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NAVAL POSTGRADUATE SCHOOL

MONTEREY, CALIFORNIA

THESIS

DISPARITY IN DEMOCRACIES:
A COMPARATIVE CASE STUDY OF MALI AND NIGER

by

Gregory Starace

December 2010

Thesis Advisor:	Letitia L. Lawson
Second Reader:	Eugene M. Mensch II

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In order to understand variation in post-transition levels of democracy, this thesis undertakes a comparative case study of Mali and Niger. Despite similarities, Mali had substantially more success with democratization than Niger. This thesis employs a detailed process tracing of the decisions of political and civil society leaders in Mali and Niger at critical junctures when democratic institutions were put to the test to evaluate the empirical validity of existing explanations. It seeks to validate (or invalidate) the causal mechanisms linking political culture and democratic success.

The evidence however, suggests something different. There is a remarkable parallel in the behavior of political and civil actors in the two countries, which invalidates the hypotheses. The most likely alternative explanation is the role of key individuals. The analysis indicates that "good guys" in Mali may have had a part in encouraging the forthright application of the rule of law, as they accepted rulings that ran counter to their agendas, whereas "bad guys" in Niger who, to varying degrees, engaged in actions that were arguably illegal, as they ran counter to the respective Niger constitutions, may have had a part in encouraging the abandonment of the rule of law.

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DISPARITY IN DEMOCRACIES:
A COMPARATIVE CASE STUDY OF MALI AND NIGER

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ABSTRACT

In order to understand variation in post-transition levels of democracy, this thesis undertakes a comparative case study of Mali and Niger. Despite similarities, Mali had substantially more success with democratization than Niger. This thesis employs a detailed process tracing of the decisions of political and civil society leaders in Mali and Niger at critical junctures when democratic institutions were put to the test to evaluate the empirical validity of existing explanations. It seeks to validate (or invalidate) the causal mechanisms linking political culture and democratic success.

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LIST OF ACRONYMS AND ABBREVIATIONS

ADEMA   *Alliance pour la Démocratie en Mali*
AEMUN   *Association des Etudiants Musulmans à l'Université de Niamey*
AFC   *Alliance des Forces du Changement*
AFRICOM   United States Africa Command
AIN   *Association Islamique du Niger*
AISLAM   *Association Islamique du Salat*
AJM   *Association des Jurists Maliennes*
AMUPI   *Association Malienne pour l'Unité et le Progrès de l'Islam*
ANDP   *Alliance Nigérienne pour la Démocratie et le Progrès*
APDF   *Association pour le Progrès et la Defense des Droits de Femme Maliennes*
ARD   *Alliance pour la République et la Démocratie*
ARCI   *Association pour le Rayonnement de la Culture Islamique*
ATT   Amadou Toumani Touré

CAFO   *Coordination des Associations et ONGs Feminines du Mali*
CDS   *Convention Démocratique et Sociale*
CENI   *Commission Electorale Nationale Indépendante*
CL   Civil Liberties
CNID   *Congrès National d'Initiative Démocratique*
COPP   *Convention pour le Progrès et le Peuple*
CTSP   *Comité de Transition pour le Salut du Peuple*

DV   Dependent Variable

ECOWAS   Economic Community Of West African States

FDD   *Front pour la Défense de la Démocratie*
FIMA   *Festival International de la Mode Africaine*

GDP   Gross Domestic Product

HCIM   *Haut Conseil Islamique du Mali*

IntV1   Intervening Variable One
IntV2   Intervening Variable Two
IV   Independent Variable

MIRIA   *Mouvement pour l'Indépendance, la Renaissance et l'Intégration Africaine*
MNSD   *Mouvement National pour la Societé du Développement*
MPD   *Mouvement Populaire pour le Développement de la République de l'Afrique de l'Ouest*

NGO   Non-Governmental Organization

PARENA   *Parti pour la Renaissance Nationale*
PDJ   *Parti Démocratique pour la Justice*
PDP   *Parti pour la Démocratie et le Progrès*
PNDS   *Parti Nigerien pour la Democratie et le Socialisme*
PR   Political Rights
PRODEJ   *Promotion de la Democratie et de la Justice au Mali*
PSDN   *Parti pour le Socialisme et la Démocratie au Niger*
PUDP   *Parti pour l'Unité, la Démocratie et le Progrès*

RDP   *Rassemblement pour la Démocratie et le Progrès*
RDT   *Rassemblement pour la Démocratie et du Travail*
RND   *Rassemblement National pour la Démocratie*
RSD   *Rassemblement Social Démocratique*

UDD   *Union pour la Démocratie et le Développement*
UFDP   *Union des Forces Démocratiques pour le Progrès*
UMDD   *Union Malienne pour la Démocratie et le Développement*
UN   United Nations (UN)
UNAFEM   *Union Nationale des Associations de Femmes Musulmanes en Afrique*
US-RDA   Union Soudanaise – Rassemblement Démocratique Africain

I. INTRODUCTION

A. MAJOR RESEARCH QUESTION

The Third Wave of democratization crested over West Africa in the early 1990s, displacing single party and military regimes. By 2000, the tide had receded, revealing electoral regimes in which one-party politics and big-man rule remained largely intact behind thin veils of "democratic" trappings. According to Freedom House, as of 2010, only four West African countries are considered "free," nine are rated as "partly free" and three are "not free."[1] In order to understand this variation in post-transition levels of democracy, this thesis will undertake a comparative case study of Mali and Niger. The two countries have similar French colonial experience and inheritance, both endured decades of military rule, and both faced internal rebellions in the early 1990s. In addition, they are both land-locked Sahelian countries that are sparsely populated, with capitals that are physically and culturally isolated from significant segments of their populations. Despite these similarities, Mali has had substantially more success with democratization than Niger. Why, then, has Mali been more successful than Niger in maintaining this upward democratic trajectory?

B. IMPORTANCE

The thesis has both academic and policy importance. It will contribute to our understanding of the divergence in democratic success in Africa, and Sahelian West Africa in particular. This understanding is important to U.S. policymakers on two accounts. According to *National Security Strategy of 2006*, the United States must "expand the circle of development by opening societies and building the infrastructure of democracy."[2] Thus, it is critical that U.S. policy makers have the most comprehensive understanding of how and why democracy takes root or fails to thrive. In addition, the United States Africa Command (USAFRICOM) values the importance of West Africa

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[1] Freedom House, *Freedom in the World 2010*, http://freedomhouse.org/template.cfm?page=15 (accessed November 25, 2010).

[2] George Bush, *The National Security Strategy of the United States of America* (March 2006): 1.

regional stability.[3]   As original members of the Pan-Sahel Initiative/Trans-Saharan Counterterrorism Initiative/Trans Sahara Counter Terrorism Partnership, Mali and Niger assume a critical role in this, since political stability and regional security are inextricably linked.   Furthermore, as military partners it is of significant worth to policy makers to understand the shades of difference between Mali and Niger.

C.   LITERATURE REVIEW

While a substantial body of literature exists concerning general themes of democratization in Africa, it generally cannot account for why Mali has been more successful in maintaining an upward trajectory than Niger.   This corpus of literature is divided into three camps.   The first is economic as represented by Barro, who explores the positive interplay of per capita gross domestic product (GDP), primary schooling, and a smaller gap between male and female primary attainment, and contrasts it with the negative effects of urbanization and with a greater reliance on natural resources.[4]   The second camp is political.   Bratton and van de Walle argue that the institutional characteristics of neopatrimonial rule and pre-transition varieties of it influence the transition to democracy.[5]   Diamond suggests that democracy is more likely to be consolidated in the presence of credible and effective institutions.[6]   Ihonvbere maintains that neo-colonial state structures are an obstacle to democratization.[7]   Sandbrook maintains that effective political parties and independent mass media are a necessary

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[3] Statement of General William E. Ward, USA Commander, United States Africa Command before the Senate Armed Services Committee and House Armed Services Committee on 17–18 March 2009, *United States Africa Command: 2009 Posture Statement* (March 2009): 23–25.

[4] Robert J. Barro, "Determinants of Democracy," *The Journal of Political Economy* 107 (December 1999): S158–S183; Larry Sirowy and Alex Inkeles, "The Effects of Democracy on Economic Growth and Inequality: A Review." *Studies Comparative Internat. Development* 25 (Spring 1990): 126–57; and Adam Przeworski and Fernando Limongi, "Political Regimes and Economic Growth." *Journal of Economic Perspectives* 7 (Summer 1993): 51–69.

[5] Michael Bratton and Nicolas van de Walle, *Democratic Experiments in Africa: Regime Transitions in Comparative Perspective* (New York: Cambridge University Press, 1997).

[6] Larry Diamond, *Developing Democracy: Toward Consolidation* (Baltimore: The Johns Hopkins University Press, 1999).

[7] Julius O. Ihonvbere, "Where Is the Third Wave? A Critical Evaluation of Africa's Non-Transition to Democracy," *Africa Today* 43 (October–December 1996): 343–367.

condition for democratic consolidation.[8]   Neither of these camps can account for the divergent outcomes in Mali and Niger, which have similar values on all of the independent variables identified.

The third camp explores the relationship between social capital and democracy. In his groundbreaking 1993 studying of social capital in Italy, Putnam concludes that cross-cutting networks encourage wider cooperation, reinforce trust, and build both a strong economy and democratic society.[9]   Writing several years later, in the wake of an outpouring of research on social capital and democracy, Newton acknowledges *some* relationship between social trust and social capital, and between political trust and political capital, but argues that the relationship is much more complex and nuanced than most theorists were suggesting, and that more research needs to be done before the prevailing theories can be fully accepted.[10] Paxton takes up this challenge in her quantitative global study, finding that there is a reciprocal relationship between social capital and democracy, and "that associations that are connected to the larger community have a positive effect on democracy, while isolated associations have a negative effect."[11]   Varshney finds that participation in intercommunal (Hindu and Muslim) associations in India mitigates intercommunal violence,[12] while Maclean finds the opposite in her study of Ghana and Côte d'Ivoire. She argues that *passive membership* in heterogeneous associations hinders interethnic cooperation in Côte d'Ivoire, while more *active participation* in relatively homogenous associations in Ghana facilitates interethnic

[8] Richard Sandbrook, "Transitions without Consolidation: Democratization in Six African Cases," *Third World Quarterly* 17 (March 1996): 69–87.

[9] Robert Putnam, *Making Democracy Work: civic traditions in modern Italy*. (Princeton: Princeton University Press, 1993).

[10] When Newton wrote, the latest theories argued "that trust has its origins in that broad, deep, and dense network of voluntary associations and intermediary organizations that comprise civil society. Trust is a – probably *the* – main component of social capital, and social capital is a necessary condition of social integration, economic efficiency, and democratic stability" Kenneth Newton, "Trust, Social Capital, Civil Society, and Democracy," *International Political Science Review* 22 (2001): 201–214; Kenneth Newton, "Social Capital and Democracy," *The American Behavioral Scientist* 40 (March/April 1997): 575–586.

[11] Pamela Paxton, "Social Capital and Democracy: An Interdependent Relationship," *American Sociological Review* 67 (April 2002): 254–277.

[12] Ashutosh Varshney, *Ethnic Conflict and Civic Life: Hindus and Muslims in India*. (New Haven: Yale University Press, 2002).

cooperation and the development of "more democratic values and practices."[13]   The arguments in this camp tend to resonate with the literature on Mali and Niger.

Most of the case specific literature attributes Mali's success to "unique political culture" or the role of key leaders in the democratization process. While citing political and economic reforms and external support, Baudais and Sborgi clearly emphasize the role of Amadou Toumani Touré in Mali's early success.[14] Likewise, Smith attributes Mali's success to economic growth, social structures conducive to equality, a favorable international environment, effective political leadership, and a unique political culture emerging from the national founding epic of Mali, again giving priority to leadership personalities and culture.[15] In a similar theme, Pringle credits Mali's democratization to a heritage of tolerance and tradition of decentralized government with roots in the Ghana Empire (eighth to eleventh centuries), Mali Empire (twelfth to fifteenth centuries), and Songhai Empire (fourteenth to sixteenth centuries).[16]   This argument is consistent with Putnam's findings that different levels of social capital in contemporary northern and southern Italy are traceable to networks of association membership rooted in the distant past. Vanhanen also attributes Mali's success to both its "unique political culture" and the leadership of President Alpha Oumar Konare.[17]   Only Vengroff departs from the unique political culture argument, stressing instead the effect of electoral systems, arguing that Mali's majoritarian system helped ensure a clear winner took power as opposed to a potentially fractious coalition government.[18] Those who have written on Niger's fleeting success also generally ascribe it to the role of individuals. Davis and

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[13] Lauren Morris MacLean, "Mediating ethnic conflicr at the grassroots: the role of local associational life in shaping political values in Co^te d'Ivoire and Ghana," *Journal of Modern African Studies* 42 (2004): 589–617.

