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Citation for the original published paper (version of record):

Saati, A. (2018)

Negotiating the Post-Revolution Constitution for Tunisia – Members of the National Constituent Assembly Share Their Experiences

International Law Research, 7(1): 235-246

<https://doi.org/10.5539/ilr.v7n1p235>

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<http://urn.kb.se/resolve?urn=urn:nbn:se:umu:diva-150523>

Negotiating the Post-Revolution Constitution for Tunisia – Members of the National Constituent Assembly Share Their Experiences

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Received: July 7, 2018

Accepted: July 29, 2018

Online Published: August 9, 2018

doi:10.5539/ilr.v7n1p235

URL: <https://doi.org/10.5539/ilr.v7n1p235>

Abstract

Though the Tunisian transition to democracy faces challenges seven years following the 2011 revolution and four years following the enactment of the new constitution, the country still constitutes a ‘success story’, especially in comparison to neighbouring states that were also touched by the Arab Uprisings. This paper takes an interest in exploring the Tunisian constitution-making process, and especially the political elite negotiated compromises that took place in the National Constituent Assembly. How were Tunisian religious and secular political forces able to unite and compromise on a constitutional document; what motivated their actions during the constitutional talks? Ideologies, rational pragmatism, self-serving interests or something else? This is a pertinent question that has bearing for other states that are in transition from authoritarian rule, in which religious and secular political parties are struggling to draft the political rules of the game anew. This is a qualitative study, based on interviews with political representatives, from a broad range of Tunisian political parties, who were part of the constitutional negotiations. Their responses suggest that pragmatism and rationality took precedence over ideological positions during the negotiations, and that this was indispensable for a draft to be produced. Despite this, the study argues that ideologies were likely not irrelevant in the minds of the political elites who were negotiating the post-revolution constitution, and that previous agreements and discussions among these elites that were, in fact, based on ideological positions, facilitated the constitutional negotiations that took place in the aftermath of the ousting of Ben-Ali.

Keywords: post-authoritarian constitution-making, Tunisia, political elites, pragmatism, ideologies

1. Introduction

Seven years have passed since the Tunisian revolution; four years have passed since the promulgation of the new, post-revolutionary, constitution. The narrative of the Tunisian transition from authoritarian rule to democracy has been depicted in much scholarly work as an unequivocal ‘success story’ (see e.g. Zoubir, 2015, Pickard, 2014, Stepan, 2012). Although this discourse has recently been challenged, mainly because of increasing powers in the hands of the Tunisian executive, failure to implement a number of judicial institutions that are stipulated in the 2014 constitution, and a general decrease of popular insight in the political process (Fassihian & Wilson, 2018, Mekki, 2018), the Tunisian case is still unique in the context of the Arab Uprisings that it was part of. Tunisia remains the one case in which the transition from authoritarianism did not revert back into a new form of authoritarianism (not yet, at least), or military rule (Egypt), or into general chaos and institutional disorder (Libya), or did not imply any real change at all (Morocco and Jordan), or – perhaps worse of all scenarios – did not result in mayhem and civil war (Syria and Yemen). Indeed, in comparison to other states that were part of the Uprisings, Tunisia has done well. The political elites of the country were able to unite behind a common vision for post-revolutionary Tunisia, come together and complete the task of drafting a democratic constitution for the country. This accomplishment came to the surprise of many, especially due to the fact that the October 2011 elections to the National Constituent Assembly (henceforth referred to as the NCA); the institutional body tasked to draft the new constitution – turned out to be a success for the Islamist political party *Ennahda*. Out of the total number of 217 seats to the NCA, the party managed to secure 89, making it the largest party in the assembly (Stepan, 2012, 90). Scholarly ideas of how democracy and Islam do not mix and match (see e.g. Huntington, 1993, Lewis, 1990, Booroah & Paldam, 2007, cf. Stepan 2012), certainly helped to fuel speculations as to what would happen next in the Tunisian transition process. Would a democratic transition be in jeopardy? Would

Ennahda use this opportunity to enforce its Islamist agenda and turn the country into a theocracy in the shape of the Islamic Republic of Iran? Would its members be unwilling to compromise with members of secular political parties in the NCA? Having been banned from the political scene during the Ben-Ali era, would *Ennahda* now have a retaliatory agenda? As events unfolded during the work of the NCA, none of these speculations were materialized. On the contrary, compromises were struck between members of opposing political parties – secular and Islamists alike. The question to be answered is; what motivated this willingness among the Tunisian political elites to compromise? The larger, and more general question, looming in the background, which is of undeniable interest for other countries in transition from authoritarianism, is; what is the rationale behind the actions and behaviours of political actors in constitutional processes? What motivates their actions; is it ideology, rational self-interest, a combination of both, or something else? This article sets out to shed light on these issues, focusing the empirical investigation to the case of Tunisia.

