

Rebuilding Contested States

A comparative study of institutional design during
political transition in Egypt, Iraq, Libya, & Tunisia

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Declaration

I declare that this PhD thesis contains no material that has been submitted previously, in whole or in part, for the award of any other academic degree or diploma. Except where otherwise indicated, this thesis is my own work.

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Forward and Acknowledgments

In 2011, as the Middle East and North Africa region exploded in political upheaval, I was in Jerusalem completing my Masters in Political Science. Watching long-term regimes that seemed so impermeable, shaken to their core in a matter of months, left a dramatic and lasting impression. Following closely over subsequent years, the missteps, twists and turns, and political trajectories in each state left me with the question: what do we understand about rebuilding contested states, and how is our knowledge still incomplete? Designing my thesis project a few years later, it was clear to me that I wanted to address this question.

The goal of my research project was to contribute to our understanding of how the interaction amongst societal groups on the design and implementation of new political institutions shapes the trajectory of a political transition. Despite an impressive and extensive canon of literature on this issue, my aim was to focus on how the interface amongst groups frames the transition period, and whether generalisations can be drawn across countries regarding the facilitation of these interactions in a way that produces widespread confidence in the political system. Looking at Syria, Yemen, and Libya, in 2018, it appears that rebuilding political institutions will remain relevant to the region for years to come.

I was fortunate to interview electoral experts and transition architects involved in the study's countries of focus at the time of political transition. I extend my thanks and appreciation for valuable insights to Ahmed Badawi, co-founder of the Transform Center for Conflict Engagement and Political Development, responsible for running workshops and public forums in Egypt and Tunisia post-2010; Larry Diamond who served as a senior advisor to the Coalition Provisional Authority in Iraq from January to April 2004; Feisal Istrabadi who was the principle legal drafter of the interim constitution in Iraq that was in effect during 2004 and 2005; Radwan Masmoudi, the founder and President of the Center for the Study of Islam and Democracy, a key organisation facilitating deliberative forums in Tunisia post-2010; Andrew Reynolds, an international electoral expert who provided electoral advice to political parties in Egypt in early 2011; and Dirk Vandewalle, who served as political advisor to Ian Martin, the special representative for the Secretary General in Libya, during 2011 and 2012.

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Abstract

Rebuilding a contested state following an authoritarian breakdown requires widespread support for the new political system from all communal groups. A central theoretical assertion of the institutional design literature is that inclusion of communal groups in institutional frameworks creates support for a political system. However, empirical evidence to either verify or refute this claim is inconclusive. A survey of institutional design literature reveals an implicit distinction between de jure inclusion (inclusive frameworks) and de facto inclusion (inclusion in practice). To date, this distinction has not been sufficiently differentiated and systematically examined, with large-N studies most often examining the impact solely of de jure inclusion on support, and case studies failing to make a clear conceptual distinction between these two elements of inclusion. To address this gap in the research, this study asks: during a period of political transition in a contested state, does de jure inclusion, de facto inclusion, or a combination of both, build support for a political system?

To investigate this question, the study undertakes a small-N comparative study of institutional design during political transitions in the Middle East and North Africa region. Four countries are selected that underwent rebuilding of their political institutions following authoritarian breakdown: Egypt, Iraq, Libya, and Tunisia. Four hypotheses are advanced that capture the expectation that either de jure inclusion, de facto inclusion, or a combination of both, will build support for a political system. The hypotheses are investigated in two key institutional design moments in the selected countries: electoral system design and constitution-making.

The study finds that de jure inclusion is not a sufficient mechanism to create support of all communal groups for the political system, whilst de facto inclusion may be sufficient. In no case where de jure inclusion alone was observed, was support for the political system present. In all cases where de facto inclusion was present, there was support for the political system, regardless of whether or not there was de jure inclusion. The study contributes to our understanding of the rebuilding of contested states following authoritarian breakdown, suggesting that, alongside an emphasis on de jure inclusion in electoral system design and constitution-making, de facto inclusion deserves consideration.

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Abbreviations

CPA	Coalition Provisional Authority
GDP	Gross Domestic Product
HCFRG	Higher Council for Fulfillment of Revolutionary Goals
IFES	International Foundation of Electoral systems
IGC	Iraqi Governing Council
IMIE	International Mission for Iraqi Elections
IPU	Inter-Parliamentary Union
MENA	Middle East and North Africa
NTC	National Transitional Council
PR	Proportional Representation
SCAF	Supreme Council of the Armed Forces
UNEAD	United Nations Electoral Assistance Division

Chapter One

Rebuilding Contested States

Following the invasion of Iraq in 2003, the US-led Coalition Provisional Authority (CPA), tasked with overseeing the immediate aftermath, was faced with the question: how best to facilitate the rebuilding of a contested state? The US stated that it would oversee a transition to a political system that would accommodate Iraq's three main ethno-sectarian communal groups: Shia-Arabs, Sunni-Arabs, and Kurds (Coalition Provisional Authority 2003; Dobbins et al. 2009, 265). The CPA emphasised inclusion in the choice of institutional frameworks for the new regime, aiming to incorporate all communal groups and build confidence in the political system (Ghai and Cottrell 2005; Simonsen 2005; United Nations 2004b). And yet, if success is measured by transition to a stable regime that enjoys widespread support, then evidence for at least the decade post-2003 must judge Iraq's transition as a failure. The regime failed to create support from all communal groups, leading to on-going insurgency violence (Al-Ali 2014). One could attribute Iraq's political trajectory to the fact that the CPA was a foreign power imposing regime transition, or to long-standing ethno-sectarian divisions. However, following Saddam's ousting there was genuine enthusiasm that spanned ethno-sectarian divisions for a transition to a new political system underpinned by inclusive political institutions (Diamond 2005; Morrow 2005).

The case of Iraq underscores a core challenge for transition scholars: *under what conditions can a contested state be rebuilt with stable institutions that enjoy the confidence of all communal groups?* A central assertion of the institutional design literature is that inclusion of communal groups in institutional design creates support for a political system. However, there is no clear empirical evidence to substantiate this claim. Some studies find a relationship between inclusive institutional design and perceived legitimacy of the political system, whilst others do not. This puzzle prompts the study's central research question: *in a contested state undergoing a political transition, what is the mechanism through which the inclusion of communal groups in institutional design builds support for the political system?*

The next section presents one of the major challenges to successful rebuilding of a contested state following authoritarian breakdown, namely, ensuring support from all

communal groups for the political system. Section 1.2 presents the puzzle that drives the study: a key theoretical assertion of the institutional design literature is that incorporating key societal groups in institution-building creates confidence in a political system, yet empirical evidence is inconclusive. In response to this puzzle, section 1.3 outlines the study's argument: disaggregation of de jure and de facto inclusion is central to understanding the mechanism through which inclusion leads, or does not lead, to support. Section 1.4 outlines the study's research design, followed by a discussion of the study's outcome. The chapter ends with an overview of the thesis structure.

1.1 Problem: building support for a political system

In rebuilding the political institutions of a contested state following authoritarian breakdown, creating support from all communal groups for the new political system is key to fostering stability and avoiding the outbreak of violent inter-communal conflict (Horowitz 1985; Lijphart 2004). Authoritarian breakdown is defined as 'transition from [a] certain authoritarian regime towards an uncertain "something else"' (O'Donnell and Schmitter 1986, 1), that occurs under the auspices of transition to a new political system (Linz and Stepan 1996; Schedler 2001). The outcome of a political transition can vary from a democratic political system, to the re-emergence of an authoritarian regime, or on-going political violence and a failure to institutionalise political power in a central governing body (O'Donnell and Schmitter 1986, 1–4).

A contested state, also referred to as a divided society (Guelke 2012; Oberschall 2007), is one in which there is a salient political division amongst communal groups that indicates a core unresolved tension regarding the principles that should underpin the state's political system (Gellner 1983; A. Smith 2010; Wimmer 2002). Communal divisions are often exacerbated by overlap with political and economic grievances (Collier, Hoeffler, and Rohner 2009; Germane 2012). A communal group is defined as a group consisting of members of a society that self-identify as belonging to a common group entity based on ethnic, linguistic, racial, religious, sectarian, or tribal attributes (Norris 2002, 206; Stavenhagen 1990), or indeed 'any other form of ascriptive affiliation' (Horowitz 2014, 5).

Unresolved tension amongst communal groups regarding the core principles of the state and the distribution of political power and resources, can heighten tension during a

period of state-building and increase the chances of violent inter-communal conflict (Horowitz 2003; Sambanis 2001; Sisk 1996). Lustick (1979, 328) notes that control of one communal group over another is a common mechanism for authoritarian regimes in contested states to maintain political stability. Control functions through 'the emergence and maintenance of a relationship in which the superior power of one segment is mobilized to enforce stability by constraining the political actions and opportunities of another segment or segments'. In other words, an authoritarian regime in a contested state often defines the state entity according to the values of one communal group and privileges that group in terms of access to political power and state resources. At the same time, other groups are disadvantaged or discriminated against (Gurr 2011; Horowitz 2003; Wimmer 2002). Political transition can therefore expose suppressed inter-communal antagonism and could lead to civil conflict.

Communal divisions have presented challenges to many political transitions and led to civil conflict in states in Africa, Asia, Eastern and Central Europe, and the Middle East (Chirots 2009; Mansfield and Snyder 2005; Sisk 1996). As noted by Lijphart (2002, 37), since the 1990s 'ethnic divisions have replaced the Cold War as the world's most serious source of violent conflict'. Nordlinger (1972, 7) notes the mechanism through which inter-communal tension increases the chance of conflict: 'conflict groups develop when a significant number of individuals believe that their segment's¹ social identity, cultural values, or material interest coincide with the segmental attachments of other individuals and are inspired to political efforts designed to influence the conflict's outcome.' Whilst civil conflict scholars dispute whether inter-communal conflict is directly attributable to communal divisions (Ostby 2008; Theuerkauf 2010) or is a function of grievance and opportunity (Collier, Hoeffler, and Rohner 2009; Elbadawi and Sambanis 2000), many scholars purport that conflict perpetuated by communal groups is rising and that communal divisions increase the risk of, and strengthen the severity and duration of, civil conflict (Cordell and Wolff 2016; Theuerkauf 2010, 117; Wimmer 1997). This is heightened during political transition, when 'heated debates have given way to conflict and even violence as transitioning societies struggle to resolve fundamental conflicts over identity' (Bali and Lerner 2016, 227).

¹ Segment refers to communal group

Building support from all communal groups for the political system is key to reducing inter-communal tension and avoiding the outbreak of violent inter-communal conflict during a political transition (Alonso and Ruiz-Rufino 2007; Widner 2005). In order for a political transition to result in a functioning political system, 'the system of government must be capable of governing effectively and the people must acquiesce in it' (Galligan and Versteeg 2013b, 23). This is particularly important in a contested state where 'transitional leaders must build deep consensus across deep divisions' (Gluck and Brandt 2015, 5). Elite theory (Higley and Burton 2006), transitions literature (Cho 2014; Chu et al. 2008; Dowley and Silver 2002; Lagos 2003), power-sharing literature (Grofman 2013; Norris 2009; B. O'Leary 2013), and literature on constitution-making (Elkins, Ginsburg, and Blount 2011; Hart 2010) note that widespread support from all significant societal groups underpins the architecture of a stable political system.

Support for a political system is defined as the perceived legitimacy of political frameworks, demonstrated by actors striving to achieve political goals within the system's political institutions and procedures, and not through extra-constitutional means such as violence (Bratton and Mattes 2001; Mishler and Rose 2001; Roy 2004). In the context of democratic consolidation, Linz and Stepan (1996, chap. 1) note three types of support that underpin consolidation of a new political system: behavioural, attitudinal, and constitutional. Behavioural support refers to an absence of violent anti-system or secessionist action; attitudinal support consists of majority confidence in the current political system; and constitutional support indicates broad agreement to resolve conflicts within the 'laws, procedures, and institutions' (6) of the political system. These three dimensions capture the core elements of confidence in a political system as defined in this research, namely, absence of anti-system violence, perceived legitimacy of the political system, and cooperation with the system's political frameworks. The importance of building support during political transition raises the question of how such confidence can be generated.

1.2 Puzzle: does inclusion build support?

Rebuilding a contested state begins with the design of the political institutions for a new political system (Papagianni 2008, 67). A key theoretical assertion of the institutional design literature is that inclusion of all communal groups in political institutions during regime

transition is a central mechanism to generate support for a new political system (Lijphart 2004; Norris 2009; Reynolds 1995b; Widner 2005). Institution-building is considered ‘most likely to generate legitimacy for the state when it is inclusive of all major political forces and open to participation of the public’ (Papagianni 2008, 50). Elkins, Ginsburg, and Blount (2011, 101) assert that ‘public involvement in constitution making is increasingly considered to be essential for the legitimacy and effectiveness of the process’. The policies of government, non-government, and intergovernmental bodies involved in the architecture of transitional institutions reflect an emphasis on participation and representation of all societal groups (Democracy Reporting International 2011c; European Commission United Nations Development Program 2015).

Table 1.1 Inconclusive findings for impact of inclusion on support

	Relationship found	No relationship or no clear relationship
Large-N studies	Bogaards (2013) Ruiz-Rufino (2013) Saideman et al. (2002) Schneider and Wiesehomeier (2008)	Alonso and Ruiz-Rufino (2007) Elkins and Sides (2007) Norris (2002) Widner (2005)
Small-N or single case studies	Call (2012) Carlson (2010) Ebrahim and Miller (2010) Selassie (2009) Wallis (2014)	Aucoin and Brandt (2010) Cottrell and Ghai (2007) Moehler (2008)

However, despite broad scholarly and policy-maker consensus on the importance of the inclusion of societal groups in institutional design, empirical studies provide inconclusive evidence to validate this assertion. Table 1.1 shows both large-N studies and small-N or single case studies that examine the relationship between inclusive institutional design and confidence in a political system. Whilst some studies do find a relationship, others either find that inclusion does not create support, or find no clear relationship. For example, despite the same independent variable (an inclusive electoral system) used in large-N studies by Alonso and Ruiz-Rufino (2007), Bogaards (2013), Elkins and Sides (2007), Ruiz-Rufino (2013), Norris (2002), Saideman et al. (2002), and Schneider and Wiesehomeier (2008), four studies do find that inclusion creates support for the political system, whilst two studies do not find a relationship. In a similar manner, small-N and single case studies that investigate constitution-making examine various indicators of inclusive institutional design (elections to select a

constituent body, inclusive deliberations, public consultations, approval by referendum) that in some cases are shown to lead to confidence in the new constitution, whilst in other cases this does not occur. The lack of clear evidence either to verify or to refute the contention that inclusion creates confidence in political institutions, suggests that we do not sufficiently understand the mechanism through which inclusion creates support for a political system.

1.3 Argument

This thesis argues that distinguishing between *de jure* inclusion and *de facto* inclusion is central to understanding the mechanism through which inclusive institutional design builds support for, or fails to build confidence in, a political system. In the context of institution-building, *de jure* inclusion refers to institutional frameworks that facilitate (or are expected to facilitate) the inclusion of all key societal groups—in a contested state this means communal groups. So, for example, *de jure* inclusion could refer to the selection of a constituent body that includes representatives from all societal groups such as the highly inclusive National Constitutional Conference in Kenya (Cottrell and Ghai 2007). *De jure* inclusion could also refer to holding a constitutional referendum to approve a new constitution which has become a modal form of constitutional ratification (Ginsburg, Elkins, and Blount 2009, 207). *De jure* inclusion could also constitute the choice of a proportional electoral system such as chosen in most post-conflict contexts as it is expected to facilitate representation of key groups in the political arena (Bogaards 2013).

De facto inclusion sequentially follows *de jure* and refers to the actual inclusion of all societal groups in institutional procedures. For example, *de facto* inclusion could refer to the actual representation of all groups in the political arena following transitional elections (Bogaards 2013). *De facto* inclusion also pertains to sustained consultation with all groups on institution-building up until an outcome is determined, such as occurred in the South African constitution-making process that culminated in the 1996 constitution (Ebrahim and Miller 2010). In addition, *de facto* inclusion constitutes an opportunity for all groups to influence an institutional outcome. *De facto* inclusion would not be present if, for example, in the final instance, a key political actor determined a constitution to the exclusion of other actors, as occurred in Timor Leste in the early 2000s (Garrison 2005, 20).

A survey of the institutional design literature reveals an implicit distinction between *de jure* and *de facto* inclusion that is not sufficiently differentiated or systematically examined. For example, one of the most rigorous studies of the impact of inclusive electoral system design on minority support for a political system (see Norris [2002]) hypothesises that there is a causal link between an inclusive electoral system (*de jure* inclusion), representation of minority groups in the political arena (*de facto* inclusion), and minority-group support for the political system. However, without measuring or testing *de facto* inclusion, the study examines whether a proportional electoral system (*de jure* inclusion) impacts confidence in a political system. The study finds no clear relationship. This may be due to a lack of attention to *de facto* inclusion as either an intervening variable or a separate independent variable.

The most comprehensive large-N study to date examining the impact of inclusive constitution-making on support for a political system by Widner (2005) also neglects to examine *de facto* inclusion. The study alludes to the importance of *de facto* inclusion, expecting that the relationship between inclusion and political support will be 'conditioned by the way [inclusive] functions are carried out' (507). However, the study almost exclusively examines indicators that measure *de jure* inclusion (composition of the constituent body, institutional actors approving the constitution, holding of a constitutional referendum) (510–15). Out of three categories of inclusion consisting of 15 indicators, only one indicator clearly, and another two possibly, measure *de facto* inclusion, with the remainder measuring *de jure* inclusion. There is no explicit justification for this. The study finds no clear relationship between inclusive institutional design and confidence in the political system. This may be due to the lack of a systematic examination of *de facto* inclusion in constitution-making.

A similar lack of clarity regarding the distinction between *de jure* and *de facto* inclusion can be observed in both single country and comparative case-studies. For example, Ebrahim's (1998) in-depth case study of constitution-making in South Africa, that describes how a highly participatory process created confidence in the new constitution, describes both *de jure* and *de facto* inclusion without identifying them as such. In another example, Wallis's (2014) comparative study of citizen participation in constitution-making in Timor-Leste and Bougainville outlines that there was both *de jure* and *de facto* inclusion in Bougainville, whereas in Timor-Leste there was *de jure* inclusion alone, without making a conceptual distinction between the two. Wallis asserts that constitution-making in Bougainville highlighted 'the important role that achieving consensus can play in diffusing conflict and

achieving widespread support for the constitution' (307), whilst in Timor-Leste one party dominated decisions in the constitution-making body. The lack of sufficient conceptual differentiation between de jure and de facto inclusion may account for the fact that no clear generalisable mechanism of inclusive institutional design has emerged from small-N and single case studies (see Miller [2010b]).

A likely reason that de facto inclusion in institution-building is not as systematically examined as de jure, at least in large-N studies, can be traced to logistical and research constraints. Information on de jure inclusive institutional design is typically easily-accessible for a large number of cases, either stipulated in policy or legislation, or otherwise made publicly available. However, the observation of de facto inclusion requires qualitative analysis to determine whether or not it is present. For example, in a different context, the Parliamentary Powers Index, that assesses de facto legislative power in over 150 countries, draws on an international survey of experts, extensive study of secondary sources, and analysis of constitutions and other documents (Fish and Kroenig 2009). The time-consuming qualitative assessment of de facto inclusion presents a challenge to examining it in a large number of cases, leading to a lack of systematic examination of the separate or combined impact of de jure and de facto inclusion on confidence in a political system.

Nevertheless, an examination of existing studies suggests that the implicit separation between de jure and de facto inclusion requires explicit examination if we want to further understand the mechanism through which confidence is created in political institutions. This thesis aims to address this gap in the literature by investigating whether either one of these two elements of inclusion is alone sufficient to create support for a political system, or whether both are jointly sufficient to achieve this objective.

1.4 Research design

In response to the question: *does de jure inclusion, de facto inclusion, or a combination of both, build support for a political system in a contested state undergoing political transition?* the thesis employs a small-N comparative study of institutional design during political transitions in the Middle East and North Africa (MENA) region. A small-N research design is selected over a large-N study as it enables a comparative qualitative examination of both de jure and de facto inclusion in institutional design moments following an authoritarian

breakdown. It is favoured over a single case study, as it allows for articulation of a causal mechanism that is generalisable beyond a single case.

A key challenge when using a small-N comparative research design is that of ‘too many variables and too few cases’ (Lijphart 1975, 159). To address this criticism, the case selection for a small-N study is purposive and not random (Seawright and Gerring 2008, 295) constituting an important tool to control for extraneous variables and increase generalisability (Ebbinghaus 2005; Goggin 1986). This study uses a most-similar-systems-design (Anckar 2008), introducing an element of control by ‘focusing the analysis on comparable cases’ (Lijphart 1975, 159), that share structural attributes but differ on the independent variable under investigation. One strategy of case selection using a most-similar-systems-design is to select countries that are ‘found within a geographical-cultural area’ (159). This is the method employed by this study; cases are selected from the Arab-majority states of the MENA region.

It is important to note that, with a small-N study, generalisability beyond the region under investigation is limited. This thesis constitutes an exploratory study to test the theoretical argument regarding the importance of a distinction between *de jure* and *de facto* inclusion. A wider validation of the study’s theoretical contribution would require testing across a far wider range of countries than are examined in this study. Unfortunately, such a large-N project is beyond the scope of what is attempted in the current thesis. However, as Lijphart (1975, 172) notes: ‘partial generalizations may be useful as a first step, and may be followed up by replications in different settings’. In other words, the causal mechanism identified in this study provides a framework for further validation of the study’s theoretical argument in a broader context.²

The Arab-majority states of the MENA region constitute a coherent region for case selection given that, for all their differences in historical experience and contemporary strategic interests and perspectives, they also share and see themselves as sharing important similarities along demographic, ethnic, geographic, linguistic, religious, socio-cultural, and political-historical dimensions (Gasiorowski 2014). Two criteria were applied to select states

² The small-N research design means that hypotheses are advanced regarding inclusion as a sufficient, and not a necessary, condition. A small-N study does not provide adequately robust control of all structural variables in order to make claims regarding inclusion as a necessary condition. In addition, due to the constraints of a small-N study, the hypotheses make deterministic and not probabilistic claims.

from this pool of cases: 1) states underwent an authoritarian breakdown in the context of a salient communal cleavage; 2) the state carried out institution-building during political transition either introducing a new electoral system that was used in transitional parliamentary elections, or designing and approving a new constitution (some states did both, however one was sufficient for selection). A full discussion of research design and case selection is given in Chapter 3.

Four states met the selection criteria: Egypt, Iraq, Libya, and Tunisia (Table 1.2). In 2003, the US-led invasion of Iraq ousted Saddam Hussein, prompting the design of a new electoral system, holding of first transitional elections to elect a legislative body in January 2005, and approval of a new constitution in mid-October 2005. Seven years later, in late 2010, a wave of regional protest, dubbed the Arab Uprisings, began in Tunisia and swept across the MENA region, prompting political transition in several countries (Brownlee, Masoud, and Reynolds 2015; Isakhan, Mansouri, and Akbardazeh 2012). Long-term leaders in Egypt, Libya, and Tunisia either abdicated or were executed, prompting a period of political uncertainty. During this period, all three countries chose new electoral systems and held transitional elections to appoint either a legislative or constituent legislative assembly; Egypt and Tunisia went on to design and approve new constitutions. All four countries underwent political transition in the context of a salient communal cleavage—discussed in detail in Chapter 4.

The study examines the period of time from the deposition of an authoritarian leader up until either the holding of first transitional parliamentary elections or the approval of a new constitution (whichever comes later). The dependent variable is support for the political system following important institutional design moments, and not the transition outcome itself. However, it is interesting to note that the political outcome varied markedly across the four selected countries. The term ‘political transition’ may imply that each state consolidated a new political system, however this was not necessarily the case. Whilst institutional design took place under the auspices of a transition to a new political system in each country, Egypt’s transition effectively ended in July 2013 when a military coup ousted the elected president, Mohammed Morsi, reinstating and intensifying the authoritarian character of the pre-2011 military-dominated regime, but with populist overtones. The outcome of Iraq’s post-2003 political transition defies a clear definition. Iraq is a ‘federal parliamentary representative democratic republic’ (Irfad 2014, 1) and has held a series of competitive elections to select

political leaders subsequent to approval of the new constitution in 2005.³ However, as of 2018, Iraq is ‘not free’ and not an electoral democracy.⁴ Since 2003, Iraq has been plagued by civil violence, but has not reverted to a personalist-authoritarian regime such as existed pre-2003 under Saddam Hussein. The transition outcome is perhaps best described as a Shia-dominated competitive-authoritarian regime (Alaaldin 2018; Kadhum 2018).

Table 1.2 Political transitions in Iraq, Egypt, Libya, and Tunisia

	Iraq	Egypt	Libya	Tunisia
Communal cleavage	Ethno-sectarian: Sunni-Arab; Shia-Arab; Kurds	Civic-religious: Islamist; non-Islamist	Regional: Cyrenaica; Fezzan; Tripolitania	Civic-religious: Islamist; non-Islamist
Political transition	2003 US-led invasion	2011 Mubarak abdicates	2011 Gaddafi executed	2011 Ben-Ali flees
Electoral system design negotiations	2004	2011	2011-2012	2011
Transitional elections for legislative (or constituent legislative) assembly	Jan 2005	Nov 2011 – Jan 2012	July 2012	Oct 2011
Constitution-making negotiations	2005	2012	N/A	2011-2014
Approval of new constitution	Oct 2005	Dec 2012	N/A	Jan 2014

Source: see Chapter 4 for a detailed discussion of sources

In Libya, following the election of a National Council in 2012, competing governance bodies claimed political legitimacy and violent conflict broke out, growing in severity during 2014. As of 2018, Libya is best described as a ‘failed state’ (Al Jazeera 2018). Since 2014, Libya has two rival governments, neither of which holds a monopoly over the legitimate use of force (Kirkpatrick 2014; Toaldo and Fitzgerald 2016). In Tunisia, the outcome of the political transition was, as of 2018, a democratic political system. Freedom House assessed Tunisia in 2018 as ‘free’ and an electoral democracy.⁵

³ See IFES election guide country profile for Iraq, available at: <http://www.electionguide.org/countries/id/104>

⁴ See Freedom House assessment of civil and political freedom in Iraq and electoral democracy status, available at: <https://freedomhouse.org/content/freedom-world-data-and-resources>

⁵ See Freedom House assessment of civil and political freedom in Tunisia and its status as an electoral democracy, available at: <https://freedomhouse.org/content/freedom-world-data-and-resources>

1.5 Outcome

The study finds that de jure inclusion of communal groups in institution-building is not a sufficient mechanism to create support for a political system, whilst de facto inclusion may be sufficient. In every institutional design moment where there was de jure inclusion alone, without de facto inclusion, confidence in the political system was not created. At the same time, in every case of institution-building where there was de facto inclusion, regardless of whether or not de jure inclusion was present, support was built for the political system. This suggests that de jure inclusion is not a sufficient mechanism to build support for a political system, whilst de facto inclusion may be sufficient.

Two policy implications emerge from the study regarding the facilitation of de facto inclusion during institution-building. Where de facto inclusion was sustained across both electoral system design and constitution-making two factors were present, providing policy implications for the focus and implementation of institutional design during political transition. First, communal groups responded to heightened tension by engaging directly and persistently with each other on salient and contentious issues. This was juxtaposed to cases where, faced with conflicting positions, communal groups withdrew from engaging with each other, or one group overrode others in order to produce a desired institutional outcome. In the latter cases de facto inclusion was not sustained. The policy implication that arises from this finding is that, during institution-building, the proscribed response to tension amongst key societal groups should be to persist with inter-group engagement on contentious issues.

Second, in cases with continuous de facto inclusion there was a consistent focus from the interim authority on reaching agreement amongst key communal groups. Under heightened pressure and risk of civil conflict, the body overseeing institutional design focused first-and-foremost on reaching agreement amongst communal groups. This was in contrast to cases where, for example, the interim authority put central emphasis on achieving a particular institutional outcome, or executing an institutional framework, despite resistance from one or more key communal groups. This implies that institutional design during political transition needs to place agreement amongst all key groups at the heart of its agenda. The findings suggest that where these two factors form the basis of transitional institution-building, a contested state will have a greater chance of building support from all communal groups for the new political system.

1.6 Thesis overview

The thesis can be conceptually divided into two parts. In the first part, Chapters 2, 3, and 4 provide the background to the study, outlining the study's theoretical underpinnings, hypotheses, and research design, as well as the political context of the selected countries. This is followed, in the second part, by an empirical investigation of the hypotheses in Chapters 5, 6, and 7. These three chapters are organized thematically, according to institutional design events, rather than per country. This is due to the study's central focus on a comparative study of institution-building during political transition, which is illustrated with an investigation of the selected countries. Chapter 8 concludes with a discussion of the study's theoretical contribution and discusses the implications of the study for research and policy.

In the first part, Chapter 2 provides an overview of the theoretical framework that informs the study. The chapter discusses a central contention in the electoral system design and constitution-making literatures, namely, that inclusive institutional design creates confidence in the political system. The lack of conclusive empirical evidence to either confirm or reject this assertion, is presented. An implicit distinction in both literatures between *de jure* inclusion and *de facto* inclusion is highlighted. I argue that this distinction may be central to advancing our understanding of the causal mechanism through which inclusive institutional design builds political support. Four hypotheses are advanced to test this claim. Chapter 3 presents the study's research design. The use of a small-N comparative study is justified in light of the research question, and the selection of country-cases is discussed in detail. The measurement of the population proportion of key communal groups in each selected country is outlined. The operationalisation of the independent variables (*de jure* and *de facto* inclusion) and the dependent variable (support for a political system) is specified for each of the three empirical chapters. Finally, the data that is used to measure the independent and dependent variables is presented.

Chapter 4 explores the political context of the salient communal cleavage in each one of the four selected countries. The chapter delineates the way in which this cleavage shaped the political landscape in each country under colonial administration in the late 1800s and early 1900s, and in the following period of colonial-backed monarchical rule. The identified communal cleavage constituted a key fissure in each state between competing visions for the character and values that should underpin the political system. In each state, upon

declaration of an independent republic in the early-to-mid twentieth century, one communal group captured political leadership and governing institutions, whilst other groups were excluded from leadership positions and full participation in political governance. This is the context in which the various political transitions took place.

In the second part of the thesis, Chapter 5 investigates whether the involvement of communal groups in negotiations on electoral system design in each country, created support for the elections. Three hypotheses are investigated to test the impact of de jure inclusion and de facto inclusion on confidence in the elections. In accordance with expectations, where both de jure inclusion and de facto inclusion were observed, there was support for elections. Contrary to expectations, where de jure inclusion was observed without de facto inclusion, support was not created. However, negotiations that did not have de jure inclusion, but did involve de facto inclusion, were shown to build support for elections. This suggests that de jure inclusion is not a sufficient mechanism to create support, but de facto inclusion may be sufficient.

Chapter 6 builds on the findings from Chapter 5 by examining whether inclusion in constitution-making leads to support for a new constitution. Two hypotheses are investigated to test the impact of de jure and de facto inclusion in constitution-making in Egypt, Iraq, and Tunisia (Libya did not approve a new constitution). In accordance with the findings from Chapter 5, constitution-making that involved both de jure and de facto inclusion, created support for the constitution; whilst negotiations that began with de jure inclusion but did not involve de facto inclusion, failed to create support. This reinforces the contention that de jure inclusion in institution-building is not sufficient to create political confidence, whilst de facto inclusion may be sufficient.

Chapter 7 investigated whether inclusive electoral system design for first transitional elections built support for the elected assembly in Egypt, Iraq, and Tunisia (de facto inclusion in Libya could not be examined at this stage because the distribution of seats amongst communal groups was pre-determined). Three hypotheses are examined to test whether a de jure inclusive electoral system was, or was not, sufficient to build support for the elected assembly. Congruent with the findings for Chapters 5 and 6, it is found that where there was de jure inclusion without de facto inclusion, there was no confidence in the elected assembly. At the same time, where both de jure and de facto inclusion were present, support for the

elected assembly was observed. This strengthens the assertion that de facto inclusion may be sufficient to create support for a political system, whilst de jure inclusion is not sufficient.

Finally, Chapter 8 summarises the study's key findings and discusses the implications for research and policy. The study's main theoretical contribution is the assertion that de facto inclusion may be a sufficient mechanism to build support for a political system whilst de jure inclusion is not. In light of this finding, the apparently inconclusive empirical evidence from the institutional design literature is re-examined. The study's key theoretical contribution provides a coherent explanation for why some studies have found a relationship between inclusion and support, whilst others have not. Regarding political transitions in the MENA region, the study suggests that de facto inclusion may be a mechanism to facilitate transition to a stable political system, and, in particular, to navigate the salient Islamist – non-Islamist cleavage relevant across the region.

Chapter Two

Theorising Inclusion in Institutional Design

South Africa's transition from an oppressive apartheid regime to a democracy with stable political institutions has been acknowledged as one of the most significant political events of the twentieth century (Inman and Rubinfeld 2013). The possibility of building support from all groups for a new political system seemed elusive as apartheid was dismantled in the early 1990s (Jenkins 1996). Following decades of brutal repression of non-white South Africans under the apartheid regime, the threat of inter-communal violence between the white minority that had been in positions of political leadership and the non-white majority population was palpable (Morris and Hindson 1992). And yet South Africa's transition was characterised by the involvement of all communal groups, and did succeed, largely without violence, in rebuilding political institutions that now enjoy widespread confidence (Ebrahim 1998; Reynolds 1995a).

Constitution-making in Kenya between 2000 and 2005, another deeply divided society in Africa, presents a contrasting case. Cottrell and Ghai (2007, 2) note that Kenyan constitution-making was similar to South Africa in that it was 'to be inclusive – accommodating all' and 'as far as possible, decisions were to be by consensus' (6). However, in contrast to South Africa, confidence of all communal groups was not created for the proposed constitutional framework. The constitution was decisively rejected in a constitutional referendum with 58 percent opposed, and 42 percent in favour.¹ Public support or rejection of the constitution was very much divided along communal lines (Cottrell and Ghai 2007; G. Lynch 2006).

How can we account for the building of support for the new political system in South Africa, whilst in Kenya such confidence was not created for a new constitution? Both electoral engineering and constitution-making scholars assert that representation of all communal groups in institution-building in South Africa was central to avoiding severe inter-communal violence and building confidence in the new political system (Ebrahim and Miller 2010; Reynolds 1995a). Conversely, in Kenya, scholars have argued that a highly inclusive and

¹ See IFES election guide country profile for Kenya, available at: <http://www.electionguide.org/countries/id/18>

participatory process failed to overcome conflicting preferences and did not create a buy-in from all societal groups (Cottrell and Ghai 2007). Given these dramatically contrasting cases, what is the mechanism through which inclusion operated to build support in South Africa, that was not present in Kenya? Answering this question forms the basis of this chapter.

The next section outlines the scholarly argument that inclusion of communal groups in institution-building in a contested state will create support for the political system. Section 2.2 examines this claim in the electoral system design and constitution-making literatures, and notes the inconclusive empirical evidence to either verify or refute this contention. This suggests the need for a better understanding of the mechanism through which inclusion leads to support. Section 2.3 notes an implicit distinction in the institutional design literature between *de jure* inclusion and *de facto* inclusion. I argue that a systematic examination of the separate or combined impact of these two elements of inclusion, on building confidence in a political system, may be key to identifying the mechanism through which inclusion creates support.² Based on this supposition, four hypotheses are advanced. The chapter concludes by summarising the study's theoretical framework.

2.1 Contested states, inclusive institutions, and political support

A key theoretical assertion of the institutional design literature is that, in a contested state undergoing a transition, inclusion is a central mechanism to create confidence from all communal groups in a new political system. As outlined in the introduction, confidence (also referred to as support) is defined as the perceived legitimacy of a political system demonstrated by actors striving to achieve political goals within the system's political institutions and procedures, and not through extra-constitutional means (Beetham 2004; Bratton and Mattes 2001; Mishler and Rose 2001; Roy 2004). This definition can be further broken down into three key elements: behavioural support or the absence of anti-system violence; attitudinal support or the perceived legitimacy of the political system; and constitutional support or cooperation with the system's political frameworks (Linz and Stepan 1996, chap. 1).

² Note that the key theoretical contribution of this study regards the function of inclusion in institution-building, and, in particular, the distinction between *de jure* and *de facto* inclusion. Support for a political system is measured to illustrate the argument, however, the main theoretical argument that is advanced relates to our understanding of how inclusion operates to create political confidence.

Some scholars argue that the type of communal cleavage in a contested state impacts on the likelihood of building support for a political system, contending that a bi-polar cleavage has a higher risk of violent conflict compared to a multi-polar cleavage (Fraenkel and Grofman 2006; Horowitz 2013, chap. 1; Reilly 2002b, 168). An example of a bipolar cleavage is the sectarian cleavage in Northern Ireland between Protestants and Catholics (McKittrick and McVea 2002), or the ethnic cleavage in Fiji between indigenous Fijians and Fijians of Indian descent (Guelke 2012, 22–23). Examples of multi-polar communal cleavages include the religious-ethnic division between Bosniacs (Muslims), Croats (Catholics), and Serbs (Orthodox) in Bosnia-Herzegovina (Burg and Shoup 1999, 6), or the religious-sectarian division between Sunni-Muslims, Shia-Muslims and Christians in Lebanon (Winslow 1996). However, the view that multi-polar cleavages provide more stability than bipolar ones through diffusing ethnic tension across multiple focal points is contradicted by violent inter-communal conflict in multipolar societies such as those mentioned above.

Other scholars contend that the extent to which communal cleavages intersect with other societal divisions creating overlapping identities, the greater the chance to avoid inter-communal tension and build widespread support from all groups for the political system (Linz and Stepan 1996, chap. 2). A citizen may possess multiple communal identities by self-identifying with more than one communal group or by intermarrying with someone from a different communal group; these identities may have varying salience at different times and in different contexts (A. Smith 2010, chap. 1). In addition, communal cleavages may overlap with other societal or economic divisions (Wimmer 1997, 639–40). However, the moderating effect of intersecting identities is undermined in two ways. First, communal identities often overlap with socio-economic groups in a way that reinforces, rather than weakens, inter-communal separation and antagonism (Horowitz 2000, 6-12). Second, in times of political uncertainty, communal identities gain in salience, and interactions between communal groups can function like a security dilemma (Posen 1993; Rose 2000). This raises the risk of allegiance to a communal identity overriding support for the political system and increasing the risk of violent confrontation.

An understudied, but increasingly noted, contentious communal cleavage is the civil-religious one between Islamist and non-Islamist groups in majority-Muslim countries (Stepan 2012a). This division is present in societies where ‘differences over the appropriate relationship between religion and the state become a source of political fragmentation’ (Bali

and Lerner 2016, 241). Whilst the term 'Islamist' has been used in different contexts to different effect (Bowker 2010, 104-105; Mansouri and Azbarzadeh 2006, 3-4), this study uses the term to mean a member of society that supports the insertion of Islamic values and teachings into the political arena as the key basis for determining laws and political systems (Schwedler 2007). Hamid (2014, 15) comments that 'whether stated or unstated the goal of an Islamist group is the 'Islamisation' of society,' meaning, 'the gradual Islamisation of laws, in politics, economics, and society'. This is not to deny that Islamist groups may operate within non-Islamist political frameworks on the path to creating a political system underpinned by Islamic values (Bowker 2010, 109). Non-Islamists are those members of society who do not support this goal.

Scholarly attention to the Islamist - non-Islamist communal cleavage intensified in the early twenty-first century. Following the rise in global prominence of Islamic extremism (Palmer and Palmer 2008; Rashid 2008) 'the salience of Islam in contemporary world politics... increased dramatically' (Mansouri and Akbarzadeh 2006, 3). In particular, scholars focused on whether such a communal division inevitably leads to either a secular authoritarian regime (such as Egypt) or a theocratic regime based on Islamic law (such as Iran); and excludes the possibility of an inclusive political system such as democracy (Diamond 2010; Stepan and Robertson 2003). On the one hand, scholars focused on political developments in Turkey post-2002, which seemed to confirm the risk of erosion of an open, inclusive civil space under the leadership of a political party aligned with Islamist values (Baran 2010; Yesilada and Rubin 2011). On the other hand, scholars examined the emergence of democracy in the world's largest majority-Muslim country, Indonesia, as evidence of the potential compatibility of Islamic values with a democratic political system (Barton 2010; Kunkler and Stepan 2013).

The Islamist – non-Islamist cleavage received particular attention following the Arab Uprisings of 2011 in the MENA region and consequent leadership change in several countries (Hamid 2014, 8). As foreshadowed by Bowker in 2010 (104) 'much of the... discussion of the prospects for political reform in the Arab Middle East leads inevitably to the question of the future of political Islam in the region'. Stepan and Linz (2013, 15) note that 'the hegemony, perceived or actual, of religious forces over much of civil society in the Arab world... had no parallel in [previous political transitions]' and that this therefore presents transition scholars 'with a novel phenomenon, and prompts them accordingly to come up with new concepts and fresh data to shed light upon it' (17).

In any contested state undergoing a political transition, building support from all communal groups for the political system is integral to creating stable political institutions and avoiding inter-communal violence. The important function of political support has prompted scholarly investigation into the factors that drive such support. A body of literature going back to Lipset's seminal article of 1959, examines economic and socio-cultural conditions as drivers of widespread support for a political regime. This literature argues that certain levels of economic development (Evans and Whitefield 1995; McAllister and White 2017), and specific socio-cultural attributes (Almond and Verba 1989; Inglehart and Welzel 2006, 2010), will serve to build confidence in a particular type of political system, such as democracy, over other types. According to this approach, support for a political system during political transition is primarily determined by pre-existing conditions in the relevant country.

