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Juridical, Religious and Globalization Perspectives on the Constitutions of Egypt and Tunisia after the Arab Spring

Lora Hadzhidimova
Old Dominion University

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JURIDICAL, RELIGIOUS AND GLOBALIZATION PERSPECTIVES ON THE
CONSTITUTIONS OF EGYPT AND TUNISIA AFTER THE ARAB SPRING

by

Lora Hadzhidimova

LL.M. May 2014, Sofia University, Bulgaria

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Approved by:

Peter Schulman (Director)

David Earnest (Member)

Chandra de Silva (Member)

ABSTRACT

JURIDICAL, RELIGIOUS AND GLOBALIZATION PERSPECTIVES ON THE CONSTITUTIONS OF EGYPT AND TUNISIA AFTER THE ARAB SPRING

Lora Hadzhidimova
Old Dominion University, 2016
Director: Dr. Peter Schulman

This work examines the juridical aspects of the current Egyptian and Tunisian Constitutions adopted after the Arab Spring. Along with the legal analysis of these two manifestations one more element is also a subject of this commentary – possible political issues that can surface from the interpretation of some controversial articles. The second part of this study focuses on the compatibility between the premises of the Islamic Sharia, the Islamic culture and tradition, and the core values of the contemporary modern democratic states. Moreover, it addresses some of the problematic moments within the discourse whether or not the Quran evokes discrimination policies. The conclusions I was able to derive, link the above mentioned practices with centuries old customs and beliefs in the Islamic societies. I also maintain that any violations of women's right and religious minorities in Islamic countries are not inherently related or prescribed by particular parts of the Quran. The latter was utilized as a source of civil norms in times when no other legislation was known. Despite the fact that it had its applicability in the past, its role has to be passed on civil codes in which no room for ambiguous interpretations of texts should be allowed. The last part of this work focuses on some patterns that the events before, during and after the Arab Spring have revealed. By connecting historical and political facts of earlier periods to the tensions in Egypt and Tunisia after the fall

of the autocratic regimes, I aim to draw some deductions for the stability of the democratic and the juridical goals in the future of these two states.

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This work is dedicated to all of my professors and mentors who were patiently encouraging my progress from my first day in the graduate program and still keep investing time and attention in the progress of every single student in Old Dominion University.

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TABLE OF CONTENTS

Chapter	Page
I. INTRODUCTION	1
RESEARCH QUESTIONS	2
METHODOLOGY AND LIMITATIONS OF THE STUDY	4
LITERATURE REVIEW	5
II. MODERN CONSTITUTIONALISM AND DEMOCRACY IN THE 2014 CONSTITUTIONS OF EGYPT AND TUNISIA	16
THE CLASH OF THE POLITICAL CULTURES IN EGYPTIAN CONSTITUTION FROM 2014: BETWEEN RELIGION AND DEMOCRACY	18
DEMOCRACY IN NORMS: TUNISIAN CONSTITUTION FROM 2014	29
CONCLUSION	36
III. ISLAMIC LAW AND SECULARISM IN THE CONTEMPORARY EGYPTIAN AND TUNISIAN CONSTITUTIONS	38
SOURCES OF ISLAMIC LAW	40
ISLAM AND HUMAN RIGHTS	49
WOMEN IN ISLAM	53
RELIGIOUS MINORITIES IN ISLAM	57
FREEDOM OF SPEECH AND LIMITATIONS OF RIGHTS FOR SOME UNDERPRIVILEGED GROUPS	59
CONCLUSION	61
IV. LOCAL AND GLOBAL IN THE NEW CONSTITUTIONS OF EGYPT AND TUNISIA AFTER THE ARAB SPRING	63
THE ARAB SPRING IN EGYPT AND TUNISIA: AN ECHO OF PAST REVOLUTIONS	68
THE GLOBAL WAY OF MAKING LOCAL POLITICS	75
THE ROAD AHEAD AND THE HYBRID GLOBALIZATION FLOW	79
CONCLUSION	84
V. SUMMARY	85
REFERENCES	88
VITA	102

CHAPTER I

INTRODUCTION

*“This is the Middle East, where every week you have something new;
so whatever you talk about this week will not be valuable next week.”*

- Bashar Assad, January 31, 2011¹.

After the Arab Spring some major changes occurred in both Egypt and Tunisia as a result from the revolts and the altered social order there. The rapidly changing events marked the way from dictatorship to democracy and produced one major act symbolizing the new public image of these states – the newly adopted Constitutions. As a legal act of a highest caliber, Constitutions point the core values that will give the directions for other laws in the hierarchical structure of a country’s jurisdiction. These cardinal principles are destined to introduce the features of these recently established democracies to international society. What possible conflict in the dyad secularism – religion can occur, what traditions can shape simultaneously the Constitutions into both a creation of globalization and a means to influence other juridical and political tendencies are some of the questions of consideration that will have a great impact on a multilayer domestic and international scale.

A lot of research over the years has explored the question if Islam is compatible with the current range of international Human Rights and the defined as “western” values – democracy,

¹ "Interview with Syrian President Bashar Al-Assad." *WSJ*. N.p., 31 Jan. 2011. Web. 09 Nov. 2015.
<http://www.wsj.com/articles/SB10001424052748703833204576114712441122894>.

protection of the main liberal rights and equality between genders, ethnic groups and religions. There is yet no unequivocal response to this question but this should not come to obscure the achievements of the academic thought that has revealed many nuances of this discourse. Nevertheless, many points of view were expressed and many explanations for different aspects of the problem were given. In this current study I focus on the juridical “novelty” in the legislation of Egypt and Tunisia after the Arab Spring. Since major changes have taken place, on my belief, it is necessary to address the altered social, political and legal environment.

Research Questions

As this is one of the primary goal of this research, I try to situate both Constitutions in a more conceptualized context by performing a juridical analysis of the Egyptian and Tunisian Constitutions in variety of fields that refer to different areas of the public life – composition of the system of private property, the freedom of speech, structures and their functions and prerogatives, relations between these institutes and the officials responsible for their management, addressing some issues about the religious minorities and the women as groups in a disadvantageous position.

In addition, my intention is also to conduct a partial analysis of texts from the Quran and the Islamic Sharia as significant sources of the jurisdiction in these two states. Another goal that I set forth is to estimate the extent of a possible coexistence of the very liberal principles thoroughly compatible with a governance in the spirit of modern democracy, and the Islamic Sharia. By liberal, in this work, I embrace all the connotations of the word that it had originally in the Enlightenment as a historical epoch and in the French Revolution as a generator of vital

ideas of this epoch. The questions I aim to respond are related predominantly to an attempt to address the following problem: to what conditions one of the sources of these Constitutions will prevail over the other and what possible outcomes could that have. The expectations for the future of Egypt and Tunisia is yet contingent highly upon the successful harmonization between the “western”, liberal values, and the traditions presupposed by the Islamic law. This potential symbiosis, namely, is the center of analysis in the third section of this work – how the globalization processes have influenced the creation and the core principles of these Constitutions, and vice versa – how they can carry meaning for the global interconnectedness as well as for reconstructing the new public image of Egypt and Tunisia after the Arab Spring.

Another core component of this research is related to the tendencies on a global scale that correspond to designing certain domestic policies. In addition, I examine some common elements in events with political and societal importance that have taken place in different times, at different places with communities professing different beliefs. Despite the discrepancies on spatial, religious and contextual level of these events, they reveal similar characteristics that give right to talk about global trends that are valid even across definitional specifications. This, therefore, bolsters the claim that the Egyptian and the Tunisian Constitutions after the Arab Spring and the events that led to their drafts are certainly not one isolated phenomena in the world history but a product of a global practice, i.e. these legal acts can be seen simultaneously as tools of globalization flows, and for creating such flows in the future as well.

Methodology and Limitations of the study

The theoretical frameworks in this study serve for constructing a lens through which the mentioned objects and phenomena will be interpreted. Among the most significant textual means for this project are works from constitutionalism, International Relations literature, feminist perspectives, Islamic law and culture's concepts, and historical details that also complement the narrative. The specific method I employ for deciphering the implications from these works will be textual analysis because the new Constitutions of Egypt and Tunisia represent a written, juridical source of the legal system. Thus, the nature of these sources presupposes textual analysis as the preferred methodology for this research. Despite its inexorable limitations², I endeavor to rely heavily on the historical evidences and traditions in the law-making process and drew conclusions by taking into consideration the existing contradicting standpoints between scholars, political and societal groups and their observations of the public relations in both countries. Regardless of the deductions I was able to make, it is evident that the environment in the Middle East will change even more in future; therefore, the scholars should raise awareness of the changes that are being gradually executed in Egypt and Tunisia. By filling the gaps in the contemporary academic dialogs researchers will produce a better understanding of not only the rapidly altering conditions in Egypt and Tunisia but also of the inevitably intertwined impact of the global environment in the state affairs.

² The limitations of the study are related to the source from which I was able to gain access to the contemporary Egyptian and Tunisian Constitutions after the Arab Spring. Since there is no official translation in English and I have exhausted all the possible resources I had in an effort to find the official ones, I examined the unofficial translations provided by:
<https://www.constituteproject.org/search?lang=en>

Literature Review

In order to provide a better understanding of the processes that drove the events that led to the creation of these legal acts, I examine the motivation and the aims of actual participants in the Arab Spring. In this study, the dimensions of the unrests are important to the extent to which they lead later to confirm why the new Constitutions embedded certain range of principles and values. The journeys, the aspirations and the obstacles that the activists in Egypt and Tunisia during the Arab Spring encountered depict the offspring of the revolution itself – a passionate fight not only for a temporary change, but for a stable condition of a democratic state, deprived from any misuse of power coming by the government officials and institutions (Al-Zubaidi, 2013). The longing for a liberal Constitution results later after the Arab Spring in a set of core ideas that serve to limit the unjustified interference of the state and the politicians taking public office. What the events before and during the Arab Spring imply is that a revolution itself is not sufficient to bring a new social order compatible with the needs of the Tunisians and Egyptians in the contemporary world. The expectations of Egyptians and Tunisians before, during and after the Arab Spring drove their inspiration to create one legally encoded manifestation. These two societies have clearly expressed their will to overthrow the tyranny and to replace it with a new democratic system that seeks to establish and to follow the main values of the democratic Constitutionalism. This is, however, immensely relevant for both the domestic and international politics of a country because it serves as an indicative merit for the rapidly globalizing world.

Inevitably in the discourse about modern constitutionalism one vital principle surfaces among all other supplementary questions. What is the connection between the democratically designated officials who represent the electoral body and the source of power they have? The

most important principle binding the freely expressed will of citizens with the representatives they elect is the one that first finds a place during the 18th century in the era of the great French philosophers and fathers of constitutionalism. This idea embodies the legitimacy of the democratically designated government that is supposed to be an immediate agency of the electoral body (Rousseau, 1950). Undoubtedly, no legal analysis of any modern, liberal constitution can be made without attributing its idiosyncrasies to the notion of the inevitably intertwined social and political flows in a society. Therefore, I will commence the commentary of both Egyptian and Tunisian Constitutions with the description of the source of power that belongs to the democratically elected members of a particular parliament.

In addition to these perspectives, another concept contributes tremendously for the contemporary understanding of the legislative system of a state. In order to achieve an efficient and fair governmental apparatus, it is of the essence for the powers within a state to be divided (Locke, 1884; Montesquieu, 1955). Furthermore, they have to be separated in a particular way providing stability and independence of all three authorities – legislative, executive and judicial. Both concepts are to be ensured only by the proper mutual control between the three authorities in a way that restrains from usurping other power's jurisdictions, and simultaneously preserves the independence of each of them.

Alongside with the theoretical framework of a modern constitution's creation, there are works that add a nuance related to the contemporary meaning of a constitution as a legal act. Some scholars emphasize the theoretical divisions that should appear in a modern liberal constitution (Bellamy, 2007). Nevertheless, the opposing views between political and legal constitutionalism, despite their differences, assign a place of the constitution as an act with highest priority and reiterates its importance for the whole system of government. Moreover,

there is a comprehensive connection between the most advanced principles of the Constitutionalism inherent for the 21st century, and its way to perpetuate the traditions in this field of science that is set by thinkers as Montesquieu, Locke and Rousseau. Unarguably, these principles are a solid mainstay for any constitutional frame but political and juridical needs have changed significantly over the centuries so that some new aspects in the modern constitutions are to be taken into consideration (Sunstein, 2001).

What is aberrant in the Constitution in Egypt and Tunisia in comparison to the European constitutions formed since the 18th century is the strongly religious element in them. Moreover, apparent is its inevitable and immense impact on each of the democratic principles proclaimed in these legal acts. This does not come to maintain the assumption that Islam and the liberal values inherent for the Western world are unavoidably incompatible. On the contrary, it ambitiously seeks to capture the level of contingency between both mindsets. Furthermore, different groups within the Egyptian and Tunisian societies shape the contemporary understanding of Islamic traditions and the understandings of its legal sources. In this regard, one of the most discussed areas of the Islamic culture has always been the role of women in a society. Frequently it is debated in the scholarship that the human rights constituted by the UN and wide range of other institutions and organizations oppose the prescriptions of the Quran and the other sacred sources of Islamic texts. Thus, I seek to examine the connotations that the figure of a woman has in a legal context and therefore to shed light on one of the most critical moments in the history of Islam in this regard. The Muslim traditions and the relationships women have inside and outside of the family unit can be illustrative for the discrepancy between teachings from the Quran and archaic ideas for the role that women have in the Muslim culture. Moreover, the idea that the eventual restrictions that Islam poses to women are not the element that represses them in

practice but it is the society that relies on different set of thinking and perceptions to the Muslim women and their place in this strictly navigated by men world (Wadud. 1999).

In an effort to compare the Islamic Law and its evolution over time more research on the intrinsic features of the legal sources is needed. They do not only have implications for the study of gender equality, but also for the thorough view of the Islam as a set of cultural beliefs and legal prescriptions. Among the many other existing myths about the Islamic Law, the one that I plan on drawing mostly is the idea of *Ijtihad*, i.e., one of the supplementary sources of the Islamic Law along with the Quran and the Sunna (the tradition related to the life that the Prophet Muhamad has led and is intended to be used as an etalon for ethical principles). When examined in depth, the *Ijtihad* shows an interesting application – its purpose is to adapt the meaning of the existing Islamic texts and to make them gradually adjusted to the contemporary world where the rapidly changing values and lifestyles are demanding a vital change in the ways that the ideas of the Quran are being understood (Mashhour, 2005). This bolsters the perception that Islam is not isolated, static religion deprived from any evolution but it is intended to be ever adjusting to the social changes in the society. Analyzing key concepts from the Islamic culture makes a step forward in searching for the theoretical compatibility between the symbol of democracy in the face of the liberal Constitutions, and the Islamic faith. The latter has been accepted as a religion strongly based on guidelines that some scholars characterize as establishing gender inequality and violations of human rights in general. Therefore, this controversy continues to be widely discussed. Contemporary scholars clarify some relationships of interdependence and historical facts in the discourse, attempting to resituate the perceptions and the cognitive associations about Islam.

When examining a source of legal principles in its entirety, researchers have to take into consideration not only the exact text of the article but even more important should be for them to emphasize its meaning of the historical and societal context. In the interpretation of Islamic texts, a great role plays the political self-identification of the scholars being either secularly oriented or more conservative (Arafa, 2012). Moreover, this immediately reflects not only on the citizens of Egypt and Tunisia who are professing Islam but this aspect also hides some uncertainties about the religious minorities in both countries. Since this very same question is complicated tremendously by the legal commitment that both Egypt and Tunisia have undertaken with acts coming from the UN, there is no facilitated response. The elements that are of pivotal essence in understanding the interaction between Islamic Law and the secular principles supported and guaranteed in the Constitutions are copious, each impacting the correlation differently and with diverse pace and speed.

Regardless of the common perception that Islam is not incompatible with the contemporary standards of Human Rights covenants and agreements, different scholars are trying to oppose these implications and to offer another narrative on the same issue (Raza Shah Gilani, Hidayat Ur Rehman, and Mujtaba, 2014). Moreover, any possible misinterpretations and criticisms for inequalities and groups of citizens in disadvantageous positions are attributed to lack of sufficient awareness of the principles of Islam.

