

THE ARAB TRANSITIONS IN A CHANGING WORLD

BUILDING DEMOCRACIES IN LIGHT OF INTERNATIONAL EXPERIENCES

SENÉN FLORENSA, Ed.

THE OUTBREAK OF THE ARAB UPRISINGS IN 2010 LED MOST OF US TO THINK THAT WE WERE WITNESSING THE FOURTH OR THE LATE THIRD WAVE OF DEMOCRATIZATION. HOWEVER, THE CURRENT DEVELOPMENTS IN THE SOUTHERN MEDITERRANEAN REGION CLEARLY CONTRADICT THE TRANSITION PARADIGM, WHOSE MAJOR ASSUMPTION IS THAT THE POLITICAL OPENING LEADS TO ELECTIONS, FOLLOWED BY A PERIOD OF CONSOLIDATION. CONSIDERING THE OBSTACLES THE MIDDLE EAST AND NORTH AFRICA COUNTRIES ARE FACING, IT IS ACTUALLY HARD TO FORESEE WHEN AND WHETHER THEY WILL TURN INTO DEMOCRATIC STATES.

THE VOLUME, PRESENTING VARIOUS CASES OF SUCCESSFUL TRANSFORMATIONS, WHICH HAVE OCCURRED SINCE THE MID-1970S IN EUROPE AND WORLDWIDE, PROVIDES COMPREHENSIVE REFLECTION ON THE PAST EXPERIENCES WITH TRANSITION AND VALUABLE LESSONS FOR THE TRANSFORMING STATES IN THE SOUTHERN MEDITERRANEAN REGION. IT ALSO PROVIDES REGIONAL AND INTERNATIONAL ACTORS WITH GUIDANCE, WHICH MAY ENABLE THEM TO RESTRUCTURE THEIR POLICIES AND PROGRAMS AIMED AT SUPPORTING DEMOCRATIZATION PROCESSES IN THE MIDDLE EAST AND NORTH AFRICA.

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INTRODUCTION

BUILDING DEMOCRACIES IN THE LIGHT OF INTERNATIONAL EXPERIENCES: A CRITICAL AND DEMANDING CHALLENGE FOR THE ARAB WORLD¹

Senén Florensa. Executive President of the IEMed

1. This volume is the result of the work started with the international conference “Arab Transitions in Comparative Perspective: Building Democracies in the Light of International Experiences”, which was first jointly organised by the IEMed and the Arab Center for Research and Policy Studies in Barcelona in November 2014. The articles prepared for this publication represent each author’s views, but in this introduction I have tried to present, along with my own appreciations, a sense of the overall shared reflections and the discussions at the conference, including the topics and areas not presented with a written article in this volume.

The outbreak of the Arab uprisings in 2010 led most of us to think that we were witnessing the fourth or the late third wave of democratisation in the contemporary international experience. In fact, only Tunisia and Morocco have engaged in a comprehensive reform agenda, which would eventually lead those countries towards democratic transformation. Egypt, under the presidency of al-Sisi, has returned to authoritarian rule, repressing not only terrorists but also opposition forces. In Libya, the recently announced agreement between some warring factions gives a faint hope of stabilisation but the peace can only be achieved once all the parties of conflict engage in talks. Meanwhile, the confrontation continues with the serious threat of the creation of a terrorist DAESH-controlled area, which will in its turn seriously endanger the security and stability of neighbouring Tunisia, while in Syria, in its fifth year of conflict, there are currently no clear prospects for a peaceful solution. The developments in this country also pose a serious threat to its neighbours, Jordan and Lebanon, who are facing a constantly growing number of refugees, endangering not only the security but also the economic and social equilibria of both states. The appearance and astonishing results of the devastating methods of DAESH has added a great deal of suffering and complication to the complex constellation of conflicts.

In addition, it must be emphasised that even the front-runner countries are facing considerable challenges, which could gravely threaten their political transitions. The terrorist attacks in Tunisia and the increasing number of Moroccan Jihadist fighters returning to their country pose a serious threat to the internal security of both states. Moreover, Tunisia and to a certain extent also Morocco are confronting serious socioeconomic problems, such as high unemployment among youths, weakening revenues from the tourism sector and, consequently, decreasing living standards. These hardships may lead to the outbreak of new waves of social protest and radicalisation of some of the most underprivileged strata of society. In addition to internal challenges, external factors, such as some international and regional actors' interest in maintaining the status quo, impede some states in the region from undertaking significant political reforms. Furthermore, the refugees fleeing the war in Syria and Iraq are confronting Europe with a humanitarian problem in the most dramatic way.

All these developments clearly contradict the transition paradigm, whose major assumption is that the political opening leads to elections, followed by a period of consolidation, during which the institutions are democratised and civil society strengthened.² Considering the obstacles the Middle East and North Africa countries are facing, it is difficult

2. Carothers, T. (2002). The End of the Transition Paradigm. *Journal of Democracy*, 13:1. Retrieved from <http://www.journalofdemocracy.org/articles/gratis/Carothers-13-1.pdf>

to foresee when and whether they will turn into democratic states.

Against this backdrop, the comparative analysis with the countries that have successfully undergone democratic transformations in the contemporary international experience might provide an invaluable insight into the most important processes accompanying democratic transitions, such as making new constitutions, electoral processes and political institutional changes, transitional justice, socioeconomic policies, political rivalries or politics of identity, as well as the role of external actors in shaping political developments. It may also help to identify and understand the conditions and factors that enable the regime change and successful democratisation.³

Accordingly, the main aim of the conference on “Arab Transitions in Comparative Perspective” was to examine the past experiences of transitions in order to shed some light on the numerous complex issues that may arise during the transformation period in the Southern Mediterranean. The most recognised experts on transition and on the Southern Mediterranean region analysed case studies taken from Spain, Latin America, Eastern Europe, the Balkans, South Africa and Indonesia in order to provide valuable lessons for the transforming projects in the region.

THE MAKING OF NEW CONSTITUTIONS: OVERCOMING FAULT LINES

The constitutional drafting processes and their related negotiating process is obviously one of the first factors of success or defeat. Case studies taken both from European history and the Arab region in recent times require a careful and comparative analysis, especially in regard to the role of religion in political transitions. Egypt's and Tunisia's constitutional procedures deserve special attention for their diverse accomplishments and, in particular, given the role of various agents in their political realignment.

Morocco, on the other hand, represented a specific case of government-led transition, given the participation of royalty in the political process.

As stated in the most remarkable contribution to this volume by Charles Powell, a constitutional drafting process can follow three main leads: the assembly can restore a previous constitution, improve the existing one or start from scratch. The Spanish case followed the third pattern. The end of the dictatorship in Spain was encouraged by a change in the social and international circumstances. The country's accelerating industrialisation of the 1960s led to a more solid economic environment and to a progressive growth of the middle class. The 1973 crisis channelled massive social unrest and thus led to what has been described as a transition via transaction, a negotiation between the main political players to achieve a new executive arrangement. The 1978 Spanish Constitution was drafted by parliamentary members of all the main parties in a protracted but inclusive process. After extensive debate, the monarchy was accepted and institutionalised in the wake of other western state models. The territorial cleavage was solved by the assertion of national unity alongside the right to self-government and the recognition of the multinational character of Spanish society, thereby heading to a formal ambiguity (Spain as a nation including different nationalities). Parallel to the assurance of civil supremacy over military power, the separation of church and state was granted, even though the church maintained a prominent role in some fields, such as education. Yet from an institutional point of view, the desire to avoid past errors, according to Charles Powell, led the constituent assembly to overcompensate for a possible tendency towards multipartitism by establishing an excessively rigid constitution that resulted in a majoritarian system, with a strong executive and an overall weak parliament.

3. See as a canonical presentation Linz, J. & Stepan, A. (1996). *Problems of Democratic Transition and Consolidation. Southern Europe, South America and Post-Communist Europe*. Baltimore and London: The Johns Hopkins University Press.

In the case of North African countries, more or less democratic transitions followed the Arab revolutions. Nonetheless, their respective constitutional drafting processes have been at the centre of the struggle for power among representatives of the main political stakeholders. In Morocco, the king took the initiative of revising the existing constitution, thus not letting his power be affected by internal turmoil. Responding to parliamentary will, according to Idriss Lakrini's contribution in this volume, the first attempts to modernise the text focused on human rights and the reinforcement of the government and judiciary power, although the king still kept essential powers on legislation and foreign policy. In 2011, the revisions accelerated with the urge to respond to the demands of Moroccan society. The protests and the 20th February Movement led to a horizontal constitutional debate, where diverse social requirements were discussed in a multiparty environment. Many political stakeholders contributed to the reform of the basic law, generating a conciliating constitution. Still, the implementation of this constitution is being discussed; as stated by Lakrini, there is a rising deficit on accountability and guaranty issues that have to be further defined and amended.⁴ For example, the right to strike or the recognition of the Amazigh language are not yet clearly stated.

Tunisia followed a very democratic transition process by electing a constitutional assembly and organising democratic elections.⁵ The elections to the constitutional assembly did not allow any party to have the majority. The constitution is the result of negotiation and compromise: the imposition of a parliamentary regime warrants continuity in the future. The effect is a republican democratic participatory form of government, with a mixed elective system that sets forth the supremacy of parliament. The legislative power allows people to elect their representatives and the assembly has the power to dismiss the president. In

the constitution drafting process particular attention was paid to social rights and women's empowerment. The establishment of a general court was a crucial step to protect the newly obtained democratic liberties and other constitutional provisions. Tunisia is a free sovereign state that has Islam as a religion and Arabic as a language, affirming freedom of religion and beliefs for all of its citizens. The mobilisation of the civil society institutions (Human Rights League, Bar Association, the CGTT union's confederation and the UTICA employers' association) was absolutely crucial, winning them the Nobel Peace Prize.

In Egypt, the first constitutional draft of 2011, which established that a constituent assembly would be elected by parliament, was replaced by a new one whose amendment was put forward by a committee of 50 members elected by the interim president with opaque standards. The text, in secrecy and approved without a referendum, enshrines extensive autonomy for military and judiciary powers. The first Egyptian constitution and the Tunisian one were innovative, in the sense that for the first time Islamic parties were allowed and participated in the constitutional process, thus recognising the supremacy of the law and maintaining moderate behaviour. These processes initially emerged from a wide national consensus, but Tunisia's successful constitutional process was the product of negotiation and of an inclusive exercise, while Egypt went through social discontentment. Egypt's ruling elite failed to build a political agreement between the most significant contending parties and institutions, including the military, and preferred to protect its interests rather than build a solid social contract. The final result was thus the return to authoritarianism.

The role of religion in politics in the case of the Polish transition after the fall of the Soviet regime is the object of Patricja Sasnal's interesting contribution to

4. See for Morocco the chapter of Idriss Lakrini and Larbi Jaidi in this volume.

5. Ounaies, A. (2015). Building a Democratic State: The Case of Tunisia. *IEMed Mediterranean Yearbook 2015*. Barcelona: IEMed.

this volume. Religion occupied a particular place in the state's politics. The Polish Constitution was eight years in the making, from 1989 to 1997, but it depicts the consensus between the church, the state and all the parties involved. The Catholic Church helped the transition, guaranteeing an anti-communist presence at the roundtables, but it was also one of its bigger beneficiaries, as it regained its properties once taken by the communists. Indeed, the role of the church after 1989 has been a controversial and divisive issue. Sermons still have a strong political hold in influencing how people vote, even if the evolution of the socioeconomic conditions and the demographic rate headed towards a more secularised society. Religious societies such as Poland prove they can assume democratic governance, although the issue of secularisation cannot be evaluated by looking at European models; a correspondence between Christianity and Islam is questionable due to the fact that Islam is not an institutionalised religion. It may be argued that Islam is in some ways institutionalised by recognised religious authorities, as is the case of the ayatollahs in Iran and other spiritual guides. What is clear in any event is that the Arab world's religious diversity, especially in the Middle East, calls for a secular state to ensure equal rights for every religion. Certainly, religious minorities in Islam cannot be granted their full rights without a secularised institutionalisation.

PARTY POLITICS, ELECTORAL PROCESSES AND POLITICAL INSTITUTIONAL CHANGE

Currently, three different transitions occur in the region: political, social and economic. Although the speed of their progression is different, they are all essential for the consolidation of democracy. As far as the *economic transition* is concerned, despite previous assumptions that economic liberalisation

would lead to political openness, there are huge disparities between different Arab countries. In general, the energy-rich countries maintain (and pay for) the accumulated inefficiencies in their economic systems. With regard to *social transition*, it is influenced by such factors as transformation in attitudes, values and aspirations of the people, resulting from education, increased contact with the outside world and dissatisfaction with the existing political system. As for the developments on the *political transition* level, they are currently shaped by three main drivers of change, besides a given level of education, which is capable of evolving only in the long run. The first one is youth and their demands for better opportunities. The second one is the role of Arab women, whose position in society and family as well as economic role in the system bear an enormous transformative capacity. The last driver of change is now information and communication technologies, which enable wider access to the independent sources of information. Despite those threefold transitions, the Arab world still faces some major challenges, such as the battle for pluralism and the capacity to integrate different visions of the model of society. Therefore, democracy should not be conceived only as a goal, but also as a method to solve problems and respond to growing expectations.⁶

To analyse the elite choices of alliance-building and its impact on the transitional path in particular, in the case of Libya and Egypt, the distinction has to be made between two types of elites: the state elite, with vested interests in the traditional political and social order established by the old regime, and the dissident elite representatives that try to establish themselves in the new regime.⁷ Both elites are facing internal problems, such as maintaining the unity and coherence of their factions, while trying to intensify the problems of their opponents, leading to change in alliances

6. Amirah Fernández, H. (2015). *The Multiple Crises in the Middle East. Quaderns de la Mediterrània*. Barcelona: IEMed.

7. See the contribution by Marwa Fikry Abdel Samei in this volume as well as Fedtke, J. (2014). *Comparative Analysis between the Constitutional Processes in Egypt and Tunisia – Lessons Learnt – Overview of the Constitutional Situation in Libya*. Brussels: European Parliament.

and tensions between civil society and state. Both in Libya and Egypt, state and dissident elites tried to solve their own dilemmas and broaden their alliances, willing to establish their own social and political order. Nevertheless, the dissolution of umbrella coalitions shortly after the overthrow of regimes and the continuously changing alliances between elites undermined the democratic transition and led to political instability. Therefore, despite the different trajectories of their revolutions, both countries failed to fulfil the promises of transitions and are currently facing the problems of social division and the polarisation of civil society, which lead to either a return to the authoritarian regime or to a serious security deficit, with catastrophic results in the case of Libya.

As for the development of electoral processes, it has been observed that Tunisia lacks a historical tradition of transparency in its elections. The elections that took place in Tunisia shortly after the uprising were judged improper, as they lacked transparency and integrity and their main aim was only to remove the settled power. On the other hand, the following elections were assessed as exemplary and inclusive. They were composed of three phases. The first phase consisted of establishment of electoral administration, registration of votes and provision of a final list of candidates to the citizens. Secondly, the proper voting took place without violence or irregularities. The last phase of elections included the counting and processing of the results and the recognition and acceptance by the losing party of its failure. Overall, the success of the electoral process does not depend only on a legal process but also on the enabling environment and electoral culture. At the same time, an election in itself does not always guarantee democracy and several other factors are necessary to achieve a successful transition.

Finally, the change in civil-military relations may be best exemplified with the case study of Spain. Although the Spanish transition process should not be understood

as a recipe for the transformations in the Southern Mediterranean region, it could shed some light on current developments. Firstly, that security sector reform (SSR) cannot be achieved without a general transition process, which may seem like a vicious circle. The existence of the monarchy in Spain enabled this problem to be avoided. As Narcís Serra has explained,⁸ the king's support for reform was a crucial factor for the military's compliance with and acceptance of the reform process. The SSR was implemented in the cycle of two sub-periods of the Spanish transition to democracy. First, the transition period's objective was to prevent the police and the armed forces from intervening in political decision-making in the country. Second, the consolidation period focused on ensuring and strengthening the government's role in taking decisions regarding security and defence matters. In order to be successful, the security sector reform has to be managed from inside, promoting some key military figures to cooperate with the task, and needs the broad support of civil society and parliament. In addition, as the reform of the security sector is complex and long, there must be a consensus on its main lines. SSR should be a coherent process, transforming not only the military but also the intelligence services, the policy and the military justice. The reform should not only address laws and institutions but also transform the professional profile, mentality and types of mission of the military. The acceptance by the armed forces of their role of defending the country and not to control it is, according to Narcís Serra, one of the main authors of the SSR in Spain as Minister of Defence and then Vice-President of the Government, a *sine qua non* of stable and successful reform.

ACCOUNTING FOR PAST INJUSTICES AND PROMOTING HUMAN RIGHTS

One of the major and most sensitive issues in democratic transitions in post-conflict situations is accounting for past crimes and abuses. There are dif-

8. Serra, N. (2010). *The Military Transition. Democratic Reform of the Armed Forces*. Cambridge University Press.

ferent ways in which post-authoritarian governments deal with transitional justice. To cite a few examples, the Spanish transition, compared with some Latin America experiences, may represent a case of avoiding confrontation and accepting the past. Bosnia and Herzegovina represented in its turn the case where striving for peace based on interethnic framing may actually jeopardise reconciliation and successful transition for a long period. The Libyan isolation law and its influence on the current situation in the country is a recent case of addressing transitional justice. Finally, as we will see, the Kurdish transitions represent an example of non-Arab transition in the Arab world.

In Spain, though, the traumatic memory of the Spanish Civil War and the will to avoid its repetition at any price, as explained in the contribution by Paloma Aguilar and Clara Ramírez-Barat, led to the decision to leave the past behind. Instead of public reflection about the responsibilities for the 1936-1939 conflict and the immediate post-war atrocities, the path towards reconciliation was based on the oblivion of the war crimes issue and adoption of the Amnesty Law in 1977. A post-transitional justice phase began much later in 2000 and culminated in 2007, with the passing of the Law of Historical Memory. Consequently, victims' offices were created, some remaining Franco symbols removed, the access to the military, judicial and general administration archives regulated and a map of common graves created. However, following the People's Party (PP) electoral victory in 2011, most of these measures have been either abandoned or cancelled.

In the case of Bosnia and Herzegovina, after the signing of the Dayton Agreement in 1995 significant transitional justice initiatives were established in the region, the most important of which was the International Criminal Tribunal for the former Yugoslavia.⁹ In addition, a variety of transitional justice measures

have been applied, such as reparation measures for property recovery or disability benefits. Nevertheless, it has been stated that the reconciliation process in Bosnia and Herzegovina largely failed. The main obstacle to the peaceful transition is the term "reconciliation" itself, implying that those who need to be reconciled are ethnic communities. Therefore, it was based on a very problematic framing of reconciliation and so confronted nationalistic narratives. Thus, the Dayton Agreement, rather than being a big success, provided for power sharing among ethnic groups and created far from inclusive politics. In fact, political participation in Bosnia depends on ethnic identity. The Dayton Agreement also undermined the process of genuine justice and accountability, as the main negotiators were the key figures of the old regimes. Therefore, it was observed that successful transition in Bosnia and Herzegovina could finally be achieved only by abandoning the ethnic framing and establishing a bottom-up type of politics. In addition, as the conflict was regional and transnational, the national framing of transitional justice measures should be abandoned. Instead, the path towards reconciliation should be based on regional inclusive consultations and recognition of past human rights violations.

In Libya, the transitional justice process took place in unfavourable circumstances, as the nation and state needed to be rebuilt. After the fall of the regime, in July 2012 the General National Congress was elected. The outcome of the election led to the radical reconfiguration of the Libyan political map for the benefit of local forces and non-state actors. The newly-elected parliament, under the pressure of revolutionary militias, passed the political exclusion law, aiming to exclude the officials from the Gaddafi era from holding public office in the government, civil service, police, the judiciary or banking for a period of 10 years. The law, compared to the "debaasification law" in Iraq, led to the exclusion of large sections of

9. Rangelov, I. (2016, May 4). Dayton, 20 Years Later: Reconciliation in the Former Yugoslavia? Esglobal. See as well Rangelov, I. (2015). *Nationalism and the Rule of Law. Lessons from the Balkans and Beyond*. Cambridge, UK: Cambridge University Press.

Libyan society and even some of the political leaders, who had played a key role since the outbreak of the Libyan uprising in February 2011. Therefore, it has jeopardised the national reconciliation and institutionalised historical divisions inside Libyan society, thus contributing to the current armed conflict and gradually transforming Libya into a failed state. In order to prevent the country from falling into total civil war, the General National Congress should abolish the political isolation law and adopt a more inclusive policy of national reconciliation. However, this process could be threatened by foreign conservative forces, such as Saudi Arabia or Egypt, which are interested in a military security approach rather than the transitional political one. Moreover, contrary to the transitional justice processes in Latin America and Eastern Europe, those in the Middle East and North Africa region lack consensus within society on the type of new political contract to be put in place.

As for the Kurdish case, in Iraq, after the fall of Saddam Hussein, the constitutionally established federalism allowed for the creation of a Kurdish regional government in the north. However, the Iraqi Kurdistan autonomy is causing tensions, due to the exclusionary constitutional drafting process, which included Shia Islamists and Kurdish nationalists, with symbolic Sunni participation. In Syria, Kurds have been operating in the context of partial transition, mainly in Kurdish majority areas, where the regime has largely lost control. The Kurdish struggle for autonomy has been conducted under two different models of Kurdish nationalism. The first one, built around economic integration with powerful nations such as Turkey, is represented by Massoud Barzani, President of the Iraqi Kurdistan Region. The second one, represented by Abdullah Öcalan, head of the Kurdistan Workers' Party (PKK), is based on leftist political ideology and focuses on the struggle for Kurdish civil rights. The rise of ISIS as a common enemy has reduced the intra-Kurdish divisions. Kobani, perceived as a radical defender of Kurdish resistance, has somehow fostered the desire for unity among Kurds in Iraq, Syria, Turkey

and even Iran. The ISIS threat has also significantly strengthened the position of the PKK, with increasing support for its armed groups outside Turkey. Overall, the growing instability in the region has revived the Kurdish desire for autonomy. Nevertheless, despite some points of cooperation, political rivalries among the Kurds will most probably remain rather unchanged in the long term.

ADDRESSING SOCIOECONOMIC INEQUALITIES DURING THE TRANSITIONAL PERIOD. THE SPANISH PARADIGM

Socioeconomic inclusion in the Arab countries is a necessary requirement to achieve a successful political transition. Unquestionably, the aggravation of social inequalities in the region is one of the main causes of popular mobilisations, which has become an unconventional way of doing politics ("street politics"). The express social demands refer mainly to basic needs, but they also reveal social classes' frustrations and territorial inequalities, reflecting the unjust distribution of power and the lack of policy measures to establish an inclusive economic growth model. The Arab Spring has shaken the Southern Mediterranean region, which previously experienced some positive macroeconomic results, especially in terms of economic growth but, at the same time, was marked by the abandonment of many categories of population, such as youth, women or rural inhabitants. It is therefore interesting to examine what can be done now, in the light of other experiences, such as the Spanish and the South African ones, to face socioeconomic inequalities.

The successful Spanish transition may serve again as a case study, in particular pertinent today in order to understand how coherent socioeconomic policies may contribute to the successful completion of transition. The Spanish experience reveals that the socioeconomic negotiation and pact in the search for equity and prosperity represent a fundamental step towards the achievement of a comprehensive transition. In other words, in order to be effective, political and institutional transformations need to be

combined with negotiated socioeconomic reforms. Along with a commonly shared long-term perspective for the future of the country, the effective socioeconomic reforms are the necessary prerequisites to generate the consensus, the cornerstone of any successful democratic transition.

However, in order to understand the transition from an authoritarian system to democracy, as in other cases, the Spanish transition should be analysed from a historical perspective. The Spanish Civil War (1936-1939) and the decade after were one of the darkest moments in Spanish history, politically, from a human point of view, and economically. During the First World War, as Spain had not been involved and did not support any particular side in the conflict, the country had the chance to take important economic advantages from the war as a privileged supplier of industrial as well as raw materials in the different tight markets of both contending parties. In complete contrast, during the Second World War the impoverished Spain was not so fortunate. The country had been greatly affected by its own civil conflict, which almost completely destroyed the Spanish economic sectors.

The possibility of engaging in a democratic transition at the end of the Second World War, as the republican opposition in exile had hoped, vanished immediately. In the aftermath of the war, Spain, as a former almost ally of the axis powers under the rule of General Franco, was ostracised. However, in the new bipolar world, Franco, as a clear anti-communist ruler, started to be internationally accepted by the West for the sake of the Cold War. The recognition of Franco's regime and the end of the political isolation of Spain was officially confirmed in 1953, when Spain and the United States signed the Pact of Madrid, providing for the military and political content of the relations between the two countries. Although no significant political changes occurred, between the 1950s and the 1960s, with the wave of the overall European

economic expansion, Spain experienced a period of intense growth and social and economic transformation. Notably, the 1959 Stabilisation Plan offered the basis for further evolution. During that period from 1961 to 1973, the average annual growth of Spain was around 6.5% to 7%. Despite a short but difficult initial period of adjustment in 1960, the country was able to meet modest but real and accelerated prosperity that opened new possibilities for consumption and progress to the middle and working classes for the first time.¹⁰

Taking advantage of the overall positive economic cycle of the West, internal and international migration – with the subsequent remittances from abroad – along with tourism and foreign investment, Spain managed to achieve significant socioeconomic goals and finance its industrialisation, despite incurring a permanent deficit in its trade balance. This situation clearly recalls the Tunisian case thirty years later, during my mission there as Spanish ambassador in the Ben Ali years. In fact, in both Spain and Tunisia, a favourable international economic environment, migration and tourism were key factors for socioeconomic development in times of major internal political stagnation. The Spanish experience also recalls to a lesser extent the present situation in Morocco, where 9% of total GNP is generated by remittances of Moroccans working abroad.

In the early 1970s, the political regime in Spain started to weaken. This moment coincided with the first oil crisis in 1973. Considering the fragile stability of the regime, the government did not pass on the impact of the crisis of the oil prices to the public but undertook some compensatory measures. These policies, or rather the lack of appropriate correcting measures, led to cumulative dysfunctionality and imbalances in the Spanish economy.

After Franco's death on 20th November 1975, the accession of Juan Carlos as king opened a new era. In a few months, Adolfo Suárez was appointed the

10. Florensa, S., et al. (1998). La España del desarrollo. Años del boom económico. *Historia Universal. Siglo xx. Historia 16*.

new President of the Government. After decades of authoritarian regime, general elections were needed. However, in order to make them possible, it was first essential to adopt a series of crucial measures to change the political landscape, such as a new electoral law, legalisation of all political parties, including the communist party, the preparation and approval of a new constitution and the reorganisation and subordination of the military to civil power. The adoption of those measures enabled Spain to go further down the path of political transition. While the new constitution (finally adopted in 1978) was being negotiated in the newly-elected parliament, Suárez formed a government and was finally able to tackle the economic problems to correct the imbalances, which otherwise could have endangered the overall democratic transition.

In 1978, after a period of negotiation between the government, political parties, trade unions and entrepreneurs' associations, they agreed on all the measures included in the Moncloa Pacts. On the political level, the agreed-upon reforms included the freedom of expression and freedom of the press, with the vanishing of censorship, the reform of the judiciary, the rights of assembly and of political association, and the abolition of the structure of the National Movement, a kind of single official party. On the economic front, a devaluation of the peseta was set in order to contain inflation, the monetary policy was tightened, and a fiscal reform was adopted to increase state revenues. On the socioeconomic level, the trade unions accepted that, in order to correct inflation, wages would be indexed on the basis of the limited increase in prices forecast for the following year, and not automatically, according to the higher inflation of the previous year.

The Moncloa Pacts had positive and extended effects both at the political and the economic and social level and paved the way for further political and institutional reforms. Besides the broad success of the Pacts, the constructive effort to include all the relevant political, social and economic actors in the negotiations

should be recognised. The effort to admit both new and old leaders, representatives and experts generated the necessary consensus that was to be the basis of economic prosperity, social development and the fulfilment of exhaustive democratic dialogue. In practice, the Pacts and all the measures that followed liberalised the markets and included the reform of a great number of fundamental social and economic structures, from the fiscal and tax systems and institutions to the health or pension systems.

In 1979, the country was greatly affected by the second oil crisis and it had to deal with a wave of imported inflation. These events led to a period of political turmoil, the victory of the socialist party in the new general elections and the appointment in 1982 of Felipe González as the Spain's first socialist prime minister in the new democracy. The subsequent decade of socioeconomic prosperity is still remembered by Spanish socialists as the "prodigious decade". This period was indeed undeniably marked by some major events, such as the Olympic Games in Barcelona and the Seville Expo '92. The "prodigious decade" had an extended life after a short recession in 1993-94 and finally ended in 2007, when Spain was heavily hit by the international financial and economic crisis.

In conclusion, the Spanish transition offers particularly interesting ground for reflection. Because of a number of similarities with the Arab transitions, it can serve as an iconic case study to overcome the socioeconomic inequalities as one of the main causes of the recent popular uprisings in the Southern Mediterranean countries. The Spanish experience not only shows the great link between inequalities, economic difficulties and popular unrest but it also presents some strategies to re-establish prosperity and successfully fulfil the democratic transition. However, one has to consider that the factors, which may have led to the transformation in one country, might not prove sufficient in another. Therefore, one-size-fits-all solutions should not be extracted from the European cases but rather the specificities of the Arab experience must be understood, and more so in the extremely difficult conditions in the Middle East.

THE ROLE OF OLD NEW ELITES. SOME TRANSITIONAL CASES

It is interesting to note the relevance of leadership in designing new socioeconomic politics in times of transition. The South African experience, as explained in the authoritative contribution by Caryn Abrahams in this volume, illustrates the role of a major party, the African National Congress, which literally made the transition.¹¹ This leadership, incarnated by Nelson Mandela in the 1990s, has been gradually eroded since then, and the country currently faces more difficulties to maintain a political project able to include all sides of the social spectrum. In comparison, no dominant political actor has guided transitions in the Arab countries because of an extremely fragmented and ideologically polarised political arena.

In fact, the leadership derives from traditional and “apolitical” authorities, such as the king in Morocco, who gave impetus to restart the dialogue between stakeholders and to revive socioeconomic initiatives, or from former elites, who participated in the modernisation of the state before the political transition. The Spanish transition is a clear example of the latter: the technocrats, who resolved part of the socioeconomic problems in 1977 and participated in the negotiations of the Moncloa Pacts, had previously worked on economic planning under Franco's rule. However, the concern remains whether the former technocratic elites involved in designing the new politics can be ideologically non-biased. The example is the return of the economic elites in Tunisia formerly linked to Ben Ali, whose loyalty to the new democratic principles may be questioned by the new elites.

Despite the complex situation to provide for a cohesive leadership, Arab countries could benefit from an effective and relatively new instrument: civil society, which has gained significant strength in the Arab World in the last five years. The way the political power guarantees channels for dialogue with civil

society representatives will be decisive in designing an inclusive socioeconomic model and determining a strong and legitimate leadership.

On the other hand, the inclusiveness of the socioeconomic policies in the region has failed in part because they have been conceived to preserve the macroeconomic equilibria, responding to the neoliberal standards. The states have concluded trade and commercial agreements without thinking enough about microeconomic reforms, such as empowerment of small business owners, women or young entrepreneurs, and sectorial strategies, for example development of sustainable energy or sustainable agriculture and land recovery.¹² This, however, would need to involve new incentives, fiscal policies and law reforms. The 2011 Moroccan Constitution or the 2014 Tunisian Constitution point in that direction, but they still have to be implemented in practice.

POLITICAL RIVALRIES AND IDENTITY POLITICS IN THE TRANSITION TO DEMOCRACY

Ethnic, religious, social and identity divisions within societies in post-revolutionary periods, if not adequately addressed, may endanger the successful transformation to democracy and even lead to the re-establishment of an authoritarian regime. Socioeconomic inequalities and exclusion in particular are the main immediate reasons behind violence during the democratisation period. In Geoffrey Macdonald's contribution, Indonesia is depicted as a country where religious differences were successfully overcome through the adoption of a specific governing system. The case of Iraq, at the other end of the spectrum, has illustrated the problematic issue of identity politics and the nation-state in the Arab World. And Yemen showcased how the deep social divisions may threaten democratic transition. Overall, stable institutions, as a result of reasonable balanced social

11. See the chapter of Caryn Abrahams included in this volume.

12. See the chapter of Larbi Jaidi included in this volume.

structures and inclusive socioeconomic policies, are necessary to establish and consolidate democracy in divided societies.

Transitions do not necessarily lead to democracy. They can reverse and even lead to the restoration of authoritarianism as a reaction to chaos. In this way, the recent European transitions are an exception because all of them have successfully resulted in the consolidation of democracy. However, historically the search for stability has prevailed over the search for freedom. This confirms the historical review of different approaches, such as Plato's equation of democracy with chaos, the Hobbesian social contract based on the search for stability or Kant's assertion: "Argue as much as you please, but obey." Democracy cannot be understood only in terms of participation. In order to achieve a stable democracy, there is a need for institutions, constitutionally defined and protected from any political interference. It is therefore difficult to achieve consolidated democracy in weak states. In addition, social structures are resilient. A political system in which each ethnic, religious or national community is autonomous becomes no longer possible, as it intensifies ethnic or religious differences, leading dominant groups to question the rights of others. Unfortunately, that process characterises most of the conflicts in the Middle East and North Africa region, where, in some cases, polarisation has even led to humanitarian crisis.

Transition periods have been judged as vulnerable to violence, especially from non-state groups. The political power vacuum between the removal of the old regime and the establishment of a new one can lead to political competition that often ends in clashes. The outbreak of political violence is most probable when the elites feel threatened by the possibility of change of the current regime. Major grievances arise around acute inequalities in economic opportunities and the feeling of wounded dignity. Therefore, in order to reduce violence during the democratisation

process, the revolutionary actors should agree on the importance of social and economic development as a way to make life better for all citizens, and not only on the unfairness of the old regime and the need to overthrow it. Most of the militant groups recruit their partisans among young educated but poor or middle class people, frustrated with the lack of employment opportunities. In order to halt this process, these youngsters should be given the opportunity to find a job or undertake the entrepreneurial path, as small as it may be, to create their own employment. Militant groups are also gaining in strength thanks to the promotion of political violence by reactionary groups, inducing it directly or by provoking hostilities between different factions asking for change. The inclusion of the old elites in the new political and economic system could, if skilfully driven, prevent this kind of reaction of the old elites from jeopardising the transformation.

The Indonesian case is presented by Geoffrey Macdonald as a success story of transition from authoritarianism to democracy.¹³ Considering its deeply divided society, the predominance of Muslims in the population, the significant religious minority and the internal doctrinal and technical division of the Muslim community itself, he observes that Indonesia may serve as a comparative reference for Middle Eastern Muslim countries. The transition from dictatorship into a stable democracy in Indonesia has been possible due to the specific design of the governing system. Power decentralisation and the nature of the electoral system, in which the voters select candidates instead of parties in multiple districts, has incentivised political parties to play local politics and to be as politically broadminded as possible in order to enter parliament. This arrangement has forced some political parties to abandon their ethnic or religious discourse for the more centrist one. The case of the Islamic party may serve as an example. After gaining only 7% of the vote, the party dropped the idea of Sharia for a more

13. See the chapter of Geoffrey Macdonald included in this volume.

moderate rhetoric. Taking into account the similarities Indonesia shares with the Middle East, this institutional design, which led to the emergence of centrist and modern political parties, could be, according to Macdonald, adapted to the Middle East context. However, before simply applying the Indonesian model to the Arab world, firstly it should be assessed whether specific historical, social and economic conditions in the Middle East may influence its effectiveness in each case.

On the issue of identity politics in political transitions, the main question is how the Arab transitions can fit in a globalising world, and whether the non-Western transitions can be successful without “Western ideals”. The Arab World is wondering whether the nations are sufficiently prepared to build new states or whether the nation-building is a part of the Western colonial programme. One of the core elements of the post-colonialism period is the issue of identity politics, which is presented as an expression of nation-building. National identity, present in Western culture, is at the centre of the debates on state-building in the Arab world and an issue that generates most of the tensions in the region. In Iraq, the state, and through it the nation itself, were built around the Sunni identity, which led to the marginalisation of other faiths and communities, affecting national integration and causing violent clashes. Since 2003, the Iraqi state has been redefined in order to reflect this diversity. However, the system based on the recognition and institutionalisation of ethnic identities, without providing their equal participation in the ruling establishment, resulted in strengthening the feeling of belonging to community identities, at the expense of national identity. In other words, in the case of Iraq, both the nation-state and the state of identities have proved to be inadequate.¹⁴

The division of societies and its impact on a transition to democracy may be analysed with the example of Yemen. Prior to the unification in 1990, the

two separated countries, South and North Yemen, were each imposing a distinct model of democracy. In North Yemen, tribalism and a minimum modality of democracy, based only on elections, prevailed. South Yemen was much more liberal, with the maximum type of democracy, where social justice and human rights were respected. After unification, North Yemen imposed its political system on the newly-unified country. The social divisions led to the outbreak of the civil war in 1994, which resulted in the revival of the tribal structure. All the power has been concentrated in the hands of the tribal leaders. As a consequence, state structures have disappeared and the middle class and huge parts of civil society were excluded from the political scene. Thus, the unification process was not successful, and some parts of society are now calling for a re-establishment of an independent southern state. The solution to the deep social division seems to be the establishment of a real democracy, where all citizens enjoy equal rights and treatment.

RESPONDING TO THE EXTERNAL ENVIRONMENT

On the influence of international and regional actors on political developments in the Southern Mediterranean region, it is interesting to examine the role the European Union has played in promoting democracy in Eastern and Southern Europe, compared with its current policies towards the Southern Mediterranean. As for the United States, its policies towards the Arab World have been considered in Marina Ottaway's valuable contribution to this volume with the example of Egypt. Furthermore, we have to bring into the picture the involvement of the regional actors during and after the Arab uprisings. Syria is the most tormented playground for regional powers, whose interests and priorities have a decisive impact on the future developments in the country. Fractures within the GCC, as a result of different policies towards the Arab Spring

14. See the chapter of Haider Saeed included in this volume.

countries, have been developing, especially in the first stages of the Arab Spring.¹⁵

The EU was one of the main drivers of political change in Eastern Europe. The successful transition of these countries into democracies has been possible due to three major factors: the carrot of membership; solid state structures, able to adapt to the new challenges; and party consensus on the need to join the EU. The conditionality policy also played a crucial role in fostering democratisation, as it adjusted the speed of the enlargement process to the process of introducing the necessary reforms. In the current EU candidate countries, these special factors are lacking. In the Balkan countries, the state structures are weak, tensions within and among the states remain and the elite disagrees on the accession to the EU. In order to enhance political changes in the Eastern Partnership countries, the EU applies the same instruments used during the enlargement process: conditionality and the more for more approach. However, their impact is lessened mainly because of the lack of a membership carrot and the strong opposition of Russia.

The EU does not have as transformative a power over the Southern Mediterranean region as it had in Eastern Europe, mainly because of limited resources, lack of a structural offer and lack of accession prospect.¹⁶ The current EU support is insufficient to enhance the EU leverage in the region, especially if compared with the financial help provided by some regional actors from the Gulf. Moreover, despite the same framework, the EU socioeconomic support for its southern neighbourhood in per capita terms is far less considerable than for Eastern Partnership countries. In addition, the cooperation instruments have hardly changed. The only major change was the reorientation of priorities on civil society and socioeconomic issues. The main EU instruments, conditionality and differentiation, are ineffective and the EU continues to treat the

European Neighbourhood Policy (ENP) countries, East and South, as unequal partners. Although the EU values and welfare state model continue to be attractive for the Southern Mediterranean countries, there is a gap between the expectations and the capabilities to support the region. Thus, in order to adapt to the new geopolitical context, the EU current logic of cooperation with its southern neighbours is to be reformed. To enhance its leverage, the EU should offer the Southern Mediterranean countries at least a prospect of joining some of the EU sectorial policies, related to market or mobility, in addition to substantially higher financial or monetary support; that is, the three Ms approach currently asked for.

Focusing on another important actor in the region, the United States, Marina Ottaway provides, as we said, a most interesting assessment of its impact on political developments in the Arab World.¹⁷ Since the end of the Cold War, where state interests prevailed over idealistic visions, the US has been struggling between running a foreign policy based on interests and the policy based on values. In the case of Egypt, the country has been an important US ally in the region for a long time. Immediately after the outbreak of the uprising in January 2011, the US defended Mubarak. Afterwards, however, the country changed its position and called on Mubarak to leave. The US support for the democratic process in Egypt, at least in terms of the elections, was based on the hope that the so-called liberals would rise to power. Although the victory was finally won by the Muslim Brotherhood, the US decided to back the result. After the outbreak of protests against Mursi, the US put pressure on Egypt to organise more parliamentary elections. The US policy towards Egypt is influenced by three major factors: the first one is the democracy issue. The law obliges the US to stop aid to a country where a democratically-elected government is deposed in

15. Lynch, M. (2014). *The Arab Uprisings Explained: New Contentious Politics in the Middle East*. New York, US: Columbia University Press.

16. Khader, B. (2015). *Europa y el Mundo Árabe. Una evaluación de las políticas europeas 1957-2015*. Barcelona: Icaria-IEMed.

17. See the chapter of Marina Ottaway included in this volume.

a coup d'état. However, the US never confirmed or denied the coup d'état, thus making its policy towards Egypt rather ambiguous. The second factor is Israel. As long as the new Egyptian president is cooperating with the Israeli government in terms of security, the Israeli government will lobby for American support for Egypt. The last factor is DAESH. As long as Egypt is cooperating in eradicating terrorism, the US will continue to support the country.

The role of regional actors in shaping the regional dynamic in the most dramatic way is most evident in the case of Syria. The early 1980s witnessed two major shifts in the region: the exclusion of Egypt from the Arab World, as a consequence of the Camp David Accord, and the outbreak of the Iraq-Iran War. As a result of these developments, Syria rose from being an arena for others to become a major regional player. Since 9/11 and the US invasion of Iraq, the environment has radically changed. Syria's opposition to the invasion resulted in the imposition of harsh sanctions on the Syrian economy, which led to the country's gradual isolation and loss of influence. Isolated by the West and by Saudi Arabia, Syria turned into a weak state and started to rely increasingly on Iran. In order to balance the Iranian influence in Syria, Bashar al-Assad decided to ally more closely with Turkey, leading to growing Turkish influence in Syria. The Iranian will to fill the vacuum in Iraq after the US withdrawal caused major concerns for Turkey and Saudi Arabia. Currently, the region is caught between three different pressures: the more moderate one led by Turkey, the other two much more involved, one by Saudi Arabia and the last one led by Iran. These three players have turned the conflict in Syria into a war of proxies over their regional dominance in the Middle East. Therefore, the peace in Syria would not be possible without those three regional powers agreeing on a solution.

Finally, we have to especially consider the policies of the Gulf countries before and after the Arab upris-

ings. The revolutions in Tunisia and Egypt brought new governments to power. As a consequence, the regional states started to fear a change in the alliance system and in the balance of power in the region. Due to close military and economic relations of Saudi Arabia and the United Arab Emirates with Egypt, both countries reacted cautiously to the events that removed their close ally Mubarak from the Presidency. Despite its economic interests in Egypt, Qatar considered it more important to ally with a new regime, as it believed that the developments caused by the Arab Spring were irreversible. In the case of Syria, Qatar and Saudi Arabia favoured maintaining the status quo and drawing the regime away from the influence of Iran, rather than overthrowing it. However, their approach changed after the increase of the regime violence, even leading the GCC to expel Syria from the Arab League. The growing Iranian hegemony in Syria and the rise of DAESH have caused major concerns for the Gulf countries. Nevertheless, in order to stabilise the situation in the region, the United Arab Emirates and Saudi Arabia would need to put aside their differences with Turkey and come to an agreement concerning the security policy towards Iraq and Syria. The major issue preventing cooperation is the Muslim Brotherhood. While Turkey is strongly supporting the Muslim Brotherhood, Saudi Arabia and the United Arab Emirates perceive it as a threat. Thus, it was observed that Qatar could use its significant relations with Turkey to play the role of mediator and enable better cooperation between Turkey, the United Arab Emirates and Saudi Arabia to prevent Bashar al-Assad or DAESH from winning in Syria, which with the growing role of both Russia and Iran would pose a threat to the whole region. Then will come the crucial issue of how to incorporate Iran into the general understanding to pacify and stabilise the region, but even then the democratic transition processes would still lie ahead.

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ARAB IN COMPARATIVE TRANSITIONS PERSPECTIVE

Building Democracies in Light of International Experiences

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THE EXPERIENCES OF BUILDING DEMOCRACIES



REVISITING SPAIN'S TRANSITION TO DEMOCRACY

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INTRODUCTION: THE SPANISH 'MODEL'

With the possible exception of its Civil War (1936-1939), Spain's transition to democracy in the 1970s is undoubtedly the episode in the country's history that has attracted most interest beyond its borders. This is largely because it has long been regarded as one of the most successful of the 'third wave' of transitions that resulted in the establishment of some thirty new democracies worldwide during the years 1974-1991 (Huntington, 1991). However, over the years scholars have disagreed quite substantially as to the origins, nature and significance of the so-called Spanish 'model', a debate which inevitably raises important questions as to its usefulness as a blueprint – or source of inspiration – for democratization elsewhere. The Spanish case first acquired 'model' status in the mid-1980s, when it received very significant attention from the so-called *transitology* (or 'elite agent') school. Hitherto, modernization theorists had largely adhered to Seymour Martin Lipset's notion that before a country could transition to democracy, it had to pass through certain stages of economic and social 'modernization'. This approach assumed that economic development would lead to a broad range of social and cultural changes, which would in turn affect peoples' attitudes and behaviour. However, this failed to explain anomalies such as Germany's political evolution in the 1930s; if industrialization, urbanization and high literacy could produce totalitarianism as well as democracy, the relationship between the latter and modernization was clearly less linear

than had been claimed. It was precisely this critique that led Dankwart Rustow, the founding father of *transitology*, to argue that the relationship between socioeconomic development and democratization was one of probability, not causality (Rustow, 1970, p. 342). This has been borne out by subsequent studies showing very strong correlations between democracy and development at the extreme ends of the economic spectrum, but weaker ones for countries placed in the middle. On the whole, scholars have tended to conclude that socioeconomic development is probably neither a sufficient nor even a necessary condition for democratization; rather, it is a factor that 'facilitates' the development of a democracy.

The *transitology* school was largely a reaction against the overly deterministic and rigid assumptions of modernization theory, which had little to say about the timing of specific processes of democratization. *Transitologists* were particularly taken by the Spanish case because it appeared to support their view that it was the nature of decisions made by elite actors, rather than any structural preconditions, which set the process for a successful democratization in motion (O'Donnell, Schmitter, & Whitehead, 1986). These authors posited that transitions to democracy were generally triggered by a crisis of legitimacy within the authoritarian elite, which split into hard-liners and soft-liners; in turn, this often encouraged the latter to seek negotiations with representatives of the moderate democratic opposition, leading to a new political settlement. In marked contrast to their

dismal performance in the 1930s, in the 1970s Spanish political elites reached a succession of pacts that enabled them to set aside deeply-entrenched ideological differences and antagonisms so as not to endanger the process of democratization. The result was so remarkable (and unexpected) that the process came to be seen as “the very model of the modern elite settlement” (Gunther, 1992, p. 24), and “in many ways the paradigmatic case for the study of pacted democratic transition and rapid democratic consolidation” (Linz & Stepan, 1996, p. 87). Beyond Spain, this ‘elite agency’ model was attractive because it could presumably be applied anywhere in the world, regardless of structural factors; success or failure would largely depend on elites’ ability to ‘craft’ democratic outcomes (Di Palma, 1990).

As students of the Eastern and Central European transitions were quick to point out, the enthusiasm with which *transitologists* embraced the Spanish ‘model’ tended to obscure important aspects of the country’s recent development that had undoubtedly contributed to the success of its transition (Offe, 1991, pp. 508-509). Most importantly, as we will see below, Spain had experienced a period of unprecedented economic growth in the 1960s and early 1970s (prior to democratization), which was to have profound social and cultural implications. The ‘elite agency’ model also underplayed the importance of the state, and in particular, the importance of its relationship with the authoritarian regime: in marked contrast to the Communist block countries, under Franco it was possible to distinguish between the regime and the state, with the result that the dismantling of the former had little impact on the latter; in other words, in Spain the newly-elected democratic authorities were able to inherit a ‘usable’ state apparatus (Linz & Stepan, 1996).

Transitology also came under growing criticism for going too far in assuming that transitions were simply the result of free choices made by rational actors, with some authors objecting that it represented a “retreat into voluntarism” or “barefoot empiricism” (Remmer, 1995, p. 42). This was partly because

transition studies tended to see democracy as a set of procedures for government, negotiated by and between political leaders, thereby separating democracy from its essential meaning (rule by the people), and conceptualizing it mainly as the establishment of a set of governing institutions. This ran the danger of consigning the majority of the population to a mere bystander role in the creation of new regimes, and of underestimating the role of popular struggles in some transitions (Spain’s included).

In the 1960s and early 1970s (prior to democratization), Spain had experienced a period of unprecedented economic growth, which was to have profound social and cultural implications.

Since the turn of the century, academic debate regarding the Spanish transition has largely looked beyond the role of political elites in the process, and has tended to stress the importance of ‘democratization from below’. Some authors have underscored that it was the pressure ‘from below’ exercised by workers, students and neighbourhood and housewife associations that induced elites to undertake reforms and initiate the formal transition process; in other words, “elite decisions were ‘structured’ by the context in which they were made” (Radcliff, 2015, pp. 172-174). Others, however, have objected that this approach tends to exaggerate the strength of Spanish civil society under Franco and its role in undermining authoritarianism (Encarnación, 2003). In turn, this is related to a broader debate about what civil society can contribute to the process of democratization itself; the academic consensus would appear to be that, at best, even a strong civil society can “only be a supporting actor in the transition drama” (Radcliff, 2015, p. 178). All of this is informed by a broader debate about the relationship between civil society and democracy more generally. In the Spanish case,

some have argued that the civil society organizations that emerged in the 1960s helped revive a tradition of interest representation and a pluralist associational culture that made a significant contribution to democratization; others, however, claim that it is a functioning and legitimate democratic state, not civil society, that generates 'social capital' and trust (Torcal, 2007, pp. 195-198). Scholars' views in this debate largely reflect different perspectives as to whether the state or society is at the heart of the democratizing process: for *transitologists*, "democratization is located firmly in the state, and its completion is marked by the construction of governmental institutions," while from a civil society perspective, "democratization is a participatory process, defined not by institutions but by broader social legitimation" (Radcliff, 2015, p. 175). The preceding pages will hopefully lead readers to conclude that Spain's transition was a highly complex, multifaceted phenomenon. As we have seen, much of the debate about this process has turned on whether the mass or the elite contribution to it should be emphasized; in future, our attention should perhaps centre on how mass and elite actions interacted and fed into each other. In the pages that follow, however, greater attention will be paid to elite actions, because it is this aspect of the Spanish transition that has generally interested students of the so-called 'Arab Spring' most. More specifically, they will describe and analyse the actors, procedures and outcomes of the Spanish constituent process in some detail. Before doing so, however, a brief overview of Spain's prior experience with democracy and authoritarianism should prove useful in placing the events of the 1970s in their historical context.

THE PAST AS PRELUDE

Spain's chequered political history has given rise to the notion of 'Spanish exceptionalism', a concept often associated with an allegedly structural inability to develop stable democratic institutions. However, this

obscures the fact that its political development was not unlike that of many other (particularly southern) European states. Admittedly, the 19th and early 20th centuries saw considerable turmoil, including severe dynastic disputes, which led to armed confrontation, frequent military uprisings, and extreme social and political polarization.¹

The Second Republic, Spain's first attempt at democracy, did not succumb of its own accord, as it was violently overthrown by a military coup led by General Francisco Franco.

However, the parliamentary monarchy established in 1874 presided over several decades of stability and prosperity, though its efforts at democratization were finally cut short by a bloodless military coup in 1923. The ensuing Primo de Rivera dictatorship, which initially enjoyed the support of King Alfonso XIII, failed to solve major deep-rooted problems, and collapsed without resistance. It was replaced by the Second Republic (1931-1936), Spain's first attempt at democracy, which was plagued by chronic cabinet instability, party-system fragmentation and ideological polarization. Additionally, it promised far-reaching socioeconomic reforms that it largely failed to deliver. Nevertheless, the Second Republic did not succumb of its own accord; it was violently overthrown by an only partially successful military coup led by General Francisco Franco, which plunged Spain into a bloody three year-long Civil War (1936-1939) that claimed some 400,000 lives. A further 30,000 to 50,000 people were executed on political grounds in the aftermath of the Civil War by the winning side.

Following the defeat of the Republican armies in April 1939, Franco established a political regime that was authoritarian, extremely confessional, half-heartedly corporatist, deeply conservative, and

1. Remarkably, during these years four prime ministers were assassinated by political opponents: Juan Prim (1870); Antonio Cánovas del Castillo (1897); José Canalejas (1912); and Eduardo Dato (1927).

Spanish nationalist. Franco exercised supreme authority as Head of State, commander-in-chief ('Generalissimo') of the Armed Forces, and head of the artificial single party (Falange Española Tradicionalista y de las JONS) he had created by decree in 1937. This organization, which later came to be known as the 'Movement', gradually lost much of its early influence, to the extent that Franco's political system has been described as a 'no-party state' (Gunther, 1980). The Catholic Church, whose leaders saw the Civil War as a 'crusade' against Marxists and atheists, was initially amongst Franco's staunchest allies, and was rewarded for its support in 1953 with a very generous Concordat. However, in the wake of the Second Vatican Council (1962-65), the Church gradually distanced itself from the regime. Abroad, Franco's major ally was the United States, which offered considerable military and economic assistance in return for access to Spanish bases as of 1953. Due to both its association with the Axis powers in World War II and its subsequent authoritarianism, the Franco regime was initially excluded from the European integration process, though the European Community finally granted it a preferential trade agreement in 1970. Indeed, the EC's policy of 'democratic conditionality' was to prove a major incentive for democratization throughout the 1970s and beyond (Powell, 2009, pp. 51-53).

Franco's regime constitutes a rare example of limited institutionalization combined with relatively elaborate constitutionalization. Although its institutions never really acquired a life of their own, its constitutional provisions were taken seriously, and some would play a crucial role during the transition. Most importantly, the 1947 Law of Succession declared Spain to be a kingdom, with Franco as regent for life with the power to name his successor. (It was this provision that allowed him to appoint Juan Carlos his successor in July 1969.) Similarly, although the 1958 Law of Fundamental Principles declared these to be "permanent and immutable", the Law of Succession stated that all fundamental laws could be reformed as long as they met the approval of two thirds of the Cortes

(parliament) and were later put to a referendum, a clause that was put to good use during the transition.

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In spite of its conservatism, the regime proved compatible with very significant social and economic change. Much of this took place after a Stabilization Plan (1959) was adopted in response to the failure of the regime's former autarchic economic policy. Over the next decade and a half, Spain experienced unprecedented economic growth (averaging 6.9% per annum during 1960-1974), with GDP per capita rising from \$300 to \$3,260. Between 1950 and 1975 the share of the labour force engaged in agriculture declined from 48% to 22%, while that employed in industry and the service sector rose to 38% and 40%, respectively. These changes brought with them a significant expansion of the middle class, which grew from 14% to 43% of the population. Prosperity also brought widespread access to consumer goods: while only 1% of households owned TVs in 1960, by 1975 this had risen to 90%. Spaniards also became better educated: adult illiteracy rates, still at 44% in 1930, had dropped to 5% by 1975.

By the 1970s Spain was a relatively modern, urbanized, and prosperous society, with a political culture substantially different to that of the 1930s. This transformation fed a growing demand for democracy: according to one study, between 1966 and 1976 support for democratic institutions rose from 35% to 78%. Attitudes favourable to democracy were

particularly strong among the working class, which largely turned its back on revolutionary ideologies. Modernization did not make the advent of democracy a foregone conclusion, however; indeed, economic growth may have delayed it by making the regime more acceptable to an increasingly prosperous and consumer-driven population.