In recent decades, scholars have increasingly emphasised the central impact of institutional choices made during political transition itself, as determinants of support for a new political system (see edited volumes by Barany and Moser [2009]; Bastian and Luckham [2003]; Lindberg [2009]; and Reynolds [2002]). Scholarship on macro-institutional design has burgeoned, contending that political transitions are formative moments that shape political legacies for the new political system (Munck and Leff 1997, 345). From this perspective, building support for a new political system in a contested state is a function of political and institutional choices made during the transition itself (Guo and Stradiotto 2014). As noted by Belmont, Mainwaring, and Reynolds (2002, 1): 'it is probably in divided societies that institutional arrangements have the greatest impact', and that therefore 'macro institutional rules... have become key in the efforts to... reduce violent conflicts in divided societies' (3).

A core theoretical assertion of the institutional design literature is that, in a contested state undergoing transition, inclusion of all communal groups is a key mechanism to create confidence in the political system (Call 2012; Lijphart 2004; Norris 2009; Reynolds 1995b; Widner 2005). During the rebuilding of a contested state, inclusion is important at two stages of institutional design: 1) the negotiations stage; and 2) the implementation stage. The negotiations stage involves the decision-making process that takes place amongst political stakeholders to determine institutional frameworks. For example, this could be negotiations to determine an electoral system for first, transitional elections (Benoit and Schiemann 2001), or a constitution-making process to determine a new constitution document (Miller 2010b). The implementation stage refers to the implementation of the institutional framework itself.

In practice, this could be holding transitional elections using a new electoral system (Norris 2004), or executing a constitutional document that defines the political institutions and procedures for a new political regime (Galligan and Versteeg 2013a).

Inclusive institutional design is expected to build support across the three dimensions outlined by Linz and Stepan (1996, chap. 1). The first dimension is behavioural support, denoted by an absence of anti-system actions such as political violence. The second dimension is attitudinal support, that is, the perceived legitimacy of the political system. The final dimension is constitutional support, and concerns cooperation with proscribed institutional frameworks. Each one of these three separate dimensions operates independently of the others. Support will be strongest if all three dimensions are present, however one or two could exist without the others.

The inclusion of communal groups in institutional design encompasses both political actors (an elite dimension) and the broader society (a mass public dimension). Post-conflict literature (Call 2012; Ingram 2014; Simonsen 2005, 302; Wagner and Dreef 2014) emphasises the elite dimension, stressing the importance of the inclusion of representatives from all key societal groups in political institutions to ensure access to state power and resources and create loyalty towards the new political system. Lindemann (2008, 21) notes that 'exclusionary elite bargains will foster antagonism and violent conflict,' whilst inclusive elite bargains 'will foster ethno-regional cohesion and political stability' (22).

Alongside the inclusion of representatives of communal groups in the political arena, channels for civil society input and public participation is a second important dimension to build confidence in a political system. As noted by Ginsburg, Elkins, and Blount (2009, 205), 'public involvement... has become the subject of particular attention in recent years and is urged by scholars, governments, and international organisations'. A key claim in the constitution-making literature is that public participation 'makes the constitution itself, transitional authorities, and subsequent governments more legitimate in citizens' eyes' (Gluck and Brandt 2015, 6). In particular, in a contested state, given that communal divisions run through society, widespread support amongst the populace is important (Belmont, Mainwaring, and Reynolds 2002, 3; Ruiz-Rufino 2013, 102).

The elite and mass public dimensions overlap and should be considered interconnected, not distinct (Bali and Lerner 2016, 235). The inclusion of political representatives from all communal groups in political frameworks is expected to increase

perceived legitimacy of the political system amongst their constituencies (Lijphart 1977; Mujtaba 2013; Norris 2002). This is the 'politics as a microcosm' concept of representation,³ where the political arena is expected to visually represent the characteristics of a population, on a smaller scale, leading to higher perceived legitimacy of the political system and the avoidance of anti-system violence.⁴ As noted by Simonsen (2005, 302) 'inclusion – understood in this case as fair representation of categories of citizens defined by social cleavages – is essential for the legitimacy of political institutions in divided societies and contributes towards stability'. This is corroborated by Krook and Moser (2013, 31) who state that 'legislatures that do not reflect society are typically deemed less legitimate and less likely to protect the interests of marginalized groups, and they can even spur excluded marginalized groups to destabilize the polity'.

The function of inclusion as a means to foster support is discussed in relationship to the Islamist – non-Islamist communal cleavage (discussed above), with much attention paid to the question of whether inclusion can moderate potentially anti-system or extreme Islamist groups (Schwedler 2007) by 'opening new channels of non-confrontational engagement between state and society' (Mansouri and Akbarzadeh 2006, 11). Islamist individuals and groups that are already, as a matter of collective identity, self-consciously outside the existing system, and are often deeply antagonistic toward those who are willing to abide by its constraints, may be unlikely to engage meaningfully in discussion of more inclusive models of governance. Beyond extremist groups of that kind, inclusion in credible, constitutionally-bounded political frameworks that allow room in practice for the ongoing pursuit of Islamist goals through political means have the potential to incentivise cooperation with other political actors in the system (Bowker 2010, 107-125). Where political outcomes are achieved through inclusive procedures, participation within such frameworks has the potential to make anti-system violence less attractive, and may encourage compromise and cooperation across societal divisions in order to achieve political objectives.

³ Politics as a microcosm refers to the idea that a member of a communal group should be politically represented by a representative from that group, and representatives in the political arena should proportionally reflect the demographic composition of a state's key communal groups. This is opposed to a focus on political representation of all groups' policy preferences, without attention to political representation from a member of one's own communal group. For further discussion of types of representation see Celis (2006); and Wangnerud (2009).

⁴ See, for example, Norris' (2002) outline of the expectation that inclusion will drive support from minority groups for the political system. See also Papagianni (2008) on the importance of inclusion to foster legitimacy.

2.2 Electoral system design and constitution-making

Two institutions that shape the trajectory of a political transition are the electoral system and a new constitution. Institutional design during a political transition spans a range of institutional choices including the choice of a parliamentary or a presidential political framework; the crafting of legislative, executive, and judicial institutions; and the choice of a unitary or federal system (Foweraker and Landman 2002; Horowitz 2009; Powell 2000; Wimmer 2003). However, perhaps the two most important and highly contested institutions that are designed (or re-designed) during the immediate period of political transition in a contested state are the electoral system and a new constitution (Birch 2005, 282; Wallis 2014, 2). Electoral system design here refers to the rules governing the translation of votes into seats (Moser 2009, 133), and constitution-making refers to the design of a new constitutional document (Elster 1995).

Electoral system design and constitution-making can be considered two distinct and equally significant institutional design moments when the former precedes the latter in the sequencing of the transition. Where elections are held before constitution-making they typically determine either the constitutional design body itself, or the political actors responsible for selecting this body. In such cases, electoral system design is not only separate to constitution-making but is typically sharply contested (Carey 2009) as it will impact which groups gain political power and the ability to influence the constitution-making process and the political frameworks of the new system (Bowler, Donovan, and Karp 2006, 434; Mansfield and Snyder 2005). As noted by Luong (2000, 564): ‘The struggle to define the nature of electoral systems is at the center of transitional politics. Particularly in a new state, they are the rules of the game that matter most because they determine who will set future rules of the game’.

Similarly, constitution-making plays a ‘central role in state building’ (Wallis 2014, 2), defining the political procedures of the new regime, and the inclusion or exclusion of different groups from the structures of political power (Blount 2011; Jung and Deering 2015, 61; Miller 2010b). A constitutional document not only captures the core values and principles of a state (Galligan and Versteeg 2013b, 8–13; Samuels 2006) but also ‘establishes a system of government [and] defines the powers and functions of its institutions’ (Galligan and Versteeg 2013b, 6). Hart (2010, 20) notes that constitution-making is ‘a contest over the distribution,

redistribution, and limitation of power [therefore] the making or remaking of a constitution is of particular significance in divided and conflicted societies'. During political transition, designing a new constitution is often fraught with tension due to the potential lasting impact of constitutional decisions on the trajectory of the political system (Carey 2009).

There is a scholarly debate in both the electoral system design and constitution-making literatures regarding the benefits and drawbacks of inclusion in institution-building. One group of electoral system scholars emphasises the importance of choosing an electoral framework that is expected to incentivise the political representation of all communal groups (Lijphart 1991, 2004; Norris 2009; Reynolds 1995b). This is a part of the consociational approach to power-sharing in contested states, most comprehensively articulated by Arend Lijphart (1969). Lijphart (2004, 100) notes that 'for divided societies, ensuring the election of a broadly representative legislature should be the crucial consideration, and PR [proportional representation] is undoubtedly the optimal way of doing so'. A second group of electoral scholars claims that electoral systems, rather than aiming to include representatives of all societal groups, should rather incentivise the election of moderate, centrist candidates who will represent a broad spectrum of views (O'Leary 2013, 22). This is known as the centripetal approach; key proponents of this view include Donald Horowitz (1991) and Benjamin Reilly (2001).

The consociational approach has been criticised on two grounds. First, it is claimed that consociationalism has only been shown to work well over the long term in states that are not deeply divided societies, prompting the claim that it 'only works where it is not needed' (Guelke 2012, 31). Second, it is claimed that consociationalism can entrench communal divisions and give disproportionate political power to extreme groups (Mansfield and Snyder 2005). 'The danger of consociationalism is that through accommodating ethnicity and incentivising communal politics, [it] will bolster the power of ethnic extremists, who will use ever-escalating, mutually exclusive ethnic claims' (Nagle and Clancy 2012, 84). This can entrench communal divisions and encourage divisive politics along increasingly-salient communal lines (Chandra 2005; Rabushka and Shepsle 1972; Reilly 2002b).

Despite these caveats, the high risk of inter-communal tension in a contested state undergoing transition, has led to the consociational approach's emphasis on the inclusion of communal-group representatives in the political arena gaining traction over the centripetal approach as the best framework for this context (Bogaards 2013; Krook and Moser 2013;

Ruiz-Rufino 2013; Simonsen 2005; Wagner and Dreef 2014, 290).⁵ In recent years, one of the founders of the centripetal approach, Donald Horowitz, himself acknowledged the importance in some cases of political representation for all communal groups and, to this end, the need to follow the consociational recommendation for a proportional electoral system. Following Mubarak's abdication from power in Egypt in early 2011, Horowitz (1) endorsed the use of a PR electoral system in the first post-Mubarak elections, rather than an electoral system that incentivises centripetal behaviour. He explained that 'Ordinarily, proportional representation has a centrifugal effect, because it allows many parties, some of them extreme, to win a few seats and enter the legislature... In Egypt, however, the small parties are concentrated in the liberal, secular center. This kind of system (or at least most versions of it) would help them... to win a level of representation they could not achieve in individual, majority-runoff constituencies'.

In the constitution-making literature, whilst some scholars contend that inclusion in a process of creating a new constitution is critical for the constitution's legitimacy (Elkins, Ginsburg, and Blount 2011; Miller 2010a, 627–38; Widner 2005) other scholars cite the dangers of a highly participatory constitution process (Landau 2013; Partlett 2012). From one perspective, designing a constitution is considered a moment of 'high' law-making that sets out the 'core and constitutive commitments' of a polity (King 2013, 73) and as such should be a deliberative process that is as inclusive as possible of a state's societal groups (Hart 2010; Ndulo 2010). A second perspective is that elite-led constitution-making may produce a more coherent constitution than one produced through extensive deliberation with multiple groups (Wheatley and Germann 2016). This view contends that civil and political rights may be better protected in a constrained, rather than an inclusive, process (Landau 2013). For example, the involvement of multiple stakeholders could threaten textual coherence and internal consistency of the constitution (Ginsburg, Elkins, and Blount 2009, 210).

Despite these misgivings, constitutional scholars and transition architects increasingly consider inclusive constitution-making as 'best practice' in a contested state (Gluck and Brandt 2015; Hart 2010; Widner 2005). Ndulo notes that constitution-making is a 'national exercise in building national consensus' (Ndulo 2010, 192) and that inclusion affords an

⁵ An additional reason for the increased prominence of the consociational approach is that, due to logistical concerns, transitioning states almost never use the electoral recommendation of the centripetal approach, namely, a majoritarian-preferential electoral system.

opportunity to facilitate the broad commitment of all societal groups to the new constitution (Aucoin 2010, xii; Papagianni 2008; Samuels 2006). This is particularly pertinent in a contested state where ‘an inclusive approach can be vital to enabling all conflicting parties to debate and negotiate the terms of the new national order and resolve important differences peacefully’ (Miller 2010a, 628). Constitutional design processes in recent decades in Cambodia, Uganda, South Africa, Thailand, Eritrea, and Kenya have emphasised participation (Galligan and Versteeg 2013b, 33; S. Marks 2010; Miller 2010b).

Whilst both electoral system design and constitution-making literature emphasise inclusion as a mechanism to create political confidence, the former focuses primarily on the implementation stage, whilst the latter focuses on both the negotiation and implementation stage. A swathe of literature focuses on the implementation of electoral frameworks examining, amongst other things, how electoral systems facilitate the inclusion of societal groups in the elected assembly (Colomer 2004; Horowitz 2014; Gallagher and Mitchell 2008; Norris 2004; Powell 2000; Reilly 2002a). In comparison, there is minimal focus on the importance of inclusion of all societal groups in negotiations to determine an electoral system, before elections are held. Literature that does examine the electoral framework as a dependent variable, primarily investigates the way in which bargaining amongst strategic actors, aiming to achieve their preferred electoral system under conditions of political uncertainty, produces an electoral framework (Andrews and Jackman 2005; Benoit and Schiemann 2001; Luong 2000; Shvetsova 2003). The emphasis is not on inclusion of groups in negotiations as an important factor in building confidence in the political system.

Literature on constitution-making examines the importance of inclusion in both the process of designing a new constitution, and in the content and implementation of a constitution. A large body of literature examines participation and inclusion of all societal groups in constitutional design (Elster 1995; Ginsburg, Elkins, and Blount 2009; Miller 2010b; Widner 2005) as a key factor expected to produce perceived legitimacy of the new constitution. Alongside an interest in deliberations, scholars also examine the content of constitutions, in terms of groups’ inclusion in political institutions and guarantees of civil and political freedoms for all groups, as well as investigating how these proscriptions are implemented and whether they create confidence in the political system (Galligan and Versteeg 2013a; Ginsburg 2012; Kuperman 2015; Wheatley and Mendez 2016).

Despite a clear theoretical claim in both the electoral system design and constitution-making literatures that inclusion creates confidence in a political system, the empirical evidence is inconclusive. In the electoral system design literature, Bogaards (2013, 72) notes that 'surprisingly, there is little empirical evidence to back up the popularity of [inclusive electoral systems]'. Whilst some large-N studies have found that inclusive electoral system design does build support for a political system (Blais and Carty 1990; Bogaards 2013; Ruiz-Rufino 2013; Saideman et al. 2002), others find that it does not have the expected impact or actually exacerbates political violence (Norris 2002, 2004; Selway and Templeman 2012). For example, Norris (2002, 232-233) tests whether inclusive electoral systems build minority support for a political regime and finds the relationship unconfirmed, stating that the findings 'indicate that there is a complex pattern at work'.

Similarly, in the constitution-making literature, 'the claim that participatory design processes generate constitutions with higher levels of legitimacy and popular support has been subject to only limited study' (Ginsburg, Elkins, and Blount 2009, 215). Wallis (2014, 4) notes that 'the literature has not progressed far beyond speculation about what benefits public participation in constitution making may offer, and there have been few empirical studies of the benefits of public participation both during the constitution-making process and in its aftermath'. In probably the most comprehensive study to date, Widner (2005) surveyed almost 200 constitutional design processes to conclude that 'differences in the degree of participation in the drafting of constitutions has no major effect... in some parts of the world... but does make a difference [in others]' (503). Widner does not expand on what differentiates the former cases from the latter. Similarly, Miller (2010a, 636), on lessons learnt from 19 in-depth case studies on constitution-making, does not suggest a clear mechanism through which inclusion leads to support; rather she summarises the findings saying 'the overarching conclusion that emerges most clearly from the case studies is that context is of paramount importance'.

The lack of clear empirical evidence to either verify or refute the assertion that inclusion builds confidence in a political system, suggests that this relationship requires further investigation. Greater clarity is needed regarding what differentiates cases where inclusive institutional design in a contested state does create political support, from those where it does not. The following section examines the institutional design literature, noting an implicit distinction between *de jure* and *de facto* inclusion in discussions of institution-

building. I argue that this distinction may be integral to a clearer understanding of the mechanism through which inclusion builds support.

2.3 Disaggregating de jure and de facto inclusion

A survey of the literature on the importance of inclusion of societal groups in electoral system design and constitution-making reveals an implicit distinction between two elements of inclusion: de jure inclusion and de facto inclusion. The division between these two categories of inclusion may be key to understanding the mechanism through which inclusion builds political support. The distinction between de jure legislative and political frameworks, and de facto implementation of institutional procedures, is not novel to political literature; this division has been noted in the literatures on judicial politics (Hayo and Voigt 2007; Melton and Ginsburg 2014a), public governance (Maggetti 2007), political power (Acemoglu and Robinson 2006; Sampson 2014; Zheng 2007), and state sovereignty (Bahcheli, Bartmann, and Srebrnik 2004; Berg 2007; D. Lynch 2004).

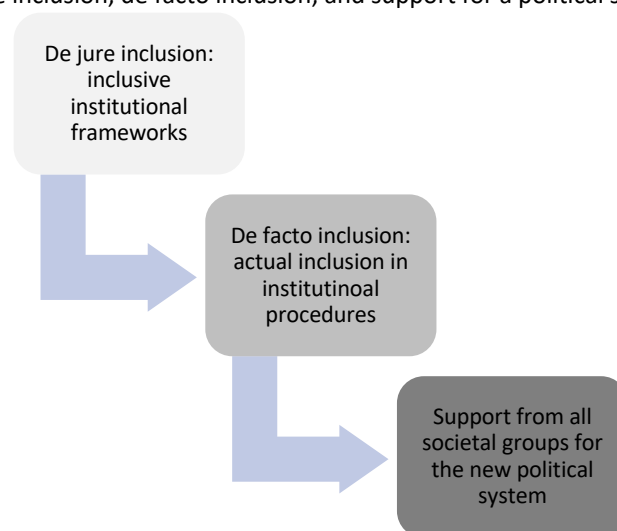
The definition of de jure and de facto in the literatures mentioned above varies according to the issue under examination. De jure independence of governance bodies is defined as formal independence based on ‘a series of prescriptions, enshrined in the constitutions of agencies’, and de facto independence as ‘the effective independence of agencies as they manage day-to-day regulatory actions’ (Maggetti 2007, 272). De jure political power is defined as ‘the type of political power allocated by political institutions (such as constitutions or electoral systems)’ and de facto political power as ‘the ability to galvanise collective action, brute force, lobbying or bribery’ (Acemoglu and Robinson 2006, 325–26) to achieve certain objectives. De jure sovereignty is defined as formal recognition of the control of a government over a specific territory vis-à-vis other governments, whilst de facto sovereignty is ‘the objective degree to which a nation asserts control over a... territory’ (Colangelo 2009, 625–26).

Literature on institutional design implicitly discusses de jure and de facto inclusion, without advancing an explicit definition of these two elements of inclusion. De jure inclusion can be understood as the inclusion of key societal groups in institutional frameworks or bodies responsible for determining institutional design. This could include the use of a proportional electoral system that is expected to facilitate the inclusion of all societal groups

in the political arena (Norris 2002; Reynolds 1995b); the selection of a constituent body with representatives from all societal groups (Cottrell and Ghai 2007, 6-7); or the holding of a constitutional referendum to approve a new constitution (Ginsburg, Elkins, and Blount 2009, 206-207). De facto inclusion sequentially follows de jure and refers to the actual inclusion of all groups in institutional procedures. For example, de facto inclusion is present if key groups actually gain representation in the political arena following transitional elections (Ruiz-Rufino 2013, 105), or if all groups are consulted on constitution-making and have an opportunity to influence the final constitution document (Ebrahim and Miller 2010, 146).

An often-implicit assumption in the institutional design literature is that de jure inclusion will produce de facto inclusion, which will in turn build support for a political system, as shown in Figure 2.1. This expectation is outlined by Norris (2002, 211) in the context of the consociational approach to electoral system design. Norris explains that ‘in plural societies with strong cleavages... PR systems... are believed to facilitate minority representation’. In other words, an inclusive electoral system (de jure inclusion) is expected to facilitate parliamentary representation of communal groups (de facto inclusion). In turn, it is expected that, ‘by facilitating the inclusion of ethnic minority parties into parliament, [inclusive electoral] systems increase ethnic minority support for the political system’ (213).

Figure 2.1 De jure inclusion, de facto inclusion, and support for a political system



Source: For an overview of this conceptual expectation see Norris (2002, 210)

There are contradictory findings regarding whether or not de jure inclusion does in fact produce de facto inclusion (Krook and Moser 2013, 33), some studies find that it does

(Bogaards 2013; Lijphart 1999; Powell 2000; Ruiz-Rufino 2013), whilst others find that it does not (Ruedin 2009; Thier 2010; A. Tripp 2010). Miller (2010a, 628) notes in her conclusion to an impressive volume of 19 constitution design case studies that ‘in some cases, the formal promise of representation and inclusion [was] unfulfilled in reality’. It is certainly plausible that de jure inclusion could exist without de facto inclusion, or vice versa. A de jure inclusive institutional framework that is expected to produce an inclusive outcome may not do so, either because human agents do not respond to the institutional incentives as expected or because the framework is not implemented as proscribed.⁶ It is also possible (though perhaps less likely) that de facto inclusion could be present without its de jure counterpart.⁷ In this case, an institutional framework that is not expected to produce an inclusive outcome instead produces one, for example, a majoritarian electoral system could facilitate representation of all societal groups in the political arena if groups are geographically concentrated (Barkan, Densham, and Rushton 2006). In an example from constitution making, it is plausible that where a constituent body does not include representatives of all groups, such representatives may in fact be consulted on the constitution and have an opportunity to influence the final document, constituting de facto inclusion.

The distinct impact of de jure and de facto inclusion in institutional design on support for a political system has not, to date, been sufficiently differentiated and systematically examined. Table 2.1 divides the available studies on inclusive institutional design into those that examine de jure inclusion, de facto inclusion, or a combination of both, and shows whether or not a relationship was found between inclusion and support. Support in the identified studies is measured either as perceived legitimacy of the government and political system, absence of anti-system violence, or participation in institutional frameworks measured by indicators such as voter turnout.

Studies examining de jure inclusion in institutional design are divided between those that find a relationship between inclusion and support and those that do not, shown in the first row of Table 2.1. Studies by Banducci, Donovan, and Karp (1999), Ishiyama (2000), Saideman et al. (2002), and Schneider and Wiesehomeier (2008) use a proportional electoral

⁶ For descriptions of de jure independence without de facto in studies on judicial and institutional independence see: Maggetti (2007); and Melton and Ginsburg (2014b).

⁷ The concept of de facto political power existing without de jure is outlined in the literature on territorial sovereignty, see, for example Colangelo (2009).

system as the independent variable (de jure inclusion) in large-N studies that find a relationship between inclusion and support. Conversely, studies by Aucoin and Brandt (2010), Cottrell and Ghai (2007), Elkins and Sides (2007), Norris (2002), Ruiz-Rufino (2013), and Widner (2005) examine the impact of either a proportional electoral system or various measures of de jure inclusion in constitution-making (selection and composition of constituent body, public consultation, constitutional approval by public referendum) on political support, and do not find a clear relationship.

The second row in Table 2.1 shows, first, that de facto inclusion in institutional design is not often examined without its de jure counterpart. Second, a lack of clear empirical evidence is revealed. Ruiz-Rufino (2013) finds that representation of minority groups in the political arena (de facto inclusion) positively impacts support of minority groups for the political system, whilst Alonso and Ruiz-Rufino (2007), in an earlier study, find that the same measure of de facto inclusion had no impact on communal group support for the political system.

Studies that examine both de jure and de facto inclusion, shown in the third row, mostly find a relationship between inclusion and political support. However, an examination of these studies shows that the impact of de jure and de facto inclusion is not considered conceptually distinct. Whilst Bogaards (2013) examines both de jure inclusion (proportional electoral system) and de facto inclusion (representation of key groups in the political arena), he frames the study as an examination of the impact of de jure inclusion on support for the political system; de facto inclusion is included to examine whether de jure inclusion in fact produces de facto, not to separately assess whether the latter builds political support. Studies by Ebrahim and Miller (2010) and Wallis (2014) concurrently examine de jure inclusion (selection of the constituent assembly, official avenues for public participation, and the holding of a constitutional referendum) and de facto inclusion (the actual inclusion of all significant societal groups in consultations on constitution-making and these groups' opportunity to influence the constitution document) in case-studies of constitution-making, without making a clear conceptual distinction between the two elements of inclusion. In the second column of the third row in Table 2.1, Moehler (2008) does not find a clear relationship between de jure and de facto inclusion in constitution-making in Uganda, and support for the political system.

Table 2.1 De jure and de facto inclusion in existing studies

	Inclusion	Support for political system: relationship found	Support for political system: no clear relationship
Row 1	De jure inclusion	Banducci, Donovan, and Karp (1999) Ishiyama (2000) Saideman et al. (2002) Schneider and Wiesehomeier (2008) ⁸	Aucoin and Brandt (2010) Cottrell and Ghai (2007) Elkins and Sides (2007) Norris (2002) Ruiz-Rufino (2013) Widner (2005)
Row 2	De facto inclusion	Ruiz-Rufino (2013)	Alonso and Ruiz-Rufino (2007)
Row 3	De jure and de facto inclusion	Bogaards (2013) Call (2010) Carlson (2010) Ebrahim and Miller (2010) Wallis (2014)	Moehler (2008)

The lack of conceptual distinction between de jure inclusion and de facto inclusion in the literature may account for the uneven empirical evidence regarding whether inclusive institutional design builds support for a political system. Studies that examine de jure inclusion produce contradictory findings. Studies on de facto inclusion alone are rare. The undifferentiated examination of de jure and de facto inclusion in other studies does not allow us to ascertain the distinct impact of de jure or de facto inclusion on support for a political system. This constitutes a gap in the literature that this study aims to address. The study's central research question is: *does de jure inclusion, de facto inclusion, or a combination of both, build support for a political system in a contested state undergoing political transition?* In order to investigate this question, four hypotheses are advanced, shown in Table 2.2.

If inclusion in institutional design is necessary to build support, as asserted in the literature, then we can expect that if neither de jure nor de facto inclusion are present, support will also not be observed. This proposition is captured in hypothesis one. Note that because this study focuses on institution-building in contested states, inclusion of all key communal groups is of primary importance.

Hypothesis 1: In a contested state undergoing political transition, where neither de jure nor de facto inclusion of key communal groups in institutional design is observed, support for the political system will not be observed.

⁸ Note that this study also examines the impact of the effective number of political parties which could be a measure of de facto inclusion, however, the authors do not relate this to the political representation of communal groups.

Table 2.2 Hypotheses

	De jure inclusion	De facto inclusion	Expected observation of support for political system
H1	-	-	-
H2	x	x	y
H3	x	-	y
H4	-	x	y

The electoral system design and constitution-making literatures implicitly assume that a combination of both de jure inclusion and de facto inclusion is sufficient to build support for a political system. This expectation is reflected in hypothesis two.

Hypothesis 2: In a contested state undergoing political transition, where both de jure and de facto inclusion of key communal groups in institutional design is observed, support for the political system will be observed.

However, if de jure inclusion or de facto inclusion alone is sufficient to build support for a political system, then we would expect that either 1) where de jure inclusion exists without de facto inclusion, support will be observed, or 2) where de facto inclusion is present without de jure, support will be observed. These expectations are reflected in hypotheses three and four.

Hypothesis 3: In a contested state undergoing political transition, where de jure inclusion of key communal groups in institutional design is observed, and de facto inclusion is not, support for the political system will be observed.

Hypothesis 4: In a contested state undergoing political transition, where de facto inclusion of key communal groups in institutional design is observed, and de jure inclusion is not, support for the political system will be observed.

2.4 Conclusion

In response to the puzzle posed at the beginning of this chapter—why did inclusive institutional design lead to support for the political system in South Africa whilst an inclusive constitution-making process in Kenya failed to build support?—evidence from this chapter suggests that, differentiating between de jure and de facto inclusion may provide an explanation for the discrepancy between these two cases. Indeed, an examination reveals that whilst both de jure and de facto inclusion were present in South Africa, in Kenya there was de jure inclusion without de facto. In South Africa, alongside inclusive deliberative bodies

and public consultations (de jure inclusion), the 'priority given to consensus was critical' (Ebrahim and Miller 2010, 146). Persistent ongoing negotiations took place up until a constitution document was finalised (Democracy Reporting International 2011d, appendix; Ebrahim 1998). De facto inclusion in South Africa was demonstrated by the fact that 'each side realised that they needed the other to be able to deliver the support of its constituency' and were willing to 'transcend their past experiences as oppressed and oppressor, and to work patiently and persistently over a long period of time to reach the desired end' (Ebrahim and Miller 2010, 147).

In Kenya, by contrast, whilst there were widespread consultations and debate on constitution-making, this was not accompanied by de facto inclusion. Cottrell and Ghai's (2007) detailed analysis of Kenyan constitution-making outlines the numerous provisions for de jure inclusion set out by the Kenya Review Act that 'provided for a very participatory process' (8) including 'the most representative body ever assembled in Kenya [that] was set up to reflect public concerns and to be the primary negotiating forum in the process' (6). However, in practice, de facto inclusion did not eventuate. Civil society actors wanted to 'exclude the government and parliament from any role as such in the review process', and government actors 'wanted to exclude the people' (21). As a result, political actors boycotted, withdrew from, or otherwise stalled the constitutional review process. A draft constitution was produced through an inclusive process, but was subsequently altered in a non-inclusive forum by political actors, and then adjusted again by the Attorney General before being put to a referendum in which it was rejected. Cottrell and Ghai (2007, 7) allude to the lack of de facto inclusion: 'the process was conducted... in accordance with the formal provisions of the [Kenya Review] Act [but] not... in its spirit'.

Rebuilding a contested state begins with the design of political Institutions. Despite a theoretical assertion that inclusive institutional design creates support for a political system, there is a puzzling lack of a coherent body of evidence to support this claim. An investigation of the literature on inclusive institutional design reveals a conceptual distinction between de jure inclusive institutional frameworks and de facto inclusive implementation of institutional procedures, that has not been systematically examined. This study addresses this gap, contending that a better understanding of the mechanism through which inclusive institutional design creates support would not only further our theoretical understanding of inclusion, and shed light on the seemingly contradictory findings in existing studies, but may

also deepen our comprehension of transitional architecture and the creation of stable political institutions.

The next chapter outlines the study's research design in order to investigate the four hypotheses advanced above. A small-N comparative method is used, employing a most-similar-systems-design for case selection. The operationalisation of the independent variables (de jure inclusion and de facto inclusion) and the dependent variable (support for a political system) are detailed for each empirical chapter, as well as the data used to measure each variable.

Chapter Three

Research Design

This study investigates the casual mechanism through which inclusion of communal groups in institutional design creates support for a political system. This chapter addresses the question of how this mechanism can be best investigated. A small-N comparative study is considered most appropriate to this task as it enables both a qualitative investigation of key variables as well as identification of a causal mechanism that is generalisable across cases. A most-similar-systems-design is used to select countries from the Arab-majority states of the Middle East and North Africa (MENA) region. Drawing on measurements of inclusion and support in the literature, indices are developed to measure the independent variables (de jure and de facto inclusion) and the dependent variable (support for a political system). Data used to measure the indicators for each index is outlined.

3.1 Research design and case selection

This study investigates the mechanism through which inclusive institution-building creates political support. Large-N studies have found that the relationship between inclusive institutional design and support is complex (Norris 2002, 232–33; Widner 2005, 503). At the same time, single or comparative case studies have not identified a generalisable causal mechanism (Miller 2010b). On the one hand, investigation of a causal mechanism typically requires a more granulated approach than is possible with a large-N study (George and Bennet 2004, 74–75), and, in particular, the investigation of de facto inclusion requires qualitative investigation. On the other hand, examination of a single case may prevent the capacity to make assertions that can be applied beyond the specific case under investigation. Therefore, a small-N comparative study is used to enable an investigation of the mechanism through which inclusion leads to support in the selected cases. The small number of cases used here enables qualitative investigation, whilst the comparative element provides greater leverage than a single case study to identify a causal mechanism that is generalisable beyond a single case (Lijphart 1975).

A key challenge when using a small-N comparative research design is that of ‘too many variables and too few cases’ (Lijphart 1975, 159). This challenge can compromise a study’s

capacity to fulfil two important criteria for good research design: 1) control for extraneous independent variables; and 2) permit the investigator to generalise from his or her findings (Goggin 1986, 329). Case selection is one method to address the challenges of control and generalisability (Ebbinghaus 2005). This study uses a most-similar-systems-design for case selection. This means that in order to control for structural factors, cases are chosen that have similar contextual conditions but differ on the independent variable under examination (Anckar 2008, 391). This introduces 'an element of control by selecting cases on the basis of comparability and similarity' (Goggin 1986, 331). Whilst most-similar-systems-design controls for extraneous variables to the extent that cases share structural factors, the study still faces the problem of generalisability beyond the study's pool of cases. This study is best considered an exploratory investigation. The findings are indicative in support of the study's theoretical argument. The illustration of a causal mechanism using a small-N comparative study in this thesis, provides a framework for these findings to be applied across additional cases, beyond those under investigation, to test their robustness and generalisability, in a future study. Such a large-N study is beyond the scope of the current project.

Lijphart (1975, 14-15) outlines four strategies of case selection using a most-similar-systems-design, one of which is to select countries that are 'found within a geographical-cultural area' (159). This is the method employed by this study; countries are selected from the Arab-majority states of the MENA region. The MENA region is considered a political entity for the purposes of scholarly analysis (see for example: Beinin and Vairel [2013]; Gasiorowski and Yom [2017]; and Yousef [2004]) and is treated as a unit for regional comparison by political research bodies such as Freedom House,¹ the International Foundation for Electoral systems (IFES),² and the World Bank.³ Given that this study examines institution-building during political transition in states with a salient communal cleavage, the political upheaval in the MENA region in recent decades, coupled with strong communal divisions, provides fertile ground for this analysis.

Case selection for the study is confined to Arab-majority states of the region to maximise similarity in structural conditions. These are defined as states with a majority-population that is of Arab ethnicity, and Arabic as an official state language. This excludes the

¹ See: freedomhouse.org/regions/middle-east-and-north-africa

² See: ifes.org/middle-east-and-north-africa

³ See: worldbank.org/en/region/mena

MENA states of Iran, Israel, and Turkey from the pool of cases. This leads to identification of 16 Arab-majority states and one territory: five states situated along the very northern border of Africa (Algeria, Morocco, Egypt, Libya, Tunisia) as well as 11 states and one territory in the Middle East and Gulf region (Bahrain, Iraq, Jordan, Kuwait, Lebanon, Oman, Palestinian territories, Qatar, Saudi Arabia, Syria, United Arab Emirates, Yemen).⁴ Scholars have used broader definitions of the MENA region (see, for example Fawcett [2013, 3]), that include states in sub-Saharan Africa that hold membership in the Arab League [Comoros, Djibouti, Mauritania, South Sudan, Sudan and Somalia]). However, given that these countries are geographically considered to be a part of Sub-Saharan Africa, the more-narrow definition of the MENA region outlined above is used here.

Of these 16 states and one territory, Lebanon and the Palestinian territories are excluded from the pool of cases due to the long-running impact of external influences on their sovereignty and politics. The Palestinian territories have never enjoyed independent state sovereignty, being consistently under foreign control (Jordanian governance from 1948 to 1967, and Israeli occupation post-1967) (Bickerton and Klausner 2016). Whilst Lebanon enjoys sovereignty, its political environment is characterised by external influence. Lebanon is unique in the Arab-majority states of the MENA region in that it underwent a period of democratic governance in the twentieth century. However, this was followed by a civil war lasting from 1975 to 1990. Today, Lebanon has a form of 'proto-democracy that differs qualitatively from the political conditions in other Arab states' (Brownlee, Masoud, and Reynolds 2015, 13). The civil war, its conclusion, and Lebanon's political context to date are characterised and driven by external players including Iran, Israel, Syria (until recently) and Saudi Arabia (Najem 2012). The exclusion of Lebanon and the Palestinian territories leaves 15 states in the pool of cases, henceforth referred to as the MENA region.

Economic and political indicators for the MENA region demonstrate diversity across the region, shown in Table 3.1. Population size ranges from under two million in Bahrain, to more than 95 million in Egypt; gross domestic product (GDP) per capita ranges from less than \$US1,000 in Yemen to almost \$US60,000 in Qatar. Countries in the region can also be broadly divided into those that possess significant natural resource wealth and those that do not, with

⁴ This definition of the Arab-majority states of the MENA region has been used in academic studies of the region, see for example: Diamond (2010); Gasiorowski (2014); Stepan and Robertson (2003).

nine countries deriving between 14 and 48 percent of GDP from natural resource rents, whilst seven countries derive less than four percent GDP from resource rents. However, in terms of political freedom Table 3.1 shows little variation. Only Tunisia was rated 'free' in 2018, following the increase in political and civil freedoms that occurred post-2010. Jordan, Kuwait, Lebanon, and Morocco were considered partly free, whilst the remaining 11 states were classified as not-free. Similarly, in 2018, Tunisia was the only country assessed as an electoral democracy. In terms of regime type, there is a division between monarchical political systems and republics. As of 2018, there were seven monarchies and six republics, with Libya and Yemen in a state of political uncertainty.

Until the twenty-first century, the MENA region was noted for regime stability, in particular authoritarian persistence (Bellin 2004; Gause 2011). The post-1975 wave of political transitions that swept across parts of southern and eastern Europe, Latin America, South-East Asia, and Africa, appeared to by-pass the MENA region (Diamond 2010). Leadership changes that did occur in MENA states did not threaten the stability of long-standing regimes. For example, the replacement of Bourguiba with Ben Ali in Tunisia in 1987 did not lead to regime change (Alexander 2012). Similarly, leadership changes in Egypt from Nasser to Sadat in 1970, and then to Mubarak in 1981 did not destabilise the governing regime (Osman 2013). Transition from al-Bakar to Saddam Hussein in Iraq in 1979 occurred in the context of regime persistence (Stansfield 2007). Equally in the monarchical regimes of the region, leadership change from one ruling monarch to another occurred without threatening the established political order (Anderson 1991; Hammond 2014; Menaldo 2012).

However, despite regime stability, salient communal cleavages resulted in violent conflict in several states, that was harshly repressed by the ruling regime. For example, Yemen's regional and sectarian division between the Shia-sect of the Houthis in the North and the Sunni-populated south drove civil war during the 1980s and 1990s (Dresch 2000). The ethno-sectarian cleavage in Iraq between Sunni-Arabs, on the one hand, that held governance, and Shia-Arabs, Kurds, and other minority non-Arab or non-Muslim groups, on the other, led to oppression of the latter groups. Notably, violent confrontation between Kurdish groups and the government of Iraq led to the death of close to 200,000 Iraqi Kurds in the late 1980s (C. O'Leary 2002; Stansfield 2007).

Table 3.1 Arab-majority MENA states: select economic and political indicators

State*	Population size (millions)	GDP per capita (US\$)	Natural resource rents (% GDP)	Political freedom 2018	Electoral democracy 2018	Regime type
Algeria	40.6	3,916	14	Not free	No	Presidential republic
Bahrain	1.4	22,579	4	Not free	No	Monarchy
Egypt	95.7	3,478	4	Not free	No	Presidential republic
Iraq	37.2	10,297 (1990)	42	Not free	No	Parliamentary republic
Jordan	9.5	3,917	1	Partly free	No	Monarchy
Kuwait	4.1	27,359	45	Partly free	No	Monarchy
Lebanon	6	8,257	0	Partly free	No	Parliamentary republic
Libya	6.3	5,603 (2011)	48 (2011)	Not free	No	In transition
Morocco	35.3	2,893	2	Partly free	No	Monarchy
Oman	4.4	14,982	27	Not free	No	Monarchy
Qatar	2.6	59,324	21	Not free	No	Monarchy
Saudi Arabia	32.3	20,029	27	Not free	No	Monarchy
Syria	18.4	2,058 (2007)	21 (2007)	Not free	No	Presidential republic
Tunisia	11.4	3,689	3	Free	Yes	Parliamentary republic
United Arab Emirates	9.3	37,622	15	Not free	No	Federation of monarchies
Yemen	27.6	990	1	Not free	No	In transition

*No data available for the Palestinian territories

Sources: Population size, GDP per capita, and resource rents from World Bank indicators available at: <http://data.worldbank.org/indicator>; all values for 2016 unless specified otherwise. Regime type from CIA World Factbook, available at: <https://www.cia.gov/library/publications/the-world-factbook>; all values for 2018. Political freedom scores and electoral democracy evaluation from Freedom House 'Freedom in the World 2018' report available at: <https://freedomhouse.org/report/freedom-world/freedom-world-2018>; all values for 2018.

The notable communal cleavage in the MENA region between Islamists and non-Islamists (Hamid 2014; Schwedler 2007) led to insurgency violence in some states with Islamist groups constituting key opposition to long-standing authoritarian regimes (Wickham

2004, 205). For example, in Algeria, a violent insurgency broke out following the annulling of election results in 1991, continuing in decreasing intensity for over a decade (McDougall 2017). Violence has also been used to a greater and lesser extent by Islamist groups in Egypt including members of the Muslim Brotherhood (Cook 2012) and by Islamist-aligned actors in Tunisia (Louden 2015). Such civil violence was for the most part met with brutal force on behalf of governing regimes (Hafez 2003).

