Nadine Schnelzer

Libya in the Arab Spring

The Constitutional Discourse since the Fall of Gaddafi

Springer VS

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Erlangen, Germany

Acknowledgements

For Prof. Dr Christoph Schumann,
who fathered my intellectual development.

Contents

The ruler's cloak did not simply cling to his body now. The leathern robe was no longer a tight garment as he had originally thought it would be. It had actually turned into a second skin. Indeed, it was his skin now.

Ibrahim al-Koni, Das Herrscherkleid

1 Introduction

From February until October 2011, a civil war[1] was waged in Libya. The interference of NATO helped decide the war in favour of the revolutionaries. The outcome was the total destruction of government and administrative institutions as well as the death of Muammar Gaddafi and the lapse of his ideology as laid down in the Green Book. Now Libya is in need of a new constitution.

Up to now, no new constitution has been drafted and the Constitutional Declaration delivered on 3 August 2011 by the National Transitional Council (NTC) has been the framework of reference. Since 2011, there have been two general elections, the first to the General National Congress (GNC) and the second to the Constitutional Committee. The delay in the constitutional process has left newly created institutions with little legitimacy, but has also given the constitutional debate time to flourish. The total destruction of the political system under Gaddafi necessitates and opens the door to a new institutional design. While the political system must be created from scratch, the political personnel are still there. Some have resurfaced from exile, some already held positions in the Gaddafi era, and others are newcomers to the political scene. They compete for positons and influence in the 'new' Libya, relying on armed brigades, or militia, to throw weight behind their demands. At the same time, NGOs have mushroomed, as have other organisations and events to discuss the future of Libya. The whole country is involved in a discourse about how Libya should be constituted.

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1 The author's use of the terms revolution, civil war and uprising follow Wolfram Lacher's use: Lacher refers to Charles Tilly and defines revolution as a situation in which contenders raise competing claims to control the state, a significant segment of the population commits to those claims and the rulers are unable or unwilling to suppress that challenge. In Libya, we can also speak of a revolution due to the complete collapse of the political order, necessitating the establishment of a new order, and with respect to the sacrifices of those who took part in the uprising. A civil war, in short, means military action within a state with the participation of the government and at least 1,000 deaths in total per year. Uprising is a more generic term for the events that have unfolded since February 2011, starting in Benghazi. (Lacher 2013a, pp. 168–169)

This research paper aims at portraying the Libyan constitutional discourse since 2011. Who are the key actors and central issues discussed, and how does the development of the discourse relate to Libya's history and society? The perspective from the origin of the debate rather than an anticipated future will focus on the progress rather than failure of political developments in Libya. A historicisation of the constitutional discourse reduces the leverage for normative criticism of the course Libya has taken. A discourse-theoretical viewpoint also highlights the longevity of any discourse, since discourses can last so long that they take on the air of natural laws: "By constant repetition, those practices develop into structures in the form of discourses which can become so natural that we abstract from their societal origins, that the latter are forgotten and seem to be natural laws" (Belina / Dzudzek 2009, p. 131). Moreover, understanding in the true sense of it as defined by Hannah Arendt requires context. Ideas, concepts and images integral to a culture must be familiar to the interpreter to make sense of things (Richter 2004, p. 15). The demand for federalism, for example, raised in the constitutional discourse bears no meaning in itself and must be put into the specific historical context of Libya.

In this study, members of the transitional law-making institutions and their militia supporters as well as civil society representatives and influential figures from the spectrum of politicized Islam are identified as key actors in the constitutional discourse. Socio-political cleavages and key issues in the constitutional debate are democracy, federalism and decentralization, the role of religion in politics, the political inclusion of women and minority rights. Besides, a look at the language used and public addressed by participants in the discourse will reveal recognized decision-making instances. The application of discourse theory makes it possible to garner visions and expectations of a new constitution[2] that would not lend themselves to observation and research if only those voiced in official documents or at events discussing the new constitution were considered. Demands relating to the constitution are also made in contexts and on topics that are seemingly unrelated to the drafting of the constitution. Drawing on the essential assumption of critical discourse theory that discourse is shaped by and shapes society, it will be evidenced that the discourse evolving around the future constitution itself shapes not only the constitution-drafting process, but also creates facts that contribute to the current and future constitution of Libya. As an example, the debate about the quota of seats reserved for women in elections to the GNC was both the

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2 The term 'constitution' has a double meaning: it stands both for a legal document that lays down, among other things, the political system of a state as well as a state and condition.

outcome of and fuel for public debate on women's rights. Election posters picturing women have made women visible in the public sphere, which is a contribution to a change of mentality towards women, which again has been a key obstacle to women taking up leading positions in politics and society.

This work provides an overview of important actors and political cleavages which are at the top of the agenda of Libya's transitional period[3] and will probably remain there in future. There is generally little political science research on Libya, which justifies the broad research question of this paper. The current constitutional discourse will be shown to be the outcome of Libya's history under the post-colonial monarchical system and the totalitarian period from 1969 until 2011. The specific societal context of Libya has also informed the discourse. Historical and societal origins, however, do not determine today's discourse. They inform and influence the discourse, yet they do not determine it. Following Foucault, the argument is made that statements on the constitutional discourse are not determined by social and political history. However, the historical background and the events and institutionalisations since the fall of Gaddafi constitute the conditions for the statements that can and cannot be made. A discursive event, an utterance, has its past history and, at the same time, is contingent. Past history and contingency are not mutually exclusive concepts, but rather are conceived together in discourse analysis: "Discourse analysis as an analysis of society is therefore capable to disclose the contingency and historical development of the forgotten discursive and social rules and to question social circumstances" (Belina / Dzudzek 2009, p. 132). This thesis' research interest is similar to that of Sawani, who underscores that

> "[…] it appears abundantly clear that pre-existing dynamics have figured prominently both politically and socially since the start of the revolt against Qadhafi. By utilizing such information as is available […] it is possible to define and analyse the manifestations of these dynamics" (p. 5).

Libya has witnessed the most profound revolutionary transformations of all the Arab states since 2011. In comparison to Egypt and Tunisia, where political parties and institutions either have survived the end of the regimes or were formed in a way that they are clearly discernible, the research on Libya is still scarce (Lacher 2013b, p. 1). This is also attributable to the difficult security situation that has persisted since the civil war and the destruction of vital infrastructure such as the airport in Tripoli, which severely inhibits field research. Again, contrary to its

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3 'Transitional period' here means the time between the fall of the Gaddafi regime and the enactment of a new constitution and not to the conclusion of democratisation.

neighbouring countries, research on Libya promises insight into the constitution-drafting process of a state that did not have a constitution before. Furthermore, in Libya, no actors were able to organise outside the centre of power since opposition actors were not co-opted as they were in Egypt's authoritarian system, but opposition was not tolerated in any form whatsoever in its political system. In chapter 3.2, it will be argued that Libya had a totalitarian political system during the Gaddafi era even though the triad of democracy, authoritarianism and totalitarianism lends itself easily to criticism, first and foremost because a trifold scale is not appropriate to giving a true account of reality. Libya is the only totalitarian state of the Arab Spring, and this fact has not been recognised by research. North Korea is considered the only totalitarian state, and the end of the USSR is the last example of the collapse of a totalitarian system. Libya now provides an example of a totalitarian system undergoing profound transition which may result in a democratic political system.

Research on Libyan developments is also relevant to international decision-makers. The European Union will closely watch the developments for sub-Saharan African refugees and irregular migrants who come to Europe via Libya. They make their way across the Libyan desert and traverse the Mediterranean, heading for Italy. Libya itself has to deal with internally displaced people who fled or were forced to leave their homes during the uprising. Both the rapprochement with Gaddafi during his last years in power as well as the quick NATO intervention give rise to the assumption that Libya has something to offer Western governments.[4]

The object of this dissertation is a work in progress. On the one hand, this makes it especially relevant to current research on Libya in political science. On the other hand, it makes it more difficult to define the time span covered. Yet in this thesis, it will be argued that the collapse of the state's institutions during the civil war that started in February 2011 made it necessary to negotiate the future constitution of the Libyan polity and society and to prepare the drafting of a new constitution. The end of the old political system was sealed by the death of Gaddafi on 20 October 2011 and the formal end of hostilities on 23 October 2011, on which day the NTC pronounced that Libya was fully liberated (International Crisis Group 2012, p. 18).

The transliteration of Arabic terms has been carried out in accordance with IJMES (International Journal of Middle East Studies) rules. Geographical terms and names are employed in their generally established spellings and/or as used by scholars in the field. The "Historical Dictionary of Libya" by Ronald Bruce St

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4 For example cooperation in the Desertec project.

John (2006) was used as a reference here.[5] Where other authors are quoted, the spelling of the respective author is used.

Discourse means everything that is said at a given time and place. While for Foucault, it is the conditions which determine whether something is said or not that convey meaning in discourse, the present study derives the meaning of discourse from its historical and societal conditions and the effects of what is said in real political and social circumstances. Foucault focuses on the power of the discourse to organise knowledge, and, more relevant to this research paper, discourse as a practice of producing knowledge (Foucault, 1991, p. 77). For the purpose of this study, the constitutional discourse until the second general election, the election to the Constitutional Committee in February 2014, will be analysed. Constitutional discourse comprises all statements and utterances referring directly or indirectly to the design of the political system.

'Society' refers to historically shaped groups often holding individual value orientations (Kaupp p. 459). The notion of 'society' underlying the present study sees society as a continuous negotiation in which its contributors constantly aim to fix meaning. Society is not a totality, but the field in which cleavages articulate themselves and identities are temporarily fixed (Laclau, Mouffe 1991, pp. 142; 162). A given society can only be the object of study in so far as societal cleavages and antagonisms are examined.

Media consumption necessarily creates presuppositions with which a researcher will approach a research object. To some extent, a researcher will have constructed the object the researcher aims to understand. One is also confronted with the challenge that given terms are not politically neutral. The implication of employing the term revolution, which expresses support of the events referred to as a revolution, has been shown above. The use of Cyrenaica or Barqa for Libya's eastern region, which was an official province from 1959 until 1963, also has a political implication (Bassiouni 2013, p. 472). Emic designations will generally be preferred in this essay, such as 'Amazigh' for Libya's Berber and 'revolutionaries' for those fighting against Gaddafi's troops in the civil war. Yet some etic designations will be necessary for reasons of categorisation, for example when it comes to the Islamic spectrum of political organisations. The use of some terms such as 'democracy' also sheds light on the fact that we are dealing here with Arabic as the language of the formerly colonized and English as the language of former colonizers.[6] Foreign terms like 'democracy', which exists in Arabic as a loanword

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5 The latest edition of the Dictionary from 2014 was not available to the author.
6 The author did not consult any sources in Italian; otherwise, it would also have to be mentioned here.

(dīmuqrāṭiyya), are dismissed by political opponents on the grounds that a foreign term stood for a foreign concept. The influence of colonialism on our perception must also especially be considered when it comes to tribes in Libya, which were considered as an undifferentiated whole by the colonial administration (Anderson 1990, p. 295). It is generally easier to determine another society, whereas an emic view facilitates a focus on the changing nature and dynamics of a society.

As indicated above, research on Libya is scarce. The next chapter will provide an overview of works available and authors focusing on Libyan politics, both in Germany and internationally. What follows is an elaboration of the theoretical assumptions and methodological procedure of this study. Chapter three is an historical account of Libya from the monarchy until the revolution, to be followed by a chapter on the characteristics of Libyan society to provide the context for understanding the origins of the current constitutional discourse. Chapter five presents the core of the present study, which is, besides an introduction of key actors on the new political scene, an analysis of the central demands voiced in the discourse. The thesis will conclude with a summary of conclusions and ideas for further research.

2 State of Research, Theoretical Assumptions, Methodology

While 'the West', i.e. the NATO countries, was quick to intervene in Libya, the focus of public and scientific attention is still on other countries; in the context of German research, this is first and foremost Egypt. This may be because, as Professor Omar Kamil put it, in Germany, research on the Middle East has traditionally focused on Egypt, whereas Libya does not have a prominent place within the scientific tradition in Germany.[7] As has been said before, the situation since 2011 has made it difficult for researchers to conduct fieldwork. During the time of Gaddafi's rule, access to sources in Libya was also limited. A national archive did not exist, apart from an archive that dealt with the colonial past only. The government made an active effort to prevent social-scientific research (Schliephake 2011, p. 31).

In Germany, Wolfram Lacher from the Stiftung Wissenschaft und Politik (SWP) has done intensive recent research on Libya. His studies, in particular "Bruchlinien der Revolution. Akteure, Lager und Konflikte im neuen Libyen"(2013b)[8], offer a thorough account of the fault lines of the revolution as well as governmental and non-governmental actors. The study is substantiated by interviews conducted in Libya with party leaders, members of the GNC, etc. Lacher draws on various Arabic sources in his publications. He is also a contributor to the volume edited by Jason Pack (2013a). Hanspeter Mattes works on Libya at the German Institute of Global and Area Studies (GIGA), which focuses on security issues. To the author's knowledge, in contrast to Wolfram Lacher, Mattes has not conducted field research in Libya since 2011. The focus of his numerous publications lies on comparative studies of North African countries and Libya's foreign policy under Gaddafi. He has published an article on the success of Islamists in Libya after Gaddafi (2012b) in a volume on Islamic actors in North Africa edited by Sigrid Faath (2012). Konrad Schliephake is a geographer at the University of Würzburg and has authored works on spatial development in Libya and

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7 Personal communication by Prof. Dr Omar Kamil and Prof. Dr Thomas Demmelhuber.
8 The study is now also available in English.

written a contribution to Fritz Edlinger's "Libya" (2011) on demographics and the job market in Libya as a rentier state. A doctoral project at the Berlin Graduate School, "Muslim Cultures and Societies" by Jakob Krais, deals with Libyan history writing during the time of Italian colonisation. Jacqueline Passon, a cultural geographer at the University of Freiburg, has worked on caravan routes and been involved in establishing a student exchange programme between the University of Tripoli and Germany.

The fact that Libya is underrepresented in German research on the Middle East is also illustrated by a recent German Academic Exchange Service programme entitled 'German-Arab Transformation Partnership'. The programme offers student grants and project subsidies for Arab-German university partnerships and exchange. The countries included are Egypt and Tunisia, but not Libya. At the Nuremberg Security Conference on Europe and the Middle East that took place in July 2014 and hosted a number of prominent German scholars on the Middle East, including Guido Steinberg, there was no speech on Libya, while much attention was devoted to developments in Syria and Egypt.

Internationally, the following authors and publications are relevant to Libya's politics and have informed the present thesis. Ronald Bruce St John, who served on the International Advisory Board of The Journal of Libyan Studies and the Atlantic Council Working Group on Libya, is the author of "Libya: From Colony to Revolution" (2012), "Libya: Continuity and Change" (2011), "The Historical Dictionary of Libya" (2006) and "Libya and the United States: Two Centuries of Strife" (2002). Lisa Anderson, current President of the American University in Cairo, has written a seminal essay on tribes in Libya (Anderson 1990). She is also the author of the afterword to "The 2011 Libyan Uprisings and the Struggle for the Post-Qadhafi Future", edited by Jason Pack (2013a).

Concentration on tribes and Islamists in the book edited by Pack is typical of current Libya analysis. It may be a form of othering in which tribes and Islamism are perceived as foreign and unmodern. Interestingly, tribal structures are a central characteristic of Libya's society, while Islamism is not. Jason Pack is also the president of libya-analysis.com, a project website that offers an extensive source for material on recent Libyan affairs. Jason Pack is a historian of the Middle East at the University of Cambridge.

For a general history of Libya, refer to Dirk Vandewalle's classic "A history of modern Libya" (2006). Vandewalle also contributed the entry on Libya to "The Oxford Encyclopedia of the Modern Islamic World" (1995).

Hugh Roberts was a Senior Research Fellow at the London School of Economics and Political Science and is now professor of Middle Eastern politics at Tufts University in Boston. In an article for the London Review of Books (2011),

Roberts argues that Libya is no longer a state. His argument is dismissed by the famous Libyan novelist Hisham Matar, who accuses Roberts of disregarding Gaddafi's total suppression of the Libyan people and of "ethnocentric contempt" (2011). Sherine N. El Taraboulsi contradicts Roberts' notion as well in her noteworthy essay "A State in Purgatory - Libya and the Logic of Statelessness" (El Taraboulsi).

The role of NATO also figures prominently in Vijay Prashad's anti-imperialistic "Arab Spring, Libyan Winter" (2012). The book had already been published at the first anniversary of the overthrow of Gaddafi and is intended to provide only "[…] a few general remarks […]" (p. 8). It is limited to criticizing the role of Western countries and neoliberals in Libya in turning the Arab Spring into a "winter" in Libya.

Alison Pargeter also looks at Libya's history under Gaddafi in "The rise and fall of Qaddafi" (2012). The book does not offer new meaningful insight into Vandewalle and St John's works and does not go into detail on many issues.

Youssef Mohammed Sawani, professor of Political Science at the University of Tripoli and director of the Centre of Arab Unity Studies in Beirut, is the author of "Post-Qadhafi Libya: Interactive dynamics and the political future" (2012) in the Contemporary Arab Affairs journal. The essay has already been referred to in the introduction since its research interest is similar to that followed here. Sawani is also a member of the former regime. He was the Director of the Gaddafi Foundation. He resigned in February 2011 in order to join the uprising. It may be assumed that his political career has influenced his writings.

The Washington-based think tank Atlantic Council has a working group on Libya and regularly publishes papers on Libya, most of which are authored by Karim Mezran, who co-authored, with Jason Pack, the analysis paper "Libya's Faustian Bargains: Breaking the Appeasement Cycle" (2014), an indispensable work to understanding the political dynamics in Libya.

The Society for Libyan Studies in Oxford publishes the annual Journal of Libyan Studies, edited by Cambridge University Press. Yet its focus is mainly on archaeological and less on political issues.

Mohamed Eljarh is another of Jason Pack's co-authors on the Atlantic Council article "Localizing Power in Libya" (Pack / Eljarh 2013). Eljarh writes on Libya for Foreign Policy. His general argument is that in order for Libya's transitions to succeed, power must be vested in local actors.[9]

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9 For a criticism of his and Mezran's arguments, see Podrasky, who defends the government's appeasement policies: "Zeidan's acquiescence to militia demands in the past may have actually prevented a more dramatic confrontation between the army and other armed

An analysis free of any criticism of the Green Book is presented by Jonathan Bearman. Bearman says about Gaddafi: "As with other Arab philosophers, he [...]" (1986, p. 159). The treatment of the Green Book as a philosophical work is objectionable, as is the fact that Gaddafi's ideology is studied without consideration of the practice of a totalitarian political system and the human rights abuses committed in its name. Bearman's neutral interpretation of the Green Book and the system of direct democracy outlined therein is in stark contrast to Sawani's analysis that "Qadhafi destroyed the concept of state and institutions and made war on society and its political and civil organisations" (p. 22). Hisham Matar's comment on Hugh Roberts, that he "[…] offers Gaddafi's comical *Green Book* [emphasis in original, N. S.] the responsibility of a serious political theory […]" (2011) equally applies to Bearman's treatise on the Green Book.

Another author, Almut Hinz from Germany, also uncritically copies Gaddafi's terminology. In her contribution of the entry "Libya" to the reference work "Die Arabischen Staaten. Geschichte, Politik, Religion, Gesellschaft, Wirtschaft" (2007), she uses the terms "popular masses" introduced by Gaddafi to refer to Libya as a people's republic of the masses and a "system of direct democracy" while Libya in practice had a totalitarian system, whose 'constitution' was everything but the result of democratic processes.

The Facebook page of the youth activist group Shabab Libya[10] regularly posts links to newly published analysis papers on Libya by the authors and institutions named above. The Libyan newspaper consulted for daily news is the Libya Herald. The Tripoli Post website is not often updated and thus less useful as a source. The Libya Independent was not accessible online for unknown reasons.

The literature available on Libya is limited. Especially helpful to the present study were recent articles rather than books. The books and contributions available are either general historical works published before 2011, some of which lack the appropriate criticism towards politics under Gaddafi. Some books were hastily published when media attention focused on the country in 2011. Individual articles proved especially fruitful to the present study, such as those by Sawani and Taraboulsi, and analysis papers published by think tanks and institutions such as the International Crisis Group, the National Democratic Institute and Democracy Reporting International. The above is an overview of the literature that is available on and was consulted for the empirical study of Libya's politics and society. As

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groups at a time when the central government lacked the popular support (and fire power) necessary to do so. More importantly, it is not clear who Zeidan's successor would be, and whether they would do any better" (Podrasky 2013).
10 https://www.facebook.com/LibyanYouthMovement.

the Libyan constitutional discourse and its historical and societal sources are looked at from a discursive perspective, premises from discourse theory are applied.

Theoretical Assumptions

Discourse theoretical studies are empirical studies with a discourse as their object. Research questions and methods are not predetermined by a discourse theoretical study. For the most part, qualitative and hermeneutic proceedings are employed. Various approaches exist, including discourse analysis as the study of the use of language in given situations, critical discourse analysis as developed in the United States that promotes interference in social relations, and culturalistic discourse analysis, to name a few. (Keller 2007, pp. 13 f.)

Critical discourse analysis as developed in the European context and represented in Germany by the works of Siegfried Jäger is based on linguistic assumptions and essentially builds on Michel Foucault's works. Its core assumption is the influence of discourse on society and vice versa. It is 'critical' in that it aims to unveil ideological aspects and, as embodied and lived by Foucault, wants to interfere with and improve society. Discourses exert power; they structure and determine power relations in a society. Like Stewart Hall, critical analysts emphasize the role of collective symbols in discourse, which all members of a society know. Fragments of a discourse that relate to the same topic are referred to as discursive threads. (Keller 2007, pp. 27 f.)

Typical questions of a discourse analysis include the following: when does a discourse arise and end? Which means, linguistic and symbolic, are employed? How does the discourse create and shape objects? What are key events? Who are the senders and addressees, and which is their public? Which references are made in the discourse to other discourses? How does the discourse relate to social contexts? How does the discourse exert power on societal reality? (Keller 2007, p. 69)

Discourse as the restricted problematisation of reality bearing power effects

Michel Foucault's work, on which critical discourse theory builds, is characterised by an interest in when and how something becomes a problem for society. Foucault addresses this question by looking at how at a given period in history and place social phenomena are discursively referred to and that way of referring to phenomena is then categorised and consequently available as common knowledge.

