: From the starting of political uprising in 2011 until the Approval of the new constitution by the constitutional assembly in January 2014 and Egypt from the starting of political uprising in 2011 until the fall of Morsi’s government in July 2013.

Before referring to analyzing the constitution-making processes in these two cases, in the next section, I will explain more extensively the significance of the “Reconciliatory Constitution-Making Process” and the characteristics of this process.

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6Mahmoud (2014).
2 What Is a Reconciliatory Constitution-Making Process?

There is a growing recognition of how the constitution-making process is being conducted, especially in conflicted societies, has an impact on the state, the government and the process of democratization. The constitution-making process may provide a basis for negotiations and dialogue in order to resolve problems and conflicts. It may contribute to educate citizens to democratic values, lead to a process of reconciliation through social dialogue, and create a consensus regarding a new vision for the country’s future. Until recently, research’s emphasis was on the creation of constitutions in a stable political reality, and less thought was devoted to emerging constitutions in a conflicted reality or within a period of political change. In this regard, realistic constitutional theory tended to attribute to the constitution a procedural role in defining the regime and the laws but did not ascribe importance to the constitution-making process as an agent of change. However, nowadays, an idealistic constitutional theory tends to attribute to the process a fundamental and founder role and believes that the process of constitution-making, symbolizes the beginning of the creation of a new regime and defines the multi-dimensional role of constitutions. This perception stems from a transformative political reality that allows for consensus. According to this perception, the constitution-making process should be recognized as a process or forum for negotiations in order to prevent conflict and division. It should be emphasized that political theory has a strong normative argument regarding the relationships between political changes and the constitution-making process. This issue first appeared in the classic constitutional model described in Aristotle’s writings. Later, it has appeared in modern constitutional theory, especially in Hannah Arendt and Bruce Ackerman’s writings. Despite the differences between the two theorists, they share the assertion regarding the potential of a constitution-making process for political change.

In recent years, various studies have focused on cases in which the process of constitution-making was part of the political changes and the attempt to resolve

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7 In recent years, various projects have begun focusing on the aspects related to the constitution-making process, resolution of conflicts, reconciliation and achieving peace. See, for example: The (Constitution Writing and Conflict Resolution) project, directed by (Jennifer Winder) focuses on constitutions that have been established since 1975 and refers to the conditions and processes in which they were established and to the consequences of receiving these constitutions upon conflict resolution http://www.princeton.edu/~pcwcr/index.html. The (Constitutional Transitions) Project, directed by (Sujit Choudhry) deals with receiving constitutions in times of political changes: http://constitutionaltransitions.org/. The (Constitution-making for peace programme) deals with the constitution-making process as part of the reconciliatory process: www.constitutionmakingforpeace.org

8 Samuels (2005), 667–668.

9 For more elaborate discussion on this issue see in this volume Brauni Andreas, Authoritative Constitution-Making in the Name of Democracy?, Sect. 2.

10 Aristotle (1984).

11 Arendt (1963); Ackerman (1992).

12 Teitel (1997), 2053–2057.
conflicts, such as South Africa, Brazil, Nicaragua, and Eritrea. These studies referred to the potential of the constitution-making process in reducing the intensity of violent crisis, and even to put an end to them. The argument is that the constitution-making process taking place following a period of conflict provides an opportunity to create a new future. In such cases, constitution-making could lead society to support principles of political tolerance and may provide a chance to build a common perception of a shared future. Primarily, since this process can provide a solution to problems of violence through social dialogue and civic education to democratic values.

The focus is on the fact that constitutional design requests democratic norms and procedures, transparency, and accountability, as usually expected from any decision-making process. Moreover, experts in constitution-making studies, emphasizes the contribution of the constitutional process for the transformation of conflicts and for ensuring peace. The focus is on the fact that constitution-making is more a process than a defining, one-off, and final moment, and it must include a new debate. The quality of the constitution-making process as a mean for transforming conflicts depends on the possibility for all those who have different positions to express their opinions.

The assumption is that the way the constitution is established is likely to reduce tensions among conflicted groups and to affect the legitimacy of the final document, as it may affect the content of the constitution. Constitutions that are formulated during periods of political change may serve as temporary measures. In such a constitutional process, constitutions are not formulated at once, but in steps. Usually, the constitutional process begins with a temporary constitution, whose function is to contribute to understanding the essence towards the formulation of a permanent one. In the first years following the constitution-making process, as long as the definition of the content of the constitution is not clear enough, the constitutional-making process is likely to affect the levels of conflict, much more than the very essence of the constitution. While citizens need time to know the essence of the constitution, the constitution-making process itself contains messages that have a direct impact on their positions. Therefore, the constitution-making process could provide a political equation of how different groups may continue to live together in harmony and carries implications for future generations. Those issues are particularly significant since the constitution-making process is related to other political processes, such as the reconciliation process.

Therefore, a constitution-making process would be a “Reconciliatory Constitution-Making Process” when:

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13 Winder (2005), 503–518; Encaracion (2008), 435–459.
14 Samuels (2005), 663–682.
15 Ibid.
16 Bannon (2007), 1824–1872.
17 Teitel (1997), 2053–2057.
18 Winder (2005), 503–518.
19 Elster (1995), 364–96.
A. Its ultimate goal is not only a constitution-making but also a solution to ongoing conflict and achieving reconciliation among conflicted groups during this process. Besides, reconciliatory constitution-making process includes dealing with significant issues such as the type and nature of the regime. The assertion is that the constitution-making process that is solely intended to determine rules and not to resolve any disputes is not successful in bringing reconciliation among the different communities.

B. The nature of a reconciliatory constitution-making process is to achieve changes in the essence of relationships between these groups, and this does not only mean a legal process or formal regulation of relations between different groups. In this respect, the constitution-making process could provide a political equation of how different groups may continue to live together in harmony and carries implications for future generations. In this context, there should be a distinction between constitution-making processes that have been successful in leading to reconciliation, and constitution-making processes based on the desire to resolve conflicts between conflicted groups, which have not modified the nature of their relationships and, at best, have achieved a temporary solution.

