

From revolutions to constitutions: the case of Egypt

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Should a constitution be an ideal document guaranteeing international human rights or a compromise document that reflects the interests and powers of different actors in a societal context? For many in the West, the former seems to be their primary understanding of constitutionalism; they tend to forget that their political orders arose from something closer to the latter. In this article, I argue that the constitutions emerging from the recent revolutions in the Middle East should be interpreted in political rather than purely legal or rights-based terms. Using Egypt as the primary case-study, I propose that its new constitution should be seen as a compromise between conflicting political interests that has created institutions within which claims for rights and responsibilities are still to be negotiated. Rather than an ideal document that will protect human rights, the Egyptian constitution should be seen as a political project in which interests and conflicts will be negotiated.

While much of the coverage of the Arab Spring has focused on the emergence of new political actors, the role of Islam and the security context of the wider region, a focus on constitutions and constitution-making reveals important political interests, actors and outcomes. The significance of this constitution-making process has largely been overlooked, as regional experts have (for good reason) paid less attention to written constitutions in most Middle Eastern states, and constitutional and legal theorists have seemed more comfortable exploring constitutions in established democracies.¹

This article will explore the dynamics of political change and constitution-making in one case, Egypt. In January 2011, activists followed the Tunisian people

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¹ There are certainly some exceptions to this lack of focus by regional experts. For instance, the Carnegie Endowment for International Peace's Middle East Programme has explored issues of law and constitutionalism in the region, led in part by analyst Nathan Brown: see <http://www.carnegieendowment.org/programs/global/index.cfm?fa=proj&id=107>, accessed 7 Feb. 2013. A more recent site focusing on constitutional transitions in the region is the Middle East Constitutional Forum, in part the work of Chibli Mallat: see <http://www.righttononviolence.org/mecf/>, accessed 7 Feb. 2013.

in organizing protests against the Mubarak regime. The protests spread quickly and within a matter of months swept away much of the existing political order, culminating in the resignation of President Hosni Mubarak. The military took over, choosing not to fire on protesters in the early demonstrations and then taking over as guardians of the state throughout 2011 and 2012. A new parliament was elected in late 2011, which brought to power a majority Islamist-led coalition.² In June 2012, a new president was elected: Mohammed Morsi, a long-time member of the Muslim Brotherhood. After controversies surrounding the composition of the constitutional assembly and leaked provisions of the text, on 29 November 2012 a draft constitution was promulgated to the nation. In a nationwide referendum lasting over two weeks in mid-December, the constitution was ratified; it came into existence as the official constitution on 26 December 2012.³

Throughout this period, there has been a heated debate over the constitutional order in Egypt. This process of constitution-making provides an important window on the politics of Egypt and the wider regional context. When western attention has turned to the Egyptian constitutional process, it has largely been in alarmist terms, with focus on the power of Islamic actors in the constitutional commission and threats to freedom of speech.⁴ For instance, a recent report from Human Rights Watch highlighted 'inadequate protections for minorities and personal freedoms',⁵ and the UN High Commissioner for Human Rights, Navi Pillay, has highlighted the failure of the constitution to make 'any reference to the international human rights treaties which Egypt has ratified, and is bound to uphold'.⁶ While it is important to highlight such concerns, this focus distorts what is a more complex and perhaps valuable political process, one in which divergent voices in the Egyptian political order can express themselves and turn their revolutionary moment into something more concrete. This article seeks to valorize this process, which will, inevitably, result in an imperfect political order but which is, importantly, an instance of political action that has long been absent from the authoritarian context of Egyptian politics.

To make this point, the article will locate the current Egyptian constitutional debate in the context of Egyptian history, pointing to two other revolutions and their transition to constitutions, those of 1919 and 1952.⁷ In comparing these three

² There are two main Islamist parties, which together won 71% of the parliamentary seats in early 2012. One is a rebranded Muslim Brotherhood (Freedom and Justice Party), while the other, Al-Nour, is a more conservative Islamic party, sometimes referred to as a Salafist party, which adheres to a more rigid social version of Islam than that espoused by the Muslim Brotherhood. For an overview of the 2011–2012 parliamentary election and the parties, see <http://www.bbc.co.uk/news/world-middle-east-16665748>, accessed 7 Feb. 2013.

³ An unofficial English-language translation of the constitution is available at <http://www.egyptindependent.com/news/egypt-s-draft-constitution-translated>, accessed 7 Feb. 2013.

⁴ For one example, see Matt Bradley, 'Alarm raised over Egypt constitution', *Wall Street Journal*, 26 Sept. 2012, http://online.wsj.com/article/SB10000872396390444083304578018582179717240.html?mod=googlenews_wsjs, accessed 7 Feb. 2013.

⁵ Matt Bradley, 'Advocacy group criticizes draft Egyptian constitution', *Wall Street Journal* (Europe edn), 8 Oct. 2012, <http://online.wsj.com/article/SB10000872396390443294904578044561379037122.html>, accessed 7 Feb. 2013.

⁶ See <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12870&LangID=E>, accessed 7 Feb. 2013.

⁷ The US legal scholar Bruce Ackerman has proposed the idea of 'constitutional moments' as one way to describe important changes in constitutions, although his argument is focused on the developments surrounding a

revolutionary moments and the resulting constitutional dynamics, the article will draw out two aspects of the constitution-making process. First, a constitution does not arise from the fiat of wise lawgivers or experts in the rule of law.⁸ Rather, it emerges from a contentious political process in which competing agents and institutions seek to promote their own interests. This competitive process, however, is actually beneficial to constitution-making, constitutional politics and political life more widely. One of the most difficult aspects of a post-revolutionary transition is the task of turning the constituent power of a revolution into the constitutional form of a political order. It is this dynamic that can be seen in all three historical instances.

Second, the article will highlight that while the political dynamics of constitution-making in Egypt reveal domestic political conflict, the process of constitution-making also demonstrates that such dynamics take place in a global political context. That is, the efforts to turn a revolution into a constitution in a penetrated society like Egypt reveal the crucial role played by agents such as Great Powers, international organizations and global civil forces in the background against which a constitution is formed. For instance, in the current constitutional context, Middle East constitutional expert Nathan Brown has noted that leaks about provisions of the text and the accessibility of those leaks to a global audience has resulted in something closer to a 'wiki constitution' than has ever been the case in the past.⁹ Certainly, constitution-making and even constitutional debate in other societies take place in the same global political space; it is the fact that the Middle East has been subject to cross-currents of political, economic and religious interests and actors that highlights the inherently global nature of the constitution-making process.¹⁰ Moreover, by focusing not just on current events in Egypt but on three different constitutional moments in its history, this article will demonstrate that Egypt has long been subject to external forces in creating its constitution(s).

