Constitutional Design in Islamic Countries: Comparative Notes on Turkey, Egypt, and Tunisia

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Introduction: Constitutions, Constitutionalism, Democracy, and Liberalism

When we talk about constitutional design, we may be referring both to the way in which constitutions are made, and to their substance. In this study, I would like to focus on the constitutional experiences of three Muslim-majority countries (Turkey, Egypt, and Tunisia) in both meanings of the term. Before proceeding with this task, however, it is necessary to clarify the basic terms.

It is axiomatic that constitutionalism cannot be equated simply by the existence of a constitution. In our times, almost all countries of the world, from highly institutionalized liberal democracies to totalitarian regimes, and many others in between, have written constitutions that they declare as the supreme law of the country. Constitutionalism, on the other hand, essentially means limited government, a system in which the state power is divided and limited by separation of powers and other effective mechanisms of checks-and-balances, with the ultimate aim of affording a strong protection for individual rights and liberties. This meaning of constitutionalism was emphatically declared by Article 16 the 1789 "Declaration of the Rights of Man and of the Citizen" of the French Revolution: "Any society where rights are not secured nor separation of powers is established has no constitution at all." The same declaration also adds a democratic element in its Article 6: "The law is the expression of the general will. All citizens have the right to participate in its making either personally or through their representatives." Thus, as Röder correctly observes, "the separation of powers, combined with judicial protection of individual rights, forms the 'matrix

of constitutionalism.' Both of them are inseparable and indispensable for the functioning of a constitutional system that meets the standards of contemporary international law" (1).

Today almost all Islamic countries, with the single exception of Saudi Arabia, have written constitutions. Very few of them, however, fit the constitutionalist model, either in the way they are made, or in terms of their substance. As Nathan Brown observes, in Arab countries "constitutions have generally been written to augment political authority; liberal constitutionalism (aimed at restraining political authority) has generally been at most a secondary goal" (2). He thus argues that Arab constitutions were not aimed at limiting the authority of the state, but they "have been designed primarily to render the political authority of the state more effective and secondarily to underscore state sovereignty and establish general ideological orientations" (3)

Those observations are supported by the constitutional experiences of our three countries, with the possible exception of the new constitution of Tunisia, as will be discussed below. A more debatable part of Brown's argument is that in his view one can conceive of a constitutionalism devoid of liberal and/or democratic elements. He thus argues that "constitutions are not always constitutionalist; constitutionalism is not democracy; liberal constitutionalism is not the only form of constitutionalism. The conflation of constitutionalism, democracy, and liberalism is based on fairly recent Western experience. While such fuzziness is understandable, it serves us poorly when we try to understand either our own history or the politics of other societies… Just as there is no necessary requirement that constitutions or constitutionalism be democratic, there is no requirement that they provide for basic individual rights" (4).

Such a view reduces constitutionalism merely to the existence of autonomous state structures such as judicial review, introducing a measure of horizontal accountability and providing limits on the exercise of the state authority. Indeed, historically speaking, there was

a long period when constitutionalism and democracy did not coincide. Most Western constitutions were adopted at a time of limited suffrage. Universal suffrage was established gradually only in the second half of the nineteenth and the first decades of the twentieth centuries. In this sense, constitutionalism predated democracy. Furthermore, the original aim of constitutionalism was to place limits on majority rule in order to protect individual rights and especially property rights. In the words of Cass Sunstein, "constitutions operate as constrains on the governing ability of majorities; they are naturally taken as antidemocratic." (5). (Sunstein, 327). Similarly, Stephen Holmes describes the tension between constitutionalism and democracy as a "quarrel between democrats who find constitutions a nuisance and constitutionalists who perceive democracy as a threat. Some theorists worry that democracy will be paralyzed by constitutional straitjacketing. Others are apprehensive that the constitutional dyke will be breached by a democratic flood. Despite their differences, both sides agree that there exists a deep, almost irreconcilable tension between constitutionalism and democracy. Indeed, they come close to suggesting that 'constitutional democracy' is a marriage of opposites, an oxymoron" (6).

It is also a fact that early constitutions did not contain extensive lists of rights provisions, or bill of rights. Even when they did, they left it to the legislature to define and limit their scope. In that sense, it may be argued that they were not truly liberal constitutions. Having said that, it is clear that modern (as opposed to earlier) constitutionalism is strongly associated both with democratic and liberal values. A constitution that does not serve these ends cannot be said to have established a truly constitutionalist regime, even if it introduces certain checks-and-balances to limit the power of the state. It will be discussed in greater detail below whether the three countries studied here, or Islamic countries more generally, have been able or are likely to attain constitutionalist regimes that are also democratic and

liberal. This question is closely related to the question whether an "Islamic constitutionalism," radically different from that of the West, is possible.

Finally, a few words about the selection of our three cases. Despite their significant differences, Turkey, Egypt, and Tunisia display certain similarities regarding their constitution-making experiences. First, they represent the earliest attempts at constitution-making in the Islamic world (together with the Iranian Constitution of 1906-1907). Tunisia was the first among the three with its "Law on the State of Tunisia" (*qanun al-dawla al-tunisiyya*) dated 1861. The document promulgated by *Bey* (the hereditary governor of Tunisia) did not create an elected parliament, but established a Grand Council; one third of its members "consisted of ministers and officials, the others were notables initially selected by the king with the approval of his ministers. New members of the Grand Council were to be selected from a list drawn up by the Council with the king's approval… The Council was charged generally with protecting the rights of the people and equality among them; more specifically, its assent was required for all laws and changes in expenditures." (7). The Tunisian Constitution was in force for only three years; it was rescinded by the *bey* in 1864 (8).

The Ottoman Constitution of 1876 (*Kanun-u Esasi*) was promulgated by Sultan Abdülhamid II, acting under the pressure of a small group of reformist bureaucrats. It was not prepared by a representative constituent assembly, but by a special committee appointed by the Sultan, composed of 16 civilian bureaucrats, two members of the military, and 10 religious scholars. The final text promulgated by the Sultan provided, for the first time, some constitutional mechanisms to check the absolute powers of the Sultan. Its most important novelty, and its chief difference with the Tunisian Constitution of 1861, was the creation of a legislative assembly at least partially elected by the people. The Ottoman legislature, called the "General Assembly" (*Meclis-i Umumi*) was composed of two chambers: the Senate

(*Heyet-i Ayan*) and the Chamber of Deputies (*Heyet-i Mebusan*). The members of the Senate were to be appointed for life by the Sultan, while the deputies were to be elected by the people through indirect (two-stage) elections in which only property owners were allowed to vote. The General Assembly was granted certain powers to enact laws and to exercise control over the executive. On both accounts, however, the ultimate authority still rested with the Sultan, who thus remained the cornerstone of the constitutional system. On the other hand, the Sultan could not unilaterally enact laws or amend the Constitution. Thus, some degree of balance was established between the two political organs. In addition, the Constitution had recognized the independence of the judiciary and enumerated a number of basic rights and freedoms without, however, providing effective guarantees for them (9).

