

Legal Mosaics: The Post-Mubarak Egyptian Constitutions, their Legal Legacies and Constitutional Heritages

Thesis submitted in fulfilment of the requirements for the
Degree of Doctor of Philosophy in
Socio-Legal Studies at
the University of Oxford

by

Heather McRobie
Wolfson College
and
Centre for Socio-Legal Studies
University of Oxford

Michaelmas Term, 2015

Abstract

Egypt's three constitutions in three years after the fall of Mubarak in 2011 were unprecedented in Egypt's constitutional history and reflect the socio-political context in which they were drafted. Each defines the relationship between citizen and state, between the branches of government, the role of the military and the role of religion in the state. This thesis demonstrates that the three constitutions are also 'legal mosaics' comprised in part of the legal legacies and constitutional heritages of Egypt's pre-2011 modern history, from the 1923 constitution onwards. The legal legacies of Egypt can be defined thematically as the British colonial legal legacy, the French colonial legal legacy, pan-Arabist socialist-influenced constitutions and Islamic jurisprudence and shari'a. The 2011 constitution's interim nature gives it specific qualities that combine constitutional qualities with provisional qualities of a document written during an unfinished revolution. The 2012 constitution reflects both Egypt's constitutional heritages and legal legacies, and the social and political conditions in which it was drafted, under the shortlived Muslim Brotherhood-backed Presidency of Mohammad Morsi. The 2013 constitution reflects both Egypt's constitutional heritages and legal legacies, and the social and political conditions in which it was drafted, after the removal of Mohammad Morsi and the subsequent state clampdown on the Muslim Brotherhood. Egypt's tumultuous recent history can be read through its successive post-revolutionary constitutional documents, including which parts of Egypt's legal legacies and constitutional heritages were drawn upon in the successive 2011-2013 constitutions. This is most evident in the significant role of Article 2 in the constitutions, defining the role of religion. The empirical evidence and analysis presented in this thesis provides a significant original contribution to scholarship in the field by demonstrating how the drafters of Egypt's three post-revolutionary constitutions drew upon the legal legacies and constitutional heritages of Egypt's past in a way that reflects the social and political situation of the post-revolutionary period. It pioneers the concept of 'legal mosaics' as a way to read constitutions that have been written in states with a modern constitutional history that involve successive previous constitutions, and demonstrates how conceiving of the post-Mubarak constitutions of Egypt as 'legal mosaics' is crucial to understanding the content, the salient features and the socio-legal dimensions of these constitutional texts.

Dedicated to Bassem Sabry
1982-2014

Table of Contents

Introduction: approaching constitutions	6
Research questions: the constitutions and their influences.....	7
Language and terminology in this study.....	9
Translation.....	10
Transliteration, Romanisation, and naming.....	12
Terminology	13
Writing through a revolution: my positionality as a researcher.....	17
Literature that informs this work.....	Error! Bookmark not defined.
Socio-legal approaches to constitutions	36
Methodological approaches	40
Contribution of the following chapters	47
The structure of this study	52
Conclusion.....	55
Chapter 1: Actors and institutions	57
Introduction	57
The ‘deep state’.....	60
The military	62
The judiciary	64
The Muslim Brotherhood.....	66
Al-Azhar	71
Political parties	74
Conclusion.....	77
Chapter 2: Egypt’s constitutional heritages.....	80
Egypt’s constitutional beginnings	82
From Nasser to Sadat, from Sadat to Mubarak	86
Mubarak’s constitutional amendments	100
Chapter 3: Egypt’s legal legacies.....	106
Introduction	106
Legal pluralism	106
Part 1: the legal legacies emanating from the constitutional heritages.....	120
Part 2: the legal legacies in focus.....	129
British and French legal influences: the Mixed Courts of 1875-1949 and the Civil Code of 1949	130
Shari’a and ‘Egyptian law’	138
Conclusion.....	145
Chapter 4: Egypt’s 2011 interim constitution – the first draft of Egypt’s future?	150
The 2011 revolution	152
Drafting the 2011 constitution.....	155
The 2011 constitution as an interim constitution.....	156
Salient features of the 2011 interim constitution	159
Conclusion.....	168
Chapter 5: The 2012 constitution – Morsi’s constitution.....	171
The 2012 constitution’s echoes of 1971	173
The constitutional referendum and constitutional crisis.....	175

Conclusion.....	187
Chapter 6: The 2013 constitution – the military constitution?.....	195
Introduction	195
From the 2012 constitution to the 2013 constitution.....	202
The 2012 constitution and 2013 constitution compared	212
‘Sisi’s constitution’? The constitution, the military, and the state, 2013-2014	220
Religion in the 2013 constitution: the Egyptian state against the Muslim	
Brotherhood	224
Conclusion.....	230
Chapter 7: The post-revolutionary constitutions in context	233
Introduction	233
The constitutional experiences of 2011, 2012 and 2013.....	236
The constitutional heritages and legal legacies in the post-revolutionary	
constitutions.....	245
Article 2 in the post-revolutionary context	253
The post-revolutionary constitutions as a struggle between the Muslim	
Brotherhood and the deep state.....	259
The divided deep state after 2011?	263
Conclusion.....	268
Conclusion	274
Introduction	274
The cumulative picture built by this work.....	276
2014-2015: a new stability? Sisi-style authoritarianism? Notes on a year without a	
new constitution	282
Insights and contributions of this work.....	284
Limitations of this study.....	289
Empirical limitations	290
Limitations of variables	292
Limitations of language	294
Potential avenues for future research.....	295
The wider context beyond this study.....	305
Conclusion.....	310
Bibliography	313
Primary sources	314
Secondary sources and academic literature	314
Media sources, online sources and other contemporary sources.....	319

Introduction: approaching constitutions

Between 2011 and 2014, the state of Egypt had three constitutions. If the mass protests and uprisings of 2011 that captured the world's eye had not been so astonishing, the mere fact of three constitutions in three years would have been striking, at least, in itself. Out of the flux of the Egyptian revolution, and out of the tumult of the mass uprisings that removed several authoritarian leaders from power in the Middle East and North Africa region in 2011, the three constitutional texts of Egypt's post-revolutionary period now remain, as a papertrail, like constitutional residue of this unprecedented period in Egyptian history.

The first constitution, in 2011, was always intended as an interim document; the second constitution, in 2012, was intended as a permanent document yet did not remain the constitution of the state of Egypt for even a year; the third constitution was drafted in the wake of the military-backed removal of a democratically elected President.

Taken together, the texts sit like sedentary layers of Egypt's recent history, rich sites for intellectual archeology, as they simultaneously stand as symbol for, and contain traces of, the post-revolutionary period that brought them into existence. This thesis takes these three constitutional texts as the primary terrain upon which to explore Egypt's recent history, the 2011 revolution, and its aftermath.

In order to fully understand the significance of the constitutional texts, however, they must be situated in their context, and it is this contextualisation – anchoring

the constitutional texts in the 'cultural text' from which they emerged, and approaching them from a social-legal perspective – that drives and structures the work undertaken here.

This work is a contribution both to the wider academic study of the 2011 Egyptian revolution and its aftermath, and to the broader scholarship on modern Egyptian history and politics, and – simultaneously – to the academic scholarship on constitutions; in the latter sphere, this work contributes both new concepts (such as 'legal mosaics') and ventures into under-researched areas (such as interim constitutions as a category of constitutions), whilst also applying existing concepts in socio-legal studies to the terrain of new subject-matter. The analysis of the three post-revolutionary constitutional texts undertaken in this work is also 'placed on the table' for both socio-legal scholars and scholars of modern Egypt and the Egyptian revolution, as new material for other academics to engage with and draw their own conclusions.

Research questions: the constitutions and their influences

The central research question driving this study is to ask what the salient or significant features of the post-2011 Egyptian constitutions are, and what factors contributed to the inclusion of these features in the three post-2011 constitutional texts. This research question is underpinned by several more specific concerns, outlined below.

As what could be taken to constitute the 'significant features' depends upon what one as a researcher is loading with value or considering 'significant', the process of identifying the 'significant features' has been fine-tuned, as will be outlined below, to identifying and analysing the ways in which the constitutional texts outline the relationship between the citizen and the state, and the ways in which the constitutional texts outline the relationship between the branches of government.

The second strand of the research question of this study, emanating out of the original question driving this research, are therefore what are the heritages, legacies and frameworks that Egypt had to draw upon during the post-revolutionary period in the drafting of the constitutional texts.

As Part 1 of this thesis demonstrates, a socio-legal approach to this question involves situating the constitutional texts in both their legal/constitutional and social context; Part 1 takes, in turn, the key actors and institutions influencing the post-2011 constitutional texts; the constitutional heritages of pre-2011 Egypt as influencing factors of the post-2011 constitutional texts; and finally the legal legacies of Egypt, meaning, the constituent components of Egypt's unique legal pluralism, and the different bodies of law and main traditions of law that existed prior to 2011.

These three factors together – key institutions and actors, constitutional heritages, and legal legacies – are presented as (part of the) 'cultural text' from which the post-2011 constitutional texts were drawn. Part 2 then closely analyses the three

post-2011 constitutional texts in turn, locating the salient features within this broader 'cultural text.'

These research questions, taken together, drive the choice of methodology, and the choice of which bodies of scholarly literature – and which conceptual frameworks within this literature – are referred to in order to understand both the texts of the constitution and the 'cultural text' from which they emerged. The (interdisciplinary) approaches adopted here to fully understand and contextualise the post-revolutionary constitutional texts will be outlined further below. The concept of 'legal mosaics' is both a significant contribution to the study and a key component of the research question, as it provides a way to understand how the heritages and legacies manifest in the post-2011 constitutional texts. The nature of the 'legal mosaics' are determined by Egypt's unique legal pluralism, or 'legal ecosystem', stemming from the co-existence of British legal influences, French legal influences and sharia in the post-independence constitutions.

Language and terminology in this study

The interdisciplinary nature of the this study means bringing together methodologies, disciplines and bodies of knowledge that do not often 'speak' to one another in scholarship. As such, necessary to briefly acknowledge how some terms will be used, and the potentials for ambiguities when 'translating across' from one discipline to another, as well as mitigating against – or at least acknowledging honestly – the ways in which certain words, phrases and dates relating to the revolution and post-revolutionary period have become loaded and metaphorically weaponised during the political and social tumult of 2011-2014.

In addition to these issues of conceptual ‘translating across’, there is also the more literal issue of translation. As a native speaker of English who is able to read French and Arabic (Modern Standard Arabic of *FusHa*) written sources, my research has been both enhanced and restricted by its multi-lingual nature. The work presented here deals with three texts original written in Arabic (the 2011, 2012 and 2013 constitutions of Egypt) as its primary sources, but the work is presented in such a way that no knowledge of Arabic is required in order to engage with the analysis and argument presented here. The thorniness of various linguistic issues and difficult, necessary linguistic choices does, however, require further elaboration – firstly the issue of translation, secondly the issues of transliteration and naming, and thirdly the issue of (conceptual and academic) terminology, which are outlined in turn below.

Translation

The official translations of the post-2011 constitutions have been used. For the pre-2011 constitutions of Egypt’s modern history, there are some small contentions over official translations (such as the 1923 constitution), and in these cases I have used the most widely used translation and checked the original Arabic version of the constitution to clarify that the translation is appropriate.

I have used my own translations sparingly and only where an official translation from Arabic to English is not available. Translation was necessary predominantly for the use of contemporary Egyptian media sources, although there were several

ways to limit the need to translate texts. For instance, the media outlets and newspapers *Mada Masr* and *Egypt Today/ Al-Mousry Al-Youm* both largely published in both English and Arabic throughout the post-revolutionary period, so I have used the English versions of their articles rather than doing my own translations. I used the popular newspaper and website Youm7 (السابع اليوم) until it shifted to producing an English-language version *The Cairo Post* in 2013, after which I used the English-language version of its articles as the source to cite directly. I therefore used my own translations only for texts from Egyptian newspapers such as *Al Doustour*, *Al Watan* and *Al Shourouk*, when no official English translation was available.

This project is not a linguistic study, and as such the necessary imperfections of translating from one language to another has not been explicated through examples at great length, unless the imperfection of translating an Arabic phrase or concept is germane and substantive, such as the particular penumbras and connotations of the word '*karama*', both in the demands and framings of the revolutionaries, and in official post-revolutionary texts. The exception to this is the re-wording of Article 2 in the successive constitutions of both pre-2011 and post-2011 Egypt, where – as will be outlined in Part 2 of the thesis – significant implications for the role of Islam in the Egyptian state hinge upon remarkably specific linguistic changes in the wording of the successive Article 2s across the constitutions.

Transliteration, Romanisation, and naming

During my intensive training in the Arabic language (to improve my Modern Standard Arabic and Egyptian dialect) in 2012-2013, I consulted several Arabic linguists in Cairo over the best approach to transliteration and transcription. The approach used for the purpose of this study is Romanisation (or transcription) rather than transliteration in the strict linguistic sense of the **ISO 223-2:1993**, or other strict transliteration schemas used by linguists to render Arabic in Latin script letter-for-letter and diacritic-for-diacritic. Transcription focuses on representing the sound of the language, rather than pairing each written letter in Arabic with an equivalent in Latin script. However, where other authors being quoted have used other transcription or transliteration systems I have not changed their authorial choices in rendering Arabic in the Latin script.

Similarly, for surnames that use ال as a prefix in their original Arabic form, I have either opted to use the transliteration or transcription that the author or public figure uses for themselves, as the name by which they self-identify when using the Latin script, or the rendering by which they are most commonly known. As a result, there are some discrepancies, such as Hodda ElSadda, which is how one of the members of the 2013 constitution drafting committee renders her name in Latin script, and scholars such as El-Grundy, Elaasar, El Dabh, Al Ali, and so on. For public figures such as President Sisi I use *Sisi*, rather than *Sissi* or *Sisi*, throughout the work, but I have not changed this where those being quoted as written sources transliterate or transcribe the name as *Sisi* or *Sisi*.

Terminology

Much of the language used to grapple with the events of 2011-2014 are, themselves, contested and charged with unresolved tensions – like the constitutional texts that are the primary sources of this work, everyday language, the language of official government statements, declarations and laws, and the language of both state-owned and private media have been a terrain upon which the contested legacies of the 2011 revolution have played out. Everything from the language used to refer to the mass killings in Rabaa al-Adewiya in August 2013 (as will be discussed at length in Chapter 6) to the new names of squares, streets, and anniversaries¹, have been loaded with contested meaning, and using one term over another can be read as a sign of allegiance to one or more of the political positions, voices, and/or actors of the 2011-2014 period. In general, my intention as an academic working on this subject is to describe and analyse, not polemicise.

Yet the experience of researching and writing on Egypt in this period of flux is such that, even if one as a scholar is not politicised, the situation – and language itself – can be read by others as a political act. I have endeavoured to minimise the use of deliberately contested language in this work, but difficult authorial choices were necessary.

¹ As will be discussed further elsewhere, particularly in reference to the renaming of Rabaa al-Adewiya in 2015, physical (urban) sites of political significance during the revolutionary and post-revolutionary period were self-consciously renamed by successive post-revolutionary governments, although particularly under Sisi, as a way of controlling the narrative and political geography of the revolution. See, for instance: *Legal Appeal to Promote Sisi Rename Public Squares in his Honour*, in Mada Masr <http://www.madamasr.com/news/legal-appeal-promote-Sisi-rename-public-squares-his-honor>. This will be explored in greater detail in Chapter 6 of this work.

Perhaps the most loaded word is 'revolution' [ثورة] itself. As I found on my fieldwork, and as is discussed further in Chapters 4, 5, and 6, whether or not one considers the removal of Mubarak from power in February 2011 as 'revolutionary' is a subject of live and unresolved debate; more unresolved – and more loaded with political weight – is whether one refers to the removal of President Morsi from office on July 3rd 2013 as a 'second revolution', a 'restoration' of the original (February 2011) revolution – or a *coup d'état*.

Where I have quoted others using language referring to this period I have tried to contextualise their statements and highlight the ideological and/or political position from which they are approaching the events of the summer of 2013. For the purpose of this work, unless otherwise explicated, 'pre-revolutionary' refers to the period prior to the revolution that overthrew Hosni Mubarak in early 2011, and 'post-revolutionary' refers to the period from 2011 after Mubarak was removed from power.

Although perhaps not as charged as the word 'revolution,' the phrase 'Arab spring' (or العربي الربيع) to refer to the mass uprisings and (successful, partially successful or unsuccessful) attempts to overthrow authoritarian and un-elected political leaders in the Middle East and North Africa region in 2011 was also become a subject of debate, amongst academics working on this period, and amongst other actors with a stake in the issue, from the regional and national media outlets to political groups.

Amongst scholars working on this period and region, there has been a growing shift against using the popular phrase 'Arab spring' to describe the regional events of 2011. The argument has increasingly been made by scholars and self-identifying Egyptian revolutionary activists alike that the phrase 'Arab spring' is problematically Eurocentric, transposing onto the events of 2011 paradigms drawn from the European experience of the 1968 mass protests or 'Prague Spring', as if to imply that events in the Middle East and North Africa region are 'the same, only later' to historical events in the 'west'.²

As an alternative to the phrase 'the Arab spring', other umbrella-terms of the events of 2011 in the Middle East and North Africa have been proposed, and some have gained widespread currency in academia, journalism and amongst self-identifying activists alike, notably 'Arab uprisings' and 'Arab awakening.'³

However, both these terms have since been woven into the fault-lines of the

² Marwan Musashar has argued that, in addition to its Eurocentric connotations, "the label "Arab Spring" proved too simplistic from the beginning" because "the process of Arab transformation will need decades to mature." Muashar, Marwan. 'Year Four of the Arab Awakening.' *Carnegie Endowment for International Peace*, December 12th, 2013. Available online at: <http://carnegieendowment.org/2013/12/12/year-four-of-arab-awakening> [accessed January 19th, 2015].

³ Rana Nessim and Mariam Ali wrote a response to Saeed Rahnama's criticism of the phrase 'Arab awakening' as one that denied the agency of the peoples of the Middle East and North Africa region prior to the 2011 uprisings (arguing that the phrase erroneously implied "that over 400 million people in 22 countries had been politically dormant and are now 'awakening'." (Rahnema 2015) by outlining the ways in which the events of 2011 were unprecedented in terms of the numbers and kinds of mass protests and mass communication used to coordinate resistance to authoritarian leaders. The scale and nature of the events of 2011, they argue, justify demarcating it as an 'awakening'. See: Nessim, Rana and Mariam Ali. 'On Arab Awakening: a Response'. *openDemocracy*, 29th June 2015. Available online at: <https://opendemocracy.net/arab-awakening/rana-nessim-mariam-ali/on-arab-awakening-response> [accessed June 29th, 2015].

ongoing debate over the role of Islam in the post-2011 states.⁴ As a result of the complicated connotations that ‘Arab spring’, ‘Arab awakening’ and ‘Arab uprising’ all carry, in order to best handle the subject matter at hand, the preferred term in this study will be ‘Arab revolutions’⁵ or ‘revolutions of 2011’.

⁴ Tariq Ramadan’s *The Arab Awakening* (2012), written in the aftermath of – and as a reflection upon – the regional events of 2011, advances the idea of “Islamic democratic secularism” (p7) and argues, as he explained in an interview with myself and Rosemary Bechler (2012) that “Muslim will only have proven the singularity of Islam when they demonstrate its universality” and this demonstration is bound up with the project he envisions of finding new ways in which Islam and democratic secularism can work in tandem. He also notes the centrality of self-identifying Islamists, such as the Muslim Brotherhood, in the anti-authoritarian protests of 2011 throughout the Middle East and North Africa region, and their cultural power as an oppositional force to authoritarian rule in the pre-2011 era, aligning Islamists with anti-authoritarian self-identifying ‘democrats.’ Engaging in an ‘applied Islamic ethics’ (p45-6) which presents both a descriptive and normative case for the compatibility of Islam and democratic pluralism, and the necessity of including Islam in (future and potential) democracies of Muslim-majority countries. In Ramadan’s reading of the 2011 uprisings and revolutions, the 2011 uprisings were an ‘awakening’ that was both Arab and Islamic in character, and involved (or required) a re-negotiation of the relationship between Islam and the nation-state in the countries that experienced revolutions. He therefore uses the word ‘awakening’ (2012: interview) to signify both the mass uprisings and protests and a shift in ways of conceptualising the role of Islam in the nation state. As such, the phrase ‘Arab awakening’, following Ramadan’s widespread and widely-disseminated use of the phrase in his book *The Arab Awakening*, and in articles and interviews, in a way that carries the connotations of his normative reading of the 2011 uprisings, has taken on implications of the 2011 uprisings as an ‘Islamic’ uprising. See, for instance, Bechler, Rosemary and Heather McRobie. ‘Tariq Ramadan interviewed post-Arab Spring.’ *openDemocracy*, 5th December 2012. Available online at: <https://opendemocracy.net/tariq-ramadan-heather-mcrobie-rosemary-bechler/tariq-ramadan-interviewed-post-arab-spring> [accessed 6th August 2014].

⁵ It is worth briefly noting that, amidst the debates amongst scholars and activists alike about the relative merits of the phrases ‘Arab spring’, ‘Arab awakening’ and ‘Arab uprising’, only the second word in the phrase has become a site of intellectual contestation, and there has been a surprising lack of criticality from the same scholars, journalists and activists about the descriptor ‘Arab’. Dabashi, Muasher, Nessim, Ramadan, Sabry and other scholars and writers who have engaged in the discussion about how best to describe and conceptually boundary the 2011-2014 period in the Middle East and North Africa region have not interrogated the issue that not everyone involved in the revolutions, mass protests and uprisings self-identified as ‘Arab’ or spoke Arabic.

A final issue on contested terminology concerns the language (specifically, the year date) used to refer to the post-revolutionary constitutional texts themselves. The third (and, at the time of writing, current) post-revolutionary constitution of Egypt – as will be explained in further detail in Chapter 6 of this study – is referred to here as the 2013 constitution, signifying the year in which the constitution was drafted. Other contemporary analysts have made the valid choice to refer to it as the ‘2014 constitution’, to signify the year in which the constitution was put to a national referendum and subsequently became the active constitution of Egypt.

Writing through a revolution: authorial positionality as a researcher

During the time in which this research was undertaken, Egypt elected the figure widely hailed as its first ‘democratically elected President’ in the summer of 2012, went through an unprecedented and *sui generis* constitutional crisis under President Morsi in late 2012, which resulted in a new – widely-alienating – constitution; Egypt then saw its the head of state removed from power (by popular uprising, or by military coup, depending on one’s viewpoint) for the second time in little over two years in the summer of 2013. It then had a new constitution put to the Egyptian public by referendum less than a year later, in January 2014.

Political power switched hands from Mubarak to SCAF to Morsi to Mansour to Sisi within three years; constitutions have been suspended, amended and re-written at a speed unprecedented in Egypt’s history; thousands have died in political violence,

tens of thousands civilians detained and tried in military courts ⁶ whilst establishing genuine rule of law remained obstinately elusive in the post-Mubarak era. And by late 2014, in a surreal inversion of the 2011 January 25th revolution, the deposed authoritarian leader Mubarak was effectively freed from prison, whilst Mohamed Morsi – elected by popular vote some two years earlier – was facing the death penalty.⁷ The dust has not even begun to settle upon such tumult.

Evidently, writing in the midst of such turmoil and unprecedented change brings with it significant obstacles. The practical limitations that have been placed upon this research due to the fact it was undertaken during this period therefore require

⁶ Although it is beyond the remit of this study to outline all of the ways in which the political turmoil of 2011-2014 manifested in terms of the violation of the civil rights of civilians, the exponential increase in the use of military trials to try civilians is particularly noteworthy, as the successive post-revolutionary constitutions were one of the ways through which this fundamentally anti-democratic and anti-civil rights practice was entrenched. I have written more extensively elsewhere on the shifting landscape of the ways in which military trials have been used to try civilians, against their right to a fair trial, from the Mubarak era through to the post-2011 SCAF, Morsi and Sisi periods, and will refer to it in Chapters 4 and 5 of this work. See, for instance: McRobie, Heather. 'Military trials in Egypt, 2011-2014'. *Report*, Chr. Michelsen Institute, 2014. Available online at: <http://www.cmi.no/publications/file/5304-military-trials-in-egypt-2011-2014.pdf> [accessed November 16th 2014].

⁷ The trials of Hosni Mubarak and Mohamed Morsi, and how they thread through the socio-legal 'cultural text' of the post-revolutionary climate, is a subject for important future work which could foreground the two trials and their strikingly different outcomes. The two trials only appear sporadically in the story being told in this work – of the successive constitutional texts – but I have written elsewhere on the likely significance of the Mubarak trial for Sisi-era Egypt's legal trajectory. See, for instance: McRobie, Heather. 'Six Things the Mubarak Trial Means for Egypt and the Revolution.' *Novara Media Wire*, 1st December 2014. Available online at: <http://wire.novaramedia.com/2014/12/6-things-the-mubarak-trial-means-for-egypt-and-the-revolution/> [accessed March 15th, 2015].

further elaboration, including my positionality⁸ as a researcher during this period, as these limitations and subjectivities have shaped both the methodology used for this work and the literature that frames and informs this study.

I undertook fieldwork in Egypt (in Cairo and briefly in Alexandria) in the summer of 2012 and the winter of 2012, in order to collect media clippings covering the constitution and constitution-drafting process (during what was the first ‘final’ constitution drafting process, of the brief period in which Mohamed Morsi as President) from the Egyptian media that would not be available online. The aim was also to conduct interviews, as much as would be possible in the political climate, with political figures and civil society activists, and thereby gain a more complete understanding of the issues being raised throughout the 2012 constitution drafting process. (I also took intensive Arabic courses in Cairo throughout this period in order to improve my understanding of *fusHa* Arabic, to enable me to more fluently read both the constitutional texts and the media

⁸ I use the term ‘positionality’ here although I am not an anthropologist, and nor is this work an anthropological endeavour, because it neatly pinpoints the issues I found affecting my fieldwork in Cairo and the ways in which my research has been shaped by my own relationship vis-à-vis the subject being studied. Positionality, as an idea, emerged out of the ‘reflexive’ cultural anthropology of the 1980s (for instance, Clifford and Marcus’ 1986 *Writing Culture: The Poetics and Politics of Ethnography*), and has since developed as a cornerstone of anthropological thought. It highlights the (social) position of the researcher vis-à-vis their research, particularly any power relations that shape the kinds of access and information a researcher receives during fieldwork, and any subjectivities of the researcher that have a bearing upon how information gained through fieldwork is interpreted. My use of it here is not to present this study as anthropological but merely to note how my research was shaped both my subjectivity and identity, in terms of access, and by the experience of researching near-contemporaneous events during a period of political turmoil and volatility.

debates in the Egyptian press on the 2012 constitution, and undertook fieldwork in Tunisia during the summer of 2012⁹).

Events, however, somewhat overtook my research plans: President Morsi effectively committed political suicide with his mishandling of the ‘constitutional crisis’ of late 2012 (during which period I was in Cairo on fieldwork), and six months later was removed from power. A new constitution was proposed, drafted, put to a referendum (in January 2014) and remains the ‘final’ post-revolutionary constitution at the time of writing.

This unexpected trajectory, with Morsi replaced by Mansour and ultimately by Sisi, and the 2012 constitution replaced with a new constitution, is – in some sense – the story that this work seeks to tell. However, the practical difficulties of ‘running alongside’ these events as a researcher were considerable, particularly for researchers such as myself who had conducted research, including interviews, during the brief Morsi Presidency – as will be noted in greater detail in Chapter 6, researchers and journalists who had had any contact with members of the Morsi regime or Morsi supporters found themselves in the difficult position of being

⁹ Much of the research conducted in the early stages of this project, which were intended for a comparative analysis of the post-2011 constitutional trajectories of Egypt, Libya and Tunisia, has not been included in this thesis. However, some of the writing I produced during this time did inform the analysis presented in this thesis, such as short pieces of analysis I produced during fieldwork in Tunisia in August 2012, during the controversy over Article 27 in the (then) proposed constitution. This controversy raised broader questions, for both Tunisia and the region, on the role of constitution-drafting in post-2011 transitional justice processes. See, for instance: McRobie, Heather. ‘Will the Tunisian Constitution Erode the Gains of Women in the Arab Spring?’ *New Statesman*, 15th August 2012. Available online at: <http://www.newstatesman.com/blogs/politics/2012/08/will-tunisian-constitution-erode-gains-women-arab-spring> [accessed January 18th, 2015].

marked by the Mansour/Sisi regime(s) from July 2013 onwards as having 'associated' with the Muslim Brotherhood, who were first outlawed and then declared a terrorist organisation.

Encroachments on both freedom of the press¹⁰ and academic freedom of expression¹¹ posed practical obstacles to researchers during this period.

¹⁰ The ebbing and flowing of freedom of expression, censorship of the media, and a political climate conducive to self-censorship, will be discussed in Part 2 of this work. The shifting media landscape of the 2011-2014 period is a complex story, and the point here is merely that this posed practical problems to researchers, both in terms of access to information and in terms of safety, as cases that censored or punished journalists also indicated that academic researchers could be pursued on the same grounds. In shorthand: censorship and intimidation of journalists were a feature not only of the Mubarak era and the 2011 post-revolutionary SCAF era, but also of both the Morsi and Mansour/Sisi eras. The high-profile trial of three Al Jazeera journalists for covering the overthrow of Morsi in 2013 bleakly demonstrated how journalists – and other researchers – were metaphorically caught in the crossfire in the antagonistic relationship between the Mansour/Sisi regime(s) and self-identifying Islamists and the Muslim Brotherhood. I have outlined the changing, but ever-present, nature of press censorship and encroachments of freedom of the press elsewhere. See, for instance: McRobie, Heather. 'From Morsi to Sisi: the evolution of targeting journalists in Egypt.' *OpenDemocracy*, 18th August 2013. Available online at: <https://www.opendemocracy.net/5050/heather-mcrobie/from-morsi-to-sisi-evolution-of-targeting-journalists-in-egypt> [accessed March 13th, 2015].

¹¹ As will be reiterated elsewhere, encroachments on academic freedom, including the imprisonment of academics for pursuing scholarly research, became a severely limiting factor for many researchers and scholars attempting to pursue their research in Egypt during this period. I have discussed the issue of academic censorship elsewhere, at *Index on Censorship* (McRobie: 2014). However, since my work for Index on Censorship there have been new developments: the prominent Egyptian scholar Emad Shahin was sentenced to death in absentia in 2015 in a verdict that was widely condemned as politically motivated, and in June 2015 a young French post-graduate student was arrested for conducting research on the April 6th Youth Movement, a group that was central to the mass protests of 2011 but has since come under attack by Sisi. See, for instance: McRobie, Heather. 'Academia in Egypt: Security forces and self-censorship'. *Index on Censorship*, April 15th, 2014. Available online at: <https://www.indexoncensorship.org/2014/04/academia-egypt-security-self-censorship/> [accessed March 3rd, 2015].

My position as a female researcher in Egypt also further complicated my potential points of research during my fieldwork, given the ways in which social space in Cairo was reconstituted in the aftermath of the revolution.¹²

My plans for fieldwork also had to be altered in light of political developments throughout the period – my intended placement with the Cairo Institute for Human Rights Studies had to be cancelled, and shortly thereafter the organisation made

¹² Although it is beyond the remit of this study to extensively detail the ways in which sexual violence at sites of protest and other political spaces became – in the language of Human Rights Watch – ‘epidemic’ in Egypt during the revolutionary and post-revolutionary period, pervasive violence against women is a significant phenomenon of Egyptian social reality since the revolution, and – aside from its myriad significances to scholars working on social realities in Egypt – it caused practical problems to female-identified researchers (as well as journalists and other relevant individuals) during this period of Egypt’s recent history. I have written elsewhere on the ways in which pre-existing patriarchal modalities and patriarchal constructions of public (urban) space in Egypt became recalibrated during the mass protests of 2011, and how this created new opportunities and motivations for mass sexual harassment and sexual violence. As well as outlining the citizen-led organisations that grew up during the revolution in response to sexual assaults in Tahrir Square, I have made the case elsewhere that we must conceptualise the ‘epidemic’ levels of sexual violence and violence against women in Egypt at least partly as state violence against women, due to extensive documented evidence of the involvement of state forces, the military, and also Islamist groups, in perpetrating sexual violence for political ends (including the end of ‘scaring female protesters away from sites of protest’). I have also published work elsewhere on the way in which discourse on sexual violence itself became politicised after the ascendancy of Sisi, which created additional practical problems for those wishing to either report their own assaults or gain accurate information. See, for instance: McRobie, Heather. ‘Sexual violence and state violence against women in Egypt, 2011-2014’. *Chr. Michelsen Institute* report, 2014. Available online at: <http://www.cmi.no/publications/file/5226-sexual-violence-and-state-violence-against-women.pdf> [accessed March 15th, 2015]. The relevance of this multi-faceted and complex issue to the work at hand is that it posed additional practical problems of safety for female researchers such as myself conducting research in Egypt throughout 2011-2014.

plans to leave Egypt in light of the renewed difficulties for human rights NGOs under Sisi.¹³

These difficulties have inevitably threaded themselves into the work presented here, shaping the choices of sources and leaving silences and asymmetries in the information presented. A final difficulty worth briefly noting here, of undertaking this study during the 2011-2014 period, has been the difficulty – and opportunities – for an academic to keep abreast of new academic publications on what was, for many researchers on modern Egypt, a paradigm-shifting series of events. As will become more apparent in the literature review, an additional obstacle to conducting research on the near-contemporaneous period of post-2011 Egypt has been the difficulty in keeping abreast of – and critically engaging with – the waves of new scholarship on the Egyptian revolution and its aftermath as scholars from a number of relevant disciplines turned their attention to the events and significance of the revolutions of 2011.

¹³In November 2014, Sisi drew upon Mubarak-era laws from 2002 that required NGOs to register with the government in order to bring human rights organisations, in particular, under more intense scrutiny. Whilst some NGOs and civil society organisations chose to re-register after Sisi evoked the 2002 law in a public statement in November 2014, others, such as the Cairo Institute of Human Rights Studies, chose instead to move their offices outside of Egypt. The Cairo Institute of Human Rights Studies closed its Cairo offices and established a new headquarters in Tunisia. I have written elsewhere on the technicalities and likely implications of this development, under Sisi, of enforcing the Mubarak-era laws, which force NGOs to register and agree to have their activities closely monitored by the state. See, for instance: McRobie, Heather. 'Egyptian Human Rights Groups Face Difficult Choices After Sisi's Ultimatum.' *Oxford Human Rights Hub*, 21 January 2015. Available online at: <http://ohrh.law.ox.ac.uk/egyptian-human-rights-groups-face-difficult-choices-after-Sisis-ultimatum/> [accessed March 5th, 2015].

As a final note on the technicalities of language and presentation: the 2011, 2012 and 2013 constitutions constitute the primary sources of this work, and such the chapters that deal with each in turn (Chapters 4, 5 and 6) do not annotate every quotation but quote from and refer to the Egyptian government-issued English translation in each case.

Intellectual approaches

Two main tributaries of scholarly knowledge feed into this work and provide the backbone of the intellectual approaches: the first is the study of constitutions from socio-legal perspectives, and the second is the body of scholarly work on modern Egypt, and the developing scholarship on the 2011 revolutions of the Arab world and their aftermath. As such, this study brings together the internal conversations and conventions of a number of disciplines that do not often 'speak' to one another.

The first body of academic literature that informs this work is the academic study of constitutions. As an extensive body of scholarship with its own academic debates, this will be discussed separately below in order to delineate the approach to constitutions taken in this study and situate it within the socio-legal project of approaching constitutions as a whole. It is worth noting that, although the work undertaken in this study takes three constitutional texts as primary sources, and compares and contrasts them as part of the project of assessing how the key actors and institutions, legal legacies and constitutional heritages of Egypt influenced the post-revolutionary constitutional texts, the work undertaken here is not that of comparative constitutional law.

The core of the intellectual approach is, rather, a socio-legal study of three constitutional texts, which situates the texts in the broader ‘cultural texts’ from which they emerged, the ‘cultural texts’ here meaning the key actors and institutions, the legal legacies and constitutional heritages.

Comparative constitutional law, as a discrete discipline, entails a different, albeit related, endeavour: it is concerned with comparing constitutional law, but not engaged in the *socio*-legal project of anchoring such a comparison in the social context, either to trace its impact or emergence from a sociological (or socio-legal) perspective.¹⁴ Nonetheless – the works of several scholars who engage in the field of comparative constitutional law but who have conducted in-depth studies of constitutional and constitution-drafting experiences provided intellectual framework and core conceptual anchors.

The Soul of a Nation, Hassen Ebrahim’s comprehensive and ground-breaking¹⁵ study of the successive drafts, and drafting-processes, of the South African

¹⁴ It is beyond the remit of this study to survey the extensive literature within legal studies concerned with comparative constitutional law. Tschentscher (2011) has comprehensively outlined the different approaches of comparative constitutional law, from Raz to Finer, Bogdanor and Rudden, and the methods of constitutional comparison, from ‘substantive’ studies to ‘dialectical’ and ‘reflexive’ methods. Finer, Bogdanor and Rudden (1995) have also outlined how comparative constitutional law is situated within the academic practice of comparative law as a whole. However, as noted above, whilst valuable contributions to our understanding of constitutions, these undertakings are not *socio*-legal in nature – the socio-legal approaches to constitutions, a tradition to which this study contributes, will be outlined in a separate section below.

¹⁵ South Africa’s post-apartheid trajectory has often been cited as a paradigm-shifting example in transitional justice: Ruti Teitel (2000; 2014), for instance, sees

constitution as the country transitioned from apartheid provides an intellectual template for how to engage with constitution-drafting processes. *The Soul of a Nation* surveys both the constitution-drafting processes, and successive drafts of the constitutional texts, pinning these drafts to internal dynamics and debates between the constitution *drafters* and other relevant actors (Ebrahim:1998). It is an innovative use of archival material, constitutional text and interviews, which Ebrahim weaves together to create a thick description of how the constitution in its final form came into being and the origins of specific articles within the final constitutional text, laying the respective drafts of the constitution drawn up by the different parties and political actors on the table to examine the genealogy of ideas in the final South African constitution from the tributaries of draft constitutions that fed into it. Ebrahim's exploration of the 'draft texts' behind the final text partly inspired my decision to consider the 2011 interim constitution as one of the constitutional texts under analysis here, and his method of pinning particular articles in the final text to their 'heritage' in earlier drafts encouraged me to think of

South Africa's Truth and Reconciliation Commission as paradigm-shifting in the genealogy of transitional justice, and Lutz and Sikkink (2001), in their comparative work on transitional justice mechanisms, see South Africa as an example of the start of a new 'justice cascade.' In addition – and often overlooked, in comparison to South Africa's significance to transitional justice genealogy – South Africa's post-apartheid constitutional experience also initiated shifts in constitution-writing and, through shifting the ways in which constitutions are approached, became paradigm-shifting in comparative constitutional law. Literature on South Africa's post-apartheid constitutional experiences were therefore particularly relevant to this study, and conceptually underpin several key facets presented in this work. For the ways in which South Africa's post-apartheid constitutional experiences shaped scholarly understandings of transitional constitutions, see, for instance: Sarkin, Jeremy. 'The Drafting of South Africa's Final Constitution from a Human Rights Perspective.' *The American Journal of Comparative Law*. Vol. 47, No. 1 (Winter 1999), pp.67-87.

constitutional texts as containing within them 'traces' of earlier constitutional drafts and texts.

Alongside *The Soul of the Nation*, another key intellectual framework, which similarly underpins the endeavour – even though it deals with a different set of constitutional texts – is provided by the work of Andras Sajos. Sajos's *Constitutional Sentiments* (2011) is a groundbreaking work that engages with the virtue ethics and textual interrogations of Martha Nussbaum's philosophical study on emotions, *Upheavals of Thought*,¹⁶ to contextualise the American constitution in a socio-historical study of public and private emotions. Reading Sajos' work just as the 2011 interim constitution of Egypt came into effect opened up a series of questions in my research, about how the 2011 interim constitution can be 'read' as containing traces of the fluidity and tumult of the 'transitional' period in which it was written. Sajos builds the case that constitutions are not 'rational' texts (Sajos 2011: 21) but rather contain traces within them of the 'sentiments' of the constitution drafters and the wider cultural 'sentiments' that the constitution absorbs.

¹⁶ Nussbaum – known primarily for her work in developing the capabilities approach alongside Amartya Sen – explores in *Upheavals of Thought* the idea that emotions – or 'sentiments', as Sajos uses the idea – are "intelligent responses to the perception of value", from which she builds a neo-Aristotelian position that emotions are assertions. Sajos seems influenced by this argument – for instance, Nussbaum builds the case, from a position akin to virtue ethics, for 'emotion-histories' – previous assertions of value – as influences on current and future assertions of value. Sajos similarly traces the genealogy of value-assertions, or sentiments, in constitutions. The study I have undertaken here builds upon these ideas of both Nussbaum and Sajos by tracing the genealogy of assertions – including assertions of value – in successive constitutional texts in Egypt. See: Nussbaum, Martha. *Upheavals of Thought: The Intelligence of Emotions*. (Cambridge University Press 2003).

Sajo's thesis subtly differs from the study of, for instance, transnational diffusion (a socio-legal approach to constitutions outlined below), as he is concerned not only with substantive borrowings, such as whether two constitutions both contain the same provisions on the right to education, but the permeation of (in Nussbaum's sense) cognitive emotion into the texts, and what they tell us of the values and worldview of the constitution-drafters.

One of the two main bodies of literature that informs this work is intellectual engagement with modern Egyptian politics and society. Such literature is threaded throughout the work, and forms the core of the analysis presented in Part 1, and is used to build the case to address . Classic works such as those by Kepel (1985) and Beattie's comprehensive works on the Nasser (Beattie 1996) and Sadat (Beattie 2000) periods have provided an overview of post-colonial Egyptian politics, upon which the analysis here is pinned, particularly the context under which the 1971 constitution was drafted, and was informative to the analytical chronology of the successive Egyptian constitutions since 1923 that are presented as a foundational component of this work in Chapter 2.

The literature on the history of the Muslim Brotherhood consulted for this study has its own internal debates (I have drawn upon Tadroz and Ramadan in part to attempt to give voice to both sides of this division). This literature is in turn situated in broader political science and historical analyses of the Middle East and North Africa region that deal with the differences, and relationship between, pan-Arabism on the one hand, and political Islam on the other, as two countervailing

ideological forces in the region throughout the twentieth- and twenty-first centuries¹⁷.

In the years since the 2011 revolutions, there has been a proliferation of written material addressing the revolution – its causes, its significance, and its consequences. Within academia, the scholarship emerging since the 2011 uprisings has clustered in two main areas. The first is that on civil society and protest movements, such as the April 6th Youth Movement (Masoud: 2011; Ezbawy: 2012).¹⁸ There is a related emerging body of academic literature of the role of

¹⁷ As will become more evident in Chapter 1, this work is underpinned by the scholarship of academics studying the politics and society of the modern Middle East, and a rich vein of analysis within this subject is the dynamic between (secular) pan-Arabism on the one hand and political Islam on the other in the period since Arab states in the Middle East and North Africa gained independence from their various colonial occupations and experiences. This is the large conversation amongst theorists and political science scholars focused on the Middle East and North Africa, and incorporates everything from the rise of the Ba'athists in Iraq to the social provisions provided by self-identifying Islamist groups such as Hezbollah in Lebanon in response to the 'absence' of the state. For an overview of pan-Arabism's trajectory throughout the region in the twentieth century, Dawisha's (2002) survey of the respective fates of Arab nationalism in the different countries of the region has been highly informative for this study.

¹⁸ I attended a summer school organised by the *International Center for Non-Violent Conflict* at Tufts University in July 2012, which brought together activists, academics and policy analysts researching on 'civil resistance' and social movements, and the emphasis during the year I attended was that of the Arab uprisings of 2011. The summer school provided numerous insights into the dynamics of social movements in the Middle East and North Africa region and the role of mass protests in the 2011 uprisings; however the focus of the summer school was not constitutions or constitution-writing since 2011, so the insights gained from this have been threaded into the work presented here only where relevant to the constitutional experiences of Egypt after 2011. My contact, in my capacity as a researcher, with members of the April 6th Youth Movement and other self-identifying secular, liberal activists who participated in the mass protests that led to the fall of Mubarak in 2011 have been informative to this work as a whole, and integrated where appropriate. However, as this work will go on to demonstrate, one key aspect of the story of the trajectory of the post-revolutionary period, and of the drafting of the successive post-Mubarak constitutions, is the way in which the voices of liberal, secular, anti-authoritarian political activists such as

social media in mobilisation and identity-formation in the social movements and self-identifying revolutionaries of 2011 both in Egypt (Eltanwany and Wiest 2011) and the region as a whole (Lotan, Graeff, Annay, Gaffrey, Pearce, Boyd 2011) (Oelsen 2013); other scholars (Khamis 2011) have focused on the role not of social media but of the media – including online news media – in identity-formation and mobilisation amongst activists. Similarly, there is an emerging body of academic literature that seeks to analyse of underlying causes for the increasing alienation with Mubarak (Lesch 2011), particularly the impact of the high levels of youth unemployment during the last years of his regime (Shahine 2011). Chapter 4 will touch upon this literature as part of its description and analysis of the 2011 revolution and the interim constitution that followed it. Mehran Kamrava's 2014 edited volume *Beyond the Arab Spring: the Evolving Ruling Bargain in the Middle East* also informed my own position (reformulated in different concepts) of the post-2011 period in Egypt as one in which the 'deep state' struggled and was ultimately (as Chapter 7 will describe) largely successful in reasserting its power.

The second main area in which there is an emerging body of academic literature on the Middle East and North Africa region since the 2011 is that of transitional justice. In *Transitional Justice and the Arab Spring* (Fisher and Stewart (eds) 2014), a number of key perspectives and new conceptual frameworks are drawn out by scholars looking at the ways in which the 2011 uprisings provided a moment for

members of and supporters of the April 6th Youth Movement were sidelined as the post-revolutionary political space came to be dominated by the antagonistic dynamic between the authoritarian 'deep state' and the oppositional Muslim Brotherhood, and the political perspectives and 'voices' of groups like the April 6th Youth Movement and the later (from 2013) Third Space movement were marginalised from the successive post-revolutionary constitution drafting processes, and from post-revolutionary political institutions as a whole.

the citizens of countries that experienced revolutions to begin to address and heal from their authoritarian past. This literature and 'academic conversation' will feature in Chapter 7 as part of the task of situating the post-revolutionary constitutional texts in their context and demonstrating the ways in which they function as 'legal mosaics'.

Literature for a general, non-academic audience, such as books written by journalists who covered the 2011 revolutions, have been drawn upon where they have provided insightful arguments and accounts for the events of 2011 and its aftermath – particularly where these works map the dynamic between the self-identifying revolutionaries and social movements of the 2011 revolution on the one hand and constitution-drafters on the other. For this, the British journalist Paul Danahar's *The New Middle East: The World After the Arab Spring* (2013) was particularly informative for Chapters 4, 5 and 6 of this work.

Non-academic works for a general audience by activists who were involved in the protests, such as Wael Ghonim's *Revolution 2.0* (2012), about his experience as a young Egyptian activist who became famous after launching a Facebook page in protest at the death of Khaled Said in late 2010, have been drawn upon and referenced to corroborate and build a fuller picture from my own research and field work with self-identifying supporters of the 2011 uprising against Mubarak. The journalistic writings, reports and blog posts in a number of English and Arabic-language publications by the promising young Egyptian journalist Bassem Sabry, who died in Cairo before I completed this study, were an invaluable guide for me as I metaphorically 'ran alongside' the tumultuous events of 2011-2013 as a

researcher, trying to grasp the significance of events even as new events quickly superceded them. Sabry was a rare voice of clarity in an era of confusion and contestation, and the way in which Sabry articulated the demands of secular, liberal self-identifying revolutionaries to a western audience in 2011 (as well as writing extensively for the Arabic-language Egyptian press) were formative to my understanding of the dynamics of the post-revolutionary era. He presented to both Egyptian and Anglophone audiences the human rights violations and power-plays of both the Muslim Brotherhood and the Freedom and Justice Party, and the way in which Sisi (using Mansour in a manner akin to Putin's use of Medvedev in Russia) and the military deep state in their own turn 'hijacked' the revolution against the interests of the secular, liberal activists such as the April 6th Youth Movement and the (post-Morsi) Third Space movement. This thesis is dedicated to his memory, and to his role as a vital voice of the 2011 Egyptian revolution that sought to honestly and incisively chart the events of the era and struggled to secure a footing at the post-revolutionary tables of power for the activists that had spearheaded the overthrowing of Mubarak in 2011.

Other works by non-academic publishers have been comprehensive studies with material that is highly valuable to academic scholars working on post-2011 Egypt, such as Thanassis (2015), whose *Once Upon a Revolution: An Egyptian Story*, contains both extensive material from the self-identifying revolutionary groups of 2011 articulating their positions and identity vis-à-vis the Mubarak regime, and also interviews and documentation from high-level officials of the successive post-2011 governments, including those involved in the constitution-drafting processes of the 'final' constitutions of 2012 and 2013 (the Committee of 100 and the

Committee of Fifty). Similarly, Sowers and Toensing's edited volume, *The Journey to Tahrir: Revolution, Protest and Social Change in Egypt* (2012), contains several pertinent contributions to the emerging scholarship of what triggered the 2011 uprisings in Egypt, and how exactly the events of January and February 2011 unfolded.

In addition to the emerging literature on the 2011 revolution and its aftermath by political scientists, journalists, and activists who were involved in the uprising and popular protests, works of critical theorists who brought their academic lenses to the subject matter of the 2011 uprisings have informed this work and shaped its scope and intellectual framework, even as I reject some of the conclusions that those working in this discipline have arrived at. In particular, in his section on the 'Geography of Liberation', Dabashi's *The Arab Spring*¹⁹ has some particularly compelling insights into what the events of the 2011 uprisings might mean for scholarship on the region, and advances the case for 2011 as the moment of epistemic departure from Saidian analysis of the west-Middle East dynamic to a kind of 'post-post-colonialism' in which the countries that experienced mass uprisings in 2011 are no longer analysed with 'the west' as a geographical or conceptual reference point ("this is no longer the Middle of anyone's East", Dabashi 2012: 91).

Although he draws somewhat too heavily on the experience of the so-called Green Revolution of Iran, in 2009, as a template for conceptually framing the historical

¹⁹ Dabashi, Hamid. *The Arab Spring*. (Zed Books 2012).

significance of the events of 2011 in the Arab world, and reads the role of social media in the 2011 uprisings (which will be discussed in Chapter 1 of this work) as holding more significance than other theorists such as Nathan J Brown have, more convincingly assessed (as others have noted the way in which such shifts in communication and mobilisation ultimately remain no match for the apparatus and reach of the Egyptian 'deep state'), Dabashi's considerations of implications of the 2011 uprisings for scholars looking at the region have informed this work. This is particularly the case in terms of how Dabashi considers the 2011 period as a 'rupture' of Middle Eastern modern history, whilst I present the case that the 2011 uprising in Egypt was a rupture to the political, social and even epistemic order, but one through which pre-existing legacies and heritages re-surfaced, palimpsest-like, into the new post-2011 realities. And it was, in part, through the mobilisation of these pre-existing legacies and heritages in the new post-2011 context that the deep state was able to 'reassert itself' after the revolution(s).

Within this emerging literature on Egypt's post-2011 experiences, there is a sub-category that is particularly relevant to my work – the literature that meets at the intersection of the two bodies of literature outlined, on law and on Egypt. The work of the subsequent chapters – and my own conceptual understanding of the Egyptian legal and constitutional sphere – is heavily indebted to and strongly leans on the scholarship of Nathan J Brown, who is one of the premier scholars addressing Egyptian constitutional and legal issues both in the Mubarak era and post-2011 period. In addition Clark Lombardi's scholarship on both the role of Islam and *fiqh* in Egypt's modern constitutions, and the history and social context of Egypt's Supreme Constitutional Court (Lombardi 2008) have been enormously

useful to developing both the knowledge and conceptual tools of the Egyptian legal-judicial sphere and his insights are threaded throughout the work. The ways in which this study departs from – and builds upon – the scholarship of Brown and Lombardi, to which it is indebted, is outlined in the section below on the original contributions of this study.

Academic scholarship that addresses constitutions other than the Egyptian constitutional experience has been referred to where relevant. In particular, as will be discussed in Chapter 4, interim constitutions are under-researched within socio-legal and legal studies of constitutions, and require us as scholars to build more robust conceptual frameworks to more fully grasp and analyse their particularities. In order to explore the idea of the ‘interim qualities’ of interim constitutions, I acquainted myself with the literature available on other interim constitutions, notably on Nepal and Iraq’s recent experiences of interim constitutions.

Part 3 of this work, which situates the 2011, 2012 and 2013 constitutions in the context of the broader ‘cultural text’ from which they emerged and demonstrates how the three post-revolutionary constitutions operate as ‘legal mosaics’, draws upon concepts from political science as a whole: from a comparative government perspective, Lijphart’s (1971) typology of states, and his two-axis comparative plotting of states on a unitary-federal scale and executive-legislative scale (in terms of the weight given to one of the other in constitutional and political arrangements) informs the analysis of the ‘salient features’ of constitutions. (I modify Lijphart somewhat by making the ‘salient features’ of constitutions firstly the relationship between state and citizen and secondly the relationship between the three

branches of government). Also within comparative politics, I draw upon Linz's (1994) analysis of Presidential systems to situate the successive Egyptian constitutions' delineation of the role of the executive vis-à-vis the other branches of governments, and Tsebelis's (2002) influential political science theory of veto players to analyse the two drafting committees of the two 'full' constitutions (of 2012 and 2013). Similarly, I draw upon the scholarship related to the concept of 'legal pluralism' in theory and practice in Chapter 3 in order to demonstrate the way in which 'legal pluralism' was a reality of the Egyptian legal sphere prior to 2011. Key concepts and studies by legal theorists such as Griffiths, Dupret, Falk Moore and Vanderlinden have been informative to my understanding of legal pluralism – and to Egypt's experience of legal pluralism – as has the anthropological work on legal pluralism pioneered by Clifford Geertz.

In addition to the scholarship on modern Egyptian history and politics, and the emerging scholarship on the 2011 uprisings and their aftermath in both Egypt and the Middle East and North Africa region as a whole, the study presented here draws upon a second strand of scholarship, which is given equal weight to the first. This is the academic literature on constitutions, both within socio-legal studies and elsewhere. As a field with numerous different lenses and perspectives, this will be outlined separately in turn below.

Socio-legal approaches to constitutions

This work is conceptually underpinned by socio-legal scholarship on the influences of constitutional legacies on the drafting of a constitution, as well as socio-legal and

sociological analysis of constitution-drafting processes. Ways of approaching constitutions as texts – and as socio-legal texts – is an expanding field of study, outlined by Tom Ginsberg and Rosalind Dixon as a discipline that reveals ‘universal themes’ emerging from the form of the constitution as a text and document, and through global ‘judicialisation’ (Dixon and Ginsberg 2011). These ‘forms’ include the constitutional design, identity, structure and interpretation of the constitution.

There are, of course, numerous ways of engaging with a constitution, and this is a significant – and developing – area of scholarship within socio-legal studies.

Aristotle undertook one of the first comparisons of constitutions in books III and IV of ‘Politics’, contrasting the organisational structures of various city states.²⁰ As instruments, constitutions both enable and constrain government, on the one hand providing principles to which government actions and future law must conform, whilst simultaneously enabling governments by empowering them and legitimising their future actions. Constitutions are necessarily social as well as political instruments, emanating from, grounded in and reflecting their particular societies – reading them is thus both a means of reading the social context in which they were

²⁰ Aristotle, interestingly, did not think it mattered whether or not a constitution was codified in a single written document and focused on the realities of organizational structures of contemporary city states. There was also a normative element to his analysis, in which he delineated between ‘true constitutions’ aimed at achieving eudemonia (‘happiness’ or ‘the good life’) for all citizens, and ‘perverted constitutions’, which only propagated the power of the rulers. Of course, Aristotle was only concerned with ‘citizens’ of the states, which left out much of the populace – namely slaves and women. He argued for ‘polity’ as the ideal form of state structure, in which rule by the many leads to eudemonia for the many – but that it had its ‘perverted constitutional state’ in ‘democracy’, just as monarchy contained the potential for the ‘perverted constitutional state’ of tyranny, and aristocracy the ‘perverted constitutional state’ of oligarchy (Aristotle: Politics III: 1279 a17-21; 1279 b5-10; Politics IV 1293 a17).

produced and provide insight into how constitutions and constitutional law itself contributes to societal change.

Of the numerous lenses and facets of looking at constitutions, I will focus the analysis here on several interrelated elements. The first is the *expressions of values* in constitutions. These manifest in various ways, such as notions such as liberty and democracy, or, as analysed by Goderis and Versteeg, transnational 'norms' or international standards.²¹

Ideological discourses come through in the values articulated by constitutions, traditionally in constitutional preambles (Galligan and Versteeg 2013: 12) but also in substantive articles, such as values of the citizen's relationship with the state. Related to this, and an element of constitutions that is also primarily found in the preamble, is the means by which constitutions articulate and shape the national and state identity.

The nation's past and nation's vision of the future, the shared heritage and, perhaps, shared destiny, are framed in the language and conceptions of the elite drafters. In this sense, constitutions both 'speak to' and 'speak for' the nation, reasserting the shared heritage and renewing the ties of citizens and those between the citizens and the state. This can in part be tied to Jeff King's (2012) conception of constitutions as *mission-statements* – that is, the conceptualisation of the

²¹ For a wider exploration of ways in which constitutions can be viewed as 'transnational', see: Goderis, Benedict and Mila Versteeg. "Transnational Constitutions: A Conceptual Framework" in *Social and Political Foundations of Constitutions* 103. Denis J. Galligan & Mila Versteeg eds, (Cambridge University Press 2013).

constitutional text as an *articulation* of a vision of state and society that will be enacted and maintained through governmental action in accordance with the regulations set out in the constitutional text.

Similarly, Rosenfeld's conception (Rosenfeld and Sajo (eds), 2013: 756-766) of 'constitutional identity' will be deployed in the analysis here, as the shifting conception of how the nation and its citizens are constitutionally identified – who the 'we' in the 'We the People' are, as Jacobsohn writes²² – can be traced across Egypt's successive constitutions.

The concept of 'legal mosaics' and tracing legal legacies and constitutional heritages, which I will develop throughout the subsequent chapters, has some commonalities with – although, as will be demonstrated, is clearly distinct from – the emerging concept in socio-legal scholarship on constitutions, which deals with 'constitutional learning' or 'constitutional borrowing.' In previous socio-legal studies of constitutions, the idea of 'constitutional learning' or 'constitutional borrowing' has largely been explored in terms of transnational diffusion of values. This has been explored by socio-legal scholars such as Mila Versteeg and Benedikt Goederis²³, particularly in view of the development of a kind of 'global constitutionalism' in which nations operate on defined and increasingly standardised constitutional tropes and models.

²² Jacobsohn uses examples from the Turkish, Indian, United States and other constitutions to argue that constitutional identity should be central to constitutional theory. See: Jacobsohn, Gary Jeffrey. *Constitutional Identity*. (Harvard University Press 2010).

²³ Goderis, Benedict, and Mila Versteeg. "The Diffusion of Constitutional Rights", 39 *International Review of Law and Economics* 1 (2015).

This idea of ‘constitutional learning’ or ‘constitutional borrowing’ contains within it the issue of the dynamics between borrowing and borrower, such as a weaker nation being coerced into complying to norms by a stronger state or power. It could also be read in terms of the concept of the ‘justice cascade’ proposed by Lutz and Sikkink (2001) in the field of transitional justice, describing the rapid global shift towards norms and mechanisms of accountability – including constitutional mechanisms – for human rights.

