

Political Organization in the Middle East and North Africa

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Abstract

The essay seeks to look at the nature and peculiarities of political organization in the context of the Middle East and North African (MENA), with special reference to Egypt, Libya, Tunisia, and Yemen, countries which experienced popular uprisings that led to the ousting of authoritarian rulers in 2011. The essay begins with a contextualization of political organization, examining aspects of continuity and discontinuity, while at the same time focusing on old problems and new challenges. To this end, the inquiry is twofold. The first section looks at the nature of political parties and party politics, including electoral processes before the Arab Spring. The second section turns to post-Arab Spring political organization. It highlights legal and practical issues involved in the current setting in which political organizations are being reconstructed in a way that supports a process of renewal of political institutions, including parties and political party laws. The strengthening of the democratic process, it is concluded, needs a favorable legal setting, which reforms political organization in order to avoid old problems (e.g., exclusionary practices and nondemocratic elections) and responds to new challenges (democratization).

Keywords: Political organization, political parties, MENA, Egypt, Tunisia, democratization.

Democratization and Authoritarian Politics: Pre-Arab Spring

Scholars from Thomas Carothers¹ to Laurence Whitehead² question the

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¹ Thomas Carothers, "The End of the Transition Paradigm," in *Critical Mission: Essays on Democracy Promotion* (Washington, D C: Carnegie Endowment for International Peace, 2004), 168, 176.

² Laurence Whitehead, *Democratization: Theory and Experience* (Oxford: Oxford University Press, 2002), 30.

“transition paradigm” and “third wave” democratization. Questioning is doubly fierce when “word” (theory) meets “world” (context, practice). No matter how normatively appealing, democratization theory neither has neat boundaries nor is uncontested. Moreover, its application to the Arab setting poses difficulties, as shall be argued in this essay. However, the difficulties of applying democratization theory to a region are not specific to MENA. Democratization has its travails, trials, failures, and successes elsewhere, as in South and Central America and Eastern Europe. What route should democratization take and what processes and outcomes should typify it in MENA?

Democratization must be situated within the broader scholarly discourse, paying special attention to the contestability of democratization. We principally focus on the “dialogue” between Samuel P. Huntington and Laurence Whitehead. Whitehead’s notion that democratization is essentially contested informs the ontological position of this essay. Democratization speaks to time and space and its progression is reflected temporally and spatially. This discussion briefly extends to the nascent scholarly effort from within MENA to understand and adapt the “democratization paradigm.” We draw on key writings which have been totally ignored by students of Arab democratization, providing a critical assessment. In the absence of an indigenous analogy to Euro-American studies of transition, it remains difficult to exclusively view reforms in MENA through a Western lens. What characterizes this emerging “Arab transitology” is the borrowing of Western theoretical frameworks and concepts that do not always explain Arab peculiarities. This is despite the wide usage of neologisms such as *damaqratah* or *tahawwul dimuqrati*, respectively, the Arabic terms for “democratization” and “democratic transition.”

Arab states and societies are caught in the vortex of the challenges brought about by the global travel of democratization to MENA. In-vogue Euro-American paradigmatic approaches and explanatory universals come and go. Since the 1960s, the study of MENA has had its share of the analytical fads invented by political scientists. Only recently, modernization has ceded to democratization. The pressure to democratize is from within and without. The global diffusion of democracy and human rights as new standards and legitimization in domestic politics has affected all Arab societies and polities. Crises of economic performance and of nonlegitimacy from the inside (e.g., bread riots) have forced many Arab ruling elites to embark on previously unthinkable political reforms.³ Arab societies are grappling with the challenge of learning about political organization in order to carve out a margin of existence in largely corporatist settings. Epistemic communities are equally challenged by the “travel” of democratization. How students of Arab politics

³ See the study of Arab political liberalizations by Michael C. Hudson et al., “The Possibilities for Pluralism,” *American-Arab Affairs* 36 (1991): 3-26.

harmonize word and world poses more questions than answers. Some of these questions concern the prerequisites of democratic transition. Others revolve around the compatibility of Islam and democracy. In particular, the assignment of scholars to invent or apply theoretical frameworks for analyzing progression toward and retrogression from substantive democratic government has not been uncomplicated. There are reservations about whether Western democratic theory is for export.⁴ Claims to universality are as reproachable as defensiveness in MENA of specificity. In MENA, the merits of relativism must be weighed against the trap of “exceptionalism.”⁵ Privileging indigenous models of democracy or democratization has worked historically to side-track genuine political reform. Indeed, democratization as a moral imperative must be defended. Euro-American paradigms for explaining democratic transition may not be applicable outside their original milieu. However, MENA can learn from the limitations, if not the successes, of these paradigms. There is plenty of learning to be had in undoing the polarities between structure and agency, state and society, institution and attitude, and what is domestic and international. To some extent, this essay attempts to seek some answers to the peculiarity of Arab political liberalizations. It does this by trying to bridge the gap between top-down and bottom-up as well as between internal and external dynamics.

Caught unprepared by the early “democratic” stirrings of the early 1990s and keen to explain transformation along the path of modernity, students of MENA have sought clues in Euro-American scholarship.⁶ The theoretical and conceptual lag in the study of Arab politics makes this exercise imperative as well as inevitable.⁷ The various analytical approaches (from behavioralism through rational choice, down to Marxism) that vied for proving their scientific credentials and establishing their pre-eminence in political science have all colored the content and direction of the study of politics in MENA. This explains the focus up to the mid-1990s on elites’ political behavior or institutions, such as the military, in Arab polities to the detriment of an investigation of civil society.⁸ Indeed, opportunities in the Arab world are slowly unfolding for greater participation and contestation—the two dimensions of Dahl’s

⁴ See Jacques Barzun, “Is Democratic Theory for Export?” in *Ethics and International Affairs: A Reader*, ed. Joel H. Rosenthal (Washington, DC: Georgetown University Press, 1995), 39-57.

⁵ See Steven Heydemann, “Is the Middle East Different?” *Journal of Democracy* 7, no. 2 (1996): 171-175.

⁶ One of the earliest pieces on the question of Arab democracy is by Malcolm Kerr, “Arab Radical Notions of Democracy,” *Middle Eastern Affairs* 3, St. Anthony’s Papers (1963): 9-40.

⁷ See, for instance, John P. Entelis, “Civil Society and the Authoritarian Temptation in Algerian Politics: Islamic Democracy vs. the Centralized State,” in *Civil Society in the Middle East*, vol. 2, ed. Augustus R. Norton (Leiden: E. J. Brill, 1996), 45. See also, James A. Bill, “Comparative Middle East Politics: Still in Search of Theory,” *Political Science and Politics* 27, no. 3 (1994): 518-519.

⁸ See the good work by Fawaz A. Gerges, “The Study of Middle East International Relations: A Critique,” *British Journal of Middle East Studies* 18, no. 2 (1991): 208-440.

polyarchy.⁹ Arab political liberalizations have not hitherto led to popularly constituted and accountable government, rule of law, or revitalized intermediary institutions. Nor have they put an end to abuse of office and serious violations of human rights.¹⁰ Nonetheless, democratization is the paradigm through which they are interpreted. By and large, the experiences of Southern and Eastern Europe and South and Central America, regions that find themselves in states of transition far more congenial with transcending the democratic threshold, form the comparative framework for the study of Arab democratic stirrings and initiatives. The state of flux observable in most Arab political liberalizations suggests that Eurocentric paradigms, especially democratization, are not easily applicable to Arab democratic experiments. That is, unless they are supplemented with indigenous forms of explanation and interpretation in which the political realities and phenomena are conceived.¹¹ Hence, there is a need for a process of dialectic, rather than a synthesis. Indigenous forms of explanation and Euro-American frameworks and knowledge practices from “East” and “West” must engage in cross-cultural “fertilization” or “cross-cultural dialogue.”¹² However, such dialogue is still a long way away. Western scholarship on democratization in MENA ignores indigenous representations of the problem. Indigenous representations, on the other hand, access and apply Eurocentric knowledge practices—dependency theory or democratization. But there is one problem. This access tends to lack critical engagement. This is evident in the rendition given to democratization in Arab scholarship in which, for example, emphasis on structure outweighs that on agency.

