

# Constitution-Making during Political Turmoil and Change: Egypt 2011-2014

Dr. Ahmed Morsy \*

## ABSTRACT

Constitutions are inherently political as much as they are regulatory charters that are supposed to reflect power and state-society dynamics. They must perform two functions well, but they seldom do. First, a charter must reflect to an extent the distribution of existing political powers and their social representation or else it would stand only a slim chance of ratification and acceptance. The second function is its ability to accommodate future changes in the distribution of political power and societal change / evolution, or else it would unravel in short order.

The already challenging dual-gaze balance in drafting constitutions becomes even harder to maintain during periods of political transition and polarization. Political flux in the wake of an autocratic collapse or revolutionary fervor means it is not yet possible to gauge the weight and power of the various political factions. And the rush to straitjacket a changing political environment into a body of rules unavoidably privileges some factions at the expense of others, deepening the transition's instability and aggravating the charter's fragility.

The challenges to drafting constitutions during times of uncertainty and political fluidity were on display in Egypt's 2012 and 2014 Constitutions. The former was scrapped just 7 months from adoption after the removal of President Mohamed Morsi from office and the latter underwent significant amendments in 2019 – only five years after its ratification. This paper focuses on the process of constitution-writing in Egypt in 2012 and 2014. It is not an analysis or judgement of the constitutional articles or a comparative study of what these two constitutions failed to accomplish. It contends that each of the charters came into existence as a compromise among particular political coalitions. Over time, and given the nature of political-transition periods, some factions in these coalitions gained political power as others diminished. Compromises become untenable, whereby the ascendant more powerful group(s) forced a revision of the rules, and the weaker factions were unable to deter opportunism.

Keywords: *Egypt, constitutions, politics, revolutions, 2011, MENA, Constitutional Law, Arab World*

---

\* Ahmed Morsy (PhD) is a Senior Researcher in the Middle East Programme at the Stockholm International Peace Research Institute (SIPRI).

This paper was finalized in January 2023.

## CONTENTS

---

INTRODUCTION .....	41
I. CONSTITUTION: MEANING AND PROCESS .....	43
A. The Different Meanings of Constitution .....	43
B. Constitution Design and Drafting .....	44
II. EGYPT: REVOLUTIONARY TIMES, TUMULTUOUS TIMES .....	47
A. The 2011 Uprising and Ensuing Power Dynamics .....	48
B. 2011-2012: Whose Rules and Whose Constitution.....	49
C. Parliament, the Constituent Assembly, and the Courts.....	51
D. 2013-2014: Military Ascendence and a New Roadmap.....	53
E. Back to the Future: Exclusion and Power Consolidation .....	54
BIBLIOGRAPHY .....	59

## INTRODUCTION

Constitutions are not just about restraining and limiting power; they are about the empowerment of ordinary people in a democracy and allowing them to control the sources of law and harness the apparatus of government to their legitimate aspirations. That is the democratic view of constitutions, but it's not the constitutionalist view.<sup>1</sup>

For over a decade since 2010, several Arab countries witnessed a mix of revolutions, counterrevolutions, civil wars, displacement, and destruction on a scale not seen before. Some, if not all, are still reeling from these consequences in varying degrees. Nonetheless, one of the main common denominators for the mass uprisings that swept the Arab world at different junctures during the past decade has been the authoritarian/top-down policies of the ruling regimes. These were clear in many political and socio-economic outcomes – from the different laws that suppress freedoms, control public space and debate, and justify tyranny under the name of security, to the economic policies that widened the wealth gap, created monopolies and oligarchs, and impoverished most people rather than creating social safety nets and welfare systems. While the regional experiences differed in their processes and outcomes of the uprisings and calls for change, they all included some form of constitutional amendments (Morocco and Jordan for example) or “newly” written charters (Tunisia, Egypt and Syria) to appease the people post-uprisings.

Egypt is arguably the country with the most constitutional declarations, amendments and charters issued in the region (and particularly between 2011 and 2019). After all, 100 years have passed since the promulgation of Egypt's first constitution on 19 April 1923. The period between 2011 and 2019 witnessed significant constitutional changes in Egypt, reflecting the complex and changing political landscape in the country. These changes were driven by a series of events, including the Arab uprisings, the rise and fall of the Muslim Brotherhood, the weak civilian opposition, the outsized role and power of the military, and the subsequent consolidation of power by President Abdel Fattah El Sisi. Nonetheless, these different attempts at overhauling the higher legal framework and principles of the state do not seem to have pushed the country toward a more inclusive, representative, and rights-based governance. In fact, there is enough evidence, particularly in the past decade, showing authoritarian backsliding, cementing one-man / single institution rule and continued disregard to the freedoms and rights approved in the constitution.

The constitution-drafting process, even 100 years ago, was mired by the power dynamics among the different political forces and elites inside and outside government, with limited regard for what citizens think. For example, the first version of the 1923 constitution submitted by the drafting committee at the end of 1922 was vetoed by the King and replaced by a watered-down version that maintained some powers in the hands of the monarchy (like dismissing parliament). Despite hailing its liberal and progressive nature, the writing of the 1923 document was top-down through a committee of elite politicians, parliamentarians, and legal scholars, which was boycotted by the *Wafd* Party (the biggest party in parliament and most popular at the time). The *Wafd* cited two reasons.

---

<sup>1</sup> Jeremy Waldron, *Political Theory: Essays on Institutions* (Cambridge, MA: Harvard University Press, 2016), 43.

The first was not being allocated enough seats on the drafting committee and the second was the party's preference that the constitution be drafted by an elected constituent assembly. The latter reason was likely political, based on their popularity and believing that an elected committee would give them control of the drafting process against the influence of monarchy at the time.

The brief example from the 1923 constitutional drafting raises many questions about how and by whom the constitution should be written; what the political dynamics at play are, how to account for them and how they influence the process; how inclusive and representative should the process be and what are the different ways to engage the public. These questions and more remain a central issue in constitution-making today and the answers differ from one experience to another, but it is clear that scholars agree in principle that the more time is taken to build bottom-up consensus and overcome prior blunders (especially under authoritarian rule and in diverse / sectarian societies), the higher the likelihood that the charter will be respected and relatively followed.

This paper focuses on the process of constitution-writing in Egypt in 2012 and 2014. It is not an analysis or judgement of the constitutional articles or a comparative study of what these two constitutions failed to accomplish. It contends that each of the charters came into existence as a compromise among particular transient political coalitions. Over time, and given the nature of political-transition periods, some factions in these coalitions gained political power as others diminished. Compromises become untenable, whereby the ascendant more powerful group(s) force a revision of the rules and the weaker factions were unable to deter opportunism. The challenges to drafting constitutions during times of uncertainty and political fluidity were on display in Egypt's 2012 and 2014 Constitutions. The former was scrapped just 7 months from adoption after the removal of President Mohamed Morsi from office and the latter underwent significant amendments in 2019 – only five years after its ratification.