The work of the following chapters was inspired by the existing socio-legal idea of ‘constitutional borrowing’, but marks its departure from this way of approaching constitutions by looking not at transnational borrowing and ‘constitutional diffusion’, but at ‘borrowings’ within one country’s constitutional experience over a period of time, tracing how its successive constitutions ‘speak to’ one another, and how the constitutional heritages and legal legacies of a country’s past can manifest in a successive constitution. This departure from the existing scholarly debate on ‘constitutional borrowing’ and ‘transnational diffusion’ is one of the original contributions of this study.

Methodological approaches

The methodological approaches of this work have been informed by the research practices and traditions of socio-legal scholars, particularly those working on constitutions (Versteeg 2015: 14), in order to answer the research question of this

project by situating the constitutional texts in the social and political context from which they emerged. The methodological approaches of this study as a work of socio-legal scholarship were chosen as the most appropriate, viable and practical approaches to studying constitutions that were drafted in a period almost contemporaneous to the period in which this research was undertaken.

As this research was developing, I initially began to approach the three constitutional texts that make up my primary sources through the methodology of critical discourse analysis²⁴ including 'frequency mapping' of particular phrases that appeared in the constitutions. Critical discourse analysis would have been an appropriate methodological tool during an early stage in this research, in which my intention was to assess whether, how, and to what extent the demands and 'language' of the self-identifying revolutionaries of 2011, such as the April 6th Youth Movement, permeated into the language of the post-revolutionary constitutions.

However, as my research continued – and as the events of the post-revolutionary period unfolded, in all their surprising twists and turns – my initial methodological focus on discourse analysis and even linguistic analysis of the constitutional texts (and their relationship with the discourse of self-identifying revolutionary groups

²⁴ Discourse analysis and critical discourse analysis as developed by Fairclough (1980) and other socio-linguists involves elements of quantitative analysis, such as counting the frequencies of uses of particular words. Whilst there are potential advantages to applying this methodological approach to analysing the content of constitutions, such a method – focused on frequencies, rather than more qualitative aspects of the connotations of words – is not the most effective way to answer the research questions of this study, in which the 'salient features' of the constitutions might not be visible through quantitative approaches to language.

of 2011) no longer seemed the most useful methodological tool through which to gain insight into the salient features of the post-revolutionary constitution(s).

For all Dabashi's claims that 2011 represented a kind of epistemic Year Zero for Egypt and for the region – dislocating previous conceptions of state, citizen and nation – as I followed the publication and response to the 2011 interim constitution, I was struck by the way in which Egypt's history kept stubbornly poking through into what Dabashi (2012: 49) has presented as Egypt's new 'permanent revolutionary mood.' From the decision to include Articles copied – or, rather, translated over – verbatim from Egypt's twentieth-century constitutions, to the institutional structures outlined in the 2011 interim constitution that had clear 'echoes' of Egypt's pre-revolutionary institutional structures, history proved more resilient than the revolutionary moment or new 'permanent revolutionary mood'.

The interim constitution struck me as palimpsestic (a term Dabashi himself uses to describe the nature of news and the media – particularly social media – during the 2011 uprisings (Dabashi 2012: 45)), with the residue of the pre-2011 era, such as the 'deep state', and the longstanding fraught dynamic between the Muslim Brotherhood and the state, permeating through into the post-revolutionary constitutional text. It seemed far removed from the proclamations of Dabashi and others, that 2011 was an epistemic Year Zero and 'new dawn' for Egypt in which its past had no place.

This has left its mark on the methodological approaches of this work. As a result of noticing this 'borrowing' in the 2011 interim constitution from the constitutions

and legal systems of Egypt's past, the methodology of this study was altered to find an approach that would illuminate the dynamics of what I had identified: how and why the post-revolutionary period was engaging in a kind of 'constitutional borrowing' – not between countries, as Versteeg and others have studied, but within a country's own previous constitutions. I turned towards thinking of the constitutions as 'intertextual', inasmuch as the post-revolutionary constitutional texts were evidently shaped by the meaning of texts that existed outside of the (post-revolutionary) constitutions – most evidently, to me, by the constitutions that had preceded them in modern Egyptian history.

The concept of intertextuality has been developed from the work of Julia Kristeva²⁵, and has expanded as a theoretical lens through which to approach and understand textual material, as well as being (in ways that prove useful for socio-legal scholarship) a way to situate textual material in a wider (social, for example) context. In order to develop a methodological approach out of this concept, I drew upon Kristeva's idea of 'semi-analysis' (*'sémanalyse.'*), in which the text is not treated as an isolated object but located in a wider 'cultural text'. Whilst Kristeva was in turn influenced by the work of Saussure and Bakhtin before her, as neither of these theorists used the term 'intertextuality', the term and concept has been largely attributed to Kristeva. Kristeva built upon Saussure and Bakhtin's work to develop the idea of what constitutes intertextuality, which in turn involved refuting

²⁵ See: Kristeva, Julia. *Séméiôtiké: recherches pour une sémanalyse*. (Edition du Seuil 1969).

the structuralist emphasis in Saussure's work that took texts as having 'fixed' meanings.

This process of '*sémanalyse*.' – a close textual reading of texts akin to discourse analysis, whilst acknowledging that the meanings of the texts are no static but dependent upon their wider context – is qualitative and responsive to the textual subject-matter. This approach allows both insight into the meanings of the text itself, and builds a picture of the 'cultural' text from which the individual texts under scrutiny (in this case, the post-2011 constitutional texts of Egypt) emerged and are situated.

As the bibliography of this work indicates, the primary sources for this endeavour are the successive constitutions of Egypt themselves. The tools for analysing this primary material come from the secondary sources of scholarship on both modern Egypt, on the one hand, and ways of approaching constitutions on the other; media sources and other contemporary sources help to build the picture of the broader 'cultural text' from which the post-revolutionary constitutions emanate in the Kristevan sense.

As outlined above in the section of socio-legal scholarship, there are a number of ways of approaching constitutions – in this study, the focus will be on the delineation of the role between citizen and state, and between the branches of government. As will be demonstrated in Part 2 of this thesis and analysed in Part 3, the post-revolutionary constitutional texts became the terrain upon which post-revolutionary power struggles between key actors and voices are played out, and

tracing these two aspects – the state-citizen relationship, and the balance of power between the three branches of government – enables us to see the ways in which this power-struggle played out in constitutional-text form.

My initial plan that the methodological basis of this work be comprised of a close engagement with the constitutional texts combined with semi-structured formal interviews with key individuals involved in both the 2011 uprising and the post-revolutionary constitutions was modified in light of the political developments of this period. I had no way of knowing, in late 2011, that Egypt's first intended-as-permanent post-revolutionary constitution of 2012 would last less than a year, and the first elected post-revolutionary President be forcibly removed from office within a year of his rule.

As a result of the tumultuous sequence of political events between 2011 and 2014, the interviews I did conduct during my fieldwork in 2012 ended up painting a very partial and weighted picture due to the nature of my 'access points' and positionality as a researcher – namely, that I had had contact with self-identifying members of the Muslim Brotherhood, *persona non grata* in the eyes of the political authorities after Mohamed Morsi was removed from power in the summer of 2013, and with self-identifying secular activists such as members of the April 6th Youth Movement, and other components of the self-identifying 'Third Space movement' (advocating "neither Sisi nor Morsi; neither the police state nor the Brotherhood") who were similarly – as will be outlined elsewhere – excluded and then imprisoned as President Sisi consolidated his rule.

This was in addition to the practical difficulties that I would have faced by attempting to repeat the interviews I conducted in 2012 during the second period in which a constitution intended a permanent was being drafted and then put to Egyptian citizens in a referendum. In particular, aside from the difficulties that researchers such as myself faced after the summer of 2013 due to who we had previously had contact with for the purpose of gaining information to academically analyse, there were practical issues of freedom of movement due to the curfew that was imposed in late 2013. As a result of this 'asymmetry' between my material on the 2012 constitution drafting process and the 2013 constitution drafting process that came after Morsi was removed from office, extensive use of material from interviews would heavily weight my analysis towards the 2012 constitution, rather than reading both the intended-as-permanent constitutions through the lenses gained by insights from the same breadth of material. Rather than perpetuate this 'asymmetry', I re-focused my analysis of the post-revolutionary constitutions, so that it was increasingly 'textual' in its focus. The interviews I conducted in 2012 are thus used in the following chapters only strategically to corroborate and underscore the textual analysis.

In summary, this work strategically deploys a number of methodological approaches, the primary one being a close textual reading and textual engagement with the post-revolutionary constitutional texts themselves. The methodological approaches of the semi-structured interviews and media analysis are supplementary to this primary approach., and are used strategically in order to further embed the constitutional texts in their social context, to highlight the 'cultural text' from which the texts of the constitutions are formed.

Contribution of the following chapters

As outlined above, this study brings together a number of academic disciplines and bodies of knowledge that do not generally ‘speak’ to one another in academic discourse, namely the lenses and practices of socio-legal studies, theories and practices of ways of approaching constitutions, historical and political science studies of Egypt and the region, and historical and political science studies of the 2011 revolutions and their (contested and unresolved) aftermaths. Whilst this work is indebted to the numerous academic works of Nathan J. Brown and Clark Lombardi as two scholars who also work at the intersection of these debates, disciplines, and academic lenses, this study makes several key contributions to socio-legal studies on the one hand (and, within that, the study of constitutional texts), and to historical and socio-political studies of modern Egypt on the other, by bringing together academic ‘conversations’ that do not normally engage directly with one another.

The first contribution of this study is the way in which it deals with new material that has not yet been analysed in academic scholarship, due to the near-contemporaneous nature of these primary documents. As noted in the literature review above, the emerging – and in many ways very vibrant – academic scholarship on post-2011 Egypt, and the aftermath of the 2011 revolutions in the Middle East and North Africa, has largely been focused on protest movements and civil society on the one hand, and (to a lesser extent) how the paradigms of

transitional justice either do or do not fit the new realities of the region in the aftermath of the 2011 revolutions on the other.

The three post-revolutionary constitutional texts have not yet been given the same level of academic scrutiny; Nathan J. Brown and Clark Lombardi, who have both impressively documented the constitutionsemaal debates, drafting-processes and legal consequences between 2011-2014, in a combination of academic and journalistic literature, have not directly engaged in the project undertaken here, which is to place the three post-revolutionary constitutional texts alongside one another in order to highlight their differences, whilst situating them in the wider 'cultural text' (in Kristeva's conception) from which they emerged.

The second, and related, contribution of this work to scholarship on both modern Egypt and on modern constitutions and constitution-making, is that new concepts are presented, advanced, and advocated for in this study. Bound up with the project being undertaken here – to map the post-revolutionary constitutional texts, discern their salient features, and interrogate why certain pre-2011 constitutional and legal phrases and ideas 'bubble up' through to the post-2011 constitutions– is the idea that these texts are 'legal mosaics'.

As Chapters 4, 5, and 6 will chronicle, and Chapter 7 will analyse and critically assess, the 2011, 2012 and 2013 constitutions cannot be fully understood without situating them in the context of the (pre-2011) constitutional heritages and legal legacies of Egypt, and understanding why these heritages and legacies have been deployed in a deliberate way by the constitution-drafters of the post-2011

constitutions. As the following chapters will show, this relates to the way in which the post-revolutionary constitutions became a terrain upon which post-revolutionary power struggles between different and antagonistic forces played out, and residue of this power struggle can be ‘read’ in the post-revolutionary constitutional text themselves.

The third major way in which this work makes an original contribution to scholarship on both constitutions and modern Egypt is by reinterpreting the pre-existing scholarship and academic literature on the subject at hand in the light of new phenomena (namely, the paradigm-shifting phenomena of the 2011 revolutions and their aftermath in Egypt and the region). As such, this study contributes to the ongoing conversations within the academic study of modern Egyptian history and politics, and provides a (partial) ‘next chapter’ to academic work on Egypt’s history and politics – particularly its constitutional experiences – that was written prior to 2011.

Engaging with the literature on Egypt’s constitutional and legal history

Part 2 of this study (where the 2011, 2012 and 2013 constitutions are taken in turn) is thus both an engagement with and an updating of the pre-existing historical scholarship on Egypt’s modern constitutional and legal history. Chapter 2, which provides a chronological account of Egypt’s modern constitutions (with a historiographical analysis threaded into this chronology), sets out the existing scholarship and knowledge of modern Egyptian constitutions up to 2011; the Chapters of Part 2 then contribute to this pre-existing body of scholarship by

anchoring the post-revolutionary constitutions in this longer trajectory of modern Egypt's constitutional history.

The fourth major way in which this work makes an original contribution to scholarly debates and the academic literature that it speaks to, is by testing existing concepts (both from socio-legal scholarship and from scholarship on modern Egypt) in new realities – that is, applying them to the ‘new’ area of post-2011 Egypt, which has thus far not been read through these lenses due to fact it is still very recent history. In particular, the existing ideas in academic research on Egypt – its ‘deep state’, and its legal pluralism, which are introduced in Part 1 of this study – are tested for their conceptual durability in the new, post-2011 realities. The same is true of the pre-existing dynamic between the Muslim Brotherhood and the secular-authoritarian state, which has been extensively documented by academics of twentieth-century (or, pre-2011) Middle East and North Africa, as part of the antagonistic but intertwined dynamic between political Islam and pan-Arabism in the region throughout the twentieth century, but how the events and aftermath of the 2011 changed this dynamic is still under-explored at the time of writing, given the recent nature of the events.

One further way in which the work of the following chapters contributes to academic scholarship is by taking a concept in socio-legal scholarship (namely, ‘constitutional borrowing’ between different nations/states) and transferring it to a new ‘borrowing’ dynamic – that is, within one country, over a period of time. This way of engaging with a country's successive constitutions provides a new template

for scholars wishing to look at other countries' successive constitutional texts and constitutional experiences in this way.

Other insights presented in the following chapters may also be of interest to academics working on constitutions other than Egypt's, particularly the constitutions of countries that have recently experienced revolutions.

In providing a demonstration of how post-revolutionary constitutions become the terrain upon which post-revolutionary political struggles are played out, this study can provide insights for scholars seeking to understand post-revolutionary constitutions in other contexts – such as those in Tunisia, Libya, and Iceland's recent (post-2010) constitutional experiences.

Lastly, as this study originally began as a comparative analysis of the post-revolutionary constitutions (and interim constitutions) of Egypt, Libya and Tunisia after 2011, the work in its current form can be taken as a contribution to the ongoing scholarly work of mapping and comparing the post-revolutionary constitutional trajectories of countries of the Arab world that experienced revolutions in the 2011. Areas for further scholarship have been highlighted throughout and summarised at the end of the study: of particular importance, as will be explored in greater detail in Chapter 4, is the necessity to develop paradigms and frameworks that can enable us to fully engage with interim constitutions in a way that acknowledges and explains their specifically 'interim' qualities – or, more precisely, how these 'interim' qualities co-exist with their 'constitutional' nature.

The structure of this study

The chapters of this work are structured to lead the reader to the post-revolutionary constitutional texts with the necessary conceptual tools, historical and social context, and wider understanding that will enable the reader to follow me as I engage, in Part 2 of this work, in a close textual analysis of the three post-revolutionary constitutional texts in turn. Part 3 then brings the broader perspectives and insights of Part 1 together with the insights gained from the close textual analyses of Part 2, in order to contextualise the post-revolutionary constitutions, and draw out the ways in which pre-2011 legal legacies, constitutional heritages, and social and political realities came to bear upon the post-2011 constitutional texts.

Part 1 (comprised of Chapters 1, 2 and 3) is therefore partly chronological and partly thematic: it provides an account of the key actors, legal legacies and constitutional heritages, the threads that together form the fabric of the wider context (the 'cultural text', in Kristeva's conception) of the 2011, 2012 and 2013 constitutions. The analysis in Chapter 1 of the key actors and institutions that existed as institutional, political and cultural 'heritage' in 2011 explains the backdrop against which the 2011, 2012 and 2013 constitutions were drafted, as these residues did not disappear from the Egyptian social and political landscape simply because Mubarak was removed from office in 2011.

Chapter 2's analysis of the constitutional heritages of Egypt is presented so that the analysis in Part 2 (Chapters 4, 5 and 6 of this work) can be situated in the longer trajectory of Egypt's constitutional 'story', and demonstrates the pre-existing

constitutional forms, concepts, ideas and heritages that the post-revolutionary constitution-drafters inherited as a kind of 'dressing-up box' from which they could choose different aspects to form the post-revolutionary constitutions. This chapter also shows how integral the successive constitutions of Egypt's post-colonial period were to its political arc throughout the twentieth and early twenty-first century, from the 1923 constitution to Nasser and Sadat's 1971 constitution to the controversial constitutional amendments of the late Mubarak period that were – in Brown's seminal reading of them – both symptom and partial cause of Mubarak's decline.

Chapter 3 then turns to the broader legal legacies – beyond the solely 'constitutional' – that the post-revolutionary constitution-drafters inherited, by outlining the particular nature of Egypt's 'legal pluralism', in which British colonial influences, French colonial influences, shari'a (or Islamic law) and fiqh (or Islamic jurisprudence) and socialist-influenced pan-Arabist legal formulations co-exist in the same legal 'space'.

Part 2 of this study then takes the background presented in Part 1 and applies it to the three post-revolutionary constitutional texts, which are taken analysed in turn. This close textual analysis of the three post-revolutionary constitutional texts is intended to survey and analyse the pertinent features of the constitutional texts in turn, whilst contextualizing them in the (often rapid) political changes. Chapters 4, 5 and 6 carry the threads of Part 1 through to the post-revolutionary texts, to see the ways in which the constitutional heritages and legal legacies come through to the surface of the post-revolutionary constitutional texts in dynamic ways.

The analysis of the 2011, 2012 and 2013 constitutions presented in Part 2 of this work is necessarily incomplete because – as explained above in the survey of socio-legal approaches to constitutions – constitutional texts can be approached from a multitude of angles. Nonetheless, Part 2 focuses the analysis by pointing both to the salient features of the texts in terms of how they construct the state-citizen relationship and the balance of power between the three branches of government, and also (through this) how the texts themselves are terrains upon which post-revolutionary power struggles have been enacted.

Part 3 of this work entails reflection upon and a synthesis of Parts 1 and 2. More precisely, it entails turning to the material presented in Part 2 on the post-revolutionary constitutional texts, and applying the information, analysis and conceptual tools of Part 1 to this information, in order to demonstrate the way in which the 2011, 2012 and 2013 constitutional texts are ‘legal mosaics’, which are influenced by their legal legacies and constitutional heritages. This comparative undertaking is also an assessment of the research questions that prompted this endeavour, in light of the findings of Chapters 4, 5 and 6 – that is, how the context (the key actors and institutions, the constitutional heritages and the legal legacies) informs and influences the post-revolutionary constitutional texts.

Part 1, Part 2 and Part 3 of this work, taken together, present the case that the post-revolutionary Egyptian constitutions are best understood as ‘legal mosaics’, and critically engaging with their substance and significance involves anchoring these texts in the wider ‘cultural text’, particularly Egypt’s constitutional trajectory

throughout the twentieth century, its particular form of legal pluralism, and key actors and institutions in Egypt's political landscape, particularly the longstanding and fraught dynamic between the 'deep state' and the Muslim Brotherhood as an oppositional force to the state.

Conclusion

Egypt's post-revolutionary constitutions provide rich material for scholars working in this subject to understand both Egypt's recent revolution and its aftermath and also its longer constitutional and political history. My experience of researching the constitutions of Egypt's revolution during the post-revolutionary period has been difficult – due to my positionality as a researcher, the practical obstacles of researching in a tumultuous and sometimes dangerous political climate, and difficulties of access to sources – but has yielded fruitful results and insights.

This work draws upon a number of different academic disciplines and 'academic conversations' within the socio-legal study of constitutions and political science and historical analyses of Egypt. These different academic 'conversations' are brought together and synthesised in this work in order to situate the 2011, 2012 and 2013 constitutions in their context and advance the case that the three post-revolutionary constitutional texts are best understood as 'legal mosaics' partly literally formed out of, and distinctly influenced by, Egypt's constitutional heritages, legal legacies, and political and institutional history.

The methodological approaches of this work are based on their appropriateness to answering the research question of this work – namely, close textual analysis and ‘semi-analysis’ in the Kristevan sense, to discern the salient features of the 2011, 2012 and 2013 constitutional texts whilst situating them in their wider ‘cultural text’.

This work has been structured to lead the reader through the material in a comprehensible manner, from the background prior to 2011 that forms the ‘cultural text’ from which the post-revolutionary texts are formed, to the details of the post-revolutionary texts themselves, and final an analysis of their significance and how they operate as ‘legal mosaics’. Part 1, Part 2 and Part 3 of this work cumulatively build the case that the 2011, 2012 and 2013 constitutions can best be understood as ‘legal mosaics’, shaped and informed by their constitutional heritages and legal legacies (these will be outlined in Part 1). This analysis leads us towards an understanding of the post-revolutionary constitutions, and what they tell us of Egypt’s past, Egypt’s present, and how successive constitution-drafters in the post-revolutionary present engages with Egypt’s past and envisions its future.

The story of Egypt’s 2011 cannot be told without understanding the role of constitutions within it – and the constitutions cannot be understood without situating them in the wider ‘cultural text.’ Similarly, the story of Egypt’s post-revolutionary constitutions cannot be understood without understanding the connotations of the inclusion – and strategic omission – of parts of Egypt’s pre-2011 constitutional heritages and legal legacies. The deployment of these heritages and legacies in dynamic ways in the post-revolutionary context – notably but not

solely the dynamic use of Egypt's historical Article 2 in the post-2011 period – is an important part of the story of this most recent chapter of Egypt's constitutional history.

Chapter 1: Actors and institutions

Introduction

This Chapter seeks to conceptually map out the main actors and institutions that are key players in Egypt's pre-2011 legal legacies and constitutional heritages, knowledge of which is necessary to engage with subsequent chapters of this work, and follow the conceptual threads this work will trace, by demonstrating the ways in which the pre-2011 legal legacies and constitutional heritages were drawn upon and strategically deployed in the post-Mubarak constitutions, making the post-revolutionary constitutional texts of 2011, 2012 and 2013 'legal mosaics' that can only be fully understood by situating them – as this work will endeavour to do in

Chapters 4, 5 and 6 – in the wider ‘cultural text’, in the Kristevan sense, from which they emerged and in which they are embedded.

Each of the actors and institutions presented in this chapter represents an authorial choice that necessarily privileges certain facets of Egyptian politics and society over other similarly relevant features, and the intention here is not to attempt a comprehensive totality of enumerating, describing and mapping the dynamics between every facet of Egyptian social, political and legal life that has previously been identified by the relevant scholars in these fields. The intention, rather is to provide a preliminary overview and a number of definitional beginnings as a precursor to the analysis that will be undertaken in the next two chapters of this work (tracing the chronological line of Egypt’s constitutions from 1923 onwards, and then thematically engaging with Egypt’s ‘legal legacies’ and its unique experience of legal pluralism).

What is presented is only what is necessary to understand the main actors and institutions that are (a) referenced, or implicitly referenced, in the 2011, 2012 and 2013 constitutions of Egypt, and (b) present an adequate background of the kinds of actors, institutions and social forces that came to bear upon the 2011, 2012 and 2013 constitutions, and form the wider ‘social fabric’ and ‘cultural texts’, in the Kristevan sense, of the actual constitutional texts of the post-revolutionary period. There is a vast internal literature and lively academic debates ranging from political science and anthropology to religious studies and socio-legal approaches to the country related to each of the actors and institutions that will be delineated in the following sub-chapters – in particular, the literature on the Muslim

Brotherhood is loaded with internal divisions amongst scholars who debate over whether it is best categorised as a social movement or a political party, and it is beyond the remit of this work to fully draw out all of these possible points of contention. There are also temporal limitations – the key actors and institutions presented here have each undergone significant changes throughout Egypt’s experience of modernity under Nasser, Sadat and Mubarak, and their internal histories cannot be fully plotted – the overviews of each are intended more as ‘readings’ of these institutions in the pre-2011 era, to highlight what was institutionally ‘inherited’ by the post-revolutionary constitution-drafters in 2011.

One of the key assertions of this chapter is that the ‘deep state’ is a social reality in Egyptian political life, and is a useful conceptual tool through which to understand the function of the Egyptian state from the Nasser era onwards. The scope and *modus operandi* of the deep state is a source of contention between academics but it nonetheless remains the most useful way to ontologically map the contours of the Egyptian political structure from Nasser to 2011 (after 2011, as Chapters 4, 5 and 6 of this work, the ‘deep state’ is a salient feature and useful conceptual tool of the political order, but one that was significantly altered and shaken by the 2011 uprisings and the overthrow of Hosni Mubarak).

The second main assertion of this chapter is that a key component of Egyptian political life from the Nasser era to the end of the Mubarak period was the antagonistic dynamic between the Muslim Brotherhood and the ‘deep state’. All other institutional and political frictions within the Egyptian political landscape, such as the interaction between the Mubarak regime and ElBaradei’s ‘National

Association for Change' in the 2000s, or the tensions between the Mubarak regime and the secular, liberal April 6th Youth Movement of the late 2000s, are secondary to the antagonism between the Muslim Brotherhood and the 'deep state' during the Nasser, Sadat and Mubarak eras, and has left a significant impact across the entire Egyptian political and constitutional landscape since the rise of Nasser. – which will be demonstrated as taking on dynamic new elements in the post-revolutionary period

The concepts presented in the following subchapters are necessary components of understanding the project undertaken in the later Chapters of this thesis – that is, how the post-revolutionary constitutions became the terrain on which post-revolutionary power-struggles were fought between key actors on the Egyptian political landscape, and how they enacted, in new and dynamic ways in the post-revolutionary period, the entrenched antagonistic dynamic between the Muslim Brotherhood on the one hand and the Egyptian 'deep state' on the other.

The 'deep state'

Integral to the arguments and analysis presented in this work, and to an understanding of the ways in which the post-Mubarak constitutional texts are influenced by and bear traces of Egypt's constitutional heritages and legal legacies is the concept of the 'deep state'. It is also an important conceptual counter-balance to apply to post-2011 realities (as Part 2 and 3 of this work will demonstrate) in light of the narrative constructed in breathless early accounts of the revolution, such as Dabashi's (2012) analysis of the 'Arab spring' noted in the Introduction,

that the 2011 uprisings were a political and epistemic ‘Year Zero’ that eradicated previous entrenched political and social structures.

The ‘deep state’ as a concept in scholarly discourse emanates in part from the Turkish context, and the way in which Turkey’s modernity as a state is intertwined with Ataturk’s legacy, situating the military as a central component of the state apparatus and executive branch of government.²⁶ As Ahmed Aboulenein describes it, the deep state in the Egyptian context can be said to be “loosely defined as a military government with a root structure of police and security organisations as well as vast economic and industrial interests.”²⁷ Nathan J Brown, referring to how the template of the Turkish ‘deep state’ transfers over to the Egyptian context, has described it as “[t]he sense that the military is not necessarily ruling directly but what you have is...underneath the surface of politics, this underlying set of structures that’s ruling things.”²⁸ Aboulenein, Brown and Cristina Casabon (2014) all frame the ‘deep state’ primarily in terms of the fusion between the military and the executive branch of government, emanating out of the Nasser era and continuing into the late Mubarak period, and including the ‘military economy’ and the military as a ‘state within a state’.

²⁶ For a fuller description of the way in which the ‘deep state’ is operationalised as a concept by scholars working on Turkey, see: Pearson, W. Robert. ‘Turkey: Exhuming the Deep State.’ *The Middle East Institute* online, March 5th 2015. Available online at: <http://www.mei.edu/content/article/turkey-exhuming-deep-state> [accessed March 20th 2015].

²⁷ Aboulenein, Ahmed. ‘Egypt’s ‘deep state’ proves victorious.’ *GlobalPost*. December 12th, 2014. Available online at: <http://www.globalpost.com/dispatches/globalpost-blogs/groundtruth/egypt-deep-state-victorious> [accessed January 15th, 2015].

²⁸ Ibid. Aboulenein references Nathan J Brown.

However, the boundaries of the 'deep state', if it is to be operationalised as a concept, extends beyond the military-executive relationship to describe the entrenched state apparatus, and the socialisation of those involved in the state apparatus, and can be said – with some important caveats – to include non-military components such as the legislature and the judiciary in a framework in which these two branches of government are subordinated to the executive, which is in turn deeply enmeshed with the military. Similarly, the existence of al-Azhar ruptures the dichotomy between the 'deep state' on the one hand and the Muslim Brotherhood and political Islam as an outside-the-state, anti-state oppositional force, for the ways in which al-Azhar has been co-opted and utilised by successive Egyptian political regimes from Nasser onwards, and embedded in successive pre-2011 Egyptian constitutional texts.

As Chapter 7 and the Conclusion section of this work will demonstrate, the 'deep state' as a structure and component of Egypt's social reality continues to be a useful framework for analysing Egyptian political and legal systems in the aftermath of the 2011 revolution, although – as the constitutional texts of 2011, 2012 and 2013 show – the 2011 uprisings altered the composition and internal dynamics of the 'deep state' in significant ways.

The military

The Egyptian political system – and the Egyptian constitutions from the Nasser period onwards – cannot be understood without acknowledging the centrality of

the military in Egyptian political life from Nasser onwards. As noted above in the delineation of the concept of the 'deep state' as applied to the Egyptian context, the power of the 'deep state' as an infrastructure and as a social force resides in the historical marriage between the military and the executive branch of government since the rise of Nasser. Clearly, this 'marriage' is in turn anchored in Egypt's experience of colonialism and struggle for independence, which provided the strong justificatory narrative of Nasser's rise to power as a 'defender' of the nation against the encroachment of abusive colonial forces. As Chapter 2 will demonstrate, this marriage between the army and the executive is embedded in the constitutional texts from Nasser onwards. It also fundamentally shapes Egyptian social life, from the significant percentage of the populace employed in the army to the way in which, from the Nasser to Mubarak eras, it exerted its power with little oversight. As Woertz notes, "[t]he military is not only a state within a state, it is also an economy within an economy, characterised by stasis and unfair advantages" and "its shadowy network of enterprise controls between 8% and 30% of Egypt's GDP according to various estimates. It enjoys tax privileges and supply monopoly. Cheap labour in the form of new recruits helps too."²⁹ Bruce Rutherford (2013) in his analysis of the post-Mubarak political order and its inheritance has traced the origins of the centrality of the military in Egyptian political life (and, particularly, its fusion with the executive branch of government, constitutionally enshrined and deeply embedded in the Egyptian political structure) as stemming from two main historical factors: the fact that the British

²⁹ Woertz, Eckart. 'Egypt: Return of the Deep State.' *openDemocracy*, 20th January 2014. Available online at: <https://opendemocracy.net/arab-awakening/eckart-woertz/egypt-return-of-deep-state> [accessed January 26th, 2014].

continued to occupy Egypt with its soldiers for twenty five years after Egypt's nominal independence in 1922, and the creation of the state of Israel in 1948, triggering the first Arab-Israeli war and forming modern Egypt's identity as a militaristic society whilst it was in its embryonic form.

As Chapter 5 and 6 of this work will outline, the centrality of the military within Egyptian political life is not only a question of its embeddedness within the executive branch of government, but also its interrelation with the judicial structures, as the use of military trials both before and – exponentially – after, 2011, are a significant feature both of the 2011-2014 period and a salient feature of the 2011, 2012 and 2013 constitutional texts.

The judiciary

Chapter 3 will outline the phenomenon of legal pluralism as it manifests in Egypt from the 1875 Mixed Courts and the onwards, and the way in which legal pluralism is central to the way in which the judiciary operates in Egypt. It is worth noting at this point some preliminaries, particularly Lombardi's (2013) work on the socialisation of the judiciary in the Mubarak era as one that designates it as – largely, and with significant caveats – as a part of the 'deep state'. Chapter 2 of this work will point to the ways in which, despite its socialisation and position within the 'deep state' infrastructure, the judiciary became increasingly dynamic in the late Mubarak period, as can be seen (as Chapter 2 will highlight) in the judiciary's relationship to the constitutional amendments of 2007 and other Presidential decrees of the late Mubarak era.

As Kamrava Mehran notes in the introduction to *Beyond the Arab Spring: The Evolving Ruling Bargain in the Middle East*, the increased judicial activism of the late Mubarak era worked in tandem with the state's constitutional amendments in the 2000s (which will be discussed in Chapter 2), and links this in turn to the strategic approaches of civil society actors both prior to and after the revolution vis-à-vis the constitutional and legal structure of country. He notes that during the Mubarak era in Egypt, the state's

incessant machinations with regard to its own framework in order to maintain a semblance of formal constitutional legitimacy... had the ironic effect of enabling regime opponents to use the law strategically in their efforts to undermine state authoritarianism.

The Egyptian judiciary was not necessarily politically activist, but "legal mobilisation" in the country did provide legal pathways for professional groups and civic associations to chip away at the state's efforts to dominate the public sphere. When the state eventually fell [in the 2011 revolution] the negotiations between weakened state elites and empowered social actors primarily revolved around replacing the old constitutional framework with a new one.

(Kamrava 2014, p6-7).

Lombardi goes further in his assessment of the 'political activism' of the judiciary in the late Mubarak era (as will also be highlighted in Chapter 2's analysis of the successive constitutions of twentieth century Egypt). In particular, Lombardi notes the way in which the constitutional court became a tool both of civil society

activists and a conduit through which members of the judiciary themselves carved out spaces of opposition to Mubarak's rule. Similarly, Brown and Dunne have pointed to the ways in which the 'judicial activism' of the late Mubarak era fed into the dynamic of the post-revolutionary political manoeuvres after 2011.³⁰

The Muslim Brotherhood

The history of modern Egypt and the history of the Muslim Brotherhood [al-Ikhwan al-Muslimeen] are intimately intertwined, and the shifting role of the Muslim Brotherhood throughout Egypt's twentieth and twenty-first centuries provides a striking illumination into the period as a whole. While scholars disagree, in a vibrant conversation within the academic literature, over the exact role and nature of the Muslim Brotherhood – and over the appropriate way in which to conceptualise the organisation (as a social movement, as a political party, or as an inherently anti-system force, and so on), the overwhelming consensus is that the Muslim Brotherhood has been the single most significant – if not powerful – indigenous political force outside of the state that has shaped the state's actions, discourse, and boundaries.

The Muslim Brotherhood's emergence out of the 'pan-Islamism' of al-Afghani and his followers, crystallising into political Islam (at the point where the ideological inheritance of al-Afghani's anti-colonial theory diverged into pan-Arabism and political Islam) is a significant component of both the political and intellectual

³⁰ Brown, Nathan J. and Michele Dunne. 'Egypt's Judges Join In'. *Foreign Affairs*, April 2nd 2014. Available online at: <http://carnegieendowment.org/2014/04/02/egypt-s-judges-join-in> [accessed March 24th, 2015].

history of modern Egypt. Moreover, its emergence, through the theories and writing of al-Banna and Qutb is striking, as Hamid Dabashi notes in the 2008 work *Islamic Liberation Theory*, for demonstrating an inheritance of the pan-Islamic movement in the nineteenth century that developed around al-Afghani's writing.³¹

The Muslim Brotherhood was the largest banned opposition party under Mubarak, and – as Chapter 4 will highlight, drawing upon Danahar's (2013) account of the revolution – its singular status as an oppositional force to the Mubarak regime meant the organisation was uniquely capable of organising in the first post-Mubarak elections, and able to consolidate their power over the secular, liberal movements that had also opposed Mubarak, such as the April 6th Youth Movement and El Baradei's campaign against the Mubarak regime.

As Zachary Laub describes, the Muslim Brotherhood is “Egypt's oldest and largest Islamist organisation and has spawned Sunni Islamist groups throughout the Arab world”, noting that it was “banned from politics for its early aim of overthrowing the Egyptian government [before it then] renounced violence in the 1970s and

³¹ Dabashi observes how, “[f]or long after al-Afghani and his disciples, Egypt remained the intellectual capital of much of the Arab and Muslim world in producing pan-Islamic ideas and movements”, and goes on to delineate the main theories and political actions of the early Muslim Brotherhood thinkers al-Banna and Qutb. See: Dabashi, Hamid. *Islamic Liberation Theory: Resisting the Empire* (Routledge 2008) p40-43. It is worth a subjective caveat at this point that, whilst this thesis has critiqued Dabashi's optimistic interpretations of the post-2011 order, his work on the ideological genealogy of political Islam has been thorough and informative of thi work.

earned popular support by providing social services such as pharmacies, hospitals and schools.”³²

The social services that the Muslim Brotherhood provided for Egyptian citizens – akin to the way in which Hezbollah has been analysed by social theorists of Lebanon as ‘stepping in’ when the state has failed – in Egypt’s case also had a component of Egyptian identity vis-à-vis foreign policy. As Laub notes: “though Nasser barred the group from government, the Muslim Brotherhood nevertheless became ubiquitous in society, building allegiances as a populist alternative to the Egyptian state, which provided neither prosperity nor welfare and suffered repeated military defeats by Israel.”³³

The academic debate regarding the role of the Muslim Brotherhood in Egypt under Nasser, Sadat and Mubarak is located in a broader academic discourse amongst political scientists and scholars of the modern Middle East and North Africa (or, the modern ‘Arab world’): namely, the twin poles of pan-Arabism and political Islam in the Middle East and north Africa region during the late colonial and post-colonial periods. Pan-Arabism’s relation to, and – in many cases, ultimate defeat to – the rise of political Islam is in turn underpinned by the colonial experiences of the

³² Laub, Zachary. ‘Egypt’s Muslim Brotherhood: Background.’ *Council on Foreign Relations*, January 15th, 2014. Available online at: <http://www.cfr.org/egypt/egypts-muslim-brotherhood/p23991> [accessed June 17th, 2014].

³³ Laub, Zachary. *Ibid.*

region itself³⁴, and the ways in which pan-Arabism (and, in a more complex manner, political Islam) emerged in opposition to the region's varied experiences of colonisation by European powers, as well as the regional dominance and then swift fall of the Ottoman Empire.³⁵ The Brotherhood's rhetorical positioning of its own legitimacy has often drawn upon its historical role in the anti-colonial movement, when the Muslim Brotherhood joined with the Free Officers' Movement to resist imperialism in the country.³⁶ However, as Laub describes, "rivalry between the military and the [Muslim] Brotherhood ensued after King Farouk abdicated in 1952" and a "military junta" (to use Laub's terms) took charge with

³⁴ Dabashi, 2008. Ibid.

³⁵ It is beyond the scope of this work to fully engage with the substantial literature on the ways in which political Islam and pan-Arabism emerged as two 'threads' of thought and as two forms of social movements in response to the Arab world's experiences of colonialism. However, for a useful overview of the ways in which political Islam in the nineteenth and twentieth century has often defined itself in opposition to the secularly-oriented pan-Arabist movements in the Middle East and North Africa, Mohammed Ayoob provides a useful description of the dynamics between the two movements in the first chapter (p1-22) of his work *The Many Faces of Political Islam: Religion and Politics in the Muslim World* (University of Michigan Press 2008).

³⁶ It is important not to draw too strict a dichotomy between political Islam emerging as a resistance to European colonialism and positioning only pan-Arabism, as an ethnically-centred identity movement, as opposed to both European colonialism and the Ottoman period. For instance, Beverley Milton-Edwards notes how the Muslim Brotherhood can be seen as a response to both European and Ottoman 'impositions'. She writes: "[t]he Muslim Brotherhood epitomised the reactionary character of the Muslim revivalist project of the late nineteenth and early twentieth centuries to the impositions of the colonial period. This was mainly a reaction to Western domination, yet at the same time this particular emergent organizational response was also a riposte to Ottoman Islamism as a form of control over Arab provinces of the Middle East." She goes on to note that political Islam is transnational in nature just as (its often oppositionally-defined counterpart) pan-Arabism was, and that in the case of political Islam and the ideology of the Muslim Brotherhood, this transnationalism as a response to imperialism is intimately linked to the Islamic concept of *ummah*. See: Milton-Edwards, Beverley. *The Muslim Brotherhood: the Arab Spring and its Future Face* (Routledge 2016).

Nasser at the helm.³⁷ As Laub delineates (although these terms are necessarily contested, it frames the juxtaposition between the two): “the military [after King Farouk’s abdication] envisaged Egypt at the helm of a *socialist, secular pan-Arab movement*, while the Brotherhood rejected [...] *nationalism as un-Islamic and called for the implementation of sharia.*”³⁸

As Chapter 2 will demonstrate, the interplay between political Islam and the Egyptian state founded on pan-Arabist and secular principles is also central to the narrative of the successive constitutions of Egypt since 1923, and it leaves its traces in the constitutional documents and constitutional amendments, particularly the 1971 constitution and subsequent amendments during the Sadat period, and Mubarak’s response to Sadat’s assassination by self-identifying Islamists.

It is worth noting at this point that the historical literature on the Muslim Brotherhood is intertwined with the normative debates on the role that Islam should have in the modern Egyptian state (for instance, Tariq Ramadan’s book after 2011 makes historical claims about the Muslim Brotherhood but is also an assertion, as noted in the Introduction of this work, of what role the Muslim Brotherhood, and political Islam in general, should have in the modern Egyptian state).

³⁷ Laub. Ibid.

³⁸ Ibid. Italics mine.

These normative positions feed into the analysis of the role of the Muslim Brotherhood in the late Mubarak era and the post-2011 events: for instance, Mariz Tadros³⁹, in her analysis of the 2012 and 2013 constitutions from a liberal, secular position, positions the Muslim Brotherhood as toxic and fundamentally alien to the Egyptian state. And, as Chapter 7 of this work will highlight, this perspective was also voiced by secular, liberal-identifying members of the drafting committee of the 2013 constitution, such as Hodda ElSadda. Engaging with the Muslim Brotherhood as a political or social movement thus requires careful critiques of the terminology of the literature, as Chapter 2 and Part 2 (Chapters 4, 5 and 6) of this work will demonstrate. There is also a temporal component to analysis of the Muslim Brotherhood, as it shifted from the leadership of Banna to Sayyid Qutb to Badie, and these shifts must be mapped on to the transitions from the Nasser to Sadat to Mubarak (to Morsi, Mansour and Sisi) Presidencies, and will be referenced in Parts 2 and 3 of this work.

Al-Azhar

The role of Al-Azhar is central to the story of the post-Mubarak constitutional texts, and to the analysis of the way in which the Egyptian state reconfigured in the aftermath of the 2011 uprisings and the removal of Hosni Mubarak from power in 2011. As Brown (2011) has described, Al-Azhar refers to a 'complex of associated institutions', for which with Al-Azhar mosque or Al-Azhar university is sometimes

³⁹ See: Tadros, Mariz. 'Egypt's constitutional referendum: the untold story'. *OpenDemocracy*. 17th January 2014. Available online at: <https://www.opendemocracy.net/5050/mariz-tadros/egypts-constitutional-referendum-untold-story> [accessed 17th January 2014].

taken as indicative of the whole, but for which the Islamic Research Complex within Al-Azhar university plays the most prominent political role in advising on matters of shari'a law and Islamic jurisprudence. As future chapters of this work will demonstrate, Al-Azhar ruptures the dichotomy between the 'deep state' and the antagonistic Muslim Brotherhood and other Islamists positioned as 'outside' of the state, because it is both a fundamentally Islamic institution who self-identifying political Islamists seek to support (Brown 2011) whilst simultaneously being endogenous to the Egyptian state (and, as subsequent chapters will demonstrate, granted a singular status in the post-independence constitutions of Egypt).

Morsy and Brown have described the way in which Egyptian leaders have controlled Al-Azhar in order to use it as a counterbalance to the Muslim Brotherhood, the Salafist groups and Wahhabism. They note:

[s]ince the time of Muhammad Ali in the 1800s, Egypt's leaders have regarded Al-Azhar as an influential tool in shaping and promoting the government's domestic and foreign policies. Accordingly, they have gradually extended their control over the institution. Nasser, as President, moved ambitiously to reorganise Al-Azhar through Law 103 of 1961, which placed the entire institution and its endowments under the formal jurisdiction of the Ministry of Religious Endowment. The same law also made the appointment of the grand sheikh the prerogative of the Egyptian president just as the appointment of any other state official. In subsequent years, the regime worked to ensure that Al-Azhar would act as a strong counterbalance to the growing

religious influence of both internal forces such as the Muslim Brotherhood and Salafists, and external forces like Saudi Arabia's Wahhabism.⁴⁰

Chapter 3 of this work will outline the role of shari'a and fiqh in the Egyptian legal space, as components of Egypt's particular experience of legal pluralism, and the way in which Al-Azhar operates within the legal pluralism of post-independence Egypt. It is worth noting at this point that Al-Azhar's historical role became recalibrated in the post-2011 era, and is one of the striking socio-legal developments of the post-revolutionary period, as Chapters 5 and 6 will outline through an analysis of the successive 'final' post-revolutionary constitutions. And Chapter 7 will conclude that the shifting role of Al-Azhar in the successive post-2011 constitutional texts demonstrates the way in which the post-revolutionary constitutional texts operate as 'legal mosaics', because the shifting role of Al-Azhar in the successive post-revolutionary constitutions entailed the post-revolutionary constitutional texts reflecting different aspects of Egypt's legal heritages and legal legacies at different moments between 2011-2014; that is, that these heritages and legacies were deployed in dynamic ways by the successive constitution drafters in the post-revolutionary context. As Parts 2 and 3 of this work will demonstrate, the shifting position of Al-Azhar after the revolution tells the story of the trajectory of the revolution itself.

⁴⁰ Brown, Nathan J and Ahmed Morsy. 'Egypt's Al-Azhar Steps Forward'. *Carnegie Endowment for International Peace*. November 7th 2013. Available online at: <http://carnegieendowment.org/2013/11/07/egypt-s-al-azhar-steps-forward> [accessed August 15th 2014].

Political parties

The eco-system of Egypt's political parties in the twentieth and twenty-first century is the subject of internal debates and analysis by political scientists both seeking to analyse the Egyptian political system, and those approaching it from a comparative politics perspective that locates Egypt's system of political parties in comparative typologies. Whilst it is beyond the remit of this study to fully engage with the broad literature on Egypt's political parties in the twentieth century, it is worth outlining its salient features in order to situate the other actors and institutions in the realm of party politics.

Undoubtedly, the Muslim Brotherhood plays a singular role in the analysis of political scientists looking at Egypt's political parties, but, as noted above and described in Part 2 of this work, they cannot be taken simply as a 'political party' given their dual nature as a social movement and anti-system 'block' antagonistic to the (Nasser, Sadat and Mubarak era) Egyptian state itself. Lisa Blaydes has delineated the interactions – alliances and mutual alienations – between the Wafd party and the Muslim Brotherhood throughout Mubarak's rule (Blaydes 2013:40) and the way in which, after the 1984 elections, Islamist parties overtook the power of left-wing parties in the Egyptian political landscape.⁴¹

⁴¹ Blaydes is unequivocal, however, that the electoral and party politics of the Mubarak era were merely window dressing. She notes: "[i]n Egypt [during the Mubarak era] as in other autocracies, there is surprising attention paid to issues like procedural integrity, even when passing the most draconian and undemocratic of laws [...] The Egyptian president has the ability to legislate by decree in "emergencies" (very loosely defined) and when parliament is not in session. Yet, deviations from policy change are potentially costly. Such actions lack the political cover provided by parliamentary action and open the regime to criticism from opposition newspapers and opposition elite. The preferred method, then, for

The Egypt of the Mubarak era has been analysed by political scientists variously as a 'hybrid democracy' (Brown 2011) and an authoritarian state (Ramadan 2012) and Chapter 7 will highlight how it fits into Lijphart's typology of states as a 'majoritarian' state with asymmetric power given to the executive – and, although not denying that elections as 'window dressing' took place during the Mubarak era, this work will take the position, as others have (and will be outlined in Chapters 4 and 5 of this work) that the 2012 elections, in which Mohamed Morsi was elected to the Presidency, constitute the first 'free and fair' elections of modern Egypt. In her analysis of elections and distributive politics under Mubarak, Lisa Blaydes describes how Mubarak continued the 'multiparty politics experiment' of the Sadat era firstly because he "lacked the power to reverse Sadat's efforts to deconstruct Nasser's political legacy" and secondly, Mubarak "implemented greater political pluralism as a counterweight to tightening economic conditions, where pluralism would serve as a political safety valve for economic discontent."⁴² She notes that there were no significant challenges, from the legislature or party politics, to Mubarak's rule (even as – as will be demonstrated in reference to Lombardi elsewhere – the 'judicial activism' of senior judges became an oppositional force to Mubarak in the 2000s) after the Wafd opposition party won a lawsuit in 1983 that allowed the party to contest the 1984 election.

securing policy objectives is through an elected supermajority in parliament. Parliamentary elections legally create the legislative supermajority needed to pass constitutional amendments and to rubberstamp initiatives put forth by the president [...] Although Mubarak has allowed the opposition to win seat, his regime would never permit the opposition enough seats to block legislation." Blaydes, Lisa. *Elections and Distributive Politics in Mubarak's Egypt*. (Cambridge University Press 2013: 39-40).

⁴² Ibid.p38.

Of the landscape of the political parties and oppositional political figures (aside from the Muslim Brotherhood as a *sui generis* case, as outlined in the subchapter above) during the late Mubarak era, it is worth briefly highlighting the following as significant actors in the political sphere. Firstly, it is worth noting ElBaradei's role in the Egyptian political landscape during the late Mubarak era, not only due to his international standing and significance as Director General of the International Atomic Energy Agency, but also due to his influence in the Egyptian political sphere as an anti-Mubarak voice with international credibility, which led to suggestions during the January 25th protests (or 'Friday of Anger') that he might become President in the event that Mubarak was ousted. Secondly, it is worth acknowledging that, despite the tense and often antagonistic dynamic between the Muslim Brotherhood (and political Islam and a whole) and the Egyptian state under Nasser, Sadat and Mubarak, Islamist parties (such as the Salafist Nour party) were part of the Egyptian political landscape during the decades after independence, and representatives of these – as will be noted in Chapter 2 of this work – were involved in the successive constitution-drafting processes, particularly the 1971 Constitution.

Lastly, the civil society organisations referenced in Chapters 4, 5 and 6 of this work have been subject to their own analysis⁴³ prior to the 2011 revolution, centering on

⁴³ For a historical overview of civil society movements in Egypt and the way in which they reconfigured after 2011, see: Sika, Nadine. 'Civil society and democratisation in Egypt: the road not yet travelled'. *Muftah.org*. May 29th 2012. Available online at: <http://muftah.org/civil-society-and-democratization-in-egypt-the-road-not-yet-traveled/#.Vp2sSnhGzFI> [accessed July 18th 2014].

the way in which civil society voices strategically – as Chapter 2 will demonstrate – made institutional ‘inroads’ against the power of the deep state during the late Mubarak era. Within this, it is worth noting the emergence of the April 6th Youth Movement, who ‘announced’ their arrival in the Egyptian political space in 2008 with a message in support of a textile strike,⁴⁴ and came to be a focal point in the mobilisation against Mubarak during the mass protests of early 2011 that led to the overthrow of the regime. The actions and fate of the April 6th Youth Movement during the period of the drafting of the successive post-Mubarak constitutional texts will be further outlined in Chapters 4, 5 and 6 of this work.

Conclusion

This survey chapter has delineated and outlined the key actors, organisations and institutions that inform Egypt’s socio-legal sphere. The information presented in the sub-chapters above was chosen in order to provide the conceptual tools and background necessary to engage with the analysis firstly of the next two chapters of this section (the chronological analysis of Egypt’s successive constitutions since 1923, and the thematic analysis of Egypt’s experience of ‘legal pluralism’ since the country’s experiences of French and British colonialism) and the analysis of Part 2 and 3 of this work, which tell the story – amongst other components of analysis – of the ways in which the 2011 revolution altered and reconfigured the dynamics between the key actors and institutions of Egypt’s political and legal landscape.

⁴⁴ Culebras, Ignacio M. Delgado. ‘A Conversation with Egypt’s April 6th Youth Movement’. *Muftah.org*. April 29th 2014. Available online at: <http://muftah.org/conversation-egypts-april-6-youth-movement/#.Vp2t3XhGzFI> [accessed April 29th 2014].

Amongst these, most salient – as Parts 2 and 3 of this work will demonstrate – is the antagonistic relationship between the Muslim Brotherhood and the ‘deep state’, and the how the constitutional texts of 2011, 2012 and 2013 became a terrain upon which the power-struggle between the two groups played out in the post-revolutionary context, with the 2012 and 2013 constitutions in particular each being an ‘assertion’ of the respective group’s vision of the Egyptian state (related to Jeff King’s idea, as outlined in the Introduction of this work, of constitutions as ‘mission statements’) and attempt to limit the power of the other.

The above subchapters sketching out the key actors and institutions of the Egyptian state prior to the 2011 revolution are necessarily not exhaustive or comprehensive. There are significant areas of the Egyptian political landscape that have not been noted here, as they are not central to the narrative and analysis of the following chapters and engagement with the post-Mubarak constitutional texts. One notable gap is the Egyptian labour movement;⁴⁵ similarly, civil society movements have not been analysed as a separate component here but will be referenced in relation to the narrative and analysis of the Egyptian revolution of 2011 in Chapter 4 of this work.

Despite the impressionistic and incomplete nature of the survey of the key actors and institutions in the subchapters above, identifying these key actors and

⁴⁵ For an analysis of how the Egyptian labour movement transitioned from its position in the late Mubarak era to its place in the post-2011 political landscape during the upheaval of the post-revolutionary period, see: Taha, Mai. ‘The Egyptian Revolution in and out of the Judicial Space: an Inquiry into Labour Law and the Workers’ Movement in Egypt.’ *International Journal of Law in Context*. (2014).

institutions sets the scene for the analysis of the post-Mubarak constitutional texts, and the 'cultural text' from which they emerged. Of particular relevance, as will be demonstrated in Parts 2 and 3 of this work, is the way in which the Muslim Brotherhood versus Egyptian state dynamic is comprehensively stitched into the political reality of modern Egypt, a dynamic that left its traces on the pre-2011 constitutions, and manifested in the post-2011 constitutions in a striking way reflecting the unprecedented shift in the role of the Muslim Brotherhood vis-à-vis (and *in*) the state after 2011.

The following Chapters will build upon the analysis presented here. In Chapters 2 and 3, the legal legacies and constitutional heritages of Egypt's experience of modernity will be outlined in a way that draws upon the literature relating to the key actors and organisations that was sketched out above. Taken together these three chapters will provide the backdrop against which the three post-2011 constitutions will be set, and provide both the context and the conceptual tools by which the post-2011 constitutions will be analysed. As Chapters 4, 5, and 6 will demonstrate, the pre-existing dynamics between the key actors, institutions, legal legacies and constitutional heritages of Egypt prior to 2011 reconfigured in the post-revolutionary period. Chapter 7 will then go on to demonstrate the way in which the three post-2011 constitutional texts operate as 'legal mosaics', in my formulation, precisely because of these social, legal and political components in Egypt's experience of modernity, which have come to bear upon the post-2011 constitutional documents, and which in turns entailed that the pre-2011 constitutional texts and legal legacies of Egypt's twentieth century became deployed in the post-2011 context in dynamic and innovative ways, using the post-

2011 constitutional texts as a terrain on which the unresolved struggles between these different factors, actors and forces in Egypt's pre-2011 realities played out.

Chapter 2: Egypt's constitutional heritages

The previous chapter delineated the key institutions and actors that shape Egypt's polity and (as Part 2 will pinpoint) shape its constitutional trajectory. Building upon this, this chapter aims to chart the constitutional 'heritages' that the post-revolutionary political actors inherited in 2011, as a kind of 'toolkit' from which they could choose – or reject – constitutional concepts and forms. As Part 2 of this work will demonstrate, these constitutional heritages were highly influential, and deployed in dynamic ways, by the drafters of the successive post-revolutionary constitutions, making the post-revolutionary constitutions 'legal mosaics' partly comprised of facets of Egypt's (pre-2011) constitutional heritages.

This chapter will survey the successive constitutions of modern Egypt, outlining them as ‘tiles’ from which the post-Mubarak constitutions – as Part 2 will demonstrate – were partially formed. This chapter will be chronological in nature, and not insert references at points of historically established fact but rather refer to the academic literature at points where there is historiographic contestation over either the details or significance of event relating to the successive Egyptian constitutions since 1923. The constitutional articles referred to are from the Egyptian government’s own English translation in each case. The chronological nature of this chapter is nonetheless underpinned by an analytical approach, in which I draw to the fore the salient features of the successive constitutions since 1923 that come to bear – as will be demonstrated in Chapters 4, 5 and 6 of this work – on the post-Mubarak constitutional texts.

Egypt’s constitutional trajectory is also a compelling way to read the political history of modern Egypt itself – as Brown (2011; 2012; 2013), Lombardi (2011) and Rutherford (1999; 2013) have all illustrated, the constitutions of Egypt – their moments of formation, and the crises or changes that brought them into being – are integral to the story of modern Egyptian politics and society. They contain traces within them of the key oppositional struggles and relationships between actors and institutions drawn out in Chapter 1 of this work, and – like the post-Mubarak constitutions that followed them, as Part 2 of this work will outline – became the terrain on which political power struggles were enacted.

Moreover, reading the successive constitutions together as a kind of lineage tells part of the story of the 2011 revolution itself, and the causes behind it (Brown:

2011). As this chapter will show, Egypt's modern history is punctuated with constitutions, and constitutional crises, culminating in the constitutional amendments of 2007, the public reaction to which in part precipitated the 2011 revolution that overthrew Hosni Mubarak.

Egypt's constitutional beginnings

As a result of populist demands, Egypt made its first attempts to draft a constitution in 1879 and again in 1882.⁴⁶ Previous eras were limited to bylaws or the 'Siyasetname' issued under Muhamed Ali, which cannot be considered 'constitutions' as they were focused purely on administrative affairs to coordinate Ali's rule – there was no delineation of the state-citizen relationship, only relations between administrative entities. In the late nineteenth century, the Prime Minister Mohamed Sherif Pasha asked Khedive Ismail to draft a constitution⁴⁷, which was modelled on the French system, although largely ignored as a legal instrument as Khedive Ismail's rule strained under the pressures of colonial encroachments and bankruptcy, and was forgotten when Ismail was deposed.⁴⁸ Similarly, the 1882 constitution drafted under Ismail's successor Khedive Tawfiq was quickly swept aside as the British colonised the country in the same year.⁴⁹

⁴⁶ Brown, Nathan J. 'Egypt's Constitutional Ghosts: Deciding the Terms of Cairo's Democratic Transition', *Foreign Affairs*, February 15th, 2011. Available online at: <https://www.foreignaffairs.com/articles/north-africa/2011-02-15/egypts-constitutional-ghosts> [accessed May 12th, 2014].

⁴⁷ Ibid.

⁴⁸ Bernard-Maugiron, Nathalie; Dupret, Badouin. *Egypt and its laws*. (Kluwer Law International 2002).

⁴⁹ Ibid.

The 1882 document was comprised of 52 articles focused predominantly on the internal workings of the Council of Delegates that had been established two decades earlier, who were pressuring the government to resist the increasing British and French control (namely the presence of British and French members of the Egyptian cabinet who were refusing to answer the Council of Delegates' questions). The text does go some way towards creating parliamentary representation, a step forward from the councils that had been only consultative. It declared two authorities in the state, the executive and legal branches, and 'contained' government inasmuch as it outlined the powers and responsibilities of the executive branch, excluding the Khedive from army oversight.⁵⁰

However, despite these tentative early moves in constitutionalism, little if any residue of the nineteenth century constitutional attempts carried over into the constitutional texts that followed. The 1879 and 1882 constitutions occur during the period of increasing resistance to French, British and Ottoman influences and moves towards reform, but are primarily concerned with the internal workings of the Council of Delegates and deal little with the usual terrain and scope of constitutional law such as sovereignty and the dynamics of political institutions – while they can perhaps be read as 'petitions for sovereignty'⁵¹ by elites negotiating the realities of colonialism or a quasi-colonial space, they had no direct legal impact

⁵⁰ Ibid.

