

# Negotiating Women in Egypt's Post-Mubarak Constitutions (2012–2014)

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This paper presents a comparative “gender audit” of Egypt’s two constitutions (2012, 2014) developed after a people’s uprising in 2011 and 2013 led to the ousting of two presidents (Mubarak and Morsi respectively). Egypt’s two constitutions are particularly compelling for the study of gender politics in transitional constitutionalism because while the number of women participating in the constitution writing process was very similar, the gendered outcomes were starkly different. While the political opportunity for mobilizing around women’s rights was enhanced in the aftermath of Mubarak’s demise, the capitalization of these opportunities by organized political forces with an anti-feminist agenda undermined the prospects of en-gendering the first post-Mubarak constitution. In contrast, the constitution of 2014, developed under severely circumscribed political space inhibiting women’s mobilization, witnessed the exercise of women’s constitutional agency to redress the containment of women’s rights under the previous constitution and en-gender many elements of it, though the extent of its enforceability remains obscure. This paper draws on primary and secondary data to analyse, through a gender lens, the processes and outcomes involved in constitution drafting along three axes: context and political opportunity structures; coalitional politics, and political and ideological struggles.

**Keywords:** Constitutions, Women, Egypt, Revolution, Islamism, Regime change

**T**his gender audit examines the context, processes, and outcomes of Egypt’s two constitutions (2012, 2014), which were promulgated in the aftermath of the Egyptian revolution of 2011 that ended Mubarak’s 30-year rule. The case of Egypt is particularly compelling in bringing to

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the fore the interface between ideology, gender identities, and coalitional politics in relation to two constitutions passed less than 2 years apart. The puzzle underpinning this analysis is this: in view of the fact that the constitutions of 2012 and 2014 had roughly the same minute percentage of women participating in drafting them, what accounts for the very different gender-specific articles? In addition, this article contributes to the broader global debate central to understanding pathways to advancing constitutions that are more favorable to gender equality, namely, the question of the relationship between descriptive representative (proportion or numbers of women) and substantive representation (gender equality interests). This critical enquiry is informed by a number of research questions relevant to engaging with this problem in the context of constitution writing at critical junctures: What opportunities and challenges faced Egyptian women's rights organizations and advocates in en-gendering the constitutions of 2012 (ratified on December 25, 2012) and 2014 (ratified in January 2014)? How have changes in the political context and ensuing power configurations influenced prospects of en-gendering the constitution and the exercise of constitutional agency both formally and informally? Although the two Egyptian constitutional trajectories of 2012 and 2014 speak to a number of thematic areas relevant to feminist scholarship on transitions, I focus on three analytical axes that are critical for understanding the gendered processes and outcomes comparatively: (a) political opportunity structures, (b) bargaining processes and coalitional dynamics, and (c) the role of ideology in constellation with other dynamics. Political opportunity structure enables us to assess the extent to which the context is open for activism and ways in which different actors exercise their agency on gender matters at critical junctures. The second axis of analysis relates to the negotiation processes, including dynamics of formation or entrenchment of coalitions, blocs, and alliances both formal and informal. Finally, the third axis explores the role of ideologies in constellation with other factors in shaping framings and agendas around gender matters. The three axes are intertwined, for example, in contexts of high political fluidity. The kind of coalitional politics that stakeholders engage in can rapidly shift because their bargaining repertoires change (for better or for worse), and this in turn influences how they strategically negotiate their political priorities and ideological agendas. In other words, analyzing the power dynamics in the process of constitution drawing requires analysis of all three axes in relation to each other: a change in one axis influences the others. Throughout this

article, “en-gendering the constitution” refers to the articles that specifically and directly influence women’s status and roles and the power relations informing them, in particular with respect to those discussed in the constituent assemblies (or constitution-drafting bodies).<sup>1</sup>

This analysis included primary and secondary data collected between 2011 and 2014. Thirty interviews of members of the constituency assembly in 2012 and 2013 constitution-writing processes were undertaken. Some of these interviews were conducted by the author, and some were conducted by a research assistant in Egypt who provided written transcripts in Arabic that were analyzed by the author. The interviewees were selected on the basis of their representation of a broad array of political and ideological backgrounds (parties Left, Center, and Right, Islamist<sup>2</sup>, and non-Islamist<sup>3</sup>) and forms (public figures, nongoverning organizations [NGOs], movements, and coalitions). These interviews were analyzed by the author, and the data were corroborated with secondary sources in English and Arabic. Since the interviews were conducted, the political climate has become extremely antagonistic toward many of the persons interviewed, particularly those of a revolutionary or Islamist background. Therefore, with a few exceptions, the article presents, unless otherwise indicated, a synthesis rather than direct quotes of anonymized individuals. Before discussing the two constitutions, a scholarly and contextual background is presented.

## EN-GENDERING TRANSITIONAL CONSTITUTIONALISM

Feminist scholarship has highlighted the critical importance of proactively en-gendering transition processes, which would otherwise be gender-blind both in theory and in practice (Goetz and Hassim 2003; Nazneen and Sultan 2014; Rai 2000; Waylen 1994). When countries are undergoing major political transformations, they represent historical moments when political openings offer opportunities for influencing the reordering of

1. This is notwithstanding that articles that do not specifically address gender issues/roles can still have deeply gendered implications; however, these would require longitudinal studies to capture, and given that the constitution of 2012 was short-lived (1 year), it does not lend itself to comparison with the constitution of 2014 in terms of unintended gender outcomes.

2. The word Islamist here refers to social and political forces, movements, and parties that advocate for the instatement of a governance system that is fully compliant with their interpretation of the Shariah, the word is not used here synonymously to mean Muslim or Islamic.

3. Interviews were undertaken by research assistant and journalist (name anonymized for protection) with women and men belonging to Islamist political forces (Muslim Brotherhood and Salafis) as well as a wide array of non-Islamist political forces. These were supplemented with further interviews undertaken by the author.

politics and society (Nazneen and Sultan 2014; Rai 2000; Waylen 1994). This also applies to transitions in postconflict contexts, for example, in several African contexts in the 1990s (Tripp 2016, 78).