Finally, the article suggests that when these two points—the practice of contentious politics in constitution-making and the dynamics of constitution-making in a global context—are taken into account, understanding constitutions and constitutionalism in a country like Egypt can do much more for us than simply explain the specifics of this case. Rather, Egypt provides an insight into how constitutionalism can and does work in the current international system, and why it is important for scholars and policy-makers to explore this process without trying to fit it into a preordained pattern largely borrowed from the history of

single constitutional text (the American one) rather than subsequent constitutions. See Bruce Ackerman, 'Constitutional politics/constitutional law', *Yale Law Journal* 99: 3, 1989/90, pp. 453–548.

⁸ The classical ideal of the wise lawgiver was Solon, who supposedly created the Greek legal order in the seventh century bc. There exist would-be Solons today, such as the United Nations Development Programme, which has a project on the rule of law: see <http://www.unrol.org>, accessed 7 Feb. 2013.

⁹ Nathan Brown, 'Egypt's constitution: Islamists prepare for a long political battle', Carnegie Endowment for International Peace, 23 Oct. 2012, <http://carnegieendowment.org/2012/10/23/egypt-s-constitution-islamists-prepare-for-long-political-battle/e4ww>, accessed 7 Feb. 2013.

¹⁰ There are many studies of the penetrated nature of this region; two good examples are Raymond Hinnebusch, *The international politics of the Middle East* (Manchester: Manchester University Press, 2003), and Toby Dodge and Richard Higgott, *Globalization and the Middle East: Islam, economy, society and politics* (London: Royal Institute of International Affairs, Chatham House, 2002).

western democracies. Efforts to make Egypt into a liberal democracy along the lines of North America or Europe fail to take into account the complexities of the region. More importantly, however, a focus solely on those provisions of a constitution relating to human rights fails to take into account the fact that constitutions are inevitably political documents that will reflect the political interests and tensions of the society they seek to govern. Assuming that wise lawgivers exist who can create an ideal document is not a true reflection of political life in Egypt or anywhere.

Politics, power and constitutions

Turning a revolution into a constitution, in Egypt as in other cases, reveals the essentially political nature of constitutionalism. This is an important point to make in relation to the legalism that now surrounds constitutions in most countries. That is, constitutions are often understood through practices of judicial review and interpretation. Instead, as the process of making a constitution demonstrates, both at the moment of creation and throughout the life of a constitution, intense political debates engage a wide range of actors in a political system. There exists a theoretical literature that makes this point in the context of British and American politics and constitutionalism. These arguments, which have become known as political constitutionalism, arise from a diverse array of factors including the theoretical tradition of republicanism and the complexities of the British relationship to the European Union.¹¹

Another important theoretical concept helpful in understanding the Egyptian case is that of constituent power. Constituent power is the revolutionary force, manifest in ‘the people’, that undergirds the creation of a political community. The term arose in the context of the French Revolution and is usually associated with Abbé Sieyès, a player in and theorist of the revolution, whose works emphasized the power of popular sovereignty. The challenge faced by all revolutions is to channel this power into a functioning government. Recent work has explored the complexity of translating this constituent power into a constitutional form, a process that has been labelled the ‘paradox of constitutionalism’ by scholars in this field.¹²

¹¹ These trends are well developed in Richard Bellamy, *Political constitutionalism: a republican defense of the constitutionality of democracy* (Cambridge: Cambridge University Press, 2007). Another key thinker here is Jeremy Waldron, who has made his contribution to this literature through a critique of judicial review. See Jeremy Waldron, ‘The core of the case against judicial review’, *Yale Law Journal* 115: 1346, 2006, pp. 1346–406, <http://www.law.harvard.edu/news/spotlight/links/waldron.pdf>, accessed 7 Feb. 2013. Adam Tomkins has also argued for political constitutionalism in the British context: see *Our republican constitution* (Oxford: Hart, 2005). In the American context, Mark Tushnet is an important theorist of this approach: see *Why the constitution matters* (New Haven, CT: Yale University Press, 2010). For a critical reply to the political constitutionalism approach, see Paul Craig, ‘Political constitutionalism and the judicial role: a response’, *International Journal of Constitutional Law* 9: 1, 2011, pp. 112–31.

¹² For the framing of this paradox, see the seminal volume edited by Martin Loughlin and Neil Walker, *The paradox of constitutionalism: constituent power and constitutional form* (Oxford: Oxford University Press, 2007). For one particularly insightful study of constituent power in the current global context, see Christopher Thornhill, ‘Contemporary constitutionalism and the dialectic of constituent power’, *Global Constitutionalism* 1: 3, Nov. 2013, pp. 369–404.

There exists a theoretical literature on the founding and making of constitutions that draws on the idea of constituent power, although it generally does not address the idea of political constitutionalism.¹³ The idea of constitution-making appears first in eighteenth-century political developments with the American and French constitutional assemblies.¹⁴ In the twentieth century there emerged a discourse of ‘constitutional design’, or the idea that states emerging from a radical political change—whether brought about by revolutionary dynamics, global political shifts or civil conflict—can begin the process of creating a new political order by first writing out a new constitution, one that is engineered to avoid the problems of the previous political order. For instance, the end of the Cold War saw a surge in literature on constitution-making in eastern Europe.¹⁵ A large-scale project led by the United States Institute of Peace has resulted in a publication summarizing efforts to build constitutions in post-conflict situations.¹⁶ The United Nations Development Programme has been actively engaged in helping states make the transition from conflict situations to political orders that are broadly constitutional.¹⁷

The combination of political constitutionalism and constituent power will animate my analysis of the Egyptian constitutional process. What I highlight in this article is how the constituent power of the revolutionary moment in Egypt’s history comes up against two different aspects of the need for constitutional form: first, the internal paradox of the need to create working institutions, which manifests itself in conflicts surrounding the assemblies tasked with writing a new constitution; and second, the global background conditions, both structural and otherwise, that shape the writing of constitutions in Egypt (and, indeed, around the world).

Egypt: from revolutions to constitutions

Egypt has undergone three major revolutionary changes since the beginning of the twentieth century that have resulted in political deliberations about its constitutional order: the 1919 revolution, the 1952 Free Officers’ Movement, and the 2011 Arab Spring, or Tahrir Square Revolution.¹⁸ In all three, the constituent

¹³ For one effort to make the link between constitution-making and political constitutionalism, see Marco Goldoni, ‘Political constitutionalism and the value of constitution making’, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2018023, accessed 7 Feb. 2013. For one effort to explore the link between and revolutions and political institution-making, see Hannah Arendt, *On revolution* (London: Penguin, 1963).