[14] Virginie Baudais and Enrico Sborgi, "The presidential and parliamentary elections in Mali, April and July 2007," *Electoral Studies* 27 (2008): 740–773.

[15] Zeric Kay Smith, "Mali's Decade of Democracy," *Journal of Democracy* 12 (July 2001): 73–79.

[16] Robert Pringle, "Democratization in Mali: Putting History to Work," United States Institute of Peace, *Peaceworks No. 58*, (October 2006).

[17] Tatu Vanhanen, "Struggle for Democracy in Sub-Saharan Africa," *Acta Politica* 39 (2004): 207–247.

[18] Richard Vengroff, "The Impact of the Electoral System on the Transition to Democracy in Africa: The Case of Mali," *Electoral Studies* 13 (1994): 29–37.

Kossomi attribute Niger's success in the early 2000s to significant political actors who believed in the moral superiority of a democratic regime.[19] Baudais and Sborgi see Niger's democratic advances in the early 2000s as a result of rational choice taken by Nigerien voters and politicians alike.[20] There have been no efforts to explain Niger's more generalized lack of success.

Moestrup, author of the only comparative analysis of Mali and Niger, follows Vengroff in attributing their divergent outcomes to different electoral systems (majoritarian in Mali, proportional representation in Niger) and the interaction of key leaders, notably the inclusion of the military in Mali and the exclusion of the military in Niger from the transition process.[21] However, like the scholars discussed above, Moestrup gives greatest emphasis to individual leaders. The argument about electoral systems is persuasive for the initial push toward democracy, but cannot explain why Mali was able to stay the course and Niger was not at various critical junctures where the electoral system was not a part of the problem or solution. In addition, Moestrup's research took place more than a decade ago, before either country had really embarked on democratic consolidation.

The consensus in the case study literature about the role of culture in shaping individual decisions that in turn affected the sustainability of democracy is plausible but lacks adequate empirical support. Thus, this thesis undertakes a more detailed process tracing of the decisions of political and civil society leaders at critical junctures when democratic institutions were put to the test to determine the empirical validity of existing arguments. It does not seek to uncover the historical roots of social capital, but rather seeks to validate (or invalidate) the causal mechanisms linking political culture and democratic success in the last two decades.

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[19] John Uniack Davis and Aboubacar B. Kossomi, "Niger Gets Back on Track," *Journal of Democracy* Volume 12 (July 2001): 80–87.

[20] Virginie Baudais and Enrico Sborgi, "The general elections in Niger, November 2004," *Electoral Studies* 25 (2006): 147–191.

[21] Sophia Moestrup, "The Role of Actors and Institutions: the Difficulties of Democratic Survival in Mali and Niger," *Democratization* 6, (Summer 1999): 171–186.

D.   PROBLEMS AND HYPOTHESES

The hypothesis of this paper is that social capital, the independent variable (IV), explains the divergent outcomes in democratic consolidation, the dependent variable (DV). "Social capital refers to connections among individuals—social networks and the norms of reciprocity and trustworthiness that arise from them. In that sense social capital is closely related to what some have called 'civic virtue.'"[22]   Two separate causal pathways are identified. The first hypothesis of this thesis is that higher levels of social capital produced a greater inclination among Malian political actors and parties to adhere to the rule of law, engage in consensus politics, and accept rulings of the constitutional courts, the intervening variable one (IntV1), which contributed to democratic survival and consolidation. The second hypothesis is that higher levels of social capital produced a greater inclination among Malian civil society organizations to engage elected governments within the limits of the law and accept its decisions even when they were not those sought by civic activism, the intervening variable two (IntV2), which also contributed to democratic survival and consolidation.

E.   METHODS AND SOURCES

As noted above, Mali and Niger are ideally suited for Mill's Method of Difference because they are very similar Sahelian countries. They are sparsely populated, have similar population demographics, underwent their initial transitions to democracy in the early 1990s, are poor, have capitals that are physically and culturally distant from the rest of their landmass, and inherited French systems of government. Economic indicators are also similar (Table 1).

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[22] Robert D. Putnam, *Bowling Alone: The collapse and revival of American community* (New York: Simon and Schuster, 2000), 19.

Table 1.   Mali and Niger Development Indicators Comparison

Country	Population, total (millions)	Population growth (annual %)	Mortality rate, under–5 (per 1,000)	Life expectancy at birth, total (years)	GNI per capita, Atlas method (current U.S.$)	Primary completion rate, total (% of relevant age group)	Prevalence of HIV, total (% of population ages 15–49)	Official development assistance and official aid (current U.S.$) (millions)
Mali	12.3	3	196	54	560	52	1.5	1,017
Niger	14.2	3.3	176	57	280	40	0.8	542

Source: The World Bank, World Development Indicators (WDI) database, based on 2007 data. http://go.worldbank.org/1SF48T40L0 (accessed March 14, 2010).

The critical junctures that will be compared are: (1) The behavior of Islamic civic organizations and leaders and (2) The behavior of political parties and government officials with respect to the rule of law during Malian election disputes in 1997 and 2007, and Nigerien political crises in 1995–1996 and 2009–2010. It is anticipated that higher levels of social capital in Mali will have set the conditions for a an active civil society that works within the framework of legality to effect change, and respect for rule of law by both the ruling party and political opposition that keeps electoral disputes and political crises from escalating to the point of illegally threatening the regime. If social capital is indeed lower in Niger, one should see a less active and/or less rule-bound civil society, and less respect for the rule of law among political actors, leading to more escalation of electoral disputes and political crises.

The level of social capital is inferred from the intervening variables. The rule of law is measured by the extent to which the decisions of the constitutional courts are independent and respected by both those in power and the opposition. Civil society behavior is measured by the extent to which contesting civic organizations adhere to the rule of law, even when doing so runs counter to their interests. The dependent variable of democratic consolidation is evaluated by the extent to which each country is considered free using the Freedom House index. The divergent outcome of political rights and civil liberties began after 1991 when Mali moved to "free" and, with the exception of 1994

where it was downgraded to "partly free," has been considered free for almost two decades. Niger, on the other hand, has been classified as "partly free" since 1991 and was even downgraded to "not free" from 1996–1998.[23]

The civil society chapter is largely dependent on two secondary sources Benjamin F. Soares' analysis of Mali and Robert Charlick's analysis of Niger.[24] However, the dependent variable in both analyses is the rise in Islamic fundamentalism. This theses uses evidence on Islamic activism provide by these authors to evaluate the behavior of civil society and its effect on democratic consolidation.

F.   THESIS OVERVIEW

The thesis is organized into four chapters: an introduction, two case study chapters exploring each of the intervening variables, and conclusion chapter.

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[23] Freedom House, "Comparative and Historical Data," http://www.freedomhouse.org/template.cfm?page=439 (accessed November 25, 2010).

[24] Benjamin F. Soares, "Islam in Mali in the Neoliberal Era," *African Affairs* 105 (December 2005): 77–95; Robert B. Charlick, "Niger: Islamist Identity and the Politics of Globalization," in William F.S. Miles, ed., *Political Islam in West Africa: State-Society Relations Transformed* (New Delhi: Viva Books Private Limited, 2007), 19–42; Robert B. Charlick, "African Studies Review Focus: Islamism in West Africa," *African Studies Review* 47 (September 2004): 97–107.

II.   RULE OF LAW

Rule of law "implies that government authority may only be exercised in accordance with written laws [and court rulings], which were adopted through an established procedure. The principle is intended to be a safeguard against arbitrary rulings in individual cases."[25] Respect for the rule of law among political actors in Mali and Niger will be evaluated by their engagement in consensus politics, and their acceptance of the rulings of the constitutional courts. The case study of Mali focuses on the behavior of political parties and government officials during election dispute in 1997. The case study of Niger focuses on the behavior of political parties and government officials during the political crises of 1995–1996 and 2009–2010. The comparative analysis looks for how differences in the level of respect for the rule of law contributed to democratic survival and consolidation.

A.   MALI

Mali's transition from a single-party state to multiparty democracy was initiated by a March 1991 military coup by Colonel Amadou Toumani Touré. Touré's *Comité de Transition pour le Salut du Peuple* (CTSP) oversaw elections in February and March 1992, and handed power to the newly elected government. The *Alliance pour la Démocratie en Mali* (ADEMA) won 76 of 116 legislative seats, and its presidential candidate, Alpha Oumar Konaré, won with 69.01 percent of the vote. [26] Within a few years, however, the regime was suffering from internal discord. In 1994, six ADEMA deputies, critical of the pace of anti-corruption reform, broke away to form the *Mouvement pour l'Indépendance, la Renaissance et l'Intégration Africaine* (MIRIA). Also in 1994, the government was rocked by student strikes demanding compensation for their role in the 1992 regime transition, and strikes by teachers and industrial workers

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[25] "Rule of law – Definition." *WordIQ.Com*, http://www.wordiq.com/definition/Rule_of_law (accessed March 12, 2010).

[26] Albert C. Nunley, *African Elections Database*, "Elections in Mali," http://africanelections.tripod.com/ml.html#2002 _National_Assembly_Election (accessed March 11, 2010).

seeking wage increases to offset a 50 percent currency devaluation.[27]   As the country headed into the 1997 elections, ADEMA's honeymoon was long since over.

The adoption of a new electoral code in January 1997 set the stage for the regime's first political crisis. The new electoral code raised the number of National Assembly seats from 116 to 147 and required that the elections for these newly created seats be conducted before June 8, 1997.[28]   The *Commission Electorale Nationale Indépendante* (CENI) appealed to the government and all political parties to come to general consensus on the election date, which should be in mid- to late-April. On March 3, President Konaré met with all thirteen parties represented in the National Assembly to discuss the election date.   He suggested April 13 or 27, and the opposition parties supported the later date. While the meeting did not produce a definite agreement on the date, all parties were supportive of the process and agreed that it was imperative to support CENI, given the short time horizon regardless of which date was chosen.[29]   On March 4, Konaré dissolved the National Assembly in anticipation of the legislative elections, which had to be held 21 to 40 days following dissolution according to the constitution.[30]   A few days later, Konaré set the April 13 date.   While the opposition lacked legal grounds to protest the April 13 date, it was dismayed that the earlier date was chosen as they were afforded less time to prepare for the election, and as such felt the conditions were unfavorable for their bid for political gain.[31]

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[27] Smith, 74–75.

[28] Inter-Parliamentary Union, "Mali: Parliamentary Chamber," http://www.ipu.org/parline-e/reports/arc/2201_97.htm (accessed October 5, 2010); *RTM radio* (Mali), "President Konare confirms elections, rules out transitional government," February 21, 1997, through BBC Summary of World Broadcasts, February 24, 1997, http://w3.nexis.com/new/ (accessed October 5, 2010).

[29] *RTM radio* (Mali), "President, political parties try to reach agreement on new election timetable," March 3, 1997, through BBC Summary of World Broadcasts, March 5, 1997, http://w3.nexis.com/new/ (accessed March 11, 2010)

[30] *RTM radio* (Mali), "President dissolves National Assembly in preparation for elections," March 4, 1997, through BBC Summary of World Broadcasts, March 5, 1997, http://w3.nexis.com/new/ (accessed October 5, 2010).

[31] *Radio France Internationale*, "Commission chairman rejects opposition criticism of 13th April elections," April 7, 1997, through BBC Summary of World Broadcasts, April 10, 1997, http://w3.nexis.com/new/ (accessed March 11, 2010)

The opposition was critical of preparations for the elections, including the manner in which electoral materials were distributed and voter registration was being conducted, despite a report from CENI that pre-election arrangements were going well.[32]   When early results showed ADEMA and its allies winning the first round, all thirteen opposition parties contested the results, and threatened to boycott the second round of the legislative elections and the upcoming May presidential election unless the government invalidated the results, dissolved CENI, and resigned.[33]   Iba Ndiaya, Secretary-General of ADEMA, responded: "we do not have the power to annul the elections, the ADEMA, the government and the president of the republic do not have it. Constitutionally, this power lies with the Constitutional Court. If a president of the republic substitutes himself for an institution, such an act is called dictatorship. It would be an abuse of power."[34] President Konaré acknowledged "shortcomings" in the running of the elections, and urged complainants to pursue their grievances through the legal system, effectively submitting himself and his party to the rule of law.[35]   In accordance with Article 86, the Constitutional Court took the issue under review.