One of the central themes in scholarship on en-gendering constitutions in contexts of transitions is how feminists engage with the constitutional legacy of ousted autocrats. Viterna and Fallon's (2008, 682) insightful comparative study of four transitional contexts (El Salvador, Ghana, South Africa, and Argentina) highlights that the elimination of previous regimes' legacies is critical to the en-gendering process. Scholarship from other countries that have gone through turbulent transitions after the ousting of dictatorships such as Iraq after Saddam (Al-Ali and Pratt 2009), Libya after Ghaddafi (Johansson-Nogués 2013, 403), and Tunisia after Ben Ali (Charrad 2014, 231) point to the importance of recognizing future threats to women's rights when engaging with previous autocrats' legacies. In all of these contexts, the elimination of previous constitutional legacies was a double-edged sword. On one hand, removing the previous constitutional legacy resonated with the desire to advance a new social contract that would mark a break with the authoritarian past. On the other hand, across these contexts, a number of political forces sought to justify their agenda of revoking women's rights from new constitutions as an act of uprooting previous authoritarian constitutional legacies. This article contributes to this scholarly debate by exploring the political moment of ousting Mubarak's regime, recognizing, in tandem with the literature on backlash against women's rights in post-Arab revolt contexts (Johansson-Nogués 2013), that even minimal women's rights instated in constitutions written under authoritarian regimes were at risk of being revoked.

Feminist scholarship has also pointed to the importance of women's mobilization for en-gendering the new political order and its constitution. Cassola et al. (2014) state, "The increasingly visible and effective mobilization of organized women's rights movements has also been critical in securing the inclusion of gender protections in constitutions around the world — through sustained pressure and incremental change in some contexts and by seizing opportunities for rapid transformation during times of marked political change in others" (228). Analysis of constitutional drafting processes by Waylen (2004, 2006), Rai (2000), and Tripp (2016) in transitional contexts in Eastern Europe, Latin America, and African countries also point to the central importance of women's activism for the process of advancing a constitution that is more gender just. This study is an exploration of the extent to which the scope and strength of women's

mobilization is a predictor of a pro-equality agenda for the constitution. Future scholarship may take the ideological agenda around which mobilization occurs to be of equal if not more importance to the gender identity of the activists. In the case of Egypt, different women actively mobilized for constitutions that circumscribed as well as enhanced rights.

Similarly, feminist scholarship has pointed to the importance of women's participation in constitution-drawing processes and women's representation in constituent assemblies (Baines and Rubio-Marin 2004; Turner 2015). However, feminist scholarship on en-gendering constitutions is also beginning to interrogate the relationship between women's presence in the constitution-writing process and the degree to which constitutions favor gender equality. Suteu and Draji (2015) noted "the possibility that the resulting constitution will not be gender sensitive despite the involvement of women in the constitution making process" (106). They argue that this disjuncture between representation and gender equality outcomes can be prevented by ensuring that women's rights representatives from the civil society, defenders, and women's rights lawyers and constitutional experts participate in the process (rather than merely relying on the inclusion of a certain number of women without consideration to their ideological commitments)" (ibid). This article highlights the centrality of alliances and coalitions in informing the nature of negotiations around gender design of the constitution, and it elucidates the drivers that inform their orientations and choices.

The debate between descriptive representation (numbers) and substantive representation (interests) has been a prominent one in the broader scholarship on women in politics. Childs (2006, 2009) contends that women's critical mass is no guarantee that female members of parliament (MPs) will advance women's equality concerns in parliament. This article contributes to the interrogation of the relationship between women's descriptive and substantive representation in constitution-drawing processes, although with the caveat that in neither of the processes of creating the 2012 or 2014 constitution did Egyptian women form a critical mass.

### Contextual Background of Egypt's Constitutions

Egypt has a long and rich history of feminist engagement with constitutionalism dating back almost a century (Badran 1995, *Women and the Constitution* 2013). In the same year that Egypt inaugurated the 1923

constitution, the Egyptian Feminist Union (EFU) was formed by feminist pioneer Huda Sharawi. The EFU lobbied for the reform of the personal status law (governing family matters) and universal suffrage and protection of vulnerable women to be enshrined in the constitution of 1923, though to no avail (Women and the Constitution 2013). Other than article 19, which made primary education mandatory for girls and boys, the constitution was gender blind. In 1956, a new constitution promulgated under Nasser (Sivak-Reid 2016) assumed a more gender-explicit character; thanks to the mobilization of feminist leaders, universal suffrage was enshrined in the 1956 constitution (Guenena and Wassef 1999). Under Nasser's modernization plans, other articles were added that were intended to enable women to accommodate their roles as mothers and workers (Hatem 1994) (Table 1). Two other constitutions were inaugurated during that period; however, they were both transitory in nature. Under President Sadat, Nasser's successor, a new constitution was adopted in 1971 that further enshrined the state's responsibility toward supporting women's productive and reproductive roles (though they remained largely unenforced) (Table 1). It also introduced for the first time the principle of affirmative action for women, though it was later discarded after being deemed unconstitutional. Significantly, in 1980, an important amendment was made to the 1971 constitution that elevated the Shariah from being "a" principle source of legislation to "the" principle source. This amendment reflected a shift toward Islamization on the part of the president, the state ideology, and the resurgence of Islamist movements.

In 2007, Mubarak (who succeeded President Sadat in 1981) introduced a number of constitutional amendments intended to further consolidate and expand his powers and included an amendment to article 64 of the 1971 constitution to allow for the introduction of quotas (Table 1). Feminists were quick to recognize that the terms of the quota as described in the ensuing electoral legislation were tailored to severely limit the prospects of a nonruling-party candidate winning, and they consequently rejected the legislative measure (quota) as antithetical to women's rights (Tadros 2010).

