Articles

The Military as the Guardian of Constitutional Democracy

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This Article challenges the prevailing and long-entrenched orthodoxy in constitutional theory that a constitutional role for the military in an emerging democracy necessarily hinders democratic progress. I argue that the ideal level of military involvement in a new democracy is not always zero and that certain militaries can play, and on multiple historical occasions have played, a democracy-promoting role in the initial phases of a transition from autocracy to constitutional democracy. The conventional constitutional theory, which assumes that all militaries are hegemonic and praetorian institutions that must be completely disconnected from the civilian realm, has restrained innovative thinking on this important and timely topic.

As the fourth wave of democratization sweeps across the Arab World, with attendant debates about the appropriate constitutional role for the military in post-

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authoritarian societies such as Egypt, this Article offers a timely theory of the democracy-promoting military. It argues that some militaries—which I call "interdependent" militaries—are capable of playing a democracy-promoting constitutional role in a post-authoritarian society because their self-interests often align with the conditions that James Madison and others have identified as conducive to the genesis of a constitutional democracy: institutional stability, political pluralism and national unity.

After theorizing the democracy-promoting role that a military can serve, the Article elaborates the theory through comparative case studies. It analyzes the democracy-promoting constitutional role that the militaries in Turkey and Portugal played following respective military coups in 1960 and 1974 that toppled authoritarian regimes and established democracies. The Article concludes by examining the implications of this theory for the transition process currently in progress in Egypt.
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INTRODUCTION

More than two years after a military coup d’etat toppled the
autocratic Hosni Mubarak regime, the future of Egypt’s newfound
 democracy still hangs in the balance. The overthrow of the Mubarak
government, after determined protests by all facets of the Egyptian
society, rightfully invoked a wave of celebrations. Those celebra-
tions, however, were short-lived. Although the revolution was “for
all Egyptians,”1 it quickly became clear that the long-oppressed Is-
 lamist groups in Egypt would capture it. Since then, secular Egyp-
tians and Western nations have been wringing their hands over the

1. David D. Kirkpatrick, Egypt Erupts in Jubilation as Mubarak Steps Down, N.Y.
   (quoting Mohamed Saad el-Katatni, a spokesman for the Muslim Brotherhood) (“This is a
   revolution for all Egyptians; there is no room for a single group’s slogans, not the [Muslim]
   Brotherhood’s or anybody else.”).
possible prospect of a theocratic Egypt, illuminated by comparisons to the 1979 revolution in Iran that produced an Islamic Republic. Those worries were compounded when the Muslim Brotherhood’s Freedom and Justice Party (Hizb Al-Hurriya wa Al-’Adala) and the Salafist Al-Nour Party (Hizb Al-Nur) collectively captured approximately three-quarters of the seats in the lower house of the Parliament, and Mohammed Morsi, a member of the Muslim Brotherhood, won the presidency, issuing sweeping unilateral decrees during the transition process that, in principle, handed him dictatorial powers. In a hotly contested referendum, Egyptian voters also approved a widely criticized constitution drafted by an Islamist-dominated Constituent Assembly.

As an antidote to a possible Islamist takeover of Egypt’s emerging democracy, several commentators, at various points during Egypt’s transition, suggested an ongoing constitutional role for Egypt’s military. They noted, for example, that the military could define “its own powers and role under the new constitution, including the broad autonomy and authority to intervene to protect the [civil] character of the state.” As a model, these commentators touted


3. Egypt’s Supreme Constitutional Court subsequently invalidated these elections after striking down as unconstitutional an electoral law that allowed political parties to run candidates for seats reserved for independents. See infra text accompanying notes 461–64.


Turkey, where the military, following a coup in 1960 that toppled an autocratic government, played a constitutional role in keeping Islamist forces in check.\(^7\)

The vast majority of commentators were less sanguine about the prospects of a “Turkish model” for Egypt.\(^8\) Although many of these commentators praised the military’s leadership in the overthrow of the Mubarak regime, they also argued that the Egyptian military needed to extract itself from politics—immediately and completely—lest the generals transform Egypt into a military dictatorship. These analysts thus balked at the suggestion of an ongoing constitutional role for the Egyptian military.

The opponents of a constitutional or political role\(^9\) for the Egyptian military found significant support in theoretical constitutional scholarship. The existing literature assumes that any constitutional or political role for the military—however limited it may be—is normatively undesirable. For example, in pioneering works on democratic transitions and consolidation, Juan Linz and Alfred Stepan have argued that the military’s imposition of “reserve domains”

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\(^9\) I use the phrase “political role” throughout the Article to recognize that the military may play a role in governance or wield political influence even if it is not expressly recognized as a constitutional actor.
on an elected government impedes democracy.\textsuperscript{10} Jonathan Turley has maintained that the military “is in some significant respects antithetical to core principles of the Madisonian system.”\textsuperscript{11} Robert Dahl has likewise argued that “control over government decisions about policy is constitutionally vested in elected officials,”\textsuperscript{12} which implicitly requires the complete subordination of the armed forces to civilian authorities. Samuel Huntington has echoed the same views in his seminal works on civil-military relations by advocating the “objective civilian control” of the military, which requires “militarizing the military, making them the tool of the state.”\textsuperscript{13} Other commentators are largely in agreement.\textsuperscript{14}


\textsuperscript{12} ROBERT A. DAHL, DEMOCRACY AND ITS CRITICS 221 (1989).

\textsuperscript{13} SAMUEL P. HUNTINGTON, THE SOLDIER AND THE STATE 83 (1957). See also Samuel P. Huntington, Political Development and Political Decay, 17 WORLD POL. 386, 429 (1965) (“Military coups and military juntas . . . cannot produce a stable political order.”).

\textsuperscript{14} PETER D. FEAVER, ARMED SERVANTS 12 (2003) (noting that the “military subordination conception” is the “\textit{sine qua non} of all civil-military theory”); NARCIS SERRA, THE MILITARY TRANSITION: DEMOCRATIC REFORM OF THE ARMED FORCES 16 (Peter Bush trans., 2010) (“[T]he element most likely to undermine the process of consolidation is the military when it asserts itself as a tutelary power or creates its own autonomous space and takes areas of political decision making away from the government.”); Terry Lynn Karl, Dilemmas of Democratization in Latin America, 23 COMP. POL. 1, 2 (1990); Richard H. Kohn, How Democracies Control the Military, 8 J. DEMOCR. 140, 141 (1997) (“The military is, by necessity, among the least democratic institutions in human experience; martial customs and procedures clash by nature with individual freedom and civil liberty, the highest values in democratic societies.”); Muhamed Mugraby, Vice President, Union Internationale des Avocats—Commission of the Defence, Panelist at the 50th Anniversary of the Universal Declaration of Human Rights Conference: The Declaration Abroad: A Comparative Perspective (Dec. 1998), in 11 PACE INT’L L. REV. 163, 184 (“The glorification of the military is a Middle Eastern phenomenon of major negative consequences to democracy and human rights.”); Eric A. Nordlinger, Soldiers in Mufti: The Impact of Military Rule Upon Economic and Social Change in the Non-Western States, 64 AM. POL. SCI. REV. 1131 (1970); Okechukwu Oko, Consolidating Democracy on a Troubled Continent: A Challenge for Lawyers in Africa, 33 VAND. J. TRANSNAT’L L. 573, 587 (2000) (“Military regimes are . . . by their modus operandi incompatible with constitutional democracy. . . .”); Edip Yuksel, Cannibal Democracies, Theocratic Secularism: The Turkish Version, 7 CARDozo J. INT’L & COMP. L. 423, 435 (1999) (“Democracy cannot be reformed or improved by military minds. This is the nature of things.”); Elizabeth Knight, Note, Facing the Past: Retrospective Justice as a Means to Promote Democracy in Nigeria, 35 CONN. L. REV. 867, 872–73 (2003) (“Dictatorial military regimes are essentially incompatible with constitutional democracy.”); Vasco Fernando Ferreira Rato, Reluctant Departure: The
This intellectual imbalance is unfortunate, but understandable. The civil-military relations field and its constitutional component developed largely in response to domestic military interventions in Latin America and Africa. Historically, in those regions, a constitutional or political role for the military has ordinarily meant the establishment of a military dictatorship—not the preservation or promotion of constitutional democracy. Many Latin American and African militaries are praetorian and hegemonic institutions, with a strong appetite for political interventions and hostile takeovers. Once they assume power, they tend to retain it. They wield their constitutional powers, not to further democracy, but to hinder it. Because these militaries were central to the development of the existing theories, when constitutional and political-science theorists speak of the "military," many do so in a homogeneous fashion. They assume that militaries across the world are all of the praetorian mold, consistent in their composition, structure and motives across diverse nations. The unwavering adherence to this conventional narrative has restrained innovative thinking on this timely and important topic and obscured the democracy-promoting role that militaries are capable of playing in post-authoritarian societies.

In this Article, I challenge the prevailing theory and the assumptions on which it rests. Although militaries can certainly pose a threat to a democracy, certain types of militaries can play—and on multiple historical occasions have played—a democracy-promoting role in post-authoritarian societies. The Article builds a theory for the democracy-promoting military and elaborates that theory through comparative case studies. I analyze the democratizing role that the militaries in Turkey and Portugal played following respective military coups in 1960 and 1974 that toppled authoritarian regimes and


15. Schiff, supra note 14, at 39.

16. See Ersel Aydini, A Paradigmatic Shift for the Turkish Generals and an End to the Coup Era in Turkey, 63 MIDDLE EAST J. 581, 583 (2009).

17. See id.

18. See id.

19. See Schiff, supra note 14, at 36.
installed democracies. The Article also examines the implications of that theory for the transition process in progress in Egypt.

Like all politics, civil-military relations are inherently local. Nations evolve and democratize in significantly different ways that continually challenge Western models and aspirations.20 Where it remains seriously debatable whether the prevailing theories, which demand the strict separation of the military from the civilian realm, even accurately describe the historical and contemporary civil-military relations in the United States,21 one should hesitate before attempting to export them to starkly different contexts—especially to nascent democracies.22

My primary objections to the prevailing constitutional theory are twofold. First, in contrast to the conventional narrative, I argue that not all militaries are of the praetorian model. Some militaries—which I call “interdependent” militaries—tend to be egalitarian institutions more responsive to democratic norms and civil society and more capable of providing institutional support to an emerging democracy. In brief, an interdependent military is ordinarily composed of citizen-soldiers, responsive to international democratic norms and focused on external, not internal, threats.

Second, the conventional wisdom that rejects any constitutional or political role for the military in a post-authoritarian society neglects the unfortunate reality that democratic regimes emerging from a long period of authoritarianism are fragile and prone to breakdown. Political actors in many nascent democracies are unwilling or unable to promote the necessary conditions for the development of a constitutional democracy. New democracies tend to lack an ethos of political pluralism, stable legal and political institutions necessary to support a competitive democracy and effective enforcement mechanisms designed to ensure that political actors do not misbehave.23 To

20. See id. at 46.

21. See id. at 37 (“[T]he fact that US military and civilian institutions have shown degrees of intermingling over the years only points to the weakness of the current theory.”); see also Deborah N. Pearlstein, The Soldier, the State, and the Separation of Powers, 90 TEX. L. REV. 797, 798–801 (2012) (noting the growing political influence of the United States military).

22. See SCHIFF, supra note 14, at 48 (“The problem is that civil-military relations scholars never bothered to go beyond foreign institutions and into the ‘Other’ culture—a culture perhaps far more complex than that of the United States—with strategies other than the familiar civil-military dichotomy.”).

23. See infra notes 138–45 (discussing the “enforcement deficit” that exists in many nascent democracies).
many political leaders in new democracies, individual rights and liberties are mere parchment barriers, as Madison famously argued.\textsuperscript{24}

In the absence of institutions designed to preserve and promote democracy and stability over a lengthy transition period, the danger that powerful individuals or groups will abuse the newly established democratic processes in a manner that undermines democracy is all too great.\textsuperscript{25} Sectarian tensions that were formerly controlled under the stronghold of an autocratic leader can detonate following a revolution, fomenting instability, violence and civil war. As the Russian, Chinese and Iranian revolutions also have exemplified, revolutions tend to produce unintended, and potentially dangerous, consequences incompatible with the revolutionaries’ aspirations.\textsuperscript{26} It is therefore not surprising that the world is littered with failed democratic transitions.\textsuperscript{27}

The savior of some of these failed democracies may lie outside the familiar institutions in Montesquieu’s tripartite scheme of the executive, the legislative and the judiciary. As Samuel Issacharoff has argued, fragile democracies may need to retain undemocratic elements to guard against democratic breakdown.\textsuperscript{28} One such institution that may provide significant institutional support to an emerging democracy is the interdependent military. In some post-authoritarian nations, an interdependent military may be a rare, if not the only, stable and legitimate institution capable of serving as the arbiter between competing political groups and providing the much-needed jump-start to the emerging democracy. This Article concedes that an interdependent military is typically a self-interested actor, but argues that its institutional interests tend to align with the conditions that Madison and others have identified as conducive to the genesis of a constitutional democracy: the promotion of intrastate stability, polit-

\textsuperscript{24} See infra Part I.B.1 (discussing the parchment-barriers problem).


\textsuperscript{26} See Alwaleed bin Talal, The Lesson of the Arab Spring, WALL ST. J., Feb. 6, 2012, at A13.


\textsuperscript{28} See generally Samuel Issacharoff, Fragile Democracies, 120 HARV. L. REV. 1405 (2007).
ical pluralism and national unity.

The military’s role as a constitutional actor in new democracies has been woefully understudied in the literature. A pioneer of the civil-military relations field, Alfred Stepan, observed that the military continues to remain the “least studied of the factors involved in new democratic movements.” In a more recent book, Narcís Serra recognized that scholars continue to neglect the importance of the military in the democratic-transition process.

As the fourth wave of democratization sweeps across the Arab World, raising questions about the appropriate constitutional and political role of the military in post-authoritarian nations such as Egypt, this Article comes at an opportune time to close the existing scholarly gap, theorize the democracy-promoting military and apply it to comparative case studies. The theoretical viability of an interdependent military sheds light on important questions, not just about civil-military relations, but also about the genesis of constitutional democracy in post-authoritarian societies, which has significant implications for constitutional theory.

The Article proceeds in four parts. Part I sets forth the theoretical foundations for the constitutional or political role that an interdependent military can play by providing institutional support to an emerging democracy. The remaining parts elaborate that theory through historical and contemporary comparative case studies. Part II studies the democratizing role of the Turkish military in the aftermath of a 1960 coup, Part III analyzes the Portuguese military’s role in promoting democracy in post-authoritarian Portugal following a 1974 coup, and Part IV analyzes the role that the military played in Egypt’s recent transition process to democracy.

I. THEORIZING THE DEMOCRACY-PROMOTING MILITARY

In this Article’s predecessor, I analyzed the typical characteristics and constitutional consequences of “a democratic coup d’état.” In a democratic coup, the military overthrows an authori-

30. Serra, supra note 14, at 24-25.
tarian government in response to popular opposition against that government and for the limited purpose of facilitating the free and fair elections of civilian leaders within a short span of time.33 Following a democratic coup, the military temporarily governs the nation until democratic elections of civilian leaders take place.34 During that transition process to democracy, which typically lasts for one to two years, the military behaves as a self-interested actor and entrenches, or attempts to entrench, its policy preferences into any new constitution that may be drafted during the transition.35 Even though a democratic coup ends with the transfer of power from the military to democratically elected leaders, the military retains an ongoing role in the nation’s political affairs through constitutional entrenchment.36 In democratic coups, therefore, the people and the military seem to strike a Faustian bargain where the military extracts a price in the form of constitutional entrenchment in exchange for deposing a dictatorship and turning power over to the people.

This Article continues chronologically from where its predecessor left off. The Democratic Coup d'État examined the role that the military can play in deposing a dictatorship and creating democratic procedures where political leaders are selected through free and fair elections. This Article analyzes whether the military can provide institutional support to an emerging democracy after democratic procedures have been established. I argue that the ideal level of military involvement in a new democracy is not always zero and that militaries can play—and on multiple historical occasions have played—a democracy-promoting role in emerging democracies.

Before I proceed, three caveats are in order. First, the theory proposed in this Article is a “second best” theory.37 Ideally, of course, it would be enlightened civilian leaders and civilian institutions that implement the requisite conditions to establish and sustain a constitutional democracy. Given the frequent absence of such civilian leaders and institutions, however, it may be necessary to enlist the institutional support of an interdependent military and temporarily preserve, during the initial stages of the democratic-transition process, admittedly counter-majoritarian checks and balances on the

33. Id. at 294.
34. Id. at 295.
35. Id.
36. Id. at 296.
elected branches in order to allow democracy to progress.\textsuperscript{38} Even where the military is enlisted to provide institutional support for the new democracy, it would ideally act in concert with other institutions, including state institutions, political and social groups, and the civil society, as one democracy-promoting actor among many.

In addition, I do not suggest that creating a constitutional or political role for an interdependent military poses no difficulties. As the case study of Turkey, discussed \textit{infra} Part II, shows, the military’s initial participation in a post-authoritarian society may complicate the later extraction of the military from politics and pose impediments to democratic consolidation. In some contexts, the costs associated with enlisting institutional support from the military may outweigh its benefits. My aim in this Article is to explain the neglected benefits military involvement may provide to a nascent democracy and analyze how to minimize some of its costs.

Second, although support for military involvement in emerging democracies is sometimes couched in terms of a desire to keep Islamist forces in check, as in the case of Egypt,\textsuperscript{39} the theory in this Article is non-ideological in nature. The Article recognizes that threats to democracy can arise from any ideology and frames its argument in structural, rather than ideological, terms that focus on the dangers posed to democracy by the concentration of power in a dominant group inadequately checked by other state institutions or opposition groups.\textsuperscript{40}

Third, an assumption underlying the theory in this Article is that transitions from autocracy to democracy and from democracy to constitutional democracy are normatively desirable. In an autocracy,

\begin{footnotesize}
\textsuperscript{38} See Landau, supra note 25, at 2 (arguing that constitution-making should “seek[] to avoid worst-case outcomes that come from abuses of the process rather than aspiring to reach a first-best world”).

\textsuperscript{39} See, \textit{e.g.}, supra notes 6–7.