On April 25, twelve days after the election and eight days after the review was initiated, the Constitutional Court cancelled the elections on account of irregularities, and called for new elections.[36]   This judgment in favor of the opposition demonstrated the independence of the courts and the acceptance of its ruling by ADEMA, demonstrated respect for the rule of law.   The opposition, which had won the case, was still not satisfied because the government had neither dissolved CENI nor resigned, as it

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[32] *Radio France Internationale*, "Commission chairman rejects opposition criticism of 13th April elections."

[33] Mali uses a two-round system, in which the two highest vote receiving candidates engage in a run-off if the top vote winner does not achieve a majority in the first round. *Africa No 1 radio* (Gabon), "Opposition calls for cancellation of election results," April15, 1997, through BBC Summary of World Broadcasts, April 17, 1997, http://w3.nexis.com/new/ (accessed March 11, 2010); *RTM radio* (Mali), "Ruling party official, opposition on "agreement" to annul election results."

[34] *RTM radio* (Mali), "Ruling party official, opposition on "agreement" to annul election results," April 22, 1997, through BBC Summary of World Broadcasts, April 24, 1997, http://w3.nexis.com/new/ (accessed March 11, 2010)

[35] *RTM radio* (Mali), "President Konare calls for greater tolerance from political parties," April 18, 1997, through BBC Summary of World Broadcasts, April 21, 1997, http://w3.nexis.com/new/ (accessed March 11, 2010)

[36] Nunley, *African Elections Database*, "Elections in Mali."

demanded. Konaré offered a number of conciliatory measures, including dialogue with the opposition, a program for a broad-based government, and pardoning of opposition activists sentenced for electoral offences. Still, the opposition embarked on various marches to "demonstrate the general discontent," made public statements declaring that the government lacked "legal authority," and some of the smaller parties categorically refused to participate in dialogue with the president.[37]

In the end, one minor opposition leader, Mamadou Maribatrou Diaby, from the *Parti pour l'Unité, la Démocratie et le Progrès* (PUDP) ran against Konaré in the May 11 presidential election, receiving 4.1 percent of the vote.[38] Eight parties, including ADEMA and its two allies *Parti pour la Renaissance Nationale* (PARENA) and *Parti Démocratique pour la Justice* (PDJ), ran in the new National Assembly elections, which took place July 30 (first round) and August 3 (second round), while seven opposition parties, including the three main ones, boycotted.[39] In January 1998, the opposition again refused to take part in a national forum called by the government to discuss the country's political issues. Despite many conciliatory efforts, Konaré never won the opposition over. It returned to participating in democratic processes after he was term

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[37] *Africa No 1 radio* (Gabon), "Opposition leader discusses planned election boycott," May 5, 1997, through BBC Summary of World Broadcasts, May 7, 1997, http://w3.nexis.com/new/ (accessed March 11, 2010); *Radio France Internationale,* "Opposition CNID official says president has no "legal authority" to rule," May 12, 1997, through BBC Summary of World Broadcasts, May 14, 1997, http://w3.nexis.com/new/ (accessed March 11, 2010); *RTM radio* (Mali), "President begins talks with political parties," August 8, 1997, through BBC Summary of World Broadcasts, August 11, 1997, http://w3.nexis.com/new/ (accessed March 11, 2010); *RTM radio* (Mali), "President Konare presents programme for broad-based government," September 8, 1997, through BBC Summary of World Broadcasts, September 11, 1997, http://w3.nexis.com/new/ (accessed March 11, 2010); *RTM radio* (Mali), "President pardons 26 opposition activists," October 22 1997, through BBC Summary of World Broadcasts, October 24, 1997, http://w3.nexis.com/new/ (accessed March 11, 2010); *Africa No 1 radio* (Gabon), "Opposition leader says march in Bamako a "warning"," December 29, 1997, through BBC Summary of World Broadcasts, December 31, 1997, http://w3.nexis.com/new/ (accessed March 11, 2010); Moestrup, 180–181.

[38] Nunley, *African Elections Database*, "Elections in Mali."

[39] Nunley, *African Elections Database*, "Elections in Mali." Those opposition parties that participated where the CDS – 4 seats, *Union pour la Démocratie et le Développement* (UDD) – 2 seats, *Parti pour la Démocratie et le Progrès* (PDP) – 2 seats, *Convention pour le Progrès et le peuple* (COPP) – 1 seat, and *Rassemblement National pour la Démocratie* (RND) – 1 seat. Those who boycotted where Boycotted by the following main opposition parties: *Congrès national d'Initiative Démocratique* (CNID), *Union Soudanaise-Rassemblement Démocratique Africain* (US-RDA), *Mouvement Populaire pour le Développement de la République de l'Afrique de l'Ouest* (MPD), RDP, *Rassemblement pour la Démocratie et du Travail* (RDT), *Union des forces Démocratiques pour le Progrès* (UFDP), and the *Union Malienne pour la Démocratie et le Développement* (UMDD).

limited out. During the April/May 2002 presidential elections, there were twenty-four candidates, representing at least fourteen political parties, who ran for president. The presidency was won Amadou Toumani Touré (ATT), who ran as a non-aligned candidate. Upon his election, he built an "oversized coalition" that included all major political parties along with independents.[40] With former opposition members incorporated into the government; the creditability of the regime seemed to be restored and the National Assembly elections in July of the same year brought the opposition back into the political arena.[41]

The rule of law was generally respected throughout this crisis. Most importantly, the court was used as designed and all sides accepted the court's ruling as binding. The decision of the opposition to boycott elections and reconciliation in an attempt to delegitimize the government is less favorable for acknowledgement of the rule of law. While on one hand boycotting the political process as a means to express their grievances with the system is a lawful technique, the fact that they did so as a result of all their demands not being met complicates the issue. The opposition boycott was driven by the refusal of the government to resign and dissolve CENI, which it did not have the legal authority to demand. Thus, as an opposition they only seemed to play the political game on their terms or not at all. As for democratic consolidation, while the rule of law was upheld and the courts respected as institutions, Freedom House's evaluation of Mali was marked by a drop in scores for 1997. In 1996, Mali was categorized as "free" with a score of "2" in political rights (PR) and "2" in civil liberties (CL), in 1997 through 2000,

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[40] Baudais and Sborgi, "The presidential and parliamentary elections in Mali, April and July 2007," 769–770.

[41] Nunley, *African Elections Database*, "Elections in Mali." The majority, who were aligned with ATT, contained four parties grouped under the banner of *Espoir* 2002 (Hope 2002), and the opposition consisted of ADEMA and unnamed 'others' under the banner *Alliance pour la République et la démocratie* (ARD), additionally there were two other parties and several independents not aligned to either *Espoir* 2002 or ARD.

both of these scores were downgraded to "3."[42] This scoring indicates that despite the noted successes of the institutions of law, democratic consolidation was negative during this period in Mali.

B.   NIGER

Niger held its first multi-party legislative and presidential elections in February and March of 1993. Mahamane Ousmane of the *Convention Démocratique et Sociale* (CDS) won the presidency and a presidential-allied coalition under the banner *Alliance des Forces du Changement* (AFC), in which the CDS was the dominant party, took 50 of the 83 seats in the National Assembly.   Mahamadou Issoufou of the *Parti Nigerien pour la Democratie et le Socialisme* (PNDS), also a member of the AFC, was appointed prime minister. Like Mali, Niger faced a host of economic problems: public spending was double the state's revenue in 1993, and labor unions demanded significant salary increases to compensate for the currency devaluation of January 1994.

Niger's semi-presidential regime, in which the division of power between president and prime minister was unclear, led to a contest for power between the two. This power struggle led to standoffs over policy and the distribution of political appointments within the ruling coalition and ultimately to political crisis.   While Ousmane attempted to expand his powers, by pushing the boundaries of the law, he accepted the constraints imposed by democratic procedures, including parliamentary no-confidence votes and elections.

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[42] Freedom House, "Comparative and Historical Data"; "Political rights enable people to participate freely in the political process, including the right to vote freely for distinct alternatives in legitimate elections, compete for public office, join political parties and organizations, and elect representatives who have a decisive impact on public policies and are accountable to the electorate. Civil liberties allow for the freedoms of expression and belief, associational and organizational rights, rule of law, and personal autonomy without interference from the state… In addition, each country and territory is assigned a numerical rating—on a scale of 1 to 7—for political rights and an analogous rating for civil liberties; a rating of 1 indicates the highest degree of freedom and 7 the lowest level of freedom." Freedom House, *Freedom in the World 2010*.

In September, the PNDS complained that it did not receive the promised quota of directorships over government departments and parastatals.[43]   The president responded in September by issuing a decree, which was outside his prerogative, that transferred control of the Cabinet Office, sections of the police and security forces, the Secretariat of the Council of Ministers, State Protocol, and the State Inspectorate Division from the office of the prime minister to the office of the president, effectively emasculating the Office of the Prime Minister.[44]   Issoufou resigned as prime minister later that month, taking the PNDS out of the governing coalition and allying instead with the opposition *Mouvement National pour la Societé du Développement* (MNSD). This left Ousmane's AFC in the minority.[45]   Ousmane appointed a close confidant, Souley Abdulaye (CDS), as prime minister.   Abdulaye was removed through a parliamentary vote of no-confidence eleven days later. Ousmane dissolved the National Assembly in November and called new legislative elections for January 1995.[46]   His coalition failed to regain control of the National Assembly in free and fair elections, officially initiating a period of cohabitation.[47]   Interestingly, Ousmane continued to jockey for control of the regime, often using questionable means to do so, either be scaling down the powers of the prime minister or controlling who occupied the post of prime minister through personal dealings. Despite the dubious nature of his gambits, he accepted and continued to accept the institutional rulings that curtailed his initiatives.

Ousmane rejected the MNSD's candidate for Prime Minister, Hama Amadou, on the grounds that the parliamentary majority was required to submit three nominations,

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[43] Jibrin Ibrahim and Abdoulaye Niandou Souley, "The rise to power of an opposition party the MNSD in Niger Republic," *University of South Africa Press*, http://www.unisa.ac.za/default.asp? Cmd=ViewContent& ContentID=11625 (accessed December 15, 2009).

[44] Ibrahim and Souley, "The rise to power of an opposition party the MNSD in Niger Republic."

[45] Moestrup, 181; Ibrahim and Souley, "The rise to power of an opposition party the MNSD in Niger Republic."

[46] Ibrahim and Souley, "The rise to power of an opposition party the MNSD in Niger Republic."

[47] Ibrahim and Souley, "The rise to power of an opposition party the MNSD in Niger Republic"; *Voix du Sahel* (Niger), "Niger; Defeated party accepts election ruling, appeals for calm," January 28, 1995, through BBC Summary of World Broadcasts, February 1, 1995, http://w3.nexis.com/new/ (accessed August 29, 2010).

and had provided only one.[48]   In fashion similar to Abdulaye's appointment, that is appointing someone whose allegiance was secured, Ousmane appointed Amadou Cisse (MNSD) as prime minister. Cisse was ejected from the MNSD (after assuming prime ministership without party approval) in February 1995.[49]   A few weeks later, the legislature again removed the Prime Minister in a close vote of no confidence (43 to 40) along party lines.[50] Cisse stepped down, noting:

> [T]he political option I adopted generated a lot of misunderstandings and resentment, which resulted in the decision made at yesterday's National Assembly session at the initiative of my own political party. So, drawing on the conclusions of this political ballot, I immediately asked the president of the republic to relieve me of my duties.[51]

Ousmane ultimately conceded this round of the struggle to the legislature and appointed Amadou prime minister on February 28.

Over the next year of cohabitation the president and the prime minister continued to vie for power.[52] Ousmane maintained that the problem of cohabitation was:

> [I]nterpretation of the constitution and what this cohabitation should be…the prime minister thinks that cohabitation means alternative government, that is, a radical change, not only of all officials in administrative and political spheres belonging to the presidential tendency, but also down-grading…prerogatives of the head of state in favour of the new majority.[53]

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[48] Ibrahim and Souley, "The rise to power of an opposition party the MNSD in Niger Republic."