The Constitution of 1876 fell far short of establishing a parliamentary monarchy. Nevertheless, even this limited experience in constitutional government proved too much for Abdülhamid II, who prorogued the Chamber of Deputies in 1878 and returned to absolutist rule for thirty years. In 1908, the rebellion of some military units forced him to restore the Constitution. The constitutionalist opposition organized under the name of the Society of Union and Progress (the Young Turks) obtained a clear majority in the Chamber in the 1908 elections. It was this parliament that radically amended the Constitution in 1909. The amendments substantially enlarged the powers of parliament and restricted those of the Sultan. Thus, a constitutional system came into being, more or less similar to the parliamentary monarchies of Western Europe. However, this liberal era, called the "Second Constitutionalist Period," did not last long and was quickly transformed into the *de facto* dictatorship of the dominant Union and Progress Party.

Egypt's first experience with constitutional government was the Constitution of 1882 (termed the Fundamental Ordinance, or *al–lai'ha al-asasiyya)*. It gave the Council (an elected body) "an extensive role in legislation and in oversight of public finances… The Egyptian

constitution of 1882 may have provided a sounder base for constitutionalism than the Tunisian constitution of 1861 or the Ottoman constitution of 1876… Yet shortly after having secured this triumph the parliament went into recess, never to reconvene" (10).

In all of these earliest attempts at constitution – making, and in many subsequent ones as well, the primary purpose was far from establishing a true constitutionalism with the aim of securing fundamental rights and freedoms of the individual. In the words of Nathan Brown,

"… a striking similarity in political circumstances surrounding these attempts at writing constitutions suggests that the fundamental purpose was to reform state authority in an attempt to make it more effective. First, almost all constitutions were issued during a period of fiscal crisis and devoted much language to establishing clear procedures for determining the budget… Autocracy had let to fiscal irresponsibility; clear legal procedures for fiscal matters could help the state operate on a sounder basis" (11).

A second similarity among our three earliest cases, is that they all "originated very much within the governing elite. They were not composed by constituent assemblies seeking to define the nature of the political community but by individuals or small group of politicians who generally occupied very senior positions… That is, the ruler or governing elite granted legitimacy to - rather than drew legitimacy from - the constitutional document." (12). Thus, the Tunisian Constitution of 1861 was prepared by a commission of officials appointed by the *bey,* just like the Egyptian Constitution of 1882, and the Ottoman Constitution of 1876. The subsequent Turkish constitutions, with the partial exception of the Constitution of 1921, also originated very much within the governing elite. Thus, the Constitution of 1924, the first republican constitution of Turkey, was adopted by an ordinarily elected legislative assembly completely dominated by the People's Party (a party that was founded by Mustafa Kemal just prior to the elections of 1923). Since the *de facto* single-party rule had not yet been

consolidated at that time, debates on the constitution took place in a free atmosphere, and some proposals designed to strengthen the position of the President of the Republic (Mustafa Kemal was elected as President in 1923) were firmly rejected by the Assembly (13). A short time afterwards, however, a single-party rule was firmly established and lasted until the transition to a multi-party system in 1946-1950. The two more recent constitutions of Turkey, those of 1961 and 1982, were basically products of military interventions. Neither was prepared by a freely elected and broadly representative constituent or legislative assembly. In both cases, the ruling military committee constituted one of the chambers of the bicameral Constituent Assemblies. In the case of 1961 Constitution, the civilian wing of the Assembly (House of Representatives) was a largely co-opted body; in the latter case, the Consultative Assembly was totally appointed by the ruling military council (National Security Council) (14). Turkey's search for a totally civilian and democratic constitution has been going on since then.

A third similarity is that in all three cases, the constitutions were either short-lived, or were maintained as a facade to otherwise authoritarian regimes. Thus, the first Ottoman experiment (the First Constitutionalist period) lasted slightly more than one year, the second attempt (the Second Constitutionalist period, 1908-1912) only four years. The Constitution of 1921 remained in force for three years. The Constitution of 1924 served as a facade to an authoritarian rule for about twenty years (1925-1946), and its demise came with the military *coup* of 1960. The more or less democratic political life was again interrupted by the partial military intervention of 1971-1973, and came to an end with the 1980 *coup*. Similarly, the Tunisian Constitution of 1861 remained in force for only three years. The republican constitution of 1959 was prepared by a constituent assembly dominated by Habib Bourguiba's Neo-Destour Party (15), and served as an instrument of an authoritarian single-party regime until the Arab Spring revolution of 2011. The Egyptian Constitution of 1923 was frequently

and explicitly violated (16). The republican constitutions of Egypt (those of 1956, 1958, 1964, and 1971) similarly functioned under an essentially authoritarian single-party regime (17).

The explosion of popular revolutions in 2011 in what came to be known in the Arab Spring countries, notably in Tunisia and Egypt, brought about radical changes in the picture. Popular uprisings in both countries resulted in the overthrow of Mubarak and Zayn al-Abdin Ben Ali. In both countries, the revolutions led to a very lively and highly contested process of constitution-making that will be examined in detail below. The difference with the earlier examples of constitution-making is that this time the process was not an essentially intra-governing elites' affair, but involved the intense participation of much larger segments of the population. The same period also witnessed a new wave of interest in Turkey for the making of a new constitution. The four parties represented in the National Assembly elected in 2011 agreed on starting the process of making a constitution. With this aim they established a parliamentary "Constitutional Reconciliation Committee." After two years of work the Committee failed to agree on a text, as will be explained below, making the attempt a stillborn one.

Divisive Constitutional Issues in Islamic Countries

In almost all Islamic countries the most critical and divisive question that faces constitution-makers is the role of Islam in the political and legal system of the country. Since the majority of the population of these countries is devout Muslim, an explicitly secular constitution is a rarity. A recent study shows twenty such countries among a total of forty-six Muslim-majority states. Of those, thirteen explicitly mention the word "secular" in their constitutions, while the remaining seven can also be considered secular states since they have no established religion. A closer look suggests that of the twenty, six are former Soviet Union states (Azerbaijan, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan) and two others are former Soviet bloc countries (Albania and Kosovo). Eight are African states, formerly

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colonies of secular European powers. In the core Muslim areas of the Middle East, only Turkey, Syria, and Lebanon-itself a religiously mixed country) qualify as secular states (18).