The events in these countries are highly dependent on the political moods in Egypt and Tunisia. The two main fractions that control the level of compatibility between secularism and theocratic tendencies are identified in the literature as “The Nationalist-Secularist Model” and “The Moralism-Islamist Model” (Safi, 2003). They both agree on the fact that Quran should play a role of an ethical guidance but they differ dramatically in terms of the future that Islamic

societies should have. Furthermore, they see economic growth and the prosperity of society through different lenses. For the former it will be of great importance that the western values and principles are employed for achieving these goals. The second one, however, anticipates only the moral downfall that material progress of western prototype will engender. In addition, this debate is being extrapolated to the extent to which a question is still pending: what is the role that the Quran should have in the Islamic countries in 21st century. With tremendous significance in looking to map this discourse is the historical background of the Islamic faith, its premises and its meaning in the contemporary globalized world. A great amount of attention also deserves the fact that Sayiid Qutb who is considered as the father of radical Islam is the ideologist behind one of these two theoretical models. The implications that Qutb's personality and views had on traditions related to Islam show the current perceptions of Islam and can hint for the social and political effects that Qutb's teachings produce in Islamic societies. (Toth, 2013). However, it is important to be delineated that despite of these two theoretical divisions that Safi suggests, there are more configurations that can be also formulated such as "Moralist-Secularist" model that I will further explore under the name of a hybridized globalization flow.

These models carry meaning also for the contemporary globalization flows that have influenced the creation of the Constitutions before they were promulgated. By globalization processes I mean the dynamics that Scholte (2005) observes in his definition about globalization as "the spread of transplanetary – and in recent times more particularly supraterritorial – connections between people". Moreover, the reasons for which the Quran had established itself from a source of moral teachings to a legitimate source of civil norms is a subject of a serious academic attention. A valid question in particular will be if an entirely ethical guide should serve as an ultimate foundation of legal regulations? Is this a surprising juridical phenomena or there

are many other cultures that have gone through a transition from customary law to a positive law? Namely these questions I try to address by employing de Silva's (2011) overview of the dissonance between centuries-old traditions and norms, accepted usually as "western". The difficulties that the societies of the developing countries may encounter are certainly not an isolated occurrence throughout the world's history. Taking into account these specific tensions I seek to provide an explanation for the controversial dynamics caused by the legally imposed westernized approach to the political and the social life in Islamic countries as Egypt and Tunisia.

Regardless of the state which creates a constitution, unarguably they all follow some traditions established on either juridical or religious level, or both. Globalization forces are shaping to a very high extent the way that modern legal acts look in the strongly intertwined affairs of the international community. A constitutional process is inevitably related to political dynamics and Egyptian and Tunisian Constitutions are no exception in this regard (Lang, 2013). The transition from a movement driven by social causes to promulgating these ideas in a constitution entails many variables that have to be explored. Among these variables are the engagements of Egypt and Tunisia in regard to Human Rights protection on a national juridical level. However, these commitments cannot be left without a proper attention if both governments aim to harmonize Islam and the secular principles upheld on supranational level. Moreover, the immediate and unavoidable interdependence between the Great Powers and Egypt's Constitution is also something that should be emphasized as an important variable in the constitutional process.

The Egyptian and Tunisian Constitutions reveal not only controversies between the secular and the religious principles but also point out toward another dimension: the

globalization flows that formed them and turned them into promoters of these globalization forces. An evident sign for these dynamics is the fact that when a state goes through a significant societal, political or comprehensive change it seeks to demonstrate this newly amended environment and tries to signify this to the international community (Melissen, 2005). Building on this particular notion, both Constitutions of Egypt and Tunisia can be considered as the most successful path to validate these countries' brand new public image that relies strongly upon secular principles.

Much vagueness was surrounding the appointment of Constituent Assembly in Egypt while in Tunisia the process of composing the body that has the legislative initiative was surely conducted in a more unflustered manner. The disagreements between different political fractions in both countries, however, underlines the importance of addressing these controversies and how they have influenced their respective Constitutions. The concept of Reflexive Complexity that Earnest (2015) develops gives an appropriate and accurate response to the tensions surrounding their birth. It corresponds directly to the work of Safi (2003) which accents on the two dominating groups mostly responsible for issuing policies in Egyptian and Tunisian societies. The characteristics of the relations between these two fractions are best described by applying Reflexive Complexity to the interactions between the two political camps in Egypt and Tunisia. In this model, the participating units are aware and sensible to each other's reactions and this reflects on the development of the relationship in general. Moreover, to a great extent the effects have an impact of the whole society. Furthermore, in accordance with these specifics comes another theoretical division of these forces in Egypt and Tunisia. The "conflicting flows" of Ritzer (2010) operationalize the interaction between the two groups that Safi (2003) describes.

Modeling these tensions allows for an extended explanation of the economic, ethnic, religious and social elements constituting the core beliefs of these two conceptual divisions.

Surely, a constitution of the 21st century, especially in a Muslim country, can also be seen as a comprehensive product of many forces and pressures, both domestic and international. Due to the complicated nature of these dynamics, Rosenau (2003) engages with a multilayer concept in an effort to theorize their conflictual but nonetheless similar, to some extent, nature. By building a lens through which these connections and processes can be interpreted, he establishes a structure of frangible dynamics on variety of levels that incorporate cobwebs of interactions. The complicated nature of the links between domestic and global jurisdictions, and between domestic pressures and international impacts can be best explained by focusing on the micro and the macro dimensions of the globalization (Rosenau, 2003). Furthermore, the controversy between Islamic influence and the contemporary western mainstream in Egyptian and Tunisian societies calls for re-evaluating the clash between secular and religious, internal and external dimensions.

Moving from a more theoretical literature frame to more exact aspects of examining both Constitutions as tools for and of globalization, few case studies show the contentious dynamic between international pressures and domestic tensions that can be resolved by juridical framework on supranational level. A case study on South Africa provides support for the claim that political decisions on state level are not an isolated phenomenon but a complex cobweb that combines multitude of aspects and influences. In particular, this example demonstrates how international norms and the power of the decisions the international community makes can alter the political stance of a state (Klotz, 1995). Moreover, the case study that Klotz uses, though slightly different in geographical terms, still relates to Africa and therefore for Egypt and Tunisia

and is, on my opinion, illustrative for the core arguments of the study I conduct. The policies developed on a state level in the 21st century cannot be analyzed properly if the transnational effects on this country are not taken into consideration.

When speaking about modern constitutions in the contemporary context of increased levels of globalizations it should be noted in what way they represent and promote democracy through two of its most pivotal forms – free trade and stable and well-functioning institutions. Furthermore, some theoretical predictions about the future of a state can be derived based on the model that shows that democracies that have high levels of trade and membership in renowned international institutions are unlikely to have a war (Russett and Oneal, 2001). The conclusions that can be deducted from this concept acts as a measure of how close Egypt and Tunisia can become to the countries with certain democratic features. Their potential relationship will signal for the future extent of influence that they can exercise on one another. This is yet highly contingent not only on the elements Russett and Oneal employ in their theory but also on a wide range of domestic political markers such as levels of corruption, type of the institutions of which the country is a member, transparency and fairness of the justice system and last but not least – if a symbiosis between secularism and conservative Islamic moods is possible. Furthermore, the elements that this concept consists of are the ones determined on a constitutional level. Based on how well these integrals are expressed and applied in practice in Egypt and Tunisia, some assumptions about the foreign policy of a country can be pointed out.

This study has three main sections and their subheadings will serve for exploring diverse but strictly related to the general topic questions that allow for building a comprehensive account in multiple directions. The first, leading component examines the legal parameters of the new Constitutions after the Arab Spring and what are the newly created institutions, what obligations

and rights have the officials within the three powers – executive, legislative and judicial.

Additionally, this first part also aims to uncover ambiguities and possible jeopardies in regard to democratic freedoms promised with these most important legal acts. As for the focal questions of consideration in the second chapter, here the emphasis shifts towards another source, only briefly mentioned in both Constitutions but nevertheless substantial – the Quran. The role of Islam as a set of cultural customs and beliefs and the Sharia as a pivotal influence on the legal system of both countries are compelling objects of exploration for many scholars. The last chapter of this inquiry provides some facts and conclusions based on the idea that both legal acts can be perceived as both a tool for and of globalization processes that have their roots in many examples in the world history.

CHAPTER II

MODERN CONSTITUTIONALISM AND DEMOCRACY IN THE 2014 CONSTITUTIONS OF EGYPT AND TUNISIA

Before December 17, 2011 nobody thought that a 26-year-old fruit-and-vegetable vendor in the Tunisian town of Sidi Bouzid, named Mohammed Bouazizi will start one of the major revolution movements in the 21st century's history by setting himself to fire as a protest for the unjust political system and against the governing of President Zine al-Abidine Ben Ali. What followed next has become familiar as the "Jasmine Revolution", whose ideas for replacing the regime of dictatorship with a democratic one have crossed many borders in the Middle East. Moreover, it has inspired many other countries to initiate a wave of protests and activities with the aim to establish a new constitutional order in which political, economic, and social reforms will be undertaken. The desperate need for one different future resulted in the active participation of many states as a part of the Arab Spring series of uprisings. The steps towards democracy did not require only the successful overthrowing of the ruling leaders but even more important was the implementation in practice of the values and the principles that the people from Morocco to Yemen have fought for. As a result of the endeavor to subscribe these countries to the global family of the liberal countries, the two new Constitutions in 2014 have being created and later become subject to a referendum. The Egyptian and then the Tunisian superior legal acts have proven themselves as proud successors of a long lasting tradition within the study of the modern constitutionalism.

My goal for this current paper is to provide a legal commentary of the new Constitutions of Egypt and Tunisia in the context of the existing international relations, domestic political tensions and most importantly the cultural frame which unavoidably accompanies and defines each state's legal acts. The norms regulating the public and the private life of the citizens, the relations between institutions and officials, are destined to model the administrative apparatus of a state. In addition, they assign the values that the other lower ranked laws will aim to follow. The major change in the political regime and the restructuring of the entire public life brings immediate reflection on the Constitution as a highest source of power in every democratic country. My goal is to emphasize the strongest sides of both Constitutions and to reveal their weaknesses that may lead to eventual imbalance of the three powers – legislative, executive and judiciary. Furthermore, I search for ambiguities that could possibly empower officials in a degree that may cause abuses or coercion for pursuing political goals.

Regardless of any flaws and how they can be interpreted, the Egyptian and Tunisian authorities, through the Constitutions of 2014, have created stable basis for future democratic development and impartial governance determined and elected by the citizens. Undoubtedly, one of the major challenges that the brand new social and administrative order in countries with predominantly Islamist population can face is if Muslim cultural norms will be compatible with modern, democratic values. Freedom of speech, gender equality, lack of discrimination practices based on religious biases and quality of the opportunities for all citizens, will have to be intertwined with the principles of the Islamic Sharia. In spite of establishing strong principles inherent for every democratic constitution, the question about how these liberal values and high standards of human rights will become incorporated and applied in practice remains open for discussions and predictions. In the current study, my effort is directed towards analyzing the

legal frameworks of the two post Arab Spring states that looked ambitious to depict one new international image, built on globally acknowledged liberal ideas. Democratization processes usually take a lot of time and only the next few decades will reveal if this process was successful for Egypt and Tunisia or they will stop their development at a phase somewhere between democracy, oligarchy and chaos, similarly to many ex-communist countries or such with ex-authoritarian regimes. Whether the new Constitutions will initiate a state of balance between Islam and liberal values or this experiment to combine controversial, at first glance principles, will prove itself unsuccessful depends mostly on how and if the regulations are going to be realized in reality. So far, according to this study, both Constitutions manifest innovative or at least traditionally liberal approaches to almost every sphere of the public life, confirming that they possess the attributes needed to be compared with the superior legal acts of the most democratic states worldwide.

***The clash of the political cultures in Egyptian Constitution from 2014: between
Religion and Democracy***

Egyptian Constitution is one of the most progressive constitutions created in the Arab world and even in general, considering the profoundly detailed description of basic human and civil rights. In addition to the minimum levels of requisites for establishing a democracy as a governing regime, the most important legal act of Egypt underlines even broader range of mechanisms through which the main liberal freedoms can receive high level of protection. Among the focal goals in this bold political plan that can be identified is the pursued prosperity in educational, cultural, and economic spheres of domestic life (Malik and Awadallah, 2013;

LaGrafte, 2012). Some sectors of the public sphere have received stronger protection and the legislative body has assigned them a more special place in the Constitution in comparison to the others. This may be easily explained giving the fact that Egyptians are extraordinarily sensitive when it comes to particular kinds of rights that have been neglected and even occasionally utterly denied during the governance of Hosni Mubarak (Brownlee, 2002; Diamond, 2010).

The Egyptian Constitution from 2014 identifies Egypt as a democratic republic but on several places it is clearly stressed out that the Islamic Sharia and its principles are the main source of the legislation. Apparently, this elucidates the biggest challenge to the new, very liberal in regard to its dimensions, Constitution. The aspiration for democratic freedoms, acknowledged in various treaties, agreements and covenants³ may become serious contender for the supremacy in the political life where previously the Sharia was the only source of legislation. As long as the balance between both of them is preserved and the religious canons are interpreted properly, the idea for modern, democratic state under the dominance of Islamic Sharia will be alive and even acquiring new positions in international political life due to its eventual success (Sadowski, 1993; Nasr, 2005).

Probably the most influencing proof for the idea of establishing a strong, democratic regime in Egypt is the multiplicity of articles that come in support for the religions different than Islam – Christianity and Judaism. Their are not only free to express their views but they may obey their religious laws for “their personal status, religious affairs, and selection of spiritual

³ International Covenant on Civil and Political Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966; Universal Declaration of Human Rights (UDHR). Adopted by the United Nations General Assembly on 10 December 1948; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Adopted by UN in New York, 10 December 1984

leaders”. Furthermore, Article 235 in the very end of the Constitution promises issuance of a law that provides building and renovation for Christian churches that comes as a guarantee for unobstructed freedom of beliefs. However, the lack of a more concrete reference about how these rights will be championed and guaranteed opens a room for misinterpretations, abuses and neglected freedoms declared on paper but not realized in practice.

As opposed to this possible discordance, all the articles from Chapter 2: “Basic Components of Society” are fully compatible with the minimum requirements of both Universal Declaration for Human Rights⁴, and International Covenant on Civil and Political Rights⁵. As Egypt is being a part of these international agreements for many years, it mandatorily has to incorporate their principles in the new Constitution and to assure the juridical harmony between them.

Moreover, it has expanded the necessary protection for the basic rights in the form of additional attention towards institutes as motherhood, childhood and people with disabilities. An ambiguous definition of the main principles for labor awakens certain amount of controversy in this regard. “Work is a right, a duty, and an honor guaranteed by the state”, the newest Constitution proclaims. Combining the labor as a right and simultaneously as a duty provokes uncertainty about the nature of the labor and how it is being perceived from the standpoint of the law. Mutually excluding notions of “right” and “duty” are opening a room for misuse of these features assigned to the labor as a category. If the right guaranteed by the state is a sign of a strong democracy, then “guaranteeing” a duty shifts to a different perspective where this definition comes closer to the category of a forced labor. Since the latter is unequivocally

⁴ Adopted by the United Nations General Assembly on 10 December 1948 at the Palais de Chaillot, Paris.

⁵ Adopted by the General Assembly of United Nations on 16th December 1966.

forbidden in the same Article 12, except for in a narrow range of cases, it can be concluded that this controversy needs to be eliminated or it may be utilized for unjust and violating basic human rights practices⁶.

One very intriguing and innovative in comparison to older constitutions approach has been undertaken in terms of education and health care. The Egyptian Constitution from 2014 sets a concrete share of the GDP of the country that has to be allocated mandatorily in a particular area (minimums of 4% for education and 3% for health care), a fact that allows for greater accuracy in the budget and limits opportunities for neglecting any of the mentioned public spheres. It is also stated that both percentages will be “gradually increased to reach global rates” which promises a development of the governmental financing in future but at the same time establishes a stable ground for subsidizing the areas of health care and education. One more assumption can be made from these articles – this kind of state policy reasonably convinces that both branches of the state’s apparatus are assigned to take places of top-priority within the new democratic and transparent manner of governing Egypt.