Although a substantive body of scholarship has examined the gender dimensions of Egypt's post-Mubarak transition (e.g., Abouelnaga 2015; Abu-Lughod and El Mahdi 2011; Al-Ali 2014; Hafez 2012; Sholkamy 2012; among several others), scholarship focusing on presenting a gendered analysis of the post-Mubarak Egyptian constitutions has been scarce (exceptions include Kamal 2015 and Morsy 2014). Hala Kamal's article is an insightful account of a feminist involved in several collectives seeking to

Table 1. Comparison of Egypt's constitutions of 1956, 1971, 2012, and 2014

<i>Constitutional Theme/Article</i>	<i>1956</i>	<i>1971</i>	<i>2012</i>	<i>2014</i>
Shariah as the basis for governance	Article 3: "Islam is the religion of the state and the Arabic language is its official language."	Article 2 was originally in the 1971 constitution: "Islam is the religion of the state and the Shariah is a principle source of legislation."  In 1980, article 2 was amended to say: "Islam is the religion of the state and the Shariah is the principle source of legislation."	Article 2, amended from 1980: "Islam is the religion of the state and the Shariah is the principle source of legislation."  New article 219 added: "The principles of Islamic Shariah include general evidence, foundational rules, rules of jurisprudence, and credible sources accepted in Sunni doctrines and by the larger community."	Article 2: "Islam is the religion of the state and the Shariah is the principle source of legislation."  Article 219 of the constitution of 2012, "The principles of Islamic Shariah include general evidence, foundational rules, rules of jurisprudence, and credible sources accepted in Sunni doctrines and by the larger community," is discarded.

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Table 1. Continued

<i>Constitutional Theme/Article</i>	1956	1971	2012	2014
Equality between citizens and no discrimination on the basis of gender	New article 31 stated: "All Egyptians are equal before the law and they are equal in public rights and duties, no discrimination between them on the basis of sex, origin, language, religion or creed."	Article 40 states: "All citizens are equal before the law. they have equal public rights and duties without discrimination on grounds of race, origin, language, religion or creed."	Reference to equality of citizens/no discrimination as per article 31 of 1956 and article 40 of the 1971 constitution, "All citizens are equal before the law. they have equal public rights and duties without discrimination on grounds of race, origin, language, religion or creed," was discarded.	Article 53 added "Citizens are equal before the law; they are equal in rights, freedoms and public duties, without discrimination on the basis of religion, belief, gender, origin, race, colour, language, disability, social status, political affiliation, geographical location or any other reason."  New article (11) added "The state shall ensure the achievement of equality between women and men in all civil, political, economic, social and cultural rights in accordance with the provisions of the constitution."

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Table 1. Continued

<i>Constitutional Theme/Article</i>	<i>1956</i>	<i>1971</i>	<i>2012</i>	<i>2014</i>
Family	Article 5: “The family is the foundation of society, with its values of religion and loyalty and” Nationalism (or patriotism).”	Article 9: “The family is the basis of the society and is founded on religion, morality and patriotism. the State is keen to preserve the genuine character of the Egyptian family-together with the values and traditions it embodies, while affirming and developing this character in the relations within the Egyptian society.”	Article 10, amended such that society also has a role to preserve the Egyptian family: “The family is the foundation of society. The family’s foundations are religion, morality and patriotism. Both state and society seek to preserve the inherent character of the Egyptian family, its cohesion, stability and moral character and to protect the family as specified by law.”  New additions to article 10: “The state guarantees mother and child serves that are free of charge and pledges to reconcile duties toward her family with her work in the public sphere.”  The state provides special protections for female breadwinners, divorced women, and widows.	Article 10: “Family is the basis of society and is based on religion, morality, and patriotism. the state protects its cohesion and stability, and the consolidation of its values.”  Note: Reference to empowering society to protect the moral character of the family as per constitution of 2013 was discarded.  New Addition to article 6: “Citizenship is a right to anyone born to an Egyptian father or an Egyptian mother.”

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Table 1. Continued

<i>Constitutional Theme/Article</i>	<i>1956</i>	<i>1971</i>	<i>2012</i>	<i>2014</i>
Family cont'd	Article 19: "The state commits to helping women reconcile public activities with family life."	New article 10: "The state shall guarantee the protection of motherhood and childhood, take care of children and youth and provide suitable conditions for the development of their talents."  New article 11: "The state shall guarantee the harmonization between the duties of women toward the family and her work in society, ensuring her equality of status with man in fields of political, social, cultural and economic life without violation of the rules of Shariah."	Article 11 of the constitution of 1971 which became article 64 in the draft constitution of 2012, "The state shall guarantee the harmonization between the duties of women toward the family and her work in society, ensuring her equality of status with man in fields of political, social, cultural and economic life without violation of the rules of Shariah," was discarded in its entirety.	New addition, article 40 cont'd: "The state is committed to the protection of women against all forms of violence, and to empower women to balance their family and work duties. It is also committed to providing care and protection to mothers, children, women-headed households, elderly and the neediest women."

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Table 1. Continued

<i>Constitutional Theme/Article</i>	<i>1956</i>	<i>1971</i>	<i>2012</i>	<i>2014</i>
Political rights	<p>Article 61:            “Participation in the elections is a right for all Egyptians and their participation in public life is a patriotic duty.”            [First recognition of universal suffrage and equality of citizens.]</p>	<p>New article 62: “Citizens shall have the right to vote and express their opinions in referendums according to the provisions of the law. Their participation in public life is a national duty. The law shall regulate the right of candidacy to the People’s Assembly [parliament] and the Shura Council according to the electoral system it specifies. The law may adopt a system that combines between the individual and the party-list systems at such a ration as may be specified by the law. Such system may also include a minimum limit for the participation of women in both councils.”</p>	<p>Article 55: “It is a national duty for citizens to participate in public life. Every citizen has the right to vote, run for election, and express his opinion through a referendum. The law specifies these”</p> <p>rights. The state commits itself to entering each citizen. . . .”</p> <p>Article 62 pertaining to affirmative action was discarded.</p>	<p>Article 11, new, cont’d: “The state shall endeavor to take measures ensuring the adequate representation of women in parliament, as prescribed by law, and to ensure women’s right to hold public office and senior management positions in the state and to be recruited by judicial institutions without discrimination.”</p> <p>New addition, article 180: “One quarter of the seats shall be allocated to youth under thirty five (35) years of age and one quarter shall be allocated for women, and that workers and farmers shall be represented by no less than 50 percent of the total number of seats, and these percentages shall include an appropriate representation of Christians and people with disabilities.”</p>

en-gender the constitutional processes leading to the promulgation of the 2014 constitution. Maya Morsy's article (2014) specifically focuses on women's rights mobilization against the constitution promulgated in 2012.

