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The Constitutionalization of the Civil State: The Self-Definition of Egypt, Tunisia and Yemen Following the Arab Uprisings

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Abstract: This paper offers a contextualized analysis of the way in which three Islamic constitutions—in Egypt (2014/2019), Tunisia (2014), and Yemen (2015)—came to a similar self-declaration of a “civil state” (*dawla madaniyya*), following the Arab uprisings. This self-expressive proclamation, which did not exist in their former constitutions, nor in any other constitution worldwide, is the product of the ongoing internal struggles of Muslim societies over the definition of their collectivity between conservatism and modernity, religiosity and secularism. In Egypt, the self-definition of a civil state enshrines the one-sided narrative of the June 2013 coup regime and the Armed Forces’ intrusive move into the field of state–religion relations; in Tunisia, the constitutionalization of the civil state reflects a settlement between Islamists and non-Islamists regarding the role of Islam in politics and legislation; in Yemen, it expresses an aspiration of detribalization and modernization within an Islamic model of statehood. The paper further seeks to trace the path of migration of this idea from one country to another, and the interconnectedness between the three cases, while pointing out possible implications on future constitution making in other Muslim countries.

Keywords: constitutions; Arab Spring; Egypt; Tunisia; Yemen; civil state; secularism; Islam; religion; tribalism; modernity



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1. Introduction

The popular uprisings that took place in the Arab world from the end of 2010, which are often called the “Arab Spring”, created a fertile field of research for constitutional studies in general and comparative constitutional politics in particular. On the global level, the last wave of constitution making was documented with the collapse of the Soviet Union. At the same time and until the turn of the millennium, Latin America had seen an intense period of constitutional change as well (Elster 1995, p. 369; Uprimny 2011, p. 1587). Relatively updated data retrieved from comparativeconstitutionsproject.org (accessed on 12 April 2021) points to another, more recent constitutional upheaval: From 2007 through 2013, twenty-five new constitutions and four interim constitutions were written (and counting), most of them in the Middle East and Africa (Ginsburg et al. 2009; Elkins et al. [2005] 2020).

This influx was preceded by three other waves of constitution-writing in the Arab world, aimed at serving different purposes. As Brown (2007, pp. 49–54) has shown, during the 19th century, constitutional documents played a role in rendering the royalty more accountable and responsive to domestic needs. In the first half of the 20th century, with the advent of new independent Arab countries, new constitutions were formed in order to proclaim independence. In the course of the 1960s and 1970s, new constitutions served as ideological manifestos of the revolutionary regimes, explicating their doctrine and orientation. Brown suggested that a fourth founding moment in the history of Arab constitutions was evolving in the 1990s, with the Gulf monarchs striving to ensure a smooth power transition to their heirs through constitutional experience. As in the past, the current wave of Arab constitutions (both new and renewed) represents “the new ruling bargains” between competing political forces and worldviews, and sets the rules of the game for the future order and politics (Arjomand 2014, p. 151).

As constitutions are “the state’s charter of identity” (Lerner 2011, p. 4), the focus of this paper is the symbolic and foundational aspects of new Arab constitutions. Beside functioning as a contract, manifesto, program, or supreme law (Frankenberg 2006), constitutions have a role in defining the features of the state and declaring its ideological orientation (Brown 2002, pp. 10–11). These texts anchor the sort of community their authors/subjects are, or would like to become (Murphy 1993, p. 10). While constitutional theorists sometimes refer to *the identity of constitutions* (Jacobsohn 2006; Alsarghali 2020), we would like to address here *the identity of the state as expressed in the constitution*, hereby referring to its autobiographical parts or to elements of a nation’s self-assertion. More specifically, we seek to examine the way in which three different Arab countries—Tunisia (2014), Yemen (2015) and Egypt (2014/2019)—arrived at a similar self-definition of a “civil state” (*dawla madaniyya*) through the drafting of a formal constitution, a self-expressive definition that did not exist in the former constitutions of these countries and does not exist in any other constitution worldwide.

The “civil state” concept is a product of the ongoing debate in many Arab countries regarding their position on the spectrum between a religious state and a secular one. This ideologically charged concept concerns the ability of Muslim societies to settle their inner struggles over the definition of their collectivity between conservatism and modernity. Rainer Grote and Tilmann J. Röder, editors of *Constitutionalism, Human Rights, and Islam after the Arab Spring* (Grote and Röder 2016), one of the most comprehensive volumes on the post-Arab Spring constitutions, pointed to the centrality of the notion of a civil state in the political debate following the uprisings (p. 907). A chapter dedicated solely to this term in the same volume also testifies to its importance (Al-Daghili 2016). However, it seems to have been written prior to the constitutionalization of this concept in Tunisia, Yemen, and Egypt. While recognizing the relevance of this concept to the post-Arab Spring constitutions, the scholarship still lacks an analysis of the different meanings of these self-definitions, their path into these constitutions and their implications for state–religion relations.¹

Thus, the intention of this paper is to describe the observed patterns of defining the state as civil in the constitution, and to explain the underlying motives and meanings of this definition and its possible implications. It aims at exposing the factual and normative assumptions beneath this constitutional choice of wording in each of the three countries. How did this phrasing reach these different constitutions? Does it mean the same in all three cases, and were they influenced by each other?

Studies of constitutional theory suggest that constitutional ideas move from place to place, whether consciously or unconsciously, in a one-way direction or in other ways. The scholarship offers various metaphors to describe this process—borrowing, migration, import/export, transfer, transplant, cross-fertilization, and more (Choudhry 2007; Lane 1996; Perju 2012). Some describe such constitutional ideas that cross borders as if they were a passing product to a merchant (Frankenberg 2013a, p. 4). During the transition, the moving idea is packed as bare text, losing all its previous context-dependent meanings (Walker 2007). At its reception in a new environment, the imported product is re-shaped by local influences. As a result of such processes, a sort of catalog of rights and values develops, a common and identical vocabulary that is available to constitution drafters to make use of, a global reservoir or for that matter, supermarket. Some items “turn into constitutional building materials that find a market at least in a related geographical, political or ideological region” (Frankenberg 2013b, p. 18). According to this approach, constitutions are not invented *ex nihilo*, rather they are reproduced using this “bag of concepts” (Tushnet 1999, p. 1286), thus indicating a complex relationship between national and supranational constitutionalism. Hence, this paper will also examine whether the “civil state” is becoming a commodity within a developing Arab market of constitutional

¹ For studies on state–religion relations in Arab constitutions, see: (Salim 2015; Sultany 2013).

ideas, that constitution drafters in other countries can shop for from an emerging Arab catalog of standardized constitutional idioms.

To tackle these questions, we will engage in a contextualized analysis of the constitutionalization of the term “civil state” in each case study, perceiving it as deeply embedded in the political, social, and cultural contexts of each society. Although all three countries view themselves as civil states, an expressivist analysis could use these cases to contrast and distinguish among the self-understandings found in the constitutional documents of Egypt, Tunisia, and Yemen (Tushnet 2007, pp. 76–80). As Walker (2007) has observed, there is no methodology available to adequately analyze what happens at the moment of transfer of a constitutional idea, “when and where national and supranational pathways intersect.” As a result, one is left to an attempt of approximation (pp. 316, 320–321). Therefore, the three case studies will not be organized in the chronological order of their constitutions’ completion, but according to the path that the concept seems to have taken, originating from Egypt, traveling to Tunisia and from there to Yemen.