These changes also had a significant impact on the role and nature of the state and its relation to the regime. As economic modernization progressed, the state administration became increasingly professional and meritocratic, and also predominantly apolitical, which largely explains why most civil servants did not later oppose democratization.² Equally importantly, although military officers initially occupied important positions in the state bureaucracy, by the late 1960s they had been displaced from all but the military ministries. In short, by the time of his demise, Franco's was a civilian-led authoritarian regime, a feature that would greatly facilitate the subsequent democratizing process (Linz & Stepan, 1996, pp. 66-69). As a result of these trends, after his death in 1975 there was no need to extricate the military from the political arena it had already abandoned, nor was it necessary to purge the bureaucracy (or the judiciary) during the democratizing process itself.

The socioeconomic transformations outlined above had complex political consequences, most of them unintended by the regime. The expansion of university education (which accelerated after the adoption of the 1970 Education Law) led to the emergence of a new student movement that was predominantly hostile to Franco. Rapid industrialization favoured the emergence of a new, increasingly self-confident labour movement, led by Comisiones Obreras (workers' committees), which had emerged in the late 1950s and were outlawed in 1967. Though theoretically illegal, the number of strikes increased

sharply, from 500 in 1969 to 931 in 1973 and 2,290 in 1974; some were met with significant police brutality, resulting in eleven deaths in 1969-1974. In Catalonia and the Basque country, the arrival of hundreds of thousands of immigrants from poorer parts of Spain and unprecedented economic prosperity combined to foster a renewed interest in their autochthonous languages and cultures, often with the active support of the local Catholic clergy. This revival also partly explains the radicalization of the university students who founded ETA in 1959, which soon became a sophisticated urban terrorist organization capable of claiming 45 victims in 1960-1975.³ The regime's twilight years also witnessed a significant increase in opposition activity. The largest and best organized group was the Communist Party (PCE), which was particularly strong in the labour and student movements, in the new neighbourhood associations that had emerged in the 1960s, and amongst the cultural elite. The PCE had been advocating a policy of national reconciliation since 1956, and in 1970 – under the leadership of Santiago Carrillo – it formally embraced the goal of a multi-class 'pact for freedom'. When such a pact finally materialized in 1974 as the Junta Democrática, however, it fell far short of the intended goal of uniting the entire democratic opposition. The Socialist Party (PSOE), by far the largest left-wing organization under the Second Republic, had almost disappeared under the dictatorship, but it began to recover its former standing after Felipe González's election as party leader in October 1974. The PSOE deeply resented the PCE's efforts to dominate the Spanish left, just as its sister trade union, the UGT, was suspicious of communist influence in Comisiones Obreras. González did not share the PCE's faith in a 'ruptura democrática' (democratic break), a process whereby large-scale popular mobilizations would somehow result in the peaceful overthrow

2. A survey carried out in 1983 among civil servants largely recruited during the Franco years revealed that 89% of them believed that democracy was preferable to any other form of government (Aguilar, 2002, p. 39).

3. During this period, the police killed 17 members of ETA; two more were condemned to death and executed in September 1975.

of the Franco regime and its replacement by a representative provisional government that would call elections to a constituent assembly. Instead, he favoured a gradualist approach resulting in the conquest of 'parcelas de libertad' (or 'plots of freedom'). González's refusal to join the Junta Democrática and his decision to sponsor an alternative Plataforma de Convergencia Democrática in mid-1975 turned out to be crucial in guaranteeing the PSOE's autonomy during the transition.

The immediate crisis of the Franco regime was due to a number of factors. The economic boom of the 1960s came to an end with the 1973 oil crisis, resulting in 'stagflation' and an increasingly active labour movement. The assassination by ETA of Franco's alter ego, admiral Luis Carrero Blanco, in December 1973, only six months after his appointment as prime minister, raised fresh doubts about the regime's continuity. His successor, Carlos Arias Navarro, presented a modest blueprint for liberalization ('apertura') in February 1974, but this only deepened the growing rift between 'hard-liners', who believed the regime's continuity should be guaranteed by an authoritarian monarchy under Juan Carlos, and 'soft-liners' who assumed the future monarch would need to bring Spain's political system in line with those of its European neighbours. This conflict intensified after the overthrow of the Portuguese dictatorship in April 1974, which was read by many as an indication of what might happen in Spain unless significant reforms were implemented immediately. Finally, in September 1975 the execution of five anti-regime militants (as a result of the draconian anti-terrorist legislation introduced after Carrero Blanco's assassination) led to an unprecedented international outcry, which highlighted the extent to which it had become a European anomaly.⁴ However, it was ultimately Franco's death on 20 November 1975 and the appoint-

ment of Juan Carlos as head of state that triggered the transition process proper.

THE TRANSITION TO DEMOCRACY

Spain's democratizing process has been described as a paradigmatic case of a 'transition through transaction' (Share, 1986), characterized by the following features: the (paradoxical) use of the former regime's institutions and constitutional procedures to initiate the democratizing process, which resulted in some striking continuities (most notably, the monarchy); negotiations between 'soft-liners' in the outgoing authoritarian regime and representatives of major opposition groups; the inclusion of representatives of all key political forces in the decision-making process; and private, face-to-face deliberations at crucial stages, involving a relatively small number of participants. Some authors have argued that 'transitions through transaction' are also characterized by relatively low levels of popular mobilization, but the Spanish experience suggests they are compatible with relatively high levels of pressure 'from below' if political actors are willing and able to modulate this in response to concessions made 'from above'. It has also been claimed that 'transitions through transaction' can only succeed in the absence of political violence, but Spain witnessed 453 deaths from political violence in 1975-1980;⁵ indeed, it was partly the fear that this violence might derail the transition process that encouraged political elites to negotiate in the first place. Memories of the fratricidal violence that marked the Civil War were still very much alive in Spain in the 1970s, and the determination not to repeat the errors of the past undoubtedly had a sobering impact on both elites and society at large (Colomer, 1995, p. 3). Indeed the unwritten slogan that best captures this mood (and the spirit of the transition as a whole) is perhaps 'never again'. Ironi-

4. Nevertheless, it should be noted that less than one person per year was executed by the dictatorship for political reasons during its last 15 years (Malefakis, 1982, pp. 223-224).

5. The Basque terrorist organization ETA was responsible for 270 of these deaths; the police for 82; the extreme left-wing terrorist organization GRAPO for 58; and an assortment of extreme right-wing groups, for 43 (Encarnación, 2014, p. 65).

cally, political violence was more widespread in Spain than in 'revolutionary' Portugal (Bermeo, 1997, p. 39). Spain's relatively brief transition to democracy (1975-1978) was launched 'from above', but it accelerated in response to mounting pressure 'from below'. It was essentially driven by domestic forces, though the European Community and some of its member states actively supported democratization. This was particularly true of Germany, which made good use of the transnational influence exercised by its political parties, trade unions and political foundations. (Powell, 2001, pp. 293-309). Overall, there can be no doubt that the Western European context in which the Spanish transition took place provided a congenial environment for democratization. The United States, on the other hand, played a relatively modest role, largely on account of its reluctance to antagonize Franco and his successors out of fear of compromising its access to military bases on Spanish soil (Powell, 2007, pp. 234-235).

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The immediate genesis of the transition largely reflects the political dilemmas facing King Juan Carlos, who needed to acquire a new democratic legitimacy for the monarchy in order to guarantee both his survival as head of state and the continuity of his dynasty. (The fate of his brother-in-law Constantine, who had lost the Greek throne in 1967, provided

a salutary warning.) The monarchy he inherited in late 1975 was not the institution embodied by his grandfather Alfonso XIII until 1931, but rather an entirely artificial, authoritarian monarchy designed to perpetuate the Franco regime. However, Juan Carlos did not inherit the general's powers: the Organic Law of the State (1967) had designed a monarchy in which the king's role was severely curtailed by the combined authority of the prime minister and the president of the Cortes, who shared effective control over the political system. Paradoxically, this meant that from the outset the king had a vested interest in a far-reaching constitutional reform that would free him from the tutelage of unelected officials (Powell, 1996, pp. 85-86).

In the first stage of the transition, prime minister Arias Navarro, who moved closer to the regime's 'hard-liners' following his confirmation after Franco's death, advanced a blueprint for limited reform that would have led to the election of a semi-democratic Cortes and the legalization of some parties (such as the PSOE) but not others (above all, the PCE). This was rejected outright by an increasingly active and outspoken opposition, mass mobilizations (which sometimes resulted in loss of life),⁶ new media outlets, the European parliament, and the Council of Europe. Furthermore, it failed to satisfy Juan Carlos, who feared this growing polarization would endanger the monarchy itself.

The king's decision to replace Arias Navarro in July 1976 with Adolfo Suárez, a 44 year-old *apparatchik* of the former regime, known for his ambition and audacity, was a crucial turning-point in the process. Suárez quickly produced a Law for Political Reform, which called for the election of a two-chamber Cortes by universal suffrage: a Congress of Deputies elected according to principles of proportional representation and a majoritarian Senate. In keeping with the procedure envisaged in the Francoist fundamental laws, the bill was first approved by the existing Cortes

6. The number of strikes registered rose sharply from 3,156 in 1975 to a record 17,731 in 1976. Furthermore, about a dozen people were killed in demonstrations and clashes with the police (or right-wing thugs acting with police connivance) during the first half of 1976 alone.

in November by 425 votes in favour and 59 against. In December, it was ratified by a referendum that registered a 77% turn-out (with 94% of votes in favour), in spite of the opposition's decision to abstain on the grounds that it had been excluded from the entire process. Secret talks between Suárez and González, however, enabled the PSOE to hold its first party congress since the Civil War immediately after the referendum, paving the way for its legalization in February 1977.

The referendum considerably strengthened Suárez's hand, and it was only after it was held that he engaged in formal talks with the opposition's 'Committee of Nine', which represented all shades of democratic opinion. Paradoxically, political violence helped to bring government and opposition closer together. In late January 1977, during the transition's so-called 'black week', two left-wing demonstrators were killed by the police, five PCE activists were murdered in cold blood by extreme right-wing thugs, and three policemen were shot dead by extreme left-wing terrorists. This mindless violence rekindled fears of a fratricidal confrontation, which Suárez and opposition leaders alike sought to head off by presenting a united front.

The talks centred on the conditions the opposition demanded be met if it was to take part in future elections, which included the legalization of all political parties and trade unions, the disbanding of the 'Movement' and the political neutrality of public employees, a generous amnesty, the negotiation of an electoral law, and the acknowledgement of regional political identities. As several participants have acknowledged, these talks did not constitute formal negotiations; rather, it was a case of Suárez listening to the opposition's demands and skilfully translating them into legislation. A good example of this was the March 1977 Electoral Law, which effectively ensured that Spain would have the most majoritarian proportional system in Europe. It should be noted, in this regard, that "choosing the electoral system is one of the most important decisions – if not the single most important decision – of all the con-

stitutional decisions facing democracies" (Lijphart, 1992, p. 207). This is partly because the first freely-elected parliaments often function as constituent assemblies as well as legislatures (as happened in Spain), and the choice of an electoral system may therefore have important consequences for the legitimacy of the new constitution. Suárez's main concern was to avoid the excessive fragmentation of the party system, which he associated with the instability and polarization that had done so much to undermine the Second Republic in the 1930s. (Montero & Lago, 2001, p. 55). By decreeing that the 52 provincial constituencies should elect at least two representatives and fixing a threshold of 3% of the vote, the system was only truly proportional in large urban areas and operated like a majoritarian one in more sparsely populated regions, a bias that favoured the larger party formations. Government-opposition talks also led to the legalization of the Communist Party in April 1977, whose exclusion would have rendered the process illegitimate in the eyes of many Spaniards; in return for this, Carrillo had already secretly agreed to recognize the monarchy and Spanish national symbols. The only significant opposition demand Suárez did not meet was the recognition of regional political identities, essentially because this was a matter best left to the future democratic parliament.

Government-opposition talks thus paved the way for the first democratic elections, held in June 1977, which produced a highly positive outcome: the high turnout (79%) confirmed their legitimacy, and the strong showing by Suárez's newly-established Unión de Centro Democrático (UCD), a loose and hastily-formed coalition of regime reformists and representatives of the moderate opposition, which obtained 34% of the vote and 165 out of 350 seats, allowed him to remain in office. At the same time, the PSOE emerged as the leading opposition party with 29% of the vote and 118 seats, well ahead of the PCE, which obtained a mere 9% of the vote and 20 seats. Significantly, the neo-Francoist Alianza Popular (AP) – the only party to oppose the opening of a constituent process –, secured a paltry 8% of the vote and only

16 seats. It has often gone unnoticed that although these were the first democratic elections held in Spain since February 1936, under the supervision of provincial and local authorities largely appointed by the previous regime and without the presence of international observers, nobody seriously questioned their fairness.

SETTING THE STAGE FOR THE CONSTITUTION: THE POLITICS OF CONSENSUS

The new Suárez government appointed after the June 1977 elections faced a broad array of challenges it could not deal with on its own. Very little had been done in the preceding years to tackle the economic crisis triggered by the 1974 oil shock, with the result that inflation had risen to 26%, prompting a fresh wave of labour unrest. In Catalonia and the Basque country, mass mobilizations in favour of regional autonomy and a general amnesty continued unabated. Disconcertingly, the promise of democracy had done nothing to persuade ETA to lay down its arms, which in turn prompted increased sabre-rattling among certain sectors of the military.

Whenever possible, Suárez sought to overcome these challenges in collaboration with other political parties. His first move was to seek a formal reconciliation with Josep Tarradellas, president of the Catalan government-in-exile, who was able to return to Barcelona in October 1977 as head of a provisional regional government after the granting of a pre-autonomy statute to that region. Though largely symbolic, this show of respect for Catalan political identity was aimed at securing the full participation of the region's political parties in the ensuing constituent process.

In order to buy time (and a degree of 'social peace') for the constituent process, Suárez also explored the possibility of reaching a broad agreement with trade unions and employers' organizations with a view to tackling the major challenges facing the Spanish economy. To his frustration, neither were willing to share the burden of such an agreement with his government, largely because, having been legalized

only recently, they were still in the process of drawing up their respective platforms. In view of this, he turned to the leaders of the parties recently elected to parliament, only to discover that, while the PCE was anxious to strike a deal in order to gain some badly-needed credibility, the PSOE remained aloof, if not downright hostile. However, the threat of a UCD-PCE deal that would inevitably strengthen their historic rivals soon convinced the PSOE to join the multi-party talks that eventually led to the famous Moncloa Pacts of October 1977.

The Moncloa Pacts, named after the prime minister's official residence in Madrid, represented an ambitious attempt to deal with the major disequilibria afflicting the Spanish economy. The measures adopted included a 20% devaluation of the national currency, extensive price and wage controls, and a limited relaxation of job-protection legislation, which the left-wing parties accepted on the understanding that the introduction of a new system of direct taxation would lead to greater public spending in education, health and public housing. These measures proved effective in controlling inflation, which fell to 16% in 1978, but did not prevent the Spanish economy from experiencing another recession after the 1979 oil shock. The longer-term structural reforms were more substantial, though many were not implemented until the PSOE came to power in 1982. The Moncloa Pacts were also important in that they introduced new legislation recognizing basic political freedoms that could not wait for the new constitution to be adopted. More generally, the pacts were significant in that they encouraged politicians to regard their opponents as adversaries rather than enemies, and enabled them to show their voters that they were capable of setting aside their ideological differences in the interest of the democratizing process. Although the pacts were negotiated outside parliament, it was agreed that they be put to the vote so as not to undermine its role in the transition process only months after the first democratic elections.

Another major initiative requiring a broad political consensus was the Amnesty Law, also passed in

October 1977. The demand for political amnesty had been one of the causes that had done most to galvanize anti-Francoist opinion since the late 1960s, particularly in Catalonia and the Basque country. Before the elections, the king had issued a modest pardon in November 1975 and a limited amnesty in June 1976, but these were deemed insufficient by left-wing and regional nationalist parties. The 1977 law went much further, for it covered “all acts of a political purpose, whatever their outcome may have been”, thus benefiting all those tried for political crimes committed against the Franco regime prior to the 1977 elections, including ETA terrorists who had been convicted of murder. It also guaranteed that former servants of the regime would not be investigated or prosecuted for the “crimes and misdemeanours that may have been committed by state authorities against the rights of others,” thereby ruling out the possibility of purging the Armed Forces, the police or the judiciary. As one author has noted, this clause was possible because Spain “underwent the transition to democracy without calls for justice against the old regime from the democratic opposition – not even a formal condemnation of its evils was demanded”; if the law ruled out the possibility of any form of transitional justice, it was because no significant political actor demanded it at the time. Overall, the Amnesty Law was generally seen as a significant contribution to national reconciliation; in the words of one Basque nationalist leader, it offered “forgiveness from everybody to everybody” (Encarnación, 2014, pp. 55, 71-72).

THE 1978 CONSTITUTION: PROCESS, ACTORS AND OUTCOMES

Transitions to democracy almost invariably result in the adoption of a democratic constitution. By and large, those participating in such a process must choose between three possible courses of action: they may (i) seek to restore a previously-existing democratic constitution that has served the country well in the not-too-distant past; (ii) adapt an already-existing text to the country’s new circumstances; or (iii) set about writing an entirely new document. In the

Spanish case, only one third of these options were ever on the table. The six constitutions produced in the 19th century (in 1812, 1834, 1837, 1845, 1869 and 1876) prove the existence of a rich tradition in this field, but were also the expression of a winner-takes-all mentality that had prevented the adoption of texts capable of withstanding the test of time. More recently, the Second Republic had adopted a constitution in 1931 that was undoubtedly modern in outlook, but had alienated conservative (and in particular, Catholic) sectors of Spanish society to such an extent that not even the left-wing parties that felt emotionally committed to the republican regime (such as PCE and PSOE) liked to identify with it publicly. Furthermore, this was a republican text, and therefore unsuited to the circumstances of 1977, since it was generally assumed that, in return for facilitating the democratizing process, Juan Carlos and the monarchy would be enshrined in the new constitution.

Writing a new constitution offers a society immersed in a complex transition to democracy both advantages and drawbacks. The main advantage is that, if the constituent process is reasonably successful, it will facilitate ‘ownership’ of the final product by the political actors (and their constituencies) that participate in it. Furthermore, a constituent process provides the media and civil society organizations with an opportunity to acquaint themselves – and others – with the key features of the new political system, in what can become a unique collective learning experience. In the Spanish case, the constituent process had an additional, extremely powerful symbolic meaning. In the eyes of the major left-wing parties at least, the adoption of a new constitution transformed the negotiated reform (‘*reforma pactada*’) initiated by the monarch and his government into a break with the Francoist past negotiated by the former representatives of the democratic opposition (‘*ruptura pactada*’). Producing an entirely new constitution can also have significant drawbacks, however. Transitions to democracy are generally periods in which vulnerable, newly-elected democratic governments face a vast array of challenges, such as dealing with severe

economic difficulties and their social consequences, redefining civil-military relations, modernizing the bureaucracy, handling territorial tensions, and even rethinking foreign policy. Writing a constitution inevitably requires those in office to invest significant time, energy, and political capital that might be better spent tackling these urgent tasks. Furthermore, constituent debates will often exacerbate existing cleavages within society, reopen old wounds, and possibly inflict new ones. Finally, a lively constituent process will often raise expectations of rapid, far-reaching change that are not always met, resulting in frustration, apathy and even disaffection. This was partly the case in Spain, where the immediate post-constituent period (1979-80) was marked by considerable public disenchantment ('desencanto') with the new political system.

On the whole, the Spanish constituent process was remarkably successful. This has largely been attributed to the manner in which it unfolded, which was characterized by the following features: (i) the tactical demobilization of street protests and unnecessary strike activity in order to avoid potentially polarizing street confrontations and to give elite negotiations a chance to succeed (with the significant exception of the Basque country); (ii) the inclusion of representatives of all politically significant parties in face-to-face negotiations; (iii) while, at the same time, keeping the number of participants in these negotiations down to a manageable number; (iv) deliberation behind closed doors; (v) restraint, cordiality and mutual respect among elites; and (vi) a modified version of the 'mutual veto'⁷ (Gunther, 2011, p. 24).

The success of the process was by no means a foregone conclusion, however. Suárez had initially intended a group of legal experts to draft a first version of the constitution, which would then be submitted to parliament. In theory, this would have

shortened the constituent process, while allowing the government greater control of the outcome. The PSOE, however, was adamant that the newly-elected parliamentarians should be responsible for drafting the text throughout, a demand that was quickly endorsed by other parties. Anxious to avoid a conflict that might undermine the multiparty consensus he had so carefully crafted thus far, Suárez acquiesced. As a result, the task of producing a draft constitution was assigned to a subcommittee of seven parliamentarians, consisting of three representatives of the governing UCD, and one each from PSOE, PCE, AP and the Catalan nationalists (who supposedly represented Basque nationalists as well). The subcommittee worked behind closed doors from August to November 1977, when a draft copy of the constitution was leaked to the press. The official version was published in January 1978, resulting in more than three thousand amendments being presented by political groups and individual parliamentarians, often at the instigation of civil society organizations. The subcommittee then produced a new version of the draft constitution, which was published in April, though not before the PSOE representative, Gregorio Peces-Barba, walked out in protest at a number of changes introduced by UCD with the support of AP. In May, the new version was submitted to a 36-member constitutional committee, where the emergence of a *de facto* coalition between UCD and AP led the PSOE to threaten to abandon the process altogether. Alarmed, Suárez instructed his deputy prime minister, Fernando Abril Martorell, to negotiate a new deal with González's alter ego, Alfonso Guerra, so as to allow the process to move forward. As of 22 May, this gradually took shape in a succession of secret late-night meetings held in restaurants and private offices. In due course, representatives of the other

7. One of the key elements of consociational politics (Lijphart, 1969) is the 'mutual veto', whereby each group participating in this type of consensual politics can block any proposal that threatens its vital interests. In the Spanish case, this took a somewhat modified form of a general norm that majoritarian winner-takes-all politics should be avoided in crafting the constitution. As described by Peces-Barba, the aim of the founding fathers was not to be "in agreement with everything, but that the constitution should not contain any aspect which would be absolutely unacceptable to any political group" (Gunther, 2011, p. 27).

parties (with the significant exception of AP) were also brought into the process. On 21 July, the resulting text was passed by the Congress of Deputies with 258 votes in favour, two against and 14 abstentions. It was then sent to the Senate, where over one thousand fresh amendments were debated during September-October. After eighteen months of negotiations, the final text was put to the vote in both houses on 21 October: in the lower house, it was adopted with 325 votes in favour, six against, and 14 abstentions; in the upper house, the result was 226 in favour, five against, and eight abstentions. Finally, the text was put to a referendum on 6 December 1978, and was passed with 87% of votes in favour and 7% against, though 32% of potential voters chose to abstain.

The debates that dominated the constituent process largely centred on the same issues that had plagued the Second Republic, but on this occasion they were dealt with far more pragmatically. Most remarkably, perhaps, the PSOE initially put forward an amendment that would have made Spain a republic, but once it was defeated by the other major parties (including the PCE, which had agreed to recognize Juan Carlos in return for its legalization), it quickly accepted the new parliamentary monarchy, though not without first ensuring that the king's future role would be largely symbolic.

Compromise also characterized the text's handling of church-state relations. The constitution boldly stated that "there shall be no state religion", thereby disestablishing the Catholic Church, and freedom of religion and worship were duly recognized. However, the same article acknowledged that the authorities "shall take the religious beliefs of Spanish society into account and shall in consequence maintain appropriate cooperation with the Catholic Church and other confessions." In effect, this would later allow the church to continue to receive generous funding from the state for its religious, cultural and educational activities; most controversially, it has also been interpreted to uphold the right of all children to receive religious instruction in public schools, as well

as the state's obligation to support Catholic schools financially (Brasloff, 1998, p. 95).

In its treatment of economic issues, the new text also sought to balance the preferences of the right with those of the left. On the one hand, it explicitly acknowledged the market economy and protected private property and inheritance rights against unlawful confiscation. At the same time, article 128 recognized "public initiative in economic activity," and stated that "essential resources or services may be restricted by law to the public sector, especially in the case of monopolies," and "intervention in companies may be decided upon when the public interest so demands." More remarkably, article 129 claimed that the authorities would "establish means to facilitate access by the workers to ownership of the means of production." Additionally, the constitution also contained guarantees of the right to strike and commitments to provide a broad range of social services, including social security, health, education, disability and unemployment benefits, as well as the promise of a more egalitarian distribution of income. Finally, the new text also contained echoes of the neo-corporatist philosophy still in vogue in much of continental Europe in the 1970s, as evidenced in article 131, which urged the government to "draft planning projects" in collaboration with trade unions and employers' organizations.

The most controversial constitutional compromise struck by Spain's political elites was undoubtedly that which sought to define a new territorial settlement. On the one hand, the founding fathers found it necessary to assert "the indissoluble unity of the Spanish nation, the common and indivisible country of all Spaniards," while at the same time recognizing the "right to autonomy of the nationalities and regions of which it is composed." (The term 'nationalities' was introduced at the suggestion of the Catalan nationalists, who would nevertheless have preferred the text to recognize the existence of a Catalan 'nation'.) Most importantly, the constitution included provisions regulating the devolution of powers from the central government to the so-called autonomous

communities, paving the way for the future development of a semi-federal State of Autonomies. However, this proved insufficient to win over the Basque nationalist party (PNV), which resented the fact that the region's ancient political traditions and fiscal privileges ('fueros') were to be updated "within the framework of the constitution" since in their view these were primordial rights that could neither be granted nor taken away by any Spanish constitution. As a result, the PNV refused to vote in favour of the constitution and recommended abstention in the December referendum, though its leaders clarified that they would nevertheless abide by it (Gunther, 2011, p. 29).

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The attitude of the PNV has been attributed to their non-participation in the subcommittee that produced the first draft of the future constitution, which represented a significant exception to the inclusiveness principle mentioned above. Although government representatives did their utmost to accommodate its demands later in the process, the PNV's exclusion from the early stages of the process – which many believe was self-inflicted – may well have given it an incentive to reject the final text. Whatever the case, the semi-loyalty of the PNV – and the blatant hostility of more radical Basque nationalist groups – inevitably undermined the legitimacy of Spanish democracy, a situation that was only slightly ameliorated by the granting of a generous statute of autonomy in October 1979, as discussed below.

THE POLITICS OF CONSENSUS AND ITS POSSIBLE CONSEQUENCES

The transition literature tends to underplay the fact that the period of consensus politics was relatively short-lived. As soon as the new constitution was adopted, Suárez decided to hold general and local elections in March 1979, in order to complete the democratization of the political system. In effect, this put an end to consensus politics at the national level. His new government spent much of that year negotiating statutes of autonomy for the Basque country and Catalonia, which were put to the vote in their respective regions in October 1979. In the Basque case, the statute was essentially the product of negotiations between the government and the PNV, which had emerged as the largest Basque party in the June 1977 elections. Most importantly, in spite of having refused to vote for the constitution, the PNV did support the statute, which the former had made possible. In the Catalan case, negotiations proved slightly more complex because they were multilateral, since the government had to engage with the regional branch of the PSOE – which had won most votes in the Catalan provinces in the general election – as well as the nationalists. Characteristically, Suárez refused to take credit for his efforts, with the result that UCD performed poorly in the first Catalan and Basque elections held in March 1980, with the nationalists emerging as clear front-runners in both contests. Spanish democracy might have been better served if the politics of consensus had been cultivated a little longer. The 1979 oil shock triggered another economic downturn, which generated fresh social unrest. The Catholic Church and employers' organizations became increasingly critical of Suárez, who was accused of "governing on the left with the votes of the right." In turn, this encouraged critics within his own party to question his leadership, with the result that UCD soon began to unravel. As democratization and Basque autonomy progressed, ETA upped the ante, claiming 64 victims in 1978, 67 in 1979 and a staggering 96 in 1980, a significant number of whom were police and military personnel. As intended, this led to

fresh sabre-rattling among the ultra right-wing sectors of the armed forces, which planned an unsuccessful coup in November 1978 and carried out a far more serious attempt in February 1981, which was aborted by the timely intervention of King Juan Carlos.

Given the difficulties experienced by Spanish democracy in 1979-81, it is ironic that critics have sometimes blamed consensus politics and the negotiated nature of the transition for many of its future shortcomings, real or imagined. Some have argued that, largely due to the absence of a 'ruptura democrática' (democratic break with the past), Spain's democracy has been 'contaminated' by the survival of institutions, values and attitudes which hail from the Franco era. Critics of the monarchy, for example, often claim that it was imposed on Spaniards as a result of the balance of power that existed in 1977-78, even though – as discussed above – it was put to the vote during the constituent process in May 1978. (These same critics conveniently forget that the republican form of government was adopted in 1931 without a referendum.) Similarly, the negotiated nature of the democratizing process has also been blamed for the absence of 'transitional justice' or the alleged failure to deal with Spain's political past in a manner acceptable to the victims of Francoist repression.

More importantly, perhaps, it has been claimed that negotiated transitions that use secret intra-elite negotiations and political pacts may result in 'frozen democracies'. Karl has suggested that, because pacts are intended to limit the uncertainty of the transition process, they tend to demobilize new social forces, circumscribe the participation of certain actors in the future, and "may hinder future self-transformation of the society, economy, or polity, thereby producing a sort of frozen democracy." In other words, pacts that may be positive during the transition may also compromise the future quality of the resulting system of government by (i) stifling political competition by concentrating power in the hands of a few elite actors; (ii) hindering democratization by retarding the development of civil rights and political liberties; and (iii) undermining popular

support for democracy by fuelling cynicism among the citizenry (Karl, 1987, p. 88).

The fact that Spanish democracy has undertaken – or at the very least, been fully compatible with – some very profound political, economic and social transformations should suffice to question the relevance of the 'frozen democracy' thesis. To name but a few, these have included the most far-reaching process of political and administrative decentralization experienced in post-war Europe; the development of a welfare state that provides universal healthcare, education, pensions and significant unemployment benefits; and the legalization of divorce, abortion and same-sex marriages, which in turn partly reflects the rapid secularization of Spanish society. Furthermore, recent research suggests that the relationship between the nature of a transition to democracy and the type of political system resulting from it is not as linear as the 'frozen democracy' thesis would suggest. For example, there is no obvious connection between the level of interest in politics (which has always been low in Spain) and whether or not the transition to democracy was negotiated or not (Encarnación, 2008, p. 48). Indeed, one of the most surprising lessons of the Spanish experience may well be the fact that the establishment of a new political system through consensual means does not necessarily result in a consensual democracy (Gunther, 2011, pp. 35-36).

POSTSCRIPT: WHITHER SPAIN?

Largely as a consequence of an unusually severe and prolonged double-dip recession (2008-2014), during which unemployment rose to 26% and social inequality reached alarming levels, in recent years the Spanish political system has come under unprecedented stress. In June 2014, public criticism of King Juan Carlos – hitherto regarded as a key protagonist of the transition settlement – forced his abdication. Partly as a result of their involvement in a succession of corruption scandals, traditional political parties have lost much of their credibility, generating considerable public disaffection. Additionally, the crisis has fuelled

doubts about the economic sustainability of the State of Autonomies, while the Catalan government's unexpected unilateral drive for independence has raised new questions about its political viability.

Unsurprisingly, this situation has led some to blame the transition settlement for Spanish democracy's current shortcomings, with a small minority claiming that only by overthrowing the political system designed in the 1970s will Spain be able to overcome the crisis. Admittedly, some aspects of the original transition settlement – such as the rigidity of the constitution,

which requires very large majorities to push through significant reforms –, may have contributed indirectly to the current impasse. However, the emergence of new political parties and the remarkable popularity of the new monarch, among other developments, suggest that the system is considerably more resilient (and flexible) than is often realised. In short, much of this recent criticism is both unfair and misleading, assuming as it does that the transition settlement was written in stone, as if subsequent generations of Spaniards had remained frozen in time.

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PAST INJUSTICES, MEMORY POLITICS AND TRANSITIONAL JUSTICE IN SPAIN

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INTRODUCTION

The Spanish transition has often been presented as one of the most peaceful and successful democratic transitions and praised as a model to follow. The traumatic memories of the population after a brutal Civil War and a long-lasting and cruel dictatorship were not easy to overcome. According to many authors, the basis for the peaceful and successful stabilization of democracy in Spain was precisely the decision to leave behind the thorniest aspects of the past. However, in recent years, different voices have been claiming that the Spanish transition was not as exemplary as it has been portrayed, mainly because it failed to provide justice and truth to the victims of Francoism, and because it left untouched certain institutions inherited from the dictatorship. Moreover, neither was it a peaceful process; indeed, political violence was present throughout the democratization period (Aguilar & Sánchez-Cuenca, 2009). However, what arouses greater criticism is the failure of the first socialist governments (1982-1996) to undertake a more comprehensive reparative policy for the victims of the Civil War and the dictatorship. Many of those who now hold this critical view also claim that it is still necessary to correct these shortcomings. Moreover, some human rights and victim groups have resorted to international jurisdiction as a means of obtaining the justice and truth denied to them in Spain.

In the first section, the paper summarizes the transitional justice (hereafter, TJ) and memory policies passed from Franco's death in 1975 until the

creation of the Association for the Recovery of Historical Memory (*Asociación para la Recuperación de la Memoria Histórica*, ARMH) in 2000. The second section deals with what we have called the 'post-TJ period', which started in 2000, reaching a peak in 2007 with the approval of the so-called 'Law of Historical Memory' (hereafter, LHM), and remains open today. Finally, some conclusions are presented.

TRANSITIONAL JUSTICE AND MEMORY POLICIES (1975-2000)

Franco's dictatorship started being dismantled upon the death of the dictator on 20 November 1975, although the legacy it had left behind still loomed large. According to the latest rough estimates, the Republican repression caused around 50,000 deaths during the conflict and the Francoist repression caused around 130,000 deaths (including an estimate of 50,000 after the Civil War) (Espinosa, 2010). Between 1936 and 1942, approximately 500,000 political prisoners passed through more than 100 concentration camps, and several tens of thousands of Spaniards were court-martialled (Rodrigo, 2003). At the end of the war, Spain's prison population was approximately of 270,000, while between 1940 and 1945 around 10,000 persons were deported to Nazi camps (Bermejo & Checa, 2006). During the conflict, around 30,000 children on the Republican side (the so-called 'children of the war') were sent abroad, many of whom never returned; while after the war hundreds of thousands went into exile, though a

significant number of them returned in the next few years (Alted, 2005). After a very exhaustive depuration process in the post-war years, thousands of people were forbidden from returning to their former jobs. Moreover, the Francoist regime denied economic support to war veterans, mutilated, widows and orphans of the defeated side, and only the relatives of the victims of Republican repression were allowed to exhume bodies from mass graves and obtained different sorts of official aid for reburying the remains in cemeteries. In contrast, those who fought or sympathized with Franco's forces were widely honoured, given preferential treatment in employment, granted compensation measures and pensions, provided with healthcare benefits and given the possibility of exhuming the bodies of their family members from mass graves to bury them properly.

After an almost forty year long dictatorship, political change in Spain came through a very long process of negotiation between the reformist sectors of Francoism and the different political forces of the democratic opposition. Soon after the dictator's death, some partial mercy measures for political prisoners were adopted invoking the spirit of 'national reconciliation'. In July 1976, the first government of the monarchy passed a Royal Decree-Amnesty Law releasing political prisoners "if they had not put in danger the life or the integrity of other persons." However, this measure was so restrictively enforced by the extremely conservative judiciary of the time that it had to be later complemented with some additional mercy measures. After the democratic elections of June 1977, the first law approved by parliament was precisely an Amnesty Law that covering crimes of a political nature led to the release of most of the few political prisoners still captive. More interestingly, it also amnestied those who had been sentenced for committing crimes involving bloodshed until 15 December 1976; and between that date and the

democratic elections when it was possible to prove that the crimes had been committed while furthering the reestablishment of public liberties or vindicating territorial demands. The practical majority of the political parties, except the heirs of Franco (Alianza Popular, AP), supported a very ample amnesty that covered not only the actions committed by the groups opposing the dictatorship, but also the violations committed by the officers of the regime. This law is still considered by many today the quintessence of 'national reconciliation' in Spain.

The decision not to undertake punitive measures against human rights perpetrators came with the establishment of several compensatory policies for the defeated that, material in nature, were the sole reparation measures undertaken by the new democratic government. From 1976 until 1984, seven different laws were passed providing some form of economic support or/and rehabilitation to different categories of beneficiaries from the Republican side (including war wounded, widows and orphans, and members of the military and the forces of public order).¹ The intention of these measures, which were never part of a comprehensive policy aimed at dealing with the legacy of the repressive past, was neither to establish the truth nor to obtain justice. In broad terms, these policies began granting compensation to the victims of war that had not received reparation during Francoism – recognizing the "unequal treatment that was given to the defeated, and offering them the same rights of the victorious" – and only later as those of Francoists. Indeed, it would only be in 1986, when the members of the military who had received sentences under Francoism recovered their active rights, that one of the most important gaps of the Amnesty Law was finally amended; i.e. the reincorporation in the army of those who were members of the Democratic Military Union (Unión Militar Democrática, UMD). The fact that it took nine

1. The collective memory of the Civil War, the legacies of Francoism, and the TJ policies adopted since Franco's death have been studied in length by Aguilar (2008a). See also, Aguilar & Ramírez-Barat (2014).

years after the Amnesty Law to adopt such a measure reveals the power that the military retained during the first years of democracy. Finally, in 1990 the State General Budget Law granted compensation measures to those who had spent time in Francoist prisons for the first time.

Despite the implementation of these reparative measures, in sharp contrast with other countries that have democratized recently, none of the following policies were undertaken in Spain, either during the democratization period or (with some exceptions, as will be seen) afterwards: trials; vetting;² restitution of individual property;³ truth-seeking; and symbolic reparations.⁴ As a result, several national and international organizations have pointed out that the Spanish state is ignoring important obligations recognized by international law, including investigating, judging, sanctioning and redressing gross violations of human rights.⁵

POST-TRANSITIONAL JUSTICE POLICIES AND MEMORY IRRUPTIONS⁶ (2000-2013)

After the implementation of the very tentative measures cited above, the agreement of leaving the thorniest aspects of the past behind was respected for many years. However, decisions to sidestep history tend to be revised, and memory irruptions are inevitable with generational change and the passage of time. In fact, since 2000 we have witnessed the emergence of a post-TJ process in Spain that has transcended the institutional arrangements established during the transitional phase. While there

may be additional reasons, there is a series of factors that can help to explain the emergence of this post-TJ phase.

Since 2000 we have witnessed the emergence of a post-TJ process in Spain that has transcended the institutional arrangements established during the transitional phase. The generational change has proved to be a crucial variable.

To begin with, and as this paper emphasizes, the generational change has proved to be a crucial variable. As mentioned, the 'third generation' that brought this issue back to the forefront of the public sphere has grown under a stable democracy, is devoid of guilty feelings and fears of their predecessors, and feels much more identified with the international legal framework and with the language of human rights (Aguilar, 2008b). An important part of this generation of 'grandchildren' of those who lived through the war believes that challenging the institutional arrangements made during the transition is not going to destabilize the political situation, and considers that the time has come to fully compensate the victims of Francoism and to give them public recognition for their suffering.

The second factor is the creation in 2000 of the ARMH, as well as various other organizations estab-

2. The only measures eventually taken in this respect were the early retirement of some judges and military personnel, and the reallocation and reform of the police forces.

3. There have only been a couple of laws to reconstitute the property rights of political parties and unions: in January 1986, a law established the return of seized properties to unions; and in 1998 another law restituted goods that had been stolen from political parties.

4. Several monuments honouring the victims of the dictatorship have been built in recent years, but only at the local level.

5. For the normative framework, see *Updated set of principles for the protection and promotion of human rights through action to combat impunity*, Report of the independent expert Diane Orentlicher, ECOSOC, Commission on Human Rights, Sixty-first session, agenda item 17, U.N. Doc. E/CN.4/2005/102/Add.1 (2005) and *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, G.A. Res. 60/147, Sixtieth Session, agenda item 71, U.N. Doc. A/RES/60/147 (2005).

6. We have borrowed this fortunate expression from Alexander Wilde, *Irruptions of Memory. Expressive Politics in Chile's Transition to Democracy*, 31/2 J. LAT AM STUD, 473 (1999).

lished in recent years, in most cases, by families of victims of the war.⁷ All of these groups have very strongly advocated the recovery of the 'silenced' memory of the Republican victims. In particular, the ARMH, founded by the grandchildren of Republicans, has promoted many successful exhumations all over Spain, and a handful of initiatives vindicating the recovery of the memory of the victims of the Civil War and Francoism that have played a key role in providing visibility to justice claims in the public space (Ferrándiz, 2010). Their initiatives have been very important for shedding light on the Francoist repressive machinery and have contributed to raising awareness at the national and international levels about the existing lacunae in terms of victims' reparation in Spain.

Thirdly, a strategic political turn took place in the Partido Socialista Obrero Español (Spanish Workers' Socialist Party, PSOE) after it first lost power in 1996, following four legislatures in office (1982-1996) during which the legacy of the past was mostly ignored. When the main conservative party, the Partido Popular (Popular Party, PP), took office under president Jose María Aznar, the leftist, Catalan and Basque nationalist parties tried to stigmatize it for its Francoist

roots. This process was particularly active during the second PP government (2000-2004) (Aguilar, 2006). The initiatives presented or supported by the PSOE during that period established a precedent difficult to ignore when it later regained office in 2004. The fact that the PSOE, this time lacking a parliamentary majority, needed the parliamentary support of parties that were much more determined to give a strong drive to these issues (especially the parties on the left of the political spectrum, Izquierda Unida (IU) and Esquerra Republicana de Catalunya (ERC), also helps explain the important policies that were approved after 2004 (Aguilar, 2008b).

Fourthly, the consequences derived from the evolution of international human rights and international criminal law frameworks and the lobbying efforts of INGOs, such as Amnesty International, but also international institutions such as the United Nations,⁸ the Council of Europe⁹ and the European Parliament, have also proved to be very relevant.¹⁰ Following the work of the Committee of Enforced Disappearances, the official visit to Spain in January 2014 of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Mr. Pablo de Greiff, significantly increased the pres-

7. Although the ARMH is the best known of these victims' organizations, there are many others, including Forum for the Recovery of Memory (Foro para la Recuperación de la Memoria, created in 2002), Friends of the International Brigades (Asociación de Amigos de las Brigadas Internacionales, founded in 1995), or the Exile Association (Asociación de Descendientes del Exilio, founded in 2002), as well as various former prisoners, ex-combatants, and 'children of the war' groups, some of these founded in the beginning of the transition.

8. Responding to a report submitted by the ARMH, in 2003 the UN Human Rights Committee (HRC) included Spain among the countries with cases of forced disappearances. Although so far the Committee has only recognized two cases of disappearances in Spain, it deals only with disappearances after 1945, whereas the vast majority of the cases in Spain are between 1936 and 1940. Still, in 2009, the HRC called on Spain to revoke the 1977 Amnesty Law; See *Consideration of the Reports Submitted by States Parties Under Article 40 of the Covenant on Civil and Political Rights*. Concluding observations of the Human Rights Committee, Spain, Human Rights Committee, Ninety-fourth session, U.N. Doc. CCPR/C/ESP/CO/5 (2009). In September 2013 the Working Group of Enforced and Involuntary Disappearances made an official visit to Spain. In its preliminary observations, the Working Group called on the government to fully implement the LHM, prepare a national plan to search for the disappeared, repeal the amnesty law and prosecute forced disappearances in Spain. See *Observaciones preliminares del Grupo de Trabajo sobre las Desapariciones Forzadas o Involuntarias de la ONU al concluir su visita a España*, 30 September 2013. In parallel to this process, and following a request presented by AEDIDH and RIS at the UN, in December 2012 Spain submitted an official report to the Committee of Forced Disappearances. The committee examined the report in November 2013 and, once again, requested the government to take all the measures necessary to ensure the investigation of forced disappearances in Spain (see *Observaciones finales sobre el informe presentado por España en virtud del artículo 29, párrafo 1, de la Convención*, advanced version, Committee of Enforced Disappearances, 5th period of sessions, 4-15 November 2013). However, the Spanish Ambassador in Geneva reiterated that Spain would not revise the amnesty law.

9. On 17 March 2006, the Permanent Commission of the Parliamentary Assembly of the Council of Europe unanimously approved the condemnation of the Franco regime and urged the Spanish Government to honour its victims. See EUR. PARL. ASS. Recomm. 1736 (17 March 2006); and Reply of the Committee of Ministers, Eur. Parl. Ass. 963rd Sess. Doc. No. 10930 (2006).

10. On 4 July 2006, the majority of the political groups in the European Parliament expressed their condemnation of the Franco regime, while in November 2012, the European Parliament urged the Spanish Government to assist the daughter of a man killed by Francoist forces to find the remains of her father (Junquera & Albert, 2012). In October 2013, the European Parliament again condemned the Francoist dictatorship, underlining the right of the victims to historical memory, truth, justice, and reparation.

sure on the government. In a preliminary statement issued after his visit, Mr. de Greiff warned of the great distance between the government and victims' groups, and called on the government to revise the Amnesty Law and adopt a series of measures to provide justice to the victims of the Civil War and Francoism.¹¹

Finally, the importance of fortuitous events, such as anniversaries, should not be underestimated.¹² Among them, a crucial episode is what has been called the 'Pinochet effect'. The consequences of the detention in London in October 1998 of the Chilean dictator – on the initiative of the Spanish Judge Baltasar Garzón – have been abundantly outlined in the literature for explaining the recent developments of the Spanish case (Golob 2008; Encarnación, 2008).

Measures Approved from 2002 to 2013

On 20 November 2002, the Constitutional Commission of the Congress of Deputies unanimously approved a declaration stating that “no one could feel legitimated to use violence with the aim of imposing political convictions and establishing totalitarian regimes,” and urging the government “to develop an integral policy of recognition for those exiled as consequence of the Civil War” (Parliament, 2002). Only one year later, as part of the commemoration of the 25th anniversary of the Spanish Constitution, the Congress organized an act of tribute to the victims of the dictatorship. The homage was not endorsed by the PP, the governing party at the time, arguing that the parties of the opposition were breaking the verbal agreement reached in 2002, according to which if the PP was for the first time in its history “to condemn Francoism”, the political left would have to accept in turn “never to use this subject again for political confrontation.” Not surprisingly, only some weeks earlier, the PP had also opposed an initiative submitted by Eusko Alkartasuna (EA) – and endorsed by the

PSOE and IU, among other parties – requesting the government to assist and provide recognition to the victims of the Civil War and the dictatorship, facilitate access to the archives containing information about the war, support the exhumation of the remains buried in mass graves and reassess the pensions of the ‘children of the war’ (*El País*, 15 October 2003).

Taking on these demands and several that followed, after the PP lost the elections in March 2004, and only two months after Jose Luis Rodríguez Zapatero started his presidency, the Congress approved a non-law proposition requesting the government to undertake a study regarding the legal situation of the victims of the Civil War and the dictatorship's repression and to advance proposals for ameliorating their economic condition. Moreover, the motion urged the government to facilitate access to private and public archives containing relevant information of the repression, and to submit a draft bill of solidarity with the victims who suffered personal harm during Franco's regime while trying to exercise the civil liberties that would be later recognized in the Constitution (Parliament, 2004). To undertake these requests, the government appointed the so-called ‘Interministerial Commission for the Study of the Situation of the Victims of the Civil War and Francoism.’¹³ The commission, chaired by the vice-president of the government, was given the mandate to undertake the above-mentioned study and submit recommendations on the matter before the end of the year. For this purpose, it was granted a budget of €5 million, part of which was to be used to fund the exhumation projects that were already being carried out with private funds by civil society associations.

Following the creation of the commission, several additional measures were taken in response to the increased number of petitions that, from June 2004,

11. Preliminary Observations by the United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence after his visit to Spain, Madrid, 3 February 2014. See <http://www.ohchr.org/EN/Issues/TruthJusticeReparation/Pages/Index.aspx>

12. Including the 25th, 30th and 35th anniversaries of Franco's death; the 70th and 75th anniversaries of the beginning of the Civil War; the 75th and 80th anniversaries of the proclamation of the Second Republic; and 70th anniversary of the end of the Civil War.

13. State Gazette. Royal Decree 1891/2004, for the creation of the Interministerial commission for the study of the situation of the victims of the Civil War and Francoism. BOE, 227 (2004, September 20), pp. 31523-31524.

some groups submitted to the parliament. In January 2005, after a long negotiation with associations representing the children of the war, the government approved an increase in their pensions and improved the healthcare access of those who were still living abroad (*El País*, 22 January 2005). Some months later, a Royal Decree was passed requesting the transfer of the documents that were seized in Catalonia after the Civil War by Franco's regime, and since then kept in the General Archive of the Spanish Civil War (in Salamanca).¹⁴ Finally, in 2006, and partially reflecting this increasingly positive situation, the Congress approved a law-proposition from the IU declaring 2006 as the *year of historical memory*.

On 28 July 2006, the Interministerial Commission submitted to parliament two reports (one regarding the situation of the victims and a second one on archives [2006; 2006a]) and a draft law. The submission of the bill initiated a long and complex negotiation process between the PSOE and the rest of the political parties. While the PP manifested strong opposition to the law, the leftwing parties and some human rights and victims' groups criticized the inadequacy of the proposal (Amnistía Internacional, 2006; Aguilar, 2008b). The bitter debates in parliament soon reverberated in the media, involving many public figures and academics (especially historians).

However, despite the existence of this very clear two-sided confrontation in the political space, the truth is that the average Spaniard was hardly involved in the discussion.

Finally, an amended version of the original text was approved on 31 October 2007. Two groups opposed the law: the PP and ERC (which, although it was initially one of its main promoters, finally refused to endorse the law because it did not declare null the trials of the Franco era).

Law of Historical Memory, passed in 2007, regulated four different issues, including reparations, the exhumation of mass graves, the removal of Francoist symbols and the question of access to archives.

Law 52/2007, which recognizes and expands the rights, and establishes measures in favour of those who suffered persecution or violence during the Civil War and the dictatorship (or the so-called 'Law of Historical Memory') was passed by the Senate on 10 December 2007. The final text, which was to establish the framework for the implementation of politics of memory in Spain, included in the end some of the demands of the left that exceeded the initial intentions of the government. Broadly speaking, it regulates four different issues including reparations, the exhumation of mass graves, the removal of Francoist symbols and the question of access to archives. Five different ministries have participated in its implementation and several additional legislative measures were adopted after its entry into force to develop further some of its provisions. It should be noted, however, that while the law constitutes the most comprehensive attempt to date to address the violent and repressive past in Spain, its coming into being and later implementation were marked by the radical opposition of the PP, the deep disappointment of many victims' groups, and the inhibition of the majority of Spanish society, which, as a consequence of the prudence inherited from its traumatic past, has recurrently showed a tendency to keep a distance when confronted with a sharp two-sided debate on this matter. A brief explanation of each of

14. Royal Decree 2134/2008 regulating the procedure whereby to return documents confiscated during the Civil War to private citizens. BOE, 9 (2009, January 10), pp. 3411-3415.

these points will follow, including the principal lines of action that were taken by Rodríguez Zapatero's government.

Reparatory Measures. The bulk of the articles of the law establish different compensation measures and recognize some categories of beneficiaries that were not included in previous reparatory laws, also standardizing some situations that were hitherto differently addressed by the Autonomous Communities. Especially interesting is the fact that, for the first time after the transition, the law granted reparations for those who died while “defending the Spanish democracy” between 1 January 1968 and 6 October 1977.

In terms of symbolic reparations, the law declares the illegitimacy of all the tribunals that were created on political, ideological or religious grounds during the Civil War and the dictatorship. Additionally, it recognizes the right of the victims to obtain a “declaration of reparation and personal recognition” issued by the Ministry of Justice. This measure was highly contested at the time, for many were expecting that the law would declare the sentences of the Francoist tribunals null and void. Other fundamental symbolic measures included in the law was the granting of Spanish nationality both to the members of the International Brigades who fought on the Republican side during the war, and to the descendants of those who were forced into exile between 18 July 1936 and 31 December 1955. In 2011, the Senate approved another disposition, long requested by memory associations, according to which those who disappeared during the Civil War and the Dictatorship were to be included in the civil registry as deceased.¹⁵

The issue of the mass graves. One of the key issues regulated by the law was the location of mass graves and the identification of the remains of those who were killed during the Civil War and its aftermath. This was important not only because it constituted

one of the major demands of victims' associations, particularly after the re-eruption of memory issues after 2000, but also because until today there has not been any official attempt to locate and identify the thousands of bodies that are still buried all over the national territory. While civil society associations had been particularly active in the location and exhumation of mass graves, this activity had been mostly carried out in an ad hoc and private manner. Consequently, many families have had to surmount administrative and legal challenges to access the places where the burials are located in addition to the mere financial ones. The law tackled the issue along three lines: the commitment of the government to draft a protocol for the exhumation of the remains, the development and publication of a national map of mass graves, and the establishment of a programme to economically support such activities. However, the law still left the task of exhuming and identifying the remains in the hands of civil society. Victims' associations and human rights groups heavily criticized this provision (Ferrándiz, 2012).

In December 2008, the government passed a law announcing the establishment of an Office for the Victims of the Civil War and the Dictatorship that, among other tasks, was mandated to produce a “protocol of scientific and interdisciplinary action for the exhumation of mass graves and the production of an integrated map covering the national territory of the inhumation sites.”¹⁶ In May 2011, a still-incomplete map of mass graves was made available online.¹⁷ Finally, on 23 September 2011, with a four-year delay, an exhumation protocol was approved. However, it has to be said that the idleness of the central government in this respect contrasted with the approach taken by several Autonomous Communities in this same matter, especially Catalonia, Andalusia, Navarra, and the Basque Country.

15. Law 20/2011, BOE 175 (22 July 2011): 81468.

16. Order PRE/3749/2008, by which publicity is given to the council of ministers concerning the establishment of the Office for victims of the Civil War and the dictatorship. BOE, 309, (2008, December 24), pp. 51900-51901.

17. See <http://www.memoriahistorica.gob.es>.

Although the law did not recognize the state's responsibility for the exhumation of the mass graves of the Civil War, it did establish, however, some provision for economic support. Starting in 2005, the socialist government passed an annual call for applications, with the general aim of "promoting the recovery of the collective memory and the moral recognition of the victims of the Civil War." Addressed at associations, foundations, universities, among others, the grants served to finance a variety of projects including the compilation of censuses of the disappeared, exhumations, celebration of tributes, compilation of documents and oral testimonies, production of documentaries, celebration of exhibits and publications. This support was, however, sharply interrupted after the PP won the elections in 2012. While in 2012 the government reduced allocated funds by 60%, in 2013 the line was eliminated from the budget. This explains why associations are now resorting to crowdfunding to at least continue with the exhumations, which is a serious backward step in the reparation process.

Removal of Symbols. The removal of symbols commemorating the military rebellion or the Francoist repression – except in those cases in which such symbols have artistic or religious relevance – was also contemplated in the Law. Although the PSOE government undertook important measures to remove a significant amount of symbols, the application of this measure has been irregular all over the country. In particular, there has been strong resistance in some municipalities to remove monuments and change the names of the streets. The leftist parties, ERC, IU and ICV, have recurrently raised this concern in parliament. Among the symbols of the Francoist past, the Valley of the Fallen – a religious-funerary monumental complex in which Franco is buried – has a quintessential standing. The complex is at the same time a mass grave holding the remains of 33,847 victims of the Civil War. The LMH provided that the Valley of

the Fallen "shall not be used to celebrate political rallies", while an additional disposition succinctly states that "the Management Foundation of the Valley of the Fallen will include in its mandate to honour and rehabilitate the memory of all those who died during the Civil War or as the result of the later political repression." On 27 May 2011, the Council of Ministers created an 'Expert Commission for the Future of the Valley of the Fallen', composed of eleven experts and chaired by the Ministry for the Presidency. Five months later, the Commission submitted a report with several recommendations, all of which except one – the relocation of the remains of Franco in a private cemetery – were agreed upon by all of its members. Two years after the submission of this report, however, not a single recommendation has been implemented. On the contrary, in May 2013 the PP government announced a project to restore the portal of the basilica where Franco was buried.¹⁸ We also have to take into account that, given the religious nature of the Valley, any change in the monument would have to be authorized by the Catholic Church, whose reticence towards digging into the Civil War and the dictatorship is well known.