Among the most promising guarantors of democracy has always been the principle for separation of powers, supported by the French political philosopher and lawyer Montesquieu (Montesquieu, 1955). According to his understanding, an essential feature of every liberal regime is the separation of powers in legislative power, executive power and judiciary. That belief becomes a standpoint in the study of constitutionalism in every democratic country and this principle has been adopted in every country that pretends to be a democratic one. Following this tradition, the Constitution from 2014 separates the three authorities and further on, under

⁶ Egypt is a member of ILO (International Labor Organization) and in its capacity as such ratified the Convention Concerning Forced or Compulsory Labour, 1930 (No.29). It specifically prohibits using forced labor except for a few explicitly enumerated cases.

Article 100 another leading principle inherent for the history of constitutionalism in general can be identified. Namely, how the court decisions are being issued and implemented. “The Social Contract” (Rousseau, 1950) uncovers why most of the republics have in their constitutions part where the judiciary takes its decisions and enforces them “in the name of the people”.

Sovereignty of a state, according to Rousseau, comes from the citizens, who agree on being governed for the sake of their own preservation. Hence, the only legitimate political power has to come from a governing body, elected and supported by the general public. Furthermore, since the sovereignty belongs to the citizens who choose their representatives, the courts usually adjudicate in the name of people. This, however, is not relevant to monarchies as types of political regimes. In such cases, usually the decisions are taken in the name of the monarch as a symbol of the state itself. As well as the principles created and supported by Montesquieu and Rousseau, another key element is also relevant for maintaining the basic liberal rights in a state. Article 33 stresses out the three main property categories existing in the Egyptian political and social environment – public, private and cooperative ownership. The segregation provides a solid basis for development of a capitalistic society when it, moreover, establishes guarantees for unrestricted and unlimited entrepreneurship within the free market conditions (Christman, 1994; Elster and Moene, 1989; Horwitz, 1882). The private sector in Egypt, according to some authors was experiencing significant difficulties to become well-functioning and to fit into the frame of a free initiative (Malin and Awadallah, 2013). This could easily explain the emphasis that was put on this article of the new Constitution.

Another important sign for the efforts to enhance Egypt’s public diplomacy is the one related to a cultural and educational context. Encouraging the translation of texts from and to Arabic and placing this state’s policy in the constitution means that the country strives to achieve

new international image and the tool used for it is namely the rebranding. The latter is being utilized often after the fulfilment of significant events for a particular society to demonstrate symbolically to the others that a change has happen, usually revolution in a sense of social and/or political alteration (Olins, 2005).

Furthermore, the global fight against terrorism has given its reflection on the new Egyptian Constitution. As a result, a special place of a particular anti-terrorism policy is assigned: the country will contribute for tracing down any action related to terrorism and its possible funding. With the rise of ISIS and the unrests in Libya after the Arab Spring, Egypt becomes a place surrounded by many potential and existing endangerments that can destabilize the state. Therefore, after the fight against terrorism became a high-ranked goal for the international community, Egypt found a legal way to prioritize this by incorporating it into the Constitution and enacting some more or less controversial laws in the same regard⁷.

The political regime of Hosni Mubarak made the Egyptians very sensitive in regard to the negligence and not in rare cases even the utter absence of acknowledging the human rights. Article 99 introduces the new institute of National Council for Human Rights that implies the function of informing the prosecutor's office in cases of non-compliance with the established by the Constitution and the other laws rights. The strong protection for general freedoms does not stop here. Further on, Article 211 presents a similar institute – the one of The National Media Council, a structure that is mainly responsible for the freedom of media and press. Additionally,

⁷ According to the bill for counterterrorism, specialized courts will be established with a specialized tribunal that will have to rule out on allegations against suspects of terrorist activity. International community expresses some concerns about this law because it could eventually facilitate coercion in internal political conflicts and could possibly become a means to eliminate opponents of the regime as it has happened with Mohamed Morsi. Source: <http://www.nytimes.com/2015/07/16/opinion/with-washingtons-complicity-egypt-cracks-down-on-critics.html>

it is responsible for exercising control in terms of observing if their practices reflect the established standards in this field. What makes the Egyptian Constitution even more progressive is the creation of multiple categories (named “Councils” and explicitly enumerated in Article 214) intended to protect certain groups of people who mostly need more support by the side of the government, including mothers, children, and individuals with disabilities. This principle of extra-protection of socially underprivileged groups is well developed in many acts of the European Union through a range of conventions, recommendations, strategies and policies⁸ – another fact that only confirms the tendency that Egypt through its Constitution is following a liberal, global pattern in the law making processes.

Another component of a modern democracy is inevitably the Parliament (Beetham, 2006). The legislative body in the face of the House of Representatives, is also provided with specific range of rights, exclusively inherent for the members of this very same structure. Among them, a special place takes the freedom of opinions, expressed while having duties in the House of Representatives, and the peculiar procedure for initiating criminal investigation against particular individual member of the same institution. Besides the House of Representatives as a main legislative body, the initiative for proposing bills have also the President and the Cabinet. The latter suggests a more important role of the President not only as a symbolical figure, but also as having multitude of duties and opportunities for an active behavior in determining the

⁸ European Convention on the Exercise of Children's Rights (1996); The European Social Charter (1961); The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention, 2007); The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention, 2011); Recommendation Rec(2003)3 on balanced participation of women and men in political and public decision making; Recommendation Rec (2012)6 on the protection and promotion of the rights of women and girls with disabilities; Recommendation Rec (2013)1 on gender equality and media

state's policy in variety of public spheres. This statement can be bolstered also by the existence of the presidential veto, his role of a Supreme Commander, along with other authorities. The complicated procedure for impeachment is an element existing in almost all of the democratic constitutions worldwide. Regardless of the similarities, depending on the constitution's requirements, this process can be expected to take place when more or less components are present. It varies between the different types of constitutions and the provisions stipulated for initiating the procedure (Sunstein, 2001).

Compiling a progressive, 21st century constitution responding to all the criteria set by democratic traditions in the constitutionalism would not be full without providing a tool for a direct form of democracy. Referendum as a powerful instrument for analyzing the adjustments and the opinions of the citizens about a certain question of importance serves as a fair measure for the existing political moods among the population (Galligan, 2001). Including the general public into the decision-making process eliminates the possibility of unilateral regulations that can threaten to transform into an autocratic pattern of behavior by the side of the legislators and the executive power. What may eventually provoke problematic outcomes is the fact that only the president as a political figure can call for referendum which leaves the citizens or any other structures (as well as NGOs) without any legal means to open an initiative. Power, being concentrated in the hands of only one person or formation could jeopardize the idea that the Egyptian people are justly and consciously represented by the legislative body.

Typically, to ensure a stable level of democratic tools for citizens to participate in decision-making process along with the House of Representatives and the President, variety of constitutions offer the opportunity for the citizens themselves to open a procedure for referendum or i.e. civic initiative. NGOs are also usually entitled to take the initiative supported

by the civil participation. While most of the scholarship in the field (Sanyal, 2015; Szmolka, 2015, Rousseau, 2012) concentrates on the constitutional referendum in 2014, some more attention to this concerning aspect about the lack of opportunities for a civic initiative should be paid in respect to future cases of exercising direct democracy.

Another debatable decision adopted in the new Constitution is the relatively low amount of members of the House of the Representatives, who can initiate an amendment. Requiring only one-fifth of all the members in the institution hides risks of unnecessary and unilateral actions by the side of a particular party, represented in the legislative body. Concerns may be expressed also about the Article 244 and the ambiguous statement about the granted representation of youth, Christians and disabled persons, where the text itself says that these groupings will be properly represented in the first House of Representatives after the adoption of the Constitution. Without any further details remain the qualifications about the propriety of the representation and the criteria for choosing the representatives. The paragraph promises a particular law in this regard to arrange these relations. One more element remains an open door for further discussions – that the Christians, the youth and the disabled persons will be represented only in the first House of Representatives if we interpret the text literally. If this statement is not clarified to a sufficient degree in a future law intended to develop and clarify the presented issue, then the individuals whose rights are subject of protection may remain without any adequate guarantees for a successful implementation in practice.

In order to obtain a better understanding of the latest Egyptian Constitution, few words about the differences with the Constitution from 2012 are in order as well⁹. Having in mind the

⁹ More information about the 2012 and the latest Egyptian Constitution is available at <http://carnegieendowment.org/files/Comparing-Egypt-s-Constitutions.pdf>

political context during the termination of the presidency of Mohamed Morsi¹⁰ in 2012 and the significant role of the military by the time, it is quite reasonable that the amendments in the Constitution from 2013 are influenced deeply by the institutions that helped taking down Morsi – military, police and judiciary. At the same time, articles from the 2012 Constitution, composed by Islamist majority, were substituted by texts that are predominantly in a more secular sense.

The most meaningful changes within the comparison between the 2012 and the 2013 legal acts are related to the prerogative to declare a war. In the 2013 Constitution, more obligations for the president are included as a necessary step before declaring a state of war. A mandatory consultation with different structures is needed and moreover in cases when the House of Representatives is dissolved. A distinction can be made also between the conditions for impeachment of the president. The elements, necessary for the conviction are slightly different. In the first case from the 2012's Constitution the required majority is one-third of the members of the House of the Representatives, and in the second case - majority of all members. The latter provides one more evolved and certainly more detailed procedure for impeachment process.

One very important step is undertaken in regard to women's rights and the gender equality in the country. The new 2013 Constitution promises an appropriate representation for the women in the legislative body along with a declaration that women are allowed to hold public posts and by appointment in the judicial body without discrimination. This remarkable

¹⁰ Muslim Brotherhood's candidate Mohamed Morsi was the first democratically elected president of Egypt after the Arab Spring. He was ousted by army chief General Abdel Fattah el-Sisi in 2013 after coup d'état. Sisi suspends the Constitution and later becomes the next president of the country. In 2015, Morsi's death sentence on accusations of espionage was upheld after a consultation with a high-ranked religious official in Egypt – the grand Mufti who is entitled to interpret the Islamic Law. Sources: <http://www.aljazeera.com/news/2015/06/egypt-court-upholds-morsi-death-sentence-150616104041261.html>; <http://www.nytimes.com/2012/06/25/world/middleeast/mohamed-morsi-of-muslim-brotherhood-declared-as-egypts-president.html>; <http://www.theguardian.com/world/2015/jun/01/mohamed-morsi-execution-death-sentence-egypt>

progress is not to be underestimated regardless of referring again to a different law arranging this category of relations. In cases where the constitutional text is referring to a lower ranked law, this always hides some risks and uncertainties about the proper execution of the declared on constitutional level rights.

Another sensitive topic is also a subject of reviewing in both 2012-2013 Constitutions. The previous Article 36 flows into the current Article 55 in a way that guarantees broader protection against tortures within a criminal investigation. With a respect of the human dignity and the basic requirements in a variety of international acts within the regulations of Criminal Law¹¹, the last Egyptian Constitution sets a very high level of protection of the basic human rights. This broader protection mainly focuses on cases involving the Law Enforcement and an individual or groups of individuals against whom charges in violation of law are pressed or they are already convicted in a particular crime and serve their terms of imprisonments. In addition, attention toward the people with disabilities is also provided, the right to remain silence of the detained or restricted is guaranteed. A declaration foreseeing a penalty for the ones violating these provisions is also implemented in the text. As opposed to the Article from 2012, the one from 2013's Constitution is more comprehensive, detailed and avoids any room for misinterpretations or to evade any stipulations dressed in juridical norms.

¹¹ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, The International Covenant on Civil and Political Rights (ICCPR) and The Universal Declaration of Human Rights (UDHR)

Democracy in norms: Tunisian Constitution from 2014

The Tunisian Constitution from 2014 can be perceived as a direct response to the revolt, part of the Arab Spring. The Preamble creates the atmosphere of continuity between the values that the Tunisian people have fought for during the uprisings and the capstone principles that these values have been reshaped to. Regardless of the decreased content of basic standpoints in the Constitution in comparison to the Egyptian one with its 247 articles, the Tunisian is definitely the more secular when it comes to juxtaposing the application of religious laws and the civil laws. Due to its not that extensive length as the Egyptian, it relies mostly on additional laws that come to arrange certain types of public relations. Despite of this assertion, the Tunisian legislative body succeeds to incorporate the main courses for development of Tunisian society, as well as some implications about the central goals of the public diplomacy which the new democracy plans to undertake.

The first couple of articles after the solid and historically focused Preamble shape the contours of a new Tunisian republic with all the features inherent for a democratic state. As opposed to the Egyptian Constitution, here is not explicitly stated that the law superiority belongs to the Islamic Sharia. It is clearly declared that the main religion in the state is Islam, but there are no further hints if the supremacy of law refers to the religious law or the civil law. Giving the lack of concrete article confirming that it is the Sharia that has the major role in the Tunisian legislation, then it is to be believed that the Constitution assigns to the civil law the role of supreme regulator in the state.

As a preventative measure in cases of new significant political changes, the articles defining the central dimensions of the Tunisian state such as religion, language, type of

government system and sovereignty are not subject to future amendments. The latter once again establishes a strong connection between the basic principles of constitutionalism and “The Social Contract” (Rousseau, 1955) as the 2014 Tunisian Constitution underlines that the sovereignty belongs to people and it is being exercised through the elected representatives and referendums. Conducting studies for the public opinion about questions of great importance for the country draws on the idea of direct democracy where the citizens have the right to participate in the political decision-making process. Sharing the same perspective, Article 82 authorizes the President, in a specific range of cases, to initiate a referendum in order to underline the strong relationship between the citizens and the decision-making process on a national level.

Throughout the 2014 Tunisian Constitution, a general requirement for transparency and accountability is being utilized as an instrument for building the new democratic principles. Bolstering the trust in the relationship between the voters and the elected politicians, it becomes necessary to provide mechanisms for ensuring publicity of the assets of the most important figures in the state. The latter principle reaffirms its applicability and importance considering the still ongoing in some African countries correlation between systems of dictatorship and a plutocracy, i.e. Nigeria, Equatorial Guinea, Democratic Republic of Congo (Zaire), (Jotia, 2012; Lazarus, 2004; Coolidge and Rose-Ackerman, 2000; Southall, 1999; De Waal, 2014). In an entirely liberalistic spirit comes the adoption of Article 20 that arranges the harmonization between domestic laws and international agreements. This legislative decision is entirely coherent within the context of the new public image of the country (Olins, 2005) and therefore provides room for correspondence between the international society and Tunisia. This assumption is also valid when it comes to the articles containing human rights in the sphere of the criminal law. The presumption of innocence as a foundation of the judicial systems

established in the modern democracies. It is also the key stone for assuring a just and impartial trial that is the main purpose proclaimed in wide range of international agreements and covenants¹². The texts in the Tunisian Constitution extend the protection of the human rights during detention and set basic rules for conducting the investigation process and the trial in regard to the way the perpetrator is treated.

A few critiques can be made on the articles concerning the right of life, the guarantees for gender equality, the possibility for limitations of rights, and the lack of article clearly identifying the basic property types. “The right of life is sacred and cannot be prejudiced except in exceptional cases regulated by law”, Article 22 says. A vivid interest awakens the fact that such a significant and undebatable human right cannot be neglected even if this concerns “exceptional cases”, especially when no further explanation about the nature of these exceptions is provided. This article certainly refers to the capital punishment that is still adopted in Tunisia and whose abolishment was rejected during the debates surrounding the creation of the new main legal act (Futamura and Bernaz, 2013). However, the concrete context in which the mentioned article allows for exceptions about the right of life needs to be mandatorily intertwined as a part of the comprehensive framework concerning the topic.

¹² International Covenant on Civil and Political Rights:

Article 14(2) of the 1966 International Covenant on Civil and Political Rights provides: “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law”;

African Charter on Human and Peoples’ Rights:

Article 7(1) of the 1981 African Charter on Human and Peoples’ Rights provides: “Every individual shall have the right to have his cause heard. This comprises: ... the right to be presumed innocent until proved guilty by a competent court or tribunal.”

Universal Declaration of Human Rights:

Article 11 of the 1948 Universal Declaration of Human Rights provides: “Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law.”

Cairo Declaration on Human Rights in Islam:

Article 19 of the 1990 Cairo Declaration on Human Rights in Islam states: “A defendant is innocent until his guilt is proven in a fair trial.”