The paper is divided into an introduction, two main sections, and a conclusion. The first section provides a brief and general overview of the different meanings and drafting process of a constitution (I), while the second looks closely at Egypt after 2011, highlighting the political dynamics and changing environment influencing the constitution-writing process (II). The discussion and narrative blend academic arguments and realpolitik, emphasizing the critical role coalitions and compromises play in constitution-making and their potential long-lasting consequences on the legal and political structures of the state. It is a reminder that constitutions, as the highest law of the land, should not be rushed, must be consultative, cognizant of the existing political dynamics, and offer room for future engagement and changes as societies evolve.

## I. CONSTITUTION: MEANING AND PROCESS

### A. THE DIFFERENT MEANINGS OF CONSTITUTION

The word *Constitution* has two uses and meanings according to Hanna Pitkin. The first is used as “the sense of composition or fundamental make-up” as building blocks of something including its framing and characteristics. This can work for both the individual level (the physical make-up and temperament for example) and the community level (nature and ethos of the people and the outcome of social conditioning and history). In essence, this becomes more of a description of who and what we *Are* rather than what we *Have*.<sup>2</sup>

In a sense, this is what Pitkin thinks Aristotle meant and showed in his work *Constitution of Athens*, where he produced a history of the city highlighting the shared social and political way of life, not just a set of fundamental laws. Not surprisingly then, that the Egyptian renowned judicial figure and scholar Tarek El Bishry shares a similar view. He believes that constitutional law is the closest and most intertwined form of law with politics and political life. He argues that political engagements and power dynamics are what *constitute* the legal frameworks of nations.<sup>3</sup>

The second meaning is more functional than descriptive, as the “action or activity of constituting – that is, of founding, framing, shaping something anew.” It is what we do or can do “to innovate, to break the causal chain of process and launch something unprecedented.” In that sense, written constitutions should be seen as “human creations, products of convention, choice, the specific history of a particular people, and (almost always) a political struggle in which some win and others lose.”<sup>4</sup>

Constitutions (or Basic Laws in some countries) are inherently political as much as they are regulatory charters that are supposed to reflect state-society dynamics and the social contract. They are regarded as higher laws that “describe the basic principles of the state, the structures and process of government and the fundamental rights of citizens.”<sup>5</sup> While the content, nature, and process of developing these documents vary, they are broadly expected to be binding on/to everyone; legitimized by broad public support; describe the state structure, its institutions, and their relationship; difficult to change unilaterally; and enshrine democratic principles, representativeness, and human rights. It is indeed an uphill battle.

The constitution is expected to perform two functions well, but it seldom does. First, it should reflect to an extent the distribution of existing political powers and their social representation or else it would stand only a slim chance of ratification and acceptance. The second function is its ability to accommodate future changes in the

---

<sup>2</sup> Hanna Fenichel Pitkin, “The Idea of a Constitution,” *Journal of Legal Education* 37, no. 2 (1987): 168.

<sup>3</sup> Tarek El Bishry, “The Constitutional System between Politics and Law,” *Constitutionalism* 4, no. 9 (2006): 27.

<sup>4</sup> Pitkin, “The Idea of a Constitution.”

<sup>5</sup> Elliot Bulmer, *What is a Constitution? Principles and Concepts*, International IDEA Constitution-Building Primer 1 (Stockholm: International IDEA, 2017).

distribution of political power and societal change/evolution, or else it would unravel in short order and become relatively irrelevant. The role of a constitution becomes more important in post-conflict and during transitions. It can be a tool to advance national reconciliation, especially in states suffering from decades of authoritarianism, socio-economic injustices and inequalities, and underrepresented minorities.<sup>6</sup>

However, the already challenging balance in drafting constitutions becomes even harder to maintain during periods of political transition and polarization. Political flux in the wake of an autocratic collapse or revolutionary fervor means it is not yet possible to gauge the weight and power of the various political factions. The rush to straitjacket a changing political environment into a body of rules unavoidably privileges some factions at the expense of others, deepening the transition's instability and aggravating the charter's fragility. In short, challenges are multiplied during transitions and revolutionary moments, especially when there is no consensus and/or societal dynamics are fragmented. The situation is far from optimal during these times.

## B. CONSTITUTION DESIGN AND DRAFTING

“Constitutions are made, not found.” Hanna Pitkin.

Constitutional design in its contemporary understanding is associated with the move from customary (and arbitrary) forms of rule to a written form, which is conventionally linked with nation-state building – particularly experiences like the United States and France. The political philosophers at the time thought of codified charters as a tool to manifest and channel self-interest into larger public ends.

But it is a misunderstanding to believe that constitution-writing is or could be a technocratic exercise that aims to get the right and best results, right away. The term constitutional design itself is contested, implying “a technocratic, architectural paradigm that doesn't easily fit the messy realities of social institutions, especially not the messy process of constitution making.”<sup>7</sup> The process, even with the best of intentions, is influenced by self-interests, cognitive biases, and emotions, and “most constitutional designs fail on the throes of unanticipated consequences, unforeseen external events, and new information revealed by counterparties.”<sup>8</sup> The decades of studying constitutions and political institutions are still limited and inconclusive to prepare scholars and politicians alike to understand how institutions, individuals and particular social practices will operate within certain environments and contexts.

Constitution drafters are mostly non-experts but expected to produce a document that structures the creation of rules and the functionality of government and expresses fundamental values. There is also another implicit belief

---

<sup>6</sup> Zaid Al-Ali, *Egypt's Third Constitution in Three Years: A Critical Analysis* (Stockholm: International IDEA, 2013).

<sup>7</sup> Tom Ginsburg (ed.), *Comparative Constitutional Design* (Cambridge: Cambridge University Press, 2012), 1.

<sup>8</sup> See: Ginsburg (ed.), *Comparative Constitutional Design*, 2; Zachary Elkins, Tom Ginsburg, and James Melton, *The Endurance of National Constitutions* (New York: Cambridge University Press, 2009).

that they (and the charter) will find enduring solutions to political conflict.<sup>9</sup> They sometimes base their work on speculations of how the different institutions will function and engage with the polity, which is most of the time being developed in heated and challenging political environments that render compromise inevitable. As John Elster concludes, “There are very few instances of either constitutional conventions or constituent legislatures deliberating “*à froid*,” in the absence of any internal or external crisis ... It seems to be a near-universal rule that constitutions are written in times of crisis and turbulence.”<sup>10</sup>

The questions of who should control the drafting process is debatable. Constitutional scholars have argued for disfavoring legislatures as constitution drafters to minimize self-dealing and biases, and instead increase public participation in the process. However, the available data do not seem to support the hypothesis that either arguments would necessarily provide for a better constitution. The problem usually stems from the fact that constituent assemblies have a mixed bag of participants, from legal experts and special interest groups to politicians and community representatives. While diverse voices and representation is critical, it ends up being a challenge since each member (or group) becomes only focused on advancing their group’s (usually narrow) view and would be content to see it documented in one of the constitutional articles. But they contribute very little to the overall debate and tend to forget about incorporating enforcement mechanisms. This was the case in Egypt, where the constitutional drafters focused more on petty political rivalries and gave limited attention to accountability and enforcement. In essence, the constitution became a tool to settle political conflicts instead of a document that creates inclusive processes and rules for all.