[49] *Radio France Internationale,* "Niger; New prime minister's party reportedly expels him," February 8, 1995, through BBC Summary of World Broadcasts, February 9, 1995, http://w3.nexis.com/new/ (accessed September 13, 2010).

[50] *Radio France Internationale,* "Niger; Parliamentary majority wins censure vote against prime minister," February 20, 1995, through BBC Summary of World Broadcasts, February 22, 1995, http://w3.nexis.com/new/ (accessed September 13, 2010).

[51] *Voix du Sahel* (Niger), "Niger; Outgoing Prime Minister Cisse Amadou accepts dismissal, expresses regret," February 21, 1995, through BBC Summary of World Broadcasts, February 23, 1995,, http://w3.nexis.com/new/ (accessed August 29, 2010).

[52] Davis and Kossomi, 82; Moestrup, 181.

[53] *Radio France Internationale,* "Niger; President Ousmane on the problems of cohabitation with his prime minister," July 22, 1995, through BBC Summary of World Broadcasts, July 24, 1995, http://w3.nexis.com/new/ (accessed September 13, 2010).

For Amadou:

> [E]ach of us should have the same interpretation…of cohabitation… [T]he president of the republic should know exactly to what extent he should be involved in the management of the affairs of the state.[54]

The sentiment of both Ousmane and Amadou would endure as both had differing ideas of cohabitation, and neither was willing to sacrifice power. Both looked for ways to either assert and/or expand their powers as they competed for control over the state.

In July, the prime minister claimed that Ousmane was categorically rejecting his political appointments and refusing to follow mediation procedures (despite public claims to the contrary).[55] Furthermore, Amadou claimed Ousmane was deliberately severing communication and refusing to meet with him.[56] Ousmane countered that the Amadou government was overstepping its prerogative by attempting a "radical" overhaul of the Niger executive to down-grade presidential authorities.[57] By the end of July 1995, the government was in crisis:

> Who is in charge in of the meetings of the Council of Ministers? Who appoints state officials? Who signs the decrees—such as this latest amnesty text? Niger is in the midst of a crisis at the moment. Behind the trial of strength between the president and the prime minister is a fierce attempt to settle accounts between the country's two main political forces: Mahamane Ousmane's CDS and Tandja Mamadou's MNSD, the former sole party. It is a battle for jobs, for posts; the state has returned to the wild, says 'Le Republicain'. If the Supreme Court does not issue a decision, or if there is no outside mediation…to calm this conflict, some

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[54] *Voix du Sahel* (Niger), "Niger; Prime minister says talks with president 'beginning of an end to the crisis,'" July 26, 1995, through BBC Summary of World Broadcasts, July 28, 1995, http://w3.nexis.com/new/ (accessed August 29, 2010).

[55] *Voix du Sahel* (Niger), "Niger; Government issues statement on relations between president and prime minister," July 6, 1995, through BBC Summary of World Broadcasts, July 8, 1995, http://w3.nexis.com/new/ (accessed August 29, 2010).

[56] *Voix du Sahel* (Niger), "Niger; Government issues statement on relations between president and prime minister."

[57] *Radio France Internationale,* "Niger; President Ousmane on the problems of cohabitation with his prime minister."

people might be tempted to use the president's special powers, or the prime minister's police powers. In other words, the youthful democracy of Niger could come under serious threat.[58]

It was at this point that Amadou too, began to push the envelope of his authorities by taking unilateral action when the opportunity arose.

International mediators from Togo and Mali attempted to foster dialogue between the president, prime minister, and MNSD party chairman Mamadou Tandja, through a joint meeting between Ousmane and Amadou and a separate meeting with Tandja.[59] This dialogue did not endure beyond the sponsored meetings, and Ousmane and Amadou were unable to agree on what cohabitation meant in practice, both believing he was entitled to have more say in the happenings of the running of the state then the other thought he was. In the spirit of cooperation, Ousmane issued an emotional appeal to the "every patriot,…all the Niger political class, socioprofessional organizations and the civil society in its entirety" to work together to build a republican pact and find a solution to the crisis.[60] In early August Amadou published a decree removing nineteen heads of state companies appointed by Ousmane, reinvigorating the political crisis.[61] Amadou held a cabinet meeting in which he tried to redefine powers, without Ousmane, to deal with appointments and three bills, which set up a national ombudsman's office and detailed the respective prerogatives of the President and Prime Minister. After the fact, Amadou maintained that Ousmane refused to take the chair, and since the constitution did not provide guidance for such a situation he chaired the meeting himself. Ousmane contended that he never refused to chair the meeting and declared the decisions taken at

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[58] *Radio France Internationale,* "Trial of strength between president and PM said to threaten Niger's democracy," July 15, 1995, through BBC Summary of World Broadcasts, July 18, 1995, http://w3.nexis.com/new/ (accessed August 29, 2010).

[59] *Africa No 1 radio* (Gabon), "Niger; Togo offers to mediate between president and prime minister," July 18, 1995, through BBC Summary of World Broadcasts, July 20, 1995, http://w3.nexis.com/new/ (accessed August 29, 2010).

[60] *Voix du Sahel* (Niger), "Niger; President Ousmane calls for "republican pact" to end political crisis,'" August 2, 1995, through BBC Summary of World Broadcasts, August 3, 1995, http://w3.nexis.com/new/ (accessed August 29, 2010).

[61] *Radio France Internationale*, "Niger; Prime minister publishes decree dismissing 19 heads of public companies,'" August 1, 1995, through BBC Summary of World Broadcasts, August 3, 1995, http://w3.nexis.com/new/ (accessed August 29, 2010).

the cabinet meeting "null and void."[62] Amadou's dismissals were immediately overruled by a Niamey county court, whose ruling was upheld by the Supreme Court in September. The Supreme Court also overturned the president's nullification of the bills approved at Amadou's cabinet meeting.[63] Amadou accepted the court's ruling, saying that the appointments in question should be resubmitted according to the procedures set forth in Article 58 of the Constitution.[64] Thus, both Ousmane and Amadou continued to joust for power, within the letter of the law as interpreted by the rulings of the judiciary.

The struggle for power continued. In October, opposition MPs failed to pass a motion of no-confidence. In November a small opposition party criticized the Amadou government for suppressing freedom of expression and violating laws, causing a systemic failure of Niger's democracy.[65] Ousmane appeared poised to dissolve parliament as soon as constitutionally allowable (12 months after the last election) in the hope of winning a legislative majority in new elections. It was at this point in the crisis that the institutions of democracy came under greatest threat as Amadou was threatening to supersede the lines of constitutionality. Amadou announced that if parliament was dissolved he would insist on staying in office until new elections were held. On January 26, 1996, President of the National Assembly Issoufou, an ally of Amadou, made a formal request to the Supreme Court to remove Ousmane on the grounds of incapacity to govern.[66] Still on the positive, members of the opposition and Ousmane, did not completely discard the institutions of democracy and employed them (no-confidence votes, arbitrating

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[62] *Africa No1 radio* (Gabon), "Niger; Crisis between president and prime minister deepens,'" August 4, 1995, through BBC Summary of World Broadcasts, August 7, 1995, http://w3.nexis.com/new/ (accessed August 29, 2010).

[63] *Voix du Sahel* (Niger), "Niger; Supreme Court overrules president, sides with National Assembly," September 6, 1995, through BBC Summary of World Broadcasts, September 8, 1995, http://w3.nexis.com/new/ (accessed September 13, 2010).

[64] *Voix du Sahel* (Niger), "Niger; Court reinstates heads of public companies dismissed by prime minister," August 1, 1995, through BBC Summary of World Broadcasts, August 8, 1995, http://w3.nexis.com/new/ (accessed September 13, 2010); *Voix du Sahel* (Niger), "Niger; Government annuls prime minister's appointments of senior officials," September 11, 1995, through BBC Summary of World Broadcasts, September 13, 1995, http://w3.nexis.com/new/ (accessed September 13, 2010).

[65] *Voix du Sahel* (Niger), "Niger; Party criticizes what it calls prime minister's violation of democracy," November 9, 1995, through BBC Summary of World Broadcasts, November 10, 1995, http://w3.nexis.com/new/ (accessed September 13, 2010).

[66] Ibrahim and Souley, "The rise to power of an opposition party the MNSD in Niger Republic."

complaints through the courts, and using constitutionally afforded powers) as they engaged in political maneuvering. Nevertheless, the threat of transgressing these same institutions appeared very real as both actors pushed the boundaries when an opportunity was afforded to them. Whether they would have continued to push further is unknowable, because on February 18, the military assumed power and suspended the constitution.

The new Salvation Council Chairman Chief of Staff Colonel Mainassara justified the coup in these terms:

> The armed forces of Niger, by intervening in the national political life on 27th January 1996, had no intention of putting an end to the ongoing democratic process, but to save the nation from the danger of deterioration that was threatening our country due to the crisis raging at the highest level of the state.[67]

The Salvation Council cited ripple effects of the nearly yearlong political deadlock: stagnation of "the nation's economic life…the crisis within the abandoned Niger schools, the social problems experienced by state agents due to the non-payment of salaries, sanitation problems, the famine looming on the horizon, and the politicization of the administration."[68] The political crisis, to the relief of the Nigerien populace, had been forcibly resolved.[69]

The rule of law was respected to the extent that the operations of democratic institutions were generally respected throughout the crisis—electoral outcomes and court decisions were accepted by both sides. However, Ousmane and Amadou certainly pushed the envelope on their authorities when grey areas of the law gave them the opportunity to do so—issuing unilateral decrees and interpreted the constitution through a lens of self-interest. So while the political actors certainly took advantage of opportunities to circumvent the law, they ultimately maneuvered within the clearly

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[67] *Voix du Sahel* (Niger), "Salvation council chairman addresses nation on reasons for coup," January 29, 1996, through BBC Summary of World Broadcasts, January 31, 1996, http://w3.nexis.com/new/ (accessed August 29, 2010).

[68] *Voix du Sahel* (Niger), "Salvation council chairman addresses nation on reasons for coup."

[69] Moestrup, 181.

established components of the Niger democracy, because when the court ruled against these actions and the national votes were called, the outcomes were respected. With regard to democratic consolidation, Freedom House's evaluation of Niger during 1994–1995 did not change. Niger remained categorized as "partly free" with a score of "3" in PR and "5" in CL.[70] This scoring indicates that despite the demonstrated respect for democratic institutions during the crisis, democratic consolidation was not furthered during this period.

After one false start and another coup, the military did return Niger to democracy in 1999. MNSD chairman Mamadou Tandja was elected as President with 60 percent of the vote, in an election certified as free, fair, and transparent by international observers. MNSD took 38 of 83 seats National Assembly seats and its CDS allies took another 17 seats, and together they took control of the government. The PNDS headed the opposition with 16 seats, and two smaller parties, the *Rassemblement pour la Démocratie et le Progrès* (RDP) and *Alliance Nigérienne pour la Démocratie et le Progrès* (ANDP) took most of the rest. Tandja was reelected in 2004 in another free, fair, and transparent election and MNSD took 47 of 113 seats, its CDS allies 22 seats, and again controlled the government. The opposition PNDS-led coalition held 25 seats, and again the smaller RDP, ANDP, *Rassemblement Social Démocratique* (RSD), and *Parti pour le Socialisme et la Démocratie au Niger* (PSDN) held the remaining 19 seats.

As he neared the end of his second term, Tandja initiated a referendum to amend the constitution to eliminate term limits. In May 2009, he announced a plan to extend his term in office by three years to allow time to pass the constitutional amendment, which would also introduce a fully presidential system of government.[71] The opposition filed a complaint with the Constitutional Court, which ruled on May 25 that Tandja's proposed

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[70] Freedom House, "Comparative and Historical Data."