Common knowledge then defines the normal and admissible versus the excluded. In a given society at a given time, there are processes of exclusion that define what can be said and what cannot be said at given instances and by authorised individuals (Foucault 1991, p. 11). For a critical discourse study, this entails the challenge that in a given discourse, not all statements relevant to the issue are made and that people are excluded from speaking on the topic of the discourse. Thereby the object of research will never be completely assessed. Michel Foucault's particular interest lies in when and under which circumstances new statements are made and the meaning of specific terms change (Foucault 2008, p. 552). Also, it lies in the power effects discourse has:

> "Why did people speak of sexuality, what was said about it? Which power effects were caused by what was said? [...] we are rather interested in the fact *that* [emphasis in original, N. S.] people speak about it, who speaks about it, we are interested in the places and the perspective from which people speak, the institutions which incite people to speak and save and process what has been said [...]" (Foucault 2008, p. 1036).[11]

According to Foucault, discourse is the reflection of reality, as much as a discourse is the basis of the creation of knowledge. Past discourses define what we think about the world, and objects and events become manifest in discourse:

> "But this logos at closer inspection is merely a past discourse, or rather it is the objects themselves and the events which imperceptibly turn into discourses by disclosing the secret of their own nature. The discourse is hardly more than the reflection of a truth coming into existence before its own eyes. Everything can eventually take the form of a discourse; everything can be said and the discourse can be said on everything because all objects have manifested and exchanged their meaning and can return to the silent subjectivity of the awareness of the self" (Foucault 1991, p. 32).

Discourse means all utterances and texts and their meaning which have an effect in the world (Kulaçatan 2013, p. 55). Discourse does not only cover linguistic events but also "[…] practices forming the objects they speak of" (Strüver 2009, p. 64).

According to Foucault, every discourse has a societal background and does not fall from the moon, as Hannah Arendt said about totalitarianism. The following quotation illustrates the relation between social cleavages and the discourse that is possible:

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11 Quotes from non-English sources have been translated into English by the author.

"On a much broader scale one must eventually discern the deep cleavages in the appropriation of discourses by a society. Education may be a de jure instrument that allows every individual in a society like ours to take part in any kind of discourse - we know, however, that it follows the lines drawn by the social differences, contrasts and conflicts in its distribution, in what it allows and what it prevents" (Foucault 1991, p. 30).

Besides its origin in social relations, Foucault underlines the incidental nature and discontinuities of discourse, which are restricted by the conditions of its appearance as indicated above (Foucault 1991, pp. 36 f.).

Foucault is a postmodern philosopher, for he is not interested in discovering a truth that can be found in a source text. Social reality is a product of historically specific discourses (Strüver 2009, p. 62). Truth is a product of the specific historical regulation of attributing meaning to objects and events (Strüver 2009, p. 62). Foucault is concerned with disclosing the incidental nature of discourses. Instead of trying to find continuity in the discourse, he regards it as a series of discursive events, which are utterances and statements. Of the various processes that restrict the utterable, politics and sexuality are the most meaningful. Foucault's theses are in contrast to those of normative hermeneutics, whose representatives argue that everything comes from a primary original text and that the more valuable the original text, the more valuable the discourse produced from it (Hufnagel 2014). Foucault sets himself clearly apart from that view: no utterance is less or more valuable than other utterances. Rather, he distinguishes between possible utterances and utterances that are not possible (Foucault 1991, p. 78). The merit of Foucault then is the revelation that discourse is not determined, even if it is subject to specific conditions at a given time and place. Applied to the research interest of this thesis, which is to link the current constitutional discourse to its historical and social conditions, Foucault's considerations offer the valuable insight that the constitutional discourse is not determined by Libya's political and social history. However, the country's past, including the developments since Gaddafi's fall, and societal givens set the coordinates and restrictions for which utterances and statements can be made of all the conceivable utterances and statements.

Arguing with Foucault and following his understanding of genealogy (Foucault 1991, pp. 39–41), the present work will ask how the constitutional discourse has formed under the condition of societal cleavages and coercive forces and what the established norms that have influenced it are. To address this question, two chapters will be devoted to Libya's monarchical and totalitarian periods and the structure of its society.

Temporary meaning and the empty signifier

Like Michel Foucault, Ernesto Laclau holds the assumption that objects do not carry meaning in themselves. The attribution of meaning is, however, not the result of past discourses. Laclau speaks of the partial in the sense of temporary fixation of meaning: meaning is created by attributing meaning to signifiers at a given time. The origins of the attribution of a specific meaning to an object or event receives less attention than in Foucault's writings. Meanings are partially fixed, a process Laclau refers to as "articulation" (Laclau / Mouffe 1991, p. 155).

Of particular value to the investigation at hand is Laclau's notion of the "empty signifier" (Laclau 2007, p. 65). According to Laclau, meaning can be fixed because signifiers are over-determined. Abstract terms such as 'freedom' and 'dignity' can come to be used so widely and prominently that they structure whole discourses. As discourse-structuring terms, their wealth of meaning can be so varied that they can serve as umbrella terms that embody and articulate various demands. In Laclau's language, they initially exist as elements with excess meaning. In the case of antagonistic conflicts, which, according to Laclau, are the essence of politics, different demands or particular identities can unite under an empty signifier and thus determine its meaning in a given context. The shared antagonism pushes the differences between the particular identities into the background while their equivalence increases. Yet, the differences have not been dissolved, but instead can resurface when equivalence decreases or the joint antagonism ceases to exist (Laclau 2007, p. 65). The higher the number of elements, of statements and utterances, the less specific is the empty signifier. Specific signifiers can operate as empty signifiers only at specific historical periods (Glasze / Mattissek 2009, p. 165) for they require an historical and social context to be able to assume a specific meaning.

The empty signifier is the result of social antagonistic conflicts. It is rooted in societal differences that decrease when there is a joint antagonism. It does not occur in a vacuum, but represents what had been a singular, particular identity. This formerly particular identity has prevailed in the social battle against other particular identities in the face of the occurrence of a common other. That particular identity, which has established itself as the universal identity, now defines the goal of the social struggle. It has hegemonised its social goal at a given time and place and the political and social conditions this entails. The claim that it raises remains so abstract as to allow it to become a universal definition of the goal of the social struggle of all the elements that unite under its umbrella. The empty signifier thus represents the direction of the common differences against the antagonistic other, yet it has no essential meaning. Meaning is attributed to an empty

signifier as an outcome of the struggle of societal identities against the common foe (Hebekus / Völker 2012, p. 53). Laclau and Mouffe reject any differentiation between discursive and non-discursive practices. There is no reality outside discourse, and actors contribute to discourse both by means of language as well as their behaviour (Laclau / Mouffe 1991, p. 157).

Discourse as social practice

As Foucault as well as Laclau and Mouffe emphasise, meaning is not essential but ascribed at given times and places. The means to ascribe meaning are language and practice. Through the use of language, by speaking about an object at a given time and place, we ascribe meaning to that object. The ascription of meaning is embedded in a context of political and societal conditions that make the allocation of specific meaning less or more probable. The ascription of meaning is therefore essentially arbitrary, but only to the extent allowed by historical and societal factors. For this reason, when we aim to make statements on a given political and social phenomenon, we can look at the discourse of that society. From a given discourse, we can draw conclusions about the societal conflicts of the society we are looking at:

> "Discourses are a mirror of the social relations which are produced and reproduced by social practices. This means that the antagonisms and power differences that determine the social relations also exist in the discourses in linguistic form. Discourses are social practices given linguistic form" (Belina / Dzudzek 2009, p. 131).

For Belina, discourse reflects society. However, Belina stops short of defining discourse as social practice and regards it only as a form of social practice. In critical discourse theory as defined by Rainer Keller, discourse is a social practice: besides ascribing meaning to social phenomena, the use of language is also a social activity (Keller 2007, p. 29). Since every instance of the use of language, besides creating meaning, is also a social act, it is a contribution to the struggle for the power to define meaning. It is part of the very societal conflict it speaks of. As such, the very use of language contributes to either the stabilisation or destabilisation of power relations (Keller 2007, p. 37).

What becomes obvious here is the dialectical relationship between societal relations and the discourse that both define each other:

"Describing discourse as social practice implies a dialectical relationship between a particular discursive event and the situation(s), institution(s) and social structure(s) which frame it. A dialectical relationship is a two-way relationship: the discursive event is shaped by situations, institutions and social structures, but it also shapes them" (Fairclough / Wodak 1997, p. 258).

The discourse produces, reproduces and changes society. It is simultaneously constituted by social reality and constitutes reality (Keller 2007, p. 29). "Given discursive practices constitute the social reality and are constituted by given social and material practices" (Belina / Dzudzek 2009, p. 133).

From the above considerations, the following conclusions are drawn for the present study: besides actors, it is discourse that forms social reality. Actors contribute to forming social conditions through their use of language and behaviour. Discourse is meaningful because it simultaneously mirrors and constitutes reality. While the contributors to a discourse speak of objects, the discourse as a whole 'speaks' about historical and societal relations, conflicts and antagonisms. The effect of the discourse again produces historical and societal conditions. The poststructuralist assumptions of Foucault and Laclau/Mouffe suggest that reality is a construction produced, reproduced and changed by discourse. Discourse is embedded in societal and historical limitations, and it structures and manifests power relations in the present, which in this thesis will be evidenced using the example of the Libyan constitutional discourse.

One may resort to various strategies in referring to one's own and others' participation in the discourse. Discourse contributions, utterances or statements can be assessed from different viewpoints, or framed from different angles:

"Frames therefore are (strategically coloured) viewpoints on political issues which highlight specific information and disregard others. Every public discourse is a competition of various actors for the dominant frame, on the level of communicators, media content and public opinion" (Matthes 2011, p. 12).

To illustrate the concept of framing, Jörg Matthes provides an example from current Libyan politics: armed Libyan rebels can be referred to either as "[…] fighters for democracy and freedom or religious fundamentalists" (Matthes 2011, p. 9). These two frames represent dramatically different viewpoints for looking at the same object.

The public sphere

Public discourses "[…] continuously circulate […]" (Ritzi 2014, p. 173) in the public sphere.[12] A statement made in the public discourse, therefore, may be directed towards identified addressees. Yet its audience will always be the public sphere. To be more precise, it is the political public sphere in which questions are discussed that are relevant to society as a whole. The public discourse defines what is of importance to society as a whole and as such influences the constitution of society. Consequently, "[…] ideas and theories of the public sphere are often closely related to ideas of how democratic systems shall be constituted […]" (Ritzi 2014, p. 173). The public sphere, then, in a democratic system is responsible for awarding legitimacy to the constitution of society. A constitution can be valid for a society only when its legitimacy has been established in the public sphere through discourse (Ritzi 2014, p. 177).

Where the historical development of the public sphere as the arena of public discourse has been hampered, this affects democracy because it limits the possibility of the public discourse to award legitimacy to political decisions with regard to the constitution of society (Wischke 2013, p. 8). The extreme exemplification of this is a totalitarian system in which the development of an autonomous public sphere is prevented. Totalitarian rule prevents the creation of civil society as a sphere in which opinions can be formed, as Jürgen Habermas points out in reference to Hannah Arendt's communication theory model of totalitarianism. In a totalitarian system, public exchange and opinion formation in the public sphere are suppressed by secret services (Habermas 1990, p. 47).

In chapter three, the argument will be made that Libya under Gaddafi was a totalitarian state. Against this background, an analysis of its present constitutional discourse must consider that the public sphere has been destroyed and must be established in the first place. The public sphere is the arena for meaningful exchange on questions that affect the constitution of society as a whole. As Habermas indicates, secret services play an important role in suppressing an autonomous public sphere as a discursive arena for civil society. Even where not personally or materially present, a secret service may be regarded as omnipresent, for the people internalize its presence.

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12 "Public sphere" is the author's translation of the German term 'Öffentlichkeit' as used by Jürgen Habermas. The term 'public' was dismissed as a translation, for it cannot be distinguished precisely from 'audience'. Additionally, the English publication of Jürgen Habermas' book "Strukturwandel der Öffentlichkeit" bears the title "Structural Transformation of the Public Sphere".

In Habermas' concept of the modern public sphere, the latter is an arena in which citizens compete for the best argument in a rational discourse. However, his notion of the public sphere and its citizens implies a homogeneous nation (Kulaçatan 2013, pp. 32–33). This ignores, among other factors, the various social movements founded on particular identities such as religious, sexual, ethnic, minority and other identities (Göle 2004, p. 29). Members of such particular identity groups may not be in a position to contribute to the public discourse of the majority for various reasons, including, above all, the reason that they may not have command of the language in which the public discourse takes place (Kulaçatan 2013, pp. 32–33). As a result, heterogeneous societies, i.e. societies with, for example, ethnic minorities that speak their own languages, show a segmented public sphere with partial spheres.

The above discourse theoretical assumptions will contribute to an understanding of the current constitutional discourse in Libya. They provide some particularly useful categories for analysing a given public discourse on how society shall be constituted: meaning is not essential; it is conditioned by historical and social limitations. Consequently, the meaning of a statement can be assessed only by considering historical and societal circumstances. The meaning of a statement can never be fully understood. Identities that contribute to a discourse have been formed in antagonistic societal conflicts. The existence of an antagonistic other forms common identities that articulate themselves in discourse. Contributions to a discourse can take both linguistic and practical form. Every contribution to a society's discourse is a social act that in itself has the power to change and changes reality. Where demands raised are articulated under the banner of a particularly abstract term, such a term might serve as an empty signifier. Discourse takes place in the public sphere that provides the rules for the discourse. Access to the public sphere in heterogeneous societies is distributed unequally, and societal segments with a particular identity are involved to varying extents in both the discourse of society and the discourse developing in their partial public sphere simultaneously.

Methodology

Discourse theory does not, however, prescribe a specific research methodology. In very general words, discourse theoretical research studies such as the present study aim at reconstructing the versions put forward by contributors to a discourse (Flick 2005, p. 311). As a discourse theoretical analysis, this thesis is interested in mirroring the material broadly rather than in detail (cf. Flick 2005, p. 111). As the research question suggests, its object is the description of a process, not a state (cf.

Flick 2005, p. 84): how is the current Libyan constitutional discourse developing against the background of Libya's historical and societal conditions? The outline of the present study has been elaborated by means of the material available (cf. Flick 2005, p. 69). As a discourse analysis, it is interpretative and explanatory (cf. Keller 2007, p. 30).

As Foucault suggests in his interpretation of the genealogical method (Foucault 1991), this study is interested in the origins of the current discourse. The objects of the study are actual utterances and statements, including those made through behaviour, made in the discourse. These have the power to constitute aspects of reality, which, in turn, constitute the objects of which true or false statements can be made (Foucault 1991, pp. 43 f.). It is the affirmative power of contributions to the discourse that make it possible for discourse to produce, reproduce and change reality. It is this process that Laclau and Mouffe refer to as "articulation" (Laclau / Mouffe 1991, p. 155).

The first step of this study was a preliminary identification of key actors and central topics discussed in the constitutional discourse following the fall of Gaddafi. This was done in a deductive process by following news reports and other publications on the developments in Libya. Some issues and demands have recurred regularly, suggesting that they are issues of national interest. These include, for example, the role of women and federalism. When it comes to the latter, the initial following of the news revealed that Libya's monarchical constitution of 1951, which provided for a federal system, has featured prominently as a reference in the discourse. Drawing on the propositions of Foucault and critical discourse theory concerning the dialectical relationship between discourse and societal reality, further investigations into the material were made. This was to some extent an inductive process since the hypothesis of the dialectical relationship between reality and discourse, as well as the preliminarily identified key issues, provided a focus under which the material was investigated. Yet in the process of analysing the material, these preliminary categories were constantly questioned and changed where necessary.

Concerning the material, the present study is largely hermeneutical and broadly draws on the secondary texts listed and assessed at the beginning of this chapter. As mentioned above, research in the field in Libya has been largely impossible for the given reasons and particularly since the destruction of Tripoli's airport in July 2014. A research trip to Tripoli organised by Jacqueline Passon in which the author would have participated was cancelled for security reasons. Wolfram Lacher advised the author against travelling to Libya in an email communication, adding that in any case it would be very difficult to find interview subjects in the given emergency situation. Due to the constant security issues on

the ground, contact via email or social media with Libyans in the country also proved difficult, and messages were answered with material delay or not answered at all. For these reasons, no primary data from interviews or surveys have been collected. To compensate for this shortcoming, the present thesis draws heavily on the work of authors, including Wolfram Lacher, who have substantiated their publications with information and data collected in comprehensive fieldwork, such as interviews with key actors. Interviews with key figures published by newspapers online were also considered as sources, as well as a public opinion survey by the National Democratic Institute entitled "Seeking Security: Public Opinion Survey in Libya" (Kjaerum 2013) from November 2013.

The research subject of this essay is Libyan society. The author, who has not been to or lived in Libya, therefore takes an etic perspective towards her subject. This implies that the author is not familiar with the collective symbols of the Libyan society, but can only infer meanings from the social and historical background of Libya as elaborated in the material consulted. Furthermore, the author's role of an outside observer carries the risk of falling into the trap of ethnocentrism, an accusation raised by Hisham Matar towards Roberts (Matar 2011). The author has been sensitive to this risk. Where emic designations exist beside etic designations, such as Amazigh for Berber, these will be used unless there is a given reason to use the etic term.

The present paper is written in English in order to make it accessible to a wider readership, and because most of the material investigated is in English. Still, this work adheres to German academic standards.

The central insight from the preceding considerations is the dialectical relationship between discourse and society:

> "Discourses develop in specific given historical and cultural contexts and are manifested, continued and transformed through discursive practices (reading, talking, writing, perceiving, portraying etc.)" (Strüver 2009, p. 65).

Therefore, in order to make any statements on the constitutional discourse, the historical and societal context in Libya must be examined. "The key to the present crisis - and to cutting the knot - is an accurate understanding of Libya's past" (Pack / Eljarh 2013). To this end, the subjects of the next two chapters will be Libya's history and society.

3 From the Monarchy to the Fall of Gaddafi

The following chapter is an account of the country's history, with an emphasis on those aspects of its history that have particularly informed the current debate. Moreover, special emphasis will be put on how Libyan society was constituted in the past. Three historic breaks can be identified here: first, the change from a land under Italian colonial rule to a self-ruled state constituted as a monarchy with initially a federal system of government. The federal system with its three regions and their abolition in favour of ten provinces informs today's discursive thread about federalism and decentralization. Second, Gaddafi's coup d'état, which turned Libya into a republic. His Green Book was later to become the de facto constitution of Libya. Gaddafi established a totalitarian system which prevented the development of an autonomous public sphere with a civil society engaged in public discourse. Third, the toppling of Gaddafi and the breakdown of Libya's government and administration after the uprising. The total collapse of the state institutions of the past totalitarian system has left Libya in a position where there is no starting point or recent example for the new constitution. For this reason, many references in today's discourse are made to Libya's past constitution, above all the system that preceded totalitarianism, which is the monarchy.

3.1 Libya as a Federal Monarchy

Libya as the country consisting of Tripolitania, Cyrenaica and Fezzan has existed since 1929 when Italy, which exerted colonial rule over Libya at the time, united the three regions under one governor (St John 2011, p. 1). In 1939, Tripolitania became an integral part of Italy (Hinz 2007, p. 179).[13] After Italy's defeat in World War II, Great Britain administered Tripolitania and Cyrenaica as two separate entities; France administered Fezzan. The United Nations were approached to help design Libya's future, and the British made Idris al-Sanusi king of the United King-

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13 For an in-depth account of Libya's colonial history, refer to Hinz (2007).

dom of Libya in 1950. The following year, a constitution was passed. It was in-spired by Western constitutions and provided for a federation of the three regions. On 25 December 1951, Libya gained independence (Hinz 2007, p. 180).

> The "[…] constitution was one of the most progressive of the era […]" and "[…] con-tained more rights than the average document even today" (Democracy Reporting In-ternational 2014, p. 4).[14] Some efforts were also made by the monarchy to expand the role of women in society (Obeidi 2001, p. 173).

Sanusi enjoyed legitimacy as head of the Sanusiyya order, which had played a central role in resistance to Italian colonialism from 1911 onwards (Roberts 2011). From 1962-1963, the federal United Kingdom was transformed into the Kingdom of Libya. A system of 10 administrative units replaced the three federal provinces (St John 2011, pp. 40–41). The reason for the change of the administrative system, according to Almut Hinz, was the discovery of vast oil reserves in Libya in 1959. The rapid change of Libya's economy resulted in a social conflict between the people and the political leadership which the monarchy hoped to curb by changing the administrative structure (Hinz 2007, p. 180). The effect was a strengthening of the central government (Lacher 2013b, p. 17).

In the vast country that is Libya, the king was concerned about manifesting his power. Political parties were banned, newspapers censored, demonstrations forbidden and opposition suppressed. Political conflicts were regulated by tribal conflict regulation rules; kinship determined politics. The king relied on interme-diaries in ruling Libya: he delegated authority to powerful families and a system of intermarriage consolidated their political and economic influence. "Most Liby-ans rightly concluded that only a few families controlled the country and deter-mined its destiny [...]" (St John 2011, p. 40). Thus, King Idris al-Sanusi's legiti-macy did not derive from his religious position as the head of the Sanusi order, but rather his secular power relied on a network of tribal loyalty and affiliations: "The secular strength of the Idris regime centred on a tribal constituency whose fortunes were tied to the monarchy. Political authority was exercised through local notables and tribal leaders, who served as the link between the head of the system and tribal clans" (St John 2011, p. 39). These tribal links guaranteed not only the king's po-

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14 For an in-depth assessment of the 1951 Constitution and its benefits and shortcomings as a model for Libya's new constitution, see the study "Assessment of the 1951 Constitution of Libya according to International Standards", Democracy Reporting International (2012).

litical power, but also economic success. Through alliances with local tribal leaders, the Sanusi monarchy secured control over both local and long-distance trade routes (Vandewalle 1995, p. 5).

The monarchy accumulated wealth while people complained about the unequal distribution of revenues from oil and trade. Muammar Gaddafi played on this complaint when on 1 September 1969, he and his followers staged a coup against the king. They framed the coup as a move to abolish the gap between the wealth of the political leaders and the backwardness of the people. The people were to gain self-determination and were promised education and reforms to promote Arabism. The slogan of the coup was "Freedom, Socialism and Unity" (Hinz 2007, p. 181).