2. Egypt: Perpetuating the Counter-Revolutionary Anti-Islamist Narrative

The idea of a civil state journeyed at length throughout Egyptian society before it was formally established in the constitution. Already at the outset of the twentieth century, the perception of a civil state was publicly debated between the Mufti of Egypt at the time, Muḥammad Abduh, and the Christian journalist, Faraḥ Anṭūn, a debate which demonstrated the “semantic haziness” (Steuer and Blouët 2015, p. 242) or “limbo” (De Poli 2014, p. 99) that characterizes the phrase to this day. While discussing Egypt’s future on the eve of the Othman Empire’s demise, Anṭūn envisioned a civil state in the sense of a religiously undifferentiated citizenship within a secular state (Anṭūn 1903, p. 125). Abduh, for his part, supported the model of civil rule, but in a contradictory manner, stressing that (Sunni) Islamic governance is essentially civil, as the ruler is a civilian, not a religious scholar or a representative of God on earth (Abduh 1938, pp. 60–62; Abduh 2004, pp. 57–87). For Abduh and today’s centrist Islamist currents, a civil government does not refer to a separation between state and religion, as Anṭūn and other progressive intellectuals have come to advocate; rather, it refers to a modern government composed of citizens and accountable to the citizens, within the tenets of Islam (Rutherford 2006, p. 730). Though representative of the varied conceptions of a civil state, this debate was episodic. Until the 1980s, the concept was considered foreign and imported, and was therefore uncommon and unaccepted, especially among Islamists.

Only following the 1979 Iranian Islamic Revolution was a dynamic created that led centrist Islamist intellectuals to gradually adopt the terminology of a civil state into their political doctrine, in the sense of a modern, non-clerical Islamic state, similar to Abduh’s interpretation. This was accompanied by intellectual efforts made by centrist thinkers to develop theoretical explanations that justify the change in their position in relation to this concept, including the formula “a civil state with an Islamic source of authority” (*dawla madaniyya dhāt marjiyya Islāmiyya*), which aimed to clarify that the concept does not refer to a secular state nor abolish the claim for the enactment of Sharīa principles (Warren and Gilmore 2013, pp. 98–101). Anti-Islamist currents were using the term ‘civil state’ at the same time in a counterattack, claiming that Islamists such as the Muslim Brotherhood aspire to turn Egypt into a religious state, in accordance with the Iranian model, while Egypt should be of a civil character, meaning the dismantling of the dominance of the religious authority in decision-making and in legislation (Hatina 2000). While both understandings of civil states uphold modern norms, institutions and procedures of government, such as parliamentarism, regular government turnover through free elections, civil society, freedoms, human rights, and civil equality, they are divided between a civil state where Islam encompasses religion and state, and a civil state in which Islam has a role in cultural and spiritual life alone. The dual use of the term civil state in the Islamist and non-Islamist sense made it seem like the parties were talking past each other throughout the 1980s and 1990s (Lavie 2018, pp. 14–27).

From the late 1990s, the Mubārak regime intervened in this intellectual controversy and decided it in favor of the non-Islamist interpretation of a civil state, which became an integral part of Mubārak's rhetoric and of the platform of the ruling party, the National Democratic Party. Intellectuals working in the service of the regime idealized this state model, portraying it as a winning combination of Islam, modernity and progress, which advances democratic norms, equality and human rights and is far from alternative models such as the theocratic Islamic state and Western secular forms of statehood. Senior clerics, including Shaykh al-Azhar, sanctioned it with religious approval. Since the late 1990s, the Muslim Brotherhood also aligned their platform with this dominant tone and adhered to the concept of a civil state. Thus, the institutionalization of the discourse of the civil state created an artificial unification of its content, blurring the deep ideological divide ingrained in Egyptian society regarding the status Islam should have. On the face of it, an outside observer who happened to be in Egypt in the 1990s and the first decade of the 2000s might have missed the differences in the rationales underlying the perceptions of the civil state among Islamist and non-Islamists, and mistakenly thought that there was a consensus in Egypt around this idea (Lavie 2018, pp. 66–78).

In this spirit, there was an expectation that the 2007 constitutional amendments would embody the notion of a civil state (Ibrāhīm 2006), a statement implying a commitment to a path in which Islam does not dominate domestic policies and foreign affairs, while not at all absent from social life. This aspiration was shared by some individuals in anti-Islamist circles, as the amendments to the constitution were part of the official anti-Islamist campaign and the desire to prevent the Muslim Brotherhood from gaining more power (Arjomand and Brown 2013, p. 237). However, these hopes were dashed. The amendment relating to state–religion relations only anchored the principle of equal citizenship in the first article. This change was intended to lessen the significance of the subordinate, second article, which states that “Islam is the religion of the state and [. . .] The principles of Islamic Sharīa are the primary source of legislation,” thereby elevating the citizenship principle over the principles of Sharīa (Hāfiz 2007; Hākīm 2008, pp. 147–150). The amendments also included imposing a ban on the establishment of religion-based parties (article 5), an article which was meant to rule out the possibility of the Muslim Brotherhood obtaining formal recognition as a legal political party (Brown et al. 2007). Yet, the demand of liberal and leftist political activists to constitutionalize Egypt's civil-ness did not completely cease, and it resurfaced with Mubārak's downfall in the January 2011 uprising.

The overthrow of Mubārak in 2011 liberated the discourse of the civil state from the constraints imposed by the fallen regime and re-exposed the old polarization on the question of the status of religion in politics, this time in the form of a debate over the definition of the state in the new, post-revolutionary constitution.² At the beginning of the transition period, as it was becoming apparent that the Islamists were expecting an unprecedented success in the parliamentary elections and that they would probably dominate the future constituent assembly, the SCAF—the ruling military elite—made an initial move to oblige the drafters of the future constitution to dictate designed to safeguard its civil nature and to prevent its blatant Islamization. For this purpose, a document of supra-constitutional principles was outlined by the deputy prime minister at the time, Alī al-Silmī, which defined Egypt in the first article as a civil state. However, this move was halted due to opposition from al-Azhar, the Muslim Brotherhood, the Salafi sect that engaged in politics, and their supporters in the Egyptian street.

Though shelved, this failed initiative attested to the Islamists' objection to this self-definition, despite their prior, outward support and incorporation of the civil state idea. Moreover, this first explicit attempt by the military elite to secure Egypt's civil-ness in the constitution indicates its self-perception as the guardian of Egypt's non-Islamist character. Thus, the al-Silmī affair served as a portent of the political developments to come (Lavie 2018, pp. 66–78).

² On the increasing use of the civil state concept in Egyptian society since the Arab Spring, see: (Wessel 2016).

However, for the time being, as Islamists dominated the drafting of the 2012 constitution formed under the rule of Muḥammad Mursī, self-defining Egypt using the controversial concept of a civil state was not even considered. Several idiosyncrasies empowering the religious establishment (article 4) and expanding Sharia's power over legislation (article 219) delineated a more Islamic orientation of the constitution than a civil one,³ though they did not represent "an upheaval of the status quo." (Scott 2014, p. 52).