Despite the diversity displayed in Table 3.1, the Arab-majority states of the MENA region can be considered a coherent ‘most similar’ pool of cases for the purposes of case selection given that they share structural attributes along seven dimensions (demographic, ethnic, geographic, linguistic, religious, socio-cultural, and political-historical), shown in Table 3.2.⁵ Demographically, the states of the MENA region share youthful populations, known as the ‘youth bulge’. In 2010, preceding the Arab Uprisings, youth aged 15-29 constituted between 25 and 34 percent of the populations of these countries (Kraetsch and Constant 2010). Along the ethnic dimension, all states have populations that are primarily of Arab ethnicity.⁶ Geographically, whilst spanning two continents, MENA states are clustered within the same geographic area, forming a common geostrategic area (Brownlee, Masoud, and Reynolds 2015, 8–9). Linguistically, Modern Standard Arabic is the official state language and the lingua franca amongst Arab-majority MENA states.⁷ Along the religious dimension, these states have a majority-Muslim population (Obermeyer 1992; Tessler 2002).⁸

Table 3.2 Arab-majority MENA states: shared structural conditions

Dimension	Description
1. Demographic	High youth population
2. Ethnic	Majority-ethnicity: Arab
3. Geographic	Located in Middle East North Africa
4. Linguistic	Official language: Arabic
5. Religious	Majority religion: Islam
6. Socio-cultural	Shared popular culture, traditional values
7. Political-historical	Shared political identity

Source: see text for detailed discussion of sources

⁵ It is acknowledged that alongside these shared structural attributes, each state in the MENA region has its own unique political and historical context.

⁶ Within states, there are minority ethnic groups such as the Berber in the Maghreb states, see Maddy-Wietzman (2011), and the Kurds in Iraq and Syria, for more detail see Abdulla (2012).

⁷ Dialects of the Arabic language vary from state to state, and there is more than one official language in some states.

⁸ There are also minority religious groups in several states, see for example, Nisan (2002). In addition, there is an important sectarian division between Shia Muslims and Sunni Muslims that constitutes a communal cleavage in states such as Bahrain and Iraq (Gasiorowski 2014, 8).

Perhaps one of the most important shared dimensions in the MENA region is a socio-cultural one. Arab-majority states share Arabic-language popular culture including movies, music, and television shows (Hammond 2007; Hamamsy and Soliman 2013), creating a shared cultural experience. In addition, common values and attitudes are shared by these states' majority-populations. This is demonstrated in Wave Six of the World Values Survey that included 10 of the 15 states in the pool of cases for this study. Chief architects of the World Values Survey project make a broad global distinction between countries with traditional/survival values and those with secular-rational/self-expression values as key lines of socio-cultural differentiation (Inglehart and Welzel 2005). In all 10 MENA states included in the survey strong traditional/survival values were displayed, as opposed to secular-rational/self-expression values.⁹

A final, important shared dimension in the MENA region is a political-historical one. All 15 states in the pool of cases have in common, at least to some extent, a shared political identity as part of an Arab-Muslim region. This traces back to pan-Arabism, initiated by Egypt's President Nasser in the 1950s (Mellon 2002; Osman 2013), an attempt to create a shared Arab identity, consolidated at the time around a shared sense of injustice at the Israel-Palestine conflict (Bickerton and Klausner 2016), and a shared anti-colonial sentiment focused on 'the West' (Bowker 2010, 8). As noted by Bowker (1996, 38): 'the Palestine issue is part of the shaping of the political identity of the Arab world and has fundamentally affected the nature of Arab governance and politics'. Whilst the strength of a pan-Arab political community has diminished in the minds of MENA citizens in recent decades, the fact remains that the Arab-majority states of the MENA region share a political history and identity that extends beyond state borders.

Out of the pool of 15 cases, two criteria were applied to select cases for the small-N comparative study. The first criterion was that a state underwent authoritarian breakdown in the context of a salient communal cleavage. As noted in the introductory chapter, authoritarian breakdown is defined as a period of political uncertainty (Linz and Stepan 1996, chap. 1; Schedler 2001), following the deposition of an authoritarian leader or government.

⁹ In terms of survival values, the 10 Arab-majority states included in Wave 6 of the World Values Survey fall between .22 and .32 (as an average) on a scale of 1-10, with 1 being closest to survival values, and 10 being closest to self-expression values; and between 0.1 and 0.38 on a scale of 1 to 10 with 1 being closest to traditional values and 10 being closest to secular-rational values. Data available at: <http://www.worldvaluessurvey.org/WVSDocumentationWV6.jsp>

A salient communal cleavage is defined as a politically-salient cleavage running along communal lines, that indicates a core dispute regarding the character of the political system (Wimmer 1997). Given the study's focus on institution-building, the second criterion was that, during the uncertain period following authoritarian breakdown, new political institutions were designed, either a new electoral system that was used in transitional elections, or a new constitution. Whilst some states carried out both electoral system design and constitution-making, one was sufficient for selection.

Table 3.3 Case selection criteria

		Authoritarian breakdown + communal cleavage*	
		YES	NO
New electoral system & transitional elections	YES	Egypt Iraq Libya Tunisia	
OR			
constitution-making and constitution approved	NO	Syria** Yemen	Algeria*** Bahrain Jordan Kuwait Morocco Oman Qatar Saudi Arabia United Arab Emirates

*There could conceivably be a category of cases that underwent political transition but do not have a salient communal cleavage. For the sake of parsimony these are aggregated as one condition. All four states that underwent transition and institutional design do contain such a cleavage.

**Conflict devolved into civil war; did not undergo authoritarian breakdown and political transition.

***Algeria's 1991 elections do not fulfill the criteria as they took place under the auspices of an ongoing authoritarian regime.

Source: for Iraq: Al-Ali (2014); for the remaining countries: Brownlee, Masoud, and Reynolds (2015, chap. 1).

Table 3.3 displays how the 15 states fulfill the selection criteria. In the top, left-hand corner of the table we see that four states meet both criteria: Egypt, Iraq, Libya, and Tunisia. In the bottom right-hand corner we see that nine states did not undergo political transition at all. The bottom left-hand corner shows that Yemen underwent a political transition in 2011, in the context of a salient communal cleavage, but did not undergo a process of institutional design. Whilst Yemen carried out a National Dialogue in 2013, this process did not produce a new electoral system or a constitution document (Gaston 2014). Syria experienced strong protests in 2011 that descended into civil war; however, Syria has not, to date, undergone complete authoritarian breakdown or a process of institutional design in the context of political transition (Hatahet 2017).

All four states that fulfill the selection criteria underwent political transition following authoritarian breakdown, in the context of a salient communal cleavage, and designed a new electoral system or new constitution during this time. Iraq underwent authoritarian breakdown and political transition following the US-led invasion of 2003 that ended Saddam Hussein's long-standing regime (Dobbins et al. 2009). Egypt, Libya, and Tunisia underwent authoritarian breakdown and a political transition as part of the Arab Uprisings of 2010-2011; long-term authoritarian leaders either abdicated (Egypt and Tunisia) or were caught and executed (Libya) following widespread civil protest (Brownlee, Masoud, and Reynolds 2015, 9–12).

All four countries underwent an authoritarian breakdown under the auspices of transition to a regime underpinned by political and civil freedom. In each country, the interim authority (shown in Table 3.4) declared that the political transition would constitute the building of inclusive institutions that would form the framework for a new political system. In Egypt, following Hosni Mubarak's abdication on 11 February 2011, the Supreme Council of the Armed Forces (SCAF), was self-appointed to oversee a political transition (International Crisis Group 2012). The SCAF dissolved the parliament and suspended the constitution, announcing that they would oversee political transition to a democratic regime. The SCAF's constitutional declaration of 13 February 2011 stated that: 'the Supreme Council of the Armed Forces believes that human freedom, the rule of law, support for the value of equality, pluralistic democracy, social justice, and the uprooting of corruption are the bases for the legitimacy of any system of governance that will lead the country in the upcoming period' (Supreme Council of the Armed Forces 2011).

In Iraq, the Coalition Provisional Authority (CPA) was established by the occupying US government and vested with executive, legislative and judicial powers following the US-led invasion of Iraq that ousted President Saddam Hussein (Coalition Provisional Authority 2003). The CPA declared that they would oversee a transition to a regime underpinned by elections to select political leaders, and guarantees of civil and political rights (Dobbins et al. 2009, chap. 9). The CPA stated in CPA Regulation Number One of 16 May 2003 that a core tenet of its mission in Iraq was to create conditions in which the Iraqi people could 'freely determine their own political future, including by advancing efforts to restore and establish national and local institutions for representative governance' (Coalition Provisional Authority 2003).

In Libya, the National Transitional Council (NTC) was self-tasked with overseeing a transition in Libya to a new political system where leaders would be freely elected and civil rights guaranteed. The NTC was formed in East Libya on 27 February 2011, composed of defected members of Gaddafi's regime, exiled opposition figures, and members of local councils (Pack and Cook 2015, 181), and declared itself the sole representative of the Libyan people on 5 March 2011 (NTC Libya 2012). The NTC declared that 'The aim of the Transitional National Council is to steer Libya during the interim period that will come after its complete liberation and the destruction of Gaddafi's oppressive regime. It will guide the country to free elections and the establishment of a constitution for Libya' (Temehu 2016).

Table 3.4 Egypt, Iraq, Libya, and Tunisia: interim authority type

Interim authority type	Country	Interim authority
Body associated with ancien regime	Egypt (military)	Supreme Council of the Armed Forces
Foreign Power	Iraq	Coalition Provisional Authority
Transitional council	Libya	National Transitional Council
	Tunisia	Higher Council for the Fulfillment of Revolutionary Goals

Source: see text for detailed discussion of sources; for a discussion of interim authority types see Shain and Linz (1992, 76-77).

In Tunisia, the Higher Council for the Fulfillment of Revolutionary Goals (HCFRG) was a transitional body composed of civil, opposition, and ancien regime actors, established in February 2011 following President Zine al-Abidine Ben Ali's abdication, tasked with overseeing transition to an open political regime (Pickard 2011; Stepan 2012a). Article one of the constitutional declaration issued on 23 March 2011, stated that: 'The public authorities in the Republic of Tunisia shall be provisionally organized in accordance with the provisions of the decree-law herein, until a national constituent assembly elected with universal, free, direct and secret vote according to an electoral system chosen for this purpose, takes its functions' (The President of the Tunisian Republic by Interim 2011).

All four countries have a salient communal cleavage that has shaped the political context since the state's inception (discussed in detail in Chapter 4). Whilst all four states have multiple and overlapping cleavages, the key line of communal division that constitutes an obstacle to a shared state identity, is considered the central communal cleavage. In Iraq, this is the ethno-sectarian division between Shia-Arabs, Sunni-Arabs, and Kurds (Stansfield 2007).

In Egypt and Tunisia, it is the division between Islamist and non-Islamist groups (Bali and Lerner 2016), that is, the division between those that support Islamic values and laws as the key basis for political and legal frameworks, and those that do not (Bowker 2010, 104-107; Loudon 2015). In Libya, the key communal cleavage that has consistently threatened state cohesion is the geographic division amongst Libya's three key provinces: Cyrenaica, Fezzan, and Tripolitania (Vandewalle 2006).

Table 3.5 Egypt, Iraq, Libya, and Tunisia: political transition and institutional design

	Start of political transition	Salient communal cleavage	Electoral system determined	First transitional elections	Constitution-making	Constitution approved
Egypt	Feb 2011	Civic-religious: Islamist; non-Islamist	Sep 2011	Nov 2011 – Jan 2012	During 2012	Dec 2012
Iraq	May 2003	Ethno-sectarian: Shi'a-Arab; Sunni-Arab; Sunni-Kurd	June 2004	Jan 2005	During 2005	Oct 2005
Libya	Oct 2011	Regional: Cyrenaica; Fezzan; Tripolitania	March 2012	July 2012	N/A	N/A
Tunisia	Jan 2011	Civic-religious: Islamist; non-Islamist	Sep 2011	Oct 2011	2011-2014	Jan 2014

Source: See text for detailed discussion of sources; see Chapter 4 for discussion of salient communal cleavage in each country.

Egypt, Iraq, Libya, and Tunisia all designed and implemented new political institutions following authoritarian breakdown, shown in Table 3.5. In all four countries a new electoral system was established within 14 months of the previous leader's abdication or demise, following which first transitional elections were held.¹⁰ Subsequent to these elections, Iraq, Egypt, and Tunisia went on to design and approve a new constitution to underpin the political system (Haugballe et al. 2017; Morrow 2005; Project on Middle East Politics 2013). The transitional authority in Libya stated that a constitution-making process would take place during the transition, however the central governing authority lost monopoly over the use of

¹⁰ See IFES election guide country profiles for all four countries, available at: <http://www.electionguide.org/countries>

force in the country before this occurred, derailing plans for constitution-making, that, as of 2018, have not eventuated.¹¹

A survey of socio-economic indicators in the selected countries in the year preceding transition (2010 for Egypt, Libya, and Tunisia; 2002 for Iraq), shows a degree of similarity amongst the four countries; this is displayed in Table 3.6. Three of the four countries had a GDP per capita below \$US5,000. Despite Iraq's significant oil reserves, severe sanctions during the 1990s led to a low level of GDP per capita (Alnasrawi 2001). Libya alone displays higher GDP due to its substantial resource wealth, at \$US12,000. However, this is still far below the oil-rich states of the Gulf (see Table 3.1). The gini index in the second column of Table 3.6 shows the level of income inequality in the three countries for which data is available; all three were clustered around 30 on the index, falling between 28 and 36. Life expectancy at birth was between 69 and 75 years for all four countries; adult literacy ranged from 72 to 79 percent; and gender parity in education was close to one in all four countries, on a scale of zero to one, with one meaning full parity.

Table 3.6: Egypt, Iraq, Libya, and Tunisia: socio-economic conditions

	GDP per capita (US\$)	Gini index (World Bank estimate)	Life expectancy (at birth)	Adult literacy (percent)	Gender parity in primary & secondary education
Egypt	2,602	31.5	70	72	.971
Iraq	1,391 (2004)	28.6 (2006)	75	74 (2000)	.8 (2003)
Libya	12,120	No available data	72	No available data	1 (2006)
Tunisia	4,140	35.8	69	79	1

Source: World Bank Indicators available at: <http://data.worldbank.org/indicator>. All indicators are in the year before transition (2010 for Egypt, Libya, Tunisia; 2002 for Iraq) unless specified otherwise.

Alongside these similarities, it is important to note three lines of division amongst the four selected cases: regime type, oil wealth, and mode of transition; this is shown in Table 3.7. In terms of regime-type, all four states were presidential republics pre-transition, and would be best classified as authoritarian regimes; there was no variation in the level of

¹¹ A governance body in Libya did undertake a constitution design process in 2017 that produced a draft document. However, due to competing centres of governance, this document has not been approved to date, see Toaldo (2017).

political and civil freedom in the year preceding transition, with Iraq assessed as ‘not free’ in 2002, and Egypt, Libya, and Tunisia considered ‘not free’ in 2010.¹² However, there was variation in terms of the type of authoritarian regime. According to the Autocratic Breakdown and Regime Transitions dataset (Geddes, Wright, and Frantz 2014), Iraq and Libya were classified as ‘personal’ authoritarian regimes pre-transition, whilst Egypt was party-personal and Tunisia was party-based. In terms of oil wealth, there is a similar line of division between Iraq and Libya, on the one hand, that are both oil-rich, and Egypt and Tunisia, on the other hand, that do not have significant income from natural resource rents (see Table 3.1).

A third line of division is the mode of transition, that is, how authoritarian breakdown occurred and when the period of political transition began; this is noted by scholars as important for the transition trajectory (Guo and Stradiotto 2014; Munck and Leff 1997). Here too, there is a division between the countries. On the one hand, Iraq and Libya underwent a political transition following foreign military intervention: the US-led invasion of Iraq in 2003 (Dobbins et al. 2009); and the NATO bombing campaign of Libya in 2011 that enabled victory for rebel groups fighting Gaddafi (Pack and Cook 2015). On the other hand, Egypt and Tunisia underwent authoritarian breakdown and political transition following the abdication of a long-term authoritarian leader due to widespread popular protest and civil unrest (Hilal 2012). This creates two pairs of country-profiles, Iraq and Libya with personalist, oil-rich regimes whose mode of transition was characterised by foreign military intervention; and Egypt and Tunisia with a party-personal or party-based regime that were oil-poor and underwent transition following the abdication of a long-term authoritarian leader.

Table 3.7 Egypt, Iraq, Libya, and Tunisia: resource wealth, mode of transition, and regime type

	Mode of transition: abdication	Mode of transition: foreign military intervention
Oil-Rich		Iraq (personalist regime) Libya (personalist regime)
Oil-poor	Egypt (party-personal regime) Tunisia (party-based regime)	

Sources: Mode of transition for Egypt: International Crisis Group (2012), for Iraq: Dobbins et al. (2009), for Libya: Pack and Cook (2015), for Tunisia: Stepan (2012a); resource wealth: World Bank indicators, see Table 3.1; regime type: Autocratic Regimes dataset, available at: <http://sites.psu.edu/dictators>, values for 2002 in Iraq, 2010 in Egypt, Libya, and Tunisia.

¹² Freedom House ‘Freedom in the World’ country reports, available at: <https://freedomhouse.org/report/freedom-world/freedom-world-2018>

These distinctions indicate that, in terms of structural conditions, Iraq and Libya constitute one pair of cases, whilst Egypt and Tunisia constitute a second pair. If these structural factors provide an alternative explanation for the creation of political support in the identified countries, then they present a potential challenge to the study's most-similar-systems research design. Diamond (2010) suggests that the authoritarian states of the MENA region have similar structural economic conditions regardless of whether or not they possess resource wealth. In addition, whilst in Iraq an occupying power oversaw institutional design during the transition period, in Libya the immediate period of transition was overseen by the NTC, a Libyan body, and international assistance took place in cooperation with this interim authority (Mattes 2014). Nevertheless, the implications of these divisions are returned to and addressed in the conclusion in the discussion of the findings.

Two institutional design processes are observed: electoral system design and constitution-making. Two stages of institutional design are considered: the negotiations stage and the implementation stage. Electoral system design is examined in all four selected countries at the negotiations stage. The implementation of elections was examined in Egypt, Iraq, and Tunisia, but not in Libya. This was due to the fact that in Libya the distribution of seats amongst communal groups in first transitional elections was pre-determined at the negotiations stage, before elections took place, this rendered meaningless an evaluation of de jure and de facto inclusion at this stage. Constitution-making is only examined in three of the four countries and only at the first stage. Libya did not undergo a constitution-making process and so is excluded from this analysis. In addition, the temporal and logistical limitations of the study meant that it was only possible to observe constitution-making at the negotiations stage and not at the implementation stage. Examining whether a state's constitution document has been de facto implemented involves an in-depth examination, over time, of the implementation of multiple articles on judicial, political, and legislative behaviour; this was beyond the scope of this study.

The study's use of most-similar-systems-design for case selection requires that cases vary on the independent variable, namely inclusion of communal groups in institutional design. Table 3.8 shows variation on the independent variables both amongst and within the four selected countries, and the number of observations to test each one of the four hypotheses advanced in Chapter 2. The table also shows the type of institutional design moment (electoral system or constitution) and the stage of institutional design (negotiations

Table 3.8 Variation on the independent variable and observations for hypotheses

	De jure inclusion	De facto inclusion	Country	Institution: electoral system or constitution	Stage: negotiations or implementation
H1	-	-	1. Egypt	1. Electoral system	1. Implementation
H2	x	x	1. Tunisia 2. Tunisia 3. Tunisia	1. Electoral system 2. Electoral system 3. Constitution	1. Negotiations 2. Implementation 3. Negotiations
H3	x	-	1. Egypt 2. Iraq 3. Iraq 4. Iraq	1. Constitution 2. Electoral system 3. Constitution 4. Electoral system	1. Negotiations 2. Negotiations 3. Negotiations 4. Implementation
H4	-	x	1. Egypt 2. Libya	1. Electoral system 2. Electoral system	1. Negotiations 2. Negotiations

or implementation). There is one observation for the first hypothesis, where neither de facto nor de jure inclusion were present. For the second hypothesis, there are three observations of institutional design where both de jure and de facto inclusion were present. In four institutional design moments, de jure inclusion was present without de facto, constituting observations that are used to test hypothesis three. Finally, there are two observations with which to test the fourth hypothesis; cases where de facto inclusion was present without de jure. This demonstrates variation on the independent variable both between countries, and within countries in separate institutional design moments.

3.2 Measurement of variables

3.2.1 *Measuring the salient communal cleavage*

In some chapters, indicators to measure inclusion of communal groups rely on an estimation of the population proportion of each communal group, shown in Table 3.9. Identifying population proportions of communal groups can be complex (Patsiurko and Campbell 2012); in a contested state, communal identities can be politically contentious or not easily observable (Fearon 2003). For example, ‘in several North African countries... a large majority of the population could, if they wished, claim Berber descent, but attitudes vary on whether to classify oneself as “Arab” or “Berber”’ (Fearon 2003, 197). In many states national census data captures communal group populations. However, where communal identities are politically sensitive, perhaps forming the basis for social or political discrimination (see, for example, Ergil [2000] on discrimination against Kurdish groups in Turkey; and Hintjens [2008,

16] on the intentional removal of ethnic groups from the public discourse in Rwanda post-1990s) individuals may be reticent to report communal-group status on a government census. If otherwise unavailable, nationally-representative survey data can capture communal group identities, providing an indication of population proportions. The population proportion of each communal group is measured preceding or at the outset of transition, to capture these populations before possible disruption from civil conflict during the political transition.

In both Egypt and Tunisia, the most salient communal cleavage is a civic-religious one between Islamists and non-Islamists. Given that this is not an externally observable identity, the best method to measure these communal groups is to use public opinion surveys that ask questions evaluating whether or not participants support Islamic values and proscriptions as a basis for the political system. For example, Tessler and Gao (2005, 89-90) operationalise Islamist-alignment in several majority-Muslim countries in the Middle East with two questions asked in a representative survey, namely, whether ‘the government should only implement laws of the Sharia’; and whether ‘men of religion should have influence over government decisions’. Responses were assessed on a four-point scale, with agree and strongly agree assessed as Islamist; disagree and strongly disagree were assessed as non-Islamist. Similarly, Ozen (2017, 7) uses three questions to assess non-Islamist versus Islamist groups in Egypt, namely, ‘religion and government should be separate’; ‘religious officials and leaders should not influence how people vote in elections’; and ‘religious officials and leaders should not influence government decisions’. Responses were measured on a four-point scale with agree and strongly agree assessed as support for non-Islamist values, whilst disagree and strongly disagree were assessed as a lack of support.

Table 3.9 Egypt, Iraq, Libya, and Tunisia: communal group population proportions

State	Type of cleavage	Key communal groups	Proportion of populace (%)
Egypt	Civic-religious	Islamist; non-Islamist	54; 46
Iraq	Ethno-sectarian	Sunni-Arabs; Shia-Arabs; Kurds	61; 17; 18
Libya	Regional	Cyrenaica; Fezzan; Tripolitania	28; 8; 64
Tunisia	Civic-religious	Islamist; non-Islamist	37; 63

Source: see text for a detailed discussion of sources

This study measures Islamist and non-Islamist population proportions in Egypt and Tunisia using similar questions to those used by Tessler and Gao (2005) and Ozen (2017) that

were asked in Wave II of the Arab Democracy Barometer in both countries four to eight months after the country entered a period of political transition (see Appendix A for survey methodology). The four questions used assess participants' attitudes to the insertion of Islamic law into political frameworks. Four questions¹³ ask respondents to what extent they agree or disagree that 'the government and parliament should enact laws in accordance with Islamic law'; 'the government and parliament should enact penal laws in accordance with Islamic law'; 'religious leaders should have influence over government decisions'; and 'religious practices are private and should be separated from social and political life'. For each question, agreement was coded on a four-point scale.¹⁴ For the first three questions a response of 'agree' and 'strongly agree' was coded Islamist-aligned; whilst 'disagree' and 'strongly disagree' was coded as non-Islamist-alignment. This was reversed for the last question. The responses were averaged, and converted to percentages. The population proportion of Islamist to non-Islamist communal groups in Egypt was assessed as 54 percent to 46 percent, and in Tunisia as 37 percent to 63 percent.

In Iraq, the most salient communal cleavage is ethno-sectarian between Shia-Arabs, Sunni-Arabs, and Kurds. Iraq is one of only two Arab-majority countries with a predominantly Shia-Muslim population,¹⁵ and is home to the most significant Shia holy sites (Stansfield 2007, 58–60). Iraq also contains a significant Kurdish minority clustered in the north of the country (C. O'Leary 2002). The population proportion of each group was a politically sensitive issue under Saddam Hussein, since a public confirmation of the demographic majority of Shia-Arabs could have detracted from the perceived legitimacy of the Sunni-led ruling regime. Censuses were conducted infrequently, and the data was treated with great suspicion (Daponte, Kadane, and Wolson 1997; Siperco 2017). Post-2003, population proportions of the main communal groups in Iraq remains a contentious issue. A census was planned to be conducted in 2010, however it was postponed due to political controversy (S. Myers 2010).

Given these measurement difficulties, the population proportion of the three ethno-sectarian groups in Iraq is drawn from three sources: US Library of Congress factsheet on

¹³ Questions 6052, 6054, 6063, 6064

¹⁴ The four point scale was coded as follows: 1. Strongly agree 2. Agree 3. Disagree 4. Strongly disagree

¹⁵ The second Arab-majority country with a majority Shia-Muslim population is Bahrain. All other countries have a majority Sunni-Muslim population.

Iraq's demography;¹⁶ a PEW Research Center report on Iraq's population percentages;¹⁷ and the CIA World Factbook.¹⁸ These three sources estimate the Kurdish population at 19 percent, 16 percent, and between 15 and 20 percent, respectively. The study takes an average of these, determining the Kurdish population of Iraq at 18 percent. Shia-Arabs are estimated at 55 percent, between 64 and 69 percent, and 62 percent, respectively. The average of these puts the estimated Shia-Arab population proportion at 61 percent. Based on the estimation of Arab-Iraqis at between 75 and 80 percent, Sunni-Arabs are estimated at between 14 and 19 percent. Therefore, Sunni-Arabs are estimated at 16.5 percent rounded up to 17 percent. The remaining approximately five percent of the population are composed of other ethnic and religious minority groups including Assyrians, Yazidis, and Turkmen.

In Libya the salient communal cleavage is regional, between the three provinces of Cyrenaica, Fezzan, and Tripolitania. Libya is only examined at the negotiations stage of electoral system design and population proportions are not used to determine de facto inclusion at this stage. Nevertheless, it is worth noting the population proportions of Libya's key communal groups. A study conducted for the National Democratic Institute reports population proportions of Libya's three provinces based on 2006 census data (Kjaerum et al. 2013, 13). Whilst the province of Tripolitania has the smallest land mass of the three provinces, at the time of transition it was home to 64 percent of the Libyan population. At the outset of transition, Cyrenaica was home to approximately 28 percent of Libya's population, and Fezzan, with the largest land mass, was home to only about eight percent of Libyans.

3.2.2 Measuring the independent variables: de jure and de facto inclusion

The independent variables examined in the three empirical chapters, Chapters 5, 6 and 7, are de jure inclusion and de facto inclusion. These variables are operationalised in each of the three chapters according to the stage and type of institutional design under examination. Chapters 5 and 6 both examine the inclusion of communal groups in negotiations to determine a new institutional framework: an electoral system or a new constitution, respectively. Chapter 7 examines inclusion of communal groups in the implementation of first transitional elections. In Chapters 5 and 6, the indices for de jure and de facto inclusion range

¹⁶ Available at: <http://countrystudies.us/iraq>

¹⁷ Available at: <http://www.pewresearch.org/fact-tank/2014/08/20/who-are-the-iraqi-kurds>

¹⁸ Available at: <https://www.cia.gov/library/publications/the-world-factbook>

from zero to four, with zero the lowest value and four the highest. A score of zero indicates a total absence of inclusion and a score of one denotes low inclusion; where there is a score of zero or one out of four, inclusion is not considered present. A score of two is considered medium inclusion, three is high, and a score of four means that inclusion is very high. In Chapter 7, the index of inclusion ranges from zero to two. In this case, zero is assessed as no inclusion, one as medium, and two as high inclusion.

It is important to note that the measurement of both *de jure* and *de facto* inclusion in this study is according to variables that are measured dichotomously and not on a spectrum. This means that, for each indicator from which the indices are constructed, the study examines whether or not inclusion is present, but does not comment on the quality of that inclusion. The strength of this approach is that it enables indices to be constructed that allow for a comparison of the strength of inclusion between cases. However, the weakness of this approach is that it does not allow for a measurement of the *quality* of inclusion, beyond the score on the relevant inclusion index as outlined above. A measurement of the quality of inclusion would require a far more detailed in-depth qualitative exploration of each case, which was sacrificed in this study for comparative leverage.

As discussed in Chapter 2, *de jure* inclusion in negotiations on electoral system design or constitution-making refers to institutional frameworks that are intentionally set up to facilitate the involvement of all communal groups. Whilst electoral system design literature does not focus extensively on inclusion at the negotiations stage, constitution-making literature emphasises inclusion in three key areas: 1) the selection and composition of the constituent body (Carey 2009; Ginsburg, Elkins, and Blount 2009); 2) official avenues for public consultation on constitutional design (Moehler 2008, chap. 1; Widner 2005), and 3) the means of approving the constitution (Elkins, Ginsburg, and Blount 2011; Hart 2010, 35-36). This provides three categories of *de jure* inclusion in negotiating institutional design: selection and composition of the design body, consultation on design, and means of approval of the institutional framework (Hart 2010, 32).

Based on these categories of *de jure* inclusion, four indicators are identified to measure *de jure* inclusion in negotiations on electoral system design and on constitution-making, shown in Table 3.10. In negotiations on electoral system design, the first two indicators concern inclusion in the composition of the electoral system design body. First, did the transitional authority publicly focus on involvement of all groups in determining an

electoral system? Second, were all communal groups included in the body responsible for electoral system design? The third and fourth indicators relate to consultation on and approval of the electoral system. First, were there official channels of consultation with the broader public on electoral system design? Second, was the body responsible for approving the final choice of electoral system inclusive of all communal groups?

De jure inclusion in constitution-making is similarly operationalised according to the composition and selection of the constituent body, consultations on constitution-making, and approval of the new constitution. A common form of de jure inclusion in the selection of a constituent body is holding national elections either to select a constituent body, a legislative constituent body, or representatives who will appoint this body (Ginsburg, Elkins, and Blount 2009, 208); this is the first indicator. The second indicator is whether the constituent body included representatives from all key communal groups, given that the inclusion of representatives of all 'demographic groups in terms of the population, geographic regions, or political parties' (Hart 2010, 33) in deliberative discussions is considered important.

The third indicator for de jure inclusion in constitution-making is whether widespread consultations were held with members of the public on constitutional design options and preferences. Official avenues for public consultation are diverse and can include hearings on draft constitutions, public surveys on constitution-preferences, consultations with civic groups, open public forums in cities and rural areas, or websites set up to gather input.¹⁹ The final indicator is whether a referendum was held to approve the constitution, considered an indicator of inclusion. As noted by Elkins, Ginsburg, and Blount (2011, 103): 'the modal form of participation in constitutional design is the power to ratify or approve the charter, usually by referendum on the final document as a whole'.

The indicators of de jure inclusion for Chapter 7 vary from those used in Chapters 5 and 6, given that this chapter examines inclusion in the implementation of first transitional elections. Before outlining these indicators, it bears noting that the study only examines lower-house elections and only the first transitional election following authoritarian breakdown. This enables comparability across cases as in all four countries lower house elections were the first transitional elections held following authoritarian breakdown (see

¹⁹ For a discussion of modes of public participation in constitution-making see Hart (2010, 37-42) and Widner (2008, 1513-14).

Table 3.4). Subsequent to this, only one country, Egypt, held upper house elections in several rounds in January and February 2012, whilst Iraq, Libya, and Tunisia had unicameral systems following political transition. Egypt was also the only country to hold a presidential election in close temporal proximity to legislative elections, in June 2012.²⁰ Tunisia held the first post-transition presidential election in 2014;²¹ Iraq and Libya do not currently have presidential elections. Only the first transitional elections are examined given that this study focuses on institution-building and political support during transition and these elections occurred during the politically uncertain transition period.

Table 3.10 Operationalisation of de jure inclusion

Chap.	Indicators		Index
	<i>Inclusion of communal groups in design body</i>	<i>Inclusion of communal groups in consultations on / approval of institutional design</i>	
5	1. Public focus from transitional authority on inclusion in determining an electoral system design (Yes=1, No=0)	1. Official policy of public consultation on electoral system design (surveys, open forums, focus groups) (Yes=1, No=0)	0-4
	2. Members of design body include all key communal groups (Yes=1, No=0)	2. Electoral system design approved by body inclusive of all communal groups (Yes=1, No=0)	
6	1. Nationally elected constituent body or nationally elected representatives tasked with appointing such a body (Yes=1, No=0)	1. Official channels of public consultation on constitution-making (surveys, open forums, focus groups) (Yes=1, No=0)	0-4
	2. Public focus on inclusion of all key communal groups in composition of constituent body members (Yes=1, No=0)	2. Referendum to approve the constitution (Yes=1, No=0)	
	<i>Inclusive electoral framework</i>		
7	1. Stated objective of inclusion in choice of electoral system design (Yes=1, No=0)		0-2
	2. Proportional electoral formula: av. district magnitude ≥ 3 ; electoral threshold $\leq 3\%$ (Yes=1, No=0)		

There are two indicators of de jure inclusion in electoral system design. First, was inclusion publicly stated by the interim authority overseeing elections as a key reason for the choice of electoral system. Second, following operationalisation by Bogaards (2013), Ruiz-Rufino (2013), and Norris (2002), was a proportional (as opposed to majoritarian) system

²⁰ IFES country profile election guide for Egypt, available at: <http://www.electionguide.org/countries/id/65>

²¹ IFES country profile election guide for Tunisia, available at: <http://www.electionguide.org/countries/id/217>

chosen. A proportional electoral formula is perhaps the most important element of electoral system design expected to produce an elected assembly that will provide representation for all communal groups (Bogaards 2013; Carey and Reynolds 2011; Lijphart 2004; Norris 2009; Reynolds 1995b; Wagner and Dreef 2014, 290). A proportional system is assessed as both a single-tier proportional system and a mixed-member-proportional system in which a proportional tier compensates for a lack of proportionality in a second, majoritarian, tier. As noted by Lijphart (2004, 100) in mixed systems where ‘the PR component overrides the plurality component, these should be regarded not as mixed but as PR systems’. Conversely, a non-proportional electoral formula is assessed as both a single-tier majoritarian system and a mixed-member-parallel system in which the majoritarian tier distorts the proportionality of the proportional tier (Dunleavy and Margetts 1995; Farrell 2011, chap. 5; International IDEA 2005, 29).

Alongside the choice of a proportional electoral formula, it is verified that two important elements, district magnitude and imposition of a legal electoral threshold,²² did not constrain the expected inclusive impact of a proportional electoral formula. District magnitude ‘refers to the size of the constituency’²³ (Farrell 2011, 6), that is, the numbers of members elected per constituency. So, if one nation-wide constituency is used, as in Israel to elect the 120-seat parliament, district magnitude equals 120. Alternatively, if multi-member districts are used, average district magnitude is calculated by divided the number of seats elected in constituencies by the number of constituencies. Proportional electoral systems, by design, have a district magnitude above one, and almost always above two. Low district magnitude can constrain the facilitation of inclusion of communal groups using a proportional formula. An average district magnitude of three or above under a proportional electoral system²⁴ is considered sufficient to produce inclusion of key societal groups in the distribution of seats in the electoral outcome (Carey and Hix 2011).

A second important element is the imposition of a minimum legal threshold, usually a minimum vote percentage ‘that a party must pass in order to be granted any seats in

²² There are several additional important elements to electoral system design, such as quotas and reserved seats, ballot structure, and the specific formula used to translate votes into seats under a proportional system (Farrell 2011), however, whilst these elements may impact the degree of inclusivity, they are not expected to obstruct the inclusive impact of a proportional electoral formula vis-à-vis a majoritarian electoral system.

²³ Constituencies are also referred to as electorates or districts

²⁴ Under certain majoritarian systems high district magnitude can have the opposite effect creating a deeply non-inclusive political arena, for example using the single-non-transferable- vote or bloc vote systems.

parliament' (Farrell 2011, 206). An imposed legal threshold can obstruct the capacity of a proportional electoral formula to produce an inclusive elected assembly. If the electoral threshold is set very high, for example, Turkey's 10 percent electoral threshold²⁵ it can negate the expected inclusive impact of the proportional electoral formula (Moraski and Loewenberg 1999). Electoral thresholds can range from less than one percent up to seven or 10 percent. However, an electoral threshold of three percent or below is considered low and would be expected not to obstruct the election of an inclusive assembly (Farrell 2011, 206). It is confirmed that average district magnitude is three or above, and any legal electoral threshold is three percent or below to confirm that the proportional electoral system chosen can be expected to facilitate inclusion and therefore constitutes de jure inclusion.

The operationalised of de facto inclusion is shown in Table 3.11. For Chapters 5 and 6, de facto inclusion is measured according to two categories of inclusion: 1) whether there was persistent involvement of key communal groups in negotiations, and 2) whether all groups had an opportunity to influence the institutional outcome. The first category consists of two indicators that measure whether consultation with representatives of all communal groups in fact took place, and, if yes, whether this continued up until institutional design was determined. As noted by Papagianni (2008, 59) 'in order for new institutions to be perceived as legitimate, they need to result from lengthy political processes inclusive of all major political actors'. If consultations discontinue before an outcome is reached, a dominant actor may have captured decision-making in the final stages, which would indicate an absence of de facto inclusion.

The second category of de facto inclusion is measured according to two indicators that capture whether there is demonstrated evidence that all groups had an opportunity to influence institutional design, measured along both an elite and a mass public dimension. Along the elite dimension, if certain actors were excluded from the final negotiations that determined the institutional design then they did not have an opportunity to contribute to the outcome determined in these negotiations. Similarly, along the mass public dimension, if, for example, public comments were only received after an institutional framework was finalised, they did not have an opportunity to influence the outcome.

²⁵ For information on Turkey's electoral system see the IPU Parline database entry on Turkey: archive.ipu.org/parline-e/reports/2323_B.htm

Table 3.11 Operationalisation of de facto inclusion

Chap.	Indicators	Index
5 & 6	<i>Persistent inclusion of all communal groups in consultation</i>	<i>All communal groups have an opportunity to impact the institutional design outcome</i>
	1. Actual consultation with representatives of all key communal groups on electoral system design / constitution-making (Yes=1, No=0)	1. Demonstrated evidence that representatives from all key communal groups had opportunity to impact electoral system design / constitution document (through official negotiations or unofficial channels such as political pressure) (Yes=1, No=0)
	2. Demonstrated evidence consultation with representatives of all key communal groups continued up until electoral system design / constitution document was determined (Yes=1, No=0)	2. Demonstrated evidence mass public had opportunity to impact electoral system design / constitution document (through official consultations or unofficial channels such as public protest) (Yes=1, No=0)
7	<i>Inclusion in political arena</i>	
	1. Seat-share of communal groups is proportional to their population-share (mean discrepancy ≤ 15 percent) (Yes=1, No=0)	0-2
	2. Absence of one communal group winning a supermajority of seats (>66 percent) (Yes=1, No=0)	

For Chapter 7, that examines the implementation of first transitional elections, de facto inclusion refers to actual inclusion of all communal groups in the elected assembly. Following Ruiz-Rufino (2013), the first indicator of de facto inclusion is the proportional representation of key communal groups in the distribution of seats in the political arena, according to their population proportion.²⁶ To measure this indicator, each political party that won seats in each election was assessed as aligned with a communal group (or as non-aligned).²⁷ The proportion of seats won by political actors aligned with each key communal group was then compared with the proportion of that communal group in the broader population. Based on the discrepancy between these two, over- and under-representation of each group was calculated; the mean discrepancy was arrived at by dividing the combined over- and under-representation of groups by the number of communal groups. Some discrepancy between population share and seat share is expected (Farrell 2011, 153-159). Around 10-15 percent discrepancy per communal group could be expected, therefore, the

²⁶ De facto electoral inclusion has also been operationalised as the proportional translation of votes into seats, see, for example Bogaards (2013). However, a proportional translation of votes into seats could still under-represent a particular key communal group in the political arena, which would not be de facto inclusive according to this study's definition.

²⁷ See detailed breakdown in Appendix B

study considers a mean discrepancy of 15 percent or below as an inclusive electoral result. If the combined over and under-representation of key communal groups was more than 15 percent, then the result was coded as non-inclusive.

The second indicator of de facto inclusion was whether or not parties aligned with one communal group,²⁸ won a super-majority of seats in the elected assembly.²⁹ A key objective of using a proportional electoral system is to avoid one key societal group gaining a majority (above 50 percent) or a supermajority (above 66 percent) of seats in the political arena (Carey and Reynolds 2011; Norris 1997). Whilst a majority-win for one communal group could have certain consequences such as the capacity to form government, and ability to pass legislation. During a period of political transition, a supermajority is typically needed to gain control over processes that will shape the post-transition regime. This can be critical in a contested state. A supermajority—win for one communal group is likely to have negative implications during a period of political transition in a contested state (Carey and Reynolds 2012; Norris 2009, 156; Sisk 1996; Wagner and Dreef 2014, 292–93; Wimmer 1997, 646). This indicates that one communal group will not only capture government, and can pass important legislation during the transition period, but will also capture constitution-making to the exclusion of other groups (Carey 2009, 2013).

3.2.3 Measuring the dependent variable: support for a political system

Support for the political system is operationalised in the three empirical chapters according to the three dimensions of support mentioned in Chapter 2. Linz and Stepan's (1996, chap. 1) distinction of behavioural, attitudinal, and constitutional dimensions of political consolidation, are applied to distinguish three categories of support. Behavioural support is defined as a lack of anti-system behaviour such as political violence. Attitudinal support refers to perceived legitimacy of the political system. Constitutional legitimacy refers to cooperation with the institutional frameworks and procedures of the political system. Support was measured in close temporal proximity to the institution-building moment under examination, to mitigate challenges noted by Carey (2009, 161) of linking inclusivity to support for the political system, if they are temporally separate (Carey 2009, 161). In Chapter 5, support is

²⁸ See appendix B for a breakdown of parties per communal-group alignment and relevant sources

²⁹ Lindberg (2004) uses the winning party's share of seats and the second largest party's share of seats as indicators of electoral competition, whereas here it is an indicator of de facto inclusion.

operationalised as support for elections, in Chapter 6 as support for the new constitution, and in Chapter 7 as support for the elected assembly. Each dimension of support is discretely measured and can exist in isolation from the other two dimensions. However, the more dimensions that are present, the higher the evaluation of confidence in the political system.