[71] *Reuters*, "Niger to hold referendum despite court ruling," June 28, 2009, http://www.reuters.com/article/idUSLS45794220090628 (accessed March 14, 2010); *Radio France Internationale*, "Niger's Tandja said ready to "face consequences" of no-vote in August referendum," July 29, 2009, through BBC Monitoring Africa–Political, July 29, 2009, http://w3.nexis.com/new/ (accessed March 7, 2010); *Radio France Internationale*, "EU official urges Niger leader to return to constitutional order," July 1, 2009, through BBC Monitoring Africa–Political, July 1, 2009, http://w3.nexis.com/new/ (accessed March 7, 2010).

referendum was unconstitutional because Article 36, which stipulates that the President may only be reelected once, was not subject to revision.[72] Within 24 hours, Tandja legally dissolved parliament.[73] Protests against Tandja's plan drew 20,000 people.[74] The ANDP and CDS, both previously allied with Tandja's MNSD, came out against Tandja too. Throughout June, unions protested and international donors and regional bodies issued criticisms.[75] In late June, the Constitutional Court rejected a request from Tandja to review its earlier ruling, reaffirming its position that the proposed constitutional referendum was illegal.[76]

Shortly thereafter, on June 26, Tandja dissolved the Constitutional Court (two months later, in August, he reinstated a newly appointed Constitutional Court with his own nominees), claiming that Article 53 of the constitution gave him the authority to do so.[77] Article 53 allows the president exceptional powers when the institutions of government, national independence, territorial integrity, or the execution of international obligations are under "grave and immediate danger." Since none of these conditions were present and the authority of Article 53 does not confer the ability to dissolve the

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[72] *Reuters*, "Niger court says third-term referendum unlawful," May 26, 2009, http://af.reuters.com/article/ nigerNews/idAFLQ4311320090526?feedType=RSS&feedName=nigerNews (accessed September 14, 2010); Constitution Of The Fifth Republic Of Niger, title III, art. 36.

[73] *Reuters*, "Niger's Tandja dissolves parliament," May 26, 2009, http://af.reuters.com/article/

topNews/idAFJOE54P0EL20090526?feedType=RSS&feedName=topNews&pageNumber=1&virtual BrandChannel=0 (accessed September 14, 2010).

[74] *Reuters*, "Niger's Tandja dissolves parliament."

[75] *Reuters*, "Niger to hold referendum despite court ruling."

[76] *Reuters*, "UPDATE 2-Niger president rules by decree after court snub," May 26, 2009, http://www.reuters.com/article/idUSLQ2439220090626 (accessed September 14, 2010).

[77] Article 53. After consulting with the Prime Minister, the President of the National Assembly, the President of the Constitutional Court and the President of the Supreme Court, the President of the Republic shall take exceptional measures when the institutions of the Republic, the nation's independence, its territorial integrity or the execution of international obligations are threatened by a grave and immediate danger and when the normal functioning of Constitutional public powers has been interrupted. He shall report to the nation regarding any such exceptional measures. If the National Assembly is not in session, it shall reconvene without need of sanction. Such exceptional measures must be inspired by the desire to assure to constitutionally granted public authorities those means of accomplishing their mission within the shortest period of time. In no case shall the National Assembly be dissolved during the exercise of exceptional powers. The National Assembly shall assess by an absolute majority of its members the duration of the exercise of exceptional powers and shall terminate it in case of abuse. Constitution Of The Fifth Republic Of Niger, title III, art. 53; *Radio France Internationale*, "EU official urges Niger leader to return to constitutional order."

Constitutional Court, but allows him to rule unilaterally to protect the integrity of the nation in times of great danger this constituted the first unequivocal violation of the rule law. The opposition *Front pour la Défense de la Démocratie* (FDD) characterized Tandja's actions as a *coup* and appealed to the army and police to refuse his orders. Eight MPs from the previously MNSD-allied CDS resigned from government, and members of Tandja's own MNSD began to express opposition to the president's actions.[78] This suggests a continuing commitment among other political actors to the rule of law.

On August 4, 2009, Tandja went ahead with the constitutional referendum, which was boycotted by the opposition. The new constitution was reported to have been approved by 92.5 percent of voters, amidst allegations of fraud.[79] The new constitution went into effect on August 18, eight days after a newly appointed Constitutional Court published the election results. [80] The most significant changes to the constitution included: Tandja was allowed to remain until a new election on December 22, 2009, and seek unlimited mandates thereafter; the president was made the "sole holder of executive power," appointment five of nine Constitutional Court justices, naming the prime minister, and having full authority over the cabinet. In short, all changes reinforced executive power vis-à-vis the legislature and courts, fundamentally weakening the democratic regime. Couched as a solution to the political struggles of the past, the

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[78] *Radio France Internationale*, "Niger's opposition raps president's move, calls for army disobedience," June 28, 2009, through BBC Monitoring Africa–Political, June 28, 2009, http://w3.nexis.com/new/ (accessed March 7, 2010);

[79] *Agence France-Presse*, "President wins referendum to extend term in office," August 7, 2009. http://www.france24.com/en/20090807-country-votes-presidents-mandate-mamadou-tandja-niger-constitution (accessed January 21, 2010). The head of the government appointed electoral agency, Moumouni Hamidou, claimed turnout was 68.26 percent, while the Coordination of Democratic Forces for the Republic (CFDR), an umbrella of opposition parties and unions, counterclaimed that there was a less than 5 percent participation rate.

[80] Boureima Hama, "Niger president wins contested vote to extend rule," *Agence France-Presse*, August 7, 2009, http://www.google.com/hostednews/afp/article/ALeqM5jboOEFaJcH5 zKH21FysfjXlgqwMA (accessed September 14, 2010); *Agence France-Presse*, "New Niger constitution promulgated," August 18, 2009, http://www.google.com /hostednews/afp/article/ ALeqM5icH0C0NbDjqo3UB7R-af1uxCK_RA (accessed March 14, 2010); *Reuters*, "Niger to hold referendum despite court ruling."

amendments in fact transferred all real authority to the executive. Opposition-led protests continued in Niamey, leading to clashes between police and protesters in several areas.[81]

Parliamentary and municipal elections in October and December 2009 were boycotted by the opposition. In the National Assembly the MNSD took 76 of 113 seats, with MNSD allies/co-opted parties taking the rest, with no opposition presence.[82] MNSD president Seyni Oumarou was elected President of the National Assembly by a unanimous vote of the 109 MPs in attendance.[83] International actors continued to isolate the Tandja government. In December, the Economic Community Of West African States (ECOWAS) attempted to negotiate between the Tandja government and the opposition, but made no progress. The opposition CFDR called for mass mobilization. Ten thousand protesters peacefully marched in Niamey on February 14, 2010, calling for Tandja to reverse the constitutional change.[84] Political stalemate was again resolved by military intervention on February 18, 2010.[85]

While initially the rule of law did prevail as the court was employed to adjudicate Tandja's referendum plan, respect for the institution of the courts quickly fell by the wayside as they tried to check Tandja's initiative. Tandja actions grew increasingly despotic as he dissolved the courts and assumed emergency powers. In reaction, the opposition, and some of those allied to, or within, his own party began to take up protest and boycotted the institutions of government in response to what they believed was in effect a constitutional coup made by Tandja. Despite the boycott, Tandja pushed forward

[81] *Agence France-Presse*, "Police fire teargas at Niger protesters," August 22, 2009. http://www.google.com/hostednews/afp/article/ALeqM5jazsmqsLHzg3V7_YNZA8nmofZe6g (accessed September 14, 2010).

[82] *Niger TV*, "Niger leader urges "general mobilization" for municipal polls," December 13, 2009, through BBC Monitoring Africa–Political, December 21, 2009, http://w3.nexis.com/new/ (accessed March 9, 2010); *BBC News*, "'Poll win' for Niger ruling party"; *Reuters*, "Tandja tightens grip on power," December 31, 2009, http://www.news24.com/printArticle.aspx?iframe&aid=0731f3a8-f38d-4b66-bccf-1154783d9f17&cid=965 (accessed January 4, 2010).

[83] *Afrique en ligne*, "Niger: New parliament chairman vows 'to restore the image' of institution," November 26, 2009, http://www.afriquejet.com/news/africa-news/niger:-new-parliament-chairman-vows-%27to-restore-the-image%27-of-institution-2009112739065.html (accessed September 14, 2010).

[84] *Reuters*, "Thousands protest Niger president's grip on power," February 14, 2009, http://www.reuters.com/article/idUSTRE61D1PI20100214 (accessed September 14, 2010).

[85] *BBC News*, "Niger's coup leaders lift curfew," February 19, 2010, http://news.bbc.co.uk/go/pr/fr/-/2/hi/africa/8524610.stm (accessed March 14, 2010).

with his agenda, amassed power according to the new constitution, rebuilt the courts with his appointments, and then took control the parliament and the municipalities through boycotted elections. Protests and dissent continued, both internally and externally, but Tandja and the MSDN were not dissuaded. It was only through a counter abrogation of the rule of law, in the form of a military coup, that Tandja's efforts were halted.

So while the constitutional courts were respected to a degree during the first crisis, they were completely run roughshod during the second. The events of 2009 are correlated with a significant depreciation of political rights. The evaluation of Niger, as offered by Freedom House, between 2008 and 2009 show a drop in the PR rating from "3" to "5." [86] As appropriate to the abrogation of the rule of law and illegal constitutional reforms, democratic consolidation was negatively impacted during this period. Among other problems, Freedom House's critique of Niger's drop in PR was attributed to "President Mamadou Tandja's unconstitutional moves to extend his rule in 2009 dismantled much of the country's democratic progress."[87]

C.   COMPARATIVE ANALYSIS

In both the Mali and Niger cases, it is readily apparent that among political parties the rule of law was respected throughout all the crises examined. Election procedures and results for the most part were honored, and those that were contested were impartially arbitrated by the constitutional courts and all sides accepted the court's rulings as binding. Democratic institutions were employed for addressing grievances: cases were submitted to the courts; no-confidence votes were taken and respected; public protests were allowed to go forward and generally remained focused on pressuring governments peacefully; election boycotts were adopted over illegal responses to ongoing concerns of electoral irregularities. In short, contending parties engaged in political maneuvering more or less within the confines of the law. Thus the rule of law was

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[86] Freedom House, "Comparative and Historical Data."

[87] Freedom House, *Freedom in the World 2010*.

equally respected, and equally effective, in Niger and Mali as the Constitutional Courts acted independently and political actors in and out of power accepted their rulings as binding.

While Mali did not have any transgressions of the rule of law in its case, the few instances where it occurred in Niger were perpetrated by individuals. The political jousting between Ousmane and Amadou certainly pushed the envelope on their authorities, in the form of issuing unilateral decrees and liberally interpreting the constitution self-interestedly. As a consequence, the rule of law seemed less binding between individuals as both attempted to expand their powers for control of the state. In Niger, Tandja abrogated the rule of law after the institutions of democracy attempted to regulate Tandja's increasingly despotic attempts to amass control of the executive through an illegal constitutional reform. He further trampled on the institutions of democracy as he re-formed a co-opted legislature and judiciary. Interestingly, in the Niger case, one finds other actors, like those in the opposition and in the margins, who continued to adhere to the rule of law when it was challenged by the executive. In several cases those in the legislature employed no-confidence votes and appealed to the courts for arbitration as a means to put violators in check.

As for measuring democratic consolidation, in both Mali and Niger one finds either a negative impact or no impact according to Freedom House's evaluation. So while the rule of law might have held at times and democratic institutions respected, the handling of the crises themselves did nothing to enhance democratic consolidation in either case. This suggests that to the extent to which respect for the rule of law occurred did not noticeably influence democratic consolidation. The only obvious correlation occurred during the 2009 crisis in Niger where Tandja's absolute disregard for law and the institutions of democracy align with a significant drop in Niger's Freedom House ranking.

III. CIVIL SOCIETY

Civil society is "the sphere of institutions, organizations and individuals located between the family, the state and the market, in which people associate voluntarily to advance common interests."[88] This chapter explores civil society's respect for rule of law by examining the nature of Islamic organizations' activism from the mid 1990s to late 2000s. Islamic non-governmental organizations (NGOs) in both countries lobbied government regularly and vigorously on morality and family law. These are ideal issues for study because government actors had little to gain or lose from the outcome of such legislative debates, and can therefore afford to be responsive to one set of societal interests or another. If they legislate "progressive" social agendas they gain favor with the international community and most national women's organizations; if they legislate more conservative laws advocated by national Islamic organizations they gain favor with broader local constituencies among their generally conservative populations. The comparative analysis looks for how differences in respect for the rule of law by civil society has contributed to democratic survival and consolidation.

Following their respective transitions to democracy, new constitutions were created that reaffirmed long standing commitments to secularism and prohibited religiously based political parties in both countries. However, new freedoms of association and expression created an opening for Islamic civic organizations, among others, and these groups sought to bring Islamic principles to bear on national legislation.[89] Between 1980 and1991 Mali had only one officially authorized Islamic association, the *Association Malienne pour l'Unité et le Progrès de l'Islam* (AMUPI). After 1990, one hundred and fifty national Islamic associations formed, alongside associations representing youth, women, and the poor.[90] By 2000, twenty-one Islamic

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[88] Helmut K. Anheier and Lisa Carlson, "Civil Society: What is it, and how to measure it," Centre for Civil Society, *Briefing No 4* (2002): 1.