With Mursī's ouster in a military coup in 2013, the drafting of another constitution was a forgone conclusion, and the possibility of defining Egypt as a civil state in the first article was back on the table. Although in this round, the constitution was formulated in a general atmosphere of the renunciation of all the marks of the Muslim Brotherhood, and in a clear trend toward the de-Islamization of society and politics, and although the newly formed constituent assembly was dominated by non-Islamists, this time, too, it refrained from entrenching the particular definite phrase of a civil state.⁴ The last draft of the 2014 constitution did include defining Egypt as a civil state in the preamble;⁵ however, ultimately, this was circumvented by a last minute adoption of an ambiguous wording that defined Egypt as "a state whose government is civil". This was a compromise made to appease the opposition of the Salafis, who backed the coup and could not bear the thought of the civil state concept being placed in the constitution, due to its secular connotation. Hence, out of the acknowledgment that any unequivocal choice regarding the identity of the state could have potentially destabilizing effects, "an indecisive and incrementalist approach" (Lerner 2011, p. 8) was taken, as in similar cases of unresolved conflicts over the identity of the state in matters of state–religion relations.

The 2019 constitutional amendments put an end to the hesitant and failed attempts to constitutionalize the civil state.⁶ Upon the initiative of 155 pro-al-Sisi parliament deputies, article 200 of the 2014 constitution was amended to stipulate that the Armed Forces are to maintain "the state's civil-ness" (*madaniyyat al-dawla*).⁷ Ostensibly, this is an oxymoron; as a civil state also means a state not governed by a military rule, this article puts the Armed Forces in charge of keeping itself out of politics. However, acknowledging past attempts to imprint civil-ness in the constitution, *madaniyyat al-dawla* does not refer to the government's non-military character. *De jure*, it is implicit that Egypt is of a civil nature and that the army is the guarantor of its non-religious and non-Islamist orientation. This amendment was made possible despite the initial opposition of the Salafi al-Nūr party, a concession that came after Egypt's parliament speaker Alī Abd al-Aāl had clarified for the record that the

³ Article (219) broadly interprets "the principles of Sharia" of article (2) compared to the relatively narrow interpretation of the Supreme Constitutional Court (SCC) of Egypt, implemented since 1996. Yet, the practical implications of this article were never made clear; Article (4) granted al-Azhar independence in determining its own affairs and a consultant role in interpreting the principles of Sharia, a task still assigned exclusively to the SCC (175). Additionally, article (4) immunizes Shaykh al-Azhar from dismissal. The following articles also delineated a more Islamic orientation to the 2012 constitution, compared to former Egyptian constitutions: Article (43) restricted freedom of religious practice to members of monotheistic religions, compared to the 1971 constitution; The Egyptian people was defined as "part of the Islamic nation" in article (1), a definition that was absent from the previous constitution; Also, the addition to this article that was inserted in 2007, according to which the regime in Egypt is based on the principle of citizenship, was moved to article (6), in order to diminish its significance and subordinate it to article (2); The 2007 amendment of article (5) of the 1971 constitution, which prohibited political activity or political parties based on a religious source of authority was also removed; Article (6) contained the Islamic wording "shūrā" beside democracy, a combination that appeased the Salafi objection to democracy, and was intended to limit democracy to Islamic principles; Article (44) prohibited "insult to all the messengers and prophets", aiming to prevent blasphemy. For a detailed account of the role of Islam in the Egyptian constitution of 2012, see: (Lombardi and Brown 2012).

⁴ The 2014 constitution stripped the 2012 constitution of most of the additions mentioned above that granted it a more religious character. In article (1) the definition of the Egyptian people as part of the "Islamic nation" was replaced; the principle of citizenship that was relegated to article (6) in the 2012 constitution was returned to its original place at the beginning of the constitution, in order to indicate its great importance; Article (219) was left out. Instead, the preamble to the new constitution stated that the source of authority for interpreting article (2) was all the rulings of the SCC; Article (4) was kept, but al-Azhar was defined as a scientific body only, and the duty to seek its counsel regarding matters pertaining to Islamic Sharia was cancelled; the word *shūrā* was removed from article (6); Article (44) was also cancelled; the ban on religious parties was reinstated (74); Article (64) asserted an "absolute freedom of belief". Nevertheless, article (2) and article (3) were left unchanged, indicating that the 2014 constitution still bears within it the traces of past bargains regarding the "identity clauses". For an overview of the 2014 Egyptian constitution, see: (Al-Ali 2016a).

⁵ On the functions of preambles in constitutional adjudication and constitutional design, see: (Orgad 2010).

⁶ On the rest of the 2019 constitutional amendments, see: (Parolin 2020).

⁷ The official English translation of the amended article is: "The Armed Forces belong to the People, and their duty is to protect the country, preserve its security and the integrity of its territories and maintain the Constitution, democracy, the basic of civil state as well as the people's gains, rights and freedoms ... " <https://www.sis.gov.eg/section/10/9418?lang=en-us> (accessed on 27 November 2020).

term *madaniyyat al-dawla* does not imply a secular state (Magued 2020). Moreover, in July 2020, the State Security Law was also amended to outline a procedure in case the civil-ness of the state is endangered (Al-Ashwal 2020).

The subtext or the unstated conventions of both the constitutionalization and codification of the civil state are that it is the duty of the military to prevent the resumption of power by Islamist forces, in line with the narrative underpinning the 30 June 2013 upheaval, according to which the Muslim Brotherhood's rule was directing Egypt toward a religious state. In this sense, Egypt's self-definition as a civil state enshrines the one-sided narrative of the coup regime in the amended 2014 constitution, representing the Armed Forces' intrusive move into the field of state-religion relations.⁸ Thus, the process that culminated in the constitutionalization of the civil state in Egypt qualifies it as a "revolutionary constitutionalism", which marks a rupture from the past, rather than reflecting an existing and settled consensus ("classical constitutionalism") or an aspiration of national unity ("transitional constitutionalism") (Turner 2015).

Although the civil state was established in the Egyptian constitution only in 2019, it seems that the origin of this concept in other post-Arab Spring constitutions drafted before 2019 is in the lengthy debate around this concept that took place in Egypt throughout the 20th century.⁹ From there, the civil state traveled to other Arab provinces. It so happened that in Tunisia, where the concept of a civil state was widely agreed upon, this concept entered the second article of the 2014 constitution even before it was finally established in the Egyptian constitution. When transferring to a different setting, even within a related geographical, political or ideological region, ideas that cross national boundaries and make their way into other constitutional documents go through a process of de-contextualization and re-contextualization (Walker 2007) through which they can take on other interpretations and local reactions that are peculiar to the relevant society, as will be elaborated in the next sections.

3. Tunisia: A Middle Ground between Islamists and Non-Islamists

In Egypt, each post-Arab Spring constitution represented the true north for the nation's compass, as perceived by the dominant political strata at the time of its ratification and at the expense of the competing worldview. While the 2012 constitution's silence regarding the notion of a civil state was considered a signifier of the government's intention to elevate Islam as a core feature of state policies, the self-definition of a civil state in the amended 2014 constitution became a declaration of an anti-Islamist re-orientation. The Tunisian 2014 constitution was formulated in a process that extended over two years, in the shadow of the dramatic political upheavals in Egypt. The incessant turmoil caused by the deep polarization over the nature of the state as defined in the Egyptian constitution undoubtedly affected the shaping of the Tunisian one. The self-definition of the civil state in the Tunisian constitution, on the other hand, is an attestation of a mutual understanding between Islamists and non-Islamists.