Concepts such as “civil society” or “pacted transition,” which accompany democratization in its global travel, are not always neat or clear in their new geographies. No matter how potent and functional in the milieu in which they are conceived, Euro-American interpretive frameworks cannot be expected to fit comfortably when being transplanted to a new milieu. Moreover, they are not always congenial with the different forms of interpretation upon which they are imposed. There are many forms of interpreting and explaining a given political phenomenon. The diversity of interpretations corresponds with the world’s vast tapestry of cultures and categories of thought. Naturally, this does not preclude the possibility of either overlap or exchange. Relatively detached Euro-American paradigms may not serve well to explain the dynamics of

⁹ Robert A. Dahl, *Polyarchy: Participation and Opposition* (New Haven, CT: Yale University Press, 1971).

¹⁰ Evidence for this view is adduced in the two volumes by Augustus R. Norton, ed., *Civil Society in the Middle East* (Leiden: E. J. Brill, 1995 and 1996).

¹¹ See a similar idea by Carrie Rosefsky Wickham, “Beyond Democratization: Political Change in the Arab World,” *Political Science and Politics* 27, no. 3 (1994): 507-509.

¹² Louis J. Cantori, “The Old Orthodoxy and the New Orthodoxy in the Study of Middle Eastern Politics,” *Political Science and Politics* 27, no. 3 (1994): 516.

Arab politics. This is true with regard to the so-called “third wave”¹³ of Arab democratizations and transitions¹⁴ to good government. This problem has been foreshadowed by a number of students of democratization in MENA.¹⁵

Recent analyses of the complex dynamics of Arab movements toward liberalizing the authoritarian structures of the various police (*mukhabarat*) states are fragmentary. Until very recently, democracy has been considered irrelevant to the Arab context. “Democracy” and “Arab” have been paired as an “oxymoron.” Hudson deprecates this exceptionalism, the by-product, *inter alia*, of the genre of Orientalist literature that excludes MENA from the study of democratization, for instance.¹⁶ An extension of this Orientalist bias is the often assumed incompatibility of Islam and democratic practices. But there are counterarguments.¹⁷ The prejudicial view against Islam has roots in an adversarial history with Christendom.¹⁸ Knowledge-making and practices in the study of Arab politics are not neutral: they are embedded in the historically biased attitude of Euro-American ideas toward Islam and Arabism.¹⁹ The corollary is that “the West feels that its stereotypes constitute ‘knowledge’ of the Middle East.”²⁰ Generalizations about Islam and Islamists and their assumed hostility to democracy aside, “Islamic and Western democratic values tend to overlap,” and include basic concepts of equality, justice, and so forth.²¹ The post-1945 democratic model, filtered through American pluralism, is not reproducible in MENA. This is not to argue either that democracy should be “Occidentalized” as exclusively Western or that the Arab democratic model will be *sui generis*. At least in theory, a common denominator already exists. Islam’s concepts of consultation compete for recognition as equal to or compatible with democracy’s most basic principles of participation and contestation. Islam’s

¹³ The coinage belongs to Samuel P. Huntington. See his work, *The Third Wave: Democratization in the Late Twentieth Century* (Norman: University of Oklahoma Press, 1991). For the application of the term in the Arab context, see Mustapha K. El Sayyid, “The Third Wave of Democratization in the Arab World,” in *The Arab World Today*, ed. Dan Tschirgi (Boulder, CO: Lynne Rienner, 1994), 179-189.

¹⁴ A standard text for the study of democratic transitions is the voluminous work by Guillermo O’Donnell, Philippe C. Schmitter, and Laurence Whitehead, eds., *Transitions from Authoritarian Rule: Prospects for Democracy* (Baltimore, MD: Johns Hopkins University Press, 1986).

¹⁵ See Wickham, “Beyond Democratization,” 507-509.

¹⁶ Michael C. Hudson, “After the Gulf War: Prospects for Democratization in the Middle East,” *Middle East Journal* 45, no. 3 (1991): 407-427.

¹⁷ John L. Esposito and James P. Piscatori, “Democratization and Islam,” *Middle East Journal* 45, no. 3 (1991): 427-440.

¹⁸ Louis J. Cantori, “Introduction,” *Political Science and Politics* 27, no. 3 (1994): 507.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ Bahgat Korany, “Arab Democratization: A Poor Cousin,” *PS: Political Science and Politics* 27 (1994): 512. Compare with the equally insightful piece by Joshua Parens, “Whose Liberalism? Which Islam? Leonard Binder’s ‘Islamic Liberalism,’” *Political Science and Politics* 27, no. 3 (1994): 514-515.

values of equality and justice, claim many Muslim scholars, have analogies in Western democracy.

The call for political science to be critical and more self-consciously interpretive is apposite.²² As mentioned above, analytical paradigms created with special reference to European and North American contexts will no doubt defy transposition to different settings. The democratization paradigm must be fluid, flexible, and sensitive to linguistic, historical, and cultural factors in MENA. Indeed, democratization ought to be defended and instituted in the region. However, the danger of homogenizing meanings of democratization is their being captured by a single framework (such as “third-wave”) to the point that they cannot speak to a different setting. A paradigm that speaks with the singularity of “truth” requires reassessment of its basic precepts. The search for “third-wave”²³ democracies and democratization in the Arab World is an exercise in futility. Scholars seem to pay too much deference to the premises of “third-wave” democratization. Is “closure” the defining test of democratic transition? Are two consecutive multiparty elections an adequate test for successful democratic transition? Whitehead puts forth an understanding of democratization as an essentially contested concept. He argues that if democracy is an essentially contested concept, so is democratization. Instead of Huntington’s “closure,” Whitehead counterargues with his own notion of “open-ended” democratic transition. The random and cyclic realities of Arab transition generally deny rather than affirm Huntington’s brand of “third-wave” democratization. They sit at odds with “closure.” Experiences of Arab transition approximate Whitehead’s counterargument of protracted processes that are subject to the vicissitudes of time and space as well as, in the case of MENA, the whims of autocrats. Arab “transitions” collide with democratization orthodoxy, owing to the false starts and uncertainty of Arab political reforms.²⁴ Huntington’s democratization is almost too neat to apply to the contemporary Arab World. The state in some parts of MENA is conspired against within (by patrimonial, corporatist, tribal, and coercive practices) and without (by expansionist impulses). The Arab realities of transition dictate against linear, determinate, stable, and measurable consolidation. Consolidation is not even an issue when the existing processes of liberalization in MENA are still marred by the state’s illiberal policies and near total control of the content and pace of reform. Huntington’s confidence in democratic outcomes and processes is context- and time-specific. His confidence is perhaps more suited to empirically verifiable democratic outcomes in Southern Europe or Latin America. Spatially and temporally, the Arab World has no record of liberalization to match Southern

²² Cantori, “The Old Orthodoxy and the New Orthodoxy in the Study of Middle Eastern Politics,” 516.

²³ Huntington, *The Third Wave*. Also see, Samuel P. Huntington, “After Twenty Years: The Future of the Third Wave,” *Journal of Democracy* 8, no. 4 (1997): 3-12.

²⁴ Whitehead, *Democratization*, 28.

or Eastern European successes. Democratic transition is a provisional process, and this is more fitting in MENA.

Organizing Arab Politics and Party Politics in the 1980s-1990s

Through the electoral process begun during in the 1980s and 1990s, proliferation of political parties (*ahzab siyasiyyah*)²⁵ and the rise of partyism (*al-hizbiyyah*) contributed to the emergence of both *de facto* and relatively “*de jure* parliamentarization” of Arab politics. That oppositional forces could organize, mobilize, field candidates, contest elections, and enter parliament was positive testimony to the gradual rolling back of single-party rule and autocracy, in general. The parliaments of Egypt, Jordan, Yemen, Lebanon, Mauritania, and Tunisia (Algeria had the initial free and fair electoral process) thus began to experiment with forms of institutionalized opposition. However, in terms of performance, strength, resourcefulness, and autonomy from the center, these newly created oppositions lacked the influence and the muscle to propose policy or weaken executive power. The number of legal parties in Egypt increased to fourteen in 1997. Yet, this numerical advantage translated into neither a rise in the number of deputies in parliament nor wider space for the public domain. The role of the opposition to check government was, more or less, clear, even if difficult, in some instances (Egypt, Jordan, and Morocco) and remained blurred in others, with a quasi-loyal opposition (Tunisia) or a form of a coalescence of interests (Kuwait and, to a lesser degree, Yemen). A welcome initiative was the Moroccan monarch’s (the late Hassan II’s) choice of a veteran opposition leader and human rights activist (‘Abd al-Rahman al-Yusufi, leader of the Socialist Union of Popular Forces) to form a new government following the November 1997 legislative (325-seat Lower House) elections.