\textsuperscript{40} Cf. Landau, \textit{supra} note 25, at 48 (“[T]he electoral landscape in Egypt, coupled with the organizational asymmetries on the ground, produced a substantial risk of an undemocratic or weakly democratic outcome.”); Thomas Carothers & Nathan J. Brown, \textit{The Real Danger for Egyptian Democracy}, \textit{Carnegie Endowment for International Peace} (Nov. 12, 2012), http://carnegieendowment.org/2012/11/12/real-danger-for-egyptian-democracy/eg5z (“Yet the greater danger for Egypt’s fledgling democracy likely to arise from the Brotherhood’s new ruling position is not Islamist illiberalism but rather dominant party overreach. In other words, the bigger concern is the creeping but ultimately extremely corrosive array of political temptations and tendencies that seize a popular party after it sweeps into power following the ouster of a dictator, inherits the reins of a state long molded by absolutist rule, and faces only a fragmented opposition.”).
\end{footnotesize}
there is little or no responsible political pluralism. The ruling party often acts, legally or illegally, to silence political opposition. A democracy, under Samuel Huntington’s definition of the term, is a regime in which political leaders are selected through free and fair elections. That definition is procedural and lacks a substantive component that focuses on the normative quality of the democracy that elections produce. A constitutional democracy, in contrast, contains both a procedural and a substantive component. In brief, a constitutional democracy (often interchangeably referred to as a “liberal” democracy) refers to a pluralistic legal order where multiple opposition parties compete for the incumbent seat in free and fair elections and where state actors respect the legal-constitutional boundaries that restrain them. Assuming that the creation of a constitutional democracy is normatively desirable, this Article proceeds to explore the role that an interdependent military may play in that process.

The conventional wisdom unequivocally rejects any military involvement in democratic government, including in new democracies emerging from authoritarian rule (also referred to as post-authoritarian societies). According to the vast majority of commentators, the military’s involvement in democratic politics necessarily stifles democratic development. In the next three Sections, I argue that this reasoning suffers from three primary shortcomings. First, it adopts a homogenous view of the military, failing to recognize that militaries, like other institutional actors, differ from one another in significant ways. Some militaries, I argue, are more capable of providing institutional support to a nascent democracy than others. Second, the prevailing view focuses largely on a peripheral argument that fixates on the undesirable qualities of praetorian militaries, at the expense of addressing the more fundamental question of how to establish and preserve a constitutional democracy. Third, the existing literature conflates the various roles that the military may play during distinct phases of the democratic-transition process and erroneously rejects military involvement in all phases of a democratic transition. I explain each of these objections in turn.

41. LINZ & STEPLAN, supra note 10, at 38, 43.
42. Varol, supra note 32, at 300.
43. HUNTINGTON, supra note 31, at 7.
44. For a sampling of the literature on defining constitutionalism, see Vicki C. Jackson, What’s in a Name? Reflections on Timing, Naming, and Constitution-making, 49 WM. & MARY L. REV. 1249, 1254 n.12 (2008).
A. The Interdependent Military and Its Attributes

The military is traditionally defined as the state “institution publicly recognized by society and the political elites as the institution that defends a nation’s borders.” Although scholars have largely denounced a constitutional role for the military in emerging democracies, the term “military” is often left undefined. Rather, the military is viewed as a homogeneous institution, consistent in its composition, structure and motives across different nations. But militaries are more complicated, diverse and multidimensional than this conventional understanding suggests. Just as the defining characteristics of presidents, legislatures, courts and other institutions differ from one nation to the other, so do the institutional characteristics of militaries.

The primary objection against providing a constitutional or political role for the military is that the military, unlike other political actors, is unaccountable. Although presidents and legislators may be voted out of office and judges may be impeached, the military, equipped with the means of coercive power, must answer to no one.

In this Section, I challenge that conventional narrative by setting forth three desiderata of what I call an interdependent military. An interdependent military is (1) dependent on the citizenry; (2) dependent on international democratic institutions; and (3) focused on external, not internal, threats. For the reasons detailed below, an interdependent military is more accountable and responsive to civil society and democratic norms than praetorian militaries.

1. Dependence on the Citizenry

The social origins of the military, as Morris Janowitz has observed, are key to understanding its purposes and logic. To that end, this Section explores the social makeup of an interdependent military. Perhaps its most important characteristic, an interdependent military is ordinarily composed of citizen-soldiers, not professionals. Citizen-soldiers are recruited, primarily through mandatory national conscription, to serve a defined term in the military before returning to civilian life. An interdependent military does not selectively exclude any major population groups—racial, ethnic, tribal, religious or

45. SCHIFF, supra note 14, at 44.
otherwise. The recruitment of citizen-soldiers thus ensures that an interdependent military represents a fair cross-section of the population. Because interdependent militaries comprise citizen-soldiers that inherently represent the general populace, they are more responsive to civil society and more capable of providing institutional support to an emerging democracy.

That hypothesis has extensive historical pedigree. Machiavelli, for example, believed that a popular militia of citizen soldiers would be effective in resisting domestic tyrants. Many founders of the United States likewise emphasized the importance of the militia in forestalling tyranny. The militia was an institution “in which state and society met and melded... in that the militia members were both rulers and ruled.” Citizen-soldiers would not act against the general well-being of the society “because the general good and their good were one and the same.” As Alexander Hamilton explained in Federalist No. 29:

Where in the name of common sense are our fears to end, if we may not trust our sons, our brothers, our neighbours, our fellow-citizens? What shadow of danger can there be from men, who are daily mingling with the rest of their countrymen; and who participate with them in the same feelings, sentiments, habits and interests?

John Hancock likewise observed: “From a well regulated militia we have nothing to fear; their interest is the same with that of the state... [T]hey do not [jeopardize] their lives for a master who considers them only as the instruments of his ambition.” Militia service would train citizens in “a life of virtue, both self-sacrificing and in-

47. The one major exception is gender. In many nations with mandatory national conscription, women are exempt from service requirements. Although the consequences of that exemption are not considered in this Article, the exclusion of any social group from military service is likely to render the military less responsive to that group.


49. Id. at 558.

50. Id. at 554.

51. Id. at 578.


53. John Hancock, An Oration; delivered March 5, 1774: at the request of the inhabitants of the town of Boston; to commemorate the bloody Tragedy of the Fifth of March 1770, ROYAL AM. MAG., UNIVERSAL REPOSITORY OF INSTRUCTION AND AMUSEMENT 15 (Mar. 5, 1774).
dependent; these virtuous arms-bearing citizens could block the designs of corrupt factions, whether those of demagogues among the people or despots among government ministers." 54 Because militia members were property holders and citizens, they had a greater stake in the republic's health than professional soldiers or mercenaries. 55 If a corrupt faction seized power, the citizen-soldiers would resist in order to restore the health of the republic. 56

Many founders of the United States thus expressly rejected proposals for a military composed solely of professional soldiers. 57 They viewed professional soldiers as automatons, "stripped of individuality." 58 "Composed of officers from the aristocracy and soldiers from the bottom of society brutalized by harsh discipline, isolated from the rest of society, loyal not to an ideal or to a government but to a commander and to its own traditions," professional soldiers were viewed as susceptible to identifying with their own leaders at the expense of the society. 59 For Madison, professional soldiers were "more readily turned by corrupt commanders against the interests of the people." 60

The post-revolutionary United States adopted a citizen-soldier model that resembles in some respects the interdependent military theorized in this Article. 61 The citizen-soldiers were called to service two to three times a year for military review and training, during which many wore their daily civilian clothes, instead of military uniforms. 62 Although sporadic military service presented significant ef-

54. Williams, supra note 48, at 556.
55. Id. at 577.
56. Id. at 556.
57. See Pearlstein, supra note 21, at 842.
58. Id.
59. Id. (quoting Richard H. Kohn, Eagle and Sword: The Federalists and the Creation of the Military Establishment in America, 1783–1802, at 2 (1975)); see also Williams, supra note 48, at 572 (noting that Republicans believed a standing professional army "could become a tool of executive usurpation" and "posed a risk of factionalism and professionalization").
60. See Pearlstein, supra note 21, at 842. As Elbridge Gerry also argued during a congressional discussion of the Second Amendment: "What, sir, is the use of a militia? It is to prevent the establishment of a standing army, the bane of liberty." 1 Annals of Cong. 749–50 (Joseph Gales ed., 1879).
61. Pearlstein, supra note 21, at 846 ("Thanks in large measure to the Anti-Federalist interest in protecting state prerogatives, the American military model in the Constitution would, at some level, remain the 'citizen-soldier,' who, after service, would return to his civilian life.").
62. Schiff, supra note 14, at 56, 61.
ficiency problems, many civilians and politicians considered the citizen-soldier model to be far less pernicious than a federally operated professional army. 63 As Bernard Bailyn observed in The Ideological Origins of the American Revolution, "the colonies demonstrated the military effectiveness of militia armies whose members were themselves the beneficiaries of the constitution and hence not likely to wish to destroy it." 64

Following World War II, scholars revisited earlier questions about military composition and civil-military relations that had ensnared the founders of the United States. In their seminal works, Samuel Huntington and Morris Janowitz advocated competing visions for the modern soldier. In The Soldier and the State, published in 1957, Huntington argued for professionalism among military ranks. 65 To be effective, Huntington observed, a soldier must be a professional, isolated from civil society and politics. 66 For Huntington, greater military professionalism would increase civilian control of the military and decrease the likelihood of military intervention in politics. He advocated what he termed "objective civilian control" of the military, which required "militarizing the military, making them the tool of the state," and rejected "subjective civilian control," which civilianized the military, "making them the mirror of the state." 67 In contrast to Huntington, Janowitz took a different tack, arguing that the military profession cannot be separated from civil society and that the military would benefit from convergence with civilian values. 68

Huntington's theory, though appealing in principle, received extensive criticism. In separate works, Bengt Abrahamsson and Samuel Finer argued that military professionalization may create excessive autonomy for the military and cause significant variances in the objectives and values of the civilian and military institutions. 69

63. Id. at 56 ("Members of Congress . . . declined full military federalization. Many had fought in the Revolution and understood the social and political significance of the militia and its connection to the states."); id. at 58 (noting that many Americans "favored a citizens' army that could not be manipulated and abused by the government").


65. See generally Huntington, supra note 13.

66. Id. at 71.

67. Id. at 83.


69. Bengt Abrahamsson, Military Professionalization and Political Power
Excessive professionalism, according to Abrahamsson and Finer, would increase the likelihood of military intervention in politics. J. Samuel Fitch’s study of Latin American militaries supported Abrahamsson and Finer. Fitch concluded: “[I]n the Latin American context, higher levels of military professionalization have historically resulted in more institutionalized military intervention in politics and high levels of military autonomy.” Arthur Larson likewise criticized Huntington’s theory as static, in that it hinders interaction between the military and the evolving civil society. Finally, Peter Feaver concluded that “the hypothesis that professionalism equals subordination has not held.”

Most recently, Rebecca Schiff lent her support to Janowitz’s views in her theory of concordance. In contrast to Huntington’s theory, which requires separation of civil and military institutions, concordance “highlights dialogue, accommodation, and shared values or objectives among the military, the political elites, and society.” Concordance theory “does not presume that militaries are innately hostile and coercive institutions.” Rather, the concordance theory, following the path forged by Janowitz, advocates the dissolution of the civil-military separation and introduces to the analysis of military-government relations a third distinct agent—the citizenry—that also affects the function and objectives of the armed forces. Schiff’s theory, however, seeks only to predict the institutional conditions that would prevent or promote domestic military interventions. She does not describe the characteristics or conditions that

(1972); SAMUEL E. FINER, THE MAN ON HORSEBACK: THE ROLE OF THE MILITARY IN POLITICS (1976). See also SERRA, supra note 14, at 205 (“To say that the problem between civilians and the military is resolved if the latter are good professionals since military professionalism assumes the acceptance of civil supremacy is to engage in a circular argument that is more akin to wishful thinking than a description of reality . . . .”).


71. Id. at 3.


74. SCHIFF, supra note 14, at 43.

75. Id. at 39.

76. Id. at 43–44; SERRA, supra note 14, at 214.

77. SCHIFF, supra note 14, at 42–43.
might allow a military to serve a democracy-promoting function,\textsuperscript{78} which is a task this Article takes on with the desiderata that make up the interdependent military.

The interdependent military is closer to the vision of Hamilton, Janowitz and Schiff than that of Huntington. The military forces in an interdependent military comprise primarily sons, daughters, neighbors, relatives and friends—not professionals. These civilians, recruited primarily through mandatory national conscription, rotate from the civilian sector into the military and back to the civilian sector, creating a feedback loop between the civilian and military populations that keeps the military in touch with civilian values. Their commitment to the military is temporary, but permanent to the society. After decades of national conscription, the military, in a very real sense, becomes the society. Indeed, a military composed of citizen-soldiers may be more representative of the society than other branches of government, which are prone to capture by powerful elites.

For example, as early as the nineteenth century, the Turkish military was more representative of the society than most civilian institutions, including the bureaucracy and the clergy.\textsuperscript{79} Even today, Turks continue to think of themselves as an “army nation” (\textit{asker millet}), reflecting the “perception that a symbiotic relationship binds the state to the armed forces that founded it and now protect it.”\textsuperscript{80} The send-off of soldiers to military service still triggers public celebrations in Turkey with parades and music.\textsuperscript{81} As Nilüfer Narlı has observed: “In Turkey, the military is not seen as a separate institution within society. Rather, it is seen as a home, a ‘Prophet’s hearth’ (\textit{Peygamber ocağı}) or soldiers’ hearth (\textit{asker ocağı}).”\textsuperscript{82}

A military composed of citizen-soldiers helps close the gap

\textsuperscript{78} Id. at 46 (“The theme of this book, however, is domestic military intervention not democratization.”). Schiff also does not describe why institutional conditions that make domestic military intervention more or less probable develop in certain nations but not in others. \textit{See id.} at 13.

\textsuperscript{79} \textit{See} \textit{Janowitz, supra} note 68, at 51.

\textsuperscript{80} Ersel Aydînli, Nihat Alî Özcan \& Dogan Akyaz, \textit{The Turkish Military’s March Toward Europe}, 85 \textit{Foreign Aff.} 77, 80 (2006). \textit{See also} Dankwart A. Rustow, \textit{The Military: Turkey, in Political Modernization in Japan and Turkey} 352, 352 (Robert E. Ward \& Dankwart A. Rustow eds., 1964) (“Throughout recorded Turkish history, military service has been accepted as the noblest episode in a man’s career.”); Nilüfer Narlı, \textit{Civil-Military Relations in Turkey}, 1 \textit{Turkish Studies} 107, 118 (Spring 2000) (“Conscription has become a major rite of passage for young males and a source of identity construction.”).

\textsuperscript{81} Narlı, \textit{supra} note 80, at 118.

\textsuperscript{82} Id.
between the civilian sector and the military generated by Huntington's theory of objective control. The citizen-soldier model also assists in solving what Narcis Serra has identified as the most important problem in civil-military relations: the military's lack of commitment to civilian values and beliefs. As Serra has argued, reducing the military's danger to democracy requires the injection of societal values into the military. Janowitz likewise observed that the modern shift from a conscript to an all-volunteer military would entail "potentials for greater social isolation and new political imbalances and tensions." An all-volunteer military, according to Janowitz, would create "the possibility of an inbred force which would hold deep resentments toward the civilian society and accordingly develop a strongly conservative, 'extremist' political ideology, which in turn would influence professional judgments." Dankwart Rustow has echoed the same view in observing that a "military revolution is likely to result from a growing disparity—in social background, cultural ethos, and political purpose—between the civilian government and the military." By creating a feedback loop with civilian society, citizen-soldiers assist in keeping the military in touch with the values of the society of which the military is an integral part.

To be sure, the military officers who dedicate their lives to the military and lead the rank-and-file citizen-soldiers are ordinarily professionals. But the soldiers upon whom the professional officers depend to execute their commands are not. As Hamilton explained in Federalist No. 29, citizen-soldiers are less likely to succumb to the "engine of despotism" run by corrupt commanders:

If there should be no army, whither would the militia, irritated at being required to undertake a distant and hopeless expedition for the purpose of riveting the

83. See Serra, supra note 14, at 207.
84. Id.
85. Janowitz, supra note 46, at 1.
86. Id. See also Serra, supra note 14, at 215 ("[T]he normalization of civilian-military relations in a democracy requires the values assumed by the citizenry and professional military to converge to an extent . . . . Anything else reinforces the military's feeling of isolation or autonomy and, with that, their desire to impose the ideas of the collective, see themselves as guardians of values that are losing substance as society evolves and even to assume they are called upon to restore their centrality."). For Janowitz's suggested mechanisms for reducing the undesirable attributes of an all-volunteer force, see Janowitz, supra note 46, at 1-11.
87. Rustow, supra note 80, at 371.
88. See Schiff, supra note 14, at 45.
chains of slavery upon a part of their countrymen, direct their course, but to the seat of the tyrants, who had meditated so foolish as well as so wicked a project, to crush them in their imagined entrenchments of powers, and to make them an example of the just vengeance of an abused and incensed people? Is this the way in which usurpers stride to dominion over a numerous and enlightened nation? Do they begin by exciting the detestation of the very instruments of their intended usurpations? 89

The citizen-soldiers, according to Hamilton, would not abandon their moral and civil sense and succumb to the wishes of a tyrant seeking to establish a dictatorship. Instead of obeying orders to establish despotism, the citizen-soldiers would overthrow the despots who issued them and side with the society with whom their permanent loyalty lies. 90

For example, during the 1950s in Turkey, the authoritarian Democrat Party government, led by Prime Minister Adnan Menderes, attempted to systematically pack the highest military ranks with his ideologues. 91 But Menderes failed to effectively infiltrate the citizen-soldier military from the top down. 92 In response to a claim by an American reporter that the military supported Menderes, a military deputy quipped: “Menderes may have the generals, but we have everyone from colonel down.” 93 And when the Menderes government ordered the army to suppress the anti-regime protests in 1960, the citizen-soldiers refused to obey its orders. Instead of turning their arms on their fellow citizens, the soldiers toppled the authoritarian government and installed a democratic regime, 94 as explained infra Part II. In a conscript military, therefore, the citizen-soldiers perform


90. See Williams, supra note 48, at 581 (“Colonial records are full of complaints that the militia, reflecting the sentiment of the people, refused to enforce edicts perceived as unjust, or even participated in popular resistance to them.”).

91. Rustow, supra note 80, at 367.

92. Id.

93. Id. at 367–68.

94. ERGUN ÖZBUDUN, THE ROLE OF THE MILITARY IN RECENT TURKISH POLITICS 14 (1966) (“[I]f the legality and basic morality of . . . [government] repressions are questionable, as in the Turkish case [in 1960], the military man is not likely to feel himself bound by the imperatives of the professional military ethic, which normally exalts obedience as his highest virtue.”).
an important check on the professional leadership that tends to keep
the leadership closer to civilian values and accountable to civil socie-

Citizen-soldiers also inject another important element into the
military: diversity. Militaries that comprise citizen-soldiers tend to
be more diverse in terms of ethnicity, religion, culture and social sta-
tus than professional militaries.\footnote{Cf. Janowitz, supra note 46, at 1
(noting that an all-volunteer military creates
"highly selective linkages with civilian society"); Williams, supra note 48, at 554
("[Any modern version of the militia must be so inclusive that its composition offers some
meaningful promise that it will not become the tool of a slice of society . . . .").
\footnote{See Janowitz, supra note 68, at 64 ("As the military becomes more representative
of the social structure, the code of professional ethics operates to repress tribal and separatist
attachments.").