Clearly, Turkey is the earliest and the most radical example of this category. Ahmet Kuru, who distinguishes between "passive" and "assertive" types of secularism, includes Turkey is the latter category. In his words, "assertive secularism requires the state to play an 'assertive role to exclude religion from the public sphere and confine it to the private domain. Passive secularism demands that the state plays a 'passive' role by allowing the public visibility of religion. Assertive secularism is a 'comprehensive doctrine,' whereas passive secularism mainly prioritizes state neutrality toward such doctrines" (19). Turkey clearly belongs to the assertive secularist category, although in recent years there has been a shift toward passive secularism. It is to be noted, however, that this change took place without any amendment to the Constitution, which remains strictly assertively secular, but by way of changing attitudes and practices.

As such, the Turkish model of assertive secularism cannot be expected to serve as a model for the core Muslim areas. Indeed, many Islamic thinkers strongly object to the concept of secularism. Thus, writes Kemali, "secularism in the Arabic terminology (*alaminiyyah*, or *dunyawiyyah*) refers to the worldly and the temporal, and it is usually taken to imply the liberation of politics from religion. It came to the Muslim world together with related concepts such as modernity and westernization in the context of colonialism. For the Muslim world, during both the colonial and post-colonial periods, secularism has largely meant the marginalization of Islam and its exclusion from law and governance, or else of confining it to the sphere of personal law" (20). Fadl argues similarly that "in the Muslim world, secularism is normally associated with what is described as the Western intellectual invasion, both in the period of colonialism and post-colonialism. Furthermore, secularism has come to symbolize a misguided belief in the probity of rationalism and a sense of hostility to religion as a source of

guidance in the public sphere" (21). Sherif goes further saying that "in traditional, hard-line Islamic thought, it is common to use the word 'secularism' and *kufr* (meaning 'non-belief in God') interchangeably. Therefore, a secularist is a non-believer in God, or *kafir,* and should be treated as such" (22). Consequently, in the Arab world, even supporters of an essentially secular system avoid to use this term and prefer a more neutral term of "civilian state" (*dawla madaniyyah*).

With regard to the central role of Islam in constitutional design in contemporary Islamic countries, Grote and Röder observe that "while constitutional debates in the period immediately following independence tended to be dominated by concept borrowed from Western and (former) socialist countries like nationalism, secularism, republicanism, or socialism, since the 1970s Islam has emerged not only as a concept for defining the religious identity of Islamic societies, but also as a major if not (at least nominally) dominating element in determining their constitutional and legal foundations.I in many parts of the Islamic world the Islamic foundations of the state are today expressly recognized in one way or another." (23).

Under the general title of Islam's role in the state, three more specific but very important issues can be identified: Whether Islam will be declared as the official religion of the state; whether *sharia* will be accepted as "a" or "the" source of legislation; and, if so, who will have the power of reviewing laws' conformity to *sharia.* With regard to the first question, among Muslim-majority countries ten declared themselves selves to be Islamic states, but "most countries have settled for a more moderate version of Islamic constitutionalism, declaring Islam as the official religion of the state, but stopping short of proclaiming the country an Islamic state" (24). Interestingly, even Tunisia, one of the most secular Islamic countries and in some ways comparable to Kemalist Turkey, declared Islam as the official

religion of the state in its Constitution of 1959. The newly adopted Tunisian Constitution, an essentially liberal and democratic document also did the same.

It may be argued that the simple declaration of a state religion (or establishing a church) in the constitution does not necessarily qualify a state as non-secular. There are examples of it among the most highly institutionalized and liberal countries of Europe. Thus, the constitutions of Norway and Denmark declare the Evangelical Lutheran Church as the established church, and the Greek Constitution of 1975 declares the Eastern Orthodox Church as "the prevailing religion in Greece." In England, the King (or the Queen) is the head of the Anglican Church. The Irish Constitution of 1999 and the Polish Constitution of 1997 also contain references to Christianity. Nevertheless, other basic features of a secular system, such as freedom of religion and conscience, full equality before law and access to public office regardless of religion and sect, are maintained (25). As Norris and Inglehart observe, "despite these seemingly significant differences in constitutional formulas on church-state relations, it remains a fact that religion no longer plays a determining role in the public life of the advanced industrial democracies" (26).

The second question is whether the *sharia* is declared as "a" or "the" source of legislation in the constitution. Obviously, there is a significant difference between the two formulas. "A source" means that laws may also be based on sources other than the Sharia, while the term "the source" signifies a much stronger commitment to *Sharia*. Another seemingly subtle, but significant in its implications, difference is constitutional formulas is between "Sharia" as such and "the principles of Sharia." It is generally accepted that the first formula includes *fikh,* the elaborate body of Islamic law developed by Islamic jurists on the basis of *Qur'an* and *Sunna*, namely a judge-made law, whereas accepting as binding only "the principles of *Sharia*" gives the legislature and the courts, a much greater leeway.

Indeed, some Islamic scholars have even distinguished between *Sharia* and *fiqh*. Fadl argues, for example that there is a paradox "in the fact that there is a pronounced tension between the obligation to live by God's law, and the fact that this law is manifested only through subjective interpretative determinations… This dilemma was resolved, somewhat, in Islamic discourses by distinguishing between Shari'ah and *fiqh*. *Sharia,* it was argued, is the Divine ideal… The *fiqh* is the human attempt to understand and apply the ideal. Therefore, *Sharia* is immutable, immaculate, and flawless – *fiqh* is not" (27).

The third question is, in case the binding force of *Sharia* or its principles are accepted, who will review the compatibility of legislation (and also of administrative acts) to them. Here, two options are possible: to give this task to secular bodies such as the legislatures or the courts, or to a council of *ulema*. Iran, not covered by the present study, is the extreme example of the latter with its Guardian Council (*shûra-ye negahbân*) (28). In Sunni countries that do not have an independent religious hierarchy, this task is generally left to courts, especially to constitutional courts or councils. Indeed, in the last two decades, many Arab countries adopted some form of the judicial review of constitutionality (29). Perhaps the most notable example of this trend is the Egyptian Supreme Constitutional Court established in 1980. The Egyptian Court has generally given a liberal interpretation to Article 2 of the then Egyptian Constitution that accepts the principles of *Sharia* as *the* source of legislation. Thus, it has interpreted this clause within the unity of the Constitution, prospectively and not retrospectively, and distinguishing between definitive and non-definitive rules of *Sharia*. Indeed, the Court has so far struck down a law on the basis of Article 2 only once (30).