¹⁴ The noted historian of constitutionalism Charles H. McIlwain explores the historical progress from an evolutionary conception of constitutionalism to one that is purposefully designed: see Charles H. McIlwain, *Constitutionalism, ancient and modern* (Ithaca, NY: Great Seal Books, 1958).

¹⁵ See e.g. A. E. Dick Howard, ed., *Constitution making in eastern Europe* (Washington DC: Woodrow Wilson Center Press, 1993). For a series of essays making a theoretical case for how to design constitutions, see Stephen L. Elkin and Karol Edward Soltan, eds, *A new constitutionalism: designing political institutions for a good society* (Chicago: University of Chicago Press, 1993).

¹⁶ Laurel E. Miller, ed., *Framing the state in times of transition: case studies in constitution making* (Washington DC: USIP Press, 2010).

¹⁷ For one effort to provide a ‘guide’ to those writing constitutions, see Yash Ghai and Jill Cottrell, *The Millennium Declaration: rights and constitutions* (Oxford: Oxford University Press, 2011).

¹⁸ There are debates among historians and regional experts as to whether or not these events—especially the 1952 Free Officers’ Movement—should be considered ‘revolutions’ in the technical sense. For my purposes here each event inaugurated a major change in the political order that focused on the revision of the constitution,

power of the revolutionary moment was transformed into a constitutional form, a process that took place in a global context in which various actors, both foreign and domestic, played a central role.

The 1919 revolution

For much of its history, Egypt has been subject to foreign rule, from Ottoman in the sixteenth century up to French and British in the late nineteenth and early twentieth centuries. As a result, efforts to resist foreign rule became a central part of Egypt's political discourse.¹⁹ What has become known as the constitutional revolution of 1919 began in a conflict between British officers and Egyptian peasants in the village of Dinshaway in 1906, which led Mustafa Kamil, an Egyptian political activist, to launch a campaign for Egyptian independence. The British House of Commons debated the event, but the British agent in Egypt, Lord Cromer, told the Foreign Secretary that such public criticisms of the colonial administration made his role more difficult.²⁰ Nationalist arguments gathered steam in the Egyptian press. Liberal political parties were critical of both the British in Egypt and also the Khedive, who worked (uneasily at times) with the British to govern the country. What is interesting is how much of this revolutionary discourse was framed in terms of constitutionalism. In a police report on a meeting in 1909, one young man asked how it was 'that the Turkish nation managed to obtain a constitution, notwithstanding that the Egyptians, who [we]re much more intelligent ha[d] not obtained one'.²¹ When the Prime Minister of Egypt, Boutros Pasha Ghali, was assassinated, the trial and execution of his assassin, Ibrahim Nasif al-Wadrani, led to more discussion about the need for a constitution. At this time the prime minister in Egypt was appointed not by a parliament but by the Khedive, who needed permission from the British for his choice. Because of this, those who objected to his role often framed their protests in terms of constitutionalism, or the need for a system of governance in which Egyptians were represented and no single actor could hold too much power. According to one account, Wadrani spent the night before his execution reading not only the Qur'an but Walter Bagehot's *The English constitution* and Jean-Jacques Rousseau's *Social contract*.²²

As the First World War came to a close, Egyptian nationalism was growing, in part for domestic reasons but also in part because of the dynamics of the global

which makes them relevant for my analysis. For an argument that the 1952 change was a revolution in some ways but not others, see Gabriel Ben-Or, 'The continuity of the Egyptian state and the ambiguity of the revolution', in Shimon Shamir, ed., *Egypt from monarchy to republic: a reassessment of revolution and change* (Boulder, CO: Westview, 1995), pp. 30–43.

¹⁹ See Juan R. I. Cole, *Colonialism and revolution in the Middle East: social and cultural origins of Egypt's Urabi movement* (Cairo: American University in Cairo Press, 1999).

²⁰ Malak Badrawi, *Political violence in Egypt, 1910–1924: secret societies, plots and assassinations* (London: Curzon, 2000), pp. 23–4.

²¹ Badrawi, *Political violence in Egypt*, p. 3.

²² Badrawi, *Political violence in Egypt*, p. 41. The assassination of Boutros Pasha Ghali, a Coptic Christian (and grandfather of Boutros Boutros-Ghali, the former UN Secretary General), has sometimes been attributed to religious tensions in Egypt at the time. While these may have played a part, Badrawi claims that the assassination was more the result of the political tensions surrounding governance in Egypt at the time.

movement towards self-determination.²³ Following the end of the war, Egyptian politicians petitioned for independence, sending delegations to the British government and the Paris Peace Conference, the latter led by Sa'ad Zaghloul, a leading politician of the day.²⁴ While the High Commissioner, Reginald Wingate, was willing to listen, officials in London were not. Partly as a result of a request from the Khedive, Zaghloul was arrested in March 1919, which set off riots in Cairo. Throughout March and April 1919 Egypt witnessed protest movements, strikes and revolutionary activities. When the British turned down the delegation, their complaint was that it did not 'represent' all of Egypt. In reply, Zaghloul launched an effort to have the delegation, the *wafd*, recognized as representatives of the nation, and the legislative assembly, various local officials and members of civil society signed a public statement to this effect.²⁵ As a result of these efforts of the Wafd Party and protests in the street, Egypt was declared independent in February 1922.

Even though the British formally transferred power over domestic affairs to the Egyptians, British influence was still felt in the process by which a constitution was crafted to govern the newly independent country.²⁶ With the declaration of independence in 1922, a constitutional commission was appointed to draft a constitution. The commission was immediately subject to controversy as the Wafd Party refused to participate in it, arguing instead for 'an elective constitutional assembly as the only satisfactory vehicle for drafting a constitution'.²⁷ The British and the Khedive rejected this approach and instead formed a commission of 32 members, including legal scholars, representatives of religious minorities, and other members of civil society. Some wanted a 'perfect' constitution, one that would severely limit the powers of the new King Fuad (previously the Sultan or Khedive); but Hussein Rushdi Pasha, who had served as prime minister from 1914 to 1918, knew that the King would not accept such limits and so worked to create a compromise document. The framers drew on European and Ottoman examples and were 'very conversant in matters of constitutional law and design'.²⁸ Even so, Fuad eventually objected to the commission as it led to a decrease in his power in relation to parliament.²⁹

As the constitutional commission was working, a new party was formed to support its efforts, one composed primarily of upper-class Egyptians. Calling themselves the Liberal Constitutionalists, they 'believed that a policy of moderation and of compromise with Britain would yield more rapid results than Zaghlul's

²³ Erez Manela, *The Wilsonian moment: self-determination and the international origins of anticolonial nationalism* (Oxford: Oxford University Press, 2007).