## CRAFTING A CONSTITUTION WORTHY OF THE 2011 REVOLUTION

### Context and Political Opportunity Structure

On January 25, 2011, hundreds of protestors rose against Mubarak's almost 30-year rule, and clashes snowballed into a mass revolt. After 18 days of sustained protest, Mubarak was ousted on February 11, 2011. The Supreme Council of Armed Forces (SCAF) assumed power, and among the measures announced was the suspension of the 1971 constitution. The process of arriving at a new constitution created a polarization between the Islamists (backed by SCAF) and a wide array of non-Islamist parties of different ideological orientations. The Islamists urged that parliamentary elections be held first so that parliament would determine the representation of the constituent assembly delegated with writing the new constitution. Having built a strong constituency through decades of welfare provision and socio-religious activism, the Islamists were well positioned to win parliamentary elections. The non-Islamist opposition comprising many newly formed parties and youth revolutionary forces and old political parties, all with weak links to constituencies, preferred a constitution be drawn first, through a consensus-building process entailing representation of all political forces in Egypt (Hamzawy 2014). In March 2011, a people's referendum on the sequence (constitution or parliament first) was won by the camp that favored parliament first (77%). Islamist political parties, most notably the Muslim Brotherhood, also assumed majority representation in the parliamentary (Majles al Shaab) elections of 2012 (Rabie 2012). However, this was a short-lived parliament. On June 14, 2012, the Supreme Constitutional Court declared parliament null and void on procedural grounds (see Rabie 2012 for details). On June 24, 2012, Mohamed Morsi (the Muslim Brotherhood candidate) was announced the winner of the presidential elections, and on June 30, 2012, he became Egypt's first post-Mubarak president.

In the aftermath of the Egyptian revolution of 2011, feminists coalesced into different coalitions. A coalition of feminist NGOs was composed of 17 civil society organizations with strong feminist identities, including, for example, Nazra for Feminist Studies. The EFU was formed by Arab

Solidarity Women Union and involved organizations with strong nationwide developmental outreach. The Revolutionary Women's Coalition was also established, comprised of young revolutionary women activists such as Dina Abouel Sooud. Such formations occurred in a context of a thriving political culture with high participation by a wide array of civil and political actors in Egypt who sought to seize what was perceived then as a political opportunity for shaping a new status quo. This perception of a political opportunity was, to a certain extent, sustained following Morsi's assumption of the presidency in June 2012. The Muslim Brotherhood were under particular pressure to show that they would not pursue "a winner takes all" approach in the selection of the constituent assembly delegated with drawing the constitution, and they assured the public that all shades of the Egyptian social, political, and economic reality would be represented in the process (Kirkpatrick 2012).

On the other hand, the political opportunity for feminists was greatly challenged by the rise of political Islamist groups and a deeply masculinist military leadership, both of which contributed to a backlash against women's rights, evident in the intensity of the anti-women's rights discourse in the aftermath of the Egyptian revolution (Elsadda 2012, Tadros 2016). There was a sense of potential threat that the modicum of women's rights would be threatened under the rubric of reversing the legacy of Mubarak given that Mrs. Suzanne Mubarak was reputed to have used her political clout to push for legislative changes on a number of gender matters (Elsadda 2012).

### **Coalitional Politics and Repertoires of Bargaining Power**

The selection of the 100 members of the constituent assembly in 2012 was informed by the principle of 50% Islamist representation and 50% non-Islamist representation, achieved through consensus. Islamists interviewed believed that a 50% representation was fair given that they had won the previously dissolved parliamentary elections of late 2011–early 2012. Non-Islamists at the time thought that although it was imperfect, there was sufficient good will to make the constitution writing process work. Overall, seven women represented 7% of the total membership of the constituent assembly. Among the seven were four women from the Islamist camp: Hoda Ghaniyya of the Freedom and Justice party; Omayma Kamel, who was also the women's advisor to President Morsi; Amany Abou el Fadl, an Islamist thinker and NGO activist; and Um Ayman, a former MP for the Freedom and Justice (Muslim Brotherhood-

affiliated) party. The three other women were Manal el Tibi, a champion of the rights of the Nubian people and a committed human rights activist; Manar el Shorbagy, a political science professor; Shahira Doss, a member of the Right-wing Wafd party and Soad Kamel Rizk, who served as a Dean of the Faculty of Management and Information Systems at the French University in Egypt (and was reported not to be present in most constitutional meetings). Suzie Adly joined the constituent assembly when El Tibi resigned. Substantively, however, only one of these seven women (Manal el Tibi) had a track record of championing women's rights.

In contrast to the modest feminist representation on the constituent assembly, there was substantial feminist mobilization outside the constituent assembly. Several feminist initiatives pursued widescale consultations in urban and rural communities to arrive at a set of demands that would represent their aspirations for Egypt's new constitution (Kamal 2015; Morsy 2014). Among the significant collective actors was the Egyptian Women's Charter led by the Arab Alliance for Women. They had a consultation that involved 3,000 community-based groups across all 27 governorates. The women's charter secured 500,000 votes of support (see Morsy 2014 for details). The other significant feminist initiative was that led by the Coalition of Egyptian Feminist Organizations convened by the Center for Egyptian Women's Legal Aid, the New Women Foundation, Women and Memory Forum, and other feminist organizations. They, too, undertook widespread consultations in rural and urban communities (see Kamal 2015 for details). Such widescale mobilization outside the constituent assembly was motivated by feminists' sense of a pending threat to women's rights.

Within the constituent assembly, feminists found allies in some non-Islamist left-of-center political parties (e.g., the Egyptian Social Democratic Party) and some youth leaders (e.g., Ahmed Maher of the 6th of April movement). However, other non-Islamist political parties such as the Ghad el Thawra party (a right-of-center political party) assumed a noncommittal stance, whereas all Islamist-leading political figures and parties (e.g., Al Nour party) represented in the constituent assembly took a stance in favor of making a constitutional reference to women's roles and status conditional upon compliance with the Shariah.

Article 68 of the draft constitution 2012 came to symbolize this struggle. It stipulated that "The State is committed to taking all measures to establish equality between women and men in political, cultural, economic and social life and all other fields as long as it does not violate the provisions of the Shariah" (article of the draft the Egyptian constitution of 2012).

