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Arab Center for Research & Policy Studies



المنظمة العربية
للقانون الدستوري
The Arab Association of Constitutional Law

The 9th ACRPS Conference on Democratic Transition

Constitutions and Democratic Transition in the Arab Region

September 24 - 29, 2020

In cooperation with

The Arab Association of Constitutional Law

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Online Registration



About Conference

Given their importance to the framework of democratic countries, forming as they do the core of the political - social contract between rulers and the ruled, constitutions are of great importance in countries undergoing democratic transition. After all, they are contracts that determine the nature of the state and the basic components upon which its political system is founded; the competencies of public authorities and the relationship between authorities; the rights and freedoms of citizens; and the rules for the distribution of power and wealth among the regions making up the state. Arab countries have seen a range of movements pressing for the adoption of political and constitutional reforms essential to the success of democratic transition and building the rule of law.

Such demands arose concomitantly with growing human rights violations in the Arab region; election fixing; the monopolization and abuse of power by tyrannical rulers; suppression of the opposition; discrimination against minorities and specific segments of society; negligible rule of law; weakness in all indicators of good governance and integrity; absence of social justice; and the lack of independence and integrity of the judiciary.

These demands were part of the “Arab reform projects” that proliferated before the Arab revolutions of 2011. Widespread preoccupation with the constitutional issue on the part of intellectuals, civil activists, and academic and political elites, did not occur, however until the Arab revolutions that encompassed – differences in intensity, contexts, and conditions between one country and another notwithstanding – a set of intersections between all Arab countries. It is plain to see that the demands expressed in the Arab revolutions in 2011 and the subsequent popular movements in Sudan and Algeria during the year 2019 were broadly similar, typically summarized in the slogan “political freedom, social justice, and the abolition of corruption and tyranny.”

The constitution was the most important focal point for the beginning of democratic transition processes, and the debate on the constitutional issue received careful attention in many countries of the Arab region, with discussions focusing upon on the ways in which constitutions may be drawn up, how they are structured, and their contents – particularly as concerns the system of government, the exercise of power, and the protection of rights and freedoms.

As a result, the constitutional reforms seen in many countries of the Arab region paved the way, and may continue doing so, for the start of democratic transition in the concerned states. But the success of any democratic transition will depend upon the extent to which the will of the people is respected, rights and freedoms protected, and the requirements of law and constitution are upheld with provision of necessary guarantees against any repetition of the violations and infractions of the past.

The existing political systems were never true reflections of constitutional texts, and the constitutional state (if we may speak of such, or alternatively the state of the rule of law – an essential pillar of any democratic system) at no time existed as such. It goes without saying that most Arab constitutions (including those of authoritarian regimes) provided for the separation of powers, independence of the judiciary, and protection of public freedoms, although none of this existed in some Arab countries, while others suffered from many problems in this regard. Hence, the fundamental question is: How can we bring about a political authority that is effectively constrained by a constitution, in other words, a

modern constitutional state? This question, which has occupied Arab thinkers since the beginning of the twentieth century, is still alive and present.

Branching out from this question are important questions not relating to the contents of the constitutions themselves, but to the constitutional process surrounding the drafting and establishing of these constitutional contents. While these questions may not seem of interest to activists pursuing constitutional reform, experts and specialists are keenly aware of their importance, based on their experience and perceptions derived from experiences of global democratic transition. Among these questions are the following: What form do constitutional documents take in the transitional stages? What are their functions? Who drafts them and promulgates them? How do they relate to permanent constitutions? How does the political, cultural, and social environment affect the constitutional process in the transitional stages? What are the criteria for a democratic constitution? Is there a global constitutional “model” that is being adopted, or do constitutions express “national perceptions”? How can citizens be involved in building perceptions about a democratic constitution? Is there a role for international actors such as the United Nations, international experts and specialist institutions? What are the limits to the role the judiciary plays in drafting constitutions for democratic systems and in influencing political actors during transitional stages? How does the constitution-forging method differ according to the nature of the change process itself? How does the constitution-making process take place in the aftermath of civil wars and armed conflicts? How can constitutional democracy be incorporated into reconciliation agreements in the aftermath of wars and conflicts? How can the urgent problems and challenges raised by the constitutional issue in transitional stages be addressed, including questions of identity, human rights, authoritarian legacies, or of distribution and social justice? What guarantees the implementation and continuity of the constitution of the democratic system? What are guarantees / conditions / institutions have served to prevent the collapse of constitutions in contemporary democracies? Which bodies have powers to oversee compliance with a constitution and its interpretation? How can the constitutional democratic system itself be developed to keep pace with societal changes, to address the deficiencies of representative democracy, and to expand the scope of political participation? What types of constitutional culture offer guarantees for the sustainability of democratic constitutional systems and their effective functioning in Arab countries?

Based on the foregoing, and with the aim of clearly highlighting the place of the constitutional issue in democratic transition in the Arab region, the Arab Center for Research and Policy Studies is organizing this conference in cooperation with the Arab Organization for Constitutional Law. The conference is part of a series of annual conferences on issues of democracy and democratization supervised by the “Democratic Transition and Stages of Transition in Arab Countries” project. This conference will examine how the constitutional issue has been managed in Arab countries initiating democratic transitions, drafting new constitutions (or constitutional documents), or amending previous constitutions.

Twenty Two research papers (presenting case studies and comparative and theoretical studies, peer reviewed and arbitrated according to the rules followed by the Arab Center for Research and Policy Studies) will be discussed in this conference, and on the sidelines a session will feature Arab and foreign experts, personalities who have participated in the constitutional experiences and constitution-making bodies in the Arab countries, or who were close to them as advisors and experts, to learn from their

assessment of these experiences in the Arab countries, or about the relevance of their experiences in constitutional reform, to dealing with the issues of reform and democratization in the Arab countries. This session also aims to hear from several foreign experts to avail prominent “lessons learned” relating to the constitutional issue and democracy in the world, and the implications they entail for the Arab world. Among the key questions in this regard are: What are the requirements for a democratic constitution in countries that have undergone political transformations in Latin America, Eastern Europe and Africa? What are the lessons learned from the constitution-making process in pluralistic countries that have witnessed ethnic and civil conflicts? What are the dimensions of the right of resistance and rebellion against governments that violate their constitutions, and especially in democratic governments? What kind of comparative knowledge can usefully support constitution-building and constitutional reform processes around the world? What are the lessons learned from comparative experiences regarding restrictions on presidential terms in democratic republics? How did the drafting of constitutions develop in the Arab world?

Timetable

Day 1

Thursday, September 24, 2020

Register



ID: 836 7809 4940

12:30 - 12:45	Opening Session Mehdi Mabrouk Abdel-Fattah Mady
12:45 - 14:15	Session 1 Arab Experts Roundtable (1 - 2) Chair: Khaled Ziade Olfat Mohammed El-Dabie (Yemen): The Constitutional Issue in Yemen after 2011 Nadeem Al-Jabiry (Iraq): Political and Intellectual Dimensions of Writing the Permanent Iraqi Constitution Amar Boudiaf (Algeria): Demands of the Algerian Popular Movement 2019 and the Preliminary Draft Amendment to the Constitution
14:30 - 16:30	Session 2 Arab Experts Roundtable (2 - 2) Chair: Haider Saeed Nabil Adib Abdullah (Sudan): The Constitutional Issue in the Sudanese Case Mohamed Abdelkader Al-Tumi (Libya): The Constitutional Experience in Libya after 2011 Mohamed Hosam Hafez (Syria): The Constitutional Issue in Syria and its Implications Mohamed Aterguine (Morocco): The Constitutional Judiciary in Morocco

- Timing of sessions based on Doha local time (GMT +3)

Day 2

Friday, September 25, 2020

Register



ID: 812 2685 0095

16:00 - 16:45 13:00 - 13:45 GMT	Session 3 Opening Lecture Keynote Speaker: Tom Ginsburg The Right to Rebel in Comparative Constitutional Law Moderator: Abdel-Fattah Mady
17:00 - 18:30 14:00 - 15:30 GMT	Session 4 International Experts Roundtable (1 - 2) Chair: Sultan Barakat Nathan J. Brown: Has Constitution Writing Changed in the Arab World? Markus Böckenförde: The Rule of (Amendment) Law: Presidential Term Limits in North Africa William Elliot Bulmer: The Role of Comparative Knowledge in Constitution Building
18:45 - 19:45 15:45 - 16:45 GMT	Session 5 International Experts Roundtable (2 - 2) Chair: Omar Ashour Katia Papagianni: Lessons Learned from Peace Processes and Constitutional-making Design in Fragile and Conflict-affected Countries Gabriel Negretto: Lessons Learned from Institutional Design in Latin America

Day 3

Saturday, September 26, 2020

Register



ID: 824 3764 0105

12:30 - 14:00	<p>Session 6</p> <p>International Experiences in the Constitutionalization of Democratic Transition (1 - 2)</p> <p>Chair: Marwan Kablan</p> <p>Ahmed Edali: The Constitutional Question and Democratic Transition in South Africa</p> <p>Mohamed Ahmed Bennis: The Constitutionality of Democratic Transition in Spain</p> <p>Mohammed Naimi: Constitutional Amendment as a Path to Democratic Transition in Chile</p>
14:15 - 15:15	<p>Session 7</p> <p>International Experiences in the Constitutionalization of Democratic Transition (2 - 2)</p> <p>Chair: Khalil Al-Anani</p> <p>Marwa Fekry: Constitution Design and Confidence Building: A Study of Democratic Transition Experiences from a Comparative Perspective</p> <p>Ahmed Hussein: The EU Constitutional Experience</p>

Day 4

Sunday, September 27, 2020

Register



ID: 823 2388 7912

12:30 - 13:30	<p>Session 8</p> <p>Constitution and the Issues of Identity: Arab Experiences</p> <p>Chair: Mahmoud Hamad</p> <p>Abdelwahab El-Affendi: Sudan's Constitutional Dilemma: Identity, Law and Politics</p> <p>Mohamed Blilid: Islamic and Amazigh Currents, and their Role in Reviewing the 2011 Moroccan Constitution</p>
13:45 - 15:15	<p>Session 9</p> <p>Constitution and Democratic Transition in Tunisia</p> <p>Chair: Mehdi Mabrouk</p> <p>Mohamed Chafik Sarsar: Compatibility in the Drafting of the Tunisian Constitution: Necessity and Limits</p> <p>Chaker Al-Houki: The 2014 Tunisian Constitution: Internationalization and Democratic Transition</p> <p>Omar Al-Boubakri: The Choice of the Political System in the Tunisian Foundational Track and its Implications</p>
15:30 - 16:30	<p>Session 10</p> <p>Arab Constitutions: Comparative Issues</p> <p>Chair: Salam Kawakibi</p> <p>Adnen Nouioua: Governance and Anti-Corruption in Arab Constitutions after the Arab Spring</p> <p>Nidhal Al-Mekki: The Impact of International Human Rights Law on the New Arab Constitutions</p>