⁵¹ Ibid.

on the period from 1882 to the early twentieth century, during which time Egypt was under British control, led by the British ambassador Lord Cromer.⁵²

During the British period anti-colonial activities and independence movements were framed partially in constitutional terms. In particular, the National (Vatan) Party and the Constitutional Reform Party drafted model constitutions for an independent Egypt, which were drawn upon in the uprising against the British after the deportation of the Wafd party representatives to the Paris Peace Conference, which led to the British declaring Egypt's sovereignty in 1922. Shortly thereafter, Egypt created its first independent constitution. The 1923 Constitution held Egypt in place between independence and the 1952 coup, with a five-year interval between 1930 and 1935, in which a modified constitution was in place, before the more liberal 1923 constitution was restored. It was a parliamentary representative system on the Westminster model, since characterised by scholars such as Nathan J Brown as Egypt's 'liberal constitution', a reference that was also made by opponents of President Morsi's proposed post-revolutionary final constitution in 2012, who proposed the 1923 constitution be taken as a model for the new post-Mubarak constitution-in-process.⁵³ It was Egypt's most detailed constitutional document up to that date in terms of establishing separation of powers between the three branches of government, drawing particularly on the

⁵² Brown. Ibid.

⁵³ Jakes, Aaron. *The myth of Egypt's liberal constitution*, Egypt Independent, 4th August 2012.

Belgian constitution and the conception of constitutional courts of the French Third Republic (Rutherford 1999).⁵⁴

The 'liberal' nature of the 1923 constitution has, however, been contested by those who point to the fact that the monarch had the power to dissolve parliament.

Moreover, the drafting process meant that the final version of the document was stripped of much of its earlier democratic and liberal content. Saad Zaghoul's Wafd party sat out of the drafting process despite its popular support amongst Egyptians, as Zaghoul maintained that only a democratically elected assembly could express the will of the people.⁵⁵ In the absence of Wafd representatives, the constitutional committee, headed by Hussein Rushdi, was comprised in large part of the political elite and landed gentry.

At this stage the constitution still retained much of its liberal character derived from the Belgian model, such as articles on religious freedom and freedom of the press. What undermined the constitution drafting process is the Consultative Committee for Legislation that was convened⁵⁶ to review the drafting committee's final version of the text: this consultative committee contained a number of British officials and through their review Articles 15 and 20 – dealing respectively with freedom of the press and public assembly – were modified with an open provision for restrictions in “the cases where it may prove necessary for the maintenance of

⁵⁴ Brown. Ibid.

⁵⁵ See, for instance, Quraishi, Zaheer Masood. *Liberal Nationalism in Egypt: The Rise and Fall of the Wafd Party*. (Kitab Mahal 1967).

⁵⁶ Jakes. Ibid.

social order". Despite this corrosion of the liberal nature of the initial draft of the 1923 constitution, the text remains significant in marking Egypt's independence as a secular and democratic independence, establishing separation of religion and state and a strong bicameral legislature.⁵⁷

It is worth turning to the Belgian constitution⁵⁸ that was drawn upon for the 1923 text, as this is a large part of why the Egyptian constitution was positioned as a 'liberal' text: enacted in 1831, the main features that were drawn upon for Egypt's 1923 constitution are the rights protection articles, such as freedom of expression, religious freedom and property rights, separation of powers, and Article 109 that states that 'the King sanctions and promulgates laws'. It's worth noting here that Belgium has had a relatively stable constitutional history, unlike Egypt, pointing to the idea that it is not the constitutional form that determines constitutional endurance but the context; that transplanting certain successful forms in other countries does not necessarily secure a successful constitutional system.

From Nasser to Sadat, from Sadat to Mubarak

After Egypt's 1952 military coup led by Nasser's Free Officer's Movement, the Revolutionary Command Council abolished the 1923 Constitution. The ruling constitutional monarchy was removed from power and the military declared Egypt a republic in the 1953 constitutional declaration, which entailed temporary constitutional provisions during the transitional period. The final constitution of

⁵⁷ Ibid.

⁵⁸ *The Constitution of Belgium*, available online at: http://www.dekamer.be/kvvcr/pdf_sections/publications/constitution/grondwet_EN.pdf [accessed 12th January 2013].

the new republic was drafted by the Free Officer Movement's higher echelons – a combination of military and judicial figures – and the final version issued in 1956. The politically tumultuous nature of the military regime meant that a series of documents were issued over the next eight years that served the military's own ideological and institutional needs. The 1956 constitution, drafted by Nasser's inner circle⁵⁹ with little public consultation, has resonances with the socialist constitutions of the era, as evident in the preamble, which states a constitutional commitment to “eradication of all aspects of imperialism”, “extinction of feudalism”, “establishment of social justice”, and “eradication of monopolies and control of capitalistic influence”.

As with the shift in socialist constitutions of this era, there is an increased emphasis on economic, social and cultural rights throughout the constitution, while civil and political rights are less foregrounded. The stipulation that the President (who is Head of State and Chief Executive) must not be related to the former royal family similarly mirrors the Free Officer's Movement official discourse that the new Egypt must not retain institutional links with the governmental system of the 1923 constitution, symbolic as it is in their conception of imperialism and an official entrenchment of social inequality (Rutherford 1999).

One significant development in the 1956 constitution was granting of the right to vote to women and the right of women to hold political office. This development is significant due to the complicated relationship between President Nasser's military regime and women's rights. Feminist organisations had begun mobilising in the

⁵⁹ Brown. Ibid.

1940s for full political rights for women, and in this sense the 1956 constitution meant the achievement of their aim. However, the Nasser period itself was more ambivalent regarding women's rights given its position against political organisation: in 1952 the Revolutionary Command Council issued a declaration demanding the dissolution of all political parties, entailing that independent women's organisations such as Bint El-Nil and the Egypt Feminist Party were banned and feminist organisations had to revert to operating as 'charity' organisations.⁶⁰

The granting of women's suffrage can thus be situated in a reading of the constitution as a socialist document, in terms of enacting the socialist principles regarding the equal status of women also evident in Communist and socialist constitutions such as the 1936 Soviet constitution and the 1946 Yugoslav constitution, whilst other aspects of socialist doctrine, principally restrictions on political movements, in practice curtailed feminist organisations and women's rights movements. This has parallels in the official political discourse of the era of President Nasser, which frequently minimised women's rights, alongside demands and discourses of civil liberties, as a bourgeois concern, or affiliated with the liberalism of the imperial powers.

Alongside the granting of suffrage to women, the 1956 constitution is significant for its qualification on the right to establish associations, which is explicitly qualified and bounded in Article 47 as a right "subject to the provisions described by law".

⁶⁰ For an overview of the role of women's movements and feminist organisations in Egypt during this period, see: Russell, Mona L. *Egypt*. (ABC-CLIO 2010: 179).

This has been read by scholars such as Nathan J Brown and Tamar Moustafa as an article that distinctly reflects the Nasser-era move towards a one-party system, but particularly addressing the fraught relationship between the regime and the Muslim Brotherhood. It is worth noting here that President Nasser had made the Muslim Brotherhood illegal as a political party, although as a religious organisation he was unable to ban them completely nor stymie their cultural and social influence. Political parties were banned by decree, in a ban that operated in combination with the constitutional Article 122, which stipulated six year Presidential terms but – significantly – no term limits. Such a provision paved the way for one-party autocracy, enabling President Nasser to remain in power until his death.

President Nasser's regime and the Free Officer Movement which delivered him to power evidently developed in the context of post-colonial pan-Arabism, an ideology that asserted solidarity amongst the countries of the Arab world, particularly positioning itself against Western involvement in the Arab world and against Israel.⁶¹

The 'solidarity' espoused by pan-Arabists extended at times to proposals of unification between Arab states, such as the proposal of Greater Syria by Abdullah in Jordan, which proposed a unification between Syria, Jordan and Palestine. While Abdullah's Greater Syria plan of Abdullah's vision was never enacted, a unification

⁶¹ Brown. Ibid.

was made between Egypt and Syria in 1958. As Eugene Cotran⁶² has noted, such an act entailed unprecedented legal reworking in order to form together the two countries. Part 1 of the Provisional Constitution of the United Arab Republic refers to the 'United Arab *State*', indicating that Egypt and Syria are no longer two independent states but now instead regions of one state, and therefore in terms of international law there was "now one international person where there had been two."

The implications of this in terms of international law were never resolved while the United Arab Republic was in existence. The United Nations, for their part,⁶³ took the position that, although Article 4 of its Charter requires that a union involving the extinction of prior national identities necessitates re-submission of entry to the United Nations, Egypt and Syria were maintaining their national personalities under a new, unified form, and thus would not need to reapply. The United Arab Republic settled its position with the World Health Organisation and International Telecommunications Union and with other bilateral treaties on new terms.⁶⁴

The internal legal implications were even more fraught: President Nasser abolished regional governments in favour of one central authority, which operated from Damascus between February and May and from Cairo throughout the rest of the year. Beattie has argued that, internally, it is most helpful to think of the United

⁶² Cotran, Eugene. 'Some legal aspects of the formation of the United Arab Republic and the United Arab States.' *The International and Comparative Law Quarterly*, Vol 8 No 2, April 1959. p346-390.

⁶³ Ibid.

⁶⁴ Ibid.

Arab Republic as an amalgam of two fully sovereign states rather than a 'union', inasmuch as Egypt and Syria were linked by a 'treaty' which creates a Union with organs of its own namely the Supreme Council – the executive – and the Union Council – which assisted the Supreme Council (Beattie 1996).

The unification of the judicial and administrative systems of the two countries was, in practice, never completed: Article 71 of the Provisional Constitution states that "The public services and administrative systems existing at the time the present Constitution comes into effect shall remain in force in each of Syria and Egypt until their re-organisation and unification by Presidential decree." This Article seems to indicate the recognition on the part of the drafters that the judicial and administrative systems cannot be unified immediately given the complexity of regional variance, but that the aim was that the United Arab Republic would eventually have a single body of laws and a uniform judicial and administrative system. The same applied to the monetary and taxation systems of the two countries, which were intended to eventually be unified.

The structure of government is set out in Articles 12-22, with the President of the Republic as the head of state (Article 12), the National Assembly as the legislature (Article 13), which exercises control over the acts of the Executive (Article 14). The structuring of the legislature hints at how the constitution drafters sought to navigate the merging of the two countries into the governmental union – Article 13 states "Numbers of the members of the National Assembly and their choice are determined by Presidential Decree. At least half of the number of members must

be members of the Syrian chamber of Deputies and the National Assembly of Egypt.”⁶⁵

Similarly, Article 20 states that the Assembly shall elect “the President and two Vice Presidents” – the idea of two Vice Presidents it recalls the structure of a consociational and power-sharing arrangement such as post-war Cyprus, however it cannot be read as a sign of consociationalism in the United Arab Republic as it is not explicitly stated in the constitution whether one Vice President will come from Egypt and one from Syria. Article 58 similarly sets out the nature of the unity, noting that Egypt and Syria are no longer countries but now ‘regions’ and “in each there shall be an executive council appointed by Presidential decree. This executive council has the competence to examine and study matters pertaining to the execution of the general policy in the region.”

Elsewhere the pan-Arab nature of the Egypt-Syria Union, and the socialism with which pan-Arabism is closely aligned, is brought to the fore, particularly in Part 2, which sets out the basic constituents of the society, noting that “social solidarity is the basis of society” and “social justice is the basis of taxation and public imports.” The reference to ‘society’ indicates the drafters’ conception of the identity of the citizens as being of one (pan-Arab) ‘society’, not the Egyptian and Syrian societies. The detailed provisions outlined for securing citizenship, and the different stipulations for those identified as ‘Arab’ – and how to identify those as Arabs –

⁶⁵ For a fuller explanation of the frameworks and internal tensions of the United Arab Republic, see: Palmer, Monte. *The United Arab Republic: An Assessment of its Failure. Middle East Journal.* 20:1. (1966: Winter).

signifies the regime's concern and commitment to pan-Arabist conceptions of identity and the state.⁶⁶

Yet for all the optimism of pan-Arabism, the United Arab Republic was short-lived, with Syria withdrawing from the union following a military coup in 1961. Egypt retained the name of the United Arab Republic for the remainder of President Nasser's rule, but pan-Arabism receded both in political discourse and in the provisional constitutional document that followed.⁶⁷

In order to regenerate Egyptian political support for his regime in the wake of the dissolution of the union with Syria, Nasser issued the National Charter in 1962, which laid out the socialist economic programme of the post-unity era, and led to the formation of a popularly elected constitutional commission, who drew up the new provisional constitution. The 1963 provisional constitution drew in large part upon the 1958 constitutional text, although there were significant departures in the following respects: it consolidated Presidential power and simultaneously strengthened the presence of socialist conceptions and elements in the constitution, which mirrors the shift in this period in Nasser's political discourse and positioning away from pan-Arabist rhetoric and towards socialism and authoritarianism. The first Article states that "the United Arab Republic [i.e Egypt] is a democratic, socialist state based on the alliance of the labouring force of the

⁶⁶ Ibid.

⁶⁷ Brown. Ibid.

people” and half of the Parliamentary seats were allocated to workers and farmers.⁶⁸

The post-Unity constitution also pushed towards a socialist ordering of society through its creation of the Arab Socialist Union (ASU), which was not a political party, but rather a mass organisation intended to channel political activism through popular committees, arguably as part of further attempts to drain social support from the Muslim Brotherhood and calls for political plurality. Similarly, the constitution stipulated duties for citizens such as defending the homeland, safeguarding social gains, and participating in public life – the emphasis on such ‘duties’ as corresponding to ‘rights’ in the state-citizen relationship outlined in the constitution reflects the militarised nature of Egypt throughout this period.⁶⁹

Anwar al-Sadat succeeded President Nasser upon Nasser’s death in 1970, having been made Vice-President by Nasser a year before the President’s death, and a new constitution was drafted by an appointed committee of the ruling elite.

Struggling with internal party divisions and with the shadow of Nasser looming over him, Sadat sought to carve out his own place as a statesman by shifting away from Nasser-style authoritarianism, which he initiated through the public burning of Nasser-era secret police files, which was met positively by the public.

Emboldened by the response, he took more significant steps away from his predecessor’s legacy by putting together a diverse committee of Islamic scholars,

⁶⁸ Ibid.

⁶⁹ Ibid.

feminists, liberals, socialists and those representing the Coptic community to draft a new constitution to herald in, in President Nasser's words, "a new era of legality."⁷⁰ The 1971 constitution used Nasser's constitutional documents, particularly the 1956 structure and format, as a foundation, but significantly tempered the socialist language.

The preamble emphasises the state's commitment to social equality and social progress but there is no explicit reference to concepts present in Nasser-era constitutional preambles such as "wealth redistribution". Whilst the main structure of government and state established by the 1963 provisional constitution remained unchanged, there is a clear change in the statement of the relationship between the citizen and the state. Namely, Article 3 states that sovereignty and authority of government comes from the people, not the state.

Although the allocation of Parliamentary seats to 'workers and farmers' remains in this constitution, there are signs of a shift away from a socialist (and, relatedly, pan-Arabist) conception of the state and towards a more social democratic conception, particularly Article 5, which states that Egypt has a multi-party system (although in reality this does not correlate with the continuing legislation that severely restricts the formation of political parties). Freedom of expression is explicitly granted except "in cases of emergency". While military rule is not ended by the 1971 constitution, the text strikes the compromise that "the law shall regulate the

⁷⁰ Barker, Raymond William. *Sadat and After: Struggles for Egypt's Political Soul*. (I.B. Tauris 1990).

military judiciary” (though whether this shift away from Nasser-era military trials occurred beyond the text is contestable).

The two-term re-election limit for the office of the President similarly signals an attempt to ease Egypt out of the shadow of President Nasser’s rule. Sadat’s decade of rule was punctuated by the 1973 war and long peace process culminating in the 1979 peace accord. Similarly, his attempts to economically liberalise the country were marred by set-backs of riots at rising food prices. The dynamic between the Islamists and Sadat’s regime also grew volatile, and would manifest itself in a confused legal path throughout Sadat’s time in office. In the early years of President Sadat’s rule, his so-called (and somewhat oxymoronic) ‘rectification revolution’ entailed a reworking of the relationship between the state and the growing manifestations of political Islam – political prisoners were released and Sadat attempted to control the role of religion through indirect methods such as a network of district offices in governorates to select his preferred ‘imams’ for state mosques. However, the Sinai treaty with Israel contributed to growing Islamist opposition to Sadat’s rule. Sadat oscillated between repression and conciliation, and this is reflected in the constitutional developments between 1971 and 1980.⁷¹

⁷¹ As Zachary Laub notes, “the Muslim Brotherhood renounced violence at the insistence of Anwar al-Sadat, who *allowed the group to preach and advocate in exchange for its support against his political rivals: Nasser loyalists and leftists.*” [italics mine]. See: Laub, Zachary. ‘Egypt’s Muslim Brotherhood: Backgrounder.’ *Council on Foreign Relations*, January 15th, 2014. Available online at: <http://www.cfr.org/egypt/egypts-muslim-brotherhood/p23991> [accessed June 17th, 2014].

President Sadat's popularity decreased in 1977 as his policies of economic liberalisation chewed away at the daily life of the populace as a result of high inflation and increasing disparities of wealth and the strength of the Muslim Brotherhood as a political alternative grew more attractive to many Egyptians (Beattie 2000), particularly after Sadat's historically significant visit to Israel, which alienated many of his supporters and further galvanised many of his opponents. In response to this crisis of confidence in his rule, President Sadat made a political calculation to re-align his rule with elements of the Muslim Brotherhood and constitutionally strengthening his own position as leader. He changed the constitution through Article 152 (proposal of amendments through referendum) – a referendum which passed, according to Brown, only as a result of vote-rigging. Once this was changed, his ability to propose constitutional reforms was considerably easier.

What happened next was an unprecedented political and legal 'deal' or alignment between Sadat and the Muslim Brotherhood, who between them effectively 'traded' the position of shari'a in the constitution in return for the amendment of Article 77, which relates to limits on Presidential re-election. This political trade-off bolstered both the legal tools at the disposal of political Islamism and – simultaneously – the degree of power concentrated in the hands of Sadat. (The tension of both authoritarianism and an empowered Muslim Brotherhood in the political sphere would contribute to the increasingly fraught political climate that culminated in

Sadat's assassination). Article 77 and Article 2 were therefore both amended from the 1971 versions.⁷²

Article 77 of the 1971 version of the Egyptian constitution limited the President to two terms in office. President Sadat duly amended this to state that the “the term of the Presidency shall be six Gregorian years starting from the date of the announcement of the result of the plebiscite. The president may be re-elected for other successive terms.” This gave Sadat the assurance of continued authoritarian power and in exchange he amended Article 2 in such a way that reflected the conception of the state of the Muslim Brotherhood. Such attempts at trade-off – to consolidate his own power in exchange for displays of conciliation towards Islamist-inclined opponents – were central to Sadat's *modus operandi* as President, and yet ultimately proved unfruitful and unsustainable.

Article 2 of the 1971 constitution initially stated clearly “Islam is the religion of the state and Arabic is the official language. Principles of Islamic law [shari'a] are a principal source of legislation”. In an amendment in 1980, this is modified to say “Islam is the religion of the state and Arabic is the official language. Principles of Islamic law [shari'a] are *the* principal source of legislation”. This shift from ‘a principal source’ to ‘the principal source’, is highly significant, both politically and constitutionally, a clear response to the burgeoning political Islam and a move away from the (secularly-defined) pan-Arabism of Nasser's constitution which had been the basis of the 1971 constitution.

⁷² Kassem, Maye. *Egyptian Politics: The Dynamics of Authoritarian Rule*. (Lynne Rienner 2004: 27).

This amendment can be read socio-politically in terms of the relationship between the state and the Muslim Brotherhood throughout this era, particularly as the Muslim Brotherhood heightened their work throughout the 1970s on judicial reform and 'legal revolution'. Sadat's elevation of shari'a seems part of his political calculation that incorporating political Islam into the state would be the most effective way to retain authority by negotiating his relationship with the Muslim Brotherhood.

The 1980 constitutional amendment was a significant departure in Egypt's constitutional history, but on a political level, Sadat miscalculated. The more hard-line Islamist groups, such as the Egyptian Islamic Jihad, never forgave Sadat for the Camp David Peace Accords, and President Sadat was assassinated by an Islamist opponent in 1981.⁷³ President Hosni Mubarak's succession was to be at once more stable and more authoritarian and the previous eras, and the structure of the 'police state' built up by his predecessors became finely-tuned to resist any encroachments on the ruling elite's power. Mubarak did little to alter the constitution throughout the duration of authoritarian rule, and the 1971 constitution of the Sadat era remained in place, with two amendments towards the end of his reign.⁷⁴ While these constitutional amendments were significant, more crucial were the developments in the Supreme Constitutional Court and the role of judicial activism as resistance to state authoritarianism.

⁷³ Laub. Ibid.

⁷⁴ Brown. Ibid.

Mubarak's constitutional amendments

Mubarak's decades of rule were, for all their numerous and undeniable faults, relatively stable until the final years. Brown (2011) notes how the incremental liberalisation of the press in the 1990s led to more critical voices in public discourse and can in part be seen as developing in tandem with the increasing support for the Muslim Brotherhood. Human rights organisations were given a more prominent place in advising the government, although this was in large part window-dressing.⁷⁵

President Mubarak's first amendment of the 1971 constitution came in 2005.

Article 76 of the constitution was amended, altering the selection process for the Egyptian President. In place of the referenda used to select the President the Head of State would now be elected by direct, national, secret ballot. This amendment generated significant controversy for the reason that the new format of the article took up almost two pages of the Constitution.⁷⁶ The amendment of Article 76 can be read as an attempt by Mubarak to consolidate his power under the guise of introducing 'direct elections' and thus appearing superficially to be a move to strengthen the democratic process.

Part of the amendment stated that a party needed at least 5% of the seats in the Parliament to be able to nominate a candidate, which decreased the likelihood of opposition parties being able to participate. The amendment sparked a series of

⁷⁵.Ibid.

⁷⁶ Ibid.

protests, and the mobilisation of civil society in opposition to the amendment laid the ground for the organisations such as the April 6th Youth Movement who coordinated the protests that brought down President Hosni Mubarak six years later.

The amendment of Article 88 was also significant⁷⁷, lessening the judicial supervision of elections. Article 88 of the 1971 constitution provided that in parliamentary elections and referenda “balloting take place under the supervision of a judicial body” but as this does not specify how the supervision is to take place, in both the Sadat and Mubarak era the regime drew upon the ambiguity of the article to ‘allow’ judges only to ‘observe’ at ballot-counting stations arguing that there were not enough judges for them to be posted to the polling stations themselves on an election day.

However, this convenient use by the regime of Article 88’s ambiguity was curtailed when the Supreme Constitutional Court, in one of its more activist and anti-regime decisions, struck down the election law in 2000 “because it did not provide judicial oversight of each polling station and failed to give judges the necessary authority over balloting”⁷⁸

⁷⁷ Brown, Nathan J, Michele Dunne and Amr Hamzamy. ‘Egypt’s Controversial Constitutional Amendments’. *Carnegie Endowment for International Peace*, 2007. p2.

⁷⁸ Ibid.

As a response to this move by the Supreme Constitutional Court, President Mubarak spread elections over several days and made judges responsible for polling. However this was widely criticised, including by Egypt's Judges Club, as "with judges only able to supervise the balloting, other aspects of the electoral process fell completely outside of their control, such as the official harassment of opposition candidates."⁷⁹

Article 88 was amended in response, transferring responsibility of supervision from judges to an electoral commission, but although this was in keeping with international practice, the shift back to holding elections on a single day meant the difficulty of monitoring them returned. Despite the widespread opposition to the 2005 constitutional amendment, Mubarak attempted a more comprehensive restructuring of the 1971 constitution two years later. In 2006, the President obtained parliamentary approval of a renewal of the state of emergency for another two years. ⁸⁰He maintained that the Constitution would need to be amended in order to pave way for such a law, and it was on this premise that he began the 2007 constitutional reforms. He pushed through amendments to a total of 35 articles with the main intention of restructuring the judicial and governmental systems to make them impenetrable to the Muslim Brotherhood. Article 179 of the 1971 constitution was amended, which originally allowed the President to order civilians to be tried in military courts. ⁸¹

⁷⁹ Ibid.

⁸⁰ Ibid. p4.

⁸¹ Ibid.

The original article provided for a 'Socialist Public Prosecutor', which tried political and corruption cases – as Brown notes, this was primarily used against Islamist terrorists in the Sadat and early Mubarak era. The 2007 amendment allowed for the President to refer “any terrorist charge” to any court of his choosing and can by-pass protections against arbitrary arrest, search without warrant and violation of privacy contained in Articles 41, 44 and 45 of the 1971 constitution.

Perhaps most significant of the 2007 reforms was the constitutional amendment that banned any political parties “based on religion, race or ethnicity” – an obvious targetting of the Muslim Brotherhood in particular, whose unexpected gain of 20% of seats in the People’s Assembly in the 2005 elections triggered alarm bells in the Mubarak regime.⁸² Taken as a whole, the 2007 amendments were a concerning combination of increasing of arbitrary detention and military trials without oversight combined with a targetting of opposition groups.

Simultaneously, the amendments removed significant parts of the socialist language and introduce the language of ‘citizenship’. Brown has argued that the 2007 amendments were a calculated move by President Mubarak: “the amendments and the process by which they were passed constitute an effort by the Egyptian regime to increase the appearance of greater balance among the branches of government and of greater opportunities for political parties, while in fact

⁸² Ibid. p5

limiting real competition and keeping power concentrated in the hands of the executive branch and ruling party.”

The dynamic between the judiciary and President Mubarak’s regime is worth turning to here as it both illuminates the constitutional reforms President Mubarak brought in in the last decade of his rule and in turn how citizens dissatisfied with the Mubarak regime eventually framed their concerns in revolutionary terms rather than seeking to continue working for reform within the system. Kevin Boyle has outlined⁸³ the way in which, throughout the 1980s and 1990s there was a cultural shift within the judiciary towards reading the 1971 constitution in a more liberal light, particularly after a 1984 law gave judges more autonomy; however, this judicial approach began to clash with the infrastructure of the police state in the 1990s as the regime began to clamp down on the Muslim Brotherhood and other perceived ‘dissidents’.

Nathan J Brown, Tamir Moustafa and Clark Lombardi have all highlighted the role of the Supreme Constitutional Court in juxtaposition to the Mubarak regime throughout this period and its shift from regulating the lower courts of the judiciary towards issuing its own ‘statements’ on constitutional and political issues and moving towards enforcing the rights of the 1971 constitution. Tamir Moustafa (2007) positions this ‘legal mobilisation’ in the face of President Mubarak as a ‘political movement’ in judicial form, inasmuch as the judiciary worked, against the

⁸³ Boyle, Kevin. *Human Rights and Democracy: The Role of The Supreme Constitutional Court of Egypt*. (University of London Centre of Islamic and Middle Eastern Law, Kluwer Law International 1996).

regime and the interests of the regime, to facilitate democratisation, embed human rights standards and even mitigate against economic instability. One of the most significant ways in which this 'legal mobilisation' manifested was through a series of court decisions on electoral laws in the 2000s.

These court decisions contributed to a more open ballot process that primarily benefitted the Muslim Brotherhood, whose social capital and political popularity had been growing throughout this period. This development, however, is what then led to President Mubarak's comprehensive reworking of the 1971 constitution in 2007 to both marginalise the Muslim Brotherhood and curtail the election process.

This response to the judiciary's decisions on the electoral laws is likely part of what prompted citizens and civil society organisations who were opposed to Mubarak's authoritarianism to begin to frame their demands and concerns in revolutionary terms, as the institutional tools of resisting authoritarianism, namely the judicial activism of the Supreme Constitutional Court, were no longer effective mechanisms.

Chapter 3: Egypt's legal legacies

Introduction

The aim of this chapter is to build upon Chapters 1 and 2 and complete the outline of the wider political, legal and constitutional context that forms the broader 'cultural text' in which the 2011, 2012 and 2013 constitutions reside. As Chapter 1 outlined the key actors and institutions of Egypt's political landscape, and Chapter 2 provided an account of Egypt's modern constitutional experience, this chapter will draw out the threads of these previous chapters to note and critically engage with the 'legal legacies' embedded in Egypt's experience of modernity. 'Legal legacies' in this context refers to the bodies of law and ways of approaching law that remain as 'live' traces of Egypt's past legal systems.

This chapter, taken with Chapters 1 and 2, is intended to provide the conceptual tools through which to understand the context of the close textual analysis undertaken in Chapters 4, 5 and 6 of this study of the post-revolutionary constitutions, and will be referred to in Chapter 7 in order to demonstrate how the 2011, 2012 and 2013 constitutions are best understood as 'legal mosaics.'

Legal pluralism

A necessary concept for understanding the Egyptian legal sphere is that of 'legal pluralism.' Whilst socio-legal theorists and legal scholars have defined 'legal pluralism' in a number of ways (which are often indicative of the different realities and examples of legal pluralism that they each focus on), this analysis takes John Griffiths' influential formulation of legal pluralism as a starting point. It is important to note that Griffiths defines legal pluralism *behaviourally*, stating in his

influential essay ‘What is Legal Pluralism?’ that “[f]or present purposes we can define ‘legal pluralism’ as that state of affairs, for any social field, in which behaviour pursuant to more than one legal order occurs” and continuing that “legal pluralism in this sense obtains in all but the most extreme cases of social fields” (Griffiths 1986: 1). In other words, if we are judging by behaviour, legal pluralism is the norm in societies – individuals in the society operate by different laws, and different systems of regulation, depending on the time and situation, and these different systems are temporally and geographically simultaneous. Griffiths’ definition of legal pluralism as something that should be discerned from behaviour rather than from legal text itself lends ‘legal pluralism’ as a descriptive term an anthropological (and socio-legal) component, which will be further demonstrated below.

Although Griffiths is elevating one descriptive position on law over another in theoretical and abstract terms, critiquing legal theorists from Hobbes onwards for misconceptualising law (“legal pluralism is the fact. Legal centralism is a myth, an ideal, a claim, an illusion.” (Griffith 1986:4), he also anchors his defence of legal pluralism in the colonial and post-colonial eras’ experiences of modernity. He argues that “[l]egal pluralism [...] has been a fixture of the colonial experience”⁸⁴, a focus that mirrors the work of anthropologists who have sought to demonstrate the existence and characteristics of legal pluralism, who have done so through examples of non-Europeans societies and states during and after their encounters with European colonialisms (for instance, Clifford Geertz, as will be explained below).

⁸⁴ Griffiths, *ibid.* p6.

Central to Griffiths' argument for legal pluralism – or, rather, against what he considers to be the erroneous presumptions of 'legal centralism' as he identifies it in other scholars – is the idea that there are both 'weak' and 'strong' forms of legal pluralism. Griffiths sketches out his departure from other scholars who have sought to define legal pluralism, such as Hooker⁸⁵, by arguing that an operationally useful description of legal pluralism as it manifests in reality would differentiate between 'weak' and 'strong' legal pluralism, and that 'legal centrists' have erroneously come to their position by only addressing 'weak' forms of legal pluralism, which legal centrists take as evidence that the state has ultimate power to demarcate the boundaries of other legal systems within it, and thus there is no legal 'pluralism' in any meaningful sense, as one actor (the state) is the arbiter of when the state's legal system can derogate to other legal systems or legal traditions.

Delineating between Pospisil's idea of 'legal levels' on the one hand (which, Griffiths outlines before critiquing it, demonstrates that we must "acknowledge the complex social structures within which legal phenomena occur" (Griffiths 1986: 15) but which ultimately presents the state as the arbiter of the validity and scope of different legal levels) and Ehrlich's anthropological concept of "living law" on the other (in which law is 'read' behaviourally, by which codes and customs are followed in a particular temporal moment, situation and context, which entails that the state might not be the ultimate arbiter of law in the sense of the ultimate

⁸⁵ As Griffiths quotes, Hooker defines legal pluralism as the existence of "multiple systems of legal obligation...within the confines of a state." (Hooker 1975:2; Griffiths 1986: 9).

determining force on people's behaviour), Griffiths demonstrates how 'strong' legal pluralism exists in realities in which there is no single supreme system under which alternative and auxiliary legal systems and legal spheres operate. He contrast this with 'weak' legal pluralism, in which one system is the arbiter of the boundaries and validity of parallel and auxiliary legal systems and traditions within in, but argues that this phenomenon in reality does not mean that legal pluralism 'does not exist', nor is it conceptually invalid (as he notes, "legal pluralism does not require the presence of more than one entire legal system" (Griffiths 1986: 12)).

Dupret, building upon Griffiths and taking his work as the backbone of his own formulations of legal pluralism as a concept, begins by surveying the different trends within the socio-legal understanding of 'legal pluralism', and then notes as a definitional overview that what they have in common is the idea that "state law is much more than state law" (Dupret 2007:1). For Dupret as for Griffiths before him, legal pluralism can be illuminated by being contrasted with legal centralism (whilst noting that proponents of 'legal centralism' might not self-identify as such or see that as the schema that they are advocating), which Griffiths sketches as "an exclusive, systematic and unified hierarchical ordering of normative propositions" found in the conceptions of law from Hobbes to Hart. As Dupret outlines, Griffiths asserts – somewhat overstressing the use of the word – that the legal centralism from Hobbes to Hart is "an ideology", and cannot be found in reality (Griffiths 1986: 3-4; Dupret 2007).

As Griffiths himself acknowledges, his defence of legal pluralism as a more tenable conceptualisation of how law operates in society than the 'legal centralism' that he

roundly dismisses builds upon Sally Falk Moore's (1978: 57) influential conception of the locus of the law as *semi-autonomous* – in other words, that different 'laws' operate in different spheres within the same society, each boundaried in their own 'realm' or remit.

Dupret's survey of both the limits and the utility of legal pluralism as a concept, and the ways in which legal pluralists have – at times problematically (as will be demonstrated below) – reframed and redefined legal pluralism, is useful to the endeavour being undertaken here, so it is worth turning to his appraisal at some length, as it highlights – and then responds to – various critiques of legal pluralism as a concept. Dupret in turn, and in addition to drawing upon Griffiths, acknowledges his indebtedness to Vanderlinden's defence and *reformulation of* legal pluralism (Vanderlinden 1989: 149-157), which Dupret claims is also convincing due to the fact it advocates taking into account normative practices as a part of law. Dupret outlines the way in which Vanderlinden builds on Moore's idea that an individual is subjected to many legal systems by belonging to a number of different 'networks' (Dupret 2007).

Dupret notes that some legal pluralists consider law as the product of an intentional agency and that a corollary of this understanding (which Dupret himself does not fully align with) is the potential pitfall that Brian Tamanaha – who has tried to build a robustly 'anti-essentialist' conception of legal pluralism – notes in the reasoning of some legal pluralists, which is the (erroneous) "conclusion that all

forms of social control are law.”⁸⁶ In his article surveying the ways in which the concept of legal pluralism has been used, Tamanaha builds towards constructing his own position on the scope of legal pluralism by refuting claims that legal pluralism is the ‘default’ situation, and yet that such a refutation as the one he undertakes does not necessarily lead to the ‘legal centralism’ Griffiths so roundly dismisses. Tamanaha points out the conceptual discomforts of the realities of legal pluralism, and so – whilst siding with Griffiths and Dupret that ‘legal pluralism’ is conceptually valid and often the most appropriate way to describe legal systems in reality – demonstrates the potential problems of legal pluralism not as a concept (he agrees it is a valid conceptual framework) but in reality. For instance, he notes how: “multiple, often uncoordinated, coexisting or overlapping bodies of law may make competing claims of authority; they may impose conflicting demands or norms; and they may have different styles and orientations.

This potential conflict generates uncertainty or jeopardy for individuals and groups in society, who cannot be certain in advance which legal regime will be applied to their situation. It also creates opportunities for individuals and groups to strategically invoke or pit one legal order against another.” Tamanaha is therefore positioned between Griffiths and Griffiths’ opponents who propose (in Griffiths’ language) ‘legal centralism’: Tamanaha agrees with Griffiths that legal pluralism is a valid ontology but argues that where it manifests its consequences are more grave than other proponents of legal pluralism are likely to acknowledge.

⁸⁶ See: Tamanaha, Brian Z. ‘Understanding Legal Pluralism: Past to Present, Local to Global’. *Sydney Law Review* Vol 29, 2007.

Dupret also acknowledges critiques of the concept of legal pluralism, particularly its accidental reinforcement of essentialism through its attempts to boundary and elevate 'culture', which erroneously treats culture as a homogenous and static entity. He notes and the way in which "generally with the best intentions, some legal pluralists promoted concepts like "folk law", "indigenous law", "native law"" and so on, thus reinforcing the erroneous idea that culture is static, immutable and unchangeable. Essentialism' in a concept now prevalent in the social sciences and humanities as a way to critique typologies, concepts and analysis of the material world, particularly social and cultural realities, that fails to acknowledge that culture is porous, internally diverse and engaged in an 'internal conversation with itself' and changeable over time.

The concept of 'essentialism' was central to – and gained widespread currency from – Edward Said's critique of 'Orientalism'. The concept and word 'essentialism' of course precedes Edward Said's scholarship on the reductivist and 'Other'-ising conceptual lenses through which the 'west' metaphorically constructed the 'east' from the advent of European colonialism. The Merriam-Webster dictionary gives one definition of 'essentialism' as "a philosophical theory ascribing ultimate reality to essence embodied in a thing perceptible to the senses" and it is a conceptual tool that has been applied to the Platonic Idealism and attempt to discern 'the Ideal' and 'the Form' in the works of Aristotle and Plato. Here – in keeping with the way the term has been used in social sciences ('biological essentialism', as a critique by feminists of discourses that assume that biology creates gender 'destiny', for instance) – the word is used in the way Edward Said developed the idea. In his now-seminal work *Orientalism* (1978), "essentialism" is outlined as a kind of

voiding reductivism – in reference to the colonial experience and the ‘colonial lens’ through which western discourses viewed and ‘constructed’ the ‘east’, “essentialism” refers to treating the non-west (or ‘the Orient’) as a metaphysical, *ahistorical* entity with immutable traits. Essentialism in the Saidian conception is therefore the failure to engage with the realities of temporally and geographically bounded ‘cultures’ (in his work, primarily, the ‘non-west’ of ‘the Levant’). This is closely linked to Said’s similarly influential idea of ‘the Other’ and how it is constructed in colonial discourses, and how it operates to dehumanise and reductively dismiss those who exist outside of the geographical and conceptual ‘west’, such as those outside of Judaeo-Christian Europe during the European colonial/ imperial eras. There is of course now a vast scholarship of writing on the Middle East and North Africa regions that builds upon Said’s conceptual innovations.

This body of scholarship was referenced by those such as Hamid Dabashi (2012) responding in the immediate aftermath of the 2011 revolutions, and asserting – for instance, as Dabashi does – that the 2011 uprisings and revolutions in the Arab and/or MENA worlds signify a fundamental paradigm shift in the relationship between ‘the colonial centre’ and ‘the periphery’, so that colonial lenses – and their internalisation by formerly colonised people – no longer blight the region. And Said’s influential conceptual innovations undoubtedly thread throughout my own scholarly approach and understanding of the discourses and texts of Egypt. As approached in the Introduction in reference to Hamid Dabashi, however, there is a difference between finding Edward Said’s conceptual innovations valuable for our understanding of the way the Middle East and North Africa region has been

'constructed' in colonial and European discourses on the one hand, and – on the other hand – seeing the 2011 revolutions as a 'fulfillment', in any neat sense, of Edward Said's normative claims and call that the Arab world/ Middle East and North Africa region be fully "conceptually decolonised." As touched upon in the Introduction of this work, Hamid Dabashi's optimistic predictions that the 2011 revolutions in the Arab world/ MENA regions mean the end of the 'post-colonial' era in which the colonial lens still distorts and hampers the citizens of the Middle East and North Africa (heralding, as he jokes, the 'post-post-colonial era') was a premature assessment – in fact, the work presented here is an assertion that the legacies of the colonial era, and its 'Other-ing' and 'essentialising' lens continue to assert itself in the region on the terrain even of law and language. In other words – we can both agree with Said's conceptual innovations in critically assessing the way the 'east' was constructed in the 'western' colonial imagination and still not agree with Hamid Dabashi's reading of the 2011 revolutions as the 'Year Zero' moment that finally removed, or drew a decisive line under, the ongoing legacies of colonialism in the region.

For the purposes of this chapter, however, it is worth acknowledging the critique that 'legal pluralism' is itself vulnerable to the charge of 'essentialism' in the Saidian sense, but that other scholars who have touched upon legal pluralism – such as Clifford Geertz – have demonstrated that it is not necessarily the case. In this chapter, the concept of legal pluralism is deployed as a tool to survey the ways in which the colonial heritage (of French and British legal influences) left a mark on Egypt's singular legal eco-system, but an attempt to critically analyse – not

perpetuate or endorse – the essentialising, and ‘Other’-ising colonial ‘lenses’ themselves.

Nonetheless, as Dupret knows when he draws upon the anthropological work of Clifford Geertz, and Geertz’s conceptions of legal pluralism as a “polyglot discourse”⁸⁷, legal pluralism is not an inherently essentialist concept (the idea of “polyglot discourse” contains within it the notion that the ‘culture’ or ‘society’ is in conversation with itself as well as subject to influences from ‘outside’ the boundary of the group, whilst Geertz’s emphasis on its ‘polyglot’ nature indicates the different languages and ‘voices’ that are speaking to one another *within* the culture⁸⁸) and only falls into this trap when it is misapplied to elevate so-called ‘authentic’ legal traditions as both ‘innate’ to the culture/ in-group and treated as immutable.

Indeed, as a counter-criticism to the charge Dupret acknowledges that legal

⁸⁸ This idea of the ‘polyglot discourse’ of legal pluralism contains within it elements akin to ideas of the ‘transgressive voice’ later explored by Judith Butler and Gayatri Chakravorty Spivak in their ‘conversation’ book *Who Sings the Nation State? Language, Politics, Belonging* (Seagull Books 2007), in which both Butler and Spivak advance the argument that it is the transgressive voices within cultures – as well as those that define themselves as either on the peripheral or only partly ‘within’ a culture – that revitalise and reproduce culture, by demonstrating that no culture is static, immutable or lacking in porousness. Geertz does not elevate ‘transgressive’ voices within the ‘polyglot discourse’ in the same way as Butler and Spivak advance the idea that ‘transgressive voices’ are significant for the revitalisation of a culture even as they question and push against the culture’s ‘boundaries’, but Geertz’s framing of legal pluralism in this way demonstrates the idea of internal dissent and transgression in – in the anthropological sense – the ‘in-group’, and how this is still indigenous to the culture or society itself. In reference to Egypt, this recalls to my mind the ‘voices’ of members of loosely-defined oppositional groups such as the April 6th Youth Movement, the Mohsireen media collective and, after the events of the summer of 2013, the Third Space movement, who sought to agitate against, and define themselves in opposition to, both the Muslim Brotherhood and the authoritarian ‘deep state’ in the guise of either Mubarak, Mansour or Sisi, but were nonetheless vital components of the ‘cultural text’ in the Kristevan sense, and contributing to the ‘polyglot discourse’ of Egypt’s cultural text, if not – directly – its experience of legal pluralism.

pluralism contains an 'essentialist' component that does not acknowledge either internal dissent or change over time, much of the scholarship on legal pluralism as it manifests in the Middle East and North Africa region – as we will see below – emphasises instead the successive waves of influence, from 'within' and 'without' the loosely-boundaried group of the 'culture' or 'society', and how these successive waves of change and influence have produced particular legal eco-systems, where legal pluralism manifests.

In *Local Knowledge: Further Essays in Interpretative Anthropology* (Basic Books Classic 2000 [1983]), Clifford Geertz builds upon his earlier work *The Interpretation of Cultures*, and does so in a way that is of particular relevance to socio-legal theorists engaging with the idea of 'legal pluralism'. His earlier work *The Interpretation of Cultures* advanced the now-influential anthropological approach of "thick description". As Geertz writes in this earlier work, "[b]elieving, with Max Weber, that man is an animal suspended in webs of significance he himself has spun, I take culture to be those webs, and the analysis of it to be therefore not an experimental science in search of law but an interpretative one in search of meaning." (Geertz 1973: 5). *Local Knowledge* builds upon this by advancing the notion that the best approach to this "thick description" approach that Geertz has earlier advocated is through "comparative contextualisation." Geertz himself then undertakes this approach of comparative contextualisation analysis by bringing together – building upon ethnographic work of their legal systems – the ways in which Islamic, Indic and Malayo-Polynesian legal systems and legal traditions engage with concepts of reality and justice. Within this comparative contextualisation, he traces the exogenous forces of structural change upon the pre-

existing systems – for instance, he delineates the way in which British colonialism came to bear upon and warp the Indian legal system during the imperial era, and yet holds within this narrative of change and ‘warping’ by a hostile force the ways in which the ‘indigenous’ legal concept of *dharma* remained – mutated, of course, by the new realities, but nonetheless still present and resilient – as a discrete and traceable thread of the Indian legal system after British colonialism. In undertaking this ‘tracing’, Geertz mitigates against the critique that has been leveled at anthropologists such as Durkheim that they ‘cannot account for temporal change.’ Geertz demonstrates through his “comparative contextualisation” the manner in which legal pluralism arises from both synchronic and temporal change, but nonetheless continues, in each locality, to operate as a *system*.

Legal pluralism *can* certainly be found as a prevalent phenomenon in the Middle East and North Africa, including in Egypt. This is the case whether or not we agree with Griffiths and Falk Moore that legal pluralism is the default legal reality – and that its opposite (as defined by Griffiths), “legal centralism”, is merely a way of imagining law that cannot be found in reality. In their study of legal pluralism in the Arab world, Dupret, Berger and al-Zwaini outline and delineate – in a manner akin to Geertz’s own proposed approach in *Local Knowledge* of “comparative contextualisation” – the different tributaries of legal systems and legal cultures that have fed into the unique legal-pluralism composition of states and societies in the modern Middle East and North Africa. They convincingly demonstrate that legal pluralism is a reality in the region, in the sense that the legal systems they describe could not be adequately outlined without acknowledging the simultaneous

existence of different traditions of law, operating contemporaneously but in parallel to one another.

In their edited collection *Legal Pluralism in the Arab World*, a number of scholars use methodological approaches from demographic analysis of the composition of the judiciary at different points in Egypt since 1875 to critical discourse analysis of legal texts to demonstrate the way in which legal pluralism manifests – textually and behaviourally – in the Arab world/ Middle East and North Africa context. For example, in the collection, Bernard Botiveau advocates legal pluralism as the most valid descriptive term for Palestine’s legal system, in which post-Tanzimat codification of *fiqh* under the Ottoman Empire is referenced by the Palestinian Authority, even as the Palestinian Authority itself is subject to another legal sphere (Botiveau charts how this shifts prior to, and after, the Oslo Peace Accords), namely, that of Israel (Botiveau 1999: 73-80 in Berger, Dupret and al-Zwaini (eds) 1999). Similarly, Lawrence Rosen (1999: 89-94) charts how Morocco’s experience of legal pluralism, with its French-inherited civil code and Islamic constitutional tenets, has in turn shaped Moroccan identity, as the behavioural experience of legal pluralism feeds into framings in modern Moroccan official discourse of coexistence and diversity.

Egypt has a singular experience of legal pluralism, and its particular legal ‘eco-system’ varies from the experiences of legal pluralism experienced by its regional neighbours. This is not to deny commonalities between Egypt’s experience and those of its neighbours, particularly Tunisia or Lebanon’s experiences both of the French civil law system and the anthropologically significant influence of French-

style jurisprudence in the region due to the socialisation of lawyers from the MENA/Arab world region, particularly Tunisia, Algeria and Lebanon, in the early decades after their respective countries' independence from colonialism, in which lawyers and law students from the region frequently pursued their legal education in France. Egypt's experiences of legal pluralism – particularly given its complex heritage of a colonialism in which both Britain and France asserted an influence in the legal sphere, as in other facets of social and cultural life – have a regional character, and can be mapped onto the wider colonial and post-colonial dynamics of the region. However, the focus here is not a comparative one, and it is feasible to substantiate the claim that Egypt's experience of 'legal pluralism' was a singular or *sui generis* one, and as such its 'legal eco-system' is unique.

Part 1 of this chapter will return to the material presented in the preceding chapter, and bring to the fore the elements that we can consider to be Egypt's 'legal legacies' that emanate from – or, at least, leave their mark upon – the constitutional history of Egypt. In other words, Egypt's legal pluralism – and the shifting components of this legal pluralism over Egypt's post-colonial period – can be 'read' in the constitutions themselves, and Part 1 of this chapter seeks to trace these components, taking the constitutional heritages already delineated in Chapter 2 and demonstrating the ways in which they contain Egypt's legal legacies. In other words, this demonstrates how Egypt's legal legacies – and its unique legal pluralism – is embedded in its constitutional experience, and the texts of Egypt's successive constitutions since 1923.

Part 2 of this chapter will then turn to the components of Egypt's unique experience of legal pluralism, and outline the nature of these components in turn. Following Dupret, Berger and al-Zwaini (1999) and their analysis of ways in which legal pluralism manifests and operates in the Arab world, Part 2 identifies the British legal heritage, the French legal heritage, and Islamic legal traditions and Islamic jurisprudence, as components of Egypt's experience of legal pluralism. As such, these are the pre-2011 'legal legacies' that those who drafted the constitutions of Egypt after the fall of Mubarak in 2011 had to draw upon within Egypt's legal experience.

Part 1: the legal legacies emanating from the constitutional heritages

The preceding chapter, taking each constitution of modern Egyptian history until 2011 in turn, provides an initial in-road into understanding the 'legal legacies' Egypt inherited in 2011. This sub-chapter will return to the successive constitutions of Egypt's modern history sketched out in Chapter 2 of this work, but use them now not to provide a chronological overview of the successive constitutions since 1923, but instead discern what they 'yield' about the components of Egypt's experience of legal pluralism. As this sub-chapter will show, the constitutions themselves, from 1923 to the late Mubarak constitutional amendments, demonstrate Egypt's reality of legal pluralism, from the manner in which they both refer to and operate within different bodies and traditions of law and different legal discourses which co-exist – sometimes uncomfortably – in the same constitutional document.

As a result of Egypt's (constitutional) history in the nineteenth and twentieth century, outlined in the preceding chapter of this work, Egypt has a mosaic of legal heritages and traditions, which operate alongside one another. In the realm of constitutional law, these have manifested through the successive constitutions of the nineteenth and twentieth century outlined in the preceding chapter. As different facets have come to the fore at different moments, the post-Mubarak constitutions can be seen as drawing facets from these different periods, discourses and conceptions – these include shifting conceptions of the relationship between the state and the citizen, different conceptions of the relationships and balance of power within and between the branches of government, conceptions of national identity, and different moments of 'constitutional learning' from external sources.

Taking the pre-2011 constitutions as a whole, numerous broader ideological, legal and philosophical debates can be read as playing out on the terrain of Egypt's constitutional legacies. For instance, the classic – and problematic – distinction between 'civil and political rights' on the one hand and 'economic, social and cultural rights' on the other can be seen as manifesting in the difference in content between, in particular, the 1923 'liberal' constitution, with its emphasis on freedom of expression and freedom of assembly, compared to Nasser's 1956 constitution, which is markedly different in tone, for instance in the way that it makes claims in its Preamble to aims such as 'the establishment of social justice'.

This difference encapsulates divides that operate on multiple levels, from the (problematic) historical reading that 'civil and political rights' are privileged by and predominantly represent the worldview and historical legacies of the 'west' and are

bound to some extent with capitalist structures, while conversely ‘economic, social and cultural rights’ have found stronger resonances and more appropriately articulate the concerns of the global south.⁸⁹ It also makes Egypt’s constitutional legacy ‘uneven’ in terms of its provisions for securing the full range of rights – while the early constitutions established civil and political rights such as freedom of assembly, these were not as developed as the current range of ‘civil and political rights’ in contemporary liberal democratic constitutions, yet their development

⁸⁹ The extensive debate within human rights scholarship of the difference in nature between civil and political rights on the one hand and economic, social and cultural rights on the other comes to bear upon the work being undertaken here in a number of ways, so will also be referenced in later chapters of this work. At this point, as a brief survey: civil and political rights on the one hand and economic, social and cultural rights on the other are often – and I would argue, following Sen, Nussbaum and others, *erroneously* – presented as ‘two generations’ of rights, with the more negative-liberty-framed civil and political rights presented as the ‘first generation’ and ‘primary’ human rights. As will be referenced elsewhere, this proposed divide between civil and political rights on the one hand and economic, social and cultural rights on the other is frequently mapped onto political-philosophy concepts of ‘positive liberty’ and ‘negative liberty’ as defined and juxtaposed in Isaiah Berlin’s famous essay ‘Two Concepts of Liberty’. And – to acknowledge briefly at this stage what is a complex and significant debate in human rights and political philosophy – it is certainly true that the two covenants of the UN human rights system, the International Covenant for Civil and Political Rights (1976) and the International Covenant for Economic, Social and Cultural Rights (1976) treat the two rights differently, in the sense that only the latter covenant has real provisions for ‘progressive steps towards securing’ the right (such as some rights to education and housing) rather than asserting that these rights are, and thus must be secured by states immediately – reflecting the more ‘positive liberty’ nature of economic, social and cultural rights. It is beyond the remit of this work to at this point outline the way in which the elevation of civil and political rights over economic, social and cultural rights, on the terrain of international law, was a product of Cold War geopolitical strategising, and an attempt by nations in the west to assert that the paradigm of human rights were a kind of laissez-faire ‘negative liberty’ of the kind proposed by J. S. Mill. It suffices to say, at this point, that this work does not take at face value the claim that civil and political rights are more ‘primary’ or ‘paradigmatic’ of human rights than economic, social and cultural rights – in part stemming from the fact that the work being presented here is conceptually underpinned by the capabilities approach developed by Martha Nussbaum and Amartya Sen, which asserts that all rights are mutually reinforcing, and series of core rights – of both the ‘positive’ and ‘negative’ liberty kind – must be secured in tandem for any of these rights to be meaningful, and for humans to be empowered to fulfill their human potential or ‘capability’.

was halted by the country's constitutional segue into pan-Arabist and socialist constitutional lenses, and were not brought in even as Sadat and Mubarak 'toned down' the stronger socialist elements of Nasser's legal legacy (Brown 2011; Beattie 1996: 45).

Similarly, economic, social and cultural rights are not fully enshrined in Egypt's constitutional heritage at the standard of international human rights norms, for instance there are gaps in protection against child labour and minority rights have never been clearly addressed in any of the constitutions up to the Mubarak era. The drafters of the post-Mubarak constitution therefore inherited a partial, uneven and internally-contradictory legacy on the issue of the range of 'rights' protection. The most archetypal examples of 'socialist' constitutional provisions, such as the designation of half of all representative seats to 'workers and farmers' were always unlikely to be drawn upon by the drafters of the post-2011 constitutions, but aspects of the constitutional documents of the Nasser era such as the "establishment of social justice" have resonated with the demands of those who mobilised to overthrow the Mubarak regime, such as the April 6th Youth Movement⁹⁰ (although, as will be noted elsewhere, this ultimately became of less relevance given the way in which the April 6th Youth Movements and other self-identifying secular, progressive organisations, were marginalised and shut out from the successive constitution-drafting processes).

⁹⁰ Interview between the author and a member of the April 6th Youth Movement in Cairo, Egypt, December 2012.

As will be demonstrated in Chapters 4, 5 and 6, and critically appraised in Chapter 7 of this work, the post-Mubarak era inherited a variety of constitutional legacies in terms of the structure of government, and this is one area where ‘constitutional learning’ is also clearly evident, in the manner that Goderis and Versteeg have surveyed in their work on constitutional learning, transnational diffusion and constitutional borrowing, as outlined in the Introduction chapter of this work. While the last century of Egypt’s constitutional heritage has provided myriad examples of structures of state and government, not all are equally applicable to the post-Mubarak period: the constitutional monarchy model of 1923 was always unlikely to be revived or drawn upon for the reason that there is no longer a viable monarchical figure in post-Nasser Egypt. Similarly, the United Arab Republic’s somewhat consociational system of a President and two Vice Presidents – as outlined in the preceding chapter – is similarly less relevant as Egypt is now a unitary state with no need to balance power between different ‘regions’ of former countries, as was the case between Egypt and Syria under their unity.

As evidenced in the chronological analysis of Egypt’s modern constitutions in the preceding chapter, strong Presidential systems have dominated for the majority of Egypt’s independence, and a shift towards a Westminster model was always unlikely in the post-2011 period, both in terms of the lack of legal structure to support it and due to the relative dominance of the Presidential system globally in the last thirty years (Linz: 1994). There is a strong trend towards a bicameral legislature, albeit one that in practice under Egypt’s previous constitutions has been fairly powerless in the face of the executive.

Similarly, the judicial structure has varied relatively little in the constitutions since 1923, with its French-style centralised constitutional court, which has parallel systems of ordinary and administrative courts. The constitutional heritages and legal legacies of Presidential term limits are obviously fraught by the ways in which this has been arbitrarily altered by the twentieth century authoritarian regimes, fluctuating between the term limit of two terms in the 1971 constitution to the lack of a limit under Sadat's later amendment.

Moreover, reflecting on the constitutions since 1923 presented in the previous chapter, there are a number of pertinent issues relating to identity and the concept of the citizen and the nation, which takes us back to Rosenfeld's idea of 'constitutional identity'. The 1971 constitution articulated the idea that sovereignty lies with the people, not the state – although whether this sentiment bore out in practice in the decades of Sadat and Mubarak's rule that followed is – to put it mildly – debatable. Similarly, the Preambles of the 1956, 1958 and 1971 constitutions all identified Egypt as an 'Arab' state, a heritage that has contemporary resonances with the identity of the post-Mubarak era as an '*Arab* awakening'.

In addition to these threads of constitutional legacies, there are the myriad and complex bodies of law that Egypt inherited in the post-Mubarak era. In particular, and as further chapters of this work will go on to show, the phrasing of Article 2, of shari'a being 'a principal source' or 'the principle source' is the terrain on which much of the historical tension and interplay between Islamists and secularists has played out.

Islamic jurisprudence or *fiqh* is an approach to law that is open to incorporation within the other legal heritages of the Egyptian historical legal landscape – ‘*fiqh*’ being the human interpretation of laws, as opposed to ‘*shari’a*’, which is the literal ‘law of God’ (in this sense ‘*fiqh*’ can be seen as akin to delegated legislation, and unlike *shari’a* is not regarded as sacred). One of the tasks of the constitution drafters in the post-revolutionary period has been – as will be outlined in Chapters 4, 5 and 6 of this study– to grapple with this heritage of *fiqh* (that is, the possibility for interpretation and development) with the position of *shari’a*, and simultaneously to anchor these in the other legal heritages and constitutional traditions outlined above, in an attempt to construct an internally cohesive constitutional document. As the following chapters – Chapters 4, 5, 6 and 7 will go on to show – the successive constitutions of the post-2011 era strained under the weight of this task, and leave chasms and knots in their attempts to build a new constitutional order out of Egypt’s legal and constitutional inheritance.

Another field of negotiation between bodies of law is the relationship between the ‘domestic’ heritages of the Egyptian constitutions of the twentieth century and new norms and international standards. This brings us to the issue of transnational values and diffusion: as outlined in the Introduction of this study, Goderis and Versteeg (2012) have argued that constitutions in the contemporary world are inherently transnational documents, inasmuch as transnational factors such as international bodies and the values of other nations and institutions are woven into the fabric of the text. This balances, sometimes problematically, with the manner in

which constitutions function as an expression of national values and a national identity, and relate conceptions of national sovereignty.