There are a number of reasons that motivate the study of constitution-making processes in times of transition for one, and the empirical study of Tunisia for the other. As regards constitution-making in post-authoritarian and post-conflict contexts, the importance of it cannot be emphasised enough or too many times (see e.g. the work of Saati, 2015, Saati, 2017a, Banks, 2007, Samuels, 2006, Miller, 2010, Brandt et al. 2011, Bâli & Lerner 2017). The constitution stipulates the rules of the political game, and actors in states where political space for the opposition has been partly, or entirely, closed during an authoritarian regime will now see an opportunity to have their voices heard, and values considered, when the founding laws of the country are being drafted anew. How this exercise of constitutional manoeuvring, between political opponents, particularly when opponents are also divided along religious/secular lines, is handled has great relevance, not to mention effects, for whether a state in transition travels down a democratic path or reverts back to some form of authoritarianism (Bâli & Lerner, 2017). As regards Tunisia as a specific case for in-depth probing, as mentioned above, the case is an exception among its fellow Arab-Uprising counterparts; whereas unity and political compromises that profoundly altered future political processes remained (and remains) absent in the other cases, this was manifested in Tunisia, and done so by the achievement of religious and secular political actors to relate to each other under democratic conditions. This makes the case pertinent to study for purposes of drawing conclusions that might be of relevance for other post-authoritarian states as well in which constitution-making includes political actors from secular and religious parties.

This study is based on field work conducted in Tunis, Tunisia, during November and December of 2017. Interviews with political elites who represented *Ennahda*, *The Congress of the Republic*, *Ettakatol*, *The Popular Petition for Freedom, Justice and Development*, *Al Massar* and *Afek Tounes* in the NCA were carried out during this field trip. The responses of these individuals as regards their understanding/their experiences of working with members from other political affiliations in order to draft a constitution for post-revolutionary Tunisia, constitutes the backbone of the empirical part of this study. Before reaching this section however, the next part of this article brings attention to, and discusses, a number of prominent theoretical understandings when it comes to increasing our understanding as to why political elites behave as they do during constitutional negotiations. This is followed by a section that explains and discusses the methodology of the study, after which the empirical part of the article is presented. The final part of the study draws conclusions based on the findings of the interviews.

2. Constitution-Making: What Motivates the Actions of Political Elites?

As accounted for by Ran Hirschl (2013), three main scholarly strands dominate the field of political science when it comes to explaining motivational aspects that underlie political elite behaviour in the specific context of constitution-making. These are; *ideational* theories, *functional* theories, and lastly; theories that stress constitutions as (mainly, self-serving) *strategic* instruments of power (see Hirschl, 2013, 158-170). Among these, I contend that the first and the last are more frequently encountered compared to the functional approach, which could arguably be viewed as falling somewhere in between ideational and strategic theories. This section will outline these three approaches, as well a theoretical strand of thought that is also prevalent in this field of research, namely that of path-dependency as an explanatory factor as to why/why not political elites are able to unite and compromise during constitutional negotiations.

Starting with the ideational strand, it is as the name indicates, held that when engaging in constitutional negotiations, politicians present, argue and defend provisions that are based on the ideological platform of the political party that they are representing. In essence, ideas take precedence over all other things, which means that regardless of the individual context of the state in question, and regardless of internal or external circumstances or occurrences that might reveal themselves during the course of the constitution-making process, political elites will stay loyal to the normative ideas that the party line prescribes (as these politicians genuinely *do* believe in their normative superiority), and advance these in all debates with political opponents (Hirschl,

2013, 158-160). Though the ideational notion has theoretical value, its explanatory value as far as practical constitution-making is concerned can be put into question. The fact of the matter is that ‘constitutional borrowing’, i.e. that states, either because they are advised to do so by external experts, or simply find themselves under normative pressure due to the current archetype for what a suitable and expected constitution should include, is common.¹ Hence, the idea that constitutions are entirely domestic products, sheltered from transnational influence, is just not accurate (Ginsburg, 2017, 7). This also implies that as far as the empirical study of the motivational aspects that guide political elites in constitution-making processes is concerned, it is difficult to determine whether the elites under study are in fact arguing on the basis of *their own/their political party's* ideological platform or rather on the basis of a transnational normative understanding of what constitutes a ‘good constitution’.

The main supposition of the functional theoretical approach when it comes to why political elites advance certain constitutional provisions during negotiations is simply that elites make propositions based on what they deem to be the best possible solutions to fundamental as well as coordination problems (Hirschl, 2013, 161). Though this appears as a straightforward theoretical argument, the fact of the matter remains that the solutions being advanced ought to be based in some prior understanding, or perhaps better expressed; in some prior *idea*, of what the best possible solution might be. It would likely not be too farfetched to assume that this idea or notion, in turn, will be informed by the ideology of the political party that the politician in question is a representative of. For example; how to ‘best’ structure the decentralization of power between different administrative units in a federation will likely be dependent on the politician’s ideological stance concerning the premises upon which power should be shared. This is why I contend that the boundary between the functional and the ideational theory is difficult to distinguish. As will become clear soon, it is likewise challenging to draw a definite boundary between the functional theory and theories that stress constitution-making as a strategic and realist endeavour. It is not implausible that responses to various types of coordination problems (between different administrative units as just exemplified), are framed in a manner that are intended to serve the self-serving interests of the political elites who are advancing the particular response, rather than being framed in a completely neutral manner. Constitution-making as a strategic undertaking is the focus of attention in the following section.