Day 5

Monday, September 28, 2020

Register



ID: 857 8324 5823

12:30 - 14:00	<p>Session 11</p> <p>The Moroccan Constitutional Experiences between Reform and Failure</p> <p>Chair: Morad Diani</p> <p>Abdellatif Al-Moutadaine: The Constitution and the Sovereignty of the People: Power Relationships in the Texts of the Moroccan Constitution</p> <p>Mohamed Al-Mesaoui: The Moroccan Constitution of 2011, and the Problem of Restricting the King's Executive Powers</p> <p>Mohamed Baske Manar: Institutional and Legal Activation of the 2011 Constitution in Morocco</p>
14:15 - 15:15	<p>Session 12</p> <p>Constitutional Developments in the Arab World (1 - 2)</p> <p>Chair: Ghassan Moukheiber</p> <p>Hassan Abdelrahim Al-Sayed: Democratic and Autocratic Constitutions: Constitutions of the Gulf Cooperation Council Countries</p> <p>Omar Ihrchane: Constitutional Development in Morocco: The Relationship between the Political Context and the Legal Text and its Impact on Democratic Transition</p>

Day 6

Tuesday, September 29, 2020

[Register](#)



ID: 847 5891 8191

12:30 - 13:30	<p>Session 13</p> <p>Constitutional Developments in the Arab World (2 - 2)</p> <p>Chair: Ayat Hamdan</p> <p>Simon Badran: Grafting a Balloting Mechanism onto Bicameral Parliaments: Towards Radical Treatment of Representative Democracy's Flaws in Lebanon</p> <p>Rashad Tawam: One Step Back: Implications of Constitutional Engineering for the Transition to the Founding Institutionalization Process in Egypt and Tunisia</p>
13:45 - 15:15	<p>Session 14</p> <p>Constitution and Political Transition in Algeria</p> <p>Chair: Mohammad Hemchi</p> <p>Kamal Djealab: The Democratic State of Law: Problematic Concept and Requirements of the Constitution-Formation</p> <p>Mouslem Babaarabi: Constitutional Management of Political Transition in the Algerian Case: Do Existing Constitutional Paths Meet the Demands of the Popular Movement?</p> <p>Abbes Ammar: Expanding the Notification of the Algerian Constitutional Council to Members of Parliament: Reasoned Opening</p>
15:15 - 15:45	<p>Closing Session</p> <p>Outcomes and Perspectives</p> <p>Chair: Radwan Ziadeh</p>

Participants

Abstracts



Abbes Ammar

Professor of Constitutional Law and Political Systems at the Faculty of Law and Political Science at Mustapha Esmbouli University, in Mascara, Algeria, and a member of the research laboratory on tools of real estate policy in Algeria, at the University of Mustapha Istambouli. He obtained his state doctorate degree from the University of Sanya, in Oran in 2015. His research interests include constitutional law and political systems, constitutional judiciary and parliamentary oversight. He is the author of research papers and published books, including Constitutional Studies on Attribution, Exercise and Control of Power (2007), and Reflections on the Path of Constitutional Reforms in Algeria (2015).

Expanding the Notification of the Algerian Constitutional Council to Members of Parliament: Reasoned Opening

The constitutional judiciary in Algeria introduced a fundamental reform in the 2016 constitutional amendment, allowing the opening of the Constitutional Council to members of Parliament, enabling notification of them aimed at monitoring the constitutionality of laws, treaties and regulations. This gave the parliamentary opposition the opportunity to participate in the legislative process. However, this all depends on notification procedures. The paper asks to what extent has this openness contributed to activating the supervisory role of the Constitutional Council and strengthening its intervention to impose respect by the authorities for the rules of jurisdiction and procedures, while protecting the rights and freedoms guaranteed by the constitution?

The paper shows the broad oversight area of the Algerian Constitutional Council, which extends to various types of legislation, in exchange for a movement authority restricted by notification from authorities that have been exclusively identified. It then addresses the procedures for notifying parliamentarians and their role in rationalizing those. It concludes that the difficult conditions and procedures for notification have prevented parliamentarians from observing and presenting any notification of the unconstitutionality of legal texts under review that have sparked controversy in the corridors of parliament, such as proposed financial laws. This is in addition to an absence of real political will to include the opposition in the legislative process. The draft constitutional amendment had attempted to address these issues by replacing the Constitutional Council with a constitutional court. The paper concludes with recommendations, including reducing the number required to notify the two chambers of parliament to forty deputies or twenty-five members of the National Assembly, subjecting legislative regulations and orders to constitutional oversight subsequent to their issuance, as well as the possibility of notifying the Constitutional Court regarding disputes that may occur between the constitutional authorities and with the intention of interpreting some provisions of the constitution.



Abdellatif Al-Moutadayne

Professor of Public Law and Political Science at Moulay Ismail University, Morocco, interested in constitutional law and the transition to democracy, international law, international relations, human rights and public freedoms. He obtained his PhD in political science from the University of Laval in Canada in 2005, and he is a member of international societies specialized in political science and international law, with published research in international refereed journals.

The Constitution and the Sovereignty of the People: Power Relationships in the Texts of the Moroccan Constitution

This paper examines the power relations surrounding the review of the Moroccan constitution in July 2011. It monitors power relations in the texts of the constitution through the competencies assigned to political actors in the executive, legislative and judicial fields. It also examines the motives driving constitutional amendments and their ability to respond to the aspirations of the governed, both revolutionaries and conservatives, and the extent to which they reflect the reality of the prevailing balance of power before and during their drafting, and after their approval, and the extent to which they achieve democratic standards and express the people's sovereignty. In the wake of the 2011 protests and King Mohammed V's claimed desire to adopt "new and comprehensive reform," an advisory committee was appointed to review the constitution, tasked with consulting partisan and trade union organizations, as well as collective and intellectual actors to develop a constitutional proposal for submission to the king for submission as the basis for a referendum.

The 2011 constitution preserved the essence of the political system established by the 1962 constitution, which was to guarantee the king's dominance over the entire political sphere. Despite the constitution's adoption of the principle of separation of powers, the broad powers that it granted to the king do not fulfill this principle. The king transcends all authority and can intervene to direct all actors in the political, economic and social system and to define various public policies, so that the constitution became an instrument for constitutionalising the king's powers rather than a tool for organizing and limiting the exercise of those powers. The paper concludes by proving the correctness of the hypothesis underlying it: the place of the monarchy in the constitution has weakened the sovereignty of the people by its hegemony over a balance of power within which there are parties that help in ruling and do not rule.



Abdelwahab El-Affendi

The Acting President of the Doha Institute for Graduate Studies, and former Dean of the College of Social Sciences and Humanities at the Institute. Since 1998 worked as the coordinator of the Islam and Democracy Program at the Center for Democracy Studies at Westminster University in London and he previously served as a diplomat in the Sudanese Foreign Ministry (1990-1997-), as a journalist in Britain managing and editing several publications (1982-1990-) and as a professor and visiting scholar at the Christian Mikkelsen Institute in Norway, Northwestern University in Chicago, the University of Oxford, University of Cambridge and the International Institute of Islamic Thought and Civilization in Malaysia. He obtained his PhD in political science from the University of Reading in the United Kingdom in 1989.

Sudan's Constitutional Dilemma: Identity, Law, and Politics

This paper hypothesizes that the chronic political crisis in Sudan is a constitutional crisis that can be summed up in the inability to agree on a constitutional framework promoting democratic stability. It traces the roots of this constitutional crisis since the beginning of a colonial rule based on a "three-pronged duality" between Egypt's claims of sovereignty over Sudan, the Ottoman Sultanate's claims to sovereignty over Egypt (and thus Sudan), and the actual reality of complete British domination over Sudan and Egypt together. In this context, British colonial rule established a reality in which the Governor General gathered civil and military powers in his hands, uniting all executive, legislative and judicial components of civil power in his grip. The core of Sudan's dilemma has been that constitutional guarantees meant to fortify the democratic system against fluctuations and preserve the rights and interests of everyone, themselves remained turbulent. During the four transitional periods that Sudan went through, the country witnessed short periods of consensus, followed by tempestuous periods of democracy (which ended in succession in 1958, 1969, and 1989) during which political forces could not agree on a constitutional framework to protect democracy, leading to the outbreak of devastating wars.

The paper follows the repeated attempts to agree on a Sudanese constitution on stable foundations, and clarifies the points around which conflict has arisen thwarting these attempts (conflict over centralization and regional independence, religion and state, partisan and sectarian conflicts, etc.). The parties to this constitutional conflict (far from the battlefield) would agree at times to relinquish power in favor of a subsequent return to the fray. The paper concludes that efforts to resolve the Sudanese crisis must focus on creating a solid constitutional structure that strengthens the resilience of the democratic movement, bolstered by firm constitutional guarantees that prevent its collapse. The solution cannot be dictatorial; rather, guarantees must be democratic in nature, such as in constitutional courts with wide powers.



Adnen Nouioua

Assistant professor of law at the Higher Institute of Technological Studies of Bizerte, and a researcher at the Laboratory of International Relations, Markets and Negotiations Law at the Faculty of Law and Political Science in Tunis, with research interests in anti-corruption and transitional justice. He obtained his PhD in Public Law from the Faculty of Law and Political Science in Tunisia in 2018, and has participated in numerous conferences including: "Corruption in International Trade Exchanges and International Commercial Arbitration" and "Cases of the Revolution's Martyrs and Wounds: What Role for the Truth and Dignity Commission?"

Governance and Anti-Corruption in Arab Constitutions after the Arab Spring

Arab constitutions after the Arab Spring revolutions adopted new principles, rules, procedures, and institutions for good governance and combating corruption – but these all threatened to remain simply "ink on paper" in view of gaps between legal text, policy and practice. The paper seeks to explore these new or amended constitutions to clarify how the drafters of constitutions dealt with the issue of governance and combating corruption, comparing new provisions and declarations of the state's commitment to combating corruption with stipulations for creating specialized structures with preventive or prohibitive force: such new provisions will prove to be useless unless linked to the exercise of power and guarantees of human rights. The paper focuses on the issue of governance and combating corruption through the division of powers and the protection of rights and freedoms in Arab constitutions.