In Lebanon, those new forces which were conceived in the course of the civil war²⁶ emerged in the post-war period as formidable power claimants and contestants. These new power claimants embodied the Shi‘ite community’s demands for inclusiveness, while articulating antisystem (Maronite-dominated) stances. Hence, ‘Amal and Hezbollah benefited from the new power arrangements, not to mention the Christian boycott (together they received twenty-seven seats) that replaced the old parliamentary 6:5 ratio

²⁵ See some of the figures on Arab political parties given by Saad Eddin Ibrahim, “Civil Society and Prospects of Democratization in the Arab World,” in *Civil Society in the Middle East*, vol. 1, ed. Augustus R. Norton (Leiden: E. J. Brill, 1995), 41.

²⁶ For a good account of the spectrum of parliamentary and extra-parliamentary forces that are active in Lebanon’s politics, including those that emerged during the civil war, see Ralph E. Crow, “Electoral Issues: Lebanon,” in *Electoral Politics in the Middle East: Issues, Voters and Elites*, ed. Jacob M. Landau, Ergun Özbudun, and Frand Tachau (London: Croom Helm, 1980), 39-68. See also, in the same book, the fine essay on Lebanon’s political elites and their political attitudes by Samir G. Khalaf, “Parliamentary Elites: Lebanon,” 243-271.

favoring Christians. The new law that passed on July 16, 1992, provided for an equal share of seats in the Chamber of Deputies between Muslims and Christians by raising the number of the seats from 108 to 128.²⁷ In Tunisia, the so-called National Pact, hammered out between the government and the secular opposition in November 1988, took effect in the March 1994 elections with the maiden entry into the National Assembly of four opposition movements.²⁸

A significant feature of Arab electoral politics was participation by independents. Examples can be conjured up in the Algerian December 1991 first-round elections for the 430-seat National Assembly in which three seats were taken by independents. In the April 1993 Yemeni House of Representatives elections, independents, with forty-seven seats, established themselves as the fourth largest political power—following the General People’s Congress (121); the Yemeni Reform Rally, or YRR (62); and the Yemeni Socialist Party (56). In Tunisia, independents proved their potential political weight on two occasions. In the June 1990 municipal elections, which were boycotted by opposition groups, independents won 34 seats as against 3,716 by the ruling Democratic Constitutional Rally (RCD). Most significant, however, were the April 1989 multiparty legislative elections—Islamist independents received 17.75 percent of the total vote, thus displacing the secular Movement of Socialist Democrats (MDS) as the country’s main political force after the RCD.²⁹ In Egypt, the inclusion of independents in the electoral process was new.³⁰ The government’s ban on their activities was revoked after the 1984 elections. In the April 1987 People’s Assembly elections, independents captured seven seats, whereas in the December 1990 elections the independents’ intake, although much higher, was blunted by their co-optation by the government.³¹ By Arab standards, given the relative resistance to change or its incremental nature, those electoral experiments—regardless of their freedom and fairness, or the lack thereof, and of their substantive outcomes—signaled attitudinal change at the leadership level. In the future, as electoral institutions were being routinized, the ballot—rather than the bullet, self-endorsement, or hereditary succession—would

²⁷ For a thorough analysis of the Lebanese 1992 elections, see Augustus R. Norton and Jillian Schwedler, “Swiss Soldiers, Taif Clocks, and Early Elections: Towards a Happy Ending,” in *Peace for Lebanon? From War to Reconstruction*, ed. Deirdre Collings (Boulder, CO: Lynne Rienner, 1994), 45-65.

²⁸ Ten seats for the Movement of Social Democrats (MDS); four for the Renewal Movement; three for the Unionist Democratic Union (UDU); and two for the Popular Unity Movement (PUP). The abbreviations correspond, respectively, with the French names of these parties: *Mouvement des Démocrates Socialistes*; *Union Démocratique Unioniste*; and *Parti de L’unité Populaire*.

²⁹ Elbaki Hermassi, “The Islamicist Movement and November 7,” in *Tunisia: The Political Economy of Reform*, ed. I. William Zartman (Boulder, CO: Lynne Rienner, 1991), 200.

³⁰ For a brief account of independents in Egypt’s electoral process, see Mark N. Cooper, *The Transformation of Egypt* (London: Croom Helm, 1982), 206.

³¹ Mustapha K. Al-Sayyid, “Slow Thaw in the Arab World,” *World Policy Journal* 8, no. 4 (1991): 720.

define the contours of power and of power holders. This remains a challenge, however, which thus far has been met only in the Mauritania 2007 presidential elections.

No less important are legal reforms. Wide-ranging new laws as well as constitutional reforms, favoring at least in theory more open government or competitive politics, were introduced. In 1992, the House of Saud, then still reeling under the negative impact of the 1991 Gulf War that compromised Saudi sovereignty and added to the financial troubles already brewing from royal profligacy,³² and under growing local pressure for more equitable sharing of oil wealth and political power,³³ codified the principles of governance. This act, the first of its kind since the monarchy's creation as a united political realm in 1932, approximated a written constitution.³⁴ The principles were made public in King Fahd's March 1992 speech, in which he decreed reforms outlining the Basic System of Governance (*al-nizam al-asasi lil hukm*), the Consultative Council System (*nizam majlis al-shurah*), and the System of Local Administration (*nizam al-manatiq*).³⁵ After thirty-two years of broken promises, finally in 1994, Saudi Arabia got its sixty-member Consultative Council—a positive step in the direction of broader participation. Another monarchy, Morocco, implemented more constitutional reforms than any other Arab state. The reform approved in a 1996 referendum created a bicameral parliament. Elections for the Chamber of Councillors/Upper House (*majlis al-mustasharin*) were held in December 1997.

In Tunisia, the November 1987 “constitutional” coup³⁶ by ex-General Zinealabidin Bin Ali was hailed in official propaganda as the precursor of a New Deal (*al-‘ahd al-jadid*). Indeed, the range of initiatives favored reformation of

³² According to one analyst, the Saudi economy, which had a \$140 billion surplus in 1982, presently has a \$60 billion deficit; moreover, the monarchy's foreign debt totals \$100 billion. See Said K. Aburish, *The Rise, Corruption and Coming Fall of the House of Saud* (London: Bloomsbury, 1994), 303.

³³ *Ibid.*, 4.

³⁴ The term, constitution, is absent in Saudi political discourse. Nowhere does the term appear in King Fahd's March 1992 speech. Instead, the word *nidham* (system) is used. The reason, as observed by one Arab analyst, is that the use of the term constitution with its secular connotation goes against the monarchy's adoption of the “*Quran* and the Prophet's *Sunna* as ‘the supreme source of legislation’.” See Saad Eddin Ibrahim, “On Democracy in Saudi Arabia,” *Civil Society* 3 (March 1992): 2.

³⁵ Details can be found in *ibid.*, 2-4.

³⁶ See Lewis B. Ware, “Bin Ali's Constitutional Coup in Tunisia,” *Middle East Journal* 42 (1988): 587-601. The coup has been dubbed constitutional in accordance with its provisions (article 57) that, in case of incapacity, power is transferred to the prime minister. As I. William Zartman explains, “The accession to power of Bin Ali occurred on the night of November 6-7, 1987, when he assembled seven doctors and received from the procurator-general their statement of Bourguiba's ‘absolute incapacity’.” See I. William Zartman, “The Conduct of Political Reform: The Path toward Democracy,” in *Tunisia: The Political Economy of Reform*, ed. I. William Zartman (Boulder, CO: Lynne Rienner, 1991), 13. The coup is also informally known as the “medical coup.”

the decaying order bequeathed by the octogenarian President Bourguiba—one of the leading heroes of Tunisia’s independence. Those initiatives not only defused the anticipated and much feared power struggle over Bourguiba’s succession,³⁷ but also indicated commitment toward multipartyism and constitutional change. Bin Ali’s maiden speech of November 1987 contained promises that embodied the new regime’s democratic orientation, and stressed that Tunisians were “worthy of democracy.”³⁸ Constitutionally, a landmark reform was the dismantling of the “presidential monarchy”³⁹—a reference to the presidential life tenure practiced by Bourguiba since 1974. The July 1988 constitutional amendments limited the presidency to two five-year terms. The amendments also reduced the executive powers of the prime minister and envisaged greater authority for the Assembly.⁴⁰ The new 1988 Political Parties Law virtually removed restrictions on the secular opposition.⁴¹ A few of these parties received government subsidies to run their weekly newspapers and sustain their general activities.⁴² Additional reforms concerned areas of freedom of expression, with the July 1988 revamped press code “preventing monopoly and reducing penalties for code infractions.”⁴³ Other reform stressed commitment to human rights through the release of political prisoners, the “issuing of pardons”⁴⁴ to former dissenters, the granting of permission to political exiles to return and for Amnesty International to establish a local branch, and the signing of the United Nations Convention prohibiting torture. On the judicial-legal front, the State Security Court and the Prosecutor-General of the republic were abolished.⁴⁵ The Personal Status Code⁴⁶ was declared

³⁷ For a brief account of the question of power struggle and Bourguiba’s endeavors to eliminate autonomous and rival centers of power, see Clement Henry Moore, “*La Tunisie après Vingt Ans de Crise de Succession*” [Tunisia after twenty years of succession crisis], *Maghreb-Machrek* 120 (1988), esp. 6-7.