Negotiations between Islamist and non-Islamist currents in Tunisia concerning the nature of the state and the status of Islam within it took place long before the Arab uprisings, culminating in an agreement on the civil state model prior to Bin Ali's downfall (Anderson 1991).¹⁰ On 18 October 2004, a small group of Tunisian oppositionists initiated a month-long hunger strike against the regime in support of expanding liberties in the country.

⁸ The drafting of the amendments did include a two-week "social dialogue" during March 2019. However, this dialogue was considered a façade as the discussions were not public. Al-Madaniyya al-Dimuqrāṭiyya: al-Ḥiwār al-Mujtamaī masraḥiyya hazliyya.. wa-sa-nuqaddimu ṭalab^{an} li-l-taẓāhur rafq^{an} li-l-tadīlāt al-dustūriyya, elsharqtv.org, (accessed on 23 March 2019).

⁹ Historically, Egyptian constitutions have had an impact on other constitutions in the region, and parts of them were repeated in other Arab constitutions; see: (Brown 2009).

¹⁰ One early indication of a broad agreement across political sectors on the notion of the civil state in the Tunisian context is the "National Covenant" (1988), which was a deal made between President Bin 'Ali and opposition forces a year after he rose to power—yet it is debatable whether the notion of a civil state in this context was in the sense of a non-military rule, or in the sense of a non-religious and non-secular orientation. Al-Mithāq al-Waṭani, 7 November 1988 www.csdhlf.tn/references/references-tunisiennes/%D8%A7%D9%84%D9%85%D9%8A%D8%AB%D8%A7%D9%82-%D8%A7%D9%84%D9%88%D8%B7%D9%86%D9%8A/?lang=fr (accessed on 11 January 2021).

Thereafter, the “October 18” group was established as a joint, broad alliance of various oppositionist currents and independent political activists, including the Islamist al-Nahḍa movement and secular leftist parties. Following a series of public symposiums and internal discussions on their part, several philosophical documents were published declaring a joint perception of foundational matters, primarily state–religion relations, women’s rights, and the state’s civil character. These documents were meant to demonstrate a united front advocating true democratization.¹¹

In this framework, a 10 December 2009 document regarding the country’s identity and state–religion relations rejected three possible models of the status of Islam in a democratic state: subordinating Islam to the political will of the authoritarian regime; monopolizing Islam and imposing it on the private life of the individual; and banishing Islam completely from the public sphere in the name of modernity. The alternative, agreed-upon model presented in this document was the civil state, meaning a state based on the principles of citizenship, human rights and non-discrimination, while attributing to Islam, being the religion of the majority, a special status but not a monopolizing one. The document does not mention Islamic Sharīa; rather, it stipulates civil lawmaking, granting anyone the right to suggest bills according to their ideological leanings. This anti-government alliance later dissolved, partly on the backdrop of distrust between al-Nahḍa and the non-Islamists. Yet, the formative documents drafted under its auspices in an attempt to reach a common denominator between the different ideological orientations that prevail in Tunisian society and that were opposed to the despotic regime, served as a basis for the post-revolutionary, negotiated constitutional arrangements (Al-Jaīdī 2014).

This is not to say that the drafting related to the status of Islam in the 2014 constitution passed without any disputes. Al-Nahḍa initially pursued the constitutionalization of Sharīa, to the dismay of its political partners in the Troika and of non-Islamists at large. Bin Jafar, the president of the National Constituent Assembly (NCA), for example, insisted that the clause concerning Sharīa be withdrawn, and referred to the provision on Tunisia being a civil state as a “red line not to be trespassed” (Suteu 2017, p. 79). On 16 March 2012, demonstrations initiated by civil society organizations that advocated the implementation of Islamic law were held. Thousands of protesters demanded that the principles of Islamic Sharīa be defined in the constitution as the primary source of legislation. However, on 20 March 2012, on Tunisia’s day of independence, thousands staged a counter-protest in Tunis to mark their commitment to the civil character of the republic (Lavie 2019). This tumultuous wrangling calmed down only after al-Nahḍa officially announced its adherence to its election promise to waive the demand for the enactment of the Sharīa in the constitution, a concession made after an intensive internal debate within the party. In exchange, non-Islamists renounced the constitutionalization of the Universal Declaration of Human Rights, and the state was defined as “the custodian of the religion” in article 6, thus rejecting the notion of the separation between religion and state often attributed to the term civil state.¹² Al-Nahḍa assuaged the fears of its rivals, clarifying that it did not intend to translate its electoral success into the establishment of an Islamic theocracy (Dalmasso and Cavatorta 2013, p. 229).

While the demise of the Muslim Brotherhood’s rule in Egypt no doubt contributed to al-Nahḍa’s decision to seek a compromise with the opposition (Pickard 2015), al-Nahḍa’s adherence to the civil state model goes further back. Al-Nahḍa had moderated its political platform and accepted the dominant discourse of democracy, liberalism and a market economy already in the 1980s. Since then, al-Nahḍa’s leader, Rāshid Ghanūshī,

¹¹ For these documents, see tinyurl.com/yas2d8oz (accessed on 11 January 2021).

¹² Zeghal (2016) adds that the non-Islamists agreed to accept the provision of the state’s custodianship of Islam in return for the inclusion of the state’s commitment to guarantee “freedom of conscience and belief”, an embodiment of freedom from religion that is rare in Middle Eastern constitutions. Yet article (6) limits these freedoms, declaring that the “state undertakes to disseminate the values of moderation and tolerance and the protection of the sacred, and the prohibition of all violations thereof. It undertakes equally to prohibit and fight against calls for Takfir [accusations of heresy] and the incitement of violence and hatred”. Article (39) adds an obligation of the state to bestow an Islamic presence in education, stipulating that the state “shall also work to consolidate the Arab-Muslim identity . . . in the young generations”. Article (74) grants Muslims alone the right to run for president.

gradually abandoned the original model of an Islamic state as the movement's supreme goal (Cavatorta and Merone 2013). Thus, al-Nahḍa is perceived as a movement wishing to preserve religion as a value and a symbol, and not as a guiding principle for public decision-making, a standpoint different from that of the Egyptian Muslim Brotherhood. Al-Nahḍa's ideological moderation and its adherence to the civil state model was to the detriment of the Salafi wing of the movement and led to its retirement from the mother movement in the 1980s. Consequently, the pro-civil-state approach prevailed within the ranks of al-Nahḍa.¹³ Ghanūshī's later rejection of the demand to constitutionalize the Sharīa, despite al-Nahḍa's electoral success and public support for the inclusion of the Sharīa in the constitution, removed a significant obstacle to consensus-building and gave credence to al-Nahḍa's support of the civil state in public eyes.

Al-Nahḍa was not the only religious actor to enable the constitutionalization of the civil state. While in Egypt the Muslim Brotherhood, al-Azhar and the Salafis (represented mainly by the al-Nūr party) all objected, the equivalent Tunisian religious actors—al-Nahḍa, the al-Zaytūna Institute and the Salafi Reform Front Party—did not pose a challenge to this self-definition. Like al-Nahḍa, the al-Zaytūna Institute supported the civil state concept and did not object to its inclusion in the post-revolutionary constitution.¹⁴ As for the Salafis, due to their marginal status in society,¹⁵ they did not play a dominant role in agitating against the civil state model, compared to the Salafis in Egypt, a fact that contributed to the formation of a consensus. In this sense, the constitutionalization of the civil state in Tunisia may qualify for a classical understanding of the constitution, expected to anchor an existing negotiated agreement on national identity, or to construct such a settlement (Turner 2015).

