
Constituting the Arab uprisings

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RECENT EVENTS IN EGYPT have confirmed the relevance of the current transitions in North Africa. The clash between revolutionary and democratic-constitutional legitimacy is evident, not only in Cairo but in the whole region.

New constitutions are either in force, as in Morocco, or are being discussed, as in Tunisia and Libya. Egypt is a case of its own, as its constitution entered into force in the last weeks of 2012, only to be repealed by the recent military coup. Even there, the constitutional process is far from over, as a new committee of experts has formulated amendments which might be approved by a referendum by the end of 2013.

The transitions that started with the Tunisian uprising in December 2010 are still unfolding, although one could argue that even 2010 is an arbitrary starting date. The Algerian uprising in 1988, which eventually led to the rise of the Islamic Salvation Front and the ensuing civil war, or the Palestinian Intifada in 1987, which led to the Oslo Accords and the birth of the Palestinian Authority, could be taken as the beginning of the unravelling of the old regional status quo that had followed decolonisation. As often happens, a broader analysis is needed in order to grasp the meaning of current events.

Against this background, the British School at Rome (BSR), the Society for Libyan Studies (SLS), and the Centre for Global Constitutionalism at the University of St Andrews jointly decided to analyse the constitutional transitions in the Middle East and North Africa in a conference held at the British Academy in London on 2-3 May 2013. Academics from Western and Arab universities attended, along with diplomats and other policymakers. Expert on Arab constitutions Nathan J. Brown delivered the keynote address, while a roundtable discussion was held with former head of the Egyptian constituent assembly, and member of the Freedom and Justice Party (close to the Muslim Brotherhood), Amr Darrag. This event was facilitated by the connections between the BSR Director Christopher Smith and the St Andrews Centre for Global Constitutionalism, which in turn provided both the intellectual background and the academic network behind the conference. The crucial support from the SLS is a further demonstration of what can be achieved when BASIS institutes co-operate and support research.

Where we started

The May 2013 conference was part of a longer process. My position was funded by the British Academy's funding for research in BASIS institutions on the Arab uprisings, and a collaboration between the BSR and SLS. Our work began

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In May 2013, a conference was held at the British Academy on 'Constitutionalism and the Arab Uprisings: Politics and Law in a New Middle East'. The conference was jointly organised by the British School at Rome, the Society for Libyan Studies, and the Centre for Global Constitutionalism at the University of St Andrews; it was supported financially by the Academy, as part of its 'Arab Spring' funding initiative.

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with a workshop on 'Libya: what happened and what's next', held at the BSR on 25 May 2012. Although focusing on only one of the countries in transition, it highlighted some of the major themes that were later investigated on a wider range of case-studies: the link between security and human rights; the relevance of free and fair elections; the challenges connected to constitution-making and the importance of inclusive processes. The workshop was attended by more than 50 academics, diplomats and experts in Rome, who praised the event as being one of the few (if not the only) opportunity to discuss these issues from different perspectives.

The May 2013 conference in London was announced by BSR Director Christopher Smith in his introductory remarks, and in fact the organisation of the event started soon after the workshop in Rome. With the Director of the Centre for Global Constitutionalism, Anthony Lang, the decision was made to investigate the current transitions through a coherent theoretical framework, that of Political constitutionalism. Political constitutionalism extends the analysis of constitution-making beyond debates surrounding judicial reviews, to include a broader analysis of the behaviour of all actors involved in the writing of new charters and of their sources of legitimacy. Among these actors, the global context and the regional powers play a role that is often underestimated.

Rather than focusing exclusively on the existence of rights to be protected through judicial bodies, Political constitutionalism takes into account the 'circumstances of

politics' such as the legislative and executive processes or the functioning of public opinion.¹

The major themes of constitutional transitions

Coherently with Political constitutionalism, we decided to expand the analysis of the new charters to go beyond the mere textual analysis and include the investigation of the 'hard politics' of constitution-making. We therefore discussed several themes: the transition from revolutions to constitutions; the influence of the religious discourse and of religiously-inspired actors on constitution-making; the balance between safeguarding human rights and guaranteeing security; the influence of external actors (such as the EU or the US) on the current transitions.

This structure of the panels will be reflected in the edited volume – to be published by Cambridge University Press, with the co-operation and support of the Society for Libyan Studies – under the title 'Constituting the Arab Uprisings: Transitional Politics in the Middle East and North Africa'. The relevance of this framework has been confirmed both by the discussion during the conference and by ensuing events.

The difficulties of the transition from revolutions to constitutions has been once more highlighted by the events in Egypt of summer 2013. Despite relatively free and fair elections, and notwithstanding the approval of a new constitution in November–December 2012, the gap between the new order established under the leadership of the Muslim Brotherhood and the revolutionary legitimacy claimed by anti-Morsi demonstrators grouped under the umbrella of the 'Tamarrod' (Rebellion) campaign seemed evident.