With regard to the constitutional status of Islam in our three countries, Turkey clearly represents an explicit preference for a secular system of government (31). The Ottoman Constitution of 1876 established Islam as the religion of the state; however, it declared that the free exercise of all known religions in the Ottoman lands and the continuation of the

privileges granted to religious communities were under the guarantee of the state (Art. 11). It also recognized the principle of equality in rights and duties regardless of religious and sectarian differences (Art. 17). Finally, it declared that all subjects of the Ottoman state would be called "Ottomans", regardless of religious and sectarian differences (Art. 8).

The 1924 republican Constitution, prepared by the National Assembly, dominated by Kemalists, but before the installation of a single-party system and the launching of a radical secularization program, declared Islam as the religion of the state (Art. 2), and empowered the Grand National Assembly to implement "the provisions of the *Shar'ia" (ahkâm-ı ser'iyyenin tenfizi*) (Art.26.). These and other religious references (such as those in the oaths of the President of the Republic and of the deputies) were removed from the Constitution in 1928, and secularism was incorporated in Art.2 in 1937 as one of the basic characteristics of the Republic, together with the other five principles of Kemalism: republicanism, nationalism, populism, statism, and revolutionism.

The Constitutions of 1961 and 1982 followed the same tradition and declared secularism as one of the fundamental characteristics of the state in both their Articles 2. Furthermore, both constitutions took strong precautions to protect the secular nature of the state. Thus, Art. 19 of the 1961 Constitution and Article 24 of the 1982 Constitution stated in identical words that "no one shall be allowed to exploit or abuse religion or religious feelings, or things held sacred by religion, in any manner whatsoever, for the purpose of even partially basing the fundamental social, economic, political, or legal order of the state, or the purpose of obtaining political or personal benefit or influence." Similarly, both Constitutions stipulate that "the statutes and programs as well as activities of political parties shall not conflict with… the principle of the democratic and secular Republic." Parties that violate this provision shall be permanently banned by the Constitutional Court (Arts. 68 and 69 of the

1982 Constitution.). Throughout this period, the Constitutional Court operated as a strong defender and protector of this assertive understanding of secularism (32).

In the Arab world, the closest parallel to Kemalist Turkey was Tunisia under Habib Bourgwiba. Even though the Tunisian Constitution recognized Islam as the religion of the state, he as president, "followed a bare-knuckled policy of French, and Turkish-style state-led 'modernization' peppered with harsh denunciations of 'so-called religious belief… Everyone knew that his modernizing and secularizing reforms had been imposed by the sheer power of the state riding roughshod over the misgivings of traditional Muslims." (33).

In Egypt, "the early constitutional experiments did not always raise questions about the relationship between the constitutional text and Islamic Shari'ah. This was partly because constitutions presented themselves as either consistent with or irrelevant to the application of Islamic law." A significant step took place, however, when the 1971 Constitution (Art. 2) declared Islamic Shari'a to be a principle source of legislation. "This was further developed when Art. 2 was subsequently amended in 1980 to provide for Islamic Shari'ah to be not only *a* principle source, but *the* principle source of legislation. This provision has been maintained unchanged in the interim constitution promulgated by the Supreme Council of the Armed Forces on March 30, 2011" (34).

The Process of Constitution-Making

One can distinguish between consensual (accomodational) and dissensual (confrontational) styles or modes of constitution-making. In the words of Andrea Bonime-Blanc, "consensual constitution-making takes place when most (if not all) major political groups participate in the drafting of the constitution… Agreements are reached through compromise, the avoidance of dogmatic solutions and by upholding the notion of political responsibility throughout the process… Dissensual constitution-making is a process in which

not all political actors participate, dogmatic solutions prevail and problems are often unresolved or resolved irresponsibly. Agreements are difficult to reach, and if reached, frequently exclude the views of one or more major political parties. The resulting constitutional text is one that poses a potential threat to the stability of the new political system" (35).

The constitution-making processes in Tunisia and Egypt correspond respectively to consensual and dissensual styles, even though both were triggered by similar circumstances, such as popular uprisings resulting from accumulated popular grievances against authoritarian and corrupt regimes. The Tunisian process proceeded essentially in a consensual manner and the resulting constitutional text commanded the approval of a strong majority of Tunisians. The Egyptian process, in contrast, was characteristically dissensual. As a result, the first stage ended with a military intervention, an intense civil strife, and the ousting of President Morsi and the government of Muslim Brothers. The second stage was completely dominated by the military. Both first and second drafts were approved by popular referenda, but with low rates of turnout.

A second variable affecting the chances for the success or failure of the transition process is the nature of the interim government. Yossi Shain and Juan Linz argue that "the type of interim administration is crucial in determining the subsequent regime, and may affect whether ethnic and regional conflicts will interfere with the prospects for long-term stability" (36). It can be argued that the Tunisian interim government corresponds to Shain and Linz's "power-sharing interim government" type. The first interim government filled with Ben-Ali's appointees was soon replaced by a much more democratic and representative one, generally known as the Ben Achour Commission after its chairman, composed of representatives from all parties as well as of civil society. In Stepan's words, this Commission turned out to be one of the most effective consensus-building bodies in the history of 'crafted' democratic

transitions" (37). Commission, focusing on essentially procedural matters to ensure a democratic transition "decided that the first popular vote to be held would be to choose the members of a constitutional assembly," that "the electoral system would be one of pure proportional representation," and that an independent electoral commission would be set up to ensure the fairness of elections" (38). Indeed, the October 2011 elections for the Constituent Assembly, where the moderately Islamist Ennahda won 89 seats (shorter than 109 seats necessary to form and sustain a government) with 37 per cent of the vote, was considered free and fair even by the losers. The Constituent Assembly elected a secular human rights activist Moncef Marzouki as the President of the Republic and endorsed a three-party coalition government under the premiership of Ennahda's former secretary-general Hamdi Jebali (39).