C. According to this model, reconciliation does not only mean resolving the conflict. The emphasis is on changes in perceptions that each group holds about the other groups.

D. The model does not assume that there is a consensus among the various groups regarding a new political framework before the beginning of the constitution-making process but refers to the reconciliatory constitution-making process itself as something that would lead to such an agreement through negotiations and ongoing discussions on contentious issues. In fact, the first agreement between the groups is about the beginning of the constitution-making process.

E. Reconciliatory constitution-making process includes the various groups and their representatives, is composed of sub-committees that examine the core issues of the conflict and attempts to find appropriate equations to continue living together. This process will be based on the principles of inclusion and partnership of the various groups in the constitution-making process and the various committees that supervise this process. This issue is required for the constitution to be considered legitimate by various groups.

As is already mentioned, the critical point is that in order for reconciliatory constitution-making to take place, several conditions are needed. Namely, a constitution-making process can be a reconciliatory constitution-making process when it entails four sets of conditions:

1. Structural conditions include:

A. transforming the nature of the regime and moving from a hegemonic regime to an inclusive regime that includes the different communities.

B. transforming the political culture from a hegemonic culture that denies the culture and identity of the different communities to an inclusive culture that includes their culture and identity.
2. Constitutional regulation of the cultural differences between the different communities.
3. Participation of the communities in the constitutional making process.
4. Means to achieve reconciliation: such as national dialogue based on principles of mutual respect, inclusivity, deliberation and justice; dealing with past wrongs; Truth and Reconciliation Commissions, the forgiveness of crimes and injustice committed before the starting of the constitutional process or in the transitional period; and abandonment of perceptions of retributive justice.

In the first and second parts, I presented the theoretical framework of this article and defined what is “Reconciliatory Constitution-Making Process” and the conditions needed for this process to take place. In the next part of the article, I will examine how the constitution-making process can also become a reconciliatory constitution-making process regarding the two cases- Tunisia and Egypt.

3 Constitution-Making Process in Tunisia and Egypt After the Political Uprising in 2011

The Arab political uprisings that took place in 2011 expressed a new massive adherence of the people, to the notion of citizenship and the collective will to underwrite a new and more inclusive type of social contract. The Arab protest can be defined as the unfolding of an accrued sense of civic involvement. The fight for political freedoms and against authoritarianism is nothing new to Tunisian and Egyptian societies. A rich history of organized opposition by multiple sectors, labor unions, students, and Islamists among them—was prominent in both Egyptian and Tunisian contexts.

The homogeneity of those opposed to the regime in countries as Tunisia and Egypt enabled them to articulate a collective worldview that embraced by the population and helped enable the mass mobilization against the regime. However, despite the similar conditions that lead to popular uprisings in Arab countries such as; economic crisis, high youth unemployment, social distress, absence of meaningful political reforms, weakening of state institutions, and a capacity for social mobilization—the paths were undertaken by these revolutionary societies were different.

In both societies, Islamists were considered the most threatening entity to the regime, rendering Islamists also the most persecuted. The Muslim Brotherhood in Egypt and the Islamist party-Ennahda- in Tunisia were well prepared. Those who came from prison and exile were supporting professional syndicates and operating as charitable organizations. However, the politics of Egyptian and Tunisian societies evolved differently after the political uprising. The Muslim Brotherhood in Egypt,

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20 Challand (2013), 169–187.
21 Gordner, M (2012) Democratic transition in Egypt and Tunisia: Lessons for “Arab Spring” states. http://www.consultancyafrica.com/index.php?option=com_content&view=article&id=1073. Accessed 7 July 2014.
22 Ishay (2013), 374–375.
maintained a purportedly Islamist ideology of state and society, whereas Ennahda party in Tunisia, postured itself as a civic organization.23

In general, both Tunisia and Egypt become increasingly polarized between Islamists and secularists after their revolutions. Although the divide was not new and somewhat historic, it seemed to have paralyzed both countries, and it rather destabilized them. Besides, both countries experienced political unrest after the political revolutions. The dominant political parties that won elections in the two countries have little experience in governing.24 Both countries were struggling to balance the influence of Islam within their fledgling democratic systems, mostly because these two cases are Islamic states and have always engaged with religion, producing and trying to impose on their people their interpretations of Islam. The Tunisian and Egyptian regimes have accomplished this in different ways, according to their specific histories. However, both have used Islam as a tool for social engineering, and they have, at the same time, attempted to separate political dissent from religious inspiration.25 However, there are many significant differences between the two cases when dealing with the transition to a democratic regime, the way of establishing a new constitution, and the intention to promote reconciliation.

The following section will present how the constitution-making process was conducted in the two societies—Tunisia and Egypt. The aim is to analyze this process in light of the conditions that have determined in the previous section.

### 3.1 Constitution-Making in Tunisia

A strong and massive popular mobilization in 2011 succeeded in ending the rule of Ben Ali and opened a transitional period that led to free elections and a new interim government. It should be noted that widespread protests in Tunisia were not a new phenomenon. However, one of the main demands of the protests in this uprising was designing a new constitution.26 Especially since Ben Ali bound much of the disaffected political class to himself through a National Pact, which supposedly paved the way for constitutional revisions. He used constitutional maneuvering to repeatedly extend his term of office, secure the exclusive privileges of his party, and undermine the democratic potential of reforms. For Tunisians, post-independence democracy was lost because the constitution continually reproduced the supremacy of the executive at the expense of the legislative, such that the legislation itself became