Egypt’s experience with constitution-drafting is mixed at best. Throughout its history, there were generally three different ways in which Egypt drafted its constitution. The first is through a top-down appointed committee, which usually included a majority of legal experts, politicians and intellectuals (like in 1923); the second is through a slightly more representative committee whose members are selected and/or nominated from different segments of society for wider inclusivity, but where the process is still controlled and appointed by the executive branch (like in 2013); and the third is a committee that Parliament chooses from among its members (like in 1971) or elects using a set of requirements to minimize bias and ensure wider representation (like in 2012). There has been another modality that included a two-tier drafting process, where a small group of legal experts prepare the essential core articles of the constitution, which is then referred to a wider committee for reviews and debate before submitting it to a referendum. Usually, this latter method is used for constitutional amendments since they are limited in number and follow a top-down approach where the President (or his parliamentary supporters) put a request for these amendments. This was the process in 1980, 2005, 2007 and 2019. Despite all these different ways to draft and amend a constitution, it is clear that none of them really made Egypt’s rulers more democratic, accountable, and respectful of the people’s rights.

---

<sup>9</sup> Ginsburg (ed.), *Comparative Constitutional Design*, 4.

<sup>10</sup> Jon Elster, “Legislatures as Constituent Assemblies,” *The Least Examined Branch: The Role of Legislatures in the Constitutional State*, ed. Richard Bauman and Tsvi Kahana (New York: Cambridge University Press, 2009), 185.

Successful democratic transitions are a product of the balance of power between opposing groups, but such balance should include space for erstwhile regime members to play a role in the new order. Susan Albers, Chris Warshaw, and Barry R. Weingast, “point out that constitutionalization can facilitate credible commitments to dictators, and hence induce them to step down.”<sup>11</sup> This assumes that rising democratic powers can win the transition – that might otherwise not happen – by crafting solutions that minimize fears as opposed to alienate the former powerholders. This is a view that is nearly accepted in political transitions literature that democratic transition is only possible when pacts are struck between the old regime and the rising political elite.<sup>12</sup>

There is so much emphasis on constitutions as instruments of democratization, separation of powers, protection of human rights, social welfare, and security of the people. Ginsburg explains this by highlighting the difference between and potential outcomes of good and bad constitutional designs:

Good designs can facilitate democracy and tame religious radicals; they can encourage executive turnover and promote responsible adjustment to new circumstances through constitutional amendments. Bad designs, on the other hand, can exacerbate intercommunal conflict and perpetuate unjust outcomes for women; they can block transitions to superior institutions; and they can clog channels of citizen redress through the courts.<sup>13</sup>

Nonetheless, experience shows that it is not as simple as a good or bad design. Democracy is a practice and not just rules, which even with the best intentions and politicians, can backslide and be turned over. As Jose Cheibub highlights in his analysis, there are unobservable deep structures in societies that may in the end be what determines outcomes, rather than any consciously designed process or institutions.<sup>14</sup> Al-Ali confirms this view by pointing out that Egypt has always had a list of rights and freedoms as well as separation of powers articles but the “problem was that the mechanisms for enforcement of these rights were completely inadequate.”<sup>15</sup>

In short, many factors play a role in constitutional design and process. Context in terms of power dynamics and overall social environment, timing, and drafters are all critical components that need to be considered and understood. This becomes more important during revolutionary times, which are euphoric with high hopes but also extreme anxiety and apprehension. Managing perceptions and expectations is usually difficult and it is even harder when societies are coming out of decades of authoritarian rule, closed public space and marginalization. In Egypt (and other similar contexts), the victors usually end up drafting the constitution and outlining the rules, which end up as ink on paper with limited to no application. They are also the first to both use the constitution to consolidate their powers and to break its principles under different guises.

---

<sup>11</sup> Ginsburg (ed.), *Comparative Constitutional Design*, 6.

<sup>12</sup> Barbara Geddes, “What Do We Know About Democratization After Twenty Years?,” *Annual Review of Political Science* 2, no. 1 (1999): 115-144.

<sup>13</sup> Ginsburg (ed.), *Comparative Constitutional Design*, 10.

<sup>14</sup> Jose Cheibub, *Presidentialism, Parliamentarism and Democracy* (New York: Cambridge University Press, 2007).

<sup>15</sup> Al-Ali, *Egypt's Third Constitution in Three Years*.



Egypt has a history of using constitutions for political rhetoric rather than empowering institutional independence, separation of powers, creating oversight and accountability, and respect for the rule of law and human rights. The second section looks at the context and background of the constitution-drafting process in 2012 and 2013, highlighting some key events, actors, and implications for Egypt's political and legal framework.

## II. EGYPT: REVOLUTIONARY TIMES, TUMULTUOUS TIMES

By a political revolution I mean a time of rapid, often erratic, change in the relative power of social classes, ethnicities, regions, political parties, legislatures, military groups, royal or noble lineages, and so on ... For such instability of relative power to continue, different groups and people have to have different estimates of how it will all come out; otherwise, they would make deals in light of who was going to win and so produce stability.<sup>16</sup>

By the time President Hosni Mubarak stepped down on February 11, 2011, the 1971 Constitution had been the law of the land for over 40 years. Among the first orders of the Supreme Council of the Armed Forces (SCAF) that took over from Mubarak, was suspending the 1971 Constitution, which was thought to be providing the authoritarian framework of the regime.

Between 2011 and 2019, Egyptians went to the polls to vote on an interim charter (2011), the 2012 Constitution, the 2014 Constitution, and the 2019 constitutional amendments. These different texts kept to a varying degree the fundamentals of the 1971 Constitution, notably a strong executive/presidency, limited accountability and oversight over government and governance, a shielded and outsized role of the military in public life, and a list of freedoms that are restricted by legislation.

These different experiences did not take place in a vacuum or peaceful social and political environment. They were developing during high levels of polarization, grievances and changing power dynamics. Even the 1971 Constitution, that lasted four decades, was developed during a critical power consolidation time. Back then, President Anwar El Sadat used an alleged coup attempt by some of Gamal Abdel Nasser's holdovers to announce a "corrective revolution" – in May 1971 – that would slightly open the public and political spaces and draft a new permanent constitution. The three times the 1971 Constitution was amended reflected the power dynamics and the mostly top-down process, which remained consistently in the hands of the President. The different proposed amendments also highlight political calculations on behalf of the executive – for instance, in 1980, President Anwar al Sadat introduced a change to Article 2 to make *Shari'a* source of legislation in a bid to appease the growing Islamist currents; and in 2005, President Mubarak introduced the multi-candidate presidential elections amendment because of some outside pressures, a modicum of domestic contestation, and to open the door for his son Gamal Mubarak to run when the time comes.