The distinction between private and public property type has always been recognized as a symbol of democracy as well as the right of integrity of the private one. Possible absence of this main principle does not make the Constitution less democratic, neither less progressive but it surely has its significant place in a liberal constitution as the one composed by the Tunisian legislative body. Moreover, the acknowledgment of such an important right builds an integral image of the new democratic regime. The limitations of basic freedoms cast some doubt about the applicability of the stated possible scenarios since they can turn out to be utilized for unnecessary coercive measures or political aims. As long as situations such as protection of the public order, national defense or public health might justify certain limitations of rights, the protection of the “public morals” brings in a new category with vague and undefined criteria for determining if a particular situation of this kind actually exists at the time. This aspect can be interpreted in more depth only in the context of Islam. The coexistence of civil premises in international and domestic acts with secular meaning and Islamic cultural norms will be a subject of further discussion in the next chapter.

Another problematic text in the Constitution points towards the protection of the gender equality and the mechanisms for its maintenance. Article 46 assures that “the state works to attain parity between women and men in elected Assemblies”. As “dissatisfying” can be assessed the efforts to provide gender equality on constitutional level since the legal text marks this goal as merely “working” in this direction. Even if the results in this regard are fruitful and productive the appropriate rank of the Constitution, as a basic source of focal political principles and freedoms, requires more definitive statements and firm positions over sensitive for the society topics. It is much needed for providing a decent level of certainty about the execution of the proclaimed rights.

Despite the various, possibly interpreted as negative, aspects of the Tunisian Constitution from 2014, there are some of its features that clearly assign it a respectful place among the most progressive and democratic constitutions of the 21st century. This claim is even more valid in terms of a comparison with other Arab states. Similar to the Egyptian Constitution, here the new public diplomacy in the form of rebranding is required as well in order to demonstrate to the international society that major changes have taken place. Declaring its strong position against violence and its openness to different cultures, the “dialogues between civilizations” add a new context for understanding the recently changed path of the country. Namely, a path from dictatorship, massacres, censorship and brutal negligence of the human rights towards a new liberal future, open for communications with the rest of the world. By restating this new policy in couple of articles, the Constitution only confirms the positive impression that one changed, more liberal and welcoming country wants to make.

One of the main features of the political pluralism is undoubtedly the existence of multiplicity of political parties competing in between for electoral support in an attempt to form a majority. Having the predominant number of seats in the legislative body, they will be able to shape the contours of the domestic and international political directions according to which the country is supposed to develop for future. Since the most democratic constitutions nowadays proclaim the free initiative for registration of political parties, the Tunisian Constitution from 2014 draws on this principle as well by broadening the constitutionally established dimensions. Article 60 directly introduces the institute of the opposition as a necessary and vital component of the parliament. A specific apparatus based on duties and rights is constructed in order to provide the essential level of participation of the opposition bringing a balance against the suggested policies by the governing party. The presence of these two factors guarantees the

existence of a specific type of catalyst, responsible for counteracting against unjust, unfair, illegal or immoral political actions coming from either the ruling party or the opposition (Sartori, 1966).

Along with the President of Tunisia, another main figure in the domestic political life appears to be very influential and capable of determining a significant share of the domestic and international policies of the new democracy. The Head of Government carries responsibility for wide range of authorities assigned to him specifically or to him and the President together as well. In variety of cases the Head of Government is the one who balances the political decisions taken by the President. It is explicitly stressed out that a consultation with him is required before determining certain political course. For instance, when issuing decree-laws in the absence of the Parliament, in cases of dissolution, the first step that needs to be undertaken before the execution of this presidential authority is to consult with the Head of Government and to obtain an agreement. Almost each of the presidential authorities includes the participation of the Head of Government or the one of the Assembly of the Representatives of the People, and in some cases even both structures are required to participate (declaring war, establishing peace and even chairing the National Security Council). The Head of Government turns out to be that powerful key figure in the political life that the Constitution considers as important to regulate how possible disputes for authorities between both President and the Prime Minister are to be resolved.

For the highest priority fields in the new Constitution can be judged by the hierarchical order in the Tunisian law system that arranges different kind of social relations in the state. The laws are being divided in two categories – organic and ordinary laws. The legislative body has put an accent on the majority required for a draft laws to be adopted with the aim to distinguish

between their hierarchical roles. Logically, the adoption of organic laws appeals for a bigger majority - it has to be absolute majority based on the members who are present by the time that the voting process is being held.

In accordance with all the democratic features of an independent judicial system, The Supreme Judicial Council is also a structure that has its place in controlling and supervising the activity of the judges, courts and the judiciary as an inseparable whole. This component of the state system involves a certain type of participation of almost all of the officials having different roles in the public life such as the President, the Head of Government and the Speaker of the Assembly of the Representatives of the People. Along with the Supreme Judicial Council, the institution of the Constitutional Court is also one of the catalysts for providing multiple guarantees for maintaining independence, fairness, observance, and compliance with the existing laws.

Both significantly influenced by the revolts within the Arab Spring, Tunisia and Egypt become cognizant with the power of the free speech, free press and the expression of opinions without the public censure of the state, dictated by an authoritarian regime. Neither the international society, the Tunisian and the Egyptian people, nor the overthrown leaders of both countries can deny the huge role of the social medium as a means of disseminating sense of the proliferating dissatisfaction and the growing resilience among the citizens craving for a change of the political regime. Therefore, it does not come as a surprise the fact that special attention in the new Constitution from 2014 is dedicated on the deprived from free expression right of speech. The presence of Audio-Visual Communication Commission, the Human Rights Commission and the Commission for Sustainable Development and the Rights of Future Generations, the Good Governance and the Anti-Corruption Commission in the current Tunisian

Constitution only come as a support for the conclusion that the Tunisians have gone through major changes and fought for values and principles that have found their reflection in the superior legal act of the country.

Conclusion

The Arab Spring has brought a significant transformation in multitude of countries but overthrowing the existing by the time regime was not sufficient to fulfill the expectations of the people of these countries. Further steps are required for the newly established democracies and a legal act which has to represent the main values and freedoms neglected and violated during the governance of Hosni Mubarak and Zine El Abidine Ben Ali. The Egyptian and the Tunisian Constitutions both adopted after holding a referendum are the most accurate evidence for the new political environment and an altered impression that the two countries want to create to the international community. Both acts might be described as definitely progressive not only in terms of a possible juxtaposition between the constitutions of other countries but furthermore when compared to other Islamic states. A successful balance between religious and civil principles, especially when the latter enjoys a stable constitutional foundation would be a new formula not only for the modern constitutionalism but also for the states with comparatively high level of impact of religion over public life. Although the Egyptian Constitution might be defined as one being oriented more towards religion and closer to theocracy than the one of Tunisia, it is still valid that both of them embrace more or less all the features that have to be present for a developing democracy. Some ambiguities and obscurities cast doubt in the wholeness and the entirety of both Egyptian and Tunisian Constitutions from 2014 but if undertaking one positive

approach for conducting an analysis, it must be noted that the Constitutions may be a subject of future amendments. These possible amendments can certainly be aimed to ameliorate the basic regulations that determine the public life on both domestic and international level. When it comes to expectations about the political and the judicial future of Tunisia and Egypt, based only on the core ideas implicated in the legal acts, the anticipations that the democracy will conquer even more positions in these countries, are to be strongly supported. Achieving solid quantity of public and civil rights, unfortunately, does not promise their successful and lawful execution in practice. Multitude of instances for states with strong democratically proclaimed principles and poor realization of the latter could be pointed out. This leads to the deduction that one last, but eventually most continuing step towards democracy has to be initiated - all of the declared freedoms and prohibitions have to be uncompromisingly executed. A long-lasting state of democratic conditions for the public life must be maintained for the prosperity of the new Constitutions. Therefore, the Egyptians and the Tunisians might have to lead one more battle – the one of the effective implementation of the awaited and desired democracy.

CHAPTER III

ISLAMIC LAW AND SECULARISM IN THE CONTEMPORARY EGYPTIAN AND TUNISIAN CONSTITUTIONS

In the September/October Issue of Foreign Affairs, Ali A. Mazrui asks “whether a theocracy can ever be democratized.” The question he poses in 1997 still has not found its most accurate response but one thing is for sure – that the political and the legal environment in some of the Muslim countries has significantly changed ever since. The Arab Spring brought many alternatives to the societies of states that are mostly professing the Islamic faith. The alterations in the political and the social spheres led to the ratification of new Constitutions for Egypt and Tunisia where the Sharia law has the difficult role to accept the secular principles established in these legislative acts of highest priority. This is, unarguably, one complex, multilayer correlation that has provoked the attention of many scholars interested in the dynamics that this interaction reveals.

In this part of the research, I offer a comprehensive overview of the Islamic Law and its aspects that are in either opposition or accordance with Human Rights regulations in international agreements, covenants and commonly accepted on supranational level standards. I outline the divine and the human sources of Islamic law that influence not only the jurisdiction of Egypt and Tunisia but moreover, the manner in which they affect the prevailing traditions in these societies. The conducted analysis of the two potentially contradictory components of these Constitutions provides a solid reasoning for the argument that these tensions should be attributed more to a strong tradition in Islamic societies rather than to any explicit discriminatory texts in the Quran and the Sunna. I also maintain that the Quran in its role of a supreme tool for both

moral and legal guidance can be understood in its ethical value but cannot be employed as a direct source of juridical norms. The historical significance of the Islamic law's divine sources should be best understood in their role of providing directions for one moral, righteous life in times that could be characterized as lacking solid legal codification. Furthermore, it should be emphasized that along with other sacred for certain religions books as the Bible or the Torah, the Quran contains archaic perceptions that are not representing and responding to the major social changes through which the world has gone since the creation of these sources.

Another core element of this study is the specific domestic and international pressure that is exercised on developing countries aiming to embrace democratic regime by replacing some of their centuries-old cultural norms with more secular ones. This process entails a shift from traditional laws to positive laws. A transition that many non-Muslim societies have executed previously but were nonetheless troubled and anxious about these substantial juridical and societal changes. Another distinctive moment inherent for Egyptian and Tunisian societies in particular is the presence of two quintessential groups that have opposite views on the future strategies for sustainable development. This argument comes to help in addressing the unrests that are related to the questionable collaboration between religious and secular norms on constitutional level. My finding was that it is not necessarily any of the divine sources of Islamic law that are incompatible with entirely secular norms, but it is more the dissonance between the two conflicting groups in the society that brings the problematic opposition. It can be also inferred that as long as these two fractions succeed in finding a balanced solution for the future of Egypt and Tunisia, both countries can enjoy a new epoch of liberal democracy by simultaneously embodying the moral standards promoted by the Quran.

Sources of Islamic Law

To ensure a proper introduction of the theoretical and the empirical differences between the Islamic Law and its practices, and the secular principles enacted in the new Egyptian and Tunisian Constitutions, I will provide few paragraphs dedicated on the primary and supplementary sources of the Islamic Law. Among the primary sources of the Islamic legal traditions are the Quran and the Sunna. It is important to be delineated that both sources are, as various scholars agree on, behavioral patterns that are praised and venerated for their exemplary morals. Morals, that have to be intrinsic for every Muslim who wants to lead a pious and righteous life according to the Islamic religious prescriptions. A theoretical division separates the divine sources of Islamic law from the human sources (Izzi Dien, 2004). It is interesting to examine how these two conceptual groups interact with each other. While the more static divine sources (the Quran and the Sunna) might be characterized with their inability to alter during different epochs, the human sources as *ijtihad* and *taqlid* are intended to bring a certain level of agreement among the scholars interpreting the sacred text of the Sharia. Moreover, the *ijtihad* in particular seeks new ways to adapt the messages of the Quran to the ever changing world, including the Muslim traditions and principles (Mashhour, 2005). *Ijtihad*, as a supplementary interpretation, represents an independent juridical reasoning but despite of its comprehensive applicability at first glance, it is nonetheless controversial due to the diversity of opinions that exist among the Islamic jurists in the subject matter. Namely because of this long-lasting tradition of debates between different schools of thought in Muslim countries, the *taqlid*, as an important tool for decoding and sense making of the Quranic texts, brings the necessary clarity and balance in the scholarship (Jackson, 1996). Its specific role in this process of subscribing a meaning to Muslim principles and concepts engenders an agreement and establishes commonly

accepted paradigms. Furthermore, once a particular context is attributed to situating a particular term, expression or social behavior, there is no longer an option for altering their meaning or opening a debate on the very same problem in the scholarship (Hallaq, 1984). However, this poses an appealing contrast between the significance that *ijtihad* may have as a tool for adjusting the old texts of the Islamic legal sources to the rapidly altering environment, and the *taqlid*, whose overly decisive status leaves any possible changes disregarded (Nyazee, 1983).

Louay Safi (2003) claims, for example, that *ijtihad* ceased to be an influencing factor for independent reasoning, let alone a source of juridical norms since law schools took over the functions of the *ijtihad*. The transition from *ijtihad* to *taqlid* indicates a shift from a context-dependent juristic interpretation to a static institutional interpretation based on legal texts, sources and other related literature. As opposed to this view, Amina Mashhour still ascribes to the *ijtihad* a specific importance as a tremendously influential instrument for shaping the obsolete texts of the Quran and the Sunna in a way that will fit better into the contemporary modern world with altered values, traditions and societal needs. Regardless of the concrete role of the *ijtihad* in the contemporary social sciences and its successor *taqlid*, undebatable remains the fact that, at least theoretically, there is a mechanism in the Islamic Law that protects the ethical principles in the divine sources but at the same time allows for adjustments in the changing reality in the Islamic societies.

In addition to this, the schools of Islamic law are dramatically different in respect to their perceptions about the socio-political system. These schools disagree with one another on multiple levels but the emphasis of their discord lies on the future reforms that the state has to go through in terms of the changing needs of the society and the expanding westernization among the Islamic countries (Pakeeza and Chishti, 2012). The two competing perspectives among the

academic fractions are defined by Safi (2003) as “The Nationalist-Secularist Model” and “The Moralism-Islamist Model”. The first formation puts an accent on the need of technological and cultural progress that should embody some of the Western values and institutes but meanwhile keeping the core Islamic principles and norms. By maintaining this notion, Taha Hussein (1954) offers an illustrative example in the face of the Egyptian culture that was and still is inevitably related to the European one in terms of history. The instance that he presents focuses on the friendly relationship that Egypt had with the “western” state of Greece. Although the author initially aims to set an argument with Egypt, the case with Tunisia and its colonial past is equally valid and indicative.

Tunisian culture was influenced and to some extent even involuntarily predetermined by the French during the colonial regime. Yet despite of the nature of the relations between colonized and colonizers, it should remain unarguable that some of the consequences of Egypt’s and Tunisia’s past have helped at some extent to ease their current aspiration for democracy, modernity and equality in terms of liberal institutions and liberal thinking (Alesina & Dollar, 2000). Namely the colonial past of Tunisia is the one forming national identity after its decolonization but at the same time not at the expense of the need for progress and advancement in every sphere of the public life. In this regard, Hiba Ali (2014), an intern at the Institute of Policy Studies argues that Tunisian history as a colonized country had inspired a new way of self-determination for the Tunisian people. The decolonization gives birth to an anti-westernization movement which can be also defined as a nationalist movement. This particular pattern can be clearly identified in variety of countries that have been colonized. The drastic change of overthrowing any external influence related to an old regime is a way for decolonized countries to find their way as independent entities, capable of establishing their own social order.

Although similar moods are typical for countries with such historical past, it is to be recognized that anti-western public opinions and adjustments are slowly giving room to a new way of thinking. This altered mindset intensively corresponds more with a longing for western technological and social trends rather than with a fierce thirst for self-determination and anti-westernization of a population that is however no longer thoroughly identified with its ex-colonizers.