It is quite clear that a rational choice logic underpins theoretical understandings of constitution-making as a, foremost, strategic undertaking. The thrust of the argument being that, in light of the very nature of constitutions; as roadmaps for political life and as prescriptions for the allocation of power that are, furthermore, not to be tinkered with every time there is an alternation of government, political elites will do their utmost to lock in institutional arrangements that they deem to be the most beneficial from their own point of view – either their own personal point of view, but perhaps more likely, from the point of view of their political party (Hirschl, 2013, 157, Elster, 2012, 22-24). For example; representatives of large political parties can be expected to push for a majoritarian electoral system because they recognise that such a system increases their power while at the same time pushes out smaller political parties from the legislative assembly; whereas, representatives of smaller political parties, in direct contrast, are likely to push for a proportional electoral system and a fairly low electoral threshold in order to ensure that they are granted political representation in the legislature. From this follows that constitution-making is, most certainly, to be considered as a pragmatic exercise in which strategizing takes precedence over ideologies, and over neutral functional understandings as to how to solve specific problems. Also important to note, as emphasised by Elster (1995, 388), is that the ability for constitution makers to approach drafting in a pragmatic, rational and strategic way, is to conduct the exercise in secrecy, i.e. not in front of the general public. This, since discussions in public appear to lead to stubbornness, grandstanding and an unwillingness to be exactly that, i.e. pragmatic and rational (Elster, 1995, 388). Strategizing, however, can and does take different expressions, depending on the context in which the state finds itself as well as depending on who the actors in the constitution-making process are. Considering that the empirical part of this paper is concerned with constitution-making in Tunisia and the underlying motifs of the Tunisian political elites, Alfred Stepan’s theoretical conception about the ‘twin tolerations’ (Stepan, 2000, Stepan 2012) serves this paper well, and is a useful illustration of rational and strategic constitutional manoeuvring.

The idea of the twin tolerations is that government must respect the religious freedom of religious groups and associations, as long as these groups exercise this freedom without infringing on the constitutional rights of other individuals of society. This is the first of the two tolerations. The second toleration implies that religious groups

¹ Normative understandings of what a constitution should rightfully include set aside, normative understandings concerning the very *process* of how the constitution ought to be produced also influence contemporary constitution-making processes particularly in post-authoritarian and post-conflict contexts (see Saati 2017b).

and associations, on their part, accept and allow democratically elected representatives to do what they are elected to do, i.e. draft laws, and to do so without denying the legitimacy of those laws on the premises that ‘only laws made by God’ are legitimate (Stepan, 2012). For states in which individuals who are very religious as well as individuals who are less so (or even not at all) reside, the practical exercise of the twin tolerations might very well be the thing that makes living in co-existence possible. And indeed, political elites – religious and secular alike – who are involved in constitutional negotiations, can view the notion of the twin tolerations as a strategic matter to be handled pragmatically during discussions. As eloquently captured by Hirschl (2012), even for those politicians who are strongly opposed to granting rights to any specific religion, or acknowledging any specific religion as the official religion of the state, paradoxically, by constitutionally enshrining religion these politicians can ‘talk the religious talk without walking most of what they regards as theocracy’s unappealing, costly walk’ (2012, 165). The logic is as simple as it is rational and pragmatic; constitutional enshrinement implies placing religion under the checks and balances of state institutions which, in turn, circumvents (or at least mitigates) the possible radicalization of (religious) groups that might feel that they have been denied constitutional rights.

There is another strand of scholarly thinking that does not emphasise ideologies, functional aspects, or rational self-calculating aspects as explanatory factors when it comes to increasing our understanding of why political elites behave as they do during constitutional negotiations – but that is still encountered in the literature in the field. The focus of attention here is rather on a track record, a historical background, of (successful or unsuccessful) collaborations/dialogues/negotiations between political adversaries (see e.g. Marzouki, 2017, Cheeseman & Tendi 2010). In a sense; political elite’s ability to negotiate, logroll and compromise is path dependent, meaning that if they have been successful to do so in the past, the likelihood of them being able to do so again during constitutional negotiations is far better than if they have a track record of broken promises, spite and resentment. This strand of thought is inspired by scholars Michael Burton and John Higley (2001), who have argued that political change (from any type of political regime to another) hinges on political elite transformations and that the key factor that distinguishes consolidated from unconsolidated democracies is the presence of elite consensual unity. Though the authors make important contributions to the field of study by introducing a typology of different kinds of elite unity (see Burton & Higley 2001, 187-189), they remain silent on *why* some political opponents manage to find common ground and unite in some societies whereas they do not in other societies. It is in this regard that Nic Cheeseman (2011) offers valuable insights when suggesting that elite unity is dependent on whether or not there is an already established history of political leaders being willing to work together and to compromise. If this pattern of behavior is rooted in a given society, it will inform individuals’ expectations concerning the prospect of resolving threats to their immediate interests through compromise with their political opponents (Cheeseman, 2011).

Having presented the most prominent theoretical understandings of the motivational ‘why’ as to the behavior of political elites in constitutional negotiations, the article now proceeds to present and discuss the methodology of the study after which the empirical section will ensue.

3. Methodology

The empirical investigation in this study is mainly based on in-depth interviews that were conducted by the author in Tunis, Tunisia, in November and December of 2017. During this time period, twelve interviews, in total, were carried out. In seeking respondents to interview, for purposes of covering as broad a spectrum as possible as far as political party affiliation is concerned, it was important to reach out to politicians who were elected to the NCA in 2011 and who belonged to different political parties.