---

<sup>16</sup> Arthur Stinchcombe, "Ending Revolutions and Building New Governments," *Annual Review of Political Science* 2, no. 1 (1999): 51.

## A. THE 2011 UPRISING AND ENSUING POWER DYNAMICS

Despite its flaws, the epoch of despotism's 1971 constitution has many articles preserving several rights and liberties; torture was hardly a constitutional act. Nonetheless, this constitution did not protect the people from the violation of their rights and the divestment of their liberties. We must ask, then: what is the value of a constitution drafter without real popular participation? Even if it is an ideal constitution, it remains ink on paper if there is no balance of forces activating and protecting it.<sup>17</sup>

The January 25 uprising was fueled by widespread dissatisfaction with corruption, economic inequality, and political repression under Mubarak (and his predecessors). The uprising resulted in a power vacuum and fluidity and created opportunities for different political forces to compete for influence, namely the Muslim Brotherhood and the military generals.

The longstanding tactics of Egypt's regimes from Nasser to Mubarak (and now) to stoke fear and animosity among different groups and in the public remained a central issue in post uprisings politics. Polarization and mistrust between the different groups and factions in Egypt started early-on with each side believing they could outmaneuver the others – or at best align, albeit tacitly, with one side over the others. Different groups ebbed and flowed depending on the context and juncture from within the state apparatus or from civil society and collectives of youth and revolutionaries, but the military and judiciary (from within the state), and the Islamists and non-Islamists (both broadly defined) were the main groupings locked in a power contestation.

As a disciplined hierarchical state institution that enjoyed a positive stance among the public as well as monopoly over the use of force, the military was the coveted partner to side with, or at best neutralize and not antagonize, despite what some of the groups and politicians publicly displayed. This created a vicious circle of mistrust and fear among all the civilian factions and would play out across all junctures between 2011 and 2014, culminating with Abdel Fattah El Sisi's election in 2014. On one hand, the Islamists, particularly the Muslim Brotherhood, were fearful of an alliance between the non-Islamists (liberals) and the military that would violently subdue and imprison them; while on the other, the non-Islamists believed they were being manipulated by a military alliance with the Islamists to share power. Both sides had reasons to believe they would become victims of a ploy but could not find a way to break the mistrust and bridge the growing divide. And eventually, both were played by the coercive arms of the state – military, judiciary, and police.

The SCAF generals believed they were above the fray of politics and civilian bickering, and that they would be able to steer and manipulate the transition. In other words, they had reasonably estimated “that with strong international backing, and a generous fund of public goodwill, they would manage a transition to a contained democracy and be lauded as enlightened modernizers.”<sup>18</sup> Nonetheless, the generals did not expect that during the 16 months of the

---

<sup>17</sup> “Let's Write Our Constitution” campaign flyer, quoted in Mona El Ghobashy, *Bread and Freedom: Egypt's Revolutionary Situation* (Stanford: Stanford University Press, 2021), 141.

<sup>18</sup> El Ghobashy, 125.

transition to an elected president, they would face multiple close calls to a full rebellion against their rule, like the one that took down Mubarak. The SCAF always pointed to the bogeyman (*al-taraf al-talet*) lurking in the shadows and sought to divide the country. In the words of the late Assistant Minister of Defense and former Minister of Military Production, Mohamed al-Assar, after the Maspero massacre, “The army’s principles have not and will not change, what has changed is that there are enemies of this nation, and enemies of the revolution for whom it important to obstruct the transition to democracy.”<sup>19</sup>

The distrust between Islamist and non-Islamist (liberal / secular / revolutionary) groups and parties reigned in and increased over time. The Islamists saw themselves as the most prepared and strongest group as opposed to the weaker and fragmented liberals. The Muslim Brotherhood, specifically, had strong mobilization networks and saw the post-Mubarak era as their time to rule after decades of ostracization and marginalization. They also had a legacy of providing social services and filling the gaps left by limited state support, particularly in marginalized communities and underprivileged neighborhoods and sectors like health and education.

The non-Islamist groups were fragmented, lacked a real cohesive message and a plan and were relatively elitist – not only on a social level but also in their rhetoric. They mostly saw the Muslim Brotherhood’s quick embrace of the SCAF’s views as betrayal to the revolution, particularly during the campaign supporting the March 2011 referendum. The younger “revolutionary” elements were relatively shunned from playing a serious role in the process, which prompted them to resort to the streets to build networks and alliances with like-minded groups, including some Islamist youth groups. Street protests and politics were the only tool left to the youth and other interest-based groups to vent their frustrations with all sides – Islamists, non-Islamists and the ‘deep state’ embodied in the security services.

## B. 2011-2012: WHOSE RULES AND WHOSE CONSTITUTION

On 13 February 2011, the SCAF issued a constitutional declaration suspending the 1971 Constitution and appointed an eight-member committee of legal experts to amend a handful of articles from the 1971 Constitution that notably focused on presidential candidacy, term limits, judicial supervision of elections and restricting the use of the state of emergency.<sup>20</sup> Signs of the schism between the different political forces became visible as early as the SCAF called for a referendum on these constitutional articles. It is important to note, however, that Mubarak’s transfer of power to the SCAF was already in violation of the 1971 Constitution, which lays out the steps to be followed when a president is incapacitated. Additionally, the SCAF was never a formal body, and it came into existence as a spur of the fluid early days of protesting Mubarak and the regime. But the revolutionary fervor swept away any adherence to rules and norms in the hope of building a ‘new Egypt’.

---

<sup>19</sup> The Maspero building massacre took place on October 9, 2011, when thousands, mainly Coptic Egyptians, marched to protest the demolition of St. George Church in Aswan. See: <https://www.hrw.org/news/2011/10/25/egypt-dont-cover-military-killing-copt-protesters> and <https://timep.org/2018/10/09/fact-sheet-the-maspero-massacre-seven-years-on/>. Quoted in El Ghobashy, 120.

<sup>20</sup> Michele Dunne and Mara Revkin, “[Overview of Egypt’s Constitutional Referendum](#),” *Carnegie Endowment for International Peace*, 16 March 2011.

The time between the SCAF appointment of the legal expert committee and the referendum was a little over a month. The Islamist forces mobilized and campaigned for a ‘yes’ vote, while the broadly non-Islamist forces – particularly some revolutionary groups and liberal figures – were not supportive. The latter groups called for drafting the constitution before any elections, noting that the proposed amendments were done in haste and did not go far enough after the uprising. Their reasoning was that the constitution would lay the ground rules for the elected institutions and the drafting process was likely to be more inclusive and representative when the playing field would no longer be hierarchical or mired with tension and mistrust. The Muslim Brotherhood, on the other hand, saw the referendum from a narrow political lens. They believed it was a chance to show their mobilization power and grassroots support and by supporting the SCAF plan, they sought to get to elections sooner, which would allow them to manage the political transition process.