³⁸ For full details of the speech, see “La déclaration de Bin Ali à la radio” [Bin Ali’s radio proclamation], *Jeune Afrique*, November 17, 1987, 42.

³⁹ Ware, “Bin Ali’s Constitutional Coup in Tunisia,” 597.

⁴⁰ Rémy Leveau, “La Tunisie du Président Bin Ali: Equilibre interne et environnement Arabe” [President Bin Ali’s Tunisia: Internal equilibrium and Arab focus], *Maghreb-Machrek* 124, no. 6 (1989): 7.

⁴¹ In addition to the three established opposition parties—the MDS, legalized in 1983; the Tunisian Communist Party, licensed in 1981 and later renamed the Renewal Party; and the PUP, authorized in 1983—three more parties have gained official recognition since the passing of the 1988 law: the Progressive Socialist Party (RSP); the Social Party for Progress (PSP); and the Unionist Democratic Party (UDU). The abbreviated forms correspond, respectively, to the parties’ names in French: *Rassemblement Socialiste Progressive*; *Parti Social pour le Progrès*; and *Union Démocratique Unioniste*.

⁴² Moore, “*La Tunisie après Vingt Ans de Crise de Succession*,” 13.

⁴³ Susan Waltz, “Clientelism and Reform in Bin Ali’s Tunisia,” in *Tunisia: The Political Economy of Reform*, ed. I. William Zartman (Boulder, CO: Lynne Rienner, 1991), 36.

⁴⁴ Mark Tessler, “Tunisia’s New Beginning,” *Current History* 89, no. 546 (1990): 171.

⁴⁵ *Ibid.*

irrevocable. A number of benchmark administrative reforms were introduced in 1993 with a view to enhance the bureaucracy's responsiveness to the citizenry. To this end, for instance, a May 1993 law created an ombudsman office (administrative mediator) charged with handling citizens' complaints about public service. Various government departments established units to handle relations with citizens by facilitating access, minimizing bureaucratic complications, and responding to citizens' complaints about public servants' inefficiency, malpractice, and misconduct. Central to this reform was a review system of administrative performance in which citizens were to sit with technocrats, senior bureaucrats, and professionals to channel their ideas about how to improve the system.

Algeria's and Egypt's liberalizations were fraught with tensions and contradictions. In Egypt, al-Sadat created a tailor-made democracy and opposition. Underpinning al-Sadat's pluralization initiatives was "traditionalization."⁴⁷ Hinnebusch pinpoints the marks of this traditionalization in al-Sadat's patriarchal politic-speak. Thus, al-Sadat "spoke as if the Egyptian political system were his personal property, referring to 'my constitution,' 'my political parties', and even 'my opposition'."⁴⁸ Emboldened by the gains of the October 1973 Arab-Israeli War, al-Sadat launched a quasi "New Deal" with his open economy (*infithah al-iqtisadi*).⁴⁹ The initial democratization process began as an Arab Socialist Union (ASU) internal affair. Al-Sadat's quest for what Cooper calls "semi-pluralism" was motivated by three factors: opposition to and disillusionment and discomfort with the ASU as a result of the major political trends; the regime's need to contain latent fragmentary forces and to widen its power base through an alternative organization; and utilization of this very organization to demonstrate the regime's democratic credentials.⁵⁰ Acting on Sayyid Mar'ai's presidential committee's recommendation, three political platforms, not proper political parties, representing the ASU's left, right, and center gained the rights of expression, organization, and mobilization. This was a type of change within continuity.⁵¹ The Parties Law of May 1977 marked the

⁴⁶ Zartman, "The Conduct of Political Reform," 21.

⁴⁷ Raymond A. Hinnebusch, *Egyptian Politics under Sadat: The Post-Populist Development of an Authoritarian-Modernizing State* (Cambridge, UK: Cambridge University Press, 1985), 84.

⁴⁸ Ibid.

⁴⁹ See details of the "October Working Paper," in George Carpozi Jr., *A Man of Peace: Anwar Sadat* (New York: Manor Books, 1979), 63-72.

⁵⁰ See Cooper, *The Transformation of Egypt*, 199.

⁵¹ Veteran Free Officer, Khalid Muhi al-din, emerged as leader of the leftist tendency, *al-Tajammu 'l-Watani 'l-Taqaaddumi 'l-wahdawi* (National Progressive Unionist Coalition). Another, Mustafa Kamal Murad, became leader of the rightist tendency, *al-ahrar* (Liberals). The main centrist platform, *Hizb Misr* (Egypt Party), was headed by then Prime Minister Mamduh Salim. The latter's victory in al-Sadat's first elections of November 1976 was decisive, winning 280 seats in the *Majlis al-shaab* (People's Assembly). Independents won forty-eight; *al-Ahrrar*, twelve; and *al-Tajammu*, only two. For a summary of these developments, consult Richard U. Moench,

re-emergence of political parties in Egypt after a twenty-five-year ban, and the June 1979 elections, the return to competitive party politics after an absence of nearly three decades.⁵² In 1978, at al-Sadat's behest, the old ruling ASU became the National Democratic Party (NDP). The change was sold as the actual creation of a new party. In the change, the adjective "socialist" was dropped and the populist word "democratic" was substituted.

Under Mubarak,⁵³ political organization, in general, and democratization, in particular, proceeded with "halting progress," as put succinctly by an observer.⁵⁴ Freedom of the press continued to be stifled by the state's censors. Media blackouts on certain news items were imposed from time to time.⁵⁵ In 1997, the state moved against irregular newspapers (*al-jara'id al-safra*), with the High Council on Journalism canceling the permits of a dozen newspapers, including the well-known *al-Dustour*.⁵⁶ Egypt's civil society registered some growth in strength, especially between 1976 and 1981, with the number of associations jumping to 10,731 from 7,593.⁵⁷ Also, the associations more or less gained greater autonomy. However, civil society's dynamism did not mean that the state was democratic, in spite of legalized political parties and periodic elections. With some sixteen legalized parties and periodic elections, contestation was evidently higher under Mubarak. In the May 1984 elections, the Neo-Wafd-Muslim Brotherhood alliance gained 15 percent of the total vote, winning fifty-nine seats in the then newly increased 450-seat Assembly. Again in the 1987 April elections, the Labor-Liberals-Brotherhood (Amal-Ahrar-al-Ikhwan) alliance won sixty seats, thirty-seven of which went to Islamists who displaced the Neo-Wafd (thirty-five seats) as the leading opposition group in parliament.

"The May 1984 Elections in Egypt and the Question of Egypt's Stability," in *Elections in the Middle East: Implications of Recent Trends*, ed. Linda L. Layne (Boulder, CO: Westview Press, 1987), 60-63. See also the Ahram Center's report on Arab pluralism, in *al-Taqrir al-arabi 'l-Istratiji 1989* [The Arab Strategic Report 1989] (Cairo: Markiz al-Dirasat al-Siyasiyyah wa 'l-Istratijiyyah bi 'l-Ahram, 1990), esp. 290-291.

⁵² Roger Owen, *State, Power and Politics in the Making of the Modern Middle East* (London: Routledge, 1992), 273-277. See also, Mona Makram-Ebeid, "Political Opposition in Egypt: Democratic Myth or Reality," *Middle East Journal* 43, no. 3 (1989): 423-436.

⁵³ For a good account of Egypt's politics under Mubarak, see Robert Springborg, *Mubarak's Egypt: Fragmentation of the Political Order* (Boulder, CO: Westview Press, 1989). See also, Nazih Ayubi, *The State and Public Policies in Egypt since Sadat* (Reading, PA: Ithaca Press, 1991), 221-251.