[89] Soares, 81 and 85, Freedom House, *Freedom in the World 2006*, chapter on "Mali," http://www.freedomhouse.org/template.cfm?page=22&year=2006&country=7011 (accessed September 1, 2010); Freedom House, *Freedom in the World 2006*, chapter on "Niger," http://www.freedomhouse.org/template.cfm?page=22&year=2006&country=7029 (accessed September 1, 2010).

[90] Soares, 85.

NGOs had voluntarily registered with the government.[91] This provided a variety of mobilization platforms for influencing the political environment.   In January 2002, the *Haut Conseil Islamique du Mali* (HCIM) was created by members of AMUPI to serve as an apolitical "interface" between the government of Mali and over a hundred Islamic groups and association.[92] Similarly, in 1994 Niger had five official Islamic associations operating under the umbrella *Association Islamique du Niger* (AIN).   By 2000, this number had grown to forty, and by 2003 to fifty.[93]

In both countries Islamic civic associations are often on both sides of a particular debate, reflecting the Islamic theology and practice in their societies.[94] They are most "forcefully political" when united behind a single position on a particular social issue.[95] Islamic organizations took on similar agendas in the two countries, dealing with morality, women's sexuality, and the family code. In Mali Islamic organizations opposed anti-excision campaigns on the grounds that the practice was a custom without which the family unit would be at risk. In Niger Islamic civics opposed a government HIV/AIDS campaign that promoted condom use, on the grounds that it encouraged prostitution and promiscuity.   However, the family code was at the forefront of the agendas in both countries.

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[91] Victor Le Vine, "Mali: Accommodation or Coexistence?" in William F.S. Miles, ed., *Political Islam in West Africa: State-Society Relations Transformed* (New Delhi: Viva Books Private Limited, 2007), 87–88.

[92] David Gutelius, "Humanities and Social Sciences, H-Net Online," H-Africa entry posted October 21, 2003, http://h-net.msu.edu/cgi-bin/logbrowse.pl?trx=vx&list=H-Africa&month=0310&week=c&msg= 0VsIQeskLvuuG1gcnCOHPg&user=&pw= (accessed October 4, 2010).

[93] Charlick, "African Studies Review Focus: Islamism in West Africa," 101; Souley Hassane, "Les associations islamiques et la démocratisation de l'espace public au Niger," *Publislam.net*, July 18, 2003, http://publislam.net/spip.php?article59 (accessed September 11, 2010).

[94] Charlick, "African Studies Review Focus: Islamism in West Africa," 101.

[95] John Uniack Davis and Aboubacar B. Kossomi, "Niger Gets Back on Track," *Journal of Democracy* Volume 12 (July 2001): 85; Robert B. Charlick, "Niger: Islamist Identity and the Politics of Globalization," in William F.S. Miles, ed., *Political Islam in West Africa: State-Society Relations Transformed* (New Delhi: Viva Books Private Limited, 2007), 22.

A.   MALI

In 1995, Islamic associations, with the backing of AMUPI, began to organize larger, more public forums to discuss and/or protest perceived encroachments on traditional Islamic values.[96]   Following the 1994 UN Population and Development conference in Cairo, which advocated the elimination of excision, or female circumcision, Islamic organizations organized pro-excision campaigns to counter the anti-excision influence of UN agencies, the Catholic Church, various bilateral donors and Malian NGOs, including Fatoumata Siré Diakité's *Association pour la Promotion et la Défense des Droits de la Femme* and more liberal Islamic associations, such as Islamic Action, an association of Muslim intellectuals.   The debate over excision pitted this coalition of local and international NGO's against a coalition of pro-excision local Islamic organizations.   While the campaign was led by religious organizations, excision has deep cultural roots in Mali and is widely considered an important component for maintaining the integrity of family.[97]

Leaders of Islamic civic associations, including Mohammed Kimbiri, chief secretary of the *Collectif des Associations Islamiques du Mali*, in early 2001 argued that excision is a religiously justifiable practice that should be "medicalized" to improve its safety rather than banned.   The *Association Islamique du Salat* (AISLAM) undertook a public information leaflet campaign, distributing literature in mosques maintaining that the banning of excision would be an "attack on the freedom of religion."[98]   This definition of the pro-excision campaign as an attack on constitutional freedoms itself demonstrates an embrace of democracy on the part of Islamic organizations.   The anti-excision message as put forth by Muslim organizations de-emphasized religion.   Islamic Action, for example, insisted that "female circumcision has got nothing to do with religion."[99]   While it is difficult to discern whether the anti-excision campaign was

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[96] Soares, 88–89.

[97] *IRIN* "Mali: Excision and early marriage violate girls' human rights," June 14, 2005, http://www.irinnews.org/report.aspx?reportid=54909 (accessed 18 august 2010).

[98] Soares, 89.

[99] *IRIN* "Mali: Excision practiced where pre-Islamic traditions strongest," June 15, 2004, http://www.plusnews.org/Report.aspx?ReportId=37117 (accessed October 4, 2010).

responsible for this policy, it was perceived that way. Moreover, it was perceived to have been achieved through the democratic practices of public discourse and information campaigns. Freedom House's evaluation of Mali in 2001 held that civil liberties, in the form of open political discourse and an open media, are largely respected, and was evaluated as a "3": which was its consistent score from 1997–2002.[100]

Following years of discussion and international pressure, in 1999 a concerted effort to reform the family code was initiated as part of Konaré's larger ten-year program to reform the legal system, called *Promotion de la Democratie et de la Justice au Mali* (PRODEJ). [101] With the support of women's rights activists and international donors, the government hosted a series of *Concertations Regionales* designed to create popular participation and buy-in to the reform.[102] At the public debates in late 2000, Muslim clergy came out in opposition to the reform, citing a need to preserve Islamic values and resist Western imperialism.[103] Nevertheless, in 2001 the Ministry for the Promotion of Women, Children and Family announced a proposal to change the existing 1963 *Code du Mariage et de la Tutelle,* reforming marriage and inheritance laws to create equity between the sexes. The proposal then went to national debate for almost a year.[104]

The proposed law received significant support from women's associations, including the *Association des Jurists Maliennes* (AJM), *Groupe-Pivot Droits des Femmes*, *Coordination des Associations et ONGs Feminines du Mali* (CAFO), and *Association pour le Progrès et la Defense des Droits de Femme Maliennes* (APDF).[105] It was opposed by Muslim associations organized under the umbrella *Collectif des Associations Islamiques du Mali.* Outspoken Muslim leaders and government critics like

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[100] Freedom House, *Freedom in the World 2002,* http://freedomhouse.org/template.cfm?page=363&year=2002 (accessed November 25, 2010).

[101] Dorothea E. Schulz, "Political Factions, Ideological Fictions: The Controversy over Family Law Reform in Democratic Mali," *Islamic Law and Society* 10 (2003): 132–133.

[102] Schulz, 133.

[103] Schulz, 133.

[104] Soares, 92.

[105] Susanna D. Wing, "Exploring Democracy, Women's Rights, and Legal Reform in Francophone Africa," (paper presented at "Rethinking Development: Societal Transformations and the Challenges of Governance in Africa and the Middle East," Yale University, January 30, 2009): 21–22.

Imam Mahamoud Dicko, director of Bamako's Islamic Radio, publicly condemned the government's proposal, arguing that marriage equality runs counter to Koranic text which demands a wife be obedient to her husband.[106] Even Islamic women's organizations protested the reform of the code. While presiding over a meeting of more than two hundred delegates in the *Union Nationale des Associations de Femmes Musulmanes en Afrique* (UNAFEM), president Tahara Drave announced the UNAFEM's official opposition to marriage provisions that were counter to Mali's "social realities." [107] The battle of the family law was one that was clearly taken on by the aforementioned civics in an attempt to influence public opinion; their dialogue demonstrated an acceptance among interest groups to leverage the instruments of democracy to affect legislative change. As a result of this popular opposition and lawmaker ambivalence, as evidenced by lawmakers from rural areas who did not support family code reform as there was a lack of support within their constituencies, the bill was never brought to the floor of the National Assembly[108] On his own initiative, during the twilight of his time in office in 2002, President Konaré adopted the reform by decree. In response to this decree, the *Collectif des Associations Islamiques du Mali* mobilized vocal protests and threats of both violence and civil disobedience. In response to this reaction, Konaré withdraw the decree weeks later.

It is again difficult to discern to what extent Islamic civics contributed to the defeat of the family code, nevertheless, they were a vocal part of the campaign against it. Civic engagement on the family code demonstrated how the vocal majority's will swayed government by killing the bill before it ever made it to the floor of the national assembly. While this was not without undemocratic incidents, including Konaré's unilateral attempt to force the family code reform through by decree and the *Collectif's* call for violence in response, overall, civic organizations dialogued, campaigned, and lobbied for both public

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[106] Nicolas Colombant, "Mali's Muslims steer back to spiritual roots," *The Christian Science Monitor*, February 26, 2002, http://www.csmonitor.com/2002/0226/p08s02-woaf.html (accessed September 12, 2010).

[107] *Panafrican News Agency* (PANA), "Muslim Women Against Mali's New Family Code," June 10, 2001, http://w3.nexis.com/new/ (accessed October 4, 2010).

[108] Wing, 23

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and government backing in support of their respective agendas. The nature of the dialogue, the use of social mobilization, and the lobbying for legislative change, all ensured that Mali remained "free" according to Freedom House as Mali's ratings during this period remained stable at a "2" for PR and "3" for CL consolidation of a representative democracy that is reflective of the vocal majority. In Freedom House's evaluation for 2003, Mali was praised for fostering an environment where "many civic groups and nongovernmental organizations, including human rights groups, operate without interference."[109] This was partly responsible for improving Mali's CL score to "2."

The family code contestation did not lay dormant for long; in 2007 a group of women parliamentarians joined with lawyers and human rights activists in a second effort to revise it.[110] After a slow start in which the debate was overshadowed by presidential and parliamentary elections, in January 2008 the Ministry of Justice established a nineteen-member commission to meet, review, and discuss the issue of an updated family law.[111] During this time a draft code made its way past consultations with members of the religious community, designed to generate support, and up to parliament. In August 2009, a revised family code was passed in Parliament with 117 of 160 votes.[112] Islamic organizations opposed to the reformed family code, including AISLAM, complained that the outcomes of the consultations with the religious community were ignored, and as a result the religious community was opposed to provisions regarding marriage, inheritance and property rights. Mamadou Diamouténé, head of an Islamic group involved in the consultations, protested that without amendments to remove these provisions, the revised family code "would be an open road to debauchery."[113] HCIM also denounced these

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[109] Freedom House, *Freedom in the World 2004*, chapter on "Mali," http://www.freedomhouse.org/template.cfm?page=22&year=2004&country=2980. (accessed September 5, 2010).

[110] *IRIN*, "MALI: New family law faces opposition from Muslim organizations," May 2, 2008, http://www.irinnews.org/Report.aspx?ReportId=78034 (accessed September 5, 2010).

[111] Wing, 23.

[112] *IRIN*, "MALI: "'Reality check' needed in proposed changes to family code," February 26, 2010, http://newsite.irinnews.org/Report.aspx?ReportId=88251 (accessed September 5, 2010).

[113] *IRIN*, "MALI: "'Reality check' needed in proposed changes to family code."

provisions and the failure to heed the input of the religious community, calling for protests and civil disobedience, which ultimately led to violence.[114] President Touré refused to sign the code into law saying that "door of debate is still open" and sent it back for revision of the contested articles, after which the HCIM called off demonstrations "until further notice."[115]

So while Islamic civics were certainly active in working against the family code, the only clear example of them directly influencing an outcome was when they threatened mass protests, civil disobedience, and violence in both 2002 and 2009. Freedom House did not seem to register this as it was not brought up in their assessments of Mali throughout the decade. Mali remained relatively stable in its rating of "free"; it was evaluated as PR "2" and CL "3" from 2000–2002 and 2006–2009, with a brief period of improvement from 2003–2005 where CL improved to a "2." Thus the only measurable net effect of Islamic civic activism was the extent to which it contributed to maintaining Mali's already "free" democracy.[116]

Another formal attempt by civil society to influence government occurred in 2002 when a powerful collective of twenty Muslim associations, not including the AMUPI, supported a presidential candidate for the first time.[117] This collective targeted both the masses and religious leaders with radio broadcasts and Friday sermons, urging voters to support former prime minister Ibrahim Boubakar Keita, who was expected to give greater support to Islamic law.[118] While Keita only took 20.7 percent of the vote and did not advance to the second round, "the marabouts, imams, and almamys declared themselves

[114] *IRIN*, "MALI: Back to the drawing board for new family code"; *BBC*, "Mali women's rights bill blocked," August 27, 2009, http://news.bbc.co.uk/2/hi/8223736.stm accessed September 5, 2010; *IRIN*, "MALI: "Reality check" needed in proposed changes to family code."