The referendum took place on 19 March, with about 77 percent of voters approving the amendments. The SCAF piggybacked on this popular approval to issue on March 30, a 63-article Interim Constitution (the public did not deliberate or vote on) that effectively kept all powers in the hands of the SCAF until the election of both the parliament and a president. It was surreal to see some of the interim articles copied verbatim from the disbanded 1971 Constitution. The most notable article with regards to next steps in constitution-drafting was number 60 that outlined the procedure for electing a 100-member Constituent Assembly (CA) by the incoming Parliament but left the criteria that members had to fulfill open to interpretation.

With growing tensions, protests, and violence in the second half of 2011, and as Egypt got closer to the scheduled parliamentary elections in November 2011, the SCAF tacitly pushed for and endorsed the “Declaration of the Fundamental Principles of the New Egyptian State.”<sup>21</sup> The 22-article document was presented by deputy Prime Minister Ali al-Silmi to highlight the basic rights that would be enshrined in a new constitution. The document included detailed criteria for the make-up of the CA, which divided the committee along corporatist lines, with 80 seats allocated to non-political parties and parliamentarians. The allocation included seats for the judiciary, professional, labor, and farmers unions, religious groups, state institutions (including security services), youth, civil society, and women. The document, which was soundly rejected because of Article 9 that gave the SCAF expanded powers and shielded it from any accountability, was an attempt to set the criteria in advance to limit the influence of elected parliamentarians and political parties over the composition and give the SCAF veto powers and the ability to form a new assembly if Parliament failed.<sup>22</sup>

---

<sup>21</sup> An English translation of the document is available at: <https://constitutionnet.org/vl/item/egypt-draft-declaration-fundamental-principles-new-egyptian-state-november-2011-english>.

<sup>22</sup> The same controversial articles empowering and legalizing the role of the armed forces were later codified in both the 2012 and 2014 Constitutions.

### C. PARLIAMENT, THE CONSTITUENT ASSEMBLY, AND THE COURTS

The seating of Parliament appears to be the culmination of fierce debates and mobilization campaigns that aim to garner and win people's votes. As a result, there is an expectation that in the immediate aftermath social pressures and criticisms will abate and likely shift elsewhere; some might call it the “honeymoon” period or the “wait and see” moment. As Guillermo O'Donnell and Philippe Schmitter observe, “one of the primary motives of transitional authorities in convoking elections for significant governmental positions may well be to get that multitude of disparate and remonstrative groups ‘of their back.’”<sup>23</sup> But Mona El Ghobashy provides a different view to this notion by arguing that the elections and parliament they produced in 2012 were “not a step on the path to pacification but as a new arena for multiple conflicts over state powers.”<sup>24</sup>

The very existence of the newly elected parliament in Egypt with its historically excluded majority raised questions and concerns from both the old powerful vested interests and some of the new political groups and social movements and propelled them to act – sometimes against the common threat or against their best interest. As Sidney Tarrow observes:

One group's actual seizure of some portion of state power, furthermore, immediately alters the prospects for laggard actors, who must immediately choose among alliance, assault, self-defense, flight, and demobilization. Consequently, rivalries, coalition making, and defensive action all spiral rapidly upward.<sup>25</sup>

The parliament had a supermajority of 72 percent Islamists, but not acting as a united front, with the Muslim Brotherhood's Freedom and Justice Party (FJP) as the plurality group with 45 percent and the Salafi al Nour party at 22 percent. The new composition automatically triggered fears on both sides: the non-Islamists feared they would be sidelined from the CA and the drafting process, while the Islamists feared the creation of a military-judiciary alliance that would impede the transition and constitutional writing process.

With these fears in mind, the Islamist-dominated Parliament rushed the process of forming the CA in three weeks, although they had up to 60 days to deliberate on the membership of this critical body. In the process, the FJP reneged on an agreement with non-Islamists to distribute the CA membership into 40/60 parliamentarians to non-parliamentarians, likely due to Salafi pressures, and a 100-member CA was elected out of 2078 candidates. The majority Islamist (64 members) assembly started hemorrhaging members as soon as the results were announced, citing lack of representation and inclusivity – or, as Zeyad Bahaa Eldin, former parliamentarian and a former deputy Prime Minister, put it, “where is Egypt in this composition?”<sup>26</sup>

---

<sup>23</sup> Guillermo O'Donnell and Philippe Schmitter, *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies* (Baltimore: Johns Hopkins University Press, 1986), 57.

<sup>24</sup> El Ghobashy, *Bread and Freedom*, 131.

<sup>25</sup> Sidney Tarrow, *Strangers at the Gates: Movements and States in Contentious Politics* (Cambridge: Cambridge University Press, 2012), 129.

<sup>26</sup> Ziad Bahaa-Eldin, “When Boycott Becomes Necessary”, *Al-Shorouk*, 27 March 2012.

The CA was effectively stillborn from its inception and the doubling down from both sides only exacerbated the crisis, eroded conditions for compromise, increased distrust and opened the door for the awaiting judiciary and military to intervene.

In this heritage of political action, admitting mistakes means weakness, hesitation, and loss of control leading to more concessions... What makes the matter graver, however, is the sense that parliament and the whole constitutional experience is being ambushed, by those hoping for the collapse of the whole process in favor of a direct military rule.<sup>27</sup>

In less than two weeks from the first CA meeting, a ruling from the Supreme Administrative Court (SAC) on April 10, dissolved the CA citing a 1994 ruling by the Supreme Constitutional Court (SCC) that parliamentarians cannot elect themselves and that the CA membership should be conformed exclusively of non-parliamentarians.<sup>28</sup> The court's intervention was just the beginning of a series of judicial challenges that plagued and weaponized the transition, which eventually saw the SCC take the decision to dissolve the elected parliament just two days before the scheduled presidential elections run-off between Ahmed Shafiq, Mubarak's last Prime Minister, and Mohamed Morsi, the Muslim Brotherhood's candidate.<sup>29</sup>

To assuage critics and adhere to the SAC ruling, the Parliament formed a second CA, on June 7, that was broader in its representation of political currents. The Muslim Brotherhood thought they could satisfy all groups by giving each something in the constitution, which would show their pragmatic and consensus-building approach, especially after the fiasco of the first CA formation. This relative concern about their public image, especially at the time, is likely the reason why the MB members tolerated more debates and discussions in the assembly as an attempt to appease the non-Islamist groups and intelligentsia whose skepticism of the Brotherhood's modus operandi and sense of exclusion were growing. The behavior of the Brotherhood, nonetheless, angered their Salafi allies and gradually increased the intra-Islamist rift.

Mamdouh Shahin, the assistant Defense Minister for Legal Affairs, was a critical figure in the transition period and continuously looked for ways to maintain the SCAF's superior position and role in the process. Shahin was monumental in drafting language and pushing legal texts to that effect and finding "rational" and "logical" explanations to the military's superiority. The tumultuous period, missteps by some of the political forces, and the populations' frustration gave the SCAF opportunities to manipulate the process. The SCAF believed it was above all institutions despite attempts to portray themselves otherwise. A clear indication of such positionality was the claim by Mamdouh Shahin after the SCC disbanded the elected parliament in June 2012. Shahin came out clearly to illustrate that the generals are the *constituting* authority in the country, allowing themselves the power to make and break the state institutions and constitutional framework of the state. In his words:

---

<sup>27</sup> Ziad Bahaa-Eldin, "Alternatives to the Deadlock in the Writing of the Constitution," *Al-Shorouk*, 3 April 2012.