The indicators used to measure the three dimensions of support in Chapters 5, 6, and 7, are shown in Table 3.12. For Chapters 5 and 6 the indices range from zero to four, and in Chapter 7 from zero to two. Behavioural support is measured as an absence of anti-system behaviour, in particular political violence, during institutional design moments. Violence and protest tend to 'cluster around election time' (Hoglund 2009, 415) focusing on electoral contests, referenda or key pronouncements during political transition (Lindberg 2004, 69; Mansfield and Snyder 2005). For Chapter 5, behavioural support for elections is measured as an absence of electoral violence. Electoral violence 'refers to physical violence and coercive intimidation directly tied to an impending electoral contest or to an announced electoral result' (Strauss and Taylor 2009, 8); such violence demonstrates that 'major actors do not see elections as legitimate' (Lindberg 2004, 104 note 40). Election-related violence includes violence on election day targeting polling booths, polling officers, or voters, and violence during the campaign period that is focused on the up-coming electoral contest.³⁰ In Chapter 6, behavioural support for a new constitution, is measured as an absence of political violence in the lead-up to and on the day of approval of a constitution by referendum or in a constituent body. For Chapter 7 behavioural support for an elected assembly is measured as political violence, mass protest and other behaviour intended to undermine the elected assembly, in the three months following transitional elections. Strauss and Taylor (2009) similarly measured political violence occurring within three months after an election.

It is important to note that, similar to all indicators measured in the study, electoral violence is measured only as a dichotomous variable based on whether or not it was present; the specific groups involved in electoral violence and the severity of the violence is not captured by the study's operationalisation of this variable. This does not deny that the severity of electoral violence and the groups involved can impact the extent to which electoral violence should be considered an indicator of a lack of political support. However, this study

³⁰ See Lindberg (2004, 69) for comparable operationalisation as 'cases where there have been no reports of any serious election-related violence during the campaign or polls'.

follows Strauss and Taylor (2006) and Lindberg (2004) who operationalise electoral violence as a dichotomous variable and do not consider the severity or the identity of the perpetrating groups. This study chooses to sacrifice some degree of qualitative depth for parsimony in determining whether or not electoral violence was present, which lends greatest comparative power.

Table 3.12 Operationalisation of support for the political system

	<i>Behavioural support</i>	<i>Attitudinal support</i>	<i>Constitutional support</i>	Index
	Absence of anti-system behaviour	Perceived legitimacy	Cooperation with institutional frameworks and procedures	
Ch. 5 Support for elections	1. Absence of election-related violence (Yes=1, No=0)	1. Perception of legitimacy: intention to vote in elections (<50 percent) (Yes=1, No=0)	1. Absence of a boycott of elections by political actors associated with a key communal group (Yes=1, No=0) 2. Absence of low turnout overall or on behalf of one communal group (≤ 33) (Yes=1, No=0)	0-4
Ch. 6 Support for the constitution	1. Absence of violence and mass protest against new constitution in the lead-up to and on the day of referendum OR in the lead-up to and on the day of promulgation by constituent assembly (Yes=1, No=0)	1. Absence of high NO vote for new constitution in referendum OR constituent assembly overall or on behalf of one communal group (>50 percent) (Yes=1, No=0)	1. Absence of boycott of referendum OR of constituent assembly (Yes=1, No=0) 2. Absence of low turnout in constitutional referendum OR abstentions on approval in constituent body (≤ 33) (Yes = 1, No = 0)	0-4
Ch. 7 Support for the elected assembly	1. Absence of anti-system activity such as political violence, mass protest and other activity to undermine the elected assembly within three months of election (Yes=1, No=0)	1. Absence of Low support for elected assembly overall or on behalf of one communal group (≤ 33) (Yes=1, No=0)		0-2

Attitudinal support refers to perceived legitimacy of the political system, and is measured using public opinion surveys; for studies that use survey data to assess support for a political system see, for example, Chu et al. (2008), Dowley and Silver (2002), Inglehart (2003), and McAllister and White (2017). Attitudinal support for elections (Chapter 5) is measured using survey data that questions respondents regarding their intention to vote in

the first transitional elections. The excitement surrounding first transitional elections is typically high, with strong intention to vote expected.³¹ It is expected that between 60 and 80 percent of a population will intend to vote in founding elections (Kostadinova and Power 2007, 367). As a consequence, anything less than 50 percent of respondents claiming an intention to vote is considered low.

Attitudinal support for a new constitution (Chapter 6) was measured by the absence of a high 'no' vote, overall or on behalf of one communal group, either in a referendum or a constituent body. Given that a simple-majority is usually required to pass or reject a constitution in a referendum (Lorenz 2005, 346-347), a 'no' vote of above 50 percent overall or on behalf of one communal group was assessed as rejection of the constitution. Attitudinal support for the elected assembly (Chapter 7) was measured using survey data and opinion polls that asked participants whether they had confidence in the elected assembly. Given that confidence in institutions 'is a declaration by citizens that institutions are reliable', it is typically measured using individual-level perceptions of legitimacy reported in nationally representative surveys, see for example, measurement of political trust by Catterberg and Moreno (2006) and Torcal (2014). Confidence in political institutions in established democracies ranges widely, from as low as 20 percent to close to 80 percent (Catterberg and Moreno 2006, 36-37). During political transition below a third (33 percent or below) confidence in political institutions can be considered problematic, indicating a challenge to political legitimacy.

Constitutional support, that is, cooperation with political institutions and frameworks, is measured in Chapters 5 and 6 as an absence of low voter turnout, and the absence of a boycott of elections or referenda. Turnout is often 'used as an indirect measure of popular legitimacy' (Lindberg 2004, 66) with low turnout demonstrating a lack of support (Birch 2010; Gilley 2006), as it is associated with 'voter apathy and mistrust of the political process (Solijonov 2016, 13). Turnout in established democracies ranges from above 85 percent in Scandinavian countries, to just above 42 percent in the United States (47-48). This means that below a third (33 percent or below) voter turnout can be considered a challenge to the legitimacy of elections. A boycott, defined as active non-participation in political procedures is considered non-cooperation with a political system, as discussed by Beaulieu and Hyde

³¹ See Fornos, Power, and Garand (2004) on high turnout in founding elections.

(2009). If political actors representing one communal group publicly announce a boycott of elections, referenda, or a political body, then boycott was considered present.³²

3.3 Data

In line with the qualitative nature of the research project, data is drawn from several sources including expert interviews; independent reports on elections and constitution-making; publicly available data on votes, turnout, and results of elections and referenda; interim constitutions and public communiques; as well as public opinion surveys conducted in the countries of focus preceding or following institutional design moments. Table 3.13 shows data used to measure the independent and dependent variables.

De facto inclusion and de jure inclusion in Chapters 5 and 6 are measured using expert interviews, independent reports from bodies monitoring elections or reporting on constitution-making. Interviews were conducted with six electoral experts and political analysts involved in the four countries during political transition. Whilst this number is neither representative nor comprehensive it provides additional verification for the qualitative assessment of de jure and de facto inclusion in each country. For Chapter 7, the independent variables are measured using communique from transitional authorities and electoral design bodies; interim constitutions; and voting data published on the websites of electoral high commissions, or, where data was not available or had been removed from electoral commission websites, from independent election reports. Support for the political system was measured in Chapters 5, 6, and 7 using independent reports (as specified); the IFES election guide country profiles (<http://www.electionguide.org/countries>) for voter turnout and referenda results; and public opinion survey data from the World Values Survey, the Arab Democracy Barometer, and PEW Global Attitudes and Trends survey (see Appendix A for survey methodology).

The three specified survey instruments were chosen for three reasons: 1) use of a rigorous survey methodology and a nationally-representative sample; 2) use of appropriate questions to assess attitudinal support for the political system in some or all of the countries examined in this study; and 3) execution of surveys in temporal proximity to the institutional design moments examined in this study. The World Values Survey is the largest non-

³² For similar coding of election boycott see Lindberg (2004, 104).

commercial, cross-national, time series investigation of human beliefs and values. Since 1981, six waves of the survey have been conducted in almost 100 countries, with a seventh wave to be completed by December 2019.³³ The World Values Survey uses a rigorous, representative methodology in each country and is used in academic research to assess political attitudes across countries and across time.³⁴

Table 3.13 Data used to measure independent and dependent variables

	Data source	Details
1	Interviews with experts involved on the ground in the countries	Ahmed Badawi, 10 March 2016 (Egypt and Tunisia); Andrew Reynolds, 21 May 2015 (Egypt and Libya); Larry Diamond, 16 July 2015 (Iraq); Feisal Istrabadi, 12 August 2015 (Iraq); Dirk Vandewalle, 21 July 2015 (Libya); Radwan Masmoudi, 21 February 2016 (Tunisia)
2	Reports from independent bodies on elections	Egypt: Democracy Reporting International (2011a, 2011b); Electoral Institute for Sustainable Democracy in Africa (2012); International Foundation for Electoral systems (IFES 2011, 2012, 2013a); International Crisis Group (2012); The Carter Center (2012b) Iraq: International Mission for Iraqi Elections (IMIE 2005); International Republican Institute (2005) Libya: Democracy Reporting International (2012); International Foundation for Electoral systems (IFES 2013b); European Union Election Assessment Team (2012); National Democratic Institute (Kjaerum et al. 2013); The Carter Center (2013) Tunisia: National Democratic Institute (2011); The Carter Center (2012a)
3	Reports from independent bodies on constitution-making	Egypt: Project on Middle East Political Science (2013); Arab-West Report: The Center for Intercultural Dialogue and Translation (Serdio and Casper 2013); United States Institute of Peace (Albrecht 2013) Iraq: Democracy Reporting International (2011c); International Crisis Group (Hiltermann 2006); United States Institute of Peace (Morrow 2005) Tunisia: Berghof Foundation (Haugbolle et al. 2017); Center for Global Cooperation Research (Bockenforde 2015)
4	Interim constitutions	Egypt: The Provisional Constitution of the Arab Republic of Egypt, 30 March 2011 Iraq: Interim constitution: Transitional Administrative Law, 2004 Tunisia: Provisional Constitution of Tunisia, 16 December 2011 Retrieved from ConstitutionNet: http://www.constitutionnet.org
5	Communique from interim authority	Egypt: Supreme Council of the Armed Forces (SCAF); Iraq: Coalition Provisional Authority (CPA); Libya: National Transitional Council (NTC); Tunisia: Higher Commission for the Fulfilment of Revolutionary Goals (HCFRG)
7	Public opinion surveys	Arab Democracy Barometer Wave II and Wave III; World Values Survey Wave 4; PEW Global Attitudes and Trends 2012 and 2013. See Appendix A for survey methodology
6	Information on voting and elections	Electoral commission websites (where data is available): Egypt: www.elections.eg ; Iraq: www.ihec.iq ; Tunisia: www.isie.tn IPU Parline database: http://archive.ipu.org/parline/parlinesearch.asp IFES election guide country profiles: http://www.electionguide.org/countries ;

³³ See: <http://www.worldvaluessurvey.org>

³⁴ For studies that use World Values Survey data see, for example, Fuchs-Schundlen and Schundlen (2015), Foa and Mounk (2016), and Magalhaes (2014).

The Arab democracy Barometer is part of the broader global barometer surveys project that encompasses six regional barometers. Barometer surveys ask standardised questions, as well as region-specific questions that provide insight into relevant regional issues.³⁵ In partnership with academic institutions, the Arab Democracy Barometer aims to create scientifically-reliable data on political attitudes; four waves have been conducted since 2005.³⁶ The survey data generated from these waves has provided a valuable resource to assess attitudes in the region.³⁷ PEW Global Attitudes and Trends surveys are conducted by the PEW Research Center, a nonpartisan institute that conducts ‘public opinion polling, demographic research, content analysis and other data-driven social science research’.³⁸ Scholarly studies have used PEW Center survey data to assess global trends.³⁹

Where survey data was unavailable from the three specified survey instruments reports were used from IFES and the International Republican Institute. These are two research and analysis institutes that conduct focus groups, polls, and surveys around the world, including in the MENA region. IFES is a global leader in the promotion of democratic rights and good governance. IFES conducts field-based research ‘to improve the electoral cycle’.⁴⁰ The International Republican Institute is a leading international institute for democracy-development. The institute frequently conducts polls in countries in which they work to assess attitudes to elections and democracy.⁴¹

This chapter has outlined the research design used to investigate the four hypotheses advanced in Chapter 2. A small-N comparative study is deemed most appropriate to identify the casual mechanism through which inclusion of communal groups in institutional design creates support for a political system during political transition in a contested state. Independent and dependent variables are operationalised according to indices composed of multiple indicators. Chapter Four provides an overview of the political background preceding political transition in the examined countries including the political foundations of the salient communal cleavage in each country.

³⁵ See: <https://www.globalbarometer.net>

³⁶ See: <http://www.arabbarometer.org>

³⁷ For studies that use Arab Democracy Barometer data see, for example, studies by Benstead (2013), Chu et al. (2008), and Tessler, Jamal, and Robbins (2012).

³⁸ See: <http://www.pewresearch.org>

³⁹ For studies that use PEW Global Attitudes and Trends data see, for example, Fair and Shepherd (2005), and Shafiq (2010).

⁴⁰ See: <http://www.ifes.org/who-we-are>

⁴¹ See: <http://www.iri.org/who-we-are>

Chapter Four

Contested States in Context - Egypt, Iraq, Libya, and Tunisia

Periods of political transition in Egypt, Tunisia, Libya, and Iraq in the twenty-first century stirred deep societal divisions reaching back to before state formation in the twentieth century. In Egypt, in 2012, the victory of Islamist-aligned parties in legislative elections and the election of a member of the Muslim Brotherhood to the Presidency touched a core fissure in Egyptian society regarding the character of the Egyptian state and its place in the region. 'The Triumph of Hassan al-Banna' wrote one commentator (Sadiki 2012), referring to the man who established the Muslim Brotherhood in the 1920s, referencing a long shadow of the past. Similarly, in Tunisia, an electoral win for an Islamist party, Ennahda, in legislative elections in 2011, stirred divisions in Tunisian society between Islamists and non-Islamists. As noted by Mansouri and Armillei (2016, 159) 'since the early stages of the (post-2010) uprising a gulf of mistrust has characterised the relationship between Islamist and secular factions'. Hamid (2014, 19) observes that 'a debate raged among Egyptians and Tunisians on the very nature of their societies'.

In Libya, post-transition civil conflict quickly broke out between governance forces based in the west and in the east of the country, harking back to provisional rivalry that characterised the monarchical period of the nineteenth century (Anderson 1986, 252-255). By 2014, Libya encompassed rival governance centers in Tripoli in the west and in Tobruk in the east effectively fracturing state unity (Toaldo and Fitzgerald 2016). In Iraq, the post-2003 reconstruction years deepened and inflamed sectarian tensions that trace back to the formation of an Iraqi state in the early 1920s (Haddad 2011).

In order to understand the salient communal division that characterised institution-building during political transition, this chapter examines the formation of communal identities in the twentieth century, in the context of states struggling to define themselves against western colonial forces and a rapidly shifting regional and international environment. The next section outlines the consolidation of the salient communal cleavage in each country during a period of colonial occupation and (where relevant) a colonial-backed monarchical period, up until the declaration of an independent republic in the 1950s or 1960s. Section 4.2

examines the inclusion and exclusion of key communal groups during the period of an independent republic. In each country one communal group captured governance frameworks, to the exclusion of others. Section 4.3 gives an overview of political contestation preceding authoritarian breakdown, with a focus on the extent of electoral competition and constitutional law in each country. A division is drawn between Egypt and Tunisia, on the one hand, where a level of political contestation was tolerated by the regime, and Iraq and Libya, on the other, where personalist regimes almost completely eliminated open political contest. Section 4.4 offers some concluding remarks regarding the continued relevance of the salient communal division in each state during the period of political transition under investigation.

4.1 The colonial period: consolidation of a salient communal cleavage

In order to understand the development of the salient communal cleavage in each country, it is informative to briefly survey the period of colonial administration and colonial-backed monarchy that preceded the declaration of an independent republic in each of the selected countries.¹ This period laid the foundations for a state identity fractured along communal lines. Table 4.1 shows the time-period of European colonial administration in each of the four countries, and the period of European-backed monarchical rule in Egypt, Iraq, and Libya. This was followed by the declaration of an independent republic in all four countries in the 1950s and 1960s, effectively establishing an authoritarian regime that held power up until the period of political transition examined in this study.

Whilst this chapter identifies a salient communal cleavage in each country, it is important to note that each state contains other communal groups, as well as a range of positions within each identified communal group. States in the MENA region encompass 'very distinctive and complex communities and societies' (Bowker 1996, 23). In Egypt, there is a substantial Coptic Christian minority, estimated at approximately 10 percent of the population (Hulsman 2012), constituting the largest Christian minority in the region (Henderson 2005). In addition, within Islamist and non-Islamist groups in Egypt there is a diversity of positions. Regarding Islamists, there is a key distinction between Salafi-Islamists, who tend to be conservative in advocating strict adherence to the 'practices of the Prophet

¹ Tunisia alone did not undergo a period of colonial-backed monarchical rule preceding the declaration of an independent republic but remained a French protectorate up until an independent republic was established in 1956.

Mohammed and his companions' (Bowker 2010, 117), and Muslim Brotherhood Islamists that range from militant to pragmatic (Bowker 2010, 117-118; Osman 2013, chap. 3; Pargeter 2013). Within non-Islamist groups there is a distinction between socialists, communists, and liberal-democratic groups (Shehata 2010, 51–81; Masoud 2014, chap. 2). Nevertheless, the broad cleavage between Islamist-aligned and non-Islamist-aligned Egyptians held political relevance throughout the twentieth century and remains relevant today.

In Egypt, an additional key political player is the military establishment. Since the overthrow of the Egyptian monarchy in 1952, military actors have controlled political governance institutions (Abul-Magd 2017). Throughout its modern history the military in Egypt has been 'widely respected by the general populace' and 'deeply interwoven into the domestic economy' (Anderson 2011, 4). Notwithstanding the fact that political opposition to the regime existed across the ideological spectrum, the military can be considered closer to a non-Islamist-alignment than an Islamist-alignment (Harb 2003; Hashim 2011). Whilst the governing regime has at times courted Islamist groups, a deep suspicion of Islamist groups as potential anti-system elements has characterised every Egyptian government since 1952.

Table 4.1 Egypt, Libya, Iraq, and Tunisia: colonial administration, monarchy, and independent republic

	Administration by a European power	European-backed monarchical rule	Declaration of independent republic (to political transition)
Egypt	British: 1882-1922	1922-1952	1953-2011
Iraq	British: 1914-1921	1921-1958	1958-2003
Libya	Italian: 1911-1947*	1951-1969	1969-2011
Tunisia	French: 1881-1956	N/A	1956-2011

*1947-1951 under British and French administration

Source: see text for a detailed discussion of sources

In Iraq, whilst the salient communal division is an ethno-sectarian one between Sunni-Arabs, Shia-Arabs, and Kurds, Iraq also contains several other religious and ethnic minority groups, as well as competition within communal groups and intersection between them. There is on-going tension in Iraq amongst Muslim groups regarding the relationship between religion and the state. Iraq is also home to Assyrian, Turkmen, and Yazidi minorities (Hanish 2009). In addition, intra-group competition has characterised Kurdish relations in the twentieth century, with two main groups competing for authority in the majority-Kurd region

of North Iraq (Stansfield 2007, 67–69). Similarly, Shia-Arab and Sunni-Arab groups are not only internally fractured between tribal groupings (C. Myers 2013), but have also at times enjoyed good inter-group relations and practiced intermarriage (Smyth and Gershman 2005). However, for all its nuances and complexities, the ethno-sectarian cleavage has nevertheless defined one of the major challenges to state-formation and post-transition reconstruction (C. Tripp 2007, 59–63).

In Libya, the regional division between Cyrenaica, Fezzan, and Tripolitania is underpinned by multiple tribal groupings within each of the three provinces (C. Myers 2013, 6). In addition, Libya has an ethnic cleavage between the Berber population that constitute between eight and 25 percent of Libyans, and those of Arab ethnicity, as well as encompassing other minority ethnic groups, notably the Tuareg and the Tebu (Kohl 2014, 425-426). In addition, Libya contains an Islamist – non-Islamist division. Whilst some Islamist groups have increased in strength in Libya post-2011 (Wehrey 2017), this cleavage has been less salient than the tribal-regional one throughout Libya’s modern political history (Lesch 2014, 71; Mokhefi 2011). The tribal groupings that fracture Libya’s political landscape (C. Myers 2013) are encompassed within the broader regional cleavage, that posed the key threat to state formation and national cohesion in Libya (Vandewalle 2006, chap. 3).

Alongside the Islamist – non-Islamist cleavage in Tunisia, there is also an ethnic cleavage between Arab and Berber, with Berber languages still spoken in some villages. However, it has been found that almost all Tunisians identify as Arab.² Tunisia also contains a regional cleavage between the wealthier coastal regions and the less-wealthy interior of the country (Koehler and Warkotsch 2014). In addition, within Islamist and non-Islamist groups there is a diversity of positions. First, there is a spectrum of Islamist groups from moderate-reformist to hardline (Louden 2015). Second, non-Islamists groups encompass diverse actors including the powerful labor union (the UGTT), liberal groups, and socialists (C. Tripp 2007, chap. 7). Nevertheless, opposition parties preceding transition could be broadly divided into the Islamist Ennahda Party on one side, and various opposition parties all with a ‘vaguely socialist ideology’ on the other (Haugbolle and Cavatorta 2011, 330), with mutual suspicion between the two camps. The Islamist – non-Islamist cleavage is the one that has been most

² See: tunisianberber.ws.gc.cuny.edu

divisive politically, and underpinned contention regarding the values that shape Tunisian national identity.

The roots of the modern political history of the four selected countries traces back to the birth of Islam on the Arabian Peninsula in the seventh century and the subsequent conquest of the MENA region by Islamic forces. Following the death of the Prophet Mohammed in the seventh century, Islamic forces spread out from the Arabian Peninsula, conquering territory held by the Persian and Byzantine Empires (Hoyland 2015). The land that now constitutes the four selected countries was conquered and subsequently ruled by an Arabic-speaking, Islamic elite; over time Arabic became the primary language and Islam the primary religion (Alexander 2012, 11; Stansfield 2007, chap. 1). From the seventh to the thirteenth century the Islamic civilisation rose to prominence under the Umayyad and Abbasid dynasties before entering a period of decline and being conquered by Mamluks and Moguls in the thirteenth century (Egger 2018).

During the 1500s the four selected countries were incorporated into the rising Ottoman Empire, before coming under colonial administration by European powers in the late 1800s or early 1900s (Alexander 2012, 11; Cetinsaya 2006, 8). From the late 1700s onward the Ottoman Empire entered a period of decline, concurrent to the increased industrial and political sophistication of European powers (Palmer 1992). During the 1800s, European powers increasingly engaged in direct military, economic, and infrastructural penetration of Ottoman territory, simultaneous to Ottoman decline and the stirrings of indigenous-Arab resistance to both Ottoman and European control, culminating in the late 1800s or early 1900s with the colonial occupation or administration of the four selected countries by European powers (Anderson 1986, 65; Owen 1992, 8–9).

During the following period of European occupation and European-backed monarchy in each of the selected countries, as Egypt and Tunisia grappled with forming a national identity within the constraints of colonial dominance, foundations were laid for a cleavage that would later threaten state cohesion between those that supported an Islamist agenda and those that did not. In each country competing visions for the nation were proffered by charismatic leaders discontent with colonial rule: one vision was for a nation based on Islamic-values and Islamic law, and the other was for a modernised nation that could rival European powers (Osman 2013, chap. 2 and 3; Wolf 2017, 22–26).

The two competing visions for Egypt advanced during this period both strove to reclaim an Egyptian identity based on strength, leadership and self-determination. In the 1920s, during British occupation, Hassan al-Banna advanced a vision for Egyptians to regain their dignity as a nation by grounding their lives in Islamic values and practice. al-Banna responded to British control and Western influence in Egypt by advocating a return to the fundamental tenets of Islam; he envisioned an Egypt where Koranic teachings and the practices of the Prophet Mohammed formed the basis for Egypt's political, social, and economic life (Kramer 2010). al-Banna created a network of Muslim Brotherhood associations that promoted Islamic values and became increasingly influential during this period, remaining a powerful political force up to, and beyond, the declaration of an independent republic in 1952 (Pargeter 2013).

An alternative vision for Egypt emerged at the end of this period, promoted by Gamal Abd al-Nasser, focused on building a powerful, modernised, republican Egypt that would be a leader in the region. Preceding Nasser, the Egyptian nationalist movement was led by the Wafd party which sought to exert sustained pressure for independence on the British and the British-backed monarchy (Goldschmidt 2004, chap. 6). However, the venality of the Wafd leadership, its incapacity to overcome British influence, as well as popular reaction to the humiliations suffered by the Arab states in the Israeli-Palestinian context, caused the Wafd to lose much of its previous legitimacy³ (Kedourie 1994, 65–70). The vision for a strong, independent Egypt was taken up by Nasser, a military officer deeply affected by the Egyptian military defeat by Israel in 1948. Nasser viewed the defeat as symbolic of Western technological and military dominance over Arab states. In 1952, he was a key architect of the Free Officers' coup that ended the monarchy and declared, in 1953, an independent Egyptian republic, with the goal of restoring Egyptian national dignity through strong regional leadership, underpinned by economic and social reforms and the strengthening of Egyptian military capability (Gordon 2006). Initially sidelining, and later crushing those with an Islamist vision for Egypt, Nasser laid the foundation for a non-Islamist vision for the Egyptian nation that has remained central to the military's approach to political leadership.

³ This was despite powerful nationalist sentiment enhanced by popular frustration with the continuing British military presence along the Suez Canal under a treaty concluded with the United Kingdom in 1936.

In Tunisia, in the lead-up to the declaration of a republic in 1956, Habib Bourguiba promoted a vision for an independent Tunisia that would be a modern, socio-economically advanced nation that would look to Europe to ensure economic prosperity. Bourguiba founded the Neo Destour party in 1934, to provide a cohesive, unified voice to the nationalist movement and represent a broad cross-section of the population, led by middle-class, provincial technocrats from traditional families (Owen 1992, 255). Bourguiba succeeded to appeal to the rural peasant populace, as well as to students, middle class professionals, business people, organized labor and religious authorities (Alexander 2012, 26–30; Anderson 1986, 173–77). This broad support base gave the Neo Destour leverage to exert sustained pressure on French occupiers for independence (Alexander 2012, 29–30).

At the same time, a split emerged within the Neo Destour party, driven by a competing vision for Tunisia offered by Salah Ben Youssef; this was a vision for Tunisia as a nation underpinned by an Arab-Islamic identity, whose governance would be based on Islamic values and laws. The struggle between Bourguiba and Ben Youssef to set the agenda for the independence movement and its vision for Tunisia continued from the late 1940s up until independence (Wolf 2017, 22–26). In January 1956 Bourguiba's faction prevailed, Ben Youssef fled Tunisia, and in March Bourguiba declared Tunisia's full independence (Alexander 2012, 33–34). The political triumph of Bourguiba's vision for Tunisia over that of the Youssefists, set the stage for the pro-modernisation, pro-development regime that was to follow, winning out over a vision for Tunisia that emphasised Islamic values as the basis for Tunisian national identity (Perkins 2014, 120–37).

Similar to Egypt and Tunisia, in Iraq and Libya the foundations were also laid during the colonial and monarchical period for the salience of a key communal cleavage in each country. In both countries, unlike in Egypt and Tunisia (Anderson 1986, 59–61; Osman 2013, 24–27), colonial incursions were accompanied by violent conflict and the destruction of existing governance structures (Anderson 1986, 181–82; Yaphe 2004, 24–26). At the outset of the colonial period the areas of modern-day Iraq and Libya consisted of three separate provinces (Baghdad, Basra, and Mosul in Iraq; Cyrenaica, Fezzan, and Tripolitania in Libya) (Vandewalle 2006, 22; Yaphe 2004, 19) that had not been administratively unified under Ottoman rule (Anderson 1986, 73–74). These factors meant that colonial administrators relied to a large extent on local notables and tribal leaders to assist with tax collection and

dispute resolution (Simon 2004, 43; Stansfield 2007, 37–38; Vandewalle 2006, 31). In Iraq, this furthered a state fractured along ethno-sectarian lines, and in Libya along regional lines.

In Iraq, the monarchical period institutionalised an ethno-sectarian imbalance in the structures of political power, and violent coercion as a key strategy to ensure cooperation with the regime. The British-backed Iraqi monarchy was led by a Sunni-Arab monarch and privileged the minority Sunni-Arab population in administrative and military positions over the Shia-Muslims, Kurds, and other non-Arab and non-Muslim minority groups (Stansfield 2007, 51–83; C. Tripp 2007, 75–82). Both Shia and Kurdish groups bid unsuccessfully for territorial independence during this period (C. O’Leary 2002; Wimmer 2003, 116). Partly as a reaction, during the 1930s and 1940s, the Iraqi military engaged in repressive military action against Kurdish resistance groups in northern Iraq, and revolting Shia tribal groups, as well as Yazidi and Assyrian minorities (Stansfield 2007, 82–87; C. Tripp 2007, 77–90). In July 1958 the Free Officers, a military faction, mounted a bloody coup, executing the King, the royal family, and the prime minister, and declaring Iraq an independent republic (Romero 2011). This consolidated governance through force under a predominantly Sunni-Arab political leadership.

In Libya, the European-backed monarchical period reinforced a regional cleavage by institutionalising regionally-devolved political power as a framework for the Libyan state. The monarchy was installed under a Cyrenaican monarch who ‘made no secret of his attachment to Cyrenaica, and his dislike for Tripolitania and the prospect of responsibility there’ (Anderson 1986, 254). The King was largely unconcerned with building a unified Libyan nation (252–256). The monarchy operated under a federal framework designed to accommodate provincial differences, leaving substantial political power in the hands of provincial governments and designating two capital cities, one in Cyrenaica and the other in Tripolitania (Paoletti 2011; Vandewalle 2006, 46–67). Resistance to the monarchy was never unified in a mass movement with a clear concept of Libyan national identity (Lobban and Dalton 2014, 51). In 1969, a military coup overthrew the monarchy and declared Libya an independent republic, led by the 27-year-old Muammar al-Gadhafi, from Sirte in the province of Tripolitania. Gaddafi, virtually unknown to the people of Libya at the time of the coup, was inspired by pan-Arab and anti-Western rhetoric, but was not associated with an institutionalised resistance movement (St John 2017, chap. 6).

The colonial and monarchical periods ended with the declaration of an independent republic in each one of the selected countries, effectively ending Western administrative influence and control. In each country, the independent authoritarian republic was formed in the context of a state grappling with its national identity and with fractures along communal lines that continued to dominate the political landscape up until the period of political transition examined in this study. The next section examines the inclusion and exclusion of key communal groups in political governance following the establishment of an independent republic.

4.2 The independent republic: governance by exclusion

Following the declaration of an independent republic in each country, one communal group captured governance structures, whilst other groups were excluded, and were at times systematically oppressed, shown in table 4.2.

Table 4.2 Egypt, Libya, Iraq, and Tunisia: exclusion of communal groups from governance structures under an independent republic

	Egypt	Iraq	Libya	Tunisia
Dominated governance structures	Non-Islamist	Sunni-Arab	Tripolitania (key tribes)	Non-Islamist
Excluded from central governance	Islamist	Shia-Arab Kurds	Cyrenaica Fezzan (key tribes)	Islamist

Source: see text for a detailed discussion of sources

In Egypt governance structures were captured by non-Islamist, military actors. It became quickly apparent that Nasser's vision for Egypt as a powerful regional leader, predicated on military prowess, did not include an Islamist narrative. Whilst Nasser's popularity gained momentum with social and economic reforms and the nationalisation of the Suez Canal (Cook 2012, 69–71), a failed project to create a United Arab Republic (Jankowski 2002), a failed intervention in Yemen in 1962 and Egypt's defeat in the 1967 Six Day War with Israel shattered his vision (Cook 2012, 91–100). Anwar al-Sadat succeeded Nasser on his death in 1970 (Gordon 2006); Sadat gained legitimacy by restoring Egyptian regional leadership in the 1973 war with Israel, viewed as a victory for Egypt (Tignor 2016, 85–120). However, Sadat's bilateral peace with Israel in 1979 and the distaste many

Egyptians, and especially Islamists, felt for his perceived identification with western interests, the corruption and inequalities associated with his attempts to open the Egyptian economy and his increasingly arbitrary treatment of his critics (Bowker, 1996, 31-32) was seen to compromise Egypt's strength and dignity, dissatisfaction with Sadat's signing of a peace treaty with Israel in 1979 was seen to lead to his assassination in 1981 (Finklestone 1996). Hosni Mubarak assumed the presidency following Sadat's assassination, but struggled to restore Egypt's earlier leadership in the Arab world. The regime was perceived to be following the United States rather than setting the agenda (Amin 2011). In 2011, mass protests led to Mubarak's abdication (Cook 2012, 272–307).

During this period, the competing vision, for an Egypt that drew its strength from Islamic values and laws, was perpetuated by the Muslim Brotherhood, who constituted a key force of opposition to the regime. Islamists believed that strict adherence to the principles and practices of Islam was the only framework for a harmonious, ethical society that would be a beacon for the entire Muslim world (Pargeter 2013). In contrast, Nasser's vision for Egypt as a regional leader, was based on an Arab, as opposed to a Muslim, identity. Whilst Egypt's leaders at times made conciliatory gestures towards Islamist groups, most notably under Sadat as he sought to curb his leftist and Nasserist critics, all three leaders undertook severe crack-downs involving arrests of Islamist leaders and group members, and closure of Islamist institutions if these groups seemed to be gaining in political influence. (Osman 2013, chap. 3). In response to such repression, an increasingly militant stream of Islamist thinking emerged, especially under Sayyid Qutb's leadership and direction in the 1950s and 1960s (Toth 2013).

Non-Islamist opposition groups in Egypt were also restricted within the public arena and excluded from governance. However, two points distinguish this from the regime's treatment of Islamist groups. First, in many cases there was a *détente* relationship between non-Islamist groups and the regime (Lust-Okar 2005, 191-202). Second, non-Islamist opposition groups were themselves deeply suspicious of Islamist groups (Shehata 2010). This fracture along ideological lines became evident in the aftermath of Mubarak's abdication, when non-Islamists were more inclined to trust the military council than the freely-elected Islamist-dominated legislative assembly, or the freely-elected Islamist president (Kirkpatrick 2012a; Volkel 2017, 604).

In Tunisia, at the outset of the republic, Bourguiba installed a secular authoritarian regime predicated on modernisation and economic development, to the exclusion of the

Islamist vision for a Tunisian state based on Islamic values and laws (Alexander 2012, 30–34; Perkins 2014, 120–37). Bourguiba, and Ben Ali after him, emphasised advances in health, education, women’s rights, and a diversified Tunisian economy. Whilst both were careful to claim that they did not reject Islam or Islamic values, neither succeeded in reconciling this cleavage. Similar to Egypt, Tunisia’s leaders at times courted Islamist groups, offering political concessions, and then periodically carried out campaigns of political oppression (Alexander 2012, 52–67; Perkins 2014, 202–29). ‘From independence until 2011, the Tunisian state tightly controlled religious institutions, suppressed religious movements and limited the role of Islam in public life’ (Bali and Lerner 2016, 276). As in Egypt, opposition to the governing regime in Tunisia during this time encompassed non-Islamist groups. However, these groups were wary of Islamists, preferring at times to cooperate with the ruling regime rather than with the Islamist opposition (Perkins 2014, chap. 7).

In Iraq, during this period, Sunni-Arab political actors captured governance structures and consolidated the political dominance of this ethno-sectarian group, to the exclusion of Shia-Arabs, Kurds, and other minority groups. In particular, Saddam Hussein consolidated the structural privilege of Sunni-Arabs in the state apparatus and the military forces. Saddam maintained national unity in a fractured ethno-sectarian context through violent engagement with the Iraqi population (Stansfield 2007, 97; C. Tripp 2007, 206–75). Brutal military campaigns were carried out against Kurdish groups that were bidding for increased autonomy, including the notorious use of chemical weapons in the late 1980s (C. O’Leary 2002; Stansfield 2007, 119–35). Shia resistance groups were also met with violent repression including widespread arrests, imprisonment, and the assassination of key leaders (C. Tripp 2007, 196–244). This further entrenched the salience of the ethno-sectarian cleavage established in the previous period.

In Libya, the rise of Gaddafi to power meant the privileging of tribes in the Tripolitania region, over those in Cyrenaica and Fezzan. Gaddafi displayed partisanship ‘over years, towards the tribes in the Tripoli region, to the detriment of the eastern [Cyrenaican] tribes’ (Mokhefi 2011, 3). Gaddafi purported to align Libyan national identity with an honorable, self-ruling Libyan citizen, exemplified by his radical form of direct democracy, that supposedly gave Libyan citizens direct administrative and adjudicative control over their own lives, without the oppressive intervention of state structures (Vandewalle 2006, 103). In fact, Gaddafi failed to devolve real political power, relying on a network of regionally-based tribal

structures and an extensive security apparatus to maintain control (Mokhefi 2011; C. Myers 2013). Gaddafi's 'direct democracy' framework served to perpetuate, rather than ameliorate, regional divisions. State structures were weakly institutionalised, with service delivery and arbitration devolved to the local level, strengthening regional allegiances (Vandewalle 2006, 104–5).

It is important to note that in both Iraq and Libya during this period, the oppression of societal groups was facilitated by significant oil revenue. Saddam's violent engagement with the Iraqi population, lack of accountability, and cavalier military ventures (notably, the Iran-Iraq war and the invasion of Kuwait) were made possible by revenue from Iraq's substantial oil reserves. The regime relied on the distribution of state patronage and a sophisticated network of state security agencies in order to survive (Stansfield 2007, 97; C. Tripp 2007, 206–14). Similarly, Gaddafi's radical political and economic approach was assisted by oil revenue that served to undermine accountability. Weak central institutions were combined with resource distribution and an extensive security network to ensure cooperation with the regime (Anderson 1986, 268; Paoletti 2011, 318–19).

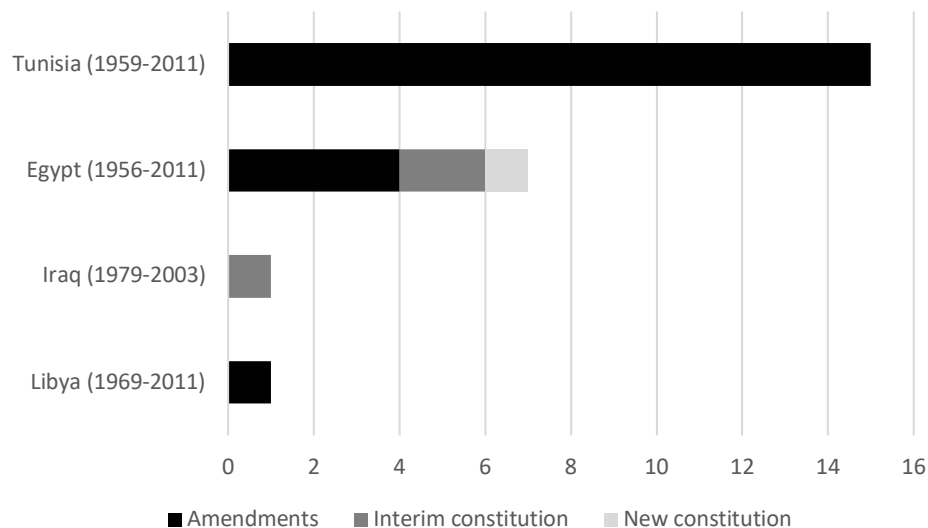
4.3 Political contestation: constitutions and elections

The level of political contestation under authoritarian governance varied in the four selected countries, with the regimes in Egypt and Tunisia permitting greater political contestation, whilst the regimes in Iraq and Libya were characterised by a highly restricted political arena (Stansfield 2007; Vandewalle 2006). In Egypt and Tunisia, when leadership change took place from Nasser to Assad, and then to Mubarak, and in Tunisia from Bourguiba to Ben Ali, the incoming leader adopted a language of political and civil reform, whilst not tolerating any political challenges that might threaten the regime's hold on power (Cook 2012, chap. 5; Perkins 2014, chap. 7).

In all four countries, the independent republic was ostensibly established within the constraints of a constitutional framework. In Egypt and Tunisia whilst the judiciary did not operate independently from the regime, it did constitute an arena of political contest that at times tested the boundaries of the permissible. This was not the case in Iraq under Saddam Hussein and Libya under Gaddafi where regimes were highly personalised and constitutional law was either revoked (Libya) or disregarded (Iraq). This is evidenced by the extent of new and interim constitutions and constitutional amendments in each country, as shown in Figure

4.1. Libya had one constitutional amendment during the 42-year period under Gaddafi. In 1975, Gaddafi replaced Libya's constitution with his 'Green Book' intended to provide a guiding framework for social and political behaviour. Similarly, in Iraq under Saddam Hussein's 24-year reign, only one interim constitution was enacted, with no constitutional amendments and no forthcoming new constitution document. Conversely, Egypt enacted four constitutional amendments, two interim constitutions, and one new constitution under Nasser, Sadat, and Mubarak. In Tunisia, 15 constitutional amendments were enacted under Bourguiba and Ben Ali.

Figure 4.1 New and interim constitutions, and constitutional amendments



Source: Comparative Constitutions Project, available at: comparativeconstitutionsproject.org/chronology; see Elkins, Ginsburg, and Melton (2009).