²⁴ Marius Deeb, *Party politics in Egypt: the Wafd and its rivals, 1919–1939* (London: Ithaca, 1979), p. 39. The Arabic word for delegation—*wafd*—became the name of the leading political party in the early twentieth century that called for independence.

²⁵ Deeb, *Party politics in Egypt*, p. 40.

²⁶ P. J. Vatikiotis, *The history of modern Egypt: from Muhammad Ali to Mubarak*, 4th edn (Baltimore, MD: Johns Hopkins University Press, 1991), pp. 249–72.

²⁷ Afaf Lufti al-Sayyid-Marsot, *Egypt's liberal experiment: 1922–1936* (Berkeley, CA: University of California Press, 1977), p. 64.

²⁸ Nathan Brown, *Constitutions in a non-constitutional world: Arab basic laws and the prospects for accountable government* (Albany, NY: State University of New York Press, 2002), p. 38.

²⁹ Deeb, *Party politics in Egypt*, p. 58.

intransigence had done'.³⁰ This party was also strongly resistant to popular opinion and universal suffrage, as its intellectual leaders followed the thinking of John Stuart Mill in his emphasis on giving greater voice to 'informed public opinion'.³¹ In October 1922 a draft constitution was proposed, but this was accepted by neither the government nor the King, and instead martial law was imposed. In April 1923 a new constitution was declared which gave the king power to dissolve parliament and appoint the prime minister and cabinet. Elections were then held, leading to the Wafd becoming the main party in parliament. But this parliament was then dissolved, and the following years saw conflicts among different classes, the political parties, European powers and the monarchy over what constitutional order should govern Egypt. The constitution of 1923 continued to structure the political order in Egypt, although it was violated a number of times by the King.³² It was not until 1952 that the constitution was entirely abandoned, although its basic ideas kept the political system in place for much of the period from the end of the First World War until the rise of the Free Officers.

The politics that surrounded the 1919 revolution, the creation of the 1923 constitution and its eventual collapse demonstrate the importance of seeing constitutions as a site of political action. Political constitutionalism, as noted above, is an effort to move constitutionalism out of debates about judicial review and legal interpretation. The creation of a constitution, as demonstrated in this case, makes the validity of that enterprise very clear. Rather than seeing a constitution as an institution around which interpretative debates take place, constitution-making engages different political actors in a contest over power and influence. The politics of Fuad, both as Khedive and as king, were about defining his power in relation to parliament. The refusal of the Wafd Party to support the constitution-making process and its efforts to create an elected constitutional commission stand in contrast to the Liberal Constitutionalist Party and its efforts to create a moderate constitutional document.³³

Additionally, as demonstrated only briefly here, the actors in this case included both those internal and those external to the polity. The role of the British was not a direct one, in which it controlled the outcome, but a necessary condition against which and with which the constitution-making process took place. In fact, as will be evident in the next historical case and the current situation, the international impact on constitution-making is not usually one of direct interference; rather, global political actors and ideologies function as a background against which domestic actors shape their constitutions.

³⁰ Al-Sayyid-Marsot, *Egypt's liberal experiment*, p. 65.

³¹ Roel Meijer, *The quest for modernity: secular, liberal and left-wing political thought in Egypt, 1945–1958* (London: Routledge, 2002), pp. 19–20.

³² Brown, *Constitutions in a non-constitutional world*, pp. 39–41.

³³ For a recent effort to redescribe the politics of this period, see James Whidden, 'The generation of 1919', in Arthur Goldschmidt, Amy J. Johnson and Barak Salmoni, eds, *Re-envisioning Egypt, 1919–1952* (Cairo: American University in Cairo Press, 2005), pp. 19–46.

The 1952 Free Officers' Movement

The next important event was the 1952 revolution, led by what became known as the Free Officers' Movement under Gamal Abdel Nasser, a colonel in the military who had fought in the 1948 war against Israel. This moment resulted in two different constitutions, those of 1956 and 1964. Between these two, Egypt and Syria united for a brief period, which resulted in a different constitutional structure. This period reveals the challenges that face a revolutionary movement that seeks to turn its constituent power into constitutional form. In both the 1956 and 1964 constitution-making processes, the essentially revolutionary nature of the Nasser regime resulted in efforts to embrace a participatory political process. Yet, even while so doing, the regime and especially Nasser himself sought to control that process in order to retain power. The result was a political order defined by a revolutionary ideology but with a strong authoritarian presidential system.

The Revolutionary Command Council (RCC), composed of disgruntled military officers, undertook what seemed to be simply a *coup d'état* in July 1952. But the social activism and political sensibilities of many of its members resulted in a much wider and deeper set of political changes, ones which were truly revolutionary.³⁴ The initial focus seemed to be on resuscitating the 1923 constitution, but the continued political power of the Muslim Brotherhood, Communists and Wafd Party led to efforts to control them through changes to party laws and regulations, which effectively emasculated the constitutional framework, and in December 1952 the RCC abolished the 1923 constitution.³⁵

In its first effort to translate its constituent power into constitutional form, the RCC issued a communiqué on 25 March 1954 which stated: 'The Council of the Revolution will surrender its powers to a constituent assembly on 24 July 1954 at which time it will proclaim the end of the Egyptian Revolution.'³⁶ The constitutional committee, appointed by the RCC, based its deliberations on the 1923 constitution, but introduced significant changes, such as replacing the king with a president. By introducing a strong president, the new constitution rendered the parliament still weaker than it had been under the monarchy, even curtailing its ability to draft legislation. If one considers a balance of institutional power to be a central aspect of constitutionalism, this constitution meant that 'Egypt had perfected the art of writing anticonstitutionalist constitutions'.³⁷

One of the reasons for the creation of a strong presidential system might be found in the assassination attempt on Nasser by a member of the Muslim Brotherhood in October 1954. In response, Nasser had many members of the Brotherhood arrested, but he also chose this moment to remove Muhammad Neguib, the President of Egypt, installing himself as president as well as head of the RCC. By taking on both positions together, he greatly strengthened both his role and the institutional role of the presidency.³⁸ Challenges to Egypt from

³⁴ See Ben-Or, 'The continuity of the Egyptian state and the ambiguity of the revolution'.