The way in which this transnational diffusion takes is dependent on the context, particularly the relational positions of the nation and the foreign 'influence' – for instance, the thesis that diffusion of transnational values takes place through 'competition' in the current globalised power structure, could be used to build the argument that the constitution drafters of the post-2011 Egyptian constitutions incorporated international norms and principles that will most appeal to the relevant organisations and nations who the constitution drafters wish to court or appease, such as foreign investors.

However, as noted in the Introduction of this work, there are also other means through which transnational value diffusion operates, such as constitutional learning and acculturation, whereby the constitution-drafters are either utilising the international norms and standards either in awareness that they are necessary in order to confer legitimacy on the new nation and nation's identity or in sincere conviction that these norms are just and legitimate.

In short, Egypt's constitutional legacy from the 1923 'liberal' constitution to the 1971 'Permanent Constitution' of Sadat's rule to the controversial amendments under Mubarak that – as the preceding chapters mentioned – ultimately contributed to the fall of his authoritarian regime left the (successive) constitution drafters of the post-Mubarak constitution with many 'tiles' through which to build the mosaic of the post-revolutionary constitutions.

Similarly, the bodies of law and norms – from the socialist norms of the Nasser era and its correlated pan-Arabism, to shari’a in the various ways it has operated as Article 2 has been amended – to the international human rights law that is both part of Egypt’s constitutional legacy and an external ‘standard’ to which it can refer – brought a complex combination of influences to bear on the post-Mubarak constitution drafting processes.

While some aspects of this constitutional heritage were always unlikely to inform Egypt’s constitutional future – the constitutional monarchical arrangement of the 1923 constitution and the ‘unity’ structure of the United Arab Republic era have little contemporary echo in Egypt’s current concerns and identity – other aspects of the constitutional lineage remain, as will be demonstrated in Parts 2 and 3 of this work – either alive or dormant.

In particular, the potency of Article 2 as determining the place of shari’a within the Egyptian body of law and Egyptian state, with all the echoes this has on Egypt’s post-revolutionary political landscape, the position and strength of the President within the executive-legislative relationship, and the strength and positioning of human rights, in both the civil and political and economic, social and cultural forms. The following chapters of this work will explore how these elements were drawn into the post-revolutionary constitutional experience(s); however, it is first helpful for us to separate out the various main ‘strands’ of Egypt’s legal legacies – both within and outside of Egypt’s successive constitutions – in order to understand the nature of Egypt’s legal pluralism, and thus build a more comprehensive picture of

the ways in which – as Part 2 and Part 3 of this thesis will demonstrate and analyse – the post-revolutionary constitutional texts operated as ‘legal mosaics.’

Part 2: the legal legacies in focus

Chapter 2’s chronological analysis brought to the fore a number of themes, patterns, repetitions and silences in the successive constitutions of modern Egypt. Certain constellations and components emerge that are worth of more detailed attention. This subchapter therefore hones in on the different key ‘components’ of Egypt’s legal legacies (which manifest in its constitutional heritage). These can be seen as the ‘components of Egypt’s legal pluralism’, or the different bodies of law and ways of approaching law that feed, as tributaries, into Egypt’s overall experience of legal pluralism.

One of the most striking features of the Egyptian legal system – and one that marks its legally ‘pluralist’ nature – is its civil law system. However, perhaps equally striking is the fact that this civil law system, often considered to be in its most paradigmatic form in the French legal system, has co-existed at different moments in modern Egypt with shari’a law and fiqh, as well as ‘mixed courts’ that reflect the ways in which European colonial powers sought to reconcile Egypt’s internal legal traditions with the legal systems of colonial control.

In the paragraphs below outlining the components of legal pluralism, there is a notable discontinuity between the components of the constitutional heritages outlined in Chapter 2 and the legal legacies presented here – namely, socialism is

not included. As Chapter 2 delineated – and Chapters 4, 5 and 6 will demonstrate in reference to the post-2011 constitutional context – socialism, and the pan-Arabism with which it was historically intertwined, is undeniably part of Egypt’s constitutional heritage, and pan-Arabism left its mark on the Nasser- and Sadat-era constitutional documents, not least through the language relating to labour and work, and structures of government that provided provisions for quotas for ‘workers’. However, socialism is not part of Egypt’s experience of legal pluralism in Griffith’s (1986) or Dupret’s (2007) definitions of legal pluralism, inasmuch as it is not a sphere of law, but rather an ideology that shaped (and shapes – as Part 2 of this work will demonstrate, in reference to the post-2011 era) the content of law, rather than demarcating the bounds of the legal system itself.

British and French legal influences: the Mixed Courts of 1875-1949 and the Civil Code of 1949

Byron Cannon demonstrates in his study of Egyptian courts in the nineteenth century – focusing on the unique phenomenon of the Mixed Courts and how they captured the public imagination both in Egypt and abroad – the way in which the British occupation and French colonisation of Egypt left distinct marks on its legal sphere. Cannon demonstrates the way in which this influence was in turn built upon complex foundations – that is, the period of French and British colonialism in Egypt as it manifested in the legal sphere was grappling with the inheritance of the post-Tanzimat Ottoman Empire period, and the way in which this had already fundamentally restructured and reshaped the Egyptian experience of legality and society. Although it is beyond the remit of this study to provide a comprehensive

historical account of the tumult of Egypt's experiences of successive – and simultaneously – modalities of colonialism in the nineteenth and twentieth centuries – this subchapter also works to demonstrate the way in which the legal sphere became a contested space for the different colonising and occupying forces (within which the Ottoman Empire and Khedive Pasha occupies a complex and singular position) to assert their power over other actors in the state and terrain of Egypt.

Two significant aspects of the influence of French and British colonialism on the Egyptian legal sphere throughout its experience of modernity are worth highlighting in turn. The first is the Mixed Courts of 1875-1949, and the second is the Egyptian Civil Code of 1949. These two cases exemplify Egypt's rich and complex legal tapestry, which in turn reflects the complex nature of its experiences of colonialism from successive (and simultaneous) 'external' forces, as well as the way in which the Ottoman Empire deployed religion to further entrench its rule.

The Mixed Courts of Egypt of 1875 to 1949 have been the subject of extensive study⁹¹. For the purposes of this sub-chapter, it is worth focusing in on the foundations they set for the legal pluralism that manifests in the later constitutional documents that are the focus of this study. As Brown, Cannon and Hoyle all describe and proceed to analyse, the Mixed Courts were introduced by Khedive Ismail Pasha as an attempt both to entrench Ottoman influence over the

⁹¹ In *The Rule of Law in the Arab World: Courts in Egypt and the Gulf* (Cambridge University Press 2007), Nathan Brown surveys the scholarly contributions to the understanding of the Mixed Court in English, French and Arabic (see the footnotes of p26-29).

populace and reform Egypt's prior, conflicted legal system, in which the jurisdiction of Muhammad Ali-era religious courts and Consular Courts had developed (Brown 2007: 23), with the increased population and large-scale migration of foreign workers to complete the Suez Canal in the 1860s, into an unworkably complex system (Holye 1991: 45-48). The Mixed Courts did not replace the Consular Courts, but created a streamlined structure in which both Egyptians and foreigners could bring cases under a French-style civil law system. The language of the Mixed Courts was French, which as Brown (2011) has noted, is a contributing factor to the continued dominance of the French language and French-style legal socialisation of the Egyptian judiciary as a class long after the advent of Nasser and the end of colonialism in Egypt.

After the British occupation of 1882, Brown writes⁹² of how the British “did not turn their attention to matters of law and justice until several months after the occupation”, and when they did, “the introduction of British judges who had often served in India insure that periodic proposals would be made to “Indianize” or “Anglicize” Egyptian justice”⁹³. Cromer considered abolishing the Mixed Courts, after complaints by British jurists that they couldn't operate under a French-style code of criminal procedure⁹⁴ but in reality, although “[m]odifications to Egyptian

⁹² Ibid. p33.

⁹³ Ibid. p38.

⁹⁴ Ibid.

law codes [and the Mixed Courts] under the occupation were often based on British expertise and advice [...] changes were relatively minor.”⁹⁵

Cannon outlines the way in which, after the British occupation, the introduction of Native Courts and a reworking of the Civil Code (in 1883, based upon and largely replicating the 1875 code) did not substantially lessen the primacy of the Mixed Courts. While scholars are divided over the question of the extent to which the Mixed Courts mitigated against the abuse of the legal system by (colonially-linked) foreigners in the country, the experience, for Egypt, of a court system that could combine Sharia and French and British styles of law was evidently formative, and the 1923 constitution outlined in Chapter 2 of this work can be seen as a product, in part, of the ‘Mixed Court era’, and an optimism that sharia could be blended with ‘European’ forms of law.

The Mixed Courts thus continued after Britain unilaterally declared Egypt independent in 1922, and even continued to operate through the period of the Second World War and the period of pre-(twentieth century) revolutionary monarchy, as Hoyle (1991) outlines in his study of the Mixed Courts and how they reflect the ways in which both colonial powers and the Egyptians themselves who used them came to view Egyptian law during this period.

Beyond the Mixed Courts, other French and British influences also evident. Whilst it is obvious in the Egyptian experience of legal pluralism that French-style civil law, rather than British-style common law, prevails, as in many other countries in

⁹⁵ Ibid.

the Middle East and North Africa, the British legal influence (alongside the influence of sharia and fiqh) modifies the way in which this civil law operates in reality⁹⁶. The Egyptian Civil Code of 1949 sits alongside the Mixed Courts of 1875 to 1949 as one of the significant ‘threads’ of European legal influence in Egypt’s legal pluralism.

The Mixed Courts were abolished in 1949 and a new Civil Code was introduced. As Richard A Debs writes in his study of Islamic law and the Civil Code in Egypt:

“[t]he civil code of 1949, the basic law governing property rights in Egypt, clearly reflects the aims of the reform movement of the first half of [the

⁹⁶ Bruce Rutherford describes the way in which British influences layered over the French influences after 1883, with the striking additional element of transference of legal forms from colonial-era India – differing somewhat from Nathan J Brown’s assessment that the British did not substantively modify the French-style legal system. Rutherford writes of how “Cromer regarded French law as ill-suited to the backwards state of Egyptian affairs, but accepted its preeminence in the Egyptian legal system until 1890. At that time, a series of corruption scandals and a rise in the crime rate led him to conclude that additional judicial reform was necessary. He appointed a British judicial advisor and instructed him to devise a plan for integrating the Anglo-Indian procedural code into the Egyptian legal system. In practice, this plan involved simplifying the rules of evidence, ending the use of multiple-judge courts, establishing summary courts to deal with small civil cases without appeal, and granting the judges power to rule on the admissibility of evidence and the assignment of punishment. [...] In order to staff this revamped legal system, the British established several training schools for lawyers and judges and restructured the Egyptian law school.” The salient point for the purpose of the work presented in this chapter is that the British did modify the French-style system introduced in 1875 and it was in turn flavoured with Britain’s own – then current – practices of colonialism outside of Egypt, namely in India. Rutherford, Bruce. *Egypt After Mubarak: Liberalism, Islam and Democracy in the Arab World*. (Princeton University Press 2013: 35-36).

twentieth] century.⁹⁷ It is a national law in that it was drafted on the basis of the particular requirements of Egypt and derived from Egyptian legal sources. It is a modern law in that it was drafted on the basis of the requirement of Egypt as a modern state, drawing upon the legal experience of other modern states. To the extent that it was based upon the former Egyptian Civil Codes and the contemporary legal systems of Western nations, it is also a Western law, developed within the context of Western legal tradition. Finally, it is a uniform law of general application in that it serves as the basic Civil Law governing all civil cases in Egypt, applied by a unified system of courts. [...] The task of drafting the new code in conformity with such standards was clearly facilitated by the existence of a Civil Code system in Egypt for three-quarters of a century and by the development of that system during that period. (Debs 2010: 116).

As Debs goes on to demonstrate throughout his study of the law of property in Egypt, the Civil Code in Egypt operated in tandem with Islamic law since 1875 in a way that has fundamentally altered Egypt's legal eco-system – the system that was inherited by the drafters of the post-Mubarak constitutions in 2011.

Mohamed S E Abdel Wahab's overview of the Egyptian legal system at the time of the 2011 revolution (although written in 2012 and with consideration for the changes made in the judicial and legal spheres after the fall of Mubarak) demonstrates the centrality of the French influence to the legal system and legal institutions (incidentally, it is also worth noting that he argues the Egyptian Civil

⁹⁷ These are the reform movements I referenced in Chapter 1 in reference to the first (1923) constitution.

Code and Egyptian legal system does not adhere to the strict binary between civil versus common law, and previous judicial decisions are not inherently disregarded). He states that

[t]he Egyptian legal system, being considered as a civil law system, is based upon a well-established system of codified laws. Egypt's supreme law is its written constitution. With respect to transactions between natural persons or legal entities, the most important legislation is the Egyptian Civil Code [...] (the ECC), which remains the main source of legal rules applicable to contracts. Much of the ECC is based on the French Civil Code and, to a lesser extent, upon various other European codes and upon Islamic (shari'a) law, especially in the context of personal status. Despite the non-existence of an established system of legally (*de jure*) binding precedents, previous judicial decisions do have persuasive authority. Courts are morally and practically bound (*de facto* binding effect) by the principles of the Court of Cessation for civil, commercial and criminal matters, and the Supreme Administrative Court for administrative and other public law matters. (Wahab 2012).

The residue of the French legal system in the Egyptian legal sphere is also evident in the establishment of the Egyptian Council of State (*'Conseil d'Etat'*) in 1946, and its continuation into the twenty first century. As Wahab notes

the classical dichotomy of public and private law has resulted in the crystallization of a separate set of rules applicable to transactions involving the State (or any of its institutions, subsidiaries or state-owned enterprises) acting as a sovereign power. This entailed the establishment of the Egyptian Council of State (*'Conseil d'Etat'*) by virtue of Law No. 112 of 1946 as

amended by Law No. 9 of 1949, which consists of administrative courts vested with the power to decide over administrative disputes pertaining to administrative contracts and administrative decrees issued by government officials. These courts apply administrative legal rules which are not entirely codified; hence, because often no applicable legislative rules exist, the scope of judicial direction is ample in light of established precedents laid by the supreme courts. (Wahab 2012).

From Wahab's analysis we can take two pertinent points – first, the fact of continued institutional and structural reach of the French legal influence well into the twenty-first century, and second, how Egypt's particular experience of legal pluralism entails that the dichotomy that is presumed in legal theory of between civil law systems on the one hand and common law systems on the other does not neatly function in reality in the case of Egypt from 1875 onwards, and a French-style legal institutional structure can clearly be seen to be operating in tandem with a legal reality in which judges can set precedents (in addition to the equally important strand of sharia and *fiqh* within the same system). Similarly, Sarah Ben Nefissa (in Dupret *et al* 1999: 135-139) has sketched out some of the distinctive features of legal pluralism in Egypt as emanating from the ruptures and continuities that the French and British colonial influences exerted on the already-complex legal tableaux of post-Tanzimat Ottoman legal structures. The British and French colonial influences on the Egyptian sphere cast a shadow long after Egypt's independence in the mid twentieth century, and their traces can be discerned in the Egyptian constitutional texts of the twenty first century.

Shari'a and 'Egyptian law'

Whilst it is beyond the remit of this study to engage extensively in the vast body of literature by scholars working solely on shari'a as a concept, discipline and practice, this sub-chapter will focus on the ways in which shari'a has operated in Egypt in its experience of modernity (particularly since 1875), and in the course of charting this, reference some of the salient features of shari'a both in general and as it has been incorporated into Egypt's experience of legal pluralism prior to 2011. This is a necessary foundation to establish in order to present the analysis in Parts 2 and 3 of this work, which will look at the ways in which shari'a was deployed in the post-revolutionary context and became a focal issue in the successive post-Mubarak constitutions. As Chapter 1 already highlighted the Muslim Brotherhood and Al-Azhar as key components of Egypt's political, legal and social order (who form part of the Kristevan 'cultural text' in which the post-Mubarak constitutions – analysed in Part 2 – are anchored), here we will turn briefly to the dynamics between Al-Azhar, the Muslim Brotherhood and the Egyptian state prior to 2011, in order to show how the concept of shari'a was integral both to Egypt's experience of legal pluralism and to the key contestations and divides in the social and political spheres. The way in which successive Egyptian regimes, from Nasser to Mubarak, utilised and instrumentalised Al-Azhar has been noted in previous chapters and will be drawn upon to explain the shifting role of Al-Azhar in the constitutions after the fall of Mubarak; the pertinent point here is to sketch out in greater detail some of the principles under which Al-Azhar operate, and the other ways in which Islamic law is embedded into Egypt's experience of legal pluralism.

Although the concepts of *fiqh* and sharia, and the ways in which they were deployed in Egypt's experience of modernity have already been explored in Chapters 1 and 2 of this work, it is worth turning to Islamic elements of Egypt's legal sphere now in order to view them as *components* of Egypt's particular experience of legal pluralism, and integral to its unique legal eco-system. For if the British and French components of Egypt's experience of legal pluralism in its experience of modernity (in the colonial and post-colonial periods) are defined by the boundaried realms in which they operated, such as civil and criminal law, the Islamic components of Egypt's legal sphere, at least after 1883, can be read in juxtaposition – as manifesting, in Ehrlich's conception of “living law” – across the range of legal behaviours.

Some theorists of Egypt's legal system – including Mohamed S. E. Abdel Wahab, whose insights on other aspects of the Egyptian legal system have been fruitful for this work – at least when addressing the period from 1883 to the rise of Nasser, frame *fiqh* and sharia as confined to ‘where the colonial is not’ – that is, sketching Egypt's legal experience during this period as ‘weak legal pluralism’ in the sense that Griffiths uses it, to subordinate Islamic influences to ‘the legal realm they were permitted by the colonial powers’. This is not entirely accurate, and nor is the depiction that shari'a was introduced to Egypt's legal system only in a neutered, boundaried format through the Mixed Courts from 1875 to 1949.

If we refer back to Griffiths' delineation of legal pluralisms, the case can be convincingly made that sharia – rather than the British or French systems – is the ‘primary’ system of Egyptian legal *behaviour*. In addition to this, Chapter 1

sketched out the singular role that Al-Azhar occupies in Egyptian political and constitutional life. Between the behavioural legal component (in which sharia dominates the daily conduct of individuals in Egypt) and the institution of Al-Azhar, it is difficult to argue that Islam is not a central component of Egypt's legal sphere throughout its experience of modernity, from 1875 to 2011.

Yet the extent to which sharia dominates – or even shares a space in – Egypt's experience of legal pluralism remains a contested question, both in scholarship and in the legal texts themselves. (And, as my research demonstrates, it became the focus of contestation between rival post-revolutionary forces vying for power after 2011).

Nathan J Brown has argued that one of the reasons for the debate about whether Islamic law – or sharia – is integral to the Egyptian legal sphere continues to be contested is due to “the flexibility of key concepts and positions” – both temporal flexibility (as in the Muslim Brotherhood's own shifting position on the ‘correct’ role of Al-Azhar in the state) and flexibility of terminology, such as, as Brown notes, whether sharia constitutes “Islamic law.” As Brown notes, it is often more appropriate to conceptualise sharia as “*the Islamic way of doing things*”; the argument has even been advanced that conceptualising of sharia as ‘law’ in the sense that it is understood in European and ‘western’ traditions does not adequately convey the theological and ontological contours of sharia (Weiss 1988: 18). However, for the purposes of this Chapter's survey of how legal pluralism manifests in Egypt, we can take the succinct delineation Nisrine Abiad gives in her typology of the central tenets and components of shari'a, which is that

[t]he substance of Sharia can take the form of positive law or prescriptive norms and moral exhortations. These rules and norms of Sharia are derived from a methodological interpretation of the Quran and the prophetic Sunnah, a process termed '*ijtihad*'. Further sources of Sharia are generally thought to include *ijma* (consensus) and *qiyas* (reasoning by analogy), while *istihsan* (juristic preference) and *maskaha* (public interest) are also the basis of some rules. The rules and norms 'derived from the Quran and the Sunnah' and 'developed by means of human juristic efforts' have been categorised by scholars as 'obligatory' (*wajib*) and prohibited (*haram*), which are generally unequivocal and legally enforceable; or 'recommended/praiseworthy' (*mandub*) and 'disapproved/ reprehensible' (*makruh*) which are mainly issues of norms and morality rather than divine law. The rules relating to matters that are *majb* or *haram* are limited in number; however, there are more difficult to review due to the precision of their expression in the Quran and Sunnah. Sharia takes the form of a comprehensive and detailed corpus of law which has been continually adjusted to changing circumstances. (Abiad 2008: xviii).

This survey of the elements of shari'a can be mapped onto the way in which shari'a was utilised in the Mixed Courts and the national court system that followed, and can also be used to stand for the scope of shari'a as understood by Al-Azhar, the 'guarder' of shari'a within the state since independence from colonialism. The role of Al-Azhar in the modern Egyptian state was described in Chapter 1 of this work. It is worth returning to it now in the context of the exploration being undertaken

here of the role of Islamic legal influences in Egypt's experience of legal pluralism, to note the way in which the dynamic between the Muslim Brotherhood and Al-Azhar – in addition to the role between Al-Azhar and the state – has shifted in the years since Egyptian independence, because Al-Azhar operates as the 'bridge' between shari'a and the Egyptian state itself. Morsy and Brown⁹⁸ have noted that "[i]n the past, Al-Azhar's struggles for centrality in Egypt's religious life and for autonomy from the state have sometimes worked against each other" – a dynamic that became central to the shifts in the role of religion in the state in the 2011, 2012 and 2013 constitutions, as Part 2 and Part 3 of this work will show.

As Brown, elsewhere, writes: "[t]he Muslim Brotherhood has confused many (including, at times, its own members) by a variety of statements and proposals on the Islamic sharia. The movement's position stems from two impulses that pull its members in different directions" – Brown goes on to explain that the first is that the Muslim Brotherhood

wants a political system that conforms fully and faithfully with Islamic norms, however broadly defined. That means that important Islamic values should be reflected in legislation; that the state should facilitate rather than obstruct the desire of Muslims to lead lives that conform to Islamic strictures; and that those with religious knowledge and training be consulted and be allowed to speak based on their training and expertise rather than be expected to tailor their

⁹⁸ Brown, Nathan J and Ahmed Morsy. 'Egypt's Al-Azhar Steps Forward'. *Carnegie Endowment for International Peace*. November 7th 2013. Available online at: <http://carnegieendowment.org/2013/11/07/egypt-s-Al-Azhar-steps-forward> [accessed August 15th 2014].

interpretation to the political interests of high officials. [Moreover] the movement has called for a stronger role for Al-Azhar and for making the institution far more independent of the executive branch, which has dominated the institution by controlling its finances and senior positions for half a century.⁹⁹

As Brown notes, the Muslim Brotherhood's internal contradictions on the role of Islam in the state – and, conversely, the role of the state in Al-Azhar, come to the fore in the second 'strand' Brown identifies, which is that the "Muslim Brotherhood emphasises just as strongly change from below and the need for all Muslims to work to understand their religion and take responsibility for educating themselves. To place ultimate political authority for all religious questions in a small group of scholars smacks of the post-1979 Iranian model, one that the Muslim Brotherhood has consistently rejected as incompatible with Sunni Islam and with the movement's own approach."¹⁰⁰

As Chapter 7 will show, the complex and ancillary nature of Al-Azhar vis-à-vis both the Egyptian state and the Muslim Brotherhood became a hinge that swung the successive post-2011 constitutions between 'Islamism' and 'secularism' (as broadly defined, and as self-conscious terms of self-identity between the drafters of the 2012 and 2013 constitutions) and became both a sharp wedge between the

⁹⁹ Brown, Nathan J. 'Egypt and Islamic Sharia: A Guide for the Perplexed.' *Carnegie Endowment for International Peace*, May 15th 2012. Available online at: <http://carnegieendowment.org/2012/05/15/egypt-and-islamic-sharia-guide-for-perplexed> [accessed July 24th, 2014].

¹⁰⁰ Brown 2012 Ibid.

drafters of the successive constitutions, and one of the reasons why the 2012 constitution – and President Morsi – did not survive a year. For the purposes of this chapter, the salient point is that Al-Azhar embeds Islam and Islamic law into the state even as its core supporters – the Muslim Brotherhood – have, throughout Egypt’s experience of modernity, re-negotiated their support for the Muslim Brotherhood between using it as a tool to advocate for state implementation of sharia in some realms of law and using its *scholarly* nature to advocate for Sunni quietism.

As Part 2 of this thesis will demonstrate – and Chapter 2 already noted in its charting of the successive constitutions of Egypt’s twentieth century the shari’a component of Egypt’s experience of legal pluralism is one that has been deployed by those seeking to position themselves against the Muslim Brotherhood in order to consolidate the state’s power, and this has largely played out of the issue of Article 2 in successive constitutions since Sadat’s 1971 constitution. The “secular reconstruction of Islamic law” by the Egyptian Supreme Constitutional Court (Balz 1999 in Dupret et al 1999) was also, until 2011, a ‘diffusing’ mechanism deployed by Mubarak to take elements of shari’a on the terms of the (anti-Islamist) authoritarian state in order to take the potency of shari’a away from the Muslim Brotherhood as an oppositional force. Brown argues that “perhaps the two most significant debates about sharia [in Egypt] concern personal status and constitutional text.”¹⁰¹ As Chapters 4, 5 and 6 will demonstrate, the latter part of

¹⁰¹ Brown, Nathan J. ‘Egypt and Islamic Sharia: A Guide for the Perplexed.’ *Carnegie Endowment for International Peace*, May 15th 2012. Available online at: <http://carnegieendowment.org/2012/05/15/egypt-and-islamic-sharia-guide-for-perplexed> [accessed July 24th, 2014].

Brown's statement also works conversely – that one of the most significant debates over the post-Mubarak constitutions was that of the role of shari'a.

Whilst the above sub-chapter has not comprehensively detailed all of the ways in which shari'a influences the lives of Egyptians – for instance, in the realm of Islamic finance, or through the power of mosques and imams to draw upon shari'a in ways that are socially influential amongst sections of the Egyptian populace, the above paragraphs have shown that – just like French and British legal systems – shari'a as a legal system is fundamentally threaded into modern Egyptian law, and the experiences of colonialism did not do away with shari'a as one of the components of Egyptian law. As Chapter 2 of this work has shown, after independence from colonialism, the Egyptian state continued to recognise and entrench shari'a as one of the components of Egyptian law, as Article 2 of Sadat's 1971 constitution – which remained in place until the 2011 revolution – explicitly states. Taken together, the two parts of Part 2 of this chapter have demonstrated how French, British and Islamic legal influences are key components of Egypt's experience of legal pluralism and integral parts of its legal 'eco-system.'

Conclusion

This chapter has demonstrated the way in which Egypt's legal pluralism has created a complex web of legal legacies that the drafters of the post-Mubarak constitutions inherited – they faced authorial choices, as constitution-drafters, over whether and how to respond to these legacies, but these components outlined above were nonetheless for that the inheritance that informed their post-2011

realities. As Mohamed S. E. Abdel Wahab has summarised: “[t]he Egyptian legal system is built on the combination of Islamic (sharia) law and Napoleonic Code, which was first introduced during Napoleon Bonaparte’s occupation of Egypt in 1789” and further consolidated by “subsequent education and training of Egyptian jurists in France.¹⁰²” The British legal influence in the Egyptian sphere – as outlined above – weaves into the already-complex relationship between French-influenced and Islamic-based law, but civil law, rather than common law, prevails. As Richard Debs has outlined, civil law and shari’a law are particularly suited to coexistence in Egypt in property law, where, Debs argues, the emphasis in shari’a courts of applying Ottoman constructs of property rights coexist with French civil practices in property law.¹⁰³

This chapter has addressed different subject matter and scholarly debates in turn in order to build the overall case for viewing Egypt’s legal sphere as an experience of some manner of ‘legal pluralism’. After defining legal pluralism and the scholarly debate within the academic literature of how it should best be defined and conceptually deployed, and what potential pitfalls reside within it as a concept (although the extensive debates within socio-legal scholarship on what exactly legal pluralism entails and its potential typologies are beyond the remit of this work), this chapter went on to undertake two tasks that are illuminated by the surveying at the beginning of the chapter on ‘legal pluralism’ in theory and realities.

¹⁰² See: Wahab, Mohamed S.E. Abdel (2012). ‘An Overview of the Egyptian Legal System and Legal Research.’ *NY Law Global*. Also available online, not in its original place of publication, at: <http://www.jadaliyya.com/pages/index/7825/an-overview-of-the-egyptian-legal-system-and-legal> [accessed July 14th, 2014].

¹⁰³ Debs, Richard A. *Islamic Law and Civil Code: the Law of Property in Egypt*. Columbia University Press, 2010.

Part 1 of this chapter foregrounded the ‘legacies’ that can be drawn out from the successive constitutional texts of Egypt’s modernity. That is, the material of the preceding chapter was returned to in order to draw out various ‘threads’ to demonstrate how Egypt’s legal pluralism manifests constitutionally and legally, and the ways in which this legal pluralism is in turn threaded into the narrative of Egypt’s constitutional experiences since the 1923 constitution. Returning to the material of the previous chapter in order to draw out these threads enables us to see the way in which Egypt’s pre-2011 constitutions are themselves reflective of Egypt’s particular experience of legal pluralism. This analysis will come to bear upon the analysis presented in Parts 2 and 3 of this these, which demonstrates the way in which Egypt’s post-2011 constitutional texts are also indicative of Egypt’s continued experience of legal pluralism, and – as I assert in later chapters – demonstrate the way in which Egypt’s post-2011 constitutional texts operate as ‘legal mosaics’ comprised of diverse legal ‘tiles’ (to extend the analogy) that come from different parts of Egypt’s legal pluralism and legal past, from the French and British colonial influence to *fiqh* and shari’a to pan-Arabism and the influence of twentieth century socialist modes of constitutionalism.

The second part of this chapter further engages with some of these ‘threads’ – outside of how they have manifested in successive Egyptian constitutions, and engaging with them instead as components in their own right – and how they have shaped Egypt’s experience of modernity, and come together to form Egypt’s particular legal eco-system – that is, its particular form of legal pluralism. The French and British colonial influences on the Egyptian legal system leave a distinct

trace in the post-colonial period, as outlined above, yet they coexist in the eco-system of Egypt's experience of modernity with other, equally vital organisms – namely, the presence of Islamic jurisprudence and *fiqh*.

This has cumulatively mapped the landscape of Egypt's experience of legal pluralism, and in doing so – to return to the Introduction of this chapter, and its survey of the idea of 'legal pluralism' in anthropological, legal, and socio-legal discourses – it is also an assertion: that legal pluralism is a tenable lens through which to understand legal systems, and the most appropriate lens to understand Egypt's legal 'eco-system.' To refer back to the discussion at the start of this chapter – if we ascribe to Griffiths' typology of legal pluralism, Egypt can be said to have experienced both 'weak' and 'strong' legal pluralism. The experiences of the Mixed Courts, and derogations –in the constitutional and legal sphere – for minority practices, as an inheritance both of the Ottoman experience and later colonial systems of law on the country – arguably fit Griffiths' conception of 'strong legal pluralism', which, in Dupret's words, "refers to legal systems in which the sovereign commands or validates or recognizes different bodies of law for different groups in the population." (Dupret 2007). From the Nasser era onwards, as mapped out in Chapter 2 of this work and again in Part 1 of this chapter, Egypt's experience of legal pluralism is closer to 'weak legal pluralism' in Griffiths' conceptual binary. In Dupret's reading of Griffiths, a weak conception of legal pluralism in Griffiths' binary is "mainly a (weak) conception of legal centralism, for

it gives the central state the ultimate power to acknowledge or refuse the existence of such different bodies of law."¹⁰⁴

This chapter has built upon the chronological and thematic explorations of Egypt's successive constitutions (Chapter 2) and the key actors and institutions that have left their traces on Egypt's legal and constitutional texts and realities. This Chapter has added to the analysis of earlier chapters an insight into legal legacies that are not necessarily 'constitutional', and exist outside of modern Egypt's successive constitutional texts – most notably, as outlined in Part 2 of this chapter, the Egyptian Civil Code is an important, extra-constitutional legal heritage of Egypt that (as further chapters will indicate) comes to bear on the post-2011 constitutional texts as a 'live' part of Egypt's legal legacies.

Moving forward, this work will take the analysis presented here, and apply it to the 2011, 2012, and 2013 constitutional texts in turn, whilst situating those texts within the context of the post-revolutionary period, and pointing to the ways in which the legal legacies and constitutional heritages in Egypt's legal-political-social landscape fed into these texts. Egypt has had a distinct experience of legal pluralism as a result of the interplay of a number of historical factors from French and British colonialism to the development of mixed courts and the evolving traditions of *fiqh*, and this legal pluralism was 'inherited' by the drafters of the post-Mubarak constitutional texts in 2011.

¹⁰⁴ Ibid. Italics mine.

Chapter 4: Egypt's 2011 interim constitution – the first draft of Egypt's future?

The three chapters of Part 1 of this work have surveyed Egypt's constitutional history through its successive formal constitutions in modern history, from the constitutional document of 1882 to the last amendments of the Mubarak era. It identified the 'bodies of law' that inform the post-Mubarak constitution drafting

process and post-Mubarak constitutional text, bodies which can be considered 'legal legacies' or 'legal voices' indigenous to Egypt's legal landscape – namely, the French and British colonial legal legacies, and Islamic jurisprudence as manifested in Egyptian law.

The task now is to bring the analysis of Part 1 to bear upon the 2011 interim constitutional text and interim constitutional drafting process, demonstrating how these heritages and legacies have fed through into the post-Mubarak era. The ways of engaging with a constitutional text outlined and applied in Chapter 1 will carry over to this analysis, such as the concept of the constitution as a mission-statement, as in Jeff King's conception, both 'speaking to' and 'speaking for' the nation, constitutions as "politics by other means" or the terrain on which negotiations and contestations between various post-revolutionary actors are played out, and constitutional texts as social instruments reflecting societal as well as political values.

The main aspects of the constitution that this Chapter will focus on, are – as in Part 1 – the constitutional articles that refer in particular to the relationship between state and citizen, articles referring to the relationship between and balance of power between the different branches of government, and parts of the constitution, predominantly the Preamble, which attempt to articulate or frame national identity and the identity of the citizens, the nation and the state.

The 2011 revolution

Although this work is not a study of the 2011 uprising that overthrew Mubarak, it is worth noting that there is of course a rich emerging literature on the causes of the January-February 2011 mass protests and uprising, ranging from analysis of the role of social media and the use of Facebook and Twitter to mobilise protesters and spread protest messages as ‘memes’ (Eltanwany and Wiest 2011) and how the use of social media by protesters and self-identifying ‘revolutionaries’ in Egypt in 2011 self-consciously drew upon the memes, slogans and demands of protesters of the 2010-2011 mass uprisings and revolution in Tunisia (Lotan, Graeff, Annay, Gaffrey, Pearce, Boyd 2011). Other emerging literature on the events of January-February 2011 have focused on the role of the April 6th Youth Movement, a protest group of liberal, secular-identified students and other young people in Egypt who produced a manifesto of demands for the protesters in early 2011, and called for the removal of Mubarak from office (Masoud 2011; Ezbawy 2012).

As in Tunisia, mass unemployment – particularly youth unemployment (Shahine 2011) – and frustration with state corruption (Brown 2012) were both cited by analysts and scholars looking at Egypt, as triggering factors for the revolution, and the frustrations produced by these social phenomena were extensively and consciously referenced by protesters themselves. Theorists of social movements and social mobilisation have noted the role that the killing, at the hands of police, of a young man, Khaled Said, in Alexandria in 2010 had in further alienating liberals and anti-authoritarians from the Mubarak regime (Olesen 2013). Olesen has described the way in which the ‘meme’ and protest chant ‘*we are all Khaled Said*’ encouraged and fostered an identification with the victims of police brutality in

Egypt and became a way of both resisting and expressing opposition to Mubarak's rule.

As protesters mobilised in Tahrir Square in Cairo in February 2011, and Mubarak delivered his hubristic speech refusing to step down, the role of the Muslim Brotherhood as an oppositional force to Mubarak, and group that demonstrated alongside the secular-identified protesters such as supporters of the April 6th Youth Movement was noted at the time by journalists covering the revolution (Danahar 2013: 84-91). The now-famous revolutionary cry for 'Bread, Peace and Social Justice'¹⁰⁵ became a popular chant and seemingly unifying demand between the different groups who opposed Mubarak's rule.¹⁰⁶ While the role of the Muslim Brotherhood in the events of January-February 2011 is at the time of writing a contested issue that has been brought into the 'war of narratives' of post-2013 and the question of 'who deserves to inherit and speak for the 2011 revolution?', both the emerging academic literature on this and my own interviews with members of the Muslim Brotherhood point to their co-operation with other protesters in Tahrir Square and elsewhere in early 2011, despite the longstanding ideological differences between the various groups opposed to Mubarak. The rifts that emerged in later 2011 and 2012 during the SCAF and Morsi periods were not

¹⁰⁵ The 2013 documentary film *The Square* (Al Mайдan) features extensive footage of crowds chanting "bread, freedom and social justice", and other revolutionary slogans that became famous throughout the revolution such as "the people demand the overthrow of the regime", from 2011 and onwards in the SCAF period of 2012. The author also witnessed these slogans in use in protests in 2012 during the constitutional crisis of late 2012.

¹⁰⁶ In an interview between a member of the Muslim Brotherhood and the author in December 2012, in Cairo, he recounted "this was our [the Muslim Brotherhood's] revolution too, these demands were our demands as well."

necessarily pre-determined. The overthrow of Mubarak was celebrated by secular and Islamist groups alike.¹⁰⁷

Nonetheless, it is worth noting at this stage – as this chapter, and Chapters 5 and 6 of this work, will document the disintegration of relations between different groups claiming legitimacy from their ‘inheritance’ as actors in the February 2011 revolution – that the Brotherhood’s good relations with secular anti-Mubarak revolutionaries in 2011 came partly from a promise the Brotherhood made at the time to not vie for power in the post-Mubarak political order. As Danahar (2013) writes:

Even before the debris from the January 2011 revolution had been cleaned from the streets, the Brotherhood tried to win over the secular youth and an equally suspicious outside world with a promise. The Ikhwan issued a statement that read: ‘The Muslim Brotherhood...are not seeking personal gains, so they announce they will not run for the Presidency and will not seek to get a majority in the parliament and that they consider themselves servants of these decent people.’ They added that they were not ‘seekers of power.’ They soon broke that promise, and fielded enough candidates in the December 2011 People’s Assembly elections, as did the hardline Salafist groups, to crowd the parliament with Islamists.

Such broken promises and transitory – and then, in turn, also broken – alliances, thread through the story of Egypt’s post-revolutionary period, and – as the

¹⁰⁷ Ibid.

following three chapters show – thread through the post-revolutionary constitutions and their constitution-drafting processes. And they leave traces on the successive post-revolutionary constitutional texts, as ‘who was at the table’ and who the constitution sought to speak to and to speak for, shifted rapidly during the events and successive constitutions of 2011-2014.

Drafting the 2011 constitution

After the fall of President Hosni Mubarak in the wake of mass protests in February 2011, the Supreme Council of the Armed Forces was tasked with drafting an interim constitution to maintain rule of law in the period prior to the country’s first post-authoritarian elections. The focus here to firstly delineate the salient features of the 2011 interim constitution, in terms of the structure it outlines regarding the relationship between the state and the citizen, the relationship between the branches of government and the balance of power between these, and the values articulated by the interim constitution, or in Rosenfeld’s conception the ‘constitutional identity’ that it articulates. In addition, the specifically ‘interim’ nature of the 2011 document will be analysed, in terms of its pivotal role in the transition process, framed both as a ‘transitional justice’ process and a constitutional stepping-stone towards full constitutionalism.

Similarly, the chapter will outline how the interim constitution was drafted and approved by the Egyptian people during the late revolutionary period, and how it laid the foundations for the 2012 constitution. Finally, this chapter will address the manifestation of Egypt’s constitutional legacies and legal heritages within the 2011

constitution, and how the 2011 interim constitutional document can be read partly as a kind of 'mosaic' informed by Egypt's early constitutional experiences.

As drawn out in the Introduction of this work, constitutions are necessarily social as well as political instruments, emanating from, grounded in and reflecting the particularities of their societies – reading and appraising them is thus both a means of reading the social context in which they were produced and gaining an insight into how constitutions and constitutional law itself contributes to or dynamically interacts with societal changes and forces.

The 2011 constitution as an interim constitution

Interim constitutions, as 'preliminary' constitutional texts, occupy a tentative space within the approaches to reading constitutions developed by comparative constitutional legal theorists – while they contain many of the same features as constitutions, their temporary nature shapes their content, role and design – they both reflect and shape the transition.

It is worth noting that interim constitutions are under-studied within the field of comparative constitutional law, and thus an analysis of the 2011 interim constitution of Egypt will contribute to the literature in this area. Interim constitutions have their own particularities – a study of recent interim constitutions such as the interim (or transitional) constitution of South Sudan (2011) or the interim constitution of Nepal (2007) shows facets that are foregrounded that are less present in 'final' constitutions, such as provisions for

conducting lustration or reorganisation of the security sector and judiciary, and the absence of many of the provisions normally found in final constitutions, such as taxation provisions .

Interim constitutions could be seen to capture a kind of liminal state of transition. In anthropological terms, the liminal state is the threshold or moment of 'crossing over' from one state to another. This 'liminality' is present in the drafting of the interim constitutions that are produced in the wake of revolutions, such as Egypt's interim constitution of 2011, the text can be seen as a kind of 'first draft' that crystallises the revolutionary moment, an attempt to hold the flux of the tumultuous revolutionary period. In this context, Jeff King's idea of constitutions as mission statements is a helpful lens, as there is some overlap between interim constitutions and the manifestos – prior to the fall of the authoritarian organisation – of the revolutionary groups that mobilised for the overthrow of the regime.

The drafting processes of interim constitutions have been studied in less detail than those of constitutions proper, although Hassan Ebrahim's study of South Africa's constitution drafting processes, *Soul of a Nation*, touches upon the specific problems of interim constitution drafting, namely the tentative coordination of the early drafting efforts. Here we can deploy the idea developed by Ran Hirschl – as referenced in the Introduction of this work – that constitutions are '*politics by other means*', the terrain on which power-plays of various interests, lobbies and groups negotiate their differences. Interim constitutions, as 'first drafts' in the post-revolutionary period, show the stitches of some of the highly contested issues amongst the revolutionary groups.

It is beyond the remit of my study here to fully chart the drafting process of the interim constitution, although the Supreme Council of the Armed Forces held press conferences and public information campaigns throughout the drafting process. The relationship between the interim constitution and the text of the final constitution is little explored in the study of constitutions.

Lastly it is worth bearing in mind as a way of framing this analysis of the 2011 interim constitution that, within its constitutional heritage, Egypt has a history of interim constitutions. In particular, the constitution of the United Arab Republic, the pan-Arabist inspired move to a 'unity' between Egypt and Syria under Nasser as outlined in Chapter 2, operated under a Provisional Constitution, as the process of merging the two countries into a 'unity' was never completed in reality and thus a final constitution was never fully enacted before the alliance fell apart. This history of 'interim' periods may inform the conduct of the drafters during the post-Mubarak interim constitution drafting period.

It is also worth briefly situating interim constitutions, in particular, in the framework of transitional justice. As 'first drafts' they often provide a first step towards larger processes such as establishing legitimacy and rule of law – as 'timetables' for what transitional justice scholars would group as a the gamut of 'transitional justice processes'. Libya's post-revolutionary interim constitution was, for instance, almost literally a timetable, setting out the tasks the National

Transitional Council would undertake on a month by month basis.¹⁰⁸ Egypt's interim constitution does have this element inasmuch as it set out the provisional political institutions with an eye on how the final institutions will be shaped after democratic elections are held.¹⁰⁹

The interim constitution was drafted by the Supreme Council of the Armed Forces, a governing body of twenty one senior figures in the national military, who assumed power with a statement that the council was not a substitute for the legitimacy of a representative body that would satisfy the people and their need for representation. Drafting the interim constitution, and arranging the first elections, were the primary tasks of the Supreme Council of the Armed Forces during their interim rule, although they did conduct thousands of closed military trials during the interim period, making their position in the 'transition' towards democracy ambiguous. The Supreme Council of the Armed Forces handed over power to the first democratically elected government, headed by President Morsi, after the June 2012 elections.

Salient features of the 2011 interim constitution

The interim constitution produced by the Supreme Council of the Armed Forces is comprised of sixty two articles. The key features of the articles of the 2011 interim

¹⁰⁸ Conversation with Felix Anselm van Lier and the author, January 2013. Anselm van Lier is a researcher at the Centre for Socio-Legal Studies at the University of Oxford who at the time of writing is working on the Libyan constitutions and constitution-drafting processes since 2011.

¹⁰⁹ Conversations with Caitlin Goss and the author, and Felix Anselm van Lier and the author, after presentations between Goss, van Lier and the author at the conference 'The Science of Constitutions', Foundation for Law, Justice and Society, University of Oxford, June 1st-2nd 2015.

constitution include the assertion that Egypt is a democratic state, with Article 1 establishing party plurality and forbidding sectarianism, meaning parties cannot be founded on the grounds of religion or race. One striking aspect of the state-citizen relationship outlined in the interim constitution is that the armed forces are the property of the people, which would seem to be a necessary position for the Supreme Council of the Armed Forces to indicate their awareness that, in order to demarcate themselves in opposition to Mubarak's authoritarianism, they would have to signal citizens' ownership of their role.

This is further underscored by a statement made by the Supreme Council of the Armed Forces in the early weeks of their takeover of power that they did not represent the will of the people and would not substitute for the will of the people, which would require democratic elections.

It is worth noting Article 49, "the Supreme Constitutional Court is an independent and autonomous judicial body, uniquely tasked with judicial oversight over the constitutionality of laws and regulations", shows an assertion, or reassertion of the independence and power of the SCC, who were instrumental in utilising judicial activism (Brown: 2011; Brown 2012) to corrode Mubarak's dictatorial mode of control. Similarly, Article 55's statement that "[t]he police are a civil order body whose responsibility is to serve the people. The police guarantee for the people tranquility and security and provide for the maintenance of order, public security and morals, according to the law" evidently signals an intention by the drafters to shift away from the arbitrary policing of the Mubarak era.

Elsewhere, however, the ability to declare ‘emergency powers’ is reminiscent of the recently deposed authoritarian regime, particularly Article 59, which states

“[t]he president of the republic, after taking into account the opinion of the cabinet, can announce a state of emergency as stipulated in law. He must present this announcement to the People's Assembly Council within the seven subsequent days to decide its view on this matter. If the state of emergency is announced in a period of recess, the Assembly must be called back to session immediately to review the matter, taking into account the time limit mentioned above. If the People's Assembly Council is dissolved, the matter will be reviewed by the new Assembly at its first meeting. A majority of the members of the People's Assembly Council must agree to the announcement of state of emergency. In all cases, the announcement of a state of emergency will be for a limited time period not exceeding 6 months. It is not permissible to extend it, except after a people's referendum on the matter and their agreement to an extension.”

This article is significant in its echoes of the constitutional decrees of Nasser in the era immediately following the Free Officer Movement coup surveyed in Chapter 2, such as the (in reality ignored, during Nasser’s rule) six month time limit of the state of emergency stated in the first constitutional declaration by the Free Officer Movement.

In terms of the relationship between the different branches of government, the independence of the judiciary is stipulated while Article 26 sets out the semi-Presidential executive system, in which the President appoints a Prime Minister, both of whom make up the executive branch. The legislature is bicameral, with the People's Assembly as the lower house and the Shura Council as the upper house. Civil and political rights such as freedom of assembly and freedom of expression (enshrined in Article 4) are clearly stipulated, while on the other hand economic, social and cultural rights are considerably sparse – even the right to education is not explicitly enshrined in the constitutional document, likely as a result of the interim nature of the constitution, with the constitution drafters assuming that such provisions will be made in the final text.

Several articles were put to a referendum, notably an article on the reinstatement of the judicial power over election monitoring, that the President must appoint a Vice-President within sixty days, that the new Parliament must draft a new constitution within sixty days and an article stipulating Presidential term limits, that is two consecutive terms, each of four years only. The referendum passed with 77.27% of the vote when put to the Egyptian people on March 19th 2011.¹¹⁰

The role of the referendum in the transitional justice process (in the broad sense of Egypt drawing a line under, and coming to terms with, its authoritarian past) is worth noting: it was significant as it was the first time in decades that Egyptian citizens had the opportunity to participate in free and fair elections, as under Mubarak's long rule referenda and elections had been notably marred by prevalent

¹¹⁰ Brown. *Ibid.*

vote-rigging and fraud; the Supreme Council of the Armed Forces thus invited civil society groups and the media to monitor the polling stations on election day.

The reinstatement of judicial power over election monitoring was significant because, as outlined in Chapter 1, this was a key terrain of the tension between the increasingly politicised Supreme Constitutional Court and Mubarak during his last half-decade in power. Similarly the stipulation on term limits can be seen as a transitional justice mechanism indicating that the authoritarianism of the Mubarak era of unlimited dictatorial rule will not be able to repeat itself in this institutional environment.

One final salient feature of the 2011 interim constitution is how it laid the foundations for the 2012 constitution. In particular, the 2011 interim text required that the newly elected parliament form a new constitutional drafting committee – the Constituent Assembly of Egypt – to write the permanent constitution of Egypt. (This passed and the draft was approved by the Assembly on November 30th 2012; this will be the subject of Chapter 5). The stipulation that the final constitution be drafted within sixty days did not happen in reality; this stipulation, also in the Libyan National Transitional Council interim constitutional document of 2011, seems unlikely ever to be feasible given the complexity of drafting a post-authoritarian constitution, which raises the question of why it was included if there was no intention it would be fulfilled.

It is worth noting here the evident fragile chasm between interim and final constitutions – it is at this stage that the post-revolutionary or post-authoritarian

constellation of interest groups frequently unravels, with the interim document either too flimsy or too unwieldy to enable the steps to the final constitution, which would normally involve a referendum, the appointment of those who will draft the final constitution and the appointment of those who will oversee any initial necessary lustration processes.

To take the fate of two recent examples of interim constitutions as an example, South Sudan stumbled on the issue of its Electoral Commission Body in 2012 as the country attempted to shift from transitional constitutional arrangement to permanent constitution, while Nepal's interim constitution did not prove sufficiently robust to maintain stability through the final stages of the negotiation for the final constitution, and by May 2012 the country was in 'crisis mode' after constitutional talks ran aground and the parties could not agree whether to return to the interim constitution until the final version was resolved.

It is worth contrasting the scale of the interim constitution to the previous constitutions in Egypt's heritage: at sixty three articles, the 2011 document is slight compared to, for instance, Sadat's Permanent Constitution, which had almost two hundred. The primary focus of the articles of the interim constitution is the citizen-state relationship and relationship between the different branches of government. There is very little on rules for the conduct of foreign relations or administrative mechanisms. Similarly, as noted above, economic social and cultural rights are barely outlined, compared to the more substantial description and enumeration of civil and political rights.

Article 1 is reminiscent of the Preambles of the pan-Arabist Egyptian (and United Arab Republic) constitutions, stating: “The Arab Republic of Egypt is a democratic state based on citizenship. The Egyptian people are part of the Arab nation and work for the realization of its comprehensive unity.”

The language of unity and citizenship are both evocative of the socialist-inflected Preambles of the Nasser constitutional documents and the 1971 Permanent Constitution while also more immediately echoing the language and framings of the anti-Mubarak movements that spearheaded the 2011 February revolution such as the April 6th Youth Movement. The references to ‘Arab nationality’ and no provisions for dual nationality is reminiscent of the detailed stipulations of the United Arab Republic constitution, due to the ideological nature of pan-Arabism, where patrolling the boundaries of ‘Arabness’ is critical to the pan-Arab project, and hence developed into a legal and constitutional concern with inherited nationalities and dual nationalities. Similarly, the collocation of ‘Arab and foreign affairs’ in outlining the duties of the Shura Council in the 2011 interim constitution indicates a conceptualisation of ‘Arab affairs’ as a separate sphere to other foreign relations, which is a paradigmatically pan-Arabist political worldview.

As noted above, the 2011 interim constitution fluctuates in tone with regard to the transition out of authoritarianism, with Article 59, which makes provisions for ‘emergency powers’ for the military, which is evidently reminiscent of the military-authoritarian rules of Nasser, Sadat and Mubarak. This tension, in a text produced as a result of a revolution where one of the central demands was the removal of

military rule, is resolved by the 'interim' nature of this provision – until the first elections take place, after which power will be handed over.

Furthermore, it is offset in part by the inclusion, within the interim constitutional text, of language that specifically evokes other (2011) revolutionary demands and concepts. In particular, Article 8, that all persons must be treated in accordance with 'human dignity' [*karama*] is reflective of human rights language and human rights law, but also has specific resonances with the Egyptian or 'Arab Awakening' context as the cry or chant 'karama' was the central rallying slogan in the protests of 2011, beginning in Sidi Bou Zid in Tunisia in January 2011 but also documented as a repeated, emblematic chant in Tahrir Square in 2011 in the build-up to and aftermath of Mubarak's downfall. (Danahar 2013; West 2011).

This language of human rights law, which would be strengthened further in the 2012 constitution, similarly reflects Goderis and Versteeg's analysis of constitutions as a terrain for the transference of transnational 'norms' and international standards, as will be outlined further in the following chapters. But while the pan-Arabism of the Nasser-era constitutional documents and the Permanent Constitution carries over into the 2011 interim document, and human rights law and the language of the February 2011 revolution manifest in the constitutional text, perhaps the most significant legacy that presents itself in the 2011 document is not pan-Arabist but Islamic: Article 2. Significantly, the 2011 interim constitution retained Article 2, inherited from Sadat's 'Permanent Constitution' in its modified form, in which shari'a is 'the' principle source of law.

It is worth again here briefly delineating the difference between shari'a and fiqh, namely that Islamic jurisprudence or 'fiqh' is an approach to law that – as outlined in the preceding chapters – if compatible with incorporation into the other legal heritages of the Egyptian legal traditions – 'fiqh' being the human interpretation of laws, as opposed to 'shari'a', which is defined as the literal 'law of God' (in this sense 'fiqh' can be seen as akin to delegated legislation, and unlike shari'a is not regarded as sacred).¹¹¹

One of the tasks of the constitution drafters was to balance this heritage of fiqh (that is, the possibility for interpretation and development) with the position of shari'a. The inclusion of Article 2 and shari'a was a significant detail of the 2011 interim constitution, and subject to much political debate, with regard to the tumultuous nature of the post-revolutionary landscape, and particularly the question of what role the Muslim Brotherhood would play in the formation and structure of the post-Mubarak state.

¹¹¹ As Brown notes, adherents to the Islamic faith will “sometimes take pains to distinguish between Islamic sharia on the one hand, as unchanging divine guidance, and *fiqh* or jurisprudence on the other hand, as the fallible human effort to understand the content of that guidance.” He continues “there is, in that sense, one sharia but many interpretations.” And that the diverse nature of fiqh is not seen as a problem, but rather the “multiplicity of interpretations of Islamic legal heritage is sometimes cited as a virtue, since it shows how attempts to discover and apply the Islamic sharia naturally evolve with prevailing conditions and community needs.” See: Brown, Nathan J. 'Egypt and Islamic Sharia: A Guide for the Perplexed.' *Carnegie Endowment for International Peace*, May 15th 2012. Available online at: <http://carnegieendowment.org/2012/05/15/egypt-and-islamic-sharia-guide-for-perplexed> [accessed July 24th, 2014].

Conclusion

This chapter has outlined the salient features of the 2011 interim constitution of Egypt, in particular the tension between democratisation and the maintenance of authoritarian elements such as emergency powers in Article 59 and military tribunals. The chapter has also delineated the significant differences between interim constitutions and permanent constitutions, and the particular pivotal role that interim constitutions occupy in the early stages of transition, and the implications of their necessarily precarious nature. This brings us to the nature of the challenges faced during the post-Mubarak era, particularly the question of the legitimacy of the Supreme Council of the Armed Forces. The referendum on the nine articles of the interim constitution in 2011 was significant both in terms of providing a stepping stone in the constitutional process and secondly its particular resonance with the democratic aims of the revolution, as the first free and fair elections many Egyptian citizens had had the opportunity to participate in.

As outlined above, the 2011 interim constitution of Egypt also laid the foundations for the 2012 constitution both in terms of working as a 'first draft' or template on which the final constitution would develop and more specifically in terms of stipulating the creation of the final constitution drafting committee in the form of the Constituent Assembly of Egypt.

The impact and resonances of Egypt's constitutional heritage and legal legacies on the 2011 interim constitution have been outlined, particularly tracing the residue or re-affirmation of the main ideological strands of twentieth-century Egyptian constitutions, politics and society – French and British colonial heritages, pan-

Arabism and its closely affiliated socialism, authoritarianism and Islamic jurisprudence and shari'a. The dynamic outlined between the President and Prime Minister in the semi-Presidential executive does reflect borrowing from the French 5th Republic model. More noticeable is the retention of specific articles and conceptions that could be clearly defined as pan-Arabist in nature, such as the language of 'the people' in the Preamble combined with the lengthy stipulations on qualifications for nationality that are reminiscent of Article 68 of the United Arab Republic constitution, where the boundaries of what is 'Arab' is central among the goals of the drafters. The retention of emergency powers for the President has obvious echoes with the Mubarak, Sadat and Nasser practices, if not constitutional frameworks. But most significant is the continuation of Article 2, maintaining shari'a as the key principle of Egyptian law.

The analysis above shows how it is helpful to conceptualise the 2011 interim constitution in terms of a kind of 'legal mosaic', heavily informed by the rich heritage of its former constitutions, notably the 1923 'liberal' constitution, Nasser's constitutional decrees and – above all – Sadat's Permanent Constitution of 1971, which have been described in Chapter 2.

It should be noted that it was beyond the remit of the analysis presented here to explore the opposite influence to the 'indigenous' constitutional heritages and legal legacies at Egypt's disposal –that is, the issue of external constitutional consultation and, relatedly, constitutional borrowing. 'External' consultations with organisations representing non-Egyptian (and frequently partisan) 'pro-democracy' positions

took place before and during the drafting of the interim constitution of 2011, notably with Carnegie Endowment and the National Endowment for Democracy.

Although it has been beyond the scope of the analysis here, the presence of 'external' consultations would lend some credence to Versteeg and Goderis's conception of constitutions as terrains for the transaction of transnational 'norms' through constitutional learning and constitutional borrowing. As will be outlined in the following chapter, this became a source of contention in the drafting of the final constitution in 2012 on the issue of child labour and whether the final constitution's domestic legal provisions on child labour were reflective of and in keeping with international legal norms.

Lastly, it is important to bear in mind the role of the 2011 interim constitution as a tool in a wider transitional justice process, as noted in the Introduction of this work where the issue of transitional justice since the 2011 uprisings was described. The Preamble of the interim constitution does not mention the previous regime by way to differentiate itself from the authoritarianism of Mubarak – in this sense there is no evident 'drawing the line under the past' or negative positioning against former regime that marks 'constitutional justice' in Teitel's conception, where transitional justice mechanisms such as lustration and vetting of police and security services are also explicitly built into the fabric of constitutional law itself.

However, several facets of the interim constitution can be framed as 'transitional justice' articles, notably the reassertion of separation of powers and the symbolic citizen control of the military, as well as the article put to the electorate in the 2011

referendum regarding the reinstatement of the judicial power over election monitoring – these were all demands central to the revolutionary protests of February 2011, and called for by groups such as the April 6th Youth Movement¹¹², and show a clear demarcation from the practices of the former authoritarian regime.