\footnote{Frederic Wehrey, Bahrain's Lost Uprising, CARNEGIE ENDOWMENT (June 12,
2012), http://carnegieendowment.org/2012/06/12/bahrain-s-lost-uprising/bkgu; Abdulhadi
Khalaf, Bahrain's Military is Closely Tied to the Monarch, N.Y. TIMES, Aug. 28, 2012,
bahrain-military-is-closely-tied-to-the-monarch ("These arrangements allow the Bahraini
regime to remain confident that its military and security forces will remain loyal no matter
how high the civilian casualties are.").

\footnote{Nicholas Blanford, Syrian Army Defections Probably Not Decisive, CHRISTIAN
0625/Syrian-Army-defections-probably-not-decisive; Justin Vela, Wave of Syrian defec-
sidered a full-blown civil war—defections have been common among Sunni soldiers, but rare among the Alawites. The religious differences between the users and the victims of the regime violence in Syria have allowed the regime, at least thus far, to continue its suppression of the popular uprising.

Finally, a military composed of citizen-soldiers in an emerging democracy may provide soldiers from humble backgrounds with a rare opportunity for advancement. In authoritarian regimes marked by corruption and nepotism, an interdependent military may be a rare, if not the only, egalitarian institution in society where systematic advancement depends, not on accidents of birth, but on merit. As Lucian Pye has observed, the "practice of giving advancement on merit can encourage people, first, to see the army as a just organization deserving of their loyalties, and then possibly, to demand that the same form of justice reign throughout their society." Citizen-soldiers tend to lack a strong allegiance to an elite upper class and possess a more reformist and modern outlook. Unlike other state institutions that are more likely to be wedded to the authoritarian status quo, a military that comprises citizen-soldiers may have a lesser stake in the existing autocratic governance structures. It may therefore be more capable of transforming those autocratic institutions into democratic ones.

99. Blanford, supra note 98; Vela, supra note 98.
100. LUCIAN W. PYE, ARMIES IN THE PROCESS OF POLITICAL MODERNIZATION 9 (1961).
101. PYE, supra note 100, at 9; JANOWITZ, supra note 68, at 53 n.17, 81 ("In the military, as compared with other institutions of a new nation, the probability of equal treatment is greater.").
102. PYE, supra note 100, at 10. See also JANOWITZ, supra note 68, at 60 ("These young men see the military as representing fundamental and desirable values. They choose the military because it is accessible to men of their social position and regional background. They choose the military because they believe that their social background will not constitute a hindrance to career success."); id. at 80 (noting that the military may serve "as an agent of social change"); ÖZBUDUN, supra note 94, at 3 ("It may be hypothesized that armies recruited from essentially lower or middle classes are more likely to produce reformist military regimes than armies of feudal or upper-class origins.").
103. JANOWITZ, supra note 68, at 56 ("What is so striking is that the combination of hinterland and middle-class social origins plus professional military education does not produce a traditional conservative outlook but, in varying forms, a modernizing and collectivist orientation."); id. at 28, 49.
104. JANOWITZ, supra note 68, at 57.
2. Dependence on International Democratic Institutions

The interdependent military is dependent, not only on the domestic population through its recruitment of citizen-soldiers, but also on international democratic institutions. Although democratization is fundamentally a domestic phenomenon, external factors can exert significant influence on the internal transition process. The officers of an interdependent military often receive military or technical aid from international democratic institutions. They may be trained, for example, in Western nations that have long espoused democratic norms alongside Western military officers. Through their training, these officers may become uniquely sensitive to the extent that their countries are democratically underdeveloped and the corresponding need for substantial advancement in their society.

For example, the support of democratic European nations was a "crucial factor" that assisted the democratic-transition processes in Spain, Turkey and Portugal as these nations looked to their European neighbors as "beacons to follow." During Franco’s reign, the Spanish army was completely isolated from European nations and instead formed alliances with armies in South Korea, Taiwan and Latin America. Following Franco’s death, the improved relationships with European armies and Spanish membership in NATO assisted the democratization process by “providing reference points for modernization and giving anchorage to current and future reforms.”

105. SERRA, supra note 14, at 241.

106. See PYE, supra note 100, at 4 n.3 ("American military aid [after World War II] has contributed to making the military the most modernized element not only in recipient countries but also in neighboring countries which have felt the need to keep up with technological advances.").

107. Note, however, that the provision of foreign financial aid alone, without extensive training and education for individual soldiers, is ordinarily not enough to sufficiently expose the military to democratic norms.

108. See PYE, supra note 100, at 5; JANOWITZ, supra note 68, at 67 ("Training in technology and contact with foreign specialists sensitizes military personnel to the relative backwardness of their countries. They are aware of the possibility of change, since they are superficially familiar with the events of colonialism and have more directly experienced recent political changes which produced independence."); SERRA, supra note 14, at 77 ("Joining alliances and security organizations will eventually convince armies that democracy is the internationally accepted system and, by the same token, that military interventions in politics will not be tolerated.").

109. SERRA, supra note 14, at 68.

110. Id. at 102.

111. Id. at 139.
The Turkish military’s participation in NATO also anchored the military to democratic European norms, catalyzing a democratization process in Turkey under the military’s leadership following a 1960 coup that toppled an authoritarian government. Likewise, in Portugal, a progressive generation of NATO military officers staged a “democratic coup” in 1974 and created a democracy in Portugal that continues to flourish today.

3. Focus on External, not Internal, Threats

Another desideratum that makes the interdependent military more responsive to society is that it is rarely used to police the population. Its primary focus is on external, rather than internal, threats.\textsuperscript{112} Relatedly, an interdependent military views itself, and is viewed by large segments of the population, as relatively neutral on political matters. To be sure, the military has institutional interests that may align with certain political and social groups, but it is those interests, not a particular political ideology, that drive the alignment. An interdependent military may shift those alliances to suit its interests, but does not remain wedded to a particular social or political group.

Neutrality is important for an interdependent military because any democracy-promoting role for the military will require it to cooperate with the citizenry and serve as an arbiter between political actors, as I explain further in Part II.B.3.a below. If the military is viewed as a partisan institution, the society is more likely to react with cynicism to, or outright reject, its attempts to promote democratic institution-building. Likewise, political parties are more likely to distrust a partisan military’s attempts to mediate among them, hindering its ability to serve as an arbiter of conflicts. Hence, the appearance of partisanship or political bias significantly impedes the military’s democracy-promoting role.

A close analogue can be found in the judiciary. Constitutional theorists and judges agree that, in the words of the U.S. Supreme

\textsuperscript{112} \textit{See} Huntington, supra note 13, at 71. As Janowitz has also observed:

The military, either as a result of the influence of Western forms or because of self-generated heroic ideals, seeks, wherever possible, to withdraw from the continuous task of day-to-day policing and repression of political opposition . . . . It seems to operate on the assumption that minor day-to-day resort to force weakens its organizational capacity to intervene successfully with shock tactic and with overpowering impact. This appears to be an application of the military theme of conservation of resources.

\textit{Janowitz, supra} note 68, at 37.
Court, "[t]he Court's powers lies . . . in its legitimacy."\textsuperscript{113} Empirical evidence demonstrates that perceptions of the judiciary's legitimacy are influenced by the "neutrality" of its judgments: the more neutral the judgments of the Court, the greater its reputed legitimacy.\textsuperscript{114}

The same is true for the military. A military whose primary mission includes partisan politics or fighting "the enemy from within" is bound to lose its legitimacy among some facets of the population.\textsuperscript{115} That was the case in Spain during Franco's reign when the military was frequently deployed to ensure internal security, rather than national defense.\textsuperscript{116} Following Franco's death, the first major change to the Spanish military was to abolish its focus on internal defense and shift its mission entirely to external defense and collaboration with allied militaries.\textsuperscript{117} That shift in turn enhanced the Spanish military's legitimacy and solidified its role as a neutral state institution.\textsuperscript{118}

An interdependent military is also ideally not perceived to be associated with a newly deposed authoritarian regime. If the military is viewed as a legitimate and autonomous entity within an autocracy, it will enjoy more legitimacy within society and be more capable of


\textsuperscript{114} See generally Tom R. Tyler & Gregory Mitchell, Legitimacy and the Empowerment of Discretionary Legal Authority: The United States Supreme Court and Abortion Rights, 43 DUKE L.J. 703 (1994).

\textsuperscript{115} See Dankwart A. Rustow, Turkey's Second Try at Democracy, 52 YALE REV. 518, 523 (1963) (noting that the use of troops to repress domestic protests may force the military into a political role). Because it is ordinarily not deployed against the domestic population, an interdependent military stands in stark contrast to the state police. The police is frequently the brutal tool of repression by the authoritarian regime. It is used to quell dissent, suppress opposition, and arrest dissidents. In an authoritarian regime, the interdependent armed forces therefore tend to represent the people, and the state police forces tend to represent the dictatorship. In fact, in the absence of a military as a counterforce, the police might expand its own power in a new nation with low levels of institutionalization. JANOWITZ, supra note 68, at 101. The intervention of the police, which tends to rely more on coercive pressure and lack a sense of national goals as compared to the military, might be "highly unstable and fragmentary." Id.

\textsuperscript{116} See SERRA, supra note 14, at 97.

\textsuperscript{117} Id. at 176.

\textsuperscript{118} As Michael Desch has argued, focusing the military on foreign, rather than domestic, threats also has the benefit of making civilian control of the military more feasible. See Michael C. Desch, Threat Environment and Military Missions, in CIVIL-MILITARY RELATIONS AND DEMOCRACY (Larry Diamond & Marc F. Platter eds., 1996); see also JANOWITZ, supra note 68, at 38 ("It is a basic assumption of the democratic model of civilian-military relations that civilian supremacy depends upon a sharp organizational separation between internal and external violence forces.").
transforming those autocratic structures during a democratic transition. If, on the other hand, the military is viewed as supportive of the overthrown authoritarian regime, its democratization capabilities will be significantly hindered. For example, the Spanish armed forces were the guardians of the autocratic Francoist institutions. As such, the armed forces were unsuited to spark and lead the democratization process in Spain. In contrast, the Portuguese military often clashed with the authoritarian Estado Novo regime over the conduct of the colonial wars during the 1970s. It was therefore able, with public support, to lead Portugal's transition process to democracy after a 1974 coup that toppled the dictatorship. The same was true for the Turkish military, which often clashed with the authoritarian Democrat Party government in the 1950s. When the government ordered the military to quash a popular uprising in 1960, the military refused to fire on the civilian population, staged a coup and oversaw a transition process to democracy in Turkey.

The three desiderata above describe the ideal interdependent military, which, for the reasons that I will continue to explain in the next two sections, is capable of providing institutional support to an emerging democracy.

B. The Genesis and Advancement of Constitutional Democracy

In addition to assuming that all militaries fit the praetorian mold, the prevailing theory also neglects the democratic enforcement deficit that exists in most post-authoritarian societies that can, and often does, derail the democratic-transition process. In the following three sections, I analyze why that is the case and explain the democracy-promoting role that an interdependent military can play. Section 1 explicates the conditions necessary to establish and maintain a constitutional democracy and argues that these conditions are often absent in post-authoritarian societies. Section 2 considers why traditional civilian actors may be unwilling or unable to supply these conditions. Section 3 explains how an interdependent military, an oft-neglected power center, may fill the constitutional void. It argues that the institutional interests of an interdependent military often align with the conditions necessary for the establishment and advancement of constitutional democracy.

119. See SERRA, supra note 14, at 140.
120. Id. at 140–41.
1. The Parchment-Barriers Problem

The prevailing theory focuses largely on a peripheral argument. The fundamental question is not whether the military should play a constitutional or political role in an emerging democracy. The more important—and conceptually prior—question is what actors, legal norms, and institutions are necessary to ensure that a nascent democracy becomes and remains a constitutional democracy. In other words, what is the "glue" that will make constitutional democracy stick? How does one ensure that an unelected despotism does not become, in the words of Thomas Jefferson, an "elected despotism"?121 And where traditional institutions of government perpetuate or remain unable or unwilling to promote democratization, what other institutions are capable of performing that task?

This fundamental question also puzzled the framers of the U.S. Constitution, particularly James Madison. He famously argued that constitutional restrictions, in the absence of any external enforcers of the constitutional bargain, were mere "parchment barriers."122 These barriers were insufficient to resist the "majority of the Community," and constitutional rights "however strongly marked on paper will never be regarded when opposed to the decided sense of the public."123 It was futile, according to Madison, to expect restraint from the public at large or their legislators who sought office for personal ambition and self-interest.124

Madison sought to counter the parchment-barriers problem by creating a government structure that would channel political forces to protect constitutional norms and individual liberties and make constitutional transgressions costly or undesirable.125 The causes of factionalism, according to Madison, were "sown in the nature of man" and could not be cured.126 He therefore aimed to counter its effects.127 In Federalist No. 10, he argued that the government should include different factions "with multiplicity of interests" in competi-

121. See THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA 120 (William Peden ed., 1955); see also THE FEDERALIST No. 48 (James Madison) (Clinton Rossiter ed., 2003).

122. THE FEDERALIST No. 48, supra note 121, at 305.

123. Id.


125. Id. at 668, 717.


127. Id. at 75.
tion with one another for political power. A greater variety of interests represented in government would afford greater security against “one party being able to outnumber and oppress the rest.”

According to Madison, the parchment-barriers problem could also arise from self-aggrandizement by government institutions. Although Madison recognized that dependence on the electorate is the primary check on government institutions, “experience has taught mankind the necessity of auxiliary precautions.” Just as the faction problem could be mitigated by competition between a multiplicity of factions, competition among different government institutions would create a self-enforcing check against tyranny by one institution. Usurpations of authority by the executive and legislative branches particularly concerned Madison. He recognized that a “mere demarcation on parchment of the constitutional limits of the several departments is not a sufficient guard against those encroachments which lead to a tyrannical concentration of all the powers of government in the same hands.” Madison therefore argued in Federalist No. 51 that “ambition must be made to counteract ambition” within each government institution so that each institution would be checked and restrained by the ambitions of the other. Madison’s intuition—that structural protections are more stable and more protective of individual rights than the substantive rights themselves—has been confirmed by modern social scientists.

The success of the Madisonian solution to the parchment-barriers problem depends on two conditions: incentive compatibility and institutional stability. Incentive compatibility requires political actors to be motivated to conform their conduct to constitutional

128. Id.
129. Id. at 78.
132. THE FEDERALIST NO. 48, supra note 121, at 306.
133. Id. at 310.
134. THE FEDERALIST NO. 51, supra note 130, at 319. Immanuel Kant had a similar aspiration of designing a system of government that would make even “a nation of devils . . . inhibit one another in such a way that the public conduct of the citizens will be the same as if they did not have such evil attitudes.” IMMANUEL KANT, Perpetual Peace: A Philosophical Sketch, in KANT’S POLITICAL WRITINGS 93, 112–13 (Hans Reiss ed., H.B. Nisbet trans., 1970), cited in Levinson, supra note 131, at 707.
135. See Levinson, supra note 131, at 729.
136. Id. at 670.
norms. Institutional stability, on the other hand, requires the institutional arrangements that empower those political actors to be relatively stable, safe from subversion by the opponents of the constitutional regime.

Nascent democracies that have emerged from a long period of authoritarian rule are more likely to lack these two Madisonian conditions than established democracies. As to incentive compatibility, new democracies tend to lack a culture of political pluralism as well as any enforcement mechanisms designed to ensure that political actors do not misbehave. The power of the status quo is undeniable, and revolutions often produce outbreaks of nostalgia. In the political and social turmoil that a democratic transition produces, many wistfully harken back to the socially and economically stable days of the autocratic regime. For example, according to a May 2012 nationwide survey of Egyptians by the Pew Research Center's Global Attitudes Project, 52% of those surveyed believed that the country is either worse off or neither better nor worse since Hosni Mubarak was deposed. Only 44% believed Egypt was better off after Mubarak.

137. See Mark Tushnet, Taking the Constitution Away from the Courts at 95–96 (1999); Levinson, supra note 131, at 670.

138. See Levinson, supra note 131, at 661, 670; see also Adam Przeworski, Democracy as a Contingent Outcome of Conflicts, in CONSTITUTIONALISM AND DEMOCRACY 59, 63 (Jon Elster & Rune Slagstad eds., 1988) (“The transition is to democracy if both conditions are fulfilled: (1) the old authoritarian power apparatus is dismantled and (2) the new political forces opt for democratic institutions as a framework within which they would compete for the realization of their interests.”).

139. See Huntington, supra note 13, at 395 (“The older an organization is, the more likely it is to continue to exist through any specified future time period.”).


141. See Guillermo O’Donnell & Philippe C. Schmitter, Transitions from Authoritarian Rule: Tentative Conclusions About Uncertain Democracies 4 (1986) (“Compared to periods of ‘order’ which characterize the high point of authoritarian rule, the uncertainty and indirection implied in movements away from such a state create the impression of ‘disorder.’ This impression some compare nostalgically with the past, while overlooking or regretting the transition’s revival of precisely those qualities which the previous regime has suppressed: creativity, hope, self-expression, solidarity, and freedom.”).

142. Egyptians Remain Optimistic, Embrace Democracy and Religion in Political Life, Pew Research Center (May 8, 2012), http://www.pewglobal.org/2012/05/08/chapter-1-national-conditions-and-views-about-the-future. See also Steven A. Cook, It’s Still Mubarak’s Egypt, FOREIGN POLICY (June 13, 2012), http://www.foreignpolicy.com/articles/2012/06/13/its_still_mubarak_s_egypt (“Consider Egypt strictly by the numbers, and the Mubarak era may have begun to look better to Egyptians—and not just to the felool, or remnants of the previous power structure.”).
Like the public, political actors who have inherited the reins from an autocrat may be tempted to reform and recreate—in other words, to produce a new autocracy in the process of reforming an autocratic regime. Change may be costly, difficult to comprehend and questionable. And inherited autocratic institutional structures may appear normatively superior to theoretical alternatives.

Therein lies the fundamental tension sparked by a revolution. The strong pull of the status quo supports the established autocratic governance structures. But the revolutionary dynamic pulls in the opposite direction, towards the demolition of autocracy and the establishment of democracy. The outcome of a revolution depends largely on the resolution of this tension. During the creation of the democratic marketplace, which often is frustratingly lengthy, costly and tumultuous, the incentives of the political actors must be—but rarely are—aligned with the creation of democratic governance structures.

In addition to incentive compatibility, there must be institutional stability for constitutional democracy to blossom. In a newly established democratic order, however, many of the existing institutions often will not have the stability to serve as the external enforcer of the constitutional bargain and support a competitive democracy. An authoritarian regime ensures its own survival by extinguishing or significantly stifling political opposition, as well as economic and social pluralism. In a post-authoritarian society, actors and institutions capable of preserving and promoting democracy and stability may be absent. Emerging democracies, therefore, are more likely to have a significant “enforcement deficit” and less likely to possess the two Madisonian conditions of institutional stability and incentive compatibility. That enforcement deficit may either lead to a rebound to an authoritarian form of government or, if unfilled, to chaos and vio-

143. Egyptians Remain Optimistic, Embrace Democracy and Religion in Political Life, supra note 142.

144. See Levinson, supra note 131, at 691; see also id. at 708 (“Maintaining coordination around the existing, and therefore focal, order will always be much easier than attempting to recoordinate around some alternative constitutional regime.”); Przeworski, supra note 138, at 75 (“[T]he authoritarian power apparatus may resist the transition to democracy even when the forces within the civil society upon which the regime rests are willing to try their chances under democratic conditions.”).