The Egyptian case provides a stark opposite to the Tunisian one. After Mubarek's fall, the transition process was strongly controlled by the Supreme Council of the Armed Forces (SCAF). While secular forces favored writing a constitution before holding elections, the SCAF, supported by the Muslim Brotherhood (MB), managed to hold elections for the People's Assembly, where two Islamist parties, the MB and the more radical Salafi al-Nour Party obtained a strong majority. In the three-round elections in November and December 2011 and January 2012, the Freedom and Justice Party, the political arm of the MB, won 235 seats, Al-Nouv Party, the political arm of the Salafist won 121 seats, the New Wafd (the oldest party in Egypt) won 38 seats, and the Egyptian Bloc (a coalition of liberal and leftist parties' won 34 seats). At the joint meeting of the People's Assembly and Shura Council (the second chamber) a Constituent Assembly was elected on 24 March 2012, which reflected a strong Islamist majority. Following a chain of constitutional battles, the text prepared by the Constituent Assembly was approved in a referendum on 15 and 25 December 2012 with an almost two-thirds majority but with a low turnout rate (40). In June 2012, Mohammad Morsi, the MB candidate was elected as President. Thus, Stepan observes that in contrast to the

Tunisian case, in Egypt the Mubarak regime " was replaced not by an open civilian body, but rather by SCAF, with its penchant for attempting to manage fundamental political change by means of unilateral communiques (more than 150 of which have been issued so far)" (41). In the same vein, Stepan and Linz describe the Egyptian constitution-making process as a three-cornered fight:

> "…the generals, the Brotherhood, and the liberals all wanted to protect themselves in certain areas by placing limits on the rights of democratic institutions to make public policy. Soon after Mubarak's fall, many of the young secular liberals who had filled Tahrir square began to argue that the MB was so strong and so fundamentally undemocratic that core-liberal-democratic values could only be saved if secular liberals cut a deal with a non-democratic source of power-the military. Many liberals argued that the military should help structure, or even write the constitution before elections for the Constituent Assembly, or at the very least appoint a committee of expert to draft the constitution so that the Brotherhood could not constitute a majority" (42).

As expected, state-religion relations constituted one of the key dispute points in Egyptian constitution-making process. "At one end of the spectrum, Christians and secular Egyptian desire a religion-neutral constitution. At the other end, conservative Muslims wanted Sharia to take center-stage. The Salafi groups originally demanded that 'principles' to be removed from Article 2, which would have made Sharia the main source of the legislation." As pointed out above, the word "principles" gave the Supreme Constitutional Court "considerable discretion in deciding what was Sharia-compatible and what was not." At the end, a compromise was reached by which Article 2 was kept intact, but three more articles (3, 4, and 219) were added to the text. Article 3 provides guarantees for non-Muslims. Article 4 states that "the Council of Al-Azhar's Senior Scholars shall be consulted on issues related to

Islamic Sharia." However, "Al-Azhar has been traditionally reputed for advocating a moderate version of Islam," and under Article 4 its opinions are not legally binding. Article 219, on the other hand, defines the meaning of Sharia. Thus, the principles of Islamic Sharia "now includes all the rules of jurisprudence and credible sources that are accepted in Sunni doctrines," broadening its scope beyond the narrow interpretation given by the Supreme constitutional Council (43). In addition to relations between state and religion, civil-military relations, and the system of government (presidential or parliamentary) constituted other important conflictual issues (44). Thus, it is no surprise that the 2012 Constitution, during the very short period it was in force, witnessed bitter constitutional disputes between the Supreme Constitutional Court and the Shura Council and between the Shura Council and Al-Azhar. Two leading experts describe the 2012 Constitution as a "document written in a process that began with high hopes and ended with bitter recriminations, high-handed maneuvers by the drafters, and an opposition boycott of the final stages of the drafting." (45).

The Egyptian constitution-making process can be described as highly dissensual. It is argued that "the entire framework for the constitutional drafting process was not the product of a negotiated or a common understanding between political forces… It was imposed by the SCAF in March 2011, and was not amended by Morsi when he had the chance in June 2012… the final decision by the Muslim Brotherhood's Freedom and Justice Party (FJP) to finalize the draft constitution in November 2012 despite the feet that all non-Islamic had withdrawn from the process was a fatal blow to constitution's and to the party's own credibility." (46). the failure of major Egyptian political actors to arrive at a broadly-based consensual text, and the resulting political polarization was certainly the main factor behind the *coup*.

With the ousting of the MB government, the new interim president Adli Mansour issued a "constitutional declaration" (or interim constitution) on 8 July 2013, providing a

roadmap on how the new constitution will be drafted (47). As expected, the new stage proceeded under the strict control of the military-dominated interim government. On September 1, 2013, the interim president established a 50 member committee to prepare a final version of the draft, and the Committee completed its work on 2 December 2013. The draft was submitted to referendum on 14-15 January 2014 and was adopted by 98.1 percent majority with a low turnout rate of 38.6. Among the most important changes brought about by the new Constitution is a lessening of the role of religion in government. Although Article 2 still declares Islam as the religion of the state, the status of Sharia is expressed in more flexible terms: "The principles of Islamic Sharia are the principle source of legislation". The former Article 4 on the consultative role of the Al-Azhar in reviewing the conforming of the legislation to Sharia does not appear in the new text. As Zaid Al-Ali argues," more secular-minded Egyptian will be comforted that many of the references to religion that had been included in 2012 were eliminated. Most importantly, the infamous article 219 from the 2012 constitution was removed, allowing a large sigh of relief." Another important change was shifting the balance of power from parliament (as the MB strongly favored) to the president, "under the assumption that the Brotherhood has little chance of winning the presidency any time soon. It also grants impressive amounts of authority and independence to the military, the police and the judiciary, which are considered to bastions of anti-Brotherhood authority." (48). It remains to be seen whether the political system of Egypt will evolve in a democratic direction under the new constitution.

Compared to the Egyptian experience, the constitution-making process in Tunisia proceeded in an essentially consensual way, even though it also had dissensual phases at certain points. Several reasons may be cited to explain this difference. Most importantly, the Tunisian Islamist party Ennahda is a more moderate force than the Egyptian MB. Hamdi Jebali, the former secretary-general of Ennahda stated at some point that "we are much closer

to the AKP than to the Muslim Brotherhood. We are a civic party emanating from the reality of Tunisia, not a religious party. A religious party believes it has legitimacy not from the people but from God. A religious party believes it has the truth and no one can oppose it because it has the truth" (49).