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23 Gordner, M (2012) Democratic transition in Egypt and Tunisia: Lessons for “Arab Spring” states. http://www.consultancyafrica.com/index.php?option=com_content&view=article&id=1073. Accessed 7 July 2014.
24 Glenn, M (2013) Why Comparison between Tunisia and Egypt aren’t helpful. Daily News. http://www.dailynewsegyp.com/2013/09/08/why-comparisons-between-tunisia-and-egypt-a. Accessed 8 Aug 2014.
25 Zeghal, M (2014) Uprising in Egypt: The Power of a New Political Imagination. http://blogs.ssrc.org/tif/2011/02/22/the-power-of-a-new-political-imagination/5/13/2014. Accessed 7 July 2014.
26 Zeghal (2013), 254–274.
an extension of the president’s wishes. Thus the starting point for democratization after the revolution of 2011 was the construction of a constitution without this flaw.\textsuperscript{27}

That is why acting President Fouad Mebazaa announced on 3 March 2011 that there will be elections for the new transitional government, which was charged with preparing a new constitution in advance of presidential and legislative elections. A further development was the legalization of the Islamist Ennahda party on 11 March. These actions were a sign that the parameters for a political organization that marked the Ben Ali construct were being abandoned and new ones set, which could offer a more inclusive and pluralist future.\textsuperscript{28}

It should be noted that although Ennahda was not active in the revolutionary movements of 2010–2011, it was the most active party in Tunisia after gaining legal status on 1 March 2011, mainly because of its organization and financial resources. Ennahda was first formed by Rachid Ghannouchi and Abdel Fattah Mourou in 1981 as the Islamic Tendency Movement. The former president Habib Bourguiba repressed the party. The name of the party was changed to “Ennahda” in 1988 to comply with the stipulation that names of political parties could not have religious references. The party remained illegal under Ben Ali’s regime, but individual members ran as independents in the elections of the late 1980s and early 1990s. After its victory in the 23rd election, Ennahda faced a double challenge in both affirming its religious identity and preserving the alliance with its secular counterparts in the governing coalition.\textsuperscript{29}

It should be noted that when The National Constituent Assembly (NCA) was elected, it began its operation with an internal mechanism that defines its missions regarding the constitution and the requisite time that will be granted for it to draft the new constitution. This was important because this body was elected, whereas former president Fouad Mebazza was not elected but rather appointed due to the political circumstances at that time.\textsuperscript{30} The Assembly decided to start drafting the constitution from scratch. This, in itself, was initially argued as a radical move designed to meet revolutionary expectations and start anew the construction of a nation plagued with autocracy and corruption.\textsuperscript{31}

After the elections, The National Constitutional Assembly established several committees to draft the constitution, each focused on a different section: the preamble, basic principles and constitutional amendment provisions, rights and freedoms, legislative and executive powers and their relationship, the ordinary, administrative, financial and constitutional judiciary, constitutional bodies, and state, regional, and local authorities. The President of the NCA and the chairs of the drafting commissions

\textsuperscript{27}Murphy (2013), 231–247.
\textsuperscript{28}Ibid.
\textsuperscript{29}Brody-Barre (2013), 211–230.
\textsuperscript{30}Asharq Al-Awsat (2012) Interview: Ennahda Movement’s Rachid Ghannouchi. https://eng-archive.aawsat.com/theaawsat/interviews/interview-ennahda-movements-rachid-ghannouchi. Accessed 5 Dec 2014.
\textsuperscript{31}Omri, MS (2013) Tunisia: Draft Constitution Reflects Compromise. ALL Africa. http://thinkafricapress.com/tunisia/draft-constitution. Accessed 7 July 2014.
form a Joint Committee for Coordinating and Drafting (JCCD), to be responsible for reconciling the drafts of the different committees.  

Despite the success of the election, the constitution writing process in Tunisia was intense and prolonged. It was supposed to last for one year, but it took much longer. Two issues divided the constituent assembly and the Tunisian political parties; the essence of the constitution and the issue of power. Writing of the constitution involved a battle about some of the principles, mainly about the nature of the political system, which came close repeatedly to derail the process. The battle of principles centered on whether the new constitution would maintain the secular character of the constitution of 1959, or would incorporate Islamist elements. When the Constituent Assembly and the troika government were in crisis and could no longer control the situation, a new broad coalition of political and civil society groups took the lead, forcing Ennahda and its partners in the government to accept a new transition process. Tunisia overcame the crisis that threatened to halt progress toward democracy by temporarily abandoning the formal rules adopted by a democratically elected assembly and relying on a process that was in part direct. This strategy proved its effectiveness and enabled the continuation of the constitution-making process.

### 3.1.1 Transformation of the Regime’s Nature

One of the striking characteristics of Tunisia’s political landscape before the revolution was the ostensive obliteration of any oppositional or alternative political space. Although, spaces of political contention have existed all the time, even under the increasingly authoritarian political conditions of Ben Ali’s rule, yet such spaces and practices were largely ignored because of their unseen location outside the official realm of politics, which included a controlled civil society and the co-opted electoral system with a few legal political parties that were allowed to compete in one of the region’s most uncompetitive systems. Ben Ali did not allow any sort of organized activity criticizing his government. Even when organizers applied for protest or demonstration permits where the intent was not to explicitly criticize the regime, but rather express grievance to issues such as working conditions, the authorities routinely denied permission to assemble in public. The political uprising in 2011 changed the rules of the political game and allowed the beginning of a political transition.

From the end of the revolution until the elections of a Constituent Assembly on 23 October 2011, Tunisia witnessed three distinct governments. Through this transitional period, the president and provisional governments issued legislation and

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32 Zoglin, Katie (2013) Tunisia at a Crossroads: Drafting a New Constitution. Dig Jou Insights. https://www.asil.org/insights/volume/17/issue/18/tunisia-crossroads-drafting-new-constitution.

33 Ottaway M (2014) Democratic Transition and the Problem of Power. Middle East Program Occasional Paper Series. Wilson Center. https://www.wilsoncenter.org/sites/default/files/democratic_transitions_and_problem_of_power.pdf. Accessed 7 July 2014.