145. See Levinson, supra note 131, at 691.

146. Id. at 661.

147. See Landau, supra note 25, at 1 (“New democracies in weakly institutionalized environments may as plausibly become quasi-authoritarian regimes or unstable states.”).
Since Madison, modern thinkers have also sought to identify the conditions that promote the establishment of constitutional democracy. In a pioneering article, Dankwart Rustow summarized the largely divergent hypotheses and explained the shortcomings inherent in most of them. Instead, Rustow proposed an alternative model that contains four ingredients indispensable to the genesis of constitutional democracy: (1) "sense of national unity;" (2) "entrenched and serious conflict;" (3) "conscious adoption of democratic rules" and (4) habituation by both politicians and the electorate to these rules. Compounding its persuasiveness, Rustow's model, created in 1970, presciently predicted the most salient features of the Spanish, Greek and Portuguese transitions that would not occur until years later.

Rustow's and Madison's conditions for the genesis of constitutional democracy overlap to a significant extent. The Madisonian condition of multiplicity of factions translates to the Rustowian condition of entrenched and serious conflict. Rustow himself notes that the first two elements of his model are aimed at creating the "right" amount of multiplicity among political parties. An infant democracy, according to Rustow, requires "not a lukewarm struggle but a hot family feud." Likewise, Rustow's condition of habituation by politicians and the electorate to democratic rules largely supports the Madisonian condition of institutional stability. Political pluralism, stability and national unity thus emerge as pivotal conditions for the genesis of constitutional democracy from Madison's and Rustow's models. The next two sections will explore why it may be in the military's institutional self-interest to promote these conditions in the absence of other willing and able actors and institutions.

2. The Interdependent Military as a Constitutional Solution

The conventional narrative relies on Montesquieu's three traditional branches of government—executive, legislative and judici-

148. Id. at 11.
150. Id. at 361.
151. See SERRA, supra note 14, at 9–10.
152. Rustow, supra note 149, at 354–55.
153. Id. at 355.
ary—to promote the conditions for democratic development explained in the previous section. Ideally, enlightened leaders in these three branches will fill the enforcement deficit in an emerging democracy and promote, in concert with civil society, the conditions necessary for democratic development with no military involvement.

But that is not always the case. As Madison recognized, placing enlightened statesmen in the executive and legislative branches will not necessarily solve the parchment-barriers problem because “[e]nlightened statesmen will not always be at the helm.” Madison famously dismissed the possibility that moral obligations superior to shortsighted self-interest would ensure compliance with constitutional norms: “If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary.” At the hands of the majority and the self-interested politicians, constitutional limitations on governmental power would be neglected at will and the rights of the politically weak would be suppressed. Madison’s concern is especially salient during a transition from authoritarianism to democracy, when the “‘standard’ actors are likely to be divided and hesitant about their interests and ideals and, hence, incapable of coherent collective action.” As David Landau has also argued, an important goal of constitution-making should be to constrain unilateral exercises of power by dominant groups or individuals, who may overreach if they are inadequately checked by other state institutions or opposition groups.

Where elected legislative or executive leaders perpetuate or remain unwilling to solve the parchment-barriers problem, many constitutional theorists posit that the judiciary provides the best institutional solution. If Madison’s “majority of the Community” refuses to heed constitutional prohibitions, then courts, the traditional thinking goes, will enforce them. But that thinking does not always hold up in established democracies, let alone in nascent ones.

157. O’Donnell & Schmitter, *supra* note 141, at 4. See also Landau, *supra* note 25, at 8 (“Constitution-making can be easily hijacked by individuals or groups who temporarily enjoy large amounts of power in order to enhance their own position.”).
159. See Levinson, *supra* note 131, at 661.
160. Id. at 666.
that have emerged from a long period of authoritarian rule. Courts can impose constitutional constraints on other political actors and protect individual rights only insofar as those actors are willing to comply with the judiciary’s commands. Even in the United States, where judicial review and independence are now well-established, Presidents Jefferson, Jackson, Lincoln and Roosevelt all have at least declared, if not acted upon, their desire to disregard the judiciary’s judgments.

The judiciary is even less likely to fill the enforcement deficit in post-authoritarian societies. In many authoritarian regimes, the judiciary is a mere puppet of the ruling party, no more capable of meaningfully protecting constitutional rights than the parchment barriers themselves. Even in the post-authoritarian period, the emergence of judicial independence will in many cases be contingent on the development of a competitive political marketplace. In the early years of the American Republic, for example, the Federalists and the Republicans both disregarded or undermined the judiciary’s rulings in an attempt to promote their partisan political agendas.

Given the frequent failure of the three traditional branches of government to promote democratic development in many post-authoritarian societies, it is therefore unsurprising, albeit unfortunate, that the world is littered with failed democratic transitions. When the glue that makes constitutional democracy stick is missing, a rebound to authoritarianism becomes largely inevitable.

In some cases, therefore, one must look outside Montes-

(2007) (“The Court cannot stand outside of politics and exercise a unique role as guardian of constitutional verities [because] the Court’s judgments will have no force unless other powerful political actors accept the . . . priority of the judicial voice.”).

162. See Levinson, supra note 131, at 733.

163. Id.

164. See Landau, supra note 25, at 38 (noting that judicial attempts to check constitution-making processes in Venezuela, Colombia and Bolivia were ineffective).

165. Levinson, supra note 131, at 741.

166. Id.

167. Participation from civil society during transitions may also be ineffective in preventing democratic breakdown. For example, high levels of civil-society participation during the 1999 constitution-making process in Venezuela did not prevent the establishment of a competitive authoritarian regime. Landau, supra note 25, at 16–17.

168. ADAM PRZEWORSKI, DEMOCRACY AND THE MARKET: POLITICAL AND ECONOMIC REFORMS IN EASTERN EUROPE AND LATIN AMERICA 51 (1991); Landau, supra note 25 (discussing examples from Venezuela and Bolivia); Partlett, supra note 25 (analyzing cases in Russia, Belarus and Kazakhstan). See Alwaleed bin Talal, supra note 26.
Montesquieu’s tripartite system of government for an innovative solution. As Bruce Ackerman has observed, the tripartite system of the judiciary, executive and the legislature no longer captures the complex web of institutions that make up a democratic government. A new separation of powers framework is emerging that contains more than three boxes. That framework, according to Ackerman, must take into account the new role that independent institutions are playing—even if such institutions cannot neatly be categorized as legislative, executive or judicial. New power-centers must be added to Montesquieu’s holy trinity in order to protect “especially fundamental governmental values, in contexts where normal political incentives are especially pernicious, and with institutional designs that are well-conceived, and if at all possible, empirically tested.”

An oft-neglected power center that may influence government decision-making in some emerging democracies is the interdependent military. Amidst the chaos that a revolution produces, an interdependent military, armed with the desiderata described in Part I.A above, may be the only stable, legitimate and accountable institution able to provide institutional support to an emerging democracy and constrain unilateral exercises of power by dominant groups. Alt-

169. Bruce Ackerman, Goodbye Montesquieu, in COMPARATIVE ADMINISTRATIVE LAW 128, 128–129 (Susan Rose-Ackerman & Peter Lindseth eds., 2011).
170. Id. at 129.
171. Id. at 131.
172. Id. at 130–31.
173. To be sure, there may be other actors, not considered in this Article, that can also perform this democracy-promoting role. My focus here is on the military, whose potential for democratic development has been under-theorized.
174. See Eboe Hutchful, Reconstructing Political Space: Militarism and Constitutionalism in Africa, in CONSTITUTIONALISM AND DEMOCRACY: TRANSITIONS IN THE CONTEMPORARY WORLD 216 (Douglas Greenberg, Stanley N. Katz, Melanie Beth Oliviero & Steven C. Wheatley eds., 1993) (“The military sees itself, and is frequently seen, as the only organization sufficiently removed from political partisanship to be able to claim an arbitrating role and to set common rules of political discourse. Its relative autonomy . . . promotes this self-conception within the military and grants it varying degrees of legitimation within society as a whole.”); Daniel Lerner & Richard D. Robinson, Swords and Ploughshares: The Turkish Army as a Modernizing Force, 13 WORLD POL. 19, 24 (Oct. 1960) (“When the court crumbles and the intelligentsia is incapacitated, only the ‘men of the sword’ remain capable of taking over political control.”); JANOWITZ, supra note 68, at 64 (noting the military’s “emphasis on anticorruption and antidecadence,” which “seems to be a rather universal characteristic of the military profession and reflects, to some degree, the underlying motives of those who select this career.”); see also Hamad, supra note 7, at 53 (“Many Egyptians saw the army as a main pillar of state stability and national security, an image that the regime controlled media carefully nurtured.”).
hough an authoritarian regime extinguishes or significantly stifles political opposition, as well as economic and social pluralism, the military—an institution necessary for the survival of most nations—is often left untouched. An interdependent military therefore often stands out as the most modern or progressive organization in a newly established democracy, where reformist institutions are often weak after a long period of authoritarian rule.\footnote{Janowitz, supra note 68, at 4–5 (noting that the military has wider involvement in domestic economic, social and political change in the typical new nation because the civilian political institutions are often weak); Pye, supra note 100, at 7 ("[The military is] one of the more modernized of the authoritative agencies of government in transitional societies"); Pye, supra note 100, at 10 ("[T]he military stand out because in a disrupted society they represent the only effectively organized element capable of competing for political power and formulating public policy. This situation is most likely to exist when the traditional political order, but not necessarily the traditional social order, has been violently disrupted and it becomes necessary to set up representative institutions before any of the other modern-type political organizations have been firmly established.").} As Janowitz aptly observed:

In a context of rapid social change and weak sources of governmental legitimacy, the military constitutes more than a group of professional specialists. As compared with business entrepreneurs and even with the civil service, its personnel become fused into an active political ingredient, because they reflect and incorporate, dramatically and visibly, national aspirations. As new nations strive to establish governments that will be considered legitimate by the population at large, the military clearly constitutes a reservoir of legitimate authority.\footnote{Janowitz, supra note 68, at 44. See also John J. Johnson, Military and Society in Latin America 143 (1964) (noting that the military may be "the country's best organized institution" and is "in a better position . . . to give objective expression to the national will" than political parties or interest groups); Pye, supra note 100, at 69 (noting that the military may "play a crucial role in shaping attitudes toward modernity in other spheres of society").}

For example, in three distinct periods in Turkish history, the military was the only available weapon against an authoritarian government.\footnote{Rustow, supra note 80, at 372.} The repression of dissidents under Sultan Abdulhamid II in the early 1900s, the independence war against the Allies and the Sultanate in the wake of the Turkish Republic's formation in 1919, and later the authoritarian Democrat Party government in the 1950s, each left the military as the only institution capable of effectuating regime change.\footnote{Id.} In all three periods, the Turks could ask: "If the
army does not do this job, who will?" 179

I do not suggest that an interdependent military’s provision of institutional support to an emerging democracy presents no challenges. As I noted above, the theory I advance here is a second best theory. Despite the legitimacy it enjoys among broad sectors of the population, an interdependent military may commit significant and costly errors in serving its democracy-promoting function. After all, a democratic transition is a turbulent process. During the transition, decades-old autocratic structures must be torn down and replaced with democratic institutions. Interim military leaders, empowered with the unfamiliar task of running a government, often face enormous difficulties in ensuring an orderly transition to democracy. Military leaders, like civilian leaders, may attempt to abuse their powers or make unpopular and costly decisions. That might prompt a backlash against the ruling military by the public, as the recent democratic-transition process in Egypt has demonstrated.

Nevertheless, so long as a reservoir of popular support remains for an interdependent military despite any errors committed by military leaders, the military will continue to enjoy legitimacy. By way of analogy, social scientists have found that the public may continue to support the judiciary—even where the judiciary generates substantive decisions contrary to popular will—because the reservoir of institutional support for the judiciary outlasts specific judicial decisions. 180 As Daryl Levinson has explained, "[i]f political actors assess judicial review as a package of probabilistic policy outcomes rather than one case at a time, then the expected policy value of the Court as an institution can be positive on net despite some negative-value decisions." 181 The same is true for the military. If an interdependent military has built up a savings account of approval within the society, it can then spend it down by making unpopular decisions during the transition period without losing significant public support. 182

That is how militaries in Egypt, Turkey and Portugal have continued to enjoy significant popular support despite any failures or abuses of power. According to a May 2012 nationwide survey of Egypt by the Pew Research Center’s Global Attitudes Project, the

179. Id.


181. Levinson, supra note 131, at 742.

182. Id. at 743.
military continued to be a well-regarded institution notwithstanding its poor performance at pivotal points during the democratic-transition process. The Pew poll found that three-in-four Egyptians believe the military continues to have a "good influence" on the country, including 43% who say "very good." And despite mixed reviews about its supervision of the democratic-transition process in Egypt, 63% of Egyptians held a positive opinion of the ruling Supreme Council of the Armed Forces (SCAF). The statistics are similar for the Turkish military. According to a Spring 2010 Pew poll, despite its history of meddling in Turkish political affairs and the recent arrests of many of its officers for alleged coup plotting, 72% of Turks believed the military has a "good influence" on the country, including 30% who said "very good." Finally, in Portugal, 54% of the population attributes "much or very much recognition" to the armed forces for their overthrow of an authoritarian regime in 1974 and the subsequent establishment of democracy.

3. The Institutional Interests of the Interdependent Military

Even if an interdependent military is an institution available to promote democratic development and constrain unilateral exercises of power by dominant groups in an emerging democracy, another important question remains: What motivates an interdependent military to perform this role? After all, militaries ordinarily defend nations; they do not govern them. Their expertise is in warfare, not democratic politics.

The military, like other government institutions, has its own reasonably concrete interests. Institutional interest is often

184. Id.
185. Pew Global Attitudes Project Question Database, PEW RESEARCH CENTER, http://www.pewglobal.org/question-search/?qid=897 ("Please tell me what kind of influence the group is having on the way things are going in (survey country). Is the influence of the military very good, somewhat good, somewhat bad or very bad in (survey country)?") (last accessed Apr. 22, 2013). See also Aydinli, supra note 16, at 581 ("[D]espite various explicit and implicit military interventions into politics and social life, Turkish society has consistently indicated the military as the country's most prestigious and trusted institution.").
187. Huntington, supra note 13, at 412.
188. See JANOWITZ, supra note 68, at 32 ("The military task is essentially indivisible, as
shorthand for the motivations of individuals who are members of that institution.\textsuperscript{189} Most individuals tend to identify with and benefit from the success of the institutions of which they are members, including sports teams, religions, countries,\textsuperscript{190} militaries and legislatures. For example, legislators tend to identify with the legislature for various reasons, including the need for cognitive consonance ("This must be an important institution since I am a member of it") or socialization.\textsuperscript{191} In addition, if members of a political party deviate from the party line, they may be sanctioned by failing to get re-nominated or reelected.\textsuperscript{192} The same dynamic is largely at work in a military. In the case of the military, the relevant decision-makers are the military leaders. The interests of the military as an institution and the interests of its leaders will often converge since it is the military leaders who often reap the benefits that derive to the military as an institution through the advancement of its institutional self-interests.\textsuperscript{193} The hierarchical command structure of the military also contributes to the coherence of its members' ideology.\textsuperscript{194}

In some cases, the interests of the military will align with the conditions conducive to the development of constitutional democra-

\begin{itemize}
    \item compared to economic and civilian functions, and it contributes thereby to a unified organization with internal cohesion.
\end{itemize}


\textsuperscript{191} See Elster, \textit{supra} note 189, at 380 n.40.

\textsuperscript{192} \textit{Id.}

\textsuperscript{193} See \textsc{Linz & Stepan}, \textit{supra} note 10, at 67 ("The officer corps, taken as a whole, sees itself as a permanent part of the state apparatus, with enduring interests and permanent functions that transcend the interests of the government of the day."); Juan Rial, \textit{Providing for the Common Defense: What Latin American Constitutions Have to Say About the Region's Armed Forces}, in \textit{Constitutionalism and Democracy, supra} note 174, at 235, 243 ("The armed forces are, however, strongly unified in their political views. It is precisely this unity of political views that makes civilians perceive the military as a single corporation.").

\textsuperscript{194} To be sure, the military will not always act as a monolithic unit and the individual interests of the military leaders will not always align with the interests of the military as an institution. On occasion, a military leader may act irrationally or against the interests of the military as an institution. In addition, the interests of the military as an institution and the interests of its leaders may diverge where factional disputes arise within the leadership or between the junior and the senior officers. As discussed \textit{infra} Part III.B, for example, during Portugal's transition to democracy, a rift occurred between the senior officers and a pro-communist faction among the junior officers. The pro-democracy senior officers, led by Lieutenant-Colonel Antonio Ramalho Eanes, prevailed.
cy. As a by-product of furthering those self-interests, the military also promotes the three conditions described supra Part I.B as conducive to the establishment of a constitutional democracy: intrastate stability, political pluralism and national unity. To be sure, these institutional self-interests are possessed by most militaries, not just those militaries that fit the interdependent mold. Nevertheless, interdependent militaries, for the reasons I described supra Part I.A, are more responsive to democratic norms and more capable of using their constitutional or political powers to further democratic ends.

a. Intrastate Stability

Intrastate stability tends to promote the advancement of a nascent democracy. The existence of a stable framework of government prevents "costly conflict over the rules of the game" and allows the government to do what it is designed to do—govern through collective decision-making.195 If the regime is unstable, the institutions necessary for democratic constitutionalism may never form or take substantially longer to form.196 For example, sectarian strife among the Shias and Sunnis in Iraq continues to present formidable challenges to the establishment of a democracy. Likewise, in Libya, widespread tribal infighting has significantly hindered Libya’s democratic transition.197 And there exists no stable institution in Libya, such as a structured and stable military, to quell tribal conflicts.198

In addition to promoting democratic development, intrastate stability in many cases advances the military’s interests as an institu-

195. Levinson, supra note 131, at 675.
196. O’DONNELL & SCHMITTER, supra note 141, at 11 ("The threat of violence and even frequent protests, strikes, and demonstrations are virtually always present, but where the via revolucionaria is taken, or when violence becomes widespread and recurrent, the prospects for political democracy are drastically reduced.").
198. Libya’s Elections Under Threat, INT’L CRISIS GROUP (July 3, 2012), http://www.crisisgroup.org/en/publication-type/alerts/2012/libya-elections-under-threat.aspx ("With a weak central government, powerful, competing armed groups and strong regional feelings, Libya is experiencing a delicate transition. Depending on how the authorities address the most pressing immediate challenge, that transition could remain delicate—or become genuinely perilous."); Libya’s Liberal NFA Group Boycotts National Assembly, BBC NEWS (Jan. 7, 2013), http://www.bbc.co.uk/news/world-africa-20935871 ("Libya has been hit by instability since the overthrow and killing of Col. Gaddafi in October 2011. The government has been battling to disarm the militias who battled his government.").
tion. The military and the state are in a symbiotic relationship. Neither can survive without the other. Militaries tend to be risk-averse institutions that conflate their own future with that of a stable and functioning state apparatus. The absence of stability leaves "nothing but chaos, economic stagnation, civil war, and vulnerability to external conquest," creating enormous costs for all government institutions, including the military. The military may therefore advance its own interests by actively serving as a stabilizer of the new democracy, which allows, as a by-product, democratic institutions and a robust civil society to form and progress. For example, as I explain infra Part III, the Portuguese military played this role by keeping anti-democratic communist forces in check and ensuring stability during that nation's transition to democracy in the late 1970s.