Amany Abou El Fadl, an Islamist activist, argued that this qualifier was in recognition of the fact that full gender equality is incompatible with Islam in some instances such as inheritance, marriage, and divorce (Abou El Fadl 2013). The qualifier, she explained, was to prevent future lawsuits being filed on grounds of inequality, for example, if men in cases of polygamy take on other wives. The wording of article 68 of the draft 2012 constitution existed in the previous constitution (Table 1); however, feminists feared that in the light of the new climate, it would be used to justify circumscribing women's rights. This concern emanated from the new political ascendancy of Islamists parties and movements and proclamations by MPs that they would like to revoke some of the rights enshrined in family and child legislation due to their incongruence with the Shariah (Morsy 2014)<sup>4</sup>. In the end, article 68 was removed in its entirety to mollify the ultra-radical Salafis, who would not allow the passage of the article without the qualifier of compliance with the Shariah, and to assuage the feminists, who were lobbying political parties to vote against its passage.

### Political and Ideological Struggles around Gender

A key gain made in the new constitution of 2012, which was commended by the feminists, was the introduction of an article that commits the state to the provision of medical insurance for all households headed by women (Table 1). No less than a quarter of all households in Egypt are headed by women (Morsy 2014); therefore, the proposed constitutional article when applied would benefit large numbers of women. Feminists battled against article 68, which was discarded altogether from the constitution, but they lost the war. In the late hours of the night, when the constitution was being voted on, Islamists succeeded in adding a new clause, article 219 of the constitution of 2013 (Table 1). Article 219 departs from previous constitutions that had allowed the judiciary to define "principles of Shariah" in highly flexible ways. Article 219 narrowed the definition of principles of the Shariah as specifically, "the general evidence, foundational rules, rules of jurisprudence, and credible sources accepted in Sunni doctrines and by the larger community." In the constituent assembly hearings, feminist lawyers and experts objected that such demarcation would inhibit the potential to

4. For a detailed discussion of the Muslim Brotherhood's historical engagement with the question of women's rights and gender ideology, see Tadros 2012, Tadros 2017 and Tadros 2018.

advance more progressive interpretations of Shariah, which are not widely prevalent among mainstream Islamic conservative circles.

Feminists also failed to secure the introduction of new constitutional articles on the protection of women against gender-based violence, human trafficking, and establishing the minimum age of marriage at 18 (the latter was enshrined in the child law). Negotiations with Islamist women failed to wield support on these issues; the latter rejected them as either already covered by legislation that is more generic or not requiring inclusion in the constitution (Abou El Fadl 2013). In protest, Manal El Tibi resigned from the constituent assembly on grounds of its lack of commitment toward women's rights. She expressed frustration that the introduction of a constitutional article committing the Egyptian state to protecting women against all forms of violence was blocked, and she opposed the absence of any articles declaring the state's commitment to equality of all citizens irrespective of their sex. The new constitution also did not have any provisions stipulating the country's commitments to international treaties of which it is a signatory, which would include the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).<sup>5</sup> Islamist-leaning members of the constitution drawing committee opposed this proposal vehemently, arguing that the Egyptian government should not have signed the CEDAW in the first place because some of its articles violate the Shariah (Abou El Fadl 2013). (Egypt became a signatory to the CEDAW in 1981 but expressed reservations to articles 2, 9, 16 and 29 that it considered incongruent with the Shariah but later withdrew its reservation to article 9 when it granted women the right to pass on their nationality to their children). This stance further confirmed feminists' suspicions that under the rubric of compliance with Islamic jurisprudence (or the Muslim Brotherhood's interpretation thereof), previously agreed commitments to women's rights were threatened.<sup>6</sup>

In December 2012, a people's referendum was held, and 67.8% of the voters (32% turnout) approved the new constitution. A counter coalition

5. Egypt ratified the CEDAW in 1981 but made reservations to articles 2, 9, 16, and 29, though later it removed its reservation to article 9 on equal nationality for offspring for female and male Egyptian citizens.

6. It is interesting that Islamic feminist perspectives from Muslim women scholars that have put forward ways of reconciling [and indeed advancing] women's equality via Islamic precepts (such as those developed by leading scholars Heba Raouf Ezzat and Omayma Abu Bakr in Egypt) did not feature in the debates and discussions around women and the constitution-writing processes, whether in 2012 or 2014, perhaps suggesting a divide between academic debates and power struggles among different political forces in the policy arena



to the Islamist coalition emerged, bringing feminists, a number of non-Islamists political parties, and revolutionary youth representatives together, galvanizing them into the formation of a united front against the Muslim Brotherhood-led government.

## **CONSTITUTION OF 2014: BEYOND “DE-BROTHERHOODIZATION OF A CONSTITUTION?”**

### **Context and Political Opportunity Structure**

Egypt's 6-month-old constitution was dropped in the aftermath of the second wave of mass uprisings that gripped the country in June 2013. Abdel Fattah el Sisi, the then Minister of Defense, intervened militarily, and on July 3, 2013, announced a new roadmap that involved the appointment of Adly Mansour, the head of the Supreme Constitutional Court, as interim president until new presidential elections materialized. Confrontations ensued between supporters of President Morsi and the new authorities, leading to continued bloodshed and violence (Abou Bakr 2015). One of the first steps taken after the ousting of President Morsi was to announce the drafting of a new constitution. The climate for feminist mobilization was mixed. Even though the political opening (at least in 2013) still enabled some level of feminist mobilization, there was fragmentation. In 2011–2012, the perceived threat emanating from the intensity of the backlash against women's rights served as a centripetal force uniting women's rights' activists around a common platform, but feminists were divided in 2013. Some feminists objected to the military being given privileges in the constitution and boycotted participation altogether; others believed there was no choice but to seize the opportunity of en-gendering the constitution (Kamal 2015). Moreover, severe encroachment on civil society and rising political repression circumscribed the opportunities for using tactics of street activism.

### **Coalitional Politics and Repertoires of Bargaining Power**

The process of drawing up the 2014 constitution materialized through two constitutional bodies intended to review the 2012 constitution (Kamal 2015, 158). The first was the 10-member constitutional expert committee comprising six representatives nominated by three courts and four constitutional law academics nominated by the Supreme Council of Egyptian Universities. This committee did not include a single woman.