34 Chomiak (2011), 68–83.
decrees, while the High Commission for Achieving the Goals of the Revolution served as the main framework for parties, associations, and prominent civil society actors. The elections were the first clear institutional test for the democratic aspirations reflected by the people. They were perceived by the international observer missions as an outstanding success and “free and fair” and they led to a formation of a coalition government that included both secular and Islamist parties. The legal structures for the elections represented a triumph of democratic intention over operational purpose and clarity. Norms of freedom, equality, and tolerance of plurality, were woven into both the process and the statutory construction, although retaining the role of the state in curbing uncivil behaviors. Moreover, the election of Tunisia’s National Constitutional Assembly can be seen as a significant victory for the transition to democracy in Tunisia. The constituent assembly consists of 217 members elected proportionally from a party-based list system. Ennahda won 90 seats in the assembly.

To a certain extent, the results of the elections were surprising. Especially since Ennahda had done considerably better than most analysts had expected and it won over 40% of the popular vote. The secularist party—the Progressive Democratic Party (PDP), won only 16 seats. The win of Ennahda was attributed to its success and its opposition’s failures. In fact, Ennahda ran the most organized and structured campaign, and it produced a comprehensive and glossy manifesto brochure that offered 365 policy commitments covering politics, economics and social development. Moreover, it distinguished itself from all aspects of the previous regime and laid out a vision for the future, which had broad appeal. In contrast to the Ennahda party, the PDP made several crucial mistakes and, most importantly, that it was the only legal opposition party to accept the last offer of Ben Ali to reform a national unity government. This mistake reflected in an election campaign that stressed reform rather than revolutionary change. Moreover, the leader of the PDP party run elitist, personality driven campaign and rejected collaboration with Ennahda in a future coalition government, leading him to appear both arrogant and too defensive of the extreme secularism of the previous regimes.

It should be noted that one of the main issues in the election discourse was the arguments about whether or not the Islamist Ennahda party intended to transform Tunisia into a new theocracy. Secularists warned that Ennahda would enforce wearing hejab, erode women’s rights, and destroy the tourism industry by banning alcohol and beachwear. Apart from the centrality of the debate about Islam’s status in the country’s political future in the election campaigning, these events illustrated the specificity of the Tunisian politics at the first stages of the transition. The entire debate was framed in terms of the rights of individual citizens, the rule of law, and the pursuit of democratic government. Both sides rejected the idea that any party should be enabled to impose one cultural code upon all Tunisians. To a certain extent, Tunisia navigated

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35 Allani (2013), 131–140.
36 Murphy (2013), 231–247.
37 Pickard (2011), 637–652.
38 Murphy (2013), 231–247.
the transition to democracy in relative success. Within a short period, Tunisia moved from authoritarian rule to free, fair, and transparent elections, and the political power shifted from narrow and urban elite to a broad-based coalition.  

### 3.1.2 Transformation of Political Culture

During the uprisings, protesters did not represent the future of Tunisia as “Islamic” or “secular”. They saw it as reconfigurable, for the sudden absence of institutionalized politics made it ripe for radical change, allowing unification around the demand for a total rupture with the past. The religious/secular dichotomy, although an ordinary staple in the political narratives of an authoritarian politics, did not help Tunisians articulate their political demands, chiefly the departure of Ben Ali and the end of the authoritarian regime. They saw themselves as one “people” endowed with agency, as expressed in the slogan “the people want”. This exceptional and extraordinary moment ended when the president fled, and end with it fugitive democracy.  

After the revolution, a conflict broke out among the political elites on the nature of the relationship between “state” and “religion” in the future democratic system. Since there was no deep preparation for the ensuing debate around this sensitive issue, the discussions between the Islamists and secularists took on a sharp tone and were characterized by hard line attitudes and mutual recriminations. The fact that it almost turned into a stubborn struggle raised fears for the future of the revolution, whose motives and slogans were as free of ideology as they were a social revolution with democratic dimensions.  

Under the regimes of Presidents Bourguiba and Ben Ali, the public interpretations of Islam and secularism were mainly defined and authorized by the state. However, after the end of the Ben Ali regime, issues related to Islam and secularism served as differentiation devices in the political arena. Especially since it was a time of expanded freedom of expression and a weakened central authority. After the political uprising, Tunisians were projecting the question of Islam back into the analysis of the nature of the massive that created a political rupture.  

Historically, although defining the identity of the state as “Islamic State” was not part of the Arab reawakening thought, it did not mean that there was agreement on the separation between state and religion. In the period that preceded colonialism, what was uppermost in the minds of the majority, is reforming the political entities that, modernizing army and administration, and bridging the gap between authorities and people. It was necessary in order to endow a minimum level of legitimacy and efficacy, by restricting its powers and attaching conditions to it. Thus, when Tunisia gained its independence and the establishment of the state began, and members of the Constituent National Assembly were elected to draft the country’s new constitution.

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39 Ibid.
40 Zeghal (2013), 254–274.
41 Jourchi (2013), 358–375.
42 Zeghal (2013), 254–274.
and to discuss the cultural background of the new national state, it became clear that the elite had no model to emulate except the modern European-style state and in particular the French model.\footnote{Jourchi (2013), 358–375.}

However, the influence of religion on society has become more prominent under the new Tunisian administration than was under the regime of Ben Ali. Throughout the Ben Ali era, the ruling party, known as the Constitution Democratic Rally, tried to curb any religious influence on Tunisian society by prohibiting the formation of any religion based political parties. Following the revolution of early 2011, more room was created for religious political parties to operate in the country.\footnote{Sadek, G (2013) The Role of Islamic Law in Tunisia’s Constitution and Legislation Post-Arab Spring. Library of Congress. \url{https://www.loc.gov/law/help/role-of-islamic-law/tunisia-constitution.php}. Accessed 27 May 2014.} Although neither the Islamists nor the secularists took part in launching or leading the revolution in Tunisia, they had tried earlier on to bridge their ideological differences on essential matters, chief among which was defining the nature of the state.\footnote{Jourchi (2013), 358–375.} While anti Ennahda voices among political elites worked hard to push for recognizable division between Islam and modernity, Ennahda leaders defended their vision of modernity— one which aligns with Tunisian history and has room for religion in public political life.\footnote{Chomiak (2011), 68–83.}