<sup>28</sup> "The Judiciary Aborts the Constituent Assembly," *Al Shurouq*, 11 April 2012.

<sup>29</sup> Ahmed Morsi, "[On the Eve of Pivotal Supreme Court Rulings, All Scenarios Point to Turmoil](#)," *Atlantic Council*, 13 June 2012.

We have three powers: constituent power (*al-Sulta al-Taʿziyya*), which is SCAF. What is constituent power? That which generates all state institutions. If there is no parliament, it brings parliament, it organizes matters until there is a parliament. There is no president until it brings a president. There is no constitution until it brings a constitution. When these state institutions are constituted, the founding power's work is considered completed.<sup>30</sup>

The first six months of 2012 witnessed a lot of critical junctures in Egypt's transition: the seating of the bicameral parliament, the rushed election of a constituent assembly that the court disbanded, the first democratically elected President, and the dissolving of the House of Representatives by an SCC decision. These incidents highlighted the continued public and private struggle and mistrust among the generals in power, a fractious Islamist force, and the weaker divided non-Islamist/liberal groups. The fluidity of these times created opportunities for some while exacerbating the threatened mindset of others. In essence, the state's newly elected institutions were fragile and nonstrategic compared to the deeply rooted and activist military and judiciary. Mona El Ghobashy provides a spot-on summary:

Political fear of the ancient regime's resurgence impelled parliamentarians to hastily pass a dubious lustration law; a loudly assertive parliament reawakened judges' belief in their supral legislative status as guardians of the constitution, motivating them to check and ultimately dissolve the new parliament; uncertainty about the future wracked prochange voters as they contemplated dismal options; aversion to being governed by a disciplined ideological party drove pro stability voters to cast their lot with the ancient regime; fear of repression and an opportunity for international recognition shaped the calculations of Egypt's largest political organization; outrage at their sidelining in the constituent process motivated minority parties to pursue permanent opposition, leaving an opening for the generals to reassert their power and autonomy in ways that had failed only months earlier.<sup>31</sup>

#### D. 2013-2014: MILITARY ASCENDENCE AND A NEW ROADMAP

Despite the controversies of the constitution-drafting process, the lawsuits and some alarming authoritarian tendencies by the new president Mohamed Morsi, the Muslim Brotherhood and its allies portrayed the new constitution as a democratic progression from the country's dictatorial past. A constitutional referendum took place in December 2012 and was approved by a 63.8 percent and turnout of 32.9 percent of the electorate.<sup>32</sup>

About two and half years since the ouster of Mubarak, Egypt was on the verge of descending into complete chaos due to continued stubbornness of all actors that stemmed from built-up animosity and the allure of realizing all interests. It is important to recognize the unfortunate reality that not all political situations and crisis end peacefully, and that compromises are only viable when the contending parties believe that concessions will yield better outcome than not. However, when the conditions of such solutions "are highly uncertain each party will be better of seeking a full realization of its interest, that is, seeking to assert itself over other by whatever means."<sup>33</sup>

<sup>30</sup> Shahin was speaking at a press conference. Quoted in El Ghobashy, *Bread and Freedom*, 160.

<sup>31</sup> El Ghobashy, 164.

<sup>32</sup> "Egypt's Constitution Passes with 63.8 percent Approval Rate," *Egypt Independent*, 25 December 2012.

<sup>33</sup> Adam Przeworski, "Democracy as a Contingent Outcome of Conflicts," *Constitutionalism and Democracy*, ed. Jon Elster and Rune Slagstad (Cambridge: Cambridge University Press, 1988), 65.

By June 2013, there was open hostility between state institutions like the judiciary and police and the Muslim Brotherhood. While the President attempted to mitigate the growing polarization, he was not able to distance himself from his fellow Brotherhood members; in the meantime, the National Salvation Front (NSF), an eclectic front of liberal and leftist parties, politicians and intellectuals, had clearly made up its mind to use any support to change the situation. The mistrust and backroom deals (both domestically and externally) culminated in mass protests against the Muslim Brotherhood that called for early presidential elections, just one year into Morsi's tenure. The Muslim Brotherhood mobilized their supporters and sympathizers and established sit-ins in Cairo, calling for abiding by the legitimacy of the elected president. By the end of June, it was too late to seek a resolution and the crescendo (orchestrated by the military) led to the SCAF intervening to overthrow Morsi under the guise of saving Egypt from descending into a civil war and with the civilian blessing of the NSF and the Salafi al-Nour party.

On 3 July 2013, Defense Minister Abdel Fattah El Sisi ousted President Morsi, suspended the short-lived 2012 Constitution, installed the chief justice of the SCC as interim president, and commenced a crackdown on the Muslim Brotherhood and other Islamists. On 8 July, the new authorities announced a constitutional declaration to regulate the governance of the country and provide the framework to return to normal politics, including the amendment of the constitution and the presidential and parliamentary elections timelines.

#### **E. BACK TO THE FUTURE: EXCLUSION AND POWER CONSOLIDATION**

On 20 July, the interim president appointed a 10-member committee of senior judges and constitutional law professors (C-10) to propose amendments to the 2012 suspended constitution within a 30-day period. This technical expert committee would then refer the amendments to an appointed 50-member Constituent Assembly representing diverse social, professional, and demographic groups as outlined in a presidential decree on 8 August 2013. The appointed committees and the process was a clear 'back to the future' sign and a reminder of the old regime top-down approach to constitutional drafting. The main difference is that in 2013, the context and Egypt's polity was very different and more tense than under the pre-2011 regimes.

To get around the representation question, the new government resorted to the corporatist criteria it knows well and was previously outlined (and rejected) in the Ali al-Silmi basic rights and foundational declaration from 2011. With a dissolved parliament, the solution was to request each state and religious institution, syndicates and unions, and national councils to nominate their representatives, have the cabinet nominate public figures, and have the presidency appoints the selected members. Within 30 days of its appointment, the technical C-10 submitted a 198-article draft document that was mainly based on the 2012 Constitution with some adjustments reflecting the new power dynamics and coalition of convenience between the military on one side and the civilian groups on the other side.<sup>34</sup>

---

<sup>34</sup> An unofficial translation of the proposed amendments is available online at: <https://constitutionnet.org/vl/item/proposed-amendments-egypts-constitution-2012-english>.



This saw the removal of any excessive references and definitions of *Shari'a*; stripped Al-Azhar's capacity to veto legislation not in-line with Islam; shielded the military from any accountability, while empowering the presidency and returning to the old parliamentary system of first-past-the-post for individual seats and winner-takes-all for party lists.