The following chapter will analyse the salient features of the 2012 constitution of Egypt, building upon the analysis presented here, and charting the shift from interim to final constitution, and the relevant actors in this process, as well as changes in how the constitutional heritages and legal legacies are drawn upon in the post-revolutionary documents, between the interim constitution of 2011 and the final constitution of 2012.

Chapter 5: The 2012 constitution – Morsi’s constitution

The preceding chapter presented the salient features of the 2011 interim constitution, addressing the specificity of the ‘interim’ nature of the document and how the constitutional heritages and legal legacies inform its content. Building upon this, and completing the tracing of the constitutional heritages and legal legacies to the present constitutional documents, this Chapter will outline the salient features of the 2012 constitution that was ratified in December 2012, and highlight how Egypt’s constitutional heritages and legal legacies inform the 2012

¹¹² Informal conversation between the author and April 6th Youth Group member, Cairo, Egypt, December 2012.

document. While this analysis in some ways mirrors the examination of constitutional texts undertaken in the preceding Chapters, here the additional question of the legitimacy of the constitutional text must be raised to a great degree.

The question of legitimacy of constitutional texts is a discrete issue within constitutional theory to the way in which constitutional texts have been handled in the analysis here so far, but is necessary to address it here in order to understand the context of the 2012 constitution, and its controversial provisions. As a result, before the close textual analysis of the constitutional document, this Chapter will present a brief survey of the drafting process of the 2012 constitution, and the constitutional referendum of December 2012. These events help locate the 2012 constitutional text as a 'live' document that works as both a source of and space for the contested political demands of the post-revolutionary period under President Morsi.

After the brief analysis of the drafting process and 2012 constitutional referendum, this Chapter will delineate the salient features of the constitutional text itself. As with the analysis of the 2011 interim constitution in Chapter 2 this will focus on state structure and the state-citizen relationship, and, within this, constitutional provisions on civil and political rights (particularly freedom of expression), worker's rights, economic social and cultural rights (particularly minority rights as these are framed in the constitutional text), the status of women and the role of

religion. These are also the constitutional provisions that were the sites of most political tension and debate throughout the constitutional drafting process and during the political and social crisis in the build-up to the constitutional referendum in December 2012.

As with the 2011 interim constitution analysed in the preceding Chapter, the legal legacies and constitutional heritages of Egypt's twentieth-century constitutional history are evident in the current document – unlike in the 2011 interim constitution, however, these legal legacies and constitutional heritages as they manifest in the 2012 constitution carry the weight of potentially shaping the course of Egypt's constitutional future.

The 2012 constitution's echoes of 1971

Structurally, the 2012 constitution bears most similarities to the 1971 Permanent Constitution of the Sadat era, replicating more than thirty articles in their entirety from the 1971 document.¹¹³ The constitutional text was prepared between the 2012 summer elections and late autumn by a 100-member constituent assembly. The course of the constituent assembly itself was not smooth, as the assembly was appointed by Parliament, which was itself dissolved in mid-2012, which led activists to question whether the constituent assembly itself should not be re-elected. After this re-election the constituent assembly released a draft text of the constitution that built upon the 2011 interim constitution and was distributed to a

¹¹³Brown, Nathan J, 'Cairo's Judicial Coup', *Foreign Policy* magazine, 14th June 2012, available online at: http://mideast.foreignpolicy.com/posts/2012/06/14/cairo_s_judicial_coup [Accessed 28th March 2013].

number of formally structured consultation committees intended to reflect the variety of Egyptian civil and political life.

Following this the final text of the constitution was finalised and put to a referendum. However, this process of consultation was queried by numerous civil society voices, including voices and organisations that had been key players in the 2011 February revolution to overthrow President Hosni Mubarak, including the April 6th Youth Movement.

Protests and political violence escalated in late 2012 as the final draft of the constitution was finalised, particularly after secular and liberal members of the body tasked with drafting the final text of the constitution resigned from their positions, arguing that the Morsi-backed Muslim Brotherhood were dominating the constitution drafting process and failing to incorporate the positions of liberals, secularists and religious minorities such as Coptic Christians. As part of the political crisis that escalated in late 2012, President Morsi enacted a decree that granted him extensive executive powers including granting himself powers above any domestic court as the sole guardian of Egypt's 'revolution'.

Such a move was explained by President Morsi and his supporters as an attempt to ensure that the Supreme Constitutional Court would have to accept the final text of the constitution. However, the move backfired politically and ignited further protest that both Morsi's extended executive powers and the constitutional text

itself were not legitimate. Shortly thereafter, President Morsi declared that a referendum would prove the legitimacy of the constitution and called for a national referendum on December 15th.

The constitutional referendum and constitutional crisis

The constitutional referendum of December 2012 dominated Egypt's national political debates through the latter part of the year. After President Morsi's controversial Presidential decree granting him extensive executive powers, the national organisations of judges, who revolted at the directive that Morsi as President had power over the ruling of any national court, boycotted the overseeing of the referendum. As outlined in Chapter 1, under President Mubarak judges were tasked with overseeing referenda and formally declaring their legitimacy.

The decision to boycott the overseeing of the referendum on the constitution in December 2012, was therefore an assertion by the national organisations of judges that both the constitutional text, and the referendum, and the Presidential decree that President Morsi enacted in order to ensure the constitutional text would not be overturned by the Supreme Constitutional Court, were all illegitimate in the eyes of the judiciary.

Political violence escalated throughout the period leading up to the constitutional referendum¹¹⁴, as opponents to President Morsi grouped themselves under the new umbrella-organisation the National Salvation Front, and mobilised to call for a widespread boycott by the Egyptian public in order to ensure that the referendum – and thus the constitutional text as it stood in December 2012 – could not be considered legitimate. Overseas voting on the referendum was delayed as President Morsi attempted to negotiate with the National Salvation Front to call off the boycott of the constitutional referendum¹¹⁵ and then the constitutional referendum went ahead over two weekends in December. Although the constitution was accepted by a ‘Yes’ vote in the referendum, the crisis of the boycotting judges had not been resolved which meant that the constitutional referendum was not valid according to its own criteria of how referenda are monitored. Nonetheless, President Morsi declared the constitutional referendum a victory and the text of the 2012 constitution came into force immediately. Since the period of the constitutional crisis, the 2012 constitutional text that was put to a referendum in December 2012 remains the official constitution of Egypt although opposition figures refuse to acknowledge its legitimacy.

¹¹⁴ I was in Cairo during the period of the constitutional crisis and witnessed mass demonstrations and political violence during these weeks, including large crowds in urban areas protesting against the constitution.

¹¹⁵ McRobie, Heather. ‘Diary of a Constitutional Crisis’, *openDemocracy*, December 15th 2012, available online at <http://www.opendemocracy.net/heather-mcrobie/diary-of-constitutional-crisis> [Accessed 28th March 2013]. I kept a day-by-day record of the events in Cairo during the 2012 constitutional crisis for the ‘public commons’ online magazine *openDemocracy*, combining some reportage from the events of these days, such as queues and demonstrations, with first-draft analysis of what the events might signify, both for Morsi’s Presidency and for the constitution and future structure of Egypt.

The 2012 constitution, born of this fraught post-revolutionary crisis and the increasing opposition between the Muslim Brotherhood-backed rule of President Morsi and oppositional figures who also claim to speak on behalf of the revolution, reveals this tension of the moment within the text itself. Nathan J Brown and Issandr Amrani have noted that the text is highly self-contradictory, particularly in relation to worker's rights and labour rights, the status of women and the status of the relationship between religion and the state. As a document, it articulates the unresolved tensions of the contested post-revolutionary arena, as well as operating in the post-revolutionary space as a terrain upon which different visions of the post-revolutionary state are enacted.

On top of this role of the constitutional text as terrain for post-revolutionary power struggles, however, there is a second important thread that can be traced, which is the aim of the analysis here, and will be fully foregrounded in Chapter 7's argumentation that the post-revolutionary constitutional texts are legal mosaics. And that is, the ways in which the text of the 2012 constitution is informed by, and re-enacts or re-contextualises, the constitutional heritages and legal legacies of Egypt's previous successive constitutional and legal texts.

Compared to the 2011 interim constitution, the 2012 final constitution has more detailed provisions – these in turn leading to further causes of contestation – particularly in worker's rights, labour rights and certain framing of civil and political rights that civil society activists and human rights activists expressed

concern were inadequate provisions for a society transitioning out of authoritarianism. The 2012 constitutional text also interacts with its constitutional heritages and legal legacies in a somewhat different way due to the permanent nature of the constitution and the significance that the constitutional heritages and legal legacies had when re-contextualised in the 2012 constitutional text, given the new significance of the re-contextualised position of a constitutional heritage such as Article 2 from President Sadat's Permanent Constitution of 1971 given the post-revolutionary contemporary context in which the Muslim Brotherhood were, for the first time, no longer an oppositional force to authoritarian Presidential power and now for the first time at the helm of institutional political power themselves.

In order to examine the salient features of the 2012 final constitutional text and how Egypt's legal legacies and constitutional heritages come to bear upon the text, it is necessary at this stage to turn to the provisions of the 2012 final constitutional text, from civil and political rights to economic social and cultural rights, to the balance of power within the state structure to other pertinent features that became sources of controversy, particularly the relationship between religion and the state, the status of women and minority rights, whether or not these are framed specifically as 'minority rights'.

Several human rights organisations both within Egypt and abroad expressed their concern with the provisions for civil and political rights within Egypt's final

constitutional text of 2012. For instance, a report by Human Rights Watch in late November 2012 enumerates many of the concerns that human rights activists and civil society activists had with the constitutional text.¹¹⁶ For the sake of the analysis here it is helpful to focus on constitutional provisions of freedom of expression and freedom of association as both of these both became sources of significant political controversy during the political and constitutional crisis of late 2012 and also demonstrate how the constitutional heritages and legal legacies were influencing the 2012 final constitutional text. While freedom of expression is fully enshrined, civil society organisations noted that this was through maintaining the provisions of freedom of expression that had been formally in place but in reality curtailed throughout the Mubarak era and called for more robust provisions to be put into place. ¹¹⁷

Similarly, freedom of assembly and association were, from the viewpoint of civil society activists, too close to the paltry provisions of the Mubarak era, and in some cases introduced new restrictions on freedom of association. In particular, a newly added provision, Article 53, limits the plurality of professional organisations by allowing only one professional syndicate per profession, an article which directly contradicts Article 51 – whose language is directly lifted from the 1971 Permanent Constitution of the Sadat era – which states that citizens have a right to establish associations, as long as they provide notification.

¹¹⁶ *Human Rights Watch* report. 'Egypt: New Constitution Mixed on Support of Rights', 30th November 2012, available online at: <http://www.amnesty.org/en/news/egypt-s-new-constitution-limits-fundamental-freedoms-and-ignores-rights-women-2012-11-30> [Accessed March 29th 2013].

¹¹⁷ *Ibid.*

Trade union organisations and human rights organisations such as the Cairo Institute for Human Rights Studies have also noted that Article 52, also drawn from the Sadat-era Permanent Constitution, establishes the right to form trade unions, but does not sufficiently outline how such trade unions would actually be registered, creating a practical problem. This is taken by civil society activists and trade unionists to be clearly reminiscent of the Sadat and Mubarak eras in which trade unionism and freedom of association were curtailed by bureaucratic encroachments in such ways as to make the constitutional provisions of the right to associate meaningless in reality.

Similarly, the self-contradictory passages in the 2012 final constitution on freedom of expression were both condemned by civil society activists as preventing full freedom of expression in reality and also reflect a similar means of phrasing freedom of expression clauses constitutionally that were deployed in the constitutional and legal framings of the Sadat and Mubarak eras to ensure freedom of expression was controlled by the military regime. For instance, whilst Article 45 states that “freedom of thought and opinion are guaranteed. Every human being has the right to express an opinion orally or in writing, photography or other means of publication and expression”, Article 44 raises the issue of blasphemy by prohibiting insults against “messengers and prophets.” Similarly, Article 48 maintains that freedom of expression can be suspended in periods of national emergencies, a phrasing that is clearly reminiscent of the ‘emergency periods’

declared by Nasser, Sadat and Mubarak to suspend freedom of expression and other civil and political freedoms.

The status of worker's rights in the 2012 constitution was an issue that departs from the issues raised in the 2011 interim constitution, which did not stipulate worker's rights in discrete articles. The 2012 constitution maintains the workers' quotas in company administrations and reserves 50% seats in Parliament for representatives of farmers and workers from the 1971 Permanent Constitution (this provision was not in the 2011 interim constitution as liberal political forces had hoped that the longstanding quotas would not be part of the post-revolutionary constitutional texts).

However, as journalist Jano Charbel has noted, while the influence of the quasi-socialist 1971 Permanent Constitution means worker's rights are clearly enshrined in the text, new stipulations in the constitution were seen as being detrimental to worker's rights, such as the vague terminology of Article 63, which builds upon Article 13 of the 1971 Permanent Constitution. Article 13 in 1971 stated that "no work shall be enforced upon citizens, except by virtue of law and for the performance of a public service and in return for fair remuneration", which Article 63 of the 2012 constitution altered by removing the "for fair remuneration", which seems to therefore legally enable forced labour.¹¹⁸

¹¹⁸ Charbel, Jano. 'Egypt's constitution see to curtail labour rights and workers freedoms' in *The Egypt Independent* newspaper, 22nd January 2013, available online

Although not an issue of the constitutional text itself, it is also worth briefly noting in the context of post-revolutionary analysis of worker's rights provisions that analysts such as Nathan J Brown have also noted how the immediately post-revolutionary laws legitimising the military trials of civilians could be used against striking workers.

In terms of economic, social and cultural rights, one of the main sources of contestation in the constitution drafting process, and one in which Egypt's constitutional heritages and legal legacies are evident, is in the formal provisions for minority rights and freedom of religion – in practical terms, the concern was primarily over the status of Coptic Christians relative to Muslims and how this relationship might formally change in legal and political life due to the advent of the Muslim Brotherhood. The rights of Coptic Christians as a minority group were a source of contention throughout the constitution drafting process and amongst civil society groups who lobbied for the boycott of the December 2012 constitutional referendum.¹¹⁹

Although several members of the second 100-person constituent assembly held the position as representatives of the Coptic Christian community, these members of

at: <http://www.egyptindependent.com/news/egypt-s-constitution-seen-curtailed-labor-rights-and-workers-freedoms> [accessed March 27th 2013].

¹¹⁹ Conversation between the author and representative of the Coptic community in Cairo, Egypt, December 2012.

the constituent assembly resigned prior to Morsi's November 22nd Presidential decree amidst allegations that the Muslim Brotherhood members of the constituent assembly were marginalising members who did not subscribe to political Islam and a conception of the 2012 constitutional text as a politically-Islamist document.¹²⁰ As a result, as noted by Nadia Shabana and Jeff Vogt, the tensions in the constituent assembly during the drafting process which lead to the representatives of the Coptic Christian community resigning from the constitution drafting process further sealed the fate of the 2012 constitution as one that would not make adequate provisions for minority rights.¹²¹

In light of this, the constitutional provisions for freedom of worship and freedom of faith pale in comparison to the centrality of Article 2, the Preamble and other constitutional statements that overtly state that the Egyptian state, and society, is Islamic in its essence. It is important to note here the legal legacies and constitutional heritages of minority rights.

Egypt's twentieth century constitutional documents make little or no provisions for minorities *qua* minorities, instead identifying Egyptians as 'citizens', and there have been no earlier attempts to make positive provisions for religious or ethnic

¹²⁰ McRobie, Heather. 'Diary of a Constitutional Crisis', *openDemocracy*, December 15th 2012.

¹²¹ Shabana, Nadia and Jeff Vogt. 'Who has the most to lose from Egypt's new constitution', in *The Equal Times* newspaper, 6th December 2012, available online at: <http://www.equaltimes.org/news/who-has-more-to-lose-from-egypts-new-constitution> [accessed March 30th 2013].

minorities *qua* minorities in either the structure of government and administration or through constitutional provisions such a right to minority language education.¹²²

This co-exists in the twentieth-century constitutional texts with the provision that Islam as the official state religion and (in the changing nature of Article 2 in successive constitutions from the Nasser-era) shari'a as either 'a' or 'the' primary principle of law. Such provisions, it could be argued, structurally disadvantage those who do not identify as Muslim in a manner not entirely unlike the consociational structure of the 1995 Bosnian constitution, which, in demarcating three 'national ethnic groups', marks those who do not identify as ethnically either Bosnian, Croatian or Serbian as "*ostali*" or "other".¹²³

Another key source of contention in the constitution drafting process was the legal status of women and constitutional provisions on gender equality. Tunisia's experience of constitution drafting over the summer of 2012 under the religiously-oriented (or, Islamist) Ennahda party gave Egyptian secularists and liberals cause for concern as they watched the largely secular nearby country bring in a draft constitutional article that positioned women as the 'complement' of men. This fear was compounded when, in November 2012, the 100-person Egyptian constituent

¹²² Ibid.

¹²³ Although it is beyond the scope of this work to engage in this discussion, for a convincing and thorough critique of the 'ethnopolis' and 'compulsory ethnic identification' (in his words) of the consociational Dayton constitution of Bosnia and Herzegovina, see: Mujkic, Asim. *We, the Citizens of Ethnopolis*. Human Rights Centre publication (University of Sarajevo 2008).

assembly removed the phrase from the draft constitutional document that explicitly stated that women were the equal to men (this phrase had been in the draft Preamble).

In the final version of the 2012 constitutional text, it is explicitly stated that there cannot be discrimination on the basis of sex (along with ethnicity and religion). However, civil society activists and human rights activists have noted that there is no explicit declaration in the 2012 constitutional text that men and women are equal, and have used this to argue that material benefits and other issues of concern to feminist activists such as use of public space and public office, are not protected as gender-equal by the 2012 constitution.¹²⁴

Finally, it is worth briefly highlighting the role between religion and the state as articulated in the 2012 final constitutional text, as this was both a source of significant controversy during the constitution drafting process and the political crisis surrounding the constitutional referendum in late 2012. It also highlights the way in which the constitutional heritages and legal legacies that inform the post-revolutionary constitutional texts play out in dynamic ways in the new realities of the post-Mubarak era.

¹²⁴ Messiah, Nancy. 'Women – Another Casualty of Egypt's Draft Constitution', in *The Middle East Voices* newspaper, 4th October 2012. Available online at <http://middleeastvoices.voanews.com/2012/10/insight-women-another-casualty-of-egypts-draft-constitution-28794/> [accessed 30th March 2013].

As delineated in Chapter 2, Article 2 of the Egyptian constitutions from the Sadat period onwards has been central to debates about the role of religion and the state, and the shifting position through successive constitutions of whether shari'a is 'a principal source' or 'the principal source' of Egyptian law has both charted and shaped the contentious issue of religion in the regimes of Sadat and Mubarak. Significantly, the constitution drafters of the 2012 constitution chose to maintain Article 2 in the incarnation in which shari'a is 'the' principal source of law.

Whilst superficially this can be read as a kind of residue or legacy of the earlier constitutional periods, its retention or repetition in the new post-Mubarak constitution is significant, because the political context in which Article 2 operates has now significantly changed. Article 2 was borne in part of Sadat's attempt to renegotiate his military regime's fraught relationship with the oppositional force of the Muslim Brotherhood (and was ultimately unsuccessful in this attempt). During this period, the assertion of shari'a within Article 2 of the Permanent Constitution operated as a stipulation that worked within a secular, authoritarian regime with residues of pan-Arabist ideology, and was included in an attempt to pacify the oppositional force of political Islamists who held no formal institutional power within the state structure. In the context of 2012, however, Article 2's repetition within the new post-revolutionary constitution takes on new contours.

It is included in a constitution drafted largely by supporters of the Muslim Brotherhood, and intended come into effect in a political configuration in which the

Muslim Brotherhood-backed President Morsi held political power. In this sense, Article 2 can be considered a potent, living and mutable constitutional heritage from Egypt's twentieth-century struggles that is re-contextualised by the post-2011 realities to take on new significance and become a new source of contestation in the shifting relationship between state and religion.¹²⁵

Combined in particular with the lack of minority rights provisions and the controversies surrounding the constitutional drafting process of 2012 (in which secularists and liberals resigned from the constitution-drafting process over its domination by the Muslim Brotherhood), the inclusion of Article 2 in the 2012 constitution may be a 'constitutional heritage' inherited from Sadat era, but the choice to include it in the new constitutional document was hardly passive inheritance, and a significant choice reflecting how the drafters of the 2012 constitution envisage the new state.¹²⁶

Conclusion

This chapter has outlined how the legal legacies and constitutional heritages of Egypt's modern past manifest in the 2012 constitutional document. In particular, it is important to note how the legal legacies and constitutional heritages outlined in Chapter 1 have become re-contextualised in the post-revolutionary political

¹²⁵ Amrani, Issandr. 'The Problem(s) with Egypt's New Constitution.' *The Arabist* newspaper. December 27th, 2012, available online at <http://arabist.net/blog/2012/12/27/the-problems-with-egypts-new-constitution.html> [accessed March 28th 2013].

¹²⁶ Brown, Nathan J. Contention in Religion and State in Postrevolutionary Egypt. *Social Research* 79(2): 531 – 550. (2012).

climate, in which the Muslim Brotherhood are no longer an oppositional or antagonistic force to authoritarianism and are now at the helm of institutional political power.

In outlining this, the some of the main sources of contention of the 2012 constitution have been raised, particularly labour rights, the status of women, freedom of expression and the relationship between the state and religion through the re-contextualised deployment of the historical Article 2 in the context of the new Muslim Brotherhood regime. This in turn raises the question of the legitimacy and perceived legitimacy of the 2012 constitution, and whether it would ever have worked to successfully 'renew the contract' between state and citizen and is compatible with the wider transitional justice process of transition away from authoritarian rule that had characterised the preceding regimes.

As outlined earlier in this chapter, concerns about the legitimacy of the constitution also existed outside of concerns about the constitutional text itself. Firstly, the legitimacy of the drafting process was called into question by civil society activists, human rights activists and secularists and liberals given the fraught path of the constituent assembly tasked with drafting the constitution and the way in which the drafting process was seen to exclude voices that dissented from the Muslim Brotherhood, leading to resignations by secularist and liberal members of the

constituent assembly who declared the 2012 constitution an illegitimate document that did not reflect the aims and concerns of the February 2011 revolution.¹²⁷

Secondly, the legitimacy of the 2012 constitution was indirectly called into question by those who expressed their concerns about the December 2012 constitutional referendum. These concerns were both that the referendum was illegitimate in light of the boycott of the judges tasked with monitoring the referendum (itself a product of the fact that independent judges did not consider the constitutional text – or the constitution-drafting process – as legitimate) and the allegations of voting irregularities over the two weekends in December in which the constitutional referendum took place, which were made by both international human rights organisations and civil society groups who were primarily representing liberals and secularists.

The legitimacy of the constitution aside, what has emerged in the analysis of the 2012 constitution since the referendum passed is the way in which the various constitutional heritages and legal legacies that Egypt has to draw upon from its earlier constitutional and legal experiences have been re-contextualised and re-framed by the way they were drawn upon by the active borrowing of the 2012 constitution drafters. As a result, like the 2011 interim constitution, the 2012 constitution is a ‘legal mosaic’ in which elements of earlier constitutional heritages and legal legacies from the colonial experience to shari’a to the pan-Arabist and

¹²⁷ Interview between the author and representative of the April 6th Youth Movement, Cairo, Egypt, December 2012.

quasi-socialist framings of the mid-century authoritarian constitutions are reconfigured in a new context.

As outlined above, the structure of the state outlined in the 2012 constitutional text reflects both elements of the Mubarak era and is simultaneously a self-conscious effort to re-position the state away from military rule, in keeping with the demands of the February 2011 revolution. Similarly, the provisions on civil and political rights, such as the potential curtailment of freedom of expression in Article 48, reflect the authoritarian framings of freedom of expression in both the 1971 Permanent Constitution and Nasser-era constitutional documents.

The lack of provisions for minority rights, as demonstrated above, similarly reflects the dominant conception throughout Egypt's constitutional heritages and legal legacies that the nation is 'blind' to ethnic or religious difference and does not make provisions for minorities, whilst simultaneously perpetuating what could be seen as a false neutrality of holding Islam as the official state religion and principal foundation of law.

As outlined above, the constitutional provisions in the 2012 constitutional document for quotas for workers and farmers are a direct inheritance of the pan-Arabist and quasi-socialist provisions of the 1971 'Permanent Constitution' of President Sadat and the constitutional decrees of Nasser, although such elevation of the 'worker' sits uncomfortably with the ambiguities about the legal status of

forced labour in Article 63 and the issue raised by scholars such as Nathan J Brown (Brown: 2012) that the immediately post-revolutionary laws legitimising the military trials of civilians could be used against striking workers. These are also the constitutional provisions that were the sites of most political tension and debate throughout the constitutional drafting process and during the political and social crisis in the build-up to the constitutional referendum in December 2012.

It is important to acknowledge that, to a greater degree than the transitional 2011 interim constitution, the fact that the 2012 constitution borrowed heavily from Sadat's 1971 Permanent Constitution has had significant tangible consequences in both the domestic and international reception of the constitutional text, as the Articles replicated or slightly modified from the 1971 Permanent Constitution are not always in keeping with international legal norms that have developed significantly since the Sadat era, such as the provisions on forced labour.

Mismanagement of the modification of these Articles has exacerbated¹²⁸ the gulf between Egyptian constitutional law and international legal norms on provisions of worker's rights.

The differences between the 2012 constitutional text and the text of the 2011 interim constitutions briefly delineated above are significant inasmuch as they highlight the ways in which the constitutional heritages and legal legacies have

¹²⁸ Charbel, Jano. 'Egypt's constitution seeks to curtail labour rights and workers freedoms' in *The Egypt Independent* newspaper, 22nd January 2013, available online at: <http://www.egyptindependent.com/news/egypt-s-constitution-seen-curtail-labor-rights-and-workers-freedoms> [accessed March 27th 2013].

informed the post-revolutionary documents in different ways. For instance, the retention of quotas for workers and farmers in parliament and administrations, explicitly stated in the 2012 final constitution only, may be taken to reflect the fact that the 2012 constitution document was more comprehensive than the slighter and temporary 2011 interim constitutional document. Like the 2011 interim constitution, the 2012 constitution is a 'legal mosaic' through which traces of Egypt's constitutional and legal past come through, palimpsest-like, whilst gaining new significance and connotations in the new realities of the post-revolutionary climate, particularly the advent of the Muslim Brotherhood as an institutional political force.

Development theorist and shari'a expert Masooda Bano has spoken on the subject of the dynamic ways in which Egypt's heritages of shari'a have been drawn upon and selectively deployed by the new post-revolutionary political Islamists, particularly the way in which, whilst working with the existing legal rubrics such as retaining the Sadat-era Article 2 in the new 2012 constitution, the interpretation the Muslim Brotherhood bring to these existing legal legacies changes the nature of religion in the post-revolutionary Egyptian state.¹²⁹

¹²⁹ Bano, Masooda. 'Al-Azhar and The Interpretation of Sharia in the New Egyptian Constitution.' Presented at *Law, Religion and Social Order: Unpacking the Promise of Shari'a*, at the Centre for Socio-Legal Studies, Oxford University, 17th May 2013. Audio available online at: <http://podcasts.ox.ac.uk/Al-Azhar-and-interpretation-sharia-new-egyptian-constitution-audio> [accessed June 3rd 2013].

The legal legacies and constitutional heritages play out in the contested claims of post-revolutionary Egypt, self-consciously deployed by the various key actors involved in or concerned with the constitution drafting in order to further their aims. In particular, the assertions in the Preamble indicate that the constitution is an attempt to renew the contract between citizen and state, with the drafters of the 2012 constitution self-consciously positioning themselves as having taken on the mantle of the revolution, of which the constitution is a final product, while the revolution is recognised as the impetus for the creation of the constitution. If we approach the constitution as a kind of 'mission statement' in Jeff King's conception, we can see it operating in this way as an attempt to both articulate the vision of the revolution, whilst formalising the revolution (and thus bringing an end to the revolutionary period) and renewing a 'just' relationship between state and citizen based on these revolutionary principles.

To this end there is an evident tension between the claims of the constitution drafters of the task and legitimacy of the constitution, both in the Preamble and in extra-constitutional statements, and the reception of the constitution by large sections of Egyptian civil society who protested against the constitution and constitutional referendum in late 2012.

Although it is beyond the remit of the analysis being presented here to fully chart the trajectory of the diverging actors of those who identify as 'revolutionary' in the period since February 2011 it is pertinent to note in the context of the

constitutional crisis and constitutional referendum that both the constitutional drafters and those who opposed the vision that has been articulated in the 2012 constitutional text sought to position themselves as safe-guarding ‘the revolution’ and ‘the spirit of the revolution.’ During the constitutional crisis of December 2012, this attempt by pro-Morsi groups and anti-Morsi anti-constitution groups such as the newly-formed New Salvation Army to position themselves¹³⁰ as the ‘true’ keepers of the spirit and ethos of the revolution, and defining their opponents as traitors of the revolution.

In other words, when in 2011 Egypt had a revolution and no constitution, by late 2012 it had a constitution and, arguably, no revolution, as formal mechanisms to govern the state structure and state-citizen relationship as articulated in the constitution were born out of a process – the constitution drafting and the constitutional referendum in December 2012 – which was also widely heralded as a betrayal of the aims and principles of the February 2011 revolution.

As the following chapter will outline, the period of the Morsi constitution – the first constitution intended to be a permanent one in the post-revolutionary period – proved short-lived, as did Morsi’s Presidency.

¹³⁰ Brown, Nathan J. Contention in Religion and State in Postrevolutionary Egypt. *Social Research* 79(2): 531 – 550. (2012).

Chapter 6: The 2013 constitution – the military constitution?

Introduction

This work has now outlined and analysed the salient features of the 2011 (interim) constitution and the 2012 constitution drafted under President Mohammed Morsi, as well as pointing to the ways in which Egypt's pre-2011 constitutional heritages and legal legacies manifested in these documents. However, Egypt's post-revolutionary path has been far from smooth, and, one year later, Egypt had another constitution, which remains the constitution of Egypt as of August 2014.

This Chapter will outline and analyse the salient features of this constitution – the third constitution of Egypt's tumultuous post-revolutionary period – with an emphasis within the analysis on how state-citizen relationships are defined in the

constitution, the role of religion in public life as delineated in the constitution, the balance of power between the branches of government as outlined in the constitution, and – as it is particularly relevant in the context of Egypt’s third post-revolutionary constitution – the role of the military and its relationship to the executive branch of government as defined by the 2013 constitution.

In addition, mirroring the analysis of the 2011 and 2012 constitutions, this chapter will draw upon the body of knowledge outlined in the earlier chapters of this work – that is, the key actors and institutions in Egypt’s legal and political sphere, Egypt’s constitutional heritages and legal legacies, from the 1923 constitution onwards, to outline how these legacies and heritages are manifest in the 2013 constitution, and why certain pre-2011 constitutional and legal influences have permeated into the 2013 constitution, while others now lie dormant. These themes will then be brought to the fore in the analysis in the final part of this study.

Lastly, although the primary focus here is the constitutional text itself, and not the often turbulent political and social climate from which it emerged, this chapter will situate the 2013 constitution in the post-revolutionary context, particularly the developments since August 2013, in order to highlight both the presence of, and the significance of, aspects of the constitution that relate to the role of the military in public life, the relationship between the military and the executive branch of government, and the role of religion in public life, especially where this implicitly or explicitly takes aim at the Muslim Brotherhood in particular.

To begin with a brief note on terminology, Egypt's third post-revolutionary constitution was drafted by an appointed 'Committee of Fifty' in late 2013, before being put to a national referendum in January 2014. (The constitution was approved with 98% of the vote, although independent election monitors and human rights groups alike¹³¹ pointed both to electoral irregularities and the stifling of opposition voices campaigning for a 'No' vote in the build-up to the referendum, which included violations of freedom of expression and other human rights violations). As the referendum was held in January 2014, some writers and analysts refer to the constitution as the '2014 constitution'. However, as the primary focus here is the text of the constitutional document itself, not the question of when the constitution came into force in Egypt, this chapter will refer to the document as the '2013 constitution'.

There are two additional preliminary issues that need to be briefly highlighted in order to contextualise the content of this chapter, and the choices made here of what is included within the parameters of the analysis. The first is the use of the word 'coup' to describe the events that culminated in the removal of President Morsi from power in the summer of 2013, and the second is a wider acknowledgement of the practical issues – largely resulting from the political instability during and after Morsi's removal from power – that mean full access to sources and the pursuit of scholarly research has been necessarily limited.

¹³¹ --- . 'Egypt: Activists Arrested for 'No' Campaign: Repression Intensifies Ahead of Constitutional Referendum'. *Human Rights Watch*. January 13th, 2014.

The use of the word 'coup' or phrase *coup d'état* and similar phrases that implied the post-Morsi powers had taken control by force or otherwise lacked legitimacy were officially discouraged in Egypt from July 2013 onwards, and the contested use of the word "coup" by journalists, activists, academics and civil society figures was itself a subject of debate. The post-Morsi powers (firstly under the nominally-civilian rule of Adly Mansour in the months following Morsi's removal from power, and then the rule of Sisi) both refuted the word and strongly discouraged its use, emphasising the popular dissatisfaction with Morsi after his Presidential decree in November 2012.

In April and May of 2014, Amnesty International observers monitoring the trial of Al Jazeera English journalists noted¹³² that the detained journalists were being targeted for depicting the events of the summer of 2013 as resembling a 'coup'. As such, even the terminology for discussing this recent period in Egypt is contested and loaded with potentially significant consequences.

In terms of discourse on the events in Egypt in the international arena as they unfolded, the reluctance of the Obama administration in America to refer to the removal of President Mohammad Morsi as a "coup" was documented¹³³ at the time by John Hudson in *Foreign Policy* magazine. Hudson noted that although "officials

¹³² --- . 'Egypt: Activists Arrested for 'No' Campaign: Repression Intensifies Ahead of Constitutional Referendum'. *Human Rights Watch*. January 13th, 2014.

¹³³Hudson, John. 'Obama's Administration Won't Call Egypt's Coup a Coup'. *Foreign Policy*. July 8th, 2013. Available online at: http://thecable.foreignpolicy.com/posts/2013/07/08/obama_administration_won_t_call_egypts_coup_a_coup [accessed August 15th, 2014].

did not dispute the fact that Egyptian President Mohammad Morsi was ousted by the military in an extrajudicial fashion, they would not say the word “coup”.¹³⁴ This was, Hudson argued, due to the consequences using such a word would have for the aid Egypt receives from Egypt, as under United States law, congressional funding to countries “whose duly elected leader of government is deposed by decree or military coup” shall not be “extended”.¹³⁵

The Obama administration’s refusal to use the word ‘coup’ to describe the events in Egypt set a precedent for normalising the post-Morsi Egyptian political powers on the international stage, without little official querying of the legitimacy of Adly Mansour’s interim Presidency or Sisi’s Presidency in international relations.

In addition to the issue of contested terminology in reference to the word ‘coup’, there are broader difficulties in dealing with the subject matter of the 2013 constitution, and particularly the path that led to it being drafted in the wake of the fall of President Mohammad Morsi. The Introduction provided an overview of the difficulties presented in researching this period in Egyptian politics contemporaneous to the post-revolutionary events and the constitutions of the period; this chapter addresses the period of Morsi’s removal from power and the ascendance of Sisi, which can be characterized as a ‘war of narratives’ and increasingly polarized discourse, in which the post-Morsi regime and pro-Muslim Brotherhood voices in political and civic society struggled, on the terrain of public statements, the media, and law, to each position themselves as the legitimate

¹³⁴ Ibid.

¹³⁵ Ibid.

inheritors of the 2011 revolution, and the opponent as an existential internal threat to the country.

Nathan J Brown spoke out¹³⁶ in the wake of Morsi's removal from power on the difficulties for academics, including legal scholars, addressing this period in Egyptian politics due to this live and unresolved 'war of narratives'. Similarly, in February 2014, Ursula Lindsey, a journalist writing for the *New York Times*, outlined¹³⁷ the way in which academics working in Egypt, most notably Professor Emad al-Din Shahin¹³⁸, were placed under scrutiny for any statements they made regarding the removal of President Morsi or on the subject of the Muslim Brotherhood.

The unresolved 'war of narratives' throughout 2013 and 2014, particularly after the Muslim Brotherhood was declared a terrorist organization in Egypt in September 2013¹³⁹, hampered both qualitative research by academics and access

¹³⁶ Lindsey, Ursula. 'Concern Grows Over Academic Freedom in Egypt'. *The New York Times*. February 23rd, 2014. Available online at: http://www.nytimes.com/2014/02/24/world/middleeast/concern-grows-over-academic-freedom-in-egypt.html?_r=1 [accessed August 2nd, 2014]. Nathan J Brown is quoted in the article.

¹³⁷ Ibid.

¹³⁸ Documenting his case, Human Rights Watch noted that Professor Emad al-Din Shahin was in fact a vocal critic of the Muslim Brotherhood and Mohammad Morsi throughout 2012 and 2013, but he nonetheless faced persecution from the post-June 30th regime because of his public comments condemning the mass killings in Rabaa al-Adewiya. ---. 'Egypt: the High Price of Dissent.' *Human Rights Watch*. February 20th, 2014. Available online at: <http://www.hrw.org/news/2014/02/19/egypt-high-price-dissent> [accessed June 20th, 2014].

¹³⁹ ---. 'Egypt court upholds Muslim Brotherhood ban'. *Al Jazeera English*. November 6th, 2013. Available online at:

to the country itself, while media sources of information were hampered by the introduction of a curfew for the last four months of 2013, media blackouts and the impact of the so-called 'Al Jazeera trial', against three journalists who had reported on the events in the period of Morsi's removal from power, which could be said to have had a ripple-effect on other media organisations, as well as researchers, attempting to address and analyse this subject-matter.

Human rights monitoring organisations were hampered in their attempts to gather information, including most notably Human Rights Watch, whose representatives were barred from the country¹⁴⁰ after their attempts to fact-check and report on the mass killings in Rabaa al-Adewiya, predominantly of pro-Morsi supporters protesting his removal from power, on the 14th and 15th of August, 2013 (human rights organisations, and media outlets, were under similar pressure not to use the word 'massacre' to describe the events at Rabaa al-Adewiya as they were to not describe the removal of Morsi as a 'coup'). Both the contested terminology of how to refer to the 'coup', and the restrictions placed on journalists, human rights monitoring organisations, and academics, colour any attempt – such as the one undertaken in this chapter – to provide a narrative account of, and analysis of, both the drafting and the content of Egypt's third post-revolutionary constitution.

<http://www.aljazeera.com/news/middleeast/2013/11/egypt-court-upholds-muslim-brotherhood-ban-2013116101936365849.html> [accessed August 4th 2014].

¹⁴⁰ Roth, Kenneth. 'Egypt's Tiananmen.' *Foreign Policy*. August 12th, 2014. Available online at: http://www.foreignpolicy.com/articles/2014/08/12/egypts_tiananment_cairo_Sisi_rabaa_square_massacre_human_rights_watch [accessed August 16th, 2014].

From the 2012 constitution to the 2013 constitution

Morsi never recovered politically from the constitutional crisis of late 2012. As outlined in Chapter 4, in November 2012 Morsi granted himself additional Presidential powers, beyond those granted to the role of the President in the 2011 interim constitutional document, in order to ensure his constitution (which many opposition and civil society figures saw as too 'Islamist') would pass without further obstacles. The constitutional crisis of November and December 2012 was both a legal crisis, and a political and social crisis in which anti-Morsi forces coalesced into the New Salvation Front.¹⁴¹ As the preceding chapter described, the December 2012 referendum on the constitution was held despite the protests from judges that they would not declare the referendum valid, as mass protests in Cairo and Alexandria grew increasingly violent.

But although President Morsi was able to regain the support of the judges who had boycotted the constitutional referendum, he lost the support of key civil society figures and activists, including those who had spearheaded the 2011 revolution, both due to the content of the 2012 constitution itself, and the alienating manner in which Morsi mishandled the 2012 constitutional crisis. Although it is beyond the scope of the analysis here to detail the reconfiguration of opposition forces to

¹⁴¹ McRobie, Heather. 'Diary of a constitutional crisis'. *openDemocracy*. December 15th, 2012. Available online at: <https://www.opendemocracy.net/5050/heather-mcrobie/diary-of-constitutional-crisis> [Accessed August 2nd, 2014].

Morsi's regime, a significant political development in the first half of 2013 was the emergence of the 'Tamarod' movement.¹⁴²

The Tamarod movement was comprised partly of those who had supported the New Salvation Front against the Muslim Brotherhood during the 2012 constitutional crisis, the (now fracturing) April 6th Youth Movement that had spearheaded the 2011 revolution¹⁴³, the Kefaya movement formed¹⁴⁴ in 2005 to campaign for political reform during the Mubarak era, supporters of El Baradei's 'Bid For Change' campaign, and other secular activists who had been involved in the 2011 revolution but excluded from Morsi's 2012 movement and alienated by the constitution-drafting protest. Its central message was that Morsi forfeited his claims to legitimacy as leader of Egypt due to his actions during the constitutional crisis, and the illegitimacy of the 2012 constitutional text.

The Tamarod movement claimed to have collected 22 million signatures from citizens across Egypt calling for Morsi to step down as President in the wake of the constitutional crisis and his 'Presidential decree'.¹⁴⁵ After a series of mass protests,

¹⁴² Gjorvad, Nicholas. 'The Evolution of Tamarod'. *Daily News Egypt*. October 12th, 2013. Available online at: <http://www.dailynewsegypt.com/2013/10/12/the-evolution-of-tamarod/> [accessed August 12th, 2014].

¹⁴³ Interview between the author and a member of the April 6th Youth Movement, Cairo, December, 2012.

¹⁴⁴ El-Gundy, Zeinab. 'Kefaya and the April 6 Youth Movement: Post-revolution Allegations in Egypt'. *Ahram Online*. July 30th, 2011. Available online at: <http://english.ahram.org.eg/NewsContent/1/64/17559/Egypt/Politics-/Kefaya-and-April-Youth-Movement-Postrevolution-al.aspx> [accessed August 1st, 2014].

¹⁴⁵ Ateyya, Ahmed. 'Rebel' Egyptian Movement Defies Morsi Through Petitions'. *Al Monitor*. 13th May 2013. Available online at: <http://www.al->

the movement focused its energy on the protest on June 30th. Although the events of the following weeks are currently highly contested, particularly the question of whether Tamarod asked the military to step in to overthrow Morsi, under pressure from the mass protests and the movement of the armed forces in central Cairo, Morsi resigned on July 3rd. At the time, Morsi himself was emphatic in using the word “coup” to describe his removal from office.¹⁴⁶

Although the events between the mass Tamarod-led protests of June 30th and the full control of Egypt under the interim President of Adly Mansour in August (with Abdel Fatah Sisi as chief of the armed forces) are contested and a live part of the ‘war of narratives’ that was to take place in Egyptian politics throughout the remainder of 2013, what is significant for the purpose of the analysis presented here is that the question of the Egyptian constitution was central to the political events. Not only did the Tamarod movement’s petition and demands focus on their conception that the 2012 constitution was illegitimate, but Abdel Fatah Sisi’s primary move as chief of the armed forces, who removed President Morsi from office, was to suspend the 2012 constitution. Moreover, Mansour was chosen to be the interim President because he was recently the head of the constitutional court.¹⁴⁷

[monitor.com/pulse/originals/2013/05/rebel-movement-egypt-early-elections.html](http://www.monitor.com/pulse/originals/2013/05/rebel-movement-egypt-early-elections.html) [accessed July 30th, 2014].

¹⁴⁶ Chulov, Martin and Patrick Kingsley. ‘Mohammad Morsi outsted in Egypt’s second revolution in two years’. *The Guardian*. July 4th, 2013. Available online: <http://www.theguardian.com/world/2013/jul/03/mohamed-morsi-egypt-second-revolution> [accessed August 2nd, 2014]

¹⁴⁷ Ibid.

As well as announcing Presidential and parliamentary elections to be held following the transitional 'curfew', those who removed Morsi, spearheaded by Sisi, emphasised the need for a new constitution to be drafted immediately. The question of the constitution became the key question of the fate of the revolution: the 2012 constitutional crisis, and Morsi's mishandling of the crisis, festered into the June 30th so-called 'second revolution', which demanded – and triggered – the rewriting of the constitution.

But as well as being a crucial moment in Egypt's post-revolutionary constitutional history, this period after the removal of Mohammad Morsi from office was also the period of the worst violence of the post-revolutionary period, particularly the forcible 'removal', and mass killings, of Morsi supporters in Rabaa al-Adewiya in Cairo – predominantly Muslim Brotherhood supporters – who staged a sit-in in the square throughout the first weeks of August to protest at the removal of Mohammad Morsi. A year later, Human Rights Watch described the events that took place during the forcible 'clearance' of Rabaa al-Adewiya – where Human Rights Watch has estimated that between 800 and 1,100 people were killed by the Egyptian armed forces on the 14th and 15th of August – as a crime against humanity and "the most serious incident of mass unlawful killings in modern Egypt history".¹⁴⁸ The mass violence of the clearance of Rabaa al-Adewiya and other targeted mass killings of protesters who stood in opposition to the rise of

¹⁴⁸ ---. 'All According to Plan: the Rab'a Massacre and Mass Killings in Egypt'. *Human Rights Watch* special report on the first anniversary of the Rab'a massacre. August 15th, 2014. Available online at: http://www.hrw.org/sites/default/files/reports/egypt0814web_0.pdf [accessed August 16th, 2014].

Mansour/Sisi and the military control of the state with the removal of Morsi, and its occurrence alongside the criminalisation of the Muslim Brotherhood, colour this chapter of Egypt's post-revolutionary period, and permeate the text of the constitution that was written during this period of mass violence by state actors in an attempt to legitimise the new, post-Morsi political powers.

As Morsi was removed from power by the armed forces, Sisi – then chief of the armed forces – appointed Adly Mansour as interim President, and the constitutional declaration that came three days later on July 7th was officially issued by Mansour, not Sisi.¹⁴⁹ As Egyptian legal scholar and analyst Zaid al-Ali outlined at the time¹⁵⁰, Mansour's declaration's primary aim was to revoke the 2012 constitution, state the timetable for the drafting of a new constitution and appoint an initial ten jurists who would produce a list of which articles of the 2012 constitution needed to be amended, before the appointment of a 'broadly representative' Committee of Fifty, who would (at this stage it was unclear) either significantly amend the 2012 constitution, or write a new constitution.¹⁵¹

¹⁴⁹ ---. 'In the interim: the constitutional declaration retains some contentious articles'. *Mada Masr* (editorial without attributed author). July 12th, 2013. Available online at: <http://www.madamasr.com/content/interim> [accessed August 25th, 2014].

¹⁵⁰ Al Ali, Zaid. 'Another Egyptian constitutional declaration.' *Foreign Policy*. July 9th, 2013. Available online at: http://mideastafrica.foreignpolicy.com/posts/2013/07/09/another_egyptian_constitutional_declaration [accessed July 25th, 2014].

¹⁵¹ Ibid.

During the period in which the Committee of Fifty were drafting the new constitution – a task which Mansour’s constitutional decree stated would take the Committee of Fifty ‘sixty days to complete, not including public holidays’¹⁵² – interim President Mansour governed Egypt on the basis of the modified 2012 constitution introduced with the constitutional decree shortly after Morsi’s removal from power.

The Committee of Fifty’s composition reflects the fact of their appointment¹⁵³ by interim President Mansour, who was himself appointed by the military and was widely seen as preparing for the same political relationship with Sisi as Medvedev held with Putin in Russia’s 2000s. Although Nathan J Brown notes that various unions, syndicates and state bodies were allowed to choose their own representatives, and the (interim) President “peppered the body [of the Committee of Fifty] with some prominent [...] intellectuals”, high-level SCAF figures were disproportionately represented.¹⁵⁴ The composition of the drafters of the new constitution was a mirror-image to the widely-criticised 2012 constitution drafting body under Morsi.

¹⁵² Brown, Nathan J. ‘Egypt’s Daring Constitutional Gang of Fifty’. *Foreign Policy*. September 20th, 2013. Available online: http://mideastafrica.foreignpolicy.com/posts/2013/09/20/egypts_daring_constitutional_gang_of_50 [accessed August 3rd, 2014].

¹⁵³ For a full list of the membership of the ‘Committee of Fifty’ in English, see: ---. ‘Who’s Who: Members of Egypt’s 50-member Constitution Committee’. *Ahram Online*. September 1st, 2013. Available online at: <http://english.ahram.org.eg/News/80519.aspx> [accessed August 22nd, 2014].

¹⁵⁴ Brown, Nathan J. ‘Egypt’s Daring Constitutional Gang of Fifty’. *Foreign Policy*. September 20th, 2013. Ibid.

As outlined in Chapter 4, the 2012 Committee of One Hundred was marred by the resignations of self-identifying secular and Coptic representatives who claimed the constitution was too Islamist in nature, particularly in Article 219 of the 2012 text. The Committee of Fifty was similarly unbalanced: although there was an ‘Islamist’ (though not Muslim Brotherhood) representative from the (Salafist-leaning) Nour Party, and three seats on the committee were allocated to the Coptic Church, the lack of representatives sympathetic to the Muslim Brotherhood – contemporaneous with the political clampdown on the group and the divisive collective reeling from the mass violence of Rabaa al-Adewiya – was criticised by analysts who noted¹⁵⁵ that the last (pre-June 30th) parliamentary elections had resulted in a parliament that was two thirds Islamist.

Egyptian activist and writer Bassem Sabry, a prominent self-identifying secular voice in Egyptian public life, made the case¹⁵⁶ during the time of the constitution drafting that the Committee of Fifty resolved few of the problems of the 2012 constitution, as the exclusion of Islamists from the drafting process made the Committee of Fifty “more ideologically homogenous than the previous constituent assembly.”¹⁵⁷

¹⁵⁵ Sabry, Bassem. ‘Problems Ahead for Egypt Constitution Debate’. *Al Monitor*. September 30th, 2013. Available online at: <http://www.al-monitor.com/pulse/originals/2013/09/egypt-constitution-highlights-new-draft.html#> [accessed August 5th, 2014].

¹⁵⁶ Sabry, Bassem. ‘Problems Ahead for Egypt Constitution Debate’. *Al Monitor*. September 30th, 2013. *Ibid.*

¹⁵⁷ *Ibid.*

Nonetheless, the Committee of Fifty quickly demonstrated that it was not merely reflective of Sisi's and Mansour's political agendas. The Committee of Fifty's spokesman, Mohammed Salmawy, made public announcements¹⁵⁸ to update Egyptians on the progress of the constitutional drafting throughout the process. Within a month of the Committee of Fifty's first meeting, he publicly announced that the Committee of Fifty would not confine the remit of their task to making the amendments to the 2012 constitutional text that had been highlighted as 'recommended for amendment' by the ten jurists initially appointed by Adly Mansour in July 2013 (recommendations which in reality focused on removing Article 219 of the 2012 constitutional text, which related to Sharia law and the scope of Islamic jurisprudence). Instead, Salmawy announced, the Committee of Fifty would undertake a comprehensive rewrite, and produce a largely new constitutional text.¹⁵⁹

The constitution was drafted between 1st September 2013 and the 3rd of December, when Amr Moussa, the chairman of the Committee of Fifty presented it to interim President Adly Mansour. The national referendum on the constitution was arranged for the weekend of January the 14th and 15th, 2014. The constitutional referendum of January 2014 was criticised by Egyptian and international human rights organisations and election monitors, often with similar criticisms to those that had marred Morsi's referendum following the constitutional crisis of

¹⁵⁸ Khalil, Ashraf. 'Egypt's Committee of Fifty Rewrites the Constitution – Again.' *Al Jazeera America*. November 11th, 2013. Available online at: <http://america.aljazeera.com/articles/2013/11/11/egypt-constitutioncommitteeof50.html> [accessed August 11th, 2014].

¹⁵⁹ Ibid.

November 2012. Human Rights Watch documented the illegal detention of opponents to the constitution in the weeks leading to the referendum, and similar encroachments of freedom of expression of those campaigning for a 'No' vote on the referendum.¹⁶⁰ Interim President Mansour made the decision to use representatives from the Tamarod protest group as election monitors, a controversial move as the June 30th 'second revolution' spearheaded by the Tamarod movement was the basis of Mansour's interim Presidency after the removal of Mohammad Morsi¹⁶¹.

Moreover, in an inversion of the criticisms that marred election monitoring during the 2012 constitutional crisis, as outlined in Chapter 4, in the January 2014 referendum judges who were deemed sympathetic to the Muslim Brotherhood were barred from election monitoring. Human Rights Watch claimed that eleven people were killed in political clashes during the referendum, in addition to expressing concern at the suppression of activists campaigning for a 'No' vote.¹⁶²

The constitution was endorsed by an overwhelming 98% 'Yes' vote, although turnout among eligible voters in Egypt was only 36% and lower amongst Egyptians

¹⁶⁰ ---. 'Egypt: Activists Arrested for 'No' Campaign: Repression Intensifies Ahead of Constitutional Referendum'. *Human Rights Watch*. January 13th, 2014.

¹⁶¹ Sabry, Bassem. 'The meanings of Egypt's referendum.' *Al Monitor*. January 20th, 2014. Available online at: <http://www.al-monitor.com/pulse/originals/2014/01/egypt-referendum-constitution-evaluation.html#> [accessed August 4th, 2014].

¹⁶² ---. 'Egypt: the High Price of Dissent.' *Human Rights Watch*. February 20th, 2014. Available online at: <http://www.hrw.org/news/2014/02/19/egypt-high-price-dissent> [accessed June 20th, 2014].

voting from abroad.¹⁶³ The overwhelmingly high figure of the ‘Yes’ vote and the lower voter turnout alike were both decried by the Muslim Brotherhood and the newly-formed ‘Anti-Coup Alliance.’ Yet despite the questions of the 2013 constitution’s legitimacy arising from politicised election monitoring, the persecution of activists campaigning for a ‘No’ vote and the contemporaneous criminalisation of the Muslim Brotherhood, the 2014 referendum was arguably no ‘less’ legitimate than previous attempts to put constitutional texts to Egyptian citizens through referenda.

Nathan J Brown made the case prior to the January 2014 referendum that “Egyptian elections have always had a low turnout” due to the country’s illiteracy rate and “Egyptian voters have never turned their rulers down” due to the sense among the electorate that any question put to them is a *fait accompli*.¹⁶⁴ Moreover the low turnout for the referendum must be contextualised in Egypt’s recent history of referenda, particularly the 2012 constitutional referendum during Morsi’s constitutional crisis, where the turnout was only 32.9%. Mansour declared the constitution would replace the 2012 constitution and Egypt would now prepare for the first Presidential elections under this constitution.¹⁶⁵

¹⁶³ Sabry, Bassem. ‘The meanings of Egypt’s referendum.’ *Al Monitor*. January 20th, 2014. Ibid.

¹⁶⁴ Brown, Nathan J. ‘An Anticlimactic Referendum in Egypt.’ *Carnegie Endowment Centre for Peace*. December 27th 2013. Available online at: <http://carnegieendowment.org/2013/12/27/anticlimactic-referendum-in-egypt> [accessed July 7th, 2014].

¹⁶⁵ El Dabh, Basil. ‘Presidential elections first: Mansour.’ *Daily News Egypt*. January 26th, 2014. Available online at: <http://www.dailynewsegypt.com/2014/01/26/presidential-elections-first-mansour/> [accessed July 13th, 2014].

The 2012 constitution and 2013 constitution compared

Sisi and his supporters frequently self-consciously juxtaposed the post-coup constitution with Morsi's 2012 constitution in order to legitimise both the new constitution and the new post-revolutionary powers.¹⁶⁶ This was a politically astute decision as the widespread sense of alienation towards Morsi stemmed in large part both from the content of the 2012 constitutional text itself, and the fact it had been drafted in a narrow and opaque process which excluded key voices of civil society and public life in Egypt (as well as the fact Morsi had granted himself additional Presidential 'powers' of veto in order to attempt to ensure that the constitution was passed).¹⁶⁷

In contrast, as Masour and Sisi presented the 2013 constitution as both salvaging and permanently enshrining the initial intent of the 2011 revolution. The Committee of Fifty's choices reflect this self-conscious aim through the balances struck between which parts of the 2012 constitution to retain and which legal legacies and constitutional heritages from Egypt's twentieth century constitutions to draw upon. As will be outlined in the subchapter below on the role of religion in the 2013 constitution, the decision to keep the historical Article 2 whilst reversing Article 219 (of the 2012 constitution, largely seen as 'Islamist' and – as analysed in Chapter 4, one of the most controversial and alienating parts of the 2012

¹⁶⁶ ---. 'Egypt's third constitution in three years: A critical analysis.' *IDEA, the International Institute for Democracy and Electoral Assistance*. December 17th, 2013.

¹⁶⁷ Ibid.

constitution) is revealing as to how the post-June 30th Egyptian state sought to position itself in contrast to the Muslim Brotherhood and Mohammad Morsi's Presidency.

By maintaining Article 2's assertion of Islam as the religion of the state¹⁶⁸ – carried down from the 1971 Permanent Constitution onwards – whilst removing Article 219 of the 2012 constitution, and revoking (in Article 7 of the 2013 constitutional text) the authority granted to Al-Azhar's Association of Legal Scholars in Article 4 of the 2012 constitution, that they be consulted in “matters pertaining to Islamic law” – the 2013 constitutional text seeks to detach Islam from Islamism as a political or sectarian affiliation. In this sense, the 2013 constitutional text can be seen to share qualities with the political bargaining and power-plays during Sadat's Presidency, which, as described in Chapters 1 and 2, played out partly on the terrain of the wording of the constitution.

The 2013 constitution is longer than the 2012 constitution, with 247 Articles, compared to the 236 in the 2012 constitution, and its provisions are more detailed and substantive¹⁶⁹, particularly relating to economic, social and cultural rights. In several cases, ambiguities which caused problems or controversy in the 2012 constitution have been addressed and clarified with more specific language. It is, of

¹⁶⁸ “Islam is the religion of the state, Arabic is its official language and the principles of Islamic Sharia are the main source of legislation”.

¹⁶⁹ McRobie, Heather. 'Egypt: A Tale of Two Constitutions'. *openDemocracy*. January 16th, 2014. Available online at: <https://www.opendemocracy.net/5050/heather-mcrobie/egypt-tale-of-two-constitutions> [accessed August 21st, 2014].

course, also an assertion of the drafters' vision of the new state, which comes to the fore in the 2013 constitution's preamble.

Strikingly, the 2013 constitution's preamble refers to the "January 2th to June 30th revolution" (with 'revolution' in the singular), putting the two uprisings together as one revolution. This (collective) authorial choice by the drafters positions the constitutional text within the contemporaneous debate, following the ousting of Mohammad Morsi, of whether June 30th and the Tamarod movement was a "second revolution."¹⁷⁰ This is also in step with the discourse of the interim government under Mansour, in which June 30th (and Mansour's interim Presidency itself) is conceptualised as a "salvaging" of the revolution from its aberrant, temporary detour from its "true" path under Mohammad Morsi's Presidency.¹⁷¹

As with the analysis presented on the 2012 constitutional text in Chapter 4, the 2013 constitution is best understood by conceptually mapping its provisions firstly regarding the relationship between the citizen and the state (through its provisions for economic, social and cultural rights, and also for civil and political rights) and secondly through analysing the way in which the balance of power between the branches of government – particularly the role of the President – is conceptualised in the 2013 constitutional text. Overall, economic, social and cultural rights are more substantively secured in the 2013 constitution than in its 2012 predecessor,

¹⁷⁰ Sabry, Bassem. 'Twenty nine things you need to know about Egypt's draft constitution.' *Al Monitor*. December 4th, 2014. Available online at: <http://www.al-monitor.com/pulse/originals/2013/12/egypts-new-proposed-constitution-sabry.html#> [accessed August 15th, 2014].