[115] *IRIN*, "MALI: Back to the drawing board for new family code."

[116] Freedom House, "Comparative and Historical Data."

[117] Le Vine, 88–89; *BBC*, "Mali's opposition backs general," May 10, 2002, http://news.bbc.co.uk/2/hi/africa/1979369.stm (accessed September 4, 2010); *BBC*, "Mali's Muslim leaders back ex-premier," April 26, 2002, http://news.bbc.co.uk/2/hi/africa/1953128.stm (accessed September 4, 2010).

[118] Le Vine, 88–89; *BBC*, "Mali's opposition backs general"; *BBC*, "Mali's Muslim leaders back ex-premier."

satisfied with this first, and unprecedented, sally into national politics."[119]   This sentiment reflects an embrace made by Islamic civics of the processes and institutions of democracy. By being satisfied that they can participate in the system, despite having lost, they appear to believe that is a system worth working in and supporting.

Islamic civics in Mali took on contesting government policies with the tools ranging from debate and rhetoric to more unified social movements and civil contestation in an attempt to influence the state using the available apparatuses of democracy. At times, the nature of this contestation threatened to undermine democratic consolidation as civic activism crossed the boundaries of legality when it threatened and employed violence. Nonetheless civil society interactions influenced both popular support and Malian lawmakers through public information campaigns and social mobilization to push their respective agendas. As already discussed, this last decade of democracy for Mali was ultimately a wash with no net gain or loss. So while Islamic civics played their part in participating in open and public dialogue to advance their agenda, they also pushed the limits with threats of violence when it appeared they were not going to get their way. Beyond seeing that Islamic civics have not given up on using dialogue and public information campaigns to assert their will and that their efforts contributed to the maintenance of democracy, it does not appear that it truly consolidated democracy anymore than had already been established.

B.   NIGER

Family law issues in Niger are governed simultaneously by civil code and customary law, which includes *sharia* (Islamic law), with customary law being preeminent.[120] The tensions between the two sources of law have periodically received attention, as, for example, when women's organizations in 1976 and 1987 tried, but failed, to formally codify family law. In 1993, a draft family code bill, modeled on codes

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[119] Le Vine, 89.

[120] Bachir Talfi Idrissa and Isabelle Akouhaba Anani, interview by Geneviève Rose, "Reforming Family Law key to Rights in West Africa," *The Danish Institute for Human Rights*, 2008, http://www.humanrights.dk/news/ reforming+family+law+key+to+rights+in+west+africa (accessed October 11, 2010).

used in other African Muslim states, was considered by the legislature.[121] The bill had the backing of two major women's associations, several human rights groups, and a number of international donors. It allowed Nigeriens to choose between codified law and *sharia* in family law matters, and prohibited repudiation of wives.[122] This provision dealing with repudiation of wives and rights of illegitimate children led all the official, recognized Islamic groups in Niger to join in lobbying against the bill at all levels from the village to the National Assembly.[123] As part of this effort, six Islamic associations issued a communiqué calling for "all Niger Muslims, whoever they are, to mobilize themselves and ensure the failure *through legal means* of all attempts to impose this bill on the Niger people."[124] They maintained that 603 of 906 articles in the bill ran counter to Koranic teachings. From the village level to the National Assembly, all officially recognized Islamic civic groups lobbied in unison to stop the legislation.[125] While the effort was largely a civil public opinion/lobbying campaign, there were reports that Islamic militants threatened female supporters of the bill with physical harm.[126] Due to the successful lobbying initiative, the bill was not even voted on.[127]

In 1993–1994, eleven Islamic organizations thwarted a government condom distribution campaign aimed at both contraception and AIDS/HIV prevention.[128] These groups accused the government of being anti-Islamic and mobilized demonstrators who

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[121] *Country Reports on Human Rights Practices for 1994*, "Africa: Niger," through Contemporary Women's Issues, 1995, http://w3.nexis.com/new/ (accessed October 12, 2010).

[122] Musawah initiative, "Home Truths: A Global Report on Equality in the Muslim Family," *Sisters in Islam* (2009): 34–35, http://www.musawah.org/docs/pubs/home-truths/GR-EN.pdf (accessed October 18, 2010).

[123] *Radio France Internationale*, "Islamic groups attempt to sabotage contraceptive campaign," November 18, 1994, through BBC Summary of World Broadcasts, November 21, 1994, http://w3.nexis.com/new/ (accessed September 5, 2010); Charlick, "African Studies Review Focus: Islamism in West Africa," 101.

[124] *Voix du Sahel*, "Six Islamic associations call on all Niger Muslims to oppose draft family bill," May 20, 1994, through BBC Summary of World Broadcasts, May 23, 1994, http://w3.nexis.com/new/ (accessed October 12, 2010); emphasis added.

[125] Charlick, "Niger: Islamist Identity and the Politics of Globalization," 29

[126] *Country Reports on Human Rights Practices for 1994*, "Africa: Niger," through Contemporary Women's Issues, 1995, http://w3.nexis.com/new/ (accessed October 12, 2010).

[127] Charlick, "Niger: Islamist Identity and the Politics of Globalization," 29; Musawah initiative, 34–35.

[128] *Radio France Internationale*, "Islamic groups attempt to sabotage contraceptive campaign."

disrupted training programs and conferences associated with the family-planning campaign.[129] In November 1994, approximately two hundred activists disrupted a family planning conference with "violent words, insults, shouting, slogans: Allahu Akbar."[130] Their primary grievance was that the use of condoms "encourages prostitution and debauchery."[131] Several demonstrations and a large prayer session at the Grand Mosque in Niamey against the government's campaign were also held.[132] Members of the Islamic organizations also tore down or damaged posters and advertising stockpiles.[133] These efforts resulted in the suspension of government mass media efforts to promote the use of condoms.[134] These early successes for Niger's Islamic organizations were largely based on civil activism, with occasional instances of material destruction and disruptive efforts to stifle opposing civic organizations. As in Mali, Islamic organizations were able to generate social pressure to block change using the democratic tools of dialogue and public information campaigns to generate social mobilization in support of their agenda.

Niger's Islamic organizations also had a string of successes lobbying against ratification of various international charters with family code implications. The first was the 1999 campaign against ratification of the UN Convention on Ending All Forms of Discrimination against Women. Islamic organizations organized a robust public information and legislative lobbying campaign to add reservations on the ratification of the convention that protected traditional social practices.[135] The government responded by ratifying the convention with significant reservations that ensured all issues regarding

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[129] Charlick, "Niger: Islamist Identity and the Politics of Globalization," 32.

[130] *Radio France Internationale*, "Islamists disrupt family planning conference," November 23, 1994, through BBC Summary of World Broadcasts, November 25, 1994, http://w3.nexis.com/new/ (accessed August 16, 2010).

[131] *Radio France Internationale*, "Islamists disrupt family planning conference."

[132] *Radio France Internationale*, "Islamists disrupt family planning conference."

[133] *Radio France Internationale*, "Islamic groups attempt to sabotage contraceptive campaign."

[134] Charlick, "Niger: Islamist Identity and the Politics of Globalization," 32.

[135] Charlick, "African Studies Review Focus: Islamism in West Africa," 100.

rights and obligations of married women were regulated by "custom and tradition."[136] Islamic civic associations led protests that resulted in the rejection of ratification of the Additional Protocol to the African Charter on Human and People's Rights in 2006 (in opposition to a provision that would have raised the legal age of marriage to eighteen

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[136] "Reservations:

Article 2, paragraphs (d) and (f)

The Government of the Republic of the Niger expresses reservations with regard to article 2, paragraphs (d) and (f), concerning the taking of all appropriate measures to abolish all customs and practices which constitute discrimination against women, particularly in respect of succession.

Article 5, paragraph (a)

The Government of the Republic of the Niger expresses reservations with regard to the modification of social and cultural patterns of conduct of men and women.

Article 15, paragraph 4

The Government of the Republic of the Niger declares that it can be bound by the provisions of this paragraph, particularly those concerning the right of women to choose their residence and domicile, only to the extent that these provisions refer only to unmarried women.

Article 16, paragraph 1 (c), (e) and (g)

The Government of the Republic of the Niger expresses reservations concerning the above-referenced provisions of article 16, particularly those concerning the same rights and responsibilities during marriage and at its dissolution, the same rights to decide freely and responsibly on the number and spacing of their children, and the right to choose a family name.

The Government of the Republic of the Niger declares that the provisions of article 2, paragraphs (d) and (f), article 5, paragraphs (a) and (b), article 15, paragraph 4, and article 16, paragraph 1 (c), (e) and (g), concerning family relations, cannot be applied immediately, as they are contrary to existing customs and practices which, by their nature, can be modified only with the passage of time and the evolution of society and cannot, therefore, be abolished by an act of authority.

Article 29

The Government of the Republic of the Niger expresses a reservation concerning article 29, paragraph 1, which provides that any dispute between two or more States concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration.

In the view of the Government of the Niger, a dispute of this nature can be submitted to arbitration only with the consent of all the parties to the dispute.

Declaration

The Government of the Republic of the Niger declares that the term "family education" which appears in article 5, paragraph (b), of the Convention should be interpreted as referring to public education concerning the family, and that in any event, article 5 would be applied in compliance with article 17 of the International Covenant on Civil and Political Rights." United Nations, *Convention on the Elimination of All Forms of Discrimination against Women*, December 18, 1979, Chapter IV, Section 8. http://treaties.un.org /pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en (accessed September 5, 2010); Charlick, "African Studies Review Focus: Islamism in West Africa," 100; UN, *Convention on the Elimination of All Forms of Discrimination against Women*.

from fifteen) and the African Union Protocol on Women's Rights in 2007. In July and November 2006, Muslim activists gathered in protest of the African Union Protocol citing incompatibility with Islamic law, but were dispersed by police. The ratification bill was briefly tabled, but there were further anti-ratification protests by several Muslim women's associations in Niamey.[137] Ultimately, the ratification bill was rejected. The net effect of these various successful political engagements was the reinforcement of democratic action as a means to promote the agendas of Islamic civics. This was noticed by Freedom House who praised Niger respecting its constitutional provisions for free expression and freedom of assembly and association. Specifically, Freedom House noted there was a gradual improvement in the government allowing demonstrations that were critical of the government contingent upon them being peaceful.[138]

Islamic civics did not always act within the parameters of the law. While peaceful protests were held at the 1999 *Festival International de la Mode Africaine* (FIMA) near Agadez, similar protests during the 2000 FIMA, near Niamey, turned violent and spread beyond FIMA. *Jama'at Izalatil Bidiawa Iqamatus Sunnah* (Movement against Negative Innovations and for Orthodoxy) or *Izala,* was the primary group in violent opposition, but it was joined by *Adini Islam*, the *Association pour le Rayonnement de la Culture Islamique* (ARCI), and the *Association des Etudiants Musulmans à l'Université de Niamey* (AEMUN).[139] Protestors maintained that the event was contrary to Muslim religious practice, with women appearing in varied states of undress, and some FIMA attendees being openly homosexual.[140] Protests started with a march on the National Assembly. As the festival went on, protestors moved into Niamey

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[137] U.S. Department of State, *2006 Country Reports on Human Rights Practices – Niger*, (March 6, 2007), http://www.state.gov/g/drl/rls/hrrpt/2006/78750.htm (accessed August 20, 2010); U.S. Department of State, *2007 Report on International Religious Freedom – Niger*, (September 2007), http://www.state.gov/g/drl/rls/irf/ 2007/90113.htm (accessed August 20, 2010).

[138] Freedom House, *Freedom in the World 2007*, chapter on "Niger," http://freedomhouse.org/template.cfm?page=363&year=2007&country=7243 (accessed November 25, 2010).