The second was the constitutional committee comprised of 50 members, 80% of whom were nominated by their respective political parties, religious institutions, trade unions, and syndicates, revolutionary youth, and 20% public figures appointed by the government. Islamic or Islamist representation comprised roughly 12% of the constituent assembly: three leaders from Al-Azhar religious establishment, one representative from (the ultra-radical) Al Nour party, and two Islamist-leading public figures, with no representation from the Muslim Brotherhood. Five women represented 10% of the constitutional committee. This proportion was only marginally better than the 2012 drafting committee in which women had 7% representation. However, substantively, the difference was dramatic. Of the five women chosen to be on the constitutional assembly, at least four women had a strong track record of championing women's rights, particularly through advocacy for reform of legislation that discriminates against women, advancement of new legislation to expand women's rights, media advocacy against misogynistic discourses, and social practices that enforce patriarchal gender hierarchies. Two of them had previously led the national women's machineries: Azza El Ashmawy had been a representative for the National Council of Motherhood and Childhood and Mervat El Telawi had been the head of the National Council for Women. The third was Mona Zu el Fuqar, one of the most influential lawyers defending women's rights in Egypt and a representative for the National Council for Human Rights, and Hoda Elsadda, professor of English literature, founder of Woman and Memory, a leading feminist activist whose work and mentoring have been highly influential in the lives of generations of women. The fifth candidate was Abla Mohey El Deen, representative for the Industrial Chambers committee.

In terms of substantive representation, these five women presented a bloc that pushed almost consistently for an expansion of rights. Other than the fact that *ideologically*, all were of a non-Islamist political background and used a discourse of a commitment to women's equal citizenship rights, they did not represent a *politically* cohesive group. Tallawy's and Ashmawy's political agendas could be expected to be aligned with the government, in view of their previous appointments on national women's machineries — institutions that enjoy minimal autonomy (Tadros 2016; Amar 2013; Elsadda 2012; Khafagy 2007). However, it is difficult to dismiss women's constitutional representation as simply exemplifying "classic, Mubarak-style tokenism" as has been argued by leading scholar Mervat Hatem on the nature of women's representation during the interim government rule in Egypt, post 2013 (Hatem 2013, 11). Two factors support this argument.

First, Hoda Elsadda, who wielded the most power among the women due to her position as head of the human rights committee, had been and remained independent of the government prior to and after the ousting of Mubarak. In 2013, when she was appointed to the constituent assembly, she held the position of the vice president of the Egyptian Social Democratic party, a left-of-center opposition party. She also remained engaged in autonomous feminist mobilization through Women and Memory and other nongovernmental platforms, and in 2011, she refused to accept a governing seat position on the National Council for Women. The second dynamic was that in 2013, the power configurations were still fluid within the constituent assembly, thereby requiring significant negotiations on the part of the women to secure any women's rights.

Advancing women's rights required a negotiation among different political actors on an article-by-article basis. Like its predecessor, the constitution drawing committee reflected the power configuration in which the Islamists had shifted from being a political majority to a minority. This shift however, did not mean that women's rights activists could, by default, rely on the majority to champion gender equality. Elsadda noted that some distinguished "liberals" (i.e., those who claimed to be in favor of a politically open democratic system) unexpectedly launched the most vehement blockage to women's rights in the constitution. Some members (e.g., representatives of unions and syndicates) were willing to concede to having an article prohibiting violence against women but completely rejected the idea of affirmative action for women. The five women individually and collectively forged alliances across some (liberal) parties and various institutions. In return for their endorsement of each group's interests, they would support an agenda that enhanced women's rights. For example, these five women refused to endorse a quota for workers or farmers unless their representatives conceded to having a quota for women. Hence, the representation of a wide spectrum of interest-based groups in the constituent assembly did not make the assembly pro-women's rights by default. However, it enabled the pro-women's rights representatives to leverage their unified, collective voices to engage in intense bargaining to secure a more gender-sensitive constitution.

### **Political and Ideological Struggles around Gender**

A constitutional referendum was held in Egypt in January 2014, with a turnout of 38.6%, and the new constitution was approved by 98.1% of

voters. A gender-sensitive reading of the Egyptian constitution of 2014 suggests that some of the losses made in the constitution of 2012 were redressed, with some new gains, though not fulfilling all the aspirations of women's rights activists and leaving some anxieties about the broader environment of political freedom. The scrapping of article 219 from the 2014 constitution highlighted the threat that conservative readings of Islamic jurisprudence could be used to curb women's rights. For the first time, the constitution stipulated that the state was committed to women holding public and senior management offices, to the appropriate representation of women in legislative bodies (thus endorsing the principle of affirmative action), and to women's appointments in the male-dominated and exclusionary judicial bodies without discrimination (Table 1). Article 180 set a quarter of seats in the local council for women, again for the first time. In view of the power that local councils assume in governance, this change would potentially expand the opportunities for the political leadership of women. Also for the first time, the state was committed to protecting women from all forms of violence (article 11 of the constitution). Moreover, the same article secured the rights of Egyptian citizens to pass on their nationality to their children, irrespective of their gender. Although the decree prohibiting women from passing on their nationality to their children had been overturned during Mubarak's era (albeit with an exception for women married to Palestinians, who need a special permit), by enshrining it within the constitution, any reversal would be made far more difficult to overturn by government policy. Moreover, article 93 stipulated the state's commitment to ratified international conventions, including the CEDAW. Egypt's commitments to CEDAW had been used as a yardstick by a coalition of feminist and developmental organizations during Mubarak's era (the CEDAW coalition) to hold the Egyptian government to account for its women's rights records at the Commission on the Status of Women and other international platforms. It was hoped that the integration of such an article would increase the leverage of the CEDAW coalition and other platforms to call the government to account when political opportunity arises (Tadros 2016).