³⁵ Robert Stephens, *Nasser: a political biography* (New York: Simon & Schuster, 1971), pp. 119–20.

³⁶ Stephens, *Nasser*, p. 127.

³⁷ Brown, *Constitutions in a non-constitutional world*, p. 79.

³⁸ Stephens, *Nasser*, pp. 135–6.

Israel and the great powers during the Suez Crisis further entrenched the power of the executive.

While it failed to develop an institutional balance of power, the constitution of 1956 did seek to create greater economic freedom in a society that had been plagued by a semi-feudalist structure. This socialist agenda was one key element of the RCC's revolutionary legitimacy. One of the leading actors in the constitutional process was the legal scholar Abdel Razeq al-Sanhuri, who argued that the revolution had undermined all previous constitutional systems and sought to propose a radically new one. But al-Sanhuri objected to the socialism of the Free Officers, resisting in particular the agrarian reform laws which sought to redistribute land and bring about a shift to a socialist political and economic order. In the view of the most economically progressive of the Free Officers, Khaled Mohi el-Din, al-Sanhuri and other 'constitutional experts' undermined the potential of the revolution, particularly in the economic arena.³⁹ In this case, 'liberal' experts such as al-Sanhuri argued for a more traditional economic order, which ran against the wishes of some members of the RCC. Of course, Mohi el-Din's perspective represents a more extreme form of economic socialism, so one might argue that the 1956 constitution, combining the socialism of some Free Officers with the more traditional economic views of al-Sanhuri, found a balance between the two extremes.

Efforts continued to translate revolutionary power into constitutional form, but faced a direct challenge from Arab politics. Syrian leaders, inspired by Nasser's and Egypt's Arab nationalism, pushed for a union between the two states. Ba'ath party leaders in Syria saw in Nasser the best chance for greater union, one that included not just Egypt and Syria but even more Arab countries.⁴⁰ But, much to the disappointment of the Syrians, Nasser abolished all Syrian political parties and created a parliament dominated by Egyptian delegates. The creation of the United Arab Republic through the 1958 constitution was approved by a plebiscite in which 99.99 per cent of voters gave their approval, reinforcing the idea of a constructed revolutionary constituent power. Nasser argued that it was the only Arab state created without the role of outside powers.⁴¹ Soon, however, the union collapsed as a result of Nasser's efforts to solidify his position and the lack of space for any political action by political parties or wider civil society in Syria.

Nasser tried one more time to channel revolutionary power into constituent form, in the 1962 National Charter, which laid out Egypt's political orientation and socialist economic programme. The Charter was an ideological socialist document that was formally intended to generate greater political participation. It was not a constitution, but it did lead to the formation of a popularly elected constitutional commission in 1964, which drafted and passed a constitution that reinforced the strength of the presidency. The new constitution also created the

³⁹ Khaled Mohi el-Din, *Memories of a revolution: Egypt 1952* (Cairo: American University in Cairo Press, 1992), pp. 116–49. Interestingly, Mohi el-Din had argued for a popularly elected constituent assembly: Stephens, *Nasser*, p. 125.

⁴⁰ Stephens, *Nasser*, p. 271.

⁴¹ Stephens, *Nasser*, pp. 274–6.

Arab Socialist Union (ASU), which was not a political party but a mass organization designed to channel the political activism of all members of society, from rural peasants through to intellectuals, by means of popular committees. Yet, while the idea of the ASU was laudable as a means of increasing political participation, Nasser prevented it from having any effective legislative or executive power. Especially when intellectuals and former political actors in Egypt tried to use it to challenge Nasser, he launched efforts to eliminate 'feudal' influences in the structure, effectively denuding it of any power.⁴² The limit on any real political space for deliberation and action meant that once more revolutionary power was being officially constructed and celebrated, but in practice prevented from having any formal constitutional force.

The 1952 Free Officers' Movement was certainly a revolutionary moment, but the constitution that emerged from this moment was limited in its ability to create a truly constitutional system, that is, one in which rights are protected and institutional balance is the norm. Before turning to the most recent revolutionary period of the current order, it is worth mentioning some evolutions from the Nasser period. In 1971, when Nasser died, Anwar Sadat came to power and a new constitution, which built on the earlier ones, came into being. This constitution evolved further when Sadat moved the country away from the Soviet sphere into the American one, driven in part by an embrace of global capitalism, and encouraged by American efforts to find allies in the Middle East in the midst of the Cold War.⁴³ While it was framed by a socialist discourse, it now protected private property and moved the state towards a slow embrace of capitalism. The constitutional developments of the 1970s and 1980s reflected a polity that was gradually becoming part of the liberal economic order, a process that culminated in an embrace of neo-liberalism by the Mubarak regime in the 1990s.⁴⁴

The second change that began to emerge in the post-Nasser era was the strengthening of the judiciary. Egypt had a long-standing and strong judicial tradition, and the role of legal experts and judges had long been part of its political system. The power of the judiciary suffered a setback under the socialism of the Nasser era, when the idea of a separation of powers was seen as detracting from the revolution and the presidency was seen to be the key institution of the society. This worry about a powerful judiciary came to head in 1969 with the 'massacre of the judiciary'. As a result of efforts by judges to articulate a role for the judiciary in promoting the rule of law and ensuring the protection of rights (captured in an article in the Judges Club newsletter), the regime created a new judicial structure that was to be better controlled by the executive branch.⁴⁵

But with the creation of a new constitution in 1971, the weakening of the judiciary was reversed. The drafting committee of the 1971 constitution identified

⁴² Stephens, *Nasser*, pp. 372–7.

⁴³ Raymond Hinnebusch, *Egyptian politics under Sadat: the post-populist development of an authoritarian-modernizing state* (Boulder, CO: Lynne Rienner, 1988).

⁴⁴ Maye Kassem, *Egyptian politics: the dynamics of authoritarian rule* (Boulder, CO: Lynne Rienner, 2004).

