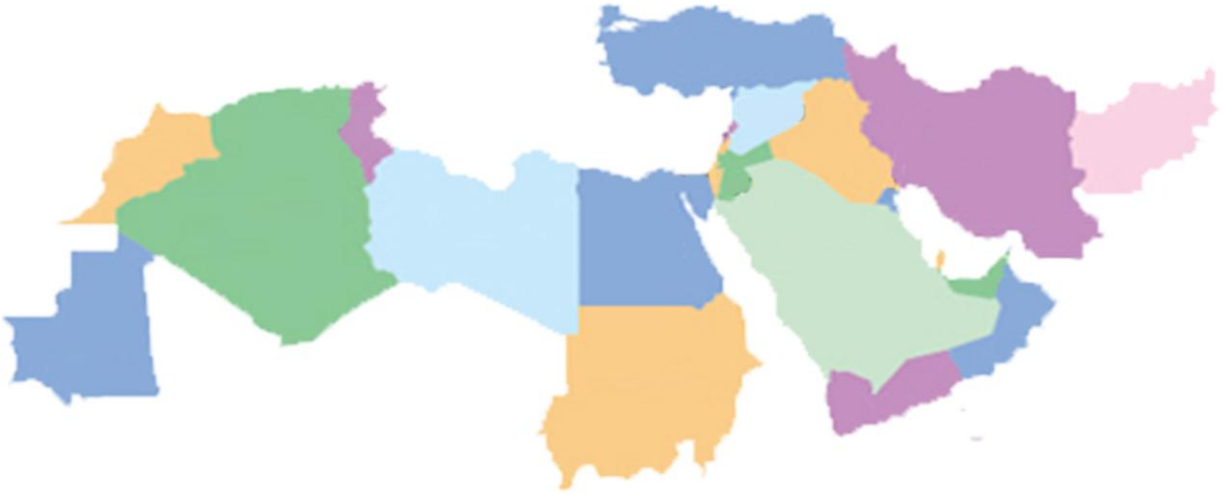
Journal of Constitutional Law in the Middle East and North Africa



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The Arab Association of Constitutional Law

Table of Contents

Editorial

We are very pleased to launch the *Journal of Constitutional Law in the Middle East and North Africa with the publication of this inaugural issue.*

JCL- MENA is dedicated to encourage greater discussion and critical analysis of constitutional and legal developments throughout the Middle East and North Africa region. Featuring articles by scholars and practitioners from the region, it is designed to facilitate access to information on the MENA constitutional issues and debates for the international community of practitioners and scholars in English.

JCL-MENA is edited by the Arab Association of Constitutional Law and published exclusively online in association with the Rule of Law Program Middle East/North Africa of Konrad-Adenauer-Stiftung.

JCL-MENA will publish two issues each year. It will also periodically publish special issues that will cover either a topic at the cutting edge of constitutional law or a single country undergoing constitutional transitions or transformations.

In this inaugural issue of *JCL-MENA*, six scholars from the region reflect on a diverse range of contemporary constitutional subjects.

In the first article, Asem Khalil evaluates the constitutionalism project in Palestine in light of the political practice. He then examines with Elias Al Hihi, in a second article, the status of international human rights law within the Palestinian legal system.

The next two articles raise the issue of religion and law from two different perspectives. Leila Hanafi discusses the question of religious freedom and the law in Morocco, while Emilia Justyna Powell and Ilana Rothkopf focus on the relationship between constitutional courts and the rule of law in twenty-nine Islamic law states, with a particular reference to Kuwait, Bahrain and Oman.

In the last article, Ghadir Al Alayli presents an in-depth analysis of administrative decentralization in Lebanon and its expansion plans.

We hope the journal will succeed in responding to the inquisitiveness of an international readership interested in constitutional developments throughout the MENA region.

Arab Association of Constitutional Law

Palestinian Constitutionalism: A Stalled Project

Asem Khalil*

ABSTRACT

The drafting and the adoption of a Basic Law for the Palestinian Authority was a drawn-out and laborious process. This written constitution was an achievement: Palestinian political representatives had endorsed the pillars of Constitutionalism, reproducing this commitment within a single written document. This was a single instance of a wider global phenomenon that is referenced in the literature as written constitutionalism.

The expectations that had been invested into the Basic Law when it entered into force soon evaporated. This article argues that the enthusiasm for a written constitution should be understood with reference to the symbolic appeal of specific principles and values. After presenting written constitutionalism, the article then attempts to demonstrate that political practice preceded the entrenchment of rules and institutions necessary for constitutionalism. Finally, the article submits that written Constitutionalism in Palestine has stalled, losing its momentum and impetus.

Keywords: *Written Constitutionalism, Palestine, Basic Law, Rule of Law, Constitutional Law*

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CONTENTS

1 INTRODUCTION

The drafting and the adoption of a Basic Law for the Palestinian Authority (PA), which was established following the Oslo Accords,[1] was a drawn-out and laborious process which took almost a decade, occurring between 1993 to 2002.[2] However, the end result was a text that is widely considered to be one of the most *liberal* constitution in the Arab world.[3] The constitution was a hugely significant achievement: Palestinian political representatives had endorsed the pillars of Constitutionalism,[4] reproducing this commitment in a single written document.[5] Since the effective implementation of the pillars of constitutionalism does not necessarily follow their codification in a written constitution, in this paper, I use 'written constitutionalism' whenever there is a need to emphasize the gap between the constitutional text vis-à-vis its effective implementation.

The Basic Law would apply during the interim period – it was supposed to extend for five years, from 1994 to 1999. The Basic Law was one of the first acts adopted by the Palestinian Legislative Council (PLC) in 1997. Yasser Arafat, the President of the PA, endorsed the Basic Law only in 2002. The Basic Law entered into force in a context of political instability, and at a time when Israel and PLO did not reach an agreement on permanent status issues. The expectations that had been invested into the Basic Law when it entered into force soon evaporated: the constitutional text remained marginal and exerted a limited influence on the Palestinian decision-making process. Over time, however, the Basic Law, which was explicitly anticipated to be a temporary constitution, came to be treated by the main political actors and the public as a real 'constitution,' to which reference could be made during

[1] Nathan J. Brown provides a comprehensive overview of those agreements between the PLO and Israel. See: NATHAN J. BROWN, PALESTINIAN POLITICS AFTER THE OSLO ACCORDS: RESUMING ARAB PALESTINE, 12ff (2003).

[2] ASEM KHALIL, THE ENACTMENT OF CONSTITUENT POWER IN THE ARAB WORLD: THE PALESTINIAN CASE, PIFF, Etudes et Colloques 47, *Helbing & Lichtenhahn*, 2006.

[3] For example, Nathan J. Brown, Constituting Palestine: The Effort of Writing a Basic Law for the Palestinian Authority 54 MIDDLE EAST JOURNAL 25, 33 (2000).

[4] The literature shows that there is a pronounced lack of agreement upon the exact definition of Constitutionalism. In this paper, I align myself with those who consider constitutionalism to be a set of theoretical claims that goes beyond being a normative theory about the form of governance: constitutionalism, in this understanding, contains an idea of control, limitation, and constraint. This applies to governmental power and to the wider state apparatus. This understanding of constitutionalism, in which liberty and equality are the principal pillars, is often referenced in the literature as liberal constitutionalism. See Jeremy Waldron, Constitutionalism – A Skeptical View, in CONTEMPORARY DEBATES IN POLITICAL PHILOSOPHY 267, 267-73 (Thomas Christiano and John Christman, eds., 2009). In this contribution (see Section III), the institutions that are presented as necessary for Constitutionalism (separation of powers, independence of the judiciary, and the state's protection of basic rights and public freedoms) are tested against the theoretical claim that government ought to be limited and that the state ought to be constrained. For purposes of convenience I refer to those theoretical claims as 'pillars of constitutionalism', a term which should be understood to encompass: limited government, rule of law, and liberty and equality.

[5] This means the adoption of a single document where fundamental formal law on the major divisions, structures, principles and powers of government, and rights and duties of citizens are stated. See Julian Go, A Globalizing Constitutionalism? Views from the Postcolony, 1945-2000, in CONSTITUTIONALISM AND POLITICAL RECONSTRUCTION 89, 90 (Saïd Amir Arjomand, ed., 2007).

the course of internal political conflicts. In large part, its heightened pre-eminence can be attributed to the changes that occurred in the PA following the death of Yaser Arafat, the figurehead of the Palestinian national struggle, who had led both the Palestine Liberation Organization and Fatah for decades. Subsequent political developments (notably the election of Mahmoud Abbas in 2005, and Hamas's victory in the Palestinian Legislative Council elections of 2006) provided the Basic Law with a reinvigorated impetus and momentum.

In the following section, I will demonstrate why constitution matters for Palestinians and for the PA in particular. Taking into account the negative impact of written constitutions and written laws in historical Palestine, I will suggest that the Palestinian enthusiasm for a written constitution should be understood with reference to the symbolic appeal and attraction of specific principles and values (II). After presenting written constitutionalism in more depth and detail (III), I will then attempt to demonstrate that political practice preceded the entrenchment of rules and institutions necessary for constitutionalism (IV). Finally, I will argue that Palestinian Constitutionalism has stalled (V), losing its momentum and impetus.

2 AN INTERIM WRITTEN CONSTITUTION

In this section, I will first attempt to show why Palestinians opted to support a written constitution at first place. This is particularly important because Palestinian historical experience of written constitutions would instead appear to suggest precisely the opposite response. From the outset, the Basic Law – whether its adoption, content or status – was subject to controversy. I will therefore argue, that the Palestinians' attachment to a written constitution cannot be explained with reference to the legacies of the past, whether of historical Palestine or the Palestine Liberation Organization (PLO) itself. Instead, I will argue that this strong attraction can be traced back to the values that are often encompassed under the heading of 'constitutionalism.'

2.1 THE NEED FOR A (WRITTEN) PALESTINIAN CONSTITUTION

Even observers with the most superficial knowledge of Palestinian legal and political affairs since the Oslo Accords[6] will have noticed the huge amount of interest and enthusiasm that was generated by a written constitution for the PA. Several drafts of the 'Basic System' or 'Basic Law' were made public as early as 1994,[7] almost at the point at which the first PLO returnees and personnel made their return to Gaza City and Jericho. Those were the the first

[6] Although analysis of the Palestinian constitutional question is often focused upon the 'Oslo years' that followed the Declaration of Principles (1993), it may be more exact to go back to the Declaration of Independence in 1988, the point at which the Palestinian National Council implicitly endorsed the two-state solution. In its aftermath, a legal committee was tasked with preparing the state's constitution. In the aftermath of the Oslo agreements, international and local efforts were directed towards preparing a Basic Law or a Basic System for the newly established PA, which exerted control over portions of West Bank and the Gaza Strip (see, generally, Anis Al-Qasem, Declaration of the State of Palestine: Background and Considerations, PALESTINE YBK. INT'L. L. 314, 314-31 [1987]).

[7] For a briefing about the different drafts that were circulated, see Khalil, *supra* note 2, at 216-8.

two cities from which the Israeli army had redeployed (subsequent redeployments from all the major cities of the West Bank and Gaza Strip then followed). President Arafat chaired the Council which would control the so-called 'autonomous territories' within the framework of Oslo Accords (the West Bank in was divided into areas A, B, and C). The Council enjoyed both executive and legislative powers until the elections in 1996.[8]

In 1996, the first elections in Palestinian modern history were held. Arafat was confirmed as the first elected president of the nascent PA, and 88 elected deputies formed the first Palestinian Legislative Council (PLC). The Interim period was supposed to come to an end in 1999, with 'final status' talks then addressing hugely contentious issues such as Jerusalem, Palestinian refugees and the borders. In the aftermath of Ariel Sharon's hugely provocative visit to the Al-Aqsa mosque in Jerusalem, the second *Intifada* broke out. The Israeli army re-entered Palestinian urban areas, directly targeting the PA's institutions.

The PA nonetheless survived these events. It continues to exert its authority over sections of the West Bank, continuing to provide services to most Palestinians living under occupation. Although the PA's agencies and services are similar to those of a state, it is not the central government of a sovereign state: the Israeli occupation of the West Bank and Gaza Strip did not come to an end with the Oslo Accords. Similarly, Israel's unilateral withdrawal from the Gaza Strip in 2005 did not put an end to Gaza's status as occupied territory.[9]

In 2006, the second legislative elections took place and Hamas won the majority of seats in the PLC. President Abbas, who was elected in 2005, had to work with a *Hamas* government, led by Ismail Haniyeh as prime minister. The Quartet (United Nations (UN), European Union (EU), United States of America (USA) and the Russian Federation) boycotted the PA immediately after the formation of the new government. This boycott was justified by the quartet on the basis that Hamas did not accept the conditions under which the Quartet provided financial and political support to the PA – including the recognition of Israel, and the respect of previously endorsed agreements between PLO and Israel.[10] The Israeli government also withdrew its support to the PA, holding back tax incomes.[11]

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[8] For more about the territorial subdivision of the Occupied Palestinian Territories (OPT) see Asem Khalil & Raffaella Del Sarto. The Legal Fragmentation of Palestine-Israel and European Union Policies Promoting the Rule of Law. In: FRAGMENTED BORDERS, INTERDEPENDENCE AND EXTERNAL RELATIONS: THE ISRAEL-PALESTINE-EUROPEAN UNION TRIANGLE, (Raffaella A. Del Sarto, ed.), *Palgrave* (2015), at 129-154.

[9] For further insight into the Gaza Strip's status after the unilateral Israeli withdrawal in 2005, see Shane Darcy and John Reynolds, 'Otherwise Occupied': The Status of the Gaza Strip from the Perspective of International Humanitarian Law' 15 JOURNAL OF CONFLICT & SECURITY LAW 211, 211-43 (2010).

[10] The Quartet announced on 30 January 2006 that all members of a future Palestinian government must be committed to non-violence, recognition of Israel, and acceptance of previous agreements and regulations. On 29 March 2006 the Quartet froze all donor contributions, stating that the resumption of donor assistance was conditional upon the Hamas-led government's commitment to the Quartet's three conditions. For a discussion of these developments, see Asem Khalil, Constitution-Making and State-Building: Redefining the Palestinian Nation, in: CONSTITUTIONALISM IN ISLAMIC COUNTRIES: BETWEEN UPHEAVAL AND CONTINUITY, Rainer Grote and Tilmann Röder (eds.), Oxford University Press (2012), at 583-596.

In early 2007, Fatah and Hamas reached a deal in Mecca. This agreement established the basis for the formation of a 'unity government', which would be led by Ismail Haniyeh and include Fatah Minister.[12] In June 2007, Hamas violently seized control of the Gaza Strip. The PLC has not convened in the years since then (it should, however, be acknowledged that the PLC rarely convened between 2006 and 2007, largely as a result of Israel's imprisonment of most of the West Bank's Hamas deputies).

President Abbas declared the state of emergency and dismissed Ismail Haniyeh's government immediately after Hamas's takeover of the Gaza Strip. Salam Fayyad was nominated to form a government to 'execute the state of emergency'. Haniyeh rejected his dismissal, and continued to run the Strip's day-to-day affairs, acting as if he was still the head of a functional government. Fayyad's government (2007-2012) ran the West Bank. In the years since, no further elections have taken place and no agreement between the different factions is currently envisaged. The geographical divide between the West Bank and Gaza Strip maps onto the political one which separates PA-Fatah and Hamas. Two successive prime ministers followed Fayyad since then, under prime minister Rami Hamdallah and then Mohammad Ishtayeh. This paper however is limited in the events taking place mainly under Fayyad's government.

2.2 THE DRAFTING OF A WRITTEN CONSTITUTION

After the elections of 1996, the PLC turned its attention to the task, which had initially been undertaken by the PLO legal committee but remained incomplete, of drafting the basic law. Within just one year (1997), the PLC had submitted the draft basic proposal to President Arafat. Arafat used his powers to veto legislation and simply ignored the text,[13] leaving the PA without a Basic Law and the PLC without any legal means to bypass Arafat.

While the Basic Law was initially supposed to be a temporary constitution for the interim period,[14] the text only entered into force in 2002 – that is, when the interim period was theoretically over![15] The Basic Law was amended

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[11] Id.

[12] See Yezid Sayigh, Inducing a Failed State in Palestine 49 (3) SUVIVAL 7, 19 (2007).

[13] This action was in conformity with Law n.4 (1995) which relates to the procedure for the preparation of legislation. Available in Arabic (upon registration) at:
<http://muqtafi2.birzeit.edu/Legislation/GetLegFT.aspx?LegPath=1995&MID=9667&lnk=2>.
All websites referred to in this paper, were accessed before 22 February 2016.

[14] The Basic Law's preamble reiterates: "Within the framework of the interim period, resulting in the Declaration of Principles Agreement, the establishment of the Palestinian National Authority with its three pillars – the legislative, executive and judicial branches – became among the most urgent of national missions. The establishment of the Palestinian Legislative Council, through free and direct general elections, made the adoption of a Basic Law suitable for the interim period a necessary foundation upon which to organize the mutual relationship between the government and the people. It is a first step on the way to determining the distinguishing characteristics of a civil society capable of achieving its independence. At the same time, it is a basic foundation upon which to enact unifying legislation and law for the Palestinian national homeland."
<http://muqtafi2.birzeit.edu/en/Legislation/GetLegFT.aspx?LegPath=2003&MID=14138>

twice: in 2003 (when the office of prime minister was introduced to the Palestinian constitutional system) and in 2005 (when changes to the electoral system, which derived from the Cairo agreement between Palestinian factions, were introduced).

The Basic Law was not the first experience that Palestinians had of written constitutions (or of legal codification in general). Looking back over a century it is possible to distinguish two different kinds of experiences:

Firstly, Palestinians have been ruled by written constitutions (or constitution-like texts) since the Ottoman period. The British authorities also enacted the Palestine Order-in-Council, after the League of Nations approved the British mandate over Palestine. Jordan also adopted a new constitution in 1952; this signaled a new beginning after the unification of the West Bank and Transjordan, which followed on from the creation of the Hashemite Kingdom of Jordan, two years earlier. Egypt also established a Basic Law in the Gaza Strip in 1955, while Jamal Abdel Nasser's Egypt formally declared the establishment of a constitutional system in 1962. The Israeli occupation did not explicitly abrogate these constitutional texts but instead sought to subordinate them to other legislative enactments, Israeli military declarations and Israeli military orders.[16]

Palestinians had also condensed their charters into a written form. The All-Palestine government declared that the state of Palestine extended to all historical Palestine, putting down a Basic Law which was de facto ineffective. In 1964, the PLO adopted its 'Basic System', a constitution-like text that determines the powers of the main PLO institutions. The Palestinian National Council, the main (parliament-like) institution of the PLO, endorsed the Palestinian National Charter. When the state was declared in Algiers in 1988, it was decided that the PLO's legal committee should draft a constitution for the state. Even the Oslo Accords refer to the possibility that the [Palestinian Legislative] Council might adopt 'basic laws'.[17]

A written constitution-like text was adopted whenever there was a substantial reform, a change of regime, a change of governmental bodies in control of Palestine or part of it. The Palestinian people have also expressed their national aspirations through written charters. The establishment of the PA leadership and the Palestinian public interest in establishing a written constitution was, in this sense, no different from previous historical experiences. In the contemporary context, it is unsurprising given the interest that contemporary states have in written constitutions.

Article 115: 'The provisions of this Basic Law shall apply during the interim period and may be extended until the entry into force of the new Constitution of the State of Palestine.'
<http://muqtafi2.birzeit.edu/en/Legislation/GetLegFT.aspx?LegPath=2003&MID=14138>

[15] The interim period was supposed to last for five years. It began from the point at which the PA re-entered the Gaza Strip and Jericho in 1994.

[16] Anis Kassim provides additional insight into legal developments in Palestine since the Ottoman era. See Anis Kassim, Legal Systems and Developments in Palestine, in PALESTINE YEARBOOK OF INTERNATIONAL LAW, 29-32 [1984]; A Al-Qasem, 'Commentary on Draft Basic Law for the Palestinian National Authority in the Transitional Period' [1992/1994] Palestine Ybk. Int'l. L. 187, 187-211.

[17] See article XVIII of the Interim Agreement signed in 1995 <http://www.mideastweb.org/meosint.htm>

2.3 CONSTITUTIONALISM MATTERS

For the Palestinians, the main significance of the written constitution did not therefore derive from its ostensible form. Instead, it derives from the fact that this was the first time in Palestinian history that Palestinians had drafted and endorsed their own constitution, establishing a supreme law that would be exerted over Palestinian land and people – a feature that clearly distinguishes it from the historical examples cited above.

Arguably, there are three justifications that can help to explain – from a Palestinian perspectives – the attractions of a *written* constitution:[18]

Firstly, the constitution served a pragmatic purpose. The PA was a newly established political authority. The constitution would serve a pragmatic function by providing the legal basis for the development of a set of associated legal instruments. Secondly, the constitution would serve a political purpose. By virtue of the fact that it was essentially imported from outside, the PA was initially regarded with considerable suspicion. A constitution would provide the basis for open, accountable and responsive governance, further enhancing political legitimacy. A written constitution would make a valuable contribution by providing a basis for the exertion of its authority. Finally, the constitution would serve a juridical function by condensing legal authority in a single document, unifying the dispersed and highly complex Palestinian legal system (at the time, different constitutional texts were still active in both the West Bank and Gaza Strip), thus simplifying Palestinian jurisprudence.

We can therefore distinguish three different justifications (pragmatic, political and juridical) for a written constitution. I would argue that each individually and cumulatively helps to explain Palestinian support for a written constitution. Each of the three justifications relates back to my earlier discussion of constitutionalism. The separation of powers, the rule of law and the protection of rights and freedoms are all intimately related to this reference point and its originating principle that the essential purpose of law is to limit and constrain arbitrary encroachments by the

[18] For additional insight into the process of making a Palestinian constitution, see: Lamis Andoni, The PLO at the Crossroads, 21 JOURNAL OF PALESTINE STUDIES 54 (1991); Al-Qasem, *supra* note 16, at 187; Jamil Hilal, PLO Institutions: The Challenge Ahead, 23 JOURNAL OF PALESTINE STUDIES 46 (1993); Nasser H. Aruri & John J. Caroll, A New Palestinian Charter, 23 JOURNAL OF PALESTINE STUDIES 5, 8 (1994); Khalil Shikaki, "The Peace Process, National Reconstruction, and the Transition to Democracy in Palestine," 25 JOURNAL OF PALESTINE STUDIES 5, 5-20 (1996); Ali Jarbawi, Palestinian Politics at a Crossroads, 25 JOURNAL OF PALESTINE STUDIES 29 (1996); Omar M. Dajani, Stalled between Seasons: the International Legal Status of Palestine during the Interim Period, 26 DENVER JOURNAL OF INTERNATIONAL LAW AND POLICY 27 (1997); Anis Al-Qasem, The Draft Basic Law for the Palestinian National Authority, in THE ARAB-ISRAELI ACCORDS: LEGAL PERSPECTIVE 101 (Eugene Cotran & Chibli Mallat, eds., 1997); Adrien K. Wing, The Palestinian Basic Law: Embryonic Constitutionalism, 31 CASE WESTERN RESERVE J. INT'L LAW 383 (1999); Nathan Brown, THE THIRD DRAFT CONSTITUTION FOR A PALESTINIAN STATE: TRANSLATION AND COMMENTARY (Palestinian Center for Policy and Survey Research, 2003); Zaha Hassan, The Palestinian Constitution and the Geneva Accord: The Prospects for Palestinian Constitutionalism, 16 FLORIDA JOURNAL OF INTERNATIONAL LAW 897 (2004); Asem Khalil, Beyond the Written Constitution: Constitutional Crisis of, and the Institutional Deadlock in, the Palestinian Political System as Entrenched in the Basic Law, 11 INTERNATIONAL JOURNAL OF CONSTITUTIONAL LAW (2013), 34-73.

government or the state. Upon this basis, I would assert that it is constitutionalism – and not written constitutions as such – that helps us to explain the broad Palestinian support for a constitution. Palestinian support for a written constitution could therefore be traced back to constitutionalism, which could in turn be broken down into three distinct pragmatic, practical and juridical justifications.

It is only the addition of constitutionalism to the equation that helps us to understand the links between the constitution-making process and Palestinian self-determination. This was the case despite the fact that the PLC lacked representative legitimacy,[19] and despite the fact that the level of popular involvement in the drafting and approving process was extremely limited. Upon closer reflection, it is constitutionalism that helps us to understand how the Basic Law, as written constitution, was seen as a *real* new beginning and a divergence from previous constitutions that instead derived from Palestinian subjugation to foreign rule.

3 CONSTITUTIONALISM BEFORE STATEHOOD

The Basic Law enshrined constitutionalism's three pillars: the separation of power, the independence of the judiciary, and the protection of rights and freedoms.[20] This occurred despite the fact that the PA was a non-state actor – giving rise to written constitutionalism.[21] The endorsement of these institutions establishes the basis for a separation of powers; the regulation of the conduct of government authorities (including legislative bodies), who are to be subject to the rule of law and the scrutiny of the course; and the establishment of mechanisms that uphold and reinforce fundamental rights and freedoms.

[19] The PLC does not represent the Palestinian people as a whole. Only Palestinians resident in the West Bank and Gaza Strip could participate in the elections. Its claim to be representative of the local population was further undermined by the fact that many factions (including Hamas) boycotted the 1996 elections.

[20] Refer to the following Articles: Article Two: 'The people are the source of power, which shall be exercised through the legislative, executive and judicial authorities, based upon the principle of separation of powers and in the manner set forth in this Basic Law.' Article Six: 'The principle of the rule of law shall be the basis of government in Palestine. All governmental powers, agencies, institutions and individuals shall be subject to the law.' Article 10: '1.Basic human rights and liberties shall be protected and respected. 2. The Palestinian National Authority shall work without delay to become a party to regional and international declarations and covenants that protect human rights.'

[21] See Go, *supra* note 5, at 89-114.

3.1 A 'DEMOCRATIC' FORM OF GOVERNMENT

The PLC acts as a unicameral parliament, and therefore fulfills a legislative function while overseeing and scrutinizing the activities of the government (composed of the Prime minister and his ministers). Its powers mainly reside in its ability to move motions of no-confidence, removing its support from an incumbent government. The President of the PA cannot be removed by a PLC vote of confidence, with his/her powers instead being demarcated by Basic Law and other legislative texts. The president nominates the prime minister and the latter is responsible for choosing cabinet members. Both the prime minister and cabinet ministers can be chosen from PLC members without being obliged to give up their status as PLC deputies. The President has the power to block legislation; however, this power is not an absolute veto power. It can therefore be overcome by a two-thirds vote of the PLC deputies. The Basic Law does not explicitly grant the President the right to dissolve the PLC.