As opposed to this first school of Islamic Law that readily accepts and seeks to multiply the beneficial effects of globalizations processes, the school that is defined by Safi as supporting a Moralist-Islamist model defends different perspectives and champions different causes. The leading thinker in this direction is Sayyid Qutb who is considered as the conceptual father of the radical Islam (Toth, 2013). He introduces a notion that is known in the literature as *jahiliyyah* society which is initially mentioned in the Quran in regard to the “faithlessness of the pre-Islamic Arab society” (Safi, 2003). This theoretical formula uncovers the establishment of a society that disobeys and disregards any of the divine sources of Islamic guidance. In other words, Qutb juxtaposes the modern society in which he sees greediness, decadence and lack of morals to an idealistic society that lives up to the core Islamic values, and refutes any of the principles inherent for the *jahiliyyah* society condemned to ever lack harmony between God and the man. Qutb sees in the progress of the developed countries only moral superiority where the material welfare comes at the expense of the lack of ethics and veneration of God.

Having in mind these two perceptions about the future of the Muslim countries, it becomes obvious that they reveal some substantial discrepancies in the area of technological advancement and economic growth. It will be important to note though that none of the two schools deny the role of the Islamic values as intrinsically important for the Muslim societies.

Their positions mainly differ on the ways to achieve progress in materialistic terms. For the first school economic advancement is inevitably related to imitating western developmental models, institutions and political strategies and for the second one, dominated by the doctrine of Qutb, this kind of evolvement will be poisonous for the moral grounds of an ideal Islamic society.

The sources mentioned above are only part of the forces shaping the contemporary perception about the legal sources of Islamic jurisprudence. To develop a deeper and broader understanding of the Islamic legal culture, I consider as vital to delineate the lenses through which Muslim societies accept and interpret different normative provisions and how they affect underprivileged groups of the population. What I mean by this is that legal, written sources of Islamic law, though establishing an objective regime of rules that are valid for all citizens, still might pose some limitations for particular societal fractions as women or members of religious minorities. These paradoxical conclusions I derived from the works of various scholars who defend the argument that the Quran does not have any impact on any possible repressions towards women (Doi, 2006; Hamdan, 2013). No text from either of these sources can be interpreted unambiguously in a direction leading to violent practices, deprivation of human rights or last but not least – any kind of disrespectful behavior towards underprivileged groups that in fact the Quran explicitly condemns. As the feminist scholar Amina Wadud (1999) notes, it is the societal traditions in Islamic culture that are twisted in a way to be used for oppression of women. The divine sources themselves cannot be deciphered in a manner that suggest even the slightest insolent and contemptuous treatment.

However, it is true, though, that in a society going through a huge transition from an utterly patriarchal structure to a more democratic, based on gender equality culture, some controversial moments should be overcome. The problematic nuance comes not that much from

the difficulties that the members of a certain society will experience during the change of the cultural paradigm shift that brings new roles for women in Islamic societies. The question that attracts more attention here focuses on the clash between traditions, beliefs and perceptions on one side, and the written sources of Islamic law, the Constitution and the international agreements and covenants that a both states have ratified, on the other. In entirely juridical terms, the Egyptian and the Tunisian legislation move toward a different mindset prioritizing liberal freedoms, technological advancements and equality not only between genders but moreover between different groups of the population in general.

What can be witnessed in practice in the new Egyptian and Tunisian Constitutions after the Arab Spring is a victory of democracy and the open-minded techniques of conducting politics. While the progress in Tunisia was achieved mainly by seeking cooperation and a compromise among all the diverse political fractions, in Egypt the liberal innovations were more limited due to the still very strong influence of the Muslim Brotherhood and the Moralistic-Islamist model that throws a shadow on the widely proclaimed progressive principles on constitutional level. Furthermore, it turns out to be easier to change policies and to demonstrate an entirely restructured social order rather than to alter public adjustments that root into centuries-old traditions and perceptions. What the international community should focus on is the steps forward in a direction of enhanced cooperation between Islamic countries and secular states. Additionally, the important elements that should attract attention in the case of Egypt and Tunisia are the juridical signs for shared democratic values and the slow but gradual motions toward a new perspective praising the legal amalgamation between Islamic and Western elements.

An immediate, simultaneous change of both the Constitutions and the traditions of Egypt

and Tunisia would have been ecstatically welcomed and celebrated by pro-westernized groups. However, it would be utopic to believe that similar transitions can be executed rapidly and nevertheless successfully after hundreds of generations being raised to believe in a patriarchal society with strongly religious grounds. These processes can be especially complicated in societies where men and women have strictly designated roles not only in the family as a unit but furthermore in countries where the silhouette of the Islamic faith spreads across borders and forms one of the most powerful globalization flows (Ritzer, 2010). This argument can be bolstered additionally by an interesting case study of Egypt that Lombardi (2008) presents: *“The idea that a government has legitimacy because it applies only laws consistent with Shari’a has a long history in Egypt, and in the Sunnī Islamic world in general. This history helps to explain why, as constitutionalism spreads in the Muslim world, Muslims have shown a deep interest in constitutional Islamization.”* These two mutually intertwined forces of constitutionalism and Islamic traditions show support for the fact that the Islamic authorities and law makers will continue to search a way to combine a model of a modern 21st century Constitution with Islamic customs and secular practices.

The public moods in Egypt and Tunisia are that polarized after the Arab Spring and shortly before its beginning, that a sudden prevalence of any of the two components (either excessive amount of radical Islamism or excessive amount of Western influence) will result in a dissonance with potentially harmful for the public order consequences. The burden that is placed on developing countries going through transitions from a religious law system to a more secular one can give rise to complications in the domestic political life. The presence of old customs and beliefs perceived as traditional law complicates further the situation in societies experiencing the negative sides of cultural and juridical changes. Scholars are warning of the contrast between

local customs, enacted on a state level and the international covenants protecting human rights. As long as this does not present a problematic moment in the legal history of the developed nations, it poses some controversial points of view in the developing ones such as Egypt and Tunisia¹³ (De Silva, 2011). An interesting aspect arises in this case – which should be the legitimate source of law that the citizens should adhere to? De Silva (2011) offers two lenses through which the problem can be approached. One of them is shared by the Muslim traditionalists who emphasize the role of protecting the morals and the human rights in the community leaving behind the individual rights. On the contrary is the opinion shared by more liberal scholars, as the Ghanaian writer Kwasi Wiredu, who rejects the violation of individual human rights as a means to guarantee public welfare (Wiredu, 1990). While he refers mainly to women's rights it should be noted that there are many other areas where fierce debates are happening between proponents of traditions dominating over the positive law and proponents of written norms comprehended as having supremacy over the customs in a society.

Another illustrative instance that reveals the complicated nature of combining secular and religious elements in juridical acts is related to the history of the Muslim countries. Centuries ago, these societies were governed by religious political structures that did not separate the civil affairs of a state from the moral ones. Furthermore, it is historically authentic to claim that even more secular societies where Christianity was an official religion acknowledged by the state, have gone through troublesome alterations of the legal system when it had to divide religion from the civil laws. The traditional or also customary law was once accepted as a primary source

¹³ For the purposes of this research I consider both Egypt and Tunisia as developing countries, based on the data provided by United Nations' Country Classification and the World Economic Situation and Prospects 2014:
http://www.un.org/en/development/desa/policy/wesp/wesp_current/2014wesp_country_classification.pdf

of law before any official codification to be enforced. An instance in this regard is the French customary law (*droit coutumier*) which was applied to arrange public relations in France before the adoption of the Napoleonic Code in 1804 (Herzog & Weser, 1967) and the Saxon Customary Law which had combined customary law and royal law in the enforced in 1220 *Sachsenspiegel* (Berman, 2003). This model can be particularly evident in countries with colonial past (Crowder, 1964; Robinson, 1992; Kiye, 2015; Premo, 2014; Ogubazghi & Andemariam, 2013). Later with the creation of civil codes, criminal codes and even 18th and 19th century constitutions, the application of traditional law became secondary, supplemental source of law, slowly converting into an archaic exemplary of norms that are no longer used.

With that being said, an interesting pattern can be tracked down. Regardless of any affiliations to a particular religion, aspirations for keeping old traditional norms in a society are an evident phenomenon in the history of the human kind. Christian Orthodox, Catholic and Protestant societies had slowly shifted from utilizing local customs and beliefs to a comprehensive mechanism of laws regulating the public relations in the state. This process, however, took decades until being fully accomplished. Consequently, Muslim societies going through a similar transition are even more burdened with high and substantive expectations because of the speed of the contemporary forces of globalization. Although there is no accurate response to the question how exactly the interaction between religious and secular norms is going to develop in future, it is recommendable that a steady, gradual transition should take place. As I have suggested previously, if a sudden, imposed change of the social order happens, that might disrupt the balance of one of the two competing in Egypt and Tunisia fractions – the Moralism-Islamists and the Nationalist-Secularists and cause new revolts or in more negative terms - even a civil war.

Islam and Human Rights

The question if the Islamic culture, traditions and legislation are compatible with the contemporary understanding about human rights has interested generations of scholars. Nowadays, the proliferation of NGOs, institutions and organizations on national and supranational level contributes for ensuring a juridical umbrella of norms intended to design equal standards for human rights worldwide regardless of affiliations with a particular religion (Jones, 2000; Freeman, 2004).

An interesting comparison between the widely known UN Declaration of Human Rights and the less popular Islamic Declaration of Human Rights sheds light on some appealing insights. Accepted on 19 September 1981, the latter seeks to translate the principles embraced by the UDHR in a manner that incorporates the Islamic legal terminology. The first impression from the texts of the twenty-three articles is quite positive in a sense of compatibility with the UDHR requirements. All the areas of public life are emphasized – right to life, justice, freedom, dignity, equality before law, asylum, rights of the religious minorities, freedom of speech and religion, right to social security, rights of workers, and rights of property. The synopsis of this document shows a broad range of covered topics inherent for the most modern democracies in the 21st century. Regardless of the obvious similarities between the UNHR and the Universal Islamic Declaration of Human Rights, one element makes the whole content a subject of scrutiny. At several places in the Islamic Declaration it is underlined that the rights and the freedoms guaranteed should be interpreted according to the existing law. One problematic aspect arises: what is exactly the law that this declaration refers to?

On one hand, there are variety of Muslim countries and each of them has dramatically different approach in their domestic legal systems. On the other hand, it is evident that acts of higher degree should be always in accordance with other laws inherent for the system. Nonetheless, highest priority provisions should not be dominated by subordinate norms – internal juridical norms should be contingent on superior legal acts including supranational acts. If a comprehensive act, as the Universal Islamic Declaration of Human Rights is, turns out to be subordinate to internal domestic laws, then the whole idea of such proclamation will be devalued and ruled by presumably lower in the legal hierarchy acts. Moreover, if a legal act of higher priority is left to be dependent on a lower ranked legal act, then, this indicatively hides major uncertainties for the whole justice system in a state. An unwanted paradox can appear in case that the domestic norms of a country are prescribing instructions thoroughly violating the meaning implied into the international acts about human rights. However, with the current configuration of the texts in the UIDHR, if the internal norms of the countries deny the declared on international level freedoms, then the former will have the power to dominate over the supposedly superior document.

Regardless of the exact meaning and eventual flaws of UIDHR as a juridical act, the original declaration issued by the UN is signed by both Tunisia and Egypt and therefore they should follow these articles as having supremacy over their national jurisdiction. Another problem with acts on supranational level that can be identified is that since such acts cover a broad range of topics, it is simply impossible for them to provide a detailed account for each area of consideration. Furthermore, law makers on international level just do not want to risk any possible disharmony between the national legal systems of the countries that will sign the document and the multinational regulations that certain act is supposed to establish. Baderin

argues that the western concept of Human Rights that is imposed on Islamic societies is the conflictual element in the lack of harmony between international and domestic standards (Baderin, 2001). Therefore, it can be derived that despite of the particular juridical nomenclatures in the different states, as long as they adhere to and observe the international standards and the pieces of legislation on supranational level then a relatively stable ground of human rights is to be guaranteed.

Scholars are undertaking different approaches in examining the Constitutions after the Arab Spring and the quality of human rights in Muslim countries. By providing a historically informative account on Egyptian constitutionalism over the years, Lang Jr. (2013) offers slightly different narrative on the problems of Egyptian law making. He makes an argument that Egyptian Constitutions after the Arab Spring should be interpreted in terms of political context rather than of utterly juridical. Another point he makes is related to the discourses that the new Constitutions evoked: *“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”*. This conclusion can be best explained by analyzing the connection between the Human Rights from which various countries before the Arab Spring were deprived, and the newly created institutions in these countries that are now considered responsible for protecting these rights. I will focus on the affordances of these new institutions and the problems that might occur in practice in the following subsections dedicated on women’s rights, the rights of religious minorities, and the freedom of speech, since all of them are an important expression of Human Rights in the Islamic culture through their moments of harmony or discordance.

Different authors prefer to shift the focus from Human Rights in the Islamic countries and their exact dimensions in Egypt and Tunisia and to divert the attention in a direction of more

serious problems i.e. developing policies to reduce poverty, corruption and reaching economic growth (Arafa, 2012). The latter explores the debate between protesters in Egypt appealing for adoption of the Quran as a new state's constitution, and the opponents of this proposal¹⁴. In this regard, an interesting perspective that a group of scholars offers is related to the fact that the Quran and the Sunna, as primary legal sources, are intended for birthplaces of moral guidance more as they should be perceived as sources of positive law. They underline the correlation between legal text and worship texts. *"Only 500 out of its total 6,666 verses have a legal element, majority of which deal with worship rituals. In the strict sense only 80 verses deal with legal subject matter."* (Raza Shah Gilani, Syed, Hidayat Ur Rehman, and Bahaudin G. Mujtaba, 2014). Based on the information provided from these scholars, it can be concluded that the positive laws as well as a constitution that enlists the core values of a country should exist independently, along with a framework of international covenants and declarations. The divine sources of law – the Quran and the Sunna, though having an impact of the written laws, are not sufficient and more importantly are not designed to be a legal foundation that should form the system of the civil laws in a country.

In the following section I offer a more detailed synopsis of the Human Rights in both Egypt and Tunisia and their expression in the areas of women's rights, the rights of the religious minorities, and the freedom of speech. Although my overview of these three categories is not planning to exhaust all the discourses in the field, it reveals my intention to suggest an eclectic summary of the critical moments and discussions that I addressed previously in this work.

¹⁴ It should be a subject of consideration that the protests were taking place during the rule of Mohamad Morsi, who was later overthrown and replaced as a president. Nonetheless, such perspective is included in the current work in order to provide a snapshot of the debate between two fractions in Egypt arguing about the concrete role of the Quran in the legislation of Egypt.

Moreover, I consider these three categories as intrinsically sensitive moments for both newly established democracies in these countries due to the long going violations executed by the regimes of dictatorship. In addition to the abnormalities in these spheres, another problematic aspect also deserves attention in this regard.

As it was outlined previously, the violations of human rights in the Islamic countries cannot be attributed to the Quran and the Sunna since their texts are prescribing a behavioral pattern opposite to any kind of possible oppression based on gender, religious or other attributes or affiliations. By conducting a deeper analysis for the reasons leading to discrimination practices, I was able to assign them to patriarchal traditions that are inherent for Muslim societies for centuries and some specific perspectives of the two dominating groups in Egyptian and Tunisian societies that Safi (2003) describes. Additionally, these understandings and beliefs sometimes differ, as their characteristics vary in different Islamic countries and are more or less conservative. Regardless of the name of the particular country though, the most expressive sign for the dimensions of these traditions remains the ideology of the ruling political party, and the prevailing public opinions about human rights and others branches of the public and legal affairs.

Women in Islam

As it was already discussed above, the Quran itself as a divine source of the Islamic legislation does not pose directly any restrictions or discriminatory practices to women. However, the interpretations of certain texts from the Quran can differ greatly in sense. I pointed out that Islamic traditions are situating the women in Islam in a particular context. Usually these traditions focus on their roles as mothers and wives, in other words, on their biological role in

society. A culture typically and inevitably is based on any similarities or discrepancies of the members of a certain community. In accordance with this apprehension, the Quran itself underlines that man and woman are created different from one another but regardless of the anatomical differences, as Wadud (1999) claims, “the Quran does not propose or support a singular role or single definition of a set of roles, exclusively, for each gender across every culture”. Further on, she maintains that it is the values ascribed to women that are oppressive and not the provisions of the Quran.