Consequently, the second article of the 2014 Tunisian constitution declares for the first time that “Tunisia is a civil state”,¹⁶ following an agreement reached in the national dialogue that accompanied the process of drafting the constitution (Sharqieh 2013). This new and almost uncontested article complements the first article, which states that “Tunisia is a free, independent, sovereign state; its religion is Islam”—an ambiguous phrasing from the 1959 constitution that was left untouched. Notably, these two articles, both concerning the place afforded religion in the new constitution and both with no mention of Sharīa, were now granted immunity from future amendments, a status indicating a delicate balance reached between varied outlooks on the state's identity. As Suteu (2017) has shown, the use of unalterable provisions (also known as “eternity” or “entrenchment clauses”) is prevalent amidst post-conflict and post-authoritarian constitutions, and signals an aspiration to preserve a fragile and hard-fought political agreement between rival parties. Thus, the perpetuation of the self-definition of Tunisia as a civil state whose religion is Islam was intended to safeguard the compromise that enabled this phrasing and to permanently prevent any future attempt to revise the proclamation embodied in these sensitive articles.

Though the constitutionalization of the civil state in Tunisia was consensual, the actual interpretation of the second article remains subject to future endeavors, which will determine its practical implications.¹⁷ The juridical ramifications of the constitutionalization of the civil state were put to the test only once so far. Tunisia's “Provisional Instance to Review the Constitutionality of Draft Laws” was asked to adjudicate in a case of prima facie incompatibility between the civil state article and a draft law concerning the Islamic banking system and financial institutions. In its decision, this temporary substitute for a constitutional court announced that the civil-ness of the state embodied in the second

¹³ Al-Nahḍa adheres to a civil state in its official party platform, retrieved at <https://goo.gl/9rK1Hb> (accessed on 11 January 2021).

¹⁴ An interview with Tunisian Minister of Religious Affairs, Nourredine al-Khademi: *Al-Chourouk*, 19 July 2013; Interview with Shaykh of al-Azhar, Ahmad al-Tayyib: *Akhbār al-Adab*, 14 August 2011.

¹⁵ The Tunisian Salafi Reform Front Party failed to win any seats in the constituent assembly in 2011 or in the parliamentary election held in October 2014. This was mainly due to the party's lack of a social base upon which it could rely during the elections (Fahmi 2015; Merone 2017).

¹⁶ The civil character of Tunisia is also mentioned in the preamble and in article (49), which was also rendered unamendable. For the Tunisian 2014 constitution, see www.constituteproject.org/constitution/Tunisia_2014.pdf (accessed on 12 April 2021).

¹⁷ Horchani (2016), for example, estimated that the constitutionalization of the civil state “does not protect unequivocally against the establishment of an Islamic State” or against the full enactment of the Sharīa (p. 204).

article of the 2014 constitution does not preclude practices originating in Islamic Sharīa, as long as they are subject to human-made international regulations. It further argued that this Islamic practice would not turn Tunisia into a religious state, suggesting that the civilness of the state is to be measured according to this elusive standard.¹⁸ It is conceivable, moreover, that the prolonged delay in the establishment of a permanent constitutional court is due to parliamentary disagreement on the composition of its judges, derived from the rivalry over the dominant (Islamist/non-Islamist) inclination of this court, which will affect the interpretation of the constitutional language, especially the newly introduced civil state clause.¹⁹

The inclusive dialogue that took place in Tunisia on the drafting of the constitution and that created mutual understandings between multiple, seemingly unreconcilable worldviews, constituted a model that other Arab countries looked up to but failed to emulate. “Tunisia is the solution” was a common slogan in mass demonstrations against authoritarian regimes across the Arab world, as it was the pioneer of the Arab Spring, but also because of the relatively democratic process that accompanied the transition phase. In post-Arab Spring Yemen in particular, the Tunisian experiment initially served as an inspiration, which affected the undertaking of a national dialogue as a foundation for constitution-writing. Although the national dialogues in these two countries led to different outcomes, the Yemeni national dialogue also recommended the constitutionalization of the civil state. The next chapter will examine the constitutionalization process of the civil state in Yemen, and address the question of whether it is the result of a long-standing internal debate between Islamists and non-Islamists as in Egypt, a negotiated agreement between them like in Tunisia, or rather a mere imitation of the Tunisian constitution with no roots in the local society.

4. Yemen: Envisioning a Modern, Detribalized Islamic State

In the case of Yemen, the civil state concept is associated more than any other political current²⁰ with the youths of the revolution, including women organizations promoting civil and gender equality (Al-Qadīmī 2011; Strzelecka 2018).²¹ For the protesters of Taghyr Square, the civil state represented the alternative to pre-revolutionary Yemeni statehood, an antithesis of the model of authoritarianism based on tribal affiliation, which had prevailed in Yemen for decades (Al-Suhaylī and al-Zindānī 2011). As Clausen (2018) pointed out, “the call for ‘dawla madaniyya’, a civil state, had united protesters during the uprising,” adding that “the term refers to the desire for a new social contract built on the rule of law, political accountability and good governance” (p. 566). The term civil state represented a longing for the establishment of a new society based on the rule of the people, social justice and the protection of basic freedoms, a society that promotes conflict resolution, civic responsibility and the technocratization of politicians, not a military rule or a hereditary one.

In effect, the civil state became an expression that embodied the demands of the uprising. According to Clausen, “many protestors were quick to point out the links between the civil state concept and President Ibrāhīm al-Ḥamdī, who ruled North Yemen from 1974 until his assassination in 1977”, since he “came to be held up as the symbol of an aborted attempt to construct a modern state.” Indeed, al-Ḥamdī planned to reduce the tribes’ power and strengthen the authority of the state. However, his policy led eventually to an opposite outcome (Rabi 2015, pp. 79–80). Thus, it seems that the Yemeni revolutionary youths were inspired by the revolutionary youths in Egypt and Tunisia, their slogans, and

¹⁸ Qarār al-Haya al-Waḥdiyya li-Murāqabat Dustūriyyat Mashārī al-Qawānīn, Adad 05/2016 al-Mutaaliq bi-Mashrū Qānūn al-Bunūk wa-l-Muassasāt al-Māliyya, 2 July 2016, retrieved at www.legislation.tn/detailtexte/Arr%C3%AAAt%C3%A9-num-2016-2942-du-02-07-2016-jort-2016-058__2016058029424 (accessed on 13 January 2021).

¹⁹ Kamāl al-Shayḥāwī, “Hal yakūnu al-faṣl al-awwal min al-dustūr huwa ‘ḥiṣān ṭirwādat’ al-Maḥkama al-Dustūriyya?” retrieved at [www.essahafa.tn/index.php?id=59&tx_ttnews\[tt_news\]=11377&tx_ttnews\[backPid\]=12&cHash=7223fa9dd9](http://www.essahafa.tn/index.php?id=59&tx_ttnews[tt_news]=11377&tx_ttnews[backPid]=12&cHash=7223fa9dd9) (accessed on 13 January 2021).

²⁰ Bonnefoy and Poirier (2012) stress that progressive leftist currents have particularly re-appropriated the civil state concept.