The form of government that the PA entrenched in the Basic Law has much in common with the semi-presidential system that is currently in place in France; there are considerably more parallels than with the US (presidential) and British (parliamentary) systems. While it is important to acknowledge various points of divergence,[22] this is probably more attributable to the fact that the French system is one among a number of different possible models that fit within the semi-presidential template.[23] In this respect, it clearly differs from the UK and US systems, both of which are often taken to be prototypes of parliamentary and presidential systems.[24]

Putting aside doubts concerning the kind of political system that the Basic Law establishes, it is first important to recognize that the Basic Law's procedures and institutions did not completely endorse one specific prototype of government. It instead establishes the basis for a form of government that functions upon the basis of a the separation of powers. To this extent, the PA represents a progression from previous forms of government that were derived from written constitutions. The British Palestine Order in Council, for example, concentrated all legislative, executive and judicial powers in the hands of the British High Commissioner. Similarly, the Egyptian administrator of Gaza had had similar concentrated powers. During the Israeli occupation, the three powers were also concentrated in the Israeli Military Commander.

3.2 AN 'INDEPENDENT' JUDICIARY

Article 98 of the Basic Law clearly establishes that "[j]udges shall be independent and shall not be subject to any authority other than the authority of the law while exercising their duties." It further establishes that: "No other authority may interfere in the judiciary or in judicial affairs." Meanwhile, Article 100 clarifies that the establishment

[22] For further discussion, see Khalil, *supra* note 18.
[23] Maurice Duverger, Arend Lijphart and Gianfranco Pasquino, A new political system, 31 EUROPEAN JOURNAL OF POLITICAL RESEARCH 125, 125 (1997).
[24] For more, about the different political systems, with emphasis on semi-presidentialism, see, Cindy Skach, The "newest" separation of powers: Semipresidentialism, 5 INT.L J. CONST. L. 93, 93-121 (2007).

of the high judicial council' would further enhance the institutional independence of the judiciary. The Judicial Authority Law was endorsed by President Arafat some two weeks before the Basic Law came into force. It had awaited, just as with the Basic Law, the President's signature for a number of years. The Palestinian High Court of Justice was intended to operate as a unique level of administrative adjudication – 'until administrative courts are established,' in the words of the Basic Law (art 102). The Basic Law established, subsequent to the passing of a law (which was passed by the PLC in 2006),[25] for the establishment of a Supreme Constitutional Court, which would have the power to consider, *inter alia*, 'the constitutionality of laws, regulations, and other enacted rules' (art 103).

The PA, again, distanced itself from previous political authorities by introducing the independence of judiciary clauses and by creating a Supreme Constitutional Court. It is true that the constitutions of many other neighboring countries (such as Egypt and Tunisia) had already established judicial independence, administrative courts and even constitutional courts. In this respect, the size of the Palestinian Constitutional Court's mandate helped to set it apart. Judges nominated by the President operated with a lifetime mandate and for this reason were more likely to resist interference from other branches of the government – subsequent nominations (e.g. in instances where a vacancy arose) are to be made subsequently upon the recommendations of the Supreme Constitutional Court judges.[26]

The established rule of law, whether conceived in its limited (independence of the judiciary) or broader (enabling an independent court to establish the constitutionality of laws and regulations) helped to set the Basic Law apart from previous written constitutions. Again, it was constitutionalism, not the distinctive features of a written constitution that helped to differentiate the PA's approach to constitution-making from other comparable examples.

The adoption of the Basic Law was an important step towards the consolidation of the rule of law, helping to protect individuals from the arbitrary use of power by the state and government, placing particular emphasis upon the need to protect personal freedoms and to guard against arbitrary arrest and detention.[27] The recognition of this right is accompanied by a principle that makes this right justiciable and enforceable by the courts: the individual's rights are upheld by judicial review of state actions and administrative decisions.[28]

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[25] 'Law No.3 of 2006 relating to the Establishment of the Supreme Constitutional Court' (The Constitutional Court Law)'. Available in English at: <http://muqtafi2.birzeit.edu/en/Legislation/GetLegFT.aspx?LegPath=2006&MID=15122>.

[26] The PA president nominated the first assembly of judges for the court in 2016 only, ten years after the entry into force of the law. The life term mandate of the judges was later on amended - to become 6 years mandate.

[27] Refer to Article 11: "1. Personal freedom is a natural right, shall be guaranteed and may not be violated. 2. It is unlawful to arrest, search, imprison, restrict the freedom, or prevent the movement of any person, except by judicial order in accordance with the provisions of the law. The law shall specify the period of prearrest detention. Imprisonment or detention shall only be permitted in places that are subject to laws related to the organization of prisons." Article 12: "Every arrested or detained person shall be informed of the reason for their arrest or detention. They shall be promptly informed, in a language they understand, of the nature of the charges brought against them. They shall have the right to contact a lawyer and to be tried before a court without delay."

[28] Refer to Article 30 of the Basic Law.

3.3 PROTECTION OF RIGHTS AND FREEDOMS

In addition to establishing the principle of equality and prohibiting discrimination,[29] the Basic Law also outlined a detailed list of civil, political and socioeconomic rights, thus upholding its claim to be among the most 'liberal' legal frameworks in the Arab world.[30] Those rights and freedoms are not only declaration of good intentions, but are also legal entitlements, although their enforceability is often curtailed by the remit of law. The Basic Law anticipates the establishment of an Independent Commission for Human Rights (art 31), and seeks to uphold certain rights and freedoms by criminalizing any infringement upon them (art 32). It even establishes the enjoyment of a balanced and clean environment as a human right (art 33).

The Basic Law distanced the PA from previous legal regimes by including this list of human rights and establishing mechanisms that would uphold these rights and freedoms. The true significance of this development can be appreciated when it is compared to the Palestine Order in Council or Israeli military orders. Both the Egyptian constitutional documents for the Gaza Strip and the Jordanian constitution refer to some rights – although considerably more limited, in this respect. The most fundamental change that the Basic Law introduced was to make these rights and freedoms enforceable by the Supreme Constitutional Court. The new Supreme Constitutional Court Law establishes that it is now possible for any aggrieved person to take their complaint before the court (art 27, para 1). In addition, the law also establishes that the authority guilty of the unconstitutional act should 'redeem the right to grievant or compensate him or her for the damage or [perform] both together' (art 25, para 3).

4 CONSTITUTIONALISM FIRST

I will now argue that Palestinians' interest in constitutionalism preceded the entrenchment of constitutional rules, as embodied by the text of the Basic Law, which came into force in 2002. The separation of powers is defined by a number of attributes. These include the government's dependence upon the confidence of a legislative body, the separation of the office of prime minister and presidency, and periodic elections. However, other aspects of the constitution, such as the need to guard against unlawful detention only came about due to the pressure, which courts placed upon governments. This example clearly illustrates how the court's interest in upholding the law preceded the entrenchment of constitutional rules concerning Habeas Corpus in the constitutional document. In addition, the establishment of a national human rights commission in 1993 (one year before the establishment of the PA and nine years before the Basic Law came into force in 2002) provides further evidence of the Palestinian leadership's intention to establish a system of government that respects basic rights and freedoms.

[29] Refer to Article 9 of the 2003 Basic Law establishes.
[30] Brown, *supra* note 1, at 72.

4.1 A REPUBLIC'S KIND OF SEPARATION OF POWERS

After the 1996 legislative and presidential elections, Yasser Arafat, the then president of the PA (who was also, in the absence of an office of prime minister, acting as the head of the Council of Ministers) nominated new cabinet members and submitted a request for the PLC to provide vote of confidence. Despite the fact that the Basic Law was not in force, a cabinet was subsequently formed.[31]

The Basic Law entered into force in 2002 in the midst of calls for reforms in the Palestinian political system. The concerned parties eventually arrived at an agreement which would separate the two offices, thus establishing a government (headed by a prime minister who retains the confidence of the PLC) and a directly elected president (who does not therefore depend upon the PLC's confidence). In 2003, the Basic Law was amended, so as to incorporate the changes that the respective parties had agreed upon.[32]

In November 2004, Arafat passed away and Rawhi Fattouh, the PLC speaker, became the interim President, in keeping with the stipulations of the 2003 Basic Law. He called for presidential elections and Mahmoud Abbas was elected in early 2005.[33] Interestingly, the President *ad interim*, just a few days before the second presidential elections took place in 2005, called for new legislative elections to be held in July of the same year.[34] This was surprising because it clearly contradicted the Basic Law provisions, which established that the mandate of the president and deputies of the PLC extended to the 'Interim period' – which had not, yet, officially concluded for the lack of agreement on final status issues.[35] After being elected, President Abbas decided to postpone the legislative elections. In seeking to justify the delay, he referred to the need to complete "legal arrangements and national consultations". He did not however reject the proposition of new legislative elections, appearing to entertain this possibility even in the absence of a constitutional duty to hold periodic elections.[36]

In January 2006, the various Palestinian political factions met in Cairo. They reached an agreement, with President Abbas establishing January 2006 as the date upon which elections would be held, a date that was in accordance with

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[31] The Second Palestinian Cabinet (16/5/1996-9/8/1998) and the third Palestinian cabinet (9/8/1998-13/6/2002) obtained confidence of the PLC before the entry into force of the Basic Law in 2002. After that, cabinet's obtained confidence of the PLC based on the 2002 Basic Law (fourth and fifth cabinet), then based on amended Basic Law of 2003 where the position of the prime minister was introduced to the system (sixth to eleventh cabinet). Since 2007 Hamas takeover in Gaza and the declaration of emergency by the PA, the successive cabinets (twelfth to seventeenth cabinet) did not obtain PLC confidence. http://www.palestinecabinet.gov.ps/WebSite/AR/Govs/Default?ID=5

[32] *See* Khalil, *supra* note 18.

[33] In conformity with Article 37 of the Basic Law that regulates cases of vacancy of the office of President.

[34] Refer to Presidential Decree no. 5 of 2005 Concerning the Call for the Legislative Elections <http://muqtafi2.birzeit.edu/Legislation/GetLegFT.aspx?LegPath=2005&MID=14817&lnk=2>.

[35] Refer to Article 36 and 47 of the 2003 Basic Law.

[36] See Presidential Decree no. (11) of 2005 Concerning the Postponement of the Date of the Conduct of General Legislative Elections. <http://muqtafi2.birzeit.edu/Legislation/getLeg.aspx?pid=16643&Ed=1>.

the newly established Election Law no.9 (2005).[37] The Basic Law was also amended in 2005, establishing that the President and PLC members would serve for a four-year term.

4.2 Rule of (Judge's) Law

Palestinian Courts made the PA accountable to the rule of law, placing particular emphasis upon unlawful detention. It is instructive to note, for instance, that the Palestinian High Court of justice (the unique level of administrative adjudication) consolidated its power to review cases involving arbitrary and unlawful arrest of individuals well before the Basic Law entered into force in 2002.[38] In many instances, the petitioners and even the judges themselves explicitly referred to "unlawful arrest" and "unlawful detention",[39] thus highlighting irregularities in the way that arrest or detention had been undertaken. Reference was invariably made to rules that had been established by different codes or legislation, such as the (Jordanian) Law no.9 of 1961 (which was in force in the West Bank until 2001)[40] or the PA's Penal Procedure Law no.3 (2001). The Court sometimes even referenced the PLO Military Procedure Code of 1979![41]

It should also be noted that legislative legal enactments are not the only legal reference points that judges need to take into account. In many cases, the court – confirming the claims presented by petitioners – held that the case before the court infringed upon what were termed as "natural and legal rights".[42] However, these 'natural rights' were almost never considered in isolation – but were frequently developed with reference – to other legislated enactments; sometimes, this occurred without the court even clarifying its understanding of what constituted a 'natural right'.

In other instances, the Attorney General Representative rejected challenges put forward by petitioners upon the basis that their complaints concerned what are referred to as 'sovereign acts' of government – this term being understood

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[37] Available at: <http://muqtafi2.birzeit.edu/Legislation/GetLegFT.aspx?LegPath=2005&MID=14861&lnk=2>.

[38] See, for example, HCJ/Ramallah – Case 38/97; HCJ/Ramallah – Case 26/98; HCJ/Ramallah – Case 40/98; HCJ/Ramallah – Case 57/98; HCJ/Ramallah – Case 14/99; HCJ/Ramallah – Case 15/99; HCJ/Ramallah – Case 20/99; HCJ/Ramallah – Case 77/98; HCJ/Ramallah – Case 18/2000; HCJ/Ramallah – Case 8/2002. In the Gaza branch of the HCJ I could not find decisions in which this right is confirmed. The only decision I could find was adopted in 2003, HCJ/Gaza – Case 78/2003. More empirical research is needed to investigate whether this discrepancy is simply related to the unavailability of courts' decision or whether it is related to the different legal systems that are in operation in the West Bank and Gaza Strip.

[39] See HCJ/Ramallah – Case 26/98; HCJ/Ramallah – Case 57/98; HCJ/Ramallah – Case 18/2000.

[40] See HCJ/Ramallah – Case 57/98 and HCJ/Ramallah – Case 20/99. Jordanian Law no.9 of 1961) was operational in the West Bank before the entry PA Penal Procedure Law no.3 came into force in 2001.

[41] See HCJ/Ramallah – Case 57/98 and HCJ/Ramallah – Case 20/99. Upon reading through these cases, I frequently formed the impression that the Court did not necessarily agree with the application of the PLO Code; it more frequently, typically with reference to instances of unlawful arrest and detention, invoked this reference point to support its decision. Taking the PLO code as its hypothetical reference point, the court would therefore arrive at the conclusion that the arrest and detention was unlawful.

[42] See, e.g., HCJ/Ramallah – Case 38/97; HCJ/Ramallah – Case 26/98;

to establish that these acts are immune from review by the High Court of Justice.[43] In all and each of these instances, the court rejected the attorney's objections, citing 'sovereign acts' as its justification. In some instances, the court expanded upon this term, while simultaneously establishing that an administrative act involving arrest and detention cannot be appropriately situated under this heading, and is consequently subject to the authority of the court.

The above examples clearly establish that the court recognized the right of individuals to undertake legal action against unlawful and arbitrary arrest and detention, evidencing a clear willingness to use its power to review the administrative actions of the state. These same examples clearly illustrate that the source of the right was often irrelevant; indeed, the court often used multiple arguments based on different possible sources, using them as the hypothetical basis for a conclusion that was going to be reached in any case. In these instances, the adoption of the Basic Law would essentially, at least in the case of the High Court of Justice further reinforce pre-existing tendencies.

4.3 OMBUDSMAN

After Israel and the PLO signed the Declaration of Principles in 1993, Yaser Arafat established a Palestinian Independent Commission for Citizens' Rights (PICCR) (this later became the Independent Commission for Citizens' Rights (ICHR)). This initiative was an important development, signaling the PA's interest in the protection of rights and freedoms. PICCR was established by decree before the establishment of the PA in 1994. This decree was adopted in Arafat's joint capacity as chairman of the PLO and President of the 'State of Palestine' (which was declared in Algiers in 1988 and recognized by dozens of states), in anticipation of the signing and implementation of the Oslo Accords, and the establishment of the PA. The PICCR/ICHR became operative in 1994, and the decree was published in the Palestinian official journal in 1995. The Presidential Decree sets out duties and responsibilities of ICHR in the following terms: "to follow-up and ensure that different Palestinian laws, by-laws and regulations, and the work of various departments, agencies and institutions of the State of Palestine and the Palestine Liberation Organization meet the requirements for safeguarding human rights."[44]

[43] It should be noted that the reference to "sovereign acts" of government is not exclusively used in relation to cases involving clearly unlawful arrest or detention, but is also used with reference to other administrative decisions. I identified at least two different instances in which the Attorney General Representative similarly invoked "Sovereign Acts": First, with reference to cases involving unlawful dismissal of civil servant (police officer) by the Director-General of the Police (see, e.g., HCJ/Gaza – Case 60/95 and HCJ/Gaza – Case 209/2001); second, with reference to the decision, taken by security forces, to close an association - see HCJ/Ramallah – Case 85/98. Interestingly, the use of "sovereign acts" in all these cases always involved some decision or action undertaken by security forces. This reflects the fact that the issues the courts dealt with were largely arose as a consequence of the "security chaos" in territories under PA control – it was not, to this extent, attributable to a deliberate rejection of due process by the PA security forces. As I will show in later sections of this paper, these cases often impinged upon what both the security forces and their commander in chief (the PA President) regarded as their international obligations.

[44] ICHR official website: http://www.ichr.ps/en/1/1/84/About-Us.htm

The Basic Law subsequently introduced an Independent Commission for Human Rights into the system, a measure that was supposed to be established by law. Up until the current date, no such law has been passed and the ICHR continues to act as if it is the commission stipulated in Article 31 of the Basic Law.

In 2016, the ICHR issued its 21st annual report, retrospectively engaging with events over the course of 2015.[45] In addition to highlighting the many human rights challenges confronting the ICHR (which are detailed in more depth by the narrative reports in the document[46]) and Palestinians more generally, the ICHR also listed a number of achievements – most notably, it referred to how, in its capacity as an Ombudsman, it had represented victims in court.

5 STALLED CONSTITUTIONALISM

In this section I seek to show that the PA's formal endorsement of the pillars of constitutionalism in the Basic Law (written constitutionalism) was not accompanied by coherent and concerted action that was directed towards the establishment of a system of limited government, rule of law, liberty and equality.

5.1 AN ADHERENCE TO THE BASIC LAW – WHENEVER CONVENIENT

The Basic Law established a mechanism through which a successor to the president could be elected. This proved to be useful in November 2004 when Arafat died. The Basic Law established the foundation for a peaceful transition of powers, resulting in the PLC speaker being appointed as an interim president. Elections were scheduled to be held within a 60-day limit, after which Mahmoud Abbas was elected as Yasser Arafat's successor (Arafat died in 11 November 2004, and elections of his successor, Mahmoud Abbas, took place on 9 January 2005).[47]

The Basic Law was amended in 2005, which provided both the President and PLC members with a four-year mandate. This entrenchment of periodic elections – a reiteration of the Palestinian commitment to written constitutionalism – was not matched by a similar commitment upon the part of the PA. In open violation of the 2005 amendment to the Basic Law, there have been no successors to the 2005 (Presidential) and 2006 (Legislative) elections. President Abbas continues to rule sections of the West Bank by decree while Hamas's control of the Gaza Strip is sustained through the use of force. The composition of the cabinet has changed in the meantime, but these changes have not been approved by the dysfunctional PLC.

The Basic Law regulated the process through which governments were formed and dissolved, establishing the PLC's confidence as an essential precondition for any incumbent government. It has played an important role in the years since the office of Prime minister was established (2003), providing impetus towards the establishment of an

[45] ICHR official website: http://ichr.ps/en/1/6
[46] ICHR official website: http://ichr.ps/en/1/1/89/Annual-PlansNarrative-Reports.htm
[47] Refer to Article 37 of the Basic Law.

autonomous collegial organ while distinguishing its responsibilities from those of the President, despite some overlaps. The 2006 legislative elections (in which Hamas was victorious) helped to further consolidate this autonomy – helping to set the cabinet further apart from both the president and the PLO. It should nonetheless be acknowledged that the rules regulating the President's nomination of the Prime Minister were deliberately not codified,[48] while other details were not included in the canonical text upon the basis that they were so obvious that it was not necessary to entrench them in the Basic Law. This inference was made with regard to the PLC's vote of confidence in government programs, and it also applied to the content of the written ministerial declaration.[49]

This inference failed to acknowledge the fact that these details were not obvious at all. This was shown in 2006, when in outlining its program, Ismail Haniyeh's Hamas government rejected the request, made by both the PA President, and by PLO Executive Committee, that it should explicitly reference the PLO. In its defense, the government could cite the fact that there was nothing in the Basic Law that obliged the cabinet to refer in its program to the PLO (there is however a vague reference to the PLO in the preamble of the Basic Law, not in the body of the Basic Law properly speaking). In the absence of a (textual) legal obligation, the Hamas government did not feel that it was necessary to make this reference.

The internal divide resulted in the President, Fatah and the Quartet boycotting the Hamas-led government. As a consequence, the President established what can be considered as a 'shadow government' – a group of advisors to the president, who would provide guidance on matters pertaining to finance, foreign affairs and security, etc. Thus, bypassing the PA government, which retained the support of the majority of the PLC deputies.

5.2 (UNCONSTITUTIONAL) STATE SECURITY COURTS

The Basic Law requires that military courts be regulated by 'special laws' that limit their scope of application to military affairs.[50] There is no basis in the Basic Law for 'State Security Courts' established by [Presidential] decree.[51] In searching for a legal basis for this innovation, President Arafat was forced to invoke previously established legal pretexts (including emergency British and Egyptian emergency regulations!) There are numerous problems with

[48] This was explicitly stated in the explanatory Memorandum which accompanied the Amended Basic Law of 2003: "The Council decided during the review of the amended law that it would not be necessary to add provisions dealing with Prime Minister's preparation in all matters related to the formation, resignation or dissolution of the cabinet to the President of the National Authority, on the grounds that this is a political tradition that does not require being put into a separate article in the text of the law."

[49] Refer to Article 66 of the Basic Law.

[50] Refer to Article 101 of the Basic Law: '[…] 2. Military courts shall be established by special laws. Such courts may not have any jurisdiction beyond military affairs.'

[51] For more about the State Security Court, see Amnesty International, Palestinian Authority: Prolonged Political Detention, Torture and Unfair Trials, PALESTINE YBK. INT'L. L. 327, 344 [1996/1997].

these courts; firstly, they are established by decree; secondly, and this follows by logical extension, they are not regulated by law; finally, they subject civilians to military-style procedures, rules and provisions. As a consequence, Palestinian civilians were forced to answer to a judge different from their 'natural judge'.

Both anomalies – courts established by decree and civilians judged by military courts – completely contradict both Basic Law provisions and the broader rule of law idea. This helps to explain why the situation became particularly intolerable after the Basic Law entered into force in 2002. It was only after 2003, when various reforms were initiated, that the Minister of Justice – in the absence of a decree or a court decision – declared that security courts come to an end. After being elected in 2005, President Abbas promised to ensure that all decisions taken by State Security Courts will be reviewed by ordinary courts – according to Human Rights Watch, this promise was not kept in subsequent years.[52]

Besides, military courts – which function upon the basis of the PLO Revolutionary Code – are still in place, despite the fact that these courts do not uphold basic standards and, in many cases, apply death penalty with limited respect to due process.[53] The constitutional basis of these courts has been challenged but the constitutional court (at the time, the High Court acting as Constitutional Court) neglected to engage with this challenge, instead dismissing them upon the basis of a range of formalities.[54] After seizing control in Gaza since 2007, Hamas established its own military courts – in certain cases subjecting also civilians to military rules – for example in cases where civilians are condemned in cases of "treason" or collaboration with Israel). It shall be noted that death penalties were also applied in the Strip despite the fact that they lacked the President Abbas's endorsement (which is a constitutional requirement, based Article 109 of the Basic Law).[55]

5.3 (NON) JUSTICIABLE RIGHTS

The adoption of the Basic Law signaled a clear break with previous legal regimes. It established the Supreme Constitutional Court, a specialized and independent court that has the power to review the constitutionality of laws or regulations; that can be petitioned directly by individuals; and that can strike down laws adopted by the legislature. However, the legal record shows that the Supreme Constitutional Court did not play an active role in protecting basic rights and freedoms or human rights. The cases' history of both the Supreme Court – in its capacity as Constitutional Court – and the Supreme Constitutional Court (operational since 2016, when President Abbas nominated the panel of judges) – show that judicial review is still incapable of making entrenched rights and freedoms justiciable in Palestine.

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[52] Palestinian Authority: Death Sentences Surge in West Bank, Gaza: 11 Sentenced to Death in 2008 (Human Rights Watch, 15 December 2008), <https://www.hrw.org/news/2008/12/15/palestinian-authority-death-sentences-surge-west-bank-gaza>.
[53] For more, see Mutaz M. Qafisheh, Human Rights Gaps in the Palestinian Criminal System: A United Nations Role? 16 THE INTERNATIONAL JOURNAL OF HUMAN RIGHTS 358, 358-377 (2012)
[54] Constitutional Complaint (n 1) of 2009.
[55] For more, see, TARIQ MUKHIMAR, HAMAS RULE IN GAZA: HUMAN RIGHTS UNDER CONSTRAINT (2013).

Looking back in the existing case law it is possible to find just one instance, in which the High Court of Justice[56] makes explicit reference Article 10 of the Basic Law. Article 10 makes very general reference to 'basic human rights and freedoms' before imposing on the PA an obligation to "work without delay to become a party to regional and international declarations and covenants that protect human rights."

The petition against the PA challenged its lack of action in ensuring that disabled people enjoyed full access to public places. The Basic Law was used upon an essentially supplementary basis. In all likelihood, the Court would have justified its decision with reference to Disabled Rights Law no.4 (1999). In citing an additional justification for its intervention and affirmative decision, the High Court of Justice referenced its mandate to address, whenever it is imposed by the lack, to address itself to both actions and inactions upon the part of the public authorities.

There are several indications that suggest that the PA committed to those obligations under international human rights law,[57] although given that the PA is a non-state which is not possessed of sovereignty, these commitments would be adhered to as a custom or convention. However, after the General Assembly recognized Palestine as a non-member state,[58] President Abbas, in his capacity as the President of the State of Palestine, ratified several Human Rights treaties.[59]

This ratification makes the PA accountable to international human rights treaties. This applies despite exceptional circumstances (the ongoing occupation) and the objective character of the PA (a non-state actor that is not possessed of sovereignty, the main characteristic of statehood). It is however important to note that this ratification was not accompanied by a conversion of internal laws, so as to make them consistent with these treaties. In addition, applications of the Basic Law do not, in being applied to the existing legal framework, invoke or directly apply human rights treaties.

6 Conclusion

In this paper, I began by observing that the PA's Basic Law entrenches the main pillars of constitutionalism. This is, taking into account the past of both Palestine and the Palestine Liberation Organization (PLO), a significant

[56] HCJ/Ramallah – Case 56/2005.