Representatives, who had been elected to the NCA, from the political parties *Ennahda*, *The Congress of the Republic*, *Afek Tounes*, *The Democratic Forum for Labour and Liberties* (most commonly referred to as *Ettakatol*), *Al Massar*, *The Popular Petition for Freedom, Justice and Development*, *The Progressive Democratic Party* and *The Democratic Modernist Pole* were contacted via email during autumn of 2017. An information letter was emailed to prospective respondents in which information about the aim and purpose of the research project was explained. This information was conveyed in English as well as in French. The letter also made clear that participation in the study was voluntary and that anonymity would be assured in all research articles produced from the material of the interviews, if the participants themselves conveyed that they indeed did not want their name and/or party affiliation disclosed. At this point, the prospective respondents were also informed that they had the option to use an interpreter during the interviews if they preferred to answer the questions in French or Arabic. Having sent such information letters to approximately twenty prospective respondents, representatives from all but two of above mentioned political parties agreed to participate in the study. Though repeated efforts were made, representatives from *The Progressive Democratic Party* and *The Democratic Modernist Pole* did not respond to emails or phone calls. Though this was unfortunate; had representatives from

these political affiliations chosen to participate, the study would have been able to include an even broader spectrum of representatives from different parties, which might have revealed a broader range of experiences of negotiating the Tunisian constitution. However, as the final interviews were drawing to a close in December of 2017, it became quite clear that respondents had relatively similar experiences and that they answered the questions along quite similar lines regardless of political affiliation. Hence, it is not necessarily the case that representatives from *The Progressive Democratic Party* and *The Democratic Modernist Pole* would have expressed opinions and experiences that differed substantially from the responses of the representatives of the other political parties that did participate in the study.

Interviews were recorded (with the oral consent of the respondent prior to each interview) and lasted about 45-60 minutes. For precautionary reasons in case of any technical failure, written notes were taken during the course of the interviews as well. All interviews were transcribed by the author on the same day that the interview had been conducted. Out of the twelve interviews, eight were carried out in English, i.e. without the use of an interpreter, whereas four of the respondents wished to use an interpreter. Through personal contacts in Tunis, the author was successful in hiring an interpreter who had considerable experience interpreting similar types of discussions, i.e., discussions between researchers and politicians. Three of these interviews were translated from French to English and one interview from Arabic to English. The recordings from these interviews were likewise, as the interviews without an interpreter, transcribed by the author.

A thematic and theoretically informed interview guide, developed by the author, was used for the interviews. The guide centred on two main themes: i) *important aspects to consider in post-authoritarian constitution-making*, and, ii) *the uniqueness of the Tunisian constitution-making process following the 2011 revolution*. As regards the first theme, questions were developed to give the author an idea of how the respondents, in general terms, viewed constitution-making in a post-authoritarian context. Questions for the second theme revolved around the very issues that are at the heart of this article, namely to gain a deeper understanding of the Tunisian political elites ability to find common ground, bargain, logroll and consensually agree on a constitutional document. For this purpose, questions such as ‘How did you experience reaching compromises with political opponents, secular and religious alike, during the NCA negotiations?’, ‘Why do believe that the Tunisian constitution-making process turned out to be the “success story” that it is commonly referred to?’, and ‘Do you believe that the *Collectif du 18 Octobre* from 2005 played a role in facilitating compromises between political opponents during the constitutional negotiations after the 2011 revolution?’.

It is also important to mention that most of the respondents agreed to have their name and party affiliation disclosed in research articles produced by the author, but some did not want their name mentioned. Hence, in the empirical section of this article, in instances where experiences of respondents who wished to be anonymous are referred to, this will be done in manner that does not reveal his/her name. In all other instances, the respondents name as well as party affiliation will be revealed. It should also be mentioned that in addition to the interview material that the author collected during November and December of 2017 in Tunis, material from another three interviews that were conducted by the United Nations Development Programme (UNDP) are also used in this study. This since the answers from these interviews echo the sentiments that were expressed during the interviews performed by the author and therefore give more robustness to the findings. These interviews are available on the UNDP ‘Arab States’ website, and were conducted by employees of the organization in 2016. These three interviews are with members from *The Congress of the Republic*, *Afek Tounes* and *Ennahda*.

4. Negotiating the Tunisian Post-Revolutionary Constitution

During the interviews with the representatives from the different political affiliations who had been elected to the NCA, it soon became clear that a pragmatic approach, in fact, took precedence over ideological battles during negotiations. Souhir Dardouri, a representative of the *Congress of the Republic*, in the NCA even expressed it in terms of ‘ideology being a handicap’ (Dardouri, 2017) in the context of constitutional negotiations as it would lead to, and did at times, an unwillingness to listen to others. Hence, albeit with a little bit more, or a slightly bit less emphasis, the respondents agreed that in order to be able to move forth with the constitution-making process and fulfil the aim of the work of the NCA, i.e. to actually draft and adopt a constitution; pragmatism was key. As conveyed by Imen Mohamed, a representative of *Ennahda*, when asked about the role of ideology versus a more rational and pragmatic approach during the work of the NCA:

Of course, to exercise pragmatism was the case for all political parties. All parties had their ideas of what they wanted in the constitution, but for compromises to be struck, ideologies sometimes had to give way to rationality– not just for us, but for everyone.