### 3.1.3 Means to Achieve Reconciliation

After the elections of the Constitutional Assembly, Ennahda has expressed repeatedly that the new constitution should be written in the spirit of “national consensus” and should “represent all of Tunisian society”. However, its skeptics argued that Ennahda might interpret “all of Tunisian society” and “national consensus” differently to what is commonly understood of it. Nevertheless, the results of the Tunisian elections forced all parties in parliament including, Ennahda—to form alliances during discussing the different articles of the constitution, trying to get a majority to approve the articles that will be included in the constitution.\footnote{Ali A (2013) A Comparison: Tunisia, the next Egypt? \url{https://aliyoub.wordpress.com/2013/08/15/a-comparison-tunisia-the-next-egypt/}. Accessed 7 July 2014.}

The National Constituent Assembly established several agreements between major political parties. These agreements and compromises are manifest in the preamble of Tunisia’s constitution that calls for an “Arab-Muslim” state that aspires towards the principles of a participatory and democratic republic. Moreover, it was agreed that the Tunisian regime would be based on civil institutions that aim to guarantee the desires of the people, support their right to determine their destiny, and ensure respect for human rights. It should be noted that “Sharia” was agreed,
would not explicitly be mentioned in the preamble of the constitution. Rached al-Ghannouchi declared that Ennahda would not ask for the inclusion of sharia as a source for legislation in the constitution. This declaration put an end to the tensions between Islamists and secularists. Ghannouchi understood that Article (1) of the 1959 constitution was sufficient to make Islam the foundation of a way of life in Tunisia. He believed that Islam had to be embodied and practiced rather than theorized and mentioned in the constitutional document.

Moreover, Ghannouchi’s first post-Ben Ali government made a gesture of reconciliation, by including 11 leading opposition and civil society figures among its 23 ministers. The formation of the government from representatives of the various groups was intended to indicate the desire to include all the different groups in the new regime. It expressed a step towards a better future, different from the political situation that lasted for years and was expressed by elite control. These measures were intended to allow some degree of agreement that would enable the success of the constitutional process and the transition of Tunisia to a democratic regime after years of a totalitarian rule.

3.2 Constitution Making in Egypt

Different reasons led to the political uprising in Egypt, but the most crucial was a lack of democracy and economic stagnation. Like other Arab states, the Egyptian regime was mostly inefficient and corrupt, lacking meaningful venues for political participation, the rule of law, and political accountability. The gap between rich and poor in Egypt remind wide while the governments have struggled to deal with endemic problems of unemployment and inflation. During the uprising, all sectors of society were involved in the demonstrations against Mubarak’s regime. Among these sectors were leftists, feminists, Islamists, and Arab nationalists. Overall the uprising was made up of all social classes and educational backgrounds. However, the cracks began to show soon after Mubarak’s downfall. It was clear that a united vision for the future of Egypt was not shared by all the different groups, especially the differences between the various Islamist groups on the one hand, and the seculars on the other.

Therefore, it is not surprising that “The Battle for the constitution” was the most accurate and used phrase to describe the constitution-making process in the post-Mubarak Egypt. The “battle” began when the leading political parties failed to define

48Gordner, M (2012) Democratic transition in Egypt and Tunisia: Lessons for “Arab Spring” states. http://www.consultancyafrica.com/index.php?option=com_content&view=article&id=1073. Accessed 7 July 2014.
49Zeghal (2013), 254–274.
50Murphy (2013), 231–247.
51Dede (2012), 99–121.
52Hellyer (2011), 118–125.
the rules that should govern the constitution-making process. Such rules should reflect the different conceptions regarding the process, as well as of the general contours of the constitution’s substance. 53 Adopting the first constitution after the political uprising in Egypt was described as illegitimate and flawed and unrepresentative of the Egyptian people as a whole. 54

The Egyptian constitution-making reflects a conflict between two schools of thought over the process of writing constitutions. The first is the classical school relates to the constitution-making process as a distinct field that rises above the changing day-to-day politics. It means that all those involved should help protect the constitution’s lofty status and preserve its value as a reference for both the government and the governed. At the revolutionary idealist moment that existed after Mubarak’s overthrow, this school’s opinion was closer to that of the unorganized Egyptian masses who thought it is possible to separate the constitution-making process from the unfolding struggle for political power. The other school is closer to political realism in believing that the constitution-making process cannot be separated from the political balance of power in which constitution-making takes place. This school stresses that this is usually the case during democratic transition. 55

The different perspectives were reflected in the dispute over the constitution-making in Egypt. Secular political groups opposed the plan set by the constitutional amendments and called for a vote with (NO) and to refuse the constitutional amendments. They pointed up that the constitution of 1971 has ended with the fall of Mubarak, and a new one must be written. On the other hand, the Muslim Brothers supported the amendments. This dispute was the beginning of a new phenomenon: vote division based on secular-religious polarization, which continued after that during the parliamentarian and presidential elections. The main reason for those two trends to have different positions regarding this issue is that the secular forces thought that the priority should be to reach a consensus on constitutional principles which will govern the political scene in Egypt after Mubarak before the relative sizes of each political party are known in the elections. The Muslim Brothers wanted to start the transitional period with the elections that they thought they would win, and hence they would have more leverage over the writing process of the new constitution. The results of the first round elections disappointed all who had hoped to build a new political regime. 56 For this reason, adopting the constitution in Egypt was