[57] The Interim Agreement (Article XIX) which was signed in 1995 contained a very similar clause: 'Human Rights and the Rule of Law Israel and the Council shall exercise their powers and responsibilities pursuant to this Agreement with due regard to internationally-accepted norms and principles of human rights and the rule of law.'

[58] Refer to the relevant United Nations General Assembly Resolution (A/RES/67/19), which passed on 29 November, 2012. Out of 193 UN member states, 138 voted in favor, with nine voting against and41 abstaining. <http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/67/19>.

[59] Dalia Hatuqa provides a detailed account of the treaties that were ratified by President Abbas in 2014. See ''Paradigm shift': Palestinians join treaties', Aljazeera (22 April 2014). <http://www.aljazeera.com/news/middleeast/2014/04/shift-palestinians-join-treaties-201441811195081331 3.html>.

development. I suggested that the commitment of political actors to the principles and values of Constitutionalism should be understood to precede the written constitution itself (the Basic Law), often coming to function as an independent set of reference points. In reflecting upon the legal practice of the PA, I argued that the transition from constitutionalism to a written constitution had been profoundly problematic, resulting in the pronounced absence of a consolidated governmental practice that institutionalizes Constitutionalism. In my view, Constitutionalism remained, at best, documentary – i.e. written constitutionalism, with the consequence that the PA's political system remained stalled.

The kind of political system that was put in place by the Basic Law was a substantial part of the problem. Upon closer reflection, the outline of the PA can be said, *grosso modo*, to correspond to the semi-presidential model of political authority. Semi-presidentialism is, to a substantial extent, defined by the fact that it permits, contingent upon election outcomes, drastic changes in the political system. It would therefore be completely misleading to conceive of the Palestinian political settlement as tending towards a distinct political system. It is instead apparent that the type of political system will be profoundly influenced by electoral outcomes, the results of which will substantially impact upon interactions between different branches of government and the central organs of the state.

The Semi-presidential system can potentially divide into three different subtypes: Firstly, a consolidated political majority (where the President, the government, and the legislative body are from the same majority party). Secondly, a divided political majority (where the President's party differs from the majority in the legislative body/the government). Finally, a divided political minority (in which neither the President nor the government has the support of a majority of the population or the elected assembly).[60]

It is astonishing to note that, despite its relatively short life, the PA passed through the three subtypes. It began as a consolidated political majority (this was the situation, with limited exceptions, between 2003-2006). It progressed to a divided political majority (between 2006-2007, the President and a majority of the PLC/government were drawn from different political parties) before coming to rest (from 2007 to the present in the West Bank) as a divided political minority.

It is similarly instructive – and also astonishing – to note that international support to the PA did not directly contribute to the establishment of a popularly accountable PA. This was clearly illustrated by the aftermath of the 2006 elections, when the establishment of a Hamas government (which corresponded to the second sub-type of a divided political majority) resulted in an international boycott of the new government.

[60] Cindy Skach has explored the ways in which different electoral outcomes impact upon the composition of the domestic political system: Skach, *supra* note 24, at 93-121.

After Hamas's seizure of the Gaza Strip in 2007, President Abbas declared the state of emergency. Salam Fayyad's government – which was largely composed of technocrats who lacked political legitimacy and electoral mandate - was formed by Presidential decree. Successive governments (serving under Salam Fayyad, and later on Rami Hamdallah, and then Mohammad Shtayyeh) continue to exert control over PA-administered sections of the West Bank. Mahmoud Abbas, who is similarly afflicted by the lack of a popular mandate since presidential elections are overdue, continues to serve as President. During these years, the PLC has not convened and the political divide between the two territories has widened.

A further degree of complexity is added by the fact that the Basic Law was amended in 2003. Mahmoud Abbas initially served in this role, resigning after less than six months due to repeated conflicts with Arafat, who was suspicious that the international community were seeking to, through the transfer of powers to the prime minister, build up an alternative point of political engagement. When Abbas was elected as President in 2005, the prospect of an empowered prime minister had lost its appeal for the international community, a state of affairs that was further reinforced, and indeed substantially accentuated, by the election of a Hamas government in 2006.

In concluding, I would observe that the form of the political system was not only contingent upon the election outcome. Other factors, such as the relation of this outcome to other considerations, including the peace process, the overarching two-state framework, and Quartet conditions, inevitably came into play. There is a clear suspicion that Constitutionalism, for both Palestinian elites and the broader international community was not valued in itself, but was instead valued to the extent that it aligned or coincided with these wider points of reference – peace, fighting terrorism, etc. Given this fact, it is difficult to envisage how Palestinians can move beyond written constitutionalism, and, as a result, the political system, unsurprisingly, remains stalled.

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International Human Rights Law within the Palestinian Legal System

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ABSTRACT

The hierarchical status of international treaties within the domestic system of states varies from one to the other depending on each state's approach and understanding of international law. While most states do not differentiate between the constitutional hierarchical status of international human rights treaties and other types of international law treaties, some states accord human rights treaties a special constitutional status. In Palestine, the legal system does not establish the constitutional hierarchy of international treaties within Palestine. The Palestinian Supreme Constitutional Court (SCC) dueled upon the issue recently. This article provides a critical review of the SCC's decisions on the constitutional hierarchy of international law in Palestine, while advancing the argument that international human rights treaties should be accorded a special constitutional status.

Keywords: *International Law, International Human Rights Treaties, Palestine, Constitutional Law, Constitutional Courts.*

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CONTENTS

1. INTRODUCTION

In 2012, the United Nations General Assembly recognized Palestine as a non-member observer State[1] and thus confirmed that, setting aside the contentious nature of recognition in international law,[2] the international community believed that the State of Palestine (SoP) was competent to ratify international treaties. When Palestine ratified seven core human rights treaties (HRT),[3] it did not submit a reservation to any of the treaties.

States that join international treaties are responsible for enforcing their international obligations domestically, but the method they use is entirely their own concern.[4] The principle of sovereignty establishes that each state is free to determine how it enforces its International obligations at the domestic level. But this does not mean that they can cite national law as 'justification' when they fail to act accordingly.[5]

Monism and Dualism have traditionally been the two approaches used to determine the relationship between a state's national law and conventional international law. Monism treats national law and conventional international law as components of a single legal system. It holds that international law becomes part of the state's national legal system when a treaty is ratified, which means there is no need for future legislation.[6] Monism generally upholds the supremacy of international law by elevating it over national law.[7]

Dualism maintains that national and conventional international law have different legal subjects and different sources, and it therefore maintains that conventional international law cannot be

[1] See G.A. Res. 67/19, U.N. Doc. A/RES/67/19 (Dec. 4, 2012).
[2] Malcolm Nathan Shaw, International Law 322-324 (Cambridge Univ. Press. 7th ed. 2014).
[3] Press Release, U. N. High Commissioner for Human Rights, Spokesperson for the High Commissioner for Human Rights Press Brief on Palestine (May 2, 2014), https://unispal.un.org/DPA/DPR/unispal.nsf/0/262AC5B8C25B364585257CCF006C010D. (Last viewed Mar. 31, 2019).
[4] Swedish Engine Divers' Union v Sweden, App. No. 5614/72, 1976 Eur. Ct. H.R. 50. *See also*, Exchange of Greek and Turkish Populations, Advisory Opinion, 1925 P.C.I.J. (ser. B) No. 10, at 20-21 (Feb 21).
[5] Vienna Convention on the Law of Treaties art. 27, *opened for signature* May 23, 1969, 115 U.N.T.S. 331.
[6] Unless a treaty is not self-executing.
[7] Jan Klabbers, International Law 287-298 (Cambridge Univ. Press.) *See also,* European Commission for Democracy Through Law Report on the Implementation of International Human Rights Treaties in Domestic Law and the Role of Courts, study no. 690/2012, 18-23 (Oct. 2014).

enforced within a state's domestic legal system unless it has first been transformed into a domestic law.[8] Common law states such as Australia, Canada and the United Kingdom usually implement international treaties on the domestic level by transforming it into laws or instead rely on case law provisions. To take one example, in 1998 the United Kingdom (UK) passed the Human Rights Act, and this enabled it to incorporate the European Convention on Human Rights (ECHR) into domestic law.[9]

The hierarchy of international treaties in each state's domestic system has to be deduced from its case law, constitution or other indicators. Some constitutions accord international treaties the same constitutional power as ordinary laws,[10] and others give international treaties a status that is higher than ordinary law but lower than the constitution;[11] more progressive constitutions, meanwhile, distinguish HRT from other international treaties, and give the former primacy by elevating them over ordinary law and giving them a constitutional status.[12] Very few constitutions however make conventional international law superior to the constitution.[13] Finally some constituteions, such as Palestine's, may not address the position of international law within their domestic system at all.[14]

This article proposes that Palestinian political and legal decision-makers should grant HRT a special constitutional status. It first determines the hierarchical status that general international treaties have within the current Palestinian legal system and then outlines the comparative experiences of states that do and do not accord HRT a constitutional status. It concludes by presenting political and legal arguments that have been advanced in support of its initial proposal.

[8] Grainne De Burca, Oliver Gerstenberg, The Denationalization of Constitutional Law, 47 (1) Harv. Int'l L.J. 243, 245 (2006).
[9] For a deeper analysis of the Human Rights Act of 1998, See: David Fledman, The Human Rights Act 1998 and Constitutional Principles, 19 Legal Stud. 165-206 (1999).
[10] Grundgesetz Fur Die Bundesrepublik Deutschland [Grundgesetz] [GG] [Basic Law], May 23, 1949, BGBI. I (Ger.) art. 25. 2014 Const. art. 93 (Egypt).
[11] 1958 Const. arts. 54, 55 (Fr.), 2014 Const. art. 20 (Tunis.).
[12] Constituicao Federal [C.F.] [Constitution] art. 5 (3) (Braz.). 2008 Const. art 84 (Ecuador). 1991 Const. art. 20 (Rom.) 1992 Const. art. 11 (Slovk.).
[13] Grondwet voor het Koninkrijk der Nedelanden arts. 91 (3), 94 (Neth.).
[14] Al-Qanoun al-Assasi al-Palestinian al-Mouadal [The Amended Basic Law] of 2003 (Palestine). 1952 Const. (Jordan).

2. The General Status of International Treaties in the Palestinian Legal System

The Palestinian Amended Basic Law of 2003 does not address the constitutional hierarchy of international treaties (including HRT) within the Palestinian legal system. Article 10 (2) does however refer to international HRT when it calls on the Palestinian Authority (PA) to accede, without delay, to international declarations and covenants that protect human rights (HR).

In 2017, the Supreme Constitutional Court (SCC or the Court) issued a decision[15] that gave international treaties primacy by elevating them over national laws (without distinguishing between ordinary and constitutional law). The Court delivered its ruling after a first instance court referred a case in which UNRWA[16] was a party to, in which the UN agency pleaded immunity before the lower court by referring to its headquarters agreement with the PA. The Court asked if the granting of this immunity breached Article 30 of the Palestinian Basic Law, which prohibits administrative decisions from being immunized from judicial review.

The SCC first established that the Basic Law did not address the incorporation of international treaties or their hierarchical status, and then expressed the view that international treaties are not administrative decisions (in the meaning of Article 30 of the Palestinian Basic Law) but are instead sovereign acts that fall beyond the scope of judicial review.

After referring to international obligations, the Court referred to Article 27 of the Vienna Convention on the Law of Treaties (VCLT), and thereby clarified that a state cannot invoke national laws as 'justification' when it fails to uphold international obligations. It then cited the ICJ's advisory opinion of 1988, which held that the US could not shut down the Palestinian Liberation Organization's (PLO) office because of the existence of headquarters agreements between the US and the United Nations, and the PLO and the United Nations.

These international obligations had not been incorporated into the domestic legal system, and the Court therefore needed to establish if national or international law had primacy. It eventually established that the latter does have primacy and observed that this applies even when the item is

[15] Al-Mahkama al-Dostoreya al-Ula [The Supreme Constitutional Court], decision No. 4 of 2017 (Palestine). Available at: https://www.tscc.pna.ps/pages?id=court_provisions.
[16] United Nations Relief and Work Agency for Palestinian Refugees.

not published in the official Gazette. The Court then ruled that the only exception to that rule is when international law contradicts Palestinian cultural, political and religious morals.[17] The precise nature of these 'morals' was however subsequently a subject of debate among the public and in legal circles.

The Court cited the special status of the Palestinian State and the Palestinian struggle as one of the reasons for its conclusion and also reiterated, on more than one occasion, that the SoP needed to affirm its commitment to international law and human rights. Its decision was however short and vague, and the majority opinion failed to explicitly clarify if international law takes precedence over Palestinian Basic Law.

An added complication arose from the fact that the SCC's competence on this issue was questioned, most notably by those who argued that the 2017 decision did not fall under any of the Court's competencies established by Article 103 of the Basic Law or Article 24 of the Court's mandate.[18] The SCC clearly did not review the constitutionality of a law or a statute; interpret any of the Basic Law provisions while referring to a conflict between the three branches of authority; adjudicate a conflict of jurisdiction between administrative and judicial authorities; adjudicate a conflict that arose in the execution of two contradictory final judgements; or adjudicate on a challenge to the President's legal capacity.[19]

The case was referred under Article 27 (2) of the SCC's mandate, which allows lower courts to refer cases to the Court in situations where there is a suspicion that a decision, decree, law (including a provision in a law) or regulation is unconstitutional. If the Court wished to exercise proper jurisdiction, it should have first established that it was competent to review a provision of an international treaty. Article 27 does not clarify whether the SCC has this competency and it is also unclear if Article 28's reference to "[l]egislative [p]rovision" covers the provisions of

[17] A concurring opinion by one of the judges assigned primacy to international treaties and held they are infraconstitutional.

[18] Constitutional Law Unit at Birzeit University, Position Paper on Constitutional Court Judgement Concerning the status of international conventions in the Palestinian legal system (Arabic), Birzeit's Working Papers Series in Legal Studies (12/17), Constitutional Law Unit, Faculty of Law and Public Administration: Birzeit University (2017) *See also* on the scope of constitutional review in Palestine: Mahmoud Abu Sway, International Treaties: Among the References for Constitutional Review in Palestine and Inclusion [Arabic], Birzeit's Working Papers Series in Legal Studies (7/2020), Constitutional Law Unit, Facultry of Law and Public Administration: Birzeit University (2020).

[19] Law of the Supreme Constitutional Court, Al-Waqaeh al-Palestinian [Palestinian Official Gazette] No. 62 of Mar. 25, 2006.

international agreements. But the Court ignored this open question of competence and proceeded to assert the primacy of international treaties over a constitutionally protected right. The Court should have referred the case back to the first instance court, which was the competent body in this instance. Its failure to do so was a denial of justice.[20]

In 2018 the Minister of Justice, in implementing SCC-related provisions set out in Article 103 of the Basic Law,[21] asked the SCC to interpret Article 10 of the amended Basic Law.[22] The Court considered the status of international treaties within the Palestinian legal system, the process through which international treaties are implemented domestically and the nature of Palestine's HR obligations and responsibilities. The Court opened by asking if it is appropriate for a constitutional court to answer such questions when there is a constitutional vacum. It answered that a constitutional judge can play an active role in reforming and interpreting a state's constitution and may seek to improve a state's constitutional and legal system.

After establishing itself as the competent body, the Court then addressed the hierarchical status of international treaties. In concluding that such treaties are of a rank higher than ordinary law but lower than the constitution (Basic Law), it established that constitutional rules are integral to the foundation of any legal system, and accordingly inferred that no legal document can claim precedence over it. This created a new constitutional provision by giving international treaties primacy over ordinary national law.

Although Palestine has a written Basic Law that functions as the constitution, the Court sought to define the documents that constitute the Palestinian constitution: it returned to the 1988 Palestinian Declaration of Independence, declared it to be of constitutional status and then elevated it as the highest constitutional document, above even the amended Basic Law. The Court held the Declaration defined the identity of the Palestinian State and its commitment to international obligations, including HR, and also observed that the Basic Law was adopted after the Declaration and was in any case only intended to operate for a transitional period.

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[20] Constitutional Law Unit, *supra note* 15, at 2, 3.

[21] Al-Mahkama al-Dostoreya al-Ula [The Supreme Constitutional Court], decision (constitutional interpretation) No. 5 of 2017 *issued on* March 3, 2018 (Palestine).

[22] Al-Mahkama al-Dostoreya al-Ula [The Supreme Constitutional Court], decision (constitutional interpretation) No. 5 of 2017 *issued on* March 3, 2018 (Palestine).

The preamble of the amended Basic Law only referred to the Declaration of Independence on one occasion and it did not accord it constitutional status. Although a constitutional court is permitted to improvise when interpreting what constitutes a state's constitution, the SCC went further when it ruled that the Declaration presides over the amended Basic Law.

The Court addressed Palestine's HR obligations and observed that respect for HR is achieved when they are incorporated into the domestic system and are aligned with Palestinian cultural and religious identity – if a right was not compatible in this sense, it would not be enforced in Palestine and the SoP would fall short of its international obligations. This identity-based criterion, which the SCC invoked on more than one occasion, resembles the reservations that a state registers when it ratifies a treaty. But it is not clear how the constitutional court can improvise a criterion/criteria that might alter the domestic application of an internationally protected right when the government did not express a reservation at the time of ratification.

In referring to the incorporation of treaties into the Palestinian legal system, the Court held that international treaties are not, per se, laws to be enforced domestically but are instead enforced by their incorporation through domestic laws – international treaties are therefore of a higher status than ordinary national laws, and courts apply them when dealing with cases. This suggests that the SCC went out of its way, and ultimately beyond its mandate, to establish international treaties as a new source of law. In making the domestic enforceability of international treaties and their superiority over ordinary national laws subject to publication in the official Gazette, it clearly recalled the enforceement criterion of ordinary national laws.[23] Subject to this requirement, international treaties are higher than ordinary national laws, and courts elevate them over ordinary national laws when they encounter inconsistency. At the time of writing, none of Palestine's treaties have been published, but this does not mean that Palestine's obligations to the international community are not effective.[24]

If Palestine attempts to ratify a treaty that conflicts with provisions of the amended Basic Law, then it is possible to envisage the treaty being reviewed before ratification (to determine its constitutional compatibility) and recommendations for reserveations are issued; alternatively, the

[23] Palestine amended Basic Law, *supra note 13*, art. 116.
[24] VCLT, *supra note* 5.

constitution could be amended. But review and recommendation in the event of a contradiction are not envisaged by the Palestinian legal system and accordingly there is no regulation in place. Amendment, meanwhile, does not seem feasible because there is still no Palestinian Legislative Council (PLC).

A further complication derives from the fact that if a treaty that contradicts the constitution is ratified, then the SCC cannot rule on its unconstitutionality. This is because Article 24 of its mandate clearly establishes this matter does not fall within its jurisdiction.[25] The Court would however be entitled to rule on the constitutionality of the law implements the treaty domestically (through incorporation). While this could solve the Palestinian legal system's dilemma, it would only insert an additional complication, as Article 27 of VCLT makes it clear that states cannot cite national laws to 'justify' non-compliance with international obligations.

The Court created two constitutional rules when it elevated international treaties over ordinary national law and also made these treaties, subject to publication, a source of law. Its action however exceeded the immediate request and possibly even its more general mandate. It also did not distinguish between bilateral and multilateral agreements, and this created the possibility that any bilateral agreement, including future agreements with Israel, could override Palestinian ordinary national laws.[26] In stating that international treaties are not laws per se in Palestine, the Court also appeared to indicate Palestine's adoption of a Dualist approach – if this was the case, then Palestine would be obliged to harmonize its national laws with ratified international treaties. But this only introduced a further problem as there is no PLC and the President does not have the authority to amend the Basic Law.

3. COMPARATIVE EXPERIENCES

This article now provides comparative perspective by considering different approaches to the hierarchy of international human rights treaties. It identifies if different legal systems accord HRT a special constitutional status, and distinguishes between them on this basis.

[25] Law of the Supreme Constitutional Court, *supra note* 16.
[26] [Anonymous, last visited Jan. 25, 2019).

3.1. Legal Systems that Do Not Accord Human Rights Treaties a Constitutional Status

The majority of legal systems do not accord HRT a special status and instead register them as general international treaties before deriving their hierarchical position from this status. Egypt, Jordan and Morocco provide regional examples of this arrangement. The West Bank was ruled by Jordan for more than three decades and the Gaza Strip was administered by the Egyptians, and the influence of both countries was later identifiable in the Palestinian legal system. Both countries are therefore obvious points of reference while the example of Morocco, which is reforming in response to popular demands for democracy and HR, is clearly relevant to the contemporary Palestinian situation.

Some legal systems make international treaties superior to ordinary laws but inferior to the constitution while others give them the same status as ordinary laws. Egypt adopted multiple constitutions after it declared independence.[27] The 1923 constitution does not refer to the hierarchical status of international law but the 1956,[28] 1964,[29] 1971,[30] 2012[31] and 2014[32] appeared to give international treaties the same status as ordinary law. Throughout this period, the country's political parties also issued political notes that did not refer to international law or HRT.[33] In 2012, local HR organizations called for the constitution to explicitly refer to ratified international HRT, but without success.[34] The constitution that followed two years later was the only one that referenced IHRL (International Human Rights Law) – its preamble explicitly referred to the Universal Declaration of Human Rights (UDHR) and reiterated the country's commitment to ratified HRT.[35]

[27] For further insight into Egypt's constitutional history, *see*: http://www.constitutionnet.org/country/constitutional-history-egypt.

[28] 1956 Const. art. 143 (Egypt).

[29] 1964 Const. art. 125 (Egypt).

[30] 1971 Const. art. 151 (Egypt).

[31] 2012 Const. art. 45 (Egypt).

[32] 2014 Const. art. 93 (Egypt).

[33] محمد المساوي، المرجعية الدولية لحقوق الانسان في الدساتير العربية الجديدة: المغرب ومصر نموذجا، المجلة العربية للعلوم السياسية 29، 39 (2016).
[International Human Rights Reference in Modern Arabic Constitutions: The Examples of Morocco and Egypt] [Hereinafter Modern Arabic Constitutions].

[34] رجب طه، "حقوق الانسان تحت مطرقة دستور الإسلاميين"، مجلة رواق عربي (مركز القاهرة لدراسات حقوق الانسان) العدد 63، 6 (2012).
[Human Rights under the Hammer of Islamists Constitution (Egypt)].

[35] Egypt's Constitution, supra note, art. 93.

Article 33 of the 1952 Jordanian constitution briefly addressed international treaties when it established that the king is responsible for concluding international treaties and agreements. Its second paragraph established that treaties and agreements that involve a financial commitment or affect the public or private rights of Jordanians will not be valid unless they are approved by the national assembly (this second condition is also upheld by Jordanian Penal Law). Although the constitution does not address the hierarchical status of international agreements, HRT do not infringe the aforementioned rights of Jordanians and can therefore be ratified without parliamentary approval.[36]

In practice, Jordanian courts have settled on the primacy of international law over ordinary national law.[37] The Jordanian delegation to the Human Rights Committee confirmed this in 2010,[38] when they committed to implementing the International Covenant on Civil and Political Rights (ICCPR) and reiterated that ratified international treaties have primacy over ordinary laws. In support, they referred to Article 24 of the Civil Jordanian Code, which states that the code's provisions are not active if they contradict an enforced international treaty.

More recently in 2020, the Jordanian Constitutional Court issued an interpratory decision confirming, in case of contradiction, the primacy of international law over ordinary national law.[39]

The preamble of the 1996 Moroccan constitution affirmed the country's commitment to obligations, principles and rights in charters and conventions and also reiterated its commitment to universally recognised HR. But it stopped short of giving international treaties a higher status than ordinary laws. In February 2011, Moroccans who had been inspired by the 'Arab Spring' marched through the streets of more than 50 cities and demanded change and democracy.[40] A new

[36] Mohamed Aljaghoub, The Implementation of Human Rights Treaties by Jordanian National Courts: Practice and Prospects, in Kreca, M., Novakovic, M., & Institut za Medunarodnu Politiku i Priverdu. (2013). *Basic concepts of public international law; Monism and dualism.* Belgrade: Faculty of Law, University of Belgrade, Institute of Comparative Law, Institute of International Politics and Economics. 387-407, at 393.

[37] Mahkamat al-Tamiez (Court of Cassation), decision No. 936 of 1993. (Jordan). Mahkamat al-Tamiez (Court of Cessation), decision No. 7309 of 2003 (Jordan).

[38] Human Rights Committee, Replies of the Government of Jordan to the List of Issues to be taken up in connection with the consideration of the fourth periodic report of Jordan, CCPR/C/JOR/Q/4, at. 1 Sep. (2010).

[39] Yahia Shkeir, On the Sidelines of the Constitutional Court's Decision... The Status of Treaties in Jordanian Laws, May 13, 2020, available at https://alawalnews.net/2020/05/13/-على-هامش-قرار-المحكمة-الدستورية-مكانة/?fbclid=IwAR0Aq9wtMLeoiN6X_bEP9Wx1wcA3241d3cLog6nOVLcLkyw6zazDof1ZOfc

[40] Mohamed Madani, the 2011 Moroccan Constitution: A Critical Analysis, International IDEA resources on Constitution Building 6, (2012).

Constitution,[41] which included a majority of the UDHR's rights, was then introduced.[42] Its preamble established that constitutional provisions, published international treaties and the "laws of the Kingdom" were the supreme laws of the land. This instituted a hierarchy in which international treaties were superior to ordinary laws but below the constitution. The supremacy of international treaties over national laws is also subject to the condition that they are compatible with the Kingdom's "immutable national identity".[43] This criterion, it will be noted, clearly recalls the criteria put forward by the Palestinian SCC.

Article 55 provided the king with the power to ratify and sign treaties. When international obligations or provisions contradict the constitution, the constitutional court can make the revision of the constitution a condition for ratification. The vague terms of the constitution can be attributed to its drafters' intention to reconcile the agendas of HR organiz-ations and political and religious parties. The former insisted on the explicit primacy of international law and the latter made no secret of their animosity to HR and international law.[44]

3.2. Legal systems that Accord Human Rights Treaties a Constitutional Status

In this trend, states give HR norms a constitutional status by explicitly incorporating specific international HR treaties into the constitution or by making a general reference to all ratified HR treaties.