(Mohamed, 2017)

Imen Mohamed's colleague, and vice president of the NCA, Mehrezia Labidi even expressed it in term of:

It's not ideology we need, it's pragmatism. It's no longer the time for ideologies, it's the time for experience, it's the time for flexibility, it's the time to meet the other and to make things possible.

(M. Labidi, 2017)

Selim Ben Abdeselem, a representative of *Ettakatol*, also agreed about the prominent role of pragmatism and strategizing during the work of the NCA; from the perspective of his own political party, the other political parties in opposition to *Ennahda* in the NCA, as well as from the perspective of *Ennahda*'s members:

A pragmatic approach was pursued by everyone, I think. They [Ennahda] could not impose exactly what they wanted because we [the opposition] were unified, so they were strategic in calculating what they could argue to have reflected in the constitution.

(Abdeselem, 2017)

Even though ideological positions appear to have taken a back seat for the benefit of rationality, strategizing, and bargaining, it would be a mistake to assume that this approach was pursued by all 217 members of the NCA from the very first day of its work. Quite the contrary. As expressed by Mabrouka Mbarek, a representative of the *Congress of the Republic* during the negotiations, and echoed by Noomane Fehri a representative of *Afek Tounes*, the atmosphere within the NCA altered numerous times during the course of its work between the years 2011-2014 (Mbarek, 2017, Fehri, 2017). Some of these changes, which had profound effects on the work of the NCA, were internal whereas others were external.

Dhamir Mannai, who represented the *Congress of the Republic* during the negotiations, stated that in the early phase of the NCA's work, mistrust between the members was widespread. People were 'reacting too fast, without thinking' (Mannai, 2017). It was commonplace to simply 'shoot down' the ideas of others on the mere basis of these ideas being proposed by representatives of other affiliations than one's own (Mannai, 2017). The elected members of the NCA were hence, in his opinion, not evaluating constitutional provisions in an unbiased and neutral manner. The ambiance of mutual distrust was also illustratively depicted by Fehri who said that, during the early stages of the NCA's work, the representatives carried around invisible 'shields' that made it nearly impossible to see, i.e. properly evaluate, what representatives from other political parties were actually suggesting. Even during those short moments when the 'shield came down so that we could see each other's faces' (Fehri, 2017), people were predisposed to discard any and all propositions that emanated from opposing parties. The state of affairs, however, altered due to a number of circumstances, the most trivial perhaps, yet still significant was the informal meetings and gatherings at lunch time. This everyday, mundane, exercise of eating lunch at the cantina of the NCA was stressed by several of the respondents, not least Fehri, before mentioned Mannai, Jalel Bouzid from *Ettakatol*, Ferida Labidi from *Ennahda*, and a representative from *The Popular Petition for Freedom, Justice and Development*, as an important contributing factor in reducing the level of mistrust and animosity between the NCA members, while at the same time providing an avenue for dialogue and increased understanding concerning the necessity to enter negotiations in a pragmatic manner (Fehri, 2017, Mannai, 2017, Bouzid, 2017, F. Labidi, 2017, Representative from *The Popular Petition for Freedom, Justice and Development*, 2017).

It is not improbable that the informal lunch gatherings gave the Tunisian political elites a sense of increased manoeuvre space for strategizing in a rational and pragmatic way, and that this contributed in setting the motion of compromise in gear. In fact, these informal get-togethers conform quite well to Elster's proposition concerning the value of conducting negotiations between political elites in seclusion. Though Elster's proposition mainly concerns secrecy from the public eye, it is possible that debating the content of the constitution in the floor of the NCA in front of all 217 delegates contributed to grandstanding and stubbornness, whereas discussing the same issues during lunch with a smaller crowd of delegates provided for a more constructive atmosphere as far as striking compromises are concerned. In other words, one could compare debating in the floor of the NCA as a public display of argumentation, quite contrary to discussing constitutional provisions in an informal setting such as the cantina with a limited number of colleagues. It's worthwhile lingering a bit on Elster's (1995) thoughts concerning secrecy as a constructive factor.

In July 2013, after 21 months of NCA procedures; after having negotiated several different constitutional texts;

and after two political assassinations² that had almost derailed the work of the NCA, a final draft was proposed (Carter Center 2014, 33). In conjunction with the release of this draft, a 23-member ad-hoc Consensus Commission was established. The purpose of this commission was, as the name indicates, to consensually agree on the outstanding issues that had up until that point not been resolved. Members from all political parties in the NCA as well as independent's held seats in the commission, the work of which was *closed* to outside individuals (Carter Center 2014, 33). During the interviews, the significance of this specific commission and the way that it, due to its very set-up of including only a fraction of the members of the entire NCA, allowed for constructive, rational and pragmatic decision-making, was emphasised repeatedly (Jeribi, 2017, Mannai, 2017, Representative from *The Popular Petition for Freedom, Justice and Development*, 2017, Abdesselem, 2017, M. Labidi, 2017), as was the *necessity* of this commission to pragmatically solve the remaining contentious issues due to the pressure from the streets following the political assassinations (Fehri, 2017). Dhamir Mannai, (*Congress of the Republic*), developed his thoughts on ideology versus pragmatism, and concluded that *if* ideological standpoints had been non-negotiable, the members of the Consensus Commission would not have been able to reach the necessary compromises that they indeed were able to do. Even for members from *Ennahda*, who were conceived by members from other political parties in the NCA as being particularly driven by ideology, being pragmatic did not appear to be an obstacle:

Had certain issues really been ideological, they [Ennahda] would not back down from them as easily as they did in the Consensus Commission.