The draft document was left with the 50-member CA that was appointed on 1 September by the President.<sup>35</sup> The appointed committee had 60 days to prepare the new draft constitution, which were to be followed by 30 days for public debate before a general referendum. While the committee composition reflected a cross-section of Egypt's society, it was hardly a representative one. One clear example is the missing representation of a political group that had claimed two-thirds in the last parliamentary elections. With the full exclusion of the Muslim Brotherhood, political Islam was represented with only one seat for al-Nour party. The relative homogeneity of the CA members meant limited serious disagreements and a far freer hand – not tied by ideologies or interests – when debating general matters and some of the rights provisions, acting as motivation to outperform those stipulated in the 2012 charter. The overall rushed timeline did not allow much time for any meaningful public debate beyond some limited events or media appearances by certain committee members to assure and encourage Egyptians to vote for the amended charter. Additionally, keeping the roadmap's timeline short including the constitutional framework served as a legitimization tool both internally and externally, and eased Western and some of the international criticism triggered by the overthrow of the elected president.

The constitutional procedural and drafting processes took place during a backdrop of an overall culture of fear, chaos, and uncertainty – the most inconducive time to build confidence and restitch the social fabric. This was clear in the growing terror attacks in Northern Sinai, state crackdown, arrests, the infamous massacres at both al-Nahda and Rabaa squares sit-ins, and the banning of the Muslim Brotherhood and its affiliate organizations.<sup>36</sup> Despite numerous assurances by the state, including from the presidency, to not use “exceptional measures” against anyone,<sup>37</sup> the Defense Minister called on Egyptians in a 24 July speech “for a popular mandate to confront violence and terrorism.”<sup>38</sup> The SCAF was looking for ways to legitimize their anticipated intervention against the pro-Muslim Brotherhood and the ousted president protesters. In that, the generals used mixed approaches from backchannel messages and pro-stability street mobilization to media incitement and the wrath of the judiciary and use of force. As observed by Abdullah Al-Arian, “The relentless show of force displayed that day [August 14] was intended to discredit the notion of mass mobilization writ large in a country where a *milyoniyya* (million-person protest) had become a commonplace occurrence since the uprising first took root on 25 January 2011.”<sup>39</sup> It also played a decisive role in consolidating power into the hands of the generals under the pretext of saving and protecting the nation.

---

<sup>35</sup> “[Members of Constitutional Committee of 50 Announced](#),” *Egypt Independent*, 1 September 2013.

<sup>36</sup> Patrick Kingsley, “[Muslim Brotherhood Banned by Egyptian Court](#),” *The Guardian*, 23 September 2013.

<sup>37</sup> *Al-Ahram Newspaper Headline*, 18 July 2013.

<sup>38</sup> *Al-Ahram Newspaper Headline*, 25 July 2013.

<sup>39</sup> Abdullah Al-Arian “[The Lasting Significance of Egypt's Rabaa Massacre](#),” *Middle East Report Online*, 23 August 2022.

The Committee of 50 continued its work despite the gloomy and dreadful climate, eagerly debating some of the articles among its members who represented a wide array of state institutions with strong egos and opinions. Nathan Brown observed that “With these institutional interests strongly represented but generally focusing on distinct clauses, a dynamic exists for most of them to get what they want – perhaps making the constitution more like a Christmas tree on which everyone hangs his or her favorite ornament than a comprehensively-designed sculpture.”<sup>40</sup>

Whereas the majority Islamist 2012 drafters were motivated to preserve their position at the heart of the new political system, assuming their continued domination of electoral politics, they chose to increase the parliament’s power and concede on some of the demands of the Salafis and military. The 2013 committee members, on the other hand, shared a common tacit desire to limit any role of political Islam and the Muslim Brotherhood in the future. Hence, the final text saw a reversal to a powerful presidency and further independence and empowerment of the military. On December 2, the committee overwhelmingly voted to approve the final 247-article draft document and refer it to the presidency to call for a referendum.

Public consultations on the new draft were selective to nonexistent, and no pluralistic referendum campaigns were tolerated. The government campaigned heavily in favor of the draft charter, framing it as a necessary step towards stability and security. Those attempting to campaign for a ‘no’ vote were intimidated, and some were arrested for exercising a right to a different opinion. In such a stifling environment, Egyptians were called to the polls on 14-15 January and the constitution was eventually approved by 98 percent of the voters and a turnout of 38.6 percent.<sup>41</sup> The results effectively paved the way for Sisi’s presidential bid.

## CONCLUSION

Challenges are multiplied during revolutions and transitions, especially when there is fragmentation and no consensus. The situation is far from optimal for any state-building or constitutional drafting during these times. Egypt’s transition experience is not unique or exceptional. It shares similarities with many other cases, some of which succeeded while others did not. The bottom line is that the process is inherently political and about power, and it is reflected in the constitutional, electoral, and socio-economic processes and management of the country. This is by no means an underestimation of the sincere and genuine efforts segments of the population have put into propelling change and offering an opportunity to imagine a new Egypt.

The Islamist-majority parliament, constituent assembly composition and debates, and the narrow victory of Morsi activated longstanding fears not only in the non-Islamist groups but also the unelected military and judiciary who believe in their constituent powers and sovereignty over certain state matters. The literature on revolutions points out

---

<sup>40</sup> Nathan J. Brown, “[Egypt’s Daring Constitutional Gang of 50](#),” *Carnegie Endowment for International Peace*, 20 September 2013.

<sup>41</sup> Patrick Kingsley, “[Egypt’s New Constitution Gets 98% ‘Yes’ Vote](#),” *The Guardian*, 18 January 2014.

to the existence of dual or multiple sovereign powers that play a role in the post-revolutionary processes. In that sense, we can see how the parliament (later President Morsi), the SCAF and the judiciary claimed such power and played a clear role in undermining directly and indirectly the whole transition process at different times. This essentially proves that during these relatively fluid times, in the words of Arthur Stinchcombe, no rules or agreements, even constitution-drafting, are irreversible.

The democratic transition literature highlights the critical role a sovereign or powerful entity plays claiming a perpetual right of overrule. As outlined by Adam Przeworski, “The crucial moment in any passage from authoritarian to democratic rule is not necessarily the withdrawal of the army into the barracks or the opening of the elected parliament but the crossing of the threshold beyond which no one can intervene to reverse outcomes of the formal democratic process.”<sup>42</sup> This is the role that the SCAF inherently believes it possesses, which was clear throughout the transition, and articulated by Mamdouh Shaheen days before the elections of the President in 2012. In other words, the military was keen to find a way to “slow down rates of change of relative power and decrease uncertainty about who, and what policies, will rule in the near and medium- range future.”<sup>43</sup>

The constitutional changes and drafting processes in Egypt between 2011 and 2014 were emblematic of a tumultuous period in the country’s political history. They reflected deeper divisions, hidden below the surface, within Egyptian society, and the struggle to balance competing ideologies and interests. The period remains a subject of ongoing debate, highlighting the complex nature of democratic transitions and the challenges faced in post-revolutionary societies, and serves as a reminder of the importance of inclusive and participatory processes.