Article 35 (1) of South Africa's 1993 interim constitution established that the country's courts must examine international law in HR cases. Section 39 (1) of the final constitution, which explicitly stated that "international law is an important interpretive tool",[45] followed three years later. It also clarified that courts who interpret its bill of rights must consider international law and may take foreign law into account. To take one example, the country's constitutional court relies on non-binding decisions issued by international HR bodies, such as the United Nations Committee on

[41] 2011 Const. (Morocco). Available at: https://www.constituteproject.org/constitution/Morocco_2011.pdf.
[42] For a full list of constitutionally protected rights: https://www.cndh.org.ma/an/bulletin-d-information/human-rights-provided-moroccan-new-constitution. Last viewed Jan. 20, 2019.
[43] Morocco Const., *supra note 36*, preamble.
[44] Modern Arabic Constitutions, *supra note* 29, at 44.
[45] *Christian Education South Africa v. Minister of Education* 2000 (10) BVLR 1051, para. 13 (S. Afr.).

Human Rights and the Inter-American Commission on Human Rights, when referring to this document.[46]

Article 75 (22) of Argentina's 1994 constitution, which set out congressional powers, established that treaties and concordats are above ordinary laws in the hierarchy. The following paragraph then set out HRTs and declarations that have a constitutional status.[47] Nicaragua's constitution adopts a similar approach.[48]

Colombia's constitution provided a general statement that international treaties that recognize HR have domestic priority.[49] Although it did not list specific treaties, it clarified that HRs that are explicitly expressed do not negate those that are not stated.[50] In seeking to define these unstated rights, the country's constitutional court adopted a "constitutional block". While it is not clear how a relevant right can be identified, the court's case law provides some guidance by suggesting they will be contained in all HRT ratified by the country.[51]

The amendments that Mexico added to its constitution in 2011 enhanced the country's protection of HR. Article 1 established that all of the country's citizens are entitled to HR granted by the constitution and international treaties; furthermore, It held that these rights can only be restricted or suspended in situations and conditions that are clearly stated in the constitution.[52] In 2014, the country's supreme court issued a decision that interpreted this article and which clarifyied that HR rules, regardless of their source, have a constitutional rank and can only be restricted by the constitution.[53]

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[46] *State v. Makwanyane* 1995 (3) SA 391; 1995 (6) BCLR 655, para. 35 (S. Afr.).

[47] Including: The American Declaration on the Rights and Duties of Man; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; and the UDHR. See Art. 75, Constitucion Nacional [Const. Nac.] (Arg.)

[48] Art. 46, Constitucion Politica De La Republica De Nicaragua [Cn].

[49] Constitucion Politica De Colombia [C.P.] art. 93.

[50] *Id,* art. 94.

[51] Alejandro Chehtman, International Law and Constitutional Law in Latin America (July 3, 2018) Forthcoming, Conarado Gubner Mendes and Roberto Gargarella (eds.),The Oxford Handbook of Constitutional Law in Latin America, at 9, 10. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3207795.

[52] Constitucion Politica de los Estados Unidos Mexicanos [C.P.], *as amended*, Diario Oficial de la Federacion [DO], 5 de Febrero de 1917, art. 1 (Mex.).

[53] Summary of decision available at: www.codices.coe.int/NXT/gateway.dll/CODICES/precis/eng/ame/mex/mex-2014-1-001?f=templates$fn=document-frameset.htm$q= %5Bfield,E_Country%3AMexico%5D%20$x=server$3.0#LPHit1. (last viewed Mar. 31, 2019).

Until Brazil adopted its 1988 Constitution, it placed international treaties at the same level as ordinary laws, which raised the prospect they could be superseded by future laws. Its supreme court confirmed this in a 1977 decision after it was requested to determine the validity of Executive Order No. 427/1969.[54] In its judgement, the court ruled that even though the Convention is binding on Brazil, it does not prevail over a country law that is validated by the constitution. [55]

International treaties and their position and monitoring were addressed in different parts of the 1988 constitution. Article 5 (2) clarified that the constitution's fundamental rights and guarantees do not exclude other rights derived from international treaties that included Brazil as a party. Second, Article 49 stipulated that international treaties required congressional approval (by a simple majority of those present). And Article 102 provided the Supreme Court with the authority to adjudicate when it was asked to consider if a treaty or federal law was unconstitutional.

In 2004, Article 5 was altered by a constitutional amendment, which established that: "[i]nternational treaties and conventions on human rights approved by both houses of the national congress, in two different voting sessions, by three-fifths votes of their respective members, *shall be equivalent to Constitutional Amendments"* [emphasis added]. This amendment produced two processes for the incorporation of treaties into the Brazilian system; one for HR treaties (three-fifths majority in two voting rounds); and another for treaties not related to HR (simple majority in one voting round).[56] Prior to this amendment, the country's courts did not consider HRT to be a special category of treaties, and they also regarded all treaties as ordinary laws. After it was introduced, HRT incorporated into the Brazilian system before 2004 were treated as infra-constitutional and those incorporated after 2004 were regarded as constitutional.[57]

[54] One of this order's provisions contradicted the Geneva Convention by adopting a uniform law on bills of exchange and promissory notes.
[55] Gustavo Ferreira Santos, Treaties X Human Rights Treaties: A Critical Analysis of the Dual Stance on Treaties in the Brazilian System, 15 Eur. J.L. Reform 20, 20-33 (2013).
[56] *Ibid.,*
[57] *Ibid*, at 32.

4. A Call for Granting Human Rights Treaties a Constitutional Status in Palestine

This article has established the current status of treaties in the Palestinian system and it has also surveyed regional and international legal systems. It will now propose that international HRT should be accorded a constitutional status in Palestine. It maintains that if this is not achievable, then at the very least these treaties should be established as a normative force that guides the interpretation of constitutionally protected rights.

The 1952 Jordanian constitution that was enforced in the West Bank provides an insight into how this proposal could be developed in Palestine. Its potential contribution is further underlined by the fact that it arguably still applies to matters not governed by the Palestinian Basic Law as it was never actually explicitly superseded. But a clear problem arises in the fact that this constitution does not establish a specific hierarchical status for international treaties in general. This is shown in contemporary Jordan where international treaties, including HRT, are regarded as of lower status than the constitution.[58]

The features of the Palestinian legal system could also be considered. Palestine applies a civil law system and it would therefore appear logical to apply Monism, as this is the approach most frequently associated with such systems. In this arrangement, international law would have primacy over national laws. But even states which accord international law this status still consider international treaties -including HRT- to be of a status lower than the constitution. This applies in Egypt, France, Jordan and Tunisia.

Another approach would be to argue that the Basic Law accords international HRT a constitutional status. Article 10 (a) establishes that basic rights and liberties must be respected; and (b) calls on the Palestinian government to ratify and join HRT. When both paragraphs are read in conjunction, and recognition is extended both to constitutional protections (for a number of basic HR and liberties in Palestine) and the constitution's call to join HRT, it appears logical to conclude that the constitution's drafters sought to use international treaties to protect HR in Palestine. It is

[58] This also applies to the Egyptian documents used to govern the Gaza Strip. See Council of Ministers, Law No. 255 for the year 1955, Basic Law for the Palestinian territories under Egyptian military authority, May (1955) (Egypt). *See*: muqtafi.birzeit.edu/InterDocs/images/160.pdf

therefore their human rights content, rather than their international character, which underpins the claim that international HRT in Palestine have a constitutional status.

The SCC's findings on the constitutional status of the Declaration of Independence are a useful point of reference here. The Declaration declared that the Palestinian state will respect the principles of the UN charter and the UDHR. Taking into account this commitment and the obligation imposed by Article 10 of the Basic Law, it could be argued that international HRT that embody the UDHR (e.g. the Covenant on Civil and Political Rights and the Covenant on Economic and Social and Cultural Rights) have constitutional status. At the least, UDHR rights explicitly referenced in Palestinian Declaration of Independence need to be interpreted in the context of standards of international HR law.

Finally, the Palestinian Declaration of Independence, which embodies the Palestinian struggle for independence, is considered by the SCC to be the highest constitutional document in the Palestinian system. It could accordingly be argued that the UDHR's rights have a constitutional status. At a minimum, constitutionally protected rights within the Palestinian system must be interpreted in the context of the UDHR. This proposition however gives rise to the same criticism as the SCC's decisions – namely that the Court was asked to go beyond the explicit terms of the amended Basic Law. But there is a clear difference – namely that the Declaration of Independence explicitly referenced the UDHR and the Basic Law and called on the PA to join regional and international HR treaties. When the Court arguably creates new constitutional rules, it does not therefore exceed its mandate but instead concerns itself with progressively interpreting the written provisions of Palestinian constitutional documents.

5. Conclusion

The status of international treaties in a state's legal system is a matter of domestic concern but this does not mean that domestic law can be cited as a 'justification' for failing to meet international obligations. Palestine's Basic Law does not regulate the hierarchical status of international treaties within the Palestinian legal system. When the SCC concluded that international treaties are higher than ordinary laws but lower than the constitution, it aligned itself with the majority of legal systems across the world. This does not however mean that the SCC should not interpret the relevant provisions of the Declaration of Independence and the Basic Law to grant human rights

treaties a constitutional status. This article has demonstrated that the Court could achieve this without exceeding its power or mandate by granting human rights and freedoms, as per the HRT, a constitutional status, based on article 10 of the Basic Law.

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Morocco at the Crossroads: Religious Freedom and the Law

Leila Hanafi *

ABSTRACT
Nearly all Moroccans are Muslims, and the King, identified as "commander of the faithful" in the constitution, has ultimate authority over religious affairs. According to the Moroccan Constitution, Islam is the religion of the state, and the state guarantees freedom of thought, expression, and assembly. This article considers the ways in which Morocco regulates religious practice, and seeks to demonstrate how interference with manifestations of religion often leads to restrictions on related rights and freedoms. It draws on a number of related court decisions, relevant legal frameworks, as well as the role played by the Ulama Supreme Council against the country context.

Keywords: *Morocco, religious freedom, international human rights, constitutional rights.*

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Contents

INTRODUCTION

Claims by Morocco that it respects the fundamental right to religious freedom of their citizens may appear misaligned when one looks at evidence.[1] In the case of religious freedom, Morocco is capitalizing on the distinction made in international human rights documents between internal beliefs and the external realm or manifestation of those beliefs.[2] According to this distinction, while the right to hold a particular belief is generally considered to be absolute, outward manifestations of religion may be subject to legitimate restrictions.[3]

In the following analysis, using a wide-ranging set of examples of court decisions, I provide some background on the emerging discussion on manifestations of limitations to religious freedom in Morocco, as enshrined in the constitution and legal framework. My general objectives are to consider the ways in which Morocco regulates religious practice, and to demonstrate how interference with manifestations of religion often leads to restrictions on related rights and freedoms. The analysis also covers relevant legal frameworks, as well as, importantly, the role played by the Ulama Supreme Council against the country context.

This Morocco-specific analysis specifically draws on court decisions adopted between 2012-2019, and places the selected decisions within the jurisdictional development and context of interpretation of constitutional rights in Morocco. The analysis focuses on how the courts balance the constitutional right concerning freedom of religion with other rights, namely freedom of expression.

Note: In the context of Morocco, public access to decisions of the Constitutional Court or other high courts that address equality rights, personal freedom, and religious law are not accessible to the public and require court approval for research purposes. The same applies to any public access to court records. Law 31-13 on the protection of the right of access to information was passed in January 2018.[4] The law comes with limitations, including restricting the right to access publicly held information pertaining to the deliberations of the Government.[5]

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[1] U.S. Department of State Annual Reports on International Religious Freedom, 2014-2018. Morocco, Annual country-by-country reports.

[2] While the preferred language is "freedom of religion or belief," reflecting the inclusion of all belief systems (theistic, non-theistic, and atheistic), I am using here "religious freedom" as my working terminology. This eliminates confusion regarding the distinctions I am making between "belief" and "practice." It also reflects the prevailing usage in this study.

[3] US Bureau of Democracy, Human Rights and Labor (2014-2018) *International Religious Freedom Report.*

[4] Morocco, *Dahir (Decree). N1-18-15. Projet de Loi. 31-13 relative au droit d'acces a l'information* (access to information). Feb. 22, 2018.

[5] Id. Art. 7.

This has proven to be the main research limitation, particularly regarding the ability to publish court decisions and the judicial outcomes of relevant cases. Consequently, the focus on the target samples was determined by the author's ability to acquire case data through own contacts. Given the sensitivities around the topic, in addition to Moroccan legal restrictions on accessing court decisions and sharing them, I cannot provide a transcript translation of the court decisions under discussion in this Morocco case study. My focus has been, rather, to distill the court orders into an analysis format that covers the decisions amply instead of reproducing them verbatim, which is not permitted. Generally, these cases have been addressed at the level of courts of first instance and courts of appeals, not beyond.

Legal recognition is difficult to achieve in the absence of social recognition, and in a conservative country such as Morocco, tolerance of religious pluralism is highly dependent on a number of determinants, which shall be explored below.

Under international law, any limitation to a right or freedom must be "prescribed by law," and must be pursuant to one of five purposes: protection of public safety, order, health or morals,[6] or the fundamental rights and freedoms of others; and finally, the limitations must be necessary in a democratic society. At the international human rights level, in response to progress made in the implementation of the recommendations issued at the second cycle of the Universal Periodic Review, Morocco affirmed the constitutional guarantees of freedom of worship for all, with no exclusion for religious minorities.

Confirming its commitment to the provisions of Article 3 of the constitution, which stipulates that the state guarantees the right of everyone to worship, the country signed the Human Rights Council Resolution on freedom of religion in March 2014.[7]

Although Article 3 of the Moroccan Constitution, adopted in 2011, guarantees, 'free practice of religion for everyone,' the Law prohibits conversion to religions other than Islam. Moreover, Article 220 of the Penal Code punishes any activity that 'undermines the faith of a Muslim,' and stipulates that 'whoever uses violence or threats to coerce a person or persons to practice or attend a certain religious practice, or prevent them from that, shall be punished…' The article, associated as it is to 'undermining the faith of a

[6] European Convention for the Protection of Human Rights and Fundamental Freedoms, "Art." 9(2), Nov. 4, 1950, 213 U.N.T.S. 221.

[7] Human Rights Council Resolution N° A/HRC/25/L.19, 25th session, March 3-28th, 2014, on the freedom of religion or belief. Morocco is signatory to the resolution on freedom of religion.

Muslim,' makes the change of religious belief *from* Islam synonymous with this crime.[8] Hence, the majority of Moroccans who have converted to Christianity live in what has been described as a 'virtual world'.[9]

LEGAL FRAMEWORK AND RELIGIOUS FREEDOM

Morocco, officially the Kingdom of Morocco, is a country with a predominantly Sunni Muslim population, and a small number of Christians, Jews, Shiites, and Baha'is. The Moroccan Constitution defines Morocco as a Muslim state in its preamble and states that Islam is the state religion in Article 3, which also guarantees freedom of religious practices to all faiths.[10] Article 106 of the constitution states that the constitutional provisions related to the place of Islam cannot be changed.[11] The constitution also stipulates that the king is "commander of believers" and "defender of the faith" in the country. [12] The constitution guarantees freedom of thought, expression, and assembly, and says the state guarantees every individual the freedom to practice his religious affairs.

The country is a party to the International Covenant on Civil and Political Rights (ICCPR).[13] It is also a member of the League of Arab States (LAS), as well as the Organization of Islamic Cooperation (OIC).

The government plays an active role in determining religious practice for Muslims, and disrespecting Islam in public can carry punishments in the forms of fines and imprisonment.[14] To that effect, the constitution prohibits the enactment of laws or constitutional amendments infringing upon its provisions relating to Islam. The constitution and the law governing the media prohibit any individual, including members of parliament normally immune from arrest, from criticizing Islam on public platforms, such as print or

[8] Ministry of Justice, Morocco. Penal Code, *Code pénal (promulgué par Dahir n° 1-59-413 du 26 novembre 1962 (28 joumada II 1382)).* Art. 220. Available at: adala.justice.gov.ma/production/legislation/ar/.../القانون%20الجنائي%20مجموعة.docx

[9] El Rouidi, A. (2014)*Waiting for the Implementation of the Constitution: Morocco's Christians Migrate to the Virtual World*. Report dated April 23, 2014.

[10] Morocco Constitution. Art. 3 Secretariat of the Government, Morocco (2011). The Constitution. Sherifyan Dahir (Royal Edict) n° 1.11.91 issued on 27 chaabane 1432 (July 29, 2011)

[11] Constitution. Art. 106

[12] Id. Art. 41

[13] International human rights law recognises a spectrum of expressions, ranging from those forms that must be protected to those that must be punished. Article 19 of both the UDHR and the ICCPR establishes the freedom of opinion and expression.

[14] Ahed, S. & Kheirat, M.) 17/05/2014) 'The History of the Religious Formation in Morocco', *the weekly Ittihad Ichtiraki*, Issue 10706

online media, or in public speeches. Such expressions are punishable by imprisonment for two years and a fine of 200,000 dirhams. [15]

Against the reaffirmation of the apostasy condemnation by the Ulama Supreme Council in 2012, six members of the same council issued in 2016 a document titled *Sabil al-'Ulama* (The Way to scholars).[16]They focused on the difference between political apostasy (according to Muslim tradition, always punishable by the death penalty) and "intellectual apostasy", the expression of individual choice in religious matters, recalling the verses of the Qur'an that assert that freedom.[17]

The law penalizes anyone who "provides for enticements to undermine the faith" or convert a Muslim to another faith, and provides for punishments of six months to three years' imprisonment and a fine of 200 to 500 dirhams. It also provides for the right to a court trial for anyone accused of such an offense. Voluntary conversion is not a crime under the law. The law permits the government to expel summarily any noncitizen resident it determines to be "a threat to public order," and the government has used this clause on occasion to expel foreigners suspected of proselytizing. By law, impeding or preventing one or more persons from worshipping or from attending worship services of any religion is punishable by six months to three years' imprisonment and a fine of 200 to 500 dirhams.

Sunni Muslims and Jews are the only religious groups recognized in the constitution as native to the country. A separate set of laws and special courts govern personal status matters for Jews, including functions such as marriage, inheritance, and other personal status matters. Rabbinical authorities, who are also court officials, administer Jewish family courts. Muslim judges trained in the country's *Maliki-Ashari Sunni* interpretation of the relevant aspects of Sharia administer the courts for personal status matters for all other religious groups. According to the law, a Muslim man may marry a Christian or Jewish woman; a Muslim woman may not marry a man of another religion unless he converts to Islam.

[15] Morocco, Press Law. Art. 72. Dahir n° 1-16-122 du 6 kaada 1437 (10 août 2016) portant promulgation de la loi n° 88-13 relative à la presse et à l'édition < http://www.mincom.gov.ma/wp-content/uploads/2017/05/Code_Presse2016_FR-1.pdf>.

[16] In 2012, the council issued a Fatwa ratifying the Sharia ruling according to which any Muslim who abandons Islam should be executed, stipulating that Islamic Law considers anyone born from Muslim parents, or a Muslim father, as a Muslim, and prohibits apostasy and disbelief, and upon refusal of return to Islam, the Islamic sentence for apostasy must be applied.

[17] It is worthy to note that in January 2016 in Marrakech, a conference of Muslim scholars to promote the rights of religious minorities took place, under the auspices of the Moroccan Minister of Habous[17]. These developments could suggest that Morocco, in spite of its hesitation, is moving toward the recognition of freedom of religion.

Legal provisions outlined in the general Tax Code provide tax benefits, land and building grants, subsidies, and customs exemptions for imports necessary for the religious activities of recognized religious groups (Sunni Muslims and Jews) and religious groups registered as associations (some foreign Christian churches).[18] The constitution guarantees civil society associations and nongovernmental organizations the right to organize themselves and exercise their activities freely within the scope of the constitution. The law on associations prohibits organizations that pursue activities the government regards as "illegal, contrary to good morals, or aimed at undermining the Islamic religion, the integrity of the national territory, or the monarchical regime, or which call for discrimination."[19]

The law does not require religious groups to register to worship privately, but a non-recognized religious group must register as an association to conduct business on behalf of the group or to hold public gatherings. Associations must register with local Ministry of Interior (MOI) officials in the jurisdiction of the association's headquarters in order to conduct financial transactions, hold bank accounts, rent property, and address the government in the name of the group. An individual representative of a religious group neither recognized nor registered as an association may be held liable for any of the group's public gatherings, transactions, bank accounts, property rentals, and/or petitions to the government. The registration application must contain the name and purpose of the association; the name, nationality, age, profession, and residential address of each founder; and the address of the association's headquarters.

Many foreign-resident Christian churches are registered as associations. The Roman Catholic, Russian Orthodox, Greek Orthodox, Protestant, and Anglican Churches have different forms of official status. The Russian Orthodox and Anglican Churches are registered as branches of international associations through the Embassies of Russia and the United Kingdom, respectively.

[18] Morocco, 2020. Code General des Impots (*General Tax Code*). Institué par l'article 5 de la loi de finances n° 43-06 pour l'année budgétaire 2007, promulguée par le Dahir n° 1-06-232 du 10 Hija 1427 (31 décembre 2006).
Available from: https://www.finances.gov.ma/Publication/dgi/2020/cgi2020-fr.pdf
[19] See La*w* regulating the right to establish civic associations in Morocco. Available at:
http://www.sgg.gov.ma/Portals/1/association_pdf/lib_pubM_ar.pdf?ver=2012-01-30-144138-000

SELECTED CASES RELATING TO APOSTASY IN MOROCCAN LAW

"Apostasy" and non-religion under the law

Non-Muslims are prohibited by the Penal Code to proselytize and to "shake the faith" of Muslims.[20] Proselytizing can be punished with a sentence of 3 to 6 months' imprisonment and a fine. Article 222 of the Penal Code states that "a person commonly known to be Muslim who violates the fast in a public place during Ramadan, without having one of the justifications allowed by Islam [such as travelling, sickness or menstruation], shall be punished by one to six months in prison," as well as a fine.

In 2016, Morocco's Ulama Supreme Council issued a *Fatwa*[21] declaring that leaving Islam no longer merited the death penalty and redefined apostasy not as a religious issue but as a political stand more closely aligned with "high treason."[22] This was progress from its 2012 position, but also draws attention to the kinds of harsh measures that prevailed heretofore. This council, the Highest Religious Committee in charge of issuing *Fatwas,* had released a book in 2012 in which it articulated its position on apostasy and argued that a Muslim who changes his or her religion should be punished with death, drawing on a widespread jurisprudential tradition.

Although apostasy is not a crime under civil or criminal law, there is plenty of scope under blasphemy laws (see below) for apostates to be punished. This is exhibited in cases related to freedom of expression. One prime example is that of caricaturists who are still struggling to coexist with red lines that are either imposed by society's conservative nature or by the political system.

Casablanca, Court of First Instance 2012-2015, Case of Khalid Gueddar

In 2012, Khalid Gueddar, an editorial cartoonist was detained by the police after publishing a caricature on his website that was deemed as insulting Islam. Gueddar's caricatures were subjected to harsh criticism because they brought down religious taboos. He was summoned by the judicial police in 2012 over caricatures that were deemed offensive to Islam, published on the satirical website Baboubi that he had created. The cartoonist said he was he was summoned by the judicial police and interrogated for six hours over his caricatures. Caricatures of Islam or the royal family are illegal in Morocco. He ultimately

[20] Penal Code. Art. 220
[21] Islamic ruling
[22] Morocco, Ministry of Habous and Islamic Affairs. Official website: http://www.habous.gov.ma/fr/conseil-supérieur-des-oulémas/531-conseil-supérieur-des-oulémas-2

received a suspended sentence from Casablanca's Court of First Instance and a fine of 320,000 Moroccan dirhams. His lawyer said if charged and convicted, Gueddar could face a harsh sentence and he compared the questioning to an inquisition on religion. The Minister of Justice at the time, Mustapha Ramid, said he would not intervene in what he described as a normal judicial process.

A stream of jurists seemed confident that the conviction of Gueddar in court was based on political grounds. In a public statement in 2015, Gueddar, noted that he was sentenced in absentia, and neither he nor his lawyer were notified of the trial date. He had attended several court sessions, and the case had been postponed several times. The case did not follow due process and the court system was a tool to harass the defendant. Gueddar challenged the court and said he would not appeal the ruling because he did not trust the independence of the Moroccan judiciary from the instructions of the political authorities in Morocco.[23]

The Moroccan Ministry of Human Rights clarified the interpretation of apostasy in Moroccan law publicly in April 2019 through former minister Ramid.[24] Morocco's Minister of Human Rights Mustapha Ramid said that Morocco does not criminalize apostasy. The minister noted that the Penal Code especially focuses on proselytizing that exploits people's "fragility" and "needs." He explained that the law criminalizes those who target minors or poor people and talk them into leaving Islam for another religion. Ramid further argued that if one converted to another religion from Islam out of conviction, the law does not prevent them from professing another faith. He said the law has its basis on the Qur'anic verse 18:29: *"The truth is from your Lord, so whoever wills – let him believe; and whoever wills – let him disbelieve."*[25]

This followed 2016, when Morocco's religious authorities had ruled that people who leave Islam should not be punished with the death penalty, reversing their previous ruling on apostasy. Morocco's High Religious Committee retracted its Islamic ruling stating that apostasy is punishable by death and decided to permit Muslims to change their religion. The reasons behind Morocco's High Religious Committee's change in position were expressed in a publicly released statement:

[23] Al Monitor News. "*Moroccan cartoonists fight for their right to express themselves*", Edition 8, 2015: https://www.al-monitor.com/pulse/fa/originals/2015/08/morocco-caricature-freedom-expression-media-press-rights.html#ixzz6NFFaNRzJ
[24] 2M TV. Interview with Minister Mustapha Ramid, *Hadith maa Sahafa* (Discussion with the Press), April 14, 2019. Available at: https://www.youtube.com/watch?v=lN1yCo2XKyg
[25] Quran Verse 18:29. Available at: https://quran.com/18/29?translations=20

"The most accurate understanding, and the most consistent with Islamic legislation and the practical way of the Prophet, peace be upon him, is that the killing of the apostate is meant for the traitor of the group, the one disclosing secrets, […] the equivalent of treason in international law."[26]

The High Religious Committee interpreted the Prophet's statement that "whoever changes his religion, kill him" in the light of his explanation referring to "the one who leaves his religion and abandons his people." The statement further explained that, at the time of continuous wars against the Islamic revolution in Arabia, apostates represented the threat of disclosing the secrets of the new Ummah to its many enemies.