⁵⁴ Derek Hopwood, *Egypt: Politics and Society 1945-90* (London: Harper Collins Academic, 1991), 186.

⁵⁵ See, for instance, "Violence in Algeria and a Media Blackout in Egypt," *Civil Society* 6 (October 1997): 5-11.

⁵⁶ See "Mubarak Reprimands the Press," *Civil Society* 8 (March 1998): 9-11.

⁵⁷ Mustapha Kamal al-Sayyid, "A Civil Society in Egypt," in *Civil Society in the Middle East*, ed. Augustus R. Norton (Leiden: E. J. Brill, 1995 and 1996), 273.

The independence of the judiciary was perhaps the most redeeming factor in Mubarak's Egypt. In fact, had it not been for the judiciary, Egypt's multipartyism would not have grown to its current potential. The Neo-Wafd's legalization was owed to the judiciary's making possible its participation in the 1984 elections, after overturning the negative response by the government's Political Parties Committee (*Lajnat al-Ahزاب*), or PPC. With the exception of the diminutive Nation Party (*Ummah*), also licensed in 1984, the PPC ruled against all legalization requests it vetted. The High Administrative Court (HAC) acted as a counterbalance to the PPC. Through its bench, the Greens, Nasserists, Young Egypt (*Misr al-Fatat*), Democratic Unionist Party, and Social Justice Party were legalized in the first half of the 1990s. The full force of the rule of law was also brought to bear upon the outcome of the 1984 and 1987 elections which discriminated against independents. Both elections were found unconstitutional owing to an amended 1983 electoral law that prevented unaffiliated individuals from standing for election; arbitrary redistricting; and the 8 percent total vote threshold as a prerequisite for entry into the Assembly.⁵⁸

Algeria's short-lived experiment with pluralist politics appealed to the imagination of democratically minded Arabs and aroused fear among nondemocratic regimes, especially in Morocco and Tunisia. As in Egypt, economic liberalization was at the core of President Chadhli's reform in Algeria. Between 1980 and 1991, he practically reversed all the politico-economic pillars that had held up Algeria's system and shaped its authoritarian-bureaucratic polity. His open economy at least partially "de-Boumediennezed," partly denationalized, de-ideologized, decentralized, and, in the process, delegitimized Algeria's ruling elites. Chadhli's open economy⁵⁹ began with the encouragement of privatization, private investment in industry and manufacturing, and managerial autonomy, and ended with IMF- and World Bank-instigated austerity measures lowering subsidies for "strategic" consumer staples, lifting price controls, and increasing taxes.⁶⁰ Reduced hydrocarbon sales accounting for 95 percent of total exports (\$45 billion in 1984 as against \$28 billion in 1986), burdensome foreign debt (\$23 billion in 1988), and high unemployment (which more than doubled between 1984 [11 percent] and 1988 [22.5 percent]) served as detonators of social discontent and political

⁵⁸ For a summary of these points, see Moench, "The May 1984 Elections in Egypt and the Question of Egypt's Stability," 56-57.

⁵⁹ For accounts of phases of his political liberalization, see John P. Entelis, "Introduction: State and Society in Transition," in *State and Society in Algeria*, ed. John P. Entelis and Phillip C. Naylor (Boulder, CO: Westview, 1992), 17-20.

⁶⁰ See Scott B. MacDonald, "The Middle East's New Economic Wave," *Middle East Insight* 6 (November/December 1989): 47. See also, Fawzy Mansour and Samir Amin, *The Arab World: Nation, State and Democracy* (Tokyo: United Nations University Press, 1992), 104-113.

instability, reaching a breaking point in the October 1988 social unrest.⁶¹ Chadli's political reform developed clarity of purpose and direction only after the bloody bread riots. They amounted to launching not only a "second republic," but also a second revolution in Algeria's post-independence political development.

The 1989 new Constitution laid the foundation for a market economy and a multiparty system. It de-ideologized the system with the dropping of references to socialism, and defined state-society relations. With these changes, the breaking up of the historical National Liberation Front (FLN)-state alliance was completed. The Constitution enshrined these classical civil liberties and provided, with qualification, for the formation of "associations of political nature." A follow-up to this provision was the July 5, 1989 law that cleared the way for the formation of political parties and, hence, for Algeria's first experimentation with party politics.⁶² This law further marginalized the FLN, which in its November 1988 Congress banned the formation of other political parties.

The February 1989 Constitution institutionalized multipartyism and, indirectly, the democratic notion of contestation. Open, free, and fair contestation climaxed twice during Algeria's democratic spring between the February 1989 new Constitution and the December 1991 first-round National Popular Assembly (APN) elections. The 1990 elections, while boycotted by the Front of Socialist Forces (FFS) and the Algerian Democratic Movement (MDA) and attracting only 65 percent of the eligible voters, were a boon to the cultivation of a democratic order. They were significant in three ways: they were pluralist; they constituted a break with the familiar Arab government practice of rigging the vote; and although the ruling FLN suffered a decisive loss, the elections led to the FLN's acceptance of the outcome, with the Interior Ministry announcing the results without delay. In the words of one analyst, "with the 12 June 1990 elections, this former paragon of one-party socialism in the Third World has become the most democratic Arab country."⁶³ With more than 55 percent of the votes cast, the Islamic Salvation Front (FIS) won thirty-two of the forty-eight provinces (*wilayat*) and 853 of the country's municipalities. The FLN, with nearly 32 percent of the votes, won fourteen provinces. Again in December 1991, the FIS won a landslide first-round victory in the parliamentary

⁶¹ Many marginals, who were hit hardest not only by high prices but also by water rationing, took refuge in Bab el-Oued or al-Qobba, where Islamists reticulated charity and welfare support systems. For FIS charity work, see Rabia Bekkar and Hannah Davis, "Taking up Space in Tlemcen: The Islamist Occupation of Urban Algeria," *Middle East Report* 22, no. 6 (1992): 11-15.

⁶² This multiplier effect of Algeria's democratization has been described as a "*printemps démocratique*" (spring of democracy); see Jean Daniel, "Alger: Le ciel et la rue" [Algiers: The sky and the street], *Le Nouvel Observateur*, April 15-21, 1990, 38-40.

⁶³ *Ibid.*, 31.

elections. The Islamists won 188 of the contested 430 seats and were certain to gain a majority in the second round in January 1992.⁶⁴ However, democratic retreats sabotaged democratic progression, inhibiting genuine and continuous development of political parties. The post-Arab Spring moment offers new opportunities for the reorganization and consolidation of political parties in a way that breaks with pre-Arab Spring practices, as argued above.

The Arab Spring and the Fall of Authoritarian Rulers

The fall of Ben Ali's regime in Tunisia on January 14, 2011, after more than twenty-three years of authoritarian rule, prompted unprecedented mass protestations in Egypt, Libya, and Yemen where the most enduring authoritarian rulers were toppled within a few months. The Arab region has witnessed the most important political change in its recent history, after being reluctant to embrace reform attempts over a period of decades. Indeed, the political sclerosis in the region had been such that the Arab Spring was very surprising to researchers and analysts who rightly had indexed the Arab region as the most deficient region in the field of democracy in the world and the most resistant to plans for democratization.

Yet, the Arab Spring presently faces serious challenges, mainly following the violent events in Egypt after the army ousted the democratically elected President Mohamed Morsi on July 3, 2013. Libya, Tunisia, and Yemen also are struggling to ensure political stability and to move ahead with building new, efficient, and sustainable democratic institutions. However, the new transitional wave in these countries is likely to be an irreversible shift from authoritarianism toward democratic and accountable rule.⁶⁵ The other Arab countries that, in the meantime, are staying away from this "wave" of democratization already have gotten wind of this tremendous change. Thus, they have decided to take positive steps to reform their own regimes in an attempt to avoid mass protests that could dethrone the current rulers. The important constitutional and political reforms achieved in Morocco in 2011 are a good example.⁶⁶ Actually, the political change is so deep that no one country of the region can be preserved

⁶⁴ There were 231 seats contested in the first round. By winning 188, the FIS was only twenty-seven seats short of a majority. The second winner was the FFS with twenty-five, followed by the FLN with fifteen seats. See Abdeslam Maghraoui, "Problems of Transition to Democracy: Algeria's Short-lived Experiment with Electoral Politics," *Middle East Insight* 8, no. 6 (1992): 20-26. See also, Alfred Hermida, "Algeria: Democracy Derailed," *Africa Report* 37, no. 2 (1992): 13-17.