Legal and political difficulties encountered in Arab constitutional rules relate mainly to combating corruption and securing the implementation of constitutional provisions regarding distribution and balance of powers. There is a close correlation between efficacy of constitutional regulation to combat corruption and the efficacy of the principles and provisions for distribution of power and protection of human rights: taken together, these form the core of constitutions past and present. The added value of anti-corruption rules binds them with democracy and modifies the exercise of power through a renewed understanding of the distinction between powers and through institutions of constitutional oversight, necessary to ensure sound interaction between constitutional texts and low-level laws and between constitutional texts and political practice in the field of combating corruption.



Ahmed Edali

Professor in political science at Ibn Tufail University in Morocco, and a member of the "Legal and Political Sciences" laboratory at the Faculty of Legal, Economic and Social Sciences of Ibn Tufail University in Kenitra. He obtained his doctorate in political science from Mohammed V University, in Rabat in 2006, and his research interests range from political philosophy, systems analysis, and public policies to the study of political and social transformations in the Arab world. He has published research papers in these fields, most recently "Saudi and Iranian Spinning in Yemen and Impact in Political Transitions" and "The Protest Dynamism of the February 20 Movement: A Study of Forms of Framing and Counterframing."

The Constitutional Question and Democratic Transition in South Africa

The paper seeks to shed light on pragmatic constitutionalism in South Africa, where the actors strove for success in democratic constitutional transition invoking a comprehensive consensual foundation to stop the cycle of violence, and employed the constitution as a basis to rebuild institutions in a democratic manner. The paper explores the inspiring logic of the new constitutional architecture, seeking to reveal the limits of normative constitutionalism, and highlight the extension of the past into the present.

The paper concludes that the South African experience embodied a model of the interconnection, as negotiators adopted constitutional rules that acted as regulators to reduce the level of hesitation and uncertainty associated with transitional periods, also showing that by subjecting the army to civilian control, the constitution succeeded in distancing itself from the fever of politics to become a protector of the democratic experiment. Further, if a determined internal will is vital fuel for transition, success also depends on external factors in its dynamics of the transition. Just as the constitutional transition experience in South Africa is beneficial to countries undergoing transformation, lessons can be derived from the limits that obstructed that experience. The transition process is not only a legal phenomenon, and the effort to standardize and establish constitutional regulations, despite their importance, is not sufficient to embody the values of democracy.



Ahmed Hussein

Researcher at the Arab Center for Research and Policy Studies and Managing Editor of the journal "Siyasat Arabiya." He previously worked as an assistant professor at the Faculty of Political Science - University of Damascus. He obtained his PhD in International Relations from the University of Florence – Italy and his research interests lie in international relations theory.

The EU Constitutional Experience

Joint treaties between member states of the European Community (EC) since its inception in the 1950s have represented the legal framework for cooperation and integration among their institutions. With each expansion of the community to include new members, negotiations between the member states led to new treaties commensurate with the process of integration and cooperation, rendering the European experience distinctive as a model of successful cooperation and integration among countries that until recently were in conflict. European Community countries then entered a new stage of cooperation and integration with the Maastricht Treaty in 1992, establishing a new phase of common European activities and policies, the European Community becoming the European Union in form and content, with new institutional structures, its active member states aspiring to fill the vacuum left by the collapse of the Soviet Union, and replace it as an international actor with an influence on international politics. European integration and cooperation continued with the treaties of Amsterdam (2007) and Nice (2000), towards preparation of a draft common European "constitution treaty".

This paper reviews the constitutional experience of the European Union, examining the contexts of the drafting of the Constitutional Treaty and the methods that led to the European countries' failure to ratify it, and the resulting shift of attention to signing of the Lisbon reform treaty.



Chaker Al-Houki

Assistant professor in public law and political science at the Faculty of Law and Political Science at al-Manar University and a researcher on political thought, public law, constitutional law, and transitional justice. He obtained his PhD in political science. His published research includes the chapter "Youth and Revolution: Is a Generational Approach Suitable as a Foundation for Reading the Tunisian Revolution?" in *Youth and Democratic Transition in Arab Countries* published by the Arab Research Center, as well as a book in French on Islam and the constitution in Tunisia.

The 2014 Tunisian Constitution: Internationalization and Democratic Transition

Given the pervasive inclusion of human rights and public freedoms in the Tunisian constitution, this paper deals with the relationship of this constitution to internationalisation, an emerging phenomenon in the literature of constitutional law that can no longer be ignored, and especially in Tunisia as the country makes its way towards democracy. Internationalisation implies an intensifying seepage of international rules into constitutional systems with an aim of harmonizing local constitutions with the set of international standards relating to democracy and human rights as may be seen in ratification of constitutions adhering to international treaties and in recognition of the importance of international law and the need to respect it.

The paper aims to find out the extent to which the Tunisian constitution responds to the conditions and requirements of internationalisation. However, the research results not initially expected; the constitutional legislator did not submit to the rules of complete internationalisation and did not join the international legal system, as anticipated; rather it preserved a traditional principled concept of sovereignty as the supreme law of the state, established by a competent authority for the purpose of regulating the relationship between the ruler and the ruled, and it did not comply with international standards or take into account proposals of international governmental and non-governmental organizations, except to the extent that it deemed those appropriate and in conformity with its own perceptions. Neither did it specify that international law was the reference for rights and freedoms in the constitution, instead adopting an Islamic reference and digging deep into the folds of Tunisian specificity. It thus becomes clear that democracy cannot be a unified and ready-made template exported to all peoples as is without changes. Rather, states register their right to participate in the acquisition of contemporary civilization without falling into blind dependence or submitting to cast themselves into ready-made molds.



Hassan Abdelrahim Al-Sayed

Professor of Public Law at the College of Law, Qatar University, with research interests including constitutional law, political systems, constitutional court, nationality law, and administrative contracts. He obtained his PhD in law from the University of East Anglia, Norwich, in the United Kingdom in 2003 and a professorship degree in 2018. His most recent books are *The Introduction to the Study of Qatari Constitutional Law* (third edition, 2020) and *Constitutional Pauses* (Second Edition, 2018), and most recent research "Factors Affecting the Effectiveness of Qatari Shura Councils." He is a part-time judge at the Qatar International Court at the Qatar Financial Center, a member of the Qatar Bar Association, a member of the Council of Qatar University, and he was Dean of the College of Law at Qatar University from its inception until 2010.

Democratic and Autocratic Constitutions: Constitutions of the Gulf Cooperation Council Countries

This paper examines the constitutions of the six countries of the Gulf Cooperation Council to reveal their proximity to or distance from the characteristics of a democratic constitution, noting in particular: the extent of the people's participation in drafting and approving the constitution of their country and in amending it; the extent to which the constitution guarantees the rights and freedoms of individuals and its determination of guarantees of enabling their exercise; the extent of people's participation in the public affairs of their country and the selection of members of public authorities; and the extent of the balance between the latter and the existing mechanisms for monitoring and accountability.

This paper is divided into three sections: The first deals with the method of preparing the constitution and the procedures for amending its articles; the second explores the characteristics of the democratic constitution related to public rights and freedoms; and the third explores the depths of public authority to highlight the characteristics of the democratic constitution.



Kamal Djealab

Professor of constitutional law and institutions at the University of Djelfa in Algeria, and a researcher with interests concentrating in constitutional law and the rule of law, constitutional justice, and individual rights and freedoms. He obtained his PhD in public law from the University of Blida, Algeria in 2012, , and he is the author of published research and studies including The Authority of the Algerian Constitutional Council in the Interpretation of the Constitution, The Constitutional Complaint before the German Federal Constitutional Court, and The Principle of Separation of Powers in the Jurisprudence of the Algerian Constitutional Council.

The Democratic State of Law: Problematic Concept and Requirements of the Constitution-Formation

The paper investigates the problematic concept of a democratic state of law combining the constitutional principle of a state of law with democracy as a political value, through searching for commonality sufficient to form a constitutional tool serving democratic transition. This involves analysis of the idea of constitutional rights as a common factor beyond the formal concept of the rule of law, placing the focus on rights and freedoms as core values that must be reflected therein and building a modern constitutional democracy that allows the crises of traditional representative democracy to be overcome.

Public rights and freedoms constitute the link between the rule of law and democracy. Therefore, a basic requirement for the constitution of a democratic state of law is their upholding a package of "constitutional rights" of supreme value in the constitution. The constitutional judiciary plays an important role in achieving the democratic state of law as a constitutional principle by reconciling the conflicting constitutional values – whether related to rights that have constitutional value or to legislative objectives of the majority – to setting them in a democratic system. Reconciling the power of the majority derived from the democratic principle with the exercise of individual rights and freedoms is one of the main challenges facing any democratic transition process. The state, embodying the formal dimension of legal rule as the product of a legislative process monopolized by the majority, is at the same time linked to the highest constitutional values and principles, especially those related to constitutional rights.



Marwa Fekry

Professor of political science at the Faculty of Economics and Political Science, Cairo University, and a former fellow at the Forum for Transnational Studies in Berlin, Germany. Her research focuses on international relations, contemporary politics and democratization in the Arab world. She obtained her PhD, from Northeastern University, USA, in 2010, writing her dissertation on "Public Diplomacy in the Age of Regional Media," and she has , presented many papers on the roles of Arab and international media in the context of the Arab Spring, and on the obstacles to democratization in Arab countries, and in 2016 she published her book *The Arab Intellectual and the Tiananmen Square Syndrome*.

Constitution Design and Confidence Building: A Study of Democratic Transition Experiences from a Comparative Perspective

The paper examines the role of the constitution-design process in pushing parties to democratic transition via cooperation rather than conflict considering the great uncertainty that characterizes the democratic transition process regarding the future. The study focuses on four successful cases in achieving democratic transition (Poland, Chile, South Africa and Indonesia) to determine common factors contributing to success. The paper also examines the constitutional arrangements according to which these transitions were managed, based on the concept of designing constitutions, a concept broader than mere texts.

Through its comparative approach, the paper concludes that designing the constitution is a political and social process rather than a legal one, one which requires bargaining and negotiations to bring about balance, consensus, and compatibility between existing political and social actors and formations. The four experiences were characterized by the adoption of counter-majoritarian arrangements that limit the absolute power of the majority to dispel many fears and build trust between political parties in the climate of uncertainty and skepticism regarding the future typically prevailing during periods of transition. Hence, the importance of using the transitional period to consolidate confidence between political opponents and enhance the spirit of cooperation among them.