¹⁷¹ Ibid.

although provisions for civil and political rights are more ambiguous¹⁷², and in terms of the relationship between the branches of government, the 2013 constitution – taken alone as a text, without reference to events under the presidencies of Morsi, Mansour and Sisi – asserts a stronger Presidential system, with more power vested in the executive branch, than the 2012 constitution.

To begin with economic, social and cultural rights, the 2013 constitution more completely adheres to the obligations Egypt holds under the International Covenant on Economic, Social and Cultural rights in its concrete provisions focused on ‘progressively securing’ economic, social and cultural rights. For instance, provisions on the right to healthcare go much further in the 2013 constitution than the 2012 text.

As noted in Chapter 4, while the 1971 constitution did not explicitly make provisions for the right to health, the 2012 constitution made the general provision, in Article 62 of the 2012 constitution, that all citizens were “entitled to healthcare.” The 2013 constitution makes more concrete provisions in Article 18 of the 2013 constitution, which states that the state is obligated to ensure that healthcare facilities are evenly geographically distributed across the country, and that the state must allocate at least 3% of its GDP to public healthcare provisions in each annual budget.¹⁷³

¹⁷² McRobie, Heather. ‘Egypt: A Tale of Two Constitutions’. *openDemocracy*. January 16th, 2014. Ibid.

¹⁷³ ---. ‘Egypt’s third constitution in three years: A critical analysis.’ *IDEA, the International Institute for Democracy and Electoral Assistance*. December 17th, 2013. Available online at: <http://www.idea.int/wana/egypts-third-constitution-in-three-years-a-critical-analysis.cfm> [accessed August 23rd, 2014].

Similarly, the right to education – an economic, social and cultural right often cited to outline how economic, social and cultural rights on the one hand and civil and political rights on the other are interdependent – is given substantive provisions for the first time in the 2013 constitution, marking a departure from previous Egyptian constitutions including the 2012 constitution. As outlined in Chapter 4, the 2012 constitution built on the provision first introduced in Egypt in Article 18 of the 1971 constitution under Sadat (which stated that the right to free education was obligatory and primary education was mandatory), with the significant development, in the 2012 constitution, that “every citizen has the right to high quality education” an implicit recognition of Egypt’s poor quality of public education and high national illiteracy rates. Similarly, the 2012 constitution’s Article 58 asserted that the state must allocate a “sufficient percentage of the national revenue to technical education”, but what percentage of GDP would be considered “sufficient” was not defined.¹⁷⁴

The 2013 constitution’s provisions on the right to education are a significant departure from the preceding constitution, inasmuch as it provides more detail on what the right to education entails and quantifies the state’s commitment to securing the right to education for its citizens. Its assertion that the purpose of public education is to “build the Egyptian character, maintain national identity, plant the roots of scientific learning”¹⁷⁵ can be read as an attempt to delineate the

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

post-2013 state from the 2012 Morsi era, in which the fear of “Islamist education” permeated public discourse. (Although in fact, self-identifying Islamists such as representatives of the Watan party expressed disappointment throughout Morsi’s Presidency that he did not make the state education system more religious or reflective of their ‘values.’)¹⁷⁶

More significantly, Article 18 of the 2013 constitution states, in a departure from previous constitutions, that no less than 4% of GDP should be allocated to education. It also asserts that the Egyptian state should “gradually” increase¹⁷⁷ that percentage until Egypt’s annual spending on education is on a par with “global standards.” Although it is beyond the remit of this chapter to draw out the reasons for this development between the 2012 and 2013 constitutions, it may be that economic, social and cultural rights are more substantively enshrined in the 2013 constitution than the 2012 constitution in an attempt to appeal to and reassure the supporters of the June 30th ‘second revolution’, as Tamarod’s message – which acted as a conduit for widespread alienation with President Morsi – emphasised the economic concerns of citizens two years into the revolution, during which

¹⁷⁶ Witte, Griff. ‘Egypt’s Morsi gets poor reviews from Islamists after first year of presidency.’ *The Washington Post*. June 18th, 2013. Available online at: http://www.washingtonpost.com/world/middle-east/egypts-morsi-gets-poor-reviews-from-islamists-after-first-year-of-presidency/2013/06/17/03445ffa-d5c2-11e2-ab72-3f0d51ec1628_story.html [accessed August 6th, 2014].

¹⁷⁷ ---. ‘Egypt’s third constitution in three years: A critical analysis.’ *IDEA, the International Institute for Democracy and Electoral Assistance*. December 17th, 2013. Ibid.

Egypt's economy was in freefall¹⁷⁸ and Egyptians saw little improvement to public services.

The provisions for civil and political rights in the 2013 constitution are less emphatically articulated, and the gaps and inconsistencies in the provisions of these types of rights in the constitution speak to the tensions of the post-June 30th period, in which the Egyptian state sought to legitimise its targetting of the Muslim Brotherhood as well as consolidate its power as the “true inheritor” of the 2011 revolution. As Bassem Sabry delineated¹⁷⁹ at the time the 2013 constitution was made public as a draft, not all differences between the 2012 and 2013 constitutions' stipulations on civil and political rights were mere ‘window dressing.’ For instance, Article 52 of the 2013 constitution specifically criminalised torture for the first time¹⁸⁰, in contrast to the 2012 constitution, which only implicitly protected citizens from torture in Article 36 within a broader framing of the rights held by those in detention. In terms of the rights of detainees, the 2013 constitution also grants Egyptian citizens the “right to remain silent” for the first time¹⁸¹, in Article 55.

Articles of the 2013 relating to freedom of expression, particularly political and religious beliefs, will be outlined in the subchapter below, as it is impossible to

¹⁷⁸ McRobie, Heather. ‘Diary of a constitutional crisis’. Ibid.

¹⁷⁹ Sabry, Bassem. ‘Twenty nine things you need to know about Egypt’s draft constitution.’ *Al Monitor*. December 4th, 2014. Ibid.

¹⁸⁰ Sabry, Bassem. Ibid.

¹⁸¹ Ibid.

disentangle these constitutional Articles from the nature of the fraught relationship between the Egyptian state and the Muslim Brotherhood, however coded the Articles may be in the false neutrality of general statements not intended to target any specific religious or political group.

The framework for the relationship between the branches of government in the 2013 constitution is striking both for the heritage it draws upon from Egypt's twentieth century constitutions in terms of the powers granted to the President (which will be analysed in Chapter 6) and the articles which enshrine the political role of the military in the executive and Egyptian politics as a whole. In a significant departure from the 2012 constitution, the 2013 constitution gives SCAF the right to choose the Defence Minister for the next two Presidential terms – eight years in all.¹⁸² Moreover, this close relationship between SCAF and the political sphere is interdependent, as the 2013 constitution also provides for members of SCAF to be appointed in consultation between the Minister of Defence and the Commander in Chief of the Armed Forces.¹⁸³

Similarly, the right of the President to appoint 5% of the members of the legislative body, a right granted under the 2013 constitution which was not present in the 2012 constitutional document, works in tandem with the additional law-making powers given to the President over the parliament: Article 123 grants the President

¹⁸² Goldberg, Ellis. 'A new political dilemma for Egypt's ruling military.' *The Washington Post*. June 2nd, 2014. Available online at: <http://www.washingtonpost.com/blogs/monkey-cage/wp/2014/06/02/a-new-political-dilemma-for-egypts-ruling-military/> [accessed August 5th, 2014].

¹⁸³ Ibid.

the right to issue or object to laws, a departure from the 2012 constitutional text in which the parliament was given the relatively stronger power to issue laws and then notify the President.¹⁸⁴ Although Sabry¹⁸⁵ and other liberal or secular analysts praised the provisions in the 2013 constitution, not granted in the 2012, for the parliament to dismiss the President indirectly by putting early presidential elections to a referendum by a two-thirds majority, this does little to mitigate against the strength of Presidential power given that the President both assigns the Prime Minister (in the new Article 146) and can appoint up to 5% of the parliament.

As this comparative subchapter has highlighted, two key features of the 2013 constitution are the relationship between the military and the branches of government within the context of the strong powers granted to the President, and the role of religion in the constitution, from Article 2 to the ban on parties formed on religious affiliation, to the removal of the 2012 constitution's Article 219. The following two subchapters will address these two key themes in turn, locating them within the political landscape of Egypt in the aftermath of the June 30th 'second revolution'.

'Sisi's constitution'? The constitution, the military, and the state, 2013-2014

The 2013 constitution cannot be conceptually separated from the political context in which it was drafted, particularly the overthrow of Morsi's government in the

¹⁸⁴ Sabry, Bassem. Ibid.

¹⁸⁵ Ibid.

summer of 2013 by military force, and the military-imposed curfew that followed. As outlined above, despite the new rights of the parliament to remove the President through referendum, overall the role of the President is stronger in the 2013 constitution than the 2012 constitution it replaced, and the role of the military as been restored to the status it held in the 1971 Permanent Constitution.

As the Committee of Fifty were devising this relationship between the military and the state, the interim government under Mansour enacted a new law on public demonstrations in November 2013 which significantly curtailed the right to protest, as part of measures during the ‘curfew period’ that followed June 30th and the revocation of the 2012 constitution to, in the conception of the interim powers, “restore law and order” after two and a half years of revolutionary activity including mass demonstrations and high levels of political violence.

The elevated role of the military in the branches of government, such as the right of SCAF to appoint the Minister of Defence, must be situated in the context of the protest law and the provisions in the 2013 constitution for military trials for civilians – as well as how military trials against civilians were deployed in reality throughout the revolutionary and post-revolutionary period, as analysed in Chapter 3.

Unlike the 2011 interim constitution, the 2012 constitution explicitly stated in its Article 198 that civilians could undergo military trials for “crimes that harm the Armed Forces”, a vague enough wording during the post-revolutionary tumult of political violence for this to be deployed against hundreds of activists, including

writers and journalists¹⁸⁶. The 2013 constitution similarly explicitly stated that civilians could undergo military trials, and gave a more extensive elucidation of the circumstances in which civilians may be tried in a military court, which “creates situations in which it remains possible for journalists to be targeted for anti-army coverage, and protesters to be tried for their political stances or opinions.”¹⁸⁷

The reality of military trials for civilians in the first years after the 2011 revolution is an important component of the history of the post-revolutionary period, and the provisions for military trials for civilians must be understood in the context of the ways in which military trials had been deployed in a targeted manner against various sections of civilian society since the 2011 revolution.

During the period of SCAF rule in 2011, when the 2011 interim constitution was in place, Human Rights Watch estimated that 12,000 civilians had been tried in military tribunals, a *de facto* violation of their right to a fair trial as the right for civilians to be tried in a civilian court is established in the International Covenant of Civil and Political Rights as well as the Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, presented before the United Nations Human Rights Commissioner in 2005¹⁸⁸. Under Morsi the right

¹⁸⁶ El-Sadany, Mai. ‘Military trials for civilians: justice denied.’ *The Atlantic Council*. November 21st, 2013. Available online at: <http://www.atlanticcouncil.org/blogs/egyptsource/military-trials-for-civilians-justice-denied> [accessed July 6th, 2014].

¹⁸⁷ Ibid.

¹⁸⁸ ---. ‘Egypt: retry or free 12,000 after unfair military trials.’ *Human Rights Watch*. September 10th, 2011. Available online at:

to try civilians in military courts was both enshrined in the 2012 constitution and deployed, in practice, against hundreds of civilians, particularly in the aftermath of the 'constitutional crisis' of November and December 2012.

The more extensive rights granted to the state (in the 2013 constitution's Article 174) to try civilians in military courts, thus comes in a post-revolutionary climate in which this power has been deployed extensively by the state, and in tandem with the other increased powers of the military in the 2013 constitution. Lastly, it is worth noting that the 'No to Military Trials' civic activism organisation campaigning on this issue was targeted with censorship throughout 2012 and 2013, including after the overthrow of Mohammad Morsi.¹⁸⁹

Taken in combination, the strengthened role of the President over appointing members of the legislative, the interdependent relationship between SCAF and political power in SCAF's new constitutional right to appoint the Minister of Defense for the next eight years and Article 174's expansion of the right of the state to try civilians in military tribunals, raise the question of whether the constitution was drafted with Sisi in mind as the future President of Egypt at the end of the interim period.

Moreover, these provisions for the military's role in the executive and legislative branches of government, taken in combination with Article 174's right to try

<http://www.hrw.org/news/2011/09/10/egypt-retry-or-free-12000-after-unfair-military-trials> [accessed August 2nd, 2014].

¹⁸⁹ El-Sadany, Mai. 'Military trials for civilians: justice denied.' *The Atlantic Council*. November 21st, 2013.

civilians in military courts, were the stated reason why the April 6th Youth Movement (which, as Chapter 4 described, spearheaded the uprising that culminated in the 2011 revolution and positions itself as the ‘voice’ and ‘keeper’ of the original aims of the 2011 revolution) called for a ‘No’ vote in the 2014 constitutional referendum.

The discord between the April 6th Youth Movement and Mansour and Sisi’s decisions undertaken in the name of ‘restoring’ the revolution in some sense completed the revolutionary cycle of power and counter-power, and in early 2014, the leaders of the April 6th Youth Movement were detained by the Egyptian state¹⁹⁰.

But overall – and overwhelmingly – the main ‘enemy’ of the Egyptian state after the 2013 constitution passed was not the secular revolutionaries of 2011, but the Muslim Brotherhood. The antagonistic dynamic between the Brotherhood and the post-June 30th state permeates the text of the 2013 constitution itself.

Religion in the 2013 constitution: the Egyptian state against the Muslim Brotherhood

As outlined in preceding chapters, Article 2 of the twentieth-century Egyptian constitutions has been loaded with significance throughout successive presidencies, particularly under Sadat and the period of his 1971 constitution, in which the wordings and provisions of the article were drawn upon in the struggle

¹⁹⁰ ---. ‘Hundreds protest banning of April 6 Youth Movement.’ *Mada Masr*. April 30th, 2014. Available online at: <http://www.madamasr.com/content/hundreds-protest-banning-april-6-youth-movement> [accessed July 16th, 2014].

between the state and oppositional Muslim Brotherhood political elements. Its inclusion in the 2013 constitution is striking given the assertions elsewhere in the constitution against 'sectarianism', including the ban of forming parties based on religious affiliation.

The argument that the continued presence of Article 2 in the new constitution is due to dissenting voices in the Committee of Fifty such as the representative of the Nour party is a possible scenario, but more likely, given Mansour and Sisi's public statements on the issue of religion during the post-June 30th period, is that Article 2 was included in order to further position 'Islamism' and the Muslim Brotherhood as toxic to Egyptian politics and identity. By keeping Article 2's wording as "Islam is the religion of the state, Arabic is its official language and the principles of Islamic Sharia are the main source of legislation," Islam is depoliticised as neutral backdrop rather than sectarian affiliation: if Islam is the religion of the state, in other words, it is implied that no one party can take on the mantle of representing or speaking on behalf of the Islamic faith.

This works in tandem with the removal of the 2012 constitution's Article 219, which, as outlined in Chapter 5, caused the re-organisation of the constitution drafting committee as it was considered 'sectarian' in terms of the way in which it spoke specifically to Egypt's Sunni Muslim majority, as it restricted the "Islamic principles of Sharia" acknowledged in the historical Article 2 to those within Sunni doctrines. Keeping Article 2 whilst removing Article 219 can be seen not only as an attempt to remove what was considered 'illegitimate' (and, by extension in the conceptual framing of Mansour and Sisi, 'Islamist') in the preceding constitution

but also an attempt to reposition Egyptian identity within the constitution into a framework in which Islam is a 'neutral' backdrop. This is consolidated by the use of the 1971 Permanent Constitution's version of Article 3 (relating to religious laws in personal matters for the Christian and Jewish communities) and the removal of the 2012 constitution's Article 7, which granted to Al-Azhar's Association of Legal Scholars the authority to be consulted in "matters pertaining to Islamic law".

The role of religion in the 2013 constitution must undoubtedly be situated in the post-coup context of the criminalisation of the Muslim Brotherhood. Mara Revkin has made the argument¹⁹¹ that the 2013 constitution's concentration of power in the office of the President, the interdependent relationship between the executive and the military, the use of military trials for civilians and the ban on parties based on religious affiliation must be taken together as they reinforce one another to create a *de facto* police state where the power of the state is implicitly but clearly aimed at stamping out the Muslim Brotherhood.

Revkin possibly overstates this by positioning these constitutional articles as part of the conceptualisation of the Muslim Brotherhood as 'terrorists' in the eyes of the Egyptian state, as the Muslim Brotherhood was not declared a terrorist organisation by Mansour's interim government until after the final draft of the constitution had been submitted by the Committee of Fifty. Nonetheless, there is salience to the idea that the 2013 constitution frames articles relating to religion

¹⁹¹ Revkin, Mara. 'Worse Than Mubarak: Egypt's New Constitution and the Police State'. *Foreign Affairs*. February 11th, 2014. Available online at: <http://www.foreignaffairs.com/articles/140729/mara-revkin/worse-than-mubarak> [accessed August 21st, 2014].

and association as universal when they were evidently written predominantly in response to the shifting dynamic between the Muslim Brotherhood and the state.

The marginalisation and deliberate targetting of the Muslim Brotherhood by the Egyptian state ran temporally in parallel to the Committee of Fifty's constitution-drafting process, the 2014 constitutional referendum that followed it, and Sisi's bid for his ascendance to the office of the President. The interim government declared the Muslim Brotherhood illegal on September 23rd 2013 and also declared that the organisation's assets should be frozen¹⁹².

On November 6th 2013, a legal ruling upheld this ban on the Muslim Brotherhood, after Tagammu, a left-leaning political party, issued a counter-suit asking the court to dismiss the Muslim Brotherhood's appeal against its ban.¹⁹³ Following on from this, in late December 2013, the interim government proclaimed the Muslim Brotherhood to be a "terrorist" organisation: in their analysis of this declaration, Human Rights Watch noted that the stated reason was recent attacks that had taken place on security installations and officials, yet the interim government did not provide any evidence linking the Muslim Brotherhood to these attacks.¹⁹⁴

¹⁹² Ibid.

¹⁹³ ---. 'Egypt court upholds Muslim Brotherhood ban'. *Al Jazeera English*. Based on wire report from news agency. November 6th, 2013. Available online at: <http://www.aljazeera.com/news/middleeast/2013/11/egypt-court-upholds-muslim-brotherhood-ban-2013116101936365849.html> [accessed August 4th 2014].

¹⁹⁴ 'Egypt: the High Price of Dissent.' *Human Rights Watch*. February 20th, 2014.

The trial in 2014 of the Al Jazeera journalists who had covered the events during and after June 30th established¹⁹⁵ that even interviewing members of the Muslim Brotherhood or reporting incidents in which members had been attacked for their political and religious beliefs could lead to punitive consequences by the Egyptian state. Through the actions taken by the interim President and then President Sisi throughout the second half of 2013 and into 2014, the Egyptian state violated its own constitutional articles, during the same period in which these articles were being endorsed by a referendum, such as Article 65 of the 2013 constitution which secures freedom of thought and freedom of religious and political belief.

Moreover, while the manner in which the 2013 constitution frames the relationship between religion and the state was evidently authored predominantly with the intention to re-cast the relationship between the state and the Muslim Brotherhood as an oppositional force, the framing also has consequences outside of this dynamic, most notably for the Egyptian Coptic community.

As outlined in Chapter 5, the exclusion of Copts from the 2012 constitution drafting process was a turning point, preceding Morsi's Presidential decree and the constitutional crisis of November-December 2012, which alienated those who initially supported him as a non-militarist Presidential figure. Given their relative marginalisation in Egyptian society, the targeting of the Copts both through sectarian laws and political violence throughout Morsi's Presidency was, as

¹⁹⁵ ---. 'Egypt: Jazeera Convictions Miscarriages of Justice.' *Human Rights Watch*. June 23rd, 2014. Available online at: <http://www.hrw.org/news/2014/06/23/egypt-jazeera-convictions-miscarriage-justice> [accessed August 25th, 2014].

documented in Chapter 5, one of the reasons why the New Salvation Front segued into the Tamarod movement to remove President Morsi from power.

Yet the treatment of the Coptic community under Mansour and Sisi has not been free from the persecution Copts experienced during the Morsi era. Mina Fayek has analysed the shift in Coptic perceptions of Sisi between the June 30th ‘second revolution’ and Sisi’s Presidency in 2014, from one of hope that Sisi’s regime would provide sanctuary for the community after the sectarian attacks of Morsi’s Presidency and the Maspero massacre during the 2011 SCAF period.

The centrality – and perceived centrality¹⁹⁶ within the Coptic community – of the role of Christians in the June 30th ‘second revolution’ – speaks to the level of alienation Morsi’s sectarian measures generated, even aside from his mishandling of the late 2012 constitutional crisis. This support by the Coptic community, and its prominent representatives in Egyptian public life, for the principles of the June 30th ‘second revolution’, and initial optimism about an Sisi presidency, was not reciprocated by Mansour or Sisi’s decisions in power, such as the failure to investigate the 2011 Maspero massacre. Moreover, in taking aim at the Muslim Brotherhood through the 2013 constitution’s attempts to mitigate against ‘sectarianism’ – whilst simultaneously keeping the 1971 wording of Article 2, in which “Islam is the religion of the state” – Copts have arguably become ideological collateral in the ongoing antagonism between the Muslim Brotherhood and the

¹⁹⁶ ---. ‘Egyptian Coptic Priest: one third of participants in June 30 were Christians.’ *Middle East Monitor*. May 15th, 2014. Available online at: <https://www.middleeastmonitor.com/news/africa/11488-egyptian-coptic-priest-one-third-of-participants-in-june-30-were-christians> [accessed August 16th, 2014].

Egyptian state, left without constitutional provisions for religious affiliation in political life on the one hand and on the other with a new constitution which asserts that Islam is the religion of the state.

Lastly, in the analysis of way in which the post-Morsi Egyptian state turned on the Muslim Brotherhood, it is worth noting the broader post-revolutionary development of power consolidating into the hands of the post-June 30th combination of high-level members of SCAF and supporters of Sisi, in which voices of the 2011 revolution were quashed or marginalised whilst simultaneously the post-June 30th powers, under Mansour and Sisi, present themselves as the defenders and inheritors of the 2011 revolution's legacy. Most notable within this trend is the clampdown on secular activists who had themselves clashed with or protested against 'Islamism' during Morsi's presidency, such as the leaders of the April 6th Youth Movement who had played a pivotal role in spearheading the popular protests that had led to the overthrow of Mubarak three years earlier.

Conclusion

This Chapter has outlined the path from the 2012 constitution to the 2013 constitution, which is bound up with President Morsi's striking and significant fall from power less than a year after his constitutional crisis (outlined in the previous chapter of this work), and the political ascendance of President Sisi, which was a defining turning point in the post-revolutionary period. The 2013 constitution was – as the sub-chapters above have demonstrated – the terrain on which this power-shift played out, and was also an attempt by the post-Morsi political figures during

the period of the post-coup curfew to define Morsi's era as 'aberrant' to the true course of the revolution, and assert the legitimacy of the post-Morsi regime.

As this chapter has demonstrated, the 'war of narratives' in Egyptian politics throughout 2013 leaves its mark on the text of the 2013 constitution. This is most striking firstly in the relationship between the military and the executive branch of government as outlined in the 2013 constitution and the provisions for military trials against civilians (residue, in constitutional form, of the fact the new constitution came into being after the previous President, and his constitution, were removed by military force) and secondly through the prohibition of political parties and political activities based on religion (residue, in constitutional form, of the political dynamic in which those who held power after the removal of President Morsi turned upon the Muslim Brotherhood as 'enemies' both of the revolution and of the Egyptian state).

As outlined above, the 2013 constitutional text can thus be seen both as an attempt to legally entrench the powers of those who had overthrown President Morsi after the June 30th Tamarod demonstrations, and also an attempt by these new powers (spearheaded by Sisi as chief of the armed forces) to rhetorically position themselves as the true inheritors of the 2011 revolution, the rightful enactors of the 'will' of the 2011 revolution, and the saviours of the original ethos and spirit of the 2011 revolution after its 'hijacking' by 'Islamists' during the aberrant, temporary and illegitimate period of Mohammad Morsi's presidency.

The following chapter will place the 2013 constitution alongside the short-lived 2012 constitution drafted under President Morsi, and the 2011 interim constitution drafted by SCAF, in order to analyse how the constitutional heritages and legal legacies of Egypt's twentieth-century manifested in and influenced the post-2011 constitutional texts. As such, this chapter has worked to provide the necessary context for the forthcoming analysis in Chapter 7, by outlining both the salient features of the text of the 2013 constitution, and the political and social context from which it was born, and the key ways in which this shapes its content.

At the time of writing, the 2013 constitution drafted after the removal from power of President Morsi remains the constitution of Egypt. The text of the 2013 constitution emerged out of, and reflects, the post-revolutionary period and the turn Egyptian politics took in the aftermath of Morsi's 2012 constitutional crisis. Although it was designed as an attempt to cement the legitimacy of the post-revolutionary regime, the 2013 constitution – both in terms of its content, in terms of the actors involved in its creation, and the very fact it came into existence – cannot be separated from the events of 2013 in which President Morsi was removed from power, and the coordinated mass killings, shortly afterwards, of over eight hundred civilians within two days in and around Rabaa Al-Adewiya.

Chapter 7: The post-revolutionary constitutions in context

Introduction

Parts 1 and 2 of this study took, in turn, the legal legacies and constitutional heritages of Egypt prior to 2011, and then the 2011, 2012 and 2013 constitutions, their salient features and the way in which the legal legacies and constitutional heritages could be ‘traced’ within them, manifesting – sometimes in modified and surprising forms – in the post-Mubarak constitutional texts.

As Chapters 4, 5 and 6 demonstrated by placing the successive post-Mubarak constitutions alongside the contemporaneous political upheavals of the 2011 revolution and its aftermath, the story of Egypt’s experience of the ‘Arab spring’ or ‘Arab awakening’ cannot be told without telling the story of the constitutions and the socio-legal narrative of how they came into being. Chapters 4, 5 and 6 of this work reflect the experience of the tumultuous years after the 2011 revolution in Egypt: historically significant moments hurtled by, events superceding events even before full analysis of their significance was possible – the army, and then the Muslim Brotherhood, and then a military-backed but popularly supported new authority each writing a constitution for the state of Egypt, in less than four years.

The aim of this chapter is thus to now build upon the work undertaken in all preceding chapters, and bring them together in order to comparatively assess the three post-revolutionary constitutional experiences, placing their constitutional heritages and legal legacies alongside one another to demonstrate the way in which all three were – in varied and differing ways – influenced by the legal legacies and constitutional heritages outlined in Part 1 of this work. In other words, Chapters 4, 5 and 6 of this work provided the material for the evidence that the 2011, 2012 and 2013 constitutions are comprised in part of both direct quotation and thematic influence and heritage from Egypt’s earlier constitutional texts and legal legacies. The aim of this chapter is to shift through this evidence to demonstrate and critically engage with the ways in which the 2011, 2012 and 2013 constitutions of Egypt operate as ‘legal mosaics’.

A number of pertinent issues were yielded by the close analysis of the successive post-Mubarak constitutions, which will now be addressed in turn. The first is the constitutional experience of each post-Mubarak constitution, and the relevant aspects of the constitution drafting processes that help demonstrate the way in which the post-Mubarak constitutions operate as ‘legal mosaics’. The second is the comparative appraisal of all three post-Mubarak constitutional texts, reiterating the information of Chapters 4, 5 and 6 and highlighting the striking ‘threads’ of this, drawing upon the work of the political scientist Lijphart to identify continuities and chasms in the post-Mubarak constitutional texts. As Article 2 was the most contested and symbolically charged article, this chapter will also address how Egypt’s modern (constitutional) history can be read through the prism of the shifting format of Article 2 in successive constitutions – and, moreover, how Article

2 is 'read' differently in different political contexts, namely, as noted in Chapters 5 and 6 of this work, the new significance that Article 2 gained in 2012 when, for the first time, a Muslim Brotherhood-sympathetic President was in power, destabilising – although, also, ultimately falling to – the historical antagonistic 'state versus Muslim Brotherhood' dynamic. As the (deep) state versus Muslim Brotherhood dynamic was reproduced and reiterated – albeit with new contours, after the election of the Freedom and Justice Party and Morsi in 2012 – in the post-revolutionary period, this chapter will also address the way in which the successive post-revolutionary constitutions of Egypt also became a terrain on which the power struggle between different forces vying for dominance in the post-2011 political order was reproduced and how, within this dynamic, the 'deep state' ultimately reasserted its power, and severely damaged the Muslim Brotherhood (whilst, as has been explored above, crushing and suppressing other key actors in civil society, from secular liberal activists to the Coptic community, as 'collateral' in the state versus Muslim Brotherhood dynamic).

The narrative that the 'deep state re-emerged victorious' – as the 2013 constitution would suggest – is, however, in need of some fine-tuning and modification, and so this chapter will also go on to sketch out the ways in which the deep state, whilst victorious over the Muslim Brotherhood and constitutionally reproduced and *reasserted* through the 2013 constitution, has also itself been affected by the tumultuous events of 2011-2014, with new internal divisions emerging that reformulate the paradigm of the 'deep state' of the Nasser, Sadat and Mubarak era presented in Chapter 1 of this work.

The constitutional experiences of 2011, 2012 and 2013

Chapters 4, 5 and 6 threaded the description of the constitution-drafting processes themselves into the presentation of the salient features of the successive constitutional texts themselves. It is worth turning now to the post-revolutionary experiences of constitution drafting, in a comparative perspective setting the 2011, 2012 and 2013 constitution-drafting experiences alongside one another, and looking at them through the lenses of political science, namely Tsebelis's (2002) idea of 'veto players', and how internal fractures and divisions within the constitution-drafting processes can both be 'read' in the final texts of the three post-revolutionary constitutional documents, and reflect the 'cultural text' from which the constitutions emerged, demonstrating how the texts operate as legal mosaics, and how the constitution drafters made authorial choices to include, exclude or amend aspects of Egypt's legal and constitutional past.

As noted elsewhere, this work engages primarily with the constitutional texts and is not an attempt to provide a comprehensive account of the behind the scenes constitution drafting processes of the 2011, 2012 and 2013 constitutions, but rather demonstrate how they operate as 'legal mosaics' and pin them to the 'cultural texts' from which they can be seen to have emerged. As similarly noted elsewhere, the asymmetry of the sources available for this research, in addition to my positionality as a researcher, renders a full portrait of the constitution drafting processes, in the manner Hassen Ebrahim undertook for his work on South Africa's constitution, impossible to fully convey. Nonetheless, the available documentation and accounts of the circumstances surrounding the constitution drafting processes of the post-Mubarak constitutions, as outlined in Chapters 4, 5 and 6 of this work,

point to striking features indicating the ways in which the constitutions operate as 'legal mosaics', and that this authorial intent on the behalf of the constitution drafters can be 'read' in the constitutional texts themselves.

The difference between the Committee of One Hundred and the Committee of Fifty for the 2012 and 2013 constitutions were outlined in Chapter 6 of this work. It is worth returning to the circumstances in which the constitutions were drafted, bearing in mind Tsebelis's (2002) idea of 'veto players'. Tsebelis developed the idea of 'veto players' as a tool for analysing outcomes in policy making, and in his formulation a 'veto player' is a political actor who can alter an outcome through their choices. This concept can be applied to constitution-drafting processes, and we can draw upon the accounts provided in Part 2 of this work for the constitution-drafting processes of the post-Mubarak constitutions to pinpoint how 'veto players' altered the outcome of the constitutions – and of related political events – in dynamic ways. Applying Tsebelis's idea of veto players to the two scenarios outlined in Chapters 5 and 6, at face value, the obvious assessment is that the Committee of Fifty succeeded where Morsi's Committee of One Hundred failed, inasmuch as the 2012 constitution-drafting process – whilst, as Chapter 5 outlined, aimed at 'inclusivity' and giving seats in the committee to non-Islamist voices – degenerated to the point that the non-Islamist actors, such as representatives of the Coptic community, felt alienated to the point that they left the constitution-drafting process in protest, and this then undermined the legitimacy of both the constitution-drafting process and Morsi's new rule as a whole. Whilst the constitutional crisis of December 2012 was of course, as Chapter 5 described, triggered primarily by Morsi granting himself 'powers' to overrule all legislation

until the constitution was passed, the anti-Morsi protests that coalesced into the New Salvation Front and then, eventually, the Tamarod movement, were also expressing wider concerns that non-Islamist voices were being excluded in the 2012 constitution-drafting process.¹⁹⁷ Article 219 of the 2012 constitution proved alienating to the non-Islamist members of the constitution drafting process, as well as wide sections of the Egyptian public, as outlined in Chapter 5 of this work, to the point that the non-Islamist members of the Committee of One Hundred became ‘veto players’, undermining the legitimacy of the constitution drafting process through their boycott.

As Hodda ElSadda, one of the members of the Committee of Fifty, has publicly described – the 2013 constitution drafting process, whilst in some ways a ‘mirror’ of the 2012 constitution drafting committee (namely, the inclusion, in the 2013 case, of Islamist members in the Committee of Fifty, from the non-Muslim Brotherhood Nour party), had a committee with a stronger unity of purpose – namely, as Hodda ElSadda describes, to “reverse” the Islamist elements of the 2012 constitution – and as such, whilst (as will be described below) there were points of contention and dispute amongst the committee members drafting the constitution, there was no divisive cleavage that a significant section of the constitution-drafting committee could use to leverage power, or act as a ‘veto player’.

¹⁹⁷ Interview between the author and member of the April 6th Youth Movement, Cairo, Egypt, December 2012. This is corroborated by statements made by Hodda ElSadda, one of the committee members involved in drafting the 2013 constitution, as will be outlined and referenced in the following pages of this chapter.

It is worth now developing this juxtaposition between the 2012 and 2013 constitution drafting processes by drawing upon the public account given of the 2013 constitution-drafting process by Hodda ElSadda. Hodda ElSadda provides an interesting perspective as a ‘dissenting’ voice within the drafting of the 2013 constitution, particularly with reference to Article 11, on gender equality between men and women. She is worth quoting here extensively in order to give voice to the experience of someone directly involved in the constitution-drafting process of one of the post-2011 constitutions, both for the insights it provides into the constitution-drafting experience of 2013 and for the illumination of the juxtaposition between the 2012 and 2013 constitutional texts and the different ways in which they drew upon Egypt’s legal and constitutional past (that is, the different ways in which they operate as legal mosaics), as well as a demonstration of how Tsebelis’s idea of ‘veto players’ operates in constitution-drafting processes. As will be outlined below, while ElSadda’s testimony is illuminating, her perspective that the post-Mubarak political space ‘opened up’ to allow more voices from outside of the deep state and establishment is not entirely in keeping with my analysis and the opinion I have formed from speaking to members of the April 6th Youth Movement who felt excluded from the constitution-drafting processes of 2011, 2012 and 2013.

In a written testimony for *openDemocracy*¹⁹⁸, ElSadda outlines from her personal perspective as a member of the Committee of Fifty her achievement of securing Article 11 constitutionally enshrining the right to gender equality between men

¹⁹⁸ I was marginally involved in the editorial process of the publication of ElSadda’s written testimony, as an editor of *openDemocracy* at the time of its publication.

and women (and the positive duty of the state to secure this right), and how this came about within the internal power dynamics of the constitution-drafting committee. She notes that “a constitutional commitment to safeguarding women’s rights was absent from the 2012 constitution”, and highlights the fact that the 2013 constitution drew upon the 1971 constitution of Sadat¹⁹⁹, which included an Article 11 on “ensuring equality between men and women in the political, social, cultural and economic spheres”²⁰⁰ – in other words, ElSadda herself notes that the drafters of the 2013 constitution turned to Egypt’s previous constitutions for a framework for the new constitutional document. She is also forthright about the internal

¹⁹⁹ ElSadda does not use my terminology or conceptual tools such as ‘legal mosaics’ or ‘legal eco-systems’, but she does provide an account that verifies my assertion that the pre-2011 constitutions were turned to as sources by the post-2011 constitution drafters, as she describes the way in which the 2013 constitution drafters ‘rehabilitated’ articles of the 1971 constitution that were missing or significantly amended in the 2012 constitution, such as Article 11 (on gender equality). Through her descriptions of the ‘insertions’ made to the 2012 constitution, ElSadda aligns herself clearly against the Islamist drafters of the 2012 constitution and thus presents the narrative that the 2013 constitution was both the rightful inheritor of the revolution and a ‘restoration’ – for instance, she notes how the 2012 Article 44, forbidding “insulting the prophet and messengers” was not in the 1971 constitution, nor were the provisions in the 2012 constitution relating to Al-Azhar, for the first time, being granted authority over legislation. It is noteworthy that she assesses the 2013 constitution as being more legitimate for being more ‘faithful’ to the 1971 constitution. She also writes that “one of the goals of the committee [of Fifty] was to “purge” the constitution of the perceived incursions made by the Islamists to inscribe the Islamist political project into the constitutional text”, and explain how the focus of this ‘project’ was the deletion of the 2012 constitution’s Article 219. This in itself is indicative of the way in which the constitutions operated as ‘legal mosaics’ – building upon, and deleting, earlier ‘versions’, such as the 1971 and (for the 2013 drafters) the 2012 constitution, rather than starting from scratch or not referencing earlier constitutional documents. It is worth adding the additional caveat here that ElSadda is describing her position, as a secular feminist, vis-à-vis the dominant (military and pro-Sisi) forces in the 2013 constitution-drafting processes, and does not position herself as endorsing either Sisi’s rule or the way he came to power, but she is highly critical of the 2012 constitution as an ‘Islamist’ constitution, and that “for the many who marched against the rule of Islamists, the new constitution was meant to right the wrongs embodied in the Islamist 2012 constitution.” (ElSadda: Ibid).

²⁰⁰ Ibid.

divisions amongst those drafting the 2013 constitution, and that one of the unifying factors amongst this representationally diverse group was their desire to remove the Islamist elements of the 2012 constitution, rather than write a new constitutional wholesale. She writes that “[n]egotiations in the 50-committee [ElSadda’s way to render what I have translated as the ‘Committee of Fifty’] for drafting the constitution were not conducted on a level playing field, but against the backdrop of entrenched and deep-rooted unequal power relations.”

Describing how the minority of self-identifying feminists on the drafting committee manage to achieve Article 11, she notes that three factors strengthened the feminist position: namely, the “divisive politics of Islamism versus secularism, the internationalism of women’s and human rights discourse, and the new political spaces that opened up as a direct consequence of the 2011 revolutionary wave.”²⁰¹ She continues that “[a]ll constitutions reflect the balance of power in society at a particular moment in history. In the Egyptian context, the voice of feminists was not among the powerful contenders at the negotiating table [of the 2013 constitution] [...] the moment was one of heightened political struggle and violence with fighting on the streets between protesters – mostly Muslim Brotherhood supporters but also revolutionary youth and security forces. There was ethical trauma and hysteria after the massacre in Rabaa [al-Adewiya] in August 2013, a comeback in old regime figures, a rise in militarized nationalist discourse, a media

²⁰¹ Ibid.

campaign vilifying protesters and protests in general, and growing disenchantment of ordinary citizens with the very idea of revolutionary change.”²⁰²

Her description of the constitution-drafting process of 2013 can be refracted through Tsebelis’s idea of veto players outlined above, as she sketches out the ways in which certain groups within the Committee of Fifty held dominant power, but nonetheless the ‘dissenting’ voices (such as her voice as a feminist within the committee) were ideologically aligned with the ‘project’ of the dominant group within the committee, of removing ‘traces’ of ‘Islamism’ from the constitution, such as 2012’s Article 219. She writes that “[n]egotiations over constitutional articles were often arduous, severely contentious and bitterly contested. Political gains, even if they appear to be miniscule within the broader picture, are still important to identify and understand in terms of their micro-dynamics as part of the ongoing struggles for women’s and human rights.”²⁰³ She goes on to describe in some detail the ways in which she believes the ‘struggle’ for Article 11 within the 2013 constitution-drafting process was facilitated by the opening of “new political spaces” for activism after 2011, as well as the transferable language of human rights discourse – although she does not reference it directly, her perspective is in keeping with Goderis and Versteeg’s conception of ‘transnational diffusion’ of human rights values in constitution-drafting processes, and that the constitutional text is ‘speaking to’ both citizens of the state and to the international community.

²⁰² Ibid.

²⁰³ Ibid.

The issue of inclusivity in the 2013 constitution drafting process, and the strategic choices made by Mansour –as outlined in Chapter 6 – to ensure that the Committee of Fifty would be representationally diverse (so as to acquire the legitimacy that the 2012 Committee of One Hundred lost after the Coptic representatives and liberal committee members left in frustration) whilst unified in the aim to ‘remove’ Islamist traces of the constitution such as 2012’s Article 219 can, in itself, be seen as a legal legacy of Egypt’s past being strategically drawn upon in the post-Mubarak ‘present’. Namely, it self-consciously references the rhetoric of ‘inclusivity’ surrounding the 1971 constitution as described in Chapter 2. It can be tentatively suggested that Sadat’s *display* of inclusivity during the drafting of the 1971 Permanent Constitution, as outlined in Chapter 2, asserted an influence on the constitution-drafters of the post-Mubarak constitutions, such as Morsi’s initial rhetorical displays of inclusivity outlined in Chapter 5, and his attempts to demonstrate that non-Islamist ‘voices’ were going to be given a seat at the constitution-drafting table, and the inclusion of progressive voices such as ElSadda’s in the 2013 constitution-drafting process (although she describes the way in which she was clearly not on an ‘equal footing’ with the representatives of the ‘deep state’ during the constitution-drafting process).

Whilst ElSadda’s description of the struggle to secure Article 11 in the 2013 constitution-drafting process is illuminating for several reasons – it shows the conscious choices post-2011 constitution drafters made to draw upon different facets of Egypt’s legal and constitutional heritage, and demonstrates how the constitution drafting processes can be read through the lens of ‘veto players’ – it is worth adding the caveat that her perspective that the post-2011 political space and

the aftermath of the mass protests of 2011 gave civil society actors a stronger 'voice' cannot be taken at face value. ElSadda occupied a particular and rare position as an 'outsider within', to use the feminist legal perspective of 'standpoint theory'²⁰⁴, and her experience was atypical of the experiences of many secular, liberal activists and civil society representatives during the post-2011 constitution-drafting processes. As noted elsewhere and in my interviews with the secular-identifying activists who had been involved in the revolutionary movement against Mubarak, the April 6th Youth Movement, the March 9th Movement and other groups that had been integral to spearheading and coordinating the mass protests of

²⁰⁴ Although it is beyond the scope of this work to extensively engage with the insights of 'standpoint theory', it has illuminated my perspectives on the role of dissenting, minority and structurally disadvantaged actors and 'voices' in constitution-drafting processes, as well as within the judiciary as a whole, and a further potential project is to map the insights gained from 'standpoint theory' onto Clark Lombardi's work on the Egyptian judiciary and its shifting and ambivalent role vis-à-vis the 'deep state'. Standpoint theory engages with inter-subjective relations and discourses, and addresses the relationship between an individual's experiences (typically, their experiences prior to occupying an institutional position or position of authority or power) and their institutional role, particularly how their experiences (for instance, previous experiences as a member of a structurally marginalised or disadvantaged group in a society, such as women in patriarchal societies) comes to bear upon their choices as institutional actors once they occupy positions of (institutional) authority. Related to feminist theorist Sandra Harding's idea of 'strong objectivity', standpoint theory has developed the concept of the 'outsider within', that is – individuals in institutional structures, such as women in the judiciary, who bring their lived experiences to bear upon their institutional role, dislodging the false neutrality of the 'objective' position of authority. Hodda ElSadda, as a feminist and women's rights activist who had been oppositional to and marginalised under the Mubarak regime, can be seen as an example of an 'outsider within', and her testimony of her experiences as a drafter of the 2013 constitution coheres with this interpretation of her auxiliary role as both 'within' and 'dissenting' to the post-Morsi political order. I have written an account of different contemporary academic applications of standpoint theory as a feminist conceptual lens through which to approach legal systems as a report from the *'When the judge is a woman' / 'le juge est une femme'* conference at the Université libre de Bruxelles in November 2013. See: McRobie, Heather. 'When the Judge is a Woman'. *openDemocracy*, November 19th 2013. Available online at: <https://www.opendemocracy.net/5050/heather-mcrobie/when-judge-is-woman> [accessed January 17th, 2015].

January and February 2011 that brought down Mubarak, were strikingly excluded from all three constitution-drafting processes. The inclusion of the word 'karama' in the constitutional texts may echo the spirit of the 2011 revolution, and – as outlined elsewhere – the preambles of the post-Mubarak constitutional texts may have sought to self-consciously position the constitution drafters as the rightful 'heirs' of the revolution,²⁰⁵ but the voices and interests of the young secular anti-Mubarak activists who spearheaded the revolution were notably absent from all three constitution drafting processes, and from the three post-Mubarak constitutional texts.

The constitutional heritages and legal legacies in the post-revolutionary constitutions

Part 2 of this thesis demonstrated the ways in which the 2011, 2012 and 2013 constitutions contain distinct elements within them that highlight the influences of the country's pre-2011 constitutional heritages and legal legacies. Sometimes these are in tact fossils – articles copied verbatim from the 1971 Permanent Constitution, and institutional structures carried over from the twentieth century, such as the French-style civil law system outlined in Chapter 3 of this work. There are also broader themes of continuity that present a counter-case to Hamid Dabashi's assertions, outlined in the Introduction of this work, that the 2011 revolutions represented a total political and even epistemic rupture with the past in the countries that overthrew authoritarian leaders during the 'Arab spring' or 'Arab awakening'.

²⁰⁵ Sabry, Bassem. Ibid.

If we turn to Lijphart's influential two-axis conception of the democratic state²⁰⁶ – executive-legislature (or party) relations and unitary-federal relations – and conceptually map the 2011, 2012 and 2013 constitutions' provisions onto this schema, it becomes evident that the continuities between the pre-2011 constitutions and legal structure and the 2011, 2012 and 2013 constitutions are stronger than forces and voices of 'innovation'. Lijphart's juxtaposition of majoritarian (or Westminster) democracies and consensus democracies plotted the two as differing along two dimensions: the executive-parties dimension (or executive-legislature dimension) signifies the extent to which a single party or actor can take complete control of the government.

The federal-unitary dimension, the second component in Lijphart's schema, assesses the extent to which a party in control of the government can change policy and institutional structures – namely, what oversight and checks on the executive are granted to other actors, namely minority voices and minority rights (in keeping with Lijphart's focus on consociational democracies and power-sharing

²⁰⁶ In *Patterns of Democracy* (1999) Lijphart outlines two competing types of democracy – majoritarian democracy and consensus democracy. His typology is a useful framework through which to look at where power lies within a state institutional arrangement or structure, such as the structure designed in a constitution. Drawing upon Lijphart for this analysis of the post-Mubarak constitutions – or for the pre-2011 constitutions of Egypt – is not intended to suggest that they are 'democratic', as earlier chapters of this work clearly demonstrate that the pre-2011 constitutions of Egypt were not democratic frameworks. It is simply that Lijphart's two-axis framework for assessing a state structure provides a useful lens through which to read where power lies in the state. It is worth noting that Lijphart does, in addition to presenting an ontological framework for assessing states, also make normative assertions, namely that consensus democracy is more democracy, and more 'just', than majoritarian democracies. This can also be seen in the post-2011 constitutions, with the strengthening of the executive branch vis-à-vis the legislature, particularly in the 2013 constitution, as one of the factors that undermines the 'democratic-ness' of the constitution.

democracies, his emphasis in on the ‘group rights’ and group representation of ethnic and linguistic minorities – although this does not map precisely onto Egypt’s constitutional experience it is still an illuminating framework for discerning where power resides within the branches of government and between the citizen and the state).

Applying this framework to the 2011, 2012 and 2013 constitutions, it can be argued that the post-Mubarak constitutions largely replicated the pre-Mubarak balance of power between the executive and other branches of government, with the notable exception of the additional powers granted to Al-Azhar in the 2012 constitution. The 2013 constitution arguably marries the executive and the army together even more closely, and this ‘marriage’ is all the more significant coming as it did in the aftermath of the military’s removal of the first democratically elected head of state of Egypt. Similarly, the unitary nature of the state in the literal sense of its borders and lack of regional devolution remained constant – for instance, there are no provisions granting additional devolved power to Sinai in the 2011, 2012 or 2013 constitutions despite (or because of) the growing insurgence and festering sense of alienation in the region at the time. It is worth noting briefly that his entails that the constitution of the United Arab Republic outlined in Chapter 2 of this work remains the only constitutional anomaly in modern Egypt’s constitutional experience for its reframings of the nature of the unitary state of Egypt.

Lijphart’s typology thus illuminates the fact that the 2011, 2012 and 2013 constitutions replicated the same institutional structures (in terms of the

executive-legislative relationship and the relationship between citizen and state, and sovereignty and central power of the state without devolved powers) as the pre-2011 constitutions from the 1923 constitution onwards had constructed these relationships. More remained unchanged than was modified by the event of 2011.

In addition to this general structural ‘replication’ of the constellation of the state prior to 2011 (in terms of executive-legislative relations, the state-citizen relationship and the unitary nature of the state) there was – as Chapters 4, 5 and 6 have drawn out – literal replication in the 2011, 2012 and 2013 constitutions. Articles were lifted wholesale from the 1971 Permanent Constitution. And, elements of the 1923 so-called ‘liberal’ constitution and Nasser’s constitutional decrees can also be discerned in the post-Mubarak constitutional texts, and – as noted in Chapter 4 – even the short-lived constitution of the United Arab Republic leaves its traces on the post-Mubarak constitutional texts: Article 68 of the United Arab Republic constitution’s emphasis on the ‘Arab’ nature of Egypt echoes through to the preambles of the 2011, 2012 and 2013 constitutions, demonstrating the residue of pan-Arabism in the post-Mubarak climate.

As outlined in the subchapter above through Hodda ElSadda’s testimony of the process of working on the Committee of Fifty to draft the 2013 constitution, the post-Mubarak constitution-drafters self-consciously drew upon and amended previous constitutional texts from Egypt’s constitutional history. There are even ‘borrowings’ from amongst the successive post-Mubarak constitution drafters: for instance, as outlined above, Hodda ElSadda describes the way in which the focus of the Committee of Fifty in 2013, and a unifying motive amongst the

representationally diverse group of constitution-drafters, was to 'remove' elements from the 2012 constitution (notably Article 219) rather than to draft a 'new' constitution from scratch.

Egypt's post-Mubarak constitutions are thus best understood – in fact, I would argue, only fully understood – in the context of Egypt's pre-2011 constitutional and legal past. In addition to the 'constitutional borrowing' from within Egypt's constitutional heritage, the continuation of the different 'threads' of Egypt's legal legacies demonstrate continuities with Egypt's ongoing and unique experience of legal pluralism. In the post-Mubarak realities, for all the turmoil and aspirations to a 'Year Zero' of 2011, Egypt's particular legal eco-system continues, with Al-Azhar and elements of shari'a continuing to operate in the Egyptian legal sphere alongside the French-style civil legal system and the ways in which this has been modified – as outlined in Chapter 3 – to include elements of British-style or common law-style precedents.

The 2011, 2012 and 2013 constitutions of Egypt did, of course, modify Egypt's unique legal eco-system, and 'what should be borrowed from the past' was a major source of contention amongst the successive constitution-drafters – not least, the symbolic charge of the historical Article 2, and the ways in which Article 2 and 2012's Article 219 gained new connotations and contours in a new political reality in which the Muslim Brotherhood, briefly, for once had the ball of state power in its court. But this does not undermine the fact that the 2011, 2012 and 2013 constitutions are best understood as legal mosaics – it, rather, demonstrates the authorial choices of the successive post-Mubarak constitution drafters made to

deliberately 'borrow' from different facets of Egypt's legal and constitutional history, knowing that this 'borrowing' would have resonances with the Egyptian public, and knowing that the borrowed articles from the past would acquire new symbolic 'charge' in the post-Mubarak era.

There are 'new' elements in the post-Mubarak constitutions that are reflective of the fact they are post-revolutionary documents that emerged out of a period of political flux and social upheaval. Primarily, as outlined in Chapter 4, the interim nature of the 2011 constitution marks it as a transitional document born of a moment of significant political change. And, as noted in Part 2 of this work, 'the language of the revolution' did permeate into the post-Mubarak constitutional texts: most strikingly, Article 8's reference to 'human dignity' (where, in Arabic, 'dignity' is written as 'karama') can be read as the language of the revolution 'bubbling up' into the language of the post-revolutionary constitutions, and can be used as an argument in favour of the question of whether the post-Mubarak constitutions reflect the demands and concerns of the anti-Mubarak revolutionaries of 2011.

The inclusion of the word 'karama' is particularly striking because of the way in which 'karama', as a concept, has both Islamic resonances and resonances with the language of secular and purportedly universal human rights discourse (with its emphasis on the inherent 'dignity' and 'right to dignity' of all human beings). This double resonance is one of the reasons that 'karama' became such a powerful

rallying cry during the Tunisian and Egyptian revolutions²⁰⁷, as it articulated the concerns of the revolutionaries in language understood in both domestic and international contexts, and its inclusion in the post-Mubarak constitutional texts can be read, in Sajo's conception, as a 'constitutional sentiment' that echoes the contemporary Zeitgeist and also pays tribute to the revolutionaries that made the post-Mubarak constitutions possible. (This is not to negate a central narrative outlined in this work, namely – that the young, secular revolutionaries who spearheaded the 2011 uprisings at great risk to their own lives were quickly excluded from the post-revolutionary table, and ultimately became figurative collateral to the ongoing, antagonistic dynamic between the Muslim Brotherhood and the deep state). These 'new' elements in the 2011, 2012 and 2013 constitutions do not, however, negate the evidence presented here in the close textual readings of the post-2011 constitutional texts, that the post-Mubarak constitutions drew heavily upon Egypt's constitutional heritages and legal legacies, replicating – and modifying – them in the new post-revolutionary context. Instead, a more helpful reading is to consider the 'new' elements, most notably the emphasis on 'karama' and the contours it acquires in the post-revolutionary 'cultural text', as new elements within Egypt's unique and complex legal ecosystem, and as new 'tiles' – to extend the metaphor – of Egypt's legal mosaics.

²⁰⁷ I have written elsewhere on the language of 'karama' in the 2011 Arab revolutions or 'Arab spring'. See: McRobie, Heather. 'Will the Tunisian Constitution Erode the Gains of Women in the Arab Spring?' *New Statesman*, 15th August 2012. Available online at: <http://www.newstatesman.com/blogs/politics/2012/08/will-tunisian-constitution-erode-gains-women-arab-spring> [accessed January 18th, 2015].

Just as the post-Mubarak constitutions reflect both Egypt's past, its (post-revolutionary) present, and how its constitution-drafters conceptualise Egypt's future, the same can be said in reverse – that the political and social realities of 2011-2014 bear the imprint of the constitutions, and the way in which the post-Mubarak constitutions strategically deployed facets of Egypt's constitutional and legal past. As outlined below, this is most obviously the case with Article 2. The constitutions of 2011, 2012 and 2013 are so intimately interwoven into the political events of 2011-2014 that it would be impossible to adequately recount the events of these years without extensive reference to them, and the centrality that the question of the content of the constitution held for the Egyptian political public, as they waited with bated breath to see how the rapidly spinning events of the post-revolutionary era would land, and how the new post-Mubarak realities would crystallise into a new stability and new political order.

It is worth noting, that in addition to the way in which the debates around the constitutions and the constitution drafting processes were central to the events of 2011-2014, the constitutions themselves can be read as a story in three successive chapters – the 2011 interim constitution sets the stage for Morsi's 2012 constitution, which bears textual markings of the strains under which it was born, and which ultimately entailed that it was not a viable long-lasting constitutional document; the 2013 constitution, as the final chapter, tells the story of the new political order once Morsi and the Muslim Brotherhood no longer have the ball in their court, and the deep state has returned to reassert its power.

The successive constitutions of the post-Mubarak era even contain within them 'keys' that unlocked the next stage of the political drama of 2011-2013, making them literally central to how the events unfolded. For instance, Article 59 of the 2011 constitution, was a necessary pre-requisite for the chain of events that led to Morsi being able to declare the constitutional emergency of December 2012.

Without this provision being included in the 2011 interim constitution, it would have been impossible for President Morsi to grant himself the 'emergency powers' of the December 2012 constitutional crisis which ultimately expedited his fall from power with the rise of the New Salvation Front and then the Tamarod movement – and, without this, the 2013 constitution would not have come into being. The post-Mubarak constitutions, taken together, as thus rich with insights and connotations of the 'cultural text', in the Kristevan sense, from which they were born, whilst their heavy borrowing from the pre-2011 constitutional heritages and legal legacies is equally rich for what it reveals of how the post-Mubarak constitution drafters conceived of their 'inheritance' from Egypt's particular experience of legal pluralism, and Egypt's successive constitutions since 1923.

Article 2 in the post-revolutionary context

As demonstrated in Chapter 2's survey of the salient features of the Egyptian constitutions between 1923 and 2011, Article 2 was one of the most politically charged constitutional articles of the last third of the twentieth century. Sadat strategically deployed Article 2, and considerations of reforming or rephrasing it, in return for trade-offs from self-identifying Islamist political groups, in an attempt by Sadat to neuter their political power.

Article 2 was again one of the most, if not the most, significant site of contestation and dispute amongst political actors and voices in the post-Mubarak era. As outlined in Part 2 of this work, Article 2 appears – in one form or another – in all three of the constitutional texts, a clear indication of the way in which these post-Mubarak texts are legal mosaics built, at different moments between 2011 and 2013, out of different aspects of Egypt’s constitutional heritage and legal legacies. As Chapters 4 and 5 of this work also described in the analytical narratives of the main events surrounding the 2012 and 2013 constitutions, the status and wording of Article 2 also became a catalyst for political clashes and social animosity, played a role in Morsi’s politically suicidal 2012 constitutional crisis, and became a central means through which the drafters of the 2013 constitution sought to differentiate themselves from the drafters of the previous, short-lived 2012 constitution.

Why is Article 2 such a raw nerve for Egypt? Why did it become loaded with symbolism to the extent that it did in the post-Mubarak era? It is worth turning to the wider issue of what Clark Lombardi refers to as ‘shari’a as a source of legislation’²⁰⁸ in Arab constitutions as surveyed by theorists such as Nathan J Brown and Clark Lombardi. In his 2013 article ‘Constitutional Provisions Making Sharia “A” or “The” Chief Source of Legislation: Where Did They Come From? What Do They Mean? Do They Matter?’ Clark Lombardi describes the way in which ‘shari’a as a source of legislation’ has manifested in Arab constitutions since the 1950s, noting that “[t]oday, most academics and policy makers seem to accept that

²⁰⁸ Lombardi, Clark B. ‘Constitutional Provisions Making Sharia “A” or “The” Chief Source of Legislation: Where Did They Come From? What Do They Mean? Do They Matter?’ *American University International Law Review* 28 no. 3 (2013): p734.

the impact of an SSL ['shari'a as source of legislation'] provision will depend on its wording"²⁰⁹, and notes that the difference, in Arabic, rests of the use of the *iDaafa* construct to differentiate between the definite and indefinite articles.²¹⁰ However, he also notes elsewhere that the potency of 'shari'a as a source of legislation' (namely, in the Egyptian case, Article 2) must be contextualised in the wider situation (or 'cultural text', in my borrowing from Kristeva) of who has either included it in a constitution, or who is wielding it from a position of political power.²¹¹ This is the central conundrum of Article 2 in the post-revolutionary context and why it became such a focus of concern for both the constitution-drafters and the general public: is the issue about what Article 2 itself contains, or about who is in the driving seat at the time that it is being used?