An interdependent military may also contribute to intrastate stability by acting as an arbiter between competing political groups and solving collective-action problems, as it has done in the case of Turkey. Divisions over social, political or religious matters in new democracies can shake the foundations of the nation, to the detriment of the military's interests in preserving intrastate stability. For that reason, Adam Przeworski has argued that democracy is possible "when the relevant political forces can find institutions that would provide a reasonable guarantee that their interests would not be affected in a highly adverse manner." Because substantive democratic agreements are not binding, political parties have an incentive

199. LINZ & STEPAN, supra note 10, at 67 ("As members of a situational elite who derive their power and status from the existence of a functioning apparatus, the military-as-institution have an interest in a stable state, and this requires a government."); Alfred Stepan, Inclusionary and Exclusionary Military Responses to Radicalism: With Special Attention to Peru, in 3 RADICALISM IN THE CONTEMPORARY AGE 221, 221 (Seweryn Bialer & Sophia Sluzar eds., 1977) ("[T]he military's corporate and individual power, status, and material well-being depend upon its relationship to a strong and relatively stable state structure.").


201. Levinson, supra note 131, at 712.

202. JANOWITZ, supra note 68, at 7 ("The military may act as an informal, or even explicit, umpire between competing political parties and political groups as it does in, for example, Turkey."); SERRA, supra note 14, at 151 ("By a Turkish solution, I mean one in which . . . the military 'institution' dialogues with the other political institutions of state and even arbitrates between them . . . ").

203. SCHIFF, supra note 14, at 25.

204. Przeworski, supra note 138, at 64.
to renege on their commitments.\textsuperscript{205} And where parties have reason to expect that others will not follow their agreements or refuse to reciprocate their compromises, they will neither agree nor compromise.\textsuperscript{206} That impasse, in turn, will lead, not to democracy, but either to the continuation of the old autocracy or the establishment of a new one.\textsuperscript{207}

Where the political factions’ compliance with substantive agreements is otherwise uncertain, only politically stable institutions—preferably those with enforcement capabilities—can provide the requisite guarantees.\textsuperscript{208} In the power void that a revolution produces, an interdependent military can provide the requisite institutional guarantee and serve as an arbiter of disputes. If the cost of disagreement is perpetual fighting to the detriment of each party’s interests, then the benefits of deference to the mediating power of an interdependent military will be high.\textsuperscript{209} This dynamic has a horizontal and a vertical dimension.\textsuperscript{210} Horizontally, each political party wants to ensure that the others will not take advantage of it.\textsuperscript{211} Vertically, each party also wants to ensure that the enforcer of the horizontal bargain—in this case, an interdependent military—is enforcing the bargaining rules fairly.\textsuperscript{212} If each political party can be assured that the enforcement is fair (vertically), then it will be less concerned about the possibility that other parties will renege on their agreements (horizontally).\textsuperscript{213} Especially where an interdependent military is viewed as a relatively non-partisan body, political parties will be more likely to rely on the military as an arbiter of disputes and enforcer of horizontal bargains. As I explain further \textit{infra} Part III, the political parties in post-authoritarian Portugal, for example, depended on the military’s oversight as a crucial check on their adversaries, which had the benefit of allowing political parties to form democracy-promoting agreements and coalitions.

\begin{itemize}
\item[205.] \textit{Id.} at 65.
\item[206.] \textit{Id.} at 65–66.
\item[207.] \textit{Id.} at 66.
\item[208.] \textit{Id.} at 70.
\item[209.] \textit{Cf.} Levinson, \textit{supra} note 131, at 695; Przeworski, \textit{supra} note 138, at 70.
\item[211.] \textit{See id.}
\item[212.] \textit{See id.}
\item[213.] \textit{See id.}
\end{itemize}
b. Political Pluralism

Political pluralism is critical to the advancement of a nascent democracy, as both legal and political-science scholars have recognized. In a post-authoritarian society, political parties are likely to be weak or nonexistent since an authoritarian regime ensures its own survival by silencing opposition voices and disabling democratic political institutions. And where traditional political institutions are weak, unstable or nonexistent, "strong party organization is the only long-run alternative to the instability of a corrupt or praetorian or mass society." Political parties serve as intermediaries between the government and the society and represent a legitimate, stable mechanism for the representation of differing interests and the peaceful transfer of power. Moreover, opposition parties also serve as important checks on the ruling party, by evoking increased responsiveness to minority interests. Without effective political opposition and meaningful contestation of the incumbent seat, the regime will be politically unaccountable and undemocratic. Therefore, the establishment of competitive political parties, and a political marketplace in which those parties can compete, are the primary factors in determining a state's probability of becoming and remaining a democracy—a proposition that has been empirically established.

In some cases, an interdependent military will have an institutional interest in maintaining political opposition and preventing the domination of the government by a single politically powerful group. If a political party becomes too strong, that party can threaten the military's interests. The governing party may attempt to curb the military's powers or strip the military of its economic and social privileges. In contrast, the military may find more comfort and autonomy in the division of political powers that political pluralism would produce. In many cases, competition amongst the political branches allows the military to sit comfortably on the sidelines without any major threats to its autonomy and independence. Unless the military


216. Lai & Melkonian-Hoover, supra note 214, at 552.

217. Id.

218. Id. at 551, 553–54.
is assured that the ruling party will protect the military’s interests and not renege on that commitment—an uncertain proposition amidst a democratic transition process ordinarily characterized by shifting interests and alliances—political pluralism will be a safer bet for military leaders. An interdependent military’s promotion of political pluralism, however, is not a grand formal scheme by prescient military leaders. Rather, it is a by-product of the military’s protection of its institutional self-interests. In keeping one powerful party in check to protect its interests, the military will tend to promote the proliferation of others.

Once again, the judiciary provides a close analogy. Judicial independence, like military autonomy, is undermined when a dominant party’s control of the government is secure and the prospects of losing political power are distant.219 In contrast, close political competition and frequent rotation of government control between competing parties gives the judiciary more autonomy and independence.220 The same is true for the military, which is why, in many cases, the military will further its interests by supporting political competition and pluralism.

Most recently, this theoretical scenario obtained some practical validation in Egypt. In the immediate aftermath of the coup that toppled the Mubarak regime in February 2011, the military’s interests were aligned to a large extent with those of the Muslim Brotherhood. From the military’s perspective, the Muslim Brotherhood promised stability after a tumultuous revolution and a turbulent transition period.221 Although the Egyptian military has traditionally prevented access of Islamists to its ranks,222 the Islamists were “natural partners in keeping order” during the transition to democracy because the Islamist parties are, by their nature, more “conservative, xenophobic and more disciplined” than the secularists.223 As the democratic transition progressed and the Muslim Brotherhood grew to be the most powerful party in Egypt, however, the military’s interests also shifted. Instead of supporting the Brotherhood’s electoral prospects, the military began to oppose them. Concerned with the growing threat to its own economic and social interests from the Brotherhood,

219. Levinson, supra note 131, at 741.

220. Id.

221. Varol, supra note 32, at 352.


the military launched a campaign to ensure that the Constituent Assembly and the parliament were not dominated by the Brotherhood and meaningfully represented opposition interests. In protecting its own interests, therefore, the military also promoted, at least to some extent, political pluralism and effective opposition in Egypt, as explained further infra Part IV. Likewise, the military-led democratic-transition processes in Turkey and Portugal produced genuine multi-party democracies, as I elaborate infra Parts II and III.

Too much political pluralism, however, can also produce undesirable consequences. As Robert Dahl has lamented, "one perennial problem of [political] opposition is that there is either too much or too little." The proliferation of political parties can disperse political institutionalization and lead to the existence of a large number of weak parties. Weak political institutionalization, in turn, renders a regime vulnerable to frequent power vacuums, political instability and collapse of governments. And military interventions in politics tend to occur when political institutions lack autonomy or coherence. Where military bureaucracy is more developed than political parties, the military will have an incentive to move into the power vacuum to fill the void. That pattern has been common in Latin America, including in Guatemala, El Salvador, Peru and Ar-

224. ROBERT A. DAHL, POLITICAL OPPOSITIONS IN WESTERN DEMOCRACIES 397 (1966).
226. Huntington, supra note 13, at 427.
227. Id.
228. JANOWITZ, supra note 68, at 87 ("[P]olitical instability . . . implies that the military will again seek to achieve political power."); SCHIFF, supra note 14, at 26 ("Where the military has the power and the opportunity to aggressively assert itself, it often does."); Huntington, supra note 13, at 407; Ümit Cizre Sakallıoğlu, The Anatomy of the Turkish Military's Political Autonomy, 29 COMP. POL. 151, 157 (Jan. 1997) ("The [Turkish] military became politically more powerful not because it was at the apex of its institutional achievements but because no other actor was capable of saving and restructuring the status quo."); Rustow, supra note 80, at 372 ("[M]ilitary intervention in politics tends to be precipitated by the clogging of civil channels of political change."); Huntington, supra note 13, at 411; JANOWITZ, supra note 68, at 114 (noting that a power vacuum "not only encourages an extension of the tasks and power of military leaderships but actually forces such trends").
229. Huntington, supra note 13, at 410.
gentina.\textsuperscript{230} The creation of the "right" amount of political opposition is therefore a formidable challenge for any new democracy. As I explain further infra Parts II and III, Portugal struck that balance well, but Turkey did not. The Turks took the Madisonian idea of promoting multiplicity of interests too far. In creating a system of proportional representation and a plethora of counter-majoritarian checks on the political branches in a constitution drafted after a 1960 coup, the Turkish military, despite its good intentions, significantly weakened the elected branches and strengthened the bureaucracy. That constitutional arrangement produced decades of weak coalition governments and legislative impasses, which created power vacuums and prompted the Turkish military to stage further interventions. In contrast, the post-coup Portuguese Constitution aimed to strengthen political parties. Because the Constitution was drafted as a reaction to the anti-party dictatorship of the Estado Novo, it sought to establish "strongly institutionalized parties capable of acting as the primary vehicles for political action."\textsuperscript{231} The difference between Turkey and Portugal is primarily historical. The Turkish military viewed the elected branches as the root cause of the country's drift to authoritarianism. In Portugal, however, it was the anti-party dictatorship that the Portuguese military sought to abolish. The creation of strong and stable political parties is the primary cause of the success of the Portuguese case and the eventual failure of the Turkish one.

The promotion of strong political parties has one final noteworthy benefit. For the reasons I discussed above, many of the newly formed political parties in post-authoritarian societies tend to be weak and unstable. Immediate attempts by such parties to confine the military to the barracks may provoke a backlash from military leaders who are more likely to dig in, rather than give in, to weak political leaders. If, however, political parties take the time to empower themselves, obtain popular support and subsequently challenge the military's prerogatives, they will do so from a position of strength.\textsuperscript{232} For example, elected leaders in Portugal waited until they formed stable and popular governments in the early 1980s before attempting to abolish the military's constitutional prerogatives. Although the same move may have been derailed by the military in the immediate aftermath of the 1974 coup, the military acquiesced to the constitutional reforms promoted by the stable government in power. The

\footnotesize

\textsuperscript{230} Id.

\textsuperscript{231} Rato, supra note 14, at 335.

\textsuperscript{232} Id. at 529.
Portugese military’s extraction from politics would therefore come from the same political parties that the military had itself empowered following the 1974 coup.

c. National Unity

In an influential article, Dankwart Rustow identified national unity as the single most important condition for the genesis of constitutional democracy. According to Rustow, national unity means, “the vast majority of citizens in a democracy-to-be must have no doubt or mental reservations as to which political community they belong to.” Unity is the product more of responsiveness and complementarity, and less of shared attitudes and opinions. National unity is especially important for a nation in transition that is struggling to incorporate ethnic and tribal groups.

A natural protagonist of national unity is an interdependent military. As an institution that comprises citizen-soldiers where advancement is based on merit, rather than accidents of birth, an interdependent military tends to promote within the society a sense of identity, which is a “social psychological element of national unity.” An interdependent military, in which many citizens serve or have served, contributes to a sense of belonging to a group that has a unified national mission. Because an interdependent military may be a more egalitarian institution than most, if not all, other state institutions in an emerging democracy, the military tends to produce cohesion and social unity. As Rustow has observed, for example, at the time of the 1960 coup in Turkey that toppled an authoritarian government, only the military “among all agencies of leadership then available could have established unity inside the country and redefined national goals.” In an interdependent military, citizens of

234. Id. at 350.
235. Id. at 351.
236. JANOWITZ, supra note 68, at 80.
237. Some militaries, such as the Turkish military, have expressly espoused national unity as their most important purpose. Sakallioglu, supra note 228, at 154.
238. JANOWITZ, supra note 68, at 80.
239. Id. at 81; Williams, supra note 48, at 580 (noting that service in the United States militia trained “the citizenry to civic virtue”).
240. See JANOWITZ, supra note 68, at 81.
241. Rustow, supra note 80, at 384.
different regional and ethnic backgrounds share a common experience that bonds them to the military and to the nation that institution is tasked to defend. As such, many citizen-soldiers come to think of themselves as citizens of the greater nation and not necessarily the particular community to which they belong. Chief Justice John Marshall, for example, famously came to think of himself, not as a citizen of Virginia, but of the United States following his military service during the Revolution. An interdependent military thus contributes to the promotion of national unity as citizen-soldiers experience a similar transformation.

In sum, a military's institutional self-interests may align with the promotion of three conditions that Madison and others after him have described as conducive to the genesis of constitutional democracy: intrastate stability, political pluralism and national unity. In promoting its self-interests, the military may thus provide pivotal institutional support to an emerging democracy. As the next Section explains, however, that support must be limited to the initial, most fragile, phase of the democratic-transition process.

C. Democratic Transition, Consolidation and Persistence

Another shortcoming of the prevailing wisdom is that it conflates the three distinct phases of democratization and advocates the military's wholesale exclusion from all three. By operating with a sledgehammer when a scalpel is better suited for the task, the conventional thinking fails to recognize that the military's role may be positive for democracy in some phases and negative in others. A democratic transition process can be divided into three useful, albeit simplistic, phases: transition, consolidation and persistence.

The first phase of democratization is transition. Transition

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242. See JANOWITZ, supra note 68, at 81.
243. Id.
244. See Williams, supra note 48, at 580 ("Many veterans of the Revolution recalled military service as the emotional high point of their lives . . .").
245. See, e.g., SERRA, supra note 14, at 28 (noting that most authors adopt a "two-phase division" to democratic transitions that focuses on transition and consolidation); Felipe Agüero, Democratic Consolidation and the Military in Southern Europe and South America, in THE POLITICS OF DEMOCRATIC CONSOLIDATION (Richard Gunther, P. Nikiforos Diamandouros & Hans-Jürgen Puhle eds., 1995) (conflating democratic consolidation and persistence); GUILLERMO O'DONNELL, CONTRAPUNTOS: ENSAYOS ESCOGIDOS SOBRE AUTORITARISMO Y DEMOCRATIZACIÓN 221 (1997) (same), discussed in SERRA, supra note 14, at 11.
begins with "the breakdown of the former authoritarian regime and ends with the establishment of a relatively stable configuration of political institutions within a democratic regime." At the end of transition, a procedural democracy ordinarily emerges—i.e., a regime in which political leaders are elected through free and fair elections. Although elected leaders assume power at the end of transition, the military may continue to enjoy constitutional and political prerogatives.

Consolidation is the phase between transition and democratic persistence. During consolidation, as J. Samuel Valenzuela has argued, "perverse elements"—including military tutelage over the democratic process—must be gradually reduced until they are eliminated. Persistence is achieved when the major political actors expect democracy to last indefinitely and do not consider any nondemocratic alternatives to assume power. In other words, for democracy to persist, it must be the "only game in town."

This Article's thesis is limited to the democracy-promoting role that the military may play during the transition and the early stages of democratic consolidation—but not during persistence. A military's constitutional and political involvement should be at its highest during the transition and should gradually decrease during consolidation until the military becomes subservient to the civilian branches of government in democratic persistence. For democracy to persist, therefore, the military must ultimately retreat to the barracks and abandon its constitutional prerogatives. During transition and the early stages of consolidation, however, the democratization process is at its most fragile point and institutional support from an independent military is likely to be most helpful in reinforcing the fledgling democracy.

Where the military retains constitutional powers to check the

246. THE POLITICS OF DEMOCRATIC CONSOLIDATION, supra note 245, at 3.
247. Id. at xiii.
250. Linz, supra note 249, at 158.
251. See Rustow, supra note 149, at 355 ("[A]n apparent evolution toward democracy may be deflected, and at no time more easily than during the preparatory phase.").
fragile democratization process, a "protected democracy" exists. A "protected democracy" is similar to Aristotle's "mixed state" or Plato's "polity," which is a mix between oligarchy and democracy. The "protected democracy" that exists because of military prerogatives during the transition and consolidation phases must eventually give way to a persistent democracy. And for that to happen, the military must become subservient to the civilian branches of government and abandon its constitutional prerogatives.

The question of the military's extraction from politics is not considered in this Article, but deserves separate treatment. For now, it is worth noting that a constitutional role for the military does not last indefinitely. For example, Turkey and Portugal, which respectively underwent democratic coups in 1960 and 1974 and resulting constitutional entrenchment by their militaries, both established consolidated democracies. Portugal removed the military's prerogatives from its constitution by amending it only six years after the end of the coup. And buoyed by its candidacy to the European Union in the early 2000s, Turkey amended its constitution to chip away at the military's constitutional entrenchment. At the time of this writing (February 2013), Turkey is drafting a new constitution that is widely expected to render the armed forces subservient to the civilian branches.

The next two Parts of this Article examine how the interdependent military has played a democracy-promoting role in two comparative case studies: Turkey and Portugal. The final Part examines the implications of this theory for the ongoing democratic-transition process in Egypt.