I wrote previously about the traditions in the Muslim societies that are hardly and sometimes even barely noticeable changing. For centuries the perception about women was a reflection not on the sacred for Muslims book but rather on subjective interpretations and cultural practices related to it (Jawad, 1998). I should note though, that it is impossible an utterly objective interpretation to be achieved due to the nature of the Quran and the same goes for any other sacred for a certain religion book. Nevertheless, the reading that Wadud (1999) and other scholars offer is closer to the original idea of the Quran of mutual respect between two genders than the widely spread discriminatory understanding that suggest that women are “weak, inferior, inherently evil, intellectually incapable, and spiritually lacking” (Wadud, 1999).

There are few focal points discussed in the scholarship whose clear decoding is problematic in terms of the meaning that they are supposed to carry. The first one is related to the right of inheritance for men and women where the latter should receive only half as if they were men (The Noble Quran, Sura 4, Verse 11). This taken out of the context of the entire source would mean, indeed, that a discriminatory practice is established. If we add to this another prescription of the Quran that says that men are the ones responsible for supporting their wives, daughters and mother, the meaning of Sura 4, Verse 11 would alter substantially. As in any other

legal text, this one is not an exception: the meaning of a particular provision should not be taken away, interpreted distantly of its context and connotations but furthermore it should be considered only when keeping these premises in mind. Many legal systems have a supplementary principle (statutory interpretation) according to which if a particular meaning of an article is not sufficiently lucid and comprehensible, then the idea and the purpose of the text should be derived from either similar ones or from superior sources giving the directions in which lower ranked acts should be composed and consequentially followed (Sweet, 2007; Itzcovich, 2009; Radin, 1930).

A second verse that appears to be controversial is related to the polygamy and the right of divorce. In this regard, an important accent should be delineated. Sura 4:3 do not specifically preach polygamy but in an effort to provide just treatment to orphan girls, then if a man is capable of dealing justly with all of his women (up to four) then he is allowed to do so. But the Quran is quite explicit that the just treatment is the focal point when allowing multiple spouses:

And if you fear that you shall not be able to deal justly with the orphan girls then marry (other) women of your choice, two or three, or four; but if you fear that you shall not be able to deal justly (with them), then only one or (slaves) that your right hands possess.

This is a nearer to prevent you from doing injustice. (The Noble Quran, 4:3)

By citing this verse, I intend to demonstrate that the polygamy in the Quran is not unlimited and unconditional as some accept. It is primary concerned with and oriented to social justice and equality more than to immediately situating women in a disadvantageous position. Another factor that might have influenced the idea of this verse is the historical detail of the wars that were taking thousands of mainly male victims and leaving their wives without a means of

support. Here I contextualize support not only in the moral sense of the word but moreover the widows and their children were deprived from any income or the source of such that was previously providing for the family. By acknowledging and reconsidering the social idiosyncrasy of the time frame for which this verse was aiming to arrange the existing public relations, Tunisia becomes the only Islamic country that prohibits polygamy in Article 18 in Tunisian code of Personal Status: “Polygamy is forbidden . . . [and] is punishable by imprisonment of 1 year or a fine of 240,000 francs or both.”

Another issue attracting the attention of the scholars to a lesser extent can turn out to be more problematic in the contemporary Islamic culture where the interactions and the marriages between people from different countries and religions are commonplace but nevertheless quite undesirable, according to the Quran, verse 221: “And do not marry *Al-Mushrikat* (idolatresses) till they believe (worship Allah Alone)”, (The Noble Quran, 2:221). In addition, the Hadiths condemn marrying a Christian or Jewish woman by pointing out what Umar has said: “...and I do not know anything worse in polytheism than for a woman to say ‘Our Lord is Jesus’, though he was merely just one of God’s servants!” (Awde, 2000).

In promoting democracy in the post-revolutionary Constitutions, Egypt and Tunisia have to face tough choices about some of the archaic principles of the religion that are not in accordance with the modern understanding of a liberal society that supports equality at all gender and religious levels. Even if the legislation becomes fully harmonized with the contemporary requirements of a democratic state, then still open remains the question about changing the traditions and the public opinions that may oppose the democratic amendments.

Religious Minorities in Islam

When discussing religious minorities, it is necessary to define to which religion belongs the majority of both Tunisians and Egyptians. The state religion is Islam and therefore under minorities it should be understood the groups of Christians (Coptic Orthodox, Greek Orthodox, Roman Catholics) and the Judaists. Since the Quran itself does not deprive followers of other religions from receiving justice, protection for their properties and rights it can be inferred that there is an equal level of rights for all the citizens. Moreover, it admits they are “equals in creation” (Sachedina, 2006). However, as Safi claims, some restrictions as observing a dress code and display of religious symbols are imposed by classical jurists but only out of “security concerns” that were product of the historical context of Mongol and Crusader invasions (Safi, 2003).

There is another factor playing a role in the concerns that have risen about the human rights of the religious minorities in Egypt. Some scholars claim that the ongoing anxiety regarding the sectarian violence disrupting the desire for equal rights stems from a defragmentation of the Egyptian identity that once was characterized with very strong self-determination (Nossett, 2014). The predominantly conservative Muslim population has taken over this Egyptian identity and threatens to replace nationalism with radical religiosity. Article 3 from the current Egyptian Constitution outlines the regulations that religious minorities in the state will have to obey¹⁵.

¹⁵ Article (3): The principles of Christian and Jewish Sharia of Egyptian Christians and Jews are the main source of legislations that regulate their respective personal status, religious affairs, and selection of spiritual leaders.

What appears to be challenging in this paragraph is a continuance of the tradition for excluding the representatives of other religions from the state affairs. The discrepancies in the provisions intended for different groups from the population can evoke sectarian violence and exacerbate the tensions between the Islamic part of the population and the Christian and Jewish ones. Moreover, it is not explicitly mentioned exactly how the sources of legislation of the Christians and the Jews will be applied and incorporated into the comprehensive state justice system. This parsimony should be certainly eradicated and replaced with a more detailed account of the exact structure of rights for religious minorities. Although everywhere throughout the Constitution the word “citizens” is present and referring to all the religious groups in the country, this particular Article 3 still casts some doubt in the level of protections and the legal guarantees that a state should be responsible for. As opposed to the scarcity of provisions that are expected to form a stable ground for development of the rights of the religious minorities, Article 235 promises to issue a law for the construction and renovation of Christian churches. Regardless of this very specific text, it stands out as a very concrete one when juxtaposed with the rest of the articles regulating the public relations between the religious minorities themselves and their juridical relations with the state. A more wide-ranging and at the same time a more definite mechanism for ensuring the human rights of the religious minorities in Egypt should be stipulated.

While the Egyptian Constitution makes an obvious division of the Muslim part of the population and the religious minorities, in the Tunisian Constitution a completely different approach is being undertaken. Instead of “religious minorities” the state act of highest priority promises a legal shield against any violations towards the freedom of religious self-determination. Here, as opposed to the Egyptian Constitution, the critique falls on the “partisan

instrumentalism” (Safi, 2003) that might be employed to obstruct the justice and the rights of the religious minorities that it defends.

Regardless of the remark and the eventual jeopardy before the rights of the religious minorities, apparent remains the difference between the ways in which the religious freedoms are being viewed and ensured in the Egyptian and in the Tunisian Constitutions. While Tunisia has made a big step towards a more liberal society that finds its juridical expression in the new Constitution after the Arab Spring, Egypt’s political interests, domestic and international pressures, and religious conservatives are still the predominant influence in the transition from dictatorship to democracy (Sarquís, 2012). Tunisian Constitution stands out with its progressive way to enlist all the liberal freedoms inherent for a modern democracy while Egyptian Constitution, yet making attempts to adopt some of the same principles, still remains somewhat unfinished and thus slightly incomplete at places. It lacks a legal and transparent political apparatus for managing the public relations in a manner that guarantees stability, clarity, and fairness of the procedures.

Freedom of speech and limitations of rights for some underprivileged groups

Few words are also in order regarding the freedom of speech and its limitations posed by the Quran or at least the limitations posed by traditions perceived to be based on the Quran. Both Constitutions of Egypt and Tunisia are building institutions and councils, norms and principles according to which freedom of speech is guaranteed and promoted. This can be viewed as an immediate consequence of the events during the revolts that were part of the Arab Spring including the two initiatives that gained popularity during the time – Operation Tunisia and

Operation Egypt (Olsen, 2012; Shakarian, Shakarian and Ruef, 2013). Going through a long period of time when Tunisian and Egyptian citizens were deprived from exercising one of the most vital human rights, it was then after the uprisings when one of the most significant tasks of the law makers becomes to establish a new constitutional order that assigns a priority place for the freedom of speech. Some scholars ascribe the limited freedom of expression of certain groups to historical traditions dictated by a need of self-preservation and relate these tendencies to a certain political regime and governmental practices rather than to any of the provisions of the Quran (Kamali, 1997).

Regardless of the promises related to this core to democracy right in the new Constitutions, as I argued previously, there are some specifics in the Muslim traditions and beliefs that can limit this to a significant extent. Although both societies are going through a transition intended to place women, religious minorities and other groups that might be discriminated in a more beneficial position that will be equal to the ones of the privileged groups, there are some controversial aspects that have to be addressed. Since the public opinions, especially in Egypt, are still very strong and in support of what Safi (2003) has operationalized as a Moralism-Islamist model, it is hard for the proclaimed rights to be applied successfully in society that is prejudiced towards women and citizens professing beliefs different than Islam.

The biases towards vulnerable groups and the traditional religious and patriarchal views in Egypt and Tunisia are the main barrier that stays on the way of incorporating the constitutional provisions into the everyday life of the citizens which would make them applicable in a sensible way. However, Tunisian society is making a progress in this regard faster than the Egyptian one and we can attribute this advancement to the less radical political ideologies inherent for the Tunisian society. Another nuance that deserves attention is that Tunisians are making a more

obvious progress due to the strong impact of its colonial past which helps them easier to embrace values typical for the West (Arowolo, 2010). The comprehensive Egyptian identity and the positive evaluation of western values that it had cherished once in its past turn out to be insufficient to dominate or even to equal the contemporary Islamic dominance. Societies develop with different pace and in different ways. An evolution from extensive medieval tradition of certain less liberal stereotypes to democratic standards typical for the republics of modern times reveals many obstacles, and is unquestionably hard and cumbersome modification in societies where the spirit of old traditions is still alive and quite evident.

Conclusion

The consecutive changes in Egypt and Tunisia after the revolts during the Arab Spring bring new aspects of consideration for researchers as well as for the citizens of both countries. The liberal amendments and the pressure coming from domestic and international factors have entailed tensions that not rarely threaten to take more serious form and to endanger the still fragile democracy. These correlations provoke scholars, practitioners and members of Muslim societies to ask the question: “Is there a way for the Islamic law to work hand in hand with the secular principles adopted in the Constitutions after the Arab Spring?”. Namely, this question I tried to examine in this essay by offering different perspectives of discourses circulating in this vividly discussed space.

The conclusions I have reached are pointing to the theoretical compatibility, though not thorough but relative, between the Sharia and the international standards for human rights. Despite of the different pace with which Egypt and Tunisians are making alterations in their

societies, based on their Constitutions, they are surely evolving in the direction of a democratic regime. Therefore, I offered an explanation for the dynamics in both countries by underlining some historical, religious and cultural characteristics and dependencies. Specifically, these contextualized features, on my belief, have significantly contributed to the assumption that a balance between the Islamic Sharia, and the secular principles inherent for Western democracies is quite possible. Unquestionably, this harmony will be contingent at a high degree on the political ideologies, possible compromises with radical Islamic groups, and last but not least, the successful implementation of the constitutionally declared freedoms and rights in the public sphere.

CHAPTER IV

LOCAL AND GLOBAL IN THE NEW CONSTITUTIONS OF EGYPT AND TUNISIA AFTER THE ARAB SPRING

“To become a true global citizen,
one must abandon all notions of 'otherness'
and instead embrace 'togetherness'.”

— Suzy Kassem

The changes after the Arab Spring in Egypt and Tunisia have led to the adoption of new Constitutions that seek to embrace the core tenets of the modern democracy. But is this possible? Many skeptics see only an end to authoritarian regimes but no actual democratic reforms in both countries. As opposed to them, optimists see a necessary and inevitable advancement in terms of liberal changes. Although the revolts in 2011 and the subsequent events were defined by many as “unique”, both the Arab Spring and its results are not entirely new phenomena in the world history. Moreover, these tendencies were accompanying many of revolutions regardless of geographical location, religion, and the type of regime that has been overthrown. Despite of the differences, one common purpose unites all of them: the struggle for democratic changes and the constitution of a civil society empowered to choose representatives through just and transparent elections.

In this research, I aim to theoretically and empirically explain the creation of both Egyptian and the Tunisian constitutions as a logical product of domestic and international tendencies. Consequently, I seek to identify common patterns between the Arab Spring and European revolutions that have replaced communism with democracy. Also, I look to coherently connect the dyad local-global by starting the current analysis from delineating some implications from Arab Spring and then shifting the focus towards the dynamics during the work of the Constituent Assembly. After situating these events in a global context I am drawing some possible predictions about the future of the still fragile democracies in Egypt and Tunisia. By exploring the political parameters on a state level and combining them with expectations of the international community I offer a comprehensive study that shows support for the fact that symbiosis between religious and secular elements in both countries is quite possible. Therefore, the concepts of “Westernization” and “Islamization” as two opposing globalization flows should be rethought and a third, hybrid flow that carries the features of secular and religious cultures should be considered.

The globalization literature becomes more and more voluminous as the awareness of the globalization forces among people rises. Many scholars are endeavoring to find an accurate definition of what “globalization” actually means, when and how it has started, what does it entail. Regardless of the abundance of explanations on the subject matter, there is no single understanding of this term, mostly due to the different approaches and the aspects of globalization that researchers are taking into consideration. For the purposes of this current study, in order to provide a solid starting point for further arguments, I will employ Scholte’s definition of the term as “the spread of transplanetary – and in recent times also more particularly supraterritorial – connections between people” (Scholte, 2005). As the scholar claims himself,

there are lots of definitions circulating in the literature that are described by him as “redundant”. In support of his assessment of variety of other definitions, it can be added that any other attempts globalization to be properly situated in a theoretical context tend to put the emphasis on secondary relations and objects rather than on people who should be considered as the core element in the globalization cobweb (Friedman, 2006). However, though supplementary, transeconomic and suprainstitutional dimensions should be surely examined when two acts such as the newly adopted Egyptian and the Tunisian Constitutions are the central piece of the analysis. The common perspective among scholars is that there is a necessary interaction between the macro components and the micro constituents in the system of international relations. These dynamics produced by forces of “framigration” serve as a compass in the proper understanding of all the spheres where institutional structures and human factors are present (Rosenau, 2003).

While some scholars see the driving forces of globalization as a result of the contrasting processes of interaction between local units and global units, others see these phenomena as a unitary influence that bring the spirit of one or other culture. Since it would be a very challenging task to identify if the Constitutions of Egypt and Tunisia are a result of predominantly western or of middle-eastern traditions, another question seems to be more appropriate in this case. If this theoretical question has to be conceptualized in a way to produce implications on a more generalized scale, then one slightly different direction of thinking can be undertaken. A more intriguing problem would be whether the two strong globalization flows will continue to be what Ritzer calls “conflicting flows” or they will gradually find a common ground to eventually become interconnected tendencies with less contradictory nature (Ritzer, 2010).

Since the making of a contemporary constitution cannot be merely perceived as a juridical act deprived from any external and internal political impacts and tensions, this comprehensive process has to be viewed in its entirety. In this regard, African states, such as South Africa and Libya, for instance, have a history emphasizing their intrinsic dependency on both internationally recognized values and the foreign policy of western states (Klotz, 1995; Zoubir, 2009). Based on these arguments, localization and globalization forces that gave their contribution on shaping a domestic legal act can be conceptually divided in two main groups: events and processes within the state that creates the constitution, and transnational impact on forming the constitutional norms.