⁴⁵ Nathan Brown, *The rule of law in the Arab world: courts in Egypt and the Gulf* (New York: Cambridge University Press, 1997), pp. 89–91.

the lack of civil and political rights as a problem of the revolutionary constitutional order and sought to correct it in their draft. They did so by strengthening some of the key judicial institutions, including transforming the Nasser era judiciary into an institution able to practise a form of judicial review.⁴⁶ The power of the judiciary increased under Mubarak. Interestingly, while this power was based in part on its respected role as the interpreter of the constitution, judges became part of the wider political order as election monitors and as leaders of protest movements in 2004 and 2008. These judges were generally more conservative and Islamic in their politics, but also worked hard to balance the power of the executive. In this case, the judiciary became part of a political constitutional order by serving as an institutional check on the executive rather than solely as an interpreter of the polity's legal framework.⁴⁷

As with the politics surrounding the 1923 constitution, the Nasser era constitutions demonstrate the importance of viewing the constitution as a political document. In both 1956 and 1964, there was an effort to turn constituent power into constitutional form. In this case, however, there was less success, as the constitutional form simply could not handle the sustained revolutionary ideology of Nasser and the RCC. Once more, the background conditions of the global sphere shaped the constitutional dynamics of events in Egypt. I have mentioned only some of the factors here, and only briefly—the Suez Crisis, the union with Syria, and the move from socialism to capitalism under Sadat and Mubarak. To explore the impact of these factors more fully would require more space than is available here. But it is important to emphasize that Nasser's efforts to reinforce his legitimacy depended in large part upon the wider Arab and international spheres. These efforts made their way into the constitutional dynamics of the day by channelling the constituent power of the revolution into the only agent capable of acting on the international stage, the president.

Tahrir Square

The final revolutionary moment to be considered here is the current one, beginning with the occupation of Tahrir Square in Cairo in January 2011. This triggered a prolonged process by which the constituent power of the protesters out on the street has slowly been turned into constitutional form. That process has seen a range of political actors, both internal and external, play a role in constructing the new Egyptian constitution. The following discussion will not address all the aspects of Egypt's transformation, but will focus primarily on the politics surrounding the constitution.

Some debate exists as to whether the events of January 2011 launched a true change or simply shifted some of the superficial political forces without changing

⁴⁶ Brown, *Constitutions in a non-constitutional world*, p. 83.

⁴⁷ For their role in the political system during the 1990s and 2000s, see Nathalie Bernard-Maugiron, ed., *Judges and political reform in Egypt* (Cairo: American University in Cairo Press, 2008). For an overview of Egypt and its courts, see Brown, *The rule of law in the Arab world*.

the power of key institutions such as the military, security services and business interests. Certainly, the movement brought down the presidency of Hosni Mubarak, who had served as president since the assassination of Anwar Sadat in October 1981. The revolution was prompted in part by the example of Tunisian protesters, who had been able to topple the regime of another powerful president in the region, Zine El Abidine Ben Ali, in a relatively short period. When Mubarak agreed to step down in February 2011, the military, under the rubric of the Supreme Council of the Armed Forces (SCAF), came into power as a transitional body. They were at first welcomed by the population, who celebrated the decision not to use military force on the protesters. Evidence at that time seemed to suggest that the military would encourage a quick transition of power into civilian hands and step back to their barracks.

The first effort to constrain some of the revolutionary potential of the protesters, and what appeared to be an effort to keep the military in a position of power, came with the publication of the first constitutional articles. In February 2011, SCAF proposed a series of amendments to the 1971 constitution. The group that created the constitutional amendments was headed by Tarek El-Bishry, a public intellectual in Egypt who had been critical of the Mubarak regime prior to his appointment. In an article in the *Guardian*, he argued explicitly that the legitimacy of SCAF was 'revolutionary' rather than constitutional.⁴⁸ This suggested that he might see his role as one of capturing that constituent power and turning it into a new legitimate constitutional form. These amendments were then put to a referendum and subsequently approved by 77 per cent of the population on 19 March 2011.

Some assumed that the 1971 constitution would be amended and then continue in force. Instead, on 30 March 2011, SCAF promulgated a constitutional declaration of 63 articles. Crucially, the amendments to the 1971 constitution and the constitutional declaration were not exactly the same, which led many to express their concern that this was not a truly legitimate process. Protesters were not entirely enthusiastic about keeping the 1971 constitution, and some groups even proposed alternative constitutional options.⁴⁹ This is the first instance in which the constituent power of the movement, represented in the March referendum on the amendments, was translated into the constitutional form of the constitutional declaration. But the constitutional declaration failed to live up to the potential of the revolution, and, as a result, came under criticism on a number of grounds, not the least of which was that it simply ignored some of the amendments that had been approved and put in place a document similar to the 1971 constitution. Even more problematic was that in article 56, SCAF stipulated that it was the only body that could legislate and govern, even after a new parliament had been elected. This ensured, according to some, that only a new president, presumably

⁴⁸ Tarek El-Bishry, 'Egypt's new legitimacy', *Guardian*, 21 March 2011, <http://www.guardian.co.uk/commentisfree/2011/mar/21/egypt-referendum-constitution-legitimacy-change>, accessed 7 Feb. 2013.

⁴⁹ See the proposal from the Harvard Study Group, chaired by legal scholar Chibli Mallat, http://www.righttononviolence.org/wp-content/uploads/2011/03/20110308_egypt-constitutional-amendments-chart_en.pdf, accessed 7 Feb. 2013.

one that SCAF would support, would be able to govern effectively. The parliament, in other words, was to be severely limited in its ability to play a role in the government of Egypt, something which would curtail any real representative government. In other words, a constitutional form was put in place that would constrain constituent power.

A second tension emerged surrounding the creation of the constitutional commission that was intended to draft the official and final constitution. When the transition was still in its early stages, Nathan Brown warned that this procedure would be drawn out:

Past constitutions have been drafted by committees working in private. The country has no tradition to draw on for more protracted and inclusive processes, such as an elected constituent assembly. The only way to design such procedures is to bring all parties to the negotiating table and agree on the process. Yet this will be difficult because as much as they might agree on matters of substance, the diffuse nature of the opposition makes agreement on tactics and procedures slow and arduous.⁵⁰

Brown's warning about an 'arduous' process has been proved correct, to put it mildly. At the same time, the idea that a constitution should be written by experts in a vacuum insulated from the rough and tumble of politics is problematic. Indeed, one might criticize those previous constitutional committees to which Brown refers as failing to include a wider constituency in the process. The Wafd in 1923 argued for exactly this inclusiveness, a more participatory process for writing the constitution; one wonders what the subsequent history of Egypt would have been like had this been undertaken.

The problem of forming a constitutional assembly came to dominate the news in Egypt during the spring and summer of 2011. One controversy that emerged was whether elections to the parliament should be held before or after the convening of a constitutional assembly. Some argued that a constitution needed to come first, so that the elected parliament would have something by which to govern. Others argued that only a representative parliament would be able to create a legitimate and representative constitutional assembly.