The archives. The final set of issues regulated by the LMH relates to the preservation and access to private and public archives that contain information about the war. To date three steps have been taken in this direction. In 2008, an instruction was approved to regulate the access to death certificates from the civil registry dependent on the General Office of Registries and Notaries (Dirección General de Registros y Notarías). In 2009, the government passed a Royal Decree regulating the Military Judicial Archives, and finally in November 2011, a decree regulating access to the State Archives. Before the general elections of November 2011, the socialist Minister of Defence promoted the declassification of around 10,000 documents from the Judicial Military Archives

18. In October 2013, the PP government rejected a parliamentary motion in favour of undertaking the recommendations of the experts' commission, alleging that Spanish society is not ready to face its past and that any step in this direction would reopen old wounds.

dating from 1936 to 1968; however, in May 2012, the Ministry of Defence of the new rightwing government announced the cancellation of the process alleging potential diplomatic conflicts. In any case, a crucial obstacle for obtaining information on Francoist repression is the fact that the Law of Official Secrets (Ley de Secretos Oficiales), which regulates access to archives and official documents, was passed by the dictatorship in 1968. An additional problem is the deliberate destruction of certain archives directly linked with the repression during the first democratic government ordered by the Ministry of the Interior, Rodolfo Martín Villa.

Finally, regarding the preservation of archives, the law established the setting up of the Historical Memory Documentary Centre and the General Archive of the Civil War, and declared such collections part of the documentary and bibliographic national heritage (González Quintana, 2001). Located in Salamanca, the Centre hosts an impressive collection of materials relating to the war and the Francoist repression.

Judicial Initiatives

Disappointed with the law and the evolution of the process, on 14 December 2006 five organizations of families of disappeared during the Civil War and under Francoism presented a series of claims at the Audiencia Nacional (National High Court, AN). According to the proceedings issued by the Prosecuting Judge, Baltasar Garzón, on 16 October 2008, these claims denounced “alleged crimes of illegal detention under the framework of a systematic and preconceived plan to eliminate political opponents through multiple deaths, torture, exile and forced disappearances from 1936, during the years of the Civil War and the post-

war, which took place in different geographical spots of the Spanish territory.”¹⁹ While the Prosecutor of the AN considered that the alleged crimes were ruled by the Amnesty Law of 1977, Garzón declared himself competent to investigate 114,266 disappearances that occurred during the Civil War and Francoism, stressing that the facts had never been judicially investigated before in Spain.²⁰ With this move he was admitting the claims presented by twenty-two families of disappeared persons, formally accusing 35 members of the leadership of Francoism of the alleged crimes and authorizing the exhumation of nineteen mass graves.

The decision of the judge came as a big surprise to many, as the possibility of opening judicial proceedings against Francoism had never before been (seriously) considered. Garzón's position was appealed by the Prosecutor of the AN. As a response, Garzón issued a new order declaring the extinction of the criminal responsibility of the accused, for they had already deceased, recusing himself from the proceedings and transferring the case to the territorial courts of the places in which the mass graves were located.²¹ Ten days later, the Criminal Chamber established the incompetence of the judge to investigate the crimes.

Besides the enormous reaction that Garzón's action triggered in Spanish public opinion, the issue acquired another dimension when the ultra-right-oriented trade union, Manos Limpias, presented a complaint against Garzón for intentionally issuing an unjust judgment (*querrela por prevaricación*) before the Supreme Court that led to the opening of a proceeding against the judge.²² While the PP manifested its strong support for the proceedings

19. *Diligencias Previas-Proced. abreviado 399/2006 V*, A. N., Juzgado Central de Instrucción No. 5, 16 October 2008. It should be noted that in the Spanish case the term disappeared refers to those who were extra-judicially executed and whose bodies, buried in mass graves, have not been identified; although in most cases there is either official record or oral testimony about the execution (Ferrándiz, 2010).

20. See *Dictamen de la Fiscalía de la AN que concluye en la no admisión a trámite y la solicitud de archivo de las denuncias presentadas por algunas asociaciones de víctimas del franquismo*, A. N., General Fiscalía No. 00757/2007, Juzgado de Instrucción No. 5, DP 399/2006, 19 January 2008; and *Diligencias Previas Proc. Abreviado 399/2006 V*, A. N., Juzgado Central de Instrucción No. 5, 16 October 2008, and *Diligencias Previas Proc. Abreviado*, A. N., Juzgado Central de Instrucción No. 5, 0000399/2006 E, 17 October 2008.

21. *Sumario (Proc. Ordinario) 53/2008 E*, A. N., Juzgado Central de Instrucción No. 5, 18 November 2008.

22. *Causa Especial No. 20048/2009*, T.S., Sala de lo Penal, 3 February 2010.

(Lázaro, 2009), the situation aroused unprecedented discontent among Spanish society (Coli & Montañés, 2010a; 2010a). On 24 April, a widespread demonstration supporting Garzón was organized in more than twenty Spanish cities. Significantly, these demonstrations turned into the first mass mobilization in homage to the victims of Francoism. When, two weeks later, the body governing judicial power in Spain declared the preventive suspension of the judge, the issue acquired an international dimension. Reflected in international media, several human rights organizations declared their public support to the judge, while a group of internationally renowned legal organizations signed a joint petition requesting the UN to intervene.²³ In Spain, memory associations strongly expressed their preoccupation, together with prominent figures of the legal profession. At the political level, several parties reacted by requesting parliament to modify the Amnesty Law, so as to exclude crimes against humanity from its rulings (*El Mundo*, 20 April 2010). All their motions were, however, rejected by both the PSOE and the PP.

The trial against Garzón started on 24 January 2012 accompanied by daily demonstrations outside the Supreme Court. As some commentators emphasized, the proceedings against Garzón made it possible for the families of victims of the Civil War to have their cases heard in a courthouse of Spain for the very first time in history. Finally, on 27 February, the Court issued a sentence clearing Garzón of abuse of power, considering, however, that he had misinterpreted the law and hence closing the possibility of any further investigation of the alleged crimes in Spain (Yoldi & Lázaro, 2012).²⁴ Following this sentence, the Supreme Court also ruled in favour of the competence of local level courts to decide about the mass grave issue, considering that, although the

families of those anonymously buried could request the exhumation through legal procedures for identification purposes, the alleged crimes could not be considered crimes against humanity (Lázaro, 2012b). As a consequence, from that moment on, the legal power to exhume mass graves would depend on the position of particular courts, instead of following a national policy. The situation became even more adverse for the families of the victims when the European Court of Human Rights (ECHR) declared non-admissible the first claim ever brought in front of such a tribunal regarding a Civil War disappearance. Echoing the arguments of the Spanish judiciary, the ECHR considered that the claim had been presented too late according to formal proceedings (Lázaro, 2012a).²⁵

The closure of Spanish (and European) judicial venues triggered a radical change in the strategy of victims' associations. Everything took an unexpected turn when, following a procedure that was presented in 2010 at the Federal Chamber of Buenos Aires (Gallego-Díaz, 2010; Junquera, 2010), the judge in charge of the case, María Servini, decided in September 2013 to officially request the extradition of four members of the Francoist security forces under alleged charges of torture (Delicado, 2013). In contrast to Garzón's proceedings, which were against the already deceased members of the Franco regime's upper echelons, this case, in which two of the alleged perpetrators are still alive and in which the crimes they are accused of were committed in the 1970s, raised the hopes of victims' groups and importantly contributed to catalysing their coordination, as will be seen, in a renewed and stronger stance against impunity (Vélez, 2013). While after a long proceeding in which the PP again showed its clear opposition to the use of judicial means to correct the abuses of

23. Re: *Judge Garzón. Formal Complaint for Consideration and Action from LRWC, ECCHR, ALRC, LWBC, CCR, FIDH, NLG, IADL and OMCT*, 20 May 2010, http://www.alrc.net/PDF/Garzon_UA_to_SRs.pdf

24. While not a consequence of this case, on 10 February Garzón was sentenced to 11 years of disqualification accused of being responsible of using illegal wiring to uncover a corruption case of the PP (Lázaro, 2012c).

25. See also *Antonio Gutiérrez Dorado and Carmen Dorado Ortiz v. Spain*, *Eur. Ct. H. R. Third Section, App. no. 30141/09, decision (2012)*.

power of Francoism, in April 2014 the National High Court rejected the extradition to Argentina of the two alleged perpetrators (while inviting the opening of a case in Spain) (Jiménez Gálvez, 2014), Judge Servini continued with the proceeding travelling to Spain in May of 2014 to gather testimony from four victims of Francoism (*El Mundo*, 18 May 2014). In parallel, another recent and unexpected achievement has been the admission by a Catalan court of the first criminal case related to the Civil War: the bombing of Barcelona by 21 Italian pilots of the Aviazione Legionaria (García, 2013).

Finally, another important development in the judicial arena is the so-called issue of the 'stolen children'. In one of the decisions Garzón issued in 2008, he warned about the existence of a 'systematic plan' of removal of children of Republican families, whose parents, considered 'ideologically' inadequate to raise their children, were dead, in exile, detained or disappeared. Once removed from their families, the children would come under state supervision and their names changed (Vinyes, 2002; Vinyes, Armengou & Belis, 2002; Rodríguez Arias, 2008). According to Garzón (who estimated around 30,000 cases) these facts would not only constitute crimes against humanity not covered by the Amnesty Law of 1977 but, as he argued, most of the victims would still be alive. Accordingly, he requested the State Prosecutor and the competent judges to investigate the crimes, punish those responsible, and compensate the victims (Yoldi, 2008).

On 5 November 2010, three local courts referred the cases back to the AN, considering that the crimes should be dealt with under its jurisdiction, since they constituted crimes against humanity (Vázquez & Barcala, 2010). Although the Prosecutor of the AN considered that the Court did not have the competence to investigate these crimes, the pressure exercised by the Plataforma Grupos Afectados de Clínicas de

toda España de la Causa de Niños Robados (Platform of Hospital Groups from all over Spain Affected by the Case of the Stolen Children) – which had collected documentation of more than 300 cases of disappeared children – led him to request the Ministry of Justice to create an office to coordinate through administrative means the demands of the affected persons (*Público*, 7 December 2010). The case entered a new phase when a second group, the Asociación Nacional de Afectados por Adopciones Irregulares (National Association of those Affected by Irregular Adoptions, ANADIR), presented a claim before the State Prosecutor, reporting around 261 cases of children allegedly stolen in private and public hospitals all over Spain between 1920 and 1990. They accused the professionals of these centres (many of which were administered by the church) of deceiving the mothers by telling them that the children were stillborn, and then giving them into illegal adoption to other families (*Público*, 27 January 2011).²⁶

The proceedings regarding this second case started in March 2011 in Madrid. By June 2011 there were 849 investigations open all over Spain (*Público*, 17 June 2011). In April 2012, the government announced its intention to create a census of those affected by this particular situation. Still in a design phase, the census will allow both parents and children looking for their biological relatives to cross-reference information (*El País*, 12 April 2012). In October 2012, in relation to a case from the 1970s, a judge established for the first time that the crime of stealing children is not subject to statute of limitations (*El País*, 5 October 2012). This decision was seconded by the State Prosecutor, who developed a policy on how to deal with these cases that was distributed to all public prosecutors (Junquera, 2012). In September 2013, the association Todos los Niños Robados son También Mis Niños (All Stolen Children are also

26. The relation between these two cases, however, is highly contested. Some consider that the first set of cases was the direct result of the Francoist repression, but that the second set constituted mere criminal acts (and hence the systematic participation of the state would not be clear); others claim that both issues would naturally be concatenated.

my Children) presented a judicial complaint joining the Buenos Aires lawsuit (Rebossio, 2013).

Social Initiatives

During the first twenty-five years of democracy, politics of 'national reconciliation' prevailed. In the political sphere, this meant the avoidance of the thorniest aspects of the Civil War and the Francoist repression, while in the social sphere only very low profile initiatives took place.²⁷ All throughout this period, Spain centred all its efforts on the economic modernization of the country and the political stabilization of the new democratic system.

However, as time passes and new generations emerge in the political sphere, the repressed memories of the traumatic past have a tendency to re-emerge. Indeed, in the past 14 years the violent legacy of the Civil War and the dictatorship has strongly irrupted in the public space. Starting in 2000, when families of the victims began to organize – notably represented by the March of Memory (Caravana de la Memoria), formed by several victims' groups that travelled all over the country to tell their stories –, and managed to insert their demands into the political agenda of some of the leftist and nationalist parties, Spain has witnessed a gradual irruption of its most recent and tragic history. A solid – albeit very fragmented and, often, strongly confronted – nationwide associative movement (also known as 'movimiento memorialista') has been consolidating during the past years, and some public initiatives – particularly in some autonomous regions such as Andalusia, the Basque Country and Catalonia – have helped bolster a movement that has reverberated in the public space in the form of films, books, research projects and photography or history exhibits about the war and the dictatorship.

The perseverance of the families of those who suffered the repression of Francoism, and especially their struggle to locate, exhume, identify and rebury the remains of their loved ones, has played a fundamental role in moving this process forward. According to recent figures, between 2000 and 2012, more than 300 mass graves have been exhumed and more than 5,700 bodies have been recovered (Universidad del País Vasco, Sociedad Aranzadi and Ministry of Presidency, 2012). Within the same process, and partly made possible by the existence of public subsidies since 2005, there have also been an increasing number of initiatives, especially at a local level, to vindicate the memory of the victims through symbolic means in streets, squares and cemeteries all over the country.

During the first 25 years of democracy, politics of 'national reconciliation' prevailed. In the political sphere, this meant the avoidance of the thorniest aspects of the Civil War, while in the social sphere only very low profile initiatives took place.

In parallel to the recovery of memory, the most recent developments in Spain have also clearly articulated a message of recognition that was absent before. However, and in spite of the important steps taken, the LMH had very important gaps; particularly, though not exclusively, for not assuming the possibility of annulling Francoist sentences and for leaving in the hands of civil society the exhumation of mass graves, instead of putting in place a nationally

27. As already stated, associations related to the Civil War, exile, and so on, began to emerge at the beginning of the transition. After Franco's death some exhumations took place and a few monuments honoring the Republicans were built in some villages. But these initiatives had a very spontaneous and private character, failed to obtain the support of relevant national organizations (such as parties and unions), received no public support and only took place at the local level. This explains why these did not achieve national resonance, in sharp contrast with the second wave of exhumations that began to take place in 2000. This silence refers both to the social and political realms, not to the cultural one, where the memory of the Civil War and Francoism has been the object of great attention for a long time (Aguilar, 2006).

coordinated policy. It is thus not surprising that some political groups kept presenting new – though unsuccessful – proposals before parliament, both during Zapatero's second term of office (2008-2011) and in the current PP legislature (from 2011), seeking to advance the agenda of this memorial movement in the political sphere. Similarly, the fact that, despite the immense social reaction that the proceeding caused, Garzón is the first person who has stood trial in a matter related to Francoism, is more than telling. In the current climate of economic uncertainty, together with the political change operated both at the national level and in some autonomous communities, victims' associations are witnessing, with despair, how some of the steps taken have been interrupted or even reverted.

Indeed, one of the first measures adopted by the PP government was the closing of the Office of Attention to Victims of the Civil War and the Dictatorship, and eventually ended up suppressing all budgetary allocations for the LHM (*Público*, 2 March 2012; Jaúregui, 2012). Finally, it should be underlined that, while with the passage of time there have been an increasing number of public statements acknowledging the human rights violations committed during the war and the dictatorship and/or the suffering of the victims in Spain, at a national level, the PP has not yet publicly condemned Franco's dictatorship in an explicit manner. In fact, in May 2013 the PP government was the only party voting against a parliamentary initiative aimed at establishing 18 July as the 'day of the condemnation of Francoism'.

The stubbornness of the Spanish state to satisfy some of the victims' demands is not only increasing the social pressure in favour of truth and justice for the victims, but also facilitating the creation of new associations made up of different social organizations (such as the *Coordinadora contra la Impunidad del Franquismo*, which groups more than 30 associations; the *Plataforma por la Comisión de la Verdad sobre los Crímenes del Franquismo*, which groups more than 100 associations; and *Red Aqua*, which groups all associations and individuals supporting

the criminal process in Buenos Aires). Although the existence of collective platforms pursuing common goals constitutes a very important step in the memory movement, their survival is uncertain given its long history of fragmentation and internal confrontation.

CONCLUSION

TJ has increasingly become recognized as a normative and binding framework for countries dealing with legacies of human rights abuses. Focusing attention on the Spanish case, this paper has examined how Spanish society dealt with the legacy of political violence and dictatorial repression after Franco's death, while also considering what has been called the post-TJ phase, providing an account of the role that generational change has played in this process. The political elites of the democratizing period, the second generation of the Spanish Civil War, considered that the priority was to stabilize the new regime in a country that, four decades after the end of the war, was still traumatized by the memory of the conflict – vividly evoked in the mid-seventies by high levels of political violence. Accordingly, this generation considered that the politics of 'national reconciliation' was the best means to achieve stability. At the same time, the way in which the transition to democracy took place in Spain – with the reformists of the Franco regime playing a leading role in its architecture and the military exerting notable pressure – made punishing those responsible for the atrocities committed unthinkable.

The need to overcome the traumatic memory of the Civil War and Francoist repression, the desire to leave behind the historical spiral of revenge, the absence of a strong social demand for accountability, the lack of international pressure against impunity at that time, and, finally, the need to appease ETA terrorists and its supporters, help to understand the approval of an ample Amnesty Law in 1977. The importance of this law lies in the fact that all crimes by the parties in conflict (both during the Civil War and under the dictatorship) were forgiven, a gesture

that was presented as the foundations for the reconciliation among Spaniards. Even today, the symbolic power of such a gesture remains so strong that, contrary to the post-TJ developments that have taken place in other countries, in Spain the prospects for the annulment of this law are extremely low. For many, the Amnesty Law is still considered today, together with the Constitution, as the cornerstone of Spanish democracy. The result is that a law that was initially proposed to release the few remaining political prisoners of the dictatorship, and to award reparations its victims, has ended up also being a law impeding judicial investigation of the truth and granting impunity to human rights perpetrators (Aguilar, 2012; Gil Gil, 2012).

After two decades in which the young democracy was consolidating, and during which the only TJ policies adopted in Spain consisted of a fragmented and incomplete reparations scheme, this status quo slowly started to be questioned by the third generation with the creation of a series of associations of victims and families of victims around 2000, which began to be supported by some of the leftist political formations of the democratic spectrum. The high visibility obtained by this second cycle of exhumations – the first one, which took place in the first years after Franco's death, went practically unnoticed – made it impossible to go on ignoring Francoist terror and the deep wounds it had left in Spanish society. The images of the remains of victims, piled up in mass graves all over the country, were received with a mixture of horror and surprise both in Spain and abroad. Nobody seemed to suspect that such a modern and prosperous European country, which had been internationally praised as an example for its democratization process, could hide, more than 60 years after the end of the war and 25 years after Franco's death, so many thousands of skeletons in her fields, caves, ravines, and wells.

All of this, together with the new political climate after the general elections of 2004, crystallized with the approval in 2007 of the first comprehensive LHM of Spanish democracy. Using more a memory than a truth or justice-based approach, the law contemplated a varied set of issues including some reparatory policies, the removal of symbols of the authoritarian past, conservation of and access to archives and, most importantly, some tentative measures to support the exhumation of the thousands of bodies that remain anonymously buried throughout the Spanish territory.

While it should be acknowledged that the LHM provided a strong impetus to the recovery of memory in Spain, its implementation has not been unproblematic and important obstacles remain. While many victims' groups and human rights organizations have kept criticizing the shortcomings of the law, the PP has recurrently shown great resistance to look back to the Civil War and, very particularly, the dictatorship, and to support the demands of the victims.²⁸ The mild position of the PSOE when in office, particularly during the first four terms, has not been particularly helpful in giving impetus to this process. The political and media polarization around these issues helps us to understand the apparent inhibition of the very cautious Spanish society when dealing with the past, even if, according to surveys, it is mostly in favour of the provisions of the law (Aguilar, Balcells & Cebolla, 2011). Moreover, the fall of the socialist government in 2012 with the victory of the PP has brought the politics of memory in Spain to a complete standstill, with the profound economic crisis as the perfect excuse for paralysing any development, including some of the provisions of the law.

In the social realm there seem to be two contradictory impulses. On the one hand, the lack of political and judicial will to attend to the most pressing claims of the victims has contributed to fostering the creation of some unitary platforms within a movement that has traditionally been – and still is – deeply divided. And, in

28. The PP is afraid of disappointing the section of its electorate that belongs to the extreme right and that, even today, passionately defends Francoism. This party, together with the Catholic Church, insists on the idea that breaking the 'pact of silence' could destabilize the country, and sustains that the only relevant victims nowadays are the victims of ETA terrorism.

some cases, it has also contributed to the radicalization of their demands. In fact, at the time the LHM was being debated in parliament, most victims' associations would have been satisfied with the annulment of Francoist trials, the development of a state-led exhumation policy, and the conversion of the Valley of the Fallen into a museum devoted to the victims of Francoist repression.

The general weakness of Spanish civil society, and of the memory movement in particular, has been an important obstacle for advancing in TJ policies.

Garzón himself, as he has often explained, did not seek to place the Francoist perpetrators in the dock, but to bring out the truth of the highly repressive nature of Franco's regime. However, the countless frustration of expectations has propelled victims' associations to go beyond their initial demands: some of the plaintiffs of the Buenos Aires proceedings seek criminal justice for tortures committed by living perpetrators on victims that are also still alive. As Davis (2013) has shown in other contexts, when victims have to face impunity at home, they can go on with their quest for justice constructing different cases and resorting to foreign courts.

On the other hand, the general weakness of Spanish civil society, and of the memory movement in particular, has been an important obstacle for advancing in TJ policies (Encarnación, 2001). These negative effects have been multiplied by the lack of sensitivity among Spanish judges to the recent developments in international human rights law and to the principles of universal jurisdiction.²⁹ Whereas human rights advocacy has proven to be a crucial determinant of human rights prosecutions in other countries, the late and scarce support provided by legal experts to the associations for the recovery of his-

torical memory has been determinant for understanding its lack of visibility and strength in Spain.³⁰ The political and judicial reaction that was triggered against Garzón's attempts to revise the crimes of the Civil War and the first years of Francoism, including the resulting sentence pronounced by the Supreme Court on the case, make further developments in the realm of criminal justice in Spain very unlikely.

Recent empirical evidence shows that "transitional countries with human rights prosecutions are less repressive than countries without prosecutions," while at the same time truth commissions have been "associated with improvements in human rights practices" (Kim & Sikkink, 2010, p. 941). While these studies seem to question the classical thesis among early transitologists about the high risks TJ measures can exercise over stability, what recent developments in Spain seem to show is that, even in consolidated transitions, the past that has been simply set aside has a strong tendency to re-emerge in the public arena. The recent judicial initiative that is taking place in Buenos Aires – fiercely opposed by the PP government – shows that a wounded memory is something very difficult to suppress for good, for it always finds a way to make itself visible again.

Recent developments in Spain show that, even in consolidated transitions, the past that has been simply set aside has a strong tendency to re-emerge in the public arena.

The Spanish case also shows that the fate of the victims and their claims very much depend on the ideological and instrumental reasons of the political and judicial powers at different historical moments, and this is one of the main reasons why TJ measures are so difficult to predict.

29. As a recent report from Amnesty International (2012) denounces, local courts are systematically closing the cases that are transferred to them. Chinchón (2012) has argued that the Spanish courts are systematically filing all the cases they examine alleging prescription of the crimes without opening any investigation or ordering the exhumation and identification of the remains. See also Aguilar, 2013.

30. This has only recently begun to change with the creation, in 2010, of Rights International Spain.

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FAITH BRINGS DOWN REGIMES. THE ROLE OF RELIGION IN TRANSITIONAL PROCESSES

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In 1990, a year after the Polish Round Table Agreement, which ended 'communism', a French catholic weekly *La Vie* put the following title on their front page: "Faith brings down regimes" (Wiara obala rezymy, 1990). The publication surveyed Poles, Hungarians and Russians (in Moscow only) asking them if religion played a big role in democratizing the system in their countries: while 73% of Poles said it played an important role, 23% were of a different opinion; 48% of Hungarians said that role was important, while 46% responded differently; and only 28% of inhabitants of Moscow said it was important while 54% said the role of religion was unimportant.

The response of Poles to the question put by *La Vie* points to the important and specific role of the Catholic Church in the Polish transition – a role that cannot be assessed in normative terms, for as much as the church helped to ease the transitional tensions in 1989 it also became one of the biggest institutional beneficiaries of transition.

This paper will discuss the role that religion played in the Polish transition to democracy after 1989. It will then try to draw parallels with the changes in the Arab world after 2011, proposing a four-fold categorization of the manner in which religion is incorporated into the political systems. An attempt at assessing how much religion in public life jeopardizes the foundations of democracy will follow based on an analysis of specific religious elements in the public sphere.

Since ideologically socialism and religion do not go together, in the pre-1989 socialist Poland the state remained in conflict with the Catholic Church, which in turn became instrumental in the creation of the opposition to the regime.

Religion has always been a potent mass mobilizer in Polish religious society, a mobilizer that either needs to be co-opted by the ruler or quelled. But since ideologically socialism and religion do not go together, in the pre-1989 socialist Poland the state remained in conflict with the Catholic Church, which in turn became instrumental in the creation of the opposition to the regime. The pre-1989 propaganda ingrained in people that religion was a private matter. The radical division between religion and politics had been developing over the years in a significant part of the society – a fact of some importance for the post-1989 developments. However, many Poles – most probably a majority – not only felt a strong spiritual affinity to the church but also looked to it for political inspiration. For most of the communist¹ era, albeit in opposition to the regime, the Catholic Church could function fairly autonomously until it engaged in politi-

1. 'Communism' is used here only nominally. By no standards could the political system in the pre-1989 Poland be factually called communist.

cal and social debate, mainly after 1978 when a Pole became pope. The 1980s marked the most politically active period for the Catholic Church, largely owing to the leadership and social guidance of the pope. Back in 1990 *La Vie* asked Poles if they thought that John Paul II had an impact on the return of freedom to the East – 89% claimed he had a decisive or very important impact (Wiara obala rezyimy, 1990).

The 1980s marked the most politically active period for the Catholic Church, largely owing to the leadership and social guidance of the pope.

The church joined the Round Table in early 1989 with three roles to play: as an observer, mediator and guarantor (Dudek, 2006). In these landmark negotiations – thought to have ended communism in Europe – the two bitter enemies (the communist regime and the Solidarity opposition) agreed on a plan of democratic reform. In this difficult agreement the church gave Solidarity a security valve against accusations from anti-communist radicals who would later see the talks as betrayal and, vice versa, it gave the ruling side guarantees that what was agreed would be respected. The church also supported subsequent reforms and, overall, gave the revolution a moral flavour.

Already in April 1989 a bill regulating church-state relations was agreed but not yet put to a vote: the church had a legal status, the freedom of religious operation and organization, the right to its own TV and radio stations, cinemas and theatres, and the right to regain the property taken by communist rule. Therefore, the Polish Church got much more than, for example, the church in neighbouring Czechoslovakia from the central-rightist government of Vaclav Klaus. In the June 1989 parliamentary elections the church was to remain formally uninvolved, but in rea-

lity priests in their parishes often instructed people in their sermons on how to vote or which list to sign. The church supported General Wojciech Jaruzelski (a representative of the regime) for president and later the head of the Catholic Church in Poland, Józef Glemp, chose Mazowiecki as the best out of three candidates for prime minister. It is hard to say if his voice was decisive but certainly he was seriously consulted.

Generally then, in the pre-1989 period, the church adopted one major rule: avoid confrontation with the communists, engage in dialogue as long as the crucial principle of church autonomy is upheld. However, as much as the church unified the Polish people before 1989, its role and position in a secular democratic country after 1989 became a divisive issue. Mostly because Poles did not really want to see it play as big a role as it had. The same survey in *La Vie* (1990) also asked if the respondents thought that priests should engage in political activities to defend democracy and freedom. In response, only 36% said yes and 55% said no.²

As much as the church unified the Polish people before 1989, its role and position in a secular democratic country after 1989 became a divisive issue.

POST-1989 GAINS

In 1989 the Catholic Church emerged as a primary single player in Polish public life – very visible and potent, often imposing its doctrine on formal solutions, either directly or indirectly. As a direct example, in 1990 religion began to be taught in public schools and in 1993 abortion was made illegal. In 1993, a Concordat was signed with the Vatican, a document that usually recognizes the Catholic Church in a coun-

2. Hungarians were split in half and in the Soviet Union 84% said yes and only 8% said no. See Wiara obala rezyimy (1990, September). *Znak*, 424, pp.30-33. Retrieved from <http://www miesiecznik.znak.com.pl/archiwumcyfrowe/90s/1990/424.pdf>

try, which is also the biggest benefiter of the accord in terms of legal and financial profits. In compensation for what was taken from it, before 1989 the so-called Property Commission gave the church 50 million dollars and more than 66,000 hectares of land of a value impossible to estimate (Pietraszewski, 2012). These were the immediate gains for the church as a result of its political and social influence.

One example of the indirect imposition of Catholic discourse was the difficulties of the subsequent Polish ombudsmen after the transition. Professor Ewa Łętowska and Tadeusz Zieliński served this function precisely when religion energetically re-emerged in public life. They defended the secular character of the new state and the rights of non-believers engaging in heated debates over issues such as teaching religion in public schools or displaying religious symbols in public places. The rightist parties even sought to curb the Ombudsman's prerogatives. Eventually, the differences of opinion on social issues with a religious background further divided the new political elites (who were once a unified anti-communist conglomerate).

CONSTITUTIONAL REFORMS

In Poland, constitutional reform took a long time and was immensely divisive partly because of the need to constitutionalize the place of religion in the state. Owing to this divisive nature, the constitutional reform had to slow down and take a gradual and cautious path. In April 1989, the parliament amended the 1952 Constitution in accordance with the transitional period's needs and the Round Table Agreements. Seats in the lower chamber (*Sejm*) were divided 65% to the ruling Communist Party and its allies and 35% to be distributed in an electoral process but at the same time it was agreed that the upper chamber (*Senat*) would be set up. Elections to the *Senat* were to be free and democratic. The elections took place on 4 June 1989 with the Solidarity camp taking 35% of seats in the *Sejm* and 99 out of 100 seats in the *Senat*. It was a sweeping victory that surprised even the opposition, given the short time for preparation.

In the electoral process the church played a two-fold role: on the level of parishes it was able to generate support for the Solidarity camp in Sunday sermons (at that time a vast majority of Poles would attend Sunday mass) and Catholic Intelligentsia Clubs served as an additional network of electoral mobilization (Slodkowska, 2009). As a result of the elections, the ruling Workers' Party was unable to form a government so, in August 1989, Tadeusz Mazowiecki from the Solidarity camp was sworn in as the first free prime minister. In December, another amendment to the Constitution was introduced, the so-called December amendment. It scrapped the ideological preamble and allowed for political pluralism in Poland (Bankowicz, 2010, p.140). It needs to be remembered that the 1952 Constitution was still valid. In January 1990, the Communist Party was dissolved. In April 1992, the *Sejm* accepted the constitutional bill that regulated the process of drafting a new constitution. It specified that the National Assembly (NA, both chambers of parliament and the president) would have to approve it before it was put to general referendum. Constitutional drafts themselves could be put forward by the president, the constitutional commission of the NA, by a group of 56 members of the NA and a group of 500,000 citizens (since 1994). But work on the new constitution was slow and the system so opaque that a 'Small Constitution' was approved in October 1992: it regulated the relation between the legislative and executive branches and also local governments. In the general constitutional debate there were three contentious issues: the scope of social rights (liberals clashed with those who advocated a more robust role of the state in solving social problems), the position

In the constitutional debate there were three contentious issues: the scope of social rights, the position of the president in the system and the role of the Catholic Church.

of the president in the system and the role of the Catholic Church, and subsequently the freedoms of conscience and belief. The last issue was catalysed in the heated debate about the wording of the preamble: whether there should be an invocation to God in a constitution of a secular country. In all three contentious cases a consensus solution was approved with the preamble finally worded by Tadeusz Mazowiecki and Marek Borowski in the following way:

(...) We, the Polish Nation — all citizens of the Republic,
 Both those who believe in God as the source of truth, justice, good and beauty,
 As well as those not sharing such faith but respecting those universal values as arising from other sources,
 Equal in rights and obligations towards the common good — Poland,
 Beholden to our ancestors for their labours, their struggle for independence achieved at great sacrifice, for our culture rooted in the Christian heritage of the Nation and in universal human values (...) (Constitution of the Republic of Poland, 1997).

It was not until April 1997 – eight years after the ‘revolution’ – that the new Constitution of Poland was approved and accepted in a national referendum and it finally replaced the 1952 Constitution.

PARALLELS WITH THE ARAB WORLD IN 2011

Similarly to 1989 the 2011 Arab uprisings have re-opened the global debate on the role of religion in public life and, more precisely, on how Islam and politics can be reconciled. In fact, if one compares the Polish and Arab transitions one may come to a conclusion that after a revolution in a society where religion had been repressed in one form or another its role will usually be emphasized in the new system. In 2006 Jürgen Habermas began his article on ‘Religion in the public sphere’ in the following way: “Religious traditions and communities of faith have gained a new, hitherto unexpected political importance since

the epoch-making change of 1989-90” (Habermas, 2006).

Such has also been the case in the Arab world. Tunisia, Egypt, Libya and other countries, indirectly affected by the riots like Morocco, have seen the rise of Islamic parties – both belonging to the Muslim Brotherhood or to the Salafi form of political Islam – establishing themselves as key players in the transition. This has created new internal divisions and disagreements that seemed sedated or had never existed before. Out of more than a hundred parties that were established in Poland in the early 1990s there were none as outright emanations of religious institutions as the Freedom and Justice Party in Egypt but, *toutes proportions gardées*, one could certainly find religiously inspired parties. In the 1991 elections the radical Catholic Christian National Union (ZChN), a marginal offshoot of Solidarity that had religious elements in its agenda, won 8.7%. The ZChN ideological declaration stated that the “only axiom guiding public and private life are the norms of the Catholic religion, which is the epitome of truth” (Kowalczyk, 2014).

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In the processes in all countries that erupted in the Middle East in 2011 religion played an important role but two of them stand out as opposing examples of the ‘end result’ for religious parties: Egypt and Tunisia. The main Egyptian Islamist party is banned and since December 2013 considered a terrorist entity, while its Tunisian counterpart came second in the October 2014 parliamentary elections and stands firm as a major political force. The developments after 2011 have shown more than just these two – Tunisian and Egyptian – modes of relationship between political actors and religious principles in the Arab world. They

can be conceptualized into four distinctive models of relationship between religion and state:

- Integration via consensus – governing in a coalition that necessitates dialogue and concessions to survive politically in a divided society. For example, the Tunisian Ennahda has been actively involved in the constitutional process of the country, forming a united majority front with other secular forces. In Poland, no similar religious parties were established but religion was present in the programmes of many parties, while some – like the aforementioned ZChN – made it a basis for its agenda altogether.³
- Antagonization – governing unilaterally in a divided society, relying on the former system’s bureaucratic behemoth (Egypt) or relying on a new system (Iraq). In Egypt the Muslim Brotherhood did not rule in a political coalition, which encouraged it to act unilaterally.
- Imposition through authority – prevalent in monarchies, allows the rulers to retain both their autocratic and religious rule (i.e. Saudi Arabia);
- Integration via confessionalism – (Lebanon, failed in Iraq).

The first two modes beg the following question: is there a significant ideological difference between Ennahda and the Law and Justice Party (the Egyptian MB) or did political circumstances decide the fate of the two organizations? What are the religious principles that guide some political parties both in Islam and Christianity?

Religion is an important part of life and for many people an indispensable feature of their everyday existence. Muslim societies are religious – their religiosity is measured above 80% (World Values Survey, Gallup). 95% of Poles declare themselves religious (and Catholic) compared to 98% of Egyptians. It is not the religiosity that may prove problematic in times of transition but the religious principles that a society deems indispensable.

“In all its forms Islam claims to be able to legislate for the whole of human activity” (Halliday, 2003). Islam encompasses and thus regulates all spheres of life: It is *din* (religion), *dawla* (state), and *dunya* (world). It therefore raises questions about whether a secular system is attainable for a Muslim society and puts arguments in the hands of those who object to such a system. On the other hand, there are principles in Islam that mimic those of a democratic order, i.e. *shura*.

The definition of religious principles in Islam is problematic. Islam is not static but has various schools of thought and interpretation. Depending on a political actor’s intentions, that actor may promote either tolerance or Jihad. The bigger debate about the compatibility of Islam with democracy has no tangible application because (1) it is a theological debate that was already discussed by Islamic scholars in the 19th/20th centuries – many of whom claimed that Islam is democratic in its nature and (2) most political parties with religious agendas explicitly endorse democracy – those that do not are Salafi and often do not take part in the political process at all. And so it is more logical to argue that political circumstances decide the fate of religious parties rather than differences in their ideology. If it is not about religious principles then how does a political party fit in a democratic order? What are the concrete challenges for a state?

MODERN DEMOCRATIC ORDER. HOW DOES RELIGION FIT IN IT?

A democratic order in Western political thought requires that the church be separated from the state, primarily for the sake of inclusiveness of the latter as a society is made up of people with different world views, religions, needs and so on. The Arab world is religiously diverse – often numerous denominations, both Muslim and Christian, coexist within a country –, which logically calls for a secular system. “No society

3. More so, there was a positive feedback from the church. Prymas, the head of the Catholic Church in Poland, himself led a mass on the occasion of establishing ZChN in 1989. Czy Polsce grozi klerykalizm (1991, June). *Więź*, 433(6). Retrieved from <http://www.miesiecznik.znak.com.pl/archiwumcyfrowe/90s/1991/433.pdf>.

or culture exists in isolation, but they borrow from each other. Thus, even if the concept of the secular was originally a Christian concept, or a modern Western concept, this does not mean that it is illegitimate in a Muslim society (any more than the use of the number zero, for example, is illegitimate in a Western culture)" (Brown, 2008).

In order to assess how much of religion in a political programme and system does not compromise the foundations of freedom and tolerance let us again look at Poland, a religious and democratic country (a 'flawed democracy' according to the Economist Democracy Index). Polish experience in transition shows that ideological inclinations of political parties come to the fore in the process of drafting a constitution and in its final stipulations.

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In order to assess how different the levels of religious presence in public sphere are in Egypt and Tunisia, certain elements of that presence and visibility need to be identified: invocation to God in the preamble; Sharia as a foundation of state legislature; impact on citizen's freedoms – i.e. abortion, inheritance laws, equality of men and women in court, freedom of belief, religion classes in public schools or religious elements in the curricula.

The following examples help to estimate the level of 'safe' religious presence and some of the rules guiding state-religion relations:

- Invocation to God in the preamble or lack thereof is less important than the constitutional process itself. There is no invocation in the 1997 Polish Con-

stitution and the preamble is a great example of ideological consensus but it had been preceded by a vehement debate about the wording of the preamble. Moreover, it mentions faith in God and Christian heritage. The two 2014 Constitutions of Egypt and Tunisia clearly refer to Islam. However, while the Tunisian preamble is a good example of a modern, consensual and well-written text, the Egyptian one seems more like an exercise in specifically antagonizing the part of the society that supported the MB. This exclusive character is in this case much more important than an invocation to God, etc.

- The indication in the Constitution that Sharia, or other religious law, be a foundation of state legislature only matters in as much as it has practical influence over the jurisdiction of the courts. There is no such indication in the Polish Constitution but on 28 July 1993 a Concordat was signed between the Vatican and Poland, an agreement that does bind religious and civil law in certain circumstances.⁴ Art. 12 of the Concordat stipulated that religion was to be introduced to schools in accordance with the principle that the parents decide upon their children upbringing.⁵ It also stipulated that a canonical marriage has almost the same legal effects as a civilian marriage. The Concordat was signed by a transitional government when the parliament was dissolved by the president, which also stirred controversy over whether the government had the necessary legitimacy. In Egypt, for example, as stated in Art. 2 of the Constitution "the principles of Islamic Sharia are the main source of legislation" (Constitution of the Arab Republic of Egypt, 2014). In practice, it means that family affairs are handled by family courts in accordance with religious law. It can lead to inconsistencies that verge on breaching democratic rules. For example, in Islam a man can divorce his wife simply by announcing it to her, she cannot do the same but has to go to the court to

4. The Concordat became law in 1998.

5. Konkordat między Stolicą Apostolską i Rzeczpospolitą Polską, podpisany w Warszawie dnia 28 lipca 1993, Dziennik Ustaw, 1998 nr 51 poz. 318. Retrieved from <http://isap.sejm.gov.pl/Download.jsessionid=5FC95B2C7EAD93793A8136CE2C1B38A?id=WDU19980510318&type=2>

get a divorce. It is problematic to explain in this case that the constitutional rule of equality between men and women is upheld.

- Religion promotes certain values and hence can influence the legal system but cannot limit citizens' freedom. In Poland in the 1990s, the Catholic Church influenced the right wing, which accentuated the role and rights of the family and the nation, not the state or the individual. That characteristic is yet another analogy with what Islam prioritizes: the umma, the Muslim family/community as opposed to individualistic liberal thought. And so abortion was made illegal in Poland in 1993 as a result of church activism. However, fundamental rights guaranteed by the Universal Declaration of Human Rights cannot be legally threatened by limiting inheritance rights for women, questioning equality of men and women or the freedom of belief itself.
- Religion classes in public schools and religious elements in the school curricula do not improve tolerance or democracy but are a common feature in many democratic countries.⁶ In 1990 the Catholic religion was introduced in public schools, with two classes per week for an overall period of 12 years. The problem with teaching religion in public schools in homogenous societies, such as the Polish one, is that it outcasts these individuals who do not wish to attend. They are few and stigmatized, hence the issue has never left public debate in Poland. In Egypt religious instruction (*At-tarbiyya al-islamiyya*) is part of the obligatory national curriculum – made mandatory by art. 24 of the Constitution – and there are very frequent references to the Quran in textbooks. Copts are taught their own religion but everyone – Muslims,

Copts and others – use the same Arabic and social sciences textbooks that are full of the Sunni Muslim religion.

- Religious signs in public places can be considered offensive. Since 1997 there has been a cross on the wall in the Polish parliament, placed unofficially at night by two right-wing parliamentarians. Even though 70% of Poles in 2011 were in favour of it hanging there, 20% would still like it taken down (Szacki, 2011). If the cross had not been put up and a major state institution were free of religious designates, there would be no need to engage in a fiery debate about taking it down, which if done now would be a strong, almost anti-Catholic, statement in itself for some. In the Arab world religious insignia are present in public institutions but the scale of their presence differs from country to country.⁷ In many republics their presence is not significantly higher than in Poland. However, people bring religion with them to state institutions. For example, they interrupt work to pray, which does not happen in Poland.
- Religious invocations in public speeches do not compromise democracy as long as they are not derogatory but they can be and often are populist. Such references are commonly used, for example very often by presidents of the United States. Moreover, Polish politicians on both sides of the political spectrum play on the religious sentiments of Poles. For example, some politicians will go to church to be seen attending mass to appeal to the more rightist constituency. Similarly, in the Arab world religious language is commonly used by politicians and people in the public sphere in general. Moreover, as in Poland, giving an aura of religiosity in certain circumstances becomes a political necessity in

6. For example, according to Art. 9 of the *Agreement Between the Italian Republic and the Holy See of 1985 amending the Lateran Treaty*, Italian state provides religious education in all public schools below university level. In the same article, the Italian government guarantees the right "to choose whether or not to receive religious instruction." Likewise in Greece on the basis of the Law of Education (1985), religious education is compulsory for all Greeks in primary and secondary school. Everyone has a right to be exempted from these classes through an application submitted by parents. In Ireland religious classes are optional but the Catholic Church runs 90% of all primary schools.

7. Saudi Arabia is roughly on one end of this spectrum with the whole country being a religious symbol. On the other hand, in the Tunisian parliament there are no apparent religious symbols. The main symbolic element is the emblem, with a crescent and a star above. These are the symbols of the Tunisian flag.

order to rally support. One good example of such behaviour, strengthened by the need to rid the MB of their monopoly of religion, is President of Egypt Abdel Fattah al-Sisi, who frequently uses religious references in his speeches.⁸ Tunisian politicians are no different in this regard.⁹

- Sermons (and *khutbas*) have a direct impact on how people think and what they do politically. For example, in Poland on the occasion of the 2003 referendum, which asked if Poland should join the European Union, the bishops wrote a letter based on the words of Pope John Paul II to be read out as sermons during the Sunday mass to convince people to vote 'yes'. Some ultraconservative and rightist priests chose not to read it in their parishes. This example shows that in fact there are two churches in the Catholic Church – there is the Episkopat (the authoritative body) and there are the parishes and priests in them who, to a large extent, remain independent, free to say, advocate and promote whatever they see fit. They may have the utmost influence on the people, their lives and decisions. In the Arab world there is a similar division, already recognized by prominent scholars such as Maxime Rodinson, between official and popular Islam. The authorities are well aware of the influence that preachers (*khutaba*) exert on the people. This is why the Ministry of Endowments in Egypt pre-ordains the topic for every Friday sermon on its website. It is then easier to control the mosques and what is being said in them (Sasnal, 2015).

SENSITIVITIES TO PLAY ON

Authoritarian regimes keep convincing people that they are the only real bulwarks against the alarming rise of extremist Islam. Is there really no middle ground between an anti-Islamist authoritarian regime and extreme Islam? If religious Poland was to be taken as an example, there certainly is a middle ground for a moderate religious role in a democratic system.

Rather than religion itself, there are other obstacles to democracy in the Arab world.¹⁰ Modern citizenship requires a sense of belonging and responsibility for the common good. It is primarily based on national identity. The phenomenon of religion as identity has the potential of resurging and thus taking a centre-stage at the time of crisis. Perhaps national identities and citizenship are not yet strong enough to overpower religious affinity in the Arab countries, which at the same time does not mean that the two cannot be reconciled. In Poland, religious ethos is identified in the Polish mind with the national ethos, not so much with private or social life ethos.

There are specific arguments in favour of separating religion from the state in a religious society (with a high level of religiosity); in other words, if religion is removed from political narrative there are fewer tools of political manipulation left for the politicians to use. Furthermore, secularism safeguards against exclusion on religious grounds and it protects religion itself from being pauperized or impoverished. These arguments need to be known to the public, otherwise separating religion from the state will be seen as a strange 'West-

8. Excerpts from al-Sisi's farewell speech as minister of defence: "(...) On this path, God has ensured us success in drafting the constitution and here we are (...) I rather stand with absolute faith in God and in your strong will to change Egypt for the better". See <http://www.aljazeera.com/news/middleeast/2014/03/sisi-resignation-speech-full-2014326201638123905.html>

9. Both centrist and Islamist leaders use references to religion in their speeches: Moncef Marzouki's speech, on 31 Dec 2011: "Allah, have mercy upon the martyrs, for had they not sacrificed their lives, I would not be standing today in this place, which embodies the sovereignty of the people, and its ability to break free from the shackles in which it was fettered by tyrants, who forgot that the will of the people is second to none, but for the will of Allah. Allah, grant their relatives the grace of forbearance and solace." See Tunisian President Moncef Marzouki, in the Inauguration Speech, Vows to Lay the Foundations for a Civil Democratic Republic and a Pluralistic Society, MEMRI (2011, December 31). Retrieved from http://www.memri.org/clip_transcript/en/3239.htm

Rached Ghannouchi's speech, lecture on secularism, Centre for the Study of Islam and Democracy, 2 March 2012: "In the name of God, prayers and peace be upon His Messenger, his household, companions, and supporters. Ladies and gentlemen, brothers and sisters may God's peace and blessings be upon you."

10. Some scholars, like John Gray, would argue that the Western world is so convinced of the backward character of the role of religion in the public sphere that it breeds 'militant atheists' who are ready to fight all forms of religion. See Gray, J. (2015, March 3). What Scares the New Atheists. *The Guardian*. Retrieved from <http://www.theguardian.com/world/2015/mar/03/what-scares-the-new-atheists>

ern' invention. It goes without saying that secularization was socially much easier for Poland. It aspired to a bloc – European Union, the Western model – that was already secularized. That was the model Poland wanted to emulate – it might have influenced the way people saw religion in their new post-1989 lives. That is not (yet) the case in the Arab world.

CONCLUSION

Religion has been a significant factor in political transitional processes in the post World War II period: from the Indian peninsula to Central and Eastern Europe in 1989/1990. In Asia there are numerous examples of transitions in countries with a Muslim majority and minorities: India, Pakistan, Indonesia, Malaysia. In Europe there are already various levels of secularization of political systems, roughly with France at the one end and Poland at the other. The case of religious Poland, which had recently gone through a transition, is of particular interest here but there are also other examples of similarly democratic and religious countries: Ireland and Italy. In the Middle East, Israel is a democracy with active religious parties such as Shas – an ultra-orthodox party that advocates a state run according to Jewish law – there is also an ultraorthodox group that does not recognize the state. Nevertheless, Israel has remained a very pluralistic society.

Overall then, regardless of the kind of religion, religious societies can and should form democratic systems of power. The following is a list of religious societies and their countries' ranking in the *Economist Democracy Index 2012*: Ireland (ranked 13), Italy (32), Greece (33), Israel (37), India (38), Poland (44), Indonesia (53), Malaysia (64), Turkey (88). Unfortunately, Arab countries only start with Tunisia at 90 and end with Saudi Arabia at 163 and Syria at 164!

In Poland, secularization came with time as a new generation was brought up in a different system and richer society. Simultaneously, the church has struggled to find its proper place in the public sphere in Poland. Fewer and fewer people go to church on Sunday.¹¹ This process was already predicted in the transition period. Polish sociologists in 1990 posed the following question: is the Polish Church ready to confront a pluralistic liberal society based on rules of competition? In short, in Poland changes in the relationship between religion and the state occurred out of demographic and economic necessity. The former is there in the Arab world – more than 70% of its inhabitants are less than 30 years old – but the latter is not, and there is no certain promise of a better future, which eventually may make changes in the sensitive religion-state duo slower. Neither the state nor religion, and certainly not society, remain constant though, which makes these changes certain to occur, albeit slowly.

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“The principle of separation of church and state demands that the institution of the state operate with strict impartiality vis-à-vis religious communities; parliaments, courts, and the administration must not violate the prescription not to privilege one side at the cost of another” (Habermas, 2006). But in the Arab world there is no other side for the moment. Atheist come-outs do happen more and more often – in absolute numbers they are insignificant but they stir up a disproportionately large debate, a debate that in Poland started in 1990s and still continues to this very day.

11. According to official church data, only 40% of Poles are churchgoers while at the beginning of the 1990s it was around 70%.

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SOUTH AFRICA 20 YEARS AFTER DEMOCRACY: MISSING SOLIDARITY

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Within this selection of papers, the reflection on Arab transitions very much parallels South Africa's ongoing and fledgling transition. This paper pays special attention to equality and solidarity, with a view to offer a narrative that would inform discourse and practice in the Arab world.

Hailed as the poster child for democratic transitions, this is a look at South Africa twenty years on after its democratic transition reveals a mixed fortune. Taken from the President's Foreword for the *Twenty Year Review* (2014), we see a celebratory but honest account of the progress and challenges in contemporary South Africa:

South Africa is a much better place to live in now than it was in 1994. [...] As a country, we have made remarkable progress in dismantling the oppressive apartheid system and we have created a thriving constitutional democracy [...]. One of the most active arenas of change has been to shift the programmes of the state towards the reconstruction and development of our country, with a particular focus on the poor and marginalized [...] Despite this remarkable progress, much more still needs to be done to address poverty, unemployment and inequality (Presidential Foreword, 2014 in The Presidency [2014]: *Twenty Year Review South Africa*, pp. i-ii).

Much could be said about South Africa's transition, and even more about the current state of democracy in South Africa today. Indeed, there have been

many successes, particularly in the provision of basic services to those in South Africa without them. Despite the many strides that have been made in lifting millions out of extreme poverty, the continued economic, social and political marginalization of the country's black majority under apartheid has continued in a democratic South Africa. The spatial legacy of apartheid has meant that though there are services in areas with sub-standard infrastructure, there are still major backlogs, and townships (apartheid towns designed as labour towns) still suffer inferior provision of services, housing and education/health amenities. Provision of human settlements through subsidized or free housing has been made available, but these have been planned and placed next to former townships, which are far from economic opportunity and still require long travelling time to places of employment (GCRO QoL, 2013). In this way, spatial inequalities are reinforced and the standard of living of those in these far-flung areas are comparatively lower. Unemployment over the past twenty years, despite an expansion in social grants, has increased. As the *Twenty Year Review* states:

Only 39.8 percent of working-age adults had a job in 1994. By the third quarter of 2013, 43.3 percent of working-age adults had a job. While the employment ratio has improved slightly since 1994, it is still far short of the international norm, which is around 60 percent (The Presidency [2014]: *Twenty Year Review South Africa*, pp. 91-92).

At the end of the 20 year period, official statistics note that 1 in 4 (25%) of people are unemployed (*Twenty Year Review South Africa*). Unemployment is particularly glaring seen from the perspective of youth. The rate of unemployment for youth aged 18 to 29 stood at 30% in 1994, and increased to 40% in 2013, with numbers doubling from 1.3 million to 2.6 million over two decades (*Twenty Year Review South Africa*, p. 93). Recent spates of violent protest and xenophobic-related vandalism and looting of foreign-owned shops in the most populous province (News24, January 2015) have been attributed to increasing unemployment and resultant anger by black African youth in townships (see Friedman, 2014). Twenty years on, the promise of freedom is still an ideal that has failed to materialize for the majority of South Africa's youth.

Most markedly, the inequalities that exist still mirror apartheid patterns where unemployment for young black African people is 40% higher than for young white South Africans (Statssa, 2014). *Statistic South Africa*, in a research brief looking at South Africa's development context states:

Systemically enforced divisions and institutionalised unequal development along racial lines resulted in inequality in all facets of South African life. The inequalities played themselves out in spheres such as education, health, employment, welfare, human settlement, access to infrastructure (Statssa, 2014).

Stark inequality, then, is still very much a part of the South African economic landscape. For this reason, building an inclusive society is a crucial policy endeavour; redress measures are critical to transforming the economy and society as a whole. Indeed those two terms – redress and transformation – are central to the rhetoric of contemporary South Africa. South Africa's National Development Plan states:

South Africa needs an economy that is more inclusive, more dynamic and in which the fruits of growth are shared more equitably. The plan envisages an economy that serves the needs

of all South Africans – rich and poor, black and white, skilled and unskilled, those with capital and those without, urban and rural, women and men (NPC, 2011).

Equality is written into political rhetoric in South Africa and rightfully so. The point to note is not that this happens, for indeed it should, but how redress becomes a point of contention between different constituencies in South Africa.

Stark inequality is still a part of the South African economic landscape. For this reason, building an inclusive society and redress measures are critical to transforming the economy and society as a whole.

In South Africa the instrument of redress has been seen in hiring and work promotion practices – which predicates those formerly disadvantaged qualified individuals over those who were formerly advantaged. Representativeness in the workplace, then, is a key marker of a transformed South Africa where once there had been racialized division. There are a number of instruments used to encourage the advancement of those previously disadvantaged; it is unnecessary to go through them here. The principle of redress and affirmative action, as a means of addressing the imbalances and injustices within the labour force, is widely criticized by different sides of the social spectrum. (This is not to say that all black people agree with these measures, and all white people disagree. Indeed, many black people disagree with the instruments, but not the principle, arguing that these benefit an elite class of people anyway. Many white people agree with the principle but not with the form of redress, which often engenders exclusion.) A recent case of senior promotion within the Department of Correctional Services (DCS)

brought forward by a mainly white Afrikaans representative trade union (Solidarity) demonstrates this contestation in South Africa (except below). Put plainly, a senior white lieutenant was overlooked for promotion a number of times even though no suitable African candidate was found – leaving the post vacant. The woman was suitably qualified, and in line for promotion, and, having been denied the opportunity, lodged the matter with Solidarity, the aforementioned trade union. The case stated in its opening:

In these consolidated referrals the applicants seek an order declaring that the Employment Equity Plan (EEP) of the Department of Correctional Services (DCS): 1.1. Fails to satisfy the requirements of an employment equity plan within the contemplation of the [Employment Equity Act] EEA, in particular section 20; and/or 1.2. constitutes a contravention of the prohibitions on race, gender and/or sex discrimination within the contemplation of section 6 of the EEA and its application in respect of the individual applicants amounts to unfair discrimination.¹

The principle of redress, as a means of addressing the imbalances and injustices within the labour force, is widely criticized by different sides of the social spectrum.