However, notwithstanding this constitutional variation between Egypt and Tunisia on the one hand, and Iraq and Libya on the other, in all four countries constitutional law failed to prevent the repression of groups excluded from governance structures. In fact, in Egypt and Tunisia, legal frameworks were at times employed to dissuade or exclude Islamist groups from participation in the political arena. In Egypt, Nasser's 1956 constitution ostensibly guaranteed an array of political rights including 'the right to set up associations', with Sadat's 1971 constitution also providing for multi-party electoral contest (Feuille 2011, 239–42). However, constitutional law operated under political uncertainty and periodic arrests of opposition figures (Egyptian State 1971, 241–42; Feuille 2011, 240–42; Osman 2013, chap. 6). In particular, Islamists were targeted by the regime, notably members of the Muslim

Brotherhood, the largest and most institutionalised Islamist association, and were frequently harassed and imprisoned, alongside more militant Islamist groups (Brown and Dunne 2007; Feuille 2011, 243–45). Egypt's constitutions did nothing to guarantee political inclusion for those excluded from central governance structures; rather, the atmosphere of political uncertainty increased inter-communal suspicion without resolving this divide.

Similarly, in Tunisia, the regime under Bourguiba (1956–1989) and Ben Ali (1989–2011) ostensibly operated under constitutional law, underpinned by the constitution approved by Bourguiba in 1959 and amended by Ben Ali after he took power (Ware 1988). However, whilst the constitution guaranteed the political rights of citizens and acknowledged Islam as a key influence (Tunisian State 1959), in practice, it was used to institutionalise repressive, authoritarian practices, and did not prevent periodic state crackdowns on opposition groups. In particular, Islamist associations and actors were systematically arrested and repressed (Alexander 2012, chap. 2, 3). The constitution did not serve to reduce political uncertainty for excluded communal groups or reconcile the key communal fracture in the country.

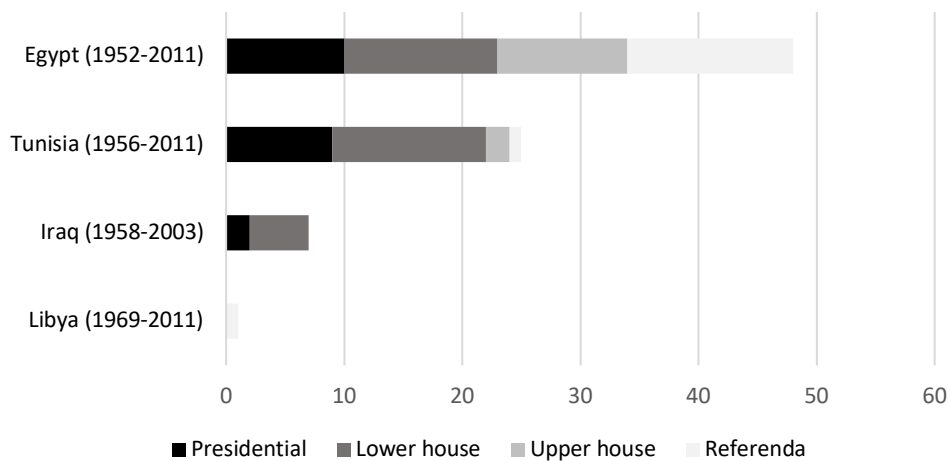
In Libya, Gaddafi enacted a new constitution in 1969, replaced in 1975 with Gaddafi's 'Green Book' (Gaddafi 1975). The Green Book declared that constitutional guarantees of individual rights are suspect and should be replaced with direct democracy through the establishment of local popular congresses. However, real political power remained in Gaddafi's hands. The popular congresses, that existed in various forms throughout the remainder of Gaddafi's rule (Kjaerum et al. 2013), served only to reinforce divisions at the local and regional level, rather than providing institutionalised governance at the national level (Anderson 2001).

In Iraq, whilst a new constitution was proclaimed after the declaration of an independent republic in 1958, no representative political institutions were established and power was concentrated in the hands of a few political actors. In 1989, 10 years after Saddam came to power, he proposed the creation of a new constitution, however this never transpired (C. Tripp 2007, chap. 5). The constitution in Iraq was a toothless document and political practice continued to exacerbate communal divisions. The Iraqi constitution did not guarantee political inclusion for all communal groups.

In terms of electoral contestation, a similar distinction can be made between electoral competition under authoritarian regimes in Egypt and Tunisia, as opposed to a dearth of competitive elections in Iraq and Libya, as shown in Figure 4.2. All four countries operated

under a presidential system. Egypt and Tunisia had an almost identical amount of presidential and lower-house legislative elections pre-transition, whilst Egypt held additional upper house elections and referenda. Iraq had very few presidential and legislative elections during this time, and Libya had no elections or referenda on a national scale. However, in no country did electoral politics further real political inclusion of excluded communal groups.

Figure 4.2 National elections and referenda under authoritarian rule



Sources: Inter-Parliamentary-Union PARLINE database on national parliaments: archive.ipu.org/parline-e/parlinesearch.asp; additional data for Egypt, Libya, and Tunisia taken from the data handbook on elections in Africa, see Ries (1999), Mattes (1999), and Pereira (1999); additional data for Iraq taken from the data handbook on elections in the Middle East, see Axtmann (2001).

Egypt and Tunisia ostensibly had multi-party systems, however these were consistently dominated by the ruling party. In Egypt, under Sadat and Mubarak, and in Tunisia under Ben Ali, approved opposition parties could participate in elections, although the ruling party consistently won almost all of the seats. Presidential ‘elections’ were typically referenda on the ruling president, where an unchallenged incumbent won over 99 percent support. Legislative elections typically served to provide an opportunity to gain access to state resources and services rather than decision making power, reinforcing a political system of competitive clientelism, with the ruling party consistently gaining at least a majority of seats (Diamond 2010; Lust-Okar 2009, 227–38; Owen 1992, 223–53; Posusney 2002). The regimes oscillated between granting small political openings, and disqualifying opposition parties or cracking down on opposition actors.

In both Egypt and Tunisia, the regimes were particularly wary of Islamist opposition parties due to their substantial popular support and frequently backtracked on promised

electoral freedom for Islamist parties, imposing restrictions and arrests (Alexander 2012, chap. 2, 3; Cook 2012, 108–209). This served to further the political exclusion of Islamists, rather than ameliorating the Islamist – non-Islamist cleavage. In Libya, political parties were banned under Gaddafi; the national legislature composed of local representatives was devoid of any real political power (Kjaerum et al. 2013). Iraq under Saddam Hussein had a single-party national legislature that did not constitute real political contest (Cordesman and Hashim 1997, chap. 4).

4.4 Conclusion

This chapter has sought to show that in the four selected countries communal cleavages gained in relevance during the colonial and monarchical periods and were institutionalised in the period of the authoritarian republic with the capturing of governance structures by one key communal group, to the exclusion of others. That situation had a significant impact on institution-building that occurred in each country following authoritarian breakdown.

In Egypt, whilst there was brief unity in resistance in early 2011 amongst Islamist and non-Islamist groups calling for increased political freedoms, the central divisive issue that framed institution-building in the transition period, was fear of Islamist political leadership from non-Islamists, and fear of ‘diluted’ Islamist values on behalf of Islamists. This rift overrode all other issues to the extent that by mid-July 2013, some liberal-secular non-Islamists called for the return of military rule to prevent Islamist groups from holding political power (Stepan 2012b). In Tunisia, mutual suspicion between Islamist and non-Islamist groups was prevalent in the post-2011 transition period, bringing constitution-making to complete breakdown and the country to the brink of civil violence in mid-2013 (Guellali 2013). In the 2014 legislative elections a party led by a prominent member of the ancien regime gained a plurality of seats with its leader, Beji Caid Essebsi, becoming president, preferred by many non-Islamists to the main Islamist party, despite his strong ties to the previous regime (Lefevre 2015).

In Iraq, whilst at the time of transition most Iraqis reported a strong sense of Iraqi identity (in 2004, 77 percent of Iraqis reported feeling ‘very proud’ of being Iraqi, and 17 percent as feeling ‘quite proud’),⁴ ethno-sectarian divisions nevertheless overshadowed

⁴ World Values Survey Wave 4, question V216, see Appendix A for survey methodology.

institution-building post-2003. Whilst at the outset of the transition there was goodwill amongst Iraqis from across ethno-sectarian groups to create a new political system (Diamond 2005; Morrow 2005), underlying tension and antagonism quickly resurfaced, exacerbated by blunders on behalf of the CPA, and intentional inciting of sectarian tensions by the imported Al-Qaeda in Iraq group (Dobbins et al. 2009; Fishman 2006). Whilst tensions regarding the place of religion in the state also exist, the central axis of division during this time was ethno-sectarian. The potential for political mistrust amongst ethno-sectarian groups that had its roots in the colonial and post-independence periods was soon realised.

Similarly, in Libya, the persistence of the regional cleavage and sub-regional tribal divisions shaped institution-building post-2011. As noted by Mokhefi (2011, 3) 'the eastern part of Libya was the very first area to proclaim the revolution... Their first criticism of Gaddafi was the partisanship that he had displayed, over years, towards the tribes in the Tripoli region, to the detriment of the eastern tribes'. The inability to overcome this division during the transition was quickly evidenced by the devolution of power to tribal groupings and the emergence of competing centers of political power in Tripolitania and in Cyrenaica (Murray 2015), echoing the monarchical period.

Against the background of communal cleavage in each country, the study now turns to an examination of whether, following authoritarian breakdown, the inclusion of communal groups in institution-building created support from those groups for the new political system. The following three chapters examine the involvement of key communal groups in electoral system design and constitution-making in the selected countries, investigating whether de jure inclusion, de facto inclusion, or a combination of both was sufficient to build support from all groups for the political system. Chapter 5 will examine negotiations to determine an electoral system, and whether inclusion in this institution-building moment created support for elections.

Chapter Five

Negotiating electoral system design

In the aftermath of the removal of the authoritarian leaders in Iraq in 2003, and in Egypt, Libya and Tunisia in 2011, an immediate task was to design an electoral system for legislative elections that were to take place as soon as feasible in each country. In Iraq, an electoral system was decided as ‘a result of long consultations with Iraqis both inside and outside of the Governing Council, both in Baghdad and in many cities around the country’ (Perelli 2004). Conversely, whilst in Libya the draft electoral law ‘was distributed via the media for public debate’, no official consultations were held (Kjaerum et al. 2013, 11). In Egypt, electoral system design was described by an electoral expert as ‘one of the most closed cases that I’ve been involved with and my colleagues had been involved with’ (Reynolds 2015), and in Tunisia, there was no public consultation regarding the choice of electoral system (The Carter Center 2012a, 14-16). If we expect inclusion to create political confidence, then of the four countries, we might expect to observe support for elections in Iraq, and not in Egypt, Libya, or Tunisia. And yet, it was in Iraq that groups urged a boycott of the elections, suggesting a dearth of support, whilst in the other countries there was full electoral participation. How can we account for this apparent discrepancy?

This chapter examines the involvement of communal groups in negotiating an electoral system in the four selected countries, with the goal of better understanding the mechanism through which inclusion creates support. Three hypotheses are examined that test whether either *de jure* inclusion or *de facto* inclusion are alone sufficient to build support for elections, or whether a combination of both leads to support. The findings suggest that *de jure* inclusion is not sufficient to build support, whilst *de facto* inclusion may be sufficient.

The next section outlines the importance of the decision-making process to determine an electoral system, and presents the hypotheses investigated. Section 5.2 outlines the observation of *de jure* inclusion and *de facto* inclusion in negotiating an electoral system in each country. Section 5.3 presents observations for the dependent variable, support for elections, and discusses whether these observations support or refute the hypotheses under investigation. The final section discusses the implications of the chapter’s findings and makes some concluding remarks.

5.1 Background and hypotheses

In the uncertain context of a political transition, choosing an electoral system for transitional elections is sharply contested and carries significance for the distribution of power amongst groups in the important institution-building period (Andrews and Jackman 2005; Luong 2002). In all of the four countries under examination, transitional elections proceeded constitution-making. In Egypt and Iraq representatives were elected to parliament who would appoint members to a constituent body. In Tunisia a constituent legislative assembly was elected tasked with constitution-making as well as legislative duties. In Libya, a constituent body was to be elected at a later date. The potential to influence constitution-making raised the stakes of first transitional elections in each country. In turn, this meant that negotiations to determine an electoral system for transitional elections was a disputed arena of inter-communal contest.

Electoral system design as a discrete and important institution-building event during a political transition has been acknowledged by scholars in recent decades (Andrew and Jackman 2005; Benoit 2004; Shvetsova 2003). An extensive literature exists on electoral reform in established political systems (Dunleavy and Margetts 1995; Rahat and Hazan 2011; Remmer 2008). However, such changes are usually moderate and infrequent (Boix 1999; Norris 1995), with a few notable exceptions. For example, electoral reform in Japan, New Zealand, and Italy in the 1990s was remarkable for two reasons. First, they constituted substantial electoral change in established western democracies; a rare event. Second, the changes were towards more proportional electoral systems that could be expected to disadvantage incumbents (Sakamoto 1999). During transition, where the legitimacy of previous structures of political power are called into question, there is often enthusiasm for a complete overhaul of a previously used electoral system (Benoit and Schiemann 2001).

Scholarly literature acknowledges the importance of decisions on electoral system design during political transition (Luong 2002). Substantial scholarly attention has been paid to electoral system choice as an outcome of actors' preferences (Boix 1999). It is somewhat surprising, however, that little consideration has been given to the quality of this decision-making process in terms of the involvement of key groups, and whether such inclusion impacts support for elections amongst those groups. Literature on institution-building in other areas, notably scholarship on designing a new constitution, emphasises the importance

of inclusion of all groups in order to build support and enhance the perceived legitimacy of political institutions. I assert that the expectation that involvement of all groups will create political confidence, should apply equally to decision-making on electoral system design, as it does for other institution-building events.

In Egypt, Iraq, Libya, and Tunisia an electoral system was negotiated within the first year of the political transition, and just months before the transitional legislative elections were held. In each country, whilst the political transition was not disconnected from the electoral context of the previous regime, there was a willingness—ranging from enthusiasm in Tunisia (Murphy 2013) to reluctant willingness in Egypt (International Crisis Group 2012)—to make a break with the past in terms of designing a new electoral system for transitional elections. The willingness to entertain new electoral options in each country is evidenced by the choice of a different electoral system to the one used under the previous regime. Table 5.1 shows that in Iraq and Libya no candidates were elected using a system employed under the previous regime. In Egypt and Tunisia a small proportion, one-third and one-fifth, respectively, used the same system as one used under the previous regime.

Table 5.1 Egypt, Iraq, Libya, and Tunisia: previous and new electoral system

	Electoral system under previous regime	New electoral system	Seats elected using same system as previous regime (%)
Egypt	Majoritarian with two-member districts	Mixed-member-parallel: Two-thirds of seats using proportional-representation; One third of seats using majoritarian two-member districts	33
Iraq	Single-non-transferable-vote	Proportional-representation	0
Libya	No national elections held	Mixed-member-parallel: 120 seats using Single-non-transferable-vote and single-member-district; 80 seats using proportional representation	0
Tunisia	Mixed-member-parallel 80 percent of seats: bloc-vote 20 percent of seats: proportional-representation	Proportional-representation	20

Sources: Faris (2012) on Egypt; C. Tripp (2007) on Iraq; Alexander (2012) on Tunisia; and Kjaerum et al. (2013) on Libya

In each country the interim authority played an important role in determining the negotiations framework to decide on a new electoral system, exerting influence over the

involvement of key communal groups in this institutional design moment (the role of the interim authority is returned to in the conclusion). In each country multiple actors had an interest in electoral system design and were eager to influence the outcome. Compared with the lack of toleration for political contestation under the previous regime, relative political and civil freedom during transition was evidenced by an unprecedented level of public debate and engagement with institutional design (Diamond 2005, chap. 5; Kjaerum et al. 2013; National Democratic Institute 2011; The Carter Center 2012b). Each interim authority stated an objective to facilitate a political system that would include all communal groups, with freely elected political leaders through competitive multi-party elections (Coalition Provisional Authority 2003; Supreme Council of the Armed Forces 2011; Temehu 2016; The President of the Tunisian Republic by Interim 2011). However, this sentiment did not extend equally in each country to the process of deciding on an electoral system for these elections.

Table 5.2 shows the hypotheses examined in this chapter based on variation on the independent variables in institution-building in each country. In Tunisia both de jure and de facto inclusion were present, so hypothesis two is examined. Hypothesis three is examined in Iraq where de jure inclusion was observed without de facto in negotiations on electoral system design. In both Egypt and Libya there was de facto inclusion without de jure, enabling an investigation of hypothesis four. The final column in Table 5.2 shows the predicted relationship between the independent variables and the dependent variable according to the hypothesis under examination.

Table 5.2 Hypotheses examined at the negotiations stage of electoral system design

	De jure inclusion (independent variable)	De facto inclusion (independent variable)	Country where independent variables are observed	Expected observation of support (dependent variable)
H1	-	-	not tested in this chapter	-
H2	x	x	Tunisia	y
H3	x	-	Iraq	y
H4	-	x	Egypt, Libya	y

De jure inclusion, de facto inclusion, and support for elections are operationalised according to the indices reviewed in Table 5.3. The first two indicators of de jure inclusion pertain to a public focus on inclusion in determining an electoral system. The next two indicators concern public consultations on the choice of electoral system, and approval of the electoral system by an inclusive body. The first two indicators of de facto inclusion examine

whether representatives of all communal groups were in fact consulted on electoral system design, and whether these consultations continued up until an electoral system was chosen. The final indicators of de facto inclusion measure whether there is demonstrated evidence that representatives of all communal groups had an opportunity to impact electoral system design, running along both an elite and a mass public dimension. Support for elections is distinguished by behavioural, attitudinal, and constitutional support. Behavioural support is measured as an absence of election-related violence. Attitudinal support for elections is measured according to individual-level perceptions of electoral legitimacy. Constitutional support is assessed according to the absence of an election boycott, and absence of low turnout (33 percent or below), overall or on behalf of one communal group.

Table 5.3 Operationalisation of variables

De jure inclusion (IV) Index 0-4	De facto inclusion (IV) Index 0-4	Support for elections (DV) Index 0-4
<i>Inclusion of communal groups in design body</i> 1. Public focus from transitional authority on inclusion in determining an electoral system (Yes=1, No=0) 2. Members of design body include all key communal groups (Yes=1, No=0)	<i>Actual inclusion of all communal groups in consultation</i> 1. Actual consultation with representatives of all key communal groups on electoral system design (Yes=1, No=0) 2. Demonstrated evidence consultation with all key communal groups continued up until electoral system design was determined (Yes=1, No=0)	<i>Behavioural</i> 1. Absence of election-related violence (Yes=1, No=0) <i>Attitudinal</i> 1. Perceptions of legitimacy: intention to vote in elections (<50 percent) (Yes=1, No=0)
<i>Inclusion of communal groups in consultations on / approval of institutional design</i> 1. Official policy of public consultation on electoral system design (surveys, open forums, focus groups) (Yes=1, No=0) 2. Electoral system design approved by body inclusive of all communal groups (Yes=1, No=0)	<i>All communal groups have an opportunity to impact the institutional design outcome</i> 1. Demonstrated evidence that representatives from all key communal groups had opportunity to impact electoral system design (through official negotiations or unofficial channels such as political pressure) (Yes=1, No=0) 2. Demonstrated evidence mass public had opportunity to impact electoral system design (through official consultations or unofficial channels such as public protest) (Yes=1, No=0)	<i>Constitutional</i> 1. Absence of a boycott of elections by political actors associated with a key communal group (Yes=1, No=0) 2. Absence of low turnout overall or on behalf of one communal group (≤ 33 percent) (Yes=1, No=0)

Data sources to measure the independent and dependent variables are shown in Table 5.4. De jure and de facto inclusion are measured using expert interviews, and independent reports from election monitoring bodies and other political analysis institutes. Behavioural support (the absence of electoral violence) is measured using reports from independent election monitoring bodies. Attitudinal support (perceived legitimacy) is measured using individual-level survey data in Egypt, Iraq, and Tunisia. In Libya, due to a dearth of public opinion survey data, this indicator is measured using a report from IFES on individual-level perceptions of legitimacy in post-election focus-groups (IFES 2013b). For constitutional support, the absence of an election boycott is measured using independent reports from election monitoring bodies and corroborated with interviews and news media, turnout is measured using data from IFES election guide country profiles, and independent reports or survey data to disaggregate per communal group.

Table 5.4 Data sources

	De jure inclusion	De facto inclusion	Support for elections
Six expert interviews	√	√	√
Communique from transitional authority	√		
Reports from independent election monitoring and political analysis bodies	√	√	√
Public opinion surveys: Arab Democracy Barometer Wave II and Wave III; World Values Survey Wave 4			√
IFES election guide country profiles www.electionguide.org/countries			√

Source: for more detail on data sources see Table 3.13

5.2 Inclusion in negotiating electoral system design

Both Iraq and Tunisia began negotiations on electoral system design with formal inclusion of key communal groups in this process, whilst in Egypt and Libya de jure inclusion was not present in decision-making to determine an electoral system. Each country's score on the de jure inclusion index is shown in Table 5.5; each indicator is discussed in detail below. In Egypt, none of the four indicators was observed, so Egypt scored a zero on the index and is evaluated as having no de jure inclusion in negotiations on electoral system design. In Libya only the third indicator of de jure inclusion was observed. Therefore, de jure inclusion receives a score

of one on the index and is assessed as low. For the purposes of testing the hypotheses a country needs to score two or above for de jure inclusion to be considered present, so de jure inclusion is not assessed as present in Libya. In both Iraq and Tunisia, three out of the four indicators were observed, so de jure inclusion is assessed as high.

Table 5.5 De jure inclusion in electoral system design negotiations

	Indicator 1 Public focus on inclusion in determining electoral system	Indicator 2 Design body members included all groups	Indicator 3 Public consultation on electoral system design	Indicator 4 Electoral system approved by inclusive body	Index (0-4)
Egypt	0	0	0	0	0 None
Iraq	1	0	1	1	3 High
Libya	0	0	1	0	1 Low
Tunisia	1	1	0	1	3 High

For the first indicator, in Egypt and Libya there was no public focus from the interim authority on inclusion in determining electoral system design; however, in Iraq and Tunisia this was the case. In Egypt, two days after Mubarak's abdication on 11 February, The SCAF issued a constitutional declaration that appointed an eight-person committee to produce constitutional amendments that were put to a referendum in March 2011 and approved. The amended constitution did not directly address electoral system design or how this would be determined, other than retaining the provision that at least 50 percent of elected members of the legislative assembly must be workers or farmers (a legacy of the Nasser-era) (Hassan 2013, 371). The first direct announcement on electoral system design in Egypt on 30 May 2011 was the SCAF's release of a draft proposal for the Law on the People's Assembly (Democracy Reporting International 2011a, 4). There was no public attention on inclusion of communal groups in producing an electoral system.

In Libya, the NTC issued a constitutional declaration in August 2011 that outlined a roadmap for determining electoral system design and holding transitional elections. However, the composition of the electoral system design body was unclear (Democracy Reporting International 2011e, 2012; Temehu 2016). In November 2011, the NTC selected an eight-member election committee tasked with drafting the election law, defining districts, and distributing seats amongst districts for the elections (Kjaerum et al. 2013, 10), without a public emphasis on inclusion in drafting an electoral system.

In Iraq, the CPA, backed by the Iraqi Governing Council (IGC), tasked a United Nations Electoral Assistance Division (UNEAD) team, led by Carina Perelli (chief of the UNEAD) with proposing an electoral system for the first transitional elections (Perelli 2004; United Nations 2004a). Nevertheless, there was a clear emphasis on inclusion in determining an electoral system, as outlined in a United Nations communique (United Nations 2004a). Perelli (2004, 1) stated in a press briefing that the UNEAD wanted to ‘broaden the consultations’ on electoral system design and have ‘open fora for discussion in order to see what type of system [Iraqis] want to have’.

In Tunisia, the HCFRG publicly communicated that inclusion would underpin the process to select an electoral system. An inclusive body was to be set up that would encompass representatives from Islamist parties as well as from an array of non-Islamist opposition groups (The Carter Center 2012a, 14). As stated in an HCFRG communique of 11 February 2011: ‘The body will be composed of representatives of the political parties, associations, organisations, and bodies undersigned, as well as representatives from the opposition, by consensus’ (Gannouchi 2016).

For the second indicator of de jure inclusion, the body responsible for negotiating a new electoral system in Egypt, Iraq, and Libya did not include representatives from all communal groups, whilst in Tunisia it did. In Egypt, the SCAF was responsible for electoral system design, a body not inclusive of all communal groups. The specific actors that drafted the electoral system was not made public (Bassiouni 2017; International Crisis Group 2012). As asserted by Reynolds (2015): ‘Egypt is probably one of the most closed cases that I’ve been involved with... there were rumors about who was actually drafting the SCAF’s [election] system options but it was never clear exactly who was doing it.’ In Iraq, the UNEAD team that drafted electoral design options was not inclusive of Iraq’s communal groups (United Nations 2004a). In Libya, the election design body was appointed by the NTC, who were themselves largely from Cyrenaica, in the east. As noted by an expert observer (Vandewalle 2015): ‘you have to realise that the leadership, the NTC... was very much from one part of the country, from the eastern part of the country’. In November 2011, Libyans were found to be dissatisfied with the NTC’s lack of transparency in decision-making (Doherty 2011). In Tunisia, however, the 155-member HCFRG included representatives from all major opposition parties, former government officials, prominent scholars, and labor union officials, including both Islamist and non-Islamist actors (Pickard 2011; Stepan 2012a).

Whilst there were no official avenues of consultation on electoral system design in Egypt and Tunisia, there were such channels in Iraq and Libya. In Egypt, as already mentioned, there were no official avenues for public consultation on electoral design (Bassiouni 2017, chap. 2, 3). Similarly, in Tunisia, no public consultations were held to debate the electoral system (The Carter Center 2012a, 15–16). HCFRG orders specified that the deliberating body must report its activity to the public, but it did not specify public consultation or public input (Gannouchi 2016). In Iraq, by contrast, official consultations with the public on the electoral system did take place. As noted in a United Nations communique (2004a): ‘Between March and May 2004, the UN undertook wide ranging discussions [on electoral system design] with political, academic, religious and social actors throughout Iraq, as well as the Electoral Committee of the IGC... Consultations were conducted at meetings or town hall gatherings in nine of Iraq’s 18 Governorates: Baghdad, Kirkuk, Mosul, Basra, Erbil, Sulamaniya, Hilla, Najaf and Nasiriyah’. In Libya, whilst there were no official consultations on electoral system design, following the release of the first draft of the electoral law on 2 January 2012, the NTC ‘invited Libyan citizens to submit comments on the draft election law before [finalising the text]’ (Democracy Reporting International 2012, 1). The first draft was distributed via the media for public debate between 6 January and 21 January 2012 (Kjaerum et al. 2013, 11).

The fourth indicator of de jure inclusion, approval of electoral system design by an inclusive body, was not present in Egypt and Libya, but was observed in Iraq and Tunisia. In Egypt, electoral system design was approved in an opaque process, with no specified approval from a body inclusive of all communal groups (Reynolds 2015). Similarly, in Libya, the election committee was not set up to be inclusive of all communal groups and there was no other specified mechanism of approval by an inclusive body (Kjaerum et al. 2013, 17). Conversely, in Iraq, the design of the electoral system needed to be approved by the IGC, a 25-member body set-up by the CPA that included Shia-Arab, Sunni-Arab, and Kurdish members according to each group’s proportion of the wider population (Al-Ali 2014, 77). The UNEAD team presented three options for electoral system design to an electoral committee appointed by the IGC. The electoral committee chose one option;¹ the IGC then needed to approve this option (which it did with 17 votes to four in favour) (United Nations 2004a). The chosen

¹ The chosen option was the one strongly preferred by the UNEAD team, suggesting possible influence in the presentation of options. However, this does not contradict de jure inclusion.

electoral system was then passed into law by the CPA in order number 96 of 7 June 2004 (Coalition Provisional Authority 2004b). In Tunisia, there was an explicit directive that the design of the new electoral system had to be approved by the HCFRG, a body composed of representatives from across communal groups (Stepan 2012a).

De facto inclusion in negotiations on electoral system design varied amongst countries. Whilst negotiations on an electoral system in Egypt and Libya did not involve formal inclusion of communal groups, in Egypt all groups ended up impacting the choice of electoral system, and in Libya all relevant groups were in fact consulted and given an opportunity to influence the electoral system. In Tunisia formal inclusion in negotiations on an electoral system was complimented with actual inclusion of all groups in consultations on the electoral system that culminated in an almost complete consensus on the outcome. In Iraq, however, formal participation and inclusion in decision-making around an electoral system did not result in sustained consultations with all communal groups, and an opportunity for all groups to shape the chosen electoral system. Table 5.6 shows each country's score on the de facto inclusion index; each indicator is discussed in detail below.

Table 5.6 De facto inclusion in electoral system design negotiations

	Indicator 1 Actual consultation on electoral system with representatives of all communal groups	Indicator 2 Consultation continued up until electoral system chosen	Indicator 3 Representatives of communal groups had opportunity to impact electoral system design	Indicator 4 Mass public had opportunity to impact electoral system design	Index (0-4)
Egypt	1	0	1	1	3 High
Iraq	0	0	0	0	0 None
Libya	1	1	1	1	4 Very high
Tunisia	1	1	1	0	3 High

The first indicator of de facto inclusion was present in Egypt, Libya, and Tunisia, but not in Iraq. In Egypt, evidence from interviews and other sources suggests that the SCAF consulted both liberal-secular and Muslim Brotherhood members during this period on electoral timing and electoral system design. A retired Egyptian general asserted in an interview with the International Crisis Group in October 2011 (International Crisis Group 2012, 4) that the SCAF placed elections ahead of a constitution-making process due to consulting with advisers that 'were mostly from the Muslim Brothers... with the Brothers being the most organised and numerous group, they [the SCAF] naturally felt it made sense

to let them have a critical say'. Additional evidence suggests that, besides consulting Islamist actors, during 2011 the SCAF also 'maintained a revolving door of experts and intellectuals—many associated with the revolution—who regularly consulted with the generals on policy' (Stepan 2012b). In an interview conducted under the auspices of the Arab West in February 2012 with an actor closely associated with the Muslim Brotherhood, the SCAF was reported to be 'negotiating with all political parties at the time [in 2011]' (Hulsman 2015, 4).

In Libya, following a draft electoral system that designated the distribution of seats amongst the three Libyan provinces, multiple unofficial negotiation rounds took place on seat distribution with regional representatives, and with representatives of the 13 districts and 73 sub-districts within the three provinces (Kjaerum et al. 2013, 12–17). Similarly, in Tunisia, within the framework of the HCFRG, consultation on electoral system design took place with representatives of key communal groups (Islamists and non-Islamists) (Brownlee, Masoud, and Reynolds 2015, 128–32). Alfred Stepan asserts that the HCFRG was 'one of the most effective consensus-building bodies in the history of "crafted" democratic transitions' (Stepan 2012a, 92).

In Iraq, on the other hand, whilst there was an emphasis on holding public forums to inform the public regarding electoral system design, there were no negotiations on electoral system design with representatives of all communal groups, evidenced by the minimal and inconsistent consultation with Sunni-Arab actors (Diamond 2015). As observed by the head of the International Crisis Group in Amman, the January 2005 elections were pushed through despite Sunni exclusion from decision-making and objections to both timing and electoral system design (Hiltermann 2006, 38). Sunni actors strongly preferred a PR list system in multi-member districts² rather than a single nation-wide district, and wanted to delay the holding of elections (Dawisha and Diamond 2006; Pachachi 2005). As noted in an interview (Diamond 2015): 'The Sunnis feared, I think understandably, and not incorrectly, that they would be penalised by this system, because they were going to wind up having a much lower turn-out'. However, Sunni-Arab representatives were not directly consulted (Istrabadi 2015).

² Using PR-list in multi-member districts would have guaranteed a certain proportion of seats to Sunni-majority provinces regardless of population and turnout. For further explanation see Al-Ali (2014, 82-83).

The second indicator was observed in Libya and Tunisia, but not in Egypt or Iraq. In Libya, negotiations on electoral system design continued 'until consensus was reached on a final distribution, which aligned with the 120 individual seats and 80 list-based seats stated in the election law' (Kjaerum et al. 2013, 17). This consensus on the division of seats amongst districts was then stipulated in the election law of 12 March 2012 (17). Similarly, in Tunisia, inclusive negotiations continued up until an electoral system was agreed upon (Pickard 2011; Stepan 2012a, 93–94). In Egypt, whilst there is evidence that some consultation on electoral system design took place with representatives of communal groups, there is no clear evidence that these consultations continued throughout the duration of the decision-making process up until the final electoral system was determined (International Crisis Group 2012, 4). In Iraq, given that the first indicator of de facto inclusion (consultation with all groups) was not observed, the second indicator was also not present.

The third and fourth indicators of de facto inclusion, representatives of all communal groups and the broader public having an opportunity to impact electoral system design, was present in Egypt, Libya, and Tunisia, but not in Iraq. In Egypt, there is evidence that political actors from across communal groups shaped electoral system design. The SCAF's original proposal for electoral system design was moderated three times to accommodate the preferences of political actors from across the Islamist – non-Islamist divide following threats to boycott the elections (Elyan 2011b). The SCAF's original proposal was for a two-tier parallel system with two-thirds of the seats elected in a majoritarian tier, and one-third by PR-list (International Crisis Group 2012). Following waves of widespread mass protest and threats to boycott the elections from both Islamist and non-Islamist political actors, the SCAF adjusted this ratio on 19 July 2011 to 50 percent elected in each tier (Democracy Reporting International 2011b, 1; Hassan 2013, 370), and again on 25 September to one-third of seats elected in the majoritarian tier and two-thirds in the PR-list tier (Democracy Reporting International 2011a; Hassan 2013; IFES 2011, 2013a). A final modification to the electoral law was made on 8 October 2011, allowing members of political parties to run in both tiers (rather than just in the PR-list tier) (IFES 2013a, 4). This demonstrated that political actors from across the Islamist – non-Islamist divide influenced the design of the electoral system.

In Libya, political representatives from all regions influenced electoral system design. The original system distributed seats amongst provinces according to population size. However, following opposition from representatives of Fezzan and Cyrenaica, seats were re-

distributed amongst the three provinces taking into account geographic size as well as population. In addition, each province had an influence over the exact distribution of seats. The final allocation of seats in each tier was only determined following extensive negotiations with provincial and local leaders that continued until agreement was reached (Kjaerum et al. 2013, 12-17). In Tunisia, there is evidence that both Islamist and non-Islamist actors had an opportunity to influence the final electoral system design outcome. Where disagreements arose on timing or electoral system choice these were discussed by all members until agreement was reached and the final system was voted on by all members of the HCFRG (Koehler and Warkotsch 2014, 20-21; Stepan 2012a, 93–94; The Carter Center 2012a, 16).

In contrast to the other three countries, in Iraq there is no evidence that representatives of key communal groups had an opportunity to influence electoral system design (Al-Ali 2014, 82-83; Hilltermann 2006). Diamond (2015) evidences the lack of inclusion of actors outside the UNEAD in determining the proposed electoral system: ‘the United Nations came in, and the United Nations team led by Carina Perelli basically dispensed with the idea [of PR-list in multi-member districts], about which there had been a good deal of writing and analysis... So, the UN, led by her, decided to just have this system of one nation-wide district with no boundaries’. The UN cited timing and logistical pressures in opting for a single nation-wide district (Perelli 2004), nevertheless consultation with all communal groups was not present.

The fourth indicator, evidence that the broader public impacted electoral system design through organised consultations or through mass protest, was evidenced in Egypt and Libya, but not in Iraq or Tunisia. In Egypt, as discussed above, electoral system design was adjusted following mass protests and public agitation from across Islamist – non-Islamist groups (Bradley 2011; Democracy Reporting International 2011b). As asserted by an expert analyst: ‘the SCAF ultimately were pushed... to reform the system and build in elements of proportionality and lists’ (Reynolds 2015). Similarly, in Libya, there is demonstrated evidence that preferences of the broader public had an opportunity to influence electoral system design. When the initial draft of the electoral system was publicly released, there was protest, primarily from political parties and civil society groups, objecting to a single-tier majoritarian system (Zargoun and Holmes 2016). Following this, the NTC adjusted electoral system design to incorporate a two-tiered system with 120 candidate-based seats elected using a

majoritarian system, and 80 party-based seats elected using PR-list (Kjaerum et al. 2013, 4; Democracy Reporting International 2012).

Conversely, in Iraq and Tunisia, the fourth indicator of de facto inclusion was not observed. In Iraq, whilst Carina Perelli asserted that extensive consultations with the public on electoral system design took place, there is no evidence to suggest that there was a real opportunity to shape the choice of electoral system design proposed by the UN and adopted by the IGC and the CPA; in fact there is evidence to the contrary. First, none of the cities in which consultations were carried out (see United Nations [2004a]) were in Sunni-majority governorates, meaning that members of this communal group did not have an opportunity to impact election system design. Second, the election system chosen was one personally preferred by the UNEAD team from the outset due to its administrative simplicity and high proportionality (Diamond 2015; Istrabadi 2015).

In Tunisia, the fourth indicator of de facto inclusion was not observed. Whilst members of the HCFRG may have indirectly represented public opinion, there is no evidence to suggest that mass public preferences had an opportunity to influence the electoral system, either through channels of official consultation or through applying other political pressure such as mass protest. Whilst protest did occur sporadically during this time, these were not directly linked to electoral system design and there is no evidence that they influenced the electoral system determined by the HCFRG (Carey, Masoud, and Reynolds 2015; Stepan 2012a).

5.3 Support for elections

Confidence in elections was found to be high in three of the countries examined, only in Iraq there was no support for elections. Each country's score on the support for elections index is shown in Table 5.7; each indicator is discussed in detail below.

Table 5.7 Support for elections

	Indicator 1 <i>Behavioural</i> Absence of electoral violence	Indicator 2 <i>Attitudinal</i> Perceptions of legitimacy	Indicator 3 <i>Constitutional</i> Absence of boycott	Indicator 4 <i>Constitutional</i> Absence of low turnout	Index (0-4)
Egypt	0	1	1	1	3 High
Iraq	0	0	0	0	0 None
Libya	0	1	1	1	3 High
Tunisia	1	1	1	1	4 Very high

Behavioural support for elections was not observed in Egypt, Iraq, or Libya, but was present in Tunisia. In Egypt, there were isolated violent incidents directly related to polling on election day, and there was protest and violence focused on electoral issues in the weeks leading up to the start of polling for transitional legislative elections on 28 November 2011; this continued during the period of polling that lasted until early January 2012 (Electoral Institute for Sustainable Democracy in Africa 2012, 71; The Carter Center 2012b). Similarly, in Libya, there were several incidences of election-related violence in the lead-up to and on the day of the 7 July elections in 2012 (Kirkpatrick 2012b; B. Smith 2012; The Carter Center 2013, 37). Violence or threats of violence led to the closure of an estimated 35 polling stations on the day of the election (European Union Election Assessment Team 2012, 32–33; The Carter Center 2013, 38). Whilst these did not appear to affect the willingness or capacity of voters to vote, and confidence and optimism remained high (IFES 2013b; B. Smith 2012), violence was nevertheless observed.

In Iraq, violence on election day disrupted polling stations and compromised the ability of the population in some governorates to vote. The key independent election monitoring body in Iraq, the International Mission for Iraqi Elections (IMIE), reported that elections were free and fair despite ‘extremely difficult security conditions’ (IMIE 2005). Twenty-eight polling stations could not open due to security concerns, which was indicative of a broader threat of electoral violence, primarily in Sunni-majority provinces (IMIE 2005). On election day, 16 attacks were recorded killing at least 25 people (IPU Parline 2005). The threat of electoral violence is evidenced by the fact that the IMIE (composed primarily of international mission members) ‘monitored’ the elections from Jordan due to security concerns. Election monitoring missions from the United States Congress, the European Union, and the Carter Center refrained from sending a monitoring team citing security concerns (Pan 2005).

In Tunisia, however, the election took place without any incidents of electoral violence on the day of the elections. Neither the Carter Center (2012a) nor the National Democratic Institute (2011), that carried out election observation missions in the country, reported incidences of election-related violence on election day. In the period following Ben Ali’s abdication in January 2011, intermittent public protest did take place accompanied by occasional acts of violence, leading to some anxiety as to whether there would be violence on election day. However, this protest was not specifically election-related and on election

day itself violence did not eventuate; all polling stations operated as planned and in a peaceful atmosphere (The Carter Center 2012a, 42–46).

In Egypt, Iraq, and Tunisia attitudinal support, perceived legitimacy, is operationalised as intention to vote in legislative elections using individual-level survey data, and as perceived legitimacy of elections in Libya using an IFES report. The World Values Survey Wave 4 was conducted in Iraq between six and 10 weeks months before elections and asked respondents:³ ‘If there were a national election tomorrow, for which party would you vote?’⁴ The Arab Democracy Barometer Wave II was carried out in Egypt⁵ five months before the first transitional elections and in Tunisia⁶ two to four weeks before elections, asked participants whether they would vote in the next parliamentary elections. Figure 5.1 shows the percent of respondents in Egypt, Iraq, and Tunisia that indicated that they were planning to vote, not planning to vote, or did not know. In Iraq, participants planning to vote was far below 50 percent at 35 percent, and so is assessed as low. In both Egypt and Tunisia, the percent of participants that reported ‘planning to vote’ was similar at a little above 80 percent, whilst those not planning to vote was around 15 percent.

Given a lack of survey data in Libya⁷ this indicator is assessed using an IFES report. Eight focus-group discussions carried out by IFES in November and December 2012 with 84 Libyans found perceptions of electoral legitimacy to be consistently high across the three provinces.⁸ Two focus groups were carried out in a key city in each of the three Libyan provinces, with similar positive findings of perceived electoral legitimacy, suggesting that perceived legitimacy was high amongst all three communal groups⁹ (IFES 2013b). ‘Participants were generally positive about election day, expressing a sense of pride about the election

³ Question V220

⁴ Whilst the wording of this question is different to the question asked in Egypt and Tunisia, respondents nevertheless indicated whether or not they intended to vote; the fact that ‘I will not vote’ was not a suggested option, and yet was offered by 35 percent of respondents, reinforces the lack of intention to vote in Iraq, as opposed to Egypt and Tunisia.