Stepan and Linz emphasize in the same vein three factors to explain Tunisia's exceptionality: "First, the leader of Ennahda party, which was at one time closer to the Muslim Brotherhood, since the early 1980s increasingly came to resemble Indonesia's major Islamic groups is arguing that democracy was not only acceptable, but necessary. This eventually facilitated collaboration between Ennahda's Islamists and secular liberals from other parties in joint efforts against Ben Ali. Second, due to highly innovative (pacts) formed between secularists and Islamists before the transition started, there was a kind of innoculation against the intense fear of democracy's consequences that drives hybrid authoritarianism. Suspicions remain, of course, but most secular liberals do not fear Ennahda badly enough to use authoritarianism as a shield against it. Thirdly, in Tunisia by contrast to Egypt, not only civil society but *political society* began to develop. In Tunisia, secular liberals and Islamists begun to meeting regularly eight years before Ben Ali's fall to see whether they could reduce mutual fears and agree upon rules for democratic government. That is, they began to create a political society" (50).

Indeed, contact between Ennahda and secular liberals had produced an impressive document called "call from Tunis," as early as 2003. The document endorsed two fundamental principles, namely that any future elected government would have to be "founded on the sovereignty of the people as the sole source of legitimacy," and the state, while showing respect for the people's identity and its Arab-Muslim values," would provide "the guarantee of liberty of beliefs to all and the political neutralization of places of worship." The Call also demanded "the full equality of women and men." From 2005 on, "four main

political parties, together with representatives of smaller parties, met to reaffirm and even deepen their commitment to the Call's principles" (51).

Certainly Tunisia displayed certain other characteristics that facilitated a peaceful and consensual transition. As Henry argues, "Tunisia was the most promising candidate, wealthier, with a more urbanized, better educated population, with proportionately more mobile phones, Internet connection, and Facebook membership. And Tunisia enjoyed another major advantage. Its relatively modest military forces, unlike those of most other Arab states, had a proud tradition of staying out of politics. Under founding father Habib Bourguiba Tunisia developed an exemplary reputation as the sole civilian republic in the region, and his successor, despite a career in military intelligence, promoted the police rather than the army to serve as his praetorian guard. The Tunisian armed forces were only too happy to step aside and protect the populace from the police rather than protect President Ben Ali." (52).

This does not mean, of course, that the Tunisian transition did not experience certain dissensual phases. In the words of the two experts, "for a time, it was far from certain that the negotiating parties would be able to reach a final agreement. This was particularly true after the changes that took place in Egypt during June 2013, coupled with the assassination of three opposition politicians, as well as attacks against the country's military… During the fall of 2013, leading members of the opposition were calling for the government to be toppled and for the Constituent Assembly to be dissolved. In the end, a series of negotiations took place to defuse the political crisis without any additional violence. The country's main political forces participated in discussions that were brokered by the country's largest trade unions, the lawyers association, and one of the country's largest human rights associations (who were together referred to as the 'Quartet') (53). Finally, an agreement was reached and the new constitution was adopted by the Constituent Assembly by a very strong majority, with 200 affirmative against 12 negative votes.

Thus, the final text reflects a compromise based on consensus. With regard to the role of religion, while Islam is declared as the religion of the state (Art. 1), Article 3 states that sovereignty belongs to the people. Although these two principles may seem contradictory, it has been argued that "the negotiating sides are unlikely to have been able to reach a better arrangement in the circumstances, particularly given the important difference in opinion that existed between them" (54). Also to the satisfaction of seculars, Art. 2 describes Tunisia as a "civil state" (in Arabic usage an approximation of a secular state); there is no provision to the effect that Sharia's being "a" or "the" source of legislation; and Article 20 endorses gender equality: "All citizens, male and female alike, have equal rights and duties, and are equal before the law without any discrimation. The state guarantees to citizen, male and female, individual and collective rights, and provides them with conditions for a dignified life." Thus, as two commentators note, "by successfully negotiating a final agreement, the Tunisians have led the way in providing that ideological differences need not lead to conflict or stalemate… The pragmatic and result-based approach that the Tunisian negotiators adopted will serve as a positive example of successful constitution-making and conflict resolution not just for the Arab region, but for much of the rest of the world as well" (55).

Turkey has not been able so far to replace its military-inspired, illiberal constitution of 1982 with a totally new and democratic one. Instead, it has engaged in politics of constitutional amendments. So far, the constitution has been amended 18 times, sometimes in major and sometimes in minor ways. Although the cumulative effect of these amendments has been a considerable amount of liberalization and democratization of the political system, it is generally agreed that it has not been possible to fully eliminate its authoritarian and illiberal spirit. The amendments from those of 1993 through 2005 were carried out in a consensual manner through intense inter-party negotiations and were adopted by the National Assembly with overwhelming majorities. The 2007 and 2010 amendments, on the other hand, were the

products of a highly dissensual style, and were adopted mainly by the votes of the majority party, the AKP. One amendment in 2008, designed to lift the headscarf ban on female university students, was annulled by the Constitutional Court for allegedly being contrary to the unamendable provision on secularism. Since both 2007 and 2010 amendments were adopted by less than two-thirds majorities, they had to be submitted to a mandatory referendum. At the end, they were approved by 69 and 58 percent majorities, respectively (56).

The most serious attempt to make a new constitution came after the parliamentary elections of 2011. All four parties represented in the newly elected parliament (the conservative AKP, the strongly secularist, center-left CHP, the ultra-nationalist MHP, and the Kurdish nationalist BDP) agreed to establish an inter-party "Constitutional Reconciliation Committee" within parliament. At the end of two years of intensive work, the Committee could agree only on 60 articles out of a total of 175 of the1982 Constitution. Moreover, none of the agreed-upon articles touched on the really divisive issues such as the Kurdish question and the relations between state and religion.

Indeed, the latter set of issues has always centred on the main cleavage in modern Turkish (even late Ottoman) politics. The cleavage is between secular and secularizing state elites and their allies in the society, and the large masses of conservative and religious people. In this sense, this cleavage has been described as a center-periphery one by a number of Turkish scholars (57). At present, the periphery is represented by the current governing party AKP, and the chief representative of the secularist center is the CHP (Republican People's Party). Even though the AKP has never repudiated the principle of secular state and described itself not as an Islamic but a "conservative democratic" party, it clearly favors a passive type of secularism with greater public visibility for Islam (58). In fact, there has been a considerable shift from assertive to passive secularism in recent years, and it has taken place

without any constitutional amendments, through ordinary legislation or even changing administrative practice. The secular front, on the other hand, has always suspected of the AKP as having a "hidden agenda" of gradually establishing an Islamic regime, as "wolves in sheep's clothing" in other words.

It is not surprising, therefore, that the Constitutional Reconciliation Committee could not reach an agreement on any issue along the secular-religious divide. The main divisive issues are the status of the Presidency of Religious Affairs, religious education in the public and private realms, maintenance or abolition of the ban on dervish orders (*tarikats*), public visibility of religion, and the ban on religious political activity. The chances for making a broadly consensual constitution seem as remote as ever.