The employment equity act, therefore, was brought into question as being tantamount to a form of racial discrimination. The trade union was reported to have stated:

The DCS's current employment equity plan has expired and it must be superseded by a new one. Under labour legislation trade unions have to be

consulted before the plan may be implemented (DSC want to enforce, 2015).

Speaking more generally, former South African president (and last president of apartheid South Africa) FW De Klerk stated in a similar vein:

He [Mandela] certainly worked successfully to promote reconciliation and to build a new multi-racial nation. We also witnessed a heartening resurgence of national unity and reconciliation during the 2010 FIFA World Cup. However, since then, the situation has deteriorated rapidly as a result of the aggressive implementation of race-based measures that are aimed against minorities in general and whites in particular (Phakathi, 2014).

The instruments and measures of redress, then, are critiqued heavily for being aggressive race-based measures by some. For others, transformation needs to proceed even more vigorously, an ideal espoused in the ruling party's policies and rhetoric (see Munusamy, 2014). The Editor of the *Daily Maverick* attests

The phrase 'radical economic transformation' has been trumpeted out repeatedly throughout the ANC's election campaign, and now they are ready to implement it, says secretary general Gwede Mantashe. Do not ask for the term to be defined or specifics of what it entails, though. This is not the time for 'conceptual clarity,' says Mantashe. But like Christmas, it's coming. Apparently.

The point of drawing out this argument is that this measure of equality is also the seedbed of contention. While of course the measure or instruments may need reform, the point is that the principle of equality does not hold strongly enough to convince.

1. See <http://www.saflii.org/za/cases/ZALCCT/2013/38.html>

It is this principle of equality, and not the tool/measure/instrument of equality that is at issue here. If the principle is criticized, then the very spirit of social justice espoused in the South African Constitution is at stake. This potential loss of solidarity is what the rest of the paper focuses on. It argues that equality as solidarity was always the focus historically in the struggle for a free and democratic South Africa, and that form of equality-solidarity is what needs to be recovered. What is missing in contemporary South Africa is that overcoming inequality, particularly through the need for economic redress, is not tackled in a way that also engenders inclusion, thus gaining legitimacy. Solidarity is missing.

SOUTH AFRICA'S STRUGGLE FOR EQUALITY THROUGH SOLIDARITY

Addressing inequalities was always a concern in the South African struggle, and fighting equality required a united front. The struggle for equality was rationalized by the principle of non-racial solidarity.

In South Africa the history of non-racial cooperation and solidarity was not only a movement for change, but also itself an ongoing struggle. Long before the negotiated settlement, the Convention for a Democratic South Africa (CODESA) presented a struggle for unity through dialogue. It was in some ways the most important fight South Africa was facing toward a future equality. It was the creation of a non-racial cadreship of individuals (a group of people united beyond their racial classifications stressing unity) who were part of the African National Congress (ANC), and other racialized congresses or political formations such as the Transvaal Indian Congress, the Coloured People's Congress, white trade unions, and democratic parties (see Everatt, 2009). Forming the congress under the broad church of the ANC, which became a home for all, was an enactment of non-racialism or non-racial solidarity. This must be stressed here, it was a struggle borne from all segments of South African society—all races—to lobby and fight for political change and justice for all, especially black South Africans. Thus there were

white anti-apartheid activists alongside black, Indian and coloured groups (these terms are used as the racialized classification in South Africa).

Everatt (2009) details how, from the 1940s, there was a struggle for a non-racial unified political leadership of those oppressed peoples and those who were in solidarity with them. And this was not without vigorous debate and contestation. In the 1950s when the freedom charter was formulated – that being the progressive document which represented the will of the people – Africanist groupings broke away from the ANC-led liberation front. These groupings did not believe that a united non-racial future should be fought for, but rather that exclusively African people should fight for an exclusively African future. Within the congress, there remained a growing group of people recognizing that of course Africans suffer worse than other oppressed peoples in South Africa but on the basis of being similarly under the oppressive arm of the apartheid state, they would unequivocally unite.

This was a show of unity and solidarity before the party was banned in the 1960s, so that in the years leading up to the leadership's arrest in the mid-1960s, a People's Charter was drawn up. Moreover, in the 1950s a massive twenty thousand women-strong march to the union buildings in solidarity with African women who had to carry pass books was held. Humiliating pass books, used to control the movement (read influx) of black women in white residential areas were burned by white, black, Indian and coloured women as a show of equality (see South Africa History Online).

The point here of this gathering was that there was a commitment to forging a united front against apartheid, within the non-racial struggle more generally. The forging of a non-racial pact and a unity of purpose of those activists and leaders in South Africa, those exiled, and those who would eventually be jailed. Practically, it also meant that there was a pool of financial support not for weapons, but for exile, training outside South Africa and for families of struggle leaders. Struggle leaders

suffered the same pressures as the people; they were all the people. Every resource was poured into the struggle. And there was little thought of accumulation or comfort. The quest for equality was a future ideal but also an immediate reality. Crucially, the struggle for unity was a united struggle. Within this struggle there was a common narrative of trust, and solidarity. Those were non-negotiable. Indeed, as history attests² the situation from all fronts had become untenable in South Africa during the 1980s. Sanctions, disinvestment, militants, an under-educated youth cohort, and rising anger was untenable. The leadership was increasingly concerned for the welfare of South Africa by rambunctious fire-brand politics that had taken over the streets of South Africa. The negotiation worked because the situation was increasingly volatile.

The negotiations under CODESA (Mandela, 1991) worked because they had to work; the leaders in prison knew that South Africa needed its leadership, the new settlement would need to include the parameters for a shared future of oppressor and oppressed, it needed to rally a fearful and insecure people, living under brutality, under a united leadership. In the words of scholar Mahmood Mamdani (2013):

The great myth of the South African transition is that it was driven by the TRC (Truth and Reconciliation Commission). The TRC was designed as a surrogate Nuremberg where the opponents of apartheid sat in judgment over its operatives. Like Nuremberg, the TRC's claim to have granted amnesty for truth should also be seen as a performance. Even though Bishop Tutu in his introduction to the multi-volume report of the TRC publicly celebrated the TRC as evidence of the ethical and political magnanimity of the victims of apartheid, the real exchange took place before the TRC was set up, in the negotiations known as CODESA. It was not an exchange of amnesty for truth, but amnesty for political reform, that reform being the

dismantling of juridical and political apartheid. It is not the TRC but CODESA that made for the real political breakthrough in the South African transition.

The ground for CODESA was prepared by an acknowledgement shared by both sides to the conflict. Both recognized that there was little prospect of ending the conflict in the short run. For the leadership on either side, this meant accepting that their preferred option was no longer within reach: neither revolution (for liberation movements) nor military victory (for the apartheid regime) was on the cards. The second best alternative was a negotiated end to the conflict. If South Africa is a model for solving intractable conflicts, it is an argument for moving from the best to the second-best alternative. The quest for reform, for an alternative short of victory, led to the realization that if you threaten to put the leadership on either side in the dock they will have no interest in reform. This change in perspective led to a shift, away from criminalizing or demonizing the other side to treating it as a political adversary.

The CODESA (1991) stated:

We, the duly authorized representatives of political parties, political organizations, administrations and the South African Government, coming together at this first meeting of the Convention for a Democratic South Africa (CODESA), mindful of the awesome responsibility that rests on us at this moment in the history of our country, declare our solemn commitment:

A. to bring about an undivided South Africa with one nation sharing a common citizenship, patriotism and loyalty, pursuing amidst our diversity, freedom, equality and security for all irrespective of race, colour, sex or creed; a country free from apartheid or any other form of discrimination or domination;

2. See South Africa History Online, www.saho.org.za

- B. to work to heal the divisions of the past, to secure the advancement of all, and to establish a free and open society based on democratic values where the dignity, worth and rights of every South African are protected by law;
- C. to strive to improve the quality of life of our people through policies that will promote economic growth and human development and ensure equal opportunities and social justice for all South Africans.

It was an agreement in spirit affecting the future, but it was also an immediate settlement for a unitary state. For the most part a result of the pursuit of national unity at the expense of immediate economic and social restitution (van der Walt et al., 2003, p. 251). This came with its own maladies. The period of transition was where “the political and ideological project became paramount” and essentially cast in unity terms meant “passivity toward addressing exploitative social and economic conditions,” thereby supplanting or overshadowing the socioeconomic features of the crisis (Marais, 2001, pp. 89–90). But with this, as noted by Marais, South Africa's transition would also come with another consequence: that “social and economic restructuring would benefit narrow layers of society whilst the cost of that restructuring would be deflated on to the rest of the country” (2001, p. 96) at a later time. Whether this was a *de facto* or just a perceived situation, it would be, he argued, a transition democracy without absolute winners or losers, and with a prolonged period of contestation (Marais, 2001; Alexander, 2003). The negotiation did not foresee the nature of contestation.

Of course redress was envisaged. Historically, the Freedom Charter, which was a broad document literally authored by the people through door-to-door discussions with people in the 1950s,³ was an ANC-led initiative. Written into the Freedom Charter was the central issue of equality; having to do with dignity,

legal rights/vote, representing the will of the people, share in the country's wealth, land, work, jobs, security, peace and friendship.

The National Democratic Revolution document, also authored by the ANC. It states that equality was meant to

transcend political independence, a social compact where importance was placed on a creation of a united, non-racial, non-sexist and democratic society. This in essence means the liberation of Africans in particular and blacks in general from political and economic bondage. It means uplifting the quality of life of all South Africans, especially the poor, the majority of whom are African and women.

In literature on non-racialism, scholars suggest that while the non-racialism liberation struggle had defined contours, the way that a non-racial future would look, and how it would be wrought, was unshaped terrain (see Alexander, 2003; Everatt, 2009; Marais, 2001; Mare, 2003; Suttner, 2010). I argue elsewhere that the ambiguity about what South Africa(ns) would become was, ironically, to be its most persistent feature (see Abrahams, 2012). Marais (2001, p. 97) argues that “the nature of the South African settlement is that it constituted (and inaugurated) not a rupture but an increasingly ambivalent... series of reconfigurations that also extended far beyond the formal political agreements.”

Despite the principle of equality or non-racialism, equality as solidarity does not easily find expression in contemporary South Africa.

Although equality as a principle of social justice was written in to the negotiated settlement and the liberation struggle more generally, the future situation

3. SAHO Freedom Charter.

of economic redress was left instead to be implicit, but nonetheless ambivalent. Would it force a form of reparation, restitution or redress?

The point here is that despite the principle of equality or non-racialism taking root so strongly during the liberation struggle, equality as solidarity does not easily find expression in contemporary South Africa, and this is the particular challenge in South Africa twenty years after its democratic transition. The next section looks beyond how the question of equality is contested in legislative terms as we have shown above, to how the question of equality is invoked when it comes to social or cultural recognition, employment opportunities or visible measures of progress for groups of people in South Africa. The point of doing this is to demonstrate that everyday rhetoric of equality is still highly racialized and divisive. In addition to the contestations around measures of redress, these everyday discourses of equality happen as a quest for identity recognition for the interests of different groups. As a result there simply is no space for solidarity within these identity-based politics that pit certain groups' needs against those of others (Abrahams, 2012).

EQUALITY IN SOUTH AFRICA

Even though equality is written in to every political and legislative document and rhetoric, its meaning is increasingly vague; the task of addressing inequality is also written into marketing and social development rhetoric. It has become a catchall for every problem that has beset contemporary South Africa. It is an ideal also pervasive in everyday conversation by ordinary people in South Africa. The difference in this everyday discourse as compared to the lofty ideals within the struggle for liberation is that here distinct interests are at play, and these interests are seen as racially defined. What we see next is a series of excerpts taken from a research project that considered the meanings and interpretations of non-racialism in contemporary South Africa (see Everatt, 2014); these were the reflections of ordinary South Africans:

Moderator: Just tell me one or two of these lies?

Respondent: That it is going to open up opportunities for us to be like Whites. That we are all going to be equal. They promise us, but do not deliver. (Focus group 1 on non-racialism. Ulundi suburbs, African female)

Blacks including our families are the real people of South Africa. They see themselves as South Africans though the most important thing that gives you life is to have money. Though we are poor it makes you wonder why you should be poor in your country South Africa when other South Africans have so much money. This won't stop us from being South African though. We will always be South Africans. (Focus group 2 on non-racialism. KwaZulu-Natal, Ndwedwe, African male, employed).

We feel like the lesser person, but on that same note, we are equal and they don't want to accept that we are equal (Focus group 3 on non-racialism. Western Cape, Paarl, coloured, male, employed).

I grew up under the oppression they say we should forgive and forget but how do you do that when you are standing in one place and they are moving forward (Focus group 4 on non-racialism. African female, Motherwell, unemployed).

In these excerpts, we see how equality is framed in ordinary ways as access to opportunity, services, economic issues, social mobility, and so on. We also see how economic realities, because they relate to issues of power and privilege, also profoundly shape identities and the manner in which people relate to each other, as we will see below. As Younge argues, "far from being neutral and abstract, our identities are rooted in material conditions that confer power and privilege in relation to one another" (Younge, 2010, p. 179). This means that our sense of who we are is not only a result of social histories, it is also the result of economic equality – or indeed our perception of our equality to others.

Ndlovu-Gatsheni (2007, p. 42) argues that “the nation-builders thought that through education a democratic citizen was going to emerge in South Africa that was truly de-tribalised, de-racialised and de-ethnicised. The slogan that carried the day was that of non-racialism feeding into the romantic idea of an accommodative ‘rainbow nation’.” He [citing Maphai, 2004] terms this moment the “euphoria of equality and common citizenship” and “an idea all too quickly abandoned in favour of reverting to racialised identities” (Maphai, 2004, p.12). Here the rhetoric of a rainbow nation, so celebrated inside and outside South Africa, gets crowded out with more urgent demands on resources which are racially or identity-driven. Equality is very much linked to what people have and feel they deserve, according to identities. This sentiment is echoed by Taylor in his discussion about what non-racialism means in contemporary South Africa. He argues (2012, pp. 45-46) that

[I]n truth the gap between the ideal and reality remains vast. What has to be asked is: do all South Africans now have equal opportunities? Do Black people have as fair a chance as White people to make what they want of their lives? The answer, by any set of objective indicators, has to be negative (NPC, 2011 a); in this regard it could indeed be claimed that the non-racial project as presently constituted remains too shallow to make a meaningful difference.

Taylor’s argument suggests as an ideal, non-racialism, or the project that seeks to tackle inequality, is shallow, lacking in impetus, and for all intents and purposes meaningless in the face of persistent poverty/inequality. This is echoed by others who argue that without a form of substantive equality that is demonstrable materially, the rhetoric of freedom would mean little (see edited collection, Everatt, 2014). Given these everyday and systemic discourses of (in)equality, but also deep contestation about the way forward and how to redress injustice, how do we balance the need for restitutive justice with the principle of equality?

EQUALITY AS DISTRIBUTIVE OR EQUALITY AS RELATIONAL?

In South Africa, a phrase that has become commonplace on race, non-racialism and social cohesion is that of ‘substantive equality’. The term, given significant currency by South African political philosophy scholar Daryl Glaser is taken to mean, at risk of oversimplification, that for a form of equality to take root, ‘something’ has to be distributed in an egalitarian way. In the South African context the term substantive equality has been used in legal terms, particularly, to debate the content of distributive justice, rights, power and material wealth (see Glaser, 2012). While these are still matters being debated in legal philosophy and elsewhere, the idea of non-racialism and social cohesion requiring – as a pre-requisite – substantive economic equality is a (popularly) pervasive argument outside of the these discourses. A similar argument is made when pursuing non-racialism in South Africa – that it cannot be achieved until there is a greater measure of substantive equality.

I use the commonplace usage of the term – or indeed what has become commonplace usage – to discuss the idea that in order to have a non-racial or cohesive society, there has first to be a measure of equality, felt or shown substantively in the material conditions of people, i.e., it must mean something materially or substantively. Without this, it is argued that these values will never take hold, or be pursued. Put another way, the vision for a truly equal, non-racial, socially cohesive society will never be realized while there are still stark inequalities and wealth disparities. This is a compelling argument. Indeed, as we see the majority of South African’s African population continue to live in dire poverty, the material gains of a democratic society failing to reach them, and the rising anger and dissatisfaction of these ‘forgotten’ parts of the population, we may become convinced that we need faster, more rigorous and radical economic redress/transformation before we even can conceive of social cohesion or non-racialism. In so doing we correlate equality with distribution.

Samuel Scheffler argues that there are two views of equality. One is that it is “essentially a distributive value” and that it requires people to have equal amounts of something – money, power, land, access, etc., (2003, p. 1) similar to Glaser’s liberal egalitarian arguments – and this view of justice means that redress needs to satisfy the demands of distributive equality. The second view that Scheffler postulates is a relational view of equality, where “equality is an ideal governing certain kinds of interpersonal relationship. It plays a central role in political philosophy because justice requires the establishment of a society of equals” (Scheffler, 2003, p. 1). In the former formulation, justice requires distribution, in the latter, the formulation of a value. This does not mean that the relational view fails to appreciate the substantive demands for equality. Instead, as Scheffler goes on to show, the relational principle or value informs the character of distributive necessity, asserting the important point that these are not the same. The distributive form of equality is a principle (often formulaic) for apportioning something. The relational is a “reciprocal commitment to treating each other with respect” (Scheffler, 2003, p. 6). It is within this second view – the relational view – of equality that I wish to develop the discussion of social cohesion.

The relational view is not just about equality, it is also about respect, recognition and responsibility, and within that pact, committing to the necessity of equitable distribution and practising it. Scheffler draws a parallel with a marriage to indicate the pre-eminence of the commitment first, and then the meeting of economic needs, or decision-making within that context. This commitment/pact is primarily about what he calls “egalitarian deliberative constraint”, the commitment of all parties to constrain their own demands or decisions for the purpose of maintaining the commitment and/or for respecting the other party’s needs/choices. It is not an action, or a one-off distribution, but rather a diachronic realization of this arrangement. It is “ultimately a form of practice rather than a normative pattern of distribution,” where the “attitude and dispositions must hold reciprocally. If

anything, the egalitarian aim is not to equalise the relevant attitudes and dispositions but to maximize them: to ensure that both parties exhibit them to the fullest” (Scheffler, 2003, pp. 17-18).

The vision for a truly equal, non-racial, socially cohesive society will never be realized while there are still stark inequalities and wealth disparities.

In political terms, Scheffler goes on to argue that the formulaic distribution of a thing or materiality in fact compromises the character of the relationship. In other words, any form of draconian distribution within a society of equals will disrupt the relationships within, but this is actually unnecessary. In a society of equals, each party is convinced of the value/needs of the other parties, and committed to the welfare of each. Forms of distribution, although possibly inconvenient, are agreeable. As Scheffler puts it “each member accepts that every other member’s equally important interests should play an equally significant role in influencing decisions made on behalf of the society as a whole,” and it also means “that the equally important interests of each of them constrain social [or economic] decisions to the same extent” (Scheffler, 2003, p. 24). In this society, there is not only a mutual commitment to respect, but also “a division of responsibility that all can accept, and [where] each member sees the other members as entitled to participate fully and equally in determining the future course and character of their shared relationship” (Scheffler, 2003, p. 32).

In this type of society, the necessities of distribution not only makes sense, but is agreed to by everyone, even those who do not stand to benefit – i.e., a form of distribution will be agreed to because of the egalitarian deliberative constraint wherein all concede that their demands may have to give way. The point

here is that the rule of distribution does not enforce certain decisions, or enforce constraint of some in order to create an equal society. It is the other way around; an equal society necessitates a form of distribution that maintains the relational aspects of that society. The task in other words is not how to regulate redress so that everyone is included, but how to convince everyone that none should be excluded. It is to create a society in which all members “expects the other to bear whatever responsibilities are assigned to a person in virtue of this status and, similarly, each sees the other as entitled to make whatever claims accrue to a person in virtue of this status” (Scheffler, 2003, p. 6).

In sum, this relational view of equality as outlined here, is ‘substantive’ in that it will necessitate a form of distributive justice so that it satisfies the essence of an equal society. At issue here, crucially, is not whether social cohesion is or is not about substantive distributive equality. The fact that distributive equality should take place is clear, but this imperative is not the business of social cohesion (if we take social cohesion to mean pursuing the ideal of a society of equals).

The quest for equality in contemporary South Africa does not lay in the measures of redress or the instruments for distribution. It is the pursuit of a society in which members are convinced of the principle of an equal society. In practice, it is one where the values of equality are widespread; where these principles are debated and accepted in popular discourse, and where deliberative constraints are understood, respected and agreed to. If this is meant to be a socially cohesive society, then distributive equality will not make it cohesive, it will in fact create divisions, mistrust and discontent. On the other hand, pursuing these values and principles, will meet the necessary and overwhelming demands of distributive justice while maintaining a cohesive society.

Thus, as a value, the quest for equality needs to be a consideration in different pursuits; for instance, that of education, labour transformation, human

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settlements and economic redress. Equality cannot be invoked to determine the distribution of materials, education etc., but essentially, as a value it must inform the practice of each of these spheres. These values need to be anti-racist in character, underpinned by a growing belief that all voices count, and that equality will demand a form of distribution.

LEARNING FROM THE PAST; LOOKING FORWARD

What is missing from discourse – everyday and political – is the question of solidarity – or in terms we have discussed, the relational view of equality. This was the central ingredient in the *united, non-racial* liberation struggle, and it still offers a beacon of hope in contemporary South Africa. There needs to be recognition that the twin tasks of relational and distributive equality are important, and these must be seen as important to all South Africans. The principle alone, of course, is not a guarantor that society will be more materially equal. But where the value/principle exists, it is more likely for a form of solidarity to grow that will see, as we had seen during the liberation struggle, people of all races come together for the disadvantaged and downtrodden in society. Recapturing this form of solidarity will be crucial in taking forward the constitutional ideal of a non-racial, democratic society in South Africa. With this form of solidarity that ‘means something’ and is not shallow in the way Taylor described earlier, real social integration can be a feature of contemporary South Africa. As Younge argues,

“As far as it goes, integration is a great thing. The more contact you have with different kinds of people, the less potential there is for stereotyping and dehumanizing those difference from yourself. The more one chooses a life that is voluntarily segregated from others and retreats into one’s own community, the less scope there is to explore, discover and engage with those common human traits that transcend identity” (Younge, 2010, p. 195). Economic equality – and equality of opportunity – and importantly the ability to access/take full advantage of employment possibilities is key to making this a cohesive society, but economic equality must follow in the wake of solidarity for it not to be divisive.

This is both an urgent and a continuing task that requires all South Africans, young and old, black and white, civil servants and private sector employees, workers and bosses, students and teachers, disenfranchised and privileged, to commit to building a non-racial, socially cohesive, democratic South Africa. In much the same way that non-racialism meant cooperation and solidarity against apartheid in the 1950s and 1960s, it now must also be an attempt

to muster and nurture inter-racial cooperation and solidarity around economic justice.

The discussion on South Africa offers a reflection of the ongoing need to pursue solidarity as a means of not only gaining legislative equality, but also securing a future that does not degenerate into ethnicist or racialized enclaves.

Finally, this discussion on South Africa offers the current volume a reflection of the ongoing need to pursue solidarity as a means of not only gaining legislative equality, but also securing a future that does not degenerate into ethnicist or racialized enclaves. Solidarity beyond ideological differences is key to pursuing a future that is not made socially tenuous or fractured by the very measures that seek to address injustice.

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INDONESIA'S PATH TO LIBERAL DEMOCRACY: LESSONS FOR THE MIDDLE EAST

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INTRODUCTION

Indonesia emerged from authoritarian rule in 1998 and quickly descended into widespread chaos. Deadly violence escalated as ethnic, religious and regional groups clashed. At the time, many observers predicted the sprawling archipelago would spiral out of control. However, Indonesia subsequently transitioned into a remarkably stable democracy that completed its fourth free and fair election in 2014. The respected think tank Freedom House now rates Indonesia as 'fully free', a designation it has held since 2007. But just as remarkable is the nature of the party system that has developed in this divided society. Rather than ethnic and religious parties forming around conflict-prone identity groups, inclusive parties won elections with largely centrist, policy-based appeals while Islamist parties moderated their rhetoric and joined governing coalitions.¹

This counterintuitive outcome is why many observers have argued Indonesia's political transition and governing model could provide important lessons for the Middle East's newly democratizing regimes. Indonesia is the Muslim-majority world's only 'fully free' democracy, according to Freedom House. It constitutes a rare counterpoint to the 'Islamic exceptionalism' thesis, which argues that Islam is inherently incompatible with liberal democracy.² Australian Amba-

sador Greg Moriarty said in 2011 that Indonesia has "shown the world democratic transitions can be made, that Islam and democracy are compatible" (Alford, 2011). He lauded the political system for avoiding the "marginalization of groups on ethnic or religious grounds." *The Economist* editorialized that Islamists in Indonesia "have shown that they can learn the habit of democracy" (The Arab Spring, 2013). Similarly, British Prime Minister David Cameron argued in 2012 that Indonesia proves that "democracy and Islam can flourish alongside each other" (Watt, 2012).

Descriptively, this Southeast Asian nation shares many similarities with countries of the Middle East. Muslims are 90% of Indonesia's population, which corresponds to the demographics of, for example, Egypt and Syria. Furthermore, Indonesia has politically and socially significant religious minority communities and a Muslim majority that is both divided doctrinally between secular and orthodox interpretations of the Quran, and divided tactically between democratic participation and violent rejectionism. Just as in the Middle East, Indonesia suffered European colonialism and decades of secular authoritarian rule that co-opted and oppressed Islamist resistance. However, Indonesia's extreme ethnic diversity is distinct from the Arab world. The country has over 300 ethnic groups, none of which constitutes a majority of the population.

1. Portions of this chapter's narrative are also in Macdonald (2013).

2. Ernest Gellner, Foud Ajami, Bernard Lewis, and Samuel Huntington are among the prominent exponents of this thesis.

The religious and ethnic mosaic of Indonesia presents a unique challenge for liberal democratic institutions. In deeply divided societies, building inclusive, moderate parties is ideal. Constitutional design scholar Benjamin Reilly argues that political parties are “intimately linked to the rise and fall of conflict.” He argues further that because “multi-ethnic parties need to appeal to a broader support base” they “tend to have a more centrist impact, aggregating diverse interests and de-emphasizing mono-ethnic demands” (Reilly, 2006, p. 811). The key question is how to build an electoral system and constitutional arrangement that incentivize centrist as opposed to identity-based politics. Indonesia’s constitutional designers implemented a complex institutional design that successfully achieved this result. As a model, it could provide an interesting example for Middle Eastern regimes.

However, the success of liberal democratic institutions is inextricably tied to culturally embedded values and norms. Political institutions that have no grounding in socially shared conceptions of governance will likely face significant legitimacy problems. Therefore, in order to evaluate the applicability of the ‘Indonesia model’ for the conflict-prone, Muslim-majority nations in the Middle East, one must situate Indonesia’s democratic design in its historical and social context. This paper will first outline Indonesia’s unique institutional arrangement. Second, it will provide an in-depth process tracing the evolution of secular nationalism in Indonesia. Finally, it will assess Indonesia’s political culture in comparison to the Middle East. In short, it will argue that while Indonesia’s constitutional design provides a useful template to manage and protect diversity for the Middle East’s newly democratic regimes, the country’s political development created a precedent for secular, liberal, and pluralistic inclusion unparalleled in the Middle East. This certainly does not mean democracy is doomed in the region, only that the rote adoption of the Indonesia model is not a democratic panacea.

THE INDONESIAN ELECTORAL MODEL: INCLUSIVE MAJORITY RULE

Indonesia’s institutional design has several features that encourage inclusive, centrist politics. Its hybrid electoral system coupled with strict party regulations mandate that political parties have broad-based support. In addition, Indonesia’s transition from a unitary state to a highly decentralized state has pushed national-level parties to compete for provincial and municipal power, making them responsive to and inclusive of a diverse set of local issues spread across the country. These two features push parties away from particularistic politics and toward the political centre where votes can be maximized.

The Electoral System and Election Rules

Indonesia’s hybrid electoral system is among the most complicated in the world; however, its combination of majoritarian and proportional features with strict party rules creates a strong incentive for broad-based, nationalist political parties. Indonesia’s three national-level elected bodies/positions operate under three separate electoral systems. The national parliament, called the People’s Representative Council (DPR), is elected from 77 multimember districts using open-list proportional representation. A second national-level body called the Regional Representative Council (DPD), which has limited powers over regional issues, is elected using single non-transferable vote in 77 four-member districts. Finally, the president of Indonesia is elected in a direct, two-round (if necessary) election in which the winner needs a majority of the vote.

This complicated mix of electoral systems is coupled with a set of strict party laws. For DPR elections, each party must surpass a 3.5% threshold (recently increased from 2.5%) in order to win a seat and must open party chapters in all provinces as well as in no less than 75% of all regencies/municipalities in each of the provinces and in no less than 50% of all districts in each of the regencies/municipalities. For presidential elections, the winning candidate must also obtain at least 20% of the vote in more than half

of the provinces. Additionally, only a party or coalition of parties that wins at least 25% of the vote or 20% of the seats in the DPR can nominate a presidential ticket.³

This convoluted set of rules and regulations was designed for one overarching purpose: to generate inclusive, broad-based political parties and competition. First, only parties with substantial electoral support can nominate presidential candidates. This limits presidential competition to comparatively large, national parties. Additionally, because generally no single party controls a majority in the DPR, parties are forced to align in order to nominate a single candidate, which inherently weakens ideological messages. For example, President Yudhoyono's secular-nationalist Democrat Party aligned with several religious parties for the 2009 presidential election, including the Islamist United Development Party (PPP) and Prosperous Justice Party (PKS). Second, by requiring a winning presidential ticket to have 20% of the vote in at least half of provinces, candidates are forced to compete in less populous and more diverse provinces, which encourages multiethnic and multi-religious appeals.

Party rules for DPR elections also hurt small, identity-based parties. First, a 3.5% party threshold precludes small, particularistic parties from winning seats and encourages the formation of multiethnic coalitional parties or nationalistic, non-ethnic parties. Second, every party must open party offices across the country, which forces parties to demonstrate not only widespread geographic support but also requires a relatively large fundraising capacity. This again favours large parties over small particularistic parties that have neither the support nor organizational capacity to meet the requirements.

In sum, Indonesia's election rules incentivize broad-based and inclusive politics, which produce political parties that must control more than 3.5% of the vote and have party headquarters across the country, but

that are ideologically broad so as to allow for charismatic and ideologically diverse candidates. Benjamin Reilly writes that Indonesia's "political reformers have introduced majority-favouring electoral systems and political party laws that encourage nationally focused political competition and that restrict parties which base their appeals upon regional or ethnic ties" (Reilly, 2007, p. 43). Consequently, political parties rely on charismatic candidates and catch-all rhetoric to generate votes across Indonesia's ethnically and religiously diverse landscape.

Decentralization

Indonesia complements its electoral system/election rules with significant decentralization of power. Indonesia is formally a unitary state; it rejects the term and structure of 'federalism' because of its association with Dutch divide-and-rule tactics. Therefore, its power-sharing laws are called 'decentralization' and have largely skipped over the provincial level – the traditional site of federal powers – and gone to the local level, where the dramatic decentralization of power has enhanced the moderating effects of electoral rules. After Suharto's fall in 1998, a new scheme of local power sharing was implemented through a 'big bang approach' that precipitously transformed centre-state relations (Crouch, 2010, p. 92).

These decentralization reforms were extensive. They included making regencies and cities the focal points of provincial power rather than governors; transferring a number of administrative and financial functions to regencies and cities; granting local parliaments control over their budgets; and introducing revenue sharing between central and regional (Hadiz, 2010, pp. 78-79). Through these reforms, Indonesia was "transformed from a highly centralized state into one of the most decentralized in the world" (Buehler, 2010, p. 268). Decentralization counter-intuitively enhances the national character of political parties. By raising the stakes of local elections, parties aim

3. In 2004, only parties that won 3% of the seats or 5% of votes in the DPR election could nominate a candidate.

to be strong not only at the national level, but also at the provincial and municipal level. This forces parties to cultivate ideological inclusion in order to compete across the largest portion of the country.

In the province of Aceh, standard decentralization efforts were inadequate. The northwestern-most province of Indonesia is unique from the rest of the country. Its Muslim majority is mostly ethnically Acehnese – a regionally concentrated group – and is significantly more conservative than the rest of country. Aceh had a parallel nationalist movement that rejected mainstream secularism and advocated strict Islamic law. The province's restive population waged intermittent secessionist violence against the central government for decades until a peace deal was reached in 2005. The ceasefire arrangement absolved Aceh from the strict party regulations that governed political competition elsewhere. This allowed regionally-based political parties to win elections in Aceh, placating the province's uniquely stubborn particularistic demands. Indonesia's asymmetrical decentralization is a significant element of its institutionally embedded conflict management. In combination, Indonesia's election rules and decentralization of power strongly encourage inclusive politics. Various regulations for legislative and presidential elections force parties to demonstrate significant and diverse support. Bolstering this imperative, decentralization has made parties more responsive to local issues. This joint incentive for moderation is shown most clearly in election outcomes. Despite the presence of conflict-prone identities – both religious and ethnic – which around the world often induce outbidding strategies and divisive, particularistic politics, inclusive and nationalist political parties have dominated Indonesian elections since 1998. This outcome is exactly what constitutional designers hoped to achieve.

THE PROCESS OF INDONESIA'S INCLUSIVE POLITICAL DEVELOPMENT

Indonesia's electoral system and constitutional design incorporate ethnic and religious diversity within a

political framework of secular nationalism that has a strong historical foundation. Indonesia's syncretic variant of Islam influenced the inclusive character of the anti-colonial movement and the nature of the post-colonial state. Indonesia's nationalist hero, Sukarno, advocated a strongly multiethnic and multi-religious vision, which continued to define the country after its collapse into decades of authoritarianism. The protest movement that ushered in the current democratic era in 1998 again reiterated the secular and inclusive character of state. In short, secular nationalism was reaffirmed at every critical juncture point of state formation. This created a steady and growing process of political inclusion that continues to reinforce Indonesia's multi-ethnic party system. The goal of Indonesia's institutional design – to foster secular nationalism – therefore conforms to a long ideological tradition in the country that is vital to its success.

Despite the presence of conflict-prone identities – both religious and ethnic – inclusive and nationalist political parties have dominated Indonesian elections since 1998.

The First Juncture Point of Inclusion: The Nationalist Movement

Islam entered the deeply heterogeneous archipelago in the thirteenth century. Yet the process of assimilation was not equal throughout the country. Some areas, such as the central island of Java, had longer periods of Islamic integration than others. This produced varied Islamic traditions that continue to define the country's syncretism (Ricklefs, 2008). Portuguese colonialists arrived in the early 1500s and gave way to Dutch colonialists during the 1600s. At the same time, Islamic states were emerging in other parts of Indonesia. Johr and Aceh, both Islamic states, were major powers. Yet despite the potentially unifying enemy of European colonialism, Muslims remained divided.

Indonesia's electoral system and constitutional design incorporate ethnic and religious diversity within a political framework of secular nationalism that has a strong historical foundation.

The consolidation of Dutch control precipitated the emergence of disparate nationalist movements and community organizations by the early 1900s. Three streams of nationalism took hold: upper class and western-oriented, religious, and radical. Islamic, socialist and communist organizations and parties began to organize Indonesians against colonial rule. By 1920, the term 'Indonesia' began to appear in party statements for the first time (Vickers, 2005). However, rather than uniting Indonesia under a common identity, the ethnic basis of these new organizations only illuminated the combative diversity of Indonesian politics.

During the late 1920s and 1930s, a truly inclusive nationalist identity began to form. Cooperation with the Dutch had been exhausted and a new secular elite emerged as the next generation of Indonesian leadership. In 1927, a young activist named Sukarno founded and chaired a political party called the Indonesian Nationalist Party. Sukarno believed deeply that nationalism and independence from colonialism was the ultimate goal and that the competing ideologies of Islam, Marxism and secular nationalism should be combined into a multiethnic movement (Ricklefs, 2008). Sukarno coordinated a multi-religious pact that unified secular, Christian, Muslim, and Chinese organizations in the name of Indonesian nationalism. "Muslims must not forget that capitalism, the enemy of Marxism, is also the enemy of Islam," Sukarno wrote (quoted in Vickers, 2005, p. 80).

The Japanese invasion and occupation of Indonesia during World War II ended Dutch control over the archipelago. At first glance, Indonesia had been liberated: the Dutch-named city of Batavia was renamed Jakarta and street names were changed into the local language. But Japanese rule was hardly benevolent. Its goal was to reorganize the Indonesian economy to support the war effort and eliminate any existing western influence from the country. In early 1943, Japan began training Indonesian military forces, youth leagues and teachers, as well as suppressing Islamic organizations in order to reshape Indonesian society (Ricklefs, 2008).

In March 1945, with Allied forces bearing down on Japan, the Japanese created an elite committee to prepare for Indonesian independence. Sukarno, a committee member, pushed his vision for a multi-ethnic, secular Indonesian state through an ideology called *Pancasila*. To become the official philosophy of independent Indonesia, *Pancasila* laid out five principles: belief in god, nationalism, humanitarianism, social justice, and democracy. To appease Islamic conservatives, the committee approved the Jakarta Charter, which obliged adherents of Islam to carry out Islamic law.⁴ The committee then drafted Indonesia's first Constitution, which created a unitary state with an exceptionally powerful president.

In August 1945, Japan surrendered to the Allies, who had not yet retaken Indonesia. This left the nation temporarily free from foreign control. Nationalist leaders Muhammad Hatta and Sukarno seized the moment. On 17 August, Sukarno read Indonesia's declaration of independence before a small audience outside his own home: "We the people of Indonesia hereby declare the independence of Indonesia. Matters concerning the transfer of power, etc., will be carried out in a conscientious manner and as speedily as possible. In the name of the people of Indonesia" (quoted in Ricklefs, 2008, p. 260).

4. Indonesian nationalists later reneged on the Jakarta Charter, which remains a contested issue in Indonesia.

The Allies finally arrived in Indonesia to accept Japanese surrender and reinstate the Dutch regime, but the newly self-proclaimed independent Indonesians began a four-year war against the returning colonial powers. The new government in Jakarta quickly formed a leadership structure around Sukarno and Hatta as president and vice president respectively. The Dutch did not have the military forces to control Indonesia, but internal divisions and ethnic diversity made the independence movement highly fragmented. For the Indonesian masses, the notion of freedom from foreign dominion was appealing, but there was still no substantive political culture or deep understanding of what democracy and independence actually meant (Hellwig & Tagliacozzo, 2009).

Continued guerrilla resistance and international pressure ultimately forced the Netherlands to relent. On 27 December 1949, the Netherlands formally transferred sovereignty to the Republic of Indonesia. The country was still not a cohesive nation, but the anti-colonial movement and its charismatic leadership had created a foundational national mythology around unity and secularism. Though significant disagreement still existed with Islamist leaders who sought more explicit Islamic values represented in the state, a precedent of compromise and unity had been set.

The Second Juncture Point of Inclusion: Democracy

The process of inclusivity within the nationalist movement was formalized with the creation of a democratically-elected parliament, which replaced the existing provisional legislature. Indonesia's first election in 1955 was dominated by four main parties, which each took approximately 20% of the vote. Sukarno's secular-nationalist Indonesian Nationalist Party (PNI) won the election with 22%. The three other top-performing parties included two Muslim parties and the Communist Party (PKI) (Feith, 1964).

Though inclusive, democratic elections did not bring unity. The 28 different parties and groups that won

seats formed themselves into seventeen factions in the assembly. The three largest parties in parliament – PNI, Masyumi and NU – formed a ruling coalition in order to exclude PKI. The deeply divided cabinet produced only deadlock. Simultaneously, Islamic militants continued their struggle against the perceived secular proclivities of Jakarta. Joined by the province of North Sumatra in 1950, Aceh separatists began an open rebellion for independence in 1953. The election also exposed a geographic divide: there remained a clear division between Java and the outer islands. Masyumi performed exceptionally well in the outer islands, while the three other parties largely split the Java vote.

With ethnic separatism and divided central rule threatening the country's nascent inclusive political system, Sukarno began to discuss publically the concept of 'guided democracy', which could replace 'western' democratic procedures and parties with elite-driven, consensual governance. This proposed Java-centred power consolidation led to a revolt among army leaders in the outer islands. As political disarray grew, Sukarno dissolved the cabinet and declared martial law in March 1957; thus ending the brief period of post-colonial parliamentary democracy in Indonesia.

Despite the centrifugal pulls that took hold during this period, a multiethnic and multi-religious Indonesian identity had been created. Nationalism was aided by the continued Dutch control of Irian Jaya, which was extremely unpopular, as well as the legacy of Dutch 'divide and rule' policies, which discredited separatism and federalism as 'western' (Ricklefs, 2008). The abandonment of democracy in Indonesia actually solidified – albeit artificially – a unifying multiethnic and multi-religious sentiment. Sukarno believed deeply in a cohesive Indonesian state that combined secular and Islamic values. Hard-line religious fundamentalists opposed this vision. Although the next democratic election would not take place until 1999, Indonesia's failed democratic experiment managed to create a common inclusive identity that would

tenuously stabilize society through decades of dictatorship.

The Third Juncture Point of Inclusion: Authoritarianism

The process of inclusivity was counter-intuitively bolstered through authoritarian rule. Political parties were on the defensive during the Guided Democracy period. Despite strong opposition to Sukarno's executive power grab, the parties remained too divided to mount a unified defence of the parliamentary system. PNI and NU officials aligned in the new cabinet. Masyumi rejected the arrangement while PKI and the Indonesian Socialist Party (PSI) were fully excluded. The failure of United Nations efforts to end contested Dutch control of Irian Jaya precipitated a spasm of anti-Dutch protest, which was encouraged by Sukarno to enhance his domestic standing.

Nevertheless, regional rebellion continued. Leftist movements challenged government authority around the country. In Aceh, a shaky ceasefire held but rebels remained armed. In the face of this unrest, Sukarno further consolidated his power by reinstating the 1945 Constitution, which enshrined vast powers in the president. The Constitution, which lacked any governmental imperative to implement Islamic law, infuriated conservative Muslims. Sukarno pushed his concept of 'NASAKOM',⁵ a national doctrine that combined communism, nationalism, and religion. He also made great efforts to emphasize Indonesia's ancient and potentially unifying multiethnic history (Vickers, 2005).

By 1960, economic chaos befell Indonesia. Sukarno presided over the devaluation of the rupiah and a reduction of the money supply. As inflation skyrocketed, economic and political chaos destabilized his rule. On 30 September 1965, military officers executed four generals. The rebelling officers claimed to be protecting Sukarno from the generals, who were said to be plotting a coup. Amid the chaos, an Indone-

sian general named Suharto took control of the non-rebelling troops and put down the internal revolt. The event signified a deepening political crisis that pitted the civilian leadership against the military.

The abortive coup of September-October 1965 hastened the end of Sukarno's Guided Democracy. During the period of 1950-1965, social divisions reified around communal rather than class boundaries. In East Java, ethnic tension rose as Islamic NU activists slaughtered communists with the help of the military. In Jakarta, pro- and anti-Sukarno youths fought in the streets. Amid continuing unrest, Suharto convened the parliament in the summer of 1966. Under his control, the parliament banned the PKI and Marxism, stripped Sukarno of his status as 'President-for-Life' (conferred in 1963), and forbade Sukarno from issuing presidential decisions. Sukarno was placed under house arrest and the period of Guided Democracy ended. Suharto took over as 'Acting President' having formal power conferred through rigged elections in 1971.

Like Sukarno, Suharto was a nationalist who maintained multiethnic and multi-religious unity through authoritarian tactics. A new electoral law allowed the government to appoint a large percentage of the previously elected representatives, effectively giving the state power to block constitutional amendments. In 1970, the government announced that state employees could not join political parties and were pressured to join Golkar, a joint army-civilian coordinating body. Existing political parties were consolidated into approved – and impotent – opposition parties. Islamic parties were forcibly combined into the United Development Party (PPP) and non-Islamic parties were consolidated within the Indonesian Democratic Party (PDI).

By the mid-1970s, Suharto had fully consolidated his one-man rule. Military allies helped crush opponents while Suharto bought support by distributing state funds to his associates and family. Virulent anti-

5. NASAKOM is an acronym combining the Indonesian words for nationalism, religion, and communism.

communist propaganda was used to suppress leftist mobilization. In the wake of the Iranian Revolution in 1979, the New Order began to view Islamic organizations with greater concern. The regime moved to create or exacerbate divisions within the already heterogeneous Islamic community. Power became increasingly centralized in the state, which continued to voice slogans of national unity while rigging elections every five years.

The peak of the New Order's power was from 1976 to 1988. Despite student protests and an abysmal human rights record, Indonesia experienced a rise in its standard of living because of oil export windfalls. This success was accompanied by increased efforts to create ideological homogeneity. In the late 1970s, the government began compulsory citizen indoctrination programmes in the state ideology of *Pancasila*. The government also required all organizations to adopt *Pancasila* as their official ideology.

The Fourth Juncture Point of Inclusion:

The Fall of Suharto and Return of Democracy

The end of the Cold War unleashed more resistance to the state. In Aceh, where large-scale separatist violence had been suppressed since 1982, the Independent Aceh Movement (GAM) attacked military outposts and ratcheted up militant activities. In East Timor, economic and political exploitation by the military, long hidden by the Cold War's shadow, now came under international scrutiny. Suharto's relationship with the military was also souring. After his election to a sixth term, the military, which had been designated seats in the parliament, nominated a sympathetic vice president to protect its interests. Suharto responded by appointing a cabinet led by a military adversary. Behind the scenes, the military began to plan for Suharto's successor.

With social and political conflict growing, the economy also began to falter. By the early 1990s, Indonesian debt was massive, corruption was driving away foreign investment, and interest rates were high. The government's large role in the economy exacerbated problems, as corruption and ineptitude only lined

the pockets of Suharto's family. The mid-1990s saw more identity-based conflict: riots spread in East Timor, anti-Chinese and anti-Christian sentiment grew, Dayaks and Madurese immigrants were targeted, and independence demonstrations expanded in Irian Jaya.

In 1997, the Asian financial crisis ravaged Indonesia's economy. Indonesia accepted a \$43 billion loan from the IMF, but public opinion turned against the regime. Suharto, who suffered a minor stroke in 1997, became more isolated. A turning point arrived when military forces violently suppressed protesting students, who only redoubled their agitation in response. Suharto then called for a period of reform and new elections, but these concessions could not sustain his rule (Lloyd & Smith, 2001). On 21 May 1998, Suharto transferred power to his vice president, Habibie, in a hastily organized ceremony. In 1999, Indonesia's second democratic election put the party of Megawati Sukarnoputri, Sukarno's daughter and an ardent secular nationalist, in power in the parliament. The momentum of the inclusive, nationalist movement had continued to carry its political descendants to power.

The process of inclusive, secular inculcation was reaffirmed at each critical juncture point in Indonesia's political development: the anti-colonial movement, the first democratic transition, the authoritarian era, and the second democratic transition.

In sum, the process of inclusive, secular inculcation was reaffirmed at each critical juncture point in Indonesia's political development: the anti-colonial movement, the first democratic transition, the authoritarian era, and the second democratic transition. However, this sentiment – exemplified by *pancasila* – was not uncontested. Various ethno-nationalist and Islamist movements challenged the proponents of secular

nationalism for control of the state. However, *pancasila* continued to triumph, becoming more embedded in the political ethos of Indonesia at each juncture point. This historical foundation of secular nationalism created the setting for Indonesia's current institutional design, which attempts to encourage catch-all political parties that will retain the country's secular character in the face of persistent, though low-scale, resistance.

POLITICAL CULTURE, TOLERANCE AND DEMOCRACY: INDONESIA VERSUS THE MIDDLE EAST

The narrative outlined above shows the progression of elite-level secularism in Indonesia's political development, which led into its second democratic transition. However, the extent to which these sentiments shaped mass-level attitudes is an important empirical and theoretical question. Scholars have long noted a connection between values and democratic strength. Much political science literature argues that successful democratization relies on a set of attitudes either toward democracy itself or toward the principles that undergird it, such as tolerance, trust, political activism, or orientation toward authority (Verba, 1965; Schmitter & Karl, 1991; Inglehart & Welzel, 2005). However, there remains debate about the sequencing of political culture and democracy: must a 'positive' culture precede democracy or can it emerge after a democratic transition? Regardless, Mark Tessler and Eleanor Gao conclude, "...there is general agreement that sustainable democracy ultimately depends not only on the commitments and actions of political elites but also on the normative and behavioural predispositions of ordinary citizens" (Tessler & Gao, 2009, p. 197).

Building on this premise, this section compares the political cultures of Indonesia and two Middle East countries – Tunisia and Egypt – at their respective moments of transition. Using data from the World

Values Survey's (WVS) 1999-2004 wave and 2010-2014 wave for Indonesia and the Middle East respectively, one can identify values and norms at the fall of Suharto and during the Arab Spring.⁶ Although political culture can certainly evolve, the attitudes and dispositions of a society at the time of transition constitute important building blocks of democracy. For this analysis, selected WVS questions were organized around attitudes toward democracy, tolerance, and religion.

Indonesia's Political Culture During its Democratic Transition

Indonesians entered the post-Suharto era with a strong belief in democracy. Nearly 90% of Indonesian's believed that democracy was a "very good" or "fairly good" way of governing the country. Less than 4% said it was "bad" or "very bad". Similarly, over 70% disagreed with the statement that democracies are bad at maintaining order or are indecisive. And over 60% agreed that democracy was the best form of government despite its problems. Around 75% said having a strong leader that can ignore parliament or elections was bad. These beliefs are particularly important given Indonesia's tumultuous politics after Suharto's fall. Nearly 70% of Indonesian's were "not very" or "not at all" satisfied with the way democracy was developing at the time of the survey.

Tolerance, as measured by attitudes towards women, homosexuals, and ethnic/racial minorities, was mixed in Indonesia. When asked which group of people you would not want as a neighbour, 34.8% said people of different race, 37.8% said people of different religion, and 54.8% said homosexuals. Nearly 95% said homosexuality is "never justifiable". Indonesians were also conservative regarding women's rights. Nearly 80% of respondents agreed that a wife's duty was to obey her husband and 83% claimed being a "good wife" is a "very important" trait for a woman. Furthermore, a slight majority agreed that

6. The WVS online data analysis tool is available at <http://www.worldvaluessurvey.org/wvs.jsp>

men have more right to a job in times of economic hardship.

Indonesia was and is a highly religious society. Over 98% of respondents said religion was “very important” in his or her life and nearly 100% said they gained comfort and strength from religion. Despite this religiosity, many Indonesians believed in a separation between religion and politics. Nearly 90% agreed that religious leaders should not influence government decisions while 86% agreed that religious leaders should not influence how people vote. More recent survey data from the Pew Research Center in 2013 show a high level of support for Sharia law in Indonesia (The World’s Muslims, 2013). 72% support making sharia the official law of the country. A smaller majority (66%) support empowering religious judges to adjudicate family law and property disputes.

Political Culture in the Middle East During the Arab Spring

In Tunisia and Egypt – two countries that made a full transition from authoritarianism to democracy (at least temporarily in the case of Egypt) – there was a relatively strong belief in democracy as a process. Over 85% of Egyptians and over 62% of Tunisians rated the importance of democratic governance, with an 8 or above (on a 10-point scale). Similarly, over 70% of Tunisians and 85% of Egyptians said free elections were an essential characteristic of democracy. However, both Tunisians and Egyptians showed an affinity for strongman politics. A plurality of Tunisians (27%) and a large majority of Egyptians (71.1%) said having a strong leader who does not bother with parliament and elections was “very good.” Similarly, only a small plurality (25%) in Tunisia⁷ said army intervention in the political process was “not an essential characteristic of democracy”.

Levels of tolerance in Tunisia and Egypt were mixed. In Tunisia, nearly 70% said they would not want a

homosexual neighbour and nearly 30% said they would not want a neighbour of a different religion. 87% of Tunisians said homosexuality is “never justifiable”. On women’s rights, both Egypt and Tunisia are conservative societies. Over 70% of Tunisians and over 80% of Egyptians said men have more right to a job than women during economic hardship. Furthermore, small majorities (approximately 52% and 59% in Tunisia and Egypt, respectively) said “women have the same rights as men”, a score of 8 or higher (on a 10-point scale). Trust is very low in both countries. Just over 15% of Tunisians and 21% of Egyptians said “most people can be trusted”. And over 86% of Tunisians and nearly 60% of Egyptians said they did not trust people of other religions “very much” or “at all”. Nearly 90% of Tunisians agreed with that “the only acceptable religion is my religion”.

Egypt and Tunisia are highly religious societies. Well over 90% of respondents in both countries claimed religion was “very important” in life. Tunisians and Egyptians were split on whether religious authorities should interpret law in democracy. In Tunisia, approximately 49% of the population agreed more than disagreed. In Egypt, a small plurality (17.1%) said this was “an essential characteristic of democracy” and nearly 60% agreed more than disagreed. The Pew Research Center’s data showed strong but different levels of support for sharia law. 74% of Egyptians and 56% of Tunisians supported making sharia the official law. In Egypt, 94% said religious judges should decide family law whereas 42% of Tunisians said the same.

Comparing Indonesia with Egypt and Tunisia

Though ostensibly disconnected, the answers to these questions regarding tolerance, democracy and religion constitute important values that correlate with democratic performance across the world. When comparing Indonesia with these

7. This question was not asked in Egypt.

two selected Middle Eastern countries, we see important similarities and differences. The populations of all three countries have high levels of support for democracy as a process. However, Indonesians appear to be more sceptical toward strongman politics than either Tunisians or Egyptians. All three countries display low levels of tolerance for women, religious minorities and homosexuals, though the rates of intolerance vary. Finally, Indonesia, Tunisia and Egypt are all highly religious societies with majorities that support sharia law – a legal code inherently discriminatory toward non-Muslims. However, there is significant variation in these attitudes. Tunisians' support for sharia is markedly less than among Indonesians or Egyptians.

The World Values Survey data do identify potentially important differences between Indonesia and the Arab world. Though Indonesians are highly religious, their political value system includes limiting the power of religious leaders and strong scepticism toward authoritarianism. These democratic attitudes are potentially vital for sustaining democracy during tumultuous periods of political competition when religious, military, or other elites are likely to advocate their own undemocratic intervention in the process. Despite sharing social conservatism with the Middle East, polling suggests Indonesians have a deeper respect for pluralistic politics. Recent events in Egypt potentially demonstrate this difference. Many liberals upset with the democratically-elected Muslim Brotherhood encouraged the intervention of the military. Respect for both the means and ends of democratic competition is fundamental to the preservation of democracy.

THE INDONESIA MODEL AND THE MIDDLE EAST

While Indonesia does present a hopeful example of democracy and minority rights for the Middle East's transitioning regimes, the unique character of its political development limits the lessons that can be

drawn from it. The historical evolution of its secular political culture appears distinct from the Middle East, which has not undergone a similarly slow gestation of inclusive political values. However, there is no single culture that makes democracy work and cultures change over time. In the short term, though, Indonesia provides an adaptable model of inclusivity that should be considered in the Middle East.

Indonesia's constitutional design and election rules represent an interesting model of conflict management for all divided societies, not simply for Muslim-majority countries in the Middle East. Its party rules and election requirements force political parties into the political centre. At the presidential level, regional vote distribution requirements compel candidates to demonstrate geographically dispersed appeal. At the parliamentary level, a minimum vote threshold and party organization requirements preclude small, particularistic parties for competition. Together, these election rules induce broad-based, catch-all political parties that use moderate, policy-based appeals to mobilize the electorate.

Indonesia's constitutional design and election rules represent an interesting model of conflict management for all divided societies, not simply for Muslim-majority countries in the Middle East.