3.2 Totalitarian, Centralist State under Gaddafi

In December 1969, the law for the protection of the revolution was passed (Mattes 2009, p. 1). It provided for perpetual revolution. Gaddafi and his fellow revolutionaries of 1969 did not define a constitutional goal of the revolution. Since the revolution had officially continued over the entire period of Gaddafi's rule, Hugh Roberts goes so far as to argue that Libya never became a republic (Roberts 2011).

In his Green Book, which was officially the constitution of Libya, Gaddafi introduced a system of direct democracy that worked through People's Conferences established in 1975.[15] However, it must be pointed out that Libya never had a system of direct democracy in reality. Direct democracy remained a "fiction" (Mattes 2009, p. 1). To name only one characteristic of the real political system illustrating that Libya did not have a democratic system of government, Gaddafi himself stood outside the constitutional system of government institutions. He was neither prime minister nor president (Roberts 2011). Gaddafi "[…] controlled all aspects of Libyan policy […]" without holding a formal office. This made political decisions arbitrary" (Joffé 2013, p. 26).

Gaddafi did not introduce a (direct) democratic system as outlined in the Green Book, but created a totalitarian system of government in Libya. A totalitarian system relies on the mobilization of the masses and not a particular class; therefore, totalitarian mobilization must establish the perception of a classless society. It is characterised by arbitrary political decisions by the leader(s). A powerful secret service and a system of mutual denunciation prevent and eradicate opposition

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15 For further details on the system of "direct democracy" under Gaddafi, consult Pargeter (2012).

to the leadership and its ideology; identified political opponents are extinguished (Arendt 1973, pp. 305 f.). Juan Linz speaks of a totalitarian system where at minimum the following features are combined:

> "[…] an ideology, a single mass party and other mobilisational organisations, and concentrated power in an individual and his collaborators or a small group that is not accountable to any large constituency and cannot be dislodged from power by institutionalized, peaceful means" (Linz 2000, p. 67).[16]

Power in Libya was vested with Gaddafi (Pack / Eljarh 2013), the 'Revolutionary Leader', or 'Guide', who stood above the 'constitutional' political system:

> "Words such as 'authoritarianism', 'tyranny' […] and 'dictatorship' have never really captured the particular character of this set-up but have relentlessly caricatured it. Gaddafi, unlike any other head of state, stood at the apex not of the pyramid of governing institutions but of the informal sector of the polity, which enjoyed a degree of hegemony over the formal sector that has no modern counterpart. It meant that the Jamahiriyya's formal institutions were extremely weak […]" (Roberts 2011).

The 'directly democratic' system created by Gaddafi did not create democratic institutions; rather, the People's Conferences and Congresses were organisations to mobilize the masses. Political leaders regularly manipulated votes by the People's Conferences. By authority of revolutionary legitimacy, the highest decision-making power in the political system of Libya vested with Gaddafi. This concentration of power at the political centre essentially meant that lower levels of decision-making had to obtain consent from higher instances even though the Green Book provided for decentralized decision-making (Mattes 2009, p. 6). The existence of the revolutionary sector, which consisted of Gaddafi, the revolutionary leadership and the revolutionary committees (Mattes 2009, p. 5), was in itself contradictory to a democratic system.

The enactment of the law protecting the continuation of the revolution indicates that in the revolutionary regime's view, the people needed to remain mobilized to ensure the success of the revolution. Gaddafi abolished his Arab Socialist Unity Party (Roberts 2011) and generally banned political parties in 1972 (Mattes 2009, p. 6). There existed no tolerance towards opposition. The 1980s in particular saw frequent mass executions of political opponents. Students were hanged from street lamps and mass executions were arranged in stadiums and broadcast via

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16 For a discussion of the triad of democracy, authoritarianism and totalitarianism, refer to Bank (2010).

TV.[17] The Revolutionary Guard was the omnipresent Stasi-like secret service in Libya. Where opposition activism was not regarded as a challenge to the regime, it was "[…] channelled into social cleavages that pre-existed the rule of Gaddafi […]" (Joffé 2013). To this end, Gaddafi invoked the tribal society structures which, at the beginning of his rule, he had dismissed. Where it was opportune to play the tribal card, Gaddafi would do it to direct social discontent away from his own leadership.

The ideology Gaddafi created is referred to by him as the Third Universal Theory. The ideological nature of the theory is unequivocally illustrated in Gaddafi's own words:

> "This grave state of affairs has led us to make available to peoples everywhere the Third Universal Theory. *This theory is not a human invention, nor is it some kind of new philosophy; it is based solely on the truth* [emphasis in original, N. S.]. Philosophical theories are subject to constant change by revocation or refutation, but God's law is that the truth is immortal and unalterable" Gaddafi, quoted after Bearman (1986, pp. 160 f.).

More precisely, the Third Universal Theory is not referred to as a theory but rather the sum of Gaddafi's proclamations published in the 1970s. "In practice, however, the country was governed by contradictory decrees from the leadership" (Mezran / Pickard 2014, p. 1).

Gaddafi's rule crept into the people's psyche; he manifested his power by means of his notorious sex life and did not spare the rape of young women whom he selected at universities. For this reason, Sawani argues that had Gaddafi survived, the success of the revolution would have been at stake, for "[…] his image was constructed in the minds of the populace, which fomented a belief that he possessed supra-natural qualities which transcend human norms and thereby rendered him capable of upsetting any sort of balanced status quo" (p. 22). His rape of relatives of political opponents highlights the nature of Gaddafi's totalitarian rule. This was a means of inscribing his power into the bodies of his adversaries. Annick Cojean quotes Libya's interim justice minister Mohammed al-Alagi as saying:

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17 Personal communication by Dr Magda Luthay. See also Matar (2011).

"Yes, in Libya, sex was an instrument of power: 'You'll shut up, you'll obey me, or I'll rape you, your wife, or your children.' And that's what he did, condemning every-one to silence. Rape was a political weapon before he made it into a military weapon" (p. 274).[18]

Libyans could not organise on the level of civil society, which prevented the de-velopment of an autonomous public sphere and with it of a public discourse. The existence of associations on the level of civil society, however, is the basis for the development of an autonomous public sphere as the arena for public discourse. "Totalitarian rule subjects precisely this communicative practice of the citizens to the control of the secret services" (Habermas 1990, p. 47). Under the idea of the jamahiriyya, the people represent themselves. For this reason, no legitimate oppo-sition can exist and even peacefully voiced opposition was regarded as a counter-revolutionary act. This made Libya under Gaddafi a "silent society" (Mattes 2009, p. 6).

3.3   Phases of Totalitarian Rule

Libya under Gaddafi had a totalitarian political system that prevented the devel-opment of an autonomous public sphere and with it of a public discourse. The following section will provide a more detailed account of Libya's recent history as part of the background of its current political issues. Almut Hinz (2007) and Hanspeter Mattes (2009) have identified three phases in the period of Gaddafi rule which overlap except for minor deviations of one or two years of the exact years.

During the first phase, which began with the ouster of the king, broad efforts at nationalisation were made. The revolutionaries focused on the eviction of the American and British military bases and expulsion of Italian settlers, along with the nationalisation of foreign oil companies. The Egyptian constitution was copied as a model for Libya and characterised the constitutional proclamation of 1969.

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18 Annick Cojean's book "Gaddafi's Harem" illustrates an aspect of particular cruelty: Gad-dafi would ask his newlywed employees to show pictures of the wedding. When any of the women on the pictures was attractive to him, even if it was the bride, Gaddafi sometimes arranged a meeting, often leading to the rape of that woman. When husbands found out and protested, they were ordered to be punished. Such punishment included hanging, being torn to pieces or, in two cases reported to Cojean, having their limbs tied to cars that drove in opposite directions. Newly hired guards were shown video footage of such scenes as a scare tactic (p. 214).
For human rights abuses committed under Gaddafi, see Human Rights Watch (2006).

The second phase, the establishment of the unitary party ASU in 1971, whose constituency consisted primarily of workers and peasants, proved unsuccessful at mobilising the masses (Hinz 2007, pp. 181 f.). The continuation of the revolution was the core aim of the political leadership. A reshuffle of administrative structures provided that People's Committees would also be present in enterprises; the administration as well as the economy were now controlled by the state. The ASU was transformed from a political party into an organisation with universal access. Employees were obliged to organise into professional conferences. People's Congresses on a local level and People's Committees on a regional level were established, complemented on a national level by the General People's Committees and the General People's Congresses (Hinz 2007, pp. 182 f.).

The beginning of the third phase was marked by the suspension of the Constitutional Declaration of 1969 on 2 March 1977, to be substituted by the proclamation of popular government and the publication of the first part of the Green Book. The General Secretariat of the General People's Conference replaced the Revolutionary Command Council. Gaddafi now held the title of 'Revolutionary Leader' and did not occupy an official government post (Hinz 2007, p. 183). Between 1977 and 1980, the Revolutionary Committees were established in all public institutions with their headquarters in Tripoli as a fundamental pillar of the totalitarian system. Their initial task of mobilising the masses vanished, and they became a tool of Gaddafi to control the people (Hinz 2007, p. 183). Their raison d'être was to implement Gaddafi's ideology of the Green Book among the people and to suppress any opposition to the revolution (Mattes 2009, p. 2). Consequently, segments of the opposition went into exile abroad. Libya's opposition organised in Europe and the US; it could not and did not organise in Libya (Mattes 2009, p. 4). Therefore, public discourses on Libya developed abroad but not in the country itself. The third phase also witnessed socialist reforms, including the socialisation of rental homes and educational measures. Their implementation was made possible by the omnipresent Revolutionary Committees (Hinz 2007, p. 184). Revolutionary Courts were established from 1980, which were not bound by the principles of the rule of law. The Revolutionary judicial system also resorted to extralegal measures abroad (Hinz 2007, p. 184) which included the assassination of dissidents.

In the fourth phase, which started at the end of the 1980s, Gaddafi proclaimed the 'revolution of the revolution', which meant the stabilisation of his rule and system and improved relations with the West. He distanced himself from extralegal activities abroad, political prisoners were released, and Libyans faced fewer restrictions on travelling abroad. The Libyan Human Rights Charter of 1988 was the first codification of citizens' rights, but the document had little effect (Hinz

2007, p. 185-186). In a move to counter opposition, the Code of Honour, issued on 9 March 1997, obliged Libya's tribes to suppress aggression against the regime. Failure to do so would lead to a tribe's exclusion from government services (Mattes 2009, p. 3).

During the Gaddafi era, the political system was split: on the one side, there were the formal structures of the political system in the form of the people's congresses and conferences. On the other side, there was the much more effective and powerful revolutionary sector of the revolutionary leader and the revolutionary committees which, due to their revolutionary legitimacy, did not report to a constitutional institution. In Libya's totalitarian political system, there was no separation of the executive and the legislative powers. The system of split government "[…] in the event of a system change renders unnecessary the recourse to constitutional amendments - as was necessary if there was an ordinary constitution" (Hinz 2007, p. 184). During the last two decades of Gaddafi's rule, Libya saw economic liberalisation without political liberalisation (Mattes 2009, p. 3). Gaddafi's efforts at stabilizing Libya's political system and his position in power ultimately failed, and the system collapsed in the wake of the Arab Spring with his death and the takeover of the NTC in 2011.

3.4 Collapse and New Beginning from 2011

"Among the states of the Arab Spring, Libya has probably seen the most profound transformations" (Lacher 2013b, p. 1). The multitude of new or resurfaced political forces complicates a categorization of political actors. When it comes to Libya's neighbours Egypt and Tunisia, the political landscape can more easily be categorised along party, block, ideological and institutional lines. That is owing to a lack of research on these new political actors in Libya as well as the institutional chaos created by the complete collapse of the former polity and the complexity of power relations.[19]

Unlike in Egypt and Tunisia, whose presidents were not founders of the republics, Gaddafi was the founder of the Libyan 'republic of the masses'. For this reason, the revolution in Libya was necessarily directed against both the head of state as well as the state itself (Roberts 2011). Gaddafi as the leader of his totalitarian system personally embodied the system the revolution was directed against.

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19 For a detailed account of the events and actors involved in 2011, see International Crisis Group (2012) and International Crisis Group (2011).

Other than in Tunisia and Egypt, NATO intervened and helped decide the civil war in favour of the opposition movement.[20] The influence of Libya's internal political structures also sets the developments apart from the course other Arab Spring countries haven taken (Mattes 2011). While in Egypt and Tunisia the uprising started and took place mainly in the capitals, in Libya, the revolution started in Benghazi: "Only in Libya did the 'periphery' conquer the 'centre'" (Pack 2013b, p. 5). The military played a different role than in Egypt: while members of Gaddafi's military quickly deserted in Benghazi, Gaddafi's forces fought against the people in Tripoli, turning the uprising into a civil war with the government as a party to this war (Mattes 2013, p. 1).[21] In Libya, foreign mercenaries fought on the government's side against Libyans with whom they had no relationship. In Egypt, however, the military is an integrated part of society and there were various affiliations between the members of the military and the people on Tahrir Square (Reichert 2011). According to the Libyan novelist Hisham Matar, the reasons for the Arab Spring-inspired uprising were not of an economic nature, but rather it was fuelled by demands for democratization, freedom of opinion and the press and an end to corruption (Reichert 2011).

Since the end of Italian colonial rule, Libya's constitutional history has been characterised by short-lived constitutional periods: the monarchical constitution of 1951 set up a federal government system which was to be abolished with the constitution of 1963, which established a unitary state with 10 provinces. The 1969 revolution introduced a revolutionary Constitutional Declaration. From the 1970s, sections of the Green Book were published, which was to be Libya's constitution until 2011. Regional or more centralised government has been a constant factor of negotiation in Libya's constitutional history. The distribution of resources and the provision of government services have played a role as both the reason for changes to the administrative system and as a tool of the political leadership to prevent or suppress opposition. Political leaders have relied on tribes to manifest their positions. The totalitarian rule under Gaddafi has rendered impossible a meaningful public discourse in Libya about questions of Libya's political constitution. In that respect, the monarchical period allowed more freedom. As it directly preceded the totalitarian political constitution of Libya, it serves as a natural point of reference. These are key cornerstones that inform today's discourse about a new constitution.

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20 For further reading on the role of NATO in Libya's civil war, consult Prashad (2012) and Roberts (2011).

21 For a revolutionist's account of events, refer to Suhbi (2012).

4 Libya's Society

Historical and societal conditions form the context in which a discourse develops (Strüver 2009, p. 65). In what follows, relevant characteristics of Libyan society will add to the preceding overview of Libya's modern and recent political history. What is outlined in these two chapters will constitute the background for the analysis of the current constitutional discourse in Libya. Five aspects of Libyan society have been identified to particularly inform the constitutional discourse: the relationship between the periphery and the political centre, the tribal factor, the role of religion in Libya, ethnic minorities and the role of women.

The link between state politics and society "[…] in Libya has remained subject to constraints to do with ideology, the tribes and oil. These were the primary factors that defined the relations of the structure of political authority with the social structure over the past four decades" (Sawani 2012, p. 2).

The look at Libya's society will begin with examining the relationship between the periphery and the centre, and the question of whether there is a sense of national belonging.

4.1 National Unity

The design of Libya's political system, as outlined in chapter three, contributed to strengthening non-governmental actors, such as tribal intermediaries under the monarchy. Also under Gaddafi, the central, constitutional institutions were weak. The lack of strong, functional central institutions prevented actors at the periphery from acting in the name of the centre. The peripheral actors have never been linked. Consequently, a feeling of mistrust and disaffection towards the centre on the part of the periphery has developed, which has never been transcended by any ideology or other common attachment (Pack / Eljarh 2013).

However, mistrust towards the central government and central political decision-making has not inhibited the development of a feeling of national unity:

According to Elbabour, the extent to which Libya is urbanized strengthens its national unity. From independence onwards, Libya's entire modern history has witnessed the development of a society "[…] steadfastly shaped into a flourishing urban system, perhaps reaching a state of maturity, though by developing countries' standards, at the turn of the 21st century when the great majority of the population lived in urban settlements" (2011, p. 2). Libya's low population density and geographical size have not been obstacles to the establishment of close cultural and social ties among cities and towns. This supported Libya's economic development as well as the shaping of identity of Libyans as a mobile society in which people move freely between Libya's urban centres (Elbabour 2011, p. 2). Approximately eighty per cent of Libya's inhabitants live in cities and towns. Largely, emigration from the peripheral areas is responsible for the growth of urban population, less so natural increase (Sawani 2012, p. 4). The emigrants have been former nomads and people from rural settlements. Thus, the urban centres have become melting pots in which Libyan inhabitants from all over the country and various backgrounds have assimilated. The cities of Tripoli, Misrata, Benghazi and Derna have played a crucial role here, for they have been the centres of Libya's economy, providing jobs in the oil industry. Libya is "[…] a true nation of cities" (Elbabour 2011, p. 2).

The fact that Libya is a "nation of cities" also surfaced in and shaped the 2011 revolution. The uprising began in Benghazi, and the various cities have had very different issues to tackle. In Tobruk, for example, which geographically lies at the outer periphery, locals policed the city during the Gaddafi period. Since these local police forces were closely related to the other inhabitants of Tobruk, which is characterized by tribal structures, they refused to confront the other inhabitants of Tobruk during the uprising (Pack / Eljarh 2013).

While cities have seen diverse conflicts during the uprising, there has been striking cohesion and solidarity, causing Elbabour to speak of a "system of cities":

urban communities regardless of size and location. Even under siege, cities proved to be interconnected, interdependent, and able to provide vital assistance to each other" (2011, pp. 1–2).

The Libyan "nation of cities" was not only united in the February revolution, but also in the struggle for independence from Italy after World War II. In both cases, the Libyan nation joined forces in a fight for a "noble cause": the quest for "freedom, dignity, democracy, and identity" (Elbabour 2011, p. 2). This historical continuity promoted a feeling of national identity. Nevertheless, Elbabour fails to mention the 1969 revolution and to address the question whether Libyans also stood united behind the coup against the king.

Until 2011, the central government in Tripoli under Gaddafi promoted Arab nationalism to unify the Libyan nation (Krais 2013). However, historically, the periphery has dominated the centre and political power has also been vested in decision-makers outside Tripoli (Pack / Eljarh 2013).

4.2 Neo-Tribal Associations in Libya

Influential actors on the periphery include tribal leaders. As has been outlined, both the monarchy as well as the Gaddafi government had an interest in establishing and maintaining good terms with the tribes in order to underpin their political power and prevent opposition to central government. Ronald Bruce St John and other authors speak of Libya as a "tribal society" (e.g. St John 2013, p. 100).[22]

In contrast to this view, Elbabour underlines that

"[o]f all the generalizations commonly made by foreign observers and subjectively augmented by Gaddafi about Libya, especially during the people's present remarkable quest for freedom and democracy, one of the least valid is that tribalism is pervasive in the Libyan society and its politics" (2011, p. 2).

Indeed, when it comes to elections, Libyans tend to vote for a party on the basis of its programmatic outlook, programme and performance rather than on the basis of whether they have any tribal ties to a given party. Neither do Libyans rate highly

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[22] See chapter two for Hisham's criticism of St John, who accuses the latter of ethnocentrism.
Dr Magda Luthay from Erlangen University also vehemently opposes the view that Libya is a tribal society. Personal communication.

in their decision for a party whether the party has close relations with a tribe or is supported by any given tribe (Kjaerum 2013, pp. 2; 18).

The term 'tribe' is a "[…] concept of political identity formed through common patrilineal descent" (Eickelman 1989, p. 128). The Saharan Tuareg are an exception in that their identity is based on matrilineal descent. Tribes are also a phenomenon of modern societies where 'tribe' can assume a constructive meaning and serve to maintain national identity (Eickelman 1989, p. 130).

Therefore, Elbabour is wrong when he refers to tribal structures as "[…] a thing of the past […]" (2011, p. 1). The notion that tribal structures vanish in modern states is, however, a commonly held miscalculation rooted in modernization theory assumptions:

> "[…] since the nineteenth century, Western social and political theory has treated tribe and state as inversely correlated. Implicit in the nineteenth-century idea of progress inherited by the Western development theorists of the post-war era is the notion that the modern state appears and develops at the expense of the tribe" (Anderson 1990, p. 290).

As opposed to this, tribes and the modern state are not mutually exclusive, but rather tendencies. Tendencies of tribal structures and structures of a modern state coexist to differing degrees in any society. They conflict with each other where representatives of both simultaneously claim sole responsibility for conflict resolution or for resource distribution (Anderson 1990, p. 289). This tension has influenced the development of Libya's society since it became a monarchy in 1951 and developed modern state institutions that function according to impersonal mechanisms. Therefore, "[t]he state identities that emerged after mid-century in […] Libya have been based more on 'compliance' with the state's existence rather than on modern legitimizing forces" (Khoury / Kostiner 1990). Ever since Libya became a modern state after the Second World War, its tribal structures have been at risk of losing relevance in the face of the state (Vandewalle 2006, p. 3).

Hüsken has suggested the term "associations" instead of "tribes". He speaks of 40 extended families in Libya that constituted these associations. At the core of each family, members are closely related by blood. In a broad network, these core families integrate business partners and other associates. Partners and affiliates all are members of the ʿāʾila[23], the Arabic word for what according to Hüsken is referred to as a tribe. For this reason, Hüsken substitutes the term "tribe" with "association". Each of these is headed by three to four men from a core family. Tribe

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23 Dictionary meaning: 'family'.

or association takes on the constructed meaning of referring to the integration of actors who are not related to each other through patrilineal or matrilineal descent. Rather, the reference to kinship through the designation ʿāʾila serves to establish a common identity. (Hüsken 2011, p. 54)

Lacher, however, rejects the use of neologisms to replace the word "tribe" on the grounds that, first, qabīla[24] was the emic word and best translated as tribe, and second, 'tribe' was misunderstood as implying a static social structure, which it was not. He quotes Hüsker's neologism "neo-tribal associations" as an example. Admitting that distinguishing between local structures based on tribe or other local structure is not easy, he provides the following "admittedly […] vague" definition of a tribe: "What matters is that common origin - perceived or real - is invoked as a key bond among a group of individuals that conceive themselves as being united in some form of solidarity" (Lacher 2013a, pp. 152–153). Speaking of "common origin", Lacher does not refer to patrilineal descent or kinship in general, which constitutes a substantial deviation from Eickelman's definition. The definition of "tribe" still largely matches that of Hüsker in that it also considers the constructivist aspect of establishing a common identity through reference to group solidarity, while Lacher fails to put into concrete terms what he means by "solidarity", thus failing to mention kinship at all. The disagreement, therefore, is largely about the signifier and less about the signified.