Mohamed Ahmed Bennis

Research professor at the Regional Center for Education and Training Professions in Tangiers, with research interests ranging from democratization issues to political elites and transitional justice. He obtained his doctorate in political science from the University of Mohammed V in Rabat in 2004, and a university qualification from the University of Abdelmalek Saadi in Tetouan in 2019. His many published papers include: "Human Rights: The Cosmic Controversy and Privacy in the Performance of the Moroccan State in the Field of Rights and Freedoms," and "Liberalization without Democracy: The Role of External Factors in the Stability of Moroccan Authoritarianism."

The Constitutionality of Democratic Transition in Spain

Many factors contributed to the success of the democratization experiment in Spain, the most important of which was the elites' agreement upon a new constitution that absorbed ideological and political contradictions and reformulated them within a new system. The constitution played a major role in the culmination of this transformation with the social, economic and political consensus that Spain experienced between 1976 and 1978. The paper examines the constitutionality of the democratic transition in Spain and the ways it contributed to managing the contradictions of constitutional transformation in the light of the Franco regime's negligible acceptability – thereby bypassing overcoming the foundational problem confronting the actors and effectively framing the compromises on which this transformation was based, and so rebuilding the Spanish state according to balances that go beyond the political and psychological legacy of the civil war. This all proceeding from the central question: To what extent did the constitutional issue contribute to framing the consensus reached by the elites of the former regime and the opposition and accompanying them to success in transforming it into a constitutional and political contract whose banner became "democratic legitimacy"?

The role of the elites in understanding the necessity of not dismantling the previous regime all at once to avoid sharp polarization created in effect a quiet democratization. A break was made with the principles and values on which the legitimacy of the previous regime was based, with due regard for the consensual nature of this rupture. The elite of the Franco regime agreed to engage in the elaboration of a democratic constitutional document, matured by parallel consensuses. The most prominent and indicative of these was the consensus on the emergence of the constitutional authority from within this system. This transformation would not have succeeded without consensus on the 1978 constitution, which ended decades of societal division and opened the way for mutual recognition between various social and political forces.



Mohamed Al-Mesaoui

Professor of Higher Education Associate at Ibn Zahr University, Morocco, with research interests including constitutional law, political thought, and human rights. He obtained his PhD in political science from Qadi Ayyad University, Marrakesh in 2010, and a university teaching qualifying degree from Ibn Zahr University in 2015. His most recent publication is *Constitutional Law and Political Systems* was published in 2017. He is a member of several research centers and laboratories, including the Research Laboratory for Law and Society at the Faculty of Legal, Economic and Social Sciences, Ibn Zahr University, and the Moroccan Center for Studies and Policy Analysis in Agadir, Morocco.

The Moroccan Constitution of 2011, and the Problem of Restricting the King's Executive Powers

The Western political sphere in the modern era has witnessed a debate about the possibility of restricting the powers of the king, the sovereign and the source of the constitution. In order for the constitutional function to be fulfilled, the king's powers became symbolic, as political power was transferred to political institutions, and with it the idea of restricting the sphere of government without impinging on the domain of the king, leading to the emergence of the concept of parliamentary monarchy. In the Moroccan political system, the function of the constitution was the subject of a political struggle at all levels, with debate on the powers of the king: between the monarchy as a central actor seeking to render the king's space beyond constitutionality, and the opposition that wagered on transforming the king's powers into symbolic powers so that the idea of constitutionalism could be realized.

Morocco's political crisis of 2011 represented a new cycle of this debate, with a renewed proposal for the idea of parliamentary monarchy, but with a multiplicity of meanings. The February 20 Movement and the forces supporting it pressed for consolidation of the Western concept of parliamentary monarchy, while the royal establishment and the elites supporting it sought to crystallize a special concept of parliamentary constitutional monarchy, in which the king retains executive power. With the easing of the social pressure exerted by the February 20 the monarchy was able, in interpretation and practice, to sanctify its concept of parliamentary monarchy in implementation of the constitution so that the king preserved his executive authority: instead of the constitution restricting the king's powers, it became a tool for managing the crisis.



Mohamed Baske Manar

Professor of Constitutional Law and Political Science at the Faculty of Legal, Economic and Social Sciences at Qadi Ayyad University, in Marrakech. His research focuses on democracy and democratization issues, elections and the constitution, and protest movements. He obtained his PhD in public law from the University of Mohammed V in Casablanca in 2009, and he is the author of several books, including *The Political Landscape in Morocco: Studies in Contexts and Conditions after the 2011 Constitution* (2018). He is a founding member and principal researcher of the Moroccan Center for Research and Policy Analysis, and of the Legal Research and Policy Analysis Lab at Qadi Ayyad University.

Institutional and Legal Activation of the 2011 Constitution in Morocco

This paper aims to examine the extent of the constitution's effectiveness, by tracking the path of creating institutions and promulgating organizational laws that were stipulated in the 2011 constitution. Among the questions raised in the paper: Has activation of the constitution consecrated a rupture with the authoritarian nature of the pre-2011 constitution? Or did it consecrate a political system perpetuating its previous characteristics? Did the activation of the constitution move towards democracy, or at least toward an openness that would achieve the monarchy's "second great transition"? What are the elements of break with the past, what is the dividing line, given the reversion that ensued from the advanced propositions of the constitution's text, the delay in its implementation, and the imposition of a conservative approach to interpretation?

The wager on democratic activation clearly failed, considering that the constitutional system still preserves its non-democratic essence. Institutional activation has known discrepancies that confirm the absence of an institutional balance between a supreme and ruling monarchy and subordinate institutions constrained by an "unwritten constitution." Constitutional principles and rights continued to decline, with no demonstration that the constitution's democratically significant contents had been achieved. This is due to overly lax drafting and employing conservative methods of constitutional interpretation, seeking to preserve the essential features of the pre-2011 constitution and political regime. This has produced a "binary constitutional obstacle"; a constitutional text, based on preserving the power hierarchy with the same basic characteristics as the previous ones, albeit with some advanced contents; and an unwritten "makhzani constitution" – an obstacle opposing any democratic contents incorporated to meet a need for circumstantial and superficial adaptation to the context of protest.



Mohamed Blilid

Researcher with interests in social movements, issues of identity and cultural diversity. He obtained his PhD in public law and political science from Mohammed V University in 2020. His published research papers include "The Amazigh Movement in Morocco between Cultural and Political," "The Concept of Tolerance for the Amazigh Movement in Morocco," and "Linguistic and Cultural Rights, and the Question of the State of Democracy in Morocco".

Islamic and Amazigh Currents, and their Role in Reviewing the 2011 Moroccan Constitution

This paper focuses on the role of both Amazigh and Islamic streams of discourse in drafting the Moroccan constitutional document for the year 2011, through an approach related to how the constitutional legislator deals with the problematic demands of these two movements with two different and even contradictory societal projects, seeking the means of reconciling these contradictions within the constitutional document. In addition to differences related to language and culture, the Amazigh currents call for a civil state where the religious sphere is neutralized and separated from the sphere of politics, while the Islamic currents do not. The paper starts from two hypotheses, the first linking the participation of these currents in the constitutional review process with the deepening of democratic behavior, while the second concluding that when democratic culture is absent among the actors, such participation turns into a negative factor. In light of the pressures exerted by the two movements, the moment of constitutional review represented an opportunity to press forward with demands for the constitutional document and for the legislator to recognize their demands.

These conflicts were manifest in the constitutional document, and the constitutional legislator dealt with matters pragmatically, without resorting to decisive or final choices and orientations, yielding a constitutional document that is subject to multiple interpretations: providing for a religious state with "Islam as the religion of the state," but in return stipulating a set of principles pertaining to the civil state such as the freedom to practice religious rites and equality between the sexes. With regard to the constitutionalisation of languages and cultures, it established the constitutionality of the Arabic and Amazigh languages, seeking to break the cultural binary: Islamic-Arabic and Amazigh, by inserting other cultural streams of influence such as the Hassaniyan, Andalusian, Mediterranean and African. In the end, the document did not establish the democratic transition: it turned into a document for crisis management.



Mohamed Chafik Sarsar

Lawyer and academic, President of the Independent High Authority for Elections between January 9, 2014 and May 9, 2017, lecturer at the Faculty of Law and Political Science in Tunisia and founding member of the Arab Organization for Constitutional Law. He obtained his state doctorate degree in public law in 2008, and a Distance Learning certificate from Switzerland in 2007. He headed the Department of Political Science at the University of Tunis Al-Manar and was a member of the Committee of Experts of the High Commission for Achieving the Goals of the Revolution, Political Reform and Democratic Transition.

Compatibility in the Drafting of the Tunisian Constitution: Necessity and Limits

The paper deals with renewal in the method of constitution-making based on consensual guarantees and through the Constituent Assembly by means of the Supreme Commission for Reform and democratic transition, to achieve the revolution's goals. It examines the participatory approach aimed at involving civil society and experts in the work of the founding committee, as well as the role of consensus in overcoming the crises that beset constitutional establishment process and the role of the national dialogue led by civil society forces to secure the democratic transition process and achieve a reformed constitution. The paper highlights the constitutional consensus that established the democratic transition, and how it sought to consecrate rights and freedoms, as well as some of its flaws, especially regarding the organization of institutions and their interrelationships.

It further deals with the issue of identity and reference, as a model for controversial issues during the constitution-making phase, and how the differences emerged between the founders regarding the philosophical and religious authority of the state and the relationship of legislation to Sharia (and its downstream issues of inheritance, women's rights and equality). The paper concludes that the Tunisian constitutional path was distinguished by its context, mechanisms and content, but six years after the constitution was drafted, opinions are still contradictory in the assessment of this path, and reaching the point of the voicing of new calls for constitutional reform, but without any precise diagnosis of the defects of the constitution, their causes or the best methods of reforming it.



Mohammed Naimi

Professor of sociology of organizations at the Institute for Social Development in Rabat, the Center for Studies and Research in Social Sciences, and a member of the Latin American Observatory's work team. He obtained his PhD in political science from Mohammed V University in Morocco in 2019, and his research interests center around social movements in their internal and external dynamics in Morocco and the role of social movements in the democratic transition in the Arab world and Latin America as well as anti-racist movements in the United States of America. His research work includes a study of "The Limitations of the Rational Choice Theory in the Sociology of Social Movements: The Two Cases of the February 20 Movement and the Rif Movement in Morocco".