Resorting to Islam's primary source of legislation, the High Religious Committee stated that the Quran talks in many instances about apostasy and its punishment in the hereafter, without mentioning any punishment in this life, as in Chapter 2 verse, 217 that says: "And whoever of you reverts from his religion [to disbelief] and dies while he is a disbeliever – for those, their deeds have become worthless in this world and the Hereafter, and those are the companions of the Fire, they will abide therein eternally."[27]

Case Taza, Court of Appeals November 2018-Case of man accused of proselytizing

This case reflects a positive development in judicial outcomes towards greater freedom of religion in the country. The Court of Appeals in Taza ruled in favor of an individual accused of "shaking the faith of a Muslim," according to Article 220 of the Penal Code. The Moroccan defendant, Y.G., gave "books of the Gospel," to a friend and fellow Moroccan. His friend, a Muslim, filed a complaint, "considering this act an attempt to incite him to convert to Christianity." The Court unveiled its decision in a statement, explaining that the Bible is one of the holy books that Muslims believe in and declared the defendant "innocent" of any offences.

The details of the case date back to 2018, when the plaintiff filed a complaint against the defendant, accusing him of proselytizing, and attempting to convert him to Christianity. The defendant denied the accusation and pleaded not guilty.

On March 28, 2018, the Court of First Instance in Taza upheld a preliminary ruling that the defendant was not guilty. At the request of the King's General Prosecutor to explain its decision, the Court of Appeals

[26] Morocco, Ministry of Habous and Islamic Affairs. *Id.*
[27] Quran. Chapter 2, verse 217

aligned itself with the decision of the Court of First Instance, thus acquitting the accused on November 22, 2018. The Moroccan authorities cited this case as a primary example of religious freedom in Morocco.

Casablanca, Court of First Instance. February 2014 Salafist Sheikh suspended jail sentence for apostasy

The Casablanca Court of First Instance gave *Salafist sheikh* Abdelhamid Abounaim a suspended one-month jail sentence in February 2014 for accusing opposition politician Driss Lachgar of apostasy following his calls to revise discriminatory laws against women.

Abounaim, 58, was found guilty of "defamation" and "undermining an organized institution," and was also given a 500 dirham fine. The lawyers for the defendant, who was absent when the order was issued, did not express an intention to appeal. Abounaim had expressed his views on social media through two videos over December 2013 and January 2014, in which he accused Driss Lachgar, the head of the opposition socialist party USFP[28], of apostasy. Several days earlier Lachgar had called for polygamy to be outlawed and urged a debate on the inheritance rights of women during the opening statement at the Socialist Party Women's Forum on December 20, 2013.[29]

[28] The Socialist Union of Popular Forces (*Al-Ittihad Al-Ishtirakiy Lilqawat Al-Sha'abiyah)* was established in 1975. The USFP (French acronym) was formed as a breakaway from the National Union of Popular Forces (UNFP), a Socialist opposition party which had itself split from the Istiqlal Party in 1959. USFP Official website: http://www.usfp.ma

[29] The 2004 Family Lawdid impose conditions to restrict polygamy, i.e. the consent of other spouses and the permission of a court needed for a man to take another wife. See *Al Ittihad Al Ichtiraki* Newspaper, December 23, 2013.

CONCLUSION

The right to freedom of expression is fundamental to holding religious beliefs and the practice of one's religion. Some civil society activist voices argue that the freedom of expression in Morocco has been hedged in by a number of limitations and restrictions, dealing with the expression of sentiments contrary to prevailing institutions or religious, or political beliefs.

In a memorandum published on October 28, 2019, the National Human Rights Council (established by the constitution to provide guidance on human rights matters to Moroccan institutions) recommended repealing Penal Code Article 220, which criminalizes proselytizing, when done to lure people away from Islam. This is an indication of the country's openness to reviewing its legal framework and debate issues at the juncture of freedom of expression and freedom of religion. Beyond conceptual clarity, it is important to understand that religious freedom manifests itself in different formats and in the case of Morocco the state is cognizant that the guarantees of freedom of religion are closely related to other substantive rights. Hence, the focus of this analysis has been on the complexity of case-law before national courts.

On the question of Islamic identity and oscillating between tradition and modernity, one could argue that Morocco could be the epitome of a third space where Islamic tradition is in constant evaluation to align, as relevant, to internationally acclaimed human rights and liberties. The next few years, however, will be key in building, and maintaining, the level of religious freedom and coexistence laid out by Morocco's leadership.

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Constitutional Courts and Rule of Law in Islamic Law States: A Comparative Study

Emilia Justyna Powell and Ilana Rothkopf [*]

ABSTRACT

This article discusses the relationship between the rule of law and constitutional courts in 29 Islamic Law States (ILS), by focusing on constitutional language, and with particular reference to the cases of Kuwait, Bahrain, and Oman. We introduce 3 new variables that can be used to measure the presence of constitutional courts in the language of the constitution, and describe the implications of such constitutional language for the rule of law. Our data show that during the 2007-2017 timeframe, constitutional oversight in the Muslim milieu has increased. In 2017, 76 percent of ILS have a constitutional court or equivalent judicial organ. This number has increased from 66 percent in 2007. We suggest that this trend highlights the importance of understanding the relationship between the rule of law and constitutional courts in the Islamic context.

Keywords: *constitutional courts; judicial review; Islamic law; rule of law; domestic legal systems; comparative constitutional law*

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CONTENTS

INTRODUCTION

The institution of a constitutional court and the idea of judicial constitutional review more generally are inherent in Western legal traditions. In contrast, appeal to a higher judicial institution was largely absent in traditional Islamic law. Yet the spread of extremist interpretations of Islamic law has, to a large extent, been halted by jurisprudential activism of contemporary constitutional courts operating within some Islamic Law States (ILS) (Powell 2020). 1 More often than not, these courts tend to share a proclivity toward modernization and progressivism. Over the past six decades, constitutions of many Islamic law states have included references to constitutional courts, some fluctuation notwithstanding. Of course, there are valid arguments that these higher courts do not automatically improve the quality of these countries' good governance or rule of law, nor spread secularism. Indeed, constitutional courts or councils of higher justice can at times be tools for the ruling elite, and thus embrace a politicized, top-imposed interpretation of the Islamic legal tradition (Hirschl 2010).2 However, a robust constitutional control over legislation, including people's ability to question constitutional legitimacy of the sub-constitutional laws in secular venues offers a vital point of connection between a country's domestic legal system, rule of law, and good governance. Secular constitutional courts can constitute a channel through which secular laws get enforced (Agrama 2012).3 In other words, the presence of a constitutional court can exponentially increase secular law's de facto well-being in the context of a country's domestic legal system (Powell 2015, Agrama 2012, Asad 2003, Hussin 2016, Lapidus 1996).

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[1] We define an Islamic law state as a state with an identifiable substantial segment of its legal system that is charged with obligatory implementation of Islamic law in personal, civil, commercial, or criminal law, and where Muslims constitute at least 50 percent of the population. This definition does not depend solely on the religious preferences of citizens, but rather fundamentally relies on the characteristics of the official legal system upheld by the state. For elaboration on this definition, see Powell 2020.

[2] For instance, the Guardian Council, consisting of Muslim theologians and jurists, is the most powerful body in Iran and has been endowed with the power to approve or veto all bills passed by the Iranian legislature on the grounds of consistency or inconsistency with Islamic principles. It is often described as a "de facto" constitutional court, though there is no appeal to a secular body for concordance with constitutional principles.

[3] We do recognize that a juxtaposition of Islamic law as a religious law against secular law constitutes an oversimplification. Some aspects of Islamic law are from a practical standpoint ipso facto secular, because they do not involve much, if any, reference to religious texts or doctrines. Also, many "secular" institutions or legal principles—perhaps counterintuitively to the popular view—have been historically part of sharia. Consequently, we use the term "secular" to designate specific legal features to emphasize these laws' common presence in the West and Muslim-majority countries.

This paper discusses the relationship between the presence of constitutional courts and rule of law in 29 Islamic Law States by focusing on constitutional language. We present original data on the inclusion of constitutional courts in these constitutions, and three illustrative cases. Our data show that during the 2007-2017 timeframe, constitutional oversight in the Muslim milieu has increased. As illustrated by Figure 1 below, in 2017, 76 percent of ILS have a constitutional court or equivalent judicial organ.4 This number has increased from 66 percent in 2007.

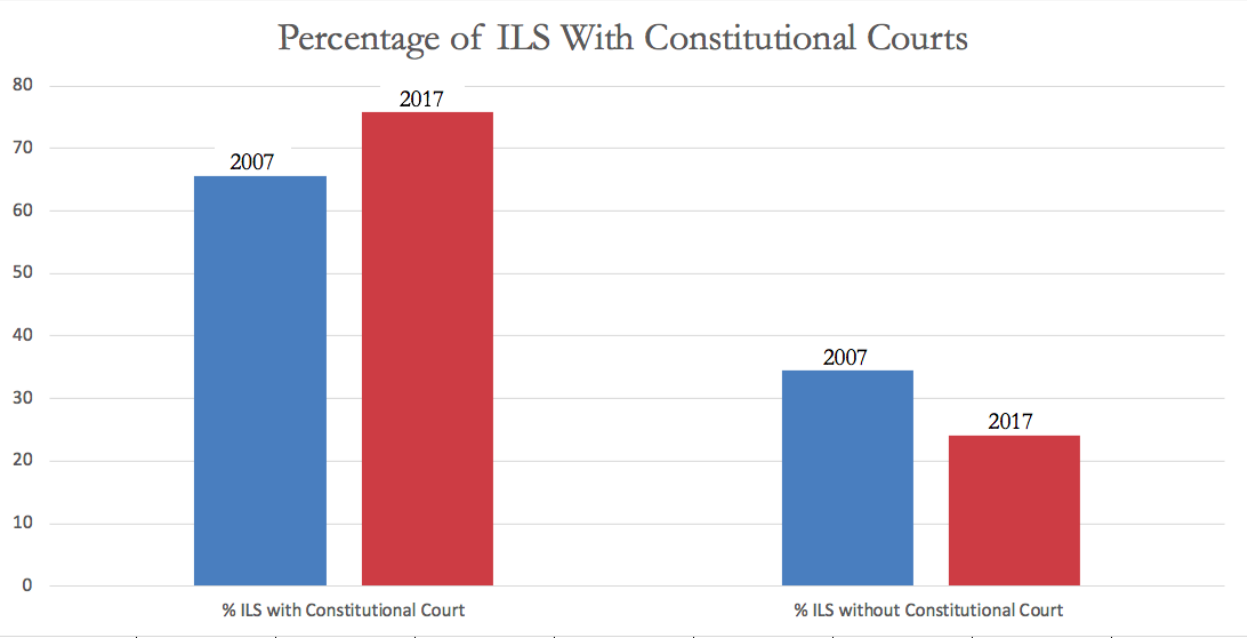

Figure 1: Percentage of ILS With Constitutional Courts

We argue that an empirical shift toward measuring constitutional oversight can remedy the existing scholarship's limitations by assessing the degree to which constitutional courts within a country are actually able to influence the quality of domestic legal systems in societies with distinctively Islamic institutions. The main insight of this paper is that only strong constitutional courts, anchored in explicit constitutional language, can effectively impact a country's rule of law.

[4] These countries include: Afghanistan, Algeria, Bangladesh, Bahrain, Brunei, Comoros, Egypt, Gambia, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Malaysia, Maldives, Mauritania, Morocco, Nigeria, Oman, Pakistan, Qatar, Saudi Arabia, Sudan, Syria, Tunisia, United Arab Emirates, Yemen. See Powell 2015 and Powell 2020 for additional description of the country selection.

CONSTITUTIONAL COURTS AND THE RULE OF LAW

The institution of constitutional review has become a norm of democratic constitutional design. Out of 191 constitutional systems, 158 include some formal provision for constitutional review, 79 of which have designated bodies called "constitutional courts" or councils (Ginsburg ad Moustafa 2008). However, the dominant Anglo-American and continental European models of constitutional courts differ from one another.[5] The continental legal systems typically include a special institution charged with overseeing the constitutionality of laws (see e.g. Garlicki 2007, Ferreres Comella 2009). As Garlicki states, in continental Europe, separate, centralized constitutional courts are "one of the most typical features of Continental constitutionalism." (Garlicki 2007, 45). In many ways, these courts are considered to be a successful improvement on the traditional parliament-oriented conception of democracy and the rule of law (Garlicki 2007, La Porta et al 2004).6 However, there are often tensions between constitutional courts and ordinary courts. These tensions emerge out of questions about the distribution of power between higher courts, particularly vis à vis criminal and civil supreme courts (Garlicki 2007). Ordinary courts' judges are sometimes resistant to the constitutional court's decisions, particularly where the constitutional court's decisions contradict their own. In the Anglo-American model, review of laws of lower status falls under the purview of the judicial system rather than a separate, parallel institution. This form of judicial review originates in the natural law overtones in the common law tradition; the notion that judges are the guardians of a higher law. The Anglo-American model is, as Ginsburg characterizes it, an "expression of Anglo-American natural law tradition in an age of positive legislation." (Ginsburg 2008). The highest court, typically called the High Court or Supreme Court is the highest judge for cases involving constitutional questions.

Importantly, constitutional courts function as veto players and often as facilitators or consolidators of democracy (Brouard and Hönnige 2017). These courts, along with the broad notion of judicial review are an important component of democratic institutions (Scheppele 2005, Skach 2011). In fact, some scholars argue that innovations of institutional design in former communist states

[5] This binary is contested by some scholars who emphasize that in practice, there are in fact many hybrid models. See Afonso da Silva 2018 for elaboration on this perspective.

[6] La Porta et al (2004) find that the Anglo-American judicial tradition that enshrines judicial independence and constitutional review in constitutions is correlated with greater economic and political freedom.

render strong constitutional courts more democratic than elected parliaments and executives (Scheppele 2005). Different historical trajectories produce different democratic institutions, and in the post-communist context, the role of the court is to compel the government to uphold the will of the voters.

Furthermore, constitutional courts, if embedded in a high-quality domestic legal system —one that is fully committed to the principle of rule of law— also help contribute to democratic stability. In particular, a constitutional court can transform political debates into pure issues of constitutional law: constitutional review has a "neutralizing function" particularly in new democracies (Sólyom 2007, 297). When a constitutional court has a "neutralizing function," political debates are transformed into issues of constitutional law and decided in legal terms as a form of conflict resolution. It is also important to consider that the specifics of a state's political institutional context may fundamentally shape the way the court governs. At times, particularly, where political institutions have weak ties with society, the court may appropriate some of the governance roles of the legislature or executive (Landau 2010). Alternatively, a constitutional court may become a useful tool for the governing elite, speaking on constitutional issues only in a way that is endorsed by those in power. Thus, mere presence of a constitutional court does not necessarily indicate that a domestic legal system as a whole is committed to embracing the principle of rule of law. Institutions can indeed become empty shells in terms of their ability to foster democratization.

Constitutional courts can potentially temper religious extremism and threats to religious freedom. This function is particularly important in the context of societies where religion or religious arguments play a significant role in political, economic, and social life. ILS constitute prime examples of such societies. Indeed, to some extent, many ILS' citizens, as adherents to the Muslim faith, are committed to tenets of Islam and one or another school of interpretation.[7] Additionally, in many ILS, Islamic law constitutes an important part of the domestic legal systems, repositioning secular legal institutions in state governance (Hirschl 2010). Hirschl suggests that constitutional courts actually serve as secularizing forces within society (Hirschl 2004). In Egypt, for instance, constitutional reforms in 1979 expanded the authority of the constitutional court and ensured the Court's independence. This establishment of the court's judicial review, argues Hirschl, has

[7] We are keenly aware that sharia cannot be reduced to a system of laws.

effectively curtailed the scope of the 1980 amendment that enshrines shari'a as the principle source of legislation (Hirschl 2004).

CASE STUDIES: KUWAIT, BAHRAIN, AND OMAN

The literature suggests that constitutional courts are important for the rule of law, good governance, and the overall well-being of democracy. What do constitutional courts look like in the Middle Eastern context? In this section, we examine the examples of Kuwait, Bahrain, and Oman to illustrate the potential benefits of constitutional courts. We selected these examples for their variation in our variables of interest – whether and how the Constitution includes a constitutional court. As the ILS category is quite diverse, we also select three Gulf countries for comparability along other factors such as language and geography. Moreover, Kuwait and Bahrain, the two cases where a Constitutional Court has been established, exhibit variation in how the Constitutional Court manages challenges to laws of lower status. These brief, albeit informative cases demonstrate the type of comparative information that we capture in the subsequent section of this paper, that presents new, descriptive data on constitutional language and constitutional courts. Furthermore, by referencing examples of Constitutional Courts' jurisprudence, these case examples illustrate the association between constitutional language and other outcomes of interest, such as the activities of Constitutional Courts and review of legislation for constitutionality.

Kuwait

Article 173 of Kuwait's 1962 Constitution declares:

> A law shall specify the judicial body competent to decide upon disputes relating to the constitutionality of laws and regulations and shall determine its jurisdiction and procedure. A law shall ensure the right of both the Government and the interested parties to challenge the constitutionality of laws and regulations before the said body. If the said body decides that a law or regulation is unconstitutional, it shall be considered null and void.[8]

[8] Kuwait Const. ch. 5, art. 173, 1962.

This article clearly establishes the need for a judicial organ that carries out the function of constitutional review. The Kuwaiti Constitutional Court, which has exclusive jurisdiction to interpret the constitutionality of legislation, was established by Law No. 14 of 1973 (Khedr 2016). Legislative acts are often accompanied by Explanatory Notes that provide the court with the stated intentions of the legislature (Khedr 2016). These notes elaborate on the background of the law or amendment and the legislature's rationale for legislative action.

The jurisprudence of the court has meaningfully impacted the way that the Kuwaiti legal system functions on a day-to-day basis. In fact, the Court's jurisprudence has shaped the way that secular institutions interact with Islam-based norms and institutions. Interestingly, the court's recent rulings have been welcomed by a substantial part of Kuwait's citizenry. Importantly for our argument, Kuwaiti citizens seem to perceive these rulings as furthering the well-being of democracy and rule of law. For example, in 2009, the Constitutional Court ruled that the Passport Law, which required women to obtain their husbands' permission to obtain a passport was unconstitutional.9 Lulwa al-Mulla of the Women Social Cultural Society commented that this decision "pleases everyone and not just Kuwaiti women, because…it is democracy that won this time" (Reuters 2009). The same year the court also ruled that female members of the Kuwaiti parliament were not required to wear a hijab, headscarf, in parliament on the grounds that failure to do so violated rules of Islamic dress.10 Although the constitution states that sharia is a main source of law, the Court asserted the constitution's guarantees to personal freedom and freedom of religion (Calderwood 2009, BBC 2009, Eagle Tribune 2009). According to Aseel al Awadhi, a female member of the Kuwaiti parliament who does not wear hijab, the hijab law "was formulated in such broad terms that it could be interpreted in various ways and – it goes against the core principles in the constitution, mainly individual freedom" (quoted in Calderwood 2009).

[9] Law No. 11/1962 Regarding Passports, art. 15. Repealed by Constitutional Court of Kuwait, Decision of Oct. 20, 2009 (women's right to apply for a passport without male guardian permission). This ruling allowed married women to obtain a passport without their husband's signature.

[10] Constitutional Court of Kuwait, Decision of Oct. 28, 2009 (women's duty to wear Islamic attire in order to vote or serve in parliament).

More recently, on October 5, 2017, the Constitutional Court struck down a 2015 law that required Kuwaiti citizens, residents, and visitors to provide DNA samples to the authorities.[11] This required that all citizens, residents, and temporary visitors to Kuwait provide DNA samples to the government. DNA samples would be collected as saliva and blood drop samples and stored in a lab at the General Department of Criminal Evidence in Dajeej. The Interior Ministry would also maintain a database of the DNA samples (Lee 2016). The government asserted that the database would be used to fight terrorism and crime. However, citizens and observers expressed concern that the law violated individual privacy and that personal information could potentially be used for other purposes, such as to test individuals' parentage in adultery cases or to deny individuals citizenship. In 2016, several citizens filed two direct constitutional petitions demanding cancellation of the law (Arab Time 2017). Ultimately, the Court found that this law violated Articles 30 and 31 of the Kuwaiti constitution, both of which guarantee the rights of personal liberty and privacy (Human Rights Watch 2017).[12] The Kuwaiti population supported the Court's ruling to overturn the law, as it was largely unpopular from the time of promulgation. Media reports noted that the government anticipated 250,000 citizens to refuse to take the tests even though such refusal could result in jail time or a $33,000 fine (Taylor 2016). The Kuwaiti case highlights ways in which a secular constitutional court may intervene to interpret and assess the constitutionality of laws. The Kuwaiti Constitutional Court contributed immensely to defining what Kuwaiti law says on an issue. The court has shaped the practice of law. Most importantly, the Court defined the precise balance between Islam-based rules and more secular institutions.

Bahrain

Unlike the Kuwaiti constitution, the 2002 Bahraini Constitution expressly refers to the constitutional court. Article 106 of the constitution states:

[11] Law No. 78/2015 regarding DNA samples, passed by Kuwait's National Assembly on July 2, 2015. Repealed by Constitutional Court of Kuwait Decision of Oct. 4, 2017.

[12] Per the Kuwait Const. ch. 3, art 30, 1962: "Personal liberty is guaranteed." and Kuwait Const. ch. 3, art 31, 1962: "No person may be arrested, imprisoned, searched, have his residence restricted or be restrained in liberty of residence or of movement save in conformity with the provisions of the Law. No person shall be subjected to torture or ignominious treatment."

> A Constitutional Court shall be established, and shall comprise a President and six members, all of whom are appointed by a Royal Order for a period specified by the law. The court's area of competence is to watch over the constitutionality of laws and statutes"[13]

The Constitutional Court was established by Law No. 27 of 2002, which provided details with regards to the Court's procedure, jurisprudence, and structure. Some provisions were amended in 2012, most notably, provisions regarding term limits for appointed justices (Sadek 2012). The amendment stipulates that the Court's members are appointed by the King for five-year terms, and that a member's term may only be renewed once.[14]

As in the case of Kuwait, the Bahraini Constitutional Court has, through its jurisprudence, contributed significantly to the development of the Bahraini legal system. For example, in 2014 the court ruled that Article 20 of the 2014 Traffic Law contravened the constitutional right to equality under the law through its restriction of movement for foreign nationals.15 This article had prevented residents of Bahrain who were neither Bahraini nor Gulf Cooperation Council citizens from obtaining a driving license or using a personal vehicle unless their job required it (Toumi 2014). Before the law had even passed it received criticism; Minister of State and Information Affairs, Sameera Rajab referred to draft legislation as "constitutionally questionable" (Thomas 2014). When the Traffic Law came into force in 2015, this unconstitutional article was omitted.

In other cases, the Court struck down constitutional challenges to existing laws. In 2003 for example, Mansour Al-Jamry, Editor-in-Chief of the newspaper Al-Wasat challenged the constitutionality of three laws that allegedly restricted the freedom of the press (U.S. Department of State 2007). Al-Jamry was fined and sentenced for purportedly publishing sensitive information about an investigation into a local terrorist cell.16 The laws he challenged address judicial authority,

[13] Bahrain Const. section 4, art. 106, 2002.
[14] The Constitutional Court's members consist of a chief justice, deputy chief, and five additional justices.
[15] Provision of the Bahrain Constitutional Court No 2014/3/D of year 12 judicial, in the Official Gazette issue 3199, on 5/3/2015, referenced in Almodares Working Paper.
[16] Freedom House and the United States Department of State both suggest that *Al Wasat* is the most independent newspaper in Bahrain, where the government has significant control over the media.

criminal procedure, and the press (U.S. Department of State 2007).[17] The Constitutional Court upheld these laws as constitutional and referred the case back to the High Criminal Court. Additionally, in 2012, the Court rejected a challenge to the constitutionality of several provisions of the National Safety Law of 2011.18 This law granted authority to the commander-in-chief of the Bahrain Defense Force to "take all necessary measures to protect the safety of the country and its citizens" (Toumi 2012). Critics alleged that this law violated freedom of assembly and peaceful protest (Human Rights Watch 2013). Nadim Houry, Deputy Middle East Director for Human Rights Watch commented that "Bahrain has spent the last two years cracking down on peaceful protest, violating people's rights from start to finish…now it's planning a whole new set of draconian restrictions, effectively creating a state of emergency…" (Human Rights Watch 2013). Critics were concerned that the law would be misused to jail peaceful protesters. The Court held, however, that the law was constitutional because it did not suspend political societies or freeze sessions of parliament (Toumi 2012). In April 2017, King Hamad ratified a constitutional amendment that enables military courts to try civilians. This amendment is designed for those accused of acts of terrorism, but Amnesty International and other non-governmental organizations worry that the scope may be extended to government critics (BBC 2017).

Oman

The 1996 Basic Statute of the State, which is the effective constitution of Oman does not explicitly provide for the establishment of a constitutional court.[19] Instead, it delegates the establishment of such a court to subsequent legislation. Article 70 of the Basic Statute of the State declares:

> The Law shall define the judicial body entrusted with the settlement of disputes pertaining to the extent of conformity of laws and regulations with the Basic Statute of the State and that the said laws and regulations do not contradict with its provisions. The Law shall also specify the powers of such judicial body and the procedure which it shall follow.[20]

[17] Al-Jamry challenged laws 42, 46, and 47.
[18] Royal Decree No. 18 of 2011 on the Declaration of a State of National Safety in Bahrain.
[19] *The Basic Statue of the State,* Ministry of Foreign Affairs of Oman, (Sept. 22., 2013), *available at* <https://www.mofa.gov.om/?p=794&lang=en>.
[20] Oman Basic Statute of the State, ch. 6, art. 70 1996 with 2011 amendments.

However, a law that would establish this judicial body has not yet been passed despite the fact that the Basic Statues calls for authorities to establish the relevant laws within two years. In 2012 the legal committee of the State Council discussed the viability of establishing a constitutional court or a separate department within the Omani supreme court as provided by the law (Khaleej Times 2012).[21]

Constitutional courts that are created by a future law are not necessarily less active than those that are established explicitly in the constitution. As noted above, the Constitutional Court of Kuwait has ruled on several noteworthy cases that uphold the protections that the constitution guarantees. However, where the constitution relegates this responsibility to legislation, there is a danger that the court may not be created for a number of years or at all. In the case of Kuwait, it took over a decade for the parliament to pass the legislation that established the constitutional court. In the case of Oman, there is still no constitutional court as called for by the constitution. These cases highlight that within the ILS category there can be meaningful variation in both formal institutions and in practice (Powell 2020, Powell 2015).