In the midst of this debate, in August 2011 the Deputy Prime Minister put forward a list of inviolable 'constitutional principles', which supposedly arose from consultation with experts and groups within political parties in Egypt. Islamist parties were not part of this consultation and they objected to it most strongly.⁵¹ The principles, in fact, reflect traditional 'western' norms, ones that include respect for the rule of law and human rights. This event brings into play the 'political versus legal constitutionalism' debate. By proposing a set of principles that cannot be violated, the military were trying to constrain the power of the revolutionary moment, the constituent power of what eventually became an Islamist parliament. The principles soon vanished from the political debate, but

⁵⁰ Nathan Brown, 'Egypt's constitutional ghosts', *Foreign Affairs*, 15 Feb. 2011, reprinted at Carnegie Endowment for International Peace, <http://carnegieendowment.org/2011/02/15/egypt-s-constitutional-ghosts/930>, accessed 7 Feb. 2013.

⁵¹ See Amani Maged, 'Whose principles?', *Al-Ahram Weekly*, 18–24 Aug. 2011, <http://weekly.ahram.org.eg/2011/1061/eg7.htm>, accessed 7 Feb. 2013.

their appearance highlighted the tensions between the rule of law and processes of representative democracy.

The process by which the constitution was to be written is described in article 60 of the constitutional declaration, which reads as follows:

The members of the first People's Assembly and Shura Council (except the appointed members) will meet in a joint session following an invitation from the Supreme Council of the Armed Forces within 6 months of their election to elect a provisional assembly composed of 100 members which will prepare a new draft constitution for the country to be completed within 6 months of the formation of this assembly. The draft constitution will be presented within 15 days of its preparation to the people who will vote in a referendum on the matter. The constitution will take effect from the date on which the people approve the referendum.⁵²

Article 60 never clarifies whether or not members of the parliament should be part of the constitutional commission or whether they should appoint outside 'experts' to that role, a fact which has become a central point of debate in the current context. When parliamentary elections were held in autumn 2011, the Freedom and Justice Party, dominated by the Muslim Brotherhood, won the largest number of seats; they then combined with the more extreme political party Al-Nour to create a majority in parliament. The resulting coalition, one in which different Islamic parties are working together, now controls parliament. As in any political coalition (including that currently governing the United Kingdom), compromise and debate continue to inform their parliamentary activities and public statements. It is important to keep in mind the complexity of this coalition: it is not a simple Islamic majority operating in parliament, but rather a broad range of groups and interests—further evidence of the importance of looking at the politics of Egypt through the lens of political constitutionalism.

On the basis of its interpretation of article 60, the parliament took on the responsibility of creating the constitutional committee to draft a new constitution in March 2012. The commission included members of parliament and, as a result, was dominated by the Muslim Brotherhood and the other Islamist parties. Soon after its formation, however, a number of members boycotted it, claiming it was unrepresentative.⁵³ This debate struck at the heart of the effort to turn constituent power into constitutional form. Those objecting included Egyptian Christians, the liberal Wafd Party and even representatives from the Islamic university, Al-Azhar. These groups brought a challenge to the constitutional commission to an administrative court, which ruled that the commission was not legal. The commission met twice and began structuring its process around the creation of five committees but then disbanded as a result of the court's ruling.

Throughout the spring and summer of 2012, various efforts were made to reform the constitutional assembly. In June 2012, SCAF demanded that the

⁵² Downloaded from the official Egyptian web portal, <http://www.egypt.gov.eg/english/laws/constitution/default.aspx>, accessed 7 Feb. 2013.

⁵³ Gamal Essam El-Din, 'A "stillborn" assembly', *Al Ahram Weekly*, 5–11 April 2012, <http://weekly.ahram.org.eg/2012/1092/eg1.htm>, accessed 7 Feb. 2013.

political parties and parliament produce a constitutional assembly, threatening to create one on its own if they did not. On 12 June 2012, the parliament announced the names of the 100 members of the constitutional assembly, along with rules to guide their deliberations.⁵⁴ The assembly retained a majority of Islamist members, but was more diverse than the previous assembly. Still, once it was formed, a number of high-profile actors rejected it, leading to continued disputes about its legitimacy.

In the midst of this process, a presidential election was held which brought to power a long-time member of the Muslim Brotherhood, Mohammed Morsi. Morsi, an engineer, had spent time in the United States and had recently served on the Guidance Council of the Brotherhood, with responsibility for ensuring ideological conformity within the party.⁵⁵ As president, Morsi sought to push the constitutional commission forward in the midst of resignations and debates. Facing challenges from the judiciary over the legitimacy of both the parliament and the constitutional commission, on 22 November 2012 Morsi declared that all presidential laws and decrees were binding and could not be challenged until the new constitution was finalized. This move infuriated the opposition and the international community, but it may have also forced the constitutional commission to finalize its work and produce a draft constitution, which it did on 29 November 2012.

The draft constitution built upon but also altered the 1971 constitution. There is much to explore in the text, but I will highlight just two issues here. First, the text retains the language of the previous constitution which stipulates that 'principles of Islamic Sharia are the principal source of legislation' (article 2). Yet it narrows the scope of how that principle can be interpreted in article 219 when it states that 'the principles of Islamic Sharia include general evidence, foundational rules, rules of jurisprudence, and credible sources accepted in Sunni doctrines and by the larger community'. As many have pointed out, this will result in a Sunni Islamic interpretation of the text, one which might disenfranchise Shi'i Muslims, whose legal traditions differ in some ways. At the same time, while this is a possible interpretation, one can point to the phrase 'the larger community' as a potential way in which interpretative strategies might not be limited to Sunni interpretations alone. Of course, how to interpret a constitution will not become clear until it is employed by the parliament and judiciary in legislating and adjudicating, a point lost on those who have argued that the text will undermine human rights in Egypt.

This brings me to the second point, the description and structure of institutions in the text. The president is now limited to two terms of four years each, a crucial change from the long-standing presidential dominance in Egypt (article 133). The legislature is composed of a House of Representatives and a Shura Council, with

⁵⁴ 'Official: the 100 members of Egypt's revamped constituent assembly', *Ahram Online*, <http://english.ahram.org.eg/News/44696.aspx>, accessed 7 Feb. 2013.