Libya's economy relies almost entirely on the petroleum industry, which does not require a society to be based on or develop the principle of division of labour. To add to this, the country's oil reserves lie in peripheral areas where power is vested with the tribal associations. Thus, it has been possible for Libya's tribes to extend their political influence at the expense of the state (Anderson 1990, pp. 300–301). Anderson's concept of a tribe includes the challenge posed by the state as an integral characteristic of Libya's tribes today. She defines them as a tendency of "[…] fidelity to ideologies and loyalties based on actual or putative ties of kinship in the face of the challenge from the state" (Anderson 1990, p. 291). Simultaneously, tribes have continued to constitute a real challenge to the state, even more so because Libyans have considered their contestation of the state legitimate. This distinguishes Libya from other Middle Eastern countries (Anderson 1990, p. 288). What Libya has in common with other Middle Eastern countries is that

"[…] the new states failed to form completely centralized bureaucracies and therefore a monopoly of authority. The transition period from empires or chiefdoms to modern

24 Dictionary meaning: (Volks-) Stamm ('tribe').

territorial states was either too short or too abrupt and uncomfortably fashioned from European models of state formation. Consequently, the new states still reflected certain tribal habits and had to accommodate a certain measure of tribal power. In Iran, Saudi Arabia, Yemen, and Libya, tribes constituted the main element in the peripheral areas of each country" (Khoury, Kostiner 1990).

During the colonial period, however, the Italian administration clamped down on the power of the tribes, primarily in Libya's east, where opposition to the Italians was strongest. To the Italians, the whole of Libya's population was perceived as a "[…] monolith non grata composed of non-descript multiple tribes […]" (El Taraboulsi). The Italians destroyed the former balance between the emerging classes and the tribes (St John 2011, p. 19). In the war of independence against Italy, Libya saw the destruction of state administrative and economic structures (Anderson 1990, pp. 292-293). Thereafter, "[t]he absence of centralized planning, administrative appointments based on kinship ties, and ad hoc taxation arrangements characterized the situation in […] Libya […] until the 1960s" (Khoury / Kostiner 1990). Tribes have consequently become a legitimate alternative to the state for Libyans (Vandewalle 2006, p. 5), while they complement central state structures and even have the power to reinforce them:

> "Tribal confederations are one of the oldest forms of organizations in Libya, they have their own systems of adjudicating differences, their own trade structures and those warrant close examination, not as an impediment - which they can be and have been - but more along the lines of an opportunity towards building a state out of local models. A state will never be built until it is in the best interest of leading tribes to give away some of their privileges in exchange for state institutions that integrate Libya within the global realm" (El Taraboulsi 2013).

Hence, while the persistence of tribal structures does not contract the conditions of a modern state and can even strengthen the state, there does exist a conflict when it comes to the modern state's monopoly on conflict resolution and control of the economy (Anderson 1990, p. 288). This conflict does not necessarily exist between the existence of strong family affiliations and a modern state. In Libya, since the 1950s, extended families have represented tribes (Anderson 1990, p. 295).

During his early reign, Gaddafi made efforts to curb the tribal associations' influence. His government redefined the borders of the administrative regions so as not to go along the lines of tribal borders as they had done before. Local administrative officers from tribes were replaced (Anderson 1990, p. 297). However, later, Gaddafi also put relatives from his own Qadadfa tribe into state positions

(Anderson 1990, p. 298). During the uprising, he invoked tribal rhetoric in an effort to delegitimise the revolt. As a response, demonstrators shouted the slogan "Libya is one nation, one clan, one family" and expressed, in the words of Elbabour, that "[…] the myth of tribalism exists only in the mind of the dictator and his few deceived followers" (2011, p. 2). The slogan is an expressive indication that the invocation of kinship plays a prominent role in Libyan politics. In no other Arab Spring country did it feature so prominently. By implication, the question whether Libya is a tribal society has been a political question since the revolution at the latest.

4.3 Religious Aspects

As tribalism has been subject to political instrumentalisation in Libya, so has Islam. Both its own rulers as well as Italian colonial rulers have attempted to play on religion for political reasons. After the fall of Gaddafi, extremist fundamentalist or jihadi groups, which have not originated in Libya but abroad, have also used Islam as a reference for framing their political goals. Despite that, the Islam of Libya has remained "moderate and tolerant [...]" (Sawani 2012, p. 3).

Islam

> "[…] has remained a central component of the cultural composition and the definition of Libyan identity. Despite the attempt of Qadhafi to substitute the ideology of the Green Book in its place, Islam remained basic and essential to the value structure of Libyan society and the primary formative element of the social system itself" (Sawani 2012, p. 3).

The overwhelming majority of Libyans are Sunni Muslims and adherents of the Maliki madhhab (school of law) (Sawani 2012, pp. 2 f.). Elbabour describes Libya as the most homogeneous country in terms of religion and culture of the Arab world and Africa (2011, p. 1).

During its monarchical period from 1951 until 1969, the king of Libya was Idris al-Sanusi, head of the Sanusi order in eastern Libya. The Sanusiyya was a Sufi order that still held a reformist ideology under the influence of colonial suppression. This makes the Sanusiyya remarkable, for "[r]eformist Islam is normally hostile to religious orders, but in tribal areas, devoid of an urban infrastructure, Sufi organisational principles provide the only available institutional tool capable of sustaining missionary work" (Khoury, Kostiner 1990, p. 120). In Tripolitania at the time, the character of Islam was rather oriented towards Ottoman influence

and the traditions of the southern region Fezzan. Culturally and religiously, Cyrenaica has been distinct from Libya's south and west:

> "The two western provinces have always been considered part of the Maghreb (the Arab west), linked primarily to Tunisia and Algeria, while eastern Libya has always been part of the Mashreq (the Arab east) and oriented to Egypt and the rest of the Arab Levant" (Roberts 2011).

Under Gaddafi, then, a policy of assimilation was pursued under the larger umbrella of an Arab nationalist ideology. According to Gaddafi, all Arabs had to be Muslims. Gaddafi even called upon Christian Arabs outside Libya to convert to Islam. In an interview with a Beirut-based daily in August 1980, he called upon the Maronites in Lebanon to convert. Following his ideology, Islamic renewal can only be championed by Arabs. The renewal of Islam has, therefore, a strong nationalist component in that it is conditioned upon Arab nationalism. Gaddafi formerly initiated a renewal of Islam through the proclamation of the Third Universal Theory, laid down in the Green Book. Yet the word 'Islam' does not occur in the Green Book. Rather, Gaddafi employs the term 'natural law'. Gaddafi regards his theoretical contemplations on religion as a corrective to deviations from natural law that have occurred in the history of the peoples. (Bearman 1986, p. 161; Al-Gaddafi no year)

More precisely, Gaddafi promoted radical ijtihād, the interpretation through reasoning of the sources of Islam. He argued that the people were better qualified to interpret Islam than the ʿulamāʾ; "The *sunna* [emphasis in original, N. S.] should not be seen as necessarily pertaining to religion, he claimed, being on the same level of codification as Roman law or the Napoleonic Code" (Bearman 1986, p. 163). He argued that the Qur'an was the only authoritative source for interpreting Islam. On the occasion of the feast of sacrifice in 1978, Gaddafi went so far as to change the Libyan calendar. It no longer counted from the hijra but from Mohammed's death ten years later in 632 AD. Invoking ijtihād, he declared that the pilgrimage to Mecca, the hajj, was not one of the essential pillars of Islam (Bearman 1986, p. 163).

In the Green Book, social, as a synonym for national, relations are regarded as the motor of history, not religion. The evolution of humankind to achieve the state of its real nature is based on social, or natural, relations, not on Islam. Gaddafi's ideology, therefore, promotes a nationalist rather than a religious agenda. His claim that laws and constitutions must adhere to natural law lets one assume that Gaddafi invokes that reference to the natural or divine law only to lend additional legitimacy to legislation. Less, though, it implies the idea of a society based

on Islamic principles. Religion stabilizes society, for it forms an integral part of people's collective identity and thus serves to unite the members of a nation. The Green Book does not claim that the founding of a (nation) state must be inspired by the foundations of Islam, for example the early Islamic period (Al-Gaddafi no year, p. 88).

The Libyan ʿulamāʾ ultimately broke with Gaddafi when, in the second part of the Green Book, he brought forward Marxist ideas such as the abolition of private ownership and wage labour: "The *Green Book* [emphasis in original, N. S.] was openly declared by several leaders of the clergy as incompatible with Islam" (Bearman 1986, p. 163). However, the nature of the dispute was not only religious interpretation. The ʿulamāʾ were from and received funds from the property-owning class with the waqf being their main source of income (Bearman 1986, p. 163).

4.4 Ethnic Minorities

While Libya's society is quite homogeneous when it comes to religion, it consists of various ethnic minorities with distinct identities. These are, above all, the Amazigh, which is the emic term for Berbers, the Tuareg and the Tebu (Krais 2013). There exist no exact data on population figures in Libya. However, it is estimated that, for example, the Amazigh constitute between three to five per cent of the population (Pack et al. 2014, p. 54).

Nevertheless, ethnicity is not a clear-cut category. It comprises the three aspects of attributes, meanings and actions (Flesken 2014, p. 13). It can apply to both the abstract term identity as well as minorities with a distinct identity (Flesken 2014, p. 3). Ethnicity describes a form of groupness in which "[…] a certain set of attributes [are] common to an aggregation of individuals, that this commonality is infused with deeper meaning, and that this meaning may give rise to both individual and collective courses of action" (Flesken 2014, p. 7) For the aspects it comprises, ethnicity must be studied as an outcome of political processes (Flesken 2014, p. 1). For the purpose of the present study, the mobilising factor of ethnicity will be particularly important. Investigating the political processes that generated the development of the group identities would go beyond the scope of this thesis. Instead, it will look at ethnicity as a reference for voicing political demands in Libya's constitutional discourse.

The Amazigh, who are the Berbers of Libya, distinguish themselves by their own language, Tamazight, which also has its own script.[25] Contrary to Libya's

25 According to St John, however, the Berber language has no written script (2006, p. 35).

majority population, they follow the Ibadi madhhab of Islam. The Ibadi madhhab is exclusive to the Amazigh in the Nafusa Mountains (Sawani 2012, p. 2).

Libya's Western Mountain region has recently seen increasing manifestations of the Arab-Amazigh dichotomy. This is to some extent attributable to tribal discord (Sawani 2012, p. 8). The Amazigh of Libya were marginalised under Gaddafi. Due to his nationalist and Arabisation politics, Gaddafi denied the existence of minorities. The use of Tamazight in public was prohibited, as was the display of the Amazigh flag.

During the uprising, the Amazigh played a crucial role in the fight against Gaddafi's troops (Abdul-Ahad 2011). The Arab Spring has provided an opportunity for the Amazigh of North Africa and particularly those of Libya, who had been denied their identity over the previous decades, to express themselves as a distinct communality with its own language. Observers have therefore coined the term 'Berber spring'. In its wake, Morocco has recognised Tamazight as an official language in its new constitution (Smith 2011). In Tripoli in 2012, an Amazigh cultural festival was staged (Hume, 2012). Dania ben Sassi, a Libyan Amazigh singer, released a song in Tamazight, which is remarkable in itself, in which she praises the sacrifices the Libyan people has made in the revolution (Dania Ben Sassi 2011). In June 2013, Nuri Abu Sahmain, a Libyan Amazigh, became the first Amazigh head of state of Libya via his election to the post of chairperson of the General National Congress (Krais 2013).

The Tebu, a non-Arab minority, live in the South of Libya and the northern region of Chad. There was a census in 1954, but that did not wield reliable results because not all Tebu living in Libya were registered. In the seventies, Gaddafi granted 30,000 Tebu Libyan citizenship. Only twenty years later, some were deprived of their Libyan citizenship again. In 2008, Gaddafi planned to strip the Tebu residents of Kufra of their Libyan citizenship, which triggered protest. During the 2011 revolution, many Tebu managed to obtain forged Libyan passports (Lacher 2013b, p. 18). In the 1960s, the Tebu presence in Fezzan and Cyrenaica "[…] contributed to Libyan interest in the Chadian rebellion […]" (St John 2006, p. 245).

Another non-Arab minority are the Tuareg of Libya, whose language developed from a Berber dialect. They live in the vicinity of Ghat and Ghadames in the southern area bordering Niger and Mali, which also have Tuareg populations. Owing to the end of caravan trade, poverty has become a problem among Libyan Tuareg. Tuareg from the neighbouring countries also served in Gaddafi's army and were therefore granted Libyan citizenship in the 1980s. (Lacher 2013b, p. 19; St John, 2006, p. 261)

4.5 Women

While ethnic minorities suffered marginalization under Gaddafi, there were extensive efforts at strengthening the role of women in Libya. Since 1970, the revolutionary leadership vehemently implemented a policy of women's empowerment. In several speeches, Gaddafi highlighted the role of women in politics, the economy, the army, in education and the health sector as an important contribution to society. Access to these sectors was therefore heavily facilitated, which aroused the furore of tribal leaders. Libya came to play a pioneering role in North Africa when it comes to women's role in society (Mattes 2009, p. 3). The Gaddafi era saw "[…] high rates of schooling for girls as well as boys, […] a degree of social and occupational promotion for women that women in many other Arab countries might well envy […]" (Roberts 2011).

Still, women's achievements in education and rights did not empower them in the political sphere, from which they largely remained excluded. Gaddafi's own peculiar relation to women and common wisdom that women in his inner circle were not chosen for their political talent contributed to this. As Doherty concludes: "Over time, stigma and limited space shifted public perceptions, feeding into a culture in which women shied away from overtly political roles and men expected them to do so" (Doherty 2012b, p. 2).

Moreover, Libya's personal status laws continued to discriminate against women, especially in matters of marriage, divorce and inheritance. Libya is a signatory to the United Nations Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW). The CEDAW Committee, in its 2009 concluding observations, mentioned these discriminatory personal status laws and criticized the unequal statutory status of women and men, addressing also the fact that polygamy is legal in Libya. The Committee went on to say that it was also "[…] concerned that the concept of male guardianship over women seems to be widely accepted and limits women's exercise of their rights under the Convention, in particular with regard to issues of personal status both de jure and de facto" (CEDAW Committee concluding observations, quoted after Muscati 2013, p. 29).

When women become victims of sexual or domestic violence, they have little opportunity to report such instances to the police or their families for fear they will be punished or stigmatised. In the same concluding observations on Libya, the CEDAW Committee also hinted at a law that makes extramarital sexual relations a crime. This law may particularly discriminate against women. The Committee also criticized the "[…] widespread practice whereby marriage between perpetrators of rape and women victims of rape is encouraged to protect the victims from

social stigma and marginalization […]" (CEDAW Committee concluding observations, quoted after Muscati 2013, p. 28). Libya had what was referred to as 'social rehabilitation facilities': the inmates of these facilities are women who have been victims of domestic and/or sexual violence. In 2005, Human Rights Watch conducted interviews with women in such facilities. From the interviews, it became clear that the women's stay in the facilities was not voluntary, but rather that they lived there in detention. "The government at the time justified the use of these 'homes' as a measure of 'protection' for women and girls suspected of having engaged in 'illicit' sex and whose families rejected them. […] Some were there for no other reason than that they had been raped, and were then ostracized for 'staining their family's honor'" (Muscati 2013, pp. 28 f.).

During the revolution, again many women became victims of systematic rape. Mohammed al-Alagi gives testimony to the fact that Gaddafi ordered the use of rape as a military weapon during the uprising: "'[…] I myself heard Moussa Koussa, his former minister of foreign affairs, state that he had seen him order the Kataeb chiefs: 'Rape first and then kill.' It went hand in hand with his way of governing and conquering through sex'" (Cojean / Jager 2013, p. 274). At places where Gaddafi's forces were stationed, boxes of Viagra were found with papers stating that they had been ordered by the State of Libya.

The concept of honour is also rooted in a tribal mentality. Tribal societies are segmented societies, and "[s]egmentation requires a 'moral' balancing of concepts of honour […]" (Eickelman 1989, p. 134). The official regime policy towards women was to encourage their political, economic and social commitment. "The findings of the survey show that the ideology of the regime has indeed been transmitted with considerable success in the field of women's rights, especially through the regime's practical policies towards women's role in society" (Obeidi 2001, p. 194). Still, the "radical transformation" (Obeidi 2001, p. 168) of the role of women was challenged by the traditional mentality, according to which "[w]omen are sex symbols and a source of shame" (Obeidi 2001, p. 171).

Libya's society, then, is influenced by tribal structures and mentality, while Libya's tribes must be understood as neo-tribal societies. Tribes have remained both an asset as well as a potential danger to the rulers. There exists a Libyan national feeling despite the fact that the three historical regions, Tripolitania, Fezzan and Cyrenaica have seen different historical developments. The centre of politics, the economy and the population are the coastal cities, including Tripoli, Benghazi and Misrata. Central government both under the monarchy as well as under Gaddafi went to great effort to extend their influence to the periphery of the vast country that is Libya, also because strong local and regional identities have persisted. When it comes to religion, there has been the Islam of the rulers and that

of the people, and Libya has no history of fundamentalism or extremist trends. Under Gaddafi, specific old aspects of society were conserved or even invigorated. This is true for the image of women as subordinates to and objects of men. This is only seemingly in contradiction with the fact that on the other hand, Gaddafi granted women formal progressive rights. Contradictory policies and irreconcilable differences between the Green Book and legislation and deeds carried out by him personally and his aides are in line with totalitarian rule. These factors have not determined, but still influence, the current discourse on a new constitution in Libya, which will be the subject of the following chapter.

5 The Libyan Constitutional Discourse

Mahmoud Jibril, Libya's interim Prime Minister and chairperson of the National Transitional Council during the civil war, underlined the importance of a new constitution in the following quote: "The moment we draft a constitution, then there is a frame of reference" (quoted after Slavin 2012).

The following is a study of the constitutional discourse as it has developed against the background of Libya's history and society. First, the Libyan constitution-drafting process will be outlined. Then, the theoretical notion of the public sphere as the arena for discourse from the first part of this thesis will be reconsidered and applied to the Libyan discourse. In the next step, relevant new actors on Libya's political scene will be introduced. And finally, issues and demands that have been the object of particular discussion in the constitutional debate will be analysed. Based on the discourse theoretical concepts elaborated in chapter two, the analysis of each thread of discourse will focus on the following aspects: who are the actors raising a given demand, and are there any cleavages among the actors who are involved in a given thread of discourse? What is the content of a given thread, and which symbols and strategies are followed when raising a given claim? How does a demand relate to the history and social characteristics of Libya? Do the relevant actors explicitly refer to them? Has a given thread of discourse or demand manifested itself in any way, for example in the development of the constitutional discourse, the law or otherwise? Who comprises the audience of the discursive thread, and is there a particular circle of addressees? How do actors frame their contributions to the discourse? Can a given claim be considered an empty signifier structuring the discourse, or are there any specifications of an abstract demand? Which power relations influence the course of a given thread of discourse? And, ultimately, is there a counter discourse?

It will be concluded that in the Libyan constitutional discourse, several demands have surfaced that are rooted in the politics during the constitutional monarchy and under Gaddafi. The monarchical period preceding Gaddafi's totalitarian rule is an important reference for today's discourse. "Omar Mukhtar's image and the flag of the Sanusi Monarchy [to which Benotman refers as the "constitutional flag", N. S.] [...] became the overarching symbols of both the uprisings and the

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Libyan people" (Benotman et al. 2013, p. 213). Those actors and societal groups which suffered most from discrimination and marginalization during the totalitarian period have used the discourse to loudly voice their demands. It is characteristic of the Libyan constitutional discourse that non-discursive strategies are employed to raise demands. This may be attributable to the fact that under the revolutionary totalitarian system, no civil society was able to develop and provide the necessary space for public discourse (Habermas 1990, p. 47).

In the literature, the various aspects of Libyan politics are discussed differently by different actors (e.g. Pack 2013a; Lacher 2013b). For this reason, no study exists that compares actors in Libya according to pre-defined categories to allow for a comparison of political goals and strategies. It is understandable that different groups, to say it very loosely, are looked at through different lenses, for ethnic minorities have been a subject of ethnology and the Muslim Brotherhood of political research on Islamism. Yet this has contributed to a lack of literature on and knowledge of what Libyan actors are aiming for in a new constitutional framework.

5.1 From NTC to Constitutional Committee Election

One month after the uprising started, the National Transitional Council established itself as a transitional government.[26] On 3 August 2011, it announced a provisional Constitutional Declaration that provided a timetable for further institution-building such as elections for a parliament, the General National Council.[27] It proclaimed the formal liberation of Libya on 23 October 2011. The creation of a Constitutional Committee was scheduled for the end of 2013. Its members were to be appointed by the GNC within one month of the latter's constituent session, and the Committee was given two months to draft a constitution and another month to put it to public referendum. The Declaration provided that in the constitution-drafting Committee, the number of members from each historical province, Tripolitania, Fezzan and Cyrenaica, must be in proportion to the population of each province.

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26 Up to this date, armed conflicts have been going on in Libya which form the background of Libya's constitutional discourse. For a distinction between militias and brigades, and especially the complex intermingling of tribal leaders, security forces and Islamist militia and the former NTC's limited options to control security in Benghazi, read Wehrey (2014).
27 For the text and a legal assessment of the Constitutional Declaration, refer to Democracy Reporting International (2013).