PATTERNS OF CONSTITUTIONAL OVERSIGHT

In order to evaluate the patterns of constitutional oversight, we have collected data on constitutional courts for 29 Islamic Law States. These data include all constitutions in effect during the time period 2007-2017. This period includes 44 constitutions and major constitutional amendments. Our variables capture the constitutional presence or absence of a constitutional court, and the prevalence of constitutional language devoted to such court. As such, we include 2 variables in addition to the simple presence or absence of a constitutional court in the constitution. The *Constitutional Court* variable (coded 0,1) captures whether a constitution references a constitutional court or another judicial organ charged with checking the constitutionality of laws of lower status (Powell and Powell 2018).[22] Where the constitution stipulates that a judicial organ is to

[21] The State Council is the upper chamber of parliament. *Oman debates constitutional court proposal*, KHALEEJ TIMES (Jan. 12, 2012) *available at* < https://www.khaleejtimes.com/article/20120111/ARTICLE/301119893/1016>.

[22] We are aware that coding constitutional courts formally does not capture all aspects of judicial review in practice. We suggest, however, that formalizing constitutional oversight in the constitution is a way to signal the drafters' commitment to supremacy

be created by a future law, we code this variable as 0 until the year in which that law is promulgated.[23] For example, as noted above, Kuwait's constitutional court was established by Law No. 14 of 1973, over a decade after the 1962 constitution. For the time period of our study, 66 percent of all constitutions contain references to a constitutional court or similar judicial organ. Figure 2 provide graphical representations of this distribution.

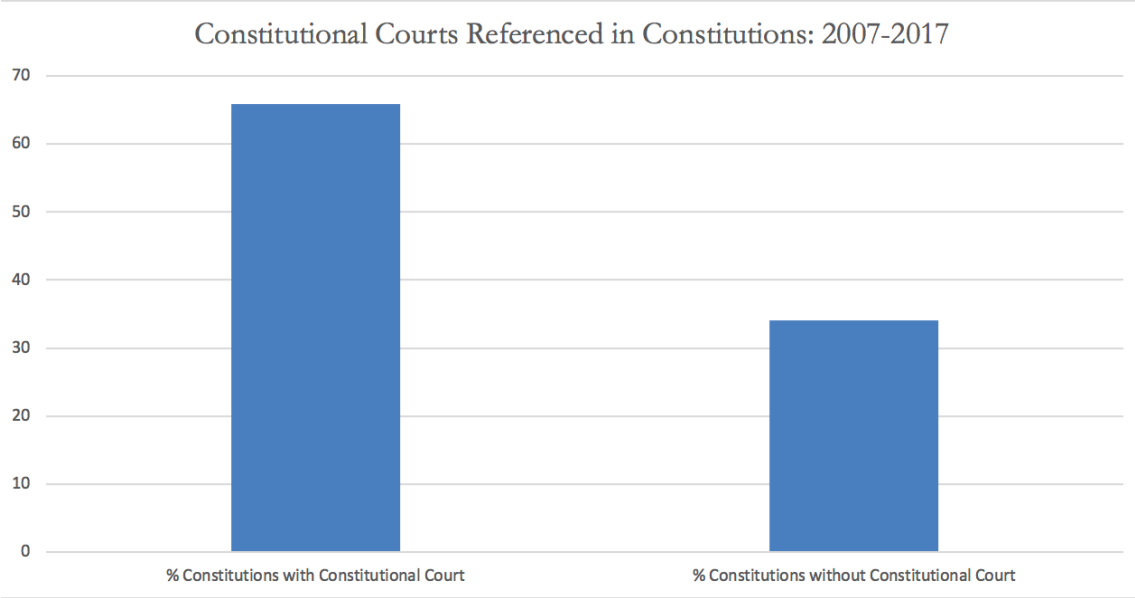

Figure 2: Constitutional Courts Referenced in Constitutions: 2007-2017

Table 1 below lists all ILS that constitutionally mention or do not mention a constitutional court as of 2017. The table lists all ILS and notes whether there is currently a constitutionally-grounded constitutional court or equivalent judicial organ. During the time frame of our study, there is a substantial increase in constitutional presence of constitutional courts. The number of ILS that include a constitutional court provision in their constitution has increased from 19 in 2007 to 22 in 2017, a 10 percent increase.[24] Of the countries that do not mention a constitutional court in their current constitution, 83 percent (5 of 6 countries) specifically state that Islam or sharia is the is the

of law. Some, but not all, Supreme Courts fit this definition of a constitutional court or functionally equivalent institution based on the constitutional language.

[23] In our data there are 7 such constitutions: Bahrain 2002, Jordan 2011, Kuwait 1962, Lebanon1990, Oman 1996, Oman 2011, and Qatar 2004. We located the law that ultimately created the court for all except Oman.

[24] Nine states established at least one new constitution or major constitutional amendments during this period, and six of these states currently have a constitutional court that is referenced in the constitution. Of those six, 50 percent did not reference a constitutional court in the constitution in 2007. Egypt, Jordan, Maldives, Morocco, Syria, and Tunisia's constitutions contain reference to a constitutional court or similar judicial organ. Jordan, Maldives, and Tunisia have added references to a constitutional court since 2007.

state religion. Of the countries that do mention a constitutional court, 84 percent specifically state that Islam or sharia is the state religion. Yet the diversity of these states is illustrated not just by references to Islam in the constitution, but by the subnational domestic legal system. The ILS category is a spectrum, and each state embraces a unique relationship between secular and religious laws (Powell 2013a, Powell 2015, Powell 2016, Powell 2018, Powell 2020). Interestingly, some of the states that have the strongest presence of Islamic legal tradition in the legal system such as Iran, Pakistan, and Saudi Arabia do not have a constitutional court.

ILS	Constitution References Constitutional Court
Afghanistan	YES
Algeria	YES
Bahrain	YES
Bangladesh	**NO**
Brunei	YES
Comoros	YES
Egypt	YES
Gambia	YES
Indonesia	YES
Iran	**NO**
Iraq	YES
Jordan	YES
Kuwait	YES
Lebanon	YES
Libya	**NO**
Malaysia	YES
Maldives	YES
Mauritania	YES
Morocco	YES
Nigeria	**NO**
Oman	**NO**
Pakistan	**NO**
Qatar	YES
Saudi Arabia	**NO**
Sudan	YES
Syria	YES
Tunisia	YES
UAE	YES
Yemen	YES
Total: 29	**22 YES 7 NO**

Table 1: Constitutional Courts in Current Constitutions

To paint a fuller picture of constitutional presence of courts, we delve deeper into the specifics of constitutional language. The *References to Court* variable is a count of the number of times the constitutional court or similar judicial organ is referenced in the entire constitution, excluding headers and tables of contents. The average number of references is 15, although this figure also includes several constitutions that do not mention the court at all and as such have a value of 0. These constitutions, such as Kuwait's, include a clause that states explicitly that a future law will specify the relevant judicial body. Several constitutions in which the court is created by a future law name the constitutional court explicitly, such as the 2011 amendments to Jordan's constitution. Figure 3 below depicts the number of references for all 44 constitutions.

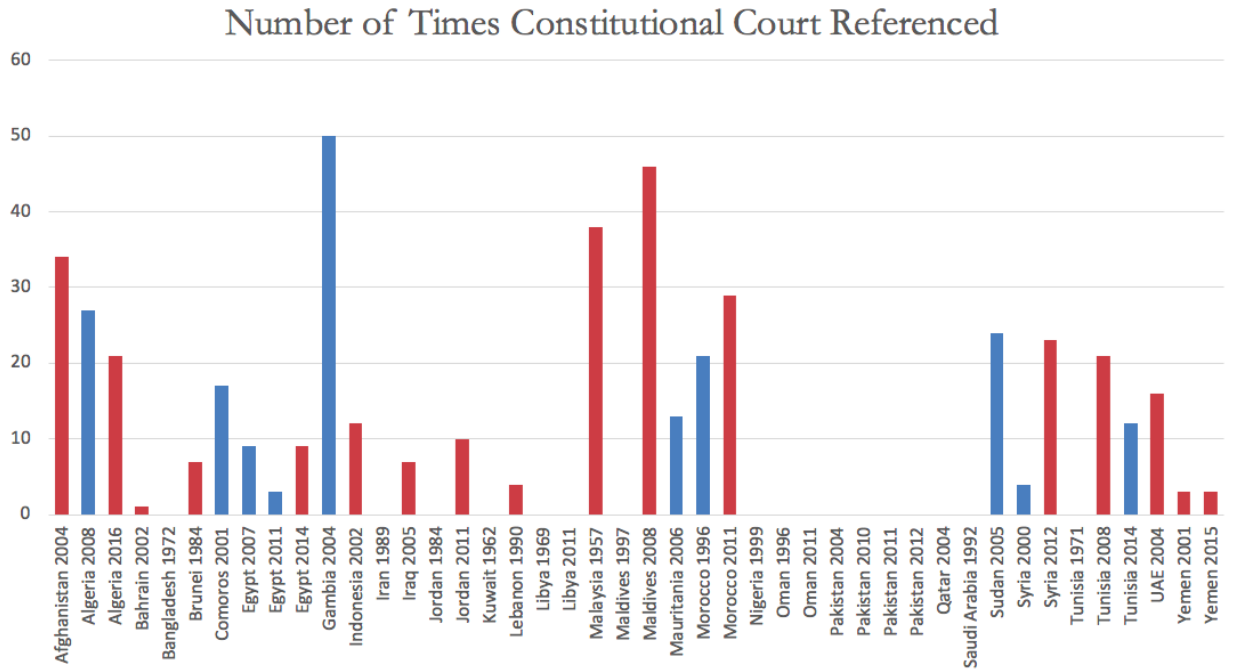

Figure 3: Number of Times Constitutional Courts Referenced

Two countries, Gambia and Maldives are outliers in that they have the two highest number of references to the court, 50 and 46, respectively. This high count is a product of their unique constitutional systems. In these states, the jurisdiction to review the constitutionality of laws of lower status is shared between a Supreme Court and a High Court. As such, we counted references to both pertinent courts.

The constitutional language for establishing a constitutional court also varies greatly. Some constitutions use a more detailed language than other. 76 percent of constitutions that reference a constitutional court or equivalent judicial organ establish the court explicitly in the constitution, whereas 24 percent delegate the establishment of the court to a future law. For instance, the 2014 Constitution of Tunisia goes into great detail, addressing not only the court's jurisdiction, but also a variety of its institutional features such as the appointment of members, the procedure for filling vacancies, and administrative procedures for decisions of the Court. Other constitutions, including the 2004 Qatar constitution use much broader language. This constitution, for example, simply declares that the law:

> The law shall specify the competent judicial body for settling of disputes pertaining to the constitutionality of laws and regulations, define its powers and method of challenging and procedures to be followed before the said body. It shall also specify the consequences of judgment regarding unconstitutionality[25]

The *Word Count* variable is a word count of the relevant section of the constitution that is dedicated to the constitutional court. Where there is another judicial organ within the judiciary that serves this interpretive function, only the articles that explicitly address this court are included in the word count. Whereas the *References to Court* variable captures the prevalence of the constitutional court in the entire constitution, this variable depicts the robustness of the constitution's attention to the structure and functions of the constitutional court. The average word count for this section is 402 words. This variable includes constitutional articles that relegate the establishment of the constitutional court to another law. Figure 4 depicts the word count total for all 44 constitutions.

[25] Qatar Constitution, ch. 5, art. 140., 2004.

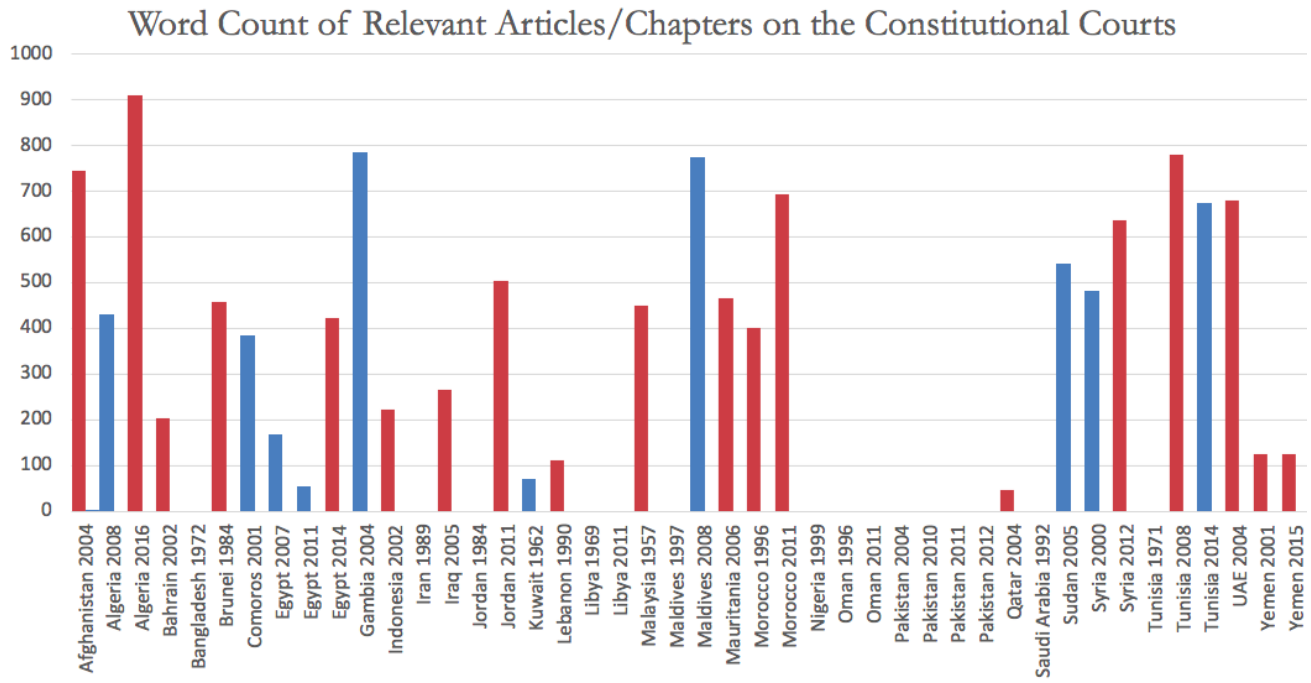

Figure 4: Word Count of Relevant Articles/Chapters on the Constitutional Courts

Gambia and Maldives are again outliers. Both of these states devote a considerable portion of their constitution to a constitutional court. Similar to the coding for the *References to Court* variable, we include language that discusses both the Supreme Court and High Court for these two countries' constitutions. The constitution with the highest *Word Count* value, however, is Algeria's 2016 Constitution, in which the section that discusses the constitutional council is 908 words. In nearly all cases where a new constitution or significant amendment was promulgated in the 2007-2017 period, the word count of the newer constitution is larger.[26] For example, Algeria's 2008 amended constitution has a *Word Count* of 430, which is close to the average *Word Count*, whereas the 2016 constitution has a *Word Count* of 908 (Powell, Rothkopf, and Shang 2018). Table 2 provides a summary of the descriptive statistics for the 3 variables depicted above.

[26] One exception to this trend the transition from the 1971 Egyptian Constitution with 2007 to the 2011 Constitutional Declaration. A comparison of the 1971/2007 Constitution and the Egyptian Constitution of 2014 shows an identical number of references to the court and a 250%-word count increase. The other exception to this trend is Tunisia's 2014 constitution, which has a lower word count and number of references from the 1959 constitution with 2008 amendments.

Variable	*Distribution*	*Mean*	*Std. Dev.*
Constitutional Court	No: 34%	0.66	0.48
	Yes: 66%		
References to Court[1]	Minimum: 0	15.00	13.41
	Maximum: 50		
Word Count[2]	Minimum: 46	402	248.92
	Maximum: 908		

[1,2] Only constitutions with "yes" for constitutional court

Table 2: Constitutional Court Variables

CONCLUSION

Constitutional courts are on the rise in Islamic Law States. Between 2007 and 2017 alone, three of 29 ILS amended their constitutions or passed new constitutions that called for a constitutional court with the ability to review laws of lower status, where such a court had not previously existed. Our data illustrate that these courts are becoming ever more present in ILS. Interestingly, we find that states where Islamic law, however interpreted, is most deeply integrated into the domestic legal system, there is no constitutional court. This finding raises the following question: what does it mean for an ILS to embrace secular constitutional oversight in the context of the Islamic legal tradition? Where the constitution states that sharia is the constitution, such as in the Kingdom of Saudi Arabia's Basic Law of Governance, a constitutional court and the notion of constitutional review could potentially be considered as underlying the source of state legitimacy.27 Yet as we emphasize throughout this paper, there is considerable variation among ILS regarding how the Islamic legal tradition is understood, interpreted, and incorporated into the state fabric (Hefner 2016, Otto 2010, Weiss 2006). It is also crucial to recognize that mere presence of a constitutional court does not necessarily indicate that a country is moving towards democratization, nor that a country is committed to embracing rule of law across all aspects of governance. Indeed, a constitutional court may be created as a tool for the governing elite. Alternatively, a constitutional

[27] Kingdom of Saudi Arabia Basic Law of Governance, part 1, art. 1, 1992.

court may overtime weaken in its ability to generate rulings in a fully independent and unbiased way.

A constitutional court's oversight can be seen as a form of appeal: the constitutional court's review of legislation is an appeal of legislation with regard to constitutional matters. In Western legal systems, the right to appeal the verdict of a first instance court is widespread. In both civil and common legal traditions, higher courts provide a degree of standardization that guide future verdicts of the lower courts (Powell and Mitchell 2011). Appeal and the uniformity it provides is, according to one scholar, "a legal phenomenon that Westerners tend to accept without question" (Shapiro 1980). However, the Islamic legal tradition treats the notion of appeal quite differently. Qadi, judges in sharia courts, must work with legal rules provided by the Koran (Hallaq 2009, Vikør 2005). Sharia, the law of God, cannot be known with certainty (Fadel 2016, Abou El Fadl 2001). The standardization afforded by the pronunciation of principles and interpretations may be, to an extent, deemed unnecessary. Moreover, generalization and standardization of law is not a characteristic of the classical Islamic legal culture: as such, there is no need to generate broad laws and reinterpret existing law (Powell and Mitchell 2011). This rejection of generalization derives from a historically pluralistic legal culture (Quraishi-Landes 2015). Today, many ILS allow for appeal within the standard judiciary, and constitutional courts have the power to appeal a body of rules through their review of laws of lower status. The presence of a secular constitutional court does not necessarily contradict Islamic law, and in the context of legal pluralism or layers of law, it can serve as one of several legitimate sources of authority.

Constitutional references to a constitutional court do not guarantee that the court will ultimately be established, as is the case in Oman. Nor does a constitutional court always unequivocally support challenges to laws' constitutionality, as in Bahrain. However, the potential for these courts to uphold the rule of law and constitutional protections is not limited to the secular arena, as recent rulings by Kuwait's Constitutional Court demonstrate. Religious and secular authority can work in tandem to assure good governance and rule of law (Powell 2013b). Future research will extend the scope of our data to all ILS constitutions from 1945-2017. This extension will allow us to examine the proliferation of constitutional courts and the language in which they are entrenched, over time.

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Modest Administrative Decentralization in Lebanon and Its Expansion Plans

Ghadir El Alayli [*]

ABSTRACT

The paper starts by explaining the notion of administrative decentralization and setting it apart from other notions. Then, it proceeds to exploring the disadvantages of a narrow version of administrative decentralization and advantages of an expanded one. The paper outlines next the key proposals and projects of administrative decentralization in Lebanon in modern history and in the present. The main features of the administrative decentralization draft law under discussion are then tackled. The paper later presents notes and recommendations about the mentioned draft law. Also, it gives an overview of the housing crisis in Lebanon, indicating the role of the sought decentralization in this regard. The paper concludes with a comparison between expanding administrative decentralization and reforming the Municipalities' Law, knowing that both were topics of discussion of the two ad hoc parliamentary sub-committees shortly before the public protests broke out in Lebanon.

Keywords: *local governance; local authorities; municipalities; administrative organization; administrative decentralization; development; housing crisis.*

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Contents

INTRODUCTION

This paper tackles the issue of promoting local governance, which must be given utmost importance from Lebanese legislators, as it is at the heart of their role to serve the public interest supposedly. Without generalizing, in light of some relatively successful municipal experiences[1], and given the current Lebanese State crisis[2], Lebanon is in dire need of rationalizing local governance and local administration, reviving democracy and enabling development in its framework, renewing administrative organization and expanding administrative decentralization. This paper aims at highlighting ways to enhance local authorities and optimally cater to local needs and interests in Lebanon, in light of the best applicable practices in comparative law.

The paper [3]starts by explaining the notion of administrative decentralization and setting it apart from other notions. Then, it proceeds to exploring the disadvantages of a narrow version of administrative decentralization and advantages of an expanded one. The paper outlines next the key proposals and projects of administrative decentralization in Lebanon in modern history and in the present. The main features of the administrative decentralization draft law under discussion are then tackled. The paper later presents notes and recommendations about the mentioned draft law. Also, it gives an overview of the housing crisis in Lebanon, indicating the role of the sought decentralization in this regard. The paper concludes with a comparison between expanding administrative decentralization and reforming the Municipalities' Law, knowing that both were topics of discussion of the two ad hoc parliamentary sub-committees shortly before the public protests broke out in Lebanon.

[1] For more about the performance of municipalities in Lebanon, refer to: Fouad Gehad Marei, Are municipalities in Lebanon delivering? Democracy Reporting International, July 2019.

[2] For more on precarity (notably economic and financial precarity- even undeclared bankruptcy), refer to : Karim Daher, Civisme fiscal et engagement citoyen, dans : L'Observatoire de la fonction publique et de la bonne gouvernance de l'USJ-Beyrouth, et Konrad Adenauer Stiftung, Démocratie en crise, Démocratie en mutation, Colloque international, 14 novembre 2019, Beyrouth.

[3] *Note from the author*: The paper was written[3] in December 2019 shortly before the outbreak of the coronavirus pandemic and the declaration of the state of emergency and lockdown that followed. The situation in Lebanon and the world ever since, as well as the consequences on several levels, necessitate careful handling from the central and local authorities alike, and they emphasize once again the pressing need to expand administrative decentralization in Lebanon. The same conclusion applies to the catastrophes caused by Beirut port's explosion on August 4, 2020. The latter has serious impacts on other issues discussed in this paper too, notably the idea of federalism, and the housing crisis in Lebanon. The original text of this paper is in Arabic and may be referred to on the following link <http://jcl-mena.org/%205.Modest-Administrative-Decentralization-in-Lebanon-and-Its-Expansion-Plans.ar.pdf>

ADMINISTRATIVE DECENTRALIZATION: NOTION AND ADVANTAGES

Before delving into the topic, it is important to quickly explain the notion of administrative decentralization and distinguish it from other notions (in light of comparative law, when necessary), and to explore the disadvantages of the narrow version of administrative decentralization and the advantages of an expanded administrative decentralization.

a) Distinction between administrative decentralization and other notions

First, it is important to distinguish between the following technical legal expressions and compare them to the applicable administrative structure in Lebanon currently[4]:

First: Administrative decentralization

Administrative decentralization within a united or simple State (non-composite) is based on the Central State giving some administrative powers to legal, elected units or entities locally, as in in regions, to have a legal capacity and financial and administrative independence to manage the affairs of each region, developmentally, economically and commercially.

In the currently applicable Lebanese administrative system[5], administrative decentralization is limited to municipalities led by heads of municipalities and municipal unions led by the municipal union heads. Municipalities are "local councils elected to manage a specific municipal territory." Municipal unions are formed of "several municipalities that decide to unite to facilitate the implementation of common construction projects and to save on economic and financial expenses."[6]

[4] For more information about these concepts, refer to the below publications:
زهير شكر، الوسيط في القانون الدستوري، ج. 1، المؤسسة الجامعية للدراسات...، ط.3، 1994، ص. 61-74 وص. 49-54.
مجد رفعت عبد الوهّاب، الأنظمة السياسية، الحلبي، 2007، بيروت، ص. 48 و ص. 67 – 69.
معمر الكبيسي، توزيع الاختصاصات الدستورية في الدولة الفيدرالية، الحلبي، ط.1، 2010، بيروت، ص. 15-40 وص. 102-107، وحول الفيديرالية العراقية، انظر ص.417-418.
عدنان الزنكنة، المركز القانوني- رئيس الدولة الفيدرالية، الحلبي، ط.1، 2011، بيروت، ص. 25- 73. وحول الفيديرالية العراقية، انظر: ص. 13-23، وص. 44، وص. 345-351.

[5] In comparative law, refer to:
Sénat français, La réforme régionale en Italie : Un exemple de décentralisation, novembre 2002, N. GA 41, (France-Italie) ;
Sénat français : Michel Mercier, Loi des finances pour 2005, Décentralisation, 2004-2005, N. 74- t.III, annexe 23.

[6] موسى حبيقة وسامر فواز، القطاع العام، مجلس النواب، 2008 ،ص. 39-57، انظر خصوصًا ص. 39 وص. 55.

Second: Deconcentration[7]

Deconcentration falls under the notion of proportional centralized organization, within the united or simple State, and it is defined as the central authority's delegation of tasks to its representatives in different areas to constitute an extension of it, without their having a legal capacity or financial independence. However, they have modest administrative independence.

In the Lebanese administrative system that is currently in force, deconcentration is at the level of districts (*qada')* headed by district officers (*qaymaqam)*, and governorates (there were only five governorates in 1959; then they became six in 1975; eight in 2003; and finally nine in 2017[8]) headed by Governors. The central authority[9] appoints the district officers and Governors.

Third: Political federalism[10]

In a composite, federal state, which is one state having a Constitution that establishes a federal, legislative, executive and judicial authority, but is divided into different autonomous States, such that: first, each state has a local Constitution that does not contradict the federal Constitution; and second, each state has a local authority composed of legislative, executive and judicial authorities, political federalism is based on the federation maintaining the defense, foreign affairs' and monetary issues only within the competence of the Central State authority exclusively[11].

Federalism is not mentioned, neither in the Lebanese law in force[12] nor in the administrative decentralization draft law. The aim behind expanding administrative decentralization is not federalism or

[7] Note that this paper will not tackle decentralization of utilities, which is a form of managing public utilities.