53 Farouk, Y Writing the Constitution of the Egyptian Revolution: Between Social Contract and Political Constructing. Arab Reform Initiatives. http://www.arabreform.net/sites/default/files/Cons_Egyptian%20Constitution_Y.Farouk_Nov13_Final_Layout_En.pdf. Accessed 27 May 2014.
54 Sickinghe, E. (2013) The Egyptian Constitution: Looking Beyond Seasonal Forecasts. ArabsThink. http://arabthink.com/2013/02/05/the-egyptian-constitution-looking-beyond-seasonal-forec. Accessed 8 Aug 2014.
55 Farouk, Y Writing the Constitution of the Egyptian Revolution: Between Social Contract and Political Constructing. Arab Reform Initiatives. http://www.arabreform.net/sites/default/files/Cons_Egyptian%20Constitution_Y.Farouk_Nov13_Final_Layout_En.pdf. Accessed 27 May 2014.
56 Fahmi G (2012) Egypt Presidential Elections 2012: The Survival of the July 1952 regime. Arab Reform Initiatives. https://archives.arab-reform.net/en/node/446. Accessed 27 May 2014.
described as illegitimate and flawed and unrepresentative of the Egyptian people. This was one of the main reasons that lead the Egyptian people to take part in the demonstrations against Morsi’s administration. Since July 3, 2013, former President Mohammed Morsi and the Muslim Brotherhood have been accused by the military, the courts, and the public of an extravagant array of crimes and sins, incompetence and maladministration, and attempts to undermine its culture and society by appointing Islamists to positions of power.

### 3.2.1 Transformation of the Regime’s Nature

The political uprising that brought down the Mubarak regime had political, economic, and social origins. To different extents, this may be a valid proposition for all transition processes. However, the weight of economic and social origins was far oppressive in Egypt’s case than in other Arab states, including Tunisia. There are significant signposts that marked the process of constructing the political system in the first 18 months of transition: the referendum and the constitutional declaration of March 30 2011, the period of political debate and power struggle that ensued the June 2012 decisions of the constitutional courts, the complementary constitutional declaration, and the presidential elections, and the consolidation by the new president of his powers and the apparent end of the military’s explicit political role. When the military called to the polls in March 2011 to approve a series of constitutional amendments, the revolutionary coalition began to tear. Islamists embraced the referendum because it promised a quick transition process and the rapid return of an elected parliament. Non-Islamist rallied around the idea of writing the constitution first, but they were too slow in laying out a coherent alternative plan for a transition.

Decades of authoritarian rule left behind an unbalanced political scene that tilted elections towards the Islamist and gave non-Islamists a deep mistrust of the ballot. Because participation in formal politics was so unpromising under authoritarian rule, the result was that non-Islamist parties were not organized enough by 2011 and did not have much power. However, with their broader social agenda, Islamists had more profound and more extensive organizations that could be quickly turned to electoral purposes. Non-Islamist had nothing to match these. Muslim Brotherhood coalition won more than 50% of the votes in parliamentary elections in 2011, with the Salafist party becoming second (25%). Parliament then was dominated by Islamists, and

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57. Sickinghe, E. (2013) The Egyptian Constitution: Looking Beyond Seasonal Forecasts. ArabsThink. http://arabsthink.com/2013/02/05/the-egyptian-constitution-looking-beyond-seasonal-forec. Accessed 8 Aug 2014.

58. Ottaway M (2014) Democratic Transition and the Problem of Power. Middle East Program Occasional Paper Series. Wilson Center. https://www.wilsoncenter.org/sites/default/files/democratic_transitions_and_problem_of_power.pdf. Accessed 7 July 2014.

59. Awad (2013), 275–292.

60. Ibid.

61. Brown, (2013), 45–58.

62. Ibid.
Muslim Brotherhood candidate—Muhammed Morsi—become a year later president after winning presidential elections with 51.7%.  

In the Egyptian case, an exclusive focus on electoral politics following the revolution had a negative impact on democratic transition, leaving Egyptians with elections, but with a low level of democracy. The Muslim Brotherhood and the Supreme Council of Armed Forces (SCAF) excluded non-elite and non-Islamist groups like women, Coptic Christians, students, and labor unions by supporting parliamentary elections before drafting of the constitution. Since the ousting of Mubarak, filling the post of the presidency has been one of the pillars of Egyptian stability. It perceived as required for a successful move to democracy. In one of the most protracted multi-candidate elections in modern Egyptian history, the presidential electoral process officially took more than 100 days. After his election, the Egyptian president Morsi, gave four speeches on the 29 and 30 of June 2012. In these speeches, Morsi presented himself as a compromising man and emphasized his respect for all state institutions and to the constitutional and revolutionary legitimacies. However, this issue has not been implemented in practice. The result was increasing the conflict between the supporters of the Muslim Brotherhood and the other groups that make up the Egyptian people. In July 2013, demonstrations were held against Morsi and the Muslim Brotherhood, and with the support of the SCAF, it brought to overthrow of Morsi’s administration.

The point is that the downfall of this regime and thus the 2012 Constitution did not begin with its suspension on 3 July 2013. It began when the new polity perceived the constitutional process as a mechanism that would allow it an immediate place within the same old regime. Establishing a constitution within these limits, hindered the construction of a framework that would gradually transform the state of revolution into a state of transition to democracy. Moreover, the problem is that also the constitutional process that started in July 2013, did not aim to establish a constitution of the “Egyptian revolution”, but rather about subduing the Muslim Brotherhood through the elimination of “their” constitution. While doing so, the new polity of 2013 adopted the same perception of 2012 regarding the constitution and the constitution-making process, as a collecting power mechanism and not as an overarching reference for the entire political system that regulates state-society relations.