Constitutional Amendment as a Path to Democratic Transition in Chile

The paper deals with the status of the constitutional issue in the democratic transition that the Chilean state witnessed in the late 1980s. How the constitutional issue is dealt with during the democratic transition process has shown clear differences from one country to another. This treatment in some of these countries takes the form of developing new constitutions. While in others it suffices to amend existing constitutions, as in the case of Chile, the subject of this research. The paper aims to show that the success achieved by the experience of democratic transition in Chile, however, is not without its limitations that are mainly related to the constitutional issue, especially through the continuation of what is known as authoritarian pockets in the constitution that were inherited from military rule, but equally derive from neoliberal practice since the establishment of the dictatorship.

The paper concluded with several conclusions, including that social movements played an important role in the continuous peaceful protest actions against the military regime. However, protest needs, at a specific moment in its development, to search for ways to intersect and meet up with political action. Another conclusion reached by the research relates to the dependence of the success of the transitional process on the ability of democratic forces to transcend their political and ideological differences and forge alliances between them in order to be able to lead the transitional path. Among the main findings of the study, as well, is that the constitutional issue occupies a privileged position in any democratic transition experiment. In this regard, the paper shows that in the political and social struggle of any society it is indispensable for the elites leading the transitional process to outline the foundations and rules of the rule of law in a constitutional document that acts as the supreme law giving expression to a specific social contract between rulers and the ruled.



Mouslem Babaarabi

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Constitutional Management of Political Transition in the Algerian Case: Do Existing Constitutional Paths Meet the Demands of the Popular Movement?

The paper deals with constitutional arrangements for the transitional phase, and what the political debates in the transitional context raise about the contents of the constitutional document inherited from the previous phase, and its position on the desired political change. The paper approaches the topic through the Algerian case and the movement it has been witnessing since February 2019. Revolutionary logic required the override of existing constitutional frameworks which could be a means of legitimizing, formally, the collapsed political system, but a desire to ensure the legitimacy of the transition and prevent the development of an institutional vacuum pushed in another direction. The paper therefore tries to apply the basic tenets of "Transitional Constitutionalism" to the reality of the existing experience in Algeria, to see the extent to which peaceful political change can be achieved through constitutional mechanisms or arrangements derived from inherited texts.

The paper concluded that the Algerian experience, in comparison to similar Arab cases, was characterized by the military establishment's imposition of a political plan to manage the transitional phase, based on constitutional measures drawn from the existing texts in force, but which did not appear convincing to those who saw in these arrangements a restriction of the course of change in favor of the reproduction of the regime and at the expense of a possibility for achieving peaceful political change. What constitutes a kind of precedent in the Algerian case is the limitation of the concept of a constitutional solution to the literal requirements the constitutional text, without partial constitutional amendments or a fundamental review of the inherited structure, and without employing the tools provided by transitional constitutional measures to overcome an impasse of brought about by inadequate comprehension of the challenges of the political moment. The paper showed that conservative forces were able, through selective employment of constitutional requirements, to control the course of managing the transitional phase.



Nidhal Al-Mekki

Coordinator of the Interdisciplinary Center for Research on Africa and the Middle East at Laval University in Canada. His research interests focus on the interrelations of international law, Arab national legal systems, and democratic transition in Arab countries. He published articles in international peer-reviewed journals and group publications. He obtained his master's degree in public law (2004) from the Faculty of Legal, Political and Social Sciences, Tunis, in 2004.

The Impact of International Human Rights Law on the New Arab Constitutions

This paper asks if international human rights law has had an impact on the new Arab constitutions, and if its influence can contribute to successful democratic transition and growth of democratic regimes in Arab countries adopting new constitutions. Recent developments in international law tend towards crystallizing a legal rule view suggesting a need for democratic preparation of new constitutions through constituent assemblies elected by general and direct elections or by referendum. Naturally, building the state and the legal system on a democratic basis sets in place the first basic building block on the path to consolidating a democratic state, making the issue of how to prepare the constitution of utmost importance. For the content of the constitutional text itself, the impact of international human rights law is clear and evident: as a reference in constitutions (albeit to different degrees among the constitutions that were examined); in a legal dictionary rooted in international law; in the techniques of protecting recognized rights; or in constitutional institutions supporting democracy.

The paper concludes by highlighting the discrepancy between the three constitutions that were studied at the foundational level, confirming the causal link between a democratic foundational path and consolidation of a more open and democratic system (the Tunisian and Moroccan cases) and vice versa (the Egyptian case). The variability of resurgence of suspicion and reservation regarding international human rights law heralds a possibility of greater openness to democracy and respect for human rights of some political systems, such as those of Tunisia and Morocco.



Omar Al-Boubakri

Associate professor of Public Law, at the Faculty of Law and Political Science, University of Sousse, Tunisia, with research interests in constitutional law and political systems. He obtained his university degree in public law in 2010, and has published several research papers including "Constitutional reforms in the Middle East and North Africa after the Arab Spring" (in English), and "Integration policies in transitional elections in Tunisia" in Development of Electoral Practices, in English by (IDEA, 2104). He is a member of the Tunisian Association for Constitutional Law and the Association for Studies on Democratic Transition.

The Choice of the Political System in the Tunisian Foundational Track and its Implications

The Tunisian constitutional path faced many difficulties related to building consensus around foundational-constitutional options, within a parliamentary council divided by different political, intellectual and ideological orientations. The selection of the political system was one of the most difficult tasks of the National Constituent Assembly (2011-2014-), given the nature of the associated stakes and the great challenges. Despite different goals and strategies its actors reached agreement with the adoption of a semi-presidential system that met the aspirations of the parties, to varying degrees. This was a positive indication of the ability of the actors to reach compromises acceptable to all. However, the semi-presidential system brought about by the 2014 constitution came quickly became subject to criticism due to the tension that it produced within the executive branch.

Building a democratic system guaranteeing the balance of powers and preventing the return of tyranny as a goal of democratic transformation remained a divisive subject, and the semi-presidential system appeared to be a compromise between the different aspirations of the political forces and a reasonable answer to all concerns. However, with the implementation of the new constitution the consensus that occurred during the founding process soon became more fragile, and many difficulties that were encountered in the political system emerged. Nevertheless, this system introduced a significant change to the system of governance along with a new, unprecedented governing dynamic based on the actual distribution of powers and their lack of concentration in a particular party at the expense of other institutions, along with the activation of real control mechanisms among the authorities, and especially the legislative authority's regulatory oversight of the government.



Omar Ihrchane

Professor of public law and political science at the Qadi Ayyad University, Marrakesh, and president of the Moroccan Center for Research and Policy Analysis. He has published studies including "The Basics in the Study Legal Terminology" and "Rights and Freedoms Under a State of Emergency: Defects in Legislation and Relevancy". He obtained his PhD from Hassan II University - Casablanca in 2011.

Constitutional Development in Morocco: The Relationship between the Political Context and the Legal Text and its Impact on Democratic Transition

This paper considers writing the constitution as a foundational moment and peoples' democratic exercise embodying the will of coexistence and a test of their ability to manage difference and welcome a diversity as a factor of strength: it is a means to what comes after it, and there is no benefit from a cloned or imposed constitutional document whose requirements may not be respected when applied, and principles may not be observed in the legislation that is generated.

The paper examines the Moroccan constitutional and political experience, through the relationship of the constitutional text to the political context it produces and its impact on the country's democratization. It is a rich experience because of its long duration, variety of paths, instability of its curve, and abundance of its outputs. The movement of the actors and the impact of the balance of power on the constitutional document, in form and content, and the impact of this document on political life, whether in the elections, the institutions that produced it, or the societal confidence it enjoys, are monitored to see whether or not it meets the requirements of transition towards democracy. We also aimed to clarify the paradox that characterized the Moroccan experience, which is very similar to the Tunisian experience at the time of Ben Ali, represented by the disproportionate level of modernization of the state compared to the level of democratization. We also concluded that the transition towards democracy may take place through the gate of the constitution or otherwise, but that it is possible, on the other hand, for the constitution to constitute an entry point for empowering authoritarianism – if it does not contain real guarantees or its contents are obscured by too many gray areas open to contradictory interpretation according to the desires of the one who possesses power.



Rashad Tawam

Researcher and founding member of the Arab Organization for Constitutional Law. He has worked as an Advisor to the Minister of Justice, Legal Advisor to the Palestinian Judicial Institute, and Coordinator for the Deanship of Scientific Research at Al-Istiqlal University for Security Sciences. He obtained his doctorate in public law from the University of Tunis Al-Manar in 2018, and he has published research papers including "New theoretical approaches to a semi-presidential system in light of Arab receptivity, " as well the book National Liberation Diplomacy: The Palestinian Experience (2013); another book, The State in the Soldier: The Army and Changing the Constitutional System in Egypt, is to be published soon.

One Step Back: Implications of Constitutional Engineering for the Transition to the Founding Institutionalization Process in Egypt and Tunisia

Between two major sequential constitutions, (one established but dropping from sight in a revolutionary moment, one enacted later by the "founding authority") the state enters into a transitional stage ruling according to "minor constitutions," established via a transitional founding authority as temporary bridges for regulating the transition and the relationship between authorities, until a new "grand" constitution can emerge. Since the transitional founding authority assumes authority outside of constitutional legitimacy and given that accident and objectivity are inherent features of minor constitutions, these last must not be overlooked, for a question arises concerning the impact of founding authority in the formation of the constituent authority: what is the legacy of such "minor constitutions" in the "grand constitution"?

Exploring Egyptian and Tunisian experiences, the paper seeks an understanding of the repercussions of constitutional engineering of the transition on the state founding process and the constitutional system produced and observable today in the two countries. This paper deals with this topic on the basis that a transitional "founding authority" was realized in the overall Egyptian experience, and in the first phase of transition in the Tunisian experience: either in an individual (the interim president in both cases) or in the military (the case of Egypt). The impact of the Egyptian transitional founder is seen to be one of interference with the formation, timing and protection of a founding institutionalization authority, thereby contributing to the complexity of the transition; in Tunisia such interference was purely formal and was reflected in the relative smoothness of the transition as a whole. The legacy of each is seen as generally slight: in Tunisia, the party that drafted the minor constitution is the same party that drafted the new constitution (the National Constituent Assembly), and this did not happen in the Egyptian case. In either case the utilization of these minor constitutions violates the recommendations of the literature of democratic transition.