⁵ Question eg302

⁶ Question t302

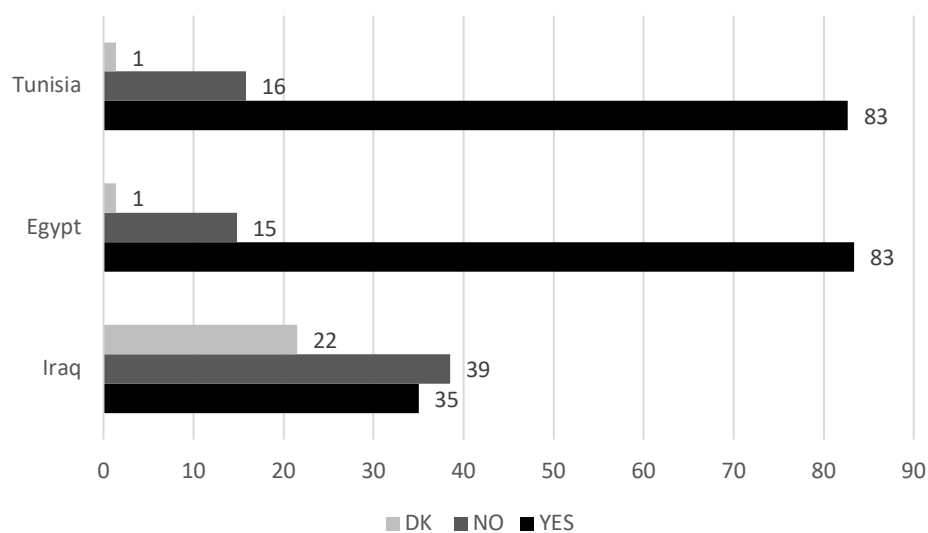
⁷ The World Values Survey and the Arab Democracy Barometer did not carry out surveys in Libya until 2014, two years after the first transitional elections.

⁸ Eight focus groups were held from 25 November to 13 December, 2012 with eight to 14 participants in each group and 84 participants all together. Focus groups were conducted in major cities in Libya’s three provinces. Participants were selected to represent demographically diverse segments of the Libyan population (IFES 2013b).

⁹ Sebha in Fezzan (19 participants), Benghazi in Cyrenaica (24 participants), and Tripoli in Tripolitania (21 participants)

process and the ability of the Libyan people to turn a new page' (IFES 2013b, 11). This is corroborated by a political analyst who stated that at the time of the transitional elections in 2012 there 'was really a euphoria, just even at the polling stations and so on, people were just ecstatic with what was happening... the expectations were extremely high' (Vandewalle 2015).

Figure 5.1 Tunisia, Egypt, and Iraq: intention to vote (percent respondents)



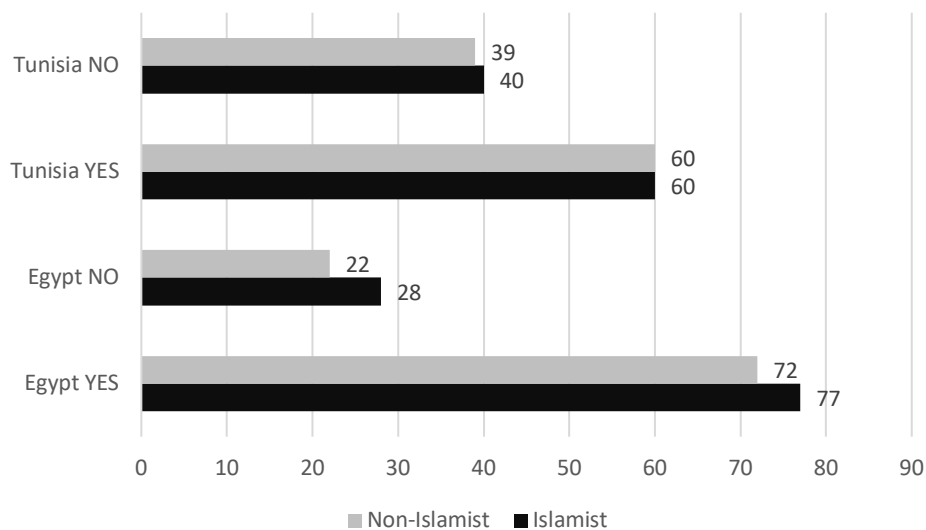
Sources: Iraq - World Values Survey Wave 4. Egypt and Tunisia - Arab Democracy Barometer Wave II. See Appendix A for survey methodology; see text for full wording of questions used.

The first indicator of constitutional support was present in Egypt, Libya, and Tunisia, but was not observed in Iraq. In Egypt, whilst at certain stages political actors threatened to boycott (Bradley 2011; Elyan 2011a; Mady 2011), in the end no political actors publicly boycotted the elections (Kirkpatrick 2011; Tayel 2011). Similarly, in Libya whilst there were some threats of a boycott from Cyrenaican actors at some stages, no political actors boycotted (The Carter Center 2013). In Tunisia no political groups called for or supported a boycott of the elections (Brownlee, Masoud, and Reynolds 2015, 132–37; Little 2011). In Iraq, however, Sunni actors, objecting to both electoral system design and timing, publicly declared a boycott of the elections (Allawi 2007, 389–90; Beaumont, McCarthy, and Harris 2005; Howard 2004; IPU Parline 2005).

The second indicator of constitutional support, absence of low turnout (overall or on behalf of one communal group), was observed in Egypt, Libya, and Tunisia, but not in Iraq. In Egypt, turnout was 45 percent averaged over three stages of voting and three rounds of run-

off voting for the majoritarian tier.¹⁰ In some stages turnout was above 60 percent (Alsannoos 2012) and in others it was a little above 40 percent (Abdel Ghani 2011). Given that the communal cleavage in Egypt does not run along regional lines, there are no official turnout figures disaggregated per communal group. However, survey data from the Arab Democracy Barometer Wave III, conducted after the elections, was used to gauge whether self-reported voting varied amongst Islamist and non-Islamist survey participants. Islamist and non-Islamist respondents were identified with the question:¹¹ ‘To what extent do you agree or disagree with the following principle in the enactment of your country’s laws and regulations? The government and parliament should enact penal laws in accordance with Islamic law.’ Those that answered ‘strongly agree’ were assessed as Islamist, whilst a response of ‘strongly disagree’ was assessed as non-Islamist. A question¹² that asked whether respondents voted in the last parliamentary elections was used to assess self-reported voting. Figure 5.2 shows that self-reported voting was comparably high across communal groups in Egypt: 77 percent of Islamists reported voting and 22 percent reported not voting, as compared to 72 percent of non-Islamists that voted and 28 percent that did not.

Figure 5.2 Egypt and Tunisia: voter turnout per key communal group (percent respondents)



Source: Arab Democracy Barometer Wave III, see Appendix A for survey methodology; see text for full wording of questions used.

¹⁰ IFES election guide country profile for Egypt, available at: <http://www.electionguide.org/countries/id/65>

¹¹ Question 6054

¹² Question 301

In Iraq, overall turnout in the election was 58 percent;¹³ however, if turnout is disaggregated for the majority-Sunni-Arab, majority-Shia, and majority-Kurd governorates there are significant differences between the three groups. Table 5.8 shows that average turnout was only 21 percent in majority-Sunni-Arab governorates, as opposed to an average turnout of 70 percent in majority-Shia governorates, and 82 percent in majority-Kurd governorates. In Libya, turnout was 62 percent,¹⁴ and disaggregated turnout per province shows comparably high turnout amongst the three provinces, with an average turnout of 60 percent in Cyrenaica, 58 percent in Fezzan, and 63 percent in Tripolitania (European Union Election Assessment Team 2012, 34).

Table 5.8 Iraq: average turnout in elections per communal group

Governorate	Turnout (%)	Majority-communal group
Babil	73	Shia
Basrah	72	Shia
Karbala	75	Shia
Misan	61	Shia
Muthanna	65	Shia
Najaf	75	Shia
Qadisiya	71	Shia
Theqar	69	Shia
Wasit	71	Shia
Average	70	
Anbar	2	Sunni
Diyala	33	Sunni
Ninewa	17	Sunni
Salahaddin	29	Sunni
Average	20	
Dohuk	93	Kurd
Erbil	84	Kurd
Suleimaniya	82	Kurd
Taamin	70	Kurd
Average	82	

*Baghdad has a mixed population and is not designated to any majority-communal group, turnout was 52 percent

Source: Mozaffar (2006)

In Tunisia, overall turnout was 52 percent (IPU Parline 2013). In line with Egypt, the key communal cleavage is not a regional one so there is no official turnout data reported for the various communal groups. However, Arab Democracy Barometer Wave III survey data was used to gauge comparability of self-reported voting by Islamist and non-Islamist

¹³ IFES election guide country profile for Iraq, available at: <http://www.electionguide.org/countries/id/104>

¹⁴ IFES election guide country profile for Libya, available at: <http://www.electionguide.org/countries/id/123>

participants, using the same questions as used in Egypt to assess self-reported voting among Islamist and non-Islamist respondents. As shown in Figure 5.2, voting did not appear to vary between the two groups: 60 percent of both groups claimed to have voted in the transitional elections, whilst 39 percent of Islamists and 40 percent of non-Islamists reported that they did not vote.

An examination of de jure and de facto inclusion in negotiations on an electoral system in each country shows that in some cases the expected relationship with support for the political system was confirmed, whilst in other cases it was not, shown in Table 5.9. In Tunisia the expectation that institution-building that contains both de jure and de facto inclusion will build support for elections was confirmed, suggesting that these two elements of inclusion may be jointly sufficient to create confidence in a political system. However, another way to interpret this finding is that either de jure or de facto inclusion may be alone sufficient. In Iraq, where negotiations on an electoral system involved only de jure inclusion and no de facto inclusion, the expected relationship between inclusion and support was not confirmed. This contradicts hypothesis three and suggests that de jure inclusion is not sufficient to build confidence in a political system. In Egypt and Libya, where there was no or low de jure inclusion alongside high or very high de facto inclusion, high support was present in each case, confirming the relationship expected by hypothesis four. The findings for all three hypotheses investigated in the chapter suggest that de jure inclusion is not sufficient to create confidence in a political system, whilst de facto inclusion may be sufficient. This finding will be further discussed in Chapters 6 and 7.

Table 5.9 Findings for hypotheses two, three, and four

Hypothesis	Country	De jure inclusion	De facto inclusion	Expected support	Observed support for elections	Hypothesis supported
H2	Tunisia	3 High x	3 High x	<i>H2: Support</i> y	Very high 4	YES
H3	Iraq	3 High x	0 None -	<i>H1: Support</i> y	None 0	NO
H4	Egypt	0 None -	3 High x	<i>H3: Support</i> y	High 3	YES
H4	Libya	1 Low -	4 Very high x	<i>H3: Support</i> y	High 3	YES

5.4 Conclusion

Inclusion of communal groups in determining an electoral system is understudied but is expected to be important for building support amongst all groups for first transitional elections. As noted by Mansfield and Snyder (2005) elections that do not enjoy the confidence of all societal groups can raise the chances of civil violence and state breakdown. The Kenyan presidential election of 2017 demonstrated the risk of civil violence posed by low confidence in elections (Moore 2017). This chapter investigated whether involvement of communal groups in choosing an electoral system is important to build confidence in elections. The chapter found that whilst *de jure* inclusion was not sufficient to create support, *de facto* inclusion may be sufficient. This latter finding suggests that persistent consultation with all communal groups on choosing an electoral system and an opportunity for all groups to shape the electoral system chosen may be central to building confidence in elections during political transition.

The findings hold implications for the literature on negotiations to determine an electoral system. As mentioned earlier, the literature on the process of designing electoral systems places key emphasis on preference aggregation under uncertainty (Benoit and Shiemann 2001, Luong 2002, Shvetsova 2003). This chapter suggests that the involvement of all societal groups in determining electoral design for transitional elections may be an important factor to create the foundations for broad political support, this is particularly important when elections are held early in a transition and before the process of constitution-making has begun.

This chapter's findings could be criticised on the grounds that confidence in elections is in fact determined by whether or not a group's preferences for electoral system design are met, and not by involvement in decision-making. It is expected that each stakeholder will preference an electoral system that is expected to maximise their electoral gains (Boix 1999). However, evidence from the four cases analysed here refutes this criticism. Whilst in Iraq and Libya it is not possible to separate the fulfillment of groups' preferences for electoral system design from confidence in elections, in Egypt and in Tunisia this is not the case. In Iraq, support for elections was not observed from one communal group, the Sunni-Arabs. The electoral system that was eventually chosen was expected to disadvantage this group in elections, so a lack of support cannot be separated from this group's self-interest (as opposed to exclusion

from negotiations on the electoral system). Similarly, in Libya, support for elections was high following extensive negotiations that met the preferences of all key communal groups for electoral system design.

In Egypt and Tunisia the claim that confidence in elections was only a reflection of preference satisfaction holds less well than in the other two countries. In Egypt, support for elections was high despite the fact that opposition groups did not achieve their first preference (a single-tier PR-list system). In Tunisia, there was high confidence in elections from all communal groups, despite the fact that the key Islamist party, Ennahda, was in fact disadvantaged by the choice of electoral system. They would have been advantaged by (and preferred) a majoritarian rather than a PR-list system (Carey, Masoud, and Reynolds 2015). As noted by Stepan (2012a, 93) 'had a Westminster-style "first-past-the-post" system of plurality elections in single-member districts been chosen, Ennahda would have swept almost nine of every 10 seats, instead of the slightly more than four in 10 it was able to win under PR'. And, indeed, during negotiations, Ennahda preferred a less proportional electoral system (Carey, Masoud, and Reynolds 2015). As noted by Masmoudi (2016) 'Ennahda realized that the law that was proposed would hurt it at the ballot box'. This supports the assertion that support for elections was not driven purely by satisfaction of each group's preference of electoral system.

A second important institution-building event during political transition, besides electoral system design, is the process of determining a constitution that will underpin the new political system. In a contested state, constitution-making is often fraught with inter-communal tension and building support for the new constitution can be central to ensuring a stable transition. The next chapter extends and deepens the investigation of the research question with an examination of the impact of de jure and de facto inclusion in constitution-making on support for a new constitution. This is investigated in Egypt, Iraq, and Tunisia. Libya is not considered given that, whilst a Constitution Drafting Assembly did produce a draft constitution in mid-2017, as of writing, the constitution has not been ratified amidst political contention regarding the trajectory of Libya's transition.

Chapter Six

Negotiating a new constitution

The constitution-making processes in Egypt and Tunisia that began in 2011 and 2012, respectively, were classified at the outset as ‘highly representative and inclusive’ (Bali and Lerner 2016, 297). Yet, in Egypt, the referendum that approved the constitution in December 2012 was ‘marred by low turnout... and bitter recrimination on all sides’ (M. Lynch 2012b) whilst the approval of the Tunisian constitution in January 2014 was accompanied by celebrations in the street, with one observer commenting: ‘It is the first time we have been so united since the revolution’ (Amara 2014). In Egypt, the impact of ‘constitutional debates over state-religion relations... was the deepening of religious divisions in the country’ (Bali and Lerner 2016, 255). Bowker asserted in 2013 (582) that ‘among the most significant consequences of the events of the past two years has been an almost irredeemable polarization within Egypt between Islamists... and those who eschew being identified in that manner’. Conversely, in Tunisia, a person directly involved in designing the constitution commented that ‘the conflicts we have gone through have enabled us to get to know and accept one another... I remember the mutual distrust that separated us at the beginning... the conflicts and the ensuing reconciliations brought us closer together’ (Mahjoub 2016, 4). What were the components that differentiated the way in which initially-inclusive deliberations transpired in Egypt, as opposed to in Tunisia?

In light of these contrasting cases, this chapter asks: what is the mechanism through which inclusion in constitution-making builds support for a new constitution? To address this question, the chapter examines the development of new constitutions in Egypt (2012), Iraq (2005), and Tunisia (2011-2014), that ended with approval of a new constitution in each country¹ (Libya, as of 2018, has not approved a new constitution since the interim constitution of 2012).² The next section situates constitution-making in each country against the background of the identified salient communal cleavage, and presents the hypotheses

¹ See here for a chronology of new constitutions approved in each country: <http://comparativeconstitutionsproject.org/chronology>

² Libya is excluded from this analysis as it did not undergo constitution-making during political transition. Whilst in 2017 certain political groups in Libya did produce a draft constitution, as of writing this has not yet been ratified, for a detailed report see Toaldo (2017).

examined in the chapter. Section 6.2 provides evidence for the assessment of de jure and de facto inclusion in each case. This is followed in section 6.3 by a presentation of the findings for support for a new constitution in each country, and a discussion of whether this supports or contradicts expectations according to the hypotheses under examination. The final section discusses alternative explanations for the findings, and how this chapter's findings build on those from Chapter 5.

6.1 Background and hypotheses

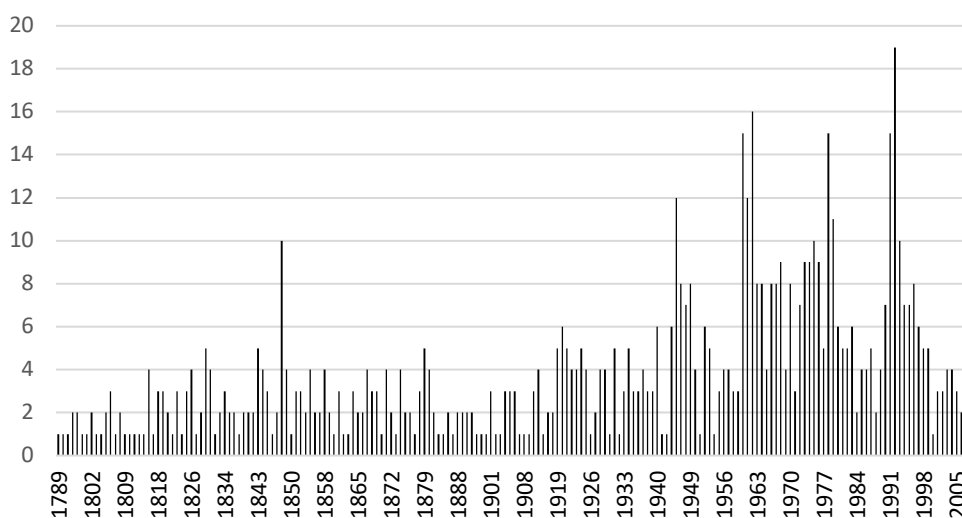
The purpose of a constitution is to 'establish a system of government, [and] define the powers and functions of its institutions' (Galligan and Versteeg 2013b, 6). A new constitution, as opposed to constitutional amendments, typically occurs at times of state formation or regime change and is a relatively rare event. Nevertheless, in the twentieth century a steady progression of constitutions was approved as having a written constitution became 'standard practice across the nations of the world, with just a few exceptions' (Galligan and Versteeg 2013b, 6). Figure 6.1 shows the rise in new constitutions from the late seventeenth century to the early twenty-first century. Concentration in the 1900s suggests that written constitutions have 'become a norm for new countries' (Ginsburg 2015). Constitutions underpin regimes across the political spectrum, from closed, authoritarian regimes such as Qatar and Saudi Arabia, to liberal democratic regimes such as Canada or France. This is no different in the MENA region, where all states have a written constitution, despite a very small number of democratic regimes.³ This situates the constitution-making processes examined in this study as part of a broader trend of increased constitution-making across the globe. Understanding constitution-making in the countries examined may provide broader lessons and insights for other countries undergoing a similar process.

Whilst devising a constitution can fulfil several functions (Galligan and Versteeg 2013b), one key role is to express the 'core and constitutive political commitments of the community' (King 2013, 73). In all three countries examined in this chapter—Egypt, Iraq, and Tunisia—a core dispute amongst communal groups regarding the character of the state shaped the constitutional deliberations and underpinned the most contentious and intractable issues that arose. In Egypt and Tunisia, with an Islamist – non-Islamist cleavage,

³ See world constitutions and constitutions for each MENA state here: <https://www.constituteproject.org>

the status of religious law in the constitution was a central issue of debate (Bali and Lerner 2016, 233). In Iraq, where ethno-sectarian groups are broadly concentrated in separate geographic areas, a key obstacle to any agreement, besides the status of religious law, was the distribution of central versus federal powers of governance (Diamond 2005, chap. 5). A key point of disagreement was Sunni-Arab objections to ‘the regional federalist model for Iraq and, in particular, the prospect of a southern, pre-dominantly Shia, federal region’ (Morrow 2005, 8).

Figure 6.1 Approval of new constitutions 1789-2006



Source: Comparative constitutions project, data available at: <http://comparativeconstitutionsproject.org>; see Elkins, Ginsburg, and Melton (2009).

The involvement of all communal groups in constitutional deliberations is expected to build support for the new constitution. Such deliberation is expected to facilitate discussion of contentious issues in a way that incorporates all communal groups into the framework of the new political system. As noted by Widner (2005, 506) ‘process influences a sense of inclusion and trust (social capital). The tone of proceedings shapes whether political elites and ordinary citizens feel included or excluded, forward-thinking or vengeful’. Following a ‘successful’ process ‘the people most able to cause violence accept the basic terms and are willing to process disagreements in constitutional ways’ (Widner 2008, 1515). This captures the view that participation of all groups enhances the legitimacy of a constitution.

This chapter investigates whether inclusion in terms of selection of the constituent assembly, consultations on constitutional design, and in approval of the constitution builds confidence in a new constitution. The chapter tests whether inclusive deliberations need to

be sustained up until a constitution document is finalised, and all groups provided an opportunity to influence the final document, in order to build confidence in the new constitution. Two hypotheses are tested in this chapter that investigate whether a combination of de jure and de facto inclusion builds support, or whether de jure inclusion alone is sufficient, shown in Table 6.1. Constitution-making in Tunisia comprised both de jure and de facto inclusion, so hypothesis two is investigated in this case. In both Egypt and Iraq de jure inclusion was present in constitution-making without de facto, enabling an examination of hypothesis three. The final column in the table shows whether or not support for the new constitution is expected in each case, according to the hypothesis under examination. Hypotheses one and four are not examined in this chapter.

Table 6.1 Hypotheses examined at the negotiations stage of constitution-making

	De jure inclusion (independent variable)	De facto inclusion (independent variable)	Country where independent variables are observed	Expected observation of support (dependent variable)
H1	-	-	not examined in this chapter	-
H2	x	x	Tunisia	y
H3	x	-	Egypt, Iraq	y
H4	-	x	not examined in this chapter	y

The measurement of de jure inclusion, de facto inclusion, and support for a constitution is reviewed in Table 6.2. The first two indicators of de jure inclusion concern the selection of the constituent body. The third and fourth indicators of de jure inclusion refer to inclusion in terms of public consultations on constitutional design, and approval of the constitution by referendum. De facto inclusion consists of two sets of indicators. The first set measures whether there was deliberation with representatives from all communal groups on constitution-making, and, if yes, whether it persisted up until a constitution document was determined. The second set of indicators concern whether all groups had a reasonable opportunity to influence the final constitution document, along both an elite and a mass public dimension.

Behavioural support is measured according to the absence of violence on the day of promulgation of the constitution, or violence in the immediate period preceding approval that is directly inspired by the debate over the appropriate form of constitution for the country. Attitudinal support refers to perceived legitimacy and is measured by the absence of a high 'no' vote (above 50 percent) in a constitutional referendum or in a constituent body,

either overall or on behalf of one communal group. Constitutional support is defined as cooperation with political procedures and institutions. This is measured by the absence of political boycott and an absence of low turnout (33 percent or below) on approval of the constitution.

Table 6.2 Operationalisation of variables

De jure inclusion (IV) Index 0-4	De facto inclusion (IV) Index 0-4	Support for constitution (DV) Index 0-4
<i>Inclusion of communal groups in design body</i>	<i>Persistent inclusion of all communal groups in consultation</i>	<i>Behavioural</i>
1. Nationally elected constituent body or nationally elected representatives tasked with appointing such a body (Yes=1, No=0)	1. Actual consultation with representatives of all key communal groups on constitution-making (Yes=1, No=0)	1. Absence of violence and mass protest against new constitution in the lead-up to and on the day of referendum OR in the lead-up to and on the day of promulgation by constituent assembly (Yes=1, No=0)
2. Public focus on inclusion of all key communal groups in composition of constituent body members (Yes=1, No=0)	2. Demonstrated evidence consultation with representatives of all key communal groups continued up until constitution document determined (Yes=1, No=0)	<i>Attitudinal</i>
<i>Inclusion in consultations on / approval of institutional design</i>	<i>All communal groups have an opportunity to impact the institutional design outcome</i>	1. Absence of high NO vote for new constitution in referendum or constituent assembly overall or on behalf of one communal group (>50 percent) (Yes=1, No=0)
1. Official channels of public consultation on constitution-making (surveys, open forums, focus groups) (Yes=1, No=0)	1. Demonstrated evidence that representatives from all key communal groups impacted final constitution document (through official negotiations or unofficial channels such as political pressure) (Yes=1, No=0)	<i>Constitutional</i>
2. Referendum to approve the constitution (Yes=1, No=0)	2. Demonstrated evidence mass public had opportunity to impact constitution document (through official consultations or unofficial channels such as public protest) (Yes=1, No=0)	1. Absence of boycott of referendum OR of constituent assembly (Yes=1, No=0)
		2. Absence of low turnout in constitutional referendum OR absence of abstentions on approval in constituent body (≤ 33 percent) (Yes = 1, No = 0)

Table 6.3 shows data used to measure the independent and dependent variables in this chapter. De jure and de facto inclusion were measured using interim constitutions declared in each country, as well as reports from independent bodies on constitution-making. Support for the new constitution was measured using independent reports; the IFES election guide, and public opinion surveys. The next section details the findings for whether there was de jure and de facto inclusion in the constitution-making process in the three examined countries.

Table 6.3 Data sources

	De jure inclusion	De facto inclusion	Support for constitution
Interim constitutions retrieved from International IDEA ConstitutionNet: http://www.constitutionnet.org	√		
Reports from independent bodies on constitution-making (see Table 3.13 for details)	√	√	√
Public opinion surveys: PEW Global Attitudes and Trends 2013 (see Appendix A for survey methodology)			√
IFES election guide country profiles www.electionguide.org/countries			√

Source: for more detail on data sources see Table 3.13

6.2 Inclusion in negotiating a new constitution

The process of designing a new constitution in Egypt, Iraq, and Tunisia was set up to be highly participatory. Involvement of all key political groups was considered important to produce a constitution that would enjoy widespread confidence from both elites and the broader populace. Therefore, each country placed explicit emphasis on designing an inclusive framework for the constitution design process. Table 6.4 shows that there was high or very high de jure inclusion in each country. Each indicator is discussed in detail below.

Table 6.4 De jure inclusion in constitution-making

	Indicator 1 National elections select constituent body or its appointers	Indicator 2 Inclusion of key communal groups in constituent body	Indicator 3 Public consultation on constitution-making	Indicator 4 Referendum to approve constitution	Index (0-4)
Egypt	1	1	1	1	4 Very high
Iraq	1	1	1	1	4 Very high
Tunisia	1	1	1	0	3 High

The first indicator of de jure inclusion was observed in all three countries. Each country held national elections either to elect the members of the constituent assembly, or to elect actors that would appoint these members. In Egypt, article 60 of the interim constitution that provided the governing framework for the transition period (Supreme Council of the Armed Forces 2011), stipulated that elected representatives would appoint a 100-member constituent body. This took place on 24 March 2012 (Bassiouni 2017, 91). In Iraq, article 60 of the Transitional Administrative Law, the interim constitution that was in effect in Iraq during the transition period, stated that: ‘the National Assembly shall write a draft of the permanent

constitution of Iraq' (Coalition Provisional Authority 2004a). The Transitional National Assembly was elected in late January 2005, appointing a constitution design body from amongst its members (Democracy Reporting International 2011c, 6). In Tunisia, as per Rule 103 of the Rules of Procedure that governed the transition period (National Constituent Assembly 2011), the elected Constituent National Assembly established a joint committee for coordination and drafting of a new constitution (National Democratic Institute 2011).

The second indicator of *de jure* inclusion was also present in all three countries; in each country there was an intervention on behalf of an interim authority to ensure that members of all communal groups would be adequately represented in the constitution-making body. In Egypt, the success of Islamist parties (mainly the Muslim Brotherhood and the salafist al-Nour party) in parliamentary elections meant that the 100-member constitution design body appointed following elections, over-represented Islamists. Subsequent protest from non-Islamists, prompted the SCAF to intervene and facilitate negotiations between Islamist and non-Islamist parties to reach agreement over the selection of a constituent body that would be representative of both groups. Agreement was reached in early June 2012, that the constituent body would be composed of 50 Islamist members and 50 non-Islamist members (Bassiouni 2017, 90–92; Serodio and Casper 2013, 35).

In Iraq, the elected Transitional National Authority, responsible for appointing a constituent assembly from its members, deeply under-represented Sunni-Arabs, one of Iraq's key communal groups. Indeed, the 55-member constituent body appointed in May 2005 had only one Sunni-Arab member (meaning less than two percent representation for a group that constitutes a little below 20 percent of Iraq's population). Consequently, following US pressure, an additional 15 Sunni-Arab members were included in the constituent body on 16 June 2005 (Al-Ali 2014, 84–102; Democracy Reporting International 2011c, 6). This change occurred about three weeks after the drafting process began, with two months of discussions still remaining.

In Tunisia, all communal groups were represented in the constituent body that determined the constitution. The constitution design process began in the Constituent National Assembly, however the opposition accused the Islamist-led government of dominating the drafting process. Tensions ran high and by late July 2013 the process had completely broken down, stemming from increasing polarisation between an Islamist-led government and its secular opponents, accompanied by widespread public protest and two

political assassinations (Kraetzschmar 2015). In early October 2013 a National Dialogue body was orchestrated by a coalition of civil society actors (called the Quartet) that intentionally included a balanced composition of Islamist and non-Islamist groups (Haugbolle et al. 2017).

Egypt, Iraq, and Tunisia all provided official channels for public consultation on the constitution, constituting the third indicator of de jure inclusion. In Egypt, the constituent assembly launched a website for the public to review the proposed constitutional drafts and express their preference by voting on specific articles online and providing suggestions (Maboudi and Nadi 2016, 716). More than 68,000 Egyptians participated in the online forum and provided over 650,000 online votes and suggestions (717). In Iraq, article 60 of Iraq's Transitional Administrative Law stipulated that the body responsible for constitution-making 'shall carry out this responsibility in part by encouraging debate on the constitution through regular general public meetings in all parts of Iraq and through the media, and receiving proposals from the citizens of Iraq as it writes the constitution' (Coalition Provisional Authority 2004a). In pursuit of this directive, an Outreach Unit was established in early June 2005 to conduct a public survey on citizens' constitution design preferences, collate the feedback, and report to the constituent body. Running efficiently by late July 2005, the Outreach Unit had received over 150,000 survey submissions from the public by mid-August 2005 (Morrow 2005, 18–20).

In Tunisia, in September 2012, a website was set up to allow Tunisian citizens to comment on the constitution design process. This was complimented by national public consultations on constitutional design took place from December 2012 to February 2013. These sessions were always attended by members of the constituent assembly, including a member of the drafting committee, so that citizen input could be noted. These public sessions were held in Tunisia's 24 governorates and involved about 6,000 citizens over a 3-month period (The Carter Center 2014, 69–70). Civil society organisations also convened discussion sessions and workshops on constitutional design (prominently, the Center for the Study of Islam and Democracy) (Badawi 2016; Haugbolle et al. 2017; Masmoudi 2016; The Carter Center 2014).

The fourth indicator of de jure inclusion, approval of the constitution by referendum, was present in Egypt and Iraq, but not in Tunisia. In Egypt, article 60 of the interim constitution stipulated that 'the draft constitution will be presented within 15 days of its preparation to the people who will vote in a referendum on the matter. The constitution will take effect from

the date on which the people approve the referendum' (Supreme Council of the Armed Forces 2011). And, indeed, a national referendum was held to approve the constitution in December 2012.⁴ In Iraq, the Transitional Administrative Law stipulated that: 'the draft permanent constitution shall be presented to the Iraqi people for approval in a general referendum to be held no later than 15 October 2005' (Coalition Provisional Authority 2004a). A national constitutional referendum was held in Iraq on that date (Al-Ali 2014, 90). However, in Tunisia, as specified in Article Three of Rule 95 of the interim law (National Constituent Assembly 2011), the final constitutional draft was approved by the constituent body itself and was not put to a national referendum for approval (Haugbolle et al. 2017, 37–38).

Despite the overt focus on a participatory constitutional design process in each country, only in Tunisia was involvement of all groups sustained up until a final constitution draft was determined. Whilst constitution-making began in each country with a *de jure* inclusive process, only in Tunisia was high *de facto* inclusion also present, shown in Table 6.5. In Egypt and Iraq only one of four indicators of *de facto* inclusion was observed, resulting in an assessment of low *de facto* inclusion, meaning that *de facto* inclusion is assessed as not present. Each indicator is discussed in detail below.

Table 6.5 De facto inclusion in constitution-making

	Indicator 1 Consultation on constitution-making with representatives of all communal groups	Indicator 2 Consultation continued up until constitution determined	Indicator 3 Representatives of communal groups had opportunity to influence constitution	Indicator 4 Mass public had opportunity to influence constitution	Index (0-4)
Egypt	1	0	0	0	1 Low
Iraq	1	0	0	0	1 Low
Tunisia	1	1	1	0	3 High

The first indicator of *de facto* inclusion, consultation on constitution-making with representatives of all key communal groups, was present in all three countries. In Egypt, the final constituent body responsible for determining the constitution began with 50/50 parity of Islamists to non-Islamists. Deliberation on the constitution commenced in this body amongst representatives from both key communal groups (Serodio and Casper 2013, 35). In Iraq, after the addition of 15 Sunni-Arab members to the constituent body, representatives

⁴ IFES election guide country profile for Egypt, available at: www.electionguide.org/elections/id/201

from all key communal groups engaged in deliberation on constitution-making. From 8 July 2005, when these members joined the committee, to 15 August when deliberation ceased, there was discussion on constitution-making that included representatives from all communal groups (Ghai and Cottrell 2005; Morrow 2005). Similarly, in Tunisia, the National Constituent Assembly that began negotiations on a constitution in 2011, and the National Dialogue body that was set up in September 2013 and deliberated on constitution-making from October, included representatives from all key communal groups (Haugbolle et al. 2017, 33–38).

The second indicator of de facto inclusion was not observed in Egypt or Iraq, but was present in Tunisia. In Egypt, whilst there was parity between Islamists and non-Islamists in the constituent body that commenced negotiations on the constitution in mid-June 2012, by the time the final constitution draft was being drafted in mid-November 2012, the constituent body had reached a state of crisis and no longer represented non-Islamists (Brown 2012). Allegations of dominance and intransigence on behalf of Islamist members, led to the bulk of non-Islamist members withdrawing from or boycotting the constituent body (more than 30 of the 50 non-Islamists-members of the 100-member constituent body withdrew or boycotted) (Serodio and Casper 2013, 43). Islamist members replaced withdrawn actors with substitute members, without attention to the 50/50 parity amongst Islamists and non-Islamists that had been agreed upon. This left a constituent assembly composed of 84 percent Islamist-identified members to draft the final constitution document (44). This unbalanced constituent assembly pushed ahead with finalising the constitution, undertaking a marathon 18-hour session on 29 November that ended with approval of a draft constitution that was put to referendum (Husseini 2012a).

In Iraq, the addition of 15 Sunni-Arab members to the constituent body led to representatives of all key communal groups being present in deliberations, however this did not continue up until the final constitution was determined. In line with the tight timeline specified in the transitional law to approve a constitution and put it to a referendum, the constituent body's activity was suspended on 15 August 2005. However, unofficial negotiations continued up until the final draft constitution was publicly made available at the end of August. These unofficial negotiations included US Embassy personnel, Shia political leaders, and Kurdish leaders, but excluded Sunni-Arab political actors. The unofficial

negotiations were the ones that determined the final constitution draft that was put to a referendum on 15 October 2005 (Al-Ali 2014, 84–102; Aldouri 2017; Morrow 2005).

In Tunisia, in contrast, deliberation on the constitution continued amongst representatives from all key communal groups up until a final constitution was approved. Months of lengthy negotiations on the details of the constitution took place amongst Islamists and non-Islamists in the National Dialogue body. There was an emphasis on deliberation and consultation between representatives of both Islamist and non-Islamist groups to reach agreement on the most challenging issues (Mahjoub 2016; Fedke 2014, 17). Deliberation continued up until agreement was reached and a constitution was approved on 26 January 2014, with 200 members in favour, 12 opposed, and four abstentions (Haugbolle et al. 2017, 38).

The third indicator of de facto inclusion, evidence that political representatives of all key communal groups had an opportunity to influence the final constitution document, was not observed in Egypt and Iraq, but was present in Tunisia. In Egypt, following the withdrawal or boycott of most non-Islamists members from the constituent body, Islamist members pushed ahead with drafting a constitution to be put to referendum. Non-Islamist political actors and civic groups were publicly distressed by their lack of involvement in constitution-making and lack of capacity to impact the constitution document, and were deeply dissatisfied with the final constitution that was put to referendum (Albrecht 2013; Black 2012; Blair and Werr 2012; Hussein and Borger 2012; M. Lynch 2012c; Lyon and Elyan 2012). As a political observer commented: 'As the Islamists dominated all elections in the transition, they translated this success into control over the constitutional writing process... non-Islamists, however, reject[ed] the final text as unrepresentative of Egyptian society in its entirety. Instead, they [saw] it as the victory of a narrow political interest' (Serodio and Casper 2013, 40).

Similarly, in Iraq, one key communal group, Sunni-Arab Iraqis, did not have an opportunity to influence the final constitution document. This is demonstrated by the fact that Sunni-Arab actors were not involved in the final negotiations on the constitution document and their preferences were not reflected in the document (Carroll 2005; Istrabadi 2009; Roberts 2005). Following suspension of the constituent body 'many of the draft's most important sections were completely overhauled, behind closed doors, by unrepresentative officials' (Al-Ali 2014, 87). 'After about a month, [Sunni-Arab drafters] were presented with a

document to which they had barely contributed, certainly its key provisions' (Hiltermann 2006, 39). As noted by a legal advisor involved in Iraqi reconstruction: 'At the end of the day, when there was an impasse on the issue of federalism, the elected representatives who were Shias and Kurds, principally, indeed almost exclusively, simply shut the door and left the unelected representatives [Sunni-Arabs] out, and the end result was a deal between the Shia and the Kurds' (Istrabadi 2015).

In Tunisia, on the other hand, both Islamists and non-Islamists had an opportunity to influence the final constitution draft, voting on each constitutional article and reaching consensus on the content of the constitution. The draft constitution was adjusted and amended during the final months of deliberation under the auspices of the National Dialogue process (Bockenforde 2015; Bousbih and Yaalaoui 2015; Gannouchi 2016), and heated debate took place between Islamist and non-Islamist members of the constituent body until consensus agreement could be reached (Fedke 2014, 17; Haugbolle et al. 2017; United Nations Development Program 2014).

In none of the three countries was there demonstrated evidence that the mass public had an opportunity to influence the final constitution draft, meaning that the fourth indicator of de facto inclusion was not present. In Egypt, whilst there were official channels for public input, there is evidence that this did not influence the final constitution document. A statistical analysis of the constituent body's sensitivity to the public input into the constitution, found that whilst the constituent assembly was sensitive to citizen input in the initial stages of the constitution design process, later in the process, when the final constitution document was actually determined, the constituent assembly became completely insensitive to public input (Maboudi and Nadi 2016). The final constitution document was negotiated and drafted in an intensive, protracted, closed session without consideration of public suggestions (Serodio and Casper 2013).

In Iraq, whilst the Outreach Unit collated over 150,000 survey responses that reflected public preferences on constitution-making, there was insufficient time for this input to be reported to the constituent assembly and therefore there was no opportunity for it to influence constitution-making. The first report from the Outreach Unit to the constituent body was on 13 August, just two days before the constituent assembly officially suspended its activity on 15 August. And indeed, according to independent reports, public preferences collected and reported by the Outreach Unit on 13 August, did not shape the final constitution

draft that was put to referendum (Ghai and Cottrell 2005; Morrow 2005, 2–3, 18–20), as ‘no procedure existed to actually incorporate the opinions and viewpoints of the public in the deliberations and drafting of the constitution’ (Democracy Reporting International 2011c, 7).

In Tunisia, whilst there were official channels for citizen input into constitutional design, these took place almost a year before a final constitution was approved. The National Dialogue body that was formed in October 2013, and reached agreement on constitutional design in January 2014, did not solicit or incorporate public input into constitution-making (Haugbolle et al. 2017). As noted by independent observers: ‘whilst Tunisia’s National Dialogue is generally heralded as a success, it is important to note that it... did not provide opportunities for public participation’ (Stigant and Murray 2015, 2) and ‘there was little opportunity for members of the general public or civil society organisations to give substantive input’ (Fedke 2014, 17).

6.3 Support for the constitution

Where a new constitution enjoys widespread confidence, its promulgation can be expected to be accompanied by celebrations and expressions of national pride. The enthusiasm and extent of public and elite participation in the approval of a constitution is an indication of the constitution’s wider legitimacy. Alternatively, protest against a new constitution, political objections, and rejection at the ballot box, are all indicators that the new constitution lacks support of a country’s populace. Confidence in the new constitution diverged amongst Egypt, Iraq, and Tunisia, shown in Table 6.6. Very high confidence was observed in Tunisia, whilst no support was observed in Egypt, and low support in Iraq. Each indicator is discussed in detail below.