253. Huntington, supra note 13, at 400.
254. See Valenzuela, supra note 248, at 87 ("Placing the military under the authority of the elected government is a key condition facilitating democratic consolidation."); Serra, supra note 14, at 26 ("The process of democratization cannot be considered finished if it does not produce a change in the principles and beliefs of the military and make them loyal to the democratic regime.").
255. Varol, supra note 32, at 322.
256. Id.
257. Id.
258. Id.
259. Id.
II. TURKEY

This Part proceeds in three sections. Section A briefly analyzes the composition and functions of the Turkish military at the time of the military's first direct intervention in republican politics on May 27, 1960, when the military toppled an authoritarian government and installed democratically elected leaders. Section B studies the 1960 coup and the 1961 Constitution drafted under military supervision. Section C analyzes the modernizing and democratizing role that the military played during the 1960 coup and its immediate aftermath.

A. The Composition of the Turkish Military

At the time of the 1960 coup, the Turkish military was composed primarily of lower and lower-middle class citizens to whom military schools offered virtually the only avenue for professional advancement based on merit. Young Turks living in rural areas, previously isolated from the ruling elite, became a part of the society at large through military service. Having been raised in rural backgrounds, these citizen-soldiers were reluctant to support government policies that favored a small minority at the expense of the greater public good.

In many ways, the Turkish military was more egalitarian than civilian society. While the civilian administration valued cliques and connections, the military cherished merit regardless of accidents of birth. Due in large part to compulsory military service, soldiers came from different socio-cultural backgrounds and ethnicities. Indeed, in an era of unequal gender relations, several women were admitted as cadets to Turkey's War Academy in the Fall of 1955. The diversity of the recruits led them to become more accountable and responsive to civil society. As anthropologist Paul Stirling aptly observed in 1951, “[c]onsciousness of being part of the whole [Turk-
ish] nation is greatly strengthened by the compulsory term of military service which all the young men seem[ed] vastly to enjoy." 266

The Turkish military also benefited from the influence of democratic Western nations. It was a major recipient of American military aid designed to implement the Truman Doctrine in 1947. 267 Turkey’s membership in NATO in 1952 and its participation in the Korean War alongside Western militaries also resulted in a “dramatic modernization” of the military. 268 By 1959, the Turkish military had received over $2 billion of American and European equipment and technical assistance. 269 In addition, Turkish soldiers were trained in Western methods in the United States, Germany and Canada. 270 The soldiers’ overseas training and exposure to modern influences broadened their cultural horizons and “resulted in a sharper awareness of Turkey’s material backwardness” along with a desire to create a better image of the country as a modern, democratic republic. 271

One final striking feature of the Turkish military bears mention. Despite its political interventions throughout Turkish history, the military has largely remained a non-partisan body. 272 Although it occasionally formed interest-based alliances with particular parties


267. Lerner & Robinson, supra note 174, at 30; Kemal H. Karpat, The Military and Politics in Turkey, 1960-64: A Socio-Cultural Analysis of a Revolution, 75 AM. HIST. REV. 1654, 1662 (1970); Rustow, supra note 80, at 356 (“With the proclamation of the Truman doctrine a large-scale program of American military assistance began, and by the late 1950’s American-Turkish cooperation ranged all the way from the building of a string of radar stations along the Black Sea coast, missile bases, and airfield to the preparation of literacy primers for military recruits.”).

268. Lerner & Robinson, supra note 174, at 31, 33 & 33 n.28; Metin Heper, Civil-Military Relations in Turkey: Toward a Liberal Model?, 12 TURKISH STUD. 241, 247 (2011); Karpat, supra note 267, at 1662.

269. Lerner & Robinson, supra note 174, at 36; Rustow, supra note 80, at 356.

270. Lerner & Robinson, supra note 174, at 33 n.27; Karpat, supra note 267, at 1662.

271. Karpat, supra note 267, at 1668; JANOWITZ, supra note 68, at 63 (“[I]n Turkey, the contemporary reawakening of political interests among junior officers is a result of the extensive overseas training that some of these officers have had and of the broadening cultural horizons that such training produces.”).

272. Sakallıoğlu, supra note 228, at 154; Aydinli, supra note 16, at 584 (“With the exception perhaps of the years 1938–1950, the Turkish army was never the army of a single party, and it was never the tool of radical politicians. It was also never truly a predatory army that sought long-term power, always having returned power promptly to the civilians after the various military interventions.”); Rustow, supra note 80, at 371 (noting the Turkish military’s “avoidance of blatant partisanship”).
and social groups, the military shifted those alliances to promote its own interests.\textsuperscript{273} If the military has had any commitments, it has been to Kemalism—an ideology inspired by Turkey's founder, Mustafa Kemal Atatürk, that, broadly speaking, advocates secularism and national unity.\textsuperscript{274} But even to Kemalism, the military's commitment has been less than steadfast. For example, in the 1980s, the military attempted to strengthen the role of Islam in Turkey in an effort to combat communism, defying its traditionally secular outlook.\textsuperscript{275} The military therefore views itself, and is viewed by large segments of the population, as a relatively non-partisan organization. That image has assisted the military in fulfilling its goal of maintaining national unity in the face of political, religious and ethnic conflict throughout Turkish history.\textsuperscript{276}

At the time of the 1960 coup, when the military deposed an authoritarian government and re-established democracy in Turkey, the Turkish military thus conformed in many respects to the interdependent military model discussed supra in Part I.A: it comprised citizen-soldiers, it was influenced by democratic nations and international alliances, and its focus was largely on external threats. Building on this brief background of the Turkish military, the next Section explores the role that the military played in the 1960 coup and in crafting a new constitution in the coup's aftermath.

\textbf{B. The 1960 Coup and the 1961 Constitution}

On May 27, 1960, the Turkish Armed Forces staged a coup d'état against the authoritarian Democrat Party [\textit{Demokrat Parti}] (DP) government. In response to sustained popular protests against that government, the DP regime, led by Prime Minister Adnan Menderes, had declared martial law and ordered the military to fire on the protestors,\textsuperscript{277} forcing the military into domestic politics after more than three decades of civilian rule in Turkey.\textsuperscript{278} If the military sided with the DP government and obeyed its orders, it would enter politics

\begin{itemize}
  \item \textsuperscript{273} Sakallıoğlu, supra note 228, at 154.
  \item \textsuperscript{274} See Ozan O. Varol, \textit{The Origins and Limits of Originalism: A Comparative Study}, 44 \textit{VAND. J. TRANSNAT'L L.} 1239, 1284 (2011).
  \item \textsuperscript{275} See \textsc{Angel Rábasa} & \textsc{F. Stephen Larrabee}, \textit{The Rise of Political Islam in Turkey} 37 (2008).
  \item \textsuperscript{276} Sakallıoğlu, supra note 228, at 154, 156.
  \item \textsuperscript{277} Varol, supra note 32, at 325.
  \item \textsuperscript{278} Rustow, supra note 80, at 366.
\end{itemize}
on its behalf and if it refused, it would enter politics against it.\textsuperscript{279} The military picked the latter option, sided with the people, refused to fire on them, and instead staged a coup, toppling the DP government.\textsuperscript{280}

After assuming power, the Armed Forces issued a communiqué stating that they staged the coup to “rescue the Turkish democracy from the unfortunate situation in which it has found itself.”\textsuperscript{281} In the communiqué, the military promised to “hold fair and free elections as quickly as possible” and to relinquish power to the electoral victors.\textsuperscript{282} During the transition period, thirty-eight officers ranging in rank from general to captain would govern the nation as part of the National Unity Committee (\textit{Milli Birlik Kurulu}).\textsuperscript{283} General Cemal Gürsel, a popular and highly respected military leader who “clearly showed his belief in a nonpolitical army” was selected to head the Committee.\textsuperscript{284}

On May 27, 1961, the first anniversary of the coup, the Constituent Assembly\textsuperscript{285} approved the constitution prepared by the National Unity Committee’s handpicked group of professors.\textsuperscript{286} Although drafted under the tutelage of the military—an institution traditionally regarded as undemocratic—the 1961 Constitution is widely accepted as the most liberal constitution in Turkish history.\textsuperscript{287} It established separation of powers, instituted checks and balances and recognized judicial independence. Inspired by the then-unfolding rights revolution—including the European Convention on

\textsuperscript{279} Id. at 370.
\textsuperscript{280} Varol, \textit{supra} note 32, at 325; Karpat, \textit{supra} note 267, at 1673; Rustow, \textit{supra} note 115, at 523.
\textsuperscript{281} Varol, \textit{supra} note 32, at 326.
\textsuperscript{282} Id.
\textsuperscript{283} Id. \textit{See also} Richard H. Dekmejian, \textit{Egypt and Turkey: The Military in the Background, in Soldiers, Peasants, and Bureaucrats: Civil-Military Relations in Communist and Modernizing Societies} 28, 42 (Roman Kolkowicz & Andrzej Korbonski eds., 1982).
\textsuperscript{284} \textit{ÖZBUDUN, supra} note 94, at 10, 26.
\textsuperscript{285} The Constituent Assembly comprised members of the National Unity Committee and its appointees, representatives of political parties, elected regional representatives and members of several professional organizations. Varol, \textit{supra} note 32, at 326.
\textsuperscript{286} Id. at 327.
\textsuperscript{287} \textit{See \textit{ÖZBUDUN, supra} note 94, at 1;} Rustow, \textit{supra} note 115, at 536 (“The [1961] Constitution, in contrast to that of 1924 which a demagogue like [Prime Minister] Menderes could so readily pervert for his ends, contains careful guarantees of civil rights and restrains partisan power through bicameralism and judicial review.”); Narli, \textit{supra} note 80, at 113.
Human Rights and the Universal Declaration—the Constitution expanded individual rights and liberties, expressly recognizing, for example, the right to privacy, the right to travel, the right to strike and the freedoms of speech and assembly. The 1961 Constitution also expanded the right to freedom of association, which led to the establishment of numerous autonomous civil society organizations and political parties.

The new Constitution also targeted what the military believed were the problems that led to the breakdown of Turkish democracy in the 1950s: abuse of political power, oppression of political opponents and a decay of the Republic’s founding principles. According to the generals, these problems had stemmed from the concentration of all political and administrative power in a one-chamber parliament.

To prevent a rebound to authoritarianism, the military leaders therefore sought in the new Constitution to end the supremacy of the one-chamber legislature. To that end, the 1961 Constitution created a number of counter-majoritarian institutions with extensive supervisory power over elected officials, including a National Security Council; a second legislative chamber (the Senate); a State Planning Organization to “guide and coordinate economic development”; a Supreme Council of Judges with the authority to make judicial appointments; and a Constitutional Court expressly empowered with judicial review of legislation and the authority to dissolve political parties whose “statutes, programs, and activities” do not “conform

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289. RABASA & LARRABEE, supra note 275, at 37.

290. Varol, supra note 32, at 327.

291. George S. Harris, Military Coups and Turkish Democracy, 1960–1980, 12 TURKISH STUD. 204 (2011); Ilkay Sunar & Sabri Sayari, Democracy in Turkey: Problems and Prospects, 165, 174, in TRANSITIONS FROM AUTHORITARIAN RULE: SOUTHERN EUROPE (Guillermo O’Donnell, Philippe C. Schmitter & Laurence Whitehead eds., 1986) (noting that the drafters of the 1961 Constitution were “on the defensive against centralization of power and concentration of function”); Joseph S. Szylowicz, Elites and Modernization in Turkey, in POLITICAL ELITES AND POLITICAL DEVELOPMENT IN THE MIDDLE EAST 23, 51 (Frank Tachau ed., 1975) (“In their zeal to restrict the power of the government, the authors of the [1961] constitution rendered such institutions as universities, the judiciary and the broadcasting system virtually immune from outside control . . .”).

292. Varol, supra note 32, at 328; Sunar & Sayari, supra note 291, at 175.
to the principles of a democratic and secular republic, based on human rights and liberties, and to the fundamental principle of the State's territorial and national integrity." The 1961 Constitution thus distributed government power between democratically accountable political institutions and independent counter-majoritarian institutions, virtually ending the Parliament's supremacy. The new Constitution was ratified with 61.5% of the vote at a popular referendum on July 9, 1961.

Following the Constitution's popular ratification, democratic elections for the legislature were held as scheduled in October 1961. The Republican People's Party (Cumhuriyet Halk Partisi) won the elections with 36.7% of the popular vote. Three newly formed parties split the remaining votes, with the Justice Party (Adalet Partisi) winning 34.8%, the Republican National Peasants' Party (Cumhuriyetçi Köylü Millet Partisi) receiving 14% and the New Turkey Party (Yeni Türkiye Partisi) obtaining 13.7% of the popular vote. Following the elections, the National Unity Committee relinquished power as promised to democratically elected leaders. In 1962, the civilian Parliament voted to make the date of the military coup (May 27, 1960) a national holiday called the Liberty and Constitution Day.

C. The Turkish Military as the Impetus for Democratic Growth in Post-1960 Turkey

Ergun Özbudun, an ardent contemporary critic of the Turkish military, wrote in 1966 that the 1960 coup was "unquestionably a reformist coup" whose accomplishments in the field of democratic, social and economic development cannot be minimized. The military officers that staged the 1960 coup sought to build a "healthy democracy" and effect a "more balanced economic growth" by making the previously excluded rural classes a more meaningful and ef-

293. TURK. CONST. art. 157 (1961).
294. Varol, supra note 32, at 328.
295. Id. at 327.
296. Id. at 328.
297. Id.
298. Id.
299. Id.
300. ÖZBUDUN, supra note 94, at 3. See also Huntington, supra note 13, at 421 (noting that the Turkish army in 1960 was "committed to modernization").
fective part of Turkish politics.\textsuperscript{301} Social reform, especially in rural areas, came to the political fore only after the 1960 coup, for which Özbudun credits the ruling military leaders.\textsuperscript{302} The ruling military also provided impetus, as a means of progress and democratization, to economic development as well as social progress and stability.\textsuperscript{303} According to Özbudun, the effects of the military's reform agenda would have been substantial "had they not been reversed, halted, or watered down by the successor civilian administrations."\textsuperscript{304} As Dankwart Rustow has also observed, Turkey's rapid return to constitutional government following a decade of autocracy "is itself a major achievement, for which President Gürsel and the moderate majority of his [National Unity Committee] deserve the fullest credit."\textsuperscript{305}

The 1960 coup also established the legal and political foundations of a participatory democratic society and a pluralist social-political order that represented major social groups.\textsuperscript{306} Under the Turkish military's supervision, the two-party system of the 1950s became a genuine multi-party system from 1961 to 1965.\textsuperscript{307} With the military's adoption of proportional representation, parties that were previously shunned from the Parliament obtained legislative representation.\textsuperscript{308} A total of six parties participated in the democratic elections held following the coup.\textsuperscript{309} At least two of these parties were creations of the democratic transition overseen by the military—the Socialist Turkish Workers' Party and the Republican National Peasants' Party.\textsuperscript{310} The election of members from the Turkish Workers' Party to the Parliament marked the first time in Turkish history that an avowedly socialist party was able to form, operate freely and obtain representation in the legislature.\textsuperscript{311} The establishment of these additional parties also brought to the fore new political questions. The basic economic, social and foreign-policy views of the two par-

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301. ÖZBUDUN, supra note 94, at 42.
302. Id. at 26.
303. Karpat, supra note 267, at 1683.
304. ÖZBUDUN, supra note 94, at 26.
305. Rustow, supra note 115, at 536.
306. Karpat, supra note 267, at 1681.
307. ÖZBUDUN, supra note 94, at 1.
308. Id. at 2.
309. Id. at 1.
310. Id. at 1 n.1.
311. Id. at 1.
ties that operated during the two-party system in the 1950s were essentially the same.\textsuperscript{312} With the multi-party democracy produced by the 1960 coup, previously uncontested economic, social and foreign-policy questions were debated and contested for the first time.\textsuperscript{313}

On October 15, 1961, the military turned over power, on schedule and as promised, to democratically elected leaders following parliamentary elections. Much to the dismay of the ruling generals who desired a stable legislative majority, the parliamentary elections produced a weak coalition government between two ideological rivals: the Republican People’s Party and the Justice Party.\textsuperscript{314} Future parliamentary elections fared no better, and successive and weak coalition governments followed. The resulting political instability prompted the military to stage further direct and indirect interventions as boosters to what the military had intended to be a one-shot intervention in 1960.\textsuperscript{315} Despite its initial democracy-promoting role in the aftermath of the 1960 coup, the Turkish military ultimately presented serious impediments to democracy and dominated the political system, as the elected branches, crippled by the bureaucracy-friendly 1961 Constitution, remained unable to form stable and effective governments. It was not until the 2000s, with the ascension to power of stable governments and the legal-constitutional reforms brought by Turkey’s accession process to the European Union, that the Turkish military retreated to the barracks.

Although Turkey has been the center stage to a number of coups, the coups and the militaries that staged them differ from the traditional praetorian mold in a number of respects. Notably, all military coups in Turkey were brought to an end voluntarily by the officers themselves.\textsuperscript{316} In addition, rather than infiltrating civilian institutions—which the military views as antithetical to democracy and its own professional cohesion—the military has chosen to wield its institutional influence outside the civilian authorities’ control.\textsuperscript{317}

The next Part tells the more successful military-led transition story of Portugal. Like the Turkish military, the Portuguese military provided crucial institutional support to the new Portuguese democracy established following a 1974 coup. Unlike the Turkish military,

\begin{itemize}
  \item \textsuperscript{312} Id. at 2.
  \item \textsuperscript{313} ÖZBUDUN, supra note 94, at 2; Rustow, supra note 149, at 362.
  \item \textsuperscript{314} Dekmejian, supra note 283, at 43.
  \item \textsuperscript{315} See Rustow, supra note 80, at 378.
  \item \textsuperscript{316} Harris, supra note 291, at 212.
  \item \textsuperscript{317} Sakalıoğlu, supra note 228, at 153.
\end{itemize}
however, the Portuguese military managed to establish a stable civilian government and returned to the barracks relatively swiftly.

III. PORTUGAL

On April 25, 1974, the Portuguese military deposed the authoritarian Estado Novo (New State) regime in a coup known as the Carnation Revolution. The coup overthrew the nearly five-decades-old Estado Novo regime, which was Western Europe’s oldest dictatorship. Following the coup, the military issued a short communiqué to justify the coup and state its objectives. In the communiqué, the military committed itself to abolishing the authoritarian regime and instituting political and socioeconomic reforms to establish a democratic regime. That was a formidable task, given the long authoritarian legacy of the Estado Novo, the revolutionary turbulence and the ongoing global economic recession. The military promised to hold democratic elections within a year for a Constituent Assembly, which would draft a new democratic constitution. The military further committed itself to holding parliamentary and presidential elections under a framework established by the Constituent Assembly within a year after the Assembly’s formation. In the end, the military not only achieved a swift return to democratic civilian rule, but also actively ensured a relatively smooth transition process, creating what Philippe Schmitter labeled “one of the most pluralistic polities in existence.”