63 Ali A (2013) A Comparison: Tunisia, the next Egypt? https://aliyoub.wordpress.com/2013/08/15/a-comparison-tunisia-the-next-egypt/. Accessed 7 July 2014.
64 Gordner, M (2012) Democratic transition in Egypt and Tunisia: Lessons for “Arab Spring” states. http://www.consultancyafrica.com/index.php?option=com_content&view=article&id=1073. Accessed 7 July 2014.
65 Rabou (2012), 15–24.
66 Farouk, Y (2013) Writing the Constitution of the Egyptian Revolution: Between Social Contract and Political Constructing. Arab Reform Initiatives. http://www.arabreform.net/sites/default/files/Cons_Egyptian%20Constitution_Y.Farouk_Nov13_Final_Layout_En.pdf. Accessed 27 May 2014.
3.2.2 Transformation of Political Culture

The political uprising in Egypt opened the political space to new actors. For the first time, the Muslim Brotherhood and Salafists founded political parties that could take part in the political game. The Muslim Brotherhood (MB) was by far the most organized force in Egypt after the ruling party of Mubarak, has been in operation for decades as a tolerated but banned movement that had taken care of social welfare services in many parts of the country, where the regime had failed to meet the needs of the people. The transformation of the Muslim Brotherhood and the other Islamist parties into legitimate parties had two significant consequences: on one hand, accepting the participation of Islamist parties was a first test on the road to democracy, on other hand, accepting the values and rules of the game by the Islamist parties means that they could not embrace practices contrary to democracy.67

However, the disputes quickly increased between the Islamists and the secular parties, especially regarding the new constitution. One of the themes that constituted deep divisions is the reference to Islam as the religion of the Egyptian state. Many Egyptians worried that dictating Islam as the religion of the state in the constitution is a step backward that may lead to religious discrimination, especially towards the Coptic group. The Muslim Brotherhood was eager to preserve Article (2) in the Egyptian Constitution because it would play a crucial role in justifying the existence of the Muslim Brotherhood and ensuring its legitimacy.68 This issue had adversely affected the results of the constitution-making process. Most of the groups perceived the constitutional process, as an unrepresentative process that does not take into account the perspective and the desires of the various political and social groups. Thus, the constitution of 2012 was perceived by large parts of the Egyptian people as illegitimate. In fact, the political culture that characterized the constitutional process in Egypt was a political culture characterized by the exclusion of the various and the concentrations of power in the hands of one group only.

4 Discussion and Conclusions

This article aimed to deal with the process of constitution-making in conflicted societies and how this process can contribute to resolving conflicts between conflicted communities and achieving reconciliation between them. The article focused on examining this issue in two societies: Tunisia and Egypt. Especially since one of the results of the political and social uprising that occurred in the Arab states in the last years is the beginning of a new wave of constitution-making processes.69 However, not all Arab states conducted their constitution-making processes in the same way.

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67Hellyer (2011), 118–125.
68Abdelaal (2013), 35–51.
69Flores, Z (2014) Problems in Process: Post-Arab Spring Constitutional Making. http://constitutionaldesign.law.northwestern.edu/2014/04/21/problems-in-process-post-arab. Accessed 7 July 2014.
In some of these states, the constitution-making process contributed to achieving reconciliation between the different groups, whereas in other states, the constitution-making process increased these conflicts. As this article shows, Tunisia differs from Egypt in many aspects, when analyzing how constitution-making processes were conducted in these two states. There are differences in the way the Islamists parties in these states operate. Unlike the Muslim Brotherhood in Egypt who took control over the government, Ennahda in Tunisia has not been governing alone, and it led a coalition with two secular parties. The Egyptian secularists claim that Muslim Brotherhood monopolized power and that President Morsi was an autocrat. Additionally, the constitution-making process in Tunisia has been long, and it was based on a real debate between Islamist and secular members of the constitutional assembly, and both sides have been making concessions and willing to accept compromises. This was not the situation in the Egyptian case, wherein the constitution was written in a hurry by an Islamist dominated commission and was approved through a referendum in which the result was less than (33%).

Moreover, an important point that must be addressed regarding the constitution-making process in these countries is the desire to achieving reconciliation between the different groups in these two states. The new polity in Tunisian has managed to reach a consensus and to ensure reconciliation, unlike the Egyptian one. Since the beginning, Tunisia has chosen a constitutional path, creating an elected Constitutional Assembly in order to draft a new constitution. In this assembly, Ennahda- the Islamist party, procured (41%) of the members and thus needed a broader coalition in order to run the government. Therefore, the Islamist party chose to work in a coalition with the two main secular parties, Congress for the Republic and Ettakatol. However, the Egyptian regime that was dominated by the Muslim Brotherhood made many mistakes that led to the fall of President Morsi. The loss of consensus was immediate, and the result was the inability of Morsi and the Brotherhood to work together with the other political forces to design a shared social and institutional future and a constitution that is acceptable to all groups in Egypt. In fact, Egypt’s post-revolution regime was characterized by a single party- the Muslim Brotherhood, while Tunisia has been governed by a coalition between the Ennahda party and the two secular parties, Ettakatol and the Congress for the Republic. The Tunisian government has managed to resolve disputes through political concessions and compromises. Ennahda has ceded key ministries to secular parties and independents and limited the references to Islam in the draft of the constitution.

Furthermore, Tunisia that is characterized by more advanced and diverse political culture, has succeeded in the democratization process even with an Islamist party leading its government. The success is mostly due to the well-established political
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The emerging electorate was sophisticated, multilateral, and prepared. However, in Egypt, the Muslim Brotherhood was the only effectively organized political opposition during the Nasser-Sadat-Mubarak era. Moreover, Tunisia’s political transition has been successful because of a commitment to consensus and compromise. A broad spectrum of political elites has influenced the transition’s progress.

Indeed, the transition in Tunisia has made strides in the direction of democracy. The interim government instituted reforms to increase personal, political and press freedom, released political prisoners, legalized political parties and began a process of transitional justice. Moreover, writing a new constitution by the elected National Constitutional Assembly and creating a government to rule until presidential and parliamentary elections were viewed as fair, transparent, and well-conducted. It should be noted that the events in Egypt have had a considerable impact on Tunisian politics right from the moment the army stepped to topple president Morsi. It did not take long before Tunisian political parties were quick to respond to the Egyptian events. Many of them pointed out that Tunisia differs from Egypt and that the Egyptian scenario is one that Tunisia should be avoided at all costs.