In total, it was to have sixty members, and the Constitutional Committee was there-fore also referred to as the 'Sixty Committee'. In January 2012, a draft law for elections to the GNC was presented. It stipulated a ten per cent quota for women, which was abolished in the face of Islamist opposition. The quota was replaced by a condition according to which party lists must alternate between male and female candidates. In March, federalists from Cyrenaica proclaimed plans for an autono-mous region of Cyrenaica. Thereupon, the NTC announced that the Constitutional Committee would consist of twenty members each from Tripolitania, Cyrenaica and Fezzan. In April 2012, the NTC abolished its ban on political parties based on ethnical or religious affiliation due to pressure from Islamists. Owing to continued pressure from eastern federalists who threatened to boycott the GNC elections, the NTC again altered the provisional Constitutional Declaration: the members of the Constitutional Committee were now to be directly elected by the people instead of being appointed by the GNC. The decision was proclaimed only two days before GNC elections, which prevented any further debate on the issue. However, the decision remained highly contested and was even taken to court. The GNC was elected on 7 July 2012, and the NTC conveyed authority to the GNC in August. Following pressure on parliament from armed groups, in May 2013, the Political Isolation Law was passed, which provides for the exclusion from public office of members of the former regime. After much delay, the GNC finally passed a law on the election of the Sixty Committee on 8 July 2013 and voter as well as candi-date registration began. The elections took place in February 2014. The Amazigh boycotted the election, leaving their six seats empty; Tebu candidates stood for election only in re-runs in April because the Tebu had initially also boycotted.[28] (Pickard 2012; Lacher 2013b)

Against the background of the development of constitutional discourse, the reasons for its delay and particularly controversially debated issues of its constitu-tional design, some initial assumptions can be made with regard to key issues of the constitutional discourse. These include the status of the three historical prov-inces that were once united in a federal monarchy, women's representation and rights, as well as the recognition and inclusion of ethnic minorities and their de-mands.

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28 For an evaluation of the institutional design of the constitution-making process, see Mez-ran, Pickard (2014).

5.2 Public Spheres and Addressees

The public sphere in which the Libyan constitutional discourse has developed is characterised by a lack of civil society. As has been elaborated before, the totalitarian system prevented the establishment of a meaningful civil society that could have created the public sphere for social discourse. A civil society has developed only since the fall of Gaddafi. In Libya, there are several partial public spheres. This is owing to the different languages spoken in Libya, which are primarily Arabic for the majority population and Tamazight for the Amazigh. Since Tamazight was suppressed by Gaddafi regulations, it now plays a special role for the Amazigh that Tamazight can be spoken freely in public. Different languages, then, create partial public spheres (Kulaçatan 2013, pp. 32 f.).

Libya's constitutional discourse also takes place in the international public sphere, for Libya's governments have relied, for example, on the United Nations to support election processes. What is more, to recover and stimulate its post-civil war economy, the Libyan government needs to establish good ties with Western countries. This is also illustrated by Islamists' accusations towards the NTC:

> "Despite their representation on it, many Islamists have tended to consider the NTC overly secular - and overly geared toward an international, namely Western audience - at the expense of what they deem to be more mainstream national values and of a constituency that had been repressed, at times brutally, under Qadhafi" (International Crisis Group 2011, p. 11).

As can be seen here, the audience addressed by given actors decides on the public sphere in which a discourse takes place. Prashad remarks as follows:

> "It is these people [the National Transitional Council, N. S.], as journalist Patrick Cockburn comments, that 'speak the best English' and are 'prepared to go before [the United States] Congress to give fulsome gratitude for America's actions'" (2012, p. 98).

General Hifter, who launched a wholescale military campaign against Islamists in May 2014 which has resulted in armed conflicts lasting to this day, returned to Libya from exile in the United States only after Gaddafi's fall. In an interview with the Washington Post, he chose a frame for his assaults on Islamist forces in Benghazi that matches that of the American war on terrorism (Schnelzer 2014). His action was a counterstrike not only serving to protect Libya but "[…] all free countries […]" and "[…] the entire world […]" (Kouddous 2014).

In addition, it can be assumed that statements made will differ according to the public addressed. When English is the language of an interview or other form of articulation, automatically the international public is addressed. Mahmoud Jibril's behaviour in an interview with the English-language al-Monitor newspaper reveals that he remains vague when asked about Islamic government in Libya:

> "Jibril did not reply when asked about a reported $ 2 billion investment by Qatar to support an Islamic government in Libya based on Shariah but said that Islamic law should provide a 'frame of reference' for a constitution that has yet to be written" (Slavin 2012).

Jibril clearly addresses the West here. It would be undemocratic in the sense that it would not represent popular Libyan opinion if Jibril did not demand that Islamic law should play a role in law-making. Jibril has also explicitly addressed 'the West' in the interview:

> "Former interim Prime Minister Mahmoud Jibril described Libya Thursday as a 'stateless society' requiring assistance from the United States and other Western nations to begin a national dialogue among its disparate factions and to stabilize the country" (Slavin 2012).

5.3 New Actors and Political System

Some new as well as old actors who have persisted since 2011 on Libya's political scene have already been introduced. The aftermath of the 2011 uprising saw a remarkable shakeup of the power and influence of relevant political actors in Libya. Among Libya's tribal associations, those that were powerful during Ottoman times and under the monarchy regained their supremacy as a consequence of the uprising. Under Gaddafi, tribal associations that were influential in the past were marginalized throughout the entire country. The 2011 uprising "[...] was in some respect a partial restoration of the pre-1969 order [...]", and the "tribal inversion [...] was characteristic of developments throughout Libya" (Smith 2013, p. 182). The Revolutionary Command Council included only two representatives from prominent tribal associations, so that the revolution curbed the influence of Libya's influential families (St John 2011, p. 48).

Libyan political actors can vaguely be divided into two opposing camps. One camp consists of those who refer to themselves as revolutionaries. While they hold differing political positions and make various political demands, they share the goal of a complete substitution of decision-makers in politics and the economy

with actors from their own ranks. The other camp comprises those forces who fear that they will continue to lose power to the revolutionary actors. This heterogeneous camp is made up of well-established moderate and conservative actors. The two camps exist in the GNC and separate cities, tribal associations and the security sector (Lacher 2013b, p. 1). The camp of the revolutionaries includes actors of the Islamic spectrum who were deprived of political power during recent decades. The opposing camp comprises, among others, members of the former regime who defected during the revolution and joined the Transitional Council. There is also a strong tension between the revolutionary foundation and the NTC for the latter is composed of members of the Gaddafi regime and of the exiled opposition who have no constituency in Libya (Lacher 2013b, p. 5).

Generally, local actors have dominated today's political Libya. In particular, advocates of regional autonomy and ethnic minorities have organised themselves. The fact that local and regional actors fought on different sides during the civil war has caused rivalries that are staged now by military means. National politics, including the composition of and debates in the GNC and among Mahmoud Jibril's government created at the end of 2012, reflect the dominance of local and regional divisions (Lacher 2013b, p. 6). Highly charged debates and violence, including the assassination of political rivals, has highlighted that another social cleavage exists between the Islamist political current and the current that is commonly referred to as 'liberal' (Sawani 2012, p. 6).

The fact that different names exist for the same organisations complicates the identification of actors. Moreover, some groups have changed their names since 2011. The Libyan Islamic Fighting Group, for example, has changed its name to the Libyan Islamic Movement for Change (LIMC) (Benotman et al. 2013, pp. 212–213). Sawani, again, refers to the Libyan Islamic Movement for Change only as the Islamic Movement for Change (2012, p. 6) but it can be reasonably assumed that he is referring to the LIMC.

Some cities and towns in Libya were strongholds of the revolution or quick to support the uprising, while others were less involved or supported the old regime. In other words, cities in Libya are either associated with the revolution or the former regime. Misrata and Zintan, to name only two, are associated with the revolution whereas Bani Walid, for example, is associated with Gaddafi (Krais 2013).

During the civil war, whenever Gaddafi's forces lost power in a particular place, local councils were established to administer that place. In the larger cities such as Tripoli and Benghazi, municipal coalitions were formed. They relied on revolutionary legitimacy and allowed only members from the given city. The mu-

nicipal coalition of Tripoli, for example, was controlled by the Muslim Brotherhood. Upon the establishment of the NTC, the Benghazi municipal coalition decided to continue to exist as a civil society organisation, for they saw the NTC as the sole future legitimate authority in Libya (Sawani 2012, pp. 16–17).

The interim National Transitional Council was established on 2 March 2011. It drew legitimacy from international recognition and recognition by Libyan municipal coalitions. Its members were not elected but self-appointed, and they defined their mandate themselves. As discussed above, they proclaimed a temporary constitution that outlined the roadmap for the formation of a government and the constitution-drafting process (Sawani 2012, p. 9). The Council members included some who were affiliated with or members of political organisations or currents and independent members from all over Libya. To counter Gaddafi's claim that the uprising was going along tribal lines, the NTC co-opted members of Gaddafi's own tribe (Sawani 2012, p. 4). Mustafa Abdul Jalil chaired the NTC from its establishment to its dissolution (Roberts 2011). Under Gaddafi, Jibril held public office from 2007 until he defected in February 2011. Mahmoud Jibril served as chairperson of the NTC's executive board (Lacher 2013b, p. 2). "Jibril was instrumental in building foreign support for the Libyan opposition and in creating a transitional council" (Slavin 2012).

From the elections to the GNC, the National Forces Alliance (NFA), a coalition of parties and civil society organisations headed by Mahmoud Jibril, emerged as the winner. The NFA is a "non-ideological melting pot" which serves the interests of the establishment and does not have a liberal outlook (Lacher 2013b, p. 2). Sawani, however, describes it as "liberal": "[…] liberal, nationalist and secularist (i.e. non-Islamist) currents, and party projects […]" (2012, p. 19). Fathi Ben Khalifa, a representative of the Amazigh, left the NTC following disputes concerning the recognition of the Amazigh (Zurutuza 2011).[29]

After its election, the GNC proved to be very powerful in Libya's institutional design.[30] According to a survey, "Libyans place high importance on GNC members' efforts to resolve conflict and directly engage citizens" (Kjaerum 2013, p. 2).

The power of the GNC stemmed from the fact that its blocs formed alliances with militia groups, and "[…] these power centres prioritize self-interest over the collective good" (Mezran 2014). The NFA was also supported by the Zintan Revolutionaries' Military Council, the Qaaqaa Brigade, and the al-Sawaiq Brigade. The Justice and Construction Party relied on the support of Misrata militias (Pack

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29 For a more thorough examination of the NFA, see Thorne (2012).
30 For a criticism of the GNC, consult Eljarh (2013a).

et al. 2014, p. 27). When demands were raised in public for the dissolution of the GNC in early 2014, it became obvious how much the survival of the GNC depended on their backing by militias:

"Zintani militias, which have so far reluctantly stood by the government, already pledged to side with the people if it takes an aggressive stance against the GNC. Meanwhile, Misratan militias, who withdrew from the capital amid widespread condemnation following the fatal clashes in Ghargour in November 2013, have promised to return to Tripoli if need be to defend the legislature and the revolution. Out of public view, Prime Minister Ali Zidan manipulates the factions gripping the legislature to maintain a hold on power, despite growing pressure from external forces urging a 'no confidence' vote to oust his administration" (Mezran 2014).

At the time of the al-Sidra port blockade by Ibrahim Jadran, the head of parliament, Nuri Abu Sahmain, ordered a special force consisting of regular soldiers and allied militiamen to the port in order to end the blockade. It was not the government under Prime Minister Ali Zeidan that commanded the force to al-Sidra. The head of parliament, therefore, has "quasi-presidential powers" (Al-Arabiya 2014).

The GNC's power, however, was not based on the GNC as an institution itself, for the GNC was highly polarized:

"Underlying much of this polarisation seems to be an inherent problem within Libya's new institutions: both the GNC and the government lack the skillset to carry out dynamic decision-making. The GNC's political blocs lack skills in mediation, consensus-development, and negotiation typical of more successful parliamentarian democracies. Moreover, much of the current paralysis is intensified by the conflictual nature of the GNC's blocs, which seem to have irreconcilable visions on almost everything" (Mezran 2013).

On the one side, there are the Muslim Brothers, Salafists, members of the exiled opposition and lawmakers from the cities who fought against the regime troops. On the other side, the GNC includes representatives from places that either supported Gaddafi or did not participate in the revolution (Lacher 2013b, p. 9). The largest blocs, however, were the Muslim Brotherhood-affiliated Justice and Construction Party and the National Forces Alliance (Mezran 2013). These are also the only two parties recognized by more than half of the respondents in a survey (Kjaerum 2013, p. 19). In fact, Libyans have many interesting reasons for voting for a particular party:

"In deciding which party to support in elections, Libyans continue to identify political factors - party identity, platform, and performance - as more important than local or

tribal ties. In general, Libyans are more likely to vote for a political party if it is seen as: promoting Libya's role internationally; representing a clear break from the former regime and a bulwark against the return of former regime members; organizationally capable and able to accomplish its goals; and, having a favorable political program. Libyans are less likely to favor a certain party for reasons pertaining to local, inter-personal, or tribal connections" (Kjaerum 2013, p. 18).

The third largest bloc in the GNC was made up of the Salafists. They are mainly from the Tripoli area and affiliated with the Grand Mufti Sadeq al-Ghariani (Lacher 2013b, p. 8). The GNC also included many 'independent' lawmakers who were either independent or were affiliated with a political party but did not run on a party list. There was a "[…] growing tendency by individual elected politicians to see themselves as institutions in and of themselves and override their party plat-forms, increasing the distance between them and the constituencies they should represent" (Mezran 2014). Nuri Abu Sahmain, as the chairperson of the GNC, became Libya's first Amazigh head of state in June 2013 (Krais 2013).

As has been hinted at before, several of Libya's new influential political fig-ures were exiled opposition figures. Ali Zeidan, Libya's Prime Minister until early 2014, had lived in exile since about 1980. He returned to Libya following the country's liberation in October 2011. Fatih Ben Khalifa, the president of the World Amazigh Congress, lived in exile in Morocco for 16 years. After that, he spent time in the Netherlands. Gaddafi pressured the Moroccan government to hand him over and was refused. After the start of the uprising in 2011, Ben Khalifa continued his opposition activities from Tunisia. He became a member of the NTC and part of its international delegation. Later, he quit the NTC over the issue of Amazigh recognition and the role of Islam (Zurutuza 2011).

5.3.1 Islamist Current

Hanspeter Mattes has diagnosed an "Islamist upsurge and strengthening of reli-gious sector" (2012b, p. 79) in Libya since 2011. For this reason, a closer look at the 'Islamist spectrum' of Libyan politics is appropriate here, though it is largely an etic term:

"Although the term 'Islamist' can be simplistic, covering as it does a wide variety of perspectives on the appropriate role of Islam - and although it is a term few Libyans would use to describe their views - several such groups have become more public since Qadhafi's fall" (International Crisis Group 2011, p. 9).

Yet it must be emphasized here that the category 'Islamist current' is only an auxiliary category. As will be elaborated on in this thesis, none of Libya's important political actors can reasonably be referred to as 'secular'. The aim of this chapter is only to give an overview of those actors who refer particularly to the role of religion in the constitution of the country. The actors described here as Islamist actors hold a wide variety of outlooks and political opinions. Libya's Muslim Brotherhood and Ansar al-Shariah are engaged in an open dispute over their opposing political outlook. A coalition composed of Ansar al-Shariah and other members has accused the Muslim Brotherhood of falsely claiming "the Islamic cause":

> "Last week, a broad alliance of Benghazi militias that now includes Ansar al-Shariah issued a defiant statement denouncing relative moderates like the Libyan Muslim Brotherhood. 'We will not accept the project of democracy, secular parties, nor the parties that falsely claim the Islamic cause,' the statement read. 'They do not represent us'" (Kirkpatrick 2014).

Paradoxically, this also legitimizes dealing with both actors in the same chapter on Islamist forces since it indirectly bears testimony to the fact that both organisations make politics with reference to the "Islamic cause".[31]

The upsurge and success of Islamist organisations and parties is due less to their membership base, which is small, but rather to the fact that Islamist organisations are highly organised and disciplined (Sawani 2012, p. 17). Its main actors have already been mentioned: the Muslim Brotherhood's Justice and Construction Party, Salafists, including Ansar al-Shariah, and Grand Mufti Sadeq al-Gharyani (Krais 2013).[32] Al-Qaeda is reported to have a presence in the Sahara region (Stocker 2013). It is only among the Islamist current that political forces with a national agenda have come to the fore (Lacher 2013b, pp. 2; 5).

The Muslim Brotherhood has existed in Libya since the 1950s and is the most prominent of all the Islamist groups. After a period of relative political liberalisation under Gaddafi, the Muslim Brotherhood changed its organisational structures a few years ago, and following a dialogue with the Gaddafi regime, many Muslim Brotherhood members were released from prison. Despite its then still-low membership, it managed to occupy central public positions in regions freed of the control of Gaddafi's troops, to the extent of leading Friday prayers. According to

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31 It should be noted that the above is a snapshot of their relationship, which may have changed after Hifter's campaign.
32 For an excellent overview of Libyan Islamist actors, refer to Ashour (2012).

Sawani, their ideology up to this day largely matches that of their mother organisation, the Muslim Brotherhood in Egypt. Members of the Libyan Muslim Brotherhood were present in all groups participating in the uprising. The Brotherhood objected to the NTC's self-mandate and published a Draft Interim National Pact in reaction to the NTC's Constitutional Proclamation. The former said that if the NTC was unable to call the convention of a General National Conference within seven days of formal liberation, city councils were to convene as a national conference (Sawani 2012, pp. 13–17). According to senior Muslim Brotherhood members, membership has doubled since February 2011, when the uprising began (International Crisis Group 2011, p. 10).[33]

Many leading figures of Libya's Salafists and Wahhabis objected to the revolt. This camp has won ground among less educated youth and is connected to Salafist currents in the Arab world, especially Saudi Arabia. Unfortunately, Sawani does not provide more details here. They do not engage in the public constitutional discourse and generally confine themselves to moral issues (Sawani 2012, p. 18).

"The most prominent figure in the Islamist spectrum - and maybe even in Libya's politics in general - is Grand Mufti Sadeq al-Ghariani" (Lacher 2013b, p. 11). Al-Ghariani was appointed director of Libya's authority for the interpretation of Islamic law in February 2012. His lifetime appointment makes clear that he must have had important influence before. His fatwas after the fall of Gaddafi were widely heard. He has voiced clear positions on political issues: for example, before the elections to the GNC in 2012, he declared that it was forbidden to vote for parties that aim to restrict the application of sharīʿa (Islamic norms). By this, he was clearly referring to the NFA (Lacher 2013b, p. 11). His position as Grand Mufti, created by the NTC in February 2012, "[…] allows the Mufti to interfere in the political scene, but does not clearly define the role of the Mufti or his responsibilities. The law also grants the Mufti and the Fatwa Council legal immunity" (Eljarh, 2014).[34]

The National Front for the Salvation of Libya, NFSL, was established during the 1980s. At the beginning, its membership base covered a wide range of the political spectrum. Many were from the diaspora opposition; now its small membership is mostly affiliated to the Islamist current. The current leadership holds a Sanusi orientation. According to Sawani, they are the only movement to have produced a clear-cut political programme (pp. 14–18). Unfortunately, however, Sawani does not elaborate further on the programme.

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33 For a detailed portray of the Libyan Muslim Brotherhood, consult Fitzgerald (2012).
34 For a concise overview of Islamic actors in Libya, refer to Mattes (2012a).

5.3.2 Civil Society Organisations

Civil society organisations have also mushroomed in Libya since 2011. The surge of civil society organisations, including social network campaigns and communities, is more attributable to the lack of organisation in the country rather than a culture of civil society. For the most part, the civil society organisations focus on "[…] human rights, women's rights or humanitarian issues" (Sawani 2012, p. 20). Only some organisations and names will be briefly mentioned here as examples.

The Libyan Women's Platform for Peace is one of these newly founded organisations. It has organised protests, submitted petitions to the NTC and the GNC, is in contact with international organisations, and gives interviews with the media. The human rights lawyer Salwa Bugaighis was also engaged in the work of the Libyan Women's Platform for Peace. It is generally committed to giving women a voice in Libya by exerting pressure on leading political organisations and figures (Naggar 2012).

Of course, the 17 February activists have been particularly important. They were responsible for the first wave of protests and have advocated political and human rights (Sawani 2012, p. 16).

The Libyan Democratic Gathering is an umbrella organisation for a variety of civil society organisations. Its members include human rights activists and other activists. In the communiqué proclaiming their founding in Tripoli on 17 September 2011, they expressly attacked the Muslim Brotherhood (Sawani 2012, p. 20).

Youth organisations among Libya's new and flourishing civil society include the Libyan Youth Forum and Shabab Libya, the Libyan Youth Movement. The latter was created during Egypt's January uprising with the aim to unite Libyan youth in preparation for a Libyan revolt. They anticipated the regime's crackdown on the media and established a network of contacts on the ground (Shabab Libya). It was co-founded by Ayat Mneina, who is living in Canada.

To summarise, formerly suppressed actors have gained power as a result of Libya's revolution. Some of Libya's new political leaders in the National Transitional Council and General National Congress had held posts under Gaddafi and defected during the uprising or had fallen out with the Gaddafi regime in the past and returned to Libya during the civil war. Local, regional and tribal affiliations have continued to play a prominent role in Libyan politics. While new parties and organisations have been established in the spectrum that is commonly referred to as 'liberal', 'secular', or 'nationalist', Islamist actors such as the Muslim Brotherhood have a history of organisation in Libya. Militias and brigades have been closely connected to blocs in the GNC, which makes both of them powerful actors.

There are actors who benefit from the partial inversion of political power in Libya and those who fear losing influence.

5.4 Discursive Threads

There is no national cleavage between the revolutionary spectrum and that of those who fear losing ground if the revolutionary powers gain more influence. Conflicts are restricted to the local level and individual sectors. Interestingly, therefore, the cleavage is not between the two sides of the civil war. This gives rise to the presumption that the war must have unleashed other simmering conflicts (Lacher 2013b, p. 1). The fact that the conflicts in Libya since 2011 have also gone along historical societal cleavages makes it indispensable to look at the country's society and history for an evaluation of its present discourse. "One critical factor was the political elite's failure to recognize that the 2011 uprisings had exacerbated Libya's pre-existing societal fissures, actually pitting various portions of the Libyan population against each other" (Pack et al. 2014, p. 13).