Simon Badran

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Grafting a Balloting Mechanism onto Bicameral Parliaments: Towards Radical Treatment of Representative Democracy's Flaws in Lebanon

The successive setbacks witnessed by "Western liberal democracies" have prompted a number of researchers to propose that representative systems be grafted a lottery balloting mechanism to preserve a representative democratic model without the trappings of "direct democracy," and not recognizing the electoral vote as the sole mechanism for legitimising allocations of a state's political and legislative posts. The Lebanese political system, based on electoral voting, is no exception among the world's representative systems, since confessional-sectarian factors and the pursuant quota system continues erosion of the sovereign body, blocking any restoration of order and regularity to the work of constitutional institutions. Owners of capitalist special interests have succeeded in dominating the political arena and controlling Lebanon's periodical elections, thereby distancing demands of the poor communities.

In contrast to the prevailing approach that relies on reforming the sectarian system, the paper spotlights use of a lottery mechanism to strengthen the national constitutional system as an entry point for reform, through a random selection of senate members. Such a system that has not yet seen the light despite direct and explicit constitutional stipulation since 1990 on the need to establish the Senate. What justifications prompted researchers to re-introduce, from the of democratic systems literature, the idea of grafting contemporary constitutional systems with a lottery? What special advantages might there be in this? What challenges do architects of this unique and radical legislative model face, within the traditional concept of parliamentary bicameralism? Does a random assignation of political posts by lot create obligations, and drive a state's citizens to abide by them? Can the Lebanese political system become a representative "model" – for other societies suffering vertical divisions – of assignation of legislative positions by lot?

Experts

Abstracts



Amar Boudiaf

Professor of Public Law at the Faculty of Law and Political Science at the University of Tebessa, Algeria. He formerly Served as its dean and headed the scientific council of the faculty for five terms. He is also the head of the training team in the doctoral program of the law division, specializing in public law - constitutional and administrative institutions and has served as head of the University Ethics Council. He has authored numerous books and scholarly research papers in the field of law.

Demands of the Algerian Popular Movement 2019 and the Preliminary Draft Amendment to the Constitution

During the great peaceful popular movement that began in February 2019, the forces of change raised many slogans, chief among them at the time was the rejection of a fifth term for Abdelaziz Bouteflika, President of the Republic. The movement demanded defining presidential term limits; limiting the hegemony of the executive authority; approving the independence of Parliament and the independence of the judiciary, while providing more guarantees; the independence of other monitoring bodies of all kinds; the establishment of an independent body to organize elections; the morality of public life; and the reduction of favoritism, bribery, abuse of influence; and finally the consecration of many other rights and freedoms. This intervention monitors the link between the various demands of the popular movement and what was mentioned in the draft amendment to the constitution for the year 2020, which was prepared by a team of experts commissioned by the President of the Republic. In this project, a number of questions arise, related to the extent to which the constitutional amendment meets the demands of the popular movement.

The intervention deals with the latest provisions regarding these questions links them to the demands of the movement project to uncover some of the gaps observed in this document; it addresses the issues of the popular movement's position in the preamble of the constitutional project, guarantees of the independence of the judiciary, guarantees of the independence of Parliament, guarantees of the independence of oversight agencies, consecration of more rights and freedoms, and the establishment of an independent body to organize elections, as well as the issue of ethics of public life and combating corruption. It proposes recommendations on the content of the document and links it to the demands of the popular movement to enhance the people's power for change and democratic transformation.



Gabriel Negretto

Professor of Political Science at the Institute of Political Science of the Catholic University of Santiago de Chile. His research focuses on comparative constitutional politics, electoral and constitutional change, institutional design, and comparative political institutions, with an emphasis on Latin American cases. He has published numerous academic articles and book chapters on these topics in the United States, Europe, and Latin America. His most recent books are *Redrafting Constitutions in Democratic Orders: Theoretical and Comparative Perspectives* (Cambridge University Press, forthcoming 2020), *Constitution Building Processes in Latin America* (IDEA, 2018), and *Making Constitutions: Presidents, Parties, and Institutional Choice in Latin America* (Cambridge University Press, 2013). Professor Negretto has been consultant to the UN, IDEA International, UNDP, and various national public institutions on institutional design and constitutional and electoral reforms. He has also held visiting appointments at several universities, including the University of Notre Dame, Columbia University, Princeton University, The New School for Social Research, Universidade de Sao Paulo, Universidad Carlos III, and Universidad Torcuato Di Tella.

Lessons learned from institutional design in Latin America

The cycle of democratization that began in Latin America towards the end of the 1970s triggered a series of constitutional changes aimed at dismantling institutions inherited from the dictatorial past. However, both in their origins, content, and implementation, these processes of constitutional adaptation have not always contributed to the deepening of democracy. At the beginning of the transition to democracy, several authoritarian regimes had enough negotiating power to leave constitutions with rules that excessively limited the power of electoral and institutional majorities. At the same time, various constitutional changes made under democracy ended up strengthening the power of presidents, limiting legislative or judicial controls, or restricting the accountability of representatives.

In this talk, I will analyze the different factors that have made constitutional changes in Latin America contribute to the progress or, on the contrary, to the erosion of democracy in the region from 1978 to the present. The main argument will be that the changes with the greatest potential to deepen democracy were those adopted through inclusive negotiation and deliberation among a plurality of elected political forces, where popular participation worked as a complement rather than as a substitute of representative pluralism, and where citizen rights were expanded at the same time as legislative and judicial limits on executive power were strengthened. Because the effectiveness of constitutions depends on factors that transcend their origin and content, I do not intend to provide a complete explanation of the stability and quality of new Latin American democracies over time. However, since constitutions provide a normative standard to evaluate the legitimacy of government actions, I intend to draw from the Latin American experience lessons about the conditions that make constitutional foundations more or less favorable to democracy over time.



Katia Papagianni

Director for Policy and Mediation Support at the Center for Humanitarian Dialogue (HD). Her work focuses on the design of peace processes and, more specifically, on national dialogues and constitution-making processes. As part of her work at HD, she has supported various peace processes, including in Liberia, Libya, Syria, Myanmar, Ukraine and the Philippines. Katia was also seconded to the United Nations to support national dialogue efforts in Yemen where she shared comparative insights on the design of national dialogue processes. Before joining HD, Katia worked for the National Democratic Institute, as well as for the Organization for Security and Co-operation in Europe, the United Nations Office of the High Commissioner on Human Rights, and for the United Nations Development Programme. She has been based in Russia, Bosnia and Herzegovina and Iraq. Katia holds a Bachelor's degree from Brown University, a Master's degree in Public Administration from Princeton University, and a Doctorate in Political Science from Columbia University. She has taught on the subjects of peacebuilding and state-building at both Geneva's Graduate Institute for International and Development Studies' and at Columbia University.

Lessons Learned from Peace Processes and Constitutional-making Design in Fragile and Conflict-affected Countries

In conflict-affected and fragile states, constitution-making is often taking place in parallel or as part of a peace process. This makes the constitution-making process different from countries which may be transitioning from one political dispensation to another, but are not experiencing violent conflict. Some of the differentiating factors are the following: (1) Often the basics of civil order are not in place and violent conflict continues while negotiations on the constitution are taking place. This has implications for the feasibility of wide consultation and public participation. When basics of public security are not in place, genuine public participation may be possible but is usually inhibited. As a result, often, the constitutional drafts reflect the considerations of armed actors but not society as a whole. (2) Partly as a result of the above, constitutions negotiated while conflict is ongoing have difficulty being implemented. This tends to apply especially in cases where provisions on resource sharing are concerned. In the 1990s and partly in the 2000s, the mediation field was able to support conflict parties to reach "grand bargains", comprehensive agreements, that contained detailed provisions on the sharing of power and resources, constitutional arrangements, development and humanitarian issues, as well as the deployment of peacekeeping operations. Contemporary peace-making efforts however are confronted with conflicts that last longer, are internationalized, and have significant humanitarian consequences. In these situations, the dilemma facing peace-makers is how to put in place some foundations of good governance when the conditions for reaching agreement on a constitution are not yet present. Such partial agreements may move the peace-making process forward while ideally also contributing to the longer term considerations of building state-wide institutions. The question of how to do this well and under what conditions is a major challenge for contemporary peace-making.



Markus Böckenförde

Associate professor of Comparative Constitutional Law at CEU's Department of Legal Studies. Before joining CEU, he was the Founding Executive Director of the Centre for Global Cooperation Research at the University Duisburg-Essen (2012-2018). As head of the advisory team to the Policy Planning Staff at the German Ministry for Economic Cooperation and Development (Bonn-Berlin) he gained some first-hand practical experience in political decision-making processes (2011-2012). From 2009-2011, he was Program Officer and temporarily Acting Program Manager for the Constitution Building Project at International IDEA, Stockholm, Sweden. He was seconded by the German Foreign Office to the Assessment and Evaluation Commission (AEC) in Sudan as its legal expert. Böckenförde holds a law degree and a PhD (summa cum laude) from the University of Heidelberg and a Master of Laws degree (summa cum laude) from the University of Minnesota as well as the equivalent of a Bachelor degree in political science (University of Freiburg). During the Constitution Building processes of Sudan, Somalia, Tunisia, and Libya, he has worked together with the pertinent constitutional assemblies and has been otherwise involved in the processes in Afghanistan, Nepal, Yemen, and Myanmar. He is the co-author of International IDEA's Practical Guide to Constitution Building and several Max Planck Manuals on Constitution Building. He has worked as a consultant on constitutional issues for the UN, UNDP, GTZ, DAAD, International IDEA, the German Foreign Office, the Friedrich Ebert Foundation, and the Konrad Adenauer Foundation.

The Rule of (Amendment) Law: Presidential Term Limits in North Africa

Until the Arab Spring, most countries in North Africa suffered from imperial presidents. While drafting their new constitutions people were keen not only to deconcentrate executive powers in general, but also to limit the absolute time a president can serve in office.

This paper looks at the design options chosen by North African countries to contain the power of the president through constitutional term limits and assesses the extent to which they have worked so far. It compares the recent North African experiences with those from Sub Saharian Africa and offer some findings that hopefully help to strengthen the survival of term limit provisions.



Mohamed Abdelkader Al-Tumi

Lawyer and member of the constituent body to draft the constitution in Libya, with experience in the field of oil and gas, civil and general business contracts, international business transactions, and commercial law, representing national and international companies and bodies in legal matters. For five years Senior Legal Adviser at the Agip Oil Company, he is currently a Lecturer in Law and member of the American Society of International Law, the Arab Society for Intellectual Property, the Arab Lawyers Union, the Arab Institute for Arbitration, the European Bar Association, and the Center for Settlements, Arbitration and Experiences in Paris. He graduated from the Cairo University Faculty of Law, and received his PhD in Law from the University of Illinois in Chicago.