Conclusion: Tentative Observations on Islamic Constitutionalism

The reason for the use of the word "tentative" in the sub-title is that this is as much a matter of theological debate (which is clearly beyond my field of expertise) as a matter of political analysis. Both the academic and public views on this question are sharply divided. Scholars from the Orientalist tradition argue that many notions associated with Western democracy, such as the notions of popular sovereignty, representation, elections, secular laws, an independent judiciary, and a civil society composed of a multitude of autonomous groups, are alien to the Muslim political tradition (59).

Many Muslim (and some Western) theorists argue, on the other hand, that Islamic concepts such as "government as a trust of the people" (*amanat al-Hukm*), limited and civilian government, consultation (*shura*), independent reasoning (*ijtihad*), consensus (*ijma*), and the Qur'anic injunction that "there shall be no compulsion in matters of religion" are principles which support a constitutional democracy (60). Stepan, citing the examples of such Muslim-majority countries as Turkey, Bangladesh, Indonesia, Senegal and Mali that have maintained

a constitutional democracy for quite some time, argues that exceptionalism is more an "Arab" than a "Muslim" phenomenon. He warns, however, that "unless a compelling case can be made that there is something unique about Arab political culture that makes it permanently more inimical to electoral competitiveness than any other major political culture in the world, it seems likely that both theorists and policy makers will do better to search the *political* – as opposed to the ethnic or religious – particularities of the Middle East and North Africa for clues to the obdurately antidemocratic features of political life in those regions (61). The successful democratic transition in Tunisia suggests that Arab exceptionalism is not an absolute one.

A third view, strongly defended by Nathan Brown, argues that an Islamic constitutionalism in the sense of a limited and accountable government based on institutional balancing is possible, but it may lack liberal and democratic elements. Thus, he states that "we should be quite open to the possibility that Islamic constitutionalism would sometimes be far from liberal in conception and practice – and still be constitutionalist… Constitutionalism might be based on different sorts of political orientations, including those with a more nationalist or communitarian flavor (62). Whether such a *sui generis* form of constitutionalism deserves to be considered truly constitutionalist in the established sense of the word is a matter of definition. But this debate is likely to go on for a very long time.

NOTES

1- Tillman J. Röder, "The Separation of Powers in Muslim Countries," in Grote and Röder, *Constitutionalism in Islamic Countries*, p. 321.

2- Nathan J. Brown, *Constitutions in a Nonconstitutional World: Arab Basic Laws and the Prospects for Accountable Government* (Albany: State University of New York Press, 2002), p. XIII.

3- *Ibid.,* pp. XIV, 10-13, 31-32, 91-94.

4- *Ibid.,* pp. 9, 197-199.

5- Cass R. Sunstein, "Constitutions and democracies: an epilogue," in Jon Elster and Rune Slagstad, eds., *Constitutionalism and Democracy* (Cambridge: Cambridge University Press, 1988), p. 327.

6- Stephen Holmes, "Precommitment and the paradox of democracy," in *Ibid*, p.197.

7- Brown, *Constitutions in a Nonconstitutional World*, p.17; Leon Carl Brown, *The Tunisia of Ahmad Bey*, 1837-1855 (Princeton, Princeton University Press, 1974).

8- Brown, *Constitutionalism in a Nonconstitutional World*, p.18.

9- Ergun Özbudun and Ömer Faruk Gençkaya, *Democratization and the Politics of Constitution-Making in Turkey* (Budapest and New York: Central European University Press, 2009), pp. 8-9; Robert Devereux, The First Ottoman Constitutional *Period*: *A Study of Midhat Constitution and Parliament* (Baltimore: the Johns Hopkins University Press, 1963).

10- Brown, *Constitutions in a Nonconstitutional World*, pp. 26-29.

11- *Ibid*., p.32.

12- *Ibid*., pp. 32-33.

13- Özbudun and Gençkaya, *Democratization and the Politics of Constitution-Making*, pp. 10-13.

14- *Ibid.*, pp. 14-21.

15- Brown, *Constitutionalism in a Nonconstitutional World*, pp. 76-78.

16- *Ibid.*, pp. 36-41.

17- *Ibid.*, pp.78-85; Adel Omar Sherif, "The Relationship between the Constitution and the Shari'ah in Egypt," in Grote and Röder, *Constitutionalism in Islamic Countries*, pp. 121-133; Natalie Bernard-Maugiron, "Strong Presidentialism: The Model of Mubarak's Egypt," in *ibid.*, pp. 373-385.

18- Ahmet Kuru, *Secularism and State Politics Toward Religion: The United States, France and Turkey* (Cambridge: Cambridge University Press, 2009) pp. 259-260.

19- *Ibid.*, p.11

20- Mohammed Hashim Kamali, "Constitutionalism in Islamic Countries: A Contemporary Perspective of Islamic Law," in Grote and Röder, *Constitutionalism in Islamic Countries*, p.21.

21- Khaled Abou El Fadl, "The Centrality of Shari'ah to Government and Constitutionalism in Islam," in *ibid.*, p.56.

22- Sherif, "The Relationship between the Constitution and the Shari'ah in Egypt," p.123.

23- Grote and Röder, "Constitutionalism in Islamic Countries: Introduction," p.14.

24- *Ibid.*, p.10.

25- Ergun Özbudun, "Secularism in Islamic Countries: Turkey as a Model," in *ibid.*, p.137.

26- Pippa Norris and Ronald Inglehart, *Sacred and Secular: Religion and Politics Worldwide* (Cambridge: Cambridge University Press, 2004), pp. 24-25.

27- Fadl, "The Centrality of Shari'ah to Government and Constitutionalism," p. 57.

28- Said Amir Arjomand, "Islam and Constitutionalism since the Nineteenth Century: The Significance and Pecularities of Iran," in Arjomand, ed., *Constitutional Politics in the Middle East: With Special Reference to Turkey, Iraq, Iran and Afghanistan* (Oxford and Portland Oregon: Hart Publishing, 2008), pp. 33-62; also, Arjomand " The Kingdom of Jurists: Constitutionalism and Legal Order in Iran," Grote and Röder, eds., *Constitutionalism in Islamic Countries*, pp. 147-169; Foroud Shirvani, "A Different Approach to the Control of Constitutionalism : Iran's Guardian Council," in ibid., pp. 279-289.