As Lombardi goes on to describe, after describe the 'shari'a as source of legislation' clauses in the constitutions of Syria, Kuwait, Sudan and Yemen,²¹² Egypt is a singular case in which 'shari'a as a source of legislation' was constitutionally introduced and amended throughout a period in which political Islam was in opposition to the state, in tandem with rearrangements in the judicial and state institutional structures that had more impact on how Article 2 itself operated than

²⁰⁹ Ibid. p734-735.

²¹⁰ To loosely transliterate from Arabic to Latin script, *masdarun raisiun li'l tashi* would be translated to "a chief source of legislation" and *al-masdar al-raisi li'l-tashri* to "the chief source of legislation".

²¹¹ See: Lombardi, Clark. 'Fierce Contest: Constitutional Islam and the Arab Spring.' *World Politics Review*, October 8th 2013. Available online at: <http://www.worldpoliticsreview.com/articles/13280/fierce-contest-constitutional-islam-and-the-arab-spring> [accessed March 24th, 2015].

²¹² See Lombardi. Ibid. p741-753.

the desires of self-identifying Islamists had to use Article 2 as a tool for their own aims of a shari'a-based society and state. He describes the successive constitutions from 1923 and their references to Islam and shari'a, noting that the 1923 constitution made Islam the state religion but did not make shari'a a source of law, and this idea was only introduced into Nasser's constitutional decrees in the late 1960s.²¹³ He continues, describing what was noted in Chapter 2 of this work, that "as Islamism grew in Egypt during the 1970s, Islamists sought to amend the Constitution to make the principle of shari'a the chief source of Egyptian legislation"²¹⁴ and that in the Egyptian state's attempt to co-opt Islamism in order to undermine its potency as an oppositional force, the government "decided to signal a new commitment to ensuring that its legislation was consistent with Islam" and thus Article 2 was – as noted earlier – amended to make the principles of shari'a "*the* chief source of legislation."²¹⁵ Lombardi continues by framing this change in the wider context of institutional re-structuring of the state, noting that

at roughly the same time, a new constitutional court was established and in a seminal 1985 ruling, the new court held that Article 2 as amended created a partially justiciable requirement that law conform to Islamic principles. Challenges to the Islamicness of legislation enacted prior to 1980 were non-justiciable, while challenges to legislation enacted thereafter were not. The court thereafter began to perform Islamic review of new legislation. In subsequent years, the court developed the Arab

²¹³ Lombardi. Ibid. p755.

²¹⁴ Ibid. p757.

²¹⁵ Ibid.

world's most expansive body of Islamic review jurisprudence. This jurisprudence made clear that the constitution did not require the government to legislate in line with the 'ulama's interpretation of Islamic law; rather, it only had to legislate in line with universal principles identified through a modernist-inspired method of interpretation [...] The state was thus constrained by only a limited number of rules and principles, most of which were quite general. Among them was a principle that the state had to act in the public interest.²¹⁶

In other words, Article 2's symbolic potency in the successive constitutions of modern Egypt is also conditional on structural and political context, namely the court infrastructure operating in tandem with it to uphold its provisions. As demonstrated in Chapters 5 and 6 of this work, the contention over the 2012 and 2013 constitutions over the role of Islam in the state and shari'a as a source of legislation was pegged to Article 2, the article that designates shari'a as either 'a' or 'the' source of legislation. But its political charge derived from the institutional structures that would be introduced in tandem with the Article – namely, in the case of the 2012 constitution, as outlined in Chapter 5, Article 219 and the increased powers of Al-Azhar in Article 4 of the 2012 constitution.

Moreover, this increase in the powers of Al-Azhar came at an historically unprecedented moment for Egypt – when the Muslim Brotherhood was no longer the antagonist to the state but supported by the Presidency and ruling party. As

²¹⁶ Ibid.

Hodda ElSadda has described in the written testimony referred to in an earlier subchapter, the constitution-drafters of the post-revolutionary texts deliberately borrowed from and drew upon the pre-2011 constitutions, knowing how this borrowing would be recognised as such by the Egyptian public.²¹⁷ Article 2 in the post-revolutionary context is thus best understood in this light: its inclusion in the post-Mubarak constitutions clearly demonstrates the way in which the post-revolutionary constitutions operate as ‘legal mosaics’, deploying aspects of Egypt’s constitutional and legal past and re-creating its formulations and structures, but its potency in the post-Mubarak political climate emerged from the new context in which Article 2 was now operating – namely, in the case of 2012, its power and the reason it became a source of contestation derived from its existence alongside Article 219 and increased provisions for Al-Azhar, in a new political constellation in which the Muslim Brotherhood was now in power.²¹⁸

It is striking that the drafters of 2013 constitution – whilst, as Hodda ElSadda has described as outlined above, unified and focused on the task of ‘removing’ the ‘Islamist’ elements of the 2012 constitution – did not alter Article 2 itself, but its context, namely the wider constitutional arrangement, such as the power of Al-Azhar and the (2013) constitutional prohibition on political parties that campaign on religious identity-lines. In this way, Article 2 was ‘restored’ to its status during the later Sadat and Mubarak eras, operating – from the 2013 constitution – in a constitutional and political framework in which the state variously quashed and

²¹⁷ ElSadda, Hodda. *Ibid.*

²¹⁸ Brown and Morsy make the argument in their article ‘Egypt’s Al-Azhar Steps Forward’ that the 2012 constitution possibly gave Al-Azhar more power than they themselves wanted. Brown and Morsy. *Ibid.*

coopted political Islam whilst attempting, through a variety of constitutional and political strategies, to de-fang the Muslim Brotherhood.

The post-revolutionary constitutions as a struggle between the Muslim Brotherhood and the deep state

As Chapter 6 demonstrated, the third constitution of the post-Mubarak era reiterated several key features of Egypt's authoritarian past, from the fusing of the executive and the military, to the provisions of military trials for civilians, and articles aimed directly at limiting the Muslim Brotherhood in a re-enactment of pre-2011 dynamics. Provisions in the 2013 constitution must be understood in the wider context and 'cultural text' of the aftermath of the removal of Mohamed Morsi from power and the brutal 'clearance' and mass deaths of of Rabaa al-Adewiya and elsewhere in August 2013.

Most significantly, the prohibition on political parties that operate on the lines of religious identity is evidently a targeted use of a purported 'blanket' prohibition aimed directly at the Muslim Brotherhood and the Freedom and Justice Party (in contradiction of the provisions in Article 65 of the 2013 constitution for freedom of religious and political belief), added to the constitution must be situated in the wider context of 2013 and the removal of President Morsi, and the swift steps taken by Mansour and Sisi, utilising the apparatus of the deep state, to literally and figuratively decimate the Muslim Brotherhood and its supporters.

Beyond deploying the constitutional as a weapon to consolidate the power of the military and the political elite surrounding Mansour and Sisi versus the Muslim

Brotherhood and Morsi supporters who Sisi had forcibly removed from power, the 2013 constitution can be read as a reconstruction of a Mubarak-like order. As demonstrated in Chapter 6, and again above in reference to Lijphart's conception of where power lies within political institutional arrangements, the 2013 constitution reasserts the central power of the Presidency and the intertwined relationship between the executive and the military, whilst further curtailing the power of the Muslim Brotherhood, and asserting the power of the military over civilians through, for instance, the provisions for the continued use of military trials.

In short, to put it bluntly, it looks a lot like the Mubarak era. What is striking is that these overtones coexist with the simultaneous presentation of the 2013 constitution (and, in parallel, in the discourse with which Sisi presents himself, as noted in Chapter 6 of this work and as will be noted in the Conclusion) as the rightful 'heir' and 'inheritor' or 'protector' of the spirit of the 2011 revolution, which it 'salvaged' from the aberrant and illegitimate period of Morsi's Presidency and the 2012 constitution. As will be noted in the Conclusion of this work, this double framing by Sisi (and by the 2013 constitution) of the post-Morsi period as both the restoration of 'order' (entailing Mubarak-era institutional arrangements) and as the successor and true 'inheritor' of the revolution, can also be mapped on to the two significant political trials of the period, namely the trial (and *de facto* acquittal) of Hosni Mubarak in juxtaposition to the charges for which Mohamed Morsi is on trial, which – at the time of writing – leaves the possibility that Morsi will face the death penalty. This shift, as charted in Chapter 6, towards making the Muslim Brotherhood, rather than the Mubarak regime and its institutional apparatus, into the ideological and fundamental 'enemy' of the Egyptian state is one

of the ways through which the ‘deep state’, as outlined in Chapter 1, can be seen to be re-asserting its power in the post-revolutionary period.

Ahmed Aboulenein has remarked that, “stepping back to look at four years of unrest and yearning for democratic change, it seems Egypt’s true leadership never lost power after all.”²¹⁹ Similarly, Eckart Woertz has described the period of 2011-2013 as one that ultimately led to ‘the return of the deep state’. Woertz notes that “[d]uring their short reign [in 2012-2013] the Muslim Brotherhood and President Mohamed Morsi never managed to penetrate the pillars of the *ancien regime*: the Ministry of the Interior, the judiciary and the military.”²²⁰ This ‘return of the deep state’ can be read unequivocally into the 2013 constitution – from Article 123’s construction of an executive-legislative relationship akin to that of Mubarak-era Presidentialism, in which the President the right to issue or object to laws, to the intertwining of the executive and the military, such as in the provisions in the 2013 constitutions allowing civilians to be tried in military courts.

If we are looking, in blunt terms, for the ‘victor’ of the 2011 revolution, after the flux and tumult of 2011-2013 and the different power-grabs and conflicting attempts by different parties to present themselves as the rightful inheritors of the revolution, it is clear that the ‘deep state’ has emerged victorious, to the extent that

²¹⁹ Aboulenein, Ahmed. ‘Egypt’s ‘deep state’ proves victorious.’ *GlobalPost*. December 12th, 2014. Available online at: <http://www.globalpost.com/dispatches/globalpost-blogs/groundtruth/egypt-deep-state-victorious> [accessed January 15th, 2015].

²²⁰ Woertz, Eckart. ‘Egypt: Return of the Deep State.’ *openDemocracy*, 20th January 2014. Available online at: <https://opendemocracy.net/arab-awakening/eckart-woertz/egypt-return-of-deep-state> [accessed January 26th, 2014].

it could be asserted (as will be outlined further in the Conclusion section of this work) that the 2011 revolution only removed the 'figurehead' of the deep state.

Since the 2013 constitution, the army and the government have been married more closely together than ever, both constitutionally – as described in Chapter 6 – and in reality. As Chapter 6 explained, the 2013 constitution's provisions that allow for the trial of civilians in military courts. As noted in Chapter 6 and as I have analysed elsewhere, the provisions in the successive post-Mubarak constitutions for the continued trial of civilians in military courts is striking because it is occurring in a new context to the Mubarak era, and one in which trials of civilians in military courts has exploded exponentially, and – after the rise of Sisi – a period in which political protest has been severely curtailed to the extent that it significantly encroaches upon the human right to freedom of peaceful assembly, and censorship abounds.

The marriage of the military and the Presidency is thus both a continuation of the Mubarak era and a 'new' feature of the post-2011 landscape, in which the military is deployed under the rhetoric of 'maintaining order' after the mass protests of 2011-2013, and wielded in particular – as the events in Rabaa al-Adewiya in August 2013 tragically demonstrated – against the Muslim Brotherhood and supporters of Morsi. Cristina Casabon writes of how, since the advent of Sisi "[t]he army, now in government with international support, is increasing its economic power and is free to impose the conditions it deems suitable. This has all been made possible

with the help of an increasing number of foreign political allies, global investors and multinationals.”²²¹

The strategic inclusion of articles – and, in broader senses, ideas and principles – of Egypt’s legal and constitutional past in the post-revolutionary constitutions can thus be seen as part of the shifting position of the ‘deep state’ in the post-Mubarak context, ultimately emerging, with the 2013 constitution, in a strengthened position that marries the apparatus and infrastructure of the deep state to the justificatory narratives of ‘defending the 2011 revolution.’ As Chapter 6 outlines, this apparatus has then been deployed to target Islamists and secular progressives alike.

The divided deep state after 2011?

As the subchapter above has explored and Chapter 6 demonstrated through its parsing of the salient features of the 2013 constitution, the pre-existing antagonistic dynamic between the ‘deep state’ and the Muslim Brotherhood replicated itself in the new political realities of the post-2011 context, from the way

²²¹ Casabon, Cristina. ‘Egypt’s Military Economy’. *openDemocracy*, 29th June 2015. Available online at: <https://opendemocracy.net/arab-awakening/cristina-casabón/egypt-s-military-economy> [accessed 29th June 2015]. Casabon goes on to describe the significance of an illuminating event that is unfortunately beyond the remit of this study, but which I have also written about elsewhere, that is – the Egypt Economic Development Conference in Sharm El Sheikh in 2015, where Sisi invited more than 2000 business leaders and political figures to encourage investment in Egypt and promote his plans for finalising the expansion of the Suez Canal. My article on the Suez canal also noted the way in which it was a ‘reassertion’ of the deep state’s power. See also: McRobie, Heather. ‘The Economist, Suez and Sisi’s cynical PR campaign.’ *Al Araby Al Jadeed*. 13th August 2015. Available online at: <http://www.alaraby.co.uk/english/comment/2015/8/13/the-economist-suez-and-Sisis-cynical-pr-campaign> [accessed 13th August 2015].

in which the Freedom and Justice Party positioned itself as ‘clean’ from the contamination (and corruption) of the recently-deposed Mubarak regime, to the way in which the events of the summer of 2013 can be read as a ‘reassertion’ of the deep state over the brief period in which the Muslim Brotherhood held power through the presidency of Mohamed Morsi. As demonstrated above, the successive post-Mubarak constitutions bear the traces of – and are, quite immediately, products of – this power-struggle between the deep state and the Muslim Brotherhood after 2011. However, the narrative is not as simple as ‘the deep state is back in power’, for two reasons that will be drawn out in this subchapter – the first, as noted above in reference to the analysis of Aboulenein and Woertz, is the question of whether the deep state ever truly *left*, and the second is the fact that the deep state itself has been fundamentally altered by the events of 2011-2014.

Brown and Bentivoglio have charted the new fractures and internal dynamics within the [Sisi-era] deep state, particularly within the religious establishment and the judiciary, and how these relate to the central power of Sisi and the army. They note that in 2014-2015 Sisi “publicly expressed frustration with both institutions for not executing his directives as swiftly or decisively as he would like”²²² and that while judges have largely been on board with the suppression of the Muslim Brotherhood, handing down mass death sentences and cooperating with the mass use of military trials documented in Chapter 6 of this work, the judiciary have at

²²² Bentivoglio, Katie and Nathan J. Brown. ‘Who’s Running the Egyptian State?’ *Washington Post*, July 31st 2015. Available online at: <http://www.washingtonpost.com/blogs/monkey-cage/wp/2015/07/31/who-is-running-the-egyptian-state/> [accessed July 31st, 2015].

time presented resistance, in a manner akin to Lombardi's account of the resistance of the judiciary to the late Mubarak era.

As Bentivoglio and Brown note, in 2014 the Supreme Constitutional Court “successfully lobbied for a change in a system – ironically decreed by their own chief justice, Adly Mansour, when he was interim president – requiring it to rule immediately on any election law challenge. Such a lightning review was design to prevent the court from taking its time and dissolving a parliament after it was elected. However, it also placed a tremendous burden on the court, and Sissi [sic] felt compelled to revert back to the old system in which the court can take its time.”²²³

Moreover, Bentivoglio and Brown describe how, since the 2013 constitution was introduced and Sisi ascended to the Presidency, Sisi has turned on Al-Azhar, delivering to them an even stronger ‘scolding’ than the judiciary. They note that “[i]n March [2015] [...] Sissi [sic] told Egypt’s religious scholars that God would judge them the harshest, as error in religion is greater than any other than thus “the responsibility over you is bigger than anyone else.”²²⁴ Brown and Bentivoglio note how the Ministry of Religious Affairs has been used to police the religious scholars of Al-Azhar since Sisi’s election to the Presidency, and that this chiding of the religious scholars by Sisi was used by the Ministry of Foreign Affairs to “move against those deemed as insufficiently supportive of the new order or supportive of

²²³ Ibid.

²²⁴ Ibid.

radicalism.” They continue that “[t]he leadership of Al-Azhar pushed back against the resulting storm of criticism in the press, complaining that critics were calling for it to do what it had long been doing anyway, [that those criticizing] did not understand what Al-Azhar was, and were not qualified to lecture its scholars on religion.”²²⁵

As Brown, Bentivoglio and others in the Egyptian media have noted, since 2014 Sisi has sought to push Al-Azhar towards using its position within the state to ‘denounce extremist and terrorism’, and – by implicit association, given the language the Sisi regime uses to conflate Islamism and terrorism – to condemn the Muslim Brotherhood. Bentivoglio and Brown go on to detail how, with the rise of Mansour and then Sisi, the security apparatus is now unequivocally at the ‘top’ of the hierarchy within the deep state, having and adapted to the post-‘Arab spring’ realities, and utilising (as I described in Chapter 6) the rhetoric of ‘anti-terrorism’ to consolidate its power and crush the Muslim Brotherhood with unprecedented vigor. As Brown and Bentivoglio note:

[a]lthough [Sisi] has made some personnel changes in key positions, the security apparatus seems to be a machine running on its own, deploying its tremendous ability to monitor, harass, detain, disappear and use routine violence. The security network is thus effectively setting internal security policy based not only on a perceived Islamist threat but also on a spirit of vengeance for how it felt scapegoated in the 2011 uprising.²²⁶

²²⁵ Ibid.

²²⁶ Ibid.

Bentivoglio and Brown's observations are a useful reminder that the demise of Morsi and the rise of Sisi (and the way that this dynamic parallels the overturning of the 2012 constitution and the introduction of the 2013 constitution, with all its provisions for the intertwining of the military and the executive and implicit attacks on the Muslim Brotherhood) is not a neat narrative of 'the deep state re-asserts itself' and that the old antagonistic dynamic between the deep state and the Muslim Brotherhood has been replicated in identical form in the pre- and post-2011 realities.

The deep state has reasserted itself, but the deep state itself has been changed by the events of 2011-2013. As Bentivoglio and Brown delineate, there is a hierarchy within the key institutions that form the deep state, and this constellation within the 'deep state' differs to those of the pre-2011 realities (as outlined in Chapter 1 of this work). These internal dynamics within the 'deep state' – particularly with Al-Azhar and the judiciary – are both a product of the new post-2011 realities, and also a strategic situation fostered by Sisi, who has been able, since his ascendancy to power, to use this dysfunction to his advantage, not least by pointing to it in front of diplomats to claim that he 'cannot control Egypt' and thus present acts of authoritarian curtailment as 'beyond his control'. Still, as Chapter 6 of this work demonstrated, this does not mean that the deep state has not been 'victorious' over the now-persecuted Muslim Brotherhood, nor that the 2013 constitution is, any less for these caveats, a product of – and an assertion of – the renewed strength of the deep state in the post-revolutionary political landscape.

Conclusion

This Chapter, drawing upon both the evidence presented in Part 2 of this work, and the 'background' provided in Part 1 of this work, has advanced the case that the 2011, 2012 and 2013 constitutions of Egypt are best understood as 'legal mosaics', reflective of Egypt's particular experience of legal pluralism. Moreover, as outlined above, the borrowing – both textually and thematically – from earlier (pre-2011) Egyptian constitutions and Egyptian concepts of law, was not a 'static' or reformative process that sought simply to reconstruct the pre-2011 political order. Instead, the different 'tiles' or 'fragments' of the pre-2011 past were deliberately drawn upon and deployed in the live and charged political fights and contestations of the new post-2011 political realities.

The 'tiles' of the 2011, 2012 and 2013 legal mosaics that are taken from the pre-2011 Egyptian legal and constitutional experience gained new significance, and new political contours, in the new political period. Article 2, most significantly, has a different potency in the hands of the constitution-drafters in 2012 producing a constitution under the first President of Egypt to be backed by and politically align with the Muslim Brotherhood. Article 2 became imbued with symbolism, and operated as a shorthand through which to understand broader political alliances and oppositions of the post-2011 periods – oppositions that were, in turn, built upon pre-2011 foundations, predominantly, the antagonistic dynamic between the Muslim Brotherhood and the Egyptian state during the Nasser, Sadat and Mubarak eras.

But beyond Article 2 and the story that its shifting role, as Lombardi (2013) has outlined, tells about the post-Mubarak period and how the successive constitutions of 2011-2013 became the terrain on which power-struggles were played out, the three constitutions are rich with echoes, repetitions and reformulations of Egypt's past. As this chapter has surveyed, the three constitutional texts are 'legal mosaics' because traces can easily be discerned within them – from full articles to repeated phrases to replicated institutional structures from the pre-2011 period – of Egypt's constitutional heritages and legal legacies outlined in Chapters 2 and 3 of this work. From the basic continuities of structure such as the unitary state (to use Lijphart's typology) and the maintenance of the French-style civil code and the continued incorporation of Al-Azhar into the state (in shifting capacities over the three successive constitutional documents) there are continuities just as there are innovations and departures – and silences²²⁷ – from the country's constitutional and legal past.

This deliberate deployment and strategic borrowing from Egypt's pre-2011 constitutional and legal past extends beyond the most contentious, obvious and symbolically charged example of Article 2: from echos of pan-Arabist and socialist elements in the Preambles (with the emphasis on the 'Arab' nature of Egypt), to international human rights norms and the French-style civil code, the three post-Mubarak constitutional texts are threaded with Egypt's complex legal and constitutional history, and bear the marks of Egypt's complex experiences of

²²⁷ It is beyond the scope of this work to engage in a detailed way with the literature on 'silences' in constitutions, but Michael Foley's *The Silence of Constitutions* (1989) has informed this work for its developments on how to 'read' constitutions, and infer from absences as well as details the socio-legal context from which the constitutions emerged.

modernity. The debates over the provisions for child labour in the 2013 constitution show the way in which international human rights norms and standards, and international human rights conventions to which Egypt is a signatory, have influenced and were borne in mind by the post-2011 constitution drafters, and yet these norms and standards co-exist with tenets and principles that are indigenous to Egypt's experience of modernity.

Approaching the constitutions without recognising these threads weaving throughout the texts – and understanding the connotations they have acquired in Egyptian social, legal and political life would – as this chapter has demonstrated – fail to adequately grasp the meaning and social significance of the texts. To return to a concept introduced early in this work, the post-Mubarak constitutions can only be fully understood by anchoring them in the 'cultural text' from which they emerged – that is, the post-revolutionary political and social upheavals of 2011-2013, and the residues of Egypt's particular experience of legal pluralism that continued to manifest in the new post-Mubarak realities.

The post-Mubarak constitutions can, in this sense, also be read as a new manifestation of that legal pluralism, and as a new chapter that continues the longer story of Egypt's legal pluralism, building upon the 1875 Mixed Courts and 1949 Civil Code (as described in Chapter 3 of this work) and the ways in which Islamic law has been embedded into the modern Egyptian legal system. None of this negates the fact that the 2011, 2012 and 2013 constitutions also contain traces within them of articles, concepts and languages that are not part of Egypt's legal legacies and constitutional heritages – the use of the word 'karama' in the post-

Mubarak constitutional texts is a self-conscious echo of the 2011 revolution just as it was self-consciously referenced in the post-revolutionary Tunisian political space in the establishment of the Truth and Dignity Commission as a mechanism of transitional justice, and indicates – as the preambles of the Egyptian post-revolutionary constitutions do – an effort by the post-revolutionary powers to position themselves as reflective of, and the rightful inheritors of, the 2011 revolutions.

That the content and significance of the post-Mubarak constitutions, as I have demonstrated above and in Part 2 of this work, can only be fully understood in the context of their legal legacies and constitutional heritages, and partly built out of – and reflective of – Egypt’s pre-2011 experiences of legal pluralism does not negate the fact that they are also ‘post-revolutionary’ constitutional documents that seek to both speak to and frame the new post-revolutionary order. As demonstrated above, the post-Mubarak constitutions function as ‘legal mosaics’ by strategically drawing upon and deploying facets of Egypt’s pre-2011 constitutional heritages and legal legacies, and entwining them with constitutional framings that are a response to the post-2011 realities and intent to steer Egypt towards a future envisioned by the successive constitution drafters.

The three constitutional texts draw upon the past, weaving facets of earlier constitutions and legal institutional structures into the constitution – as outlined above – whilst simultaneously articulating a vision of the future, or – in Jeff King’s conception, as outlined in the Introduction of this work, simultaneously functioning as ‘mission statements’. As outlined above in reference to the way in which Article

2 – and other significant articles from Egypt’s pre-2011 experience - were altered in the three successive post-Mubarak constitutional texts, the resurrection of these articles took on new significance in the new post-revolutionary context. Furthermore, and crucially, the drafters were self-aware of this new significance, and deliberately deployed Egypt’s constitutional heritages and legal legacies to represent both continuities and changes with the past. Most significantly, Article 2 developed new contours when ‘re-introduced’ in the new context of the post-Mubarak period, particularly during the 2012 constitution as Egypt was experiencing the unprecedented moment of the Muslim Brotherhood occupying the position not of the political antagonist to the state but the main source of support for the President. In this sense, Egypt’s post-Mubarak constitutions are best understood as ‘legal mosaics’, steeped in Egypt’s particular experiences of legal pluralism, reflective of both its previous constitutional experiences and its previous legal frameworks and traditions, and indicative of a post-revolutionary climate in which different political actors sought both to position themselves as the rightful inheritors of the 2011 revolution and, simultaneously, the rightful inheritors of Egypt’s modern heritage.

This story can be mapped onto another narrative – that of the post-revolutionary return of the ‘deep state’. As described above, and in Chapter 6’s juxtaposition of the 2012 and 2013 constitutions, the trajectory of the post-revolutionary period of 2011-2014, as mapped onto the successive constitutions, can be read as one in which the deep state re-asserts its power, after the brief and unprecedented 2012 experience in which the Muslim Brotherhood was – for the first time in Egypt’s experience of modernity – no longer the antagonistic force against the Egyptian

state. The shifting role of Al-Azhar in the successive constitutions is a prism through which to read the post-revolutionary power struggles because it demonstrates the way in which previous legal legacies and constitutional heritages were drawn upon and deployed by the successive drafters of the post-Mubarak constitutions to construct an order most conducive to their own interests.

The fact that the post-Mubarak constitutions became the terrain of a power struggle between the Muslim Brotherhood and the 'deep state' also means that other actors – namely, the civil society movements, social movements and (largely secularly-defined) activists, as well as religious minorities, became collateral in this power struggle, either through their formal exclusion or alienation from the constitution drafting processes and provisions of the constitutions or, as Hodda ElSadda has described, struggling to bring to the constitution drafting processes and final texts of the constitutions perspectives of those other than the successive ruling forces of either the Muslim Brotherhood (in 2012) or the 'deep state' (in 2013).

As well as a demonstration of the way in which the post-revolutionary constitutional texts were informed by Egypt's legal legacies and constitutional heritages, the analysis above provides an important counter-narrative to Hamid Dabashi's assertions in his work *The Arab Spring*, outlined in the Introduction of this work, that the 2011 revolutions were a kind of regional Year Zero that uprooted the entrenched political structures of the countries. There was, in reality, no Year Zero, as the constitutional texts themselves assert through the way in which they dynamically deploy aspects of Egypt's legal and constitutional past.

Instead, through the tumult of the 2011-2014 period, the 'deep state' remained resilient, however wounded and reconfigured in new realities. The 2011, 2012 and 2013 constitutions bear the marks of this reconfiguration, and the struggle between the deep state and its primary adversary, the Muslim Brotherhood.

Conclusion

Introduction

Egypt's three constitutions in three years were a remarkable, unprecedented experience for the country, both a product of and a signifier of the post-revolutionary political and social tumult. However, this was no 'Year Zero', and Hamid Dabashi's claims that the revolutions in the Middle East and North Africa region signified a totalising rupture with the past is erroneous; the constitutions demonstrate the traces of the past in the present, and how the post-2011 constitutional texts operate as 'legal mosaics' – literally formed of, and conceptually shaped by, Egypt's unique legal and constitutional heritages.

The preceding chapters demonstrate the ways in which the key actors and institutions, legal legacies and constitutional heritages influenced the content of the post-revolutionary constitutional texts. The three constitutional texts, as examined and contextualised in turn in Chapters 4, 5 and 6, can be seen as 'legal mosaics', in which Egypt's constitutional heritages and legal legacies from prior to 2011 exert a textual influence over the post 2011 constitutional texts.

As Part 2 demonstrated through the close textual analysis of each post-2011 constitution in turn, and Part 3 analysed as a whole, the pre-2011 constitutional heritages and legal legacies are like 'tiles' from which the post-2011 constitutions, the 'legal mosaics', are assembled. Moreover, the pre-2011 constitutional heritages and legal legacies are deployed in new and dynamic ways, and take on new meanings in the post-revolutionary context: phrases and concepts borrowed or carried forth from the pre-2011 legacies and heritages gained new connotations in light of the new political realities.

As such, as well as constituting 'legal mosaics', the 2011, 2012 and 2013 constitutions were also the terrain upon which post-revolutionary power struggles played out, and evidence of this struggle can be 'read' in the texts themselves.

The most striking example of the way in which Egypt's past legal legacies and constitutional heritages were deployed in the new post-revolutionary context is through the shifting wording, status, and significance of the historical Article 2. The texts of the 2011, 2012 and 2013 constitutions can thus be read as emanating from a wider 'cultural text', in the Kristevan sense, with the language, concepts and assertions of the post-revolutionary constitutional texts being built from – and containing evident residues of – the legacies and heritages in Egypt's wider cultural text, and its legal realm in particular.

The central research questions that were posed at the start of undertaking this work have been answered in the subsequent chapters. Namely, the key actors,

constitutional heritages and legal legacies of Egypt's post-revolutionary constitutions have been identified, outlined and analysed, and the constitutional texts have been read to reveal traces of these legacies and heritages embedded within them. The salient features of the 2011, 2012 and 2013 constitutions were outlined in turn in terms of their comparative delineation of the state-citizen relationship and the balance of power between the three branches of government. Furthermore, an insight emanating from this comparative study of the three texts is that one of the ways in which post-revolutionary power-struggles were enacted in the realm of constitutional law was by deploying these heritages and legacies in the new post-revolutionary context so that they took on new meanings, such as the use of the historical Article 2 in a period in which a Muslim Brotherhood-sympathetic party and President unprecedentedly held power in Egypt.

The cumulative picture built by this work

Egypt's constitutions can only be fully understood if we engage with them as 'legal mosaics', and the post-2011 revolutionary trajectory of Egypt can only be fully understood if we engage with the way in which the post-2011 constitutional texts became a terrain on which power struggles were played out – significantly, the power struggle between the historical antagonistic forces of the Muslim Brotherhood and the executive-military state, or political Islam versus secular authoritarianism. The preceding chapters of this work were deliberately structured in order to methodically and cumulatively build a picture of Egypt's constitutional and legal experience, and the order of the information presented was designed to lead the reader through this cumulative 'picture'. Part 1 gave the

reader the tools to understand the analysis to be presented in the second part of the work; Part 2 then analysed the post-2011 constitutional texts, while Part 3 contextualised them and compared them. Each Part of the thesis was necessary in order to lead the reader to the information presented in the following stage.

Part one of this thesis provided the necessary conceptual tools, information and frameworks through which to understand the post-2011 constitutional texts. Chapter 1 introduced the key actors and institutions that exert a historical and contemporary influence on Egypt's constitutional texts, particularly noting the central antagonistic dynamic between the Muslim Brotherhood and the state since Egypt's independence from European colonialism, and the shifting role of Al-Azhar within this. This dynamic is in turn situated within larger historical and ideological currents, namely the fraught and frequently oppositional dynamic between pan-Arabism on the one hand, and the subsequent emergence of political Islam on the other, in the Middle East and North Africa's post-colonial experiences.

Building upon this, Chapter 2 presented a chronological analysis of the successive constitutions of modern Egypt, and briefly contextualised each within the historical and political moment from which they emerged. Starting with the 1923 constitution, and going through the twentieth-century to the end of the Mubarak period, the successive constitutions of modern Egypt are a lens through which Egypt's modern political experience as a whole can be seen, from Nasser's pan-Arabism (with both the brief union with Syria under the United Arab Republic and the inclusion of socialist constitutional articles) to Sadat's 'opening' of Egypt to market forces, to Mubarak's attempts to shore up the power of the 'deep state', the

story of Egypt's successive constitutions throughout the twentieth century is in part a story of the most fundamental dynamic in modern Egyptian politics: that between the 'deep state' on the one hand, and the Muslim Brotherhood as an antagonistic force, outside the state but wielding significant social power.

Chapter 3 built upon both Chapter 1's outlining of key actors and institutions, and Chapter 2's chronological narration of the path of the successive constitutions of modern Egypt, by introducing the 'legal legacies' that became both residue and reference-point for the drafters of the post-2011 constitutions. The 'legal mosaics' of the three post-2011 constitutional texts are shaped by the legal legacies they inherited from Egypt's past: its legal inheritance of British colonialism, French colonialism, and pan-Arabism, and the inheritance of Islamic law and Islamic jurisprudence, and this body of law's relationship with the state.

Taken as a whole, the subject matters of these three chapters are like horizontal and vertical threads – some thematic, others chronological – that make up the broader 'cultural text' from which the post-revolutionary Egyptian constitutions of 2011, 2012 and 2013 were formed. It was therefore necessary to present this information first, so that Part 2 could take up the subject matter of the post-2011 constitutions and situate them in this wider context.

Part two of this work then turned to the post-revolutionary constitutions of Egypt, analysing each in turn in light of the background and conceptual framings of the first three chapters. Chapter 4 analysed the salient features of the 2011 interim constitution, whilst noting the particular qualities of interim constitutions – and

post-revolutionary interim constitutions in particular – as occupying a kind of liminality, between temporariness and permanence, in which their ‘interim’ nature is in tension with their qualities of ‘constitutionality’, when one of the qualities of a constitution is its (attempt at and assertion of) permanence.

Building upon this, Chapter 5 outlined the salient features of the 2012 constitutional text – the first attempt at a ‘permanent’ constitution in the post-revolutionary period, although one that proved short-lived and fraught. As outlined in Chapter 5, the 2012 constitution was a paradigm-shifting and unprecedented moment in Egyptian constitutional history, as the first text drafted by the actors and groups historically marginalised by the Egyptian state.

Despite its unprecedented nature, the 2012 constitutional text was significantly shaped by Egypt’s legal and constitutional past, with components of pre-2011 constitutional and legal heritages deployed in dynamic ways, due to the way in which the new political realities re-contextualised these legacies – most notably the historical Article 2 on the role of Islam in the state. The ‘constitutional crisis’ of late 2012 surrounding Morsi’s attempts to pass the constitution was similarly unprecedented in Egyptian political history, and effectively sealed Mohamed Morsi’s fate before his fall from power the following year.

Chapter 6 addressed the salient features of the 2013 constitution (which became Egypt’s constitution in 2014, following a referendum, as outlined in Chapter 6). As delineated in Chapter 6, the 2013 constitution can be seen both as a ‘post-revolutionary’ constitutional text that seeks to position itself as the final and

legitimate stage of the 2011 revolution, yet also – paradoxically, or at least antithetical to this position – represents in substantive terms the reassertion of the Egyptian ‘deep state’, and the entwining of the military and the executive, to the detriment of a full separation of powers between the branches of government and civilian oversight in military affairs. As with the 2012 constitution, the text of the 2013 constitution re-animated and deployed components of Egypt’s constitutional heritages and legal legacies in the new, post-revolutionary context.

Chapter 4, Chapter 5 and Chapter 6 thus delineated the salient features of the 2011 (interim), 2012 and 2013 constitutions, analysing the most significant features of the constitutions in terms of how they define the state-citizen relationship and the relationship between the three branches of government. Within this, the role of religion in the state, and the role of the military in the state, are necessarily foregrounded as the conceptual ‘sites’ at which the main struggles of the different antagonistic post-revolutionary forces sought to assert an order of the future state that would most suit their own interests and self-preservation.

Reading the three constitutions side-by-side in this manner is a way of reading the textual residue of the arc of the revolution – both of who held power at what moment during the tumultuous post-revolutionary period, and how those who held power positioned themselves vis-à-vis the 2011 revolution and envisaged Egypt’s future.

As the most conceptually sophisticated part of this work, Part 3, comprising of Chapter 7, then sought to weave the analysis of Parts 1 and Parts 2 together in

order to fully situate the post-revolutionary constitutions in their wider ‘cultural text’, tracing the legal legacies and constitutional heritages (outlined in Part 1) as they manifested in the post-revolutionary constitutions (outlined in Part 2). This textual comparison of the three post-revolutionary constitutional texts also comparatively highlighted the constitution-drafting processes of the post-revolutionary constitutional texts – of who held power in terms of being ‘at the table’ in which post-revolutionary constitutional moment – and demonstrated that the legal legacies and constitutional heritages outlined in Part 1 were deployed and re-manifested themselves in new and dynamic ways due to the new connotations this heritage took on in the new post-2011 political reality (or realities).

Taken together, the seven chapters present a narrative arc through the cumulative analysis. They demonstrate how the post-revolutionary constitutions became the terrain on which the political power-struggles of the post-revolutionary period played out, how the constitutional heritages and legal legacies of the pre-2011 era reconfigured in the new post-2011 political landscape, and how old dynamics – predominantly that of political Islam versus the state, and the ‘deep state’ – repeated themselves in a newly-charged manner as these divergent political forces struggled to ‘claim’ the 2011 revolution as their victory.

The story of ‘who was at the table’, and whose conception of the state was asserted at different points in the three post-revolutionary constitutions also tells a story in negative-image, of who was excluded. Voices of the young progressive activists who had spearheaded the revolution that overthrew Mubarak in 2011 were doubly sidelined – first from the 2012 constitution and then the 2013 constitution – as

collateral damage to the old dynamic of political Islam versus the deep state, which sucked the oxygen out of the political landscape, leaving no room for other civil society voices to meaningfully leave their mark on the constitutional texts.

2014-2015: a new stability? Sisi-style authoritarianism? Notes on a year without a new constitution

At the time of writing, the 2013 constitution continues to be the constitution of Egypt, and President Sisi continues to tighten his grip as Egypt's President, quashing both the Muslim Brotherhood and Islamists on the one hand, and progressive secular movements such as the 'Third Space' (the "neither Sisi nor the Brotherhood") movement and the April 6th Youth movement. For all the debates over how the revolutionary period should be demarcated, in 2015 we are clearly no longer in 'revolutionary' times. The 2013 constitution may thus well prove to be Egypt's new 'Permanent Constitution', just as Sadat's constitution held the highest legal textual authority in the country for a generation. The future of Sisi's Presidency will no doubt influence how the 2011-2013 constitution-drafting period is perceived.

To take a brief snapshot of how Sisi's Presidency has developed since we last encountered its beginnings in Chapter 6 – the first full year without a new constitution since 2011 entailed Sisi shoring up his power by clamping down primarily on the Muslim Brotherhood and other Islamists – first making them illegal and then declaring them a terrorist organisation – whilst more subtly

consolidating his rule against any attempts by those allied to or ideologically sympathetic to the ‘Third Square’ movement, through a protest law that severely restricted freedom of assembly (bringing an end to the mass demonstrations that had characterised the post-revolutionary period) and through the arrest of the leaders of the April 6th Youth Movement.²²⁸

Moreover, while the constitutional texts themselves have been the focus of analysis here, some analysts have argued that one of the most striking features of the period in which Sisi has been President is the extent to which the constitution has not been a meaningful check on Presidential power.²²⁹

Whatever the arguments on the ‘boundaries’ and temporal demarcations of the ‘end’ of the 2011 revolution, by 2015, Egypt is no longer in a ‘revolutionary’ state. Sisi is formally recognised as the leader of Egypt in the international arena; there are no mass protests against his rule and – aside from the agitated issue of Sinai, as a pre-existing contested periphery whose period inflammations have interlocked with the post-revolutionary events – he and his forces have control over the terrain of the country.

²²⁸ I have detailed Sisi’s attempts to further consolidate his power throughout the first year of his rule – aside from the 2013 constitution – in a series of articles and publications elsewhere, particularly on his use of the discourse of ‘security’ and ‘counter-terrorism’ to justify increasing power in his own hands and positioning himself as the sole legitimate ‘inheritor’ of the 2011 revolution. See, for instance, McRobie, Heather. ‘Egypt, Where ‘Human Rights’ Are a Threat To Security.’ *Al Araby Al Jadeed*, 26th August 2015. Available online at: <http://www.alaraby.co.uk/english/comment/2015/8/26/egypt-where-human-rights-are-a-threat-to-security> [accessed 27th August, 2015].

²²⁹ Walter Ambrust, Associate Professor of Modern Middle Eastern Studies, Oriental Institute, University of Oxford, in conversation with the author during Confirmation of Status assessment, Oxford, 2015.

Yet, although the argument holds as outlined in Chapter 6 that the 2013 constitution was a reassertion of the ‘deep state’, this does not mean that Sisi’s future is secured in the position he is attempting to (paradoxically) hold as both ‘inheritor of the 2011 revolution [that overthrew Mubarak]’ and ‘the new Mubarak.’ There are too many tensions in such a position. As a result, Brown and Dunne²³⁰, for instance, have argued not that Sisi will have his turn at Mubarak-style stability, longevity (and authoritarianism) but rather that any new uprising will be qualitatively different to that of the 2011 uprising that overthrew Mubarak. Brown and Dunne have advocated the case that future uprisings may also turn against the ‘deep state’, thus differentiating themselves from the 2011 uprising that – in retrospect – may be seen as having ‘only chopped off the head, not harmed the body’ of the deep state infrastructure. Thanassis Cambanis as similarly pinpointed 2015 as a potential moment of a future uprising, rather than the beginnings of Sisi’s long, stable, stifling, Mubarak-style rule.²³¹

Insights and contributions of this work

As a work of socio-legal scholarship, the preceding chapters contribute to a number of wider academic discussions and unresolved questions amongst socio-legal

²³⁰ Brown, Nathan J. and Michele Dunne. ‘Egypt’s Judges Join In’. *Foreign Affairs*, April 2nd 2014. Available online at: <http://carnegieendowment.org/2014/04/02/egypt-s-judges-join-in> [accessed March 24th, 2015].

²³¹ See: Cambanis, Thanassis. ‘The Egyptian Revolution, Four Years Later.’ *The Atlantic*, January 16th 2015. Available online at: <http://www.theatlantic.com/international/archive/2015/01/the-egyptian-revolution-four-years-later/384593/> [accessed March 22nd, 2015].

theorists and scholars of contemporary Egypt alike. The contribution a work makes to the scholarship of others' of course always depends in part upon the focus and remit of the work of the reader; this is particularly so in studies such as the work of the preceding chapters, which 'speaks to' different disciplines and subject-areas – that is, both to those concerned with constitutions as a terrain of research, and those interested in contemporary Egypt (and the contemporary Middle East and North Africa region since the 2011 uprisings).

Primarily then, the work of the preceding chapters contributes to the academic body of work on Egypt's post-revolutionary period, and the role of the post-revolutionary constitutions within this. As this study has charted, the post-revolutionary constitutions were integral to the unprecedentedly tumultuous political events in Egypt of 2011-2014, and became the terrain on which the power-struggles between antagonistic and oppositional political actors were played out.

Further to this, the study contributed to the wider scholarship of both post-2011 Egypt and (socio-legal) approaches to constitutions by the way in which it has contextualised the post-revolutionary constitutional texts of Egypt, situating them within their wider 'cultural text', and tracing the ways in which Egypt's pre-2011 constitutional heritages and legal legacies shape, and are manifested in, the post-2011 constitutional texts.

The work also contributes to socio-legal scholarship in a broader sense, by engaging with and developing conceptual frameworks and approaches within the socio-legal academic canon. As outlined in the Introduction of this work, socio-

legal scholarship has provided a number of rich inroads in terms of ways of approaching constitutions and conceptually 'handling' them as both legal texts and products of their socio-historical context.

The findings of this study contribute to this wider academic conversation firstly by engaging with material which, due to its near-contemporaneous nature, has not yet been extensively analysed by socio-legal scholars: this work places the three post-revolutionary Egyptian constitutions 'on the table' as subject matter for socio-legal research, and as such provides a new 'site' of analysis to socio-legal scholars who are interested in constitutions.

Secondly, this study contributes to the wider endeavour and academic conversation of socio-legal scholarship by introducing new concepts, which can be extrapolated from the context in which they are presented here – on the post-revolutionary constitutional texts of Egypt – and utilised in further analysis for other constitutional texts and constitutional experiences.

In particular, the idea of 'legal mosaics' developed in this study to articulate the way in which the pre-revolutionary constitutions and bodies of law were drawn upon (and re-constellated, in the new post-revolutionary political realities) is a new concept that could provide socio-legal scholars concerned with different constitutional texts with a new in-road into exploring how successive constitutions are formed and 'speak to' each other.

This idea of constitutions as intertextual subjects that contain within them the echoes of previous texts, and the residue of previous political realities and dynamics alongside elements of the 'new' political order (in this example, residues of changes in Egypt resulting from the 2011 revolution, such as the rallying cry for 'karama'), is an innovative approach to constitutions and a potential inroad into new insights about constitutions in any nation/state that has had more than one constitution.

Thirdly, the work presented here has also brought both new material and new insights into areas of interest to socio-legal studies even when this was not the main focus of the work – a number of issues have been touched upon in passing that provide insights of relevance to socio-legal scholars concerned with constitutions, how they are formed, and how they work. In particular, the analysis of the 2011 interim constitution highlights the particular, liminal nature of 'interim' constitutions, and the tensions within these texts that seek to be both 'constitutional' and 'temporary', which strains the socio-legal understandings of a constitution's stated attempt at permanence.

In a more focused manner, the findings of this study also contribute to the academic conversation of legal and socio-legal theorists who have taken Egypt's legal and constitutional world as their subject matter. As outlined in the Introduction and throughout the Chapters, the work undertaken here builds upon and is influenced by the scholarship of Lombardi and Brown in particular, as scholars who engage with the Egyptian constitutional and legal sphere. Whilst heavily indebted to their insights and conceptual frameworks in many respects,

this work also adds a new element to the body of work produced by Lombardi, Brown and other (socio-)legal scholars of Egypt by methodically charting the progression of the three post-2011 constitutional texts, and providing a comparative analysis of the three.

Given the near-contemporaneous nature of this thesis and the events and constitutions it analyses, (socio-)legal scholars working on Egypt have not yet published comparative academic analysis of the three post-2011 constitutional texts. I anticipate and look forward to future publications by Nathan Brown in particular²³², in which he may present his own comparative socio-legal study of the three post-2011 constitutional texts.

Lastly, there are insights presented in this work that speak to different bodies of scholarship – both asking different questions and finding different answers – than the academic conversation of socio-legal scholarship. The insights of this study – particularly in terms of how the post-revolutionary constitutional texts were a terrain on which the power-struggles of the tumultuous post-revolutionary period were enacted – contribute to the emerging scholarship on the dynamics of Egypt's post-2011 period among historians, political scientists, sociologists,

²³² This is not to in any way diminish Brown's academic endeavours, as his output of nuanced and critical analysis of the legal and constitutional facets of the post-revolutionary period since 2011 – in all its twists and turns – has been remarkably prodigious. Brown's analysis of the judiciary, Al-Azhar, and the role of shari'a have all been enormously useful and formative to my own understanding of Egypt's legal and constitutional realities. Brown has not, at the time of writing, published a comparative analysis of the post-revolutionary constitutional texts, and I look forward to reading any future analysis by him on this in order to further develop my own understanding of the post-2011 constitutional texts and how they may be approached and understood.

anthropologists and other scholars focused on contemporary Egypt and the events and aftermath of the 2011 revolution. As noted in the Introduction and throughout the chapters, a body of academic scholarship on the 2011 Egyptian revolution and its aftermath is now rapidly emerging, and the insights of this study contribute to this 'new' conversation, as scholars of a variety of disciplines seek to make sense of the nature and significance of the 2011 revolution and its aftermath.

Limitations of this study

The work undertaken for this thesis was limited in a number of significant ways, primarily related to the near-contemporaneous nature of the subject-matter, and the various practical and conceptual obstacles posed by conducting research in Egypt during the tumultuous period of 2011-2014. Other limitations stem from the necessary trade-offs of emphasis, where certain elements had to be sacrificed as units of analysis in order to fully engage with other factors.

This work is necessarily only a snapshot of the post-revolutionary period, and the role of the post-2011 constitutions within this. The focus on tracing the legal legacies and constitutional heritages from the pre-2011 period in the post-2011 constitutions – whilst justified by the work undertaken here, and yielding the innovative concept of constitutions as 'legal mosaics' – entailed sacrificing other lenses through which the post-2011 constitutional texts might be approached. For instance, another scholar may have approached the same texts by reading the constitutions primarily as 'products of their moment' without the same level of reference to the pre-2011 heritages that shaped them (however, this thesis has

presented the case that the post-2011 constitutional texts are most fully understood if they are situated within the historical arc – for instance, can you really understand Article 2 of the 2011, 2012 and 2013 constitutions without anchoring it Article 2’s historical role and the historical ‘moment’ of the 1971 Constitution and what this moment meant for Egyptians?). A number of other limitations of this work are outlined below, taking empirical limitations, limitations of variables, and limitations of language in turn.

Empirical limitations

This study charts a historical period, and the ‘journey’ of Egypt’s post-revolutionary constitutions, but the work itself had its own ‘journey’, as intended methodological approaches were no longer suitable as events developed in the 2011-2014 period. As a result, the original intention to substantiate the analysis through extensive semi-structured formal interviews with key actors in the constitution-drafting process, including the constitution-drafters themselves, was no longer viable, and the study undertaken here became increasingly ‘textual’ as the project developed, and I focused my attention on close textual reading of the post-revolutionary constitutions.

As outlined in the Introduction, the practical obstacles in undertaking fieldwork, particularly after the fall of Mohamed Morsi and the imposition of a curfew in late 2013 (in addition to a broader cultural-political climate that made academic research on the post-revolutionary period increasingly difficult and risky) led me to rework this study to lean more on media sources as well as the project of engaging closely with the constitutional texts, and situating them in the longer

threads of their constitutional heritages and legal legacies. The constitution drafters themselves were particularly elusive after 2013 (with the exception of Hodda ElSadda as a ‘dissenting’, progressive feminist voice in the 2013 constitution-drafting process²³³), and I was aware of the asymmetry this created in terms of sources, as I had more extensive interview material on the drafting and context of the 2012 constitution.

Moreover, when I was able to successfully interview officials in connection with the constitution-drafting processes, the near-contemporaneous nature of the events (in addition to my own positionality as someone with my identity, background, incomplete access-points to potential interviewees and so forth) meant that the interviews rarely yielded insights beyond the ‘official line’. At times it was clearly outright propaganda that diverged from the reality, such as Freedom and Justice Party/ Muslim Brotherhood statements on the ‘inclusivity’ of 2012 constitution-drafting process that did not match up to the complaints, outlined in Chapter 5, of representatives of the Coptic community, or other minority and secular voices who felt increasingly excluded from the 2012 constitution-drafting process. (As noted elsewhere, the official Muslim Brotherhood emphasis on the ‘inclusivity’ of the 2012 constitution-drafting process seemed a self-conscious attempt to gain the

²³³ ElSadda, Hodda. ‘Article 11: feminists negotiating power in Egypt’. *openDemocracy*, 5th January 2015. Available online at: <https://opendemocracy.net/5050/hoda-elsadda/article-11-feminists-negotiating-power-in-egypt> [accessed January 16th, 2015]. As noted in Chapter 7 of this study, in this article, ElSadda describes the way in which members of the 2013 constitution drafting committee who identified as secular progressives, such as those aligned with the ‘Third Square’ movement, attempted to make themselves heard in the 2013 constitution-drafting process, particularly on the issue of women’s rights and gender equality.

same kind of legitimacy for the 2012 constitution as Sadat acquired by similarly emphasising the inclusivity of the 1971 constitution-drafting process).

Perhaps ironically, my access was predominantly with groups and actors who were increasingly marginalised from successive constitution drafting processes – for instance, the April 6th Youth Movement-affiliated student groups in Cairo who, although they spearheaded the revolution that overthrew Mubarak, were soon sidelined. The story of the preceding Chapters, particularly Parts 2 and 3, also tell the story of this sidelining, first as the Muslim Brotherhood dominated the 2012 constitution-drafting process, and then with the reassertion of the (militaristic) ‘deep state’ in the 2013 constitution.

Limitations of variables

In addition to the empirical limitations – and the potentials for future research that they yield for socio-legal scholarship – the work of the preceding chapters was limited by the variables that were isolated for the analysis of the constitutions. In particular, the constitutions were assessed for the ‘salient features’ particularly in regards to how they delineated the state-citizen relationship and the three branches of government (with the corollary, in the second case, of how this impacts upon the relationship between the government and the military, and the extent of civilian oversight of the military).

Similarly, as a way to focus the analysis, Chapter 3 isolated several main ‘threads’ to trace from the pre-2011 constitutional past of Egypt to its post-2011 present: namely, the British colonial influence, the French colonial influence, the pan-

Arabist influence (which is historically ideologically intertwined with socialism, thus having a particular dynamic with the division between economic, social and cultural rights on the one hand and civil and political rights on the other) and Islamic jurisprudence or 'fiqh'. The preceding chapters have demonstrated the particular relevance of these legal legacies in particular as being constitutive parts of the 'legal mosaics' that form the post-2011 constitutional texts of Egypt.

However, it is important to acknowledge that there were other 'threads' that could have been drawn upon, and other facets that could have been pinned down in order to perform the comparative analysis from a different perspective. As noted elsewhere, one particularly interesting academic conversation within contemporary socio-legal scholarship is the idea of 'transnational borrowing' and 'constitutional diffusion', as analysed by Versteeg and others. Such 'borrowings' from the constitutions of other countries likely are tributaries that fed into the constitution-drafting processes of the post-revolutionary constitutions of Egypt, and merit their own analysis.

Moreover, even outside of the country-comparative element, this work has told the story of how Egypt's own constitutional and legal past influences the post-2011 constitutional text; there are certainly other threads within the textual tapestries of the post-2011 constitutional texts that could be 'pulled out' for analysis, such as whether the language of particular groups lobbying the constitution-drafters emanated into the final texts of the post-revolutionary constitutions: as noted in Chapter 4 and 5, for instance, the demands and framings of revolutionary groups such as the April 6th Youth Movement were largely absent from the post-

revolutionary constitutional texts, something that those who spearheaded the 2011 uprising against Mubarak noted and condemned with each post-revolutionary constitution.

Limitations of language

A third central limitation of this work, related to the limitations of variables outlined above, is that of language. As discussed in the Introduction of this work, authorial choices were necessary in order to handle the conceptual material of the revolutionary and post-revolutionary period, from whether to refer to the regional events of 2011 as an 'uprising', 'spring', 'awakening' or 'revolution', and how to boundary, in temporal terms, the 'revolutionary' period – as two revolutions (with the Tamarod movement and ousting of Morsi as a 'second', restorative revolution), as a single revolution that remained 'revolutionary' only until Morsi's election, or a single revolution that remained 'revolutionary' until Mansour or Sisi's Presidency. Not all of the contested language has been thoroughly interrogated and smoothed over throughout this study for the simple reason that there were at times no 'neutral' terms that could be used.

Live and loaded debates continue to be played out on the terrain of terminology and discourse for referring to the 2011-2014 revolutionary and post-revolutionary period. For instance, it has become commonplace for pro-government media and official government statements to refer to the period of February 2011-August 2013 as 'the revolutionary period', which aligns the removal of Mohamed Morsi in 2013 with the original overthrow of Mubarak in 2011, thus conferring legitimacy

on Sisi's regime as the 'defender of the revolution' (defending it – it is implied – from political Islam and the enemy-of-the-state Muslim Brotherhood).

Potential avenues for future research

The scope and remit of this study necessarily leaves a number of areas which have been touched upon but not fully explored, and further questions for future research emerge with the generation of the new information and insights that have been presented here. These will now be briefly outlined in turn, although there are certainly more potential areas for future research emanating from the preceding chapters than the ones outlined below.

Firstly, as noted above, in the outlining of the insights of this work, the preceding chapters presented a number of new ideas and concepts, which could be extrapolated from the context they have been presented in here (of Egypt's post-2011 constitutional texts) and applied to other constitutional experiences. The idea of 'legal mosaics' – reading constitutions as intertextual bodies that contain within them references to the country's own constitutional and legal past – was a concept I developed to best describe what I believed I was witnessing when examining the 2011, 2012 and 2013 constitutions of Egypt. This concept of 'legal mosaics' offers a new lens through which socio-legal theorists can approach other constitutions, at least in nations and states that have had more than one constitution.

Versteeg's work on constitutional borrowing has looked at the cross-pollination of constitutional framings, phrases and structures between countries, and interesting scholarship continues to be generated on this topic. 'Legal mosaics' as a concept for socio-legal scholars could similarly produce future research projects by mapping – not borrowing *between* countries, as Versteeg and others have done – but 'borrowings' in more recent constitutions from the earlier constitutions of the same nation/state. Within this, the salient part of the 'story' that this borrowing tells us is why certain parts of the legal and constitutional past are 'kept' when a new constitution is written, whilst others are shed and cast aside in favour of new constitutional articles.

Relatedly, the idea taken as a starting-point for the socio-legal analysis of the preceding chapters – that Kristeva's ideas of the 'cultural text' can be used to approach constitutions – provides potentialities for future research in socio-legal scholarship for scholars wishing to approach other constitutions in this vein.

In addition to the concept of 'legal mosaics' that I have sought to pioneer in this work, and Kristeva's idea of 'cultural texts' which I have used as a starting-point for my approach to constitutions, this study has highlighted an area which other socio-legal scholars have in some ways addressed, but which remains rather under-examined within socio-legal scholarship: the salient features of 'interim constitutions.' As Chapter 4 demonstrated, interim constitutions are under-studied within the socio-legal scholarship on constitutions, and strain the typological definitions of 'constitutions' as understood by socio-legal scholars.

At the time of writing, Caitlin Goss has recently completed a study at the Centre for Socio-Legal Studies at Oxford University that advances a typology of interim constitutions and maps their relationship to the durability of final constitutions.²³⁴ Chapter 4's analysis of the 2011 interim constitution provides raw material for future research by socio-legal scholars wishing to engage with interim constitutions as a category of research.

This study has dissected three texts in detail: the 2011, 2012 and 2013 constitutions of Egypt. My ways of approaching these texts is necessarily not exhaustive, and there are many potentially fruitful avenues of future research that would involve taking the same 'terrain' of the three post-revolutionary constitutional texts, and approaching them with different lenses.

As outlined above and in the Introduction, socio-legal studies as a discipline provides a varied conceptual toolkit for scholars wishing to critically engage with constitutions – whether it is by reading constitutions as 'mission statements' as Jeff King has argued, or as Rosenfeld has developed, assertions of shared identity.

There are many avenues for possible future research in approach the same three texts as have been taken here, and isolating different variables or aspects – focusing on the preambles, for example, or analysing the relative frequency of certain words – which would yield further insights into the salient features of the three post-revolutionary constitutional texts.

²³⁴ Conversation between Caitlin Goss and the author, Oxford, 2015. Goss has also presented her research at a conference the author attended: *The Science of Constitutions: Measures of Success and Failure*, Foundation for Law, Justice and Society, University of Oxford, June 1st-2nd 2015.

In addition to the potential avenues for future research in comparing the same three constitutional texts again but approaching them with different lenses and emphases, there are many potential avenues for future research in broadening the scope of the comparative project undertaken here. A third potential avenue for future scholarship emanating from the work presented here – and one which I explored on the journey of researching this work, but which is not evident in the final presentation of the research here – is a comparative study encompassing both the post-revolutionary constitutional texts and other constitutional texts.