318. Varol, supra note 32, at 333.
320. Varol, supra note 32, at 335.
321. Id.
323. Varol, supra note 32, at 335–36.
324. Id. at 336. There was some favorable discussion of socialism within the military leadership, but liberal democracy would be the foundation upon which socialism would be built. NANCY GINA BERMEO, THE REVOLUTION WITHIN THE REVOLUTION: WORKERS’ CONTROL IN RURAL PORTUGAL 3 (1986).
325. BRUNEAU & MACLEOD, supra note 322, at 22.
326. PHILIPPE C. SCHMITTER, CORPORATISM AND PUBLIC POLICY IN AUTHORITARIAN PORTUGAL 62 (1975).
year of the coup, fifty political movements or parties were established, union activity flourished and neighborhood committees sprang up.327

This Part proceeds in five sections. Section A provides a brief socio-historical sketch of the Portuguese military at the time of the 1974 coup and details its objectives in staging the coup. Section B analyzes the unsuccessful communist uprising that the military quelled during the transition to democracy. Section C examines the democratic Constitution drafted under military supervision following the coup. Section D describes the first democratic presidential and legislative elections in Portugal and Section E concludes by analyzing the military’s exodus from Portuguese politics.

A. The Portuguese Military as a Democratizing Force in Post-1974 Portugal

The Portuguese military was arguably the only domestic institution with sufficient resources to overthrow the authoritarian Estado Novo regime.328 The military came to represent the Portuguese civil society primarily because of Portugal’s lengthy colonial wars and the need to supply the armed forces from a small population,329 which rendered isolation of the military impossible.330 Of Portugal’s roughly 8.5 million population in 1970,331 over one million had fought in the colonial wars.332 In addition, the low salaries of the military officers required them to supplement their income while off-duty with employment in the civilian sector, which kept the officers in frequent contact with civil society.333

In addition, Portugal’s connections to international institutions also reinforced democratic development. Portuguese membership in NATO in 1958 fomented modernizing reforms within the Portuguese military, creating a reformist and progressive set of “NATO generation” officers.334 Portuguese officers attended training pro-

327. BRUNEAU & MACLEOD, supra note 322, at 99–100.
328. Rato, supra note 14, at 170.
329. Varol, supra note 32, at 334.
330. Id.
332. Varol, supra note 32, at 334.
333. Id. at 334–35.
334. Rato, supra note 14, at 128.
grams in NATO facilities, which augmented the democratization process by exposing the officers to democratic norms. The NATO-trained officers were placed in a better position in the line of promotions, which reinforced the military leadership’s commitment to democracy. Portugal’s connections to the democratic European community were also strengthened by its accession to the European Economic Community (EEC).

The Portuguese military that staged the 1974 coup thus conformed to the three primary attributes of the interdependent military: it consisted largely of citizen-soldiers, it was responsive to international democratic norms through membership in democratic alliances and its primary focus was on external threats (i.e., the colonial wars) rather than internal threats. The task of responding to internal threats was entrusted instead to Portugal’s political police forces, infamous for their brutal repression tactics.

The months following the coup that toppled the Estado Novo regime were marked by chaos and conflict. To many, the prospects for democracy remained bleak, and Portugal’s Communist Party (PCP) (Partido Comunista Português) appeared poised to assume power and establish a new dictatorship. The Communist Party had been banned during the Estado Novo regime, but enjoyed five decades of underground existence, much like the Muslim Brotherhood in Egypt. During the transition process, the PCP behaved and acted very much like the authoritarian regime the military had just deposed and did not conceal its intention to install an antidemocratic communist regime in Portugal.

Amidst the post-revolutionary chaos and strong antidemocratic movements, moderate factions of the military, in concert with democratic-minded politicians, successfully averted a rebound to authoritarianism and steered the nation to the establishment of a

335. Id. at 407.
336. Id.
337. Rato, supra note 14, at 402.
339. See id.
340. See Rato, supra note 14, at 188.
pluralist democracy.\textsuperscript{342} Between April 1974, when the military overthrew the \textit{Estado Novo} regime, and July 1976, when the military relinquished power to a constitutional government, Portugal underwent a \textquotedblleft radical transformation\textquotedblright.\textsuperscript{343} Under military leadership, and with the assistance of largely civilian cabinets, Portugal established the foundations for a constitutional democracy, releasing political prisoners, establishing a pluralistic political marketplace with the formation of political parties, guaranteeing the freedoms of expression and association, which led to the emergence of peasant leagues and farmworkers' unions and liberating union activity from government control.\textsuperscript{344}

The military leaders summarized their democracy-building tasks in a document called the Program of the Movement of the Armed Forces (\textit{Movimento das Forças Armadas}) (MFA).\textsuperscript{345} The aims of the Program were to dismantle the authoritarian institutions of the \textit{Estado Novo} regime, remove the key personnel of the former regime from state institutions, dissolve the political police that served as a tool of brutal repression, end censorship and combat corruption.\textsuperscript{346} The Program also sought to abolish the \textquotedblleft special tribunals\textquotedblright of the \textit{Estado Novo} regime, which were used to try political dissidents.\textsuperscript{347} After the authoritarian institutions were dissolved and formal democratic procedures were established, the military, according to the Program, would retreat to the barracks and \textquotedblleft restrict themselves to their specific mission of defending the nation's sovereignty.\textquotedblright\textsuperscript{348}

The military's preoccupation with dismantling authoritarian state structures and establishing a pluralist democracy arose largely out of self-interest. Many military leaders blamed the \textit{Estado Novo}'s authoritarian institutions for the costly and unfruitful military operations to suppress separatist groups in Portugal's African colonies.\textsuperscript{349} Dismantling those authoritarian institutions thus became a necessary first step in protecting the military's interests in post-authoritarian

\begin{itemize}
\item \textsuperscript{342} \textit{See} Rato, \textit{supra} note 14, at 3, 9.
\item \textsuperscript{343} \textit{Bermeo, supra} note 324, at 3.
\item \textsuperscript{344} \textit{See id.} at 3–4, 41.
\item \textsuperscript{345} \textit{See Rato, supra} note 14, at 173.
\item \textsuperscript{346} \textit{Id.} at 172–73.
\item \textsuperscript{347} \textit{Id.} at 173.
\item \textsuperscript{349} \textit{See} Rato, \textit{supra} note 14, at 176.
\end{itemize}
Portugal. It also had the concomitant effect of promoting democratic development.

To educate the rural population about the newly established democratic processes, the military organized a rural development program called the Cultural Dynamization Campaign. The dynamization campaign sought to ensure that the largely illiterate rural population would not be manipulated into reelecting an authoritarian regime. The campaign was run primarily by soldiers, though civilian singers and artists also participated. Through its "sessions of enlightenment," the campaign educated the rural population on a variety of political issues, such as decolonization, the upcoming democratic elections and the role of the ruling military. The military brought its dynamization campaign to more than 1.5 million peasants, workers and shopkeepers. To achieve democratization, the military thus strived to win the hearts and minds of the rural population, which required increased levels of interaction between the military and civilians, which in turn contributed to keeping the military in touch with civilian values.

B. The Unsuccessful Communist Uprising

Elections for a Constituent Assembly, tasked with drafting a new constitution, were held as scheduled on the first anniversary of the coup, April 25, 1975. These elections were the first in Portuguese history to feature universal suffrage and a secret vote and the first meaningful elections in Portugal since the 1920s. Twelve major political parties—which were organized under military leadership following the coup—participated in the elections, which were fair and free by all objective accounts. The turnout was an impressive 92%. A center-left party, a center-right party and a conservative

350. See id.
351. See BERMEO, supra note 324, at 39.
352. See id.
353. See id.
354. Id.
355. Id.
356. See id.
357. See Bruneau, supra note 319, at 149.
358. Id. at 152–53.
359. Id. at 149.
360. Id. at 153.
party—whose agendas were all dedicated to establishing a Western-style pluralist democracy—won 72% of the vote. \(^{361}\) The Communist Party obtained only 12.5% of the vote. \(^{362}\) In addition to determining the distribution of seats for drafting a new constitution, the elections for the Constituent Assembly, through the staggering turnout, “legitimated the idea of popular participation and democracy” in Portugal. \(^{363}\)

Although the Constituent Assembly elections produced a victory for the democratic parties and their allies within the military, the Portuguese Communist Party still had partners within the junior officers’ ranks. \(^{364}\) Following the Communist Party’s poor showing in the Constituent Assembly elections, the pro-communist faction in the military attempted a coup on November 25, 1975. \(^{365}\) The military leadership, led by Lieutenant-Colonel Antonio Ramalho Eanes, successfully repelled the attempted coup. \(^{366}\) According to Eanes, November 25 represented the “moral rebirth of the armed forces,” the victory of a “democratic project over a totalitarian perversion that sought to destroy the military,” and the “recovery of the promises and ideals of April 25.” \(^{367}\) The defeat of the coup by the military constituted a decisive triumph over an attempted communist revolution and significantly reduced the likelihood of a future dictatorial regression in Portugal. \(^{368}\)

The blame for the coup attempt fell primarily on the Communist Party. \(^{369}\) Various political actors blamed the Communist Party for “systematically violat[ing] the rules of democracy” and placed the burden on the Party to “prove its unequivocal abandonment of antidemocratic politics.” \(^{370}\) The Communists were thus forced to curb their authoritarian appetite in order to participate in the new-

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\(^{361}\) Linz & Step, supra note 10, at 121.

\(^{362}\) Bermeo, supra note 324, at 171.

\(^{363}\) Bruneau, supra note 319, at 153.

\(^{364}\) See Rato, supra note 14, at 233–43.

\(^{365}\) See id. at 248–49.

\(^{366}\) Id. at 249.

\(^{367}\) Id. at 292.

\(^{368}\) See id. at 255, 266.

\(^{369}\) See id. at 266.

\(^{370}\) Id. at 266. See also Bruneau & MacLeod, supra note 322, at 51 (noting that the Communist Party was “singled out as the main enemy of democracy” in Portugal following the November 25 coup attempt).
found democratic marketplace.371

Following the failed November 25 coup, virtually all democratic actors saw a non-partisan military as the guardian of Portugal’s nascent democracy.372 The democratic parties recognized the “impracticability, even the undesirability” of completely excluding the military from Portuguese politics373 as they viewed the military as “indispensable for providing all actors with guarantees that the constitutional truce would not be violated.”374 The military would therefore retain a constitutional role to safeguard its functions as the guarantor of Portugal’s newly established democracy.375 As the leader of the democratic faction that repelled the November 25 coup, Lieutenant-Colonel Eanes was quickly appointed as Army Chief of Staff.376 The promotion of Eanes, a pro-democracy military leader, signified the domination of the Army by officers steadfastly committed to the promotion of democracy and non-partisan politics and primed the armed forces for their future constitutional role.377

C. The New Constitution

The new Constitution, drafted by the Constituent Assembly, promised both socialism and liberal democracy.378 It referred to the “transition to socialism” and a “classless society,” but also established the foundations of a liberal democracy similar to other Western European states.379 To avoid the political instability that had been rampant in Portugal at the beginning of the century, the Constitution established a semi-presidential form of government.380 Political power was shared between an elected president, an elected National Assembly, a prime minister approved by both and a “Council of the Revolution.”381

371. See Rato, supra note 14, at 266.
372. See id. at 259.
373. Id. at 302.
374. Id. at 341.
375. See id. at 295–96.
376. Id. at 277.
377. See id.
378. BERMEO, supra note 324, at 163.
379. Id.
381. BERMEO, supra note 324, at 163 & n.2.
The Constitution empowered the Council of the Revolution to serve as the "guarantor of the proper working of the democratic institutions, of fulfillment of the Constitution and faithfulness to the spirit of the Portuguese revolution of 25 April 1974 and as a political and legislative organ in military matters." The Council would be chaired by the President and composed of the Chief of the General Staff and his Vice-Chief, the three branch chiefs of the military, the Prime Minister and fourteen officers to be selected by the Army, Air Force and the Navy. The new Constitution also authorized the Council of the Revolution to serve as an "advisory body" to the President and to "make laws concerning the organizational functioning, and discipline of the Armed Forces." The civilian assembly retained the sole authority, however, to formulate a national defense law and, importantly, to approve the military's annual budget. The Constitution further authorized the Council to act as a de facto constitutional court and judge the constitutionality of all laws passed by the parliament. The Council also could invoke "unconstitutionality by omission" and call for the passage of legislation to further the purposes of the Constitution where the Assembly did not pursue such legislation.

The military's assumption of a constitutional role, though a sub-optimal course for the political parties, also had the benefit of promoting democratic consolidation in the long term, for two primary reasons. First, the political parties viewed the military's oversight of the political system as a check, not only on themselves, but on their adversaries as well. The protected democracy established by the Constitution would ensure that all political parties would abide by the fundamental rules of democratic politics. Second, the Constitution preserved the military's autonomy during the first four-year legislative session when the Constitution remained unamendable without the Council's consent. In so doing, it preempted any tensions that would have arisen had the newly formed political parties

382. CONSTITUIÇÃO DA REPÚBLICA PORTUGUESA [Const.], Apr. 2, 1976, art. 142 (Port.).
383. Id. art. 143.
384. LINZ & STEPAN, supra note 10, at 123.
385. Rato, supra note 14, at 331.
386. LINZ & STEPAN, supra note 10, at 123.
387. PORT. CONST. arts. 146, 279 (1976).
388. Rato, supra note 14, at 308, 320.
389. Id. at 320.
390. Id.
attempted to eject the military from politics immediately or otherwise curtail the military’s autonomy. The temporal limitation placed on the military’s constitutional role allowed the political parties to institutionalize and gather sufficient popular backing from the electorate before tackling any sensitive issues affecting the military.

The Constitution also retained the system of proportional representation in the legislature that had led to the election of four major political parties to the Constituent Assembly. That achieved two ends. First, the exclusion of any significant political power from the parliament could have led them to adopt an anti-democratic agenda. Second, the existence of four political parties ensured that no single party became too powerful to endanger democratic governance. The political parties, uncertain of their prospects at the polls, readily acceded to a system that prevented the exclusion of any significant political party from the parliament. A system of proportional representation also meant, however, that single-party majority governments would be very difficult to form and portended bargaining, compromise, coalitions and impasses—a recipe for political combustion and instability.

As time would show, however, the Portuguese system of proportional representation, unlike the Turkish system, posed no serious impediment to democratic consolidation. Rather, the centralized party structures of the main political parties led to the expulsion of anti-democratic factions and both the Socialist and Christian Democratic parties expelled individuals unsupportive of democracy. Each of the four major parties that won seats in the Constituent Assembly elections became an integral part of the newly established democracy, which was confirmed in the first parliamentary elections of April 1976 in which all four parties obtained representation.

391. Id. at 308.
392. Id.
393. Id. at 336–37.
394. Id. at 337.
395. Id.
396. Id.
397. Id. at 338.
398. Id. at 340.
399. Id.
400. Id. at 347; MAGONE, supra note 380, at 26.
D. The First Democratic Presidential and Legislative Elections

The unstated understanding during the democratic transition was that the President of the Republic (who was also the chairperson of the Council of the Revolution) would be elected from senior military leadership. Only a soldier-president could normalize the armed forces and provide all power-holders (civilian and military) with guarantees of maintaining the regime through the constitutional oversight authority provided to the military. Although the election of a military leader might appear to be in tension with democratization, a soldier-president who could invoke electoral legitimacy could also impose constraints on the Council of the Revolution’s extensive constitutional prerogatives. By fusing civilian and military authority in the same office, the Constitution pitted soldier against soldier, which proved to be beneficial in consolidating the democratic regime. The juxtaposition of these two powers eventually ensured that the Council of the Revolution, the military organ, became subordinate to the civilian Presidency as a mere advisory body.

General Eanes prevailed in the 1976 presidential elections with an overwhelming 61.6% of the popular vote. Eanes, a political moderate, was widely viewed as the military leader best positioned to normalize the armed forces and instill non-partisanship in the military. Eanes believed that the “armed forces should not espouse a political role but should rather act as guarantors of a democratic system on a western model.” Under Eanes’s leadership, the military’s focus would be on external—not internal—threats, bolstered by Portugal’s membership in NATO and the employment of Portuguese forces in NATO missions. Eanes also committed himself to be non-partisan—a President who would remain “above the parties” and uncommitted to any political party or agenda.

402. Id. at 359.
403. Id. at 358.
404. See id.
405. Id. at 386.
406. Id. at 4, 368.
407. Id. at 358.
409. See Rato, supra note 14, at 400, 404; see also id. at 407 (noting a “new, externally-focused mission for the armed forces”).
410. Id. at 363.
also believed that maintaining the regime’s stability was necessary to overcome an economic crisis that threatened to foment antidemocratic sentiment.411

Although significant political instability existed following the first parliamentary elections in post-authoritarian Portugal, the resulting political coalitions were much stronger than the weak and fragile coalitions that characterized much of recent Turkish history. In the aftermath of the 1974 coup, political parties had “successfully infiltrated so many aspects of Portuguese society that one can imagine few public offices or social institutions not subject to their dictates.”412 In stark contrast to Turkey, it was the political parties, not military leaders, that filled any power vacuums.413 And struggling to overcome internal conflicts, the Portuguese military was not as effective as the Turkish military in filling any political power gaps.414

In addition, unlike the Turkish military’s indefinite constitutional entrenchment, the Portuguese military expressly limited its own constitutional term to six years. It was generally assumed that the Council of the Revolution would be abolished when it became possible to revise the Constitution following the 1980 legislative elections.415 By setting a temporal limit for its constitutional powers, the Portuguese military signaled that its term would be temporary and its exodus from politics permanent.