29- Brown, *Constitutions in a Nonconstitutional World*, pp. 148-159; Rainer Grote, "Models of Institutional Control: The Experience of Islamic Countries," in Grote and Röder, eds., *Constitutionalism in Islamic Countries*, pp. 221-238.

30- Sherif, "The Relationship between the Constitution and the Shari'ah in Egypt," pp. 128-132; Brown, *Constitutions in a Nonconstitutional World*, pp. 180-184.

31- Here, I draw from Özbudun, "Secularism in Islamic Countries: Turkey as a Model."

32- *Ibid.*, pp. 139-144; also, Osman Can, "The Turkish Constitutional Court as a Defender of the *Raison d' Etat?*" in Grote and Röder, *Constitutionalism in Islamic Countries*, pp. 259-278; Hootan Shambayati, "The Guardian of the Regime: The Turkish Constitutional Court in Comparative Perspective," in Arjomand, ed., *Constitutional Politics in the Middle East*, pp.99-121.

33- Alfred Stepan, "Tunisia's Transition and the Twin Tolerations," *Journal of Democracy*, 23, no.2 (April 2012), pp.99-100.

34- Sherif, "The Relationship between the Constitution and the Shari'ah in Egypt," pp. 125-127.

35- Andrea Bonime-Blanc, *Spain's Transition to Democracy: The Politics of Constitution-Making* (Boulder and London: Westview Press, 1987), p.13.

36- Yossi Shain and Juan J. Linz, *Between States*: *Interim Governments and Democratic Transitions* (Cambridge: Cambridge University Press, 1995), pp. 4-5, 7.

37- Stepan, "Tunisia's Transition and the Twin Tolerations," pp.92.

38- *Ibid*., pp. 92-93.

39- *Ibid*., p. 91; Ergun Özbudun, "Introduction: Transition Theory and The Arab Spring," in Özbudun, ed., *Regime Changes and Transitions in Arab Spring Countries* (Istanbul: Küre Yayınları, 2014), p. 19.

40- Ibid., pp. 19-20; Mahmoud Hamad, "The Rocky Road to the Second Republic: The Birth and Battles of Egypt's Constitution," in Özbudun, ed., *Regime Changes and Transitions in Arab Spring Countries*, pp. 91-98; Hanafy Gebaly, "Recent constitutional Developments in Egypt (January-March 2012), Venice Commission, CDL (2012)027, Strasbourg, 11 April 2012.

41- Stepan, "Tunisia's Transition and the Twin Tolerations," p. 92.

42- Alfred Stepan and Juan J. Linz, "Democratization Theory and the 'Arab Spring'," *Journal of Democracy*, 24, no. 2 (April 2013), p.21.

43- Hamad, "The Rocky Road to the Second Republic," pp. 99-101.

44- *Ibid*., pp. 102-108.

45- Zaid Al-Ali and Nathan J.Brown, "Egypt's constitution swings into action, "*The Middle East Channel*, March 27, 2013, mideast.foreignpolicy.com/posts/2013/03/27/egypt_s_constitution_swings_into_action

46- Zaid Al-Ali, "Egypt's new constitutional declaration," http://mideast.foreignpolicy.com/posts/2013/07/09/another_egyptian_constitutional_de claration.

47- *Ibid*.

48- Zaid Al-Ali, "Egypt's third constitution in three years: A critical analysis," http://www.idea.int/wana/egypts_third_constitution_in_three_years_a_critical_analysis .cfm

49- Stepan, "Tunisia's Transition and the Twin Tolerations," pp. 95-97.

50- Stepan and Linz, "Democratization Theory and the 'Arab Spring'," p.23. For the authors' concept of "political society," see Juan J. Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America and Post-Communist Europe* (Baltimore and London: The Johns Hopkins University Press, 1996), pp.8-10.

51- Stepan, "Tunisia's Transition and the Twin Tolerations," pp. 96-97.

52- Clement Moore Henry, "Social, Cultural, and Economic Conditions of Democratization in the Arab World," in Özbudun, ed., *Regime Changes and Transitions in Arab Spring Countries*, pp. 64-65, also, Mouna Kraiem Dridi, "Le Cadre Juridique de la transition en Tunisia," in ibid. pp. 115-130.

53- Zaid Al-Ali and Donia Ben Romdhane, "Tunisia's new constitution: progress and challanges to come," *Open Democracy*, 16 February 2014, http://www.opendemocracy.net. It is worth noting that the Tunisian Constituent Assembly closely cooperated with the Venice Comission of the Council of Europe (Commission for Democracy through Law). Several joint meetings took place between the members of the commission and those of the Constitutional Committee of the Constituent Assembly. See, for example, Venice Commission, "Observations on the Final Draft Constitution of the Republic of Tunisia," Strasbourg, 17 July 2013, CDL (2013)034; "Opinion on the Final Draft Constitution of the Republic of Tunisia," Strasbourg, 17 October 2013, CDL_AD (2013)032.

54- Al-Ali and Romdhane, "Tunisia's new constitution."

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56- Özbudun and Gençkaya, *Democratization and the Politics of Constitution-Making*, chs. 2, 3, and 6; Özbudun, "Democracy, tutelarism, and the search for a new constitution," in Carmen Rodriguez, Antonia Avalos, Hakan Yılmaz, and Ana I. Planet (eds.), *Turkey's Democratization Process* (London and New York, Routledge, 2013), pp. 293-311.

57- Ergun Özbudun, *Party Politics and Social Cleavages in Turkey* (Boulder and London, Lynne Rienner, 2013), chs. 2 and 3.

58- William Hale and Ergun Özbudun, *Islamism, Democracy and Liberalism in Turkey: The Case of the AKP* (London: Routledge, 2010).

59- See, for example, Elie Kedourie, *Democracy and Arab Political Culture* (Washington, DC: The Washington Institute for Near East Policy, 1992), pp.5-6.

60- Alfred Stepan with Graeme B. Robertson, "An 'Arab' More than 'Muslim' Electoral Gap," *Journal of Democracy*, 14, no.3 (July 2003), p. 40; Kamali, "Constitutionalism in Islamic Countries," pp. 19-33; Fadl, "The Centrality of Shari'ah to Government and Constitutionalism in Islam," pp. 35-61.

61- Stepan, "An 'Arab' More than 'Muslim' Electoral Garp," pp. 40-41. Along the same lines, Vali Nasr, "The Rise of Muslim Democracy," *Journal of Democracy*, 16, no. 2 (April 2005), pp. 13-27.

62- Brown, *Constitutions in a Nonconstitutional World*, pp. 108,180 and ch.6 *pessim*.