Table 6.6 Support for the constitution

	Indicator 1 <i>Behavioural</i> Absence of violence and mass protest	Indicator 2 <i>Attitudinal</i> Absence of high ‘no’ vote (>50 percent)	Indicator 3 <i>Constitutional</i> Absence of boycott	Indicator 4 <i>Constitutional</i> Absence of low turnout OR absence of abstentions (≤33 percent)	Index (0-4)
Egypt	0	0	0	0	0 None
Iraq	0	0	0	1	1 Low
Tunisia	1	1	1	1	4 Very high

Behavioural support for the new constitution was measured by the absence of violence and mass protest directed at the constitution and its ratification. This was not present in Egypt and Iraq, but was observed in Tunisia. In Egypt, violence and mass protest objecting to the new constitution marred the lead-up to the constitutional referendum that went ahead 'despite persistent street clashes' (The Economist 2012), taking place in an atmosphere of polarised tension (M. Lynch 2012c). Violence between Islamist and non-Islamist groups in the three weeks preceding the referendum included at least seven dead and hundreds injured (Elgood 2012), as well as the burning of several party buildings belonging to the Muslim Brotherhood's Freedom and Justice party, and violent clashes of rival factions in city streets (Hussein 2012b; Serodio and Casper 2013, 53). The constitution was adopted 'amid intense political contestation and deep rifts between Islamists and liberal political forces' (Albrecht 2013, 1).

In Iraq, there were incidents of violence and mass protest objecting to the new constitution and the constitutional referendum. In the lead-up to the referendum, party offices were attacked and violence was threatened on referendum-day (Al Jazeera 2005a). In addition, there were large-scale civil protests by Sunni-Arab groups protesting the constitution and the referendum (Worth 2005). A senior military US official reported 19 attacks on polling stations (United States Department of Defense 2005), and there were a number of violent incidents including a bombing, and shootings on the day of the referendum (Al Jazeera 2005b).

In Tunisia, no incidents of violence and mass protest were observed in the lead-up to and on the day of approval of the constitution. During Tunisia's political transition, mass protest was a frequent means of expressing public dissatisfaction with the transition process, so the absence of protest was striking; public and civil society groups appeared supportive of the constitution (United Nations Development Program 2014). At the signing of the constitution, celebrations took place on Tunisian streets (Amara 2014). A political observer in Tunis noted: 'There was a sense of joy, pride and relief inside the assembly, when it became clear that the new constitution had been adopted with an overwhelming majority... Members of the public and the assembly gasped first, and then embraced each other, while they sang the national anthem' (Kottoor 2014, 1). Public support for the constitution in Tunisia was confirmed by an International Republican Institute opinion poll conducted between 12 and 22 February, just a few weeks after the constitution was approved. The poll found 62 percent

of respondents were 'very satisfied' or 'somewhat satisfied' with the constitution, and only 10 percent 'not very satisfied' or 'not satisfied at all', with the remainder 'unsure' (International Republican Institute 2014).

Attitudinal support, which is defined as the absence of a high 'no' vote either in a constitutional referendum or in a constituent body that approves the constitution, was not present in Egypt and Iraq, but was observed in Tunisia. A high 'no' vote is measured as a majority (above 50 percent) against the constitution, overall or on behalf of one key communal group. In Egypt, there was a solid majority in support in Egypt's constitutional referendum, with 64 percent in favour and 36 percent opposed (IFES 2012). Whilst there is no official referendum data that disaggregates the votes according to Egypt's key communal groups, public opinion survey data is used to gauge support for the constitution along communal lines. The PEW Global Attitudes and Trends Survey of 2013 assessed individual-level perceptions of legitimacy of the new constitution using a nationally representative sample.

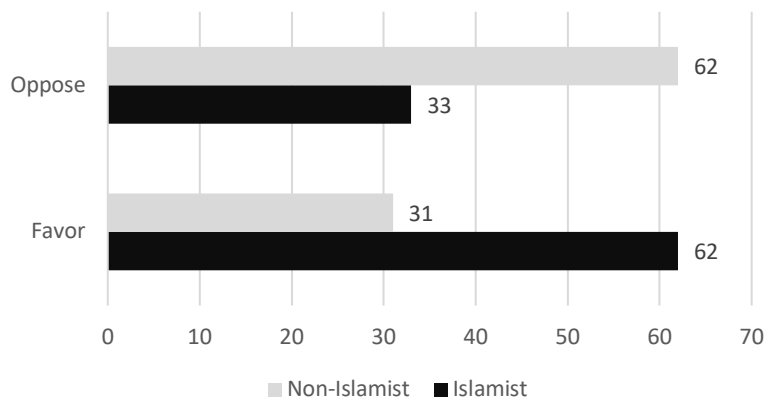
In order to evaluate Islamist-aligned and non-Islamist-aligned respondents in Egypt using PEW 2013, a question was used⁵ that asked participants whether their own view is closer to the statement that laws should: '1. strictly follow the teachings of the Quran; 2. follow the values of Islam but not strictly follow the teachings of the Quran; 3. not be influenced by the teachings of the Quran?' A respondent that chose the first option was assessed as Islamist, whilst respondents who chose option two or three were assessed as non-Islamist. Perceived legitimacy of the constitution was assessed using a question⁶ that asked respondents whether they favour or oppose the constitution. A participant that answered 'favor' was assessed as supportive of the constitution; whilst those that answered 'oppose' were assessed as not supportive. Figure 6.2 shows that whilst 62 percent of Islamists reported that they support the constitution, only 31 percent of non-Islamists claimed the same; 62 percent of non-Islamists reported that they oppose the constitution, as opposed to 33 percent of Islamists. Whilst this is not a direct measure of referendum voting it is evidence that there was an absence of perceived legitimacy amongst non-Islamists.

⁵ Question 37

⁶ Question 126

The Iraqi constitution passed in the October referendum with an impressive super-majority of 79 percent in favour and 21 percent opposed.⁷ However, if voting is disaggregated according to majority-Sunni-Arab, majority-Shia, and majority-Kurd governorates, Table 6.7 shows that there was a high ‘no’ vote in majority-Sunni-Arab governorates. In fact, the ‘no’ vote was so high in these governorates that the constitution was close to being rejected on the basis of a super-majority ‘no’ in three governorates.⁸ The average ‘no’ vote in majority-Sunni-Arab governorates was 71 percent, as compared to three percent in majority-Shia governorates, and two percent in majority-Kurd governorates.

Figure 6.2 Egypt: support for constitution per communal group (percent respondents)



Source: PEW Global Attitudes and Trends Survey 2013; see Appendix A for survey methodology; see text for full wording of questions used.

In Tunisia, the constitution was approved by a super-majority in the ratifying body. In the constituent body tasked with approving the constitution, 92 percent of members voted in favour (200 out of 217 members), 12 were opposed (six percent), four abstained, and one member was absent (Haugbolle et al. 2017, 38). Given that the constituent body included 89 Islamist members and an even larger number of non-Islamist members (see Appendix B), even if all 12 votes in opposition were from Islamists this would only constitute 13 percent of these members. Therefore, no communal group voted above 50 percent against the new constitution.

⁷ IFES election guide country profile for Iraq, available at: <http://www.electionguide.org/countries/id/104>

⁸ Article 60c of the Transitional Administrative Law states that: ‘The general referendum will be successful and the draft constitution ratified if a majority of the voters in Iraq approve and if two-thirds of the voters in three or more governorates do not reject it.’ Two majority Sunni-Arab-governorates rejected the constitution by a super-majority, but a third only by a simple majority. So, the constitution was approved.

The first indicator of constitutional support, absence of a boycott of the constitutional referendum or of the approval vote in a constituent body, was not observed in Egypt or Iraq, but was observed in Tunisia. In Egypt there were strong objections to the constitution on behalf of non-Islamist actors. Non-Islamist political parties and other political elites called for a boycott of the constitutional referendum (Elgood 2012; Hussein and Borger 2012; Lyon and Elyan 2012). According to a political analyst ‘large parts of the opposition boycotted’ (Brown 2013, 49), with at least two prominent non-Islamist parties calling for a boycott, whilst others campaigned for a ‘no’ vote (Hill 2012, 38). In Iraq, there were calls from Sunni-Arab-led political parties to boycott the constitutional referendum held on 15 October 2005. Whilst a majority of Sunni-Arab parties urged a ‘no’ vote in the referendum rather than a boycott, 10 days before the referendum Sunni-Arab political leaders called for a boycott (CNN international 2005), and Sunni-Arab actors declared that they would stay home to demonstrate disapproval (Achcar 2005; Beehner 2005).

Table 6.7 Iraq: constitutional referendum outcome per communal group

Governorate	Yes	No	Majority-communal group
Babil	95	5	Shia
Basrah	96	4	Shia
Karbala	97	3	Shia
Misan	98	2	Shia
Muthanna	99	1	Shia
Najaf	96	4	Shia
Qadissiya	97	3	Shia
Theqar	97	3	Shia
Wasit	96	4	Shia
Average	97	3	
Anbar	3	97	Sunni
Diyala	51	49	Sunni
Ninewa	45	55	Sunni
Salahaddin	18	82	Sunni
Average	29	71	
Dohuk	99	1	Kurd
Erbil	99	1	Kurd
Suleimaniya	99	1	Kurd
Taamin	96	4	Kurd
Average	98	2	

*Baghdad has a mixed population and is not designated to any majority-communal group, the ‘yes’ vote in Baghdad was 78 percent, to a 22 percent ‘no’ vote.

Source: Al Jazeera (2005b)

In Tunisia, on the other hand, there were no calls from political parties involved to boycott the National Dialogue process that was responsible for determining constitution-making. Twenty-three political parties agreed to join the National Dialogue body, including

Islamist and non-Islamist actors, and remained consistently engaged in deliberations up until a constitution was approved in the constituent assembly in late January 2014 without withdrawals or boycotts. Only one of the 217 members was absent from the vote to approve the constitution, constituting less than one percent of members (Haugbolle et al. 2017).

The second indicator of constitutional support was not observed in Egypt, but was present in Iraq and in Tunisia. In Egypt turnout for the constitutional referendum was low at 33 percent.⁹ In Iraq, however, turnout was high overall at 65 percent.¹⁰ Similarly, when average turnout is calculated for majority-Shia governorates (63 percent), majority-Sunni-Arab governorates (59 percent), and majority-Kurd governorates (79 percent), it is shown to be high across communal groups, seen in Table 6.8. In Tunisia, there were only four abstentions from the final approval of the constitution document, out of a 217 member body (Haugbolle et al. 2017, 33–36; The Carter Center 2014, 43; United Nations Development Program 2014). Less than two percent of members abstained, so abstentions were very low.

Table 6.8 Iraq: constitutional referendum turnout per communal group

Governorate	Turnout	Majority-communal group
Babil	73	Shia
Basrah	63	Shia
Karbala	60	Shia
Misan	59	Shia
Muthanna	54	Shia
Najaf	57	Shia
Qadissiya	90	Shia
Theqar	57	Shia
Wasit	54	Shia
Average	63	
Anbar	38	Sunni
Diyala	67	Sunni
Ninewa	57	Sunni
Salahaddin	75	Sunni
Average	59	
Dohuk	85	Kurd
Erbil	95	Kurd
Suleimaniya	78	Kurd
Taamin	58	Kurd
Average	79	

*Baghdad has a mixed population and is not designated to any majority-communal group, turnout in Baghdad was 55 percent

Source: Fisher (2005)

⁹ IFES election guide Egypt country profile, available at: <http://www.electionguide.org/countries/id/65>

¹⁰ IFES election guide Iraq country profile, available at: <http://www.electionguide.org/countries/id/104>

Returning to the central research question, evidence from constitution-making in Egypt, Iraq and Tunisia examined in this chapter suggests that, despite a focus on involvement of all groups in selection of the constituent body, official consultations, and approval of a constitution, de jure inclusion is not sufficient to build confidence in a new constitution. Table 6.9 shows the findings for the two hypotheses that were tested in this chapter. In Tunisia, there was both de jure and de facto inclusion and the expected relationship was observed: confidence was created for the new constitution. However, in Egypt and Iraq where the constitution design process began with high participation, but did not involve persistent involvement up until a constitution was determined, confidence in the new constitution was lacking. This suggests that de jure inclusion is not a sufficient mechanism to build support for a new political system, whilst de facto inclusion may be a sufficient mechanism.

Table 6.9 Findings for hypotheses two and three

Hypothesis	Country	De jure inclusion	De facto inclusion	Expected support	Observed support for constitution	Hypothesis supported
H2	Tunisia	3 High x	3 High x	<i>H2: Support y</i>	High 3	YES
H3	Egypt	4 Very high x	1 Very low -	<i>H4: Support y</i>	None 0	NO
H3	Iraq	4 Very high x	1 Very low -	<i>H4: Support y</i>	None 0	NO

This section investigated whether support for a new constitution was present upon promulgation of the constitution in Egypt, Iraq, and Tunisia. It was found that strong support was only garnered in Tunisia, whilst the constitutional design processes in Egypt and Iraq failed to ‘convert the spoilers’ (Widner 2008, 1515). This is somewhat surprising given that all three countries began with an inclusive framework for constitution-making. However, the separation of de jure and de facto inclusion provides a possible answer to this puzzle. An investigation of the two hypotheses tested in this chapter show that only in Tunisia, where inclusion was sustained up until a final constitution draft was decided upon, was confidence created in the constitution.

6.4 Conclusion

A highly participatory constitution design process is considered important to create confidence in a new constitution. Such participation is typically considered in terms of the selection of the constituent body, consultations on the constitution, and an inclusive mechanism of constitutional approval. However, this chapter suggests that sustained and persistent inclusion of all groups up until a final constitution is determined may be a key element to achieve the objective of a constitution with high perceived legitimacy. This suggests that, rather than inclusion being unimportant, a focus on participatory and representative frameworks does not go far enough in terms of tracking the inclusion of communal groups throughout the duration of constitution-making up until a constitution document is approved.

A criticism that could be levelled against this chapter's findings is that Tunisia, where *de facto* inclusion was present and support was created, was simply better disposed than Egypt and Iraq to build support for the new constitution. This argument would suggest that in Tunisia the communal cleavage is simply less salient than in Egypt or Iraq and therefore Tunisia was more likely from the outset to build confidence in the new constitution. It is certainly true that in Egypt, as opposed to Tunisia, there was a strong Salafi presence in the legislative assembly that appointed the constituent assembly, requiring the Muslim Brotherhood to navigate between this more conservative cohort, and secular-liberal members (Project on Middle East Political Science 2013). In addition, Islamist-leaning parties in Egypt won a super-majority of seats in the elections that preceded constitution-making, whereas in Tunisia Islamist candidates won a plurality of seats, compelling Islamists to form a coalition government with non-Islamist-aligned parties.¹¹ In Iraq, Shia-aligned parties won a super-majority of seats in the elections preceding constitution-making, and ethno-sectarian tensions were rapidly deteriorating in 2005, when constitution-making took place (Hiltermann 2006).

However, notwithstanding these differences, inter-communal relations in Tunisia did reach an advanced stage of escalating tension and seeming intractability during constitution-making. Journalists and leading non-Islamists interviewed in Tunisia in March 2011 (Stepan 2012a, 95) were 'extremely frightened by the prospect of free elections and the expected

¹¹ See Appendix B for full breakdown of seats

appeal of Islamists'. The transition reached complete breakdown by August 2013 fueled by Islamist – non-Islamist tensions, and Tunisia appeared to face a real prospect of a descent into violent conflict and civil war (Amara 2013; Bali and Lerner 2016, 278; Beaumont 2013; Guellali 2013; Lefevre 2015). As observed by a member of a political party: 'there was complete political deadlock and the country was heading into the unknown' (Mahjoub 2016, 4).

Despite these concerns, however, in Tunisia, actors engaged directly with one another during this tense period, up until the constitution document was determined. As deputy speaker of parliament, Islamist-aligned Meherzia Labidi, commented: 'legally, yes, we could have pushed through the constitution at the time, but what are we going to choose? Are we going to cling to our electoral legitimacy and say "we have two thirds of the parliament, we will push through the constitution" or are we going to enter this dialogue, not only to save the voting of the constitution, but to save the process in general' (Haugbolle et al. 2017, 30). This direct engagement contributed to de facto inclusion in Tunisia.

Contrast this with Egypt, where, following non-Islamists members' withdrawal from the constituent assembly, Islamists pushed ahead with hastily approving a constitution document to put to referendum. The Islamist secretary-general of the constituent body commented on withdrawals of non-Islamists members, saying that these members were 'doing something completely against democracy: they wanted to impose their opinion as a minority' (Serodio 2013, 51). When confronted with inter-communal discord, this lack of direct engagement amongst key communal groups in Egypt meant that de facto inclusion was not present and the constitution lacked support from non-Islamists.

In Iraq, differences between communal groups were not as irreconcilable as they appeared to many observers. Morrow (2005, 11) notes in Iraq that extending the constitution-making process would likely have succeeded to create support from all groups and that 'several indicators suggest that Sunni Arab positions had not hardened against federalism, and were not as intractable as some have suggested'. However, when difficult issues arose amongst communal groups, instead of persisting with direct engagement 'discussion of the knottiest issues was moved from the committee to an informal grouping of political party leaders, who tended to gather at party headquarters or leaders' homes, often without inviting Sunni Arab drafters. For all practical purposes, therefore, the latter were re-excluded from the drafting process' (Hiltermann 2006, 39).

A second criticism that could be directed at the findings is that support for the constitution can be attributed to whether or not the constitution document reflected the preferences of a specific communal group and not to involvement in constitution-making. Inclusion in negotiations on institutional design is likely to increase a group's chance to influence the institutional outcome, so the two are not entirely distinct. However the outcome arrived at in Tunisia, the only case where support was created for the new constitution, supports the assertion that it was *de facto* inclusion, rather than just the reflection of preferences in the constitution document, that created support for the constitution.

In Egypt and in Iraq exclusion of a group's preferences from the constitution document existed concurrent to their exclusion from constitution-making, so the two cannot be separated. However, in Tunisia, both Islamists and non-Islamists compromised on their preferred option in terms of the constitution document. The final constitutional provisions were based less on Islam than Islamists would have liked, and yet more on Islam than preferred by non-Islamists (Bockenforde 2015; Kuhn 2015; Mahjoub 2016; Stepan 2012a; United Nations Development Program 2014). Following extended and persistent debate on the constitution, both groups supported it, reinforcing the assertion that *de facto* inclusion was the mechanism that created confidence in the constitution.

This chapter has extended and reinforced the findings from Chapter 5 that, at the negotiations stage of electoral system design, *de jure* inclusion in institutional design is not a sufficient mechanism to create confidence in elections, whilst *de facto* inclusion may be sufficient. This chapter's findings support this assertion. In Egypt and Iraq, where *de jure* inclusion was present without *de facto*, the constitution lacked support. Constitution-making in the only case where there was confidence from all groups in the constitution, Tunisia, involved *de facto* inclusion. Chapter 7 investigates inclusion in first transitional elections, and support for the elected assembly.

Chapter Seven

Holding transitional elections

In Iraq, the first post-2003 elections were held in January 2005. The UNEAD team tasked with developing options for electoral system design had at its disposal the accumulated electoral expertise of international non-government bodies such as International IDEA and IFES, electoral experts, and the UN's electoral division itself. A UN communique stressed the importance of inclusivity, stating that 'it is crucial for the legitimacy and success of the constitutional exercise that the national assembly represents a broad and diverse cross-section of Iraqi society as possible. The electoral process must therefore seek to gain the greatest inclusiveness and transparency as possible' (United Nations 2004a).

Despite the clear intention to facilitate a representative political assembly, the electoral outcome was an overwhelming victory for Shia-aligned and Kurd-aligned parties, to the exclusion of Sunni-Arab candidates (Hiltermann 2006, 38). Rather than provide a turning point in building widespread support for Iraq's new political system, the elections consolidated a pattern of sectarian violence (Thurber 2011, 3). Despite extensive knowledge of electoral system design, why did the Iraqi electoral system fail to fulfil the expectation that it would facilitate an inclusive political assembly and create confidence in the elected body?

To address this question, this chapter investigates the importance of de jure inclusion and de facto inclusion in transitional legislative elections in building support for the elected assembly. Transitional elections in Egypt, Iraq, and Tunisia are examined.¹ The next section discusses the background to first transitional elections in each country and the hypotheses that are examined. Section 7.2 outlines de jure and de facto inclusion in the implementation of elections in each country. Section 7.3 presents the findings for support for the elected assembly, and whether this confirms or rejects the hypotheses that are tested. The final section discusses how the findings build on those from previous chapters, and the

¹ Libya is not examined at the implementation stage of electoral system design given that the key communal cleavage in Libya is regional, and the regional distribution of seats in the elected assembly was pre-determined as part of negotiations on electoral system design. This renders meaningless an assessment of the de facto inclusion of political actors from the three key regions in the distribution of seats in the political arena.

implications for the mechanism through which inclusion builds confidence in a political system.

7.1 Background and hypotheses

Before examining the first transitional elections in Egypt, Iraq, and Tunisia, it is informative to briefly survey the context in which they took place. Elections were held in each of the three countries following the removal of a long-term authoritarian leader, under the auspices of a transition to a regime that would guarantee political and civil freedom. Founding elections held during a period of political transition are typically events that involve not only high tension but also great enthusiasm from the populace for the opportunity to freely elect political representatives, often for the first time (Fornos, Power, and Garand 2004). Since the 1970s, electoral politics became common across the MENA region, but elections typically took place in the context of a repressive political environment with a predictable incumbent victory (Koehler and Warkotsch 2014, 10-11; Lust-Okar 2009; Posusney 2002). The transitional legislative elections that took place in each country examined in this study constituted the first time since the declaration of an independent republic that free and fair elections were held under conditions where there was real uncertainty regarding the electoral outcome. As Brown (2014, 4) puts it, 'In the first parliamentary elections in Libya, Tunisia, and Egypt, the electoral performance of some parties surprised even their leaders'.

In Egypt, the elections presented to multiple stakeholders both an opportunity and the possibility of great political risk (International Crisis Group 2012). The intention of first elections in Egypt was to select a legislative assembly that would appoint a constituent body. Therefore, Islamist groups, non-Islamist groups, and the SCAF themselves were watching the elections closely and with great interest in, and concern for, the outcome. While Egyptians were proud that their nation was determining its own destiny, mutual suspicion amongst communal groups characterised the context in which elections took place (M. Lynch 2011).

In Iraq, whilst the CPA officially ceded control over Iraq in 2004, US military forces were still embedded in Iraq at the time of the first elections in January 2005, with no clear withdrawal plan in place. These elections in Iraq represented a major step toward the transfer of power from the occupying US force to elected representatives, and the withdrawal of US troops. The prominent Shia actor, Grand Ayatollah Al-Sistani, had argued for free elections to

transfer power to Iraqis (Diamond 2005). The Kurds were also keen for elections to be held. Sunni-Arabs, on the other hand, were resistant to elections, feeling marginalised and discriminated against (Hiltermann 2006). Their objections to the electoral system had not been heeded (see Chapter 5), and they were unsure of what the political trajectory in Iraq would mean for Iraq's Sunni population.

Tunisia was not only the country in which the Arab Uprisings began, but was also the first of these countries to hold national elections (Stepan 2012a). The catch-cry of the revolution—'bread, justice, freedom'—was present in people's minds, and the elections seemed to herald the fulfilment of the last of these demands. Whilst in Tunisia the elections marked a break with the past, they also represented continuity in terms of existing societal tensions and communal cleavages. As noted in political analysis: 'The elections pitted Islamist Ennahda Party against a number of non-religious parties and the question of Ennahda's position on political democracy and social questions such as women's rights structured the debate' (Koehler and Warkotsch 2014, 20).

Placed in the context of the raised expectations and political uncertainty that often characterise transitional elections, the management and execution of elections is of high importance. Holding national elections is a massive logistical task and requires competent management. 'The administration of elections during a transition from an authoritarian... regime is fraught with challenges' (International IDEA 2012, 1). An electoral management body is typically tasked with overseeing the procedures of ensuring voter rolls are accurate and up-to-date, setting up and manning electoral booths, transporting votes, and vote tallying. Public trust in the result of an election can be contingent on perceptions of the competency and independence of the electoral authority in transporting and counting votes after they have been cast (Boyko and Herron 2015; Elklit and Reynolds 2002). In each one of the countries examined here, an independent electoral management body oversaw first transitional elections and was assessed as competent and impartial by an independent monitoring body.²

This chapter examines *de jure* inclusion and *de facto* inclusion in the holding of transitional legislative elections, as well as confidence in the elected assembly. Three

² For an assessment of Iraq see IMIE (2005), regarding Tunisia see National Democratic Institute (2011), and concerning Egypt and Libya see The Carter Center (2012b) and (2013), respectively.

hypotheses are examined based on variation in the independent variable in Egypt, Iraq, and Tunisia. These hypotheses are shown in Table 7.1. In Egypt, where neither de jure nor de facto inclusion were present in the implementation of elections, hypothesis one is examined. In Tunisia both de jure and de facto inclusion were present, enabling an investigation of hypothesis two. Lastly, In Iraq, de jure inclusion was present without de facto inclusion; accordingly, hypothesis three is examined.

Table 7.1 Hypotheses examined at the implementation stage of electoral system design

	De jure inclusion (independent variable)	De facto inclusion (independent variable)	Country where independent variables are observed	Expected observation of support (dependent variable)
H1	-	-	Egypt	-
H2	x	x	Tunisia	y
H3	x	-	Iraq	y
H4	x	-	Not examined in this chapter	y

Source: see text for a detailed discussion of sources

The operationalisation of de jure inclusion, de facto inclusion, and support for the elected assembly is reviewed in Table 7.2. In implementing an electoral system, de jure inclusion refers primarily to the choice of electoral system, whilst de facto inclusion refers to the representation of all communal groups in the elected arena. The two indicators of de jure inclusion are, first, whether inclusion was a stated objective in the choice of electoral system and, second, whether a proportional formula was chosen (with average district magnitude of three or above and a legal electoral threshold of three percent or below). The first indicator of de facto inclusion is the accuracy of correspondence between the proportion of seats won by political actors from each communal group, and the proportion of that group in the broader population. The second indicator of de facto inclusion is the absence of one communal group winning a supermajority of seats in the legislative assembly. Political support is operationalised according to two indicators that capture behavioural and attitudinal support. The first indicator is an absence of political violence and other anti-system activity to undermine the assembly in the three months post-elections. The second indicator is an absence of low support for the elected assembly. Unlike the indices used at the negotiations stage of institutional design, the index for each variable in this chapter is based on two indicators and ranges from zero to two, with zero indicating an absence of inclusion

or support, one indicating medium, and two indicating high inclusion, or support for the elected assembly.

Table 7.2 Operationalisation of variables

De jure inclusion Index 0-2	De facto inclusion Index 0-2	Support for elected assembly Index 0-2
1. Stated objective of inclusion in choice of electoral system design (Yes=1, No=0)	1. Seat-share of communal groups is proportional to population-share (discrepancy ≤ 15 percent) (Yes=1, No=0)	<i>Behavioural</i> 1. Absence of anti-system behaviour such as political violence, mass protest, and other activity to undermine the elected assembly within three months post-election (Yes=1, No=0)
2. Proportional electoral formula: with av. district magnitude ≥ 3 and electoral threshold $\leq 3\%$ (Yes = 1, no =0)	2. Absence of one communal group winning a supermajority (> 66 percent) of seats (Yes=1, No=0)	<i>Attitudinal</i> 1. Absence of low support (≤ 33 percent) for elected assembly overall or on behalf of one communal group (Yes=1, No=0)

Table 7.3 shows the sources of data that were used to measure the independent and dependent variables. De jure and de facto inclusion were measured using commune from the interim authority or electoral system design body; election reports from independent bodies; and information on electoral system design was taken from electoral commission websites (where available) and from the Inter-Parliamentary Union (IPU) Parline database on elected assemblies. Behavioural and attitudinal support were measured using reports from independent bodies, and public opinion survey data. In Egypt and Tunisia, surveys conducted

Table 7.3 Data sources

	De jure inclusion	De facto inclusion	Support for elected assembly
Communique from transitional authority or body tasked with electoral system design	√		
Reports from independent election monitoring / political analysis bodies	√	√	√
Egypt and Tunisia: Public opinion survey PEW Survey of Global Attitudes and Trends 2012 (see Appendix A for survey methodology); Iraq: Report from the Independent Republican Institute (IRI)			√
IPU Parline parliamentary database http://archive.ipu.org/parline/parlinesearch.asp	√	√	√

Source: for more detail on data sources see Table 3.13

between three and six months after first transitional elections were used to capture respondents' support for the elected assembly. In Iraq, none of the three survey instruments used in the study (Arab Democracy Barometer, PEW Global Attitudes and Trends, and World Values Survey and) conducted a survey between the first and second transitional elections in January and December 2005, respectively. Instead, a poll conducted by an independent survey body, the International Republican Institute, is used to measure overall approval for the direction of the transition in Iraq, approximately one month after the assembly was elected.

7.2 Inclusion in first transitional elections

In both Iraq and Tunisia a highly inclusive electoral system was used in legislative transitional elections, that was expected to facilitate the representation of all communal groups in the elected assembly. In Egypt, however, whilst the electoral system included a proportional tier of seats, the non-proportional tier was expected to distort the accurate representation of communal groups in the parliament. Table 7.4 shows that in Iraq and Tunisia there was high de jure inclusion, whilst in Egypt there was none. Each indicator is discussed in detail below.

Table 7.4 De jure inclusion at implementation stage of elections

	Indicator 1 Focus on inclusive electoral system design	Indicator 2 Proportional formula with av. district magnitude ≥ 3 and legal electoral threshold $\leq 3\%$	Index (0-2)
Egypt	0	0	0 None
Iraq	1	1	2 High
Tunisia	1	1	2 High

In Egypt there was no explicit focus from the SCAF on inclusion in the choice of electoral system. The SCAF themselves preferred the electoral system used under the previous regime (Hassan 2013; International Crisis Group 2012) that was not expected to produce an inclusive outcome (Reynolds 2011; Tavana 2012, 6). On the contrary, political observers (and apparently SCAF actors as well) (International Crisis Group 2012, 4, 17; Reynolds 2015) anticipated that the previously-used electoral system would disproportionately benefit actors from the ancien regime (Faris 2012, 149; Masoud 2014, 130). Following public pressure, the SCAF did increase the proportion of seats elected in a PR-

list tier, however, inclusion was not an explicit rationale for the choice of electoral system design (International Crisis Group 2012).

In Iraq, the UNEAD team responsible for electoral system design emphasised inclusion as a key reason for the choice of a proportional electoral system (Hooker 2005; Perelli 2004), stating that ‘the electoral process must seek to gain the greatest inclusiveness and transparency as possible – offering the widest opportunity for Iraqis to participate as voters and candidates’ and that ‘the PR system [chosen] is most effective in gaining inclusive representation for a range of groups’ (United Nations 2004a). In effect, then, inclusion was a clear criterion for the choice of electoral system.

In Tunisia, inclusion was emphasised as a basis for the choice of a PR-list electoral system in multi-member districts. As recorded by Alfred Stepan (2012a, 93) based on an interview with Ben Achour, chairman of the body responsible for electoral system design, ‘The Commission agreed that the electoral system would be one of pure proportional representation. This decision was correctly understood to have crucial antimajoritarian, democracy-facilitating, and coalition-encouraging implications’. Political analysts similarly suggest that inclusion was an explicit focus in Tunisia. As Reynolds (2015) puts it, ‘I think the designers went for a system that they felt would maximise inclusion... they thought that inclusion was the first priority of the electoral system as a part of the broader new framework of the state’.

The second indicator of *de jure* inclusion, use of a proportional electoral formula, was not present in Egypt, but was observed in Iraq and Tunisia. Key features of electoral system design in each country are shown in Table 7.5. Egypt used a mixed-member-majoritarian system (Hassan 2013); whilst this included a tier of seats elected using a proportional electoral formula, the disproportionality of the majoritarian tier was not compensated for, so this type of system was expected to distort the translation of votes into seats and over-represent large parties, and is not considered proportional.

Iraq, on the other hand, used a single-tier, proportional, closed-list system. Tunisia also used a proportional electoral formula, with a closed PR-list system in multi-member districts. In Iraq, the election was conducted in one nation-wide district, so district magnitude was the entirety of seats elected to the assembly, that is, 275 seats (Coalition Provisional Authority 2004b). In Tunisia, the average district magnitude was between six and seven seats.

Neither Iraq (United Nations 2004a) nor Tunisia (Carey 2013) imposed a legal electoral threshold which the parties were required to meet to secure representation.

Table 7.5 Egypt, Iraq, and Tunisia: electoral system design for first transitional elections

	Egypt	Iraq	Tunisia
Assembly title	The People's Assembly	Transitional National Assembly	Tunisian Constituent Assembly
Date of election	28 Nov 2011 – 11 Jan 2012	30 Jan 2005	23 Oct 2011
No. of seats	508	275	217
Electoral formula	Mixed-Member-Parallel 332 seats: PR-list 166 seats: Two-round-system 10 seats: SCAF appointed	Proportional PR-list	Proportional PR-list
District magnitude	Proportional tier: 4-12 Majoritarian tier: 2	275	Domestic: 4-10 Out-of-country: 1-5 Average: 6-7
Legal electoral threshold	0.5% for proportional tier	None	None
Ballot structure	Categorical Closed-list / non-preferential	Categorical Closed-list	Categorical Closed-list
PR list formula	Hare quota - largest remainder	Hare quota - largest remainder	Hare quota - largest remainder
No. of districts	PR list tier: 46 2RS tier: 83	1	27 in Tunisia 6 out-of-country
Quotas / reserved seats	10 seats appointed by SCAF 1 woman on each party list	8 seats for minority groups 25% for women	Zipped lists (m/f/m/f)

Sources: information on electoral system design taken from electoral commission websites where available (www.elections.eg; Iraq: www.ihec.iq; Tunisia: www.isie.tn) and from IPU Parline database on parliamentary electoral systems, available at: archive.ipu.org/parline/parlinesearch.asp

Whilst both Iraq and Tunisia chose electoral systems that were expected to facilitate the accurate representation of all communal groups in the elected assembly, the countries varied in terms of how accurately the distribution of seats amongst candidates reflected the population proportion of each group in the broader populace. In Iraq, despite a highly inclusive electoral system, Sunni-Arabs were under-represented in the legislative assembly. In Tunisia, on the other hand, Islamist and non-Islamist groups were accurately represented in the constituent legislative assembly. In Egypt, the electoral outcome in terms of the

distribution of seats amongst Islamist and non-Islamist candidates did not accurately reflect the proportion of these groups in the population. Islamists were over-represented, whilst non-Islamists were under-represented. Table 7.6 shows that both indicators of de facto inclusion were observed in Tunisia, whilst neither one was present in Egypt or in Iraq. All indicators are discussed in detail below.

Table 7.6 De facto inclusion in electoral outcome

	Indicator 1 Seat-share of key communal groups proportional to population-share	Indicator 2 Absence of supermajority win for one key communal group	Index (0-2)
Egypt	0	0	0 None
Iraq	0	0	0 None
Tunisia	1	1	2 High

The first indicator of de facto inclusion, the accurate representation of key communal groups in the distribution of seats in the elected assembly, was not observed in Egypt or Iraq. Table 7.7 shows the percent of over- and under-representation of the key communal groups in each country. This is the difference (expressed as a percentage) between the share of seats in the elected assembly won by political parties aligned with a particular communal group, and that communal group's proportion of the population.³ In Egypt, Islamists were over-represented by 33 percent in the seat-share won by Islamist-aligned political actors in the elected assembly, whilst non-Islamists were under-represented by 50 percent. The mean of over- and under-representation of communal groups in Egypt was 42 percent and is assessed as a lack of de facto inclusion.⁴

In Iraq, the Shia-Arab population was over-represented by 10 percent in the elected assembly, and the Kurdish communal group by 56 percent, whilst Sunni-Arabs were under-represented by 35 percent in the proportion of seats won by Sunni-Arab-aligned parties. The mean of over- and under-representation was, therefore, 34 percent,⁵ which constitutes a lack of de facto inclusion. In Tunisia, by contrast, there was a low discrepancy between the population proportion of each key communal group and their seat share in the elected

³ See Appendix B for details of the assessment of each party's alignment with a communal group and the distribution of seats in the elected assembly in each country.

⁴ The lack of accurate representation of key communal groups was also confirmed by political observers, see for example The Carter Center (2012b); International Crisis Group (2012); Masoud (2014); and Tavana (2012).

⁵ The lack of accurate representation of Sunni-Arabs in Iraq was confirmed by political analysts and election observers, see for example Al-Ali (2014, 389–90); Hiltermann (2006); Istrabadi (2015); and Mozaffar (2006).

assembly. Islamists were over-represented by 11 percent, and non-Islamists were under-represented by the same proportion, constituting a mean discrepancy from accurate representation of 11 percent.⁶

Table 7.7 Representation of communal groups in elected assembly

	Communal group	Population proportion (%)	Seat proportion (%)	Discrepancy (%)
Egypt	Islamist	54	72	Over-represented: 33
	Non-Islamist	46	23	Under-represented: 50
Mean over- and under-representation of communal groups (%)				42
Iraq	Shia-Arab	61	67	Over-represented: 10
	Kurds	18	28	Over-represented: 56
	Sunni-Arab	17	6	Under-represented: 35
Mean over- and under-representation of communal groups (%)				34
Tunisia	Islamist	37	41	Over-represented 11
	Non-Islamist	63	56	Under-represented: 11
Mean over- and under-representation of communal groups (%)				11

Source: See Appendix B for sources and detailed description of allocation of political parties per communal group

The second indicator of de facto inclusion is the absence of one communal group winning a supermajority of seats (above 66 percent) in the elected assembly. In Egypt and Iraq, as shown in Table 7.7, one key communal group did win a super-majority of seats. In Egypt, Islamist-aligned political representatives won 72 percent of seats in the elected assembly. In Iraq, parties aligned with the Shia-Arab communal group won 67 percent of the seats. Conversely, in Tunisia, no communal group won a supermajority of seats. Islamist-aligned parties won 41 percent of seats, whilst non-Islamist-aligned parties won 56 percent. Therefore, no one group won a supermajority of seats. And indeed, in Tunisia, a coalition government was formed with the largest Islamist party, Ennahda, and two other non-Islamist parties (Al Jazeera 2011a).

7.3 Support for the elected assembly

Transitional, legislative elections in Iraq and Egypt divided the country and exacerbated tensions along communal lines, whilst in Tunisia, despite mutual suspicion between Islamist and non-Islamist groups, there was a willingness in the population to support the elected

⁶ The accurate representation of communal groups in Tunisia's elected assembly was confirmed by additional research, see, for example Carey (2013); and National Democratic Institute (2011).

assembly as they attempted to address the many challenges ahead. In Iraq, first transitional elections were described by a political observer as the ‘last clear chance’ (Istrabadi 2015) to prevent Iraq’s descent into civil war. However, violence only worsened following the elections, and support for the elected assembly in majority-Sunni-Arab governorates was low. In Egypt, the elections sharpened distrust in the elected assembly, with perceptions of legitimacy low for many non-Islamist groups. In Tunisia, by contrast, whilst there was tension between Islamist and non-Islamist groups, this tension was mostly successfully navigated in the immediate aftermath of transitional elections, and the populace was largely willing to wait and see how the assembly would deal with the multitude challenges of the transition period beginning with formation of a government. Table 7.8 shows each country’s score on the index of support for the elected assembly. In both Egypt and Iraq, neither indicator was present. In Tunisia, however, there was confidence in the elected assembly at this stage. Each indicator is discussed in detail below.

Table 7.8 Support for the elected assembly

	Indicator 1 <i>Behavioural</i> Absence of violence, protest, anti-system action to undermine elected assembly (three months post-elections)	Indicator 2 <i>Attitudinal</i> Absence of low support for elected assembly overall or on behalf of one communal group (≤ 33 percent)	Index (0-2)
Egypt	0	0	0 None
Iraq	0	0	0 None
Tunisia	1	1	2 High

Behavioural support for the electoral system is operationalised as an absence of political violence, mass protest, or other anti-system activity to undermine the elected assembly in the three months post-elections. In Egypt, following elections in which Islamist groups won a clear victory, mass protest continued with hundreds injured (Knell 2012). As noted by a political observer after the election results were announced: ‘The elected Parliament and the... protests in Tahrir [Square] represent two different claims to legitimacy in post-Mubarak Egypt. Many activists dismiss the elections as a sham and continue to claim revolutionary legitimacy’ (M. Lynch 2012a, 1). Anti-system activity was also demonstrated in Egypt by support amongst some non-Islamists for the dissolution of the elected assembly a little over four months after the election (Kirkpatrick 2012a). As noted by Hamid (2012, 25) ‘many [non-Islamists] welcomed the dissolution of Egypt’s first democratically elected parliament, call[ing] on the military to intervene and “safeguard” the civil state’. Similarly, in

Iraq, following the election of the political assembly in January 2005, anti-system activity and violence, in particular on behalf of Sunni insurgent groups, increased (Al-Ali 2014, 114-115). Rather than undergoing a reduction in severity, 'it was not until 2005 that violence took on a decidedly sectarian pattern' (Thurber 2011, 3).

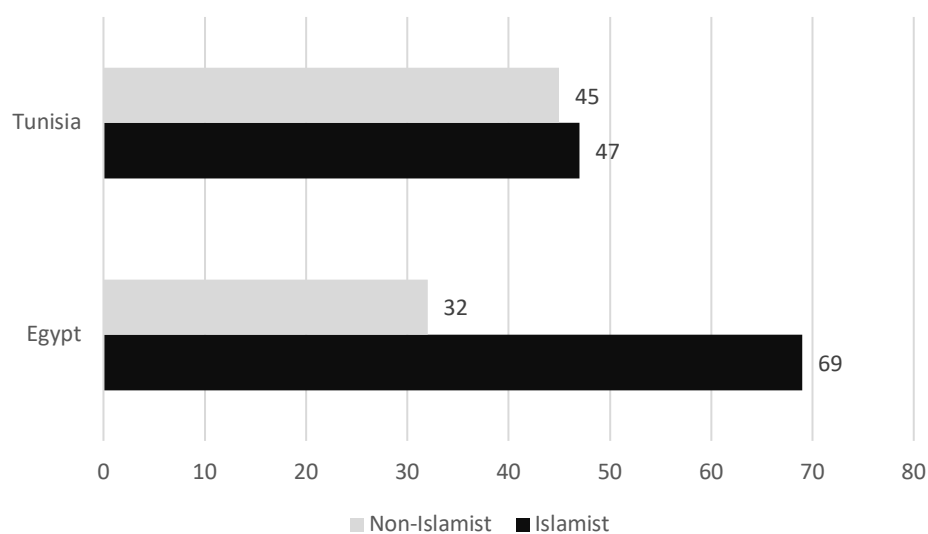
In Tunisia, by contrast, in the immediate months following the October 2011 election, violent anti-system activity was not observed. A political commentator noted a month after the election an atmosphere of 'jubilation' and that Tunisians were 'immensely proud of last month's elections' (Marks 2011, 1). In Tunisia, despite caution and inter-group suspicion, there was no evidence of anti-system sentiment directed towards the elected assembly on behalf of political actors in the immediate post-election period. The first task of the assembly was to form government, which was accomplished, and the government 'devised a broadly agreed-upon set of rules for its own activities pending presidential and national assembly elections' (Murphy 2013, 231). Whilst political tension persisted throughout the transition, and public protest in Tunisia increased in late 2012 and the first half of 2013, largely due to frustration with the constitution-making process, anti-system behaviour was not present in the months immediately following elections.