²¹ For young activists’ coalitions advancing a civil state, see the website of Shabāb Mustaqillūna Aḥrār freeyouth.wordpress.com/2012/04/09/7867578/ (accessed on 28 January 2021).

ideas, including the demand for a civil state, while trying to root this concept in the local history and culture.

Unlike Egypt and Tunisia, where the civil state was used mainly in the discourse on the status of religion and its relations with modernity, in Yemen the aspect of a modern Islamic state conformed also with the aspirations of many Yemenis that the uprising would lead not only to modernization, but also to detribalization.²² In this sense, for example, we find “Southerners talking often of the ‘civil state’ they enjoyed under British and then socialist leadership, and their ‘subjugation’ by tribalism and brutishness in the north” (Salisbury 2016, p. 35). Hence, in the Yemeni context, a civil state often refers to a state of law and order as opposed to a state ruled by a “tribal gun culture” (Heinze 2014), in which social and political mobilization is dictated by customary law and according to tribal, ethnic and religious loyalties (Māhir 2012; Muṣṭafā 2012). According to this interpretation of a civil state, Yemen should move from being a non-state (*al-lā dawla*) to a civil state, which is sovereign, independent and stands on its own without any foreign interference (Al-Arshī 2013). For this reason, while the civil state concept was mostly identified with the youths, other political currents willingly embraced it.²³

A minority position opposing the idea of a civil state was emphatically and loudly expressed by Abd al-Majīd al-Zindānī, one of the founders and a member of Yemen’s branch of the Muslim Brotherhood, the al-İslāh party, which is part of the Joint Meeting Parties (JMP). On 5 July 2011, al-Zindānī publicly stated that a ‘civil state’ is a Western term that calls for the secularization of Muslim society and the repression of the Islamic model in politics and government (Al-Suhaylī 2012); instead, he called for an Islamic state based on the notion of Shūrā, provoking a debate in Yemeni intellectual and political circles. Only members of the Salafi Rashād party and Hizb al-Taḥrīr shared al-Zindānī’s view (Khamīs 2019).²⁴ Among the prominent respondents was the senior member of the JMP, Abd al-Malik al-Mutawakkil, who used Egypt’s al-Azhar’s position in favor of a civil state as a counterweight to al-Zindānī’s stance against this model. In protest of al-Zindānī’s statement, mass Friday prayers were held on 15 July 2011, in more than 17 districts throughout Yemen, raising the slogan “Friday for a Democratic Civil State”.²⁵ In one of these mass protest prayers on al-Sittīn street in Ṣanaa, another prominent member of the al-İslāh party, Abdullah al-Ṣatar, rejected al-Zindānī’s stance as not reflecting the party’s official position, but his own (Al-Qadīmī 2011; Al-Ṣūfī 2011). According to Bonnefoy and Poirier (2012), al-İslāh wanted to be perceived as loyal to the civil state project, which had defined the new rules of game, and therefore supported this rather consensual model during the National Dialogue Conference (NDC), similar to the Tunisian al-Nahḍa party, and unlike the Egyptian Muslim Brotherhood.

In March 2013, the NDC was launched with the participation of 565 representatives of various political factions (Alley 2013) and described as the freest and most comprehensive discussion of its kind ever to have taken place in the Arab region (Al-Ali 2016b, p. 394). Directed at reaching understandings on essential issues regarding Yemen’s future (including the Southern problem, the system of government, reform of the security apparatuses, rights and freedoms, development and transitional justice), the NDC was also designated

²² On the contrast between a civil state and a tribal state in general, see (Gross 1998). On this contrast in the Yemeni context, see (Al Dawsari and Greenfield 2017).

²³ For example, al-Hizb al-İstīrākī supported defining Yemen as a civil state in the constitution (Al-Ṣalāhī 2012). The Hūthīs supported the civil state outwardly (Askar 2020). Yet, the Hūthīs are criticised for their support of the civil state, as they themselves use violence to promote their political goals (Al-Ḍarī 2012; Al-Mikhlāfī 2015; Al-Muḍarī 2012).

²⁴ In an interview with the Egyptian weekly al-Ahālī on March 2011, the secretary general of the Salafi al-Rashād party, Shaykh Abd al-Wahhāb al-Ḥumayqānī, testified that he had consulted on the issue of the civil state with several Egyptian scholars and members of parliament, and came to realize that although this concept also means secularity, most people refer to it as a modernized state. Thus, his party is willing to accept the notion of a civil state if it adheres to the sovereignty of the Sharīa. “Al-Ḥumayqānī: Amīrikā ḥarīṣa alā al-Ḥūthī wa-maṭlab al-dawla al-madaniyya akkara ṣafw al-thawra,” 31 March 2012. marebpress.net/articles.php?id=14872 (accessed on 12 April 2021).

²⁵ Taẓāhur muḥāfazāt al-Yaman fī Jumāt al-dawla al-madaniyya, 16 July 2011 www.youtube.com/watch?v=3abfM5TXis0&list=UUTkE01w_N5iNN4gLRqflgSQ&index=8188 (accessed on 12 April 2021).

to set up the constituent assembly for the drafting of a new constitution, in line with these understandings, and in accordance with the NDC's recommendations.

When the NDC was launched, the formation of a civil state had already been marked as its guiding principle and as a supreme goal. In its opening session on 18 March 2013, President Hādī, who chaired the conference, declared that the NDC should adhere to the values demonstrated by the young Yemeni activists in the squares in order to express their sincere desire to establish a modern civil state. He added that a modern civil state—based on the foundations of good governance, the principles of *shūrā*, modern democracy, social justice and the rule of law—is a joint aspiration “that we have failed to realize for many decades, a civil state that is governed by systems and laws drawn from our glorious Islamic Sharīa, that opposes extremism, and that is consistent with the needs of time as it is committed to human rights . . . ”²⁶

In this spirit, the notion of a civil state prevails throughout the NDC's Outcomes Document, which was issued on 24 January 2014, with over 1800 recommendations for the constituent assembly. Already in the preamble, the document states that the NDC sought to find “a sustainable solution to the Southern problem within a unified state that includes a fair division of power and resources, a modern civil state based on equal citizenship, and the establishment of good governance that ensures sustainable development in all areas and increased rights and freedoms.”²⁷ The adherence to a civil state is evident not just in the preamble, but also in the body of the document. For instance, under the heading “State Building”, concerning the identity of the state, its image, religion, language and government orientation, the civil state is mentioned again as representing the Yemenis' hope for the establishment of a democratic state with modern institutions.²⁸ This description of a civil state conforms with the prevalent meaning of the civil state in the Arab world—an Islamic state which is simultaneously modern, non-secular and non-religious (non-theocracy), a model which upholds modern norms, institutions and procedures of government, while renouncing other prototypes of an Islamic state which reject modernity and maintain or project a fundamentalist and scriptural understanding of Islam.