## COMPARATIVE DISCUSSION OF THE TWO CONSTITUTIONS, PROCESSES AND OUTCOMES

Three axes of analysis framed the discussions of the two constitutions: (a) contextual factors and political opportunity structure, (b) the dynamics of

coalitional politics and different repertoires of bargaining power, and (c) the nature of political and ideological struggles around the framing and content of the constitution. With respect to context and political opportunity structure, throughout 2011–2013, the context of constitution drawing in Egypt was one of extreme political volatility not only domestically but regionally as well (i.e., Libya and Syria were in civil war and Sudan and Gaza were highly unstable). In 2011–2012, the contestation over the constitution not only became a microcosm of the broader political struggles but also became a platform for entrenching divisions and galvanizing countercoalitions. Although the political fault lines can shift rapidly in highly fluid political settings, the Islamist–non-Islamist demarcation became at times particularly entrenched during this period. In 2012, women negotiating the constitution, whether of a non-Islamist or Islamist orientation, both reflected and contributed to this political polarization in and outside the constituent assembly. This fact is significant for future studies of women's collective agency in times of major political upheaval: the constitution-writing process was both a site for the enactment of power struggles and for the deepening or entrenchment of fault lines between and among women and other stakeholders.

In terms of the dynamics of coalitional bloc formation and repertoires of bargaining power, efforts to en-gender the constitution were blocked due to the weakness of the feminist bloc politically, weak bargaining positions, and a strong Islamist opposition unified in its ideological stance on patriarchal gender hierarchy (which did not challenge the medical insurance for households headed by women).

Although the number of women involved in the constituent assembly was roughly the same as that in 2012, the climate for negotiating a gender-sensitive constitution had changed dramatically. A new political status quo meant that the weight of different repertoires of bargaining had changed. The weakening of the Islamist bloc after the ousting of President Morsi did not automatically translate into a pro-women's rights stance in the new constituent assembly but it put women's rights activists in a better bargaining position to negotiate a gender-just constitution. This trend occurred on three accounts. First, the majority of women (despite their small numbers) were willing to champion women's rights. Second, the opposition to women's rights from a strong, organized, and unified Islamist bloc was absent. Third, the plurality of stances and positions on different gender equality issues across the broad spectrum of interest-based groups (e.g., farmers, unions, public figures, etc.) enabled women's rights to offer support for particular causes and/or articles in return for their

endorsement of particular gender-sensitive articles. This situation is relevant for future scholarship analyzing the negotiations around a constitution. It may be useful to study not only how different stakeholders' agendas shape the position they adopt on gender matters in the constitution but also how the broader political and ideological power configurations influence, indirectly, how and with whom they bargain on gender matters.

### Political and Ideological Struggles around Gender

The political opportunity for feminist mobilization in 2011–2012 was favorable because of the existence of political space to engage in activism. This opportunity was seized by feminist actors who coalesced into coalitions, displaying a relatively united front against perceived threats to women's rights. The political opportunity structure was different in 2013. Opportunities for grassroots mobilization began to be circumscribed by shrinking civil space. Moreover, the formation of feminist collectives that would coalesce around common agendas was undermined by a schism that emerged between them around the legitimacy of engaging with a new status quo that came to power via military intervention. Consequently, those feminists who opted to mobilize for en-gendering the constitution engaged directly with the women representatives on the constitution drawing committee, pressing for the implementation of the same demands (as part of broader coalitions) that they had made in the constitution writing process of 2012.

Significantly, despite the conspicuous absence of unified feminist coalitions mobilizing for en-gendering the constitution in 2014 compared to that of 2012, the gender equality outcomes of both constitutions are starkly different (Table 1). Four years after the inauguration of the constitution of 2014, the outcomes of implementation and enforcement have also been inconsistent. On one hand, some positive gender outcomes have emanated from the constitution. Based on the constitutional principle of affirmative action, in the parliamentary electoral law that ensued, a quota of 56 seats was allocated to women as well as half the presidential appointments, amounting to 14 seats (Hassan 2015). In the 2016 parliament, 89 women joined parliament (75 won seats of a total 568 seats, and 14 were appointed by the president). Thus, women constituted 14.9% of MPs, and although this is still a small percentage, it marks the highest female representation in Egypt's parliamentary history (El-Behary 2014). Moreover, the constitutional article on redressing gender discrimination in the judiciary has also been partly activated. In

June 2015, 26 new female judges were sworn in office in the largest appointment of women in the judiciary since 2007 (Messieh and Gaber 2015). For the first time ever, in 2015, a woman was appointed assistant to the head of the Court of Cassation (i.e., the highest court of appeal) (Abou Bakr 2015). Against the backdrop of high levels of sexual harassment in Egypt (El-Dabh 2013), Egypt passed its first law against sexual harassment in 2014. The sexual harassment law leaves much to be desired in terms of its enforceability; however, it criminalizes a wide array of expressions of sexual harassment including digital forms and recognizes harassment against both women and men (see Harassmap 2014 for text of the law).

On one hand, there has been a severe encroachment on civil liberties and a regression toward authoritarian rule since 2013 (Brown and Bentivoglio 2014). The Ministry of Interior introduced a new protest law that prohibits public gatherings or protest without prior permission, thereby obstructing one key way in which women's activists' can hold the government accountable. Women's rights defenders have also been imprisoned for challenging the law. Moreover, the political environment for civil society organizations including women's NGOs, is considered more hostile than that which existed during Mubarak's reign (Amnesty International 2016). A new NGO law passed in 2017 severely inhibits civil society organizations' liberties (UN News Center, 2017).

There is another major hurdle for mobilizing for women's equality claims making. Women's rights mobilization continues to be deeply polarized between those who consider any engagement with the government in place anathema because it legitimizes authoritarian rule and those who believe that there is an obligation to press for redressing gender inequalities even if it means engaging with the authorities. As of July 2018, there is no sign that the fissures are healing.

The absence of effective implementation mechanisms in the Egyptian constitution of 2014 (Al-Ali 2016) represents enforcement dilemmas, ones that feminist scholarship have identified as key for the effective redress of unequal power relations constitutionally (Baines and Rubio-Marin 2004; Cichowski 2013, 589 and 592; Irving 2012). Although the constitution of 2014 is more gender just than its predecessors with respect to constitutional design and specific articles relating to women's rights, without a unified feminist front as well as the political opportunity to hold authorities to account for enforcement, its mobilization power is stunted. However, as Cassola et al. (2014) and Waylen (2006) note that, at the very least, when more gender-sensitive constitutions are promulgated, they become more difficult to repeal or amend than other

legislative or policy commitments. In that sense, the Egyptian case study supports other scholarship that highlights the importance of a constitution having articles that clearly stimulate a commitment to gender equality as the normative and legal basis for pro-equality claims-making thereafter. However, it also highlights that to press the state to enforce its constitutional commitments, basic liberties such as freedom of organization and association are essential, so accountability has “teeth,” meaning the clout to hold power-holders answerable for their actions, or lack thereof (Fox 2015, 347–48).