The domestic pressures on the creation of the Constitutions in Egypt and Tunisia were also a micro example of the conflict between the benefits that the “westernization” brings and an ideology that strongly opposes the core premises of the former. Safi (2003) identifies the two groups in Islamic societies having the predominant influence on political matters. The Nationalist-Secularist model and the Moralism-Islamist model as political fractions, at the time of debating and voting the parameters of the new Constitutions, were aware of each other’s political antipathies and predilections. Therefore, this allows for situating the birth of these North African constitutions in a comprehensive pattern where the idea of reflexive complexity (Earnest, 2015) can best explain some of their idiosyncrasies. Namely, it could provide an eclectic approach in an effort to denote why these acts of highest priority were, respectively, a product of the domination of the ultra-conservative Islamist party (Al-Nour) in the case of Egypt, and a result of mutual compromise between pro-religious and pro-secularist parties in Tunisia. Regardless of the choice that Egyptians and Tunisians have made during the elections after the Arab Spring revolts, one claim can be asserted: that the political party having the majority of seats in the

legislative body in these countries should rapidly reorient its political behavior to match both domestic and international anticipations (Hilal, 2012).

Combining the diverse expectations coming from inside and outside Egypt and Tunisia is a very difficult task but yet feasible. It should be pointed out, in this regard, that one of the most significant principles of the modern democracy – the right of private property is widely supported by Islamic countries. This principle is seen as a source of maintaining and achieving wealth nowadays but nonetheless historically it had to make a meaningful transition from public to private property (Cuno, 1980). Therefore, the core values of the liberal constitutionalism are not rejected by countries where the Sharia is still not only a legal source but moreover the supreme source of law, as it is in the case with Egypt and its Article 2 from the enforced in 2014 Constitution¹⁶. Moreover, scholars maintain that both societies are not opposing the economic growth and technological progress as both being forms of the traditionally western culture of capitalism and consumerism but are, however, opposing the exact word but not its content (Esposito and Burgat, 2003).

In ancient times some nation-states and even tribes were having some formal relationships in terms of trade, art and even rudimentary norms entrenched in agreements. If this pattern was considered more as an exception than a rule in the medieval, the era of modernity in the meaning that Giddens (2013) suggests, brings many new points of consideration not only within the states but also beyond the state borders. In the contemporary pace of globalization states are not functioning anymore as single entities isolated from phenomena taking place in the

¹⁶ Due to some limitations of this study and the lack of access to an official translation of the Egyptian and the Tunisian Constitutions, unofficial copy in English served as a substitute. The source of the translated constitutions was provided by <https://www.constituteproject.org>.

global political space. Moreover, they are self-conscious about this veracity which makes them cautious in enacting domestic policies. This can be easily explained through a simple but noteworthy link: in an interconnected world a single political or legal decision can have a broader impact that reflects on a multilevel scale. At the present time juridical acts and the dynamics surrounding their enforcement are necessarily a part of a bigger structure. A structure that is sensitive to amendments in the status quo due to the complex nature of the global organizational behavior (Finnemore, 1996).

In a world of complex interdependence characterized by multiple levels of communication (Keohane and Nye, 1977) new laws are determining the political interaction between states. Trade relations, political regimes in countries and their membership in a certain range of international organizations are serving as tools for determining the contacts between states as being amiable or antagonistic (Russett and Oneal, 2001). Furthermore, according to this concept, a constitution can dramatically change the course of transnational interaction since it establishes the ground principles of every sector of the public life. Thus adopting a new constitution can unambiguously express an altered public image (Olins, 2005) that Egypt and Tunisia are aiming to demonstrate after the social, political and juridical changes that have taken place after the events in the Arab Spring.

The Arab Spring in Egypt and Tunisia: an echo of past revolutions

In order to build a comprehensive understanding about the social and the political environment that gave birth to the Egyptian and Tunisian Constitutions some parallels with past events at different places should be drawn. The features of the new socio-economic orders in

some of the countries I will refer to below are diverse but yet analogous. Regardless of the turmoil surrounding the events during the Arab Spring, an uprising as a form of protest against undemocratic regimes in the world history was widely-known phenomenon. Moreover, there is a solid scholarship on questions related to such revolutions. Subtle impressions implicated by media that the Arab Spring should be perceived as an inherent attribute of the Middle East is not entirely true. Some revolts that have remained in history directly correspond to this pattern, such as the Prague Spring, for instance. Despite of the fact that the vast majority of the revolutions were not having the word “spring” in their names they surely carry in their nature the same ideas as the Arab Spring and the Prague Spring. Interestingly, the Prague Spring had at a first glance nothing to do with the dynamics in Egypt or Tunisia but a more detailed analysis can show a tight connection between them. Although the events in Czechoslovakia after the World War II were coherently related to the opposition capitalism-communism, the implications from the Prague Spring remind a lot of the ones that have taken place in the Middle East nearly three decades later after these from Europe. The Velvet Spring, as it is also named, occurs in 1989 and entails a certainly more peaceful transition between the two regimes in comparison to the one in the Middle East.

Another fact also bolsters the claim that these two “Springs” have more in common than they are different from each other: in the core of all these uprisings were standing young people, mostly students (Gorbachev and Mlynar, 2013; Klimke et al, 2013; El Rashidi, 2013, Sghiri, 2013). Despite of the popularity of only few revolutions that were labeled this way, many more countries were going through a transition that engenders political, legal, cultural and societal changes. To conceptualize these features, I will use the term liberalization as another notion for the “springs”. These two equals were categorized in the Czech post-communist literature as

“collective projects for an alternative future” (Przeworski, 1991). In addition to these observations few more aspects have to be discussed in this regard. The revolutions calling for a change were both highly influenced by important international actors that maintain strong interest in the regions. For Egypt and Tunisia among these powers was the U.S. claiming that these territories should be kept away from eventual more concentrated presence of extremist groups like Al-Qaeda, as *The Guardian* points out in 2010 about a WikiLeaks article that sheds light on the increasing levels of corruption in Tunisia¹⁷. The same source also identifies two major powers that used to have and still maintain solid interests there, i.e. Italy and France although the European influence was weakly represented in this particular case. A retrospection in the historical timeline of the events in Eastern Europe will show the Reagan’s administration strong support of the aspirations of the protesters around 1985 shortly before the fall of the Berlin wall in 1989¹⁸.

However, a powerful influence for accumulating tension and resentment toward the ruling class and the regime in general was a cultural tendency. It can be best describe as a limited by the state access to products and ideas originally coming from the West (for Egypt and Tunisia these were access to social networks, and possibilities of exchanging data through YouTube, Twitter, Facebook). This can be viewed as a strong motivation for the protesters to turn their heads to a possible change of the status quo not only in the Middle East, whatsoever. Thirty years before the Arab Spring, Eastern Europe was also indulging forbidden by the communism fruits such as usually arduously achieved access to banned literature works and medium promoting liberal ideas (Gibianskii and Naimark, 2004), music bands that were not in

¹⁷ <http://www.theguardian.com/world/2010/dec/07/wikileaks-tunisia-first-lady>

¹⁸ Source: <https://history.state.gov/milestones/1989-1992/fall-of-communism>

accordance with the socialist doctrines (The Beatles, Pink Floyd, Depeche Mode, etc.¹⁹), any journeys abroad in countries where communism was not a state's religion were severely restricted. Although the dimensions of these prohibitions vary in different countries and geographical regions, one element remains easily discoverable – the place of the revolution. Despite of the unquestionable huge role that the technologies played in Egypt and Tunisia in 2010, as Gladwell (2013) argues, there were successful revolutions far before the social networks were created. Where? At the public squares from Eastern Europe around 1989 to the Middle East in 2010.

Another similarity that can be pointed out is a conceptualized model through which authoritarian regimes (across time and space) are dealing with any forms of resistance – “Successful repression serves to keep opposition movements small and divided. This is achieved by eliminating, coopting, or driving away the opposition of political parties and other institutions (restricting freedom of association) and by placing sharp limits on the communication of dissent (restricting freedom of expression)”, (McGarty et al, 2014). The latter concept enjoys applicability beyond the concrete spatial features of the revolutions in the Middle East and those in Eastern Europe and can be perceived as one more sign of the similarities between different cultures that pursuing one and the same goal – overthrowing a dysfunctional regime of oppression and replacing it with a modern democracy.

Some critiques of the adopted general classification of democratizations of states can point out that despite of some similarities, communism and authoritarian Islamic governance are too different to be compared. In order to address these possible controversies, few more

¹⁹ <http://www.openculture.com/2015/06/soviets-create-a-list-charging-38-rock-bands-with-crimes.html>

components of these regimes have to be rethought. Autocracy in a highly religious countries and communism share opposing standpoints in regard to faith and what role it has to play on juridical level. While communism, as a political doctrine, rejects religion by giving rise to other ideas of Marxism (Geoghegan, 2004), the strictly religious system of government in Egypt and Tunisia could have been characterized in entirely distinct nuances in this regard. In both countries the cult towards Islam was praised to the extent of assigning the Islamic faith a place not only as a state religion but as a state legislation. However, the strong presence of religion or the lack of such is not the most crucial factor in neither of these regimes. What can be assumed to be more informative and indicative consideration is the role of power and how it has been exercised in both cases. Namely the power feature of the governmental apparatus is the main ingredient in portraying a particular ideology. Communism and autocracy simultaneously disregard core democratic values typical for a modern governance in this current epoch. Among the violations of the central premises of liberalism are highly limited freedom of speech, which is harshly sanctioned by the state authorities if disobeying, absence of fair and transparent elections based on pluralism, unlawful repressions against opponents of the regime (Thomas, 2001; Howard and Donnelly, 1986; Richards et al, 2001; Ropp and Sikkink, 1999).

From this discussion it can be concluded that not only the Arab Spring has its analogs and predecessors in the world history but moreover the tensions that led to these uprisings were to a certain extent the same. Thus, the historical background of mass civic dissatisfaction, the followed unrests and the democratic changes that these events have engendered provide a stable ground for perceiving this pattern as “dynamic features of world culture and society that generate expansion, conflict and change...” (Meyer et al, 1997).

After reviewing the tendencies that have accompanied the changes made in Egyptian and Tunisian societies, it should be emphasized now how these processes have obtained more concrete dimensions, i.e. how domestic political figures and fractions reached decisions that have resulted in drafting the new Constitutions. Although the political powers in Tunisia were promoting more secular and closer to western type of democracy legal solutions, in Egypt a compromise between conservative and more secular political parties was not utterly reached. In the process of drafting the 2011 Constitution in Tunisia that was officially promulgated in 2014, the political party with most seats in the legislative body was Ennahda (professing moderate views), followed by its coalitional partners Congress for the Republic (CPR) with 20 seats and Democratic Forum for Labor and Liberties (FDTL) with 29 representatives²⁰. The latter shares the views of social democracy and secularism and so does CPR as well but with one insignificant disparity – CPR's political views embrace wider range of ideologies in this regard including left-wing nationalism and social liberalism. Giving the distribution of seats in the Tunisian Constituent Assembly in 2011, the consequence of adopting a secular and more liberal than the Egyptian Constitution seems thoroughly logical (Robbins, 2015).

While the electoral process and the process of drafting the Tunisian Constitution was highly influenced by a compromise between Islamic parties and secular political divisions, the Egyptian was a result of more unidirectional juridical decisions. The Egyptian constitution making process²¹ was marked by two stages due to a boycott that has occurred (Brown, 2012;

²⁰ The data provided for the Tunisian Constituent Assembly that composed the draft for the enacted in 2014 Constitution was collected from The Carter Center (https://www.cartercenter.org/resources/pdfs/news/peace_publications/democracy/tunisia-constitution-making-process.pdf) and respectively from the Freedom House (<https://freedomhouse.org/report/freedom-world/2014/tunisia>).

²¹ Numbers and facts for this part of the research was provided by Carnegie Endowment for International Peace (<http://carnegieendowment.org/2012/06/13/egypt-death-of-constituent-assembly>).

Sharp, 2012). These tensions were provoked by the fact that members of conservative Islamist parties such as Muslim Brotherhood's Freedom and Justice party and Al-Nour were evidently outweighing representatives subscribing to different political beliefs (liberal political parties, members of religious minorities, women). After compensating with some new members in the Assembly such as lawyers, judges, public figures and representatives of the Coptic Church a new Constitution was promulgated in 2014. It reveals, however, provisions that obscure some of the tenets of the liberal democracy by substituting them with texts having religious meaning (Stepan, 2013).

In an attempt to generalize the outcomes from the work done by both legislative bodies, I will draw a parallel between political systems inherent not only for the Muslim societies of Egypt and Tunisia but moreover for structures that were typical for secular Eastern Europe (Czech Republic, Romania, Bulgaria, Serbia) after the era of communism. After a significant political transition from authoritarian type of regime, regardless of the particular kind – religious autocracy or atheistic communism, an evident tendency can be observed. The two major divisions that compete for the dominant position in the political life can be theoretically separated into two groups: secular proponents of a liberal governance or supporters of the old regime that might have slightly altered views but yet adhere to beliefs more popular before the revolution rather than afterwards (Lewis, 2002; Hough et al, 2014). As the time goes by, both in countries with ex-communist regimes and in former autocracies the political life from being clustered in two main fraction becomes highly segmented. These formations express various ideologies and specific mindsets mostly related to strong nationalistic views, supporters of more ecological policies, and even parties of ethnic minorities (Rohrschneider et al, 2013; Kitschelt, 1995; Fidrmuc, 2000). These similarities across borders, across religions and across types of

governance show once again political and societal tendencies that Egypt and Tunisia might follow in future. Although we are witnessing now only few parties with stable positions in the parliaments after the Arab Spring, this can surely change ahead. This might engender a need for a number of amendments in the Constitutions the political course of these countries alters to a sufficient extent.

The global way of making local politics

If the Arab Spring is labeled as a purely local phenomenon, then the roots of these uprisings and the consequences they unlocked should be certainly complemented with some global context. Many scholars that have documented, witnessed or researched the events during the revolts have mentioned, though sometimes unintentionally, the presence of an international element that has influenced the beginning, the development or the outcome of the unrests. The core of the activist groups in both Egypt and Tunisia was composed predominantly of young people, mostly students, and not a small part of them have been traveling, studies or lived abroad. This highly perceptive of the new technological environment diaspora had used social networks, communication channels and complicated strategies for sending and receiving messages aiming to subscribe Egyptian and Tunisian societies to the global liberal values of the 21st century (Kinsman, 2011; Lotan et al, 2011).

As Finnemore (1996) asserts “...states are constituted by civil society, and their policies reflect the interests of one or more groups in domestic society. State preferences are thus the preferences of dominant domestic groups”. One of the relatively strong groups in the domestic society during the Arab Spring and shortly after that were composed by the same young people

who initiated the activist movements that led to the revolts. Another dominant fraction was the still powerful Islamist group that have maintained that the Sharia should be perceived as an ultimate source of the legislation in the country, as I argued in Chapter II. This division also remain skeptical about if foreign intervention should be allowed in order to influence reforms²².

I have already pointed to the global context of the modern ideas that were rapidly spreading among young people not only in Egypt and Tunisia but over the world in general. But how is that second, pro-religious group that was holding strong positions of power connected to these global tendencies? Here the role of the geographical neighbors of both countries should be emphasized (Manley et al, 2013). As much the ideas of the revolutions circa 1989 in Europe and respectively in 2010 for the Middle East were contagious, yet another mindset professed by another group was still evident – communism in the first case, and radical Islamism in the second. While the Western neighbors of Eastern Europe have established well-working democracies long ago and served as a bright example of what has to be done, the neighbors of Egypt and Tunisia in Africa were not on the same page as the West in 1989. The controversial results from the Arab Spring in Libya can be used as an example for a terminated authoritarian regime that was followed by a civil war afterwards (Prashad, 2012). Quite unsatisfying remains the aftermath of the Arab Spring in Algeria as well²³. Morocco sets an example of a successful transition to enhanced liberal standards after the Arab Spring but first, Morocco has always been the most secular and progressive state among all of the African countries, and second, the Arab Spring there had completely different contours, expressing peaceful requirements by the

²² Statistics provided from the following research: http://www.arab-reform.net/sites/default/files/Foreign%20Influence%20in%20the%20Middle%20East%3A%20Changes%20in%20Perceptions%20and%20Expectations%20Foreign%20Influence%20in%20the%20Middle%20East%3A%20Changes%20in%20Perceptions%20and%20Expectations_0.pdf

²³ <https://www.washingtonpost.com/news/monkey-cage/wp/2014/04/17/algerians-vote-for-stability/>

population, and in addition to this, for mostly economic reasons. Moreover, there is an ongoing debate if the king should remain a nominal figure in the government and pass on the actual political prerogatives to a future democratically elected government. However, the background of the events in Egypt and Tunisia does not consist only of the presence of the very liberal kingdom of Morocco. More attention and more illustrative of the political moods on the African continent are the still many countries that could be characterized currently or previously as kleptocracies (Acemoglu, Verdier and Robinson, 2004) and the bad influence they can be for the region.