⁶⁵ Olivier Roy, "The Transformation of the Arab World," *Journal of Democracy* 23, no. 3 (2012): 5-18, and Nasser Weddady and Sohrab Ahmari, eds., *Arab Spring Dreams: The Next Generation Speaks Out for Freedom and Justice from North Africa to Iran* (New York: Palgrave Macmillan, 2012).

⁶⁶ Cf. Rachid Yalouh, *The Discourse of Change in Morocco*, policy analysis (Doha: Arab Center for Research and Policy Studies, October 2011).

from its impact.⁶⁷ The political organizations in the transitional processes are one of the most accurate criteria to use to assess the ability of Arab Spring countries to shift into liberal democracy.

Political Organizations on the Eve of the Arab Spring

Over past decades until today, the people of the region have suffered from repressive regimes that deny their basic rights, including the right to associate and to create political organizations. Such organizations have been allowed only when they have supported the ruling regimes, while organizations tending to criticize the rulers and act independently simply have not been tolerated; when political organizations are permitted to exist, they face all kinds of abuses and restrictions. The 2004 Arab Human Development Report gives a clear idea about the situation of political organizations in Arab countries.⁶⁸ The report shows that one of the most redoubtable means used to repress political organizations is a legal one. The different legal systems in the Arab region do not guarantee freedom of political organization to citizens. Legislation is usually used to hinder the right, which is not fully recognized by all Arab countries.

The constitutions of the Arab countries place serious constraints on freedom of association, as was the case of the 1971 Egyptian Constitution, which provided in article 5-2 that, “The citizens have the right to establish political parties according to the law.” Article 55 of the same Constitution further stipulated that, “Citizens shall have the right to form associations as defined by the law. The establishment of associations whose activities are detrimental to society or have a clandestine or military character is prohibited.” Ben Ali in Tunisia decided to impose restrictive legislation on civil society organizations (CSOs) and political parties from the first year of his rule. Thus, the law on political parties was adopted on May 3, 1988, and the law on associations was adopted on April 2, 1992.

Such legal texts provide a clear idea about the legal techniques used to limit the right to create political organizations in Arab countries. The ability to organize politically is systemically relegated to ordinary legislation. In a genuine democracy, this would be the ideal solution, since a parliament basically expresses the general will according to Rousseau’s theory of representative democracy. This is not the case, however, for the parliaments of Arab countries

⁶⁷ See Sinan Ülge et. al., *Emerging Order in the Middle East*, Carnegie Policy Outlook (Beirut: Carnegie Endowment, May 2012).

⁶⁸ United Nations Development Programme (UNDP), Arab Fund for Economic and Social Development (AFESD) and Arab Gulf Programme for United Nations Development Organizations (AGPUNDO), *Arab Human Development Report 2004: Towards Freedom in the Arab World* (New York: Regional Bureau for Arab States, New York, 2005), 87-88, 132-133, and passim.

that do not truthfully represent the “general will.” These parliaments always have been controlled by ultra-dominant parties and power and, therefore, are totally monopolized by the same dominant ruling parties. Thus, the guarantee and protection of political freedoms, as well as of other fundamental freedoms, have never been a priority for these parliaments. On the contrary, laws always have served as a tool of repression.

Moreover, the situation in some Arab countries is even worse, as parliaments are not elected by the people and universal suffrage is simply denied. This is the case primarily for the majority of Arab Gulf countries, where pseudo-parliamentary institutions are invested with a simulacrum of legislative power. The real power remains with the head of the executive branch, who deals with political rights through his absolute and unquestionable authority. The situation is not better in Arab countries where parliaments elected by means of universal suffrage exist. In fact, elections held over the decades have never led to alternation or sharing of power and have not met the requirements of democratic elections. Whether elected by means of universal suffrage or not, outcomes for the control of parliaments in Arab countries are, therefore, the same in the end.

Relegation to ordinary legislation to deal with political rights is usually done without safeguards that would avoid the authoritarian drift of legislatures. This has given power to the parliaments to impose restrictions that have hindered free political organization and freedom of association for decades. The absence of constitutional limits to the parliaments’ power has made constitutional review unlikely to check whether laws are respectful of basic political rights. Indeed, an efficient, constitutional, control system over the legislative process is generally inexistent in Arab countries. In Tunisia, such control had been systematically rejected when activists asked the court to review the constitutionality of the 1959 law on association that was the basis of political organizations, until the law on political parties was adopted on May 3, 1988.⁶⁹

Additionally, restrictions on political rights and the right to associate and to create political organizations are clearly included in the legal texts. To come back to the Egyptian case, the 1971 Constitution included an imprecise clause that allowed the authority to ban any political organization it did not accept. Thus, article 5-2 prohibited the “exercise [of] any political activity or to found any political party based on religious considerations or on discrimination on grounds of gender or race.” This clause provided fearsome power to political authorities to hinder freedom of political organization. The terms of the text were very malleable and could be used to outlaw any organization that the

⁶⁹ Dali Jazi, *Les rapports entre l’Etat et le citoyen dans la Tunisie indépendante: Le problème des libertés publiques* [The relationship between the state and citizen in independent Tunisia: The issue of public liberties] (Ph.D. Thesis, Faculty of Law, Sorbonne University, Paris, 1982), 351-353.

political authority did not like for one reason or another. The same clause was used by Ben Ali to exclude the Tunisian Islamist party, Al-Nahda, from any political participation in Tunisia and to repress other organizations concerned with political rights. In other cases, the control of the right to create political organizations relies on a broader variety of concepts such as national security, national unity, and so forth, all of them aimed at strengthening the power to outlaw any unwelcomed political organization.⁷⁰ Along the same lines, article 5 of the 1991 Yemeni Constitution states, “The Law stipulates rules and procedures required for the formation of political organizations and parties, and the exercise of political activity.” And, although article 57 recognizes “the right to form associations in scientific, cultural, social and national organizations in a way that serves the goals of the Constitution,” this right is not protected against possible violations that could come from either the legislative or executive power.

The right to create political organizations, therefore, is mostly reliant on the willingness of the political authority, which is usually reluctant to show genuine respect for political freedoms, as rulers generally perceive them to be a menace to their power. Thus, political organizations are always subject to various kinds of abusive practices when their activities are not liked by the government. This situation illustrates the important relationship between political organizations and “fundaMENAtal” freedoms, mainly those of expression and thought. Authoritarian Arab regimes, indeed, have problems with all freedoms by nature. Since freedom to create political organizations always serves as a vehicle for these freedoms, Arab regimes do not hesitate to mercilessly stifle independent political organizations that may allow people to enjoy the freedoms of expression, conscience, and ideas.

In Tunisia, for example, thousands of people were jailed over decades in the aftermath of unfair trials before special and ordinary courts. People were accused of being responsible for participating in political organizations without respecting the provisions of article 4 of the 1959 Associations Law that subjected the right to create an organization to prior authorization from the Minister of Interior.⁷¹ What is appalling is that article 4 made the right to form a political organization dependant on the willingness of the Minister of Interior, in contradiction of the 1959 Constitution which recognized freedom to politically organize.⁷²

In Egypt, Law 40 (1977) concerning the political parties system provided that “Egyptians shall have the right to form political parties and each Egyptian shall have the right to become affiliated to any political party.” However, this

⁷⁰ UNDP, AFESD, and AGPUNDO, *Arab Human Development Report 2004: Towards Freedom in the Arab World*, 110.

⁷¹ Jazi, *Les rapports entre l'Etat et le citoyen dans la Tunisie indépendante*, 352.

⁷² *Ibid.*

right was subject to several restrictions, allowing the government large powers over political parties. Another example is Law 84 (2002) on nongovernmental societies and organizations which had the appearance of a liberal legislative ruling on freedom of association. On paper, an association did not need prior registration to exist.⁷³ However, this law subjected a CSO's funding to tight control aimed at obstructing the development of independent organizations and those that were critical of the regime.