The Constitutional Experience in Libya after 2011

The constituent body for drafting the constitution was formed through the free, secret, direct election of 60 elected members from the three regions (Tripoli - Cyrenaica - Fezzan) with representation of all the components of Libyan society with cultural and linguistic specificities (the Amazigh, Tebu, and Tuareg). The difficult conditions set by the Constitutional Declaration for approval of the draft constitution represented an obstacle for the Constituent Body's completion of the project within the specified period, as did also differences in viewpoints between the various currents and the complex security and political conditions prevailing in Libya throughout the work of the founding body (2014 – 2017).

The most prominent contents of the draft constitution include all of the following: the unity of the Libyan soil; the establishment of the Libyan identity on comprehensive and varied constants; the civil state and its foundation on political pluralism; peaceful transfer of power and separation of powers; recognition that Islam is the religion of the state and Islamic law is the source of legislation; a dual or bicameral legislative authority; popular election of the President of the Republic; independence of the judiciary; decentralization; provision for independent constitutional bodies; subordination of the army to civilian authority and the prohibition of its interference in political life; stipulation of the right to vote without running for office for military and police personnel; commitment to implementation of a system of transitional justice; and, last but not least, the reservation of seats for women in any electoral system for a period of two elections. The paper presented here concludes its review of the constitutional experience in Libya by addressing the issue of the referendum on the constitution and the accompanying circumstances — noting that the Libyan draft constitution has not yet seen the light of day as a result of political divisions as well as regional and international interference in the Libyan affairs.



Mohamed Aterguine

Professor of higher education at Mohammed V University in Rabat and a former member of both the Constitutional Council and the Constitutional Court of the Kingdom of Morocco. He received his doctorate in political science for a thesis entitled "Democratic Transition and the Constitution: A Reading in the Presumption of Constitutional Law Foundation for Democratic Transition". A researcher on the constitutions of democratic transition specializing in the constitutional judiciary, he has authored many books, including "The Constitution and Constitutionalism: From Constitutions of the Separation of Power to the Constitutions of the Bill of Rights" (2007), as well as "Investigations on the Jurisprudence of the Moroccan Constitutions" (2020).

The Constitutional judiciary in Morocco

The open drafting of the Moroccan constitution has expanded the fields of action of the constitutional judge in the interpretation and interpretation of the constitutional document, especially through the dilemmas in which the constitutional text appears to present contradictory principles or lacks in harmony. The Moroccan constitution provides for non-discrimination on the basis of sex, for prohibiting and combating all forms of discrimination (preamble to the constitution), equality between men and women, as well as the goal of parity between men and women (Article 19). Its provisions also include a call to the legislator to encourage equal access for men and women to electoral functions (Chapter 30). How can "unity" be achieved between these constitutional principles? Is the establishment of a mechanism for positive discrimination in the representation of women in the House of Representatives (the first chamber of Parliament) inconsistent with the prohibition of discrimination and with the constitutional principle of equality? What is the judicial reading provided by the Moroccan constitutional judge on the matter?

These are the questions that were asked of the Moroccan constitutional judge, in considering organizational laws that complement the foundational constitutional writing, which required an answer in a pressurized context, facing contradictory demands, and in a political space demanding everyone to interpret the constitution as a "democratically"! The intervention poses a set of questions, including: what methods did the Moroccan constitutional judge work? What is his reading of the questions of positive discrimination, the goal of parity, and the "quota" mechanism? And what are the controls of the "discretionary power" of the legislator to ensure the supremacy of the constitution? What are the features of "the jurisprudence of constitutional law"?



Mohamed Hosam Hafez

Professor of Public International Law and International Humanitarian Law at the College of Law, Qatar University, and is the legal advisor to the Law, Policy and Society Center for Consultations, Studies and Training. He obtained his master's degree in international human rights law from the University of Nottingham, UK and his doctorate in international law from the University of Damascus in 2006. He worked as a diplomat between 1998 and 2012 in the Syrian missions to different capitals, including Tehran and London. He was a member of the Syrian opposition negotiations delegation for the year 2014, and a member of the High Negotiations Committee and its legal office during the years 2016-2017, after working as head of the Foreign and Diplomatic Affairs Authority of the Syrian Interim Government between 2014 and 2015.

The Constitutional Issue in Syria and its Implications

The Syrian question has never been a constitutional problem, although there are legal and constitutional manifestations associated with it. In the context of the political process and with reference to the two famous UN resolutions 2118 of 2013 and 2254 of 2015, changing the constitution becomes key only after achieving the political transition. This is to say that the new constitution will be culminating the political transition that has created the appropriate safe and enabling environment for constitution-production, and for the basic constitutional steps that will determine the end result of the transitional period.

The Syrian regime bases its legitimacy on many considerations none of which is considered a direct result of a process of political representation that is subject to the constitution and the law. Hence, in the Syrian context, the upcoming battles in the post-regime era will be of political nature, particularly those related to the constitution and its provisions. This can be deduced from the many discussions that dominated the bodies of the political organizations within the Syrian opposition, whether formal or informal. These debates include the ones held on the sidelines of the Syrian-Syrian negotiations over the past years. These discussions have touched upon many constitutional issues, some of which could be described as crucial. In addition, it was noted that such debates ranged in depth and influence on the public mode of the Syrian opposition and the Syrian public in general. In my intervention I will focus on the reference characteristics of the constitutional question in the context of the Syrian political process. I will also address the practical aspects characterized by the discussions and conclusions that accompanied the Syrian-Syrian dialogues regarding the Syrian constitution and constitutional issues. In addition, I will speak about the role of constitutional issues in the political positions of both the Syrian opposition and regime in the negotiating process especially considering the formation of the so-called Syrian Constitutional Committee.



Nabil Adib Abdullah

Head of the Sudanese Human Rights Observatory and a human rights lawyer with a proven record of legal defense of victims of violations during the era of Al-Bashir. He chaired the committee established in 2019 by the Constitutional Declaration, to investigate human rights violations during the Sudanese protests.

The Constitutional Issues in the Sudanese Case

The "Salvation Regime" in Sudan went through different phases since its inception in 1989 until its fall, after developments that changed the degree of its severity, without modifying its nature as an authoritarian regime, including several milestones such as the declaration of the Sudan Interim Constitution of 2005, which came as a result of the Comprehensive Peace Agreement signed with the Sudan People's Liberation Movement. The texts of this constitution reflected the features of a democratic constitution, while the reality of its implementation strongly denies this.

Among the features of this constitution is the role of the armed forces. The controversy erupted over the order issued by Al-Bashir to the army to confront the sit-ins. By describing this matter as endangering the country's sovereignty, with an ensuing commission of crimes against humanity and extrajudicial killing, the responsibility to protect the people was effectively transferred from the state to the international community, opening the way for external intervention. Thus, it was the duty of the armed forces to disobey this order to protect the people and topple the president himself. Hence, de facto authority was formed in the hands of the Military Council, which should remain for only a transitional period, until the reins of government can be handed over to an elected legitimate authority. Holding elections without reforming the legal system and liberating the judicial and executive authorities from the control of the former regime, meant going against the popular will. At the same time, the forces of freedom and change were authorized by the people, who in the language of the jurists "authorized their behavior". The handover of power was carried out in accordance with a constitutional document between two parties drawn by reality and defining the governance structures and powers during the transitional period to prevent their intrusion on public freedoms.



Nadeem Al-Jabiry

Professor of political science at the University of Baghdad, and member of the Iraqi Parliament in its first session. He has many publications in the field of political thought, including *The Idea of the Republic in Iraq: The Political and Intellectual Dimension in Writing the Permanent Iraqi Constitution*, and *Thoughts on the Palestinian Issue*. He is a member of the Iraqi Political Science Association and a member of the Iraqi Parliamentarians Union.

Political and Intellectual Dimensions of Writing the Permanent Iraqi Constitution

After April 2003, political circles in Iraq faced the task of drafting a new constitution based on democracy and human rights and reflecting the political changes that occurred following the occupation – not an easy matter given conditions arising from the American occupation and the chaos it employed to undermine the capabilities of the Iraqi state and its military and security institutions. Among the difficulties was a revenge mentality dominating the ruling elite at the time and their lack of a real political project, as well as the country's militant social traditions, sectarian, and theocratic orientations, and the long authoritarian legacy in Iraq.

The constitutional process in post-occupation Iraq came as a result of the initiative of the International Coalition Provisional Authority, and the Constitutional Committee drafted the principles of the Transitional State Administration Law, which represented the basis for the permanent Iraqi constitution of 2005. Accordingly, general elections were held in January 2005 to legitimize the constitutional process. The Transitional National Assembly formed a committee to write the country's permanent constitution in 2005 with quotas between the components of society. Despite the relative success of this constitution in organizing the political process during the period between 2006 - 2010, it was no longer able to organize the political process in the period between 2010-2020, due to the transformation of the conflict in Iraq from a political struggle, over power and influence, to a social struggle revolving around the possession and command of land and people. Debate continues over the issue of the constitution, towards either amending it or creating a new one.



Nathan Brown

Nathan Brown received his B.A. in political science from the University of Chicago and his M.A. and Ph.D. in politics and Near Eastern Studies from Princeton University. He teaches courses on Middle Eastern politics as well as more general courses on comparative politics and international relations. He received the Oscar and Shoshana Trachtenberg Award for Scholarship from George Washington University in 2015 and the Harry Harding teaching award from the Elliott School of International Affairs in 2014. His dissertation received the Malcolm Kerr award from the Middle East Studies Association in 1987. In 2013-2015, Dr. Brown was president of the Middle East Studies Association, the academic association for scholars studying the region. In 2013, he was named a Guggenheim Fellow; four years earlier, he was named a Carnegie Scholar by the Carnegie Corporation of New York. For the 2009–2010 academic year, he was a fellow at the Woodrow Wilson International Center for Scholars. His previous research was funded by the United States Institute of Peace and two Fulbright fellowships. In addition to his academic work, Brown serves on the board of trustees at the American University in Cairo. He is also nonresident senior fellow at the Carnegie Endowment for International Peace. He has previously served as an advisor for the committee drafting the Palestinian constitution, USAID, the United Nations Development Program, and several NGOs.