E. The Military’s Exodus from Politics

The December 1979 and the October 1980 parliamentary elections handed a landslide victory to the Democratic Alliance coalition, comprising the Democratic People’s Party, the Democratic and Social Center, the Popular Monarchist Party and a number of independents.416 That electoral triumph signaled that civilian parties were ready to assume the center stage in politics and ignited a period of stability and process of institutional change that ended with the abolishment of the military prerogatives in the 1976 Constitution.417 The Democratic Alliance coalition sought to reinforce Portugal’s ties

411. Id. at 369.
412. BRUNEAU & MACLEOD, supra note 322, at 7.
413. See id.
414. See id. at 7–8.
415. Id. at 12, 119.
417. MAGONE, supra note 380, at 28; Rato, supra note 14, at 436, 531.
to the European community in order to ensure that Portugal con-
formed to the pattern of military subordination to civilian authorities
in other democracies.\textsuperscript{418} A commitment to NATO and the EEC made
civilian supremacy “an absolute imperative.”\textsuperscript{419}

By 1982, the political parties and institutions in Portugal had
attained a “reasonable degree of stable existence.”\textsuperscript{420} A coalition of
the existing political parties obtained the necessary two-thirds majori-
ty to revise the Constitution.\textsuperscript{421} The constitutional amendments de-
creased the powers of the President, transferred them to other institu-
tions and abolished the Council of the Revolution. The Council was
replaced with the Council of State, a civilian advisory body and a
Constitutional Court.\textsuperscript{422} The amendments also created a legal
framework for the subordination of the military to democratic civil-
ian control.\textsuperscript{423}

In addition to ratifying constitutional amendments, the legis-
lature also enacted a Law on National Defense in November 1982.\textsuperscript{424}
The law subordinated the military to civilian authorities and also re-
deﬁned the concept of national defense to bring the military in line
with NATO norms.\textsuperscript{425} The law limited the military’s role to defend-
ing the nation against external threats and abolished the military’s
mission of internal security, which the military could have used to
justify future political interventions.\textsuperscript{426}

If there exists any “model” for a military-led transition from
autocracy to democracy, that model is Portugal. As this Part has
showed, the interdependent Portuguese military abolished an authori-
tarian regime with the 1974 coup, installed democratically elected
leaders, ensured stability, promoted political pluralism and retreated
to the barracks relatively quickly after its democratization mission
was accomplished. The result was a robust democracy that continues
to thrive today.

\begin{footnotes}
\item 418. Rato, supra note 14, at 444–45.
\item 419. Id. at 505.
\item 420. BRUNEAU & MACLEOD, supra note 322, at 8.
\item 421. Varol, supra note 32, at 339.
\item 422. Id.
\item 423. Id.
\item 424. BRUNEAU & MACLEOD, supra note 322, at 16.
\item 425. Id. at 17.
\item 426. Id.
\end{footnotes}
IV. EGYPT

In February 2011, the Egyptian Armed Forces toppled the autocratic Hosni Mubarak regime in response to eighteen days of determined popular protests. Thereafter, the Egyptian nation underwent a turbulent transition process marked by conflict and attempted power grabs by various self-interested institutions and political factions. As Egypt continued on its transition path to democracy, a lively debate commenced over the proper constitutional and political role, if any, that its military should play in the newly established democratic order. Should the Egyptian military play a constitutional role to provide institutional support to Egypt’s emerging democracy and check excessive majoritarian tendencies, as some commentators advocated? Or should the civilians demand an immediate return to the barracks for the military, lest the generals establish a military dictatorship in Egypt? This Part explores the implications of this Article’s interdependent-military theory on these difficult questions, without providing any definitive normative answers. In Section A, I first consider whether the Egyptian military fits the interdependent-military mold I discussed supra Part I.A. Section B proceeds to explore the democracy-promoting functions the Egyptian military served in the immediate aftermath of the coup.

A. The Egyptian Military: An Interdependent Institution?

In many respects, the Egyptian military is a mixed bag. On the one hand, the Egyptian military is composed of citizen-soldiers at its lowest ranks and represents a wide cross-section of the Egyptian population, including a progressive middle class.427 It also toppled an unpopular dictator in February 2011—in a move that I previously argued was motivated largely by institutional self-interest—and paved the way for the establishment of a long-awaited democratic regime in Egypt.428 In addition, at the time of the February 2011 revolution, the military was a “widely popular”429 institution in Egypt.430

427. TAREK OSMAN, EGYPT ON THE BRINK: FROM NASSER TO MUBARAK 228 (2010) (“[T]he [military] establishment at its core (at the individual’s level), and despite the benefits allocated to officers and army professionals which shelter them from the economic difficulties that most Egyptians confront, is a representative of the society’s middle class, which is increasingly seeking change from the modus operandi that has governed the country for decades.”).

428. See Varol, supra note 32, at 314 n.124.

429. David D. Kirkpatrick, Egyptians Defiant as Military Does Little to Quash Protests,
It had built a stellar reputation in part because of national conscription for all men. And until the recent democratic-transition process, the military was rarely used to police the Egyptian population—a task entrusted to the much-despised black-clad riot police.

But there are indicators that point in the opposite direction. The Egyptian military, unlike the Portuguese and Turkish militaries, is not a member of any democratic international alliances that would accustom its officers to democratic norms. The military establishment was associated, at least loosely, with the dictators that have ruled Egypt since a 1952 revolution overthrew King Farouk. Yet, as Tarek Osman has noted, Egypt was arguably never a genuine military dictatorship—its presidents have always had the final say—and the military establishment did not assume a role as the “guardian of the state.” And beginning with the Yom Kippur War in the mid-1970s and until the February 2011 coup, the Egyptian military largely confined itself to the barracks, where its influence in politics was limited to matters of national security for more than a decade. Its commitment to the regime also has been less than steadfast. In the 2000s, the military began to clash with Hosni Mubarak’s son and heir-apparent, Gamal Mubarak, and finally delivered the coup de grâce to the Mubarak regime in February 2011 when it became apparent that the regime was on its last legs.

The democratic-transition process that the Egyptian military supervised from February 2011 until August 2012 reflected its mixed pedigree. At the beginning of the process, the military was celebrated as a heroic institution that protected the protestors during the popular uprising against the Mubarak regime and ended the uprising by toppling a relentless dictator and promising the establishment of de-
mocracy. Thereafter, however, its reputation and legitimacy in Egypt declined as it repeatedly botched the democratic-transition process that it controlled through the ruling Supreme Council of the Armed Forces (SCAF). For example, it was accused of detaining civilians on trumped-up charges and beating protestors. At times, commentators even questioned its willingness to eventually return power to civilians. Yet at others—for example, when it relinquished its executive powers to Mohammed Morsi, Egypt’s popularly elected president—it appeared dedicated to restoring civilian rule. And despite its mixed record during the transition, in May 2012, three-in-four Egyptians continued to have a positive view of the military.436

The next Section explores the role that the Egyptian military played in the democratic-transition process. Specifically, it analyzes its role in promoting political pluralism and serving as an arbiter between the competing political factions in Egypt. In highlighting the institutional support that the Egyptian military has provided to Egypt’s emerging democracy, I do not mean to imply that the military’s performance has been consistently positive for democratic development. To the contrary, the SCAF, like other actors in Egypt, has overreached to protect its own institutional interests and autonomy. My aim, rather, is to highlight a largely neglected by-product of the SCAF’s self-interested actions, which have promoted, at least on occasion and to some extent, pluralism and stability in Egypt’s new constitutional order.

B. The Egyptian Military’s Role in the Democratic Transition

Following the February 2011 coup that toppled the Mubarak regime, the Egyptian military appeared to be in a tacit partnership with the Muslim Brotherhood.437 As the only established political group in Egypt, the Muslim Brotherhood offered stability following a turbulent transition period.438 The Brotherhood also appeared to support many of the state institutions that gave the Egyptian military its extensive economic and social privileges.439 From the military’s perspective, the Brotherhood was thus a natural partner in keeping order and protecting its status in Egypt.440

437. Varol, supra note 32, at 352–53.
438. Id. at 352.
439. Id. at 351–52.
440. Id. at 352.
As the transition progressed, however, the Brotherhood-military partnership frayed. Initially, the Brotherhood asserted a humble political agenda. It promised to seek less than a majority of the seats in the Parliament and not to run a candidate for President. But the Brotherhood’s humble agenda eventually took an ambitious and opportunistic turn. Disregarding its promises to the contrary, the Brotherhood launched an aggressive campaign to capture more than a majority of the parliamentary seats—including seats reserved for independent candidates with no party affiliations—and fielded its own candidate for the presidency. In the parliamentary elections for the lower house, the Muslim Brotherhood’s Freedom and Justice Party obtained 47.18% of the seats. Its presidential candidate, Mohammed Morsi, captured the presidency in a hotly contested election. What was once a humble partner of the military thus turned into an ambitious opponent that controlled both the presidency and the parliament and threatened to undermine the military’s prerogatives.

Against the Brotherhood’s growing political powerhouse, the military launched a campaign under the façade of attempting to protect Egypt’s democracy from the Islamists. General Mamdouh Shaheen, a member of the SCAF, offered a telling glimpse into the military’s plans: “We want a model similar to that found in Turkey... Egypt, as a country, needs to protect democracy from the Islamists.” The SCAF’s campaign, though fueled by the military’s institutional self-interests, has had the concomitant effect of increasing the representativeness of Egypt’s political institutions and proliferating political pluralism.

As part of its campaign, the SCAF first announced a set of “supraconstitutional principles” that would bind the Constituent Assembly in drafting a new constitution. The principles attempted to protect individual liberties and minority rights, which many inter-


442. Egypt’s Army, Islamists Discuss President’s Powers, ASWAT MASRIYA (June 26, 2012, 3:00 PM), http://en.aswatmasriya.com/news/view.aspx?id=1473db7b-d69b-41d8-8299-e2c2c9fb1a17 (noting “the army became increasingly uneasy about the Brotherhood’s drive for power, especially after it broke a pledge not to seek the presidency”).

443. Hamad, supra note 7, at 58.

444. Maggie Michael & Christopher Torchia, Egypt’s Generals Eyeing Turkish Model, PITT. POST-GAZETTE, June 28, 2012, at A4 (“[T]he Egyptian generals... seem largely motivated by their desire to prevent the Islamic Brotherhood from gaining a monopoly on power.”).

interpret as an attempt to preempt any potential anti-democratic moves by the Constituent Assembly. The principles, which were devoid of any references to Islam, angered the Islamists who feared that the principles would make Egypt too secular. One provision expressly granted the military a constitutional role as the guardian of "constitutional legitimacy," which many Islamists suspected would give the military the authority to intervene to protect the civil character of the state.

The SCAF also established a thirty-member Advisory Council to exert more influence over the constitution-drafting process. The military wanted the Council "to check the influence of religious extremists on the [constitution-drafting] process" by ensuring that the assembly represented all religions, political parties and professions. Asked whether the Council was an attempt to limit the Islamist influence, General Mukhtar Mulla, a member of the SCAF, replied unequivocally: "Absolutely.... The Egyptian people won't allow this to happen."

In addition to establishing an Advisory Council, the SCAF also attempted to control the makeup of the Constituent Assembly that would draft the new Egyptian Constitution. Although a March 2011 referendum authorized the parliament to select the members of the Constituent Assembly, the military sought to rein in that power once it became clear that the Brotherhood would dominate the parliament and the later selection of the Constituent Assembly. Under a plan announced by Deputy Prime Minister Ali al-Selmi, the parliament’s authority to appoint members to the Constituent Assembly would be limited to 20% of the seats. To make the Assembly more representative, the remaining members would be chosen from, among others, judges, professors, labor unions and the Coptic

448. Kirkpatrick, supra note 446.
449. Hamad, supra note 7, at 56.
451. Id.
452. Sharp, supra note 447, at 1.
453. Hamad, supra note 7, at 55.
454. Id.
The Brotherhood responded to the plan by staging massive protests, which caused the SCAF to relent and abandon it.\footnote{456}

The SCAF’s foiled plan to increase pluralism on the Constituent Assembly was resurrected by the Administrative Judicial Court in April 2012. The Court voted to dissolve the Brotherhood-dominated Assembly in response to arguments that the Assembly was unrepresentative of the Egyptian society, especially women and the youth—a legally dubious ruling since Egypt’s interim constitution does not mandate a representative Assembly.\footnote{457} After the Assembly’s dissolution, Egypt’s civilian politicians returned to the drawing table to create a more pluralistic body. When negotiations over the Assembly’s makeup ground to a halt, the burden of reviving them fell on the military. In early June 2012, the SCAF entered the fray by giving the politicians an ultimatum to create an Assembly within 48 hours or expect a new constitutional declaration giving the SCAF the authority to unilaterally expedite the process.\footnote{458} Under intense pressure, the politicians reached an unexpected agreement, reinforcing the “narrative that only the military can press self-serving civilian politicians to fulfill their duties to the nation.”\footnote{459} The outcome was a more pluralistic Assembly that includes representatives from all major social groups in Egypt.\footnote{460}

\footnote{455} Id. 
\footnote{456} Id. at 56.


\footnote{458} Zarwan, supra note 200; Mara Revkin & Yussuf Auf, Egypt’s Constitutional Chaos, FOREIGN POLICY (June 14, 2012), http://www.foreignpolicy.com/articles/2012/06/14/egypt_s_constitutional_chaos.

\footnote{459} Zarwan, supra note 200.

\footnote{460} The Assembly includes “9 constitutional experts, 6 judicial officials, 5 from Al-Azhar, 4 from Egyptian churches, 7 professional syndicates’ heads, 4 representatives of labour and farmers, 33 MPs from political parties, 3 representatives of the executive authority (Armed Forces, the Police and the government), 29 public figures and youth, 4 political parties chairman, 7 representatives of women, 7 representatives of the uprising and the injured, 10 Islamic figures (including those from Al-Azhar), 8 representing the Copts, 28 legal experts, 10 thinkers and writers, 30 university professors, 4 representatives of the labour syndicates, one representatives [sic] of the foreign-based Egyptians.” Sherif Tarek & Hatem Maher, Egypt’s Constituent Assembly Unveiled Amid Fears over Islamist Dominance, AHRAM ONLINE (June 13, 2012), http://english.ahram.org.eg/NewsContent/1/0/44716/Egypt/0/Egypts-Constituent-Assembly-unveiled-amid-fears-ov.aspx. See also Revkin & Auf, supra note 458. Many opposition groups argued, however, that the
In addition to the Constituent Assembly, the Brotherhood-dominated legislature was also targeted by the military, after a ruling by the Supreme Constitutional Court that dissolved the lower house of the Parliament. The Court struck down as unconstitutional an electoral law that allowed political parties to field their members for the one-third of the Parliament seats reserved only for independent candidates who are not affiliated with a party. The ruling was issued by a Court widely viewed by experts as independent and outside of the military’s influence. The military, eager to restrain the stronghold of the Brotherhood, welcomed the Court’s ruling and promptly enforced it.

Many commentators speculate that the new parliamentary elections are likely to produce a more representative Parliament given the declining popularity of the Muslim Brotherhood in Egypt and the unification of the previously divided opposition groups. Access not sufficiently representative despite its improved composition. See Egypt Power Struggle: Assembly Backs Draft Constitution, BBC News (Nov. 30, 2012), http://www.bbc.co.uk/news/world-middle-east-20551575.

461. Revkin & Auf, supra note 458.

462. See, e.g., Nathan J. Brown, Train Wreck Along the Nile, FOREIGN POLICY (July 10, 2012), http://www.foreignpolicy.com/articles/2012/07/10/train_wreck_along_the_nile.

463. Id. ("Was the court acting at the SCAF's behest? Probably not in terms of the substance of the ruling—those who know the court best were not surprised by the ruling, only by the speed."); Haider Ala Hamoudi, Democracy and the Supreme Constitutional Court of Egypt, JURIST (June 28, 2012), http://jurist.org/forum/2012/06/haider-hamoudi-scc-parliament.php.

464. Brown, supra note 462; David D. Kirkpatrick, Egypt's Military Softens Tone as Vote Count Favors Islamists, N.Y. TIMES, June 18, 2012, http://www.nytimes.com/2012/06/19/world/africa/islamist-candidate-is-apparent-victor-in-egypt-as-military-cements-its-powers.html; Kareem Fahim & Mayy El Sheikh, Egypt’s President Orders Return of Parliament, N.Y. TIMES, July 8, 2012, http://www.nytimes.com/2012/07/09/world/middleeast/egypts-president-orders-return-of-dissolved-parliament.html?_r=1&hp (noting that the military’s actions were "aimed at curbing the power of the Muslim Brotherhood"). Some commentators have argued that the Egyptian military eventually reached a rapprochement with the Muslim Brotherhood after the Brotherhood-dominated Constituent Assembly approved a draft constitution that grants broad powers to the military. See Stephanie McCrummen & Abigail Hauslohner, Egypt’s Morsi, Looking to Army for Support, Pushes Charter that Enshrines Military’s Power, WASH. POST, Dec. 6, 2012, http://www.washingtonpost.com/world/middle_east/egypt-protests-turn-violent-as-political-crisis-intensifies/2012/12/06/b176f912-3f76-11e2-ae43-cf491b8377b_story.html; see also Varol, supra note 32, at 295 ("[E]ven though a democratic coup ends in free and fair elections, the military behaves as a self-interested actor during the democratic transition process and entrenches, or attempts to entrench, its policy preferences into the new constitution drafted during the transition process.").

465. See FJP Predicts Winning 55% of Parliamentary Seats in Next Elections, EGYPT
cording to a Gallup survey, for example, less than half of the Egyptians (42%) polled in April 2012 supported the Muslim Brotherhood—a significant decline from 63% in February.466 In addition, less than half of Egyptians thought it was a “‘good thing’ for the Muslim Brotherhood to hold a strong and influential position in the country’s parliament.”467 The Brotherhood’s loss of support can be attributed to the Brotherhood-dominated Parliament’s inability to restore stability and improve Egypt’s dismal economic outlook.468 The Brotherhood’s failure to keep its promise of not fielding a presidential candidate and opportunistic actions in, for example, packing the Constituent Assembly with ideologues also seems to have eroded popular confidence in it.469 President Morsi’s unilateral decrees that gave him virtually dictatorial powers also led to massive protests against the President and the Brotherhood and damaged his popularity.470

In sum, at various points during the transition, the promotion of the Egyptian military’s self-interests had the concomitant effect of increasing, at least to some extent, the representativeness of Egypt’s political institutions.471 At times, the military also served as an arbiter between competing political factions to expedite and resolve contentious political questions, such as the selection of the Constituent Assembly. At the time of this writing, the turbulent democratic transition in Egypt is still in progress. Only time will tell whether the


467. Id.

468. See id.; Michael Wahid Hanna, Mapping Egypt's Electorate, FOREIGN POLICY (May 15, 2012, 1:46 PM), http://mideast.foreignpolicy.com/posts/2012/05/15/mapping_egypts_electorate (“The Muslim Brotherhood’s short and unhappy experience with institutional power has clearly eroded some degree of their widespread support.”).

469. Id.

470. Lynch, supra note 2.

471. See also Landau, supra note 25 (“[T]he [Egyptian] military’s actions may have opened space (and bought time) towards a more inclusive constitution-making process less dominated by monolithic political movements.”).
military-led transition process in Egypt will produce a stable multi-party democracy like Portugal or a fragile democracy, like Turkey, that invites further military interventions until stable governments take hold.

CONCLUSION

The theory in this Article admittedly goes against the grain of theoretical constitutional scholarship. But my aim here is not to be provocative or contrarian. Rather, it is to bring intellectual balance to a field dominated by a conventional narrative that myopically views the military as an impediment to democratic development. I have argued that certain types of militaries—which I call “interdependent” militaries—are capable of providing much needed institutional support to an emerging democracy. The Article acknowledged that the military is a self-interested actor and analyzed how the institutional interests of the military may nonetheless align with the conditions necessary for the genesis and progress of a constitutional democracy—i.e., the promotion of stability, political pluralism and national unity. It also showed how the militaries in Turkey and Portugal provided crucial institutional support to their newfound democracies in 1960 and 1974 and concluded by examining the implications of this theory for Egypt.

Ideally, of course, it would be civilian, not military, leaders that would promote the conditions conducive to democratic development. In some cases, however, civilian leaders are unable or unwilling to shoulder that task, which explains in part why recent history is littered with failed democratic transitions. It may therefore be necessary to enlist the help of non-traditional and second-best actors, such as the military, to promote democratic progress in emerging democracies. In an imperfect transition process, the second best may be the best we can do.