(Mannai, 2017)

Mannai continued to elaborate his thoughts, and accentuated the element of seclusion in the work of the Consensus Commission:

I don't actually think we had an ideology problem in this commission. Pragmatism was key, and we had to protect it from outside disturbances; this was important. By working in this commission, the members could afford to be pragmatic as they didn't have to make public statements towards their voters all of the time. So this commission really was a good mechanism to allow for pragmatism to work its way. Whatever we couldn't achieve outside of this commission, we could achieve within this commission.

(Mannai, 2017)

Rym Mahjoub, who represented *Afek Tounes* in the NCA, in her interview with the UNDP also brought attention to how strategizing in the work of the Consensus Commission was a quite deliberate and methodical procedure, particularly for purposes of neutralizing the impact of religious provisions/religiously formulated constitutional articles suggested by members from *Ennahda*. Before entering into the negotiations with the other members of the Consensus Commission a strategy had already been settled amongst the members of the opposition; the different 'roles' that these opposition representatives were to take during the debates had been decided; who would play, in a sense, the 'bad-cop' by being more tough in the debates, and who would play the 'good-cop' by being more obliging, etc.; all of these things were carefully, strategically, considered prior to each of the meetings (Mahjoub, 2016). This procedure of rationally and pragmatically safeguarding and advancing the interests of the opposition while at the same time taming and reducing the impact of *Ennahda's* constitutional propositions, likely explains some of the successes that the opposition garnered when it comes to the content of the constitution. The very fact that the Tunisian constitution, establishes that Islam is the religion of the state (Constitution of Tunisia, Article 1), but also goes on to settle that Tunisia is a 'civil state based on citizenship, the will of the people and the supremacy of law' (Constitution of Tunisia, Article 2), illustrates the institutionalization of the twin-tolerations. Indeed, though Islam is recognized as state religion, laws made by humans are at the same time granted supremacy. These provisions, that follow each other in the constitutional text of Tunisia, is likely an outcome of the strategic deliberations that were carried out among the members in the

² Chokri Belaïd; a member of the far left party, the Democratic Patriot's Movement (and the Popular Front coalition in the NCA), was assassinated on February 6th, 2013. Less than 6 months after his death, Mohamed Brahmi, who belonged to the same coalition was also assassinated (Carter Center, 2014, 45). To be sure, as stressed in the interviews the author conducted with Nadia Chaabane from *Al Massar* (2017), Lobna Jeribi from *Ettakatol* (2017), Jalel Bouzid from *Ettakatol* (2017), Dhamir Mannai from the *Congress of the Republic* (2017), Imen Mohamed from *Ennahda* (2017), as well as the ones conducted by the UNDP with Rym Mahjoub from *Afek Tounes* (2016) and Aziz Krichen from the *Congress of the Republic* (2016), the assassinations of Belaïd and Brahmi, constituted external factors to the constitution-making process that had enormous impact on the work of the NCA. As conveyed by all of these representatives, these assassinations helped to shelve the representative's ambition to grandstand and overbid each other to instead join forces in order to reach compromises.

Consensus Commission.

5. A History of Dialogue, a Prerequisite for Future Compromise?

Before exploring the views of the respondents when it comes to how/if they perceived that discussions between opposing political parties, prior to the 2011 revolution, contributed in creating an atmosphere of compromise during the constitutional negotiations in the NCA, a brief contextual background must be provided.

When one engages with literature that pertains to the recent political history of Tunisia, one can be sure to come across scholarly writings that discuss what has come to be referred to as the *Collectif du 18 Octobre* dialogue (hereafter referred to as the *Collectif*), initiated in 2005 (see e.g. Marzouki, 2017, Boubekeur, 2016, Cavatorta & Merone, 2013, Haugbolle & Cavatorta, 2011). The *Collectif* was a successful attempt of cross-party cooperation between political parties in opposition to the Ben-Ali regime. Some of these political parties were legalized by the regime, such as the *Congress of the Republic* and the *Progressive Democratic Party*, whereas others were not; namely *Ennahda* (Haugbolle & Cavatorta, 2011, 336). The *Collectif* was initially organized as a hunger strike by the opposition for purposes of expressing their discontent over the fact that Tunisia was hosting the World Summit of the Information Society; a conference which was to discuss how to establish the foundations for an open and free information society for everyone (Marzouki, 2017). Somewhat ironically, it could be argued, seeing that the host in question – Tunisia – was under authoritarian rule, in which freedom of the press was severely circumvented (Haugbolle & Cavatorta, 2011). Nevertheless, this event forged the coming together of the opposition, and kept these parties engaged in a dialogue over the coming five years. Following the hunger strike and the World Summit meeting, the dialogue came to centre around formulating a shared vision for Tunisia, post Ben-Ali; a vision for Tunisia based on human rights and democracy (Haugbolle & Cavatorta, 2011, 325). Hence, considering this history of dialogue and ability to compromise between members representing vast ideological differences, there would thus, on a theoretical level at least, be a foundation on which compromises, in relation to the constitution, could be struck following the 2011 revolution. How did the interviewed representatives of the NCA regard this history of dialogue; did it contribute to forge consensus or not?