Therefore, CSOs were the target of a governmental campaign intended to crush associations that criticized the human rights record of the government. Foreign funding was used as an alibi to tarnish public opinion about CSOs. Associations were subject to abusive decisions of dissolution for receiving foreign funds without permission from the Ministry of Social Solidarity. NGOs that acted in the area of human rights concerns were usually the target of such decisions. Associations were subject to abusive decisions of dissolution for receiving foreign funds without permission from the Ministry of Social Solidarity. NGOs concerned with human rights issues and that denounced torture and other violations were usually the focus of such policies.⁷⁴

Muammar Gaddafi's Libya could be considered the country where freedom to create political parties was the most violated in the world. Gaddafi's slogan that said whoever joined a party was a traitor is very famous. In his political manifesto, *The Green Article*, Gaddafi considered political parties a tool of dictatorship to allow a part of society to rule instead of the entire people.⁷⁵ Thus, political parties were simply banned by the Prohibition of Party Politics Act No. 71 of 1972. Political parties in Libya were seen as a threat to national unity by the monarchy and were banned even before Gaddafi.⁷⁶

Libya was one of the rare countries in the world where all political parties were prohibited for more than six decades. This prohibition continued until the triumph of the February 17, 2011 Revolution and the fall of Gaddafi's regime. Also, Law 71 (1971) prohibited any kind of association that contradicted the principles and ideals of the 1969 Revolution. People even risked the

⁷³ Kareem Elbayar, "NGO Laws in Selected Arab States," *The International Journal of Not-for-Profit Law* 7, no. 4 (2005): 8-11.

⁷⁴ Amnesty International, *Challenging Repression: Human Rights Defenders in the Middle East and North Africa* (London: Amnesty International Secretariat, 2009), 23; Euro-Mediterranean Human Rights Network, International Human Rights Federation and World Organization against Torture, *Fact-finding and Advocacy Mission on Freedom of Association*, March 22, 2012; and Euro-Mediterranean Human Rights Network, *Freedom of Association in the Euro-Mediterranean Region, Monitoring Report* (Copenhagen: EMHRN, 2009), 25-26.

⁷⁵ See Nathan Alexander, "The Continuous Revolution," *Middle East Studies* 17, no. 2 (1981): 225, note 13.

⁷⁶ *Ibid.*, 213; Lisa Anderson, "Religion and State in Libya: The Politics of Identity," *Annals of the American Academy of Political and Social Science*: 483; and Robert J. Meyers, ed., *Religion and the State: The Struggle for Legitimacy and Power* (London: Sage, 1986), 68.

death penalty if they violated this law.⁷⁷ Simultaneously, Law 111 (1971) on associations was adopted to detail the repressive provisions included in Law 71 (1971).

The Reform of the Legal Framework for Political Organizations

Reform of the legal framework that governs freedom of association is one of the most important challenges that is faced in Arab countries undergoing political transition in the context of the Arab Spring. Such reform was required by human rights organizations in the region, even before the current political transitions, as a prerequisite for genuine democratic reform.⁷⁸ Despite similarities in the transitional processes in these countries, the situation differs from one country to another when it comes to legal reforms, in general, that have been undertaken since the fall of the old regimes. This is particularly true regarding freedom of association. Thus, Tunisia was the pioneer in introducing significant legal reforms intended to reinforce the right to associate. Libya is following Tunisia's lead with an ongoing reform process, while Egypt has witnessed regression of the attempt to reform, and Yemen has kept its previous legal framework.

The New Legislation on Political Organizations in Tunisia

The first decision made by the Tunisian government after the fall of the Ben Ali regime on January 14, 2011, was to set up a commission for political reform and democratic transition that was mandated to prepare the legal framework considered indispensable to holding the first post-transition elections.⁷⁹ Thus, a set of legislation was issued to organize political parties and associations and to grant freedom of the printing press and expression as well as freedom of audiovisual media.⁸⁰ It is widely recognized that this legislation meets

⁷⁷ Human Rights Watch, *Libya: Words to Deeds. The Urgent Need for Human Rights Reform* 18, no. 1(E) (January 2006): 2.

⁷⁸ Cf. Cairo Institute for Human Rights Studies, *Towards a Democratic Legislation Supporting the Independence of Non-Governmental Organizations (NGOs): A Legal Analysis and Field Study* (Cairo: CIHRS, 2009).

⁷⁹ The commission was led by Yadh Ben Achour and composed of only independent legal experts at the beginning, but enlarged in a second phase to include members representing political parties and civil society organizations. See Decree-law no. 2011-6, dated February 18, 2011, creating the High Authority for the Achievement of the Revolution Objectives, Political Reform and Democratic Transition, *Official Gazette*, no. 13, 2011, 96; also see, *Hatem M'rad et Fadhel Moussa, La transition démocratique à la lumière des expériences comparées* [The democratic transition in the light of comparative experiences], proceedings of the international colloquium of the Tunisian Association of Political Studies, May 5-7, 2011, Tunis, 2012.

⁸⁰ Decree-law no. 2011-87, dated September 24, 2011, on political parties, *Official Gazette*, no. 74, 2011, p. 1973; Decree-law no. 2011-88, dated September 24, 2011, on associations, *Official Gazette*, no. 74, 2011, p. 1977; Decree-law no. 2011-115, dated November 2, 2011, on freedom of press, printing, and publication, *Official Gazette*, no. 84, 2011, p. 2559; and Decree-law no.

the requirements of international standards guaranteeing these freedoms. Obviously, the Tunisian government was very willing at the beginning of the transitional process to ensure a genuine democratic transition and to create a new political climate built on respect for human rights and fundamental freedoms.

Simultaneously, key international instruments dedicated to protecting human rights were promptly ratified by the provisional government, including the Rome Statute on the International Criminal Court, the Optional Protocol to the United Nations Convention against Torture, and the first Optional Protocol to the International Covenant on Civil and Political Rights.⁸¹ All these positive steps were a sign of a genuine political opening in Tunisia after the fall of Ben Ali's regime. Decree-law 2011-87 on organizing political parties was adopted in this new political context, signaling a big change in Tunisia. It replaced Organic Law 1988-32, dated May 3, 1988, on political parties,⁸² which had served as a main tool to repress the freedom to create political parties in Tunisia during the decades of authoritarian rule. The drafters of the new legislation were inspired basically by liberal ideals and decided to include a maximum number of guarantees in the law to prevent any attempt to jeopardize citizens' freedom to create political parties.

Decree-law 2011-87 has closed the door on past practices that had hindered the right to create political parties. Its liberal spirit is obvious from its first article stating, "This decree-law guarantees the right to create and join political parties, and act within their framework and aims to consecrate the freedom of political organization and to support and improve the political plurality and to embody the principle of transparency in managing the political parties."⁸³ Article 5 states also that "it is forbidden to the public authorities to obstruct the activity of political parties or to hinder them directly or indirectly."⁸⁴ Besides, the new Constitution adopted on January 26, 2014, guarantees in its article 35 full enjoyment of the right to create political parties and

2011-116, dated November 2, 2011, on freedom of audiovisual communication and the High Independent Authority of audiovisual communication, *Official Gazette*, no. 84, 2011, p. 2568.

⁸¹ See Decree-law no. 2011-2, dated February 19, 2011, approving the International Convention for the Protection of All Persons from Enforced Disappearance, *Official Gazette*, no. 12, 2011, p. 88; Decree-law no. 2011-3, dated February 19, 2011, approving the accession of the Republic of Tunisia to Optional Protocol to the International Covenant on Civil and Political Rights, *Official Gazette*, no. 12, 2011, p. 88; Decree-law no. 2011-4, dated February 19, 2011, approving the accession of the Republic of Tunisia to the Rome Statute of the International Criminal Court and to the Agreement on the Privileges and Immunities of the Court, *Official Gazette*, no. 12, 2011, p. 89; and Decree-law no. 2011-5, dated February 19, 2011, approving the accession of the Republic of Tunisia to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Official Gazette*, no. 12, 2011, p. 89.

⁸² *Official Gazette*, no. 31, 1988, p. 703.

⁸³ Translated by the authors from the Arabic.

⁸⁴ Also translated by the authors from the Arabic.

associations.⁸⁵ Decree-law 2011-87 removed all of the obstacles to registration in the 1988 political parties' law. Therefore, registration has become an easy and efficient process that offers genuine guarantees for persons seeking to create a new political party. Furthermore, according to Decree-law 2011-87, any decision that bans the creation of a political party or an association is subject to judicial review, representing a real guarantee against any abuse or misuse of power.