[8] The nine governorates are: Beirut, Mount Lebanon, Ftouh Keserwan and Byblos, North Lebanon, Akkar, Baalbek-Hermel, the Bekaa, South Lebanon and Nabatiyeh.

[9] زياد بارود، اللامركزية الإدارية في لبنان، مجلس النواب و مشروع برنامج الأمم المتحدة الإنمائي، الملف 21، تشرين الثاني 2007، ص. 14-15.

[10] Chibli Mallat, Federalism in the Middle East and Europe, CWRJIL, Vol.35, No.1, Winter 2003. Compare : François Crépeau, Droits de l'homme et Etat de droit en Occident, dans: Collectif, dir. Marie-Hélène Parizeau et Soheil Kash, Pluralisme, modernité, et monde arabe, Les Presses de l'Université Laval, Bruylant, Delta, 2001, pp.207-211, which, through studying structural pluralism, analyzes notably federalism and decentralization ; and : Gouvernement allemand, Un aperçu de la Fédération et des Lander, 1997. About the advantages of federalism, refer to : Philippe Ardant et Bertrand Mathieu, Droit constitutionnel et institutions politiques, LGDJ- Lextenso, 30e Éd., 2018, Paris, p.51 in limine, which consider that the federal State is more capable of resolving economic and social problems of a modern society that is placed in an international environment where competition is the law

[11] عصام سليمان، أسس الفيديرالية وشروط قيامها، في: جامعة سيدة اللويزة والمركز العربي لتطوير حكم القانون والنزاهة، بناء دولة الحق والقانون، سلسلة ندوات 2008-2009، منشورات الحلبي الحقوقية، ط.1، 2010، ص. 204-206.

[12] About federalism and the Lebanese political and constitutional system, refer to:

political decentralization, rather fulfilling the demand of expanded administrative decentralization, far from any political federal inclination.

The Lebanese people rejected the option of political federalism, as per the National Accord Document in the Lebanese parliamentary meeting in Taif city in Saudi Arabia on Oct. 22, 1989, ratified on Nov. 5, 1989. The accord ended the civil war, otherwise known as "the war for others" (non-Lebanese)[13] that broke out in Lebanon between 1975 and 1990[14].

Political federalism, which some Lebanese people called for, especially during the aforementioned war, was also rejected as per the Lebanese Constitution amended in 1991.

Repeated calls for federalism appeared[15] (and still appear sometimes[16]). However, other[17] Lebanese people refuse this option because of Lebanon's small geography, or for fear of federalism being a prelude to dividing the country into different States - which was proposed repeatedly but was met with failure.[18]

Fourth: Partition

In the context of division, there are concerns related to the risk of fragmentation and partition[19] of States into two or more States (this constitutes a fundamental divergence in comparison with federalism under

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جامعة سيّدة اللويزة والمركز العربي لتطوير حكم القانون والنزاهة، مذكور أعلاه، لا سيما ص. 19-20، وأوراق كل من زهير شكر، وعصام سليمان، وسليم الصايغ، ص. 197-208، كما وورقة انطوان نجم، ص. 434-440.

[13] Une "guerre pour les autres" : Ghassan Tuéni, Refaire le Liban?, Ed. Dar An-Nahar, (article published in the special edition of l'Orient-Le Jour in March 2007), p.7; and by the same author: Jean Lacouture, Ghassan Tuéni et Gérard Khoury, Un siècle pour rien, Albin Michel, 2002, p.185 et s.

[14] For more on this war, see:

Farid ElKhazen, The Breakdown of the State in Lebanon, 1967-1976, L.B. Tauris, 2000, London, New York.

عبد الرؤوف سنو، حرب لبنان 1975-1990، المجلّد الثاني، الدار العربية للعلوم ناشرون، ط. 1، 2008.

Dorothée Schmid, Guerre(s) du Liban, dans: Encyclopédie de la culture politique contemporaine, dir. Alain Renaut et coord. Claire Demesmay, Pierre Zelenko et Ludivine ThiawPo-Une, Ed. Hermann, 2008, t.I, pp.427-432 ; et : Lucien George, Quinze années de guerre civile, in: Revue Historia, Une histoire du Liban: des Phéniciens à nos jours, hors-série, 2016, pp.80 et 84.

[15] Bichara Tabbah, Droit politique et humanisme, USJ- Annales de la Faculté de Droit, LGDJ, 1955, p.XIV et pp.17, 201, 257, 260-261 et 316 ; approved, in fact, by : Albert Chavanne, Nécrologie: Bichara Tabbah, Bulletin de la SLC, RIDC, Vol.24 N.4, octobre-décembre 1972, pp.879-881, cf. p.881.

[16] هاني عانوتي، لم لا التقسيم أو الفيديرالية؟، النهار، ص. 9، 2019/8/23، منبر.

[17] Diane Khair, Unité de l'État et droits des minorités, Etude Constitutionnelle comparée du Proche-Orient, Fondation Varenne, Coll. de thèses, (Soutenue à l'Université Paris II), Vol.56, 2011, pp.31, 96-97, 139, 276 et 393.

[18] غسان حجار، مجلس الجنوب... الفيديرالي، النهار، 26 أيلول 2019، ص. 3، جدل.

[19] About partition as a right, refer to: Isabelle Chulte-Tenckhoff, in: Alain Fenet (dir.), Geneviève Koubi, Isabelle ChulteTenckhoff, Le droit et les minorités, 2e éd., Bruylant Bruxelles, 2000, Coll. Organisation internationale et Relations internationales, 32, pp.78-81.

which the State remains one and the same). These concerns have increased in the Arab region in general in the past few years, especially since the term "Arab Spring" was coined. Several Arab States resorted to partition[20] based on conflicts, sectarian, confessional or ethnic considerations[21], particularly in Sudan[22] when the secession of South Sudan occurred in 2011.

In reality, not by law, a sort of partition prevails in federal Iraq[23]. There are also serious possibilities to divide Libya[24] where chaos has been rampant since 2011, and Yemen, at least since 2015, after the unification of its north and south in 1990[25]. Demands for partition have been voiced in several Arab countries also, like the Arab Maghreb[26], from some social components including but not limited to the Amazigh[27].

Moreover, some States[28] are marked by precarity, at least at the level of their systems of governance up to this date, like in Syria[29], in the wake of the war that has been draining it internally since 2011. On Sept. 5, 2019, the "establishment of the Kingdom of the Yellow Mountain" was "declared" as a "sovereign Arab

[20] Chibli Mallat, op.cit., pp.1-14, cf. pp.10 et 2; Charles Saint-Prot, Nabil Khoury, Zeina El Tibi et Jean-Yves De Cara, Les risques de désintégration de l'Etat et de séparatisme dans le monde arabe, conférence CEDROMA et OEG, 28 février 2018; The New York Times, www.archive.nytimes.com, 28/9/2013.

[21] About these conflicts: Joseph Maïla, Les conflits, in: CPM (groupe d'auteurs), Médiation: Renforcement de la démocratie et de l'Etat de droit, Ed. de l'USJ, 2014, p.136.

رياض الريس، سيناريو لمستقبل متغيرات عربية، رياض الريس للكتب والنشر، ط.1، كانون الثاني 2004، ص. 25-26 و33.

[22] About the history of Sudanese Constitutional Law: Jean Salem, Présentation de la Constitution du Soudan, dans: CEDROMA, dir. Eric CanalForgues, Recueil des Constitutions des Pays Arabes, Bruylant Bruxelles, 2000, pp.417-427.
About the history of civil war in Sudan: Natacha Lemasle, Guerre civile au Soudan, in: Encyclopédie de la culture politique contemporaine, op.cit., t.I, pp.446-450.

[23] About the Iraqi Federal State:

معمر الكبيسي، مذكور سلفًا، ص. 15-40 وص. 102-107، وص. 417-418.

About sectarian, confessional and ethnic tensions in Iraq: Christophe Kantcheff, in: Farouk Mardam-Bey et Elias Sanbar, Entretiens avec Christophe Kantcheff, Etre arabe, Actes Sud, Sindbad, 2005, Mayenne, p.15.
About the history of Iraqi Constitutional Law: Lara Karam, Présentation de la Constitution de l'Irak, in: CEDROMA, dir. Eric Canal-Forgues, Recueil […], op.cit., pp.163-175.

[24] About the history of Libyan Constitutional Law in general: Nabil Maamari, Présentation de la Constitution de la Libye, in: CEDROMA, dir. Eric CanalForgues, Recueil […], op.cit., pp.275-290.

[25] لطفي نعمان، هل تنتهي وحدة اليمن؟، النهار، 2019/8/20، ص. 9، قضايا

[26] About the history of Constitutional Law in the Moroccan kingdom specifically: Khalid Naciri, Présentation de la Constitution du Maroc, in: CEDROMA, dir. Eric CanalForgues, Recueil […], op.cit., pp.295-300.

[27] Against these demands, refer to:

أحمد عزوز ومحمد خاين، العدالة اللغوية في المجتمع المغاربي، المركز العربي للأبحاث ودراسة السياسات، ط.1، 2014، ص. 105-108

[28] Compare: Konrad Aenauer Stiftung and the Lebanese Center for Policy Studies, Failed States in the Arab World?, Roundtable discussions, February 17-18, 2010, Beirut- Lebanon.

[29] About the history of Syrian Constitutional Law: Jacques El-Hakim, Présentation de la Constitution de la Syrie, in: CEDROMA, dir. Eric Canal-Forgues, Recueil […], op.cit., pp.385-397.

Islamic State" (before that, the establishment of the Kingdom of North Sudan was declared in 2014, and another ruler was ordained to govern the area between Egypt and Sudan). This prompts questions about the possibility of establishment of new Arab States and the creation of different Arab-Arab (inter-Arab) regional borders in the short or medium-term. Relevant preparations seem to be increasingly underway, even if their sole aim, for now, is to check such projects' feasibility.

It is noteworthy that a terrorist organization (the so-called "Islamic State of Iraq and Al-Sham (ISIS)") had occupied several Arab territories, and it even removed the borders between Syria and Iraq in summer 2014; establishing a so-called Islamic caliphate. However, these areas were liberated by the concerned States, local resistance factions, regional powers and the international military coalition formed specifically for that purpose.

b) Disadvantages of the narrow version of administrative decentralization

The limited space for non-expanded administrative decentralization in Lebanon currently has several disadvantages, mainly: the State's general disinterest in municipalities and their unions, the central authority's use oftentimes of some of the municipalities' funds and revenues of the independent municipal fund or its lack of provision of all their resources, the low rate of transfer from the central government to the municipalities and municipal unions and the low rate of local spending compared to the overall central spending and to spending in other countries. All this negligence has resulted in negative development and social, economic and political repercussions, not just locally, but also nationally. Therefore, expanding administrative decentralization in Lebanon[30] is important.

c) Advantages of expanded administrative decentralization

The expansion of administrative decentralization has several advantages[31] on multiple levels, which is an evident idea in comparative law[32], including but not limited to facilitating the provision of services to

[30] زياد بارود، مرجع سالف ذكره. محمد مراد، بلديات لبنان: جدلية التنمية والديمقراطية، دار المواسم، ط. 1، 2004، بيروت، ص. 154-207.
مجلس النواب اللبناني، المديرية العامة للدراسات والمعلومات، مصلحة الأبحاث والدراسات: ساندي طانيوس، تعديل قانون البلديات في لبنان، 2015/12/21.
علي حسين الشامي، التقسيمات الإدارية والانتخابية: النموذج الأفضل للبنان، 2005، ط.1، رشاد برس، بيروت، ص. 160-178.

[31] About the advantages of decentralization in general, see:
زهير شكر، مذكور أعلاه، ص. 49-54. وزارة الداخلية والبلديات- لبنان، اللامركزية الإدارية، 2011، ص. 8-12 و53.

[32] See for instance (but not limited to):

citizens and people in general and meeting their needs locally; communicating amongst each other and with the public administration; cementing the feeling of belonging to the local community, especially through fostering the role of youth, minorities and women; reducing administrative bureaucracy and routine work; boosting local representation, social justice, partnership and engagement in local governance; ensuring opportunities to achieve the right to access information; developing the performance of public administration; enhancing the capacities of local administrations; guaranteeing coordination between decentralized authorities and the official central institutions, especially ministries; and consolidating the human resources' (employees) capacities and competences in the public administration.

In addition to the abovementioned advantages, expanding decentralization boosts transparency, accountability and liability, knowing that these goals are at the heart of the demands of the Lebanese popular uprising that broke out on Oct. 17, 2019 against the ruling class with all its components[33]. The uprising objected to the rampant corruption, the bad economic and living conditions and the absence of a serious plan and actual reformative public policies to address the unsettling financial crisis that has been taking its toll on the country since months. Notably, the uprising per se was decentralized. The protests and sit-in squares were not limited to the capital's downtown area, with Lebanese people flocking to it from other cities, as it was the case in massive protests on national occasions in the past. This time, protests filled numerous Lebanese cities and towns. Citizens even moved from one area to another to protest in cities and villages other than the ones they hail from or live in to directly communicate with their fellow rebels and share personal experiences with them.

Expanded administrative decentralization also contributes to boosting economic success chances, like in the US, India and Belgium, and promoting the cultural, social and urban growth of society. Moreover, it develops the different rural areas and cities equally, as per the Lebanese Constitution, since decentralization

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المنظمة الدولية للتقرير عن الديمقراطية، دليل السلطة المحلية في تونس، 2017، لا سيما ص. 8-9.

Also, about the French experience during the late 20th century, see: François Mitterrand, dans: Collectif, dir. Dominique Colas, Travaux de la Mission sur la Modernisation de l'Etat, L'Etat de droit, PUF, 1987, Paris, p.XVIII.

[33] About the current Lebanese revolution and the related developments, see:

معهد عصام فارس والمؤسسة اللبنانية للسلم الأهلي الدائم، انتفاضة تشرين وتحدّيات المرحلة الإنتقاليّة، جلسة نقاش، 25 تشرين الثاني 2019، معهد عصام فارس، بيروت

L'Observatoire de la fonction publique et de la bonne gouvernance de l'USJ-Beyrouth, et Konrad Adenauer Stiftung, op.cit.

ناصر ياسين، تأمّلات في انتفاضة تشرين اللبنانيّة، 25 تشرين الأول 2019، معهد عصام فارس، مقالات الرأي، بيروت.

المنظمة الدولية للتقرير عن الديمقراطية، خطة الإصلاح: من الأزمة إلى الحكم الرشيد، ندوة 30 تشرين الثاني 2019، بيروت.

André Sleiman, A Moment for Change, December 2019, Democracy Reporting International.

غدير العلايلي، "رافعة وطن" ثائر، النهار، 20 تشرين الثاني 2019، ص. 9، منبر.

غدير العلايلي، عساه يكون، النهار، 29 تشرين الثاني 2019، ص. 9، منبر.

is a unified and comprehensive development plan that aims at optimally providing resources to all regions, in the hope of achieving sustainable development[34]. The desired demand helps curb the migration of rural folk to cities and the overcrowding in Beirut specifically, and it also contributes to solving the local housing crisis[35].

Expanded administrative decentralization increases the chances of political and democratic success, as it prevents, for instance, a competent minister from using the rights of municipalities financially as a "political tool" that (s)he threatens with, whenever the need arises[36]. The expansion of administrative decentralization also prevents members of parliament from offering public services to citizens as though they were personal interests and partisan or sectarian favors, although they are fundamental rights.

Expanded administrative decentralization also contributes to bolstering public safety and stability, improving public spaces, developing infrastructure, organizing transportation, curbing traffic bottlenecks and improving the suffering public transport sector. It also helps elevate the sectors of education and teaching, hospitals and nutrition, and contributes to rationalizing the management of environmental issues, especially waste. If the Lebanese legislator designs an administrative decentralization law, which places national affiliation above all sectarian and confessional considerations, the legislator would be helping reduce sectarianism and confessionalism, which Lebanon still suffers from, and overcome these two vices, even if in the middle or long run[37].

KEY PROJECTS AND PROPOSALS FOR ADMINISTRATIVE DECENTRALIZATION IN LEBANON

The scope of this paper does not allow to explore the administrative division that was in force in the past and shortly after Lebanon's independence in 1943; when the State of Greater Lebanon was established in 1920; and even before that, under the two *district officers'* system between 1842 and 1861; during the

[34] About the advantages of administrative decentralization especially in terms of achieving development, see: عصام سليمان، اللامركزية الإدارية والإنماء المتوازن، مجلة الدفاع الوطني اللبناني، العدد 40، نيسان 2002، www.lebarmy.gov.lb
And publications of the Democracy Reporting International in Lebanon in Arabic and English, specifically those published in 2017 (www.democracy-reporting.org).

[35] See Section 5 below herein.

[36] Georges Corm, La participation citoyenne au niveau local passage obligé pour une participation nationale, dans : L'Observatoire de la fonction publique et de la bonne gouvernance de l'USJ-Beyrouth, et Konrad Adenauer Stiftung, op.cit.

[37] جمعية اللامركزية والإنماء، ممثلة برئيسها المحامي فادي بركات في المؤتمر الصحفي لـ" إطلاق أعمال الجمعية وتطلّعاتها" في 2012/12/12، في مؤسسة عصام فارس، لبنان.

mutasarrifate era between 1861 and 1914, or under the French Mandate between 1920 and 1943[38]. It is noteworthy that the first local council was established in the capital Beirut in 1833, but its functions were limited to guarding, lighting and cleaning. Then, a municipal council was established in Deir el-Qamar (Chouf) in 1864, and municipalities later multiplied, notably after the country's independence[39].

This paper explores key projects and proposals of administrative decentralization in Lebanon in modern history and in the present.

a) Modern history

During the first and middle parts of the 20th century, more interest was attributed to administrative decentralization, especially in the days of President Fouad Chehab in 1959[40], according to a French study that divided Lebanon into 20 administrative units[41], and even before that, under President Emile Eddeh. In our modern times, since peace was restored in Lebanon in 1990, projects and draft laws have been proposed regarding administrative decentralization in the following chronological order:

In 1995, late MP Auguste Bakhos proposed a draft law to amend the administrative organization law. In 1997, the sub-committee of the Administration and Justice Committee put together a draft law related to administrative organization and decentralization. In 1999, the government of PM Salim al-Hoss presented a draft law and referred it to parliament as per decree no. 1066. In 2001, the Minister of Interior and Municipalities Elias al-Murr presented a draft law about administrative organization and decentralization. In 2007, MP Robert Ghanem, head of the parliamentary committee for law modernization, presented a draft law about administrative decentralization.

b) Status quo

The preamble of the Lebanese Constitution states that "Lebanon is a final homeland for all its citizens. It is unified in its territory, people and institutions," and that "the Lebanese territory is one for all Lebanese.

[38] For studies about the history of establishment of the Lebanese State, in general, see:
جامعة سيّدة اللويزة والمركز العربي لتطوير حكم القانون والنزاهة، مذكور سابقًا، لا سيما ورقة الأب بولس نعمان، ص. 98 – 111.

[39] موسى حبيقة وسامر فواز، مذكور أعلاه، ص 41.

[40] Georges Corm et Ziyad Baroud, dans : L'Observatoire de la fonction publique et de la bonne gouvernance de l'USJ-Beyrouth, et Konrad Adenauer Stiftung, op.cit.

[41] جمعية اللامركزية والإنماء، مذكور أعلاه.

Every Lebanese shall have the right to live in any part thereof and to enjoy the rule of law wherever (s)he resides. There shall be no segregation of the people on the basis of any type of belonging, and no fragmentation, partition or settlement of non-Lebanese in Lebanon[42]."

Article 1 of the Constitution states that "Lebanon is an independent, indivisible and sovereign State." Article 3 states that "the boundaries of administrative areas may not be modified except by law." Reference shall be made here to the Legislative Decree no. 116, dated 12/6/1959 related to administrative organization.

The aforementioned National Accord Document stipulated several reforms including administrative decentralization and set forth verbatim:

> "1- The State of Lebanon shall be a single and united state with a strong central authority.
> 2- The prerogatives of the Governors and district administrative officers shall be expanded and all State administrations shall be represented in the administrative provinces at the highest level possible so as to facilitate serving the citizens and meeting their needs locally.
> 3- The administrative division shall be reconsidered in a manner that emphasizes national fusion while preserving coexistence and unity of the soil, people, and institutions.
> 4- Expanded administrative decentralization shall be adopted at the level of the smaller administrative units (district and smaller units) through the election of a council for every district, headed by the district officer to ensure local participation.
> 5- A comprehensive and unified development plan capable of developing the Lebanese provinces economically and socially shall be adopted and the resources of the municipalities, unified municipalities, and municipal unions shall be reinforced with the necessary financial resources."

On 7/11/2012, the Prime Minister issued decision 166/2012, as per which a committee to prepare an administrative decentralization bill was formed[43]. In 2014, the said committee put together a bill, which the parliamentary sub-committee's draft law currently derives from. The said ad hoc sub-committee for

[42] What is meant here mainly is the settlement of Palestinian refugees in Lebanon.
[43] Spearheaded by former Minister of Interior and Municipalities Attorney Ziyad Baroud.

administrative decentralization emanates from the joint parliamentary committees. During the two past years, it was amending the bill in order to ratify it as a draft law[44].

Just like the ministerial statements issued by the successive Lebanese governments since the Taif Agreement, the ministerial statement of the current outgoing caretaker Lebanese government (following the current revolution/uprising) that was read out on Feb. 12, 2019 stipulated the expansion of administrative decentralization. In one of its clauses, the statement declared verbatim: "The government shall commit to continuing cooperation with the parliament to resume work on ratifying the administrative decentralization law."[45]

According to relevant laws and regulations in force, the Lebanese Republic is a unitary state that follows deconcentration and decentralization, and its government is based in the capital Beirut. The Lebanese territories are divided into nine governorates that are themselves divided into districts, except for Beirut. Municipalities cannot be considered part of the divisions within the districts, and they are not part of deconcentration either. Along with the municipality unions, they constitute the only form of administrative decentralization so far[46].

[44] What is mentioned in this paper does not express in any way the opinion of any member of parliament in the mentioned sub-committee or the opinion of the latter which was still researching, examining and discussing the content of the draft law under preparation. The parliamentary committees' sessions, their work, minutes, discussions and voting are all confidential (unless the committee decides otherwise). For more information about the work of the ad hoc sub-committee, see: https://www.lp.gov.lb/ViewContentRecords.aspx?id=1121 .

[45] Between Feb. 12 and 16, 2019, the Lebanese parliament tackled administrative decentralization during the discussion of the aforementioned ministerial statement. For example, MP Samir al-Jisr (the parliamentary Future Movement) said that the ministerial statement outlined a roadmap to address problems through proposed reforms regarding the CEDRE* conference, which he supports. He noted that "the statement has some gaps, since the administrative decentralization project requires support to ratify it and enforce it. The Lebanese people want this project to be an introduction to equitable development." He asserted that "equitable development is based on fair spending, and development aims to serve humans and provide them with a bundle of services." MP Ziad Hawat (representing the parliamentary Lebanese Forces' bloc), for instance, said, "The government has reiterated in its ministerial statement its pledge to ratify the administrative decentralization law. We demand that Joubeil (Byblos) be included on the map of development and projects, including infrastructural and development projects, as former PM Saad ElHariri had promised us. We have several demands in this regard."
*CEDRE: (Conférence économique pour le développement du Liban par les réformes et avec les entreprises), which France hosted in Paris on April 6, 2018, to support the Lebanese economy.

[46] For a statistical study about how to implement decentralization in Lebanon effectively, see:
المركز اللبناني للدراسات، حول اللامركزية الإدارية في لبنان، كتيّب، 2014.

KEY FEATURES OF THE ADMINISTRATIVE DECENTRALIZATION DRAFT LAW UNDER DISCUSSION

According to the draft law that the ad hoc parliamentary sub-committee is currently working on, administrative decentralization shall be expanded at the level of municipalities and districts as decentralized units led by elected local councils and having a legal capacity as well as both administrative and financial independence, in addition to enjoying wide privileges. Local councils shall include municipal councils, District Councils and Beirut's own city council since it is the capital and has a special standing, provided that diversity, plurality and participation of all social components are maintained, and Lebanon is divided administratively into governorates.

As per the draft law, municipal unions shall be dissolved, and cooperation shall be limited to certain municipalities only i.e. intercommunality, when need be[47].

The draft law aims at promoting the single and unitary state with a strong central authority stipulated in the National Accord Document, provided it is represented in the country's regions according to the deconcentration system.

In its preliminary version that is still under study and discussion within the sub-committee, the draft law sets forth that the electoral bodies in the cities and villages of the district shall elect the General Assembly of the District Council, which in turn elects the District Board. The General Assembly is formed of representatives whose number ranges according to the number of people registered in the city or village and the number of district inhabitants who previously asked to be registered. The General Assembly

[47] About this topic in comparative law, see: Rémy Le Saout, L'intercommunalité : vingt ans de développement et des interrogations, Métropolitiques, 15 Rémy Le Saout, L'intercommunalité : vingt ans de développement et des interrogations, Métropolitiques, 15 octobre 2012. URL : http://www.metropolitiques.eu/L-intercommunalitevingtans-de.html; Olivier Thomas, Intercommunalité française et hausse de la pression fiscale : effet collatéral ou stratégie politique délibérée ?, Revue française d'administration publique, 2008/3 n° 127, pages 461 à 474 ; Chris Game, The future is Intercommunality - yes, but with whom?, 01/12/2014, https://inlogov.com/2014/12/01/the-future-is-intercommunality-yes-but-withwhom/; Stéphane Cadiou, L'intercommunalité ou les promesses déçues de la démocratie locale, Métropolitiques, 19 octobre 2012. URL : http://www.metropolitiques.eu/Lintercommunalite-oules.html; Stéphane Cadiou, translated by Oliver Waine, "Intercommunality, or the broken promises of local democracy", Metropolitics, 16 January 2013.URL: http://www.metropolitiques.eu/Intercommunality-or-the-broken.html; Gérard-François Dumont, France : intercommunalité ou « supra-communalité » ?, Population & Avenir, nov.déc. 2018, N.740, p.3, https://www.population-et-avenir.com/collection-2018/population-avenir-n740- novembre-decembre-2018/; Nicole Maurice and Clara Braun, Intercommunality : The success story of CODENOBA, Argentina, UNESCO, 2005: http://digitallibrary.unesco.org/shs/most/gsdl/collect/most/index/assoc/HASH0137.dir/doc.pdf; Fabien Desage et David Gueranger, L'intercommunalité, les maires et notre démocratie, Métropolitiques, 24 avril 2013. URL : http://www.metropolitiques.eu/L-intercommunalitelesmaires-et.html

authorizes some decisions of the board and puts them to a vote of confidence, in addition to forming advisory committees. The District Board, which manages the district's affairs within its scope, is composed of 12 members, including the board director and his deputy. The board has executive tasks, and its functions are general in nature or serve public interest. It issues regulations and offers recommendations of public interest, as well as remarks and proposals.