During the uprising, astonishing recourse was made to Libya's former monarchy; its flag was prominently flown (Roberts 2011): "Furthermore, the appearance and amazing proliferation of the constitutional flag, the symbol of national independence, fluttering almost everywhere in great numbers and shapes, bears unmistakable witness to such unity" (Elbabour 2011, p. 2). There were also voices among Libya's political leaders expressing the belief that the 1951 constitution should serve as a model for the new one and would facilitate consensus on critical issues.

In this chapter, the study will examine key issues of Libya's constitutional discourse. The previous deliberations, including those concerning Libya's monarchical and totalitarian history as well as the characteristics of its new political system, will serve as the background for understanding the individual discursive threads, above all the demands raised by actors. The issues of democracy, federalism or decentralisation, the role of religion in politics, women's representation and recognition of ethnic minority identities are identified as essential categories. The following criteria are authoritative in determining these discursive threads: the topic must have echoed frequently in the material researched, which is deemed sufficiently comprehensive to allow for the conclusions made and generalisations as to the constitutional discourse; a given discursive thread includes demands that are either raised by several actors or at least have met any reaction in the form of a counter discourse or effect; an issue must be relevant to the constitution and the

general future of Libya's politics and society. Moreover, Lacher as well as Mezran, both well-established and proven experts on Libyan politics, consider the demands for federalism or decentralization and the future position of religion in politics as central policy areas. Lacher adds to this list the future rights of minorities (Mezran / Pickard 2014, p. 5; Lacher 2013b, pp. 2; 19). The author has included the role of women in the list of key issues for the future Libya. The constitution process has been delayed over the dispute as to how political representation can be ensured for women in elections. The 10 per cent quota was abolished and replaced by a system of alternation between female and male candidates on party lists, referred to as the zipper-list-system, which was advocated by the Libyan Women's Platform for Peace. The outcome of the elections in terms of women candidates' success was received very well, also by the international community.[35] Therefore, women's political role has proven to be a central issue for the polity of Libya. This being the case, the present study does not aim to provide an exhaustive account of the constitutional discourse. Instead, it will focus on selected discursive threads, which nevertheless will address the critical aspects of the constitutional discourse that will continue to influence Libyan political debates. Moreover, the selected categories illustrate policy-making in Libya after the end of totalitarianism and serve to identify key actors.

As outlined at the beginning of this chapter, the focus of interpretation in the elaboration of each discursive thread will be the actors involved, demands raised, strategies employed, symbols used, the historical and societal background, effects, addressees, framing, the identification of any empty signifiers, relevant power relations and the identification of counter-discourses. Depending on relevance and the material available, each point will be given more or less attention in the discussion of the individual threads.

5.4.1 Democracy

Article 1 of the Constitutional Declaration of 3 August 2011 reads: "Libya is an independent democratic state" (Democracy Reporting International 2011). Elbabour has identified a historical continuity from the war of independence to the February 2011 revolution. This continuity followed a linear and teleological development with the result of a "democratic civil society" (Elbabour 2011, p. 2). Elbabour's point that the development has led to democracy must, however, be rejected. But given Article 1 of the Constitutional Declaration, it is reasonable that

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35 Email communication by Ayat Mneina.

in the Libyan constitutional discourse, liberation from the totalitarian regime under Gaddafi is equated with liberation from the Italian colonial forces, which marked the establishment of a constitutional republic in Libya in 1951.

For Elbabour, democracy is closely connected to civil society. This corresponds to the concept of democracy held by the 'liberal' political spectrum:

> "Their [according to Sawani: liberal, nationalist, and leftist currents, N. S.] representatives advocate a civil state and warn that the danger to democracy is not only its being divested of any social or economic content, but also in its potential to be hijacked under an Islamic rubric" (Sawani 2012, p. 6).

The above quotation indicates two important points: first, the term 'democracy' is an empty signifier in Libya's constitutional discourse. It has become depleted of concrete meaning: it is a demand raised by all influential political actors, including important actors from the Islamist spectrum, and the term has come to structure constitutional discourse in the sense that 'democracy' is referred to implicitly or expressly as the result of a teleological development, as Elbabour's quotation highlights. Second, there is no such binary as 'democratic' versus 'Islam' or 'Islamist'. The demand for democracy in the Libyan context is not per se rejected by actors from the Islamist spectrum. The notion of a 'civil society' or a 'civil state' is directly linked to the idea of democracy. The totalitarian government did not rule by a powerful army, but rather by a totalitarian ideology defended by the revolutionary command councils and the suppression of civil society. For this reason, 'civil' cannot form the counterpart to 'military' here, as has been the case in Egypt with its army, which has traditionally commanded great political influence. Against this background, 'civil' must be interpreted to mean that power will be vested in the people and as an opposite to the suppression of the people. Hence, it can be interpreted as a synonym of 'democratic'.

A look at Libyan Islamic actors' stance on democracy reveals how much consensus there is in the Libyan discourse that Libya should be constituted as a democratic state. Libya's Muslim Brotherhood embraces democracy. They view democracy as a technique or an instrument to be used. According to Sawani, the Brotherhood is "[…] cautious with voicing objection to a civil state" (p. 6). Bashir Kabti, a member of the Amazigh minority elected as president of Libya's Muslim Brotherhood in November 2011 (Fitzgerald 2012), in his inaugural address expressed his idea of Libya as a "democratic civil state" with an "Islamic frame of reference" (Fitzgerald 2012). This reproduced the election campaign platform of the Justice and Construction Party, the political party that has emerged from the Muslim Brotherhood. Again, 'democratic' can refer to myriad concrete meanings.

According to Fitzgerald, "Libyan Islamists, when pushed as to what exactly they mean by this, tend to define it [democracy, N. S.] as meaning that no law passed in the nascent state would contradict Islam" (2012).

Libya's Ansar al-Shariah uncompromisingly reject democracy (Kirkpatrick 2014). Abdal Hakim Bilhaj, the leader of the Libyan Fighting Group, surfaced as head of the Tripoli Military Council and acted as Tripoli's military governor. Sawani describes the Libyan Fighting Group as 'jihadi'. Yet Bilhaj has stressed that he supports a democratic and civil state. Members of this group were released from prison as part of an eventual dialogue with the regime only a few days before the beginning of the uprising, which was "[…] vital fuel for the revolution" (Sawani 2012, pp. 18–19). The National Front for the Salvation of Libya demanded that the temporary political authority have a democratic mandate. However, their position on other issues suggests that the group in fact rejects democracy. It criticized the Constitutional Proclamation on points of citizens' rights such as freedom of opinion, arguing that any such freedoms were subject to restrictions found in Islamic law (Sawani 2012, p. 14-16).

The demand for democracy echoes the wishes for democracy of the Arab Spring. It comes as one aspect of the ouster of Gaddafi and therefore is a clear indication that Libyans did not experience Gaddafi's 'direct democracy' as democracy.

5.4.2 Federalism, Decentralisation, Localisation

The distribution of power among the national, regional and local levels is a central issue of the constitutional process (Lacher 2013b, p. 2). This discursive thread has been strongly informed by Libya's political history since the monarchical period:

> "At the core of the decentralization debate is Libya's history of deinstitutionalization, which Dirk Vandewalle, a leading expert on Libya, has argued is rooted in the founding of the country in the 1950s. Libya's first constitution crafted a kingdom out of three Ottoman provinces turned Italian colonies. Before this, Libya had not existed as a unified entity. A new constitution was drafted with equal representation from each of the three provinces, and a federal pact was established whereby each of the provinces retained sovereignty over a defined set of policy areas" (Pickard 2013).

Decentralisation and federalism are also topics that are important to Libya's ethnic minorities: the definition of administrative units determines the membership of administrative councils, and ethnic minority representatives have reason to fear

that borders will be drawn in a way to make them a minority in administrative councils (Lacher 2013b, p. 23). Therefore, "[d]ecentralization is shaping up to be a defining feature of the constitution-making process […]" (Pickard 2013).

According to Mezran, decentralisation and federalism comprise one and the same demand:

> "The conflict between federalists and anti-federalists about the future shape of the state is one of Libya's most intense conflicts. Federalists, strongest in the east, demand significant powers for their region, arguing that anything less would amount to marginalization akin to that of the Qaddafi regime. Others consider federalism to be a stand-in for the disintegration of the state and the rejection of central government. The binary debate over federalism or central government is a red herring, however, as both terms capture a wide range of constitutional design options. The constituent assembly should move beyond the semantics and leave terminology aside. Indeed, many decentralized states, including Spain and South Africa, have deliberately eschewed the word federalism" (Mezran / Pickard 2014, p. 5)

Pickard also states that decentralisation and federalism are only two labels for the same discussion (Pickard, 01.10.2013). Yet while both terms stand for a discursive thread that has as its object the sharing of power among national, regional and local political institutions, federalism has come to mean something more specific in Libya's constitutional discourse. Decentralisation is to be understood here as the demand for state corporations and ministries to be moved to Benghazi. It differs substantially from the concept of devolution as practiced in the United Kingdom. The federalist movement, in contrast, calls for more autonomy of the historical regions, independence from the central government and a bigger share in oil revenues. In that respect, federalism forms a counter-discourse to decentralisation. While the federalist movement does not enjoy wide support, demands for decentralisation are welcomed more widely (Lacher 2013b, p. 18). Against this background, Böckenförde's definition of 'decentralisation' does not hold in the Libyan context:

> "This report understands decentralisation as a generic term for the transfer of some governmental authority and power away from the national centre to lower levels of government or administration. Decentralisation is thus understood as a territorial concept. Authorities and powers are allocated to regional, provincial or local and municipal levels" (2013, p. 7).

On the contrary, against the background of Gaddafi's centralisation policies and people's sense of national identity und unity, decentralisation stands for the demand that Libya continue to exist as a unitary state with central government institutions also existing outside Tripoli. That demand was met by plans of the Libyan government to move the GNC and the headquarters of the state oil company back to Benghazi from Tripoli. It was moved to Tripoli under Gaddafi (Reuters). Federalism is related to an end of marginalisation:

> "The NTC, which moved from Benghazi to Tripoli on 26 August 2011, also faced intense criticism from eastern-based federalists, who advocated immediate solutions to the decades of marginalisation under the Qadhafi regime" (Democracy Reporting International 2013, p. 6).

The demand for decentralisation must be viewed as a synonym for the empowerment of peripheral administration by allocating regional and municipal authority in national administration:

> "Questions of decentralization pervade policy debates in Libya. After decades of harsh and highly centralized rule under Muammar Qaddafi, policymakers, scholars, and civil-society activists are contemplating how to unpack state authority to empower cities and regional development" (Pickard 2013).

Sawani refers to the Libyan intellectual al-Awlaki and points to the danger that decentralisation, which he contrasts with federalism, fosters competition among tribes and regions. Decentralization, thus, has played into the hands of reactionary forces and prejuiced democratic developments and modernisation (Sawani 2012, p. 5).

What Böckenförde and others refer to when they speak of decentralisation in the Libyan context is localisation, the transfer of power from central state institutions to local ones:

> "Only truly national institutions answerable to the elected government can jump-start the economy and administer the mega-infrastructural projects that Libya so desperately needs. Since centrally-controlled institutions threaten their own local arrangements, the stronger localities prevent such attempts at centralization. For any nation-wide institution-building process to succeed it must be driven by a web of relationships between the state and local communities. The institution formation process must be both bottom-up and top-down simultaneously. Paradoxically, to build centralized institutions the central Libyan government must first localize itself. Localization is the only way to address many of the central government's failures by drawing upon

the functioning sub-national institutions in Libya that are better positioned to respond to the expectations and aspirations of the Libyan people" (Pack / Eljarh 2013).

Here Pack contradicts Sawani by stating that strengthening local centres of decision-making contributes to building strong central institutions. Throughout Libya's history, power has been vested with local power centres and central governments have resorted to forming close ties with the periphery. This has enabled them to strengthen their power base.

On 6 March 2012, a Conference of the People of Cyrenaica was held in al-Bayda. It was attended by political leaders, civil society activists, representatives of the military as well as tribal associations (Sadiki 2012). It was led by, among others, Ahmed al-Zubair al-Sanusi, a descendant of King Idris al-Sanusi. The Conference's demands centred on four issues. First, it called for the unity of all Libyan regions to counter marginalisation. It demanded equality, both for Libya's regions and citizens. Libya as a state should remain sovereign and independent. Second, the NTC was addressed and requested to introduce a federal system in Libya. Third, the monarchical constitution of 1951 should be modernised and serve as Libya's constitution. Fourth, the election law adopted by the NTC was criticised, for it disadvantaged the three historical regions (Sadiki 2012). The UN resolution of 1949, which created the federation of Cyrenaica, Tripoli and Fezzan, provided for twenty seats for each region in the Constituent Committee (Sadiki 2012). A delegation of the conference visited Qatar, from which fact Sawani concludes that a regionalist attitude prevails over a national one, despite the fact that the communiqué from the Conference underscores Libya's national unity. Sawani remarks that commentators have concluded that behind the doors of the Conference, however, members of the gathering demanded a federal system (p. 7). However, the open demand for the restitution of the 1951 federal constitution is already an indication that the gathering favoured a federal system. The demand also highlights that the gathering did not demand separation. The framing they used was that of equality and anti-marginalisation, two issues that all Libyans can relate to after the Gaddafi era. Since 1951, Libya has become urbanised to a large degree. During the civil war, some of the most intense conflicts were between cities within the same region, such as Misrata and Zintan, causing Pickard to conclude that "[t]he 20-20-20 arrangement is a 1951 solution to a 2013 problem" (2013). Moreover, the 1951 constitution as a model for a new constitution is problematic. The federal arrangement the constitution stipulated was abolished only twelve years after it became effective because it proved unsuccessful after the discovery of massive oil reserves in Libya (Democracy Reporting International 2014, p. 4).

The demands raised by the Conference had effects on the constitutional discourse. The call for equality of the three historical regions was met by the NTC. It changed the constitution of the future constitutional assembly to be made up of 20 members from each region and abolished the original stipulation that membership be based on population size.

On 1 June 2013, more than 3,000 members of the Cyrenaica Transitional Council (CTC), created in opposition to the National Transitional Council, gathered to declare Cyrenaica an autonomous region under the Constitution of 1951 (Bassiouni 2013, p. 472). The unilateral action of the Conference to declare Cyrenaica an autonomous region did not meet broad support in Cyrenaica. It was opposed by revolutionary brigades, the Muslim Brotherhood and local councils.

The federalist movement "[...] is fuelled by the grief over the region's political and economic marginalisation under Gaddafi and the nostalgic memory of one's leadership role during the monarchy in the fifties and sixties" (Lacher 2013b, p. 17). Its strategy to call for a boycott of the July 2012 GNC elections failed. However, the threat led the NTC to determine that the constitution-drafting committee was to be directly elected by the people. The demand for a boycott resulted in splits among the federalist movement (Lacher 2013b, p. 3).

A split occurred between al-Sanusi and Ibrahim Jadhran. Jadhran was a commander of the government's petroleum facility guards. Jadhran and his supporters relied on action as a strategy: he blockaded oil ports in eastern Libya, preventing the export of oil, and has thereby evolved as the "self-styled leader" of the federalist movement (Mezran 2014). Jadhran's government, the Cyrenaica Political Bureau, founded its own oil company in Tobruk in a move to gain income and to demonstrate its power to the central government (Mezran / Pickard 2014, p. 6).

Jadhran's aim is to translate the economic power of the eastern province Cyrenaica into political power. In November 2013, he formed a government of twenty members. Their demands primarily included a greater share of Libya's oil revenues and increased autonomy for Cyrenaica (Keilberth 2013). Jadhran issued an announcement that addressed the NTC and listed the demands for the creation of an

"[…] independent investigation panel to look into allegations of widespread corruption in the oil industry; an oversight commission led by representatives from Barqa, Tarabulus, and Fizzan, to oversee all of the National Oil Corporation's marketing and sales deals; and a mechanism to ensure better oil wealth distribution to benefit local economies in oil-rich regions" (Eljarh, 2013b).

Jadhran's strategy of oil-port blockades played on Cyrenaica's vast oil reserves: eighty per cent of Libya's oil reserves are in Cyrenaica, as are three of the country's four refineries (Sadiki 2012).

However, only 15 per cent of people in Cyrenaica support the idea of federalism, with eight per cent of Libyans being in favour of a federal state. But "[t]his minority is more vocal than the majority, however […]" (Pack et al. 2014, p. 13).

Over the course of 2013, demands for the autonomy of Fezzan were raised. The "[…] demands are partly driven by rivalries over territorial control: formalizing their de facto authority over regional spheres of influence is the logical next step for competing armed factions" (Lacher 2014, p. 8). Tebu and Tuareg communities in Fezzan have been split on the claim for autonomy in Fezzan. A reason for this is that the Gaddafi regime, after the beginning of the revolt, was committed to dividing the country. The demand for secession of the south from the 'new' Libya echoes the aim of Gaddafi politics. Representatives of the Qadhadhfa, Magarha, Tuareg and Ahali who were allied with the former regime proclaimed Fezzan a federal region (Libya al-Mostaqbal, 2013). Yet, the declaration was commonly dismissed across Fezzan and was made without broad consultation. Affiliation with the Gaddafi regime is a crucial issue behind federalist agitation in Fezzan:

> "Among the Tuareg, politicians who had been influential under the Qaddafi regime have sought to mobilize Tuareg of Sahelian origin for the federalist cause with promises that they would push for citizenship rights. In sum, though federalist mobilization has been largely inconsequential to date, it has underlined the fractures among and between different communities" (Lacher 2014, p. 8).

While federalism and decentralisation are not key issues to Libya's Amazigh, Ali Munir Abul Soud, a Libyan Amazigh member of the World Amazigh Council, holds the following view on federalism:

> "In my opinion, the federal system may be successful in a nascent country and may bring good to Libya. Libya was established in 1951, it formed its institutions and departments based on the federal system, and at its current situation, it is in bad need for a federal government or a decentralised system with broad powers" (al-Gattani 2013).

5.4.3   The Role of Religion in Politics

According to Lacher, the role of Islam is not likely to cause divisions in the process of formulating the new constitution (Lacher 2013b, p. 2). This is true as far as a

role for sharīʿa in law-making is concerned, as Elham Saudi, Director of Lawyers for Justice in Libya, suggests:

> "In Libya, whether you are a so-called secularist or liberal politician or you're an Islamist politician, Sharia has to be the focal point of your conversation, when it comes to legislating. No one is suggesting the option of potentially lowering the role of Sharia beyond it being a primary source of legislation" (Naselli 2014, p. 5).

According to a Benghazi University survey, forty per cent of Libyans want sharīʿa to be the only source of legislation (University of Benghazi 2013). However, the Islamist versus non-Islamist divide has played a crucial role in Libya's latest descent into conflict, starting with Haftar's assault on Islamist forces in Benghazi. Therefore, the institutional and legislative integration of Islamists such as the Muslim Brotherhood and the exact role of sharīʿa is a crucial issue in Libya's constitutional discourse. "Like Egypt and Tunisia, the debate about the role of Islam in Libya's constitution begins with the formulation of the role of sharia (Islamic law) in lawmaking: should sharia be the only source, the principal source, or a source among sources for legislation?" (Mezran / Pickard 2014, p. 5) It is "Libyans from across the political spectrum [who] believe that questions of Islam and sharia are important for the constituent assembly to consider […]" (Mezran / Pickard 2014, p. 5).

In his Liberation speech, NTC chairperson Mustafa Abdul-Jalil said that "islāmunā wasaṭī": that sharīʿa should be the principle source of legislation, and that he rejected any form of extremism (al-Jazeera 2011). His underlining of the importance of sharīʿa met with criticism from Fathi Ben Khalifa, an Amazigh representative. Yet the liberation speech was addressed to the entire Libyan public, and Jalil made it clear that his idea of the role of sharīʿa differs substantially from that held by 'extremists'. Jalil invoked the example of a Gaddafi-era law that restricted polygamy to illustrate that laws must not contradict sharīʿa. The law against polygamy was against sharīʿa and therefore needed to be abolished so polygamy could be legalised again (St John, 2013a).

While Jalil made the remarks in Arabic and towards the Libyan public, Mahmoud Jibril, the former Prime Minister, spoke about the role of sharīʿa in English in an interview with al-Monitor. When the interviewer inquired about a reported $ 2 billion investment made by Qatar to Libya designated to support Islamic government founded on sharīʿa, Jibril did not reply. Instead, Jibril replied that Islamic law should provide a "frame of reference" for the future constitution (Slavin 2012). Jibril clearly addresses a "Western" audience here, for he remains vague on

the role of sharīʿa. "While Jibril was categorical that 'Sharia is our frame of reference and every law which contradicts Sharia should be rejected,' he said the job of interpreting exactly what that means should be left to experts" (Krais 2013). That Islam should be a frame of reference is also the opinion voiced by Muslim Brotherhood representatives, as mentioned above. Like democracy, it is a broadly shared view in Libyan politics.

Grand Mufti Ghariani upholds that the role of sharīʿa as a source of law must not be put to referendum. This announcement met with little criticism, for there is consensus in Libya on that point. Thus, "[…] there is no secular political camp in Libya" (Lacher 2013b, p. 11). The charter of the National Forces Alliance holds that sharīʿa is the main source of legislation. When head of parliament Mohammed al-Magariaf said during an interview that Libya should be a secular state, he was attacked not only by members of the Muslim Brotherhood, but also by members of his own National Forces Alliance (Lacher 2013b, p. 6).

The National Front for the Salvation of Libya demands that the legislative power of any future parliament must be constitutionally restricted so that any laws passed must conform to sharīʿa. It has called for seats in the constitution-drafting assembly to ensure that sharīʿa be observed (Sawani 2012, p. 15).

The Group of the Ulama of Libya has no mandate by the ʿulamāʾ of Libya nor any other official legitimacy. Yet the ʿulamāʾ issued a communiqué on 10 October 2011, two months after the Constitutional Proclamation, in which they outline their demands regarding the constitution: the Constitutional Proclamation must comply with Islamic law and must not contradict its source principles. To this end, the ʿulamāʾ must be consulted. A committee of ʿulamāʾ must form part of the body drafting the final constitution to guarantee that the constitution is in accordance with the foundations of Islam. sharīʿa is of necessity the only source of legislation. They demanded changes to Article 1 of the Constitutional Declaration, according to which the people are the source of authority, in a way that it makes clear that "[…] authority derives its legitimacy from the people in respect of what does not contravene the shar' (law) of Allah" (Sawani 2012, p. 15).