This couples with significant power decentralization, including asymmetrical rights granted to the province of Aceh, which encourages parties to compete at the local level – where policy issues dominate – for access to power. For the Middle East's floundering post-Arab Spring countries, which are rife with sectarian outbidding, Indonesia's moderation amid diversity is an appealing template.

However, the political setting in which Indonesia's institutional arrangement emerged was markedly different than in the Middle East. Despite long-

standing discontent and protest against authoritarian regimes, the Arab Spring seemed to emerge precipitously and out of nowhere. A fruit vendor's immolation in Tunisia sparked a revolutionary contagion that in only a few months ended several of the region's longest surviving autocrats. The pluralism and democratic spirit undergirding the Arab Spring had few historical antecedents. The succession of the Ottoman Empire to European colonialism to secular dictatorships occurred without the consent of the region's inhabitants. When authoritarian regimes fell in 2011 at the hands of secular and inclusive people's movements, this represented a radical rather than gradually-building shift in the Middle East's political development.

This contrasts significantly with Indonesia. The mass protests that precipitated the fall of Suharto fit within Indonesia's historical narrative. Centuries of colonial rule formally ended in 1945 after a nationalist armed resistance movement won the country's independence. Though fleeting, Indonesia's brief experiment with constitutional democracy in the 1950s institutionalized a secular state. Unlike in the Middle East, the secular authoritarianism that began in 1965 under Suharto was not an artificial implant. From colonial resistance to democracy to authoritarianism, the ideological underpinning of the political elite remained predominantly secular. Thus, when student protests ushered in the current democratic period, which included the electoral reforms outlined above, there was nothing particularly foreign about them. They had a strong precedent in Sukarno's ideology of *pancasila*. Indeed, the leading figure of the pro-democracy movement was Magawati Sukarnoputri, Sukarno's daughter.

A persistent political culture of secularism is represented in survey data from Indonesia. Indonesians are strongly sceptical about authoritarianism and prefer religious leaders to stay out of politics. These sentiments are layered over a deep religiosity, exemplified by elevated support for Sharia law and antagonism

toward women and religious minorities. Nevertheless, this cultural separation between religion and the state is an important democratic norm. Although Tunisians appear more secular than Indonesians according to some indicators, a closer examination of Tunisia's political history would be required to fully compare its experience with secularism to that of Indonesia. The "twin toleration" (Stepan, 2000) of religion and secularism that buttresses Indonesia's democracy has deep historical roots, which make it likely to persist. Contrastingly, the rapid and radical nature of the Middle East's democratic change could portend a regression into authoritarian modes of governance in some countries.

Indonesia's political development suggests that though inclusive democratic institutions can be designed, their success cannot be separated from sui generis historical and cultural factors.

In sum, Indonesia's current pluralistic, tolerant and liberal democracy was partly nurtured and partly in its nature. Though some interreligious and interethnic violence continue at the local level, the moderate character of national-level politics and policy was induced through institutions. Yet the success of these institutions cannot be understood without recognizing the conducive social setting in which they are embedded. Syncretic Islam and political secularism were present at the state's founding moment, persisted through authoritarianism, and now reinforce Indonesia's liberal democracy. Indonesia's political development suggests that though inclusive democratic institutions can be designed, their success cannot be separated from sui generis historical and cultural factors.

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THE CHALLENGES OF TRANSITIONS IN THE ARAB WORLD



STATE POWERS AND CONSTITUTION DRAFTING PROCESSES IN POST-REVOLUTIONARY TRANSITIONS IN NORTH AFRICA

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The 2011 uprisings in the Arab World have triggered a wave of constitution writing. Some states amended their Constitution while others decided to put a new one in place. In North Africa, Egypt and Tunisia both adopted new Constitutions in January 2014 after the removal of their presidents. Libya is still struggling to adopt its own basic law amid a deteriorating security situation. Morocco took a different path and prudently preferred to begin a process of reform to defuse the risks of political rupture. In Algeria, in 2011 the president undertook to introduce amendments to the Constitution to strengthen democracy. He set up a constitutional commission in April 2013 in charge of making proposals. The commission submitted its conclusions in September 2013 but there was no follow-up. In May 2014, the newly re-elected president again proposed amending the Constitution, but most political parties considered his proposals as an attempt to co-opt them rather than a move toward real reform.¹ In June 2015, the president stated again that the constitution will be revised, without giving an agenda or a deadline. Constitutions have a multifaceted role and can serve different purposes. They establish the nature and identity of the political system, organize the power and the rules of the political game, and determine the fundamental principles by which the state will

be governed. Traditionally, a constitution is also described as a social contract between the people that binds all sectors of society together.

Thus, in its essence a constitution is an agreement among citizens of a country on how to govern themselves and which principles to uphold. Product of a negotiation that reflects the interests and powers of the different actors around the shape a given society should take, it should be based on a compromise between all parties and unite rather than divide. Political theory, however, views constitutions as political documents reflecting the distribution of power among the most important actors in the country at the time of drafting. According to this more realistic theory, a constitution is not only a normative or aspirational document but also a map of power relations in each country. Constitutional writing engages different political actors in a contest over power and influence.

Constitutions are typically drafted or modified in the wake of a crisis. Their adoption is considered as a central element to construct national consensus and to help a country undergoing a difficult political transition along its path to national reconciliation. They provide a break with the old regime, create a common vision of the future of the state and act as the foundation of the new political order.

1. For current discussions on constitutional reform proposals, see Goui, B. (2015). Algerian Angst: Can it Agree on Constitutional Arab Reform Initiative. *Arab Reform Initiative*. Retrieved from <http://www.arab-reform.net/sites/default/files/Algerian%20angst%2C%20can%20it%20agree%20on%20constitutional%20change.pdf>

The process of constitution-making has started to become an object of analysis as important as the content of the final document. It is inextricably linked to the substance of the constitution and the question of who writes the basic law may be the most crucial determinant of what it will say. The legitimacy of the document will also be affected by its drafting process of creation, which can be limited to the elite or open to popular participation. An established trend requires drafting to build and develop a national consensus through a participatory and inclusive process that integrates all social and political forces. However, constitution building is often conceived as a short-term victory that involves only the dominant groups.

The legitimacy of the Constitution depends on its drafting process, which can be either elite-driven or open to public participation.

Each state may follow a different path in the modes of appointment of the members of its drafting body. The constitution-building processes in North Africa, all of them with their own specificities, had to accommodate powerful actors. Some countries decided to elect the members of their constituent body, while others opted for their appointment by the executive power. In Egypt, the army and the judiciary played a central role in the transition process and took part in the struggle for power.

DIVERSITY OF CONSTITUTION-MAKING BODIES

Elected Constituent Assemblies

Tunisia followed the most democratic process, since its 2014 Constitution was drafted by a constituent assembly directly elected by the people. This body, composed of 217 members, was elected in October 2011 through a proportional representation system. In recognition of the important role youth played during the revolution, the law required at least one person

under the age of 30 to be included in all party lists. Parties were also required to alternate between male and female candidates on their lists, leading to a fourth of the seats being won by women. Candidates who had served in the government or in the former ruling Constitutional Democratic Rally were banned from standing in the election. The assembly also worked as a parliament, enjoying both legislative and constitutional powers. A consensus committee of 22 members was established within the constituent assembly in which various political blocs were given equal weight, regardless of their results in the 2012 elections. This committee examined controversial provisions in order to reach deals before they were passed to the plenary. It played a central role in reaching consensus and compromise between different factions: "Successful negotiation of a new constitution demands that all stakeholders be willing to seek common ground and consider alternatives to their own preferred positions and the possibility of trade-offs along the way. The result achieved in Tunisia on 26 January 2014 would not have been possible without the mediation of civil society organizations and – procedurally – the creation of a special committee that was tasked specifically with the facilitation of compromise and gave all parties equal representation regardless of electoral support" (European Parliament, 2014).

After a lengthy process that took more than two years and witnessed tensions and clashes, the Constitution was adopted in January 2014 by a majority of 200 members with 12 members voting against and four abstentions. The Constitution required two thirds of the members to vote in favour in order to be adopted without submission to a referendum. In Libya, the Constitutional Declaration adopted by the National Transitional Council in August 2011 entrusted a constituent assembly appointed by the General National Congress with the drafting of a Constitution. Under pressure from the opposition, however, it was decided shortly before the elections in July 2012 to amend the Declaration in order to provide for direct election of the constituent assembly. The electoral law guar-

anted an equal representation of the three regions, Tripolitania, Cyrenaica and Fezzan, irrespective of population size. Six out of 60 seats were to be allocated for women and six other seats for ethnic minorities. The Amazigh community, however, decided to boycott the elections to contest their being allocated only two seats. The elections took place in February 2014, with a very low turnout. For security reasons, voting could not take place in about 80 polling stations and 13 seats remained vacant. The constituent assembly was given four months to draft the Constitution and it was to be submitted to a referendum. The deadline, however, could not be met and a draft Constitution was released in December 2014.² In the midst of increasing instability in the country, the draft constitution could not be submitted to a referendum. In Egypt, the 2012 Constitution was the first one to be drafted by an elected body. Previous basic laws had all been written by unrepresentative committees appointed by the executive power. The March 2011 Constitutional Declaration adopted by the Supreme Council of the Armed Forces (SCAF) stipulated that the new Constitution would be drafted by 100 members chosen by the parliament. The newly-elected parliament, dominated by Islamists, nominated the members of the constituent assembly in March 2012. One month later, however, in April 2012, the constituent assembly was declared unconstitutional by the State Council because half its members had been chosen within the legislative assembly. A second assembly was elected in June, after threat from SCAF to appoint a body on its own if the parliament did not succeed in electing a new one. This new constituent assembly was assigned seats according to political quotas and to the composition of the society and retained a majority of around 60% Islamists. Seven women were part of that body, of whom five were members of the Brotherhood. Most non-Islamist members withdrew from the Assembly, to complain against the way preparatory works were conducted,

claiming that some articles had been changed after consensus had been reached or that they were handed a new draft almost every day. The Constitution was adopted by referendum in December 2012 by a 63.8% majority but with a low turnout of 32.9%. The law organizing that 2nd Constituent Assembly was declared unconstitutional by the Supreme Constitutional Court (SCC) in June 2013, meaning six months after the adoption of the Constitution. However, the Court declared that the validity of the Constitution would not be challenged, due to its approval by the people in the referendum.

In both Egypt and Tunisia, it was the first time Islamist parties were offered the opportunity to participate in the drafting of a constitutional text and to set down their vision of society. Their acceptance of the supremacy of a higher state norm binding on all legal and political bodies should be underlined, since classical Islamic law does not know the concept of constitution. Indeed, in this model, law can only be the expression of the will of God and the norms are established in mosques by religious scholars and not in parliaments by elected representatives of the people. The mere fact that Islamist groups agreed to become political parties and run in elections to sit in an elected legislative/constitutional assembly demonstrates their readiness to make concessions and at least accept the rules of the game of democracy. The 2012 Egyptian Constitution did include provisions referring to Islam and religion. However, it granted sovereignty to the people (Article 5): "Sovereignty belongs to the people who practice and protect it, preserve its national unity and is the source of authority as stipulated in the Constitution." It grounded the political system on the principles of democracy and consultation (Article 6): "The political system is based on the principles of democracy, consultation, citizenship that confers to all citizens the same public rights and duties, political pluralism and a multi-party system, peaceful transfer of power, separation of powers

2. For an unofficial translation of the draft Constitution see <http://www.constitutionnet.org/vl/item/libya-initial-draft-constitution-2014-english>

and the balance between them, the rule of law, and respect for human rights and freedoms; all as elaborated in the Constitution." In Tunisia, Ennahda ended up making important concessions regarding the status of sharia and Islam and the Constitution was adopted on the basis of a wide national consensus. "The Ennahda-led government made concessions concerning key demands of the opposition, such as the protection of women's rights and freedom of expression and religion – key values for urban middle class Tunisians who see Islamists endangering their lifestyle and convictions. Although fearful of seeing Islam reduced to a mere cultural accessory (and of a return of the oppression they suffered previously), Ennahda nonetheless compromised on these key issues" (Mersch, 2014). Participation of Islamic parties in democratic processes, therefore, could end in moderating their ideologies and behaviour.

Committees Appointed by the Executive Power

In Morocco, the King succeeded in avoiding the escalation of protest to revolution by passing reforms while retaining control of the entire revision process. Shortly after the onset of demonstrations in March 2011, he took the initiative of revising the Constitution. He appointed the members of a reform commission in charge of preparing a draft in less than four months on the basis of seven key elements he established. The 18 members of the Consultative Commission on Constitutional Reform were for the most part university professors and human rights activists (Tourabi, 2011). They ensured the participatory dimension of the process by consulting with different groups of the society, political parties, unions and associations. A referendum was held on July 2011 and was approved with 98% of those who voted. The reform diminished the powers of the king to the benefit of the government and the parliament. Yet the core of the king's

powers was not affected and he remains the true holder of power. He succeeded, though, in defusing the protests movement by following an alternative route towards democratic transition.

In Egypt, after the suspension of the 2012 Constitution in July 2013 following the removal of Mohamed Morsi by the army, a very innovative but not successful two-step process was established to draft a new Constitution. A committee of ten legal experts was nominated by Interim President Adly Mansour and was given a month-long period to prepare amendments to the 2012 Constitution and then pass them on to a committee of fifty members, the Committee of 50. These ten experts were six judges and four constitutional law professors from Egyptian universities. In practice, the Committee of 50 did not show any deference to the work of the ten experts and disregarded their recommendations. The Committee of 50, in charge of preparing the final draft amendments, was to reflect the major components of society.³ In practice, the members were selected by the interim president on the basis of opaque criteria and more than two thirds of the seats were allocated to representatives of various institutions within the state apparatus – the army, the police, al-Azhar, national councils – or were close to the state. All these bodies had been in direct confrontation with the Muslim Brotherhood. Leftist and Nasserist groups were represented by 11 members and only two seats were allocated to political Islam: one for a Salafist from the Nour party and the other for a former member of the Muslim Brotherhood who had resigned from the group the year before. The prejudice against the representation of the Islamic trend in that Committee echoed the bias against secularists, liberals and leftists from the drafting process of the 2012 Constitution: "Just as secularists were sidelined from the 2012 Constitution-drafting process, Islamists were almost entirely excluded from the Committee of 50.

3. Political parties, intellectuals, workers, farmers, unions and syndicates, national councils, al-Azhar, the churches, armed forces and the police, youth, etc.

The drafting process thus served to deepen political divides among Egyptians rather than as a means to achieve consensus" (Carter Center, 2014). Five women were appointed to that committee.

The Committee of 50 was given only 60 days to prepare the final draft. The members managed to extend the deadline by considering that the 60-day limit meant 60 working days, and did not include official holidays. However, such a short deadline meant that the constitution had to be written in a rush without time to engage in discussion and debate. The six month timeframe imposed by the March 2011 constitutional declaration for the drafting of the 2012 Constitution had already been considered as too short. The Committee of 50 decided to meet in closed-door sessions, limited to the core members only. Even alternate members and the ten experts were not allowed to attend. Members were banned from giving public statements to the press and only the official spokesperson was giving information about the debates in daily press conferences. In the absence of media coverage, the majority of Egyptians lost interest and no longer followed the Constitution drafting process. By comparison, the debates in the 2012 Constituent Assembly had been widely publicized and published in the media and most plenary sessions of the assembly had been broadcasted on television. Civil society and youth groups had launched constitution writing and awareness raising campaigns (Farouk, 2013).

While Tunisia followed a participatory approach and organized sessions to register public concerns, civil society in Egypt played a very limited role in the drafting processes.

Egypt refused international aid in writing its constitutions, while several international organizations and experts supported the drafting process in Tunisia. Tunisia followed a participatory approach and organ-

ized sessions to register public concerns, while civil society in Egypt played a very limited role in the making processes.

'ALIEN' ACTORS IN THE DRAFTING PROCESS: THE CASE OF EGYPT

In Egypt, both the army and the judiciary played a central role in the drafting process and succeeded in pushing through the Constitution provisions protecting their own interests (Brown & Dunne, 2013).

The Army Controls the Constitution Transition Process

The military exerted control over the whole transition process and several times altered its timeline to suit its own interests (Moustafa, 2012). While in charge of ruling the country from February 2011 to June 2012, they were to decide on sequencing the process of elections and constitution drafting, with the Muslim Brotherhood and other Islamist groups wishing to have elections first and leftist and liberals pushing hard for a new Constitution in advance of elections. In the end, the army decided to hold parliamentary elections before convening a constituent assembly, and then moved to organize the presidential elections in June 2012.

The army acted twice as direct constituent body. Two days after Mubarak's fall, SCAF suspended the 1971 Constitution, thus creating a legal vacuum. They appointed a committee tasked with amending the Constitution, at the head of which they placed an ex-vice president of the State Council known for his closeness to 'enlightened' Islamic circles. The nomination process was neither open nor participatory and the only political trend represented within the committee was the Muslim Brotherhood. The deliberations were closed and did not provide any public accountability. Less than three weeks after the completion of its work, about ten amendments to the 1971 Constitution were submitted to a referendum. They were adopted on 19 March 2011 by an overwhelming majority of 77.2% with a level of participation of 41%.

A few days later, the 1971 Constitution, suspended on 13 February and amended on 19 March, was replaced by the constitutional declaration of 30 March 2011 that was to serve as the interim Constitution. This document was drafted in secret by anonymous and unaccountable figures and was not submitted to referendum, although ten days before, the constitutional amendments had been submitted to the people. This laborious administration of the transition by SCAF gave an impression of improvisation and of the absence of an overall vision. Moreover, as later developments would demonstrate, numerous lacunae and omissions in the actual content of the constitutional declaration undermined the progress of the institutional reform process. In particular, the declaration did not make clear the order in which the successive stages of the institutional reform process were to be organized and it was ambiguous with regard to the modalities of the composition of the constituent assembly. The constitutional declaration was amended by the army in June 2012 to increase its powers before relinquishing the executive power to the newly-elected president.

After the 2012 Constitution was suspended following Morsi's removal, interim president Adly Mansour appointed by the army adopted a new constitutional declaration on 8 July 2013. This document was also drafted in secret and was not submitted to referendum.

The military establishment was also interested in shaping some provisions in the new Constitution to enshrine their autonomy. A project of inviolable supra-constitutional principles to guide the constitution writing process circulated in August 2011. A revised version proposed in November 2011 by the Deputy Prime Minister (Selmi document) stated that Egypt was a "democratic civil state", Islam its official religion and the sharia the main source of legislation. Non-Muslims were given the right to follow their own creeds in personal status and religious matters. But the supra-constitutional principles also made the army the guarantee of constitutional legitimacy and proposed to shield the budget of the military from

civilian oversight. The National Defense Council had the sole right to approve legislation pertaining to the armed forces. Moreover, the army was attributed very significant powers of intervention in the drafting process of the Constitution. They could object to any provision they deemed contradictory to the fundamental components of the Egyptian state and society or to the rights and freedoms established by previous Egyptian constitutions. In the event that the assembly refused the revision, SCAF would submit the matter to the SCC, which was to issue a binding decision within seven days. Another controversial article stated that if the constituent assembly failed to draw up a draft Constitution within six months, SCAF would have the authority to appoint a new constituent body.

These provisions were rejected by Islamists, who resented the attempt by the military to impose guidelines on the coming constituent assembly and constrain its power. Liberals and leftists also objected strongly to this set of principles that were trying to perpetuate the political role of the armed forces in domestic governance by embedding fundamental constitutional provisions preserving their institutional autonomy and financial interests.

The army managed to push through the 2012 and 2014 constitutions several of these principles that had been rejected earlier in the process. If these constitutions were not written by the army, they were drafted under its close supervision. The military command was represented by two members in the 2012 Constituent Assembly and one member in the Committee of 50. For the first time in Egyptian constitutional history, both texts enshrined autonomy for the military and entrenched its power by granting them a privileged position. The 2012 Constitution gave the military a significant number of privileges that were maintained and even strengthened in the 2014 Constitution.

The army budget will not be made public and will not be under parliamentary monitoring. It will appear as a single figure in the annual state budget. In the past, the budget of the military and the economic activities of the army were already escaping democratic moni-

toring but the 2012 Constitution stated it explicitly for the first time. The 2014 Constitution maintained this secrecy of the military over its budget.

The opaque constitution-making process in Egypt, dominated by the military, was considered “as a short-term political deal rather than a long-lasting social contract”.

The 2012 Constitution provided that civilians could be tried in military courts for crimes that “harm the Armed Forces”. This provision was criticized and, early in the drafting process, several members of the Committee of 50 had supported a complete ban on subjecting civilians to military courts. In the end, though, the 2014 Constitution kept the possibility for civilians to be brought before military courts, even though it tried to make the provision more explicit by defining the crimes that harm the armed forces as those that “represent a direct assault” against them and by restricting this jurisdiction to specific kinds of cases. However, the language is so broad that the military courts still enjoy a wide jurisdiction covering all places that belong to the armed forces, including clubs, hotels or petroleum stations.⁴

The 2012 Constitution stated for the first time that the minister of defence had to be drawn from the officer class. The 2014 Constitution added that for two presidential terms, meaning eight years, he would have to be approved by SCAF.

This opaque and chaotic constitution-making process, dominated by the military, could not lead to a consensual document and stable political order. It was considered “as a short-term political deal rather than a long-lasting social contract” (Farouk, 2013).

THE JUDICIARY AS A MAIN ACTOR OF THE CONSTITUTION TRANSITION PROCESS

The judiciary has emerged as a central political player on the Egyptian scene. By taking what were considered as explicitly political decisions against Morsi, courts have been considered as one of the main actors behind his removal and accused of overstepping their authority. The State Council, alongside the SCC, ruled on very sensitive and consequential political issues, most notably the composition of Egypt's first Constituent Assembly, which it declared unconstitutional in April 2012, leading to its dissolution and to delaying the formulation of the Constitution. A year later, the SCC delivered a similar ruling, declaring the law on the organization of the second Constituent Assembly unconstitutional. The latter ruling came almost half a year after the new Constitution drafted by this assembly had already been adopted by popular referendum and entered into force.

Judges played a prominent role in the transition process too. In June 2012, two days before the completion of Egypt's first post-revolution presidential elections, the SCC ruled that the electoral law that had governed the election of the lower house of parliament in January was unconstitutional. On the basis of this ruling, SCAF immediately issued a decree to dissolve the assembly. In June 2013, the SCC delivered a similar ruling with regard to the law that had governed the election of Egypt's upper house of parliament. Although equally controversial, this ruling had a more limited political impact. The upper house was not dissolved, because the new Constitution, adopted in December 2012, had expressly made that house immune from dissolution until new elections were held for the lower house. Another highly sensitive decision delivered by the SCC concerned its ruling on the Political Isolation Law. On 14 June 2012, the same day that it delivered the ruling declaring the election of the lower house unconstitutional, the SCC ruled

4. In October 2014, the president expanded the powers of military courts by subjecting to their jurisdiction a large number of public facilities, such as roads, bridges or railways.

the Political Isolation Law unconstitutional. This law banned from participation in politics officials of a certain stature who had served the old regime and ruling party in the last ten years of the Mubarak era. The law had been challenged by Ahmed Shafiq, a presidential candidate deprived of his right to run because he had served as Mubarak's last prime minister. The Presidential Elections Commission referred the case to the SCC. The Court ruled on the challenge two days before the second round of the presidential elections and invalidated the law.

Judges were also involved directly in the different phases of the constitution drafting process: the committee of eight experts appointed in March 2011 by SCAF to amend the 1971 Constitution included three judges; according to the November 2011 supra-constitutional principles established by SCAF, the SCC would have decided on conflicts between SCAF and the constituent assembly regarding the content of the draft Constitution; the 2012 Constituent Assembly included six judges, and six of the ten seats in the Committee of Experts appointed by Adly Mansour in July 2013 to prepare amendments to the 2012 Constitution were held by members of the judiciary.

The drafting process also saw the rise of the judiciary in politics as a body putting forward its own interests. Rather than simply acting as an arbiter for disputes between state institutions, they managed to enshrine considerable autonomy in the 2014 Constitution. The general prosecutor will be selected by the Supreme Council of the Judiciary, a body run by senior judges, and the SCC will be able to appoint its own chief justice. As before, judges will be appointed on the basis of the recommendation of the Supreme Council of the Judiciary and will not be removable. The budget of the judiciary will be incorporated into the annual state budget as a single figure, meaning they will receive their budget in a lump sum and will be able to

transfer funds from one post to another without having to require previous agreement of the parliament. The laws on the judiciary will need a majority of two thirds of the parliament to be amended.

Judges managed to win more autonomy with little accountability and with very few checks on their authority. No mechanism for controlling the judiciary has been established apart from the Supreme Council of the Judiciary and no reform of the justice system has been provided. "Some observers have argued that increasing judicial independence is a positive development. However, in a country like Egypt where courts are generally seen (with notable exceptions) as failing the people, increasing judicial independence before operating wholesale reform means that the negative practices of the past will become much more difficult to change" (Al Ali, 2013).

CONCLUSION

It is difficult to assess the extent to which an elected assembly is better geared than an appointed committee to make a Constitution. While it is too soon to determine the outcome of the transition processes in countries such as Egypt, Tunisia and even Morocco, one can compare the current situation in the two countries that adopted a new Constitution in January 2014. Tunisia successfully held its parliamentary and presidential elections and appointed a coalition government after a peaceful transfer of power, while in Egypt there is a dramatic reverse of the gains made following the 25th January uprising, and the parliamentary elections that according to the Constitution were to take place before June 2014 have been delayed to the end of 2015.

There has been too little research to date on the outcomes of Constitution-drafting processes and on the assessment of their long-term impact on the reconciliation process and consolidation of democracy.⁵

5. However, Wing argues that "it is this participatory inclusiveness that fosters legitimacy among a state's populace and, ultimately, constructs democracy", Wing, S. D. (2008). *Constructing Democracy in Transitioning Societies of Africa: Constitutionalism and Deliberation in Mali* (p. 3). New York: Palgrave Macmillan. See also Ghai, Y., & Galli, G. (2006). Constitution Building Processes and Democratization: Lessons Learned. *International Institute for Democracy and Electoral Assistance (IDEA)*. Retrieved from http://www.idea.int/publications/dchs/upload/dchs_vol2_sec6_2.pdf

However, there is a wide acceptance that inclusivity and participation in a Constitution-drafting process will confer more legitimacy and longevity to the Constitution than an elite-dominated process. There is a widely held belief that certain mechanisms may provide for more viable constitutions, negotiated rather than imposed.

There is no perfect and unique Constitution-drafting process. Constitutions drafted under the control of the legislative power (e.g. Tunisia 2014) or executive power (e.g. Morocco 2011) can be successful as long as they reflect the interests of the different actors and are considered as basic laws for all citizens. Election of representatives may be the most democratic but not necessarily the most representative process, since it may not be inclusive, as was the case in Egypt in 2012. Strengthening of national unity is difficult to achieve in the absence of inclusivity and public participation that will allow for the negotiation of solutions to contested issues.

An inclusive participation in a Constitution-drafting process will confer more legitimacy and longevity to the Constitution than an elite-dominated process.

In the absence of a strong army and judiciary, Tunisia succeeded in making compromises and adopted a Constitution in a spirit of national consensus and dialogue (Grewal, 2015). "Tunisian lawmakers have negotiated, compromised, and given concessions. Despite the political disputes and profound ideological divisions that marred the country's politics after the fall of the former regime, political players realized that giving concessions is the only way to move forward and to avoid the fate of other Arab Spring countries such as Libya, Egypt, and Syria" (Al Anani, 2015). "By successfully negotiating a final agreement, the Tunisians have led the way in proving that ideological differences need not lead to conflict or stalemate and that they can survive in the context of

a modern Arab state and society. The pragmatic and result-based approach that the Tunisian negotiators adopted will serve as a positive example of successful Constitution-making and conflict resolution, not just for the Arab region but for much of the rest of the world as well" (Al Ali & Ben Romdhane, 2014). The result of these compromises, however, is a Constitution that contains contradictory provisions that will have to be implemented and interpreted by political actors under the control of the judiciary.

Egypt defined the rules of the political game but failed to build a political consensus and the processes were neither inclusive nor participatory. In both 2012 and 2014, a major faction of society was left out and the two Constitution-building processes were used by the most powerful groups to extend their advantage over their rivals and reinforce their own position in the state. Drafters were motivated by a desire to protect narrow and short-term interests rather than to establish rules to regulate the entire political system and achieve democracy in the future. "It was designed to serve the needs of a particular moment and of specific players, above all the military and the judiciary" (Ottaway, 2014). Rather than a social contract binding all sectors of society together and a means to achieve consensus, the Constitution only deepened political divides and exacerbated the political crisis by becoming an instrument of power of one dominant faction. "A revolutionary environment demanded a revolutionary Constitution. Instead, both documents were drafted in a context of widening distrust between rival political camps and were used as means for parties to reinforce political alliances and seek to extend their advantage over rivals" (Al

Rather than a social contract binding all sectors of society together, the Egyptian Constitution deepened political divides by becoming an instrument of power of one dominant faction.

Ali, 2013). Consensus was lacking even among the members of the Committee of 50, who failed to agree on important issues, such as the sequencing of the parliamentary and presidential elections, and

the choice of the voting system. All these issues were referred by the Constitution to the legislature. In this absence of parliament, they were decided by the president.

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INCREMENTAL CONSTITUTIONAL REFORM IN MOROCCO: AN APPROACH TO THE 2011 CONSTITUTION

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Constitutional reform in Morocco has been characterized by its incremental nature since the country's first Constitution was enacted in 1962. A number of amendments have been passed that, taken as a whole, reflect the country's political and social transformation. Constitutions, for all their typical stability, cannot be regarded as sacred. They will always require reforms in line with developments in society.

The memorandum mechanism has provided a means of communication between the monarchy and national political parties in recent decades and has contributed to overcoming the tension and distrust that characterized their relations in previous periods. Morocco's activist movement has been peaceful and flexible. This is only natural in the light of a number of factors including the country's achievements in promoting human rights, the political opening that culminated in the opposition entering government in the late 1990s, and the support for women's participation and the improvement of their position in society. We may also mention the implementation of transitional justice through the Equity and Reconciliation Commission. This process took place free of any pressure and left many of the victims unenthusiastic about the activist movement. The king's speech of 9 March 2001, with its announcement of major steps towards reform, also played its part in reducing tension.

The outbreak of the 20 February Movement's protests played a key role in bringing the issue of constitutional reform back to the top of the agenda. The political activism that Morocco saw with the advent

of the movement had a great impact on the process adopted for reforming the Constitution. Political forces, including parties, trade unions, academics and rights groups, were all consulted. The movement also influenced the content of the reform, leading to an emphasis on enhanced rights and freedoms, the giving of constitutional effect to the recommendations of the Equity and Reconciliation Commission, greater clarity over the division of powers, and overcoming the ambiguity of previous constitutional provisions.

The outbreak of the 20 February Movement's protests played a key role in bringing the issue of constitutional reform back to the top of the agenda.

Although the monarch has retained critical powers in the fields of religion and security, as well as legislative, judicial and executive powers, the powers of the government, parliament and judiciary have been increased.

The adoption of a new constitution that reflects political and social changes will not magically resolve all the problems and constraints that the country faces. But many provisions in the new Constitution can revive Morocco's political life if they are correctly implemented. It is incumbent on the parliament, the government and the various political and civil groups and elites to ensure that they are.

THE HISTORICAL CONTEXT OF INCREMENTAL CONSTITUTIONAL REFORM IN MOROCCO

Constitutions, in all their variety, and despite their typically entrenched and stable nature, can never be considered sacred. They are in constant need of review and amendment in line with social transformations. This is only natural when we consider that one of the characteristics of the legal system is that it is social.

Procedures for amending entrenched constitutions¹ vary according to the relevant provisions of the constitutions themselves. There may be a requirement for a constitutional assembly, the parliament may be empowered to amend them, or amendment may be conditional on the approval of citizens in a referendum. According to one researcher, “the purpose of constitutional entrenchment is to give the constitution a certain fixity and stability. To that end its rules and provisions are surrounded by a strong barrier that bestows some degree of raised status on them and shields them from changes that might be made without due planning and consideration.” (Qalloush, 1995).

Since its independence, Morocco has seen a number of constitutional amendments and revisions reflecting the varying balances of power and political changes over the course of a decades-long struggle between, on the one hand, the monarchy and, on the other, the opposition as represented by the parties emerging from the nationalist movement.

Not all those amendments have been of a progressive nature. There have also been some backward moves, as in the case of the 1970 Constitution. Some of its provisions were regressive compared to the 1962 Constitution, the first that Morocco adopted after its independence. Even so, they led to important political debates, bringing dynamism to the Moroccan political scene.

We can thus see that constitutional reform and related debates are nothing new in Morocco. Indeed, some research points to relevant intellectual stirrings as early as the beginning of the twentieth century. Historical studies indicate that *ulama* and notables from the city of Fez submitted a draft Constitution to Sultan Abd al-Hafiz on 8 October 1908. Its content was published in the Tangiers newspaper *Lisan Al Maghreb*.

Constitutional reform was implemented in a top-down way for several decades after independence, as the Constitution placed it in the purview of the monarchy, which therefore retained the initiative in the field.

The early 1990s saw domestic political change, with growing demands from political parties and rights organizations for reforms to protect human rights and enhance democratic practices. These coincided with the great international changes linked to the end of the Cold War, and growing international concern for democracy and human rights. At this point, a certain level of consensus developed between the monarchy and the national parties, paving the way for two major constitutional amendments in 1993 and 1996. Important though these were, they did not, however, affect the elevated status of the monarchy as the dominant and ruling institution.

The early 1990s saw domestic political changes, with growing demands for reforms to protect human rights and enhance democratic practices.

The 1962 Constitution tried to lay the foundation for post-independence institutions based on a modern and open monarchy. A parliament and government were established alongside the monarchy. The preamble to this Constitution also affirmed that: “The

1. Rigid constitutions are those that require more complicated and difficult procedures to amend them compared to ordinary laws and legislation; the opposite type of constitutions are flexible constitutions, which are usually amended by ordinary laws made by the legislative power via simple and uncomplicated procedures.

Kingdom of Morocco is a fully sovereign Islamic state. The Arabic language is its official language and it is part of the Greater Maghreb." Article 1 of the Constitution stated that: "The system of government in Morocco is a social and democratic constitutional monarchy." Article 3 stated that: "Political parties contribute to organizing and representing citizens and the one-party system is forbidden in Morocco."

The Constitution also affirmed a set of political, economic and social rights. A bicameral parliament was established with powers to legislate and to supervise the work of the government. The powers of the government and prime minister, and their accountability to the monarch and the two chambers of parliament, were also defined. In return, Article 19 stated that: "The King is the Commander of the Faithful, the symbol of unity of the nation, the guarantor of the state's existence and continuity, the protector of religion, the vigilant guardian of the Constitution; he also protects the rights and freedoms of citizens, communities and public bodies; he is the guarantor of the country's independence and of the Kingdom's territory within its rightful borders."

As regards constitutional amendments, the Constitution gave the right of initiative to the prime minister and the two houses of parliament (Article 104).

The 1970 Constitution, by contrast, came after the late King Hassan II imposed a state of emergency² in the aftermath of the political and social events, including rapidly escalating protests, witnessed by some Moroccan cities on 23 March 1965.

Among the changes in this amendment were the abolition of the bicameral system in favour of a single chamber, the House of Representatives. Part III of the Constitution deals with the organization of the House, its powers and the manner in which they may be exercised. The powers of the monarchy remained central and crucial.

As regards constitutional amendments, the right of initiative lay with the monarch (Article 97 of the Constitution). The House of Deputies could propose a revision of the Constitution to the monarch with the agreement of two thirds of its members (Article 98 of the Constitution).

The 1972 amendments to the Moroccan Constitution, by contrast, came during a period of relative political opening, which made a number of important gains possible in various domains.

With regard to the parliament (the House of Representatives), whose members were elected for a six year term under Article 43 of the 1970 Constitution, the 1972 Constitution provided for a four year term (Article 43). The composition of the House was given a democratic character by the election of two thirds of its members through direct popular ballot. The remaining third were elected by an electoral college composed of members of municipal and village councils as well as electoral colleges composed of electors from the professional chambers and representatives of employees (Article 43). These amendments also sought to strengthen the House's legislative powers (Article 45 of the Constitution).

As regards the executive power, the prime minister's powers in administrative affairs were strengthened under Article 63 of the Constitution, and under Article 64 he became responsible for coordinating ministerial activities.

In addition, a number of further powers were placed within the remit of the Council of Ministers (Article 65), including the declaration of a state of siege, the declaration of war, the power to seek a vote of confidence from the House of Representatives for the government to remain in office, the preparation of draft laws for submission to the office of the House of Representatives, and the drafting of constitutional amendments.

2. Article 35 of the 1962 Constitution stated that: "If the integrity of the national territory is threatened, or if any events that could affect the functioning of the constitutional institutions occur, the King has the right to declare a state of emergency by royal decree, after having consulted the presidents of the two Houses and after delivering a speech to the Nation. For that reason, he has the power, regardless of any contrary provisions, to take the measures required, in order to defend the national territory and restore the functioning of the constitutional institutions. The state of emergency is terminated by the same measures followed to declare it."

The harmonious relations between the monarchy and the national parties in the mid-1970s enabled the revival of the political sphere and the activation of many constitutional provisions.

In the 1970s the National Bloc's demands centred on the establishment of a constitutional monarchy and the formation of a constituent assembly. Recalling the relevant experience of the National Bloc in that particular period is important for two reasons. First of all, it demonstrates that the demand for reform is not new. Secondly, in subsequent periods a number of unnatural alliances were born, characterized by narrow electoral and partisan preoccupations.

The National Bloc emerged in 1970, in the aftermath of the state of emergency imposed by the late Hassan II in 1965 under which the work of institutions was suspended and political tension escalated. Fourteen years had passed since independence and two coup attempts were soon to take place. The Bloc took the form of a bipartisan alliance between the Istiqlal Party and the National Union of Popular Forces. The two parties had a common origin in the nationalist movement and shared many concerns and priorities, at a time when the late Hassan II wished to develop constructive relations with the national parties so as to overcome the burdens bequeathed by the previous period and its negative repercussions on political life.

The challenges of the period convinced the two parties to overcome their differences and form a bloc that could act as a counterweight in demanding a number of reforms. The Bloc's covenant set out an analysis of the general situation in the country and its political (both external and domestic), social and economic constraints.

It also set out the two parties' positions on social, economic and political issues, issued a call to overcome the after-effects of foreign occupation, and rejected the unjustified state of emergency. It committed the parties to working together to establish political, economic and social democracy, strengthen human rights, reform the education system and the economy, regain the remaining occupied territories,

build the North African Union, and support the struggle of the Palestinian people. The covenant was open for other political forces and organizations to adhere to.

This coalition had its ups and downs, due to developments such as the split of the Socialist Union from the National Union of Popular Forces in 1975 and the Istiqlal Party's decision to enter government in 1977 while the Socialist Union Party chose to remain in opposition. None of these prevented the parties from coordinating their positions and contributing to a more cordial political atmosphere after the organization of the Green March. The Green March brought about a considerable degree of consensus between the monarchy and the national parties, which was reflected in the country's political life as a whole, with a certain level of trust between the different actors becoming apparent.

In the early 1990s, in an exceptional international environment marked by the end of the Cold War and a growing concern for democracy and human rights, and with rising social problems and political tension, the Democratic Bloc opened up to other national parties (the Progressive Party, the Socialist Party and the Democratic Action Organization). This resulted in a number of achievements, including the return of exiles, the release of political detainees and constitutional reform, and paved the way for the opposition to enter government under the leadership of Abderrahmane Youssefi.

In contrast to the historical period in which the National Bloc arose, and its demands, which reflected a certain degree of struggle with the monarchy, the demands of the Democratic Bloc remained linked to the implementation of reforms by agreement with the monarchy. These involved the expansion of parliament's powers in legislative matters and in supervising the work of the government, as well as the establishment of a suitable mechanism for constitutional review of laws.

Despite the differences between the two contexts, this practical experience showed that influential blocs and alliances, which are open to citizens' real

concerns and usually appear in difficult times, can exact a certain level of coordination and cooperation in dealing with the problems and challenges of the time. They have also had the merit of fleshing out reformist proposals from a stronger position (Lakrini, 1997).

In this period, the memorandum mechanism became a means of communication between the monarchy and the national parties, and contributed to easing the tension and mistrust that had characterized their relations in previous historic periods.

New provisions in the 1992 Constitution affirmed respect for human rights, as recognized internationally; increased the powers of the government, and supported parliament's role in supervising the work of the government. Laws could be referred to the Constitutional Council on the request of one quarter of the members of the House of Representatives. The House also retained its legislative powers should a state of emergency be declared.

The constitutional judiciary was also strengthened by replacing the Constitutional Chamber of the Supreme Council with the Constitutional Court, under Article 76 of the Constitution.

On the other hand, the monarch also retained his critical functions. Indeed, there were some extensions to his powers, such as the power to establish parliamentary committees of enquiry (Article 40 of the Constitution), and the power to refer laws to the Constitutional Court to determine their constitutionality prior to enactment (Article 79). This was despite other developments that limited the monarch's powers relative to parliament with regard to the implementation of laws, the declaration of a state of emergency, and the ratification of international conventions; or relative to the government, as the powers of the prime minister were extended.

The new Constitution also recognized the region as an administrative division alongside the prefecture,

province, and urban and rural municipality, under Article 94. An Economic and Social Council was established.

In 1996, a constitutional amendment was adopted in the same manner, paving the way to the consensual transfer of power led by the opposition parties. Many researchers and observers saw this amendment as an expansion, in form and substance, of the previous amendment of 1992. It extended the monarch's powers in a number of civil and military areas and in his relations with the three powers.

As regards the activities of the government, the 1996 Constitution tended towards granting it administrative authority.

The bicameral system was adopted and the role of the two houses in supervising the government's activities was enhanced. The amendment gave the House of Counsellors significant powers in legislation, the formation of parliamentary committees of enquiry, and supervision of government. The House of Representatives had sole power to vote on the programme for government, and its supervision of government activity was strengthened by making it easier to propose a censure motion.

Thus the parliament was once more composed of two houses (Article 36 of the 1996 Constitution): the House of Counsellors, whose members had a nine year term, with one third subject to re-election every three years, and the House of Representatives, whose members' term of office was reduced from six years to five.

The parliamentary duality³ in this Constitution was not new: the system had been obtained in Morocco under the 1962 Constitution. Some concerns, however, were raised by the legislative and supervisory powers that the 1996 Constitution granted the two houses, which appeared to be almost equal (as is proven by Articles 44, 45, 46, 50, 56, 57, and 58 of this Constitution).

3. For more details on the two-house system, see Abu Zaid Mohammad Ali, M. (1994). *Parliamentary Duplication and its Impact on Achieving Democracy*. Egypt: Egypt Book Board.

It should be noted that there were conflicting views regarding the bicameral system adopted in the amended 1997 Constitution. Those who supported implementing this system in Morocco considered that it would provide an opportunity for wider representation of the country's regions and sectors, embed the regional system and enhance the legislature's professional performance. Others observed that the upper house, rather than serving as a platform for deliberation and proposals, had become a near copy of the lower house, with closely matching powers, thereby stripping the dual system of any substance. In particular, the upper house held decisive powers such as that of removing the government. Article 77 of the 1996 Constitution provided that: "The House of Counselors may vote on a motion of warning or of censure to the Government."

Some went so far as to view this system as an obstacle to legislative work and a mere 'political luxury'; especially since elections to the upper house have seen a number of illicit practices, such as bribery and use of money. Others saw it as an attempt to restore the system whereby one third of the parliament was elected indirectly (Lakrini, 2008).

During a speech given by the late Hassan II on 3 March 1996, he announced that the return to the bicameral system was intended to achieve a number of fundamental advantages, which he summed up as follows:

- A. Expanding the base of popular participation by citizens, in line with demographic growth;
- B. Guaranteeing fair representation to Morocco's economic actors;
- C. Ensuring compatibility between the legislature and the regional system;
- D. Stimulating parliamentary supervision of government activity through the two houses along with the supervision carried out by the monarch.

The amendment also sought to enhance the policy of regionalization adopted by Morocco in the framework of administrative decentralization based on enabling territorial units and public bodies to reduce the grow-

ing burdens on the state through management of local issues via a policy of proximity and participation.

It is important to note that regionalization, in its administrative and political aspects, refers to a modern administrative model typical of contemporary states. It is based on the division of powers between the centre and the periphery within a participatory framework that allows territorial units to manage local affairs democratically having regard to the region's needs.

Various circumstances have led countries to adopt the regional option, including a desire to strengthen development and reduce economic and social disparities between regions by allowing regional components to create wealth, exploit available resources and market them optimally. A preoccupation with regionalization may also stem from a desire to manage social diversity and exploit it in support of the state's unity and cohesiveness, resulting in local political dynamism that can enhance local democracy. Both arguments are supported by the experiences of countries that have led the way in regionalization (Spain, Italy and Germany).

Since independence, Morocco has opted for a decentralized approach to administration. In Morocco, regionalization has been proposed in various historical, social and political contexts.

In the early 1970s, seven economic regions were established with the aim of bringing about balanced regional development. When failings in this approach became apparent, the region was promoted to the status of an administrative division under the revised 1992 Constitution. With the 1996 Constitution, the number of regions became 16 under a framework that was set out in Regional Organization Law 96-47 of 1997.

Due to the growing contradictions in the existing regional system resulting from shortcomings in terms of powers, resources and intervening parties, which negatively affected local development and local democracy, a new debate developed on the reform of the regional system in Morocco. The King of Morocco appointed a broadly-based committee to

draw up a general report identifying the shortcomings and actions required to overcome them. It was to consider expanding the powers of regional councils, strengthening solidarity and cooperation between the various territorial units, reducing the dominance of the prefectures, and supporting the regions' revenues. This led to broad political and academic discussions in recent years with the participation of various actors and interested individuals. A number of issues concerning the Moroccan experience were considered, including boundaries, powers, funding and intervening parties. Various pioneering international experiences in this regard were also discussed. A set of conclusions and recommendations was proposed supporting this option.

The 1996 constitutional amendments also sought to strengthen the financial judicial system. The Court of Accounts was recognized in the Constitution, as were regional courts of accounts. They were to perform judicial monitoring of public funds by verifying that operations relating to the income and expenditure of local authorities and state bodies were carried out correctly.

The freedom of private enterprise was also affirmed,⁴ signalling the state's moves towards a more open economy in its economic and social policies and its endeavours to incentivize the private sector to play a role in development.

The power to revise the Constitution was given to the monarch and the two houses of parliament subject to certain rules.

THE CONTEXT AND CONTENT OF THE 2011 CONSTITUTIONAL AMENDMENTS

The Arab World has seen a massive wave of protests, which has brought the question of political and constitutional reform issue back to the top of the agenda.

The nature of this movement varied from country to country. While it took the form of violent struggles in Libya, Syria, Egypt and Yemen, it was distinctly peaceful in Tunisia, Morocco and Jordan.

Despite the protesters' radical demands for toppling regimes, combating corruption and adopting fundamental economic and social reforms, constitutional issues were also prominent in their demands and slogans.

There were calls for democratic constitutions that would ensure respect for human rights and protect the people from tyranny and absolute rule through democratic mechanisms breaking with the constraints and shortcomings of the past.

In Morocco, the 20 February Movement emerged, organizing a series of protests that spread to several cities. At those protests, demands and slogans were raised calling for the adoption of a constitutional monarchy, the reform of the judiciary, giving constitutional effect to the recommendations of the Equity and Reconciliation Commission, and support for judicial independence.⁵

Demands for political and constitutional reform in Morocco have not been unique to the 20 February Movement; they were in continuity with the struggles and efforts led by various civil, political and rights groups over previous decades.

Nevertheless, the outbreak of the Movement's protests revived the idea of constitutional reform fifteen years after the passage of the last constitutional amendment, especially since many political parties and elites had not considered constitutional reform their priority during that period. Since the adoption of the 1996 constitutional amendments, the issue had all but disappeared from public debate.

The Movement took advantage of growing social and political tension at the time, and the stresses of

4. Article 15 of the 1996 Constitution states: "The right of property and the freedom of private enterprise are guaranteed. The law can restrict their extent and exercise if economic and social development so requires. Property may not be expropriated except in such circumstances, and according to such procedures, as are provided for by law."

5. For further details concerning the circumstances in which the Movement, its demands and its effects appeared, see: Lakrini, I. (2011, April). Possible Implications to the 20 February Movement in Morocco. *International Politics Magazine*, 184.

the transitions that the countries of the region were going through, to raise the issue of a constitutional amendment from a position of strength.

A number of factors explain the peaceful nature of the Moroccan movement. First of all, the reformist discourse was not new. Morocco had achieved much in the field since independence, especially since the political opening and advances in rights of the late 1990s that culminated in the opposition entering government under the leadership of the Socialist Union Party.

In addition, many initiatives related to women's empowerment, support for their access to decision-making positions, such as the parliament and government, and family law reform, had been adopted in the preceding years. A promising experiment in the field of transitional justice was established in the form of the Equity and Reconciliation Commission, enabling Morocco to come to terms with the massive violations of human rights it witnessed between 1956 and 1999. The Commission submitted an important report to the king comprising conclusions and procedural and legal recommendations for establishing a law-bound state with strong institutions respecting human rights, thus sparing future generations any repetition of these harsh experiences. A number of international conventions related to human rights were also ratified.

Neither were the protests led by the movement alien to Moroccan political life. Citizens had become accustomed to daily protests outside the parliament and elsewhere, organized by unions pursuing professional demands or by university graduates seeking access to the labour market.

The King of Morocco's speech on 9 March 2011, only a few weeks after the beginning of the protests led by the 20 February Movement, summarized the political and constitutional reforms that the country would implement during this period. The speech

came at the right time and was well received by many political, human rights and social groups.

The speech set out a number of key issues that would be covered by the constitutional amendments of 2011. These included judicial reform; constitutional recognition of the pluralistic nature of Morocco's unifying identity, with the Amazigh identity as an integral part thereof; the expansion of individual and collective freedoms, with guarantees for their exercise; the strengthening of human rights institutions; and giving constitutional status to the important recommendations of the Equity and Reconciliation Commission. This speech, which pre-emptively addressed various demands, contributed to easing the tense atmosphere and played a major part in reducing the intensity of the protests.⁶

Amid all these rapid developments, the king appointed a committee of experts to formulate a vision for these constitutional reforms through debate with the various political parties, unions, and civil and academic bodies, and submit a report to him by June 2011.

The activism that Morocco saw with the birth of this movement had a great impact in accelerating the constitutional reform process. It also played a major role in involving society as a whole in the debate on constitutional reform, which had previously been restricted to elites.

The movement's birth in the context of the transformations brought by the wave of protest in the Arab world had an obvious impact on both the form and the content of the constitutional reform. The movement had, from its first appearance, called for the establishment of a constituent assembly to draft the Constitution. Even though the amended Constitution was not drafted by a constituent assembly and did not lead to the parliamentary monarchy repeatedly demanded by the movement, the committee that was established for this purpose, and which

6. The impact of the withdrawal of the Justice and Charity Group from the protests of 20 February, and the victory of the Islamist Justice and Development Party in the legislative elections and its subsequent entry into government, cannot be denied. For further details on the topic, see the researcher's interview with *Hespress*, published on 20 February 2012, through the following link: <http://www.hespress.com/interviews/48006.html>

put the draft before the people in a referendum, succeeded in gaining the support of 98% of the electorate, according to official figures. This was a record in the history of Moroccan constitutional amendments.

The activism that Morocco saw with the birth of 20 February Movement played a major role in involving society in the debate on constitutional reform, which had previously been restricted to elites.

The widespread debates and consultations that took place upon the announcement of this amendment saw many divergent positions emerging. Particularly intense polemics developed over issues related to identity, Islamic authority and women's rights.

It appears that the circumstances that paved the way for this reform had a great impact on the way the amendment was developed. A great number of political forces, parties, unions, academics and rights groups were consulted. A similar impact could be observed in the content of the constitutional document, which was much more detailed than equivalent documents in the past.

The committee charged with drafting the Constitution received various proposals and petitions from unions, political parties, and academic, technical, sports, civil and rights bodies. This led to the detailed nature of the 2011 constitutional amendment, which included a number of fundamental reforms in vari-

ous fields, to the extent that some considered it a Constitution aimed at pleasing everyone.

The constitutional document contained a number of provisions that sought to promote rights and freedoms in several respects. Regarding women's rights and empowerment, Article 19 of the Constitution states: "Men and women equally enjoy rights and freedoms of civil, political, economic, social, cultural and environmental character... The State works for the realization of equality between men and women. To this end, an Equality and Non-discrimination Authority is created."

Constitutional force was given to a number of the Equity and Reconciliation Commission's recommendations concerning judicial independence and the criminalization of arbitrary or secret detention, genocide, torture, cruel, inhumane or degrading treatment, and treatment offensive to human dignity.

The amended Constitution gave constitutional status to institutions and councils dealing with human rights, including the National Human Rights Council and the Equality and Non-discrimination Authority.

Abandoning the ambiguity of some provisions in the previous Constitution, whose multiple possible readings and interpretations left them entirely subject to the balance of power, the 2011 Constitution sought to clarify and detail many powers. In order to overcome the great problems posed by Article 19 of the previous Constitution⁷ in relation to the monarch's interlinked religious and civil powers, a subject which had taken up much of the political, constitutional and academic debate since the first Constitution that Morocco adopted in 1962, this article was split into two parts. The first sets out the monarch's religious authority (Article 41 of the Constitution),⁸ while the

7. Article 19 of the 1996 Constitution states that: "The King is the Commander of the Faithful, the Nation's ultimate representative, the symbol of unity of the Nation, the guarantor of the country's existence and continuity, the protector of religion, the vigilant guardian of the Constitution, he also protects the rights and freedoms of citizens, communities and public bodies; he is the guarantor of the country's independence and of the Kingdom's territory within its rightful borders."

8. Article 42 of the 2011 Constitution states that: "The King is the Commander of the Faithful, the protector of faith and religion and the guarantor of the freedom of practice in religious matters. The King, the Commander of the Faithful, chairs the Supreme Council of the Ulama which studies the cases the King proposes to it. The Council is the only body competent to issued official fatwas (Islamic advisory opinions) on issues referred to it, based on the principles and provisions of the true Islamic religion and its merciful intentions. The terms of reference, composition and procedure of the Council are determined by Royal Decree. The King practices his religious powers related to the commanding of the faithful, exclusively authorized for him, according to this Article, through Royal Decrees."

second sets out his civil authorities and functions (Article 42 of the Constitution).⁹

The monarch enjoys a number of critical powers in religious and security matters, as well as legislative, judicial and executive powers. In return, the powers of the government, parliament and judiciary are strengthened.

In contrast to the prime minister's functions in the 1997 Constitution, according to which he coordinated the work of the government, he now becomes the head of government and leads its work, and is appointed from the political party that wins first place in the election of the members of the House of Representatives.

Furthermore, the amendment also strengthens the parliament's powers relating to the appointment of the government and the passage of legislation. The two chambers of parliament become the main legislative authority, with the matters covered by their legislative powers doubled from 30 to more than 60. The amended Constitution includes new provisions to simplify parliament's role in supervising the work of the government, such as in the establishment of fact finding committees. The document includes new powers supporting the parliamentary opposition's participation in committees of parliament and in supervising the work of the government, enacting legislation and practising parliamentary diplomacy.

The amended Constitution also includes new provisions supporting the financial and administrative independence of the judiciary. It replaces the term 'judiciary' with the term 'judicial power' in Part VII, and it affirms the independence of this power from the other powers (Article 107). The Supreme Judicial Council is replaced by the Supreme Council of the Judicial Power. Under Article 115 of the amended

Constitution, the membership in this Council is expanded to include a number of independent bodies, notably the National Human Rights Council and the Ombudsman, as well as "persons known for their competence and integrity," thus guaranteeing the Council's independence compared to the composition of the previous Council.

The Constitution enhanced the regionalization policy as a means of achieving local democracy and enabled civil society groups to strengthen this policy by participating in policy development locally and nationally.