In a nutshell, the District Council is formed of the General Assembly and the District Board. Regarding deconcentration, the Governor, according to the draft law, is the link between the regions and the center. Sub-prefectures and their apparatuses, as well as the function of district officer are eliminated, in violation of the related provisions in the National Accord Document, and the prerogatives of the district officer (an appointed employee) are transferred to the District Council (elected).

Given the particularity of the capital, which is a melting pot for all citizens of different backgrounds, the draft law, in principle, notes the establishment of the Beirut City Council, provided it includes a General Assembly and a board of directors. As per the preliminary version of the draft law, Beirut shall be considered one constituency in principle. The General Assembly of the Beirut City Council shall be elected by the electoral bodies and formed of 72 members, provided that 6 of them are reserved for Beirut's 12 historical neighborhoods. Those six include 5 representatives of the registered people, and one representative of the residents. The Beirut City Council shall have a special situation and shall be elected directly by the electoral bodies, unlike in other districts where the General Assembly elects the board of directors. Thus, the local authority, without exception, in the capital would be based on public elections. The Beirut city Governor would be the representative of the central authority in the Beirut City Council.

Moreover, the draft law boosts transparency and limits auditing; constraining it to post-audit rather than pre-audit. A Decentralized Fund shall replace the currently applicable Independent Municipal Fund. The members of its board of trustees shall be elected, and it shall work according to systematic rules and distribution criteria based on aforementioned objective indices that cater to the importance of equitable development and encouragement of local growth[48]. The draft law sees to the establishment of: the Ministry of Local Governance (the current Ministry of Interior and Municipalities shall become the Ministry of

[48] Compare: Special Committee on Administrative Decentralization (Lebanon), Report and Draft Bill for administrative decentralization, 2014.

المركز اللبناني للدراسات، نحو لامركزية إدارية موسعة في لبنان، كتيّب، 2014.

Interior only), the partnership apparatus between the District Councils and the private sector, a disciplinary committee for the District Councils, the statistics apparatus, the local governance apparatus, the information technology apparatus and the traffic safety apparatus.

The draft law invokes many recommendations and remarks that cannot be detailed here, but below are some of them briefly.

NOTES AND RECOMMENDATIONS ABOUT THE ADMINISTRATIVE DECENTRALIZATION DRAFT LAW

Below are some notes and recommendations that can be proposed regarding the administrative decentralization draft law:

One of the technical and logistic difficulties in local elections is the absence of a detailed housing map and official census of registered inhabitants and of residents (as well as houses)[49], and in general, the lack of digital data and official statistics. It is important not to undermine the role of the Independent National Elections' Commission to ensure transparent and democratic elections. It is also necessary to reduce the age of candidacy for the membership of the General Assembly of the District Council to 18 years to promote youth participation and representation, in line with the spirit of the law in other issues and articles. On those same grounds, we believe it is necessary to remove the university degree requirement for accepting candidacy to the membership of the board.

The financial aspect is another main hurdle delaying the ratification of the draft law. On the one hand, ensuring the minimum financial independence by boosting financial resources that local authorities need in their work is necessary to empower them to best perform their tasks. On the other hand, the financial burdens to meet local needs are huge. For that reason, the legislator has to be cautious before ratifying the provisions of a decentralized fund to avoid problematics like those related to the bitter experience of the Independent Municipal Fund that is currently still in force. Undoubtedly, stopping squandering and fighting corruption, which are the demands of the current revolution, are among the foolproof ways to

[49] نجوى يعقوب ولارا بدر، خصائص السكان والمساكن في لبنان، إدارة الإحصاء المركزي، SIF.2012، العدد 2، نيسان

overcome this obstacle. Evidently, reform and integrity are linked to decentralization, and the opposite is true. These two demands constitute a virtuous circle.

In fact, financial decentralization, which is under consideration, brings up thorny issues in the Lebanese experience, such as the composition of those finances and their sources, the management of funds of the prospective decentralized fund, the rules and principles of accountability, the financial control of local administrations and the role of the Court of Audit[50]. Other issues include how to design and manage transfer systems and settlement payments, as well as decisive factors that should be taken into account when dealing with financial and institutional effects that might arise from the desired reforms on the state treasury and taxpayers. Regarding partnership provisions between the District Councils and the private sector, ideally and unlike the draft law, private partners should be limited to national rather than foreign entities. This recommendation aims to increase the chances of Lebanese companies or company conglomerates, except for exclusively specific cases like lack of competition, specialization or competence among Lebanese companies or conglomerates in the relevant sector or field.

The draft law also necessitates activating the role of civil society organizations and engaging them with decentralized authorities[51], as the two are complementary in achieving public interest. Those organizations shall have an advisory, non-binding opinion, solely for the purpose of deliberations and listening to community needs and practical proposals regarding sector-specific or certain issues, like urban planning, environment, health, culture, women's rights, children's rights, youth, the rights of people with special needs, social research, etc. This activates the role of local councils and boosts their effectiveness[52]. The enhancement of the electronic and modern aspect of administrative "paperwork" is also required to facilitate it in the era of mechanization, globalization and e-governments. Lebanon largely lacks this aspect[53], and the draft law tasks the government with putting a plan to address this gap.

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[50] On these topics, see:

هادي الديك، بلديات لبنان بين الرقابة والتوجيه، المجموعة الطباعية، ط. 2، 2017.

[51] منتدى الشباب الاقتصادي، منبر الإصلاحيين، 2011، ص. 65-66.

[52] Compare to the status quo. For instance in 2011, a department dubbed the "municipal observatory" was created in Lebanon as part of the cadre of the Directorate General of Local Administrations and Councils in the Ministry of Interior and Municipalities, as per decree no. 6481, issued on Oct. 8, 2011. It aimed at assessing the performance of municipalities to develop them through following up on the work of local authorities and extracting numbers, data and inclinations. But the said observatory was not effectively implemented, and anyway as conceived by the said text, it lacks independence and transparency as well as competence in the development field. Besides, it does not include any civil society representatives. See:

جمعية المفكرة القانونية، 10 تشرين الثاني/نوفمبر 2011، "المرصد البلدي": "الأرقام" في سريرة السلطة، https://mail.legal-agenda.com

[53] مؤتمر التيار الوطني الحر، اللامركزية الإدارية الموسعة: إنماء متوازن أم أزمة جديدة؟، حزيران 2019، لبنان.

An article should be added to the draft law, indicating that the expanded administrative decentralization system is based on the principle of delegation of power[54] to achieve public interest, whereby elected local councils are given the widest possible scope of prerogatives as per the provisions of the said law and other applicable laws that do not contradict the provisions thereof. It is also hoped that the proposed administrative organization will not need to, as much as possible, cater to the nature and requirements of the sectarian political system and the particularity of the composition of the "Lebanese formula" at the expense of the ultimate constitutional goal of overcoming sectarianism. Decentralization should serve this end, not the contrary. Through legislation, the legislator shall improve the community situation, rather than wait for the community to improve in order to mirror it legislatively. In any case, the demands of the current popular revolution indicate the emergence of a popular awakening to reform the Lebanese system in general.

The topic of administrative decentralization triggers talk about other necessary reforms that are also important and delicate, like the situation of stateless[55] people who, despite being "original" residents of a certain city or village in the district, remain deprived of their right to citizenship since dozens of years, and consequently, of their right to vote and participate in local representation and governance. This also applies to the children and husband of a Lebanese woman married to a non-Lebanese[56]. However, each of these issues deserves a separate law and a legislative workshop.

OVERVIEW OF THE HOUSING CRISIS

Going back to the abovementioned advantages of administrative decentralization[57], it could be said that the latter contributes to resolving the housing crisis, and this idea will be further elaborated in the current

[54] "EdaraBiMahalla" campaign, joint statement about administrative decentralization.
Compare the principle of subsidiarity, in the European Community Law, for instance : Communautés Européennes, Au service de l'Union Européenne, 2e Ed. 1999, pp.30-31; Christian Engel, Comité des régions, dans: Werner Weidenfeld et Wolfgang Wessels, L'Europe de A à Z: Guide de l'intégration européenne, Communautés Européennes, 1997, pp.38-40; Carles Gasòliba I Böhm, Les régions et la construction européenne, Chaire Jean Monnet- Université de Montréal, 1995, pp.7-8 et 17; Céline Stehly, L'Union Européenne infranationale, Petite fille deviendra grande?, Chaire Jean Monnet-Université de Montréal, 1996, pp.7, 13, 18-31; Henri de Bresson, Le traité en 40 questions, série: 11 avril - 20 mai 2005, www.lemonde.fr, N.21 et: Agnès Fontana, Le Comité des Régions de l'Union Européenne, dans: Encyclopédie de la culture politique contemporaine, op.cit., t.II, pp.171-174.

[55] For a new book about this topic, see:
جمعية روّاد فرونتيرز، جنسية قيد القضاء، رحلة عديمي الجنسية في أروقة المحاكم اللبنانية، 2019، بيروت.

[56] Ghadir El Alayli, Le droit de la femme libanaise d'accorder sa nationalité à ses enfants, HBDT, juin 2015.

[57] In the first part of this paper, specifically in paragraph (C) and in footnote 38.

section. This issue is among the main advantages resulting from decentralization, and it is pivotal, especially amid the deteriorating and fragile situation in Lebanon, economically, financially and socially.

In fact, Lebanon has been facing several crises for years, and they have piled up, one after the other, and recently erupted with the popular revolution. The bad public policies adopted by the Lebanese state can be considered one of the main problems, as the state slackened in performing its social role and function, thus leading the country to the brink of a social explosion. These policies are evident especially in the housing issue, knowing that such a sensitive social crisis cannot be addressed in separate texts, like the "new" rent law, or by solving the housing loans' problem only. A more comprehensive way of approaching the matter is needed.

The Lebanese Constitution explicitly guarantees the right of property, as it clearly states in its Preamble that "the economic system is free and ensures private initiative and the right of private property." In Art. 15, it states that "rights of ownership shall be protected by law. No one's property may be expropriated except for reasons of public utility, in the cases established by law and after fair compensation has been paid beforehand." The right to suitable housing is also guaranteed in international charters and treaties that the Constitution refers to and that have become part of it. These are two complementary rights that should not conflict or clash, as in the case of the ratification of the exceptional rent laws and the "new" rent law, which works on liberalizing the former gradually.

The Lebanese legislator's decisions over the years in terms of housing, especially regarding old rents, have bred a lot of social hatred and tensions[58]. Meanwhile, the State's main function should be promoting social harmony and instilling social justice, solidarity and synergy.

Many ideas and proposals were made and published to solve the housing crisis in Lebanon, but the best solution, in our opinion, is to continue acting to avoid what awaits Lebanese society in a few years, when "the old tenants" will be on the streets. This is an exact socio-legal problematic, and to achieve the right balance between the relevant basic rights, the State should fully assume its responsibilities. This can be done through devising a comprehensive and integrated housing plan[59] that includes public policies

[58] Ghadir El Alayli, Le droit naturel, fondement de l'État de droit panarabe, Ed. A. Pedone, Paris, prévu en octobre 2020.
[59] It was mentioned during the discussion of the new rent law (at the time) by MP Nadim Gemayel (The Phalangist parliamentary bloc).

stemming from good governance and wise management to face the housing crisis in all its aspects and dimensions (social, legal, developmental, reconstructive, administrative, urban planning, transportation, financial and banking incentives and facilities). The housing problem must be addressed, especially amid the escalating crisis given the worsening Syrian displacement to Lebanon (in addition to the Palestinian refugees and camps and the Iraqis, among others), and in the wake of the deteriorating financial and economic situation in the country since the end of 2019.

In comparative law, there are relevant notions like "reasonable housing" (in India, for example) and "adequate housing" (in Europe, for instance). These principles oblige the state to provide protection and safety for society based on certain criteria, especially in terms of covering all related circumstances. The latter include the situation of the elderly, people with special needs and children, including orphans, the vulnerable and families with women as breadwinners (India), and ensuring the right to public housing (USA)[60].

Several recommendations can be made in this regard, such as restructuring financial support offered by the Banque du Liban (BDL) to buy housing property, reviewing the tax system (two key demands of the current revolution), activating urban organization and planning, amending or at least preventing the violation or circumvention of the law on foreign acquisition of real estate in rem rights in Lebanon. We also recommend[61] launching suitable, decent and motivating housing projects/public housing to social categories that are mostly in need, including low-income individuals, youth and elderly, provided the housing units are ready at the time of "forced displacement" or even "homelessness" of "old tenants". The projects or units should also ensure the organization of slums and the achievement of equitable development, all the while promoting the role of local authorities, urging sects and associations to provide lands (especially communal lands "*mousha'*" and endowments "*awqaf*") to build the desired housing compounds, and facilitate access of low-income individuals to affordable housing.

Decree no. 8198, dated 24/5/2012 (draft bill) must be ratified in order to amend law no. 767, dated Nov. 11, 2006 and related to rent-to-own leasing targeting low-income individuals specifically and ensuring

60 لمى كرامة، التقاضي الاستراتيجي اثباتا لحق السكن، 2012/5/7، العدد الرابع من مجلة المفكرة القانونية.

61 انطوان شمعون، الخطة الوطنية لحقوق الإنسان: الحق في السكن، سلسلة الدراسات الخلفية، مجلس النواب - لجنة حقوق الإنسان النيابية وبرنامج الأمم المتحدة الإنمائي، 2008.
غدير العلايلي، "حق السكن" في الخطة الوطنية لحقوق الإنسان: التخطيط بعيدا عن اشكاليات الحاضر..، العدد الرابع من مجلة المفكرة القانونية، نيسان 2012.

housing units at low prices. This has become a pressing and necessary need, given the tough economic, financial, banking and social situation in Lebanon and the recent rise in unemployment. The aforementioned draft bill aims at giving incentives (in which the Sstate, the private sector and banks participate) to the investor selling a housing unit to a low-income tenant specifically through rent-to-own lease, notably by exempting the tenant from several charges.

It is also pressing to issue implementation decrees for the Construction Law and Rent-to-Own Lease, which defines a rent-to-own lease as a lease that grants the tenant the right to own the leased premises in exchange for a fee agreed upon when concluding the lease, after deducting the paid installments in rent from the total price. The duration of the rent-to-own lease shall not exceed 30 years, and the tenant cannot use his/her right to buy the leased premises before five years at least have passed from the lease. During the 30 years or upon their completion, the tenant shall have the right of choice to transfer the lease into ownership.

If the competent authorities continue to ignore the legitimate public rights and recommendations about consecrating the right to housing, on the one hand, and protecting the right to property ownership, on the other, vertical social confrontations and divisions might aggravate and threaten the Lebanese civil and social fabric[62]. It is noteworthy that the last provision of the "Proposed Preliminary Reform Measures to Face the Crisis" paper issued by the economic meeting held in the Presidential Palace in Baabda on Sept. 2, 2019 had underlined, under the clause of social policy that aims at providing protection for all social groups, the importance of putting a housing policy based on the right to housing, and not limited to encouraging ownership.

The aforementioned recommendations about the housing crisis have voluntarily gone beyond the main topic and scope of this paper. Once again, expanded administrative decentralization is enough to contribute to ensuring provision of the right to housing practically, as per the local needs and reality of each region. However, even under the current applicable Lebanese laws, hence under the limited administrative decentralization, the municipal council handles the establishment of public housing, provided this step is ratified by the Governor. The municipal council can manage the housing units

[62] ناضر كسبار، جوزف زغيب، أنطوان كرم، ندوة حول قانون الإيجارات بين المفهوم والحسنات والسيئات، 6 أيار 2014، مركز الدراسات الحقوقية للعالم العربي.

personally or through an intermediary, or can contribute to or help in executing them, according to the provisions of the Municipalities' Law[63]. The latter will be tackled in the last section of this paper.

BETWEEN EXPANDING ADMINISTRATIVE DECENTRALIZATION AND REFORMING THE MUNICIPALITIES' LAW

The ad hoc parliamentary sub-committee was seeking to adopt the administrative decentralization law proposal before the end of 2019 by achieving a national consensus on such a "development project" that would unite the parliamentary blocs representing the various political forces. This is regardless of these forces' views on political matters in their narrow sense. The sub-committee wanted the demand for expanded administrative decentralization to override secondary differences, let alone considerations related to factions and parties. In fact, it expressed its will to achieve local interests and the general national interest.

However, this deadline will inevitably be extended for two reasons: First, sub-committee members representing parliamentary blocs have yet to agree on several contentious terms. Chief among these is the financial aspect of the decentralization and the peculiar status of the capital, Beirut. Second, they have yet to reach an agreement on the political, security and logistic levels due to the outbreak of the popular revolution. Of note, the Parliament's General Assembly has been unable to meet for over a month due to street pressure, and the parliamentary committees' priority is currently the draft laws that the revolutionaries are demanding as a way out of the financial and political crises plaguing the country.

Pending the approval of the administrative decentralization law, the Lebanese legislation will seemingly lack any ambitious, comprehensive and integrated plan, vision, or approach to expand or reform administrative decentralization. In recent times, a proposal study with more "modest" objectives emerged with the only aim of specifically amending the Municipalities' Law (Legislative Decree No. 118 dated 30/6/1977 amended[64]) in a bid to modernize and reform it and fill its gaps, more than 40 years later. As of the date of writing these lines, this proposal is the one likely to be completed (first) in the future (and not the proposal

[63] Articles 49-50 and 61 of the Lebanese Municipalities' Law.

[64] Amended as per Law no. 665, dated 29/12/1997, Law dated 25/4/1999, and Law no. 316, dated 20/4/2001.

to expand decentralization), even though the political and security events since mid-October 2019 have been hindering work on both until further notice.

Since mid-2019, the Parliamentary Sub-Committee for the Modernization of the Municipalities' Law, emanating from the Parliamentary Committee for National Defense, Interior and Municipalities, has been working on discussing three draft laws to approve one overarching draft law that would address the most prominent difficulties encountered by municipalities in performing their administrative, logistic and financial duties[65]. Lebanon suffers from a huge aggregation of 1058 municipalities spread over the total surface area of the country i.e. 10452 km^2. This number increases in a record manner compared to other countries in the world. Such proliferation calls for the need to control this phenomenon and to develop the municipal resources financially and humanly. The solution lies in adopting a policy of stimulating municipal mergers to ensure the sustainability of local authorities and enable them to carry out their development tasks.[66]

This also calls for a discussion of a set of recommendations in order for the sub-committee to adopt the most important standard conditions for the establishment of municipalities. These should ensure the latter's sustainability by securing a minimum amount of expected revenues based on the financial sources stipulated in the law. Also, municipalities shall be able to fill basic jobs based on the expected financial resources, and to efficiently provide public services. The sub-committee must review the mechanism for establishing municipalities and defining their administrative scope. There is a special need for the law to determine this mechanism as consisting of a reasoned decision issued by the competent minister confirming the foregoing. The sub-committee must work according to the best criteria for annexing, merging and separating municipalities, notably based on their geographical continuity and while proving greater ability to employ and to provide public services, as well as financial sustainability based on the financial resources noted in the law[67].

[65] What is mentioned in this paper does not express in any way the opinion of any member of parliament in the mentioned sub-committee or the opinion of the latter which is still researching, examining and discussing the content of the draft law under preparation. For more about the work of this sub-committee, see: https://www.lp.gov.lb/ViewContentRecords.aspx?id=2157

[66] أندره سليمان، من أجل سلطات محلية أكثر استدامة: في ضرورة الدمج البلدي ودور التخطيط المركزي للشؤون المحلية في لبنان، 2019، غير منشور بعد.

[67] توصيات المنظمة الدولية للتقرير عن الديمقراطية لتحديث قانون البلديات، 2019، غير منشورة.

The sub-committee shall take into consideration the most urgent recommendations related to the incentives that could be adopted to join and merge municipalities. These include financial incentives through the Independent Municipal Fund and tax exemptions. The increasing number of municipalities in Lebanon is a negative phenomenon due to the unsustainability of their components. This is taking place amid the lack of any debate among legal experts and in comparative law about the necessity of merging poorly performing municipalities, as is the case in Lebanon[68]. In many countries of the world, including Arab countries such as Jordan[69] and Algeria[70], the policy of municipal integration[71] plays an increasing role in local governance and decentralization. The merger policy is based on the inclusion of municipalities as well as adjacent and homogeneous localities in a single municipality capable of providing better services while having a highly efficient administrative, financial and technical apparatus capable of facing challenges[72].

It is true that the integration policy faces difficulties in some countries, such as France[73] which, despite its efforts to apply integration, opted for boosting coordination and cooperation mechanisms[74] between local groups[75] namely intercommunality. However, it is also true that the policy of integration is inevitably a trend in most developed countries, such as Japan[76], Canada[77], the United States of America, and many

[68] أندره سليمان، من أجل سلطات محلية أكثر استدامة، سالف ذكره.

[69] محمود عودة أبو فارس وأيمن عودة المعاني، أثر دمج البلديات في الأردن على فعاليتها الإدارية والمالية من وجهة نظر رؤساء المجالس فيها: دراسة ميدانية تحليلية. مجلة الجامعة الأردنية :دراسات العلوم الإدارية ،المجلد 33،العدد 1، 2006.
The Hashemite Kingdom of Jordan - Ministry of Tourism and Antiquities; The World Bank; Third Tourism Development Project, Secondary cities revitalization study Analysis of the municipal sector, Annex B, see page 6 among many others.

[70] *Fusions municipales*.

[71] 21..ديمة صادر، المركز اللبناني للدراسات، تجربة العمل البلدي في لبنان: الإنجازات والعوائق والتحديات، لا تاريخ، ص

[72] محمود عودة أبو فارس وأيمن عودة المعاني، سابق ذكره، ص. 34.

[73] Thomas Frinault, « La réforme territoriale de 2010 : un remodelage compromis ? », Métropolitiques, 24 octobre 2012. URL : http://www.metropolitiques.eu/La-reforme-territoriale-de2010-un.html, p.1.

[74] Compare: coordination and cooperation mechanisms between local groups in Tunisia, cf.
المنظمة الدولية للتقرير عن الديمقراطية، دليل (...)، مرجع مذكور أعلاه، ص3. وص33.

[75] Rémy Le Saout, op.cit., p.1; Olivier Thomas, op.cit., pp. 461-462 et 473-474 ; et : Chris Game, op.cit.

[76] Institute for Comparative Studies in Local Governance, (GRIPS 2007) The Development of Municipal Mergers in Japan. Tokyo: ICSLG, pages 9-14.

[77] Christophe André and Clara Garcia, OECD Economics Department Working Papers, No. 0090, 3 June 2014, Local Public Finances and Municipal Reform in Finland, page 24; François Hulbert, Réforme municipale au canada et au Québec : la recomposition géopolitique des agglomérations (Municipal geopolitics in the recent city mergers in Canada and Quebec), Norois, n° 199, 2006/2, p. 23-43 ; Bachir Mazouz, Marcel J. B. Tardif et Jean-Michel Viola, Les fusions municipales au Québec : vers un modèle d'intégration orientée projet, Dans Gestion 2003/3 (Vol. 28), pages 48 à 57 ; And : https://www.saskatchewan.ca/government/municipaladministration/community-planning-land-use-and-development/municipal-status-and-boundarychanges/merging-municipalities.

European countries[78] such as Portugal, Austria, the Netherlands, Belgium, Germany, Britain, Denmark, Norway, Sweden, Iceland, Finland[79], and other countries of the Organization for Economic Cooperation and Development[80]. A comparison between the number of municipalities before and after the merger in a number of these countries indicates that merger policies[81] have come to fruition. According to the best relevant international practices, merger policies are mainly based on the need to achieve economies of scale and rationalize domestic spending by mobilizing financial and human resources as well as eliminating duplicate administrative expenditures[82].

This comes in the hopes that the primary purpose of the legislative workshop in Lebanon would be to improve the public services provided by the municipalities to be of high quality and effectiveness, as well as to promote local development in a balanced, sustainable and democratic manner based on the general local interest. This is a natural and constitutional right guaranteed to human beings to entrench their right to decent living without any discrimination, preference or exception, especially when it comes to medicine, health, housing, learning, work, environment, security and safety[83].

The legislative draft amendment is supposed to facilitate and accelerate municipal work to bypass administrative bureaucracy, the accumulation and delay of transactions and the unjustified lack of good coordination. The suggested amendment should also aim to address difficulties encountered by municipalities while carrying out their administrative and logistical tasks. Meanwhile, it must seek to strengthen the capacities of municipalities and devote their sustainability, especially in terms of financial and human resources. In fact, the latter are expected to be compatible with the size of the responsibilities entrusted to municipalities in order for these to be able to achieve their goals in response to local needs and requirements, notably at the development level. The legal amendment should also aim to activate accountability and enhance transparency in municipal work. The Municipalities' Law will hopefully be integrated with the administrative decentralization draft law, which is also under preparation. This requires

[78] Tuukka Saarimaa and Janne Tukiainen, Politics in Coalition Formation of Local Governments, Spatial Economics Research Centre, Discussion Paper 102, March 2012, pages 2, 9-10, 26. (See also p.5).
[79] Christophe André and Clara Garcia, op.cit., pages 3 and 24.
[80] Idem, page 24.
[81] مبادرة المساحة المشتركة، مشروع نقاش عام حول إصلاح اللامركزية الإدارية في 86 لبنان، التقرير النهائي، 2016 ،انظر ص. 26-27 و34.
[82] أندره سليمان، من أجل سلطات محلية أكثر استدامة، سالف ذكره.
[83] حلف "الإدارة بمحلها"، شرعة اللامركزية الإدارية، وهو حلف تأسس عام 2016 ويضم عددا من المنظمات اللبنانية والدولية، ويسعى الى توفير حق الحصول على الخدمات العامة.

coordination and communication between the chairperson and members of each of the two ad hoc parliamentary sub-committees, given that these two laws are closely related to each other.

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