In his inaugural address as head of the Libyan Muslim Brotherhood, Bashir Kabti referred to his vision of Libya as a state with an "Islamic frame of reference" (quoted after Fitzgerald 2012). According to Mary Fitzgerald, "Libyan Islamists, when pushed as to what exactly they mean by this, tend to define it as meaning that no law passed in the nascent state would contradict Islam" (2012). In his framing of the Muslim Brotherhood's vision, the concept of sacrifice featured prominently. "The movement experienced severe repression under Qaddafi - members were referred to as 'wayward dogs' and many were executed or jailed" (Fitzgerald 2012). Many of the Muslim Brotherhood's leadership were jailed in Abu Salim

prison, where during the Gaddafi era, more than 1,000 inmates were killed at one time under dubious circumstances. The Brotherhood's Justice and Construction Party launched its election campaign at the now empty Abu Salim prison, a meaningful symbol for the extent its outlook is informed by suppression under Gaddafi (Fitzgerald 2012). Libya's Muslim Brotherhood also initiated a demand for the dissolution of the NTC, arguing that its composition did not follow the Islamic principle of the bayʾa (pledge of allegiance) (Sawani 2012, p. 13). One of the problems the Libyan Muslim Brotherhood has faced in contributing to the discourse is that it was not in a position to disseminate their visions including their stance on the role of sharīʿa via the media:

> "Bashir Kabti and many other leadership figures believe much of the movement's image problem in Libya is down to fact it has does not have a TV channel [sic.] 'Many other Libyan channels are working against the Brotherhood, trying to put all the Islamists in one box. When people bring weapons to the street to demand sharia, these channels say 'This is Ikhwan' and they say the same when people destroy the Sufi mosques, graves, and shrines. It is very difficult to challenge this when we have no TV channel to put our message across'" (Fitzgerald 2012).

5.4.4 The Role of Women

As discussed in chapter three, the suppression of women was a means of exercising power under Gaddafi's revolutionary regime. While women enjoyed equal education to men's during the last decades and access to certain sections of the labour market was facilitated for women, there has existed a mentality in Libya in which women are subordinate to men and the concept of honour restricts women's freedom. Now, Ibrahim Sharqieh (2013) identifies women as a key agent of national reconciliation in Libya.

Although the Constitutional Declaration proclaimed in August 2011 was finally amended to stipulate that the constitution drafting committee would comprise 60 members due to pressure from federalist activists, it provided no mechanism for the representation of women on the committee. Women's advocacy groups were infuriated that women would not be guaranteed seats on the body (Doherty 2012b, p. 9).

As a Human Rights Watch Report highlights,

> "[g]iven the fundamental importance of a constitution in upholding and promoting women's rights, ensuring women's representation on the Constituent Assembly is a

key concern of the Libyan women's rights activists that Human Rights Watch interviewed" (Muscati 2013, p. 20).

To this end, women's rights organisations were concerned with and defined strategies to enshrine the protection of women's rights in the constitution and make sure that women are represented on the constitution-drafting committee.

It is therefore remarkable that Lacher does not count the debate about women's rights as a central issue of Libya's constitutional discourse (Lacher 2013b). This is even more surprising considering that the legitimacy of Libya's government or parliament will be measured against its degree of inclusiveness: "Although Libya has striven to build a democratic state, gradual erosion of a commitment to inclusion - particularly of women - undermines the new government's potential legitimacy" (St John, 2013a). Inclusiveness, meaning that all segments of society are represented, is even more important when it comes to the composition of a constituent assembly than in a parliamentary election. "The current Constitutional Declaration does not bar discrimination on the basis of sex or ethnicity, making the electoral law the only defence against such discrimination in the electoral process" (Democracy Reporting International 2013, p. 13). The debate about women's representation is hence an essential issue in the constitutional discourse and must also be included in an investigation of Libya's constitutional discourse. The current debate is decisive for the future role of women in Libyan politics and society.

The state of Libya is a signatory to the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW. Under Article 7, it is required to take steps to eliminate the discrimination of women in politics, including that women contribute equally to men when formulating government policies. In Article 3, Libya is obliged to take political and other measures to ensure women's empowerment "for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men" (Democracy Reporting International 2013, p. 13). Libya's current constitutional discourse offers an opportunity to create the basis for the future fulfilment of these international obligations.[36]

Following the assumption of critical discourse analysis that any contribution to the discourse in itself changes societal reality, the public discourse on women's political representation has itself manifested the idea that women must be politically represented, and that this must be ensured by lawmakers. Women also stood

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36 For the CEDAW Committee Concluding Observations as well as the legal situation of women in Libya, refer to Muscati (2013).

as candidates in the GNC election and challenged the image of Libyan women through their election campaigns. While it is not only the political demands that they voice which have the power to change the position of women where met by legislators, their campaigns in themselves have changed relations between men and women in Libya. This is illustrated by the following episode described by Human Rights Watch:

> "Some female candidates told Human Rights Watch that they tried to attract voter interest through different methods, including posters, websites, and campaigning in the streets. Women's faces beamed from election posters in Tripoli and Benghazi, a significant innovation in a culture that prizes traditional notions of female modesty and is unused to such public displays of women, according to rights activists. Some female candidates engaged male voters on the streets, even in the evenings, challenging another taboo in Libya's traditional society. Human Rights Watch saw Amal Mohamed B'ayou, an independent candidate in Benghazi, handing out election pamphlets to passengers of passing cars one evening in early July. Nearby, her two sisters also handed out pamphlets and initiated conversations, including with young men, which could have been culturally inappropriate in another context" (Muscati 2013, p. 18).

The fact that the discourse about women's rights and political representation had as an effect spontaneous conversations among unacquainted young women and men in the street shows the direct social power of discourse as assumed in critical discourse theory.

The reasons the demand for women's appropriate political inclusion has become uncontested include also the fact that women played a vital role during the revolution.

> "Women organized and participated in protests, they petitioned, wrote policy reports and advocated for the recognition of the NTC to the international community, they spearheaded media campaigns both inside and abroad (…) they were part and parcel of the uprising and in many respects its backbone."[37]

Prominent examples of Libyan women activists in the revolution are Salwa Bugaighis, a lawyer from Benghazi who was a founding member of the NTC and involved in the National Dialogue, among other activities, and Ayat Mneina. Women also organised food, cared for wounded fighters and smuggled weapons and ammunition to the front lines. After the revolution, civil society movements

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37 Email communication by Ayat Mneina.

that developed out of women's activism demanded inclusion in the political transition as a natural consequence of their commitment (Doherty 2012b, pp. 1–2). Doherty attributes the fact that women stood for election to the circumstance, among others, that "[p]ersonal involvement in the revolution gave ordinary Libyans a sense of responsibility for the direction of their country […]" (2012b, p. 3).

As early as in November 2011, the civil society organisations Voice of Libyan Women and the Attawasul Association for Youth, Women, and Children held Libya's first women's conference on a national level. The aim of the conference was to draft proposals as to how women can be included in Libya's transitional processes (Doherty 2012b, p. 3).

When the protests in Benghazi began in 2011, Salwa Boughaigis was among the first women protestors and among the first who went out into the streets in general. Boughaigis was assassinated in Benghazi in June 2014. She was a human rights lawyer from Benghazi and advocated women's rights. She was a member of the NTC and Deputy Chairwoman of the Libyan National Dialogue Preparatory Commission (Mneina 2014). Salwa Boughaigis has become an iconic figure in the struggle for women's rights in Libya. Her death caused outrage and mourning in social media and international newspapers reported on her assassination and biography. She had resigned from her post on the NTC on the grounds that the policies of the Council discriminated against women and that she had no real influence on decision-making (Doherty 2012b, p. 3). Power relations were such that she, as a woman and women's rights advocate, had no real power to contribute her demands to the constitutional process.

In an interview with the Initiative for Women, Peace, and Security of Georgetown University, Boughaigis elaborated on the reasons why women are not equally represented in Libya's political leadership and on her strategy to change that. In this interview, she identifies as the reason women are not represented in influential institutions the fact that during the Gaddafi era, no women were in power. This factor created the psychologically manifested image that political leaders are men, not women. Moreover, she regards the still prevalent tribal mentality in Libya as a reason for the continued political discrimination against women. Her strategy, therefore, is to change the mentality towards women in Libya. She sees the key to women's empowerment not in the drafting of laws or the constitution ("It's not about constitution and laws," Georgetown University 2014) but rather in raising awareness and thereby influencing the mentality. As the strategy to raise awareness, she lists the examples of increasing women's presence in the media, political lobbying and exerting pressure on political decision-makers. She also demands that school curricula be changed. While women have enjoyed broad education over the past decades under Gaddafi, women's access to

the job market has been restricted to certain sectors. In textbooks, women were still portrayed only in caring professions such as doctors and nurses, cleaning personnel, or as those taking care of children, but not as leaders. Boughaigis, however, admits that her strategy of changing people's mentality would involve long-term effort (Georgetown University 2014). Yet her demand for a fifty per cent quota in the election law testifies to the fact that she did not rely only on a change of attitude, but also on affirmative action. The change of mentality was her long-term goal, and the institutionalization of women's representation in the country's political leadership through a quota a short-term goal. As in the case with women's election campaigns, it is not only the fulfilment of her demands and their effects in the constitutional process that is decisive. The very fact that she was a member of Libya's interim government and that she enjoyed such prominent attention in Libyan and international media in itself changed the constitutional discourse.

Boughaigis was an active member of the civil society organisation Libyan Women's Platform for Peace that, in January 2012, demanded a fifty per cent quota.[38] This demand itself set a high stake as the basis for negotiating the proportion of the quota and rules for ensuring women's representation in general. The organisation's aim is to give Libyan women a voice. They talk to the media, submit petitions to the political institutions, organise demonstrations and address international organisations with the request that they pressure Libyan politicians. The existence of the organisation and its work constitutes a form of empowerment of women, for under the totalitarian system of Gaddafi, membership in an organisation or party which was not answerable to the regime was forbidden and punishable as treason (Naggar 2012).

In August and September 2012, there was a conference of women's rights activists and GNC members in Tripoli on the constitutional process. A gathering of women's groups initiated The Right Committee campaign. It addressed the GNC and demanded a 30 per cent quota for the constitution-drafting committee in the case that it was formed through election. In a meeting with Mohammed Magarief, head of the GNC, civil society organisations championing women's rights passed a petition to Magarief in which they demanded affirmative action as the strategy to guarantee women's representation on the constitution-drafting body. "According to the Voice of Libyan Women, one of the organisations involved, Magarief showed strong support for affirmative action to ensure women's inclusion in the Constituent Assembly" (Muscati 2013, p. 21). Magarief said that the empowerment of women was essential in building a democratic and free Libya.

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38 For the importance of quotas for promoting women's political participation in transition processes, see Doherty 2013.

In January 2013, the Voice of Libyan Women organisation held a conference in Tripoli which was attended by women's rights activists. This conference suggested a thirty-five per cent quota for the constituent assembly. Their demands included that the latter have a gender expert to provide advice. While these civil society organisations have supported the cause of women from outside the institutions, there were also female members of the GNC committed to women's political inclusion:

> "On January 13, 2013, Congresswoman Hana al-Orfi from Misrata announced that 29 congresswomen had formed a cross-party women's bloc in the GNC to promote women's rights and push for female representation on the Constituent Assembly. The bloc's formation came days after Zawiya Congressman Mohammed al-Kilani criticized the presence of women in the congress, saying that the attire of congresswomen and gender mixing within the GNC had caused God to be furious with the legislature, resulting in the Congress' shortcomings" (Muscati 2013, pp. 21 f.).

The counter-discourse to women's inclusion in political processes was also shared by the NFSL, which rejects the equality of men and women. Affirmative action in the form of a quota amounted to a corruption of democracy and equality between women and men was against the divine order (Sawani 2012, p. 15). Other women's rights activists also opposed the demand for a quota and instead championed equal conditions for men and women (Doherty 2012b, p. 5).[39]

The effects of the discourse on women's inclusion were as follows. Article 15 of the law on the election of the GNC stipulated a closed-list zipper system: in concrete terms, this means that party lists must alternate between male and female candidates, and on half of a party's lists women candidates must hold the top position. However, out of the two hundred seats, one hundred and twenty were reserved for independent candidates, whether affiliated to a party or not, for which no measures were taken to ensure the election of women (Doherty 2012b, p. 5). The result of the July 2012 GNC election was that 16.5 per cent of lawmakers were women. The quota had a measurable effect: thirty-two of the women elected ran on competing party lists (Doherty 2012b, p. 1).

The law governing the election to the constituent assembly finally provided for a ten per cent quota for women. This may seem like an achievement compared to the GNC election law, which did not prescribe a quota but the alternation of male and female candidates on party lists. Nevertheless, a representation of women amounting to sixteen per cent in the GNC was realised, while the constituent assembly election law made more than ten per cent improbable. "Assuming

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39 For Libyan opinions on women in politics, refer to Doherty (2012a).

that the electoral system will make it difficult for women to win other seats, 10 per cent falls significantly short of the UN Beijing target of 30 per cent and the 16 per cent in the GNC achieved by a vertical and horizontal zipper for the list-based seats" (Democracy Reporting International 2013, p. 13).

The electoral quota system also attracts criticism in the Democracy Reporting International Report on the grounds that it discriminates against men candidates:

> "The quota for women is very low at a total of six, or 10 per cent of the membership of the assembly. Two women's seats are allocated to each of the three regions, and assigned to particular sub-constituencies. In the western region, two sub-constituencies are specifically assigned to women. This arrangement restricts voters' choices and the right to candidature for men" (Democracy Reporting International 2013, p. 13).

5.4.5 Recognition of Identity

The rights of the Amazigh, Tebu and Tuareg ethnic minorities is a key issue in the constitutional debate (Lacher 2013b, p. 2). In general terms, Libya's ethnic minorities demand recognition of their cultural and linguistic heritage and an end to their economic and societal discrimination (Krais 2013). As stated in chapter three, the identities of ethnic minorities were suppressed under Gaddafi's nationalist Arabisation politics, and the political discrimination has continued to this day (Lacher 2013b, p. 18). The current constitutional debate has opened a window for the Amazigh to escape the decades of silencing:

> "After long decades of suppression by Qadhafi of the Amazigh […], the current state of political fluidity and the absence of any strong political authority has opened the door to all forms of expression among the Amazigh of Libya" (Sawani 2012, p. 21).

As was the case with women, Amazigh people contributed to the uprising against Gaddafi and have now raised the demand to be included in politics: "The revolt against Qadhafi in the region of Jabal Nafusah was characterized by clear expressions of its Amazigh components" (Sawani 2012, p. 21). The new expression of Amazigh identity in North African countries has been referred to as the 'Amazigh Spring'. It includes the proliferation of the Amazigh language, the showing of the blue, green and yellow flag with a symbolic red figure representing the 'free man', and the flourishing of Amazigh music. In Libya, Dania Ben Sassi has become a

well-known Amazigh singer. "Simply singing in Tamazight (a.k.a. the Berber language), which Gaddafi's regime outlawed, was a pretty revolutionary act" (Dania Ben Sassi 2011).

Members of the Amazigh explicitly refer to their suppression under Gaddafi as the reason why now they have demanded special consideration in politics:

> "The concerns we heard in Jadu [place known for Amazigh militia, N. S.] are reminiscent of what many localities and regions are proclaiming these days - that they were wronged under Qadhafi and that they deserve redress in terms of special privileges, political over-representation, local control over local resources, and a disproportionate share of government funds. These are emotional narratives that foster local cohesion against the specter of an evil central government, and they help block the authorities' attempts to coordinate with the local administrations that were created by the revolutionary mobilization" (Pack / Raynolds 2013).

Ali Munir Abul Soud, one of five members representing Libya's Amazigh in the World Amazigh Congress, said in an interview that the Amazigh are preoccupied with finding a nation-wide consensus on the following: "[…] name of state, its language, identity, flag and its national anthem" (al-Gattani 2013). These are issues typically laid down in a constitution.

Three important Amazigh actors have contributed to Libya's constitutional discourse: the leaders of Local Councils in the Amazigh region of the Nafusa Mountains[40], the Amazigh Supreme Council of Libya, headed by Ibrahim Makhlouf, and the World Amazigh Council, headed by Fatih Ben Khalifa. According to a Libyan representative to the World Amazigh Council, "[t]he relationship with the World Amazigh Congress is a connection with affiliate Amazigh associations and has nothing to do with Libyan affairs. Recommendations are not made by it, but by the Supreme Council of Amazigh which includes all local councils of Amazigh cities in Libya" (al-Gattani 2013). Nouri Abu Sahmain, who was president of the GNC from 25 June 2013 until 5 August 2014, was also an Amazigh. He was Libya's first Amazigh head of state. Yet an Amazigh meeting between the Amazigh Supreme Council and three to four hundred Amazigh in February 2014 strongly criticised Nouri Abu Sahmain for ignoring the Amazigh cause. In addition, criticism was voiced at the meeting that Amazigh who speak only Arabic were ignored. The Amazigh's discourse has focused on the recognition of the Amazigh language, Tamazight. What added to the discontent was that documents could be submitted in the meeting only when they had been drafted in Tamazight

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40 In his effort to gloss over the existence of the ethnic minority of the Amazigh, Gaddafi called the Nafusa Mountains 'Western Mountains'.

(Hasairi 2014b). Ali Munir Abul Soud voiced objection to Amazigh activists' closing of border crossings with Tunisia and blockading oil flows: "What the Amazigh revolutionaries have done is a big mistake that hurts the national economy. However, this act has been done by many Libyans not just the Amazighs" (al-Gattani 2013).

In an unprecedented move in Libya's recent history, Amazigh held a general conference on 26 September 2011. The aim of the conference was to secure rights for the Amazigh in the new constitution. One of the demands raised was that Tamazight and the written script, Tifnagh, be recognised in the constitution as an official language as well as Arabic. According to Sawani, the general orientation does not want to jeopardize Libya's national unity, yet some leading figures have spoken of some form of independence or affiliation to the other Amazigh of North Africa. A prominent leader openly dismissed Arabism (Sawani 2012, p. 8). The day following the conference witnessed the largest protest of Amazigh in the history of Libya in Tripoli. After the conference, Fathi Ben Khalifa complained: "Can you believe that nobody in the NTC bothered to call us to sit down and talk afterwards?" (Zurutuza 2011) This is also an indication that the Amazigh's demands are largely ignored by Libya's new political leadership and that their community is not in any position that would allow them to enforce their claims.

The recognition of Tamazight as an official state language in the constitution is symbolic of the recognition of Amazigh presence and identity in Libya (Zurutuza 2011). The Amazigh flag is also a forceful symbol for Amazigh identity. This is particularly significant, for under Gaddafi, it was strictly prohibited to display the flag (Lane 2011).

Fathi Ben Khalifa, who is an Amazigh dissident from Libya and former NTC representative, has complained that the Amazigh are completely ignored in the constitutional proclamation of August 2011. (National Transitional Council) They are not mentioned and their identity, their presence in Libya and their language are not recognised (Zurutuza 2011). According to Fathi Ben Khalifa, the Amazigh are confronted with the same situation they knew under Gaddafi. As a representative of the federalist movement, Khalifa also refers to Libya's history before Gaddafi as a starting point for the Amazigh's current demand for recognition of their identity and existence in Libya: "Then Gadhafi came with his assimilation policies and a horrendous dictatorship that lasted four decades so the issue was totally out of the question" (Zurutuza 2011).

In July 2013, the Amazigh representatives to the GNC resigned from their posts

"[…] because they felt that their language should be enshrined in law as an official language of Libya alongside Arabic - before the constitutional committee that is tasked with drafting the constitution is even elected and convened" (Pack / Raynolds 2013)

At an Amazigh demonstration in Zuwara on the occasion of the Constitutional Committee election on 19 February 2014, protestors framed their demands with the slogan "We will not recognise those who do not recognise us" (Hasairi 2014b). This was in support of the Amazigh Supreme Council's decision to boycott the Constitutional Committee election. The Supreme Council was also the author of that slogan. The day of the protest was referred to as a "Day of Mourning" and a "black day" (Hasairi 2014b). Only two seats were reserved for the Amazigh in the elections. Demands shouted also included the recognition of Tamazight as an official state language, and criticism was addressed to the GNC. The Amazigh candidates then boycotted the election to the Constitutional Committee, which was finally held on 20 February 2014. The two seats reserved for the Amazigh remained empty. The Committee, therefore, consisted of only fifty-eight members instead of the sixty stipulated in the election law (Hasairi 2014b). This further decreases the Amazigh's power position in Libya after Gaddafi and means that they can only contribute to the constitutional discourse from outside the institutions.

The central issue for the Tebu minority is citizenship. The origin of this issue is that under the totalitarian regime, a characteristic of which was arbitrary rule and ever-changing policy-making, the Tebu were alternately granted and deprived of Libyan citizenship. During the uprising, the Tebu were depicted as Chadian mercenaries, which was easy since the citizenship of many Tebu is not clear. The Libyan media widely reported this as fact. (Lacher 2013b, p. 18). The Libyan National Tebu Convention enjoys broad support. Its leadership maintains close relations to Tebu-dominated military units (Lacher 2013b, pp. 18–19).

The Tebu have raised political demands concerning administration on a local level in Tebu areas as well as economic demands for their community in the southeast of Libya. In a demonstration, Tebu protestors demanded that the Tebu town of Rebyana be linked to Libya's national electricity grid. Demands were voiced for a municipal council for Rebyana and for the creation of a sub-municipal council for the Tebu districts in Kufra where, at the time, all council members were Arab (Adel 2013). In addition to their strategy of protesting, Tebu activists once resorted to blocking the Sarir power station for two weeks (Adel 2013).

As with the Tebu, citizenship is a central issue to Libya's Tuareg. Starting in the 1980s, Gaddafi granted citizenship to thousands of Malian and Nigerien Tuareg in order to have them serve in his army. Therefore, there is a strong connection

between Libyan Tuareg and those in Mali and Niger. The Integrity Commission, responsible for excluding from public office anyone who held official positions under Gaddafi, banned Tuareg members from the GNC as an outcome of the Political Isolation Law.[41] Consequently, from September 2012 until February 2013, there were no representatives of the Tuareg in the GNC. Thus, the Tuareg "[…] were not in a position to influence the formation of the government and the debate on the constitutional process" (Lacher 2013b, p. 9).