Attitudinal support for the elected assembly was not observed in Egypt or Iraq, but was observed in Tunisia. Figure 7.1 shows self-reported support for the respective elected assemblies in Egypt and in Tunisia, disaggregated for each communal group and measured using the 2012 PEW Global Attitudes and Trends survey. Islamist and non-Islamist respondents are measured using the same operationalisation as outlined in Chapter 6 for the PEW 2013 survey.⁷ To measure support for the elected assembly, a question⁸ was used that asks participants to assess the influence of the legislative assembly on a four-point scale. A response of very good and somewhat good was coded as support. As shown in Figure 7.1, in Egypt support for the People's Assembly was 69 percent amongst Islamist respondents, and only 32 percent amongst non-Islamist respondents. In Tunisia, however, self-reported support for the National Constituent Assembly was 45 percent for non-Islamist respondents and 47 percent for Islamist respondents. Given that low support is assessed as 33 percent or below, non-Islamist confidence in Egypt is evaluated as low.

⁷ Whilst the relevant question used has exactly the same wording and same choice of responses in both survey waves, in PEW 2012 it is question number 39 and in PEW 2013 it is question 37

⁸ Question 36

Figure 7.1 Egypt and Tunisia: support for elected assembly per communal group (percent respondents)



Source: PEW Global Attitudes and Trends 2012; see Appendix A for survey methodology; see text for questions used.

Given a lack of survey data for Iraq from the three survey instruments used in the study, attitudinal support is measured using a poll conducted by the International Republican Institute a month after the election, between 27 February and 5 March 2005⁹ (International Republican Institute 2005). Attitudinal support is assessed with a question that asked respondents whether they felt the country was going in ‘the right direction’. Whilst 71 percent of respondents from Shia-majority regions and 59 percent of respondents from Kurdish-majority regions answered that the country was going in the ‘right direction’, a little below 33 percent of respondents in Sunni-majority areas responded the same (8). The latter constitutes low support on behalf of a key communal group.

The findings for support for the elected assembly in Egypt, Iraq, and Tunisia provide support for hypothesis one and hypothesis two, but do not support hypothesis three (Table 7.9). In Egypt, neither de jure nor de facto inclusion was observed. As expected, support for the elected assembly was also absent. Whilst this hypothesis does not show that inclusion is necessary to build support, it demonstrates that this assertion is not refuted. In Tunisia both de jure inclusion and de facto inclusion were observed; congruent with the expectation of hypothesis two, support for the elected assembly was observed. In Iraq, however, where de jure inclusion was observed without de facto, support for the elected assembly was not

⁹ The poll was based on 1,967 face-to-face interviews using a nationally representative sample of Iraqis from across key communal groups, see International Republican Institute (2005, 2).

observed. This corroborates the finding in Chapters 5 and 6 that de jure inclusion is not sufficient to build support for a political system, whilst reinforcing the finding that de facto inclusion may be sufficient.

Table 7.9 Findings for hypotheses one, two, and three

Hypothesis	Country	De jure inclusion	De facto inclusion	<i>Expected support</i>	Observed support for elected assembly	Hypothesis supported
H1	Egypt	0 None -	0 None -	<i>H1: No support</i> -	None 0	YES
H2	Tunisia	2 High x	2 High x	<i>H2: Support</i> y	High 2	YES
H3	Iraq	2 High x	0 None -	<i>H3: Support</i> y	None 0	NO

7.4 Conclusion

A comparison of Iraq and Tunisia shows that both countries chose de jure inclusive electoral systems for transitional legislative elections, based on the reasoning that representation of all groups was of paramount importance at this stage of the political transition. However, only in Tunisia were communal groups roughly proportionally represented in the elected assembly. In Iraq, political violence increased following transitional elections, whilst in Tunisia the period immediately following the election of the assembly was characterised by cautious optimism. This suggests that choosing a proportional electoral system is not sufficient to create confidence in the elected assembly; Tunisia shows de facto inclusion to be an important and possibly sufficient condition to create support for the elected assembly.

Scholars of electoral systems do not deny the importance of an inclusive electoral system producing a representative outcome; this is, after all, its key objective. However, large-N studies tend to focus only on the choice of electoral system as the independent variable (see, for example Elkins and Sides [2007]; Ishiyama [2000]; Norris [2002]; and Saideman et al. [2002]) without examining whether or not a representative outcome was achieved. As discussed in Chapter 2, these studies do not provide clear empirical evidence to support the assertion that inclusion creates confidence in a political system (see Table 2.1). This study suggests that a lack of attention to whether or not a representative outcome was in fact produced by an inclusive electoral system, may account for the uneven findings in

large-N studies regarding the relationship between inclusive electoral design and confidence in a political system.

A closer examination of the cases studied in this chapter reveals that, unsurprisingly, the mechanism through which a proportional electoral system failed to produce a de facto inclusive electoral outcome was voter turnout. In Iraq, low turnout in majority-Sunni-Arab governorates confounded a representative outcome despite proportional translation of votes into seats (Hiltermann 2006). The importance of turnout has been discussed extensively in the context of political transitions in post-communist countries (see, for example, Bohrer, Pacek, and Radcliff [2000]). Kostadinova (2003) finds that high electoral turnout in post-communist countries was highest in founding elections, and in elections that used a proportional electoral system. Pacek, Pop-Eleches, and Tucker (2009) find that a 'high-stakes' election, that is, an election where 'there is more at stake' (475), will foster high turnout. However, in Iraq, despite the presence of these identified factors, average turnout in majority-Sunni-Arab governorates was very low at 21 percent.

Chapter 5 claimed that, in Iraq, low turnout in majority Sunni-Arab-regions was a reflection of a lack of confidence in elections on behalf of this communal group. Low turnout was underpinned by calls for a boycott from Sunni-Arab parties, and protest from Sunni-Arabs to electoral timing and the chosen electoral system. Chapter 5 asserted that a lack of persistent involvement of Sunni-Arab groups in the process of choosing an electoral system for transitional elections, compounded low confidence in elections. This underscores the importance of consistent inclusion of all communal groups from the outset of political transition, before institutional frameworks are implemented, in order to possibly avoid such detrimental outcomes from a lack of support in the new political system.

Chapter 8, the conclusion, presents the study's key theoretical contribution and policy implications. The seemingly contradictory findings in the literature outlined in Chapter 2, are re-examined in light of this study's key finding. Implications for policy architecture during political transitions is discussed, as well as implications for transitions in the MENA region.

Chapter Eight

Conclusion

This thesis began by presenting the challenge of rebuilding a contested state in Iraq following the US-led invasion of 2003. I asked under what conditions a contested state can be rebuilt with stable institutions that enjoy widespread support from all communal groups. Carina Perelli, a UNEAD officer responsible for determining electoral system options in Iraq in 2004, declared that 'At the end of the day, if the citizens do not believe in this process, no matter how many technical experts you throw into a process, the process is going to fail' (Perelli 2004). And yet, long-running insurgency violence in Iraq post-2003 suggested that political confidence was lacking. Diamond (2004, 34) claims that 'as a result of a long chain of US miscalculations, the coalition occupation... left Iraq in far worse shape than it need have and... diminished the long-term prospects of democracy there... What went wrong?'

This study suggests that the CPA's focus in Iraq on inclusion only in terms of institutional frameworks and public consultation, without attention to the persistent involvement of all communal groups in institution-building throughout the transition, failed to create commitment from all groups to the emerging regime. In Iraq, a highly inclusive electoral system was chosen for first transitional elections: PR-list in a single national district. The subsequent process of designing a constitution began with an inclusive deliberative body and official channels for public input. The stated US objective in Iraq was to create a political system that would be inclusive of all of Iraq's key societal groups. However, the means to achieve this goal were at times highly non-inclusive, leaving certain groups out of negotiations and making decisions on institutional frameworks despite resistance from key groups. This study's findings suggest that if inclusion is a stated objective, but is not sustained in the way that institution-building is carried out, the desired objective of creating stable institutions that enjoy widespread confidence from all groups will not be achieved.

The next section outlines the study's key theoretical contribution to current scholarly understanding of how inclusive institutional design creates political support. In light of the study's contribution, the contradictory findings in the literature, discussed in Chapter 2, are re-examined. Section 8.2 presents two key policy implications from the study for designing institutional architecture during a political transition, in order to facilitate de facto inclusion.

The final section discusses the study's implications for political transitions in the MENA region, in particular in states with an Islamist – non-Islamist communal cleavage.

8.1 Theoretical contribution

This study's key theoretical contribution is to further our understanding of the mechanism through which the inclusion of societal groups in institutional design creates support for a political system. I argue that a conceptual distinction between *de jure* inclusion and *de facto* inclusion is key to comprehend this mechanism. Four hypotheses were advanced to test this theoretical. The hypotheses were examined in institution-building during political transitions in four countries in the MENA region: Egypt, Iraq, Libya, and Tunisia. The study's findings suggest that *de jure* inclusion is not sufficient to create political confidence, whilst *de facto* inclusion may be sufficient.

Table 8.1 summarises the findings for the four hypotheses. Hypothesis one predicted that where neither *de jure* nor *de facto* inclusion are present, support will also not be forthcoming. As expected, this hypothesis was supported. Hypothesis two predicted that institution-building that involves both *de jure* and *de facto* inclusion, will create political support. This hypothesis captured an implicit assumption of the institutional design literature, that a combination of both *de jure* and *de facto* inclusion is sufficient to build support for the political system (Norris 2002, 210). The hypothesis was examined in three institutional design moments and was supported in each one, confirming the expectation from the literature. However, this finding does not enable a distinction to be made between the separate impact of *de jure* and *de facto* inclusion.

Hypothesis three contended that institutional design that has *de jure* inclusion, without *de facto* inclusion, will create support for the political system. Whilst the electoral system design and constitution-making literature do not explicitly state this expectation, it is implicit in studies that examine the impact of *de jure* inclusion on support for a political system, without examining *de facto* inclusion (see, for example, Widner [2005]). Alonso and Ruiz-Rufino (2007, 240) observe that, in the context of electoral system design, some scholars 'assume that proportional systems are synonymous of higher levels of parliamentary representation', without verifying whether or not this is the case. However, the hypothesis that *de jure* inclusion alone creates support was refuted in the four institutional design

moments in which it was examined. In every case where de jure inclusion was present without de facto inclusion, support for the political system was not observed.

Hypothesis four captured the expectation that de facto inclusion is sufficient to build political support. This hypothesis predicted that where institution-building involves de facto inclusion, and de jure inclusion is not present, there will be confidence in the political system. This hypothesis was confirmed in the two institutional design moments in which it was examined.

Taken together, the findings for hypotheses two, three, and four suggest that de jure inclusion is not sufficient to build support for a political system, whilst de facto inclusion may be sufficient. This means that designing institutional frameworks that proscribe inclusion is not sufficient to create confidence in a political system. However, persistent and on-going inclusion throughout the implementation of institutional procedures may be of key importance to build such confidence. The reason for this may be because persistent engagement itself creates allegiance to the political system and alleviates distrust from citizens and political actors towards the new political frameworks, it could also be because consistent inclusion is more likely to ensure equitable distribution of political power and resources. Ultimately, the findings suggest that if involvement of communal groups is not present step-by-step throughout the transition period, inclusive frameworks will not have the desired impact on building political support. This is the study's key theoretical contribution.

Table 8.1 Summary of findings for hypotheses 1-4

	De jure inclusion	De facto inclusion	Number of observations to test hypothesis	Expected observation of support	Hypothesis supported (# obs.)	Hypothesis not supported (# obs.)
H1	-	-	1	-	1	0
H2	x	x	3	y	3	0
H3	x	-	4	y	0	4
H4	-	x	2	y	2	0

A criticism that could be levelled at the research is that it examines two different types of institution-building events (electoral system design and constitution-making) that are not strictly comparable. There are two responses to this criticism. First, comparable indicators of de jure inclusion, de facto inclusion, and support for the political regime were measured for each type of institution. Second, findings were consistent across institution-building events. In each empirical chapter, support was only observed where de facto inclusion was present

(regardless of institution or institutional stage) and support was never observed where de jure inclusion alone was present without de facto inclusion.

A second possible criticism concerns the four countries' structural attributes, as discussed in Chapter 3. A distinction was made in that chapter between Iraq and Libya, on the one hand, both of which possess significant natural resources, and where the political transition was precipitated by foreign intervention; and Egypt and Tunisia, on the other, where the political transition occurred due to civil protest, and neither country has significant natural resources. A most-similar-systems research design requires selecting a pool of cases with maximum similarity in terms of structural conditions; on these grounds a criticism could be brought that these two pairs of cases are not comparable to each other. If either of the structural factors that differ between the pairs of cases hindered or furthered the building of support for the new political system, this could mean that inclusion is a spurious variable. Foreign military intervention, for example, to the extent that it is perceived unfavorably by the population could negatively impact support for the political system. In addition, significant natural resources are often accompanied by weak political institutions at the outset of transition and an underdeveloped political – civil culture that could have contributed to a lack of confidence in the new political system.

However, the structural factors of natural resource wealth and foreign intervention do not appear to have been primary determinants of support for the political system in the relevant countries. In Libya, despite these factors, support for elections was observed when de facto inclusion was present. In Iraq, despite undeniable negative sentiment towards occupying US forces, at the outset of the transition there was widespread enthusiasm across communal groups to participate in new political institutions and create a new political order. As noted by a political expert involved in Iraq post-2003, there was a hunger amongst Iraqis to 'chart their political future and to elect their leaders' and 'the yearning for a genuine rule of law' (Diamond 2005, 128). This thesis contends that the lack of support for the political system in Iraq on behalf of Sunni-Arab Iraqis was not inevitable, but was rather created during the institution-building process by a lack of consistent de facto inclusion of Sunni-Arab actors. In Egypt, a country that does not possess significant natural resources and that did not undergo foreign intervention, confidence in the political system was created when there was de facto inclusion. However, when institutional design did not involve de facto inclusion, support was not observed. This suggests that it was not these structural factors, but rather

de facto inclusion, that led to confidence in the political system at some stages of Egypt's transition, and not at others.

The study's key theoretical contribution sheds new light on the seemingly contradictory findings in the existing literature, discussed in Chapter 2 and reviewed in Table 8.2. The finding that de jure inclusion is not sufficient to build support explains why several studies listed in the first row of Table 8.2 do not find a relationship between inclusion and support. At the same time, this finding suggests that the causal factor in studies that do find a relationship between de jure inclusion and support may in fact be de facto inclusion (not measured in these studies). Returning to the two prominent large-N studies on the impact of inclusive electoral system design (Norris 2002) and inclusive constitution-making (Widner 2005) on political support, discussed in Chapter 2, the findings of the present study suggest that a lack of attention to de facto inclusion in these studies may account for the unclear findings regarding the impact of inclusion on creating confidence in a political system.

Table 8.2 Re-examining inconclusive evidence

	Inclusion	Support for political system: relationship found	Support for political system: no clear relationship
Row 1	De jure inclusion	Banducci, Donovan, and Karp (1999) Ishiyama (2000) Saideman et al. (2002) Schneider and Wiesehomeier (2008)	Aucoin and Brandt (2010) Cottrell and Ghai (2007) Elkins and Sides (2007) Norris (2002) Ruiz-Rufino (2013) Widner (2005)
Row 2	De facto inclusion	Ruiz-Rufino (2013)	Alonso and Ruiz-Rufino (2007)
Row 3	De jure and de facto inclusion	Bogaards (2013) Carlson (2010) Ebrahim and Miller (2010) Wallis (2014)	Moehler (2008)

Ruiz-Rufino's (2013) study (in the second row) is congruent with this study's theoretical contribution, finding that de facto inclusion of minority groups in the political arena correlates to support for the political regime. An earlier study by Alonso and Ruiz-Rufino (2007) appears at first to contradict the finding that de facto inclusion may be sufficient to build support. However, a close examination of this study reveals that this is not the case. The study in fact argues that parliamentary representation (de facto inclusion) does effect support for the political system, but only under certain circumstances. First, the study finds that the representation of minority ethnic groups is a less effective mechanism to build support when

groups have a violent, secessionist agenda. It could be that in such cases the territory of the state is simply an indivisible good, or that de facto inclusion in negotiations on institutional design is a necessary precondition to building support for the political system before elections take place. Second, the study finds that 'the ameliorative effect of parliamentary representation over conflict is stronger in those legislatures where the ethnic group has effective influence over decision making' (256). This latter finding is in fact an assertion that inclusion in terms of representation in a legislature needs to consider political efficacy of minority ethnic players, that is, de facto inclusion needs to be taken into account to a greater extent. Rather than suggest that de facto inclusion is unimportant, this study argues that greater attention should be paid to the degree to which de facto inclusion is present in legislative activities.

The studies in the third row that find a relationship between both de jure and de facto inclusion, and support for a political system, are in accordance with this study's key theoretical contribution. Contrastingly, Moehler's (2008) research appears to contradict the current study's key finding. Moehler examines both de jure and de facto participation in constitution-making in Uganda. She compares support for the constitution on behalf of citizens that participated in constitution-making consultations with those that did not. She does not find a significant difference in the extent of political support between these two groups. However, Moehler does find that overall 'participation appears to have indirectly enhanced constitutional support by helping citizens to form opinions about the constitution (most of which were positive)' (3). Moehler also finds that support for democracy overall, (a measure of support for the political system), was strengthened. So, Moehler's study does not present a direct contradiction to the current study's key theoretical contribution.

The study's theoretical contribution also speaks to key debates in the electoral system design and constitution-making literatures regarding the place of inclusion in building political confidence. The electoral system design literature is divided between scholars who advocate for widespread participation and representation of all communal groups during a political transition (Lijphart 2004; Norris 2009; Reynolds 1995) and scholars that support incentivising political actors to hold moderate, centrist positions that have broad appeal (Horowitz 2004; Reilly 2001). The findings from this study suggest that, far from being unimportant, the inclusion of communal groups has at times been treated in too superficial a manner, and that in fact de facto inclusion of communal groups during political transition, starting with

decisions to determine an electoral system, may be a key factor in building support for a new political system.

In the constitution-making literature, there is a key division between those who advocate highly participatory constitution-making involving widespread consultation with political actors and civil society groups (Miller 2010b; Widner 2008), and those that contend that an elite-led process will produce a more coherent constitution incorporating guarantees of civil and political freedoms (Landau 2013). The findings presented here suggest, first, that inclusion needs to follow both a mass public and an elite dimension. Citizen participation, such as occurred in Kenya between 2000 and 2005 needs to be accompanied by consistent involvement of political actors in order to build confidence in the constitution from all groups. A second implication for this literature is that consultations or inclusive frameworks that are not accompanied by persistent engagement with all groups that continue until a constitution is determined, as well as a real opportunity for all groups to influence the final document, are unlikely to build support from all groups for the new constitution.

As noted in the introductory chapter, the generalisability of the findings from this study are constrained by the small-N research design; further verification of the validity of the findings would require testing in a large number of cases that span different regions of the world. A key challenge to examining de facto inclusion in a large number of cases, is a logistical one. A likely reason that de facto inclusion is almost never examined in large-N studies, is that it requires a qualitative investigation of each case. Determining whether involvement of all key societal groups persisted throughout a process of institutional design, and whether all groups had an opportunity to shape the institutional outcome, necessitates qualitative research. This exercise is necessarily more time-consuming than examining whether, for example, a proportional electoral system was used for transitional elections, a constitution design body was selected in a national election, or a referendum was held to approve a constitution.

This study highlights the value of creating a database of cases that includes data on both de facto and de jure inclusion in institution-building. One method to create this database would be to carry out an expert survey of country specialists on the existence of de jure and de facto inclusion in determining electoral system design and/or a constitution document during political transitions. A large database could therefore be created which would allow for a wider examination of the impact of de jure and de facto inclusion on support for an

emerging regime. The use of area experts could also enable a clearer articulation of the components of de facto inclusion that constitute the mechanism through which inclusion creates support during a political transition. Whilst Widner has compiled the most comprehensive database on constitution-making to date¹ it does not contain direct measures of de facto inclusion.

It also bears noting that, whilst during a period of political transition it is possible to differentiate between de jure and de facto inclusion and assess their separate relationship to political support, over the longer term both de jure and de facto inclusion would likely be mutually reinforcing if political support is consolidated. De jure inclusion without de facto inclusion is unlikely to create perceived legitimacy for a political system, as it will appear non-substantive. On the other hand, where de facto inclusion exists over a prolonged period of governance, this is likely to lead to the institutionalisation of inclusive practices in de jure inclusive frameworks. Where this does not take place, reliance on only de facto inclusion, without de jure, may erode over time if not institutionalised.

8.2 Policy implications for institution-building

A central factor when addressing policy implications from this research, is understanding the *conditions* that facilitate the presence of de facto inclusion. The key research finding highlights the importance of de facto inclusion to build political support, so an important question that arises from this for policy and practice during political transitions is: which factors contribute to or ensure that de facto inclusion will be present? This section addresses this question by extracting the central distinction between Tunisia, where de facto inclusion was consistently present, and other countries where this was not the case. The factors discussed below provide indications for practitioners and policy-makers of central factors that may contribute to facilitating de facto inclusion. If de facto inclusion, as found in this study, is important to create political support, then the factors below may form a useful framework for the architects of political transition aiming to build such support. However, it would be valuable to undertake a more thorough investigation of this question in future research.

Two key policy implications emerge from the study regarding designing transitional architecture to facilitate de facto inclusion. Whilst there was de facto inclusion in negotiations

¹ See <http://pcwcr.princeton.edu>

on electoral system design in three out of the four countries covered here, Tunisia was the only country in which sustained de facto inclusion was present throughout the transition in negotiating an electoral system, holding elections, and constitution-making. Comparing the trajectory of the four cases, Tunisia is also the only country that (as of 2018) has sustained a path of transition towards a democratic regime that guarantees political and civil freedoms. Two elements were present in Tunisia and not in the other countries, that underpinned sustained de facto inclusion. First, when faced with contentious communal divisions that threatened to derail the transition, the major political actors in Tunisia persisted with direct engagement on challenging issues, whilst in other countries the relevant actors chose to either withdraw from direct engagement or push ahead with an agenda for institutional design without the inclusion of all groups. Second, there was a consistent and on-going focus from the Tunisian authorities overseeing institutional design, on reaching agreement amongst all key groups as a primary objective.

For example, during constitution-making in Tunisia, when the process reached total breakdown in mid-2013, the political representatives of the main communal groups engaged directly with each other on challenging issues (Badawi 2016), and the interim authority focused first and foremost on reaching agreement amongst antagonistic groups. As described by Rached Gannouchi (2016, 1), the leader of the main Islamist party: 'Following the second crisis after the assassination of member of the Assembly Mohamed Brahmi, we did not opt to impose our own view of how the transition should proceed, nor rush through the adoption of the Constitution. We were convinced that the aim of being in power in the transitional phase was the adoption of the Constitution and leading the country to the second elections, both of which required broad consensus and a climate of national unity. We refused that the Tunisian Constitution be the constitution of a majority imposed on a minority'.

Masmoudi (2016) corroborated this factor in Tunisia, stating that both Islamists and non-Islamists 'kept the dialogue going even during the most difficult times, there was never a break down in the dialogue, they always kept talking to each other and I think that's important because not only do you build confidence but at least they have a chance to reach a consensus'. As noted by Alfred Stepan (2012a, 94) 'much of Tunisia's superior record... can be credited to Islamic and secular leaders, who have worked to overcome their mutual fears and distrust by crafting agreements and credible guarantees in political society'. Intense debate brought some Islamist and non-Islamist actors closer: 'After the vote, in what many

saw a symbol of compromise, Mongi Rahoui, a deputy from the assassinated leaders' party [non-Islamist], embraced Habib Louz, an Ennahda hardliner. The two men sparred furiously over Islam last week' (Amara 2014).

Second, in Tunisia the interim authority placed primary emphasis on reaching agreement amongst communal groups, Table 8.3 shows the key focus of the transitional authority in each country. First the HCFRG and then the Quartet placed a key emphasis on shared national purpose and agreement amongst all key communal groups during institutional design. In particular, the Quartet's explicit focus was on national unity, a shared national purpose, and reaching agreement between all relevant communal groups. In the words of the Quartet leaders (Organization for Security and Cooperation in Europe 2016, 1): 'we noted clear priorities: the national interest came first and that of our organizations second'... 'the Quartet demonstrates the capacity of civil society to transcend its own conflicts... to give precedence to the national interest before the particular interest, be it partisan or corporate'. The Quartet did not allow the National Dialogue process to proceed without agreement from political actors, up until a constitution was determined (Haugbolle et al. 2017; Stigant and Murray 2015, 3).

In Egypt, by contrast, as constitution-making progressed, Islamists were increasingly unwilling 'to compromise or treat [their] political rivals respectfully' (M. Lynch 2012b, 1). Non-Islamists largely withdrew from deliberations on the constitution, and became increasingly antagonistic calling for mass protest to undermine the legitimacy of the constitution that was put to referendum (Brown 2012, 2013, 50–53; Hamid 2012; Hill 2012; Serodio and Casper 2013). Islamist members responded by increasing the pace at which they worked to produce a final constitution document. This led to an escalation of tension amongst Islamists and non-Islamists (Albrecht 2013, 1) and a lack of non-Islamist support for the new constitution.

At the same time, the SCAF maintained a focus first and foremost on national stability. The SCAF considered themselves 'the sole actor possessing the experience, maturity and wisdom necessary to protect the country from domestic and external threats' (International Crisis Group 2012, i). As noted by a political analyst 'the key to understanding the SCAF is that it has used its expanded power with a single-minded determination to restore the country to what it perceives to be stability and return it to normalcy' (Hanna 2011, 21). The SCAF were willing to make concessions and devolve power in order to maintain political stability (M. Lynch 2012c). Hanna (2011,21) notes that 'the instances when public protests have effected

change...have... been a function of SCAF fear of public disorder'. Whilst the SCAF may have welcomed the opportunity to regain political control in mid-2013, they did not intervene until national stability was seriously in doubt and Egypt seemed to be lurching towards political breakdown (Housden 2013).

In Iraq, when challenging issues emerged during constitution-making amongst Sunni, Shia and Kurds, in particular regarding federalism, key actors chose to push forward with producing a draft constitution in secret negotiations that excluded Sunni actors, rather than engage with Sunni actors on contentious issues (Morrow 2005, 11–15). Once the constituent body officially suspended its work, Kurd and Shia leaders continued negotiations on the draft constitution together with US-personnel (Al-Ali 2014, 84–102). Concurrently, US personnel placed a consistent emphasis throughout on achieving specific institutional design outcomes, in terms of an inclusive electoral system and a liberal democratic constitution that guaranteed political and civil rights. Whilst the US-led CPA officially transferred authority over Iraq to a local body in June 2004, US government and embassy personnel maintained political leverage throughout the institutional design moments examined in this study. During the drafting of the constitution, US actors intervened frequently and insistently whenever their preferences for institutional design appeared threatened (Diamond 2005; Morrow 2005, 10). US government personnel were involved in actively excluding Sunni-Arab representatives from final negotiations on constitution-making. US actors prioritised producing a constitution document that would guarantee political and civil freedoms over ensuring agreement amongst all communal groups (Morrow 2005, 9–11) 'based on the mistaken assumption that a new constitution would ease tension in the country and lead to an improvement in security' (Al-Ali 2014, 87).

In Libya, de facto inclusion was present in negotiations on the electoral system. Due to the NTC's role in accommodating the preferences of all communal groups. There was no direct engagement amongst stakeholders themselves on contentious issues, and the NTC placed primary emphasis on accommodating preferences rather than on reaching agreement amongst the main communal groups. The lack of emphasis on communal groups reaching agreement amongst themselves is reflected by a political analyst who states that 'while the NTC was in power there was a tendency to put off any difficult or important decisions until after elections were held' (Omar 2014, 78). And, indeed, after the General National Congress was elected it quickly fractured into competing factions; there was no persistent engagement

amongst communal groups on contentious issues or primary focus on communal groups coming to agreement on key issues (Vandewalle 2015).

Table 8.3 Key focus of transitional authority overseeing institutional design

	Egypt	Iraq	Tunisia	Libya
Transitional authority	SCAF	CPA / US government personnel	HCFRG / The Quartet	NTC
Key focus	<i>Political / societal stability</i> Maintaining state stability during institutional design process	<i>Institutional framework</i> Reaching specific institutional design outcome	<i>Agreement</i> Agreement of all groups on institutional design	<i>Accommodation</i> Accommodation of preferences of all groups
Intervention	Only intervenes to maintain stability	Constant intervention to ensure desired institutional design	Constant intervention to ensure all groups stay focused on common national purpose	Bilateral negotiations with groups to ensure accommodation of preferences
Response to conflict / deadlock	Tries to ensure that demands are met to avoid destabilisation	Ignores conflicting demands and pushes through own institutional design agenda	Facilitates engagement amongst conflicting parties	Accommodates or defers difficult issues
Institutional design outcome	Group with demographic majority dominates institutional design	Transitional authority agenda dominates institutional design	Widespread agreement on institutional design amongst all key groups	Institutional design meets preferences of all groups but core challenges remain unresolved

Source: see text for discussion of sources

The importance of the de facto inclusion of actors from all of the main communal groups implies that a long timeframe may be necessary for institutional design, in particular constitution-making, if all societal groups are to engage on the most challenging issues. However, whilst de facto inclusion may take time and be difficult to achieve, the findings nevertheless suggest that there is unlikely to be a stable outcome with high support for the political regime, if de facto inclusion of all key communal groups is not present. As the US discovered in Iraq, de jure inclusion alone will not build the requisite widespread confidence in a new political system.

8.3 Implications for transitions in the MENA region

The policy implications outlined above indicate a key lesson for transitions in the MENA region regarding the importance of de facto inclusion. A challenge to many Arab-majority states in the MENA region is the Islamist – non-Islamist communal cleavage, as outlined. The ‘inclusion-moderation’ hypothesis that asserts that the inclusion of Islamist groups in political frameworks will lead to the moderation of behaviour that would exclude non-Islamists from the political arena, typically focuses on de jure inclusion in political institutions (Schwedler 2007). Such inclusion could include the right to form political parties, the right to participate in elections, and to hold public office. This study’s finding suggests, however, that this alone will not ensure legitimacy of a new political system.

The findings suggest that the extent to which Islamic values and laws underpin the political systems of the Middle East needs to be directly addressed amongst relevant groups in states where this division is pertinent. Simply holding elections is on its own unlikely to have the expected ‘moderating’ effect without explicit engagement amongst the various groups on divisive policy issues. In Libya, for example, there is currently a contention regarding the timing and holding of elections. Some external actors advocate holding elections expediently in order to progress with a constitution-making process, whilst others claim that Libya is not ready to hold elections (Megerisi 2018). Regardless of which position is correct, the findings from this study suggest that direct engagement from all communal groups on this issue, until a decision is made, is of primary importance. If such elections are pushed ahead without such engagement, it is unlikely that there will be support from all communal groups for a new political system going forward.

Tunisia has so far emerged as unique amongst the twenty-first century transitions in the MENA region for its sustained trajectory of democratisation. This implies, as noted by Mansouri and Armillei (2016, 170), that ‘secularists and Islamists... are not inherently incompatible’. This study suggests that it was the existence of de facto inclusion in Tunisia that enabled this country to navigate the Islamist – non-Islamist divide more successfully than other countries have managed to do. The lesson that emerges most clearly from Tunisia’s trajectory is that, at critical moments of tension and negotiations breakdown, challenges were confronted through direct inter-group engagement, under a clear directive from the authority overseeing institutional design to place primary emphasis on reaching agreement

amongst all groups. This enabled consistent de facto inclusion and for Tunisia to achieve 'political change while ensuring overall stability' (174).

In summary, I find that involvement of communal groups in institution-building that is present at every step of the way, and is not discontinued at any point, will be most likely to create confidence in the political system. I argue that direct engagement amongst groups on difficult issues will increase the likelihood, not only of reaching consensus, but also of building support for the new regime. The extent to which the interim authority pursues an explicit goal of ensuring agreement amongst all groups, the greater the likelihood that political confidence will be created. Taken together, these points imply that rebuilding contested states following authoritarian breakdown that does not go faster than the pace of agreement amongst key groups, and that does not push ahead without such agreement, is most likely to lead to transition to a stable political system.

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Appendix A: Survey methodology

Table A.1 Survey methodology for World Values Survey, Arab Democracy Barometer, and PEW Global Attitudes and Trends

Survey	Field dates	Sample size	Sampling and weighting
World values survey (WVS) WVS Wave 4:	Iraq: 19 Nov – 16 Dec, 2004	Face-to-face interviews Iraq: 2,325	Nationally representative sample adults 18 +. Stratified by governorate and urban / rural. Interviews distributed proportional to population size, clustered by 1. census districts, 2. census sub-districts, 3. sampling blocks (primary sampling unit) 20 interviews conducted in each block, random selection of households. Interviewee selected using 'last birthday' method*
Arab Democracy Barometer (ADB) Wave II	Egypt: 16 June – 3 July, 2011 Tunisia: 30 Sep – 11 Oct, 2011	Face-to-face interviews Egypt: 1,219 Tunisia: 1,196	National probability sample, adults 18+. Stratified by governorate and urban-rural. Interviews distributed proportional to population size.** Egypt: Within each strata, sampling blocks were selected proportional to population size and served as the primary sampling unit. Within each sampling block, clusters of 10 households were randomly selected. Tunisia: Within each strata delegations were selected proportional to population size. Within each delegation, sectors were selected proportional to size and within each sector, blocks were randomly selected each containing 10 households. Within each household, individuals randomly selected using a Kish table informed by quotas for gender and age.
Arab Democracy Barometer (ADB) Wave III	Egypt: 31 March – 7 April, 2013 Tunisia: 3 – 25 Feb, 2013	Face-to-face interviews Egypt: 1,196 Tunisia: 1,199	Weighting Egypt and Tunisia: Weighted for probability of selection and post-stratification weighted by age and gender
PEW Global Attitudes and Trends (PEW) 2012	Egypt: 19 March – 10 April, 2012 Tunisia: 22 March – 20 April, 2012	Telephone and face-to-face interviews Egypt: 1,000 Tunisia: 1,000	Egypt and Tunisia: Representative, national sample of adults 18 and over, multi-stage cluster sample stratified by governorate and proportional to population size and urban/rural population*** Weighting Egypt and Tunisia: Correcting for unequal selection probabilities. Adjusting of key socio-demographic distributions (gender, age, education) to align with reliable, official population statistics
PEW Global Attitudes and Trends (PEW) 2013	Egypt: 3 -23 March, 2013	Telephone and face-to-face interviews Egypt: 1,000	

*Where security concerns prevented interviews in a Kurdish or Sunni-Arab majority city, the interviews were reallocated to another Kurdish or Sunni-Arab majority city, respectively

** Wave II in Egypt - 20 interviews were conducted in Red Sea and Suez governorates

*** PEW 2013 in Egypt excluded frontier governorates (approx.. 2% of population) for security reasons

Sources: <http://www.arabbarometer.org>; <http://www.worldvaluessurvey.org>; <http://www.pewglobal.org>

Appendix B: Parliamentary election results per communal group

Table B.1 Egypt: Party allocation per communal group and distribution of seats in Nov 2011-Jan 2012 election

	Party	Communal group	Seats: PR-tier + majoritarian-tier = total	% Seats
1	Democratic Alliance (FJP)	Islamist	124 + 108 = 232	45.7
2	Islamist Bloc (al- Nour)	Islamist	94 + 27 = 121	23.8
3	al-Wafd	non-Islamist (nationalist liberal)	38 + 2 = 40	7.9
4	Egyptian Bloc	non-Islamist (social liberal)	33 + 2 = 35	6.9
5	al-Wasat	Islamist (moderate Islamist pro-liberal-democracy but advocates Sharia as a basis for law)	10 + 0 = 10	2
6	Revolution Continues Alliance	non-Islamist (liberal social)	8 + 2 = 10	2
7	Reform and Development Party	non-Islamist (liberal)	9 + 1 = 10	2
8	Egyptian National Party	non-Islamist (ancien regime)	4 + 2 = 6	1.2
9	Freedom Party	non-Islamist (ancien regime)	4 + 0 = 4	.8
10	Egyptian Citizen	non-Islamist (ancien regime)	3 + 1 = 4	.8
11	Union Party	non-Islamist (ancien regime)	2 + 0 = 2	.4
12	Democratic Peace Party	non-Islamist (ancien regime)	1 + 0 = 1	.2
13	Justice Party	non-Islamist (revolution- based)	0 + 1 = 1	.2
14	Egyptian Arab Union	non-Islamist (ancien regime)	1 + 0 = 1	.2
15	Arab Democratic Nasserist	non-Islamist (nationalist)	1 + 0 = 1	.2
	Other (non-party affiliated)		20	3.9
	SCAF appointed		10	2
	Total		508	100

Sources for electoral result: Results are no longer available on the Egyptian High Electoral Commission website: <http://parliament2011.elections.eg/results> is inactive. Results taken from: Electoral Institute for Sustainable Democracy in Africa (2012, 45–47) and the IPU Parline database on parliamentary elections, available at: archive.ipu.org/parline-e/reports/arc/2097_11.htm

Sources for communal alignment of political parties: Teti (2011); The Middle East Institute's "Egyptian Political Party Explorer" that provides information on Egyptian party ideology available at: www.mei.edu/transitions/political-parties

Table B.2 Tunisia: Party allocation per communal group and distribution of seats in Oct 2011 election

	Party	Communal group	Seats	% Seats
1	Al-Nahda	Islamist	89	41
2	Congress for the Republic	non-Islamist	29	13.4
3	Popular Petition	non-Islamist	26	12
4	Democratic Forum for Labour and Liberties	non-Islamist	20	9.2
5	Progressive Democratic Party	non-Islamist	16	7.4
6	The Initiative	non-Islamist	5	2.3
7	Democratic Modernist Pole	non-Islamist (did not promote Islamist policy)	5	2.3
8	Afek Tunis	non-Islamist	4	1.8
9	Tunisian Workers' Communist Party	non-Islamist	3	1.4
10	People's Movement	non-Islamist	2	.9
11	Movement of Socialist Democrats	non-Islamist	2	.9
12	Free Patriotic Union	non-Islamist (anti-Islamist)	1	.5
13	Democratic Patriots Movement	non-Islamist (anti-Islamist)	1	.5
14	Liberal Maghreb Party	non-Islamist	1	.5
15	Social Democratic Nation Party	non-Islamist	1	.5
16	New Constitutional (Destour) Party	non-Islamist	1	.5
17	Progressive Struggle Party	non-Islamist	1	.5
18	Justice and Equality Party*	non-Islamist	1	.5
19	Cultural Unionist Nation Party	non-Islamist	1	.5
20	Independent (non-party) lists			3.7
	1. Voice of the Future			
	1. Independent			
	1. Fidelity			
	1. Hope			
	1. Tunisian National Front			
	1. Justice			
	1. Socialist struggle			
	1. Loyalty to Martyrs		8	
	Total		217	100

Sources for electoral result: Election results per constituency on the Tunisian High Electoral website, at: www.isie.tn/resultats/election-2011 Commission; Carey (2013); and IPU Parline database on parliamentary elections, available at: archive.ipu.org/parline-e/reports/arc/2392_11.htm

Sources for communal alignment of political parties: Bollier (2011); Brody-Barre (2013); detailed outline of ideational platform of Tunisia's political parties preceding 2011 elections from *The Guardian* available at: image.guardian.co.uk/sys-files/Guardian/documents/2011/10/19/Tunisian_Parties_2010.pdf

Table B.3 Iraq: Party allocation per communal group and distribution of seats in Jan 2005 election

	Party	Communal group	Seats	% Seats
1	United Iraqi Alliance	Shi'a (sectarian)	140	50.9
2	Democratic Patriotic Alliance of Kurdistan	Kurdish (sectarian)	75	27.3
3	Iraqi List	Shi'a (secular)	40	14.5
4	The Iraqis	Sunni (secular)	5	1.8
5	Iraqi Turkmen Front	Turkmen	3	1.1
6	National Independent Cadres and Elites	Shi'a (sectarian)	3	1.1
7	Islamic Action Organization in Iraq	Shi'a (sectarian)	2	0.7
8	Islamic Group of Kurdistan	Kurdish (sectarian)	2	0.7
9	People's Union	Communist	2	0.7
10	National Democratic Alliance	Secular non-denominational	1	0.4
11	National Rafidain List	Assyrian Christian	1	0.4
12	Reconciliation and Liberation Bloc	Sunni (sectarian)	1	0.4
	Total		275	100

Sources for electoral result: Maye (2016, 135); O'Sullivan and Al-Saedi (2014); IPU Parline database on parliamentary elections, available at: archive.ipu.org/parline-e/reports/arc/2151_05.htm

Sources for communal alignment of political parties: Guide to Iraqi Political Parties organized according to Shia, Sunni, and Kurdish parties from the British Broadcasting Commission, available at: news.bbc.co.uk/2/hi/middle_east/4051977.stm; corroborated with outline of major party orientation available at: online.wsj.com/public/resources/documents/info-iraqelect0105.html?printVersion=true