### CONCLUSION: BROADER THEORETICAL INFERENCES

In this study, three axes were used in a framework to analyze processes and outcomes of drafting constitutions using the comparative drafting of two constitutions in post-Mubarak Egypt as a case study. Political opportunity provides the analytical lens through which to explore the dynamic interface between changing political contexts and how different women seize and act on them. However, constitution-writing processes involve more than seizing the political opportunities available to make claims. The second axis explores the different stakeholders’ leveraging of informal and formal sources of power to influence their negotiating power, and in turn, the kind of alignments between actors as well as fault lines that emerge. The third axis of the framework, ideology is significant on two levels. First, in its interface with political opportunity, ideology allows for a de-reifying of women’s mobilization agency, allowing for a mapping of how different ideological and political orientations influence claims making. Second, in its interface with coalition building and alliances allows for an exploration of how ideological shifts in the broader context influences bargaining power and strategic alignments inside the constituent assembly.

The Egyptian case study discussed here raises a number of theoretically pertinent issues with respect to the study of women’s agency vis-a-vis engendering constitutions. The first issue is the nature of the women’s mobilization at the political juncture when authoritarian leaders have been ousted. In the context of the political power configurations on the ground in 2011–2012, the struggle facing feminists was to promote a democratic constitution while blocking the threat of the modicum of women’s rights enshrined in the previous constitutions being revoked. In post-Mubarak Egypt, as with Libya, Tunisia and Iraq, feminists recognized that the rejection of the ousted autocrat could be politically appropriated by new power holders spearheading a backlash against



women's rights. This is significant for future research on constitutions at critical junctures. Given that constitutions inaugurated under authoritarian regimes sometimes do offer a modicum of rights to women, feminist mobilizations face the dilemma of challenging legacies of undemocratic constitutions while defending women's rights, however inadequate and tainted they are, by virtue of their association with undemocratic regimes. This is particularly so when they are faced with opponents who wish to circumscribe women's rights in the name of eliminating the legacy of authoritarianism.

The second theoretical proposition emanating from the Egyptian case study is in relation to the agency of women's mobilization and en-gendering constitutions. The works of Waylen, Cassola, and others (highlighted in section one) emphasize the centrality of women's activism for en-gendering constitutions in times of transition. In view of the fact that women activists can also mobilize against the promulgation of constitutions that enshrine women's rights and challenge gender hierarchies (as was the case in Egypt in 2011–2012), future constitutional studies may need to interrogate not only the strength of activism of women's agency but also the ideological underpinnings of their agendas. The strength of women's activism both for and against the enshrining of women's rights in transitional constitutions in Iraq, Libya, and Tunisia provides further evidence of this. However, this also applies to the study of women's activism in relation to the constitution-drawing processes globally. As Htun (2014) noted, women are organizing effectively around agendas that entrench gender power hierarchies while defending them in the language of rights. These women are gaining political ground through their presence in right-wing political parties (Htun 2014, 116). Consequently, research on women organizing will increasingly need to shift from reified notions of organizing around a shared gender identity being a proxy for commitment to advancing a women's rights agenda.

The third proposition underpinning this article examines the number of women in constitution-drawing processes as a proxy for the potential to en-gender constitution. In Egypt, although the percentage of women in the constitution drawing processes of 2012 and 2013 was minimal and roughly the same, their agendas and aspired-for gender outcomes were radically different. Thus, in view of women's participation in constitution sometimes being driven by highly divergent (and sometimes opposing) visions of desired gender hierarchies, an analysis of the gender agendas they advocate will become increasingly important in future constitution-drawing processes around the world.

The fourth and final theoretical proposition put forward in this study is broadening the study of ideology to capture its influence on not only gendered constitutional articles and design but also processes of bargaining and alliance formation (i.e., the link between the second and third axes of the framework). In constitution-crafting processes, alliances and coalitions may not always be premised on ideological standpoints on rights and freedoms. In Egypt in 2012 and 2013, the political interests of different groups often informed their agenda setting, affecting how they amplify or forgo proclaimed ideological stances on gender. From the constituent assembly discussions in 2012 and 2013, there is evidence to support Hatem's (1994) contention that both Islamist and (political) liberals in Egypt displayed contemptuous attitudes toward women's rights. However, a nuanced difference exists in how political actors respond when power configurations change, and with them the hegemonic ideology. This significantly affects the bargaining positions in constitutional struggles, and their subsequent outcomes for gender equality. In the constituent assembly that was formed in 2012, Islamists successfully coalesced into a bloc to prevent the introduction of articles that would enhance women's rights. In contrast, among non-Islamist political forces in the constituent assembly of 2012 and 2013, a diversity of stances were represented, some in support, some in opposition.

The implications for coalitional politics in constitution building are significant. Sometimes it is more possible to arrive at a common agenda with men representing political parties that are not antithetical to gender equality than it is to build a consensual platform around a common gender identity with women who hold anti-feminist agendas. For example, feminists chose to coalesce into a collective with actors such as the Tunisian Defense League for Human Rights, the General Workers' Union (UGTT), and the National Council for Freedom in Tunisia to actively oppose female and male leaders in the Islamist Al-Nahda party who had proposed the substitution of the constitutional principle of equality between women and men with the notion of complementarity (Charrad and Zarrugh 2014, 238–39). In a related point, future research on en-gendering constitutional processes may also consider how ideology in constellation with other factors directly or indirectly enhances or inhibits the bargaining powers and opportunities of those negotiating more gender-sensitive constitutions. This is particularly significant in broadening the methodologies underpinning the study of coalitional politics in constitutional processes to go beyond analyzing the bargaining power of individual actors and to take into account the more subtle

powers of the ideology(ies) shaping the broader climate in which negotiations are occurring.

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