[139] Saidou Arji and Noel Tadegnon, "Niger bans Islamic groups opposed to Fashion Festival," *Inter Press Service*, November 18, 2000, http://www.afrol.com/html/Categories/Culture/cul010_niamey_fashion.htm (accessed September 5, 2010).

[140] Arji and Tadegnon, " Niger bans Islamic groups opposed to Fashion Festival."

neighborhoods, attacking prostitutes and women in short skirts.[141] *Izala* led attacks on bars, brothels, hotels, guest houses, and churches in Maradi.[142] Protestors attempted to burn the Iya of Maradi, a pre-Islamic female ritual figure.[143] The violence surrounding FIMA was not a representation of all Islamic organizations, as most did not support the violent actions of *Izala* et al. Whether opposed to the use of violence or to protesting FIMA or both, more moderate groups, like the AIN, called for tolerance and calm as the "teachings of Islam forbid attacks on other people's property."[144] While violence of the FIMA protests did nothing to consolidate democratic institutions of civic mobilization, it was, in the grand scheme, uncharacteristic of the largely civil mobilizations undertaken by Islamic organizations to pursue their agendas.

Political Islam in Niger quickly found the utility in confederated social movements that attempted to influence the state using the available apparatuses of democracy. Unfortunately in some instances the nature of this contestation threatened to undermine democratic consolidation as civic contestation flirted with the boundaries of legality when at least one series of protests moved beyond civil and turned violent. Nonetheless Islamic organizations proved successful in pursuing their agendas through public information campaigns and social mobilization to pressure lawmakers to respond in favor to the Islamic agenda. While Niger was at best characterized as "partly free" throughout the decade of 2000, it did make some gradual improvements in its CL score. In 1999 its CL was rated at "5," this improved to "4" from 2000–2003, and further improved to "3" from 2005–2007.[145] While in 2008 it slipped back to "4" this was because of the government restricting freedom of expression in an attempt to control media coverage of the Tuareg conflict in the North.[146] Thus the peaceful actions of

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[141] Arji and Tadegnon, " Niger bans Islamic groups opposed to Fashion Festival."

[142] Charlick, "African Studies Review Focus: Islamism in West Africa," 100.

[143] Charlick, "African Studies Review Focus: Islamism in West Africa," 100.

[144] Arji and Tadegnon, " Niger bans Islamic groups opposed to Fashion Festival."

[145] Freedom House, "Comparative and Historical Data."

[146] Freedom House, *Freedom in the World 2008*, chapter on "Niger."
http://freedomhouse.org/template.cfm?page=22&year=2008&country=7460 (accessed November 25, 2010).

Islamic civics was reflective of furthering democracy making public civic-government dialogue through protest and public information an acceptable tool of discourse.

C. COMPARATIVE ANALYSIS

The question repeated throughout the discussion was, were Islamic civics perceived to be effective with their activism and were they civil/law abiding in their attempts to promote their agendas, and did the nature of their activism contribute to democratic consolidation? In Mali, one finds Islamic civics contesting government policies with tools ranging from debate and rhetoric to more unified social movements and civil contestation. At times, when their engagement seemed ineffective, their action came close to undermining democratic consolidation as civic contestation flirted with the boundaries of legality when Islamic civics threatened violence. While it never truly came to violence, the extent to which civics operated within the confines of the law is difficult to establish because they came close to crossing over the boundaries of legality. Nevertheless civil society interactions influenced both popular opinion and Malian lawmakers through public information campaigns and social mobilization as they pushed their respective agendas. Freedom House's evaluation does not support that this strengthened democracy, but it does suggest that it helped maintain what had already been established.

Likewise, political Islam in Niger quickly found the utility in confederated social movements that attempted to influence the state using the available apparatuses of democracy. In some instances the nature of this contestation threatened to undermine democratic consolidation as civic contestation crossed the boundaries of legality during two notable campaigns against the 1993–1994 government condom initiative and the 2000 FIMA event, moving beyond civil and either engaged in material destruction, and/or turned violent. These notable exceptions aside, Islamic civics in Niger still maintained a credible history of successfully pursuing their agendas though through public information campaigns and social mobilization that pressured lawmakers to respond to their demands. While still only "partly free," Freedom house noted an

improving relationship between Niger's civics and the Niger government throughout the 2000s, as peaceful protests grew more common and more accepted by the government.

The analysis above demonstrates striking similarities in the two cases. In both countries Islamic civic organizations were largely civil and quite effective in advancing their interests; with notable exceptions. They not only engaged the government but they engaged other civic organizations in both dialogue and social mobilization, be it women's groups, humanitarian groups, or other Islamic organizations who did not view situations with a universal Islamic lens. What is perhaps most striking is that Islamic organizations, which might have rejected liberal democracy as unIslamic, instead embraced the democratic game to block change. This was as much in evidence in Niger, despite the repeated collapse of democratic regimes, as in Mali. Therefore, the nature of civic activism, as a manifestation of political culture, does not help to explain the variation in democratic stability between the two countries.

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IV.   CONCLUSION

This thesis tested the hypothesis that different levels of social capital (IV), acting through two separate causal pathways, explain the divergent outcomes in democratic consolidation (DV) in Mali and Niger. The first causal pathway is a greater inclination among Malian political actors and parties to adhere to the rule of law, engage in consensus politics, and accept rulings of the constitutional courts (IntV1). The second causal pathway is a greater inclination among Malian civil society actors to engage the democratically elected government within the limits of the law (InvtV2). The evidence however, suggests something different. There is a remarkable parallel in the behavior of political and civil actors in the two countries, which invalidates the hypotheses.

If the rule of law was upheld by the parties and institutions, and in the few cases it was not was due to the actions of key individuals, what does this say for the first causal pathway? It suggests that either the level of social capital is similar in the two cases, or that it does not act through the hypothesized causal pathway.

As already mentioned, Smith, Vanhanen, and Pringle suggested that Mali has a "unique political culture" which predisposed it to take a positive track towards democratization. Unfortunately, they say nothing of Niger and according to the findings of this thesis, social capital between Mali and Niger does not seem too divergent. In support of parallel social capital, it is Pringle, whose argument credits Mali's democratization to a heritage of tolerance and tradition of decentralized government, that suggests that Mali's history and culture is not all that unique, and that Niger, along with four other West African neighbors, has similar cultural factors that could have set it on a path of democratization, but either bad history, bad geography, and bad leadership have intervened in a way that negated Niger's democratically inclined culture.[147]   With geography and history being fairly similar, Pringle's reasoning would leave leadership as the culprit.

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[147] Pringle, 53–57.

On the other hand, if social capital is not equal, then the hypothesized pathway is flawed, suggesting that the rule of law does not serve as the appropriate intervening variables that influence democratic consolidation. Regardless of the state of social capital in both cases, tolerance among parties and institutions for the rule of law was parallel, and does not explain a divergence on democratic stability and consolidation.

A similar conclusion can be made about the second causal pathway, that social capital works through civil society to affect democratic consolidation. Both the cases of Niger and Mali demonstrate a remarkable similarity in the nature of their respective civil societies. While there were occasions of less than civil behavior and material destruction at the hands of protestors, in both Mali and Niger civil society action was often enough within the acceptable confines of democracy if not always the law. In addition, civics were effective in the sense they were able to advance their interests through dialogue and social mobilization. Furthermore, in both cases Freedom House's evaluation was not drastically different: in Mali the status quo was maintained; and in Niger it improved only slightly. Thus, an active civil society does not seem to determinate democratic consolidation for the cases examined. Like rule of law, social capital appears equal and is producing a similar outcome. Either social capital does not serve as the independent variable or the causal pathway does not operate as suggested. Are there any hints in the analysis that might explain this divergence?

Going back to Pringle's analysis, perhaps leadership has played a role. Within the story told, one picks up suggestions that individuals might have been the intervening variables affecting democratic consolidation. Thus, the influence of individuals on the consolidation of democracy is worthy of further exploration, as there is something indicating that "good guys" like Konaré and Touré may have had a part to play in encouraging the forthright application of the rule of law, as they accepted rulings that ran counter to their agendas. Conversly, in Niger key individuals made choice at critical junctures, as "bad guys" like Ousmane, Amadou, and Tandja, who, to varying degrees, engaged in actions that were arguably illegal as they ran counter to the respective Niger constitutions, may have had a part in encouraging the abandonment of the rule of law. The notable dueling between Ousmane and Amadou, who both pushed the envelope on

authorities in an attempt to redefine the roles of president and prime minister in a fashion that supported their own interests. And the boldness of Tandja who trampled the Constitution of Niger in an attempt to restructure the regime in a fashion that transferred executive power to the presidency and discarded term limits that would have prevented Tandja from enjoying the power he created, these key Nigeriens did little to support the unsurpassed arbitration of the rule of law. Instead, the leaders themselves where responsible for bypassing institutions that where generally respected by the parties privy to the democratic process.

These individuals appear to have influenced democratic consolidation by the way their choices affected the trajectories of their respective countries. In Mali, we find leaders who bowed to dialogue and compromise when political wrestling seemed like it was stressing the seams of democracy. In Niger, conversely, the "playing for keeps" of key leaders was not deescalated. Instead we find key leaders who refused to give up power when contestation climaxed. This refusal to back down, or submit to democratic dialogue and compromise, at critical junctures was most detrimental to Niger itself. In both cases, it was only resolved by the desperate choices of outside actors in the military. It was not dialogue and compromises that saw the day through and strengthened democracy, but it was coups that hit the reset button, and gave Niger yet another chance to reforge democracy.

Likewise, for civil society in Mali, the individual influence of Konaré and Touré during Mali's family code debate played a part in peacefully defusing contestation. It is hard to discount the eleventh hour actions of Konaré in reversing his family code decree in 2002 to appease Islamic civics. Konaré unilaterally forced family code reform, but backed down after evoking the ire of Islamic civics who called for (but did not take to) violence. Touré too stopped legislation by refusing to sign a family code bill that was passed in Parliament. This potential reform of the family code sparked public mobilization, headed by Islamic civics, and created significant uproar, which in a few cases did involve protestors and police clashing. So while civics certainly played a role publicly advancing their agenda, it was not without the mediating influence of key leaders who made their mark on the nature of Mali's democracy.

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The most likely alternative explanation is that articulated in the existing literature: the role of key individuals. This follows in line with the argument of Pringle and Moestrup. Pringle, as previously stated, believes that the lack of democracy may have been the result of "bad leadership." Similarly, Moestrup argues that since both Niger and Mali have a similar lack of economic development, turbulent political histories, and economic and societal preconditions, the reason for their divergent trajectories is found in both institutional choices (electoral systems) and key leaders during transition.[148] Moestrup's analysis ends before 1999, but she does place heavy emphasis on key leaders like Konaré, whose efforts were conducive to keeping democracy alive in Mali, and Ousmane, Amadou, and Issoufou, whose political wrestling brought Niger to its knees.[149] It seems likely that Moestrup would place Touré and Tandja with their respective countrymen and suggest that they too were most responsible for the way crises were resolved and whether that crisis strengthened or weakened democracy.

What then does this suggest for the study of democracy? The argument presented does little to advance the role of social capital in democratic consolidation. Additionally, the effects of the rule of law and civil society are equally unclear, as the nature of both rule of law and civil society in both Mali and Niger were parallel, but the outcome of democratic consolidation was divergent. What has already been suggested is that the story told lends some credence to the influence of individuals, as key leaders seemed to have the most profound effect on democratic consolidation in both Mali and Niger.

So for Mali and Niger the suggestion is that future research should explore these critical junctures for insight into the decision making calculi of the key actors. The role of leaders, both "good" ones and "bad" ones is worthy of exploration. While not comparatively, Baudais and Sborgi, in separate works, together attributed democratic trajectories to among other things, the role of politicians. Moestrup, as previously discussed also brings up the effect of key leader interactions, but does so while

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[148] Moestrup, 171.

[149] Moestrup, 180–182.

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simultaneously looking at divergent electoral systems. An approach that might provide more clarity would be one that isolates leaders as the independent variable, and does so within a comparative framework.

For the larger body of literature concerning democracy in Africa, much of the focus is on the nature of African economics of African political systems and institutions. More could be done to explore how individuals influence democracy. Is there any basis to suggest that "good guys" and "bad guys" can make the difference in influencing the trajectory of democracy? Are critical junctures in the political history of Africa really a result of economics and institutions, or is it a result of big-men who make selfish or selfless decisions to usurp or submit to democracy?

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