Both the 2012 and 2014 Constitutions were drafted during socio-economic and political polarization and upheaval that had a renewed focus on social justice, fair representation, rights, and freedoms. State failures over the years created deep social injustices from limited employment and socio-economic mobility to inadequate access to healthcare and education. The drafters of both charters were less focused on a real discussion on how the constitution and the process could guide the transition period and rebuild a state that serves all citizens, and more interested in rushing the process, settling scores, and reinforcing longstanding fears and victimization. As Al-Ali observes, “both documents [2012 and 2014 Constitutions] were drafted in a context of severe and widening distrust between rival political camps and were both used a means for parties to reinforce political alliances and to seek to further extend their advantage over rivals.”<sup>44</sup> Unfortunately, the revolutionary environment did not lead to any revolutionary politics or constitution.

---

<sup>42</sup> Przeworski, “Democracy as a Contingent Outcome of Conflicts,” 65.

<sup>43</sup> Stinchcombe, “Ending Revolutions,” 54.

<sup>44</sup> Al-Ali, *Egypt’s Third Constitution in Three Years*.

The 2012 Constitution, with its Islamist tilt, sparked protests and intensified divisions within Egyptian society. The 2014 Constitution, while aiming to restore stability, raised concerns about the concentration of power, the erosion of civil liberties, and the weakening of checks and balances. It is safe to say that both constitutions failed to guarantee fundamental rights, including freedom of expression, assembly, and association as there was no mechanism for these rights to be enforced and keep state institutions accountable. They also highlighted the exclusion of certain political and social groups from the drafting process and the lack of mechanisms for meaningful public participation ahead of the public referendums. As Al-Ali concludes, “without democratic, effective, transparent and accountable institutions to enforce rights, they will remain just as theoretical as they did under the 1971 constitution, which is something that Egypt can ill afford today.”<sup>45</sup>

Finally, if constitutions drafted during transition periods must be judged on how far they helped or hindered democratic transitions, then both failed. The more immediate reason for failure of the 2012 charter was the mistrust and unwillingness among the civilian parties, politicians, and coalitions, particularly the Islamist, to come together to chart the next phase of Egypt’s transition. There is also the Muslim Brotherhood’s rush in fear of losing control of the process and the inability to build solid bridges with their challengers and opposition. This left the door open for the activist judiciary and military to scheme and to intervene, which increased the gap of animosity, victimization and confirmed biases among all parties involved. The 2014 Constitution failed because the balance of power in the coalition that created it was lopsided in favor of counter-revolutionary forces and the security service apparatus, and time made the imbalance worse, as a deteriorating law-and-order situation allowed the executive to obtain even more powers using both legal and extra-judicial tactics.

---

<sup>45</sup> Al-Ali.

## BIBLIOGRAPHY

- Al-Ahram Digital Archive: <https://www.eastview.com/resources/gpa/al-ahram/>.
- Al-Ali, Zaid. *Egypt's Third Constitution in Three Years: A Critical Analysis*. Stockholm: International IDEA, 2013.
- Al-Arian, Abdullah. “[The Lasting Significance of Egypt’s Rabaa Massacre](#).” *Middle East Report Online*, 23 August 2022.
- Al-Masry Al-Youm: <https://www.almasryalyoum.com/>.
- Al-Shorouk Newspaper: <https://www.shorouknews.com/>.
- Bahaa-Eldin, Ziad. “When Boycott Becomes Necessary.” *Al-Shorouk*, 27 March 2012.
- ———. “Alternatives to the Deadlock in the Writing of the Constitution.” *Al-Shorouk*, 3 April 2012.
- Brown, Nathan J. “[Egypt’s Daring Constitutional Gang of 50](#).” *Carnegie Endowment for International Peace*, 20 September 2013.
- Bulmer, Elliot. *What is a Constitution? Principles and Concepts*. International IDEA Constitution-Building Primer 1. Stockholm: International IDEA, 2017.
- Cheibub, Jose. *Presidentialism, Parliamentarism and Democracy*. New York: Cambridge University Press, 2007.
- Constitution-net : <https://constitutionnet.org/country/egypt>.
- Dunne, Michele, and Mara Revkin. “[Overview of Egypt’s Constitutional Referendum](#).” *Carnegie Endowment for International Peace*, 16 March 2011.
- Egypt Independent: <https://www.egyptindependent.com>.
- El Bishry, Tarek. “The Constitutional System between Politics and Law.” *Constitutionalism* 4, no. 9 (2006): 27-30.
- El Ghobashy, Mona. *Bread and Freedom: Egypt’s Revolutionary Situation*. Stanford: Stanford University Press, 2021.
- Elkins, Zachary, Tom Ginsburg, and James Melton. *The Endurance of National Constitutions*. New York: Cambridge University Press, 2009.
- Elster, Jon. “Legislatures as Constituent Assemblies,” *The Least Examined Branch: The Role of Legislatures in the Constitutional State*, ed. Richard Bauman and Tsvi Kahana. New York: Cambridge University Press, 2009, 181-197.
- Geddes, Barbara. “What Do We Know About Democratization After Twenty Years?” *Annual Review of Political Science* 2, no.1 (1999):115-144.
- Ginsburg, Tom (ed.). *Comparative Constitutional Design*. Cambridge: Cambridge University Press, 2012.
- Kingsley, Patrick. “[Muslim Brotherhood Banned by Egyptian Court](#).” *The Guardian*, 23 September 2013.

- ————. “[Egypt’s New Constitution Gets 98% ‘Yes’ Vote.](#)” *The Guardian*, 18 January 2014.
- Manshurat: <https://manshurat.org/taxonomy/term/31>.
- Morsy, Ahmed. “[On the Eve of Pivotal Supreme Court Rulings, All Scenarios Point to Turmoil.](#)” *Atlantic Council*, 13 June 2012.
- O’Donnell, Guillermo, and Philippe Schmitter. *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies*. Baltimore: Johns Hopkins University Press, 1986.
- Pitkin, Hanna Fenichel. “The Idea of a Constitution.” *Journal of Legal Education* 37, no. 2 (1987): 167-169.
- Przeworski, Adam. “Democracy as a Contingent Outcome of Conflicts.” In *Constitutionalism and Democracy*, ed. Jon Elster and Rune Slagstad. Cambridge: Cambridge University Press, 1988.
- Stacher, Joshua. *Watermelon Democracy: Egypt’s Turbulent Transition*. Syracuse, NY: Syracuse University Press, 2020.
- Stinchcombe, Arthur. “Ending Revolutions and Building New Governments.” *Annual Review of Political Science* 2, no. 1 (1999): 49-73.
- Tarrow, Sidney. *Strangers at the Gates: Movements and States in Contentious Politics*. Cambridge: Cambridge University Press, 2012.
- Waldron, Jeremy. *Political Theory: Essays on Institutions*. Cambridge, MA: Harvard University Press, 2016.