Has Constitution Writing Changed in the Arab World?

Constitutions are not a new introduction to the Arab world; indeed, constitutional texts have been in operation in much of the region for a century and a half—almost as long as some other world regions (like the Americas); as long as much of Europe; and longer than most of Asia and Africa. But until recently, most constitutions have been written by existing regimes; it is rulers who constitute the documents, not documents that constitute the state or political authority. In the twenty-first century, however, there are some new experiments in writing constitutions at a time of political flux; when the nature of the regime is much more deeply and seriously contested. Does this result in different documents or different processes? And can it lead to more viable constitutionalism? This will be a broad, historical review of constitutional documents in the Arab world over time and at the present.



Olfat Mohammed El-Dabie

Assistant Professor of Sociology at Taiz University in Yemen, and a member of the Yemeni post-February 2011 revolution National Dialogue Conference and of the Transitional Justice and National Reconciliation Team (2013). She was involved in drafting the new Yemeni constitution that was an outcome (2015) of the National Dialogue Conference and was a member of Consultative Group for the United Nations Envoy in Geneva at the Peace Consultations in Yemen (December 2018). She obtained her PhD in Sociology from the University of Jordan in 2010, and has authored many contributions to the fields of transitional justice and democracy, women's participation, and the issue of violence against women. She is author of a documentary book on the Yemeni revolution, *The March of Life: The Light Coming from Taiz with Revolutionary Eyes* (2012).

The Constitutional Issue in Yemen After the 2011 Revolution

The Gulf Initiative constituted the political and legal framework for the settlement following the "February 2011 Revolution". The planned transfer of power was accompanied by a national dialogue conference to discuss priorities for change and to establish a new constitution. The conference bore the slogan "The people write their constitution" seeking to ensure broad participation from all components of Yemeni society, with popular participation fostered and calling upon citizens (including the revolutionary youth, intellectuals, academics, and civil society) to present their visions for the constitution. Their proposals, from individuals and organizations subsequently found their way to the constitution drafting committee and triggered a popular awareness of the importance of the constitution, as a guarantee for preserving citizen rights and achieving the goals of the revolution. The "guarantees document" constituted a support for the implementation of the consensus achieved by the interlocutors, clearly defining the criteria for forming the Constitutional Committee and its working mechanism.

The drafting committee was keen on a constitutional draft that reflected the aspirations of Yemenis for change, dealt with the main problems of society, and adopted consensus as method. The committee listened to many local, Arab, and foreign experts, and this assisted the committee in its endeavor to establish constitutional federalism project compatible with the reality of Yemen. The adoption of the dialogue conference document as a frame of reference for drafting the constitution facilitated the reaching of several consensus agreements and strengthened rights and freedoms, constitutionalizing of the rights of women and youth, and establishment of safeguards and guarantees against a return of authoritarianism. The document faltered due to the differences among the parties, and war intervened to disrupt it. This draft is still awaiting the end of the war, as a basis for a new social contract in Yemen.



Tom Ginsburg

Leo Spitz Professor of International Law, Ludwig and Hilde Wolf Research Scholar, Professor of Political Science. Tom Ginsburg focuses on comparative and international law from an interdisciplinary perspective. He holds BA, JD, and PhD degrees from the University of California at Berkeley. His latest book, *How to Save a Constitutional Democracy*, was written with Aziz Z. Huq, and his earlier books include *Judicial Review in New Democracies* (2003), which won the C. Herman Pritchett Award from the American Political Science Association; *The Endurance of National Constitutions* (2009), which also won a best book prize from APSA; and *Judicial Reputation* (2015). He currently co-directs the Comparative Constitutions Project, an effort funded by the National Science Foundation to gather and analyze the constitutions of all independent nation-states since 1789. Before entering law teaching, he served as a legal adviser at the Iran-US Claims Tribunal, The Hague, Netherlands, and he continues to work with numerous international development agencies and foreign governments on legal and constitutional reform. He is a member of the American Academy of Arts and Sciences.

The Right to Rebel in Comparative Constitutional Law

When is it acceptable to rise up against an unjust authority? This question is not only of great importance to the peoples of the Middle East today but was also of profound interest to the American founders and, through them, has informed the very basis of modern constitutionalism. It is perhaps unsurprising then that many countries' constitutions allow the people to challenge or overthrow their governments under certain circumstances. But to date, little systematic and empirical analysis has been done on the prevalence of this so-called right to resist in national constitutions or on what motivates constitution-makers to adopt such a right. This Article takes up the task, drawing on data from the Comparative Constitutions Project to explain the distribution and functioning of "right to resist" clauses. It argues that these clauses elucidate important purposes for constitutions



William Elliot Bulmer

Professor at University of Dundee (Scotland, United Kingdom). Elliot Bulmer's work focuses on the policy-oriented analysis of constitutional design choices, with a view to equipping constitution-builders with the knowledge and understanding they need to make well-informed constitutional choices. As such, he leads the 'Constitution Building Primers' project, as well as leading trainings for civil society actors engaged in constitution-building processes. Bulmer has a particular interest in the comparative study of Westminster-derived constitutions and in normative questions of constitutional and political theory. His current research emphasis is on how innovative anti-oligarchic constitutional designs may provide a response to the perceived 'crisis of representation' in democracies. Bulmer's previous work experience includes work on constitution building in Scotland, as the Research Director of the Constitutional Commission (2009-13). He has also taught comparative politics and history of political thought courses at university level (Universities of Glasgow, Stirling and West of Scotland). Before that, he was an officer in the Royal Navy, with a particular interest in PSYOPS.

The Role of Comparative Knowledge in Constitution Building

This presentation examines four inherent paradoxes of comparative constitutional knowledge. The first paradox is that comparative knowledge assumes there are things to learn from other constitutions and constitutional processes that are transferable between contexts; and yet the first rule of all constitution building is that one must be sensitive to the context. We understand what 'works' – or at least what is familiar – but does that limit our creativity in responding to problems and circumstances that are each in their own ways unique? The second paradox is that the person bringing the comparative knowledge – the international advisor – comes in as the 'expert', but always knows less about the country in which he or she is working than the people being advised. At best, we advise from a position of humble ignorance; at worst, from arrogant ignorance. Our role therefore is often more to ask than to tell, to put the questions that help national decision-makers find solutions.

The third paradox is that constitutions are technical legal documents, which have to be 'sound' and workable, but they are also messy political agreements, arising from arguing and bargaining. This calls for careful navigation and definition of one's role: is it to help reach the political agreement (for example, by expanding the menu of options) or is it to take that agreement, in whatever form it might be, and help turn it into a workable constitutional text? The fourth paradox is that constitutions, to be legitimate, must be seen as coming from the people. But without the active co-operation of existing political and other (administrative, judicial, sometimes military and financial) elites, change will not be possible. How can the constitutional advisor help shape the process? The presentation concludes with a cautious and qualified defence of the importance of comparative constitutional knowledge and of the role of the constitutional advisor, but calls for more 'south-to-south' and 'south-to-north' knowledge transfer.

Moderators

Abdel-Fattah Mady

Professor of political science at Alexandria University, coordinator of the "Democratic Transition" project, and editor-in-chief of the Hikama journal at the Arab Center for Research and Policy Studies. He obtained his Ph.D. in political science from Claremont University for graduate studies in the United States in 2005. Previously he worked as a fellow at the Woodrow Wilson Center in Washington, DC, and the University of Denver, as an expert at the United Nations Development Program, and research manager at the Cordoba Institute for Peace in Geneva. His research interests focus on governance systems and democratization, the Arab-Zionist conflict, and research methods in the social sciences.

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Ghassan Moukheiber

Lawyer and member of the Lebanese Parliament (2002-2018), Rapporteur of the parliament's Human Rights Committee, member of parliamentary committees for Administration and Justice and the Environment, with a master's degree in law (Harvard Law School). He is a researcher, activist and founding member of associations and civil society organizations working in the fields of law and the constitution, protection of human rights (and especially women's rights), combating and preventing corruption, developing democracy, parliamentary work and conflict resolution.

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Head of the Research Department at the Arab Center for Research and Policy Studies. He previously worked as a consultant for the Iraqi Center for Strategic Studies, and at the Future Foundation in Amman (2010-2011). He is the author of many scientific books, the last of which is the contribution to the second part of the book *The Islamic State Organization, so-called ISIS*, and he has edited a multi-author work entitled: *The Arab Shiites: Citizenship and Identity*; both published by the Arab Center. He contributed to "The National Report on the Status of Human Development in Iraq", in 2009 and in 2014.

Khaled Ziade

Director of the Arab Center for Research and Policy Studies, Beirut Branch. He is a University professor and researcher in social and cultural history. He obtained his PhD from the University of Sorbonne III, Paris in 1980, and has worked as Director of the Faculty of Arts and Humanities, Branch III, at the Lebanese University, and as a fellow at the Institute for Advanced Study in Berlin. He held the position of Ambassador of Lebanon to Egypt (2007-2014) and Permanent Representative to the League of Arab States. He has authored many books, including: *The Arab City and Modernity*, *Muslims and European Modernity*, and *Records of the Sharia Court: The Ottoman Era, Methodology and Terminology*, *Europe No Longer Has What It Offers to the Arabs*, *The Writer and the Sultan*, *from the Jurist to the Intellectual*. He has also investigated, presented and translated several books.

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Associate Professor of Political Science at the Faculty of Economics and Political Science at Cairo University. He obtained his PhD in political science from the University of Utah in the United States in 2008. Previously, he held the position of Secretary General of the Arab Organization for Constitutional Law. He has published several research papers in the fields of democratization, the political role of the judiciary, and constitutional reform, including "Judges and Generals in Contemporary Egypt: How Do Institutions Preserve or Weaken Authoritarianism?" (in English, University of Cambridge, 2018).

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Salam Kawakabi

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Sultan Barakat

The founding Director of the Doha Institute's Center for Conflict Studies and Humanitarian Action. He holds a professorship in political science from York University, where he founded and directed the Post-War Reconstruction and Development Unit (1993-2014). Previously, he has worked at the Brookings Research Center in Doha. He has published many books, most recently *Understanding Impact: The Use of State Building Research in British Politics*. His practical experience covers various academic and professional fields, the most important of which are conflict management, humanitarian response to disasters, post-war recovery and transitional management. He has provided professional advice to many United Nations organizations, the World Bank, the European Union, the International Federation of International Cross and Red Crescent Societies, CARE International and Oxfam. He was a founding member of the expert committee for the Global Peace Index initiative (2008-2014).