⁵⁵ For background on Morsi, see Joshua Hammer, 'Understanding Mohammed Morsi', *New Republic*, 7 Dec. 2012, <http://www.tnr.com/article/politics/magazine/110866/understanding-mohammad-morsi>. For a more critical take on Morsi, see Eric Trager, 'Why won't Morsi back down? Read his resume', *New Republic*, 30 Nov. 2012, <http://www.tnr.com/blog/plank/110614/what-know-why-morsi-wont-back-down-read-his-resume>, both accessed 7 Feb. 2013.

more power given to the former than the latter. The judiciary has been altered in important ways, and there is some worry that it has been weakened through lowering the numbers of the Supreme Constitutional Court and defining more carefully its ability to become involved in electoral matters. Already a case has been brought before the court challenging the status of the constitution by a former member of the Supreme Constitutional Court, its only female member, who claimed she was removed from the court because of her conflicts with the Muslim Brotherhood.⁵⁶

It is interesting to note that most of the commentary on the new Egyptian constitution has focused on human rights rather than on the institutions that the constitution creates. One notable exception, which combines an analysis of both, comes from Chibli Mallat, whose criticism of the constitution is linked to his wider interpretations of law in the Arab and Islamic world.⁵⁷ But even this account focuses on the legal rather than the political elements of the constitution. Critiques of the constitution are important, for it will govern Egypt for many years to come. At the same time, a purely legal reading of the constitution ignores the political compromises that go into any text. The US constitution famously resulted from a number of compromises, including those between large and small states and between the north and the south. Of course, these elements of the American constitution had to be resolved through civil war and numerous amendments, but all of this is part of the political process. The hope is that compromise can be worked out politically rather than through violence.

Finally, to what extent has this process been informed by the global political space? As with the other two cases, the global space played a role in the background, one that conditioned many of the events in the constitution-making process. The actors have included the US government, which seemed to play an important role in talking with the military during the early stages of the transition. It is also certainly the case that the Islamic parties are drawing on a wider Islamic context, one that is an inherently global phenomenon.⁵⁸ In the original constitutional assembly, one of the five committees was tasked with examining foreign constitutions.⁵⁹ This suggests that the constitution drafting process was to include insights from the global political context, although certainly mediated through the Islamic concerns of the dominant bloc in the parliament and the commission.

Furthermore, efforts were made to keep 'foreign' NGOs from operating in Egypt prior to the parliamentary elections. The debate surrounding the NGOs is interesting, in that they are often strong supporters of human rights and rule of law programmes, some of which are funded by the EU and the US. There is

⁵⁶ 'Former judge challenges Egypt's constitution', *Time*, 8 Jan. 2013, <http://world.time.com/2013/01/08/former-judge-challenges-egypts-constitution/>, accessed 7 Feb. 2013.

⁵⁷ See Chibli Mallat, 'Reading the draft constitution of Egypt: setbacks in substance, process and legitimacy', *Ahram Online*, 2 Dec. 2012, <http://english.ahram.org.eg/NewsContentP/4/59606/Opinion/Reading-the-Draft-Constitution-of-Egypt-Setbacks-i.aspx>, accessed 7 Feb. 2013.

⁵⁸ For the best expression of how global political Islam is, see Peter Mandaville, *Global political Islam* (London: Routledge, 2007).

⁵⁹ Gamal Essam El-Din, 'Tied up in knots', *Al Ahram Weekly*, 12–18 April 2012, <http://weekly.ahram.org.eg/2012/1093/eg3.htm>, accessed 7 Feb. 2013.

no direct evidence that these groups have been central players in Egypt's constitutional process, although they have certainly been part of its interpretation for the West. Nevertheless, these efforts became a subject of some controversy. For instance, when the UNDP offered to provide aid in writing the constitution, the Egyptian foreign ministry announced that no help was needed.⁶⁰

One further development is the creation of a Constitution Party by the former head of the International Atomic Energy Agency, Mohamed ElBaradei, who entered the presidential race but withdrew in January 2012.⁶¹ This development could be considered one that emerged from the global political space in that ElBaradei worked for many years in the international civil service and had brought his international perspective into the Egyptian national context. More importantly, the fact that the party is named after the constitution (*al-Dastur* in Arabic) both builds on previous parties of this name and also focuses on the importance of representation in the political process.

The process of turning the 2011 revolution into a constitution is a complex one and it will continue. It raises issues of representation, political action and foreign influence. These issues have, as suggested in the previous sections, long been part of Egyptian politics. By focusing on the Egyptian constitution-making process, we can begin to see these issues more clearly.

Conclusion

In this article, I have tried to draw on themes of political constitutionalism to understand the process of turning constituent power into constitutional form in Egypt. Political constitutionalism provides one standard by which to measure whether or not constituent power can be translated into constitutional form in a legitimate way. This process, however, is complicated at a number of levels. The penetrated nature of Egyptian society means that these transitions are taking place in a global political space. The three moments I have highlighted in the most recent era suggest that there is no clear way by which this process can best happen.

In conclusion, one counter-intuitive idea may be worth exploring. The fact that Islamic parties are the voice of constituent power in Egypt at present means they must have a role in creating the constitutional form. The Islamic coalition that now governs Egypt's parliament is the result of a compromise between the more moderate Muslim Brotherhood and other, more extreme, Islamic parties. The fact that these disparate groups were forced to compromise and were willing to do so for the sake of producing an admittedly imperfect text suggests that the political process of creating a constitution will reflect political realities rather than ideal forms. The idea that the constitutional commission was not representative because it was dominated by one political bloc from parliament is not viable. In fact, the

⁶⁰ 'Egypt rejects foreign assistance in writing constitution', *Egypt Independent*, 22 Feb. 2012, <http://www.egyptindependent.com/news/egypt-rejects-foreign-assistance-writing-constitution>, accessed 7 Feb. 2013.

⁶¹ See Salma Shukralla, 'El Baradei launches Constitution Party alongside revolutionary activists and figures', *Ahram Online*, 28 April 2012, <http://english.ahram.org.eg/NewsContent/1/0/40350/Egypt/o/ElBaradei-launches-Constitution-Party-alongside-re.aspx>, accessed 7 Feb. 2013.

new President, Mohammed Morsi, has argued that Egypt must begin as a mixed presidential and parliamentary system and eventually become a full parliamentary democracy. This is, perhaps, a reflection of the fact that the Islamists have control of the representative institutions at this point, but it might also be a belief that corresponds to his conception of constitutionalism and democracy. The concerns of western NGOs and powers such as the US and EU that human rights norms should be privileged in the constitution-making process fails to take seriously the importance of constituent power and political constitutionalism. If those parties and players that represent the people and the constituent power of the revolution are not central to the constitutional process, it will be a still-born document, one that reflects norms but cannot actually govern. It is to be hoped that a deeper understanding of political constitutionalism can remedy this tunnel vision that perceives a constitution as merely an institution that defends rights rather than one that avoids domination and protects equality.