The debate conducted at the NDC on the Sharīa article sheds light on the way various groups in Yemeni society perceive the term civil state. The 1991/2001 Yemeni constitution stipulated (article 2) that “Islam is the religion of the state . . . ” and that (article 3) “Islamic Sharīa is the source of all legislation”.²⁹ Many groups voted against keeping this wording, including Binā al-Dawla, Jamāat al-Ḥuthī, al-Ḥirāk al-Janūbī, al-Ḥizb al-Ishtirākī, Ḥizb al-Mutamar, al-Tanzīm al-Waḥdāwī al-Nāṣirī and Ḥizb al-Ḥaqq al-Shī. The al-Isḫāḥ and the Salafī al-Rashād party voted in favor of the state religion clause. The preference of the former parties was to define Islam as the religion of the people (and not as the state's religion) and Sharīa as the primary source of legislation (and not as the source of all legislation), since according to this approach, defining a state religion makes Yemen a religious state, which contradicts the self-definition of a civil state. In their opinion, defining Sharīa as the primary source of legislation, on the other hand, makes the legislation originate in the people through its representatives in parliament, and thus the sovereignty of the people over legislation sustains the civil, non-religious character of the state. For his part, Shaykh Abd al-Wahhāb al-Ḥumayqānī, secretary general of the Salafī al-Rashād party, saw no contradiction between a civil state and defining Sharīa as the source of all legislation (Āyish 2013).³⁰

²⁶ Kalimat al-Raīs Hādī fī al-jalsa al-ūlā li-Mutamar al-Ḥiwār al-Waṭanī al-Yamanī, 19 March 2013 www.youtube.com/watch?v=dNjZtzfR9Iw&list=ULkeOAL1sUkAo&index=1121 (accessed on 12 April 2021).

²⁷ Wathīqat al-Ḥiwār al-Waṭanī al-Shāmil, 2013–2014, pp. 15–17, 85. constitutionnet.org/sites/default/files/final_outcome_document-arabic.pdf (accessed on 12 April 2021).

²⁸ Wathīqat al-Ḥiwār al-Waṭanī al-Shāmil, 2013–2014, pp. 15–17, 85. See also pp. 185, 297.

²⁹ Yemeni 1991/2001 constitution (English): www.constituteproject.org/constitution/Yemen_2001.pdf (accessed on 28 January 2021).

³⁰ Abduh Āyish, “Khilāf bi-l-Yaman ḥawla huwiyyat wa-Islāmiyyat al-dawla,” 25 July 2013. Retrieved at tinyurl.com/y2kaer3o (accessed on 28 January 2021).

In line with these self-definition declarations, the first recommendation of the NDC Outcomes Document to the constituent assembly was to state in the preamble of the future Yemeni constitution that it “shall guarantee the principles of equal citizenship, the dignity and rights of the citizens of Yemen, social justice and the rule of law under a democratic civil state.”³¹ Under the section of “Decisions Relevant to the States Identity”, the document further recommends the constituent assembly the following wording, next to the article which defines Islam as the religion of the state: “Yemen is a federal, civil, democratic, independent and sovereign state, established on the basis of equal citizenship, the will of the people, and the rule of law, and is part of the Arab and Islamic nation”.³² Moreover, the notion of a civil state is mentioned as the guiding principle for the recommended reorganization of the judiciary and the prosecutor office, and for the formulation of legal rules and foundations that prevent the predominance of tribalism and its interference in the state’s authorities and their mandates.³³ A section titled “A Modern Civil State” outlines a decentralized, pluralistic, democratic Islamic state with neutral independent institutions, division of powers and broad popular participation in decision-making and equal citizenship.³⁴

In early March 2014, President Hādī issued a presidential decree establishing a 17-member Constitution Drafting Committee (CDC) composed of diplomats, lawyers, judges and other professionals that reflected Yemen’s geographical, ethnic and political diversity. In accordance with the NDC’s recommendations, and since there was no objection to the notion of the civil state, article 1 of the Yemeni 2015 draft Constitution, which anchors the “Nature of the Federal Republic of Yemen”, stipulates that “The Federal Republic of Yemen is a federal state, civil, democratic, Arab Islamic, independent and sovereign country; based on the will of the people, equal citizenship and the rule of law . . . ”³⁵ Article 134 provides that the “rights and freedoms set forth in this constitution shall not be subject to obstruction and derogation . . . Restrictions may only be determined when necessary with the aim of protecting rights of others, public order or public morals and to the minimum level necessary for these purposes as required by the foundations of the civil democratic state . . . ” This article is similar in substance and wording to article 49 of the 2014 Tunisian constitution, except that the Tunisian constitution provided it as an eternity clause, as mentioned.³⁶ The state religion clause remained in place, for the benefit of the Salafi current, but article 4 states, to the chagrin of the Salafis, that “Islamic Sharīa is the source of legislation. Interpretation of the codification of Sharīa provisions shall be assigned exclusively to the Legislative Authority.”³⁷

The process of drafting the Yemeni constitution was one of constitution making amidst a military conflict, which was reflected in the internal struggles between Hādī’s supporters and the Ḥūthī representatives (Johnson 2017). While the NDC was considered a positive model of productive negotiations, the 2015 draft constitution was formulated in an environment of increasing tension and mutual suspicion between the parties, as well

³¹ Wathīqat al-Ḥiwār al-Waṭanī al-Shāmil, 2013–2014, p. 86.

³² Wathīqat al-Ḥiwār al-Waṭanī al-Shāmil, 2013–2014, p. 93.

³³ Wathīqat al-Ḥiwār al-Waṭanī al-Shāmil, 2013–2014, article 29, p. 112; article 71, p. 114 respectively.

³⁴ National Dialogue Conference Outcomes Document 2013–2014, pp. 230–31 www.peaceagreements.org/masterdocument/1400 (accessed on 12 April 2021).

³⁵ The 2015 Draft Yemeni Constitution (English): constitutionnet.org/sites/default/files/2017-07/2015%20-%20Draft%20constitution%20%28English%29.pdf (accessed on 12 April 2021). Arabic: www.constituteproject.org/constitution/Yemen_2015D.pdf?lang=ar (accessed on 12 April 2021).

³⁶ The following is a comparison between article 49 of the 2014 Tunisian constitution and article 134 of the Yemeni 2015 draft constitution. Similarities are highlighted: Article 49 of the 2014 Tunisian constitution states: “yuḥaddidu al-qānūn al-ḍawābiṭ al-mutaalliqā bi-l-ḥuqūq wa-l-ḥurriyyāt al-maḍmūna bi-hādha al-dustūr wa-mumārasatahā bi-mā lā yanālu min jawharihā. Wa-lā tūḍau hādhihi al-ḍawābiṭ illā li-ḍarūra taqtaḍiha dawla madaniyya dīmuqrāṭiyya wa-bi-hadaf ḥimāyat ḥuqūq al-ghayr, aw li-muqtaḍayāt al-amm al-amm, aw al-difā al-waṭanī, aw al-ṣiḥḥa al-amma, aw al-ādāb al-amma . . . ” Article 134 of the Yemeni 2015 draft constitution states: “al-ḥuqūq wa-l-ḥurriyyāt al-muqarra bi-hādha al-dustūr lā taqbalu taṭīl^{an} wa-lā intiḳāṣ^{an} wa-lā yajūzu al-masās bi-hā bi-ayy šūra min al-šuar, wa-fi al-aḥwāl al-lati yanuṣṣu al-qānūn fihā bi-waḍ ḍawābiṭ li-tanzīm al-ḥuqūq wa-l-ḥurriyyāt lā yajūzu li-hādhihi al-ḍawābiṭ an tamassu aṣl al-ḥaqq wa-jawharahu wa-maḍmūnahū. Wa-lā tataqarraru al-ḍawābiṭ illā li-ḍarūra wa-bi-hadaf ḥimāyat ḥuqūq al-ghayr aw al-nizām al-amm aw al-ādāb al-amma, wa-bi-l-ḥadd al-adnā al-lāzim li-hādhihi al-arāḍ, wa-bi-mā taqtaḍihi usus al-dawla al-madaniyya al-dīmuqrāṭiyya, wa-alā allā taqtaṣira alā ḥāla khāṣṣa.