Article 108 affirms that judges cannot be removed from office or transferred except in accordance with the law. Article 109 prohibits interference in cases that are before the judiciary. Judges can turn to the Supreme Council of the Judicial Power whenever the independence of the judiciary is threatened. The provisions of the amended Constitution also grant judges the right to freedom of expression and the right to establish and join associations (Article 110).

Citizens are now able to sue the state and obtain compensation for any damages suffered if an unlawful judgment is issued against them (Article 122). Article 127 bans the establishment of extraordinary courts. The 2011 constitutional amendments confirm Morocco's policy of regionalization and set out some basic principles intended to overcome the problems that marked the Moroccan experience. The second paragraph states the following: "The region, under the

9. Article 42 of the current Constitution states that: "The King is the Head of State and its highest representative, the symbol of unity of the Nation, the guarantor of the country's existence and continuity and the highest arbiter among its institutions, the vigilant guardian of the Constitution and the proper functioning of the constitutional institutions; he is the protector of democratic choice and of the rights and freedoms of citizens, both men and women, and of communities, and of respecting the Kingdom's international obligations. He is the guarantor of the country's independence and of the Kingdom's territory within its rightful borders. The King exercises his functions by issuing Royal Decrees through the authorities explicitly granted to him by the text of the Constitution. Royal Decrees are signed by the Head of Government, except for those provided for in Articles 41, 42 (second paragraph), 47 (second and sixth paragraph), 51, 57, 59, 103 (first and fourth paragraph) and 174."

supervision of the president of the regional council, has the leading role relative to the other territorial units in developing and pursuing regional development programmes and regional land planning schemes, while respecting the specialized competencies of those territorial units.”

In addition to enhancing the regionalization policy as a means of achieving local democracy and development, the Constitution enabled civil society groups to further strengthen this policy by participating in policy development locally and nationally. It designated Amazigh as an official language of the state alongside Arabic. It also affirmed the link between responsibility and accountability.

The 2011 constitutional amendment is highly significant for its major enhancements to rights and freedoms and the establishment of a degree of balance between the various powers – all the more so given that the Constitution’s elevated status requires legislation and public policy to adapt to its spirit. These reforms, however, will remain futile unless the organic laws giving effect to them are correctly framed. In this regard, we may refer to the organic law on exercising the right to strike and the organic law giving effect to the official status of the Amazigh language.

The 2011 constitutional amendment is highly significant since it enhances rights and freedoms and establishes a degree of balance between the various powers.

In addition, many researchers and political actors have noted problems raised by the 2011 Constitution concerning the principle of linking responsibility to accountability, and limits thereto, as well as the guarantee of certain collective rights. Some opposition forces in parliament have argued that the government is still acting according to the previous constitutional logic, and that it has not yet fully absorbed the new constitutional developments. Conversely, some researchers affirm that the parliamentary opposition has yet to exploit the possibilities and opportunities provided by Article 10 of the new Constitution.

CONCLUSION

The rapid developments following the appearance of the 20 February Movement, and all the political and constitutional reforms that followed, demonstrate that Morocco accomplished a series of achievements in a pressing regional and domestic situation.

The new provisions of the amended Constitution, if they are brought into effect, can revive Morocco’s political life. Nevertheless, despite this Constitution’s great importance, it cannot be considered a magical solution to all the social, economic and political problems and constraints the country faces.

All the new provisions of the latest constitutional amendment must be properly brought into effect to give them real significance. This is incumbent on the parliament, the government and the various political and civil actors.

In fact, influential political elites are still needed that could translate these developments into practical reality, thus gaining the citizens’ trust and encouraging political participation.

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ECONOMIC AND SOCIAL CHANGE IN MOROCCO: CIVIL SOCIETY'S CONTRIBUTIONS AND LIMITS

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INTRODUCTION

Since the early 2000s, Morocco has experienced a change in its economic and social development dynamic. Growth has never been so strong over such a long period; a growth that is not free of paradoxes, weaknesses and imbalances but nevertheless has brought about a transformation of the production system structures and social changes. In this dynamic, Morocco is enduring serious difficulties in linking prosperity and social cohesion. An important cause of these difficulties is the delay accumulated for years in the management of social needs, mainly in the rural world. The other cause is the difficulty of the development model to meet the imperatives of the social inclusion of women and youths in the labour market and addressing social inequalities. The needs for social commitment have intensified under the effect of several factors: volatile growth, opening of the economy, geographical mobility, poorly controlled urbanization, relaxation of social links, rise of individualism, and emergence of new expectations.

Since the mid-1970s Morocco has been engaged in a 'controlled' democratization process supported by institutional reforms favoured by the national mobilization on the Sahara issue. This process has gradually led, with ups and downs, to the expansion of civil liberties. With the 1997 'consensual alternation', the democratization process has enabled relations between the power and the opposition to be redefined and has opened opportunities for alternation in the management of public affairs, while

bringing about new forms of conflict. The role played by opposition political parties and civil society actors in this process has not been negligible, both at the level of political advocacy for democratic change and of political and social demands.

The expansion of liberties has opened the way to the development of the associative environment and to a proliferation of initiatives by the social movement, a movement that was not born in the wake of the waves of protests and uprisings experienced by the Arab world since 2011. This does not mean that Morocco has not been involved in any political protest following what was all too soon called the 'Arab Spring'. However, in contrast to what happened in the rest of the region, it was possible to regulate the political tensions without violence. At the root of this particularity is the specific configuration of the Moroccan political system, the achievement of political reforms that started some years ago, and the progress in terms of the rule of law. Today, social movements increasingly have new political demands. The rise of mass mobilizations reveals the decline of the legitimacy of traditional political parties and illustrates the emergence of an increasingly segmented society that has clear effects on politics. The challenge of this situation lies in the capacity of the new constitutional reform to meet the demand for a redefinition of the relations between the state and society. The (political) 'rationalities' that had strongly marked the institutional universe of previous decades are losing their essence and efficacy in the management of political tensions.

A CHANGING MOROCCO

Some years ago Morocco started a process of important and often arduous reforms and established the objective of developing its economy and institutions in order to ensure a convergence towards an economic system governed by market laws, with an open and democratic government system. Taking into account the issue of the democratization of the institutions in the formulation and management of economic policies reveals the awareness that the success of the economic reforms is closely linked to the parallel existence of the structures. Today, a key issue dominates the debate on the management of public affairs in Morocco: the need to realise the hopes awakened by the constitutional reform for better governance of public decision-making and a more transparent and efficient functioning of the institutions. The mistrust expressed in recent years by the social movement of the government, parliament and political class is hindering the potential for economic development and the progress towards a more socially committed society.

Economic Growth: Performances and Weaknesses

After the 1990s, a decade during which the Moroccan economy followed a cyclical pattern that alternatively combined expansion and recession, it experienced a phase of consolidated growth up to 4.7% in real terms between 2001 and 2013 against an average of 2.8% between 1991 and 2000. The new phase involved access to a higher growth rate despite an unfavourable environment characterized by an increase in the price of energy products, a slowdown of world growth from 2008, and two years of recession in 2005 and 2007.

Record Growth

The economic growth recorded since the early 2000s was higher than that of the population, which grew 1.7% per year on average. Consequently, GDP per capita increased by 3% on average over the whole period. However, these performances materialized without fanning inflationist tensions or destabilizing

the macroeconomic foundations. Growth was sustained by a strong domestic demand, stimulated by the support for the purchasing power of households and the acceleration of investments in infrastructures and the social field.

From 2009 to 2012, the Moroccan economy suffered a series of micro-shocks: first, financial with the international crisis and, later, political with the effect of the 'Arab Spring'. Each in their way disrupted the course of growth and domestic and foreign accounts. The transmission mechanisms of the world crisis followed the circuits of the exports of goods and services, tourism revenues, remittances by Moroccans living abroad and foreign direct investments. The financial system, given that it had not yet achieved a sufficiently significant level of integration into the international markets, was relatively unscathed. The effects of the Arab Spring were disseminated through the channel of unexpected public spending submitting the budget to strong oscillations mortgaging healthy management of its accounts.

From 2009 to 2012, the Moroccan economy suffered a series of micro-shocks: first, financial with the international crisis and, later, political with the effect of the 'Arab Spring'.

Despite the negative effect of these mini-shocks, Morocco's economic performances over the last 12 years have been solid. On average between 2000 and 2013, Morocco's growth was systematically higher than that of its Maghreb neighbours: an increase of 4.7% in GDP compared to 3.3% for Algeria and 4% for Tunisia. However, the Moroccan growth model showed several signs of breathlessness, notably the worsening of macroeconomic imbalances it generated and the difficulty of reducing the high unemployment.

External Weaknesses

Thus, the trade deficit continued to grow during the period 2000-2013. This deficit was mainly fuelled by the imports of intermediate goods and raw materials (notably oil and cereals). It also has its origin in the negative trade balance within the framework of the free trade agreements. The trade deficit resulting from these agreements amounts to almost half of the global trade deficit.

Globally, the contribution of the foreign balance to growth has been weak. Under the effect of an annual average growth of imports that is higher than exports, the Moroccan economy's rate of dependence on the rest of the world (global trade/GDP) revealed a bullish trend with a gap of over 20 points between 2000 and 2013. The dependence of the production system on imported inputs raises the question of the productive, cross-cutting and sectoral diversification that can favour the integration of the productive fabric. The weak competitiveness of Moroccan products in exports also contributes to this dependence, as do the strong geographical concentration of exports on a not very dynamic European market and Morocco's specialization in business sectors with weak added value.

The succession of shocks finally destabilized growth and balances built up over time. Resilience faded and structural weaknesses reappeared. The factors of resistance became sources of concern: growth slowed down, the margin of budgetary manoeuvre reduced, the trade deficit widened and the current account deteriorated. Moreover, the structural deficiencies of the Moroccan economy, partly concealed by the euphoria of the 2000s, continued to be its poor competitiveness, the failure of convergence and the dysfunctions of the economic sectoral plans, the slowness of diversification of the production system, and the delays in the implementation of major reforms. These deficiencies fed the tensions in the labour market and the injustices of social inequalities.

The year 2015 poses open questions. At a macro-economic level: how to reconstitute the margin for budgetary manoeuvre, how to remobilize the growth potential in a psychologically worrying political environment? At a microeconomic level: what will happen with the investment of private enterprises when they are under the constraint of the self-funding rates and declining margins, managing overstaffing and more difficult market conditions? At a financial level: how will the funding conditions evolve when saving is slowing down, the cost of funding is quite inflexible and companies are reticent about exposing themselves to the financial markets? Based on this background of macro and microeconomic weakness, citizens seek to defend their available income and purchasing power.

Social Fractures

Although the economic growth was noticeably higher in the 2000s than in the 1990s, it was not enough to meet the needs of employment. However, the strengthening of growth had positive effects on people's standards of living. An improvement in the population's standard of living must be noted, given the continuous increase in the disposable income per capita and the decrease in the poverty rate. This situation was complemented by relative stability in the inequality index. The human development indicators for Morocco show significant progress but it continues to be poorly rated. The homogenization of society around the middle class is hindered by the reproduction of social inequalities.

A Weak Growth Generating Employment

The relationship between growth and employment in the period 2001-2012 highlights an elasticity of employment in relation to weak growth, which would not enable the flow of young men and women entering the labour market to be absorbed.¹ Alongside the rigidities of the labour market and the lack of qualifications of some graduates, this is a major obstacle to reducing youth unemployment. The lack of employ-

1. The Haut-Commissariat au Plan considers that the employment elasticity of growth would amount to between 0.3 and 0.5.

ment in the economic growth is due to different factors: the growth of the working age population, the entrance of women into the labour market, and the public education policy of public powers, which did not keep their promises, resulting in a major gap in the labour market between the supply and the employers' needs for qualified workforce.

Thus, the unemployment rate, although in decline, was still significant and amounted to 9.1% of the active population. The decrease in the unemployment rate concealed certain critical dysfunctions of the labour market. Less than half of the population (48.5% of people aged 15-64) participated in the labour market (one of the lowest rates in the MENA region). Unemployment more particularly affected people living in an urban environment (14%), young people (19.1%) and graduates (17%). According to the World Bank (2013), the unemployment rate among youths aged 15-24 would reach approximately 50% in Morocco.² However, and despite the implementation of a certain number of initiatives to promote employment, the labour market in Morocco is characterized by persistent imbalances that pose certain challenges to be overcome.

Poverty in Decline

In a framework of controlled inflation, purchasing power has improved annually. This favourable progress has been reflected at the level of poverty indicators. Thus, the poverty rate dropped from 21% to 6.2% between 1985 and 2011. However, the vulnerability rate is still high despite its reduction between 2001 and 2007 (from 22.8% to 17.5%). Poverty has therefore experienced a fall but mainly continues to depend on climatic conditions. There is a large concentration of vulnerable population around the

poverty threshold. The state plays a prevailing role in the social assistance mechanisms but, as a whole, in Morocco they are far from adequate because they do not reach a large number of poor and vulnerable people. They have not been conceived with a view to a clear reduction and prevention of poverty strategy; moreover, they are fragmented and dispersed in different public authorities.

Persisting Inequalities

Despite the marked reduction of poverty, Morocco has experienced persistent, if not greater, income inequalities. The income of 10% of the well-off is over 12.7 times that of 10% of the poorest. The quintile of the richest population already accounts for 48% of the total income against 6.5% for the poorest quintile. The Gini coefficient, calculated to provide a better account of the issue of inequality, almost shows stability in this measure between 1998 and 2007 and of its level, which is always high in Morocco. The income inequalities have a negative impact on growth (negative partial elasticity around 0.003).

This concentration of incomes reflects the narrow social basis of the middle class in Morocco. If we refer to the results of the study on the middle classes conducted by the Haut Commissariat au Plan (HCP),³ the middle classes encompass 16.3 million people, i.e. 53% of the Moroccan population. Nevertheless, within this population statistically called 'middle class', 72% has an income below the national average income and 28% constitutes the upper category with an income above the national average. The proportion of households with debts among the middle classes reaches 30.6% against 37.5% of well-off households and 27.3% of modest households.

2. Thus, given the low rates of participation in the labour market, the official unemployment figures underestimate the number of unemployed people. Moreover, the informal sector amounts to 37% in non-agricultural jobs while the employment considered vulnerable (unpaid family jobs and self-employed) amounts to 50% of total employment. Their proportion of total employment is much higher in Morocco than in the other MENA region countries because of the high proportion of self-employed (including workers contributing to the family business) associated with a relatively low percentage of people with a paid job.

3. This study is based on the National Household Survey on Living Standards 2006/2007. According to this approach, middle classes are made up by populations whose consumer spending or level of income are in the central bracket of the social distribution of these indicators. The option chosen is extensive (0.75 times the median for the lower bound and 2.5 times or over for the upper bound).

Inequalities in Morocco do not only appear in the measure represented by the distribution of income. They are also found in all social indicators (education, healthcare, access to public services...). Morocco's Human Development Index rose to 0.591 in 2013, ranking 130th out of 187 countries graded. Thus at a human development level Morocco is ranked significantly below what may be predicted by its economic development level.

Political Disenchantment

During his reign, King Hassan II had managed, after 40 years in power, to establish the monarchic institution in a dominant position by exercising its control over producing and managing the rules of the political game. The principle of the separation of powers defined by the successive constitutions, however, meant that the functioning of the monarchy fell on the two fields of the religious and the rational, and thereby confirmed the 'transcendental' nature of monarchy. The political conflicts and power relations deriving from them finally imposed this institutional set-up over the remaining political actors, notably the components of the national liberation movement, which shared with the sovereign the commitment to the fight for independence and consequently nationalist legitimacy.

Since the start of the democratization process in 1973, the opposition has decided to participate in the opening of power, to extend it as much as possible and profit from it to better organize itself by accepting, in return, the tacit conditions of this opening (legitimacy of the monarchy, the sacred nature of the king),⁴ This opening had a dual effect: institutionaliza-

tion of the electoral process and preparation of the conditions for the entrance of the left-wing in the management of public affairs. It was in 1998 when Morocco first experienced 'consensual alternation' with the arrival in government of a coalition led by A. Youssoufi, a major figure in the Moroccan left-wing.⁵ This political experience marked the evolution of contemporary political Morocco. Undoubtedly, the political system began to more positively meet the demands of the elite with a view to more participation.⁶ The political conditions seemed more favourable than ever to the establishment of closer relations between the monarchy and the left-wing to accelerate the pace of these reforms. This political opening released a potential for emancipation and learning for the stakeholders of the political process. The government discovered what the political field means in terms of management of public affairs.⁷ Similarly, the monarchy had to accept a new model of power sharing.

The democratic potential, until then contained, not to say repressed, was gradually expressed in different forms and with varying degrees of coherence and continuity. On the one hand, the democratic progress in the field of civil liberties, transparent elections and freedom of the press were real. On the other, relations between the monarchy and the left-wing remained marked by reciprocal control and tensions from past history. What we witnessed corresponded more to a first phase of political liberalization in which democracy was still a project under construction. But this does not prevent that this evolution process, in contact with the reality of the political and socio-cultural tensions what affect the society, advanced or rather

4. The Union Socialiste des Forces Populaires and the Parti du Progrès et du Socialisme decided to participate in the political opening of power by accepting the constitution in force and participating in the local and national elections.

5. This political experience has been qualified as 'consensual alternation' because the leader party of the new political alliance did not have the majority of the votes given that the constitution of the new government was the result of a negotiation between the Palace and the Union Socialiste des Forces Populaires.

6. Outside the brief and significant experience of the A. Ibrahim government after independence, Morocco has never experienced the participation of the left-wing in power.

7. The El Youssoufi government was made up by an alliance of parties, some of which had already participated in earlier governments but the vicissitudes of political life in Morocco for 40 years have meant that the leader party of the government coalition Union Socialiste des Forces Populaires has been in opposition since the early 1960s.

bearer of the seeds of a certain form of modernity, which is specific to Morocco.

The Monarchic Succession

After the accession to the throne of King Mohammed VI, the constitutional problem did not form part of the royal agenda. Faced with the tentative demand for constitutional reform by left-wing parties, the king asserted his will to reign and govern and insisted on the need to reform the political parties. Bearing in mind the architecture of the system, which could not be modified, the monarch opted for a gradualist approach emphasizing institutional reforms.

Thus, the king first expressed his will to consolidate the rule of law through the implementation of a process of modernization of the institutions.⁸ Later, in his speeches he regularly expressed the determination of the state to give real meaning to the democratic practice by ensuring the legitimacy of the elections.⁹ Hence the royal insistence on the renewal of political management structures – parties, trade unions, associations and the media –, based on respect for internal democracy, the right to difference, and competition.

In fact, the achievement of the democratization of the institutions not only involves a revision of the texts but is the result of a political practice. An examination of the functioning of the political system over the first ten years of the new reign (1999-2011) shows that the potential for democratic emancipation has not truly been achieved. The political opening is tolerated insofar as it was top-down and controlled. This type of opening has rather contributed to state control of society through the institutional weakening of the political parties, trade unions and so on. Thus, the government and the elected bodies seem to form part of an 'institutional machinery', without having a real influence on most political deci-

sions. Beyond the appearance of a government that decides and manages with its ministerial departments and administration, there is another centre of power, constituted around the king's advisors and other spheres of influence. This centre exercises a parallel yet real power that has the final word. The centrality of the king, at the core of this universe, is supposed to dominate and control the decision-making process. This practice that perpetuates the rules governing the functioning of a 'Court Society' not only limits itself to weakening the relations of the government with the royal power but reproduces the functioning of a system built upon clientelism, neopatrimonialism, and the use of politics for financial gain. A system that imbues the individual behaviour of policy-makers, beyond the loyalty required in the exercise of their responsibilities, to mark them with the imprint of servitude.

Social Mistrust

The experience of alternation has shown the ambivalent behaviour of the political elite who, using modern discourses and instruments, pursue traditional objectives. Personal relations, family links, tribal affiliations, groups and clients are still the most determinant levels of political positions. The capacity for and pace of absorption by the Moroccan political elites of the democratic culture are still too weak to dare imagine anything other than a political system with a monarchy as the central actor. These elites have interiorized, sometimes unconsciously, the principles of authority in the widest sense and the culture inherent to them so well that they have clearly stated the need for some time to discover the virtues of autonomy. In other words, the debate on the establishment of a parliamentary monarchy is not really on the agenda. It is perhaps an ideal type towards which will be necessary to move within a few years.

8. This approach was expressed in the initiatives aimed at rationalizing the institutions provided for in the constitution: revision of the royal decree ruling the National Human Rights Council; restructuring of the Higher Council and the Regional Ulama Councils in order to better qualify them to assume their mission; implementation of the Economic and Social Council in order to establish the culture of dialogue on the democratic mechanisms; the reform of the Supreme Court; and the reform of the Civil Liberties Law.

9. The reforms of the Electoral Law, the Communal Charter and the Civil Liberties Laws formed part of this perspective.

The experience of consensual alternation has also shown a key dimension of the exercise of power in Morocco, i.e. the management of the tension between contradictory temporalities, and notably the gap between the long-term nature of the institutions, in contrast to the medium-term nature of the action and the short-term nature of opinion. In this framework, the change can only be gradual to enable the political elites, which are slow to change, to digest the stages. Paradoxically, at the same time as the transparency of the ballot boxes is progressing, confidence in the institutions of the emerging democracy is declining. The elections have damaged trust in voting, parliament, political parties, and politicians (their honesty, their attention to citizens' problems). They have delivered a series of indicators on the institutions of representative democracy and the members thereof and have revealed a gap between citizens and their representatives.

The experience of consensual alternation has finally revealed a democratic malaise through the low participation in elections.¹⁰ Abstention also reveals the low importance attached to the act of voting: voting is no longer seen as one of the foundations of political life. The high level of abstention illustrates a real 'civil fracture'. This reflects the social and cultural distance between some citizens and the political universe. This strong abstention not only reflects the poor social and economic integration of these citizens but also has a more political aspect: it expresses a desire to protest by citizens well integrated into society and interested in public affairs. The main components of the political scene only control a tiny part of the electoral corpus. It is the core of the mechanism of the 'democratic transition' parties that is affected. Behind this behaviour, which underlies a great deal of mistrust, distancing and protest, we foresee the emergence of a new type of increasingly more critical citizen.

This behaviour of distancing should not be interpreted as a sign of political apathy but rather a call for a profound renewal of the working of the political system. These indications do not mean that most citizens approve of an authoritarian regime but rather reveal mistrust of the political representatives together with the level of dissatisfaction regarding the operation of Moroccan 'democracy'. Distant, partly corrupt, completely lacking in legitimacy, this is the image that the Moroccan political class has today. The equivalent of this poor image of the men and women holding power or leading the parties is the loss of trust by a large majority of citizens in the parliamentary institution as such. Hence the vulnerability of the representative democracy institutions.

The electoral abstention should not be interpreted as a sign of political apathy but rather a call for a profound renewal of the working of the political system.

This erosion of trust and the rise of a 'growing cynicism' towards the elected representatives and rulers do not only involve a deterioration of classical democratic participation (electoral participation, party militancy, civil commitment) but also favours the development of 'protest politics' ('radical' movements, protest activism), which until now has contributed more to eroding the relation with an emerging democracy than to offering credible alternatives. Thus, a hiatus is established between a democratic ideal and a reality marked more by 'cynicism' and disenchantment. This relative divorce has contributed to destabilizing the fragile democratic achievements, which only have sceptical support from part of the electorate.

10. The arrival, in 2002, of a government of technocrats led by Driss Jettou broke with what in Morocco was called the consensual alternation process. King Mohammed VI preferred to appoint as his successor A. El Youssefi, a qualified technocrat and insider instead of a politician from the majority party.

The Challenges of the New Constitutional Reform

As a response to the political impact of the 'Arab Spring', the king made the decision to propose a constitutional reform. The distinctive feature of this reform comes from the fact that the monarchy has anticipated the crystallization of the protest movements in the wake of the 'Arab Spring' by proposing a reform. The king entrusted a committee with the preparation of the constitution project. Another committee made up by political party and trade union leaders was established to compensate the lack of political legitimacy of the first committee.

By giving an overwhelming majority to the 'yes' vote (98.7%), the referendum endorsed the centrality of the monarchy in the national political system.¹¹ However, the constitutional revision anticipates the architecture of new relations between political institutions (monarchy, government, parliament): the consolidation of the separation of powers (appointment of the prime minister within the party winning the elections, strengthening of the power of the prime minister as head of the government); the consolidation of the rule of law; the will to make justice an independent power; the strengthening of citizen management bodies (the role of parties, the parliamentary opposition and civil society); the consecration of the plurality of the Moroccan identity and the constitutional recognition of the Amazigh component; the consolidation of mechanisms of moralisation of public life with a view to linking the exercise of authority with the imperatives of control and accountability; and the constitutionalization of the bodies responsible for good governance, human rights and protection of liberties. The new text includes the demands of civil society actors such as Amazigh activists (recognition of the Amazigh language as official language: art. 5), women's organizations (parity: art. 19) or Moroccans living abroad (recognition of full citizenship rights: art. 17),

trade unions (the maintenance of the House of Councillors: art. 63), and elites of youths (creation of the advisory board). The new constitutional text offers a non-negligible potential to the development of participatory actions. Citizen action has autonomous tools and means whose use can powerfully make up the contours of a democracy underway. It is necessary to conceive the institutional rooting. If the participatory approach must, as the new constitution suggests, irradiate the legal and institutional framework rather than continue to be at most a procedure that is not an exception to common law, it is still necessary to organize the modalities of this evolution in the revision of legal texts.

CIVIL SOCIETY'S COMMITMENT TO THE POLITICAL AND SOCIAL CHANGES

Moroccan society's changes in the last two decades have shaken the positions and capacities of traditional civil society actors (trade unions and professional organizations) to work in the field of political and social demands. They have had impacts on the strategies of these actors, i.e. the very representativeness of the organizations. The social partners (trade unions and the employers' association) are faced with the need to speed up their progress. The associative movement plays a more dynamic role in the current democratic evolution; however, it is still faced with several limits and difficulties to be overcome in order to firmly establish its vision and action with a view to real democratic development.

Trade Unions and the Employers' Association: Two Social Partners Losing Speed

Moroccan trade unions and the employers' association are restricted by several burdens but are always hopeful of modernizing their structures. They are both confronted with two challenges: on the one hand, the crisis of representativeness and, on the other, the

11. Some minority movements have stated their rejection of the constitution granted: the 20th February Movement, the Unified Socialist Party, and Annahj (The Way: extreme-left wing), political groups such as Al Adl wal Lihssane (Justice and Charity: Islamist) and associations such as the Moroccan Human Rights Association (AMDH).

pressing need to take into account the conditions created by the opening of the economy.

Moroccan trade unions and the employers' association are confronted with two challenges: the crisis of representativeness and the pressing need to take into account the conditions created by the opening of the economy.

A Trade Unionism Ruined by the Archaism of its Discourse

Four trade unions (out of the 17 existing) dominate the national unionist landscape.¹² The data related to the number of members is approximate and difficult to verify: between 200,000 and 1 million, i.e., a membership rate (members/trade union population) ranging between 6.7% and 33%. The sectors covered by the trade unionist action are the formal private sector (1.2 million employees in 7,500 enterprises affiliated to the CNSS or National Security), 120,000 employees in public enterprises and 840,000 working in the public service.

Between 2000 and 2015 the unionist action experienced difficulties linked to persistent unemployment, notably in the urban environment. Indeed, the instability of the employer/employee relationship is at the root of a reduced commitment by employees to labour conflicts. Nevertheless, it has reoriented the action of trade unions and refocused their demands on the preservation of jobs. Social conflicts are driven by classic concerns: work instability, social rights, pay levels and so on. Indeed, the crisis of Moroccan trade unionism shows characteristics specific to the configuration of the labour world and wage-earners: important flows of entries and exits

and a permanent renewal of the bases, protected sectors and exposed sectors; a difficulty to address the new salaried classes; a mode of authoritarian operation; a delay in taking into account the changes of society, and so on. The unequal management of the members adds to the spontaneity of the action. Moroccan trade unionism is also experiencing difficulties with the negative effects of its division, over-politicization, and lack of professionalism and institutionalization. The history of national trade unionism is strongly marked by the presence of ideological quarrels, the conflictive nature of its relationship with the political field and the aura of its charismatic leaders. In contrast to Europe, where the sociological changes led to the advent of a society in which the differences between workers are more acute, in Morocco we are still at an initial model of trade unions embodying labour groups with almost homogenous concerns. The production system is still built on small structures, rudimentary forms of organization, and professional relations in which paternalism prevails.

Given the lack of adaptation to the new situation of the international environment and the opening of the national economy, trade unions would find themselves in an awkward position faced with the challenges of competition, or even the expectations of the salaried population. The transformations shaping the economy and society are not sufficiently taken into account by trade unions. From this observation it can be deduced that trade union behaviour, its language and modes of action, are the core of the problem. It is not the essence of the institution that is being questioned but rather its forms, styles, behaviour and modes of action. If the renewal takes time, the historical functions of representation and regulation that define its *raison d'être* will be affected.

An Employers' Association in Search of Meaning
The Confédération générale des Entreprises du

12. The Union marocaine du travail (UMT), the Union générale des travailleurs du Maroc (UGTM), the Confédération démocratique du travail (CDT) and the Fédération démocratique du Travail (FDT).

Maroc (CGEM), founded in 1947, is the main body representing employers; it is the major interlocutor with public powers and social partners.¹³ It also aims to increase the value of the image of the business world and contribute to the establishment of the necessary conditions for strengthening free competition. Along with the challenge of upgrading the companies, the CGEM is faced with two major problems linked to the scope of its representativeness and the limits of its organizational efficiency, on the one hand, and to the historically conflictive nature of relations with trade unions, on the other. The association, with a will to reform, began a project in 1995: to reconcile economic performance and the social sphere in a framework marked by an overly weak mobilization of companies. The objective of this project was condensed into a single formula: to promote Corporate Social Responsibility. It announced its intention to build the foundations of a renewed contractual policy by placing business values at the core of society. Nothing happened although the employers' association has not in fact forgotten the issues that are very important to it: more flexibility, fewer burdens. In its quest for credibility with the state and public opinion, the CGEM took the initiative (in 1998) to set up an Ethics Committee to make companies aware of the infringements of ethics. This initiative was a way of recognizing that corruption, special privileges and practices contrary to transparency are a powerful hindrance to the competitiveness of companies and free competition. Nevertheless, the main role in the field of the fight against non-ethical practices falls to sectoral federations and associations. Moreover, with the aim of improving its brand image among trade unions, the Confédération prepared a Corporate Social Responsibility (CSR) Charter.

Despite the solemn terms used, some provisions are no more than mere commitments to respect the law on issues such as hygiene, accidents at work and occupational diseases. The Corporate Social Responsibility Charter acts as a reference to achieve the CSR label granted by the CGEM.¹⁴ The reality of CSR in Morocco mainly refers to the image that some companies would like to present of themselves to stakeholders. The argument of the CGEM mainly reveals a legitimate aspiration for integration into the world market by attempting to align with the OECD and European Union standards, resulting in a strong link between the CGEM version of CSR and the real or potential links of the companies based in Morocco with the demands of the market, including competitiveness in the international market.

The experience has shown that Morocco not only needs a change of the rules of the game but also and above all a revolution in behaviours. At present, the CGEM is committed to actions to restructure the association: revising the statutes, reviewing the services provided, enlarging the regional presence, strengthening competences and capital bases. But the challenge of renewal will lie above all in redefining the missions and producing a strategy to renew its representative power by redefining its identity image. A broader vision of social justice must replace a purely mechanical conception of salary demands: a modern and responsible trade unionism, in keeping with the expectations of social Morocco on the issues of flexible employment, conflict regulation, professional relations and social solidarity.

The Emergence of the Associative Movement

The two decades after the country's independence were marked by the rise in power of the state. An

13. There are other groups such as the Union générale des entreprises et des professions and, more recently, the Mouvement des entreprises du Maroc. The CGEM is the main network of entrepreneurs in Morocco with 31 statutory professional associations bringing together the enterprises and professional associations of the same sector. It has approximately 40,000 direct and affiliated members and has at present 10 regional representations throughout Morocco.

14. The CSR label is a solemn recognition of respect by Moroccan companies of their commitment to observe, defend and promote the universal principles of social responsibility and sustainable development in their economic activities, social relations and, more generally, in their contribution to the creation of value.

administrative coverage of the whole of the territory enabled the political regime to firmly establish its power by exerting maximum control over the opposition forces. This policy engendered a kind of social inertia unfavourable to the emergence of a dynamic civil society. In the 1980s, under the effect of social struggles and the exacerbation of political tensions and the economic crisis, the public powers sought to defuse these tensions through a socio-political opening aimed at the opposition and non-governmental institutions. Thus, a movement of democratic demands was gradually developed, embodied by a dynamic and plural associative network (associations for the defence of human rights, women's rights, cultural rights, fight against corruption, and so on).¹⁵

A Plural Associative Movement

The associative movement has experienced a notable evolution since the mid-1990s in several fields: a diversification of the fields of action and an exceptional expansion of their role in the provision of social services, community development and advocacy actions: a significant contribution of the feminist movement to the democratic associative movement; the emergence of a new culture: that of the acceptance of difference and pluralism in collective work and the independence of the associations in relation to party affiliation.

These evolutions prompted the emergence of several advocacy associations at a national level (or that wish to be) sharing a common culture and developing the opportunities of consultation and coordination. Limited in the beginning to the big cities, coordination and networking extended to other regions of the country.

The scope and diversity of the associative movement provide fertile ground for the expression and develop-

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ment of citizenship. Although it is difficult to have reliable data on the number of people involved in these associations, the perception of their significance in political, economic and social life is becoming more noticeable. The issue of the role of the associative movement in democratic evolution is linked to a typology of the associations and the varied contributions to the dynamics of social, political and economic life. The notable movements include:¹⁶

- Advocacy in favour of democracy: components of the associative movement have played a role of mediation between state and individual. They are more particularly associations that defend human and women's rights, or that work on fighting against corruption, on increasing the responsibility of government towards the governed, and on the emergence of citizenship.
- Promotion of gender equality: the women's movement has managed to place the issue of the promotion of women's rights at the core of political debates.¹⁷ The actors and actresses of the fight for women's rights have managed to make the demand for gender equality advance with the adoption of a new Family Code, the improvement of women's political participation and the amendments to the Labour and Penal Codes (2003).
- Defence of human rights: the associations of defence of human rights have contributed to fostering respect for and the culture of human rights

15. The emergence of Islamism on the political scene and in the associative field has been one of the major issues in the two last decades. A flourishing young independent press also illustrates the dynamism of civil society.

16. Typology defined by M. S. Janjar, R. Naciri & Mohamed Mouaquit (2004). *Développement démocratique et action associative au Maroc : Eléments d'analyse et axes d'intervention*. Rabat: Droits et Démocratie/Espace Associatif.

17. The popular mobilizations 'for' and 'against' the Plan of Integration of Women in Development illustrated the conflictive nature of two systems of reference: the universal instruments, on the one hand, and the visions inspired by religion, on the other.

through several instruments: Forum Vérité et Équité, reform of the National Human Rights Council (CCDH); a new Equity and Reconciliation Commission, and so on.

- Promotion of cultural rights: the construction of the modern state and the transformation of Moroccan society (rural exodus, rapid urbanization, decomposition of tribal structures, and so on) have meant that the Amazigh language and culture have been marginalized. The awakening of identity was firstly academic with the multiplication of the studies on Amazigh cultural heritage and, later, the Amazigh associative movement contributed to the democratic development of society by calling for respect for cultural diversity.
- Support for citizen participation: The contribution of the associative movement to local development has been enormous by playing a role in the elimination of illiteracy, the development of microcredit and the activities generating income and the emergence of a new culture of citizenship.
- Lobbying for constitutional reform: In the wake of the Arab Spring, Morocco has seen the emergence of the 20th February movement in a political and social landscape marked by authoritarian blockage, the weakness of the political parties and the structures of representation. The movement has been able to make the problem of the constitution emerge as a pressing political issue; this emergence forms part of a more general discourse on condemning the king's authoritarianism and entourage.¹⁸ The mobilization organized by this movement took place through such diverse group actions that the very idea of a unique movement poses a problem: cacophony of the discourse and practices, decentralized and multiform movement aimed at organizing itself in networks and

spreading everywhere through local committees and neighbourhood committees; a movement that is not limited to ideological representations and that above all makes pertinent use of technological communication.

Innovative Action Modes

The new social movements reflect the fundamental changes experienced by Morocco (women's movement, human, cultural, economic and social rights movements...). These civil movements present themselves as the heirs of the workers' movements with which they share the major core values: human rights, democratic principles, secularism, solidarity, social justice, and so on. However, they differ in their approach, which leads to a brand new vision of the ways of 'doing politics' and the ethical demands involved.¹⁹

The motivations of the protests are linked, although not exclusively, to the decline of purchasing power (water, electricity, transport, access to healthcare...).

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We find demonstrations against insecurity or in favour of local social development projects. These demonstrations, sit-ins and peaceful marches also take place in disadvantaged and forgotten areas. The safeguarding of the environment also finds its place in this plural movement: the fight against the pollution

18. Demonstrators focused on explicitly political demands such as parliamentary monarchy, the democratic and popular constitution, the division of powers, the abrogation of article 19, the separation of power and wealth, the establishment of accountability, liberty, dignity, citizenship, the dissolution of the Parliament and the destitution of the government, the recognition of the Amazigh language as official language, the release of all political prisoners, and so on.

19. Nevertheless, this movement, issued and formed, for the first generations at least, within the political parties, has distanced itself from the parties but without imposing a social model in the ground practice.

of the phreatic layers or for cleaning the towns and neighbourhoods, combating damage to ecosystems by industrial and tourism projects. The denunciation of the forms of the rentist economy, such as sandpit or mining concessions, also forms part of this movement, as does the denunciation of the scandalous use of money for the purchase of candidates or electors in the last elections. The rebellion of populations in the Sahara and the difficult reconciliation with the marginalized Rif region are also at the root of the large mobilization movements.

These movements distance themselves from traditional political actions through specific forms of action: occupation of the street, petitions, complaints, recourse to justice, (plural) use of Internet, specific modalities of expression (protest songs), and so on. They are not organized following a traditional hierarchical form (party or trade union) but as an encasing of networks; they do not have a complete political programme but try to submit alternative proposals; they do not solve their unavoidable contradictions but do not limit themselves to old ideological divisions: they strive to found their actions on the achievement and exercise of rights in a concern for independence and autonomy in relation to the states and party structures.

From Mistrust to Rebirth?

In the national political landscape, we see a lot of mistrust, distancing and protest and we sense the emergence of a new type of far more critical citizen. However, we have the impression that while the values of democracy are evolving on the surface of society, confidence in the state and the institutions of representative democracy is decreasing. Meanwhile, this relative alignment with the democratic regime favours the development of a 'protest politics' (extremist movements, protest activism, urban unrest) and contributes to eroding the relation with common law and the meaning of general interest. This mistrust can contribute to destabilizing the democratic process, which would only benefit from sceptical support of the public but can also put democracy

back in motion by encouraging reflection on reforms aimed at invigorating representative democracy and developing participatory democracy.

Today's social movements act in frameworks that are experiencing very strong regulatory evolutions. Whether they form part of the 'classical' tradition of the centrality of labour conflicts or the issue of 'new social movements', the institutional or political frameworks to which they refer are based on the primacy of political regulations. The more or less direct 'face to face' that in the past characterized relations between state and social movements is no longer pertinent and real. From now on, the latter form part of frameworks – frameworks of regulations – in which numerous different actors increasingly intervene at different levels, each of them seeking, according to their own interests, to influence the existing rules, reform them or produce new ones.

In professional relations, the classical employers-trade unions-state triptych is much more complex. The emergence of consumers, local powers, environmental defence associations and so on has modified the situation. Its only effect is to make the modalities of arbitration in conflicts between employees and employers ever more difficult. It also has as a consequence a proliferation of initiatives and mobilizations, the most efficient of which are not necessarily the most visible, and which (each by itself) try to impose very disparate, sparse and specific formal or informal regulations of the rules of the game.

Hence a multiplication of the sources of conflict: legitimacy conflicts, authority conflicts, precedence conflicts and above all 'rule conflicts' that refer to 'polymorphic conflicts'. Evidently, the same phenomena are reproduced in the implementation of more societal demands, whether they concern the movement of youth, women, poor and vulnerable people or other social categories. Here also, the group mobilization takes place in the spaces with a strong intervention of many actors involved in specific symbolic representations and strategies also in relation to the rules of the game.

All things considered, what is now at stake for social movements is the efficacy of the collective action they unleash and which, faced with the proliferation of sources of power and rules, involves a fight for credibility; that is, the credibility of the rules that they are compelled to propose in the 'regulatory frameworks' in which they act. This established fact may seem anodyne to some, even trivial. However, it has as a consequence political implications which, in our view, are far from negligible. They consist of the capacity of political organizations and civil society organizations to invent modes of coordination of their actions, while respecting their respective autonomies and the specific role of each component in the consolidation of the rule of law and the intelligent and efficient coupling of representative democracy and participatory democracy. They also consist of defining a new relation of the state with society and, more particularly, the political and associative movements effecting social innovations while respecting their autonomy.

THE NEW RELATIONS OF THE STATE WITH CIVIL SOCIETY

In Morocco, social conflict has become eruptive. The lower number of strikes has partly been compensated by the growth of protest groups. Here we find another feature of our social regulation system, in which dialogue in the labour sphere regularly runs the risk of being counterbalanced by the structural flaws of dialogue in other spheres of social life.

Indeed, collective mobilizations intervene in a framework of political disenchantment. These movements go beyond the trade union and/or party framework in the narrow sense when they do not purely and simply refute them. In today's society, the emergence of segmented, group or spontaneous mobilizations is a matter of trends concerning the presence of the 'political' in the city. They mainly concern the status

of democracy today which, in the discourse of the numerous social events, cannot be limited to the single representative democracy or to the single interventions of the political power. The increase of citizens' participation in public decision-making has become even more necessary given that the public intervention has slowed down, showing the limits of the decision-making procedures based only on elective representation. Hence the need to take into account proximity to meet the demands of populations confronted with pressing needs.

It is in this framework that the state has been forced to introduce innovations in the regulation of social conflict stressing citizen participation initiatives or renewing the social dialogue mechanisms and institutionalizing dialogue with civil society.

INDH or the Attempt to Couple Representative Democracy with Participatory Democracy

The National Human Development Initiative (INDH) comprises a series of programmes launched by the public powers in 2005 with the objective of reducing poverty, vulnerability, insecurity and social exclusion and establishing dynamics in favour of human development. These programmes target 250 urban neighbourhoods and 360 rural municipalities through social projects generating income.²⁰ The second objective of this initiative is "to improve the living conditions of poor and vulnerable people" and enable the "promotion of wider access to basic services, social programmes and economic opportunities in the pockets of poverty."

The participation of populations, the contractualization and partnership with the associative network and local development actors are at the core of the INDH foundations to ensure better ownership and feasibility of projects. Since the launch of the INDH, over 22,900 projects have been undertaken to the benefit of 5.2 million people. Over 85.7% of the loans

20. The targeting of rural municipalities and urban neighbourhoods has been possible thanks to the establishment of poverty charters developed by the Haut Commissariat au Plan in collaboration with the World Bank. These charters have made it possible to identify the rural municipalities (poverty rate over 30%) and the districts with the poorest urban neighbourhoods.

have been repaid. Moreover, 6,000 associations and partner cooperatives have been involved. The INDH has been subject to several assessments. Currently, these assessments do not allow the specific impact of the INDH on poverty, insecurity, exclusion and more generally human development to be measured. The changes brought about in the INDH programmes within the framework of phase 2 (2011-2015) have consisted of redressing the sectoral approach to form part of a dynamic of integrated local development, improving the participatory approach for better ownership and, finally, more accurately targeting the areas and populations and sustaining the projects.

Participation, a Social Catalyser

The programmes form part of a participatory community development approach. The members of the target communities themselves express their priority needs in terms of social facilities and services, support for activities generating income, and strengthening capacities and social invigoration. These needs are studied at the level of the municipality or the neighbourhood and are funded within the framework of a 'local human development initiative'. The implementation of this local initiative had to be done by seeking a convergence with the sectoral programmes of the central ministries and the development plan of the local authorities.

The participatory approach is seen as a real catalyser for sustainable development. It establishes new links between the stakeholders of a town or village (elected people, local representatives of the ministries, local authorities and other policy-makers) in decision-making. This participatory process was to make each of the stakeholders responsible and strengthen inclusion and social cohesion. It enables citizens to launch group and individual initiatives. Moreover, their commitment to the development process exerts a positive pressure on technical services and local authorities.

Although participation is a central issue of the INDH philosophy, its appreciation is very difficult due to the multiple aspects it embraces: information, training, consultation, taking into account views, revising results, participatory follow-up and assessment, mediation, inclusion, representativeness, and so on. Moreover, the quality of the participation depends strongly on the quality of human resources, the mode of governance, and the availability of and access to information.

The Involvement of the Associative Actors

The governance, started by the INDH, had to support the decentralization and deconcentration process and contribute to a better implementation of the principles of participatory and representative democracy. Some imperfections have been identified, such as the imbalances sometimes seen in the representation of elected members, state services and associations within the local committees and respect for the gender approach in the categories of women and youths, mainly at the level of the committees.

Among all these actors participating in the implementation of the INDH,²¹ the associations and cooperatives have a central place. Yet, currently the associations do not always fully play their role of decision-making actors within the committees of which they form part, as they do not always know the missions and assignments. Moreover, their position in the INDH makes them a potential rival for the elected members in terms of influence on local policies. This situation has often led either to the creation of numerous associations by opportunism and political ends or to the weak involvement of the elected members and therefore a weak commitment of the local and regional authorities to the local governance of the INDH. There is also the fact that most of these associations lack the capacities necessary to manage the projects.

21. Many actors participate in the implementation of the INDH: associations and cooperatives, local elected members, external services, local authorities, universities, the private sector, and technical and financial partners.

Many associations have seen their position in the system of social action and the organization modified by the new public policies. As active pieces in the mechanism, they have proven to be easily mobilizable, sometimes even exploited. The spirit of partnership has not yet gained a right of citizenship. Institutional legitimization is sometimes eroded: the Local Human Committees at a local scale (made up of elected members, associations and local authorities) tend to substitute the committees elected in the decision-making to the detriment of the rules of good local governance. The Moroccan social landscape, already naturally entangled, becomes even more opaque through the multiplication of procedures and greater dispersion of the actors.

The associations participating in the actions against exclusion must be better recognized, with respect for their autonomy, by the political-administrative authorities. In short, in many places, the INDH appears as an addition of new structures to the traditional apparatus (Committees of Elected Members) while ensuring a coherent evolution of the whole of the institutional and social landscape. Certainly, it is not possible to produce efficiency in such a short term. The Initiative, pertinent in itself, would gain efficacy by placing itself in a profound trend aimed at strengthening the decentralization and deconcentration. The initiative has brought about an institutional re-composition of the actors and makes it necessary to reflect on its organization and operation.

Social Dialogue in Search of a Renewal

The links between the social partners are experiencing greater tensions, both in the public and private sectors, putting an end to the relative stability that has prevailed during the past decade. We have seen a notable increase of strikes between 2010 and 2013 as well as of companies affected, strikers and lost working days. Bypassing the law, eluding control and alleging difficulties in conforming to the law, thereby

maintaining impunity, provide the grounds for protest. Faced with these widespread practices, the means of prevention and repression available prove to be clearly insufficient.

The Difficulties of Collective Representation

Generally speaking, there is no collective representation in the companies with fewer than ten employees, although the Labour Law encourages the voluntary organization of professional elections within these companies. Likewise, in most small and medium-sized enterprises (SMEs), which constitute the backbone of the national economy, collective representation is still merely formal. Consequently, in the absence of representative trade unions, the conditions of collective negotiation are lacking.²² The regularity of the sessions of social dialogue has not been observed. The negotiations are hindered by the lack of a clear institutional framework for collective representation in the public sector and by the lethargy of collective negotiation in the private sector.

The system of representation, negotiation and resolution of collective conflicts established by the labour law with the aim of developing social dialogue between employers, employees and their organizations does not manage to establish dialogue or contribute to social peace. As shown by the modest number of collective agreements concluded to date, the relations between trade unions and employers are experiencing great difficulties to build the collective autonomy necessary for the development of collective negotiation, which is still the best means to arbitrate between collective demands and the capacities of enterprises.

The public sector in its turn has experienced repeated strikes in recent years. The demands of civil servants are categorically addressed due to the multiplication of particular statutes given the lack of a system of collective representation at the scale of central administrations and their external services. Lacking a legal framework for organizing these relations,

22. This is why collective negotiation remains linked to the strikes instead of being linked to collective agreements and social peace. The number of collective agreements concluded, a mere 18 and most of them in companies, reflects their weakness.

many channels of dialogue are used to prevent and deal with the conflicts both at the level of central and external services of the administrations and on the occasion of the bipartite or tripartite national dialogue. The social dialogue is still confused and lacking a device enabling it to be framed and limit the negative impact of the collective conflicts in its contribution to the development of sectoral policies and the establishment of social peace.

The Prospects of National Social Dialogue

In Morocco, the law gives social partners the responsibility of fostering social dialogue. It is both a key for better governance and a driving force of economic and social reforms. Its final objective is to contribute to addressing issues related to unemployment and employment and to support the economic reform and social cohesion by defining subjects for collective negotiations. This emphasizes the challenges to which the social partners are confronted given their role and responsibilities in the definition of a social model.

In a recent announcement, the CESE (Economic, Social and Environmental Council) considers that dealing with collective conflicts requires that the participation of the social partners is ensured for the enrichment of public policies by making collective negotiation a regular procedure of balance between the social demands and competitiveness of the companies. This is how conventional law becomes a synonym for social peace, and the contracting parties guarantee respect for it by monitoring the bilateral mechanism for resolving collective conflicts.

The establishment of new devices of prevention of collective labour conflicts and the implementation of alternative soft ways of recourse compatible with the administrative and judiciary procedures in force can also foster a system of professional relations appropriate for reconciling economic competitiveness and social progress and establishing social peace.

Under certain conditions, social dialogue is a driving force of economic and social reforms. Its role is essential faced with the fundamental challenges for Morocco, such as the modernization of the labour organization, the promotion of social rights and the strengthening of competences and qualifications. The negotiations between the social partners are the best adapted way to progress in the field of modernization and management of change. Social dialogue must be recognized as an essential dimension of the model of society and development, through the search for a consensus of the actors on issues as important as labour law, reform of social protection, support for investment in education and qualifications and actions aimed at improving the dynamism of the economy.

Morocco has implemented the CESE, an institution that should confer on the social partners the responsibility for fostering social dialogue in a new environment and under new conditions. This is expected to be both a key to better governance and a driving force of the economic and social reforms.

The Project of Institutionalization of Dialogue with Civil Society

With the aim of redefining its relation with civil society, the state, through the ministry responsible for the relations with the parliament and civil society, has recently launched (March 2014) a process of national dialogue with civil society to debate mechanisms and laws related to the new constitutional provisions (articles 12 to 15).

The Meaning of the Initiative

This enlarged consultation initiative with the associative actors aims at the global revision of the legal framework in order to strengthen the partnership between the state and civil society organizations while stressing the participatory approach adopted by the government in the implementation of the flagship reforms in several sectors.²³ The national dialogue on

23. The initiative has not been unanimously welcomed. More than 400 civil society organizations (CSOs) have boycotted the dialogue arguing the lack of transparency in the constitution of the commission responsible for leading the operation.

society has enabled the strengths and weaknesses of this movement to be identified and the recommendations related to the implementation of the new prerogatives of civil society and associative life to be defined and, in the future, a real contractualization and partnership between the state and civil society based on a national charter of participatory democracy to be established. Three draft laws have been established:

- A draft code related to associative life with a view to strengthening its three fundamental pillars: freedom of association, the right of associations to equitable access to different types of public subsidies, consolidation of good governance and correlation between responsibility and accountability.
- A draft organic law on the rights of citizens to submit motions in legal initiatives, framed within participatory democracy, in order to implement the legal framework governing the exercise of the right to submit motions, in keeping with article 14 of the Constitution.
- A draft organic law on the right to submit petitions, framed within the participatory approach aimed at the adoption of a legal framework governing the right to submit petitions, in keeping with article 15 of the Constitution.

The recommendations on the implementation of new constitutional prerogatives of civil society and associative life therefore advocates the establishment, in the future, of a real contractualization and a partnership between the state and civil society based on a national charter of participatory democracy.

The Necessary Representation of the Great Causes

Some years ago, the struggle of social movements involved challenges focused on the labour world and material and quantitative demands. The challenges deriving from qualitative (i.e. socio-cultural) demands had little resonance. Today, the social movements go beyond the enterprise and are applied to very diverse fields of action, such as the status of women, urban demands, and so on. The evolution is significant as it tends to show that the change of society mainly involves mobilizations different from those focused on the labour world.

This initiative of dialogue with civil society expresses to a certain extent the necessary particular representation of 'great causes' led by the associations, such as poverty, local development, immigration, consumers and users as well as the specific representation of young people, women and senior citizens. The social dynamics of recent years enable us to take stock of the view of Moroccans on democracy in its different meanings – representative democracy, involving the mediation of parties and elected members; participatory democracy, by means of collective mobilizations (demonstrations, strikes, social movements). They enable us to see whether these different meanings are complementary or concurrent and analyse the underlying perceptions and socio-cultural and ideological factors.

The government has committed to implementing a policy aimed at improving the legal framework ruling the action of associations and non-governmental organizations. The national dialogue on the new civil society's constitutional prerogatives has enabled the views of the associative actors and civil society organizations working in this field to be collected. This initiative is the first national experience of widened consultation with the association actors aimed at globally revising the legal framework in order to strengthen the partnership between the state and civil society organizations while affirming the participatory approach adopted by the government in the implementation of the flagship reforms in diverse sectors.

CONCLUSION

Over the last 15 years, Moroccan economic growth has performed quite well although the domestic imbalances (public finances) and external imbalances (foreign trade) are still weak. The standard of living of the population has improved but social inequalities have widened. Morocco must face major challenges today. A framework in which we expect a great deal, not to say everything, from the state: control of balances, national solidarity or competitive upgrading of the productive fabric. Citizens are

becoming increasingly demanding and call for their needs to be quickly met.

The Moroccan economy and society have assets that make possible major improvements in dealing with the problems of social inclusion: growth margins to be exploited; public policies to be optimized; traditional solidarities to be reinvented; an active civil society or democracy seeking its way. These assets are considerable. So much so that we can predict that Morocco can solve its social problems. Several areas of reforms must be pursued or initiated to solve these problems. On the one hand, the consolidation of the competitiveness of the economy through the steady control of macroeconomic balances and efficiently embracing globalization through a solid network of enterprises and the development of infrastructures. On the other hand, a demand for distributive solidarity that resolves inequalities without incurring in increasingly heavy debts that would asphyxiate wealth creation.

Morocco has always experienced difficulties in consolidating its reforms given the lack of a receptive institutional sector. In certain aspects, the dynamic of the institutional reforms shows a will to enhance the potential of democratic emancipation. But, in reality, this dynamic has not been free from the tensions in society. Certainly, the model of political action is today more profoundly affected by the evolutions of the last decades. On the one hand, the segmentation of society fuels the multiplication of increasingly more heterogeneous social demands and a growth of the protest phenomenon. On the other, we are witnessing depreciation of the capacities of the political parties to manage the social demand and to respond to it by promoting appropriate political regulations. This hiatus should be corrected through a revalorization of political mediation and a reconstruction of the regulation capacities of democratic practices. The state finds it hard to abandon its bureaucratic control, to make the institutions work and to reorient behaviours: uncertainty, avoidance or bypassing strategies are even the norm. At a pinch, the reform appears as a process imposed rather than desired. On the

other hand, the implementation of reforms stumbles against the unequal capacity or will of the actors to integrate them into their behaviour.

The new constitution opens prospects of establishing the rule of law in new norms and consolidating the fragile democratic achievements. It is paramount that economic and political actors assume the challenges of the reforms. The achievement of a reform no longer simply involve having a clear objective. Along with these conditions, there is the degree of support of the leading characters and society's capacity of absorption. The pressure for reforms will continue, even intensify. The problem does not lie in the choice between a strategy of shock or of small steps in the implementation of reforms but rather in strengthening the institutional frameworks in which the management of performance takes place. It is necessary to clarify the relation between state and society so that the link between autonomy and responsibility in public decisions is established.