Libya's Tawergha are in a particularly precarious position. The town of Tawergha is close to revolutionary Misrata, and the cities were involved in heavy fighting during the civil war. The Tawergha, or some of them, fought at Gaddafi's side. After the town's capture by Misratans on 11 August 2011, many Tawergha became internally displaced. They fear acts of revenge, especially on the part of Misratans, upon their return to Tawergha. For this reason, the Tawergha have been primarily concerned with survival and not the constitution (Sawani 2012, p. 7). Again, the plight of the Tawerghans shows that the uprising reopened historical cleavages glossed over by Gaddafi's totalitarian regime: "When the 2011 uprising rolled around, the guns and rockets of war ignited long-running tensions between the towns" (Atkinson 2014). Human Rights Watch refers to the Misratan offensive against Tawergha, which expelled all its inhabitants, as "ethnic cleansing" (Atkinson 2014).

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41 The Political Isolation Law was passed by the GNC after heavy pressure from Islamist militias on 14 May 2013 (Lacher 2013b, p. 10). For a thorough investigation of the Law and its ramifications as well as alternatives to political exclusion as a means of transitional justice in emerging democracies, see David, Mzioudet (2014).

6 Conclusion

Ali Munir Abul Soud, Libyan representative to the World Amazigh Council, emphasised that the Amazigh "[…] problem for the time being is not with the constitution; the Amazigh members have resigned from the General National Congress (GNC) in protest of its failure to approve the principle of consensus in the constitutional commission law (the 60-member panel)" (al-Gattani 2013). This is typical of the Libyan constitutional discourse: as the women's activist Salwa Boughaigis underscored, Abul Soud also expresses that the Amazigh community was not concerned with the constitution itself but its drafting. The institutional design for drafting the constitution is expected to adequately represent a given community. This is the primary occupation of most communities introduced in the preceding chapter. Simultaneously, communities do define demands, such as the recognition of Tamazight as an official language, that are typically stipulated in a constitution.

The strategies followed to ensure representation in the constitutional process as well as to voice and reinforce political demands include civil disobedience such as the boycott of elections, affirmative action in the form of demanding a quota for women in elections, protests, force including pressuring parliament and the recourse to affiliated militias and brigades, and exerting pressure on the central government by blocking central infrastructure such as oil ports, pipelines and power stations. The effects of raising demands in these ways have been changes in the constitutional process and institutional design of Libya's interim political institutions rather than promises that particular demands as to the content of the constitution would be met.

Libya under Gaddafi had no codified constitution that could provide a model for a new constitution. After the coup against King Idris al-Sanusi, Gaddafi ruled under a revolutionary Constitutional Declaration. In the 1970s, the Green Book replaced the declaration as the effective constitution of Libya. However, the political constitution outlined in the Green Book had no legitimacy and it bluntly contradicted the reality of the government of the revolutionary sector. Hence, Libyans have no model for a constitution in recent history. Therefore, frequent reference is

made to the original monarchical constitution of 1951, which provided for a federal system. Despite its shortcomings and its abolition only a few years later, the 1951 constitution is commonly regarded very positively.

Moreover, the suppression of both public discourse and the emergence of a civil society that would have provided the sphere for public discourse during the totalitarian period preceding the 2011 uprising renders the drafting of a constitution and consensus on issues of national importance particularly difficult. The denial of the existence of ethnic minorities and the general prevention of a discourse and contest along societal cleavages, the existence of which was denied by the totalitarian ideology, have resulted in an all-out resurgence of splits along ethnic, regional and other lines.

Actors involved in the constitutional discourse can be found at the local and national levels. There are cleavages between those representatives of a community who fought as revolutionaries during the uprising and those who were not actively involved in the fighting. The controversies are about strategies rather than aims, as is the case with the Amazigh and the women's movement. There is a cleavage as to the content of demands between federalists and decentralists, yet this stems from the fact that federalism and decentralisation mean different things in the Libyan context and must therefore be looked at as two separate demands. These actors address their demands to the central government in Tripoli, despite the fact that historically, Libya's periphery has been very powerful and suspicious of central government. When it comes to language, claims are often framed as oppositions to what was absent during the Gaddafi era. Whether a given community is in a position to raise and enforce its demands depends on its power position. The latter is influenced by whether a given community has managed to emerge from the revolution in a victorious or defeated position and whether it fought on Gaddafi's side or against it. As a result of the Political Isolation Law, members of the Amazigh community were excluded from the GNC and key decisions. In addition, the success of enforcing demands depends on the power to control resources, first and foremost oil facilities.

Where a strategy of raising demands has proven successful for one community, it might be copied by another:

"Alongside that you have to look at what's happening in the west of Libya, where Amazigh groups and groups around Zintan, and then down in the south Tebu, have also been blockading fields and pipelines in various ways, because they've seen what advantage Jadran has secured from that and have decided to do the same thing" (Naselli 2014, p. 6).

While Libya's constitutional discourse has been very 'progressive', as it were, to some respect, particularly in the debate about a quota for women in the elections, the enforcement of claims by force contradicts Weber's definition of a modern state and also the concept of democracy. The demands of those who play according to democratic rules are neglected. Instead, the strategy of voicing demands in the discourse through practice has proven successful: "The authors argue that *the proximal cause of most of Libya's current interlocked political and security problems is the central authorities' penchant for appeasement* [emphasis in original, N. S.]" (Pack et al. 2014, p. 18).

Two national elections have fuelled hopes for Libya's political future. The third national election in 2014, however, has destroyed some of that hope. The contestation of the results and the establishment of a parallel parliament have reinforced violent conflicts. Still, Libya's public constitutional discourse has created and reinforced public debate about important issues, and as discourse theoretical assumptions suggest, that discourse will have an impact on the future discourse. As an example, the debate about women's representation in leading political institutions and the discussion and acceptance of quotas as a means of affirmative action will be perpetuated in the future discourse on women's political representation and the role of women in society in general.

Roberts contends that "Libya no longer has - or is - a state" (Roberts 2011). Vandewalle disagrees with Roberts' understanding. While there had been tension between the continuance of family and tribe as a form of political community, the impersonal structures of a modern state developed simultaneously (Vandewalle 2006, p. 3). Lisa Anderson, however, argues that kinship-based politics and the state are not mutually exclusive categories, but rather tendencies and characteristics of every society (Anderson 1990, p. 289). Sawani, who was not part of the debate between Roberts and Vandewalle, concludes that Libyan tribes have not transformed into an institution that exists in parallel with the institutions of the modern state (Sawani 2012, p. 2). Thereby, Sawani suggests the possibility of a modern state integrating tribal forms of decision-making, supporting Vandewalle and Anderson's point. Essentially, the question remains what Libya is if not a modern state, as Roberts claims. Here, further research on Libya's stateness and integration of kinship-based political decision-making might render interesting results.

Another research desideratum lies in the field of Transition Justice since the fall of Gaddafi. The strategy applied in Libya has been that of lustration, the exclusion of former officials from holding public office, under the Political Isolation Law (David, Mzioudet 2014). Other measures, such as taking members of the former regime to court or even to The Hague, have also been attempted in Libya.

However, to the author's knowledge, no comprehensive study on Transitional Justice in Libya since 2011 has yet been presented.

While the present study has focused on societal cleavages and differing demands with regard to the new constitution, further research would be appreciated on the factors uniting the Libyan nation. A first study on the topic has been advanced by Ibrahim Sharqieh (Sharqieh 2013). The work of the National Dialogue Initiative would provide a foundation for such research (Talverdian / Pruegel 2014).

Since 2011, despite the still-difficult access for researchers to the country owing to the precarious security situation, more information on Gaddafi's totalitarian rule has become available. This is reason to rewrite Libya's history under Gaddafi. Hannah Arendt wrote that totalitarianism does not fall from the moon. What comes after totalitarianism does not fall from the moon either.

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Appendix

**Draft Constitutional Charter
for the Transitional Stage**

The Constitutional Declaration

In the Name of God, the Merciful, the Compassionate

The Interim Transitional National Council

In view of our belief in the Revolution of the7th day of February, 2011 AD corresponding to the 14th day of Rabi' al-awwal, 1432 (Islamic calendar) which has been led by the Libyan people in different districts of their country and due to our faithfulness to the martyrs of this blessed Revolution who sacrificed their lives for the sake of freedom, living with dignity on the land of home as well as retrieving all the rights looted by Al-Gaddafi and his collapsed regime.

Based on the legitimacy of this Revolution, and in response to the desire of the Libyan people and their hopes to achieve democracy, establish the political multitude and the estate of institutions, to create a society wherein all of us can live in stability, tranquility and justice; a society that can raise by science, culture, welfare and health, and that can bring up the new generations according to the Islamic spirit and love of goodness and home.

In the hope of seeking a society of citizenship, justice, equality, booming, progress and prosperity wherein there is no place for injustice, tyranny, despotism, exploitation and dictatorship. The interim Transitional National Council has decided to promulgate this Constitutional Declaration in order to be the basis of rule in the transitional stage until a permanent Constitution is ratified in a plebiscite.

Part One

General Provisions

Article (1)

Libya is an independent Democratic State wherein the people are the source of powers. The city of Tripoli shall be the capital of the State. Islam is the Religion of the State and the principal source of legislation is Islamic Jurisprudence (Shari'a). The State shall guarantee for non-Moslems the freedom of practicing religious rituals .Arabic is its official language. The State shall guarantee the cultural rights for all components of the Libyan society and its languages shall be deemed national ones.

Article (2)

The law shall prescribe the emblem and national anthem of the State.

Article (3)

The national flag shall have the following shape and dimensions:

Its length shall be double its width, it shall be divided into three parallel colored stripes, the uppermost being red, the centre black and the lowest green, the black stripe shall be equal in area to the two other stripes together and shall bear in its centre a white crescent, between the two extremities of which there shall be a five-pointed white star.

Article (4)

The State shall seek to establish a political democratic regime to be based upon the political multitude and multi-party system in a view of achieving peaceful and democratic circulation of power.

Article (5)

The family is the basis of society and shall be entitled to protection by the State. The State shall also protect and encourage marriage. The State shall guarantee the protection of motherhood, childhood and the elderly. The State shall take care of children, youth and the handicapped.

Article (6)

Libyans shall be equal before the law. They shall enjoy equal civil and political rights, shall have the same opportunities, and be subject to the same public duties and obligations, without discrimination due to religion, doctrine, language, wealth, race, kinship, political opinions, and social status, tribal or eminent or familial loyalty.

Part Two

Rights and Public Freedoms

Article (7)

Human rights and his basic freedoms shall be respected by the State. The state shall commit itself to join the international and regional declarations and charters which protect such rights and freedoms. The State shall endeavor to promulgate new charters which shall honor the human being as being God's successor on Earth.

Article (8)

The State shall guarantee for every citizen equal opportunities and shall provide an appropriate standard of living. The State shall also guarantee the right of work, education, medical care, and social security, the right of intellectual and private property. The State shall further guarantee the fair distribution of national wealth among citizens, and among the different cities and districts thereof.

Article (9)

Defense of the motherland, safeguarding national unity, keeping the civil, constitutional and democratic system, abiding by civil values, combating tribal, kindred and eminent bias shall be the duty of each and every citizen.

Article (10)

The State shall guarantee the right of asylum by virtue of the law. The extradition of political refugees shall be prohibited.

Article (11)

Dwelling houses and homes shall have their sanctity and they may not be entered or inspected except in cases prescribed by the law and according to the manner set forth therein. Caring for the public and private funds shall be duty of each and every citizen.

Article (12)

The law shall protect the inviolability of the private life of citizens and the State shall not spy on the same except by a causal judicial warrant in accordance with the provisions of the law.

Article (13)

Correspondence, telephone calls and other means of communication shall have their own sanctity and their secrecy shall be guaranteed. They may not be confiscated or monitored except by a causal judicial warrant and for a definite period in accordance with the provisions of the law.

Article (14)

Freedom of opinion for individuals and groups, freedom of scientific research, freedom of communication, liberty of the press, printing, publication and mass media, freedom of movement, freedom of assembly, freedom of demonstration

and freedom of peaceful strike shall be guaranteed by the State in accordance with the law.

Article (15)

The State shall guarantee the freedom of forming political parties, societies and other civil societies, and a law shall be promulgated to regulate [sic!] same. The establishment of clandestine or armed societies, or societies in violation of public system or of public morals and others which may be detriment to the State or the unity of the State shall be prohibited.

Article (16)

Property shall be inviolable. No owner may be prevented from disposing of his property except within the limits of the law.

Part Three

Form of State Governance during the Transitional Stage

Article (17)

The Interim Transitional National Council is the supreme power in the State of Libya and shall undertake the works of the supreme sovereignty including legislation and laying down the general policy of the State. The Transitional National Council shall be deemed as the sole legitimate representative of the Libyan people and it shall derive its legitimacy from the Revolution of February 17th. The Transitional National Council shall be entrusted to guarantee the national unity, the safety of the national territory, to embody and circulate values and morals, to ensure the safety of citizens and expatriates, to ratify the international agreements and to establish the bases of the civil constitutional democratic state.

Article (18)

- The Interim Transitional National Council shall consist of representatives for the Local Councils. It must be taken into consideration in determining the

representatives of each Local Council the population density and the geographical standard of the city or the area which it represents. The Council shall have the right to add ten (10) members for the sake of national interest. The Council shall nominate and elect those members.

- The Interim Transitional National Council shall elect a president, first and second vices thereof. If the post of the President or of his vice becomes vacant, a successor shall be elected by the Council. In all cases, election shall be effected by relative majority of those present. In case more than one nominee equaled in obtaining the majority votes, the member who is given a casting vote by the President shall be elected.

Article (19)

The President of the Interim Transitional National Council shall take oath before the Council and the members of the Interim Transitional National Council shall take oath in the following formula:

"I swear by Almighty God to carry out the duties of my job honestly and truthfully, to remain faithful to the goals and principles of the Interim Transitional National Council in Libya, to respect the constitutional charter and internal statutes thereof, to look after the interests of the Libyan people in full and to safeguard the independence, security and unity and territorial integrity of the motherland."

Article (20)

The Interim Transitional National Council shall have its own statutes which shall regulate the method of work therein and the manner to exercise the duties and functions thereof.

Article (21)

It shall be impermissible for any member of the Interim Transitional National Council to assume any executive public office. It shall also be impermissible to combine the membership of the National Council with the membership of the Local Council. A member may neither be appointed in a Board of Directors of any company nor may he contribute to obligations made by the government or made by one of the public institutions. Further, during the term of his membership, the

member, his wife or his sons may not buy or rent any State property or lease or sell to or barter with the State any of his own property, or conclude a contract with the Sate in his capacity as obligator, supplier or contractor.

Article (22)

No membership in the National Council shall be revoked except on the grounds of loss of one of the conditions of membership or the violation of his obligations as a member. The membership shall be deemed invalid on the grounds of a decision taken by two-thirds of the Interim Transitional National Council members. The membership shall end in cases of death, acceptance of resignation by the Interim Transitional National Council, losing of legal competence or disability to perform duty. In case of revoking or expiration of the membership, the National Council shall elect the new member in replacement of the member whose membership was revoked or expired.

Article (23)

The seat of the Interim Transitional National Council shall be in the city of Tripoli and it may establish an interim seat in the city of Benghazi. However, the Council may, meet in another place upon the request of the majority of its members.

Article (24)

- The Transitional National Council shall appoint an Executive Office or an Interim Government consisting of a Chairman and sufficient number of members in order to manage the different sectors of the State. The Interim Transitional National Council shall have the right to dismiss the Chairman of the Executive Office or the Interim Government or any member thereof provided that such resolution shall be issued and adopted by the majority of two thirds of the members of the Council.

- The Chairman of the Executive Office or the Interim Government and the members thereof shall be jointly liable before the Interim Transitional National Council for carrying out the general policy of the State in accordance with the instructions and directions of Interim Transitional National Council.

Each and every member shall further be responsible for the works of the sector presided by him before the Executive Office or the Interim Government.

Article (25)

The Chairman of the Executive Office or the Interim Government shall take oath in the formula prescribed by Article (19) prior to carrying on their duties before the President of the Interim Transitional National Council.

Article (26)

The Executive Office or the Interim Government shall carry out the general policy of the State in accordance with the instructions and directions of the Interim Transitional National Council. The Executive Office or the Interim Government shall as well undertake the issuance of the executive regulations of the issued laws. The Executive Office or the Interim Government shall also submit the draft laws to the Interim National Council in order to review same and to take as it may deem appropriate in respect thereof.

Article (27)

The general budget of the State shall be issued by law.

Article (28)

The Interim Transitional National Council shall establish an Accounting Department which shall undertake financial control over all revenues, expenses, all movable and immovable property belonging to the State. The said department shall verify the optimum use of such funds and preserve same. It shall also submit an annual report on that to the Interim National Council, the Executive Office or the Interim Government.

Article (29)

The Interim Transitional National Council shall appoint diplomatic representatives of the State abroad upon the nomination of the Executive Office. It shall also

have the right to remove them or to accept their resignations. It shall further accept the credentials of the heads of foreign diplomatic missions. The Council shall as well delegate its President in accepting the credentials of the heads of foreign diplomatic missions.

Article (30)

- Prior to liberation, the Interim Transitional National Council shall be completed as approved by the Council. It shall remain the Council which represents the supreme authority in the State of Libya; it shall be liable for managing the State until the National Public Conference is elected.

- After the announcement of liberation, the Interim Transitional National Council shall move to its headquarters in Tripoli. The Interim Transitional National Council shall form an interim government within a period not exceeding thirty days and within a a [sic!] period not later than ninety days from the date liberation is announced and made known, the Council shall:

    1. Promulgate a law on electing the National Public Conference.
    2. Appoint the National Supreme Commission for elections.
    3. Invite for the election of the National Public Conference.

- The National Public Conference shall be elected within a period of two hundred forty days from the date liberation is announced and made known.

- The National Public Conference shall consist of two hundred elected members from amongst all the sons of the Libyan People in accordance with the law of electing the National Public Conference.

- The Interim Transitional National Council shall be dissolved upon holding the first meeting of the National Public Conference. The oldest members shall undertake the chairmanship of the meeting. The youngest member shall assume the position of the secretary of the meeting. During such meeting, the President of the National Public Conference and his Vice shall be elected by direct, secret balloting by relative majority. The Provisional Government shall continue carrying on its works until an interim government is formed.

    - The National Public Conference shall, within a period not later than thirty days as of the date thereof, shall:

1. Appoint ministers and shall propose the names of the members of its government provided that all such members shall have the confidence of the National Public Conference prior to carrying on their works as an Interim Government. The National Public Conference shall further appoint the presidents of the sovereign posts.

2. Opt for a Constitutional Power in order to formulate the constitution draft for the State which Power shall be called "the Constitutional Power for Formulating the Constitution" provided that such Power shall finish submitting the constitution draft to the Conference within a period not exceeding sixty (60) days from the date of holding its first meeting.

- The constitution draft shall be approved by the National Public Conference and shall be referred to the people for a plebiscite with (Yes) or (No) within thirty days from the date of the approval thereof by the Conference. If and when the Libyan people approve the Constitution by two thirds of the majority of the voters, the Constitutional Power shall then approve the constitution draft as being the Constitution for the State. The National Public Conference shall also approve the same. In case of disapproval of the Libyan people, the Constitutional Power shall then be assigned to reformulate the constitution draft and the constitution draft shall be re-referred to the people for a plebiscite within a period not exceeding thirty days.

- The National Public Conference shall issue the Law of public elections in accordance with the Constitution within thirty days.

- The public elections shall be conducted within a period of one hundred eighty days from the date the laws regulating the same are promulgated. Both the National Public Conference and the interim government shall oversee the preparation of all the requirements of conducting the election process in a democratic and transparent manner.

- The National supreme Commission for Elections, which shall be

reformed by the National Public Conference, shall conduct the public elections under the supervision of the National Judicial authority, the United Nations and the international and regional organizations.

- The National Public Conference shall ratify and announce the results of the elections, and shall convoke the Legislative Authority for meeting within a period not exceeding thirty days. In the first session thereof, the National Public Conference shall be dissolved and the Legislative Power shall fulfill its legislative tasks.

- By holding the first session of the Legislative Power, the Interim Government shall be deemed and taken as a caretaker government for conducting business until a permanent government is approved in accordance with the Constitution.

Part Four

Judicial Guarantees

Article (31)

There shall be no crime or penalty except by virtue of the text of the law. Any defendant shall be innocent until he is proved guilty by a fair trial wherein he shall be granted the guarantees necessary to defend himself. Each and every citizen shall have the right to recourse to the judiciary authority in accordance with the law.

Article (32)

- The Judiciary Authority shall be independent. It shall be exercised by courts of justice of different sorts and competences. They shall issue their judgments in accordance with the law. Judges shall be independent, subject to no other authority but the law and conscience.

- Establishing Exceptional Courts shall be prohibited.

Article (33)

- Right of resorting to judiciary shall be preserved and guaranteed for all people. Each and every citizen shall have the right to resort to his natural judge. The State shall guarantee to bring the judiciary authorities near the litigants and shall guarantee the swift determination on lawsuits.

- Laws shall not provide for the prohibition of judiciary authority to control any administrative decree.

Part Five

Conclusive Provisions

Article (34)

The constitutional documents and laws which were applicable before applying this Declaration shall be repealed.

Article (35)

All the provisions prescribed in the existing legislations shall continue to be effective in so far as they are not inconsistent with the provisions hereof until they are amended or repealed. Each reference in these legislations to the "People's Congresses", the "General People's Congress", shall be deemed as a reference to the Interim Transitional National Council or to the National Public Conference. Each reference to "General People's Committee" or the "People's Committees" shall be deemed as a reference to the Executive Office, to the members of the Executive Office, to the interim government or to the members thereof each within its respective area of jurisdiction. Each reference to (Great Socialist People's Libyan Arab Jamahiriya) shall be deemed as a reference to (Libya).

Article (36)

No cancellation or amendment shall be made to any provision contained herein save with another provision issued by the Interim Transitional National Council and by the majority of two thirds of the members of the Council.

Article (37)

This Declaration shall be published in different media and shall take effect from the date it is published in media.

The Interim Transitional National Council
Benghazi on the 3rd day of Ramadan, 1432 AH corresponding to 03/08/2011 AD.