Another critical issue in this regard is that a transition from an authoritarian to a democratic system usually involves a redistribution of power. The departure of Tunisian President Ben Ali created a power vacuum, but the overthrow of Egyptian President Hosni Mubarak did not. Tunisia was able to embark on a democratization process not because the Tunisian citizens were politically more mature, or its political class more enlightened, but because Ben Ali’s sudden departure created a power vacuum no single actor could fill. However, there was never a power vacuum in Egypt. The Supreme Council of the Armed Forces deposed President Mubarak and immediately assumed executive and legislative powers for a transitional period that lasted until June 30, 2012. The power was formally transferred to President Mohammed Morsi, but in practice, the situation was different. Morsi did not control the military, the police, the judiciary, or the top levels of the bureaucracy, who were not politically neutral but strongly opposed to him. The military was having other thoughts about allowing Morsi to govern, and on July 3 2013, following massive demonstrations, the SCAF openly seized power again.

Two things were needed for Egypt’s post-2011 democratic development: a broad agreement among elites on the rules of the transition, and a procedure that allowed...
people to express their will early, without having all matters settled by backroom deals. There was a need for a consensus on the rules and popular participation in order to guarantee democracy.\(^78\) The constitutional experience in 2012 confirms that the only safe exit for a constitutional process locked in logic of short-term balance of power is the participation and equal representation of all political and social forces.\(^79\)

However, the problem goes far beyond a failure to conduct a new constitutional order. The pre-revolutionary constitutions have been used as models in the drafting process. Egypt used its 1971 constitution as a starting point for its deliberations that resulted in the 2012 constitution. However, Tunisia decided to set aside the failed 1959 Tunisian constitution and to establish a new constitution. Public participation and the nature of the interim power in Tunisia’s constitutional-making process resulted in the Constitution of 2014 that has been characterized as the only success story of the post-Arab spring. Another issue critical to the constitutional-making process is timing. One of the mistakes of President Morsi during his short rule was his decision to maintain the drafting process that had been established by the Supreme Council of the Armed Forces in March 2011. The SCAF, clearly not expert in democratic transition, imposed a 6-month timeframe for the entire constitutional drafting process.\(^80\)

This decision had a decisive influence on the constitutional process and the political changes that followed.\(^81\)

Unlike Tunisia that succeeded to some extent to move toward democracy, Egypt has regressed from one kind of authoritarianism of the Mubarak period to another kind of authoritarianism. Many Egyptians claim that their country experienced not one but two revolutions, in January–February 2011 and June-July 2013. In reality, Egypt did not experience even a single real transfer of power in this period. The military had been the power behind Mubarak, and on February 2011, the SCAF forced Mubarak out of the office and governed directly until the 2012 presidential elections. It then stepped aside briefly, letting the elected president take office, but within a few months, it started preparing a new takeover, openly returning to power in July 2013.\(^82\)

This situation has dramatically influenced the perception of the constitution as legitimate among Egyptian citizens and the possibility of reducing tensions between the various groups. Making a constitution that is legitimate and acceptable should involve a process of national dialogue, allowing competing perspectives and claims

\(^{78}\)Brown (2013), 45–58.

\(^{79}\)Farouk, Y Writing the Constitution of the Egyptian Revolution: Between Social Contract and Political Constructing. Arab Reform Initiatives. [http://www.arabreform.net/sites/default/files/Cons_Egyptian%20Constitution_Y_Farouk_Nov13_Final_Layout_En.pdf](http://www.arabreform.net/sites/default/files/Cons_Egyptian%20Constitution_Y_Farouk_Nov13_Final_Layout_En.pdf). Accessed 27 May 2014.

\(^{80}\)Flores Z (2014) Problems in Process: Post-Arab Spring Constitutional Making. [http://constitutionaldesign.law.northwestern.edu/2014/04/21/problems-in-process-post-arab-](http://constitutionaldesign.law.northwestern.edu/2014/04/21/problems-in-process-post-arab-). Accessed 7 July 2014.

\(^{81}\)On the implication of military intervention on constitution-making process, see the in the Volume Fatih Öztürk, Again: From 1867 to Today, Making a Constitution under an Elite Umbrella in Turkey Fatih Öztürk. The chapter discusses this issue extensively in the context of the Turkish case.

\(^{82}\)Ottaway M (2014) Democratic transition and the problem of power. Middle East Program Occasional Paper Series. Wilson Center. [https://www.wilsoncenter.org/sites/default/files/democratic_transitions_and_problem_of_power.pdf](https://www.wilsoncenter.org/sites/default/files/democratic_transitions_and_problem_of_power.pdf). Accessed 7 July 2014.
and promoting reconciliation between different groups. The constitution in Egypt should be seen as a compromise between conflicting political interests and as a political project in which interest and conflicts will be negotiated. Additionally, the success of the political transition should involve aspects of transitional justice, and establishing the rule of law and economic reconstruction. A starting point in the direction of democracy in Egypt must be an establishment of an investigation committee to discover individuals who were responsible for acts of violence during and before the political uprising and truth and reconciliation commission that will be responsible for achieving national reconciliation process.

A few years after the beginning of the Arab uprisings, Tunisia and Egypt are moving in entirely different directions. Tunisia has achieved considerable success in adopting a constitution through a process that, despite delays, interruptions, and other crises, has remained reasonably democratic. Not so in Egypt, that has reverted to violence and struggle between the Muslim Brotherhood’s supporters and the new regime. It should be noted that it is still too early to determine the success of the constitution-making processes definitively in the cases of Tunisia and Egypt. However, as this article aimed to point out, these two cases are different examples of constitution-making processes in conflicted societies and how such a process may bring about reconciliation. Besides, a sharper determination of the success of the constitution-making process in achieving reconciliation requires an examination of the other conditions that this article did not examine. The emphasis of this article was defining some of the conditions needed to transforming the constitution-making process into a reconciliatory process in divided societies such as Tunisia and Egypt.

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