The new constitution opens prospects of establishing the rule of law in new norms and consolidating the fragile democratic achievements. It is paramount that economic and political actors assume the challenges of the reforms.

The first condition is that of re-establishing citizen trust in the political system through a profound clarification of the political responsibility of each actor in the system. The second would be to renew the support for the demand of democracy by these political institutions that are the parties – essential mediators between citizens and the world of political commitment. If the parties want to escape the crisis of trust that is hitting them hard, they must rediscover their roots in this demand for a domestic, living and participatory democracy increasingly in keeping with the elevation of the cultural level and the feeling of com-

petence of the militants. The third condition would be to clarify the lines of cleavage between the parties and the associative movement on the main issues of society. More particularly, the parties are invited to shake off the burdens of historical trajectories, to set out on a doctrinal renewal and to work in agreement with the associative network. This must also understand the limits of its role and become a vector of familiarization of citizens with the political universe, a space to lead them to take the floor on public challenges. Thus, like a sick body produces antibodies, the hesitant democracy invites us to invent new political

practices that will guide collective decision-making to real objectives, based on hope rather than myth. In all cases, reform of the method of approaching institutional problems must be implemented. The aim is to make a mode of operation of the economy and society prevail based on the optimal mobilization of resources, regulation that prevents abuses, transparent management and an assessment verifying respect for these commitments. What is at stake is a project of modernization that would transform the face of Morocco and respond to the demands of the 21st century.

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KEEPING DEMOCRACY AT BAY: POST-REVOLUTIONARY DILEMMAS IN EGYPT AND LIBYA

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INTRODUCTION

The Arab uprising, and the scenes of people pouring into the streets and squares, challenged many of the theoretical models that scholars used to employ in interpreting Arab politics. It was a major stimulus to 'bring the society back in' by focusing on the role of social forces in enacting change in the Arab world and resisting authority. In other words, the Arab uprising led many analysts to shift attention from the authority/state (structure) to resistance (action/agents). However, in most cases the transition to democracy was obstructed, if not reversed; while the old regime did not die the new regime was not born. This urges a questioning of the maturity of the arguments understating the structural factors in the 'Arab Spring' or overstating the agent-related aspects. Many analysts as well as ordinary people wondered what went wrong.

Egypt and Libya represent two stories of unsuccessful transitions. Despite the different trajectory of the two revolutions, both countries failed, at least in the short term, to fulfil the promises of a new era. This paper investigates how elite choices of alliance and re-alliance building play the major role in the democratic transition in these two countries. It argues that the nature of the old regime and the elite's perception of threat and opportunity mediate these choices. It distinguishes between two kinds of elites: the state's elite (those who represent the State's Dilemma: the regime's collective action problem of maintaining the unity of dominant classes and mould-

ing its various factions into a coherent power bloc) (Lichbach, 1998), and the rebel/counter-elite (representing the Dissidents' Dilemma: how to maintain the counter-elite dilemma). Tackling these dilemmas requires an analysis of a two-level game that occurs between regime elites and dissidents, at one level, and within the regime and the dissident coalitions, at another level (Lichbach, 1998, p. 414). The interaction between the Dissidents' and State's dilemmas, this paper argues, affects the transitional path.

Accordingly, the paper seeks to answer the following questions: what accounts for the formation and dissolution of revolutionary coalitions? How do the main social and political actors change alliance and why? The importance of these questions lies in the fact that coalition formation largely determines the fate of protest movement/revolutions (Tarrow, 2011, p. 191). Needless to say, coalition building also includes internal as well as external elements, although the paper focuses mainly on the internal dynamics and tackles three main signposts on the transitional trajectory in both countries: the situation immediately after the revolution, the elections, and inclusivity vs. exclusivity in the political process.

THEORETICAL FRAMEWORK

Collective action theories perceive protests as result of rational and calculated behaviour. Recognizing the within-group conflicts, collective action theorists address the conditions under which protest groups are activated/deactivated. According to Mark Lich-

bach, the collective action model focuses on the interrelationship of what he called four dilemmas: Hobbes's Dilemma, the Prisoner's Dilemma, the Rebel's Dilemma, and the State's Dilemma (Lichbach, 1998, pp. 401-424). Hobbes's Dilemma focuses on the possibility of social order in a certain nation. In their search for social order, people face the Prisoner's Dilemma: "[e]veryone wants everyone else to voluntarily renounce the use of force and fraud, but everyone also wants to retain that right for himself" (Lichbach, 1998, p. 413). Applying this logic to the world of contentious politics, dissidents have their own Hobbesian problem of order when they challenge an existing social or political order. They also have their rebel's dilemma. In Lichbach's words, "[d]issidents seek a public good of either capturing the state or forcing the existing authorities to redress their grievances. Rational dissidents will not voluntarily contribute to this public good" (Lichbach, 1998, p. 413). Looking at the counterrevolutionary coalition, argues Lichbach, regime supporters also face a collective action problem in assisting the regime. In this case, contributions to the regime are also a public good in the same way as contributions to protest. Lichbach calls the regime's collective action problem of maintaining the unity of dominant classes and moulding its various factions into a coherent power bloc "the State's Dilemma" (Lichbach, 1998, pp. 413-414). In this way, the importance of this approach lies in its analyses of the strategic situations in which regimes and dissidents confront one another. It brings new insights into the study of revolution and transition by identifying many collective action problems in conflict (for example, among rebel organizations, within a rebel organization, among the state's supporters or the State's Dilemma). As Lichbach summarized it:

The politics of reform and revolution involve the interaction of the Rebel's Dilemma and the

State's Dilemma. Each side wishes to solve its own CA problem and intensify the CA problem of its opponents. Alignments and realignments, tensions between civil society and the state, and cross-class alliances and social coalitions result (Lichbach, 1998, p. 414).

In this sense, tackling these two dilemmas requires an analysis of a two-level game that occurs between regime elites and dissidents, at one level, and within the regime and the dissident coalitions, at another level (Lichbach, 1998, p. 414). The paper focuses on the interaction between the Dissidents' and State's Dilemmas, and argues that this interaction affects the transitional path.

NATURE OF THE OLD REGIME

The different trajectory of the Egyptian and Libyan revolutions partially finds explanation in the different nature of their old regimes. The Egyptian regime under Hosni Mubarak was best described as semi-authoritarianism or electoral authoritarianism. Although transition to a multiparty system was initiated three decades ago, it did not lead to a transfer of power or real power sharing. The regime arbitrarily controlled the margin of freedom to maintain its survival and manage its foreign relations. Mubarak's regime also reflected a great imbalance of power as the president enjoyed sweeping constitutional prerogatives (Tawfia, 2011). The executive authority was further empowered by imposing the emergency law that was in effect since 1981.¹ The law severely restricted civil and political rights. Moreover, the Egyptian party system was a de facto one party system as the National Democratic Party (NDP) monopolized power since the end of the 1970s. The opposition parties were weak, fragile and lacked any substantial popular base. The only

1. For more on the emergency law and its restriction of civil and political freedoms, see El-Amrani, I. (2011, September 15). The Emergency Law Needs to Go. *The Arabist*. Retrieved January 6, 2015, from <http://arabist.net/blog/2011/9/15/the-emergency-law-needs-to-go.html>; Egypt: Repeal Emergency Law, Abolish Emergency State Security Court (2003, August 3). Human Rights Watch. Retrieved February 12, 2015, from <http://www.hrw.org/news/2003/08/27/egypt-repeal-emergency-law-abolish-emergency-state-security-court>

opposition group that had a considerable popular base was the Muslim Brotherhood, which was de jure banned for decades.² It seems that the regime needed this de facto existence of the group to use it as an internal and external scapegoat. Mubarak has often stated directly or indirectly that it was either him or the Islamists.

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One of the main pillars of the Egyptian regime was the military institution. Steven Cook described the army in Egypt as an institution that rules but does not govern (Cook, 2007). Mubarak has succeeded in outlining a power sharing formula between him and the military elite. This arrangement enabled him to control power and, at the same time, remain faithful to his power base: the army. The military institution also has its economic interests since it manages an economic empire and is keen on keeping it away from public scrutiny. This obviously requires a deep involvement of the military in the decision-making process. Such an involvement takes different forms; the most famous of which is appointing retired officers in the highest positions in the Egyptian bureaucracy as governors, heads of state-owned companies, and so on (Elgohari, 2013). In short, the Mubarak regime represented an alliance among the security institutions, state bureaucracy, and the ruling party. Capitalist interests represented in Gamal Mubarak's crony businessmen later joined that alliance and were pushing for installing Gamal as his father's successor. The regime's stubbornness in the years preceding the revolution in dealing with the demands of political reforms confirmed the per-

ception that the inheritance scenario was politically irreversible.

As for Libya, Gaddafi came to power through a coup against the monarchy in 1969. He established a personal 'sultanic' style of dictatorship. Over the years, he destroyed all the institutions that existed before the coup and banned all political organizations (Bruce, 2011). Decisions were thus taken arbitrarily given the complete lack of institutionalization. Gaddafi also succeeded in getting rid of, or at least marginalizing, the majority of the political elite. With the establishment of *Jamahiriyya* and 'direct democracy' in 1973, the regime persecuted civil society and restricted independent media, and established a network of unelected bodies and informal centres of power (Bruce, 2011).

It is noticeable here how Gaddafi, when he first came to power, worked on dismantling the tribal alliances formed by the old regime. He substituted the tribal nobles, who occupied the top administrative positions on the regional level, with youth technocrats. Tactical and ideological reasons drove him to weaken and marginalize the role of the tribes. Tactically, he wanted to push aside any remaining loyalists to the monarchy. Ideologically, his Arab nationalist beliefs enticed him to shift the political regime from tribalism to one that could encompass all of the Arab states (Wright, 2012). Attempts to excluded tribalism did not last for long, however. Different attempts to seize power urged Gaddafi to seek protection from his tribe to face political opposition. He started appointing many of his relatives and in-laws in the important positions in army and police. The small number of his tribe (al-Qaddadfa), in addition to its light political and economic weight, urged Gaddafi to form tactical and informal alliances with important tribes such as Warfalla and Magarha. Playing the tribes against each other and building tribal alliances became an important part of Gaddafi's internal political manoeu-

2. The regime's exclusionary policies toward the Muslim Brotherhood left deep imprints on its group in a way that made its unity a goal in itself. For more on this point: Al-Anani, K. Mubarak wa al-Ikhwan: Khibrat al-Thlathin 'Aman [Mubarak and the Muslim Brotherhood: The Thirty Years' Experience]. *Al Jazeera Center for Studies*. Retrieved January 20, 2015, from <http://studies.aljazeera.net/files/2011/08/201187113648385131.htm>

vres. Favouritism, because of alliance or blood ties, became the pillars that maintained Gaddafi's tactical alliances.³ This tribalization of power is partly responsible for the rejection of the symbols of power such as the state and the security apparatus, a problem that became obvious after the fall of Gaddafi (Martinez, 2014).

Weary of the army, Gaddafi established a parallel security system of paramilitary forces controlled by one from his circle of trust, particularly his sons.⁴ These security brigades were far better trained and armed than the regular army. The national army was kept weak to avoid the possibility of a coup and the officer's units were under tight control to avoid any possible treason.⁵ For its part, the police did not have a bad reputation as it was mainly performing traffic duties and the like. It also lacked suitable weapons (El-Katiri, 2012).

In the years preceding the revolution, it became clear that any attempt to reform the system was doomed to failure given Saif al-Islam's inability to achieve his 'reformist' agenda. Saif al-Islam tried to portray himself as a reformer working on legalizing the work of non-governmental, non-political organizations and establishing an 'independent' media. The failure of his supposedly 'reformist' agenda showed how dominant the most conservative wing of the regime was,⁶ and revealed its fear of any quick or broad changes that could disturb the political stability. Simultaneously, the ambiguity surrounding the political succession in view

of the rising star of Saif al-Islam created animosities among the internal circle of Gaddafi known as the 'men of the tent'. The undeclared rule for decades was that in case of Gaddafi's absence from the political scene, one of his revolutionary comrades would ascend to power (El-Katiri, 2012, p. 6).

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This brief characterization of the two regimes leads to some concluding remarks. Authoritarian and semi-authoritarian regimes allow a limited space for the opposition. Most of the time, they encourage the existence of this space to give a democratic appearance to their rule, especially if they do not build their legitimacy on a particular ideology. This opposition is often disunited and weak but may sometimes have the ability to organize for particular causes. These regimes tighten their grip via control of state institutions, particularly the military and security apparatus. The army in particular plays a major role (if not the major role) in the survival of these regimes (this is

3. The norm was to appoint family members and the symbols of the main allying tribes in important and leading positions. The regime also armed the trusted tribes. Gaddafi enhanced his power by playing off the tribes against each other and promoting one tribe over the others in different places in the country. In 1990, the role of the tribes in public life was further enhanced by establishing a comprehensive system of the 'popular social leadership committees'. The nobility in the tribes and regions were the main members in these new committees, which were in charge of several bureaucratic and social tasks of the central state. These committees provided welfare services to the locals and acted as judicial forums to adjudicate in local conflicts. For more details: El-Katiri, M. (2012). State-Building Challenges in Post-Revolution Libya (pp. 3-4). US Army War College: Strategic Studies Institute. Retrieved September 9, 2013, from <http://www.strategicstudiesinstitute.army.mil/pdf/FILES/PUB1127.pdf>

4. Some analysts suggest that Gaddafi even played off his sons against each others to guarantee that none of them would aggregate enough power to challenge his authority. Retrieved from <http://www.independent.co.uk/column/insight/4551-despite-its-iron-grip-gaddafis-regime-was-always-likely-to-fall#sthash.bYt8WCuX.dpuf>

5. It is not, therefore, surprising to see many of these big units defecting from the regime during the revolution. Such a deflection made the liberation of the east possible.

6. The most telling example is that of the Libyan Constitution, which was written by a committee appointed by Saif al-Islam in 2008. Some leaks at that time mentioned how the work of the committee did not significantly change the existing political system. Apparently, it crossed so many lines that Gaddafi and his old guard would not have accepted it. At the beginning of 2010, the draft constitution was sent to the Social Popular Leadership Committee for discussion. Thereafter, the draft constitution disappeared and was never heard of again.

in case the army itself is not de jure in control). In contrast, totalitarian regimes do not allow any opposition and do not rely on institutions in ruling but on the individual will of the ruler. So, while the authoritarian regimes are characterized by a degree of institutionalism, the totalitarian regimes are characterized by lack of institutions. Moreover, most of the time, totalitarian regimes allow parallel security arrangements founded solely on loyalty and obedience to the ruler. In this way, the army is not necessarily the strongest existing institution. The issue of political succession represents one of the most salient problems in both authoritarian and totalitarian regimes. However, it could be a way to dismantle regime alliances and ushers in the possibility of change. While transition in authoritarian regimes often take the form of negotiations or the withdrawal of the military's support from the regime, transition in totalitarian regimes is often enforced by violence that could easily develop into an armed conflict.

STATE'S AND DISSIDENTS' COALITIONS IMMEDIATELY AFTER THE REVOLUTION

In both Egypt and Libya, support for the revolution was the common denominator among the political actors that comprised the negative coalition that overthrew Mubarak and Gaddafi. Because the revolution caught everyone by surprise, there was no clear vision of how to manage the transitional period or clear common goals apart from the slogan of 'protecting the revolution' or 'achieving the goals of the revolution'.

Looking at the Egyptian case, the negative coalition was comprised as follows: the civil/secular elites, youth movements, the Muslim Brotherhood, the Salafists (later to be largely organized in the Salafist al-Nour party and al-Fadila party), the former violent

Islamists, such as the Islamic group, individual Copts (the church itself did not encourage dissent). They all shared antagonism towards Mubarak's police regime. Although overthrowing Mubarak was not on the agenda of the planned demonstrations, the coalition soon perceived the unexpected crowd as an opportunity to raise the ceiling of demands. The army's apparent decision not to open fire on protesters enhanced such a perception. It was also an indication that the internal coherence of the old regime was crumbling or at least under review. Although some revolutionary voices started questioning the role of the army, particularly after the battle of the camel,⁷ these voices remained highly marginalized and sidelined.

Meanwhile, the regime coalition comprised the police, the military institution, the state institutions and bureaucracy, and the NPD high ranks, a coalition that became conventionally called the 'deep state'. It was later revealed that the military was reluctant to approve Gamal Mubarak's ascendance to power. Some accounts also mentioned the army's increasing uneasiness towards the rising influence of the police and Gamal's crony businessmen (Al-Houdaiby, 2014, pp. 5, 8). The army therefore perceived the uprising as an opportunity to put an end to the hereditary scenario. This explains why the army did not open fire on the protestors while the police fought until the end, along with the businessmen and the party cadres (Al-Houdaiby, 2014, p. 8). This inter-division explains why, immediately after Mubarak stepped down, the deep state kept a low profile. After all, it was under attack: the police capabilities faltered faced with the angry crowds, the NPD's headquarters were burned down ushering in its political demise, and there were calls for Gamal Mubarak's business elite to be brought to justice. This did not mean surrender, however. After all,

7. After an emotional speech by Mubarak on 1 February 2011, thousands of his supporters attacked the encampment in Tahrir riding on horses and camels. The two parties clashed for many hours, after which the Tahrir revolutionary succeeded in holding their ground. On the night of the same day, the Tahrir encampment was under attack by Molotov cocktails and live ammunition from unknown persons who occupied the roofs of the buildings looking over the square. The fact that there were snipers seen by the demonstrators led the latter to accuse the police of orchestrating the attack. See Egypt's Revolutions Turns Ugly as Mubarak Fights Back (2011, February 2). *The Guardian*. Retrieved January 10, 2015, from <http://www.theguardian.com/world/2011/feb/02/egypt-revolution-turns-ugly>

the military's perception of the new social and political order was one of Mubarakism without Mubarak.⁸ It soon became clear for the different isolated allies in the deep state that their survival depends on their mutual interdependence, shaking the negative coalition, and controlling the masses. The military found the Islamists, particularly the MB, a perfect fit for the job.

As for Libya, the negative coalition was comprised of a wide array of groups that mainly shared anti-Gaddafi sentiments. These groups were the experienced politicians who quickly established the National Transitional Council (NTC),⁹ the Islamists (those espousing the ideas of the Muslim Brotherhood, and the Salafists), the brigades that were formed during the war, anti-Gaddafi tribes and their militias, and the Eastern federalists. The coalition was too broad and contradictory to survive. Immediately after overthrowing Gaddafi, the goal of safeguarding the revolution from the 'pro-Gaddafi' forces started shaking the alliance that had just been born (Sharqieh, 2013, pp. 14-15). The first signs of inter-coalition division were seen in the different perception of who the pro-Gaddafi forces were. While some groups limited their definition to those who remained Gaddafi's allies until the last minute (for example, loyalist tribes such as Warfalla and Magarha, the political and business elites who tied their fate with that of the regime), others considered Gaddafi's entire elite as a threat (Rosan, 2013, pp. 15-16). The Benghazi demonstrations in 2012 were the early manifestation of this disagreement. In the demonstrations, the armed groups questioned the legitimacy of the NTC and accused it of being elitist, connected to the Gaddafi regime and thus lacking the revolutionary credentials (Rosan, 2013, p. 23). Behind these claims lies a dominant perception that, as phrased by Luis Martinez,

"the state can never be an autonomous agent taking care to protect its territory and inhabitants" (Martinez, 2014, p. 2). We cannot understand the regional and ideological rivalries plaguing the Libyan transition without reference to the legacy of *Jamahiriyya*. The lack of any institutional structure for peaceful mobilization resulted in capitalizing on identity, either tribal or regional (Tabib, 2014, p.2).

THE ELECTIONS

The first election that followed the overthrow of the two regimes in Egypt and Libya was the first step in exposing the fragility of the negative coalition and paving the way to its dismantling. After all, negative coalitions in both cases have little in common and their historical, political and ideological rivalry soon took precedence.

In Egypt, the negative coalition lacked a clear vision of the transitional period. As a result, the SCAF took charge of managing the transitional period. Mindful of its vested interests and determined to retain order in the streets, the SCAF apparently opened channels with the Islamists, perceiving them as the most organized civil group that could control the masses (Al-Houdaiby, 2014, p. 9). The army also saw the election-first trajectory as a means of containing dissent and overriding the myriad interests in Tahrir. For their part, Islamists, and the Muslim Brotherhood in particular, were confident of their organizational capabilities and electoral experiences. They were also afraid of a possible comeback by Mubarak's allies. Therefore, they also pushed for the election-first trajectory. They were probably also worried about the army's presence in the political scene but, at the same time, did not have a revolutionary agenda to clash with it. For their part, the youth revolutionaries and the secular civil elite perceived the first trajectory as an attempt

8. This was reflected in the slow pace of change and the lack of any attempt at any real reform under the Supreme Council of the Armed Forces (SCAF). See Goldberg, E. (2011, February). Mubarakism without Mubarak: Why Egypt's Military will not Embrace Democracy. *Foreign Affairs*. Retrieved January 12, 2015, from <http://www.foreignaffairs.com/articles/67416/ellis-goldberg/mubarakism-without-mubarak>

9. For more on the composition of the NTC, see Salem, P. & Kadlec, A. (2011, June). Libya's Troubled Transition, *The Carnegie Papers*, p. 4. Retrieved from http://carnegieendowment.org/files/libya_transition.pdf

to marginalize their role in the political landscape and adopted, instead, the constitution-first trajectory. For them, the congruence between the Islamists' and the army's view with regard to managing the transitional period was a deal according to which the army guarantees the political rise of the MB and, in return, the latter guarantees the main interests of the army and keeps its leaders unaccountable.¹⁰

A demarcation was therefore drawn between 'hardline revolutionaries', represented mainly by the youth movements (allying with the civil forces), and the moderate or 'soft' revolutionaries represented by the Islamists. The civil forces were apparently allying with the revolutionary movements not for the sake of the revolution but to exert more pressure on the SCAF to grant them a greater share of power. What proves this point was their promotion of the idea of 'supra-constitutional principles' and their willingness to grant the army special status.¹¹ For its part, the 'deep state' has been given the kiss of life by this rift and invested in deepening it. On the one hand, the army adeptly established itself as the arbiter between the political actors and, on the other hand, the private media, largely dominated by the remnants of Mubarak's regime, intensified their messages to deepen the rift between the former allies in Tahrir and slowly turn public opinion against the revolution itself, associating it with chaos and the destruction of the Egyptian state.

The first rift was thus established: Islamists versus the rest. The rift became deeper with every electoral event. The more electoral gains the Islamists made, the more they distanced themselves from the other

civil constituencies and the more they inclined towards the more conservative ones (Alaa, 2014). In contrast, with every electoral loss, the youth movements intensified their radical approach and, consequently, became more alienated from the military as well as society at large, which was in favour of more stability. As for the secular elites, the more electoral loss they experienced, the more they became convinced of the impossibility of reaching power through the ballot box and the more they became worried about their influence in the post-revolutionary regime.

The 2012 presidential election was another major manifestation on the unsustainability of the negative coalition. This was clearly apparent in its failure to support a single candidate to confront the counter-revolutionary contender, Ahmed Shafiq. Threatened by the possibility of the return of the old regime, most of the influential youth movements backed Mohammed Morsi in the second round. For them, although the MB was not trusted, its hands were not yet tainted with blood. The old regime was still perceived as the most dangerous threat to the revolution. The personality of the candidate of the counter-revolution also encouraged such an alliance. Some of the secular elites rallied around Morsi only after extracting the most painful promises from him and the MB.¹² Others preferred to stay neutral waiting to see who would win the race, while a third group chose to back Shafiq rather than Morsi. For them, Morsi's victory and his new legitimacy were more threatening to them rather than the old regime. At that moment, the perception of the different parties of the negative coalition of

10. For a more detailed view on the divisions in the negative coalition, see Alaa, B. (2014, October). Al-Khuruj min al-Midan: Kayf lam Na'ud Namtalik Hululan [Getting Out of the Square: How Do We No longer Have Solutions]. *Fairforum*. Retrieved November 1, 2014, from <http://fairforum.org/wp-content/uploads/2014/10/tahrir-square-exit.pdf>

11. The then Deputy Prime Minister Ali al-Selmi proposed a document suggesting a number of 'supra-constitutional principles' that would guide the constitution-writing process. The document dealt with the concerns of liberals who feared the rise of Islamists. It adopted the principle of a 'civil state' and detailed a number of liberal rights that must be preserved in the new constitution. The document actually entrenched the power of the military in domestic governance. For further discussion, see Moustafa, T. (2012). Drafting Egypt's Constitution: Can a New Legal Framework Revive a Flawed Transition? *Brookings Doha Center*, no. 1. Retrieved October 10, 2014, from <http://www.brookings.edu/~media/research/files/papers/2012/3/12-egypt-constitution-moustafa/new1-drafting-egypts-new-constitutionenr03.pdf>

12. This was formulated in what came to be known as the 'Fairmont Agreement', where diverse groups of political players and revolutionaries met with Mohammed Morsi prior to the second round of the election to announce their support for his candidacy on condition that he would form a national salvation government, formulate a national unity project, and form a presidential team comprising members from across the political spectrum. See Wahab, N. (2013, June). How to Win an Election and Lose a Presidency. *Atlantic Council*. Retrieved January 20, 2015, from <http://www.atlanticcouncil.org/blogs/egyptsource/how-to-win-an-election-and-lose-a-presidency>.

the SCAF as an integrated part of the deep state – the most influential component, indeed – was substantiated. This would later affect the strategies and coalition-building process of the different actors.

The presidential election was also the moment in which the counter-revolutionary coalition put itself back together and started to strike back. Apart from the media campaign in support of the candidate of the counter-revolution, the military issued a constitutional declaration stripping the would-be president of almost all his powers: the military was to be the actual ruler of the country (Hill, 2012). Such a move enticed the revolutionary youth movements, which were already clashing with the military (especially after the clashes of Mohamed Mahmoud and Maspero¹³). That pushed them to back to Morsi, as mentioned above. It was also at that moment that the regime coalition realized that, despite its capabilities, it was still in need of broadening its coalition if it was to restore the pre-25 January regime.

Like Egypt, elections were also a demarcating moment between the 'hardline' vs. 'moderate/centrist' revolutionaries in Libya. In contrast to Egypt, in Libya Islamists were the hardliners who advocated a complete break with the past, while the more liberal, who adopted a more accommodating agenda, were the moderates. The hardline coalition consisted of the MB, represented by its political party, the Justice and Construction Party (JCP), and the Salafists, brigades from revolutionary strongholds like Misrata, Islamist brigades, and the federalists from the east. Eastern federalists have historical animosity towards the vested interests of the favoured regime elites and regions. Under Gaddafi, the Eastern region was kept underdeveloped and completely marginalized and

ignored. This is why after the revolution, demands for federalism appeared in Cyrenaica. For these reasons, federalists politically backed the hardliners in the beginning despite their different constituencies (Wehrey, 2014, p. 27). The moderates comprised those with vested political and economic interests in the Libyan state, such as the politicians and bureaucrats united in the NTC – which later largely formed the National Front Assembly (NFA) –, and the tribal brigades that were former allies of Gaddafi but departed him early during the revolution, such as the Zintan (Smits, 2013, p. 23-24).

Despite their different agendas, the hardliners perceived the existence of past vested interests as the most dangerous threat to the revolution. For them, undermining these interests was a high priority that deserved the unity of all the revolutionaries (Smits, 2013, p. 24). After all, the Libyan revolution is in essence "a revolution of the regions and rural areas against a central authority, an authority which has been perceived for the last half-century as being abusive and arbitrary" (Martinez, 2014, p. 6). For their part, the pro-revolution centrist forces perceived the revolutionary influence as threatening and promoted a more pragmatic and inclusive approach. This position enabled them to win the majority of votes in the first General National Congress (GNC) elections and nominate its president, Mohammed Magarief. The pattern of shifting alliance of the independent members¹⁴ soon challenged the numerical dominance of NFA in parliament. The rivalry between these two camps reached its climax during the passing of the 'law on political isolation' that excluded the former regime officials from the country's public life (Smits, 2013, p. 24).

13. For more on Mohammed Mahmoud's clashes between youth revolutionaries and the army, see (November 2012). Egypt: The Legacy of Mohammed Mahmoud Street. *BBC News*. Retrieved January 10, 2015, from: <http://www.bbc.com/news/world-middle-east-20395260>. Maspero clashes were mainly between Copts and army forces, see Tadros, M. (2011). Egypt's Bloody Sunday. *MERIP*. Retrieved December 11, 2014, from <http://www.merip.org/mero/mero101311>.

14. There were 120 independent deputies in the GNC who were primarily representing the interests of their cities, tribes or even families. Local loyalties were, thus, the decisive factor in electing those members. See Wehrey, F. (2014, September 24). Ending Libya's Civil War: Reconciling Politics, Rebuilding Security. *Carnegie Papers*, p. 27. Retrieved from <http://carnegieendowment.org/2014/09/24/ending-libya-s-civil-war-reconciling-politics-rebuilding-security>

As we can see, in both Libya and Egypt the State's and Dissident's coalitions were trying to solve their own dilemmas by endeavouring to maintain and broaden their alliances. They were also trying to overcome their Hobbesian dilemma, which is concerned with establishing a certain social and political order. In Egypt, the state's Hobbesian dilemma revolved around how to restore the pre-25 January regime and contain dissent, while the dissidents' Hobbesian dilemma was how to establish the new regime and what the desired nature of the regime was. In Libya, the state's coalition wanted a political and social order that somehow protect the vested interests created by the old regime. In contrast, the hardliners wanted an order that makes a total break with the past.

THE INCLUSIVITY VS. THE EXCLUSIVITY OF THE POLITICAL SYSTEM

Soon after the elections, Morsi grabbed power from the SCAF, a move that was apparently not part of the deal.¹⁵ His attempts to trim Mubarak's remnants in the judiciary (an institution that became openly hostile to the president and before with his group through different controversial rulings), highly alerted the state's coalition, solidifying its plan to overthrow him. The deep state elite felt challenged by the new elite that, theoretically, enjoys popular and legal legitimacy. It perceived Morsi's move as an introduction to exclude them from the post-Mubarak regime. The coalition was, however, aware that any claims of authority had to emanate from the street; in other words, it had to have a revolutionary cover. It is now clear that the aim was not only to overthrow Morsi and the MB but also impede any future dissent by tarnishing the

most organized ally in any possible future negative coalition.

Morsi's disastrous performance, and his failure to meet his pre-election promises, facilitated the mission of the old regime coalition. Morsi and the MB probably knew that they were fighting the deep state but instead of joining forces and uniting approaches in dealing with it as one entity, they diversified their strategies from open hostility (as in the case with the judiciary) to one of co-optation (particularly in dealing with the army and, somehow, the police). They spared no effort in losing every probable ally in their coalition. They perceived every move as a threat and part of a conspiracy against them. This led them to exclude everyone from the decision-making process and, consequently, become isolated from the rest of the negative coalition. Media messages, the active street protests, and the judiciary rulings and actions were, as they perceived them, evidence that plots were being hatched. Although this perception was probably partially true, Morsi and the MB failed to delineate the effective strategy to foil them. Not only did they alienate themselves from the rest of the political actors, but also from the rest of the society. This, of course, paved the way for their utter suppression.

For their part, the revolutionary youth movements felt entitled to impose their views in return for their support to Morsi in the presidential elections. Their more radical approach clashed with the non-confrontational strategy of the MB, especially when it comes to dealing with the police and the military. The slower Morsi was in dismantling the interest and corrupt networks of Mubarak's regime, the more antagonized the youth movements became.¹⁶ This was particularly the case with the demands to restructure the Ministry of the

15. On this move, see <http://www.skynewsarabia.com/web/article/39150/%D9%85%D8%B1%D8%B3%D9%8A-%D9%8A%D8%AD%D9%8A%D9%84%D8%B7%D9%86%D8%B7%D8%A7%D9%88%D9%8A-%D9%88%D8%B9%D9%86%D8%A7%D9%86-%D9%84%D9%84%D8%AA%D9%82%D8%A7%D8%B9%D8%AF>.

16. Alaa, B. (2014). Al-Khuruj min al-Midan: Kayf lam Na'ud Namtalik Hululan (Getting Out of the Square: How Do We No Longer Have Solutions). *Fairforum*. Retrieved from <http://fairforum.org/wp-content/uploads/2014/10/tahrir-square-exit.pdf> and Al-Houdiby, I. (2014). Changing Alliances and Continuous Oppression: The Rule of Egypt's Security Sector. *Arab Reform Initiative*, pp. 5, 8. Retrieved from <http://www.arab-reform.net/sites/default/files/%D8%AD%D9%83%D9%85%20%D8%A7%D9%84%D9%82%D8%B7%D8%A7%D8%B9%D9%8A%D9%86%20%D8%A7%D9%84%D8%A3%D9%85%D9%86%D9%8A%20%D9%88%D8%A7%D9%84%D8%B9%D8%B3%D9%83%D8%B1%D9%8A.pdf>

Interior. In addition, the low power sharing provoked the secular forces, who also felt challenged by the neo-Islamists elites and were concerned about their social status.¹⁷ Refusing to deal with the MB except on their conditions, these forces pushed Morsi more towards his inner circle of trust: the MB. This substantiated the other forces' perception that Morsi mainly governed only for the sake of his 'people', the Muslim Brotherhood, irrespective of the goals of the revolution. Therefore, while all parties had the same interest in overcoming Mubarak's deep state, they did not pursue a cooperative strategy.

Morsi's November constitutional declaration,¹⁸ followed by Al-Ittihadiya clashes¹⁹ ushered in an irreconcilable rift between the MB and the revolutionary youth movements. It was also an open invitation to the state's elite to broaden its coalition. This is when the National Salvation Front was established, an alliance between liberals, Naserrites, leftists, and some remnants of the old regime. This time they were united against a common enemy: the MB. The coalition moved slowly but steadily to get rid of Morsi under the pretext of saving the state from the "ikhwanization project" (Massad, 2013). Together, they started knocking the doors of the military either directly by calling on the army publicly to intervene, or indirectly by increasing the level of violence in the street and intensifying the clashes with the police, on the one hand, and the members of the MB, on the other. The army apparently welcomed this invitation either because it was planning to re-seize power or because this was perceived as an opportunity to redeem much of its popularity and status that were relatively affected when the SCAF

was in power. For the army, it was also an opportunity to overcome its Hobbesian dilemma by establishing the desired social and political order that the MB failed to establish. In this way, the alliance between the state coalition and most of the Tahrir negative coalition was established. It was still lacking a final touch.

The Tamarod (Rebel)²⁰ youth movement, mobilizing the people through the media, and the support of the other revolutionary youth movements in the 30 June demonstrations were enough to add the needed revolutionary touch. On 3 July, Morsi was removed from power by a coalition led by General Abdel Fattha al-Sisi, the Minister of Defence at that time, supported by the Grand Sheikh of al-Azhar, the Pope of the Coptic Orthodox Church, the Head of the Supreme Court, a representative of the Salafist al-Nour party, the female liberal journalist Sekina Fouad, the liberal – and, for some, the iconic figure of the 25 January Revolution – Mohammed al-Baradei, and representatives of the youth movement Tamarod which had played a significant role in mobilizing Egyptians against the deposed president. This was visual evidence of the resilience of the 'old regime', and the breakdown of the revolutionary coalition that forced Mubarak to step down. Despite the frequent characterization of this revolutionary-coalition breakdown as polarization along the Islamic-secular division, a closer look suggests a more complicated pattern of alliance and re-alliance building. The July coalition included al-Azhar, the oldest Islamic institution in Egypt and the main representative of moderate Islam, along with the Salafists, representing the more conservative version of Islam. These two Islamic-oriented allies have agreed

17. Most probably, this was the perception with regard to appointing an Islamist minister of cultural affairs. Intellectuals, artists and actors objected to this appointment and encamped in the minister's office denying him access.

18. In November 2012, Mohammed Morsi issued a very controversial constitutional declaration concentrating all the judicial, executive and legislative powers in his hands. Consult the declaration at: <http://shorouknews.com/news/view.aspx?cdate=09122012&id=ac870987-0412-4dd8-ace9-a21b83213115>

19. On 5 December 2012, opposition demonstrators encamped in front of the Ittihadiyya Presidential Palace expressing their rejection of the November constitutional declaration. Violence erupted on 5 and 6 December in the area surrounding the Presidential Palace when supporters of the Muslim Brotherhood tried to disperse the sit-in. For more details, see Al-Ittihadiya, (December 2012). 'Presidential Palace' Clashes in Cairo 5 and 6 December 2012. *CIHRS*. Retrieved February 10, 2015, from http://www.cihrs.org/wp-content/uploads/2012/12/Ittihadiyya.rep_CIHRS_Eng_Dec_.pdf

20. A youth movement that collected people's signatures to call on Mohammed Morsi to step down. It played a major role in mobilizing the streets on 30 June 2013 demonstrations that paved the way to the army's intervention. Consult the movement's profile in: Profile: Egypt's Tamarod Protest Movement. *BBC News*. Retrieved December 10, 2014, from <http://www.bbc.com/news/world-middle-east-23131953>

to overthrow an Islamic-oriented president. Interestingly, the secular liberals who have long called for separation between religion and politics, agreed to sit side by side with the two main religious institutions in Egypt to legitimize a political act.

The Salafist al-Nour party threw in its bid where the balance of power lies. It also had the ambition of replacing the MB as the most influential opposition. Al-Azhar is itself an institution that has long been co-opted by the old regime²¹ and may also have felt threatened by a rising Islamist elite that could challenge its monopoly of the representation of moderate Islam. The Orthodox Church is an institution that shares many characteristics with the Mubarak regime and which also felt threatened by the increasingly sectarian discourse on the part of the new ruling elite.²² For their part, the revolutionary and secular elites agreed to stand side by side by the old regime (consciously or unconsciously) to get rid of the MB. The first was naïve in thinking of the situation as a second revolutionary wave that would deter the army from assuming power. The second was opportunistic in thinking of reaching power though bullets after failing to acquire it via ballots. The deep state has actually reasserted itself and protected its interests as was reflected in the 2014 Constitution. Rather than establishing fully-fledged state institutions, the Constitution reflected a system of personal fiefdoms.²³ With the election of Abdel Fattah el-Sisi as president, the new/old layout of the Egyptian system became clear: the military on top (the military *vilayet*) (Fikry, 2014), state institutions and bureaucracy, and Mubarak's business

elite.²⁴ Anyone else is just playing along or simply persecuted, as in the case of the revolutionary youth movements.²⁵ The dissidents thus became divided between the most revolutionary youth movements, on the one hand, and the MB and other Islamists, on the other.

In Egypt, the deep state has reasserted itself and protected its interests as was reflected in the 2014 Constitution. Rather than establishing fully-fledged state institutions, the Constitution reflected a system of personal fiefdoms.

As for Libya, the law on political isolation accelerated the rift between the moderates and hardliners. The pattern of coalition that each party forged contributed to its success or failure in achieving its political agenda. The hardliners forged a coalition based on animosity to Gaddafi's elite. Among the same coalitions, different motives were employed. The two main Islamic currents in the GNC, the Muslim Brotherhood and the Salafists, despite their ideological differences and competition, both wanted to attain political dominance over the NFA-controlled government (Smits, 2013, p. 26). The JCP was also able to mobilize fellow revolutionary forces – most notably the federalists, local groups and Jihadist forces – to back the Islamists' ambition to influence national politics.

21. For more on this point, see Kumar, G. (2011-2012). From Co-Optation to Compromise: The Changing Role of al-Azhar in Egyptian Politics. *McGill Journal of Middle East Studies*, vol. xii.

22. For more on the political role of the Egyptian church, see Fahmi, G. (2014, December 18). The Coptic Church and Politics in Egypt. *Carnegie Papers*. Retrieved from <http://carnegie-mec.org/2014/12/18/coptic-church-and-politics-in-egypt>

23. Brown, N., & Dunne, M. (2013, December 4). Egypt's Draft Constitution Rewards the Military and Judiciary. *Carnegie Papers*. Retrieved from <http://carnegieendowment.org/2013/12/04/egypt-s-draft-constitution-rewards-military-and-judiciary>; El Shalakany, A. (2014, March). Egypt's New Constitution: A Mixed Bag. *E-International Relations*. Retrieved December 20, 2014, from <http://www.e-ir.info/2014/03/06/egypts-new-constitution-a-mixed-bag/>

24. The old faces of the Mubarak regime, after being acquitted by the judiciary, have made a strong public comeback. Some of them were even planning to play a political role. The most flagrant example is Ahmed Ezz, the business tycoon of Gamal Mubarak's cronyism. Ezz was an influential leader in the National Democratic Party and was famous for orchestrating the rigged results of the 2010 parliamentary elections.

25. Many of the youth symbols of the 25 January Revolution are now in jail. The most famous are Ahmed Maher, Alaa Abdel Fattah, and Mohamed Adel.

Despite Islamists' criticism of federalists' objectives, and the fact that both parties (Islamist and federalists) have distinctive constituencies, they shared the common interest of combating the vested interests of Gaddafi's former elite and allies. The federalists had their historical grievances in terms of the marginalization and underdevelopment they suffered during the Gaddafi era (Smits, 2013, p. 27). The JCP also attracted many of the independent members within the GNC, who mainly represented their local and tribal interests and wanted to prove themselves in post-revolutionary Libya. Changing alliances on the part of independent members explains how the hard-line camp was able to change its fortune and became the dominant coalition in politics at the expense of the once-dominant NFA-led coalition (Smits, 2013, pp. 27-28).

The NFA and former Gaddafi allies perceived the law on political isolation as a step to exclude them from the emerging political scene. Simultaneously, former and current army officers perceived the increasing influence of the militias as a challenge resembling that of Gaddafi's security brigades. They feared another marginalization in the new regime similar to the one they suffered under Gaddafi. They also despised the state's favourable treatment of the revolutionary militias (Wehrey, 2014, p. 26). Moreover, worried about repeating the Egyptian scenario, the Islamist coalition ordered armed allies from the Libya Shield Force (most of its members come from Misrata) to Tripoli. As a result, Zintan perceived the rise of Misrata in the capital as a worrying threat. Therefore, it quickly started reviving old tribal alliances with powerful western tribes, several of which fought with Gaddafi during the revolution (Smits, 2013, p. 31). This perception strengthened the NFA-Zintan coalition. After undermining the NFA, the federalists objected to the new political agenda of the leading coalition in the GNC, perceiving it as conducive to their margin-

alization. They resorted to controlling the oil refinery sites to exert pressure on the dominant coalition (Smits, 2013, pp. 32-33). Realizing that it has to forge new alliances to maintain its political existence, the NFA-Zintan coalition opened its door to the federalists to join them in a tactical alliance.

In this way, perception of eastern exclusivity (represented by the federalists), the desire for a stronger military (former and current military officers) and the determination in playing a political role in post-Gaddafi Libya (NFA-Zintan) were the basis of what came to be known as 'Operation Dignity' under the command of retired Brigadier General Khalifa Haftar. Haftar was one of the young officers who stood with Gaddafi to seize power from King Idris in 1969. He remained a close ally of Gaddafi until the humiliating Libyan defeat in Chad in 1987. After his defeat, he went into exile in the US and only returned to Libya when the revolution started in 2011.²⁶

Playing on the grievances of ex-Gaddafi military officers, particularly in the east, Haftar was able to integrate many of them into his coalition. A considerable number of those officers loathed many of the GNC's policies and perceived them as a conspiracy against the army in favour of the Islamist armed groups. Haftar also managed to ally with powerful tribes in the east, such as the Ubaydat, the Awaqir, and the Baraghitha. As for the Western region, the General's coalition included the Zintan-based armed groups such as the Qaqa, Madani, and Sawaiq Brigades (many of them are rumoured to include ex-soldiers from Gaddafi's security units). Moreover, the commander of the military police, and tribal armed groups from Warshafana and the area outside of Tripoli also joined Haftar's fight. Politically, Haftar's move was welcomed by the NFA and other Libyan politicians, such as former Prime Minister Ali Zeidan, and the former National Council Chairman Mustafa Abd al-Jalil (Wehrey, 2014, p. 21).

26. For more on Haftar, see Madi, M. (2014, October). Profile: Libyan ex-General Khalifa Haftar. *BBC News*. Retrieved February 13, 2015, from <http://www.bbc.com/news/world-africa-27492354>

Meanwhile, the Islamists in the east perceived Haf-tar's wide definition of terrorism as an existential threat, one that attempts to deny them any role in politics. This urged them to join forces in what came to be known as the Benghazi Revolutionary Shura Council (Wehrey, 2014, p. 22).²⁷ This coalition was the nucleus of what is now known as Libya Dawn, which can be described as Islamist, Misratan, anti-Zintan, and anti-federalist (Wehrey, 2014, p. 13). Libya Dawn comprises the following groups: the Chamber of Command of Libya Revolutionaries,²⁸ the Libya Shield Forces,²⁹ Misrata Brigades,³⁰ some tribes in western Libya, and the Benghazi Revolutionaries Shura Council.

In these two umbrella coalitions, the armed groups and militia had fought side by side in the revolution to overthrow Gaddafi. Now they are fighting each other and they sometimes even find it imperative to fight in the same camp with the pro-Gaddafi entourage. Expectedly, each of the two coalitions currently promotes a different narrative. The Libya Dawn coalition claims that they are fighting a counterrevolution led by Gaddafi's elite and cronies. Meanwhile, the partners in Operation Dignity claim that they are fighting against an Islamist/terrorist takeover. The division results in a failed state with two parliaments (one in Tripoli and the other based in Tobruk) and two rival claims to governance, each backed by a different constellation of regional powers.

In both the Libyan and Egyptian transitions, the interaction between the State's and Dissidents'

Dilemmas resulted in a zero-sum game and a complicated Hobbesian dilemma. In Egypt, the status of the military and its 3 July alliance facilitated its crushing of Islamists and the installation of a more authoritarian regime – one that controls power and eliminates dissent – to put an end to this Hobbesian state of affairs. The balance of weakness among the Libyan parties led to the state of 'war of all against all' where the prospect for establishing any kind of political regime is dim.

EGYPTIAN AND LIBYAN TRANSITIONS AND THE PATTERN OF EXTERNAL ALLIANCES

In general, the international and regional contexts were not encouraging to the revolution, let alone a real political transformation, in both cases. In Egypt, this attitude was obvious from the comments of Western and Arab countries (apart from Qatar) during the early days of the revolution. These comments ranged from supporting the then Egyptian President Hosni Mubarak (the case with some Arab countries)³¹ or expressing the need to starting a process of democratic transition without directly calling on Mubarak to step down. The US and EU adopted the latter position. They were balancing between supporting democracy and freedom on the one hand, and maintaining stability on the other.

After Mubarak stepped down, financial assistance was not quickly offered to Egypt despite the dete-

27. The coalition comprising the Shura Council included the following groups: Ansar al-Sharia, the Libya Shield one, the February 17 Revolutionary Martyrs' Brigade, the Rafallah al-Sahati companies in addition to the Jihadists coming back from Iraq and Syria.

28. It comprises of revolutionary leaders in the west region. The chamber is affiliated with the high command of the army staff. The former parliamentary speaker, Abusahmain, mandated it to secure Tripoli after the attacks that targeted the parliament headquarters. For more, see Dawn of Libya Forces Impose Control on Tripoli. *AlMonitor*. Retrieved January 12, 2015, from <http://www.al-monitor.com/pulse/security/2014/08/libya-tripoli-control-hifter-tribal-forces.html#ixzz3SsNt5cES>

29. It is a group of armed militia affiliated with the high command of the army staff. It comprises fighters from different tribes, mainly Misrata.

30. The main brigades that took control of Tripoli from Gaddafi. It was its members who arrested and killed Gaddafi. After the toppling of Gaddafi, there were more than 200 militias registered with the Misratan Union of Revolutionaries. Its members are estimated at 40,000 fighters. See Guide to Key Libyan Militias (2014, May). *BBC News*. Retrieved December, 2014, 20 from <http://www.bbc.com/news/world-middle-east-19744533>

31. There was news that the Saudi King Abdullah warned the American President Barack Obama that Riyadh was willing to offer financial assistance to Egypt that would replace the American aid if America continued its pressures on Mubarak to step down. See Jabril, A. Al-Su'udiya wa al-Khalij: Nahwa Tahalufat wa Adawat Jadida fi Idarit al- Mintaqa [Saudi Arabia and the Gulf: Towards New Alliances and Tools in Managing the Region]. *Ummati fi al-'alam*. o. 11. Cairo: Hadara Center for Political Studies.

riorating state of the economy. It was particularly noticeable how the Gulf State' assistance was delayed. When Mohammed Morsi came to power, the Gulf States' anxiety over the political rise of the MB was apparent (especially on the part of Saudi Arabia, the United Arab Emirates, and Kuwait). This unwelcoming attitude manifested itself in, for example, hosting the symbols of the Mubarak regime in the UAE like Omar Suliman (the former director of the Egyptian General Intelligence and the vice-president, whom Mubarak appointed during the revolution) and Ahmed Shafiq (Mubarak's last prime minister and the presidential candidate against Morsi). The rumours had it that both the KSA and UAE were financing the counter-revolution. For its part, Qatar supported the rise of Islamists in the Arab Spring states. Building bridges with these political groups, which were believed to have the most fortune in ascending to power, was perceived as an opportunity for Qatar to have regional advantage and expand its sphere of influence. Islamists needed the cash flow and the financial support of a rich ally.

The Gulf States' position was crystal clear after 3 July coup. There was some news on Saudi-Emirate funding of the opposition and the protest movement that destabilized the country during Morsi's year in power (Chumley, 2013). Moreover, after the 3 July coup, these countries embarked on pumping cash and aid into the Egyptian economy to support the new/old regime.

As for Libya, the pattern of regional alliances of the different political actors resulted in a lack of confidence among the different groups of the negative coalition. The NFA and its allies were closer to the UAE while the MB and its allies were closer to Qatar. Both parties were reported to receive military and financial aid from their regional sponsors. However, the near balance of power between the two main political camps opened paths for some kind of political arrangements.

However, the internal developments in Egypt after 30 June 2013 had negatively affected the political

process in Libya, especially with regard to weighing the military solution. For example, when Ali Zeidan, the former NFA-backed prime minister, visited Egypt after the coup, the JCP members in the government were upset and threatened to withdraw from it (Ali, 2013). It is noticeable here how after the visit Zeidan criticized the MB and its political arm for the first time. Some analysts pointed out that the NFA had actually changed its positions since then and increasingly drifted away from the political compromise approach that it used to cherish (*The Tripoli Post*, 2013). According to this view, the NFA was under increasing external pressure from its allies who insisted on excluding Islamists from the Arab political scene after the revolutions. The NFA's early call to terminate the GNC on 7 February 2014 on the pretext that it exceeded its mandate period represented one of these manifestations.

In both transitions, the pattern of external alliances, particularly on the regional level obstructed the political process and consolidated the zero-sum game mentality.

In addition, since launching his operation, Haftar was drawing similarities between events in Egypt and Libya. He was trying to portray himself as Libya's al-Sisi-style strongman who would eliminate the threat of Islamists and save the country from chaos and preserve its identity (Smits, 2013, p. 23). Furthermore, both the UAE and Egypt were reported to perform air strikes against Libya's Islamist militias (Goodenough, 2014). Recently, Egypt launched air strikes against particular locations in Libya. The Egyptian narrative frames this action as retaliation for the beheading of 21 Egyptian Christians at the hands of the ISIS branch in Libya. However, many analysts see these strikes as an attempt to support Haftar's coalition after his failure to prevail militarily.

In both transitions, the pattern of external alliances, particularly on the regional level, played an important role by affecting the strategies and choices made by the main political actors. It actually obstructed the political process and consolidated the zero-sum game mentality.

CONCLUSION

The Egyptian and Libyan cases show how two different modes of transitions led to almost the same dilemmas, albeit with different intensity. Social division, polarization and the security deficit plague the two experiences.

It is interesting how each country, while observing the other's trajectory, fail to learn the lessons.

Libyans should have realized that at times of transition it is inconceivable to restart the whole political process and expect the desired outcomes. Moreover, delegitimizing and trying to eradicate political opponents cannot end well, particularly when those opponents represent substantial constituencies. As for Egypt, weakening the civil society, announcing the death of politics, demonizing a considerable constituency of the population and playing the different political actors against each other, all lead to a more violent path of resistance. This is what is really going to make Egypt look more like Libya.

The Libyan and Egyptian transitions show how the choices of the main actors from both the regime and the opposition largely determine the chances

The Egyptian and Libyan cases show how two different modes of transitions led to almost the same dilemmas, albeit with different intensity. Social division, polarization and the security deficit plague both experiences.

of success and failure. There is a relation between divided elites, political instability and floundering democratic transition. Political instability takes different forms: political violence, demonstrations, the frequent change of governments and finally a coup d'état. A successful transition requires a strong political will, especially among the opposition, coupled with popular support and backing from civil society. In this regard, it is not important for transitional steps to be very quick but they have to be continuous in order to block the chances for anti-reform forces to restore their power and reorganize themselves. The existence of political will does not mean the need for a comprehensive consensus among the opposition. What is necessary is agreeing on the minimum demands related to the transition, and most importantly agreeing on the mechanism to resolve their differences. The skilful political engineering changes the formula of political contestation into a non-zero-sum game.

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IDENTITY POLITICS
AND THE NATION STATE
IN A NON-WESTERN WORLD
A THEORETICAL ESSAY
WITH REFERENCE TO
THE CASE OF IRAQ

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The concept of 'identity politics' is tied to advances in social sciences and to the development of the nation state in Europe. This concept, in the commonly accepted view, grew out of black, homosexual and ethnic movements in the 1950s and 60s in what was known as 'minority issues'.

This is why trying to apply this concept to understanding identity-based social movements in the non-Western world poses theoretical problems. It could be that these two patterns of identity movements have very different origins and that the concept is part of a 'West-centric' trend, like most global social sciences concepts, possibly including the very idea of a 'nation'. The idea of the 'nation' has been widely discussed in Arabic social sciences circles these past few decades, and yet some basic questions were glossed over. For example: is the 'nation' an internal inevitability that non-Western societies are bound to attain like Western societies did? Or could it be that nation-building is a programme imposed by European colonialism? Can the non-Western world produce a demographic-political entity like the 'nation'?

In saying this I am *not* taking the fundamentalist approach dominant in the Middle East, which is based on an entrenched tendency to reject Western modernism and found its most tragic manifestation in the radical Islamist movements that emerged in the past decade and turned Iraq into a bloody battle field. Rather, this is an attempt to look into the use of these concepts in two contexts that differ in culture and development, and in the role of social actors.

The fundamentalist approach is based on a dangerous use of the notion of 'cultural exceptionalism' as the logical opposite of 'universalism', whereas this essay would attempt to reconstruct 'universalism' to be based not solely on the West's experience and general values, or the values presented as general, but rather on a diversity of cultural practices, including the non-Western world, and from there to develop the general models of social sciences to reflect that diversity.

With this in mind we can say that if the emergence of 'identity politics' in Europe was seen as a crisis of the nation state, in 'our region' – the Middle East – it can only be seen as a consequence of the failure of nation-building to start with. Whereas in Europe identity politics are a phase, a moment, a turning point in the evolution of the nation state, linked to a series of developments like migration and other trends, in our region identity politics form the main scheme of the structure of the post-colonial state. In other words, identity politics in the West are the exception; in this region, they are the rule. Nation-building in this part of the world was never separated from identity politics, turning the state into a space for the long and old clash between identities. Unlike in the West, where national identity is beyond the scope of identity politics, in our region national identity is at the heart of identity politics.

Moreover, as I explained in an earlier contribution, the coincidence of nation state-building with the colonial era served to intensify competition between

identities.¹ This competition, which modern political literature would describe as 'sectarianism', is a product of the modern Arab state that took shape in the early 20th century. I am not saying that the modern Arab state is a new phase of this long sectarian conflict, but rather that the modern state redefined sectarianism and reproduced it in a different form. Specifically, the modern state reshuffled the positions of the identities that were already in competition.

Nation-building in the Middle-East was never separated from identity politics, turning the state into a space for the old clash between identities.