Though it is difficult to know the underlying reason, an interesting observation was made during the interviews when it comes to this very issue. Whereas representatives of *Ennahda* were very much in agreement that the discussions that had been initiated under the *Collectif* indeed provided an almost indispensable foundation for compromises to be reached between the NCA delegates during the constitutional negotiations, almost none of the representatives from the other political parties agreed that these past discussions had any effect on the NCA members ability to reach compromises whatsoever. Comments such as ‘I don’t believe that for a second’ (Fehri, 2017), ‘No, they [the *Collectif* discussions] were useless...’ (Chaabane, 2017), ‘I would say that the *Collectif* discussions didn’t matter post-2011’ (Mannai, 2017), ‘My feeling is no, they [the *Collectif* discussions] didn’t have an effect (Jeribi, 2017), ‘To tell you the truth...they [the *Collectif* discussions] didn’t have an effect on what happened during the constitution-making process’ (Abdesselem, 2017), were made by respondents not belonging to *Ennahda*. What furthermore unites these respondent’s answers as regards the possible impact of the discussions that took place under the *Collectif*, is that all of them emphasised that albeit that these prior discussions were valuable in terms of uniting the opposition against the Ben-Ali regime, the fact of the matter is that these talks took place in an entirely different context than the political environment that came into existence after the toppling of the regime in January of 2011. Prior to the revolution there was a ‘common enemy to unite against’ (Bouزيد, 2017, Fehri, 2017, Mannai, 2017, Jeribi, 2017), which served to unify the opposition. Hence, the discussions that took place during the *Collectif* centred on issues of how to ‘make it possible for the opposition to have the right to run for office in elections, and basically, how to establish democracy after Ben-Ali’ (Mannai, 2017). By the election of the members to the NCA in October of 2011, this mission was in sense achieved, and the next phase of the transition, and the next phase of difficult compromises, ensued; namely the exact content of the constitution; to settle the rules of the political game (Mannai, 2017). Also, as stressed by Lobna Jeribi (2017), not only was the context entirely different during the period of the NCA’s work, but some of the individuals who were present during the *Collectif* discussion had left politics by the time of the revolution and the subsequent constitution-making process, and perhaps more importantly, many of those who had partaken in the *Collectif* discussions and who were still active in politics following the revolution of 2011 and the NCA elections later that year, now found themselves in new positions. Whereas they were *all* in opposition prior to 2011, representatives from *Ennahda* now suddenly found themselves in a position of being the strongest party in the NCA while the other political parties still found themselves in opposition. Hence, the ‘changing of positions for individuals after 2011 compared to the positions they had during the *Collectif*’ (Jeribi, 2017) differed so much that the track record of making compromises did not matter in the context of drafting the new constitution.

Though the sentiments of Jeribi (2017) and the other respondents, as conveyed above, are of course valid since

they represent their personal perceptions of whether or not the *Collective* discussions had any bearing on the subsequent constitutional negotiations, it is still worthwhile to ponder if a track record of having had compromised with one's political opponents has a positive effect on one's ability to do so in the future as well – on an individual level of analysis, at least. The case might perhaps be that a history of reaching compromises is favourable for future compromises to be struck *only* if the negotiations include the exact same individuals who were involved the first time around. In other words, on an institutional/political party level, it might not matter much that for example *Ennahda* and the *Congress of the Republic* were able to negotiate during the *Collective* discussion, but it might matter that specific individuals from *Ennahda* and specific individuals from the *Congress of the Republic* had a history of reaching compromises during that period of time when they again had to try and do so in the NCA. The response of Mehrezia Labidi, from *Ennahda*, would confirm this proposition. As Labidi was the vice president of the entire NCA, she had insight into the work of all the individual commissions within the assembly, and after having conveyed that she 'definitely' (Labidi, 2017), believed that the *Collective* discussions were valuable for the work of the NCA, she stated that:

I was in charge of following the work of the separate commission's in the NCA, and in one of these I noticed that the members were solving problems much easier than members in other commissions. I was looking for a reasons as to why, and I discovered that in this specific commission we had five members who had been part of the Collective discussions...So, they had already negotiated with each other back then. They already had something in common.

(M. Labidi, 2017)

Rached Ghannouchi, co-founder of *Ennahda*, in his interview with the UNDP in 2016 also conveyed the importance of the *Collective* discussions as a cross-party collaboration that provided fertile soil for future negotiations in the NCA (Ghannouchi, 2016). In a similar manner, Ferida Labidi, who chaired the commissions on Rights and Freedoms in the NCA, expressed that the history of the *Collective* discussions facilitated compromises in this specific commission at least (F. Labidi, 2017). Imen Mohamed, also a representative of *Ennahda*, was likewise confident about the impact of these past dialogues, stating that:

The Collective showed that political elites had found agreements before, so why wouldn't they now? There was a history to build on.