Although many scholars emphasize the fading role of the state in the international society (Haas, 2008; Omae, 1995), others confirm the still strong functions that it executes and the guarantees that this creates (Hoffmann, 1966; Boyer and Drache, 1996). Regardless of these debates, the positive role of external influence on countries in Africa can be seen in many cases. Appeals of other states and NGOs for observing the civil and human rights in Egypt and Tunisia proclaimed in many supranational agreements and covenants were somewhat neglected before the changes after the Arab Spring. The Egyptian and the Tunisian governments were both relying heavily on two reasons for dismissing the warnings: the first one is related to the fact that every call for precluding the violations was received as an attack against the whole religion and therefore the culture as well; and the second stems from the fear that letting international community arrange domestic issues would seriously hurt the sovereignty of both states. However, after the uprisings the situation was slightly different. The officials from the authoritarian regimes could have kept maintaining the same position but in the altered social environment after the revolts it becomes clear that people longing for a democratic change were having a strong ally in the face of many states, NGOs and other non-state actors.

In addition to this, there are copious cases in the past century in which a powerful state with pro-western type of governance was advocating for discontinuing of ongoing violations in regard to human rights. One such case is the one with South Africa where numerous sanctions were undertaken by UN, Germany, France, Japan, and the Nordic countries in an effort to exercise some pressure on the local authorities supporting and maintaining policies of racial discrimination (Klotz, 1995). Especially interesting in this particular instance is that the U.S. during the mid-1980s abstained from supporting the sanctions for South Africa led by material interests related to high levels of trade that were carefully observed by the local South African government. The authorities from this government were to certain extent dependent on their American business-partners. However, despite of its economic interests in the region, due to serious domestic pressure, the U.S. eventually joins the other states in the sanctions adopted against South Africa. Later, this leads to, though not complete, but yet sensible change in terms of the racial inequality in this area.

The colonial past of the African continent has made the countries there inherently sensitive to external influence (Bertocchi and Canova, 2002). When Tunisia gained its independence, a new constitution was adopted. Not surprisingly, it was designed after the French highly centralized presidential governmental system²⁴. Furthermore, the Egyptian legislation is also modeled on the French Napoleonic Code from 1804²⁵. Interestingly, many of the criminal or/and the civil codes of other European countries different than France are composed by adopting principles, concepts and formulas from the same Napoleonic Code. This certainly gives

²⁴ The source for this data can be found on:

http://webcache.googleusercontent.com/search?q=cache:X97cTSq6M6YJ:carnegieendowment.org/files/Tunisia_APS.doc+&cd=14&hl=en&ct=clnk&gl=us

²⁵ <http://egyptjustice.com/egypt-law-an-overview/>

scholars the right to encourage the extrapolation of a discourse about the ancestors of many constitutions worldwide. Even though the reason for implementing parts of the French legal system in Egypt and Tunisia is mainly based on their colonial relation in the past, this is not valid for the European countries that have based their legislations on the French as well. Hence, a merely historical correlation between the countries from the Middle East and France cannot be the only source of this similarity. Instead, this pattern should be examined in a rather international political context, i.e. considering the global way of making domestic politics.

The road ahead and the hybrid globalization flow

Since the Egyptian and the Tunisian parliaments are composed by an Islamic conservative or moderate majority then this presumably leads to the deduction that they would adhere to the Sharia as a most important source of legislation in these countries. In this case, if the Sharia rejects democracy designed by the civil society, further liberal changes in these societies would be hardly possible even if the international community strongly promotes them (Mouhib, 2014). A careful examination of some of the Quranic texts might provide some answers to what extent can the Islamic law coexist with a democratic regime of governance. Abou El Fadl (2005) maintains that among the values central to the Quran are “pursuing justice through social cooperation and mutual assistance; establishing a non-autocratic, consultative method of governance; and institutionalizing mercy and compassion in social interactions”. He also considers that modern forms of democracy would best respond to the divine provisions in the sacred for the Muslims book. Many other scholars support this point of view and furthermore, the ultimate proof for a possible synergy between secularism and religion is the fact

that both Egypt and Tunisia are slowly embracing liberal ideas demonstrated on constitutional level (Bellin, 2013; Netterstrom, 2015).

Although these changes are gradually penetrating into both societies with a different pace and in a different manner, the more secular approach for conducting politics is quite evident. An example for a successful Islamic monarchy that is open to democratic changes is Morocco. Its constitution, revised in 2011, can compete only with the Tunisian one with its modern ideas. Muhammad VI, as opposed to his father Hassan II who was popular as a very strict and uncompromising ruler, executed many reforms in a liberal spirit that showed support for the claim that the Middle East was ready for changes, regardless of whether it will be achieved with or without a revolution (Campbell, 2003). Critics of the regime point out that despite of the liberal results, a monarchy deprived from democratic election of a ruler is not something that the Moroccans would like to put up with. This position would be in a strong contrast with Egypt, for example where, on the one hand, not so liberal changes were made but, on the other hand, were implemented in a democratic way – through elections and a fairly appointed government. All of this comes to delineate that the democracies in the Middle East are still not entirely completed. They either conducted reforms through authoritarian means, and subsequently reached democratic results or vice versa – the reforms were executed by democratically elected body but have produced juridical decisions that were far less liberal in nature (Totten, 2013). A successful democracy would employ the democratic means to achieve democratic outcomes. If this rule is neglected, then countries aiming to become effective democracies would mark an advancement but will still lack attributes to be perceived as entirely successful in this regard.

While some authors skeptically see Islam as a barrier between highly religious countries and secularism (Jawad, 2013; Huntington, 1996), others optimistically view this religion as a

powerful modernizing agent in the Middle East (Esposito and Burgat, 2003). The latter opens room for more discussion. Namely Islam can be the key element that will encourage conservative religious countries to become more welcoming to “western” values when they see that the religious sphere does not inevitably excludes the secularism of the modern civil society.

This brings another nuance to the discourse about Islam and the West – Egyptian and Tunisian Constitutions cannot be perceived only in their meaning of tools of globalization flows but furthermore they have to be acknowledged as a convincing evidence that a symbiosis between secular and religious is not a utopia. This comes to suggest that these two legal acts have to be situated in a context where they are playing the role of the globalization forces themselves and are not being perceived as mere products of the same forces. Moreover, public opinions about “Westernization” connect it and define it as almost equal to globalization (Mazrui, 1997). This claim has to be rethought and reexamined. While the “Westernization”, as a globalization flow can be inherently widespread in western type of societies, the “Islamization” can be as equally appealing to religious societies professing the Islamic faith. While the first flow preaches a shared understanding of democratic values based on the idea of the civil society and the freely expressed will of voters who select their representatives, the other flow is focused more on praising the religion as an ultimate power that has to regulate private and public affairs.

These tendencies are often depicted as mutually exclusive, contrast mindsets with no possible chance of overlapping. Regardless of these views, the dense cobweb of intertwined Islamic and secular threads rejects the plausibility of such interpretations. A more innovative approach should be undertaken as an alternative to the conservatively defined in the scholarship Westernization and Islamization, as they are being contextualized as two mutually exclusive globalization flows. Instead of dividing these globalization flows of either “western” or

“Islamic”, a new, third flow should be accepted as a recently generated compromise between them. It seeks to combine elements from both streams and it originates from the refusal of the Islamic societies to utterly overthrow any of the two forces – Westernization and Islamization - that are strongly affecting them.

When thinking about the Egyptian and the Tunisian Constitutions in their function as a hybrid flow, it should be specified what are the features of this amalgamation between Islam and secularism that can possibly influence other countries with Islamist authoritarian regimes to become more open to secular ideas. Unarguably, regardless of the exact dimensions of the democracy’s quality in both countries, it is still to be recognized that a step forward has been made. If it is not a transition to democracy then it is to be characterized at least as a “transition from authoritarianism” (Abdelali, 2013). Although Egypt and Tunisia will face many challenges and shortfalls that are inherent for democratic regimes, they will be unarguably rewarded by the international community for the political amendments that promise an increased cooperation and openness to multinational initiatives. If antagonistic relations between states are more likely to occur over time when there is an absence of one of the three factors defined by the Triangulating Peace theory (Russett and Oneal, 2001), then their existence will guarantee amiable atmosphere for global interaction between the newly established democracies and the ones with much longer history in this regard.

Another example of how the new Constitutions of Egypt and Tunisia can result in enhanced relations with other democracies is that they both promise to expand transnational collaboration in various spheres which can definitely contribute for improved diplomatic ties between them. What remains questionable is to what extent these states will respond to the

requirement of having a democratic regime from now on. In theory, both Constitutions proclaim the states as democracies but in practice critics claim that the transition to liberal political model could be commenced but yet not finished (Langohr, 2004). Therefore, in addition to this formula one more element should be added when referring to developing countries going through a transition from authoritarianism to democratic governance. The missing piece here is, interestingly, something that not only the countries from the Arab Spring are suffering from. The symptom of unstable democracy is a political issue that many other countries that have replaced totalitarian regime with a democratic one are experiencing. This can be easily illustrated by an instance containing some information about inequality and poverty among the European countries²⁶. Not very surprising is the particular correlation between the fact that Serbia, Romania, Bulgaria, Montenegro, Kosovo, Moldova, Georgia, Belarus, Bosnia and Herzegovina, are ex-communist countries, and the circumstance that they have the lowest indicators among all states. Regardless of the common pattern, some countries are doing better than others. According to a study called *Freedom In the World*, conducted by Freedom House, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia are showing same levels of freedom as Britain (Rose, 2002). There is another correlation that implies that ex-communist countries with longer experience with capitalism are better off than the ones being democracies for shorter periods of time (Soos, 2011).

²⁶ The statistics for this comparison were collected from The World Bank:
<http://povertydata.worldbank.org/poverty/home/>

Conclusion

By comparing, in this study, the revolutions that led to democratic regimes of ex-communist countries with the ex-autocratic regimes in Egypt and Tunisia, a negative tendency can be observed. Nearly two and a half decades after the fall of the Soviet Union, many of these countries are still looking forward to complete the transition from authoritarianism to democracy. Some countries, despite of their efforts to fulfil the requirements for being a successful democracy are still failing to do so. A reasonable doubt exists and suggests that they might remain in the midst of a transition that many developing countries could not entirely go through.

However, despite of some pejorative elements in the current state affairs of the former socialist republics, they are still showing higher levels of human and civil rights protection in comparison to Egypt and Tunisia which can be again attributed to the fact that they have a longer history in being democracies. A more optimistic perspective can underline the assumption that a slow progress does not equal lack of such. Moreover, successful motions towards democracy will include a strong and efficiently working administrative and legislative apparatus, well-functioning application of the rights proclaimed on constitutional level, and legitimate government with confirmed authority. Some countries might need more time to adjust to the environment of a blossoming democracy than others, a correlation that is evident from the example with the former totalitarian republics. Therefore, as long as efforts in this regard are invested by both Egypt and Tunisia on the one side, and the international community, on the other, the idea of a balance between the local and the global, between the Islamic culture and the tenets of a liberal governance is still theoretically possible and realizable.

CHAPTER V

SUMMARY

Many questions were raised after the Arab Spring and even more will surface in future giving the dynamic nature of the Middle Eastern politics the past few years. In this research I tried to provide a comprehensive analysis of the Egyptian and the Tunisian Constitutions after the Arab Spring. My conclusion was that they are secularly oriented but nevertheless pose some ambiguities that might lead to misinterpretations or even to abuse of power, and to recurring violations of the Human Rights. The Constitution of Tunisia can be defined as the more progressive one since the one in Egypt was created by predominantly Islamist parties and representatives of conservative religious views unlike the former where moderate Islamist were taking these legislative decisions but balanced by the presence of diverse political and public figures in the Constituent Assembly. In sum, both legal acts of highest priority are generally in accordance with the contemporary requirements of the modern liberal constitutionalism.

What makes these Constitutions unique is the fact that they have the ambitious task to combine secular provisions typical for the positive law, and religious components from the Sharia. There is no analogous constitutional tradition in Africa where Islam coexists with civil norms so that this amalgamation in the new Constitutions of Egypt and Tunisia to be labeled as whether well or poorly designed. Although the Islamic law is traditionally considered as an objective category that steps on solid grounds because the unalterable nature of the Quran and the Sunna, the interpretation of these texts can vary greatly. They not only can dramatically differ from one another but moreover depend on two political and ideological fractions in both societies that have opposing views on how sustainable development can be achieved. In addition

to these domestic tensions should be added the international pressure on these countries to adopt the globally accepted values and principles that, according to many, will inevitably bring a serious disruption of the righteous and pious life that a God-abiding Muslim should lead.

When examining the Quran and conducting a textual analysis from various sources, I could not find verses that can be held responsible for any purposeful discriminatory practices against women, religious minorities or other underprivileged groups. Such oppressive behavior toward such categories of people can be ascribed to patriarchal traditions whose roots can be followed back centuries ago, and to a tendentious manner of interpreting the Quran for political and ideological purposes. Furthermore, the sacred for the Muslims book directly forbids any kind of disrespectful behavior toward women. However, as long as it was used as a source of juridical norms in the past due to the lack of civil code or any other codification that separates religious affairs from the secular ones, nowadays the Sharia is starting to lose its applicability. The pace of the globalization processes and the ever more interconnected societies call for making an evident distinction between the sources for moral guidance, and the legal sources that come to arrange public and private matters of the citizens.

While the Arab Spring is perceived as a phenomenon with no analogue, to a great extent the features of these political and societal transformations can be observed in other events across time and space. The series of protests that overthrew the communism in Eastern Europe are at first glance different but yet so similar to the unrests in the Middle East. Although the contemporary means of communication were not present nearly thirty years ago to contribute for the fall of communism in Eastern Europe, this political, economic and cultural, reconstruction of the public order yet somehow found its way to succeed. The times were different but the places

of the revolutions in Europe and in the Middle East were the same – the squares. The demands of the protesters were the same. The complaints about the authoritarian regimes were the same. Even the reaction of the governments trying to liquidate the uprisings was similar regardless of the whereabouts and the times of the protests.

Here came another question that I tried to address – will the fate of Egypt and Tunisia be the same of the still recovering and slowly building democracy countries from Eastern Europe? If the Middle East wants to be successful in this transition they have to learn the lessons from the ex-communist countries – once achieved, democracy certainly has to be carefully maintained and observed at any level of the public life. Newly established democracies are fragile, and for developing countries, especially such with a strong religious conservative ruling class, it will be a long way until the legacy of the authoritarianism is forgotten and replaced by well-functioning democracy. The role of the international community also should not be underestimated because it has the capabilities to provide a strong support for countries that want to obey the same liberal norms and values. What is problematic here is that neither Egypt nor Tunisia seem open to the idea of external interference. But would they find a peaceful balance between radical Islamist and pro-secular governance without any intervention from non-domestic political actors when simultaneously developing the core premises of the democracy in the country? This is surely a question that will initiate a new discourse about the aftermath of the Arab Spring because it was just the inaugural step toward a change. Until its completion, there will be many more ahead.

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VITA

Lora Hadzhidimova was born in Varna, Bulgaria, on September 19, 1989. She receives her LL.M. from Sofia University, Bulgaria in 2014. Before her graduation, she works on various interdisciplinary initiatives including a project developed by scholars from Technical University of Varna (“Educational Management”) in 2009, and in 2013 she cooperated in the development of another program setting educational goals (“Multispectral Approach in Educational Integration and Adaptation of children from ethnical minorities”), sponsored by European Social Fund of European Union. Shortly before the completion of her law degree, she becomes an intern in the law firm “Independent Consulting” in Varna, Bulgaria where she specializes Insurance and Labor Law, and later Contract Law. After her graduation from law school, she gets accepted to continue her studies with a Master’s degree in the Humanities program at Old Dominion University, Norfolk, VA (3041 Batten Arts & Letters, Norfolk, VA 23529). As of the beginning of the fall semester of 2016, she will be enrolled in the PhD program in International Studies at Old Dominion University.