The move from the vast and decentralized Ottoman imperial realm to a small centralized state was a decisive factor in redefining the conflict, not just as conflict for power in the nascent state, now defined and understood as the sole source of authority and the influence and wealth that come with it, but also as a conflict over the 'ownership' of the concept of the 'nation' – a modern colonial invention – as a unified entity. When the nation failed to become a unifying implement, this left the space open for pre-state identities to reorganise and dig in for the fight over control of this unifying implement.

There is no doubt that the creation of the modern state in the region was an extraordinary event – the most momentous in its modern history in fact. This is so not because these states took political practices in the region from their pre-modern setting to political modernity rooted in the West, but because these states displaced the leadership of social, political, economic and cultural movements. The order of these movements, their strength or weakness was now

determined through the state – the system political sciences describe as 'statism'.

In Iraq the British set out to build a fully-fledged nation state and launched a nation-building project knowing that the demographic components of Iraq each carried its own pre-national state identities, ethnic, religious or sectarian. In other words, building the nation was part of the state's mission.

This coupling of nation-building to the state is one of the features of what some early theorists of nationalism described as "Eastern Nationalism", which they saw as different from Western nationalism that emerged in Europe in the 17th and 18th centuries in that, in the non-Western world, the nation was post-factum justification for nation states invented by Western colonialism, whereas Western nationalisms were defined by the masses, and served as cultural rationalization of already-existing polities.²

The aim of the nation-building process carried out by the nation state in Iraq and similar countries was to create a historic mapping between the state and the nation.

THE IRAQI NATION?

The pioneer of the nation-building project in Iraq, King Faisal I (1883-1933), complained shortly before his death about the fragmentation of Iraq's ethnic groups:

I have long noticed the existence of different ideas and opinions about how to run the state, (...) and have been thinking about it. I recently came to understand that this stems (...) from the elements of destruction like ignorance and the difference of origins, religions, sects and environments and cultures. (...) The Iraqi land lacks the most important element of social life, that is intellectual, national and religious unity; which is why this country is fragmented and divided (Al-Husseini, 1953, pp. 286-287).

1. See Saeed, H. *Al-Ta'ifiyya al-Siyasiyya fi al-'Iraq inkaran wa i'tirāfan (Political Sectarianism in Iraq: Denial and Recognition)*, a paper presented at the "Sectarianism and Manufacturing of Minorities in Greater Arab Mashreq" conference held by the Arab Center for Research and Policy Studies at the Dead Sea, Jordan, in September 2014.

2. See Kohn, H. (1994). *The Idea of Nationalism: A Study of Its Origins and Background*. New York: Macmillan Company.

And on a different occasion:

I think there is no Iraqi people in Iraq yet. What we have is human groups free of any national ideals and saturated with tradition and false religious superstitions that have nothing in common. They lend ears to any rabble-rouser and are always ready to rebel against any government. This being the case, what we need to do is form these groups into one organized, trained and educated people. Those who understand how difficult it is to form a people in these conditions also understand the effort to be expended to achieve this (...). I have taken it upon myself to form this people, and this is my opinion about it (Al-Husseini, 1953, pp. 269-270).

This nation-building project comprised the usual tools, like building a common cultural structure, complete with history and traditions, all the way to material structures like national military service and physically connecting the country through transportation projects and the like.

And yet the regime observed the ethnic diversity of the country – within limits. Whether by law or by practice, ethnic identities were taken into account in the country's political and administrative organization. The recognition in the law of ethnic diversity was mostly about cultural and religious aspects, such as leaving family law cases to religious courts, regulation of use of local languages or similar measures the Iraqi state adopted in its early days.

That said, the nation-building project did not keep a steady pace. More specifically, the early 1930s proved to be a turning point, with the end of the British mandate, independence, Iraq's joining the League of Nations (1932) and the death of King Faisal I (1933). It was in this period that the 'Sharifian Officers' officially came to power: these were a group of former Ottoman army officers who had joined the

Arab Revolt under Sharif Hussein in 1916 and later on formed the backbone of the new Iraq's ruling elite. This class, with its pan-Arab background, worked to build a unitary identity for Iraq – an Arab-Muslim-Sunni identity that did not reflect the ethnic, religious and sectarian diversity of the country. On the other hand, they placed Iraqi identity within the broader context of the Arab World, a point that would assume greater ideological significance in the Baath era.

The way I see it, the attempt to build a unitary identity in this manner was part of the rivalry and clash of identities in the country, yet at the same time this unitary identity worked to enrol a wide section of the public in the base of the regime, establishing (or at least trying to establish) a long and flexible process of domination.

Thus, the political class launched a 'national integration' programme on two dimensions:

- Coercive and violent. In this period the state launched a number of military operations seen, even by Iraq's intellectual elite, as part of the 'making of Iraqi national identity' that was influenced by Kemalism in Turkey, such as the Simele massacre (1933) and the repression of the mid-Euphrates rebellion (1935). At Simele the Iraqi army killed hundreds of Assyrians mainly, although there were other political factors at play, because the pro-German government of Rasheed Aali al-Gailani saw the Assyrians as part of the British legacy, and now Iraq was an independent state.³ In the mid-Euphrates region the army savagely repressed tribesmen who had formulated demands under the headline of 'Shiite demands'. In both cases the government's violent response was presented as part of the birth throes of Iraqi national identity. Again, I have to underline the dates of these events, which mark not just the rise of violence in Iraq's political dealings, but also a turning point in the country's history, as the beginning of the project to build a unitary national identity.

3. See Malko, A. (2013). *Nakbat Sumayyil 1933, asbābuhā wa ta'thīrātuhā al-mahalliyya wa al-dawliyya (The Massacre of Simele 1933: Its Causes and Domestic and International Impact)*. Dohuk: The Federation of Assyrian Writers and Authors.

- Cultural and soft, comprising the building of a common memory for the nation, recounted through school curricula and the state's cultural bodies, and a system of symbols for the nation state, complete with national holidays and slogans, in addition to the political narratives, discourse and ideological connotations that inform the state and the political expression of its identity.

In this respect, the discourse of the Sharifian Officers redefined the Great Iraqi Revolt (renamed the 1920 Revolt after the coup d'état of 1958) as part of the 'Great Arab Revolt' of 1916-18 against Ottoman rule. A broad section of the intellectual elite was involved in this process. Indeed, they were the main tool for building this unitary identity for the country and they placed it within the context of the existing rivalry between identities. For example, affirming Iraq's Arab identity included questioning the 'Arabness' of Iraq's Shiite population, suggesting they have Iranian origins or at least that they are loyal to Iran. Several books on that theme appeared starting from the mid-1930s, including Abderrazzaq al-Hassan's *Arabism in the Balance* (1933) and Maarouf Rasafi's *Iraqi Letter* (1940). Both books questioned the 'Arabness' of Iraq's Shiites, which by extension meant raising doubts about their loyalty and patriotism.

Throughout all that the various Iraqi factions were quarrelling, sometimes sharply, over narratives of the past. One famous incident in Iraqi history was when Shiites demonstrated against a book published by Anis al-Nusouli, a Syrian teacher working in Iraq, which glorified the Umayyad state.

Some researchers see this as a facet of the victory of the Turkish model and its representatives in Iraq over the Iranian model and its representatives. Although the Sharifian Officers carried a pan-Arab project that, at the time, was defined in contrast to Turkish nationalism, not to mention the fact that the nation-building project was started by the British, the nation-

alist model that dominated the thinking of Sharifian Officers, who, it should be recalled, were trained in the Ottoman army, was the Kemalist model and its understanding of the nation, the state and power. Thus, the Iraqi nation, and possibly pan-Arabism, were built on the model of Turkish nationalism and inherited even its understanding of ethnic and sectarian balances in the region.⁴

To sum up, the nation-building project in Iraq (and possibly in the broader region, too) failed to meld or integrate the identities that existed in the country into one national identity. Instead, it is the nation-building project that was contained within the rivalry and clash of these identities. The Iraqi nation was built on the basis of a unitary Arab-Muslim identity; and the deep logic of the state, which carried the project to build a coherent nation, was that this coherence can only be achieved by eliminating religious and ethnic diversity. The plan to weave the various ethnic identities into one demographic-political tissue failed.

A long-term strategy was put in place to achieve this coherence, including expulsion (as happened with the Jews and is happening now to Christians), forcible modification of ethnic identity and all the way to mass extermination. Such practices were not mistakes, but rather the manifestations of a long historic process to align the nation and the state, to create the coherent unitary-identity nation that could live in peace with the post-colonial state. Redrawing the borders of the state could be the last manifestation of this historic alignment process.

POLITICAL SECTARIANISM AS DENIAL OF DIVERSITY

Thus, the more established nation-building becomes in this manner, the more political sectarianism expands, by which I mean recognition of pre-state identities and building political institution based on them. Although the Iraqi state tried from the begin-

4. See Al-Alawi, H. (1988). *Al-Ta'thīrāt al-Turkiyya fī al-Mashrū' al-Qawmī al-'Arabī fī al-'Irāq* (Turkish Influence on the Pan-Arab Project in Iraq). London: Zawraa Press.

ning to give the various identities making up the country some representation in political institutions and the administration – under Sunni domination, of course – this tendency became more marked when the nation-building process was launched in earnest, especially from the early 1930s on.

But first we should note that any national or nation state system in a multi-identity country has to recognise that diversity to some extent. That recognition comes in various forms: institutional, legal or traditional. Under the Iraqi monarchy, alongside the dominant tendency to give the state a unitary identity, diversity was recognized in different ways, including religion-based family and civil status laws and cultural recognition of local languages, enshrined in the local languages law of 1931, even though classic nationalist models made a point of defining the national language as a pillar of nationalist construction. In addition, there was some degree of allocation of political and administrative posts on the basis of existing identities.

The representation of Shiites in ruling institutions was one of the thorny problems under the Iraqi monarchy, dominated by the Sunnis for various reasons that we are not going to discuss in detail here. Suffice it to say that this dominance came about not just because the Sharifian Officers, who controlled the levers of power, all had background in the Ottoman administration, but also because the highly sectarian Ottoman state afforded the Sunni community the opportunity to cultivate competence in the political, military and bureaucratic domains while keeping the Shiites marginalized. Shiite leaders were aware of this. Samir Naqqash related what one of them told B. H. Bourdillon, the British high commissioner in Iraq:

We know we are uneducated and so cannot at present take our proper share in public services. What we want is British control, to save us from Sunni domination, until our sons are educated;

then we, who are the real majority, will take our proper place in the government of our country.⁵

What is remarkable is that Shiite representation, say in ministerial posts, grew as the unitary nation-building process deepened. In the first phase of the modern Iraqi state (under the British mandate, 1921-32) and before the Sharifian Officers came to power in the early 30s, Shiites held 18% of these posts; that rose to around 28% in the following phase (1936-46) and reached about 35%⁶ in the period of 1947-58, described as the second foundation of the monarchy in Iraq. In this latter phase, four out of the 12 prime ministers were Shiites (Iraq had 23 prime ministers in the whole monarchic era).

Any national or nation state system in a multi-identity country has to recognise that diversity to some extent. That recognition comes in various forms: institutional, legal or traditional.

It appears clear that political sectarianism in this sense was an attempt to fill in the gaps, or manage the crises, of the nation-building process. More dangerous, though, was that in reality it reaffirmed the existing power balance – and when the equilibrium is disrupted, sectarian relations turn violent. This is what happened in 1958, unleashing sharp and violent ethnic and sectarian confrontations, including the Kurdish rebellion of September 1961 and an unprecedented explosion of the Sunni-Shiite conflict. The 1960s were a sectarian decade par excellence.

This period produced the second document about the 'Rights of the Shiites' in the history of the mod-

5. Acting High Commissioner for Iraq to the Secretary of State for the Colonies, 15 July 1927, Foreign Office, The Public Record Office, London 371/12274/3135; quoted in Nakash, Y. (2003). *The Shi'is of Iraq* (p. 117). Princeton University Press.

6. See Batatu, H. (1978). *The Old Social Classes and the Revolutionary Movements of Iraq* (p. 47). Princeton: Princeton University Press.

ern Iraqi state. Sheikh Muhammed Ridha al-Shibibi in 1965, just a few days before he died, presented a document on this exact subject to then Prime Minister Abderrahman al-Bazzaz. A comprehensive document, it mentioned internal crises, Iraq's foreign relations and the necessity of its commitment to pan-Arabism, called for restoration of constitutional political life through free elections, guarantees for freedom of expression and the press, a decentralized system to treat the Kurdish question, respecting the rights of labour unions and better labour legislations. Yet it focused on the necessity of comprehensive equality and fighting the sectarian discrimination that, according to Al-Shibibi, left "the majority of the people" (by which he means the Shiites) under-represented in government posts. Jobs were filled based on sectarian clientelism, not competence, he contends, and the areas where the majority is concentrated and their cultural, economic and social facilities were neglected. Even worse, their dignity was targeted and doubts raised about their origins, their 'Arabness' and their loyalty to the country. Shibibi also criticized some economic measures the Shiites and their leaders felt were targeted against them, like the 1964 nationalization law which the Shiite community protested, seeing it as targeting Shiite capital,⁷ and before that there was the agricultural reform law, which drew a negative reaction from the religious authorities of Najaf.⁸

Shabibi's was the second document of its kind, after that of Sheikh Muhammed al-Hussein Kashif al-Ghitaa, a leading Shiite "alim (scholar), during the mid-Euphrates rebellion in 1935, in the early days of the Sharifian Officers" rule. Known as the 'Najaf Charter', this document, written by Kashif al-Ghitaa and a number of tribal leaders from the mid-Euphrates area, is more explicit about "the rights of the

Shiites" than Shibibi's document. Although it does mention some general demands, like freedom of the press, bureaucratic reforms and more care for Islamic charitable foundations, and some tribal demands, like lighter taxation on agriculture and more effective land registry measures, the document is mainly concerned with what it describes as the "sectarian discrimination" that underlies the power structure in Iraq. "The majority of the country" (again, meaning the Shiites) is represented by one or two ministers, it continues, chosen from circles close to the regime. The document denounced the sectarian hiring policies adopted in government and the administration and called for them to be changed. It also complained of the neglect afflicting healthcare, education and other public institutions in Shiite regions, especially in the south of Iraq. It called for an end to Shiite exclusion from judicial bodies and demanded that the majority of judges should be Shiites (as per the 1925 Constitution that stipulated that judges should come from the majority religious current), that a Shiite judge should sit on each circuit of the Court of Cassation, and that Jaafari jurisprudence should be taught at law faculties.⁹

So the sectarian equilibrium turns violent when its order is disrupted, as happened in July 1958. Batatu noted:

In upsetting the old power structure and the old class configuration, the revolution [of 1958] has disrupted the delicate balance between the various ethnic and sectarian communities of Iraq, and basically between the Arabs and Kurds and the Shi'is and Sunnis, mainly owing to the unevenness in the social developments of these communities. One practically unhappy consequence has been the revolt of the Kurds [of 1961] (Batutu, 1978, p. 807).

7. See Al-Alawi, H. (1990). *Al-Shi'a wa al-Dawlah al-Qawmiyya (Shiites and the Nation State)*. London: Zawraa Press; and Asadi, M. (2007). *Al-Imām al-Hakīm: 'Ard Tārīkhī li Dawrihi al-Siyāsī wa al-thaqāfi (Imam Haeem: A Historic View of his Political and Cultural Role)*. Baghdad: Afaq Foundation for Iraqi Studies.

8. The text of Shabibi's document, published in *Al-Hayat* newspaper, Beirut, November 5, 1965, as quoted in Al-Uzri, A. (1991). *Mushkilat al-Hukm fi al-'Irāq (The Question of Power in Iraq)*. London.

9. Text of the Najaf Charter cited in Al-Hussein, A. (1953). *Tārīkh al-wizarāt al-'Irāqiyya (History of Iraqi Governments)* (pp. 84-86). Lebanon: Irfan Press.

The revolution [of 1958] has disrupted the delicate balance between the various ethnic and sectarian communities of Iraq, mainly owing to the unevenness in the social developments of these communities.

This disruption of the existing equilibrium will happen twice more in pivotal moments in modern Iraqi history: in 1991 and 2003.

In 1991, after the defeat of the Iraqi army by the international coalition in the first Gulf War, Saddam Hussein's regime appeared to be on the verge of collapse, which made a redistribution of the balance of power between the competing identities look possible. So that period saw sharp sectarian confrontation, which manifested itself in the 1991 Shiite Rebellion in the south and mid-Euphrates under the slogan "*Mākū walī illā 'Alī, nrīd qā'id Ja'afarī*" (No ruler but Ali [Bin Abi Talib, Imam of Shiites], we want a Jaafari leader), which is clearly a call for a religious state under Shiite leadership, in the state's violent reaction and the massacres that accompanied it and in the political discourse that accompanied the events and went beyond competition of identities to reproduce the dominant stereotypes of the 'Sunni tyranny' and 'Shiite traitors'. The uprising in the south was followed by years of debate and bickering over the sectarian issues, both inside Iraq, where the government reorganized the country into 'white' (Sunni) provinces and black provinces for the Shiite and Kurdish population, and abroad, where Iraqi politicians and researchers discussed the sectarian question more intensely than ever before.

Most of the literature discussing the sectarian question in the country appeared in the 1990s, or the late 1980s at the earliest. Some fundamental works were written, though most of them approached the issue from the angle of Shiite exclusion from power since the foundation of modern Iraq. Shiite claims about injustice

and exclusion from power, although old, found their clearest and most comprehensive expressions during the 1990s. Some notable works in this field:

- Al-Alawi, H. (1989). *Al-Shī'a wa al-Dawlah al-Qawmiyya (Shiites and the Nation State)*.
- Al-Uzri, A. (1991). *Mushkilat al-Hukm fi al-'Irāq (The Question of Power in Iraq)*.
- Samarrai, S. (1993). *Al-Tā'ifiyya fī al-'Irāq: Al-Wāqī' wa al-Hall (Sectarianism in Iraq: the Reality and the Solution)*.
- Nakash, Y. (1994). *The Shi'is of Iraq*.
- Farhad, I. (1996). *Al-Tā'ifiyya al-Siyāsiyya fī al-'Ālam al-'Arabī (Political Sectarianism in the Arab World)*.
- Fuller, G. E. & Francke, R. R. (1999). *The Arab Shi'a: The Forgotten Muslims*.

POLITICAL SECTARIANISM AS RECOGNITION OF DIVERSITY

In 2003, the fall of the regime and the power void re-launched the conflict between the various components of Iraq. This time, though, the American operator did not limit its action to playing competing identities off against each other, but rather contributed to shaping the new state. More precisely, after April 2003 the Americans worked to change the definition of Iraq from a nation state to a multi-identity state whose institutions are built to express all these identities.

After April 2003, the Americans worked to change the definition of Iraq from a nation state to a multi-identity state whose institutions are built to express all these identities.

Before and during this process we saw a copious output of literature explaining that Iraq is an 'artificial' state, invented by British colonialism in the first quarter of the 20th century and that this 'inven-

tionality' is the reason for the collapse of the Iraqi state. This thesis started emerging in Western writings, especially in the US and the UK, around the mid-1990s, or from the end of the first Gulf War in 1991 according to Isam al-Khafaji. Toby Dodge's *Inventing Iraq: The Failure of Nation Building and a History Denied* (2003) is seen as the archetype of this thesis.

On the one hand, this thesis was an attempt to understand the crisis of the Iraqi state, but on the other it was an attempt to justify American plans to redefine the identity of the Iraqi state. And it was criticized by Iraqi and Western writers and researchers that adhere to what I describe as 'Iraqi nationalist romanticism'. The core of their criticism is that the idea of an 'invented' Iraq is a simplistic orientalist proposition. Instead they argue that the formation of the 'Iraqi nation' – while certainly not as old as ancient Mesopotamian civilizations as the modern state's propaganda claimed in an attempt to base Iraqi identity on the two pillars of 'Arabness' and Mesopotamian roots¹⁰ – dates from before British occupation, to at least the early 18th century, when Baghdad gradually emerged as the centre of the three Ottoman governorates of Baghdad, Mosul and Basra. According to Isam al-Khafaji:

Since the 18th century Baghdad slowly but steadily emerged as the administrative and economic centre of what would become modern Iraq. The governors of Baghdad gradually assumed responsibilities covering the whole territory of today's Iraq. And Ottoman sultans mandated them with this responsibility as long as they carried it out competently and it did not stoke either their ambitions or calls for independence from the empire. The affirmative role of Baghdad and its governors was backed up by some economic developments, chief among which were successful attempts to use the Tigris for navigation and the settlement of border disputes with Persia (Al-Khafaji, 2012, pp. 106-107).

More broadly, al-Khafaji does not deny that the modern political map of the region was shaped by the great colonial powers, but:

The great powers, driven by the desire to maximise their political and economic benefit from colonialism, could not ignore the long-term processes that brought some groups together or separated them from others. Colonial powers could, and did, play on some population segments in the lands they controlled, but this could not have worked if it did not coincide with strong local interests (...). The formation of modern states in the Middle East was a case of the articulation of local social structures with established regional and international forces and factors. (...) The formation of modern Iraq, Syria, Lebanon, and the Gulf principalities was the product of long-term economic and social processes that operated within the context of the region's integration in the global market. The colonial powers tried to subjugate these provinces but in the end, and regardless of their intentions, they had to adapt to the economic, social and political realities of these societies (Al-Khafaji, 2012).

In my opinion, it would be difficult, and probably without interest, to try to answer the question of whether Iraq, at any moment of its history before or after the British occupation, did constitute a 'nation'. Not only because the 'nation' as a demographic, socio-political entity might be a pure product of the European historic experience specifically and the fact that it was abstracted into a concept and turned into a mechanism applicable outside Europe by colonial 'nation-building' projects does not mean that societies outside Europe are capable of building or accepting a 'nation'-like demographic-political structure, but also because the answer would in any case be ideological and politicized. It is more important, in my point of view, to examine two programmes applied in

10. See Davis, E. (2005). *Memories of State: Politics, History, and Collective Identity in Modern Iraq* (pp. 7-11). Berkeley: University of California Press.

Iraq within the past 100 years. The first, carried out by the British, governed the drawing of maps in the first quarter of the 20th century and was based on a nationalist perspective that saw Iraq as a 'nation' or as capable of becoming a nation. The second was a pluralist programme applied by the Americans that drew on their own political and cultural experience – what some researchers describe as the 'multi-cultural state'¹¹ – and was based on a pluralist perspective that saw Iraq as a collection of distinct identities.

The Americans tried to build political institutions to reflect this diversity. The first draft of this pluralist system was the Law of Administration for the State of Iraq for the Transitional Period (also called the Transitional Administrative Law, or TAL), issued in March 2004 as an interim Constitution. It was purely an American proposition, with no input from the Iraqi political elite (which, at the time, was made up mostly of figures of the former opposition to the Saddam regime), whose ideas for a post-Saddam state did not go beyond the same notion of a 'nation state' with a special status for the Kurdish region, as some studies have shown.¹² The Iraqi elite did not think in terms of a multi-cultural state or one with composite identity.

The American design contained all the elements of a pluralist system – decentralization, federalism, proportional representation, mutual vetoes – seen as the ideal system for divided societies, now that Iraq had been redefined as a divided society. Parallel to that was the traditional practice of distributing senior political and state positions among the representatives of the major identities of the country. However, the permanent Constitution of 2005, drafted by an elected Iraqi commission, saw the re-emergence of a majoritarian tendency that tried systematically to eliminate major aspects of the pluralist system. In fact, as a political document, the 2005 Constitution

contains two contradictory tendencies, one pluralist, inherited from the transitional administrative law, the other majoritarian, which does not adhere to a pluralist model.

The second tendency was led by the Shiite political elite that, possibly because of its traditional nationalist background or because of the political mindset that comes with being the demographic majority, had little time for the idea of a multi-identity state.

Thus, some major components of the pluralist system were eliminated (mutual veto, legislation by absolute majority to guarantee national consociation, and so on) in favour of a majoritarian system that is working to suppress pluralism, including the federalist principle. The past few years, for example, saw attempts to redefine Iraqi federalism away from the US or German model to make Iraq into a centralized state containing a 'special status region', following the Spanish or Italian models.

The Constitution of 2005 saw the re-emergence of a majoritarian tendency that tried systematically to eliminate major aspects of the pluralist system.

The majoritarian tendency in the 2005 Constitution formed the basis of the exclusionary practices later adopted by Prime Minister Nouri al-Maliki in his eight years in office (2006-14), who tried to impose his control on all branches of government and public institutions: on parliament (by limiting its legislative and monitoring roles), on the judiciary and other independent commissions, on the military, the media, in addition to a host of draft laws that limit freedom of expression. As to partnership with other identities

11. See Kymlicka, W. (2007). *Multicultural Odysseys: Navigating the New International Politics of Diversity*. Oxford and New York: Oxford University Press.

12. See Al-Rachid, L. (2011). *The Rise of the Iraqi Exopolity in the 1990s*, paper presented at the "Iraq Under the Sanctions: Economic, Political, Social and Cultural Effects" conference organized by The American Academic Research Institute in Iraq (TAARI) and the British Institute for the Study of Iraq (BISI) in Amman, Jordan, September 2011.

in the institutions of power, Maliki, on top of his rejection of any decentralized arrangements and his total control over security decisions, refused to activate or develop the political bodies that were intended to deepen the principle of partnership. These include the Council of Union, intended by the Constitution as the second chamber of the Iraqi parliament with a consociational authorities mode; it has yet to be formed or convened, or the National Council for Strategic Policies, a body bringing together representatives of the main identities and charged with defining the broad policy orientations of the country.

It seems clear that the Shiite elite does not believe in a composite identity for the country. Instead they dealt with the post-2003 state through the tradition of the nation state, reproducing the nationalist belief in a unitary identity for the country – albeit one that is not identical to the identity adopted after the foundation of the modern state in 1921.

A way to contain (or window-dress) this problem was to distribute chairmanship positions among the main identities of the country, while keeping the partnership limited to the sphere of execution, not high-level decision-making. This strategy not only produced a failed state, incapable of offering basic services (first and foremost, security), but also failed to build a marginal or secondary concept of partnership.

The most dangerous aspect here is that a system built on the recognition and institutionalization of ethnic identities that failed to offer equal partnership for these identities in governing bodies only led to deeper attachment to these identities at the expense of the national identity, to the point of severing all exchange – in the literal sense – between Iraqi components. Exchange, according to Jürgen Habermas, is the foundation of the public sphere.

Thus the multi-ethnic state that ended up dominated by the spirit of the nation state proved no better at ending identity competition than the nation state that had been submerged and subjugated by the identity competition. In both cases, political sectarianism was the expression of a crisis within the regime, which is why both regimes fell: the nation state regime fell

in 1958 and ended in 2003, and the multi-identity regime fell in June 2014.

Although one could argue that other elements contributed to the fall of these regimes, such as internal class contradictions, international factors, foreign military occupation, or the challenge of radical organizations, it remains that it is first and foremost tied to the failure of the state's internal logic.

In both cases political sectarianism turned into general mobilization of communities based on narratives that place identity competition in an ahistorical context, based on the idea of absolute historic rights and the pure evil of the 'other'. We will come back to this point in discussing the structure of sectarian argumentation as pure discourse.

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This mobilization made communities capable of waging holy war on the other; an existential war whose soldiers and victims lack understanding of its political context, Thomas Hobbes' original "war of all against all".

A NATION WITHOUT BORDERS

The experience of authoritarian regimes in the region, having adopted a unitary identity as we discussed above, prevented cross-border movements of opposite identities, or movements of identities that differ from the state's unitary identity. This was the case even though, in Iraq, the state itself adopted a cross-border identity, pan-Arabism, as part of its ideology. This led it to get involved in cross-border projects

based on this identity, such as supporting pan-Arabist movements in various parts of the world, similar to what non-governmental identity movements do today. The Islamic Dawa Party, founded in the late 1950s to stand against the rising leftist and communist tide, became an expression of Shiite identity and its narrative about exclusion from power. And although it did find echo outside Iraq, especially in Shiite circles in Lebanon and the Gulf, as the first Shiite political organization in the modern era, its formula as an Arab Shiite party with branches outside Iraq, did not develop and did not inspire others to follow its example. Yet the collapse of states in the eastern part of the Arab World allowed such identity movements to come to the fore. The collapse of the state, in the case of Iraq, is seen in the fact that it went from being an authoritarian state to being a failed state. The dominance of identity movements could be one of the hallmarks of a transitional period, whose duration is anybody's guess, but it will certainly be one of the decisive factors in shaping a new map for the Arab east.

The dominance of identity movements could be one of the hallmarks of a transitional period, whose duration is anybody's guess, but it will certainly be one of the decisive factors in shaping a new map for the Arab east.

The scene right now is that of armed conflict between forces based on transnational religious, ethnic or sectarian identities: the Islamic State (ISIS) calls on Sunnis all over the world to come to Iraq to fight Iraqi Shiites on their land, while the Abbas Brigade, an Iraqi Shiite militia, is fighting Syrians on their land to defend Shiite shrines there, and the Kurdish Peshmerga fighters cross into Syrian territory to defend Syrian Kurds from other fighters, some of whom are Syrian.

Indeed, the discrepancy of in-fighting identities over lands whose identities are defined in contradiction to the fighting identities is in itself a historic discrepancy resulting from lack of understanding of ongoing developments. National borders no longer have any value to these identities that see themselves as broader and more real than these artificial borders. What we see here is not only the failure of a nation-building project that could not bring itself to accept the melding of pre-modern ethnicities in one national identity based on the polity but instead tried to build a unitary nation based on ethnic identity, it is also the tendency of ethnicities (or identities contradicting the state's unitary identity) to invent a new, post-nation-building form: that of an alternative nation, with a political identity corresponding to sectarian or ethnic identity. This alternative nation is broader and older and goes beyond modern-state national identity.

CONCLUDING QUESTIONS: MODERNIZATION OR DEMOCRACY?

This troubling situation poses a number of problematic questions that usually surround waves of change in the non-Western world, and in our region in particular, especially now that it is rocked by three profound and interconnected disruptions: the failure of the post-authoritarian state in Iraq, the receding of hope brought about by the Arab Spring and the rise of what can generally be described as 'religious radicalism'.

Specifically, can a nationalist, just and pluralist political system contain the raging rivalry between identities? Can genuine democratization bridge over this rivalry? Can democratization anticipate structural social and cultural modernization? Can political reform stand in for cultural reform? Or is it the case that cultural modernization can be brought about by the political sphere, or by a state that decrees modernization as in some notable experiences in the region? Is there a path to modernization different from the Western path? Is there logical inevitability that could open a path to modernization in the region along the model of European modernity? Again,

does the problem lie in the failure of the modernization project and its reduction to abstract tools? Can the modernization project coexist with extant pre-modern structures?

Indeed, can we move forward without a global vision that encompasses all these complications and without confronting these problematic questions with all their heat and turbulence?

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BETWEEN DEMOCRATIC VALUES AND STATE INTERESTS: THE UNITED STATES AND EGYPT AFTER THE UPRISING

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The January 2011 Egypt uprising and its aftermath have proven a difficult challenge for the United States. Washington's policy has been marked by improvisation and constant change and four years later has yet to find a clear direction. The uprising took place at a time when the United States was rethinking its policies in the Middle East, trying without success to reduce its involvement. The brash, assertive confidence in US power that had led the Bush administration to go to war in Afghanistan and Iraq, announcing an agenda of nation-building and democracy promotion, had waned. It had been replaced by the more sober and cautious approach of the Obama administration, based on a realistic assessment of past failures. Events in Egypt added to the uncertainty of the policy because they did not unfold as expected. Washington believed the uprising would lead to a democratic transition, but liberal, democratic forces proved to be the weakest component of the Egyptian political spectrum, with Islamists and the military emerging instead as the dominant players. The United States had to work either with the military, which seized power in February 2011 and again in July 2013, or with the Islamists, who had won it in fair elections. The choice between Islamists and the military was a difficult one. Backing the elected Islamists meant basing the policy on democratic values. Supporting the military meant forgetting principles and focusing instead on state interests in maintaining good relations with the largest Arab country. The choice between values and interests

is a classic dilemma of US foreign policy, but in this situation both choices were risky and neither offered a winning solution. The United States, as a result, has been and is still foundering, reacting to events rather than following a coherent course of action.

BEFORE THE UPRISING

During most of Hosni Mubarak's 30-year presidency, US policy toward Egypt was clearly based on state interests – its own and those of Israel. Thus the United States maintained good relations with Egypt although Mubarak was an authoritarian ruler and his regime had become increasingly corrupt as time went by. As long as Egypt respected the Camp David Accords and maintained peace with Israel, Washington was willing to overlook the regime's democratic deficit. Relations with Egypt were particularly cordial in the 1980s, with Mubarak benefiting from the reflected glow of the policies of Anwar Sadat, whose eventful presidency had transformed Egypt from an enemy to an ally of the United States. Sadat had turned his back on the Soviet Union, announced an 'open door' economic policy to replace the previous

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emphasis on the state's domination of the economy, and rejected the single party system. In practice, the domestic reforms did not go very far, but it was still a significant change from the policies of Gamal Abdel Nasser.

Most important to the United States, Sadat had made peace with Israel and the United States wanted to make sure that peace would be maintained. In 1973, Sadat had gone to war with Israel, launching a surprise attack across the Suez Canal. Although quickly stopped by the Israelis, the attack served Sadat's goal of reviving the stalemated peace talks and to close the unfortunate chapter opened by the 1967 Six Day War. With the intervention of US National Security Adviser Henry Kissinger, Israel and Egypt quickly agreed on a ceasefire and continued negotiating increased separation of the troops on the ground.

The tempo of the negotiations accelerated, and their goal changed, in 1977, when Sadat took the historic decision to travel to Jerusalem. That bold move eventually led to the signing of the Camp David Accords in 1978 and of the Egyptian Israeli Peace Treaty the following year.

The signing of the Camp David Accords brought the United States and Egypt closer, and also helped make Egypt one of the major recipients of US assistance. The Accords did not contain specific provisions requiring the United States to increase assistance to Egypt or Israel. Nevertheless US economic and military aid to Egypt increased sharply to over \$2 billion after 1979. The military component of the assistance remained fairly constant from 1979 to 2014, hovering around \$1.3 billion. Economic assistance, which reached more than \$800 million in 1979, started decreasing after 2003, as Egypt's economy grew. By the time of the military takeover in 2013, economic aid was less than \$250 million.

When Hosni Mubarak succeeded Sadat, who was assassinated by Islamists in 1981, he inherited the goodwill of the United States but soon squandered it. As cautious and risk-averse as his predecessor was bold and prone to swift decisions, Mubarak was hesitant to embark on the reforms needed to pursue

Sadat's vision. He maintained peace with Israel, but relations remained extremely cold. Economic reforms stalled, although much change was needed to allow the private sector to operate effectively. For example, not only did the government control the currency exchange rate, but it maintained multiple exchange rates that applied to different sectors, fuelling unending confusion and a flourishing black market. And Egypt was spending much more than it could afford on poorly targeted subsidies for basic foods and energy. Despite pressure from the United States, the IMF and the World Bank, Mubarak was slow in tackling the currency problem and refused to touch subsidies.

Critical of Mubarak's lack of dynamism and of his authoritarian rule in private, US officials nevertheless liked the stability he brought to Egypt. In fact, the half-hearted attempts by the George W. Bush administration to put pressure on Mubarak to rule more democratically came to an abrupt halt after Muslim Brothers won 20% of the parliamentary seats in the 2005 election.

In focusing on stability over democracy in the name of state interests, Washington was taking a short-term view of the situation. Behind the peaceful façade, trouble was brewing in the country. The 2005 election had provided a glimpse into the popularity of the Muslim Brotherhood, which had obtained remarkable success despite being a banned organization with some 15,000 members in prison – no party other than Mubarak's NDP had won so many votes since the restoration of the multiparty system. Other signs of discontent were also unmistakable. There was an exponential growth in the number of unauthorized strikes and labour protests for example, because the economy was growing but little trickled down to ordinary Egyptians. Income inequality was growing while state services, particularly in health and education, continued to deteriorate.

By 2009, there was no hiding the anger among workers and youths. Egyptian newspapers and non-governmental organizations estimated that the number of strikes, labour sit-ins and demonstrations

had increased from 222 in 2006 to 580 in 2007. By 2009, the number of such actions was over 1,000. The protests remained largely apolitical. Workers focused on wages, an issue on which the government was willing to make concessions, while rejecting attempts by other organizations, including youth groups and the Muslim Brotherhood, to broaden the scope of protest and draw them into larger political alliances. One of the best known youth organizations, the April 6 Youth Movement, took its name from the date of a short-lived general strike the group had helped to foment in 2008 in a unique display of cooperation between labour and political organizations (Ottaway & Hamzawy, 2011). In the midst of the growing turmoil, the United States did not appear to notice. It remained focused instead on the succession crisis expected to unfold in the near future, when the aging President Mubarak died or, worse, sought to install his own son Gamal as his successor before retiring. The position of the United States reflected that of Egyptian officials, similarly disinclined to take popular discontent seriously. As a high ranking official of Mubarak's National Democratic Party explained to the author in 2010, there was no reason to worry because Egyptians were docile people and in any case the military would quickly deal with any potential unrest.

SOWING DEMOCRACY AND REAPING THE MILITARY AND THE MUSLIM BROTHERS

The January 2011 uprising thus came as a surprise to the United States, although it should not have. While the specific timing and unfolding of events, with unrest in Tunisia helping mobilize discontented groups in Egypt, was unpredictable, the uprising itself was a larger-scale manifestation of the discontent that had been bubbling for years. Nevertheless, jolted by the drama of the large crowds taking to the streets the United States rushed to embrace what they interpreted to be the beginning of democratic change in Egypt. Support for democratic values, rather than concern for state interests, was to guide US policy in Egypt for the next two and a half years.

When the demonstrations erupted in Tahrir Square on 25 January 2011, the first reaction of Secretary of State Hillary Clinton was to defend the status quo. "We support the fundamental right of expression and assembly for all people and we urge all parties to exercise restraint and refrain from violence," she declared as crowds surged in Cairo's Tahrir Square, but she also hastened to add "our assessment is that the Egyptian government is stable and is looking for ways to respond to the legitimate needs and interests of the Egyptian people." Clinton also dispatched to Cairo former Ambassador Frank Wisner, who was strongly supportive of Mubarak. "The president [Mubarak] must stay in office in order to steer those changes through," he declared on 4 February. And he added: "It is his opportunity to write his own legacy – he has given 60 years of his life to the service of his country. This is the ideal moment for him to show the way forward, not just in maintaining stability and responsible government, but actually shaping and giving authority to the transition that has to be underway" (Lee, 2011). By this time, however, the official position of the Obama administration had changed from support for Mubarak to serious doubts about his willingness to accept change, let alone steer it, and Washington dismissed Wisner's statement as a personal opinion that did not reflect US policy. President Obama instead warned Mubarak repeatedly that the transition had to start immediately. And on 11 February, when the military forced Mubarak to resign, Obama applauded the change. "The people of Egypt have spoken," President Obama stated, "their voices have been heard and Egypt will never be the same" (Sliverleib, Starr, King, Bash & Walsh, 2011). For several months after Mubarak's departure, United States officials, like most observers and analysts, succumbed to what can be called the 'Arab Spring Syndrome', an emotional enthusiasm for the popular uprising that led them to misread the situation. While the reaction was understandable – the scenes from Tahrir Square were captivating and the enthusiasm of the participants contagious – in reality it was the military that deposed Mubarak: there was no storm-

ing of the palace by the mob, no seizing power by 'revolutionary committees'. Instead, the Supreme Council of the Armed Forces, entirely composed of high-ranking officers appointed by Mubarak, took over and started issuing proclamations. Yet nobody in or out of Egypt uttered the words 'coup d'état', while many insisted on discussing the events as a revolution. In part, this happened because popular enthusiasm was so great and in part because for months the military played its hand extremely well, seemingly intent on driving the country toward a genuine democratic transition.

For several months after Mubarak's departure, United States officials succumbed to what can be called the 'Arab Spring Syndrome', an emotional enthusiasm for the popular uprising that led them to misread the situation.

Yet many factors made it extremely unlikely that the Egyptian uprising would lead to democracy. The continuing control of the military was the most important. The class and ideological cleavages were also crucial, because they turned elections into a perceived existential choice between competing elites. The imbalance among political organizations also played a role. The Muslim Brotherhood and other Islamist groups were strong, all other political organizations extremely weak. These factors greatly affected the political process. The secular political parties and leaders who saw themselves as liberal and thus could have been expected to champion democracy were in reality leery of the voters' choice. They sought to delay or even opposed elections, did their best to obliterate their outcome after Islamists won, and finally embraced military rule as the better alternative. Islamists became the strongest supporters – and beneficiaries – of democratic processes.

A POLITICAL ELITE MEETS DEMOCRACY

Egypt, quite homogeneous in terms of ethnicity and religion, is deeply divided socially. It has been dominated for decades by a social, economic and intellectual elite quite conscious of its status and aloof from the rest of the population. This elite is proud of its position and its supposedly modern outlook. It is essentially secular and while it proclaims its adherence to Islam, it considers the views of Islamists as retrograde. It feels entitled to occupy positions of power – in government institutions, universities, media, and the courts. And it does not believe in social mobility. Former President Mohammed Morsi, a man of modest origins who had nevertheless earned a PhD from an American university, was not admired for his achievement but openly reviled as a country bumpkin and an upstart whose wife would discredit Egypt by dressing unfashionably. In an even more telling example, in September 2013 the judiciary's governing body removed from office 138 newly hired prosecutors on the ground that their parents did not have university degrees. The decision was upheld on appeal, with a senior judge explaining on television that "we have nothing against the job of garbage collectors, but their sons belong in other fields than the judiciary, because it is a sensitive job" (Kingsley, 2014). In terms of its ideas and social attitudes, the Egyptian elite would have been at home in 19th century Britain, with its strong class distinctions.

Not surprisingly, an elite that despised much of the population had trouble mobilizing support and thus was poorly placed to compete in open elections. Although more than twenty secular political parties had been allowed to form in Egypt by the end of the Mubarak period, most of them existed on paper only. The parties that managed to win some seats in the parliament, including the Wafd, which had been in existence since the 1920s, did so by negotiating with the regime and its National Democratic Party rather than by building its constituency.

Even secular political movements formed to challenge Mubarak toward the end of his presidency had been unable to gain broad popular support. The Egypt-

tian Movement for Change, better known as *Kefaya*, made its debut on the streets of Cairo in December 2004 demanding the resignation of Mubarak and protesting his supposed intentions to install his son Gamal as his successor. The movement attracted much media attention in Egypt and outside because it was a new phenomenon, and also because the people it mobilized tended to be members of the Egyptian elite. In reality, however, *Kefaya* mobilized remarkably few people – a few hundred at most joined any one demonstration – and never became a political force the regime had to reckon with.

The youth groups that engineered the uprising in 2011 were different from the old elite, although many of the leaders came from it. They were not afraid of reaching out to everybody and surprised even themselves by their prowess in generating support. One of the leaders of the April 6 Movement and of the uprising, Ahmed Maher, told this writer a year before the uprising that he believed that his and other youth groups might succeed in mobilizing at most 50,000 people countrywide. In January 2011, they brought out several times that number in Tahrir Square alone. But even the youth groups were organizationally weak. They operated through loose networks relying on social media, an approach that proved successful in mobilizing crowds but ineffective in the aftermath, when the time came to negotiate with the military and other groups about governance in the interim period. Refusing on principle to build hierarchical structures and tighter organizations, and without recognized leaders, youth groups could not participate in a constructive manner in discussions of the modalities of transition.

By contrast with the loosely structured secular groups, Islamists, particularly the Muslim Brotherhood, were well organized. The Brotherhood was a hierarchical and disciplined organization, and it had a strong network among the very Egyptians the secular elite neglected or even despised. It had a presence both in the cities and in the villages, thanks to its network of charitable organizations that long antedated its political activity. It provided charity, but also

health and education services that became increasingly important to poor Egyptians as the government services deteriorated.

The secular elite and its political organizations and the Islamist parties did indeed move in different worlds, among different categories of Egyptians and Islamists had a much better outreach to ordinary people. As a result, while Islamists from the outset agitated for a short transition period and early elections, the old elite and the secular parties they represented sought other mechanisms for transferring power, in particular setting their sights on individuals they hoped would somehow be placed by the military in important positions without being elected.

The best known among these would-be leaders favoured by the elite was Mohamed ElBaradei, a former head of the International Atomic Energy Agency (IAEA) and the 2005 winner, together with his agency, of the Nobel Peace Prize. After retiring, ElBaradei had returned to Egypt in February 2010 amidst high expectations that he would play an important political role, making it clear that he had presidential ambitions but that he would not run under the undemocratic conditions that prevailed in Mubarak's Egypt. Nevertheless, hopeful supporters started gathering signatures so he could become a presidential candidate, but ElBaradei wavered, spending much of his time outside Egypt. He was absent when the demonstrations broke out in January 2011, but he rushed back to Egypt and Tahrir Square, announcing that he was ready to lead an interim government if that was the will of the demonstrators.

But the crowds were not prepared to choose a new leader by acclamation, nor were they ready to accept the efforts of a group of self-appointed 'wise men' that thought that the organizers of the demonstrations were too young and inexperienced to lead and that it was up to older and supposedly wiser people to guide the transition. The Committee of Wise Men was launched by Naguib Sawiris, one of Egypt's wealthiest businessmen, and Ahmed Kamal Aboul Magd, a professor of constitutional history who had served as minister of information under Mubarak. It pulled

in other well-known figures such as Amr Moussa, the long-time secretary-general of the Arab League, Nabil Fahmy, former ambassador to the US, and Nabil Elaraby, a former judge of the International Court of Justice, with Amr Hamzawy, an intellectual and newspaper columnist serving as their spokesman. Membership in the group was somewhat fluid and eventually a rival group with the same name emerged, causing a great deal of confusion. The group soon fizzled, however, demonstrating for the first but not the last time the weakness, lack of organization and support, and internal division of the secular elite that aspired to lead Egypt in the post-Mubarak period. Secular organizations, whether liberal or leftist, had neither an effective message resonating outside intellectual circles, nor structures. The people who the United States hoped would lead the new Egypt showed from the beginning that they could not do it. The post-uprising parliamentary elections, held in an unprecedented climate of free choice, provided dramatic proof of the imbalance between the well-organized Islamists with a popular following and the secular organizations that had no organized constituencies. When the process was completed in early 2012, Islamists had won 70% of the seats, with the remaining 30% going to fragmented secular parties.

THE VICTORY OF THE ISLAMISTS AND THE MISUNDERSTOOD US RESPONSE

A resounding victory by the Islamists was not what the Obama administration had hoped for when it decided to withdraw its support from Mubarak and back the uprising in the name of democracy. But while Egyptian secular organizations cried foul, complaining the revolution that rightfully belonged to them had been hijacked by Islamists, the United States put on a brave face and accepted the election results. It did the same the following June when Mohammed Morsi, a Muslim Brother, was elected president by a narrow majority. Having advocated elections, Washington decided to accept the results. "We look forward to working together with President-elect Morsi and the government he forms, on the basis of mutual respect,

to advance the many shared interests between Egypt and the United States," the White House declared, exhorting Morsi to take steps to reach out to all segments of the population.

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The US decision to respect election results and accept the Morsi presidency upset much of the old elite. As the US embassy scrambled to develop relations with the Muslim Brotherhood, which it had shunned as an illegal organization under the Mubarak regime, secular parties and the press started complaining that Washington favoured the Muslim Brothers and neglected other parties – disregarding the fact that the Brotherhood had won the elections. But the opposition went further, promoting the myth that the United States had really wanted the Muslim Brotherhood to win the elections and rule Egypt – why, the myth did not explain. Signs started appearing at Tahrir Square demonstrations proclaiming that "Obama supports the dictator Morsi" and "Down with Morsi, America's agent."

While Washington was willing to accept an election outcome it did not like, the Egyptian elite and its secular parties were not. Rallying quickly after their election defeat, they turned away from the democratic process where the better organized Islamists had the advantage and worked through the non-elected state institutions they controlled to bring down Morsi and the Muslim Brotherhood. The military quietly sided with them. The battle between the country's elected officials and the so-called deep state started as soon as the new parliament was seated and ended some

18 months later with Morsi's overthrow in a coup d'état.

The most visible instrument of the old secular elite was the judiciary. Under Mubarak, the judiciary had not always been independent of the executive, but it became so under the Muslim Brotherhood. Independent did not mean apolitical, however. Many judgments were deeply political, seeking to void the electoral victories of the Islamists. In April, the Supreme Constitutional Court (SCC) dismissed the 100-member Constituent Assembly the parliament had elected to write a new Constitution. The reason, clearly more political than legal, was that the assembly was unbalanced, including too many Islamists as well as too many members of parliament. Then the SCC proceeded to dismiss the entire parliament just before the presidential elections, making sure that, if Morsi won, as he did, the Muslim Brothers would not control both the executive and the legislature. The legal justification was that the 2011 parliamentary election law was unconstitutional. In reality, an American analyst deeply familiar with the Egyptian judiciary declared, it was a "judicial coup" (Brown, 2012).

By the time Morsi was elected in June the courts had thus annulled the Islamists' electoral victory. The only trace of that victory was the second Constituent Assembly the parliament had formed before being dissolved. The formation of the second assembly had been the object of much discussion and bargaining among political parties. Nevertheless, the new body was immediately targeted by law suits demanding its dissolution. It limped on, under threat of an adverse judicial decision and boycotted by most of its secular members, until it managed to enact a new Constitution on 30 November 2012.

Islamist rule was also challenged by the bureaucracy, staffed at the top level by Mubarak appointees who did their best to slow down policy implementation or even sabotage the Morsi regime (Hubbard & Kirkpatrick, 2013). Although Islamists were accused by their enemies of trying to 'brotherize' Egypt by appointing their own people to positions of power, they never gained control of state institutions.

Behind the scene, the ultimate weapon of the anti-Islamist opposition was the military. In June 2012, the SCAF had seemingly accepted Morsi's victory and officially turned over executive power to him. In August, it even appeared that Morsi and the military had forged an alliance, agreeing that Field Marshall Mohammed Tantawi, the Mubarak era chief of staff, would retire in favour of General Abdel Fatah al-Sisi. In reality, there was no alliance. The military was biding its time.

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In the midst of this turmoil, the United States adhered to the fiction that Egypt was in the middle of a democratic transition. It reiterated its support for the elected president, kept silent about the political verdicts the courts were issuing, and increased funding for democracy-promoting NGOs, which had flocked back to Egypt after the uprising. The disconnect between US policy and reality on the ground continued to grow.

By early 2013, the break between the Islamists, on one side, and the state institutions, the old secular elites and the military and security apparatus, on the other, was complete. State-controlled and private media no longer hid their distaste for the Islamists and portrayed the 2012 Constitution as a retrograde document seeking to impose sharia on Egypt. Secular politicians refused any form of cooperation with the Muslim Brothers. The courts blocked new parliamentary elections, which Morsi had tried to schedule for April 2013, by rejecting the proposed election law not once, but twice. Once again, the problem was not legal but political: the secular opposition

did not dare challenging the Islamists at the polls again. While Islamists had undoubtedly lost some support, as a result of their clumsy governance and of the relentless hostile propaganda in the media, the parties representing the old elite were as disorganized as ever and thus feared the Islamists could win again.

Instead of taking their chances on election results, the military and the old elite chose to get rid of Morsi outright. A campaign to collect petitions for Morsi's resignation, launched in April by a new youth movement called Tamarod, was soon taken over by police and state security forces with all the means at their disposal (Saleh, 2014). The effort culminated in massive demonstrations on 30 June 2013 and was followed three days later by a military coup d'état. As in 2011, the crowds paved the way and the military ultimately brought about the change.

The United States remained largely a spectator during this tumultuous period. Washington had accepted military rule, but did not like it and had no influence over the Muslim Brotherhood. It did not like the intervention of the military but it had no sway over it either, despite the large amount of military aid it had provided for three decades and the supposedly strong ties to the hundreds of officers who had received training in the United States. Nor could the United States hope to work with the so-called liberal parties, which had no independent clout and were counting on the military to defeat the Islamists. As in 2011, events in Egypt were unfolding without Washington being able to influence them.

THE UNITED STATES AND THE NEW MILITARY REGIME

Since the July 2013 coup d'état, the United States has found it especially difficult to formulate a coherent policy toward Egypt. The policy based on the upholding of democratic values it pursued after the uprising proved a failure. It did not contribute to the advancement of democracy in Egypt and exacerbated instead antagonism toward Washington on the part of the Egyptian elite and the military. At the same time, and

unrelated to US policy in Egypt, the security situation deteriorated in the entire region, giving renewed saliency to state security interests.

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Certainly many voices in Washington, particularly in the Pentagon, argued in favour of strengthening ties to the military regime, citing the deteriorating security situation in Sinai, the collapse of Libya, and the turmoil in Levant as reasons for pragmatism. The new regime's democratic deficit, in this view, was less important than the United States' security interests. US policy started to waver between upholding values and safeguarding security interests the day after the military takeover. Commitment to democratic legitimacy and respect for US legal clauses embedded in every foreign assistance appropriation bill required the United States to condemn the military takeover and to suspend aid. State security interests suggested that it was better for the United States to safeguard its relations with Egypt. Unable or unwilling to choose, the Obama administration settled for ambiguity. US law, state department lawyers argued, required the US government to suspend aid if it determined that a coup d'état had taken place. The law, however, did not oblige the government to make such determination, so none would be made.

Nevertheless, the administration took some steps to penalize Egypt. As a mild rebuke to the Egyptian military and the civilian government it had put in place, it cancelled joint military manoeuvres scheduled for September – dubbed 'Bright Star', the joint manoeuvres had taken place every two years since the signing of the Camp David Accords. On 9 Octo-

ber the administration further announced that military assistance would be 'recalibrated' by suspending delivery of 10 Apache helicopters and of a number of F-16 fighter jets, M1A1 tanks and Harpoon anti-ship missiles. It also announced a halt to the transfer of \$260 million in cash assistance to Egypt until credible progress was made toward the restoration of democracy and the establishment of a government through fair elections.

The suspension did not last. The deteriorating security led the United States to resume military aid to Egypt within a few months. In April 2014, it announced that the Apache helicopters and half the \$1.3 million in military aid would be released. At the time, Egypt had not held either presidential or parliamentary elections, so it was impossible to argue that Egypt had made credible progress toward the restoration of democracy. But concern about the growing presence of radical Islamists groups in Sinai, including Ansar Beit al-Maqdisi, which a few months later was to declare its allegiance to the Islamic State of Iraq and the Levant, was sufficient to override doubts about the Egyptian government's democratic credentials.

The decision was not a turning point in the relationship. Eighteen months after the military takeover the reciprocal distrust between the governments of Egypt and the United States government has not decreased, and public opinion in Egypt remains hostile as well.

There is a long list of policies pursued by Egypt that the United States cannot disregard completely, although it seems to be trying. The country has held presidential elections and it now formally has a civilian president, although he is the same Abdel Fattah al-Sisi who, as a general, led the 2013 coup. It still does not have an elected parliament and al-Sisi de facto rules by decree. The procrastination in electing the parliament could be overlooked as a temporary problem of transition, but the regime's authoritarianism has become well entrenched. It now includes not only the systematic dismantling of the Muslim Brotherhood that started with the coup, but the silencing of independent voices

of any kind in the media, the mass death sentences the judiciary is imposing on the basis of absurdly short trials, the pressure on all non-governmental organizations to register with the government and fall in step with its policies, the adoption of an election law that limits the role of political parties and enhances that of independent candidates and many other measures. Taken together, such policies suggest that Egypt is moving toward a deeper authoritarianism than what it experienced under Mubarak.

Security concerns remain real, however, and so far the United States has toned down the criticism of the regime. Although it joined in the international chorus of condemnation directed at Egypt when in November 2014 the United Nations issued a new, highly critical human rights report, it subsequently reverted to business as usual.

So policy continues to waver and there seems to be no satisfactory solution. When Washington tried to uphold democratic values, it was accused of being in cahoots with the Muslim Brotherhood; no matter how ludicrous such an accusation appears to Americans, it gained a lot of credence in the region. A policy based on state interests is hardly likely to prove more satisfactory. Support for a blatantly repressive regime, routine during the Cold War, is an embarrassment to the United States in the 21st century. And the policy is also likely to backfire, with repression inviting the growth of a radical opposition and a new round of instability.

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