(Mohamed, 2017)

Mohamed then continued to elaborate her thoughts on the matter by stating that, in addition to the history of compromise instigated under the *Collective*, the homogenous character of Tunisian society likely also facilitated the negotiation process among political elites from different parties:

We might have different opinions, different ideologies and different motivations...But we don't have, for example, ethnic conflict...We are very similar, really, and we have a strong sense of a Tunisian identity. We are all Tunisians. This is different than in Libya where people seem to identify more with their tribe...maybe this made it difficult for them to unite towards an end-goal as we in Tunisia were able to do. An end-goal that was democracy.

(Mohamed, 2017)

6. Conclusions

Based on the findings of this study, one would likely conclude that theories that emphasize constitution-making as a primarily strategic, rational, and pragmatic exercise, have a strong explanatory value – at least as far as the case of Tunisia is concerned. Indeed, when it comes to negotiating the Tunisian constitution, the Tunisian political elites who participated in the work of the NCA, appear to have shelved, or at least placed ideologies in the back seat, and approached the exercise of constitutional drafting in a rational and pragmatic way in order to be able to reach compromises. A number of factors come into play when one attempts to understand why i) compromises were struck, ii) why ideology, as it would appear, took a back seat in the negotiations.

As far as compromises are concerned, it must be remembered that although *Ennahda* managed to garner the largest amount of support in the NCA elections, it did not win an absolute majority of the votes. Hence, the party, in fact, found itself in a position where it *had* to find common ground with other parties in the NCA. This fact also implies that we can only speculate on how the constitution-making process would have unfolded had *Ennahda* (or any of the other political parties for that matter) been able to secure an absolute majority of the votes. Perhaps a willingness to listen to, accommodate, and compromise with the opposition would have been

less present. This is, however, something that we will simply never know. When it comes to the ‘why’ of ideology taking a back seat for the advantage of rationality and pragmatism, based on the responses of the interviewed politicians in this study, it would appear that the answer is quite straightforwardly ‘because it had to’. Had the representatives in the NCA, instead, rigidly held on to their ideological positions without considering to engage in compromise with their opponents, the work of the assembly would likely not have been able to proceed, a constitution would not have been drafted nor adopted. Nevertheless, even though rationality, strategizing and pragmatism, seem to have been winning concepts in the Tunisian case, I would still be hesitant to exclude the role of ideology as a motivational factor entirely. This since there was a history of political elite compromise that, actually, centered on an ideological position. Let me elaborate my reasoning.

The very fact that the political parties who were part of the *Collectif* discussions established that the political future of Tunisia would be based on human rights and democracy is not only potentially valuable for purposes of laying a foundation for future compromises, but it is also an *ideological* standpoint. Democracy in itself may be a concept, but to agree that it is an ideal form of government, is an ideological position. The fact of the matter is that in the Tunisian case, this baseline ideological position was agreed upon by all parties that were in opposition to the Ben-Ali regime when they came together in 2005 and during the continuous talks they engaged in over the coming five years up until the 2011 revolution. Hence, to argue that ideology played no role at all in the minds of the Tunisian political elites would be incorrect; there was, in fact, a baseline agreement for the future political direction of Tunisia which was very much ideological in character. This means that all of the compromises and negotiations that took place in the NCA were carried out with this baseline agreement as a backdrop; in a sense, democracy, was non-negotiable whereas the procedures through which the Tunisian democratic system was to be structured remained a matter to be negotiated. I would argue that it is in regards to these, more or less, structural aspects that pragmatism, rationality and strategizing moved to the forefront of how compromises were struck. Again, however, without the baseline agreement about a democratic Tunisia, it is difficult to imagine how the parties would have reached a mutual understanding as regards issues such as the form of government, specific rights and freedoms, and perhaps most importantly in the Tunisian context; the role of religion, and how to institutionalize the twin-tolerations, no matter how much pragmatism and rationality the individual political elites exercised.

The sort of politically negotiated baseline agreement that we find in Tunisia is interesting because it resonates with similar findings in other cases of post-authoritarian and post-conflict constitution-making. In South Africa political elites from all political parties that negotiated the post-apartheid constitution agreed on a core-set of 34 binding constitutional principles that were not to be altered during any circumstances. In the South African case, these were the ‘non-negotiables’, which could be compared to the baseline agreement of a democratic system of government in Tunisia, albeit that the South African principles were elaborated in greater detail (see Saati, 2015). The 2008-2012 Nepalese constitution-making process had a comparable set-up in which an interim constitution established a number of fundamental constitutional principles, agreed upon by all political parties, which had to be reflected in the final text of the constitution (see Saati, 2017c). Again, this could be compared to the baseline agreement about democracy as a non-negotiable principle in Tunisia. Interesting to note as well is that these non-negotiables in the South African and the Nepalese cases respectively were agreed upon in seclusion from the public eye much like the proceedings of the Consensus Commission in Tunisia. This, in turn, brings strength to Elster’s ideas of the value of allowing certain parts of constitutional negotiations to be handled by either a small group of political representatives, away from the whole group and away from the public eye, or an entire assembly of representatives, but still away from the public eye in order to facilitate an atmosphere that is more conducive for compromises to be struck.

Acknowledgments

The author gratefully acknowledges the funding provided by the Swedish Research Council (grant no. 2016-00378) in order to conduct this research. The author also extends gratitude to colleagues within the *Varieties of Peace* research program at the Department of Political Science at Umeå University for insightful comments on earlier drafts of this article.

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