³⁷ The 2015 Draft Yemeni Constitution.

as allegations of injustice and marginalization. Changes in the balance of power on the field of battle affected positions within the committee. At the end of December 2014, three weeks before the publication of the official draft constitution, the Ḥūthī movement rejected the wording of the draft constitution based on their opposition to the intention to divide Yemen into six federal districts, seeing it as a violation of the NDC Outcomes Document (Mujais 2017). On 15 January 2015, the Ḥūthīs kidnapped Hādī's Chief of Staff, Aḥmad Awḍ bin Mubārak, who was on his way to hand over the final draft constitution to the National Body in Ṣanaa. The failed attempt to bring about his release led to the resignation of Hādī, the prime minister and the cabinet, and the outbreak of government chaos. As a result, this draft constitution did not reach a referendum, and Yemen degenerated into an all-out war between a variety of military, tribal and religious forces.

The constitutionalization of the civil state, if ratified, would have been a “contextual and contingent element of transitional constitutionalism whereby the constitution plays a role in transforming legacies of the past” (Turner 2015, p. 280). It would have expressed a desire to break from what had gone before and reshape politics through constitutional design. Since in Yemen there is no evidence of a prolonged local debate on the civil state model, as opposed to Egypt, and no record of a pre-revolutionary understanding regarding this concept between political currents, like in Tunisia, it is reasonable to assume that the civil state idea reached Yemen as a copy of the demands posed by the revolutionaries in Tunisia. After consolidating in Yemeni society and acquiring local interpretations in addition to its original meanings, the civil state idea was constitutionalized, using phrasings similar to the 2014 Tunisian constitution. Due to the similarity in wording of the civil state clauses in Tunisia and Yemen, one cannot but wonder whether the civil state is becoming—regardless of its context-specific local traditions and experiences—a constitutional, marketable item in a regional reservoir, which will continue to cross borders and make its way into other constitutional documents in the region (Frankenberg 2013a, p. 4).

5. Conclusions

Since the outbreak of the Arab Spring uprisings, the civil state model has gained a foothold in many Arab states as an ideal model, acquiring a range of meanings affected by the various complexities of different political environments and religious beliefs. This paper sought to examine the path taken in recent years by the idea of a civil state until reaching the constitutions drafted in three states following the Arab uprisings; it also sought to stretch the symbolic and practical meanings of this concept in each case individually, according to its specific context; and to evaluate possible implications of such cross-country self-definitions of modern Islamic states.

The examination of the three cases implies that the contemporary self-definition of a civil state in different constitutions of Muslim states has a declarative significance on matters of identity and orientation, as well as practical implications on matters of governance, legislation, and religion. On the level of a country's expressive identity, defining a state as civil reflects adherence to a model of statehood which is neither clerical-theocratic nor secular. This post-secular formal statement represents a unitary agenda which strives to combine Islam with modernity, while decrying scriptural understandings of the sacred texts and fundamentalist regressive approaches to Islamic political theory. In all three cases examined, the perpetuation of the state as civil in the constitution means a joint rejection of alternative Islamic models of state, such as the Iranian model or the model of ISIS, alongside a shared denunciation of foreign models of polity, like secular Western democracies. The civil state model indicates willingness to embrace modern norms and patterns of governing without exceeding the limits of the public consensus that considers Islam a supreme value in managing state affairs and social life.

On the prescriptive level, the ambiguity of the term civil state leaves the legislative, executive, and judicial branches large room to maneuver between policies grounded on religious reasoning and rationalistic considerations. As all legislation must conform with

the self-definition of the civil state anchored in the constitution, the civil-ness clause can serve as a foundation for the repeal or amendment of laws based on the tenets and practices of religion or for the rejection of such new bills. Yet, as the Tunisian case has proven thus far, the civil-ness clause can be interpreted in a way that allows the drafting of new laws based on Islamic practices and traditions. Hence, the constitutionalization of the civil state does not entail a drastic and immediate reform of the status of religion in the state.

Along with this common denominator for the three cases examined, the concept of a civil state carries different context-dependent meanings according to each nation's distinctive history and character. The civil-ness of the state anchored in article 200 of Egypt's amended 2014 constitution encapsulates a decades-long debate on the place of Islam in politics and on the country's religious/non-religious orientation. The constitutionalization of the civil state reflects an attempt to elevate, endorse and affirm the anti-Islamist narrative of the 30 June 2013 coup against Mursī and the Muslim Brotherhood. It is intended to prevent a resurgence of political currents advocating the conception of the totality of Islam, and to authorize the military to intervene to thwart any such possibility in the future.

Based on the Egyptian experience, where the polarization over the idea of the civil state caused frequent upheavals, its constitutionalization in the 2014 Tunisian constitution reflects a willingness on the part of competing political currents, both Islamist and non-Islamist, to compromise their ideological principles in matters of state–religion relations. A joint perception of Islam as a value and civilization instead of a state and law helped formulate the identity articles of the constitution as an agreeable social contract, out of a collective effort to secure the transitional phase and the success of the democratization process.

In the Yemeni case, the constitutionalization of the civil state, which remained only a draft, did not echo an existing reality or a long-standing debate on the role of Islam in politics but, rather, wishful thinking. It expressed the desire of the protesters of Taghyr square to resemble other reformed Islamic states, such as Tunisia, renouncing primordial patterns of statehood and governance. The mere migration of the idea of a civil state to Yemen indicates the transfer of this concept not only from an intellectual and popular discourse in one country to another, but also its transfer from modernized countries to tribal societies.

Moreover, the transfer of the civil state idea between the three cases mirrors its relocation to the constitutional realm, which led to its endorsement as a satisfactory solution for questions of identity and the compatibility between Islam and modernity. The Yemeni case proves, furthermore, that the civil state concept has taken root in Arab societies beyond the issue of religiosity and secularism. It is likely that in the future, the civil state concept will also penetrate into the legislative discourse, as these states will be required to translate the articles of the constitution into more detailed laws, and constitutional courts will have to interpret laws and draft laws in accordance with the civil state constitutional articles. As time goes on, it will be easier for us to estimate the practical implications of the constitutionalization of this concept. It will be interesting to see whether the interplay between the three test cases will continue in terms of the legal interpretation given to these respective articles.

As additional Arab countries come to engage in the constitutionalization of the civil state, we will better grasp the reach of the concept in the Muslim world, the local, context-specific perceptions that the concept carries, and its cross-border meanings. In Egypt, the concept has roots going back 100 years; in Tunisia, the intellectual debate around the civil state lasted for several decades, while in Yemen it is evident that the concept was absorbed mainly around the Arab Uprisings and under the influence of both Egypt and Tunisia. It can only be assumed that henceforth the process of its reception in other Muslim countries will be short, as in the Yemeni case. If the civil state concept will continue penetrating Islamic constitutions, it will confirm its function as a constitutional commodity available in the free market of constitutional ideas. Future comparative studies of other unique idioms common to post-Arab Spring constitutions will contribute to our understanding

of whether, in parallel with a global catalog of constitutional concepts, a regional catalog unique to Islamic countries is also being formed.

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