Legislation on Political Parties in Libya

Libya started its democratic transition by ending its ban on political parties. The right to create political parties is now explicitly included in the Constitutional Declaration, adopted by the National Transitional Council of Libya (NTC) on August 3, 2011. It states in article 15, "The State shall guarantee the freedom of forming political parties, associations and all civil society organizations, and a law shall be promulgated to regulate them."⁸⁶

Law no. 71 (1972) prohibiting political parties in Libya should be considered abrogated, given that article 34 of the Constitutional Declaration has canceled all documents and laws belonging to the old regime that had a constitutional nature.⁸⁷ Besides, laws that contradict the Constitutional Declaration are canceled according to its article 35. This is the case for Law no. 71 (1972) that violates article 15 of the Constitutional Declaration. Moreover, the new constitutional provisions will remain in effect until a new constitution is adopted, according to the Constitutional Declaration as amended on July 5, 2012. The new Libyan authorities have shown a liberal approach toward the freedom to create political parties, totally different from the posture of the former regime. Along the same lines, on May 2, 2012, the NTC adopted Law 29 (2012) as the new legal text regulating political parties. The law explicitly recognizes the right of Libyan citizens to create political parties and is intended to protect this right. However, article 9-4 places some restrictions on a political party's defending thought considered contrary to *Sharia* (Islamic Law).

⁸⁵ Article 35 states: "The liberty to found political parties, unions and associations is guaranteed. The political parties, unions and associations commit themselves in their status and activities to respect the provisions of the constitution and the law, and to financial transparency and the rejection of violence as well." Text translated by the authors from Arabic.

⁸⁶ The NTC was created on February 27, 2011, just ten days after the uprising that led to the fall of Muammar Gaddafi's regime on October 23, 2011. See Democratic Reporting International, *The Constitutional Declaration: A Basis for Democracy?* Briefing Paper 22, December 2011.

⁸⁷ Libya under Gaddafi's rule was one of the rare countries without a written constitution. Thus, the constitution was made of scattered texts that contained declarations and laws, among them Law 19 (1991) on associations. See Moncef Ouannes, "The Constitutional Libyan Experience," in *Maghreb Constitutional Studies*, ed. Ahmed Essoussi (Tunis: University Publications Center, 2011), 105-118.

Regressive Reform in Egypt

Civil society has played a very positive role in Egypt by raising the culture of protest mainly over the last decade. Also, CSOs played a very important role at the outbreak of the January 25, 2011 Revolution by providing a different kind of assistance to citizens, while the state failed to guarantee even security.⁸⁸ After the fall of the Mubarak regime, a law on association was drafted in February 2013. The draft generated a wave of criticism against the government and was seen as more repressive than Law 84 (2002).⁸⁹ Indeed, fewer guarantees were offered to associations and more restrictive measures were included in the draft to tightly control foreign organizations and their funding.⁹⁰

Also, Decree 12 (2011) amending Law 40 (1977) on political parties was supposed to improve the legislation on political parties in the aftermath of the January 25, 2011 Revolution. However, the new text raises serious obstacles to political parties. Hence, article 4-2 (new) provides that, “Party's principles, goals, platforms, policies and/or methods of operation should not contradict the basic principles of the Constitution or the prerequisites of protecting Egypt's national security, national unity, social peace or democratic system.”

Unlike Tunisia, the transitional authorities in Egypt did not manage to enhance freedom of association by the adoption of new laws. Yet, the Constitutional Declaration of 2011, and the 2012 Constitution as well, have recognized freedom of association in a more or less acceptable way. Article 4 of the 2011 Declaration stated that, “Citizens have the right to establish associations, syndicates, federations, and parties according to the law.”⁹¹ Article 51 of the 2012 Constitution, which replaced the 2011 Constitutional Declaration, was more liberal when it provided that:

Citizens have the right to establish associations, civil institutions and parties, subject to notification only. Such institutions shall operate freely, and be deemed legal persons.

Authorities may not disband them or their administrative bodies without a court order, in the manner prescribed by the law.⁹²

⁸⁸ Jennifer Ann Bremer, “Leadership and Collective Action in Egypt’s Popular Committees: Emergence of Authentic Civic Activism in the Absence of the State,” *International Journal of Not-for-Profit Law* 13, no. 4 (2011): 70-92.

⁸⁹ Mohamed Elagati, *Foreign Funding in Egypt after the Revolution*, FRIDE’s Working Paper (Madrid: AFA, Fride and Hivos, 2013), 4-5.

⁹⁰ Ibid.

⁹¹ The Constitutional Declaration of March 30, 2011, Egypt’s Government Services Portal, <http://www.egypt.gov.eg/english/laws/constitution>.

⁹² The Constitution of December 22, 2012, Egyptian State Information Service Web site, <http://www.sis.gov.eg/En/Default.aspx>.

However, the 2012 Constitution has been suspended since the major political crisis that occurred in Egypt in June 2012, which led to the coup on July 3, 2013, when President Mohamed Morsi was ousted by the Egyptian army and a state of emergency was declared in the country.⁹³

The Status Quo Policy in Yemen

In Yemen, political parties are ruled by Law 66 (1991) governing parties and political organizations, which is one of the most liberal pieces of legislation on political parties in the Arab region. So, too, for freedom of association, which is ruled by Law 1 (2001) concerning associations and foundations, an outcome of fruitful cooperation between the Yemeni government and the international community, mainly donors.⁹⁴

Registration is an easy process in Yemen and it provides strong guarantees to political parties against any attempt at abuse of power. Yet, some improvements are needed to ensure genuine enjoyment of the freedom to create political parties in Yemen. Specifically, reference to Islamic values in the law could be used as a tool to exercise tight control on the activities of the political parties, as these values are subject to different and even contradictory interpretations. This is the case, for example, for article 8 which states in paragraph 5, “the party may not be based on concepts contrary to Islamic law.”⁹⁵

The current transition in Yemen following the fall of the authoritarian regime and the removal of the long-term president, Ali Abdullah Salah, in February 2012, is a good opportunity to reform legislation governing political parties. However, the Yemeni transitional authorities so far have not expressed willingness to move ahead with the needed reforms. Yet, the transition in Yemen faces several difficulties in dealing with the damaging legacy of the old regime, and major political steps should be taken in order to start a genuine democratic transition in the country.⁹⁶

Conclusion

In general, the scene is varied in the “Arab Spring” states. Right now, these states are being upgraded from a quasi-“proscriptive model” (in which the function, status, funding, and participation of political parties tend to be heavily regulated) to a “permission model” (minimalist in the specifications on how parties are operated) in which legal relaxation of party laws and, by implication, party politics are encouraged.⁹⁷ At least, this seems to be the case

⁹³ See David Kirkpatrick, “Army Ousts Egypt’s President,” *New York Times*, July 3, 2013.

⁹⁴ Elbayer, “NGO Laws in Selected Arab States,” 24.

⁹⁵ See also, in the same line, article 33 (paragraph a).

⁹⁶ Thomas Juneau, “Yemen and the Arab Spring: Elite Struggles, State Collapse and Regional Security,” *Orbis: A Journal of World Affairs* 57, no. 3 (2013): 408-423.

⁹⁷ Kenneth Janda, *Political Parties and Democracy in Theoretical and Practical Perspectives* (Washington, DC: NDIA, 2010).

in Tunisia. Like democratization itself, political organization is not linear and is subject to consolidation. Practice is best when it comes to solidifying the status of parties and the role they can play in deepening competition and widening participation. Political parties across the Arab Spring region, especially in poor states such as Egypt, Tunisia, and Yemen, may be forced to seek international backers and sources of funding. This complicates the status of political parties in the fledgling democracies being constructed in Egypt, Libya, Tunisia, and Yemen. The first set of party laws may not go so far as to account for these challenges. From the beginning, the donor community from Northern America and the European Union has paid attention to the rise of new parties. While Islamist parties seem to be better positioned to receive funds and moral support from Gulf states (e.g., Qatar, where Muslim Brotherhood parties are concerned, and Tunisia's Al-Nahda Party), the French, for instance, seem to be drawn to secular and leftist parties (e.g., the Tunisian President's party, Congress for the Republic, and House Speaker Mustafa bin Ja'afar's Ettakatol Party). Thus, these international dynamics complicate the evaluation of national party laws. At this stage, the rationale behind newly created party laws may be simply the facilitation of democratization. However, political parties do not always measure up to the task of facilitating democratization, especially when they are ideologically rigid and their membership, as in the case of many religious parties, is limited to members who observe certain religious rituals and are deemed to be practicing. Here lies the biggest challenge for the newly rising Islamist parties, whose membership rules are not always open to public scrutiny. Similarly, but to a lesser extent, leftist and secular parties can be equally obstructive when secularism or a leftist "ism" of sorts becomes a reason for discriminating against those not open to similar political persuasion. There is, as yet, no clarity in newly created laws to say one way or another how these issues are or will be regulated. It is too early to state confidently that political organization, still under construction, is right now a case for optimism or pessimism in terms of the extent to which it is disposed by dint of new laws and constitutions to promote democratization.