In the work presented in the preceding chapters, three constitutional texts were the focus of comparative analysis; future work could place other constitutional texts ‘on the table’ alongside these to yield further insights into the salient features of the constitutions at hand – which would in turn contribute to our wider socio-legal understanding of the nature of constitutions as a whole.

The project undertaken here was originally devised with a cross-country comparative element in mind, which would place the post-revolutionary constitutions of post-2011 Egypt alongside the post-revolutionary constitutions of Tunisia, Libya and Iceland. (The three additional cases were chosen for the variables that could be isolated through the comparison, notably Libya’s singular 2011 experience of both revolution and armed conflict, and Iceland’s experience of a near-contemporaneous ‘revolution’²³⁵ with the so-called ‘Kitchenware

²³⁵ In my readings on Iceland’s post-2010 constitutional experiences in preparation for a comparative study between Egypt’s and Iceland’s recent constitutional

Revolution' of 2009 in starkly different social, (geo-)political, regional and economic circumstances to the revolutions of the Arab world in 2011).

In the end, this cross-country comparative element was not a sustainable project to undertake at the time for a number of reasons. Firstly, Egypt's unprecedented and striking experience of 'three constitutions in three years' demanded a high level of focus both to keep apace of events and to grant it the level of analytical attention it required, which left no space for the study of other near-contemporary post-revolutionary constitutions. Furthermore, the disintegration of Libya's attempt to draft and pass a final constitution²³⁶ – which disintegrated in tandem with Libya's

experiences, I found Thorvaldur Gylfason's account of his experiences as a member of the committee elected by the public and appointed by parliament to re-write the constitution very helpful. He discusses both the way in which the initial optimism of the 'Kitchenware Revolution' gave way to what could also be read as a 'return of the deep state' inasmuch as the conservative parties and industrial lobbying groups worked to undermine the so-called 'crowd-sourced constitution' – Iceland's innovative and inclusive post-2010 constitution-drafting process – as the content of the constitution, particularly in terms of Articles relating to the right to a clean environment, did not serve the interests of these groups. The near-contemporaneous nature of Egypt and Iceland's constitutional experiences, contrasted with their vastly different contexts of both demographics and economics – and the striking difference between Iceland's highly innovative and inclusive attempted constitution-drafting process in 2011-2012 on the one hand, and Egypt's strikingly closed and alienating constitution-drafting processes 2011-2013 – would make a comparative study of Iceland's and Egypt's constitution-drafting processes since 2010 highly compelling and likely to yield significant insights. See: Gylfason, Thorvaldur. 'Democracy on Ice: A Post-Mortem of the Icelandic Constitution.' *openDemocracy*, June 19th 2013. Available online at: <https://opendemocracy.net/can-europe-make-it/thorvaldur-gylfason/democracy-on-ice-post-mortem-of-icelandic-constitution> [accessed January 15th 2014].

²³⁶ Libya's unique and fractured experience since the 2011 uprisings is of course more complicated than can be outlined here. (I have written on this topic elsewhere in forthcoming publications analysing the trajectories of post-2011 transitional justice in Tunisia, Libya and Egypt, and the role of constitution-drafting within this process). In brief summary, Libya's 'interim constitutional declaration' – not even, exactly, entitled as a 'constitution' – drafted by the National Transitional Council (NTC) in 2011 before the NTC even had full control over the country in the

post-2011 attempts at state-building – meant that, at the time of writing, Libya did not have a final constitutional text that could be set alongside the final post-revolutionary constitutions of Egypt and Tunisia for the purposes of analysis.

There is rich future work to be undertaken in particular on the ‘wave’ of post-2011 constitutions, comparative to other historical constitutional ‘waves’ such as post-1989 in Eastern Europe. Whilst socio-legal scholars have already begun to analyse the 2011 ‘moment’ legally in terms of the developments in transitional justice²³⁷, there has so far not been a comprehensive socio-legal work on the constitutions that emerged from the 2011 uprisings in the Middle East and North Africa.

aftermath of the armed conflict of 2011, was only ever intended as an interim constitution. The constitutional declaration of 2011 somewhat optimistically scheduled the drafting of the permanent constitution for the following year; yet four years after the revolution the ‘interim constitutional declaration’ remains the current supreme law of Libya, even as the country continues to fracture to the point that – in 2015 – two separate governments, in Tripoli and Tobruk respectively – both claim sole legitimacy to govern the country. The significance of Libya’s failure to draft a final constitution – and how this works in tandem with its broader failures to deliver meaningful transitional justice, from the botched and misguided Political Isolation Law (2013) and Transitional Justice Law (2013) – is an important story of the aftermath of the 2011 uprisings. Perhaps most strikingly, it speaks to the dangers of attempting a ‘transition’ – or ‘state building’ – without prioritising constitution-drafting within this. Whilst this topic is broader than can be examined here, the relevant point is that Libya’s lack of a final constitution at the time of writing means that a comparison of the final post-revolutionary constitutions of Libya, Tunisia and Egypt is not currently possible. However, an analysis of how and why Libya, Tunisia and Egypt’s post-revolutionary constitutional trajectories unfolded as they did is surely needed. Conversations between the author and Felix Anselm van Lier, a researcher at the Centre for Socio-Legal Studies in Oxford who is researching on Libya’s constitution-drafting experience, have been helpful throughout this research. For a further outline of Libya’s constitution-drafting experiences since 2011, see, for instance: Hammady, O. Omar Ould Dedde and Michael Meyer Resende. ‘Saving Libya’s Constitution Making Body’. *Carnegie Endowment for International Peace*. December 18th, 2014. Available online at: <http://carnegieendowment.org/sada/?fa=57565> [accessed January 24th, 2015].

²³⁷ Fisher and Stewart (eds). *Transitional Justice and the Arab Spring*. Introduction.

Within this, there is interesting scope for future scholarship in contrasting the post-revolutionary constitutions that emerged from 2011 uprisings with focus on the linguistic choices of the post-revolutionary constitution drafters of the different countries that experienced revolutions in 2011. For instance, as noted elsewhere, the use of the word 'karama' in the 2011 uprisings provides the most striking example of a way to trace the 'language of the revolution' in terms of the popular street protests of 2011 into the 'language of the institutions'. And, in turn, this provides insight into whether or not the voices of civil society that struggled to make themselves heard during the 2011 uprisings were able to have a place at the table in the post-revolutionary order. The use of 'karama' (dignity) in Tunisia's transitional justice initiative 'The Truth and Dignity Commission'—a formal mechanism enshrined in Tunisia's constitution²³⁸ – highlights how the language of the 2011 uprisings have filtered through into the post-2011 political order (which could in turn – with some significant qualifications and caveats – be used as a marker of the 'success' of the 2011 uprisings). A point of potential future research, therefore, would be to map the extent to which the post-revolutionary constitutions of Middle East and North African countries that experienced uprisings

²³⁸ I have written elsewhere on the formal mechanisms of Tunisia's post-2011 transitional justice process, particularly the way in which the use of the word 'karama' – 'dignity' – for formal transitional justice processes shows the way in which these post-2011 transitional justice processes are shaped by the language and concepts of the 2011 uprisings, and the demands of self-identifying revolutionaries in 2011. McRobie, Heather. 'Will Tunisia's Truth and Dignity Commission Heal the Wounds of the Authoritarian Past?' *Oxford Human Rights Hub*, February 20th 2015. Available online at: <http://ohrh.law.ox.ac.uk/will-tunisia-truth-and-dignity-commission-heal-the-wounds-of-the-authoritarian-past/> [accessed March 15th, 2015].

in 2011 have used the language and concepts of that were used by self-identifying revolutionaries during the 2010-2011 uprising or 'Arab spring.'

Aside from future comparative research to be undertaken, to return to the Egyptian context, there are numerous potential areas for expansion in the work presented in the preceding chapters that could focus on the drafting processes of the 2011, 2012 and 2013 constitutions rather than the final texts. As noted in the Introduction, the work presented here was initially inspired in part by Hassen Ebrahim's study of constitution-making in transitional and post-apartheid South Africa, *The Soul of a Nation*, with its extensive documentation of the deliberations in the constitution-drafting processes. The analysis presented in the preceding chapters of this study became increasingly 'textual' and less focused on procedures of constitution-drafting for the reasons already stated. But such a study may be possible in the near future, and could be constructed by drawing upon, for instance, Jon Elster's (1995) study of forces and mechanisms in the constitution-making process to create a detailed map of the internal dynamics of the constitution-drafting committees and influencing actors. An academic endeavour of this nature would only be feasible in Egypt if the researcher conducted the fieldwork in more favourable circumstances than 2011-2014, and thus would be able to get information from all the relevant actors in the 2011, 2012 and 2013 constitution-drafting processes.

Similarly, a related project to the endeavour undertaken in this thesis, but one which I was not able to fully explore due to the limitations of both space and my positionality as a researcher is the project of methodically mapping the relevant

actors, groups and associations that were formally and informally lobbying the constitution-drafting committees of the 2011, 2012, and 2013 constitutions, and analysing the extent to which the demands of these 'outside' groups had influence on the constitution-drafting processes in each case, particularly in terms of substantive articles adopted by the successive constitution-drafting bodies.

Further research on this subject would further highlight the influencing factors of the post-revolutionary constitutional texts, and could be conducted at a time when academic research in Egypt is given freer rein in order to interview all the relevant actors of the constitution-drafting processes, 2011-2014 (a project which is possible at the time of writing due to the problems noted earlier related to academics who make contact with the Muslim Brotherhood). This is a legitimate – but separate – endeavour to the one I have undertaken here, and one that would enrich our understanding of the constitutions produced in the post-2011 period.

In addition to the potentialities for future research in re-treading the ground of the post-revolutionary constitutions informed by interviews with different relevant actors, there is another striking area of future research that relates to the endeavour presented here: approaching the post-revolutionary constitutional texts again, whilst situating the constitution-drafting and constitutional texts in the context of transitional justice. As noted elsewhere, there is a developing body of scholarship on 'post 2011 transitional justice' which touches upon the constitution-drafting processes and post-2011 constitutional texts, particularly if we position constitutions as a (potential) part of transitional justice.

Bringing the post-revolutionary constitutional texts into a larger portrait of 2011 as another ‘wave’ of transitional justice, or part of a ‘justice cascade’ in Lutz and Sikkink’s conception, would tell a different story with the material presented in the previous chapters: not of the relationship between Egypt’s constitutional present (and near-present) and its constitutional and legal past, but rather the relationship between Egypt’s constitutional present and broader – regional, international and temporal – shifts in transitional justice, of which constitution-writing can be seen (as noted in the Introduction in reference to South Africa) as a constituent element.

Relatedly, there are possibilities for future research that build upon the analysis of the post-revolutionary Egyptian constitutions presented here that situates the post-revolutionary constitution-making in a broader context of post-revolutionary *law*-making. Aside from the three constitutions themselves, and the unprecedented period of constitution-drafting that has occurred in Egypt since 2011, there have been other – related, but non-constitutional – developments in the judicial sphere. As noted in the introduction, the trial of Mubarak, and his later *de facto* acquittal²³⁹, and the trial of former President Morsi, are a symbolically and substantively significant part of the socio-legal tapestry of the post-revolutionary period, and could be analysed in parallel with the analysis presented in the previous chapters

²³⁹ I have written a short focused analysis on the significance of Mubarak’s trial and then *de facto* acquittal (after the case against him was dismissed on a technicality in late 2014) elsewhere, as it is beyond the remit of this work to fully outline the ways in which his acquittal was significant not only for the trajectory of the 2011 revolution and its aftermath but also for the Egyptian judiciary and the ways in which it operated in response to, and in dynamic with, the successive post-revolutionary powers after 2011. See: McRobie, Heather. ‘Six Things the Mubarak Trial Means for Egypt and the Revolution.’ *Novara Media Wire*, 1st December 2014. Available online at: <http://wire.novamedia.com/2014/12/6-things-the-mubarak-trial-means-for-egypt-and-the-revolution/> [accessed March 15th, 2015].

of this work, placing the judicial decisions and arguments alongside shifting voices and powers behind the successive constitutions.

Similarly, the exponential increase in the use of military trials for civilians throughout the 2011-2014 period is a striking component of the boundaries of the judicial sphere since Mubarak, and there are many potentials for future research in mapping the increase of military trials against the remit, in the successive post-revolutionary constitutions, given to the military in judicial matters.

Lastly, as noted elsewhere, Nathan J Brown's scholarship prior to the 2011 revolution documented the legal implications of demographic shifts in the judiciary in the late Mubarak period, particularly the increase of activist judges pushing against Mubarak's leadership in the last half decade of this regime, and there are avenues for future research to be done in mapping the differences between the make-up, outlook and societal strength of the judiciary in the post-2011 period, versus the late Mubarak period that Brown has already studied. This kind of socio-legal scholarship would also have implications for the question of how much strength the judiciary has to enforce the post-revolutionary constitutional texts, however much power the judiciary is formally granted in the constitutional texts themselves.

The wider context beyond this study

The wider context to which this study of the post-2011 constitutions has been 'pinned' is necessarily wider than has been fully conveyed in the work presented

here. The preceding chapters situated the constitutions in their wider ‘cultural text’ in the Kristevan sense – but it is always possible to sketch the ‘cultural text’ more thickly, and key issues have largely been made invisible in the study presented here as they do not leave ‘residue’ in the constitution-drafting process, and yet are central to understanding Egypt’s social and political realities 2011-2014. As such, although in my research and readings I have familiarised myself with these key issues, they have not been foregrounded in this thesis. One of the most striking contemporary issues is that of the (ongoing, at the time of writing) insurgency in Sinai, and the Bedouin-jihadist-military state triangulation²⁴⁰. The political violence in Sinai, and the discourse of the state in response to it, is a central component in understanding both the state-citizen relationship and the way in which the state has (both in the pre-2011 period of Nasser, Sadat and Mubarak and now again under Sisi) sought to consolidate its power by closely entwining itself with the military.

Relatedly, the discourse of ‘terrorism’ as applied to the Muslim Brotherhood since the removal of Morsi from office in 2013 has been noted in Part 2 of this work – but the rise of ISIS/Daesh²⁴¹ in Egypt, and the state’s response to this political violence,

²⁴⁰ I have explored in other articles the ways in which the overthrow of Mubarak and the 2011 revolution shifted the pre-existing dynamic between the central state and the neglected and marginalised Bedouin in Sinai. See, for instance, McRobie, Heather. ‘Egypt’s Sahara and the Arab Spring: an Unquiet Desert.’ *La Repubblica/Limes geopolitical magazine, republished in New Left Project*. 13th April 2013. Available online at: http://www.newleftproject.org/index.php/site/article_comments/egypts_sahara_and_the_arab_spring_an_unquiet_desert [accessed January 14th, 2015].

²⁴¹ This is not an attempt to enter into the contemporary debate over terminology, of how the self-defining ‘Islamic State’ should be referred to in English, as ISIS, ISIL or Daesh.

has not been part of the scope of this work despite the fact it is – at the time of writing – a significant development in post-revolutionary Egypt, for simple reason that ISIS/Daesh rose to regional prominence in 2014, after the 2013 constitution had been drafted and passed the January 2014 referendum, and as such this development did not leave any ‘residue’ in the constitutional texts that have been analysed here.

Thirdly, as was briefly noted at various points in Part 2, the backdrop to the 2011-2014 period analysed in the preceding chapters was a stark economic reality, as the revolution shook Egypt’s economy and inflation sky-rocketed. The pressure on Morsi by the IMF in 2012-2013, in particular, was part of the reason for his decline in popularity even as he alienated many citizens with his miscalculated ‘Presidential decree’ during the December 2012 constitutional crisis. Egypt’s economic realities were not a ‘constitutional’ issue per se, but did thread into the arc of the successive post-revolutionary constitutions: for instance, as noted in Chapter 6, one of the explanations proffered by analysts for the high percentage of ‘yes’ voters for the January 2014 constitutional referendum was that voters hoped that the passing of the constitution would restore a ‘normality’ to Egypt, particularly in the immediate sense of preventing further shocks to the country’s economy.

Fourthly, the immediate wider context of this study, and one which underpins the ‘story’ of Part 2 of the successive post-revolutionary constitutions, is the 2011 uprising that ousted Mubarak – why it occurred, what the aims of the revolutionaries were, and how its nature shaped what came next. Chapter 4

synthesised the main academic and journalistic narratives of the 2011 uprising, but there is a fast-growing body of academic literature on the myriad facets of the 2011 revolution.

In particular, one of the wider factors that underpinned the period were the dynamics of social movements – whilst this has threaded throughout the analysis of the preceding chapters, from the youth movements of 2011 to the Tamarod movement to the historical and contemporary structure and mobilising abilities of the Muslim Brotherhood, there are a number of other social movements that complete the picture of group activity and mobilisation in contemporary Egypt, but which were not mentioned in the preceding chapters as their existence left no ‘residue’ in the post-revolutionary constitutional texts. For instance, scholars looking at both social movements and political violence in revolutionary and post-revolutionary Egypt have highlighted the socio-political role of football violence and Ultras²⁴² both as an identity and as a politicised use of occupying and mobilising in public space.

Fifthly, an issue which partially surfaced in the comparative analysis of the three post-revolutionary constitutional texts, but which has a wider context and historical legacy is that of minorities in Egypt. Chapters 4, 5 and 6 of this work

²⁴² For a thoughtful exploration, from a gendered perspective, on the role of football-related violence and identity and its relationship with the mass protests and identity-reformulation of the post-2011 period, see: Chakravarti, Leila Zaki. ‘Performing Masculinity: the Football Ultras in Post-Revolutionary Egypt.’ *openDemocracy*. Available online at: <https://opendemocracy.net/5050/leila-zaki-chakravarti/performing-masculinity-football-ultras-in-post-revolutionary-egypt> [accessed January 15th, 2015].

touched upon both Coptic identity as a defined political identity and the ways in which the successive post-revolutionary forces variously sidelined and disingenuously instrumentalised the concerns of the Coptic community in Egypt. However, the rights and political realities of other Egyptians, such as Nubians and Bedouin communities, are part of the wider story of contemporary Egypt, yet have been made invisible by reading the constitutional texts precisely because they do not fit into the central antagonistic dynamic between the Muslim Brotherhood and the deep state, and – like the secular, progressive revolutionaries of 2011 – have become doubly marginalised as the Brotherhood-deep state clash erases those caught in its mutual crossfire.

Sixthly, it is worth noting that – in addition to the issue of Sinai, the economy, the Ultras and football violence, and minorities such as the Nubians, another thread of the wider context in which this study has been situated is that of social class in Egypt. Anthropologists of Egypt have produced a rich body of work²⁴³ on social class in Egypt, and the ways in which it has reconfigured in the face of successive waves of nation-building and state-driven ‘modernisation’ projects. (As noted in Chapter 1, the issue of social class in Egypt is interwoven with the issue of the social power of the Muslim Brotherhood).

While all of the above factors are significant social and/or political phenomena with rich literatures addressing their particularities, to have focused on these when

²⁴³ El-Aswad (2006) has summarised the work of anthropologists of Egypt working on social class in his study ‘Applied Anthropology in Egypt: Anthropology Within Local and Global Contexts’ in *NAPA Bulletin* 25, 2006. pp35-51. Available online at: https://www.academia.edu/2044032/Applied_Anthropology_in_Egypt_Practicing_Anthropology_within_Local_and_Global_Contexts [accessed July 13th 2015].

they do not leave ‘traces’ in the constitutional texts may well have been a worthwhile initiative, but would be a different project to the one that was undertaken here.

Conclusion

This work has both told a story and presented a case. The story is that of the post-revolutionary constitutions – how they came into being after the 2011 uprisings, what forces and metaphorical ‘voices’ influenced the texts (both the constitutional heritages and legal legacies, and also the key actors and influences in the constitution-drafting processes), how these constitutions were received, and what their fate was. The striking story of Morsi’s 2012 constitution – precipitating the constitutional crisis that paved the way for Morsi’s downfall, and a constitution positioning itself as the ‘final stage of the revolution’ that itself lasted less than a year – is an important part not only of the story of Egypt’s constitutional trajectory, but also an important part of the story of modern Egypt. That a Muslim Brotherhood-backed President was the head of state would shock a twentieth-century scholar of Egyptian history and politics; that the constitution of the first democratically elected President of Egypt lasted less than a year is noteworthy to any socio-legal scholar interested in constitutions. The events of these few tumultuous years will leave a lasting mark on Egypt and the region, and the work presented in the previous chapters has tried to tell this story in order to help us gain a fuller understanding of these surprising, complex and significant events.

But as well as telling a story, the work of the preceding chapters has also presented a case, and argued a position. The case that has been put forth is that the 2011, 2012 and 2013 constitutions can be read as 'legal mosaics', informed by the constitutional heritages and legal legacies, which leave a distinct 'residue' in the post-revolutionary constitutional texts. The meaning and implications of the post-revolutionary texts cannot be fully understood without situating them in the context of their constitutional heritages and legal legacies, and reading them as part of the 'journey' of Egypt's successive modern constitutions, from 1923 onwards. Furthermore, the preceding chapters have demonstrated the way in which the 2011, 2012 and 2013 constitutions became the terrain on which post-revolutionary power-struggles were enacted. Linking this back to the idea of the post-revolutionary constitutional texts as 'legal mosaics', it can be said that one of the ways in which the post-revolutionary constitutional texts became the terrain of this power-struggle is through the way in which constitution-drafters self-consciously drew upon the constitutional heritages and legal legacies, and deliberately deployed them in the new post-revolutionary context, in which these heritages and legacies gained new contours.

This is particularly evident in the way in which the 'inheritance' of the historical Article 2 on the role of religion in the state became 'deployed' by the successive drafters of the post-revolutionary constitutions, in a new context in which the Muslim Brotherhood first – unprecedentedly – held power, and then had just been removed from power. A constitutional article defining the relationship between religion and the state necessarily acquires new contours when resuscitated from its earlier historical context, reborn in a post-revolutionary world in which – for the

first time – the Muslim Brotherhood is no longer the nemesis of the state, but the ideology that holds the Presidential office. It again gains new contours in the 2013 constitution, drafted in the aftermath of the removal of the Muslim Brotherhood-backed President from office, and in a period in which those who define themselves in opposition to the Muslim Brotherhood (namely, Sisi, Mansour and their supporters) position themselves as both the rightful rulers of the state *and* as the just inheritors of the 2011 revolution.

In this way, the legal legacies and constitutional heritages that bubble up through the post-revolutionary constitutional texts are not merely a kind of stagnant ‘borrowing’, but a live and loaded re-deployment of Egypt’s (constitutional and legal) past in a way that speaks to its present, in the midst of a highly charged and unresolved power-struggle between the Muslim Brotherhood and the deep state. This struggle left its mark on the texts of the 2011, 2012 and 2013 constitutions, which cannot be fully understood without this dimension.

When I began to research the ‘possible constitutional future of Egypt’ in 2011, neither I nor anyone I spoke to would have been able to predict the path the following years took – the subsequent dramatic turn of ‘three constitutions in three years’ and a political landscape that rearranged itself several times over. Moreover, I was struck in 2011 by the response of scholars I knew who were also watching the events of the revolution unfold – my focus on constitutions, others often said to me, was obscure and almost irrelevant to the questions the 2011 uprisings raised. In the years since, the constitutions came to be entirely central to Egypt’s post-revolutionary path – and during my fieldwork in Egypt in December 2012, the

constitution was the subject that most dominated daily conversations with Egyptians, even without my prompting.

In other words, the trajectory of Egypt's post-revolutionary constitutional experience, and the forces that shape it – including its constitutional heritages and legal legacies – matter because constitutions matter: they claim to speak 'for the people', re-define the relationship and 'renew the contract' between citizen and state, and tangibly shape the lives of citizens. They are not a side-story or a footnote to the 'main' history – as this work has shown, the story of Egypt's revolution cannot be told without the central role of the successive constitutions. In the case of Egypt's post-revolutionary constitutions, the 'we' of the metaphorical 'We the People' were the citizens of Egypt – many of whom, in 2011 and the years since, risked their safety and their lives for a more just Egypt. Attempting to understand the constitutions that emerged from their revolution is a way of acknowledging, and honouring, what they struggled for.

Bibliography

Primary sources

The Constitution of The Arab Republic of Egypt 2014 (final draft written 2013). Egyptian government's own English translation available online: <http://www.sis.gov.eg/Newvvr/Dustor-en001.pdf> [accessed July 2nd, 2015].

The Constitution of The Arab Republic of Egypt 2012. Unofficial English translation available online: <http://www.egyptindependent.com/news/egypt-s-draft-constitution-translated> [accessed July 2nd 2015].

The Constitutional Declaration of The Arab Republic of Egypt 2011. Egyptian government's own English translation available online: <http://www.egypt.gov.eg/english/laws/constitution/> [accessed July 2nd 2015].

Secondary sources and academic literature

- Ambrust, Walter. "The Trickster in Egypt's January 25th Revolution." *Comparative Studies in Society and History* 55 (4): 834-864 (2013).
- Amit, Romi and Nathan J. Brown. 'Constitutionalism in Egypt'. Chapter 9 in *Political Culture and Constitutionalism: A Comparative Approach*. Baun, Michael J and Daniel P Franklin (eds). (M. E. Sharpe publishers 1995).
- Aristotle, Benjamin Jowett, and H. W. Carless Davis. *Aristotle's Politics*. (Oxford Clarendon Press 1920).
- Asad, Talal. *Thinking About Secularism and Law in Egypt*. (International Institute for the Study of Islam in the Modern World, 2001).
- Ayoob, Mohammed. *The Many Faces of Political Islam: Religion and Politics in the Muslim World* (University of Michigan Press 2008).
- Barker, Raymond William. *Sadat and After: Struggles for Egypt's Political Soul*. (I.B. Tauris 1990).
- Beattie, Kirk J. *Egypt During the Nasser Years: Ideology, Politics and Civil Society*. (Palgrave Macmillan 1996).
- Beattie, Kirk J. *Egypt During the Sadat Years*. (Palgrave Macmillian 2000).
- Bernard-Maugiron, Nathalie; Dupret, Badouin. *Egypt and its Laws*. (Kluwer Law International 2002).
- Blanc-Jouvan, Xavier. 'Worldwide Influence of the French Civil Code of 1804, on the Occasion of its Bicentennial Celebration'. *Cornell Law School Paper* 2004.
- Blaydes, Lisa. *Elections and Distributive Politics in Mubarak's Egypt*. (Cambridge University Press 2013).
- Botman, Selma. *Egypt from Independence to Revolution*. (Syracuse University Press 1991).

- Brown, Nathan J. 'Egypt's Constitutional Ghosts: Deciding the Terms of Cairo's Democratic Transition', *Foreign Affairs*, February 15th, 2011. Available online at: <https://www.foreignaffairs.com/articles/north-africa/2011-02-15/egypts-constitutional-ghosts> [accessed May 12th, 2014].
- Brinton, Jasper Yeates. *The Mixed Courts of Egypt*. (Yale University Press, 1930).
- Boyle, Kevin. Human rights and democracy: the role of the Supreme Constitutional Court of Egypt. University of London Centre of Islamic and Middle Eastern Law. Kluwer Law International, London 1996
- Brown, Nathan J. *Constitutions in a Non-Constitutional World: Arab Basic Laws and the Prospect for Accountable Government*. (SUNY Press 2002).
- Brown, Nathan J. *The Rule of Law in the Arab World: Courts in Egypt and the Gulf*. (Cambridge University Press 1997).
- Butler, Judith and Gayatri Chakravorty Spivak. *Who Sings the Nation State? Language, Politics, Belonging*. (Seagull Books 2007).
- Cambanis, Thanassis. *Once Upon a Revolution: An Egyptian Story*. (Simon and Schuster 2015).
- Cannon, Byron. *The Politics of Law and Courts in Nineteenth Century Egypt*. (University of Utah Press 1988).
- Cappelletti, Mauro. *Judicial Review in the Contemporary World*. (Indianapolis University Press 1971).
- Cappelletti, Mauro. *The Judicial Process in Comparative Perspective*. (Oxford University Press 1989).
- Clifford, James and George Marcus. *Writing Culture: The Poetics and Politics of Ethnicity*. (University of California Press 1986).
- Cotran, Eugene. Some legal aspects of the formation of the United Arab Republic and the United Arab States. *The International and Comparative Law Quarterly*, Vol 8 No 2, April 1959, pp346-390
- Cruz, Peter de. *Comparative Law in a Changing World*. (Routledge 1999).
- Dabashi, Hamid. *Islamic Liberation Theory: Resisting the Empire*. (Routledge 2008).
- Dabashi, Hamid. *The Arab Spring*. (Zed Books 2012).
- Dawisha, Aheed. *Arab Nationalism in the Twentieth Century: From Triumph to Despair*. (Princeton University Press 2002).

- DuPont, Jerry. *The Common Law Abroad: Constitutional and Legal Legacy of the British Empire*. (William S Hein Publishing 2001).
- Ebrahim, Hassen. *The Soul of a Nation*. (Oxford University Press 2000).
- Elaasar, Aladdin. *The Last Pharaoh: Mubarak and the Uncertain Future of Egypt in the Obama Age*. (New York, 2009).
- Elster, Jon. 'Forces and Mechanisms in the Constitution-Making Process'. *Duke Law Journal*, 45. (1995) p364-396.
- Foley, Michael. *The Silence of Constitutions: Gaps, 'abeyances', and political temperament in the maintenance of government*. (Routledge Revivals 2012 [1989]).
- Galligan, Denis J and Mila Versteeg (eds). *The Social and Political Foundations of Constitutions*. (Cambridge University Press, 2013).
- Geertz, Clifford. *Local Knowledge: Further Essays in Interpretative Anthropology* (Basic Books Classic 2000 [1983]).
- Gelvin, James L. *The Arab Uprisings: What Everyone Needs to Know*. (Oxford University Press 2012).
- Ginsburg, Tom; Dixon, Rosalind (eds). *Comparative Constitutional Law*. (Edward Elgar publishers 2011).
- Ginsburg, Tom (ed). *Constitutions in Authoritarian Regimes*. (Cambridge University Press 2013).
- Goderis, Benedict and Mila Versteeg. "Transnational Constitutions: A Conceptual Framework" in *Social and Political Foundations of Constitutions* 103 (Denis J. Galligan & Mila Versteeg eds, Cambridge University Press, 2013).
- Goderis, Benedict, and Mila Versteeg. "The Diffusion of Constitutional Rights", 39 *International Review of Law and Economics* 1 (2015).
- Goldsworthy, Jeffrey Denys. *Interpreting Constitutions: A Comparative Study*. (Oxford University Press 2006).
- Griffiths, John. 'What is Legal Pluralism'. *Journal of Legal Pluralism* 24: 1-55 (1986).
- Hart, H L A. *The Concept of Law*. (Oxford University Press 1961).
- Hevinga, A.W and Philipp Kiiver. *Constitutions Compared: An Introduction to Comparative Constitutional Law*. (Intersentia 2007).
- Hill, Enid. *Mahkama! Studies in the Egyptian Legal System: Courts and Crimes, Law and Society*. (Ithaca Press 1979).

- Hirsch, Ran. *Towards Juristocracy: the Origins and Consequences of the New Constitutionalism*. (Harvard University Press 2004).
- Hirsch, Ran. *Constitutional Theocracy*. (Harvard University Press 2004).
- Hoyle, Mark. *The Mixed Courts of Egypt*. (Springer 1991).
- Jackson, Vicki C and Mark Tushnet. *Defining the Field of Comparative Constitutional Law*. (Praeger 2002).
- Jacobson, Gary Jeffrey. *Constitutional Change*. (Harvard University Press 2007).
- Kassem, Maye. *Egyptian Politics: the Dynamics of Authoritarian Rule*. (Lynne Rienner Publishers 2004).
- Kamrava, Mehran (ed). *Beyond the Arab Spring: The Evolving Ruling Bargain in the Middle East*. (Oxford University Press 2014).
- Kepel, Gilles. *Muslim Extremism in Egypt: The Prophet and the Pharaoh*. (University of California Press 1985).
- King, Jeff. 'Constitutions as mission statements' in Galligan, Denis and Versteeg, Mila (eds) *The Social and Political Foundations of Constitutions* (Cambridge University Press 2013).
- Kristeva, Julia. *Séméiotiké: recherches pour une sémanalyse*. (Edition du Seuil 1969).
- Kristeva, Julia, ed. Toril Moi. *The Kristeva Reader*. (Blackwell Press 1986).
- Laws, David S. 'Globalisation and the future of constitutional rights', *Northwestern University Law Review*, 102: 1277-1350 (2008).
- Laws David S and Versteeg, Mila. 'The evolution and ideology of global constitutionalism' *California Law Review*, Vol 99, No 5, (2011).
- Lijphart, Arend. Comparative Politics and the Comparative Method. *The American Political Science Review*, Vol. 65, No. 3. (1971).
- Lombardi, Clark B. 'Constitutional Provisions Making Sharia "A" or "The" Chief Source of Legislation: Where Did They Come From? What Do They Mean? Do They Matter?' *American University International Law Review* 28 no. 3 (2013): 733-774.
- Lutz, Ellen and Kathryn Sikkink, 'The Justice Cascade: the Evolution and Impact of Foreign Human Rights Trials in Latin America', *Chicago Journal of International Law* 2 (1): 1-34 (2001).
- Milton-Edwards, Beverley. *The Muslim Brotherhood: the Arab Spring and its Future Face* (Routledge 2016).

- Moustafa, Tamir. *The Struggle for Constitutional Power: Law, Politics and Economic Development in Egypt*. (Cambridge University Press 2007).
- Mujkic, Asim. *We, the Citizens of Ethnopolis*. Human Rights Centre publication (University of Sarajevo 2008).
- Nussbaum, Martha. *Upheavals of Thought: The Intelligence of Emotions*. (Cambridge University Press New Ed edition 2003).
- Palmer, Monte. The United Arab Republic: An Assessment of its Failure. *Middle East Journal*. 20:1. (1966: Winter).
- Quraishi, Zaheer Masood. *Liberal Nationalism in Egypt: The Rise and Fall of The Wafd Party*. (Kitab Mahal 1967).
- Ramadan, Tariq. *The Arab Awakening: Islam and the New Middle East*. (Allen Lane 2012).
- Russell, Mona L. *Egypt*. (ABC-CLIO 2010).
- Rutherford, Bruce. *Egypt After Mubarak: Liberalism, Islam and Democracy in the Arab World*. (Princeton University Press 2013).
- Rutherford, Bruce. *The Struggle for Constitutionalism in Egypt: Understanding the Obstacles to Transition in the Arab World*. (PhD dissertation Yale University 1999).
- Rosenfeld, Michel. 'The Problem of 'Identity' in Constitution-Making and Constitutional Reform'. Working paper, *Benjamin N Cardozo School of Law, Jacob Burns Institute for Advanced Legal Studies* (2005).
- Rosenfeld, Michel. *Constitutionalism, Identity, Difference and Legitimacy: Theoretical Perspectives*. (Duke University Press 1994).
- Sajo, Andras. *Constitutional Sentiments*. (Yale University Press 2011).
- Sajos, Andras. *Limiting Government: An Introduction to Constitutionalism*. (Central European University Press 1999).
- Sarkin, Jeremy. 'The Drafting of South Africa's Final Constitution from a Human Rights Perspective.' *The American Journal of Comparative Law*. Vol. 47, No. 1 (Winter 1999).
- Stone Sweet, Alec. 'The Politics of Constitutional Review in France and Europe'. *I.CON*, Vol 5, Number 1. (2007).
- Taha, Mai. 'The Egyptian Revolution in and out of the Judicial Space: an Inquiry into Labour Law and the Workers' Movement in Egypt.' *International Journal of Law in Context*. (2014).

- Tamanaha, Brian Z. 'Understanding Legal Pluralism: Past to Present, Local to Global'. *Sydney Law Review* Vol 29 (2007).
- Teitel, Ruti. *Transitional Justice*. (Oxford University Press 2002).
- Teitel, Ruti. *Globalising Transitional Justice: Essays for the New Millennium*. (Oxford University Press 2014).
- Tsebelis, George. *Veto Players: How Political Institutions Work*. (Princeton University Press 2002).
- Weiss, Bernard. *The Spirit of Islamic Law*. (University of Georgia Press 1988).
- West, Jonny. *Karama! Journeys Through the Arab Spring*. (Heron Books 2011).
- Wolf-Philips, Leslie. *Comparative Constitutions*. (Macmillan 1972).
- Yassari, Nadjma. *The Shari'a in the Constitutions of Afghanistan, Iran and Egypt: Implications for Private Law*. (Max-Planck-Institut für Ausländisches und Internationales 2005).

Media sources, online sources and other contemporary sources

- . 'All According to Plan: the Rab'a Massacre and Mass Killings in Egypt'. *Human Rights Watch* special report on the first anniversary of the Rab'a massacre. August 15th, 2014. Available online at: http://www.hrw.org/sites/default/files/reports/egypt0814web_0.pdf [accessed August 16th, 2014].
- . 'Egyptian Coptic Priest: one third of participants in June 30 were Christians.' *Middle East Monitor*. May 15th, 2014. Available online at: <https://www.middleeastmonitor.com/news/africa/11488-egyptian-coptic-priest-one-third-of-participants-in-june-30-were-christians> [accessed August 16th, 2014].
- . 'Egypt: Activists Arrested for 'No' Campaign: Repression Intensifies Ahead of Constitutional Referendum'. *Human Rights Watch*. January 13th, 2014.
- . 'Egypt court upholds Muslim Brotherhood ban'. *Al Jazeera English*. Based on wire report from news agency. November 6th, 2013. Available online at: <http://www.aljazeera.com/news/middleeast/2013/11/egypt-court-upholds-muslim-brotherhood-ban-2013116101936365849.html> [accessed August 4th 2014].
- . 'Egypt: Jazeera Convictions Miscarriages of Justice.' *Human Rights Watch*. June 23rd, 2014. Available online at: <http://www.hrw.org/news/2014/06/23/egypt-jazeera-convictions-miscarriage-justice> [accessed August 25th, 2014].
- . 'Egypt: retry or free 12,000 after unfair military trials.' *Human Rights Watch*. September 10th, 2011. Available online at:

<http://www.hrw.org/news/2011/09/10/egypt-retry-or-free-12000-after-unfair-military-trials> [accessed August 2nd, 2014].

---. 'Egypt: the High Price of Dissent.' *Human Rights Watch*. February 20th, 2014. Available online at: <http://www.hrw.org/news/2014/02/19/egypt-high-price-dissent> [accessed June 20th, 2014].

---. 'Egypt's third constitution in three years: a critical analysis.' *IDEA, the International Institute for Democracy and Electoral Assistance*. December 17th, 2013. Available online at: <http://www.idea.int/wana/egypts-third-constitution-in-three-years-a-critical-analysis.cfm> [accessed August 23rd, 2014].

---. 'Hundreds protest banning of April 6 Youth Movement.' *Mada Masr*. April 30th, 2014. Available online at: <http://www.madamasr.com/content/hundreds-protest-banning-april-6-youth-movement> [accessed July 16th, 2014].

---. 'In the interim: the constitutional declaration retains some contentious articles'. *Mada Masr* (editorial without attributed author). July 12th, 2013. Available online at: <http://www.madamasr.com/content/interim> [accessed August 25th, 2014].

---. 'Who's Who: Members of Egypt's 50-member Constitution Committee'. *Ahram Online*. September 1st, 2013. Available online at: <http://english.ahram.org.eg/News/80519.aspx> [accessed August 22nd, 2014]

Aboulenien, Ahmed. 'Egypt's 'deep state' proves victorious.' *GlobalPost*. December 12th, 2014. Available online at: <http://www.globalpost.com/dispatches/globalpost-blogs/groundtruth/egypt-deep-state-victorious> [accessed January 15th, 2015].

Al Ali, Zaid. 'Another Egyptian constitutional declaration.' *Foreign Policy*. July 9th, 2013. Available online at: http://mideastafrica.foreignpolicy.com/posts/2013/07/09/another_egyptian_constitutional_declaration [accessed July 25th, 2014]

Ambrust, Walter. "The Revolution against Neoliberalism." *Jadaliyya* February 23 2011 <http://www.jadaliyya.com/pages/index/717/the-revolution-against-neoliberalism> [accessed 7th March 2013].

Atallah, Samer. 'Egypt's 'new' constitution: repeating mistakes.' *Al Jazeera English*. January 14th, 2014. Available online at: <http://www.aljazeera.com/indepth/opinion/2014/01/egypt-new-constitution-repeating-mistakes-201411255328300488.html> [accessed January 15th, 2015]

Ateyya, Ahmed. "'Rebel' Egyptian Movement Defies Morsi Through Petitions'. *Al Monitor*. 13th May 2013. Available online at: <http://www.al-monitor.com/pulse/originals/2013/05/rebel-movement-egypt-early-elections.html> [accessed July 30th, 2014]

Bechler, Rosemary and Heather McRobie. "Tariq Ramadan interviewed post-Arab Spring." *openDemocracy*, 5th December 2012. Available online at:

<https://opendemocracy.net/tariq-ramadan-heather-mcrobie-rosemary-bechler/tariq-ramadan-interviewed-post-arab-spring> [accessed 6th August 2014].

Benvoglio, Katie and Nathan J. Brown. 'Who's Running the Egyptian State?' *Washington Post*, July 31st 2015. Available online at:

<http://www.washingtonpost.com/blogs/monkey-cage/wp/2015/07/31/who-is-running-the-egyptian-state/> [accessed July 31st, 2015].

Brown, Nathan J. 'An Anticlimactic Referendum in Egypt.' *Carnegie Endowment Centre for Peace*. December 27th 2013. Available online at:

<http://carnegieendowment.org/2013/12/27/anticlimactic-referendum-in-egypt> [accessed July 7th, 2014].

Brown, Nathan J. 'Egypt's Daring Constitutional Gang of Fifty.' *Foreign Policy*. September 20th, 2013. Available online:

http://mideastafrica.foreignpolicy.com/posts/2013/09/20/egypts_daring_constitutional_gang_of_50 [accessed August 3rd, 2014].

Brown, Nathan J. 'Egypt and Islamic Sharia: A Guide for the Perplexed.' *Carnegie Endowment for International Peace*, May 15th 2012. Available online at:

<http://carnegieendowment.org/2012/05/15/egypt-and-islamic-sharia-guide-for-perplexed> [accessed July 24th, 2014].

Brown, Nathan J and Ahmed Morsy. 'Egypt's Al-Azhar Steps Forward'. *Carnegie Endowment for International Peace*. November 7th 2013. Available online at:

<http://carnegieendowment.org/2013/11/07/egypt-s-Al-Azhar-steps-forward> [accessed August 15th 2014].

Brown, Nathan J, Michele Dunne and Amr Hamzamy. 'Egypt's Controversial Constitutional Amendments'. *Carnegie Endowment for International Peace*, 2007. Available online at:

http://carnegieendowment.org/files/egypt_constitution_webcommentary01.pdf [accessed February 12th, 2014].

Brown, Nathan J. and Michele Dunne. 'Egypt's Judges Join In'. *Foreign Affairs*, April 2nd 2014. Available online at: <http://carnegieendowment.org/2014/04/02/egypt-s-judges-join-in> [accessed March 24th, 2015].

Cambanis, Thanassis. 'The Egyptian Revolution, Four Years Later.' *The Atlantic*, January 16th 2015. Available online at:

<http://www.theatlantic.com/international/archive/2015/01/the-egyptian-revolution-four-years-later/384593/> [accessed March 22nd, 2015].

Casabon, Cristina. 'Egypt's Military Economy'. *openDemocracy*, 29th June 2015. Available online at: <https://opendemocracy.net/arab-awakening/cristina-casabon/egypt-s-military-economy> [accessed 29th June 2015].

Chakravarti, Leila Zaki. 'Performing Masculinity: the Football Ultras in Post-Revolutionary Egypt.' *openDemocracy*. Available online at:

<https://opendemocracy.net/5050/leila-zaki-chakravarti/performing-masculinity-football-ultras-in-post-revolutionary-egypt> [accessed January 15th, 2015].

Chulov, Martin and Patrick Kingsley. 'Mohammad Morsi outsted in Egypt's second revolution in two years'. *The Guardian*. July 4th, 2013. Available online: <http://www.theguardian.com/world/2013/jul/03/mohamed-morsi-egypt-second-revolution> [accessed August 2nd, 2014].

Culebras, Ignacio M. Delgado. 'A Conversation with Egypt's April 6th Youth Movement'. *Muftah.org*. April 29th 2014. Available online at: <http://muftah.org/conversation-egypts-april-6-youth-movement/#.Vp2t3XhGzFI> [accessed April 29th 2014].

El Dabh, Basil. 'Presidential elections first: Mansour.' *Daily News Egypt*. January 26th, 2014. Available online at: <http://www.dailynewsegypt.com/2014/01/26/presidential-elections-first-mansour/> [accessed July 13th, 2014].

El-Gundy, Zeinab. 'Kefaya and the April 6 Youth Movement: Post-revolution Allegations in Egypt'. *Ahram Online*. July 30th, 2011. Available online at: <http://english.ahram.org.eg/NewsContent/1/64/17559/Egypt/Politics-/Kefaya-and-April--Youth-Movement-Postrevolution-al.aspx> [accessed August 1st, 2014].

ElSadda, Hodda. 'Article 11: feminists negotiating power in Egypt'. *openDemocracy*, 5th January 2015. Available online at: <https://opendemocracy.net/5050/hoda-elsadda/article-11-feminists-negotiating-power-in-egypt> [accessed January 16th, 2015]

Fahim, Joseph. 'Egypt's Copts May Soon Regret Supporting Sisi'. *Al Monitor*. July 4th, 2014. Available online at: <http://www.al-monitor.com/pulse/originals/2014/07/egypt-coptic-christians-Sisi-secular-islamist.html#> [accessed August 13th, 2014].

Fayek, Mina. 'Copt's in El Sisi's Egypt.' *openDemocracy*. May 29th, 2014. Available online at: <https://www.opendemocracy.net/arab-awakening/mina-fayek/copts-in-el-Sisis-egypt> [accessed August 12th, 2014].

Goldberg, Ellis. 'A new political dilemma for Egypt's ruling military.' *The Washington Post*. June 2nd, 2014. Available online at: <http://www.washingtonpost.com/blogs/monkey-cage/wp/2014/06/02/a-new-political-dilemma-for-egypts-ruling-military/> [accessed August 5th, 2014].

Gjorvad, Nicholas. 'The Evolution of Tamarod'. *Daily News Egypt*. October 12th, 2013. Available online at: <http://www.dailynewsegypt.com/2013/10/12/the-evolution-of-tamarod/> [accessed August 12th, 2014].

Gulfason, Thorvaldur. 'Democracy on ice: a post-mortem of the Icelandic constitution.' *openDemocracy*, June 19th 2013. Available online at: <https://opendemocracy.net/can-europe-make-it/thorvaldur-gylfason/democracy-on-ice-post-mortem-of-icelandic-constitution> [accessed January 15th 2014].

- Hammady, O. Omar Ould Dedde and Michael Meyer Resende. 'Saving Libya's Constitution Making Body'. *Carnegie Endowment for International Peace*. December 18th, 2014. Available online at: <http://carnegieendowment.org/sada/?fa=57565> [accessed January 24th, 2015].
- Hudson, John. 'Obama's Administration Won't Call Egypt's Coup a Coup'. *Foreign Policy*. July 8th, 2013. Available online at: http://thecable.foreignpolicy.com/posts/2013/07/08/obama_administration_won_t_call_egypts_coup_a_coup [accessed August 15th, 2014].
- Jakes, Aaron. 'The myth of Egypt's liberal constitution', *Egypt Independent*, 4th August 2012. Available online at: <http://www.egyptindependent.com/opinion/myth-egypt-s-liberal-constitution> [accessed July 17th, 2014].
- Khalil, Ashraf. 'Egypt's Committee of Fifty Rewrites the Constitution – Again.' *Al Jazeera America*. November 11th, 2013. Available online at: <http://america.aljazeera.com/articles/2013/11/11/egypt-constitutioncommitteeof50.html> [accessed August 11th, 2014]
- Kirkpatrick, David D. 'Vow of Freedom of Religion goes Unkept in Egypt'. *The New York Times*. April 25th, 2014. Available online at: http://www.nytimes.com/2014/04/26/world/middleeast/egypt-religious-minorities.html?_r=0 [accessed August 11th, 2014]
- Laub, Zachary. 'Egypt's Muslim Brotherhood: Backgrounder.' *Council on Foreign Relations*, January 15th, 2014. Available online at: <http://www.cfr.org/egypt/egypts-muslim-brotherhood/p23991> [accessed June 17th, 2014]
- Lindsey, Ursula. 'Concern Grows Over Academic Freedom in Egypt'. *The New York Times*. February 23rd, 2014. Available online at: http://www.nytimes.com/2014/02/24/world/middleeast/concern-grows-over-academic-freedom-in-egypt.html?_r=1 [accessed August 2nd, 2014].
- Lombardi, Clark. 'Fierce Contest: Constitutional Islam and the Arab Spring.' *World Politics Review*, October 8th 2013. Available online at: <http://www.worldpoliticsreview.com/articles/13280/fierce-contest-constitutional-islam-and-the-arab-spring> [accessed March 24th, 2015].
- Lombardi, Clark and Nathan J Brown. 'Islam in Egypt's New Constitution.' *Foreign Policy*, December 13th, 2012. Available online at: <http://foreignpolicy.com/2012/12/13/islam-in-egypts-new-constitution/> [accessed June 23rd, 2014].
- Maged Youssef, Ahmed. 'Seven Trends Dominating Egyptian Media'. *openDemocracy*, 15th July 2015. Available online at: <https://opendemocracy.net/arab-awakening/ahmed-magdy-youssef/seven-trends-dominating-egypt-s-media-landscape> [accessed 15th July, 2015].

- Mahmoud, Youssef. 'In Egypt's New Constitution, Are Women Equal Citizens?' *Global Observatory*. December 19th, 2013. Available online at: <http://theglobalobservatory.org/2013/12/in-egypts-new-2013-constitution-are-women-equal-citizens/> [accessed June 4th, 2014].
- Mansour, Muhammad. 'Members of Constitutional Committee of 50 announced'. *Egypt Independent*. September 1st, 2013. Available online at: <http://www.egyptindependent.com/news/members-constitutional-committee-50-announced> [accessed July 21st, 2014].
- McRobie, Heather. 'Academia in Egypt: Security forces and self-censorship'. *Index on Censorship*, April 15th, 2014. Available online at: <https://www.indexoncensorship.org/2014/04/academia-egypt-security-self-censorship/> [accessed March 3rd, 2015].
- McRobie, Heather. 'Diary of a Constitutional Crisis'. *openDemocracy*. December 15th, 2012. Available online at: <https://www.opendemocracy.net/5050/heather-mcrobie/diary-of-constitutional-crisis> [accessed August 2nd, 2014].
- McRobie, Heather. 'The Economist, Suez and Sisi's cynical PR campaign.' *Al Araby Al Jadeed*. 13th August 2015. Available online at: <http://www.alaraby.co.uk/english/comment/2015/8/13/the-economist-suez-and-Sisis-cynical-pr-campaign> [accessed 13th August 2015].
- McRobie, Heather. 'Egypt: a Tale of Two Constitutions'. *openDemocracy*. January 16th, 2012. Available online at: <https://www.opendemocracy.net/5050/heather-mcrobie/egypt-tale-of-two-constitutions> [accessed August 21st, 2014].
- McRobie, Heather. 'Egypt's Sahara and the Arab Spring: an Unquiet Desert.' *La Repubblica/Limes geopolitical magazine, republished in New Left Project*. 13th April 2013. Available online at: http://www.newleftproject.org/index.php/site/article_comments/egypts_sahara_and_the_arab_spring_an_unquiet_desert [accessed January 14th, 2015]
- McRobie, Heather. 'Egypt, Where 'Human Rights' Are a Threat To Security.' *Al Araby Al Jadeed*, 26th August 2015. Available online at: <http://www.alaraby.co.uk/english/comment/2015/8/26/egypt-where-human-rights-are-a-threat-to-security> [accessed 27th August, 2015].
- McRobie, Heather. 'Egyptian Human Rights Groups Face Difficult Choices After Sisi's Ultimatum.' Oxford Human Rights Hub, 21 January 2015. Available online at: <http://ohrh.law.ox.ac.uk/egyptian-human-rights-groups-face-difficult-choices-after-Sisis-ultimatum/> [accessed March 5th, 2015]
- McRobie, Heather. 'From Morsi to Sisi: the evolution of targetting journalists in Egypt.' *openDemocracy*, 18th August 2013. Available online at: <https://www.opendemocracy.net/5050/heather-mcrobie/from-morsi-to-Sisi-evolution-of-targeting-journalists-in-egypt> [accessed March 13th, 2015]

- McRobie, Heather. 'Military trials in Egypt, 2011-2014'. *Report*, Chr. Michelsen Institute, 2014. Available online at: <http://www.cmi.no/publications/file/5304-military-trials-in-egypt-2011-2014.pdf> [accessed November 16th 2014]
- McRobie, Heather. 'Patriarchy and Militarism in Egypt: from the Street to the Government.' *openDemocracy*, 29th May 2013. Available online at: <https://www.opendemocracy.net/5050/heather-mcrobie/patriarchy-and-militarism-in-egypt-from-street-to-government> [accessed March 24th, 2015].
- McRobie, Heather. 'Sexual violence and state violence against women in Egypt, 2011-2014'. Chr. Michelsen Institute report, 2014. Available online at: <http://www.cmi.no/publications/file/5226-sexual-violence-and-state-violence-against-women.pdf> [accessed March 15th, 2015].
- McRobie, Heather. 'Six Things the Mubarak Trial Means for Egypt and the Revolution.' *Novara Media Wire*, 1st December 2014. Available online at: <http://wire.novaramedia.com/2014/12/6-things-the-mubarak-trial-means-for-egypt-and-the-revolution/> [accessed March 15th, 2015].
- McRobie, Heather. 'When the Judge is a Woman'. *openDemocracy*, November 19th 2013. Available online at: <https://www.opendemocracy.net/5050/heather-mcrobie/when-judge-is-woman> [accessed January 17th, 2015].
- McRobie, Heather. 'Will the Tunisian Constitution Erode the Gains of Women in the Arab Spring?' *New Statesman*, 15th August 2012. Available online at: <http://www.newstatesman.com/blogs/politics/2012/08/will-tunisian-constitution-erode-gains-women-arab-spring> [accessed January 18th, 2015].
- McRobie, Heather. 'Will Tunisia's Truth and Dignity Commission Heal the Wounds of the Authoritarian Past?' *Oxford Human Rights Hub*, February 20th 2015. Available online at: <http://ohrh.law.ox.ac.uk/will-tunisia-truth-and-dignity-commission-heal-the-wounds-of-the-authoritarian-past/> [accessed March 15th, 2015].
- Morsy, Ahmed and Nathan J. Brown. 'Egypt's Al-Azhar Steps Forward.' *Carnegie Endowment for International Peace*, November 7th 2013. Available online at: <http://carnegieendowment.org/2013/11/07/egypt-s-Al-Azhar-steps-forward> [accessed January 27th, 2015].
- Muashar, Marwan. 'Year Four of the Arab Awakening.' *Carnegie Endowment for International Peace*, December 12th, 2013. Available online at: <http://carnegieendowment.org/2013/12/12/year-four-of-arab-awakening> [accessed January 19th, 2015].
- Nessim, Rana and Mariam Ali. 'On Arab Awakening: a Response'. *openDemocracy*, 29th June 2015. Available online at: <https://.opendemocracy.net/arab-awakening/rana-nessim-mariam-ali/on-arab-awakening-response> [accessed June 29th, 2015].

- Pearson, W. Robert. 'Turkey: Exhuming the Deep State.' *The Middle East Institute* online, March 5th 2015. Available online at: <http://www.mei.edu/content/article/turkey-exhuming-deep-state> [accessed March 20th 2015].
- Rahnem, Saeed. 'On 'Arab Awakening'.' *openDemocracy*, June 29th, 2015. Available online at: <https://opendemocracy.net/arab-awakening/saeed-rahnama/on-%27arab-awakening%27> [accessed June 29th, 2015].
- Ramzy, Bishoy. 'Sisi and the Copts: Revival of Old Fears'. *The Cairo Post*. May 14th, 2014. Available online at: <http://thecairopost.com/news/110379/editors-choice/Sisi-and-the-copts-revival-of-old-fears> [accessed August 20th, 2014].
- Revkin, Mara. 'Worse Than Mubarak: Egypt's New Constitution and the Police State'. *Foreign Affairs*. February 11th, 2014. Available online at: <http://www.foreignaffairs.com/articles/140729/mara-revkin/worse-than-mubarak> [accessed August 21st, 2014].
- Roth, Kenneth. 'Egypt's Tiananmen.' *Foreign Policy*. August 12th, 2014. Available online at: http://www.foreignpolicy.com/articles/2014/08/12/egypts_tiananment_cairo_Sisi_rabaa_square_massacre_human_rights_watch [accessed August 16th, 2014].
- Sabry, Bassem. 'The meanings of Egypt's referendum.' *Al Monitor*. January 20th, 2014. Available online at: <http://www.al-monitor.com/pulse/originals/2014/01/egypt-referendum-constitution-evaluation.html#> [accessed August 4th, 2014].
- Sabry, Bassem. 'Twenty nine things you need to know about Egypt's draft constitution.' *Al Monitor*. December 4th, 2014. Available online at: <http://www.al-monitor.com/pulse/originals/2013/12/egypts-new-proposed-constitution-sabry.html#> [accessed August 15th, 2014].
- Sabry, Bassem. 'Problems Ahead for Egypt Constitution Debate'. *Al Monitor*. September 30th, 2013. Available online at: <http://www.al-monitor.com/pulse/originals/2013/09/egypt-constitution-highlights-new-draft.html#> [accessed August 5th, 2014].
- Sadek, George. 'Perspectives on Egypt's 2014 Constitution.' *Blog, for the Library of Congress website*. February 19th, 2014. Available online at: <http://blogs.loc.gov/law/2014/02/perspectives-on-egypts-2014-constitution/> [accessed August 5th, 2014].
- Schuster, Courtney and Corri Zoli. 'What Egypt's New Constitution Tells Us about Political Transition'. *The Fletcher Forum of World Affairs*, March 12th 2014. Available online at: http://www.fletcherforum.org/2014/03/12/zoli_schuster/ [accessed March 15th, 2015].
- Sika, Nadine. 'Civil society and democratisation in Egypt: the road not yet travelled'. *Muftah.org*. May 29th 2012. Available online at: <http://muftah.org/civil-society->

[and-democratization-in-egypt-the-road-not-yet-traveled/#.Vp2sSnhGzFI](#) [accessed July 18th 2014].

Tadros, Mariz. 'Egypt's constitutional referendum: the untold story'. *openDemocracy*. 17th January 2014. Available online at: <https://www.opendemocracy.net/5050/mariz-tadros/egypts-constitutional-referendum-untold-story> [accessed 17th January 2014].

Wahab, Mohamed S.E. Abdel. 'An Overview of the Egyptian Legal System and Legal Research.' *NY Law Global*, 2012. Available online on the *Jadaliyya* website: <http://www.jadaliyya.com/pages/index/7825/an-overview-of-the-egyptian-legal-system-and-legal> [accessed July 14th, 2014].

Witte, Griff. 'Egypt's Morsi gets poor reviews from Islamists after first year of presidency.' *The Washington Post*. June 18th, 2013. Available online at: http://www.washingtonpost.com/world/middle_east/egypts-morsi-gets-poor-reviews-from-islamists-after-first-year-of-presidency/2013/06/17/03445ffa-d5c2-11e2-ab72-3f0d51ec1628_story.html [accessed August 6th, 2014].

Woertz, Eckart. 'Egypt: Return of the Deep State.' *openDemocracy*, 20th January 2014. Available online at: <https://.opendemocracy.net/arab-awakening/eckart-woertz/egypt-return-of-deep-state> [accessed January 26th, 2014].