Tunisia, the writing is on the wall: 'Democracy, proud to be Tunisians'.

The connection between religion and constitution-making was another important topic discussed during the conference, particularly with studies of Tunisian constitution-making and of the Moroccan example. In Tunisia the relevance of Islam in the new constitution has been the subject of a heated debate also in light of the article of the previous constitution, in place under the dictator Ben Ali, which stated that Islam is the religion of Tunisia, a formulation that leads to several conflicting

interpretations. In Morocco, Islam has been used as source of legitimacy both by the king (formally and concretely the religious leader of the country) and by his opponents.

The balance between security and human rights has always been tilted in favour of the former in the Arab world. Nevertheless, as the workshop on Libya in 2012 had highlighted, overcoming the oppressive rule of the former security apparatus could imply a state of *de facto* anarchy that in fact denied the concrete exercise of human rights, particularly by social groups such as women and minorities. Libya was therefore at the heart of the discussion of this topic, with its struggle to build an efficient and independent judiciary, while ensuring that the monopoly of force be exercised by the state and not by the myriad of militias that sprang out of the messy revolution/civil war. Egypt presents the same contradiction between enforcing human rights and guaranteeing security and law and order, although under a different perspective. The balance between political and social pluralism, on the one hand, and the right of the majority to govern, on the other hand, were one major source of debate during the conference – and the discussion will continue for years to come.

The role of external actors

The relevance of external actors in the transitions in North Africa had already been assessed during the workshop on Libya at the BSR. The international intervention against Qadhafi provided fairly obvious evidence of the importance of Western and regional powers in the toppling of dictators and in the establishment of a new order – although in most cases it would be more appropriate to speak of *the failure to establish any type of order* after the overthrow of the old regime.

Although the Palestinian Territories have not been directly affected by the so-called 'Arab spring', their history since the late 1980s can be analysed as an antecedent of current events. This was the goal behind two different papers presented during the conference that highlighted the interaction between external actors (mainly Israel and the Western world) and Palestinian constitution-making in the early 1990s. As a matter of fact, the Palestinian case is all the more interesting as the constitution of the Palestinian Authority was never connected to the establishment of an independent state.

The interplay between local and external actors in the Arab transitions has been the focus of my personal work since the workshop on Libya in 2012, and throughout my postdoctoral fellowship for the British School at Rome and the Society for Libyan Studies. Libya was the clearest example of foreign intervention in the transitions through Operation Unified Protector, in which NATO joined forces with some members of the Arab League to oust Colonel Qadhafi. Nevertheless, the role of external actors has always been a crucial component of political constitutionalism, as highlighted by the study of successive transitions in 20th-century Egyptian history.²

¹ For a broader discussion of political constitutionalism see Richard Bellamy, *Political Constitutionalism: a Republican Defence of the Constitutionality of Democracy* (Cambridge University Press, 2007). A use of this framework to describe events in the Middle East and North Africa

can be found in Anthony Lang, 'From revolutions to constitutions: the case of Egypt', *International Affairs*, 89:2 (March 2013).

² See Lang, 'From revolutions to constitutions'.

In the past decades, the EU and the US have prioritised the preservation of the status quo over change, supporting authoritarian regimes in North Africa and the Middle East in the name of stability. Their policies towards the Arab world have highlighted the contradiction between democracy support and the pursuit of national interest, yet both are destined to be major actors also in the future. Nevertheless, dramatic changes have occurred particularly in EU policy after the outbreak of the Arab uprisings: with the review of the European Neighbourhood Policy started in March 2011, significant changes have been promoted in the EU support to Mediterranean countries to include more attention to human rights and step up conditionality in case of violations of the rule of law. A similar approach has been at least stated by the Obama administration, although many authors and several Middle Eastern commentators have questioned how much discontinuity there is between the Freedom Agenda promoted by President George W. Bush alongside the intervention in Iraq and Obama's programme of democracy support. The crackdown on the Muslim Brotherhood and the suspension of the 2012 Egyptian constitution by the military tested these statements and aims: the EU and the US have had a hard time using their economic and political leverage in the face of the growing repression of the Muslim Brotherhood and the reintroduction of the Mubarak-era emergency law.



One of the recent demonstrations in Egypt.

Future challenges

Although some constitutions have already been approved (for instance Egypt's and Morocco's), the constitutional process in North Africa is far from being over, with new elections and the implementation of new constitutional rights being among the first tests. The depth of the top-down reform process in Morocco will be understood only in the medium term, while recent events in Egypt seem to bring the whole process back to square one: new amendments to the constitution (now suspended), a new referendum and eventually fresh national elections. Again, rather than just looking at rules, scholars of the Egyptian transition would do well to see how inclusive of all political actors the process will be, particularly with regards to the plurality force, namely the Muslim Brotherhood. As things stand, it is hard to predict whether the new constitution will regulate the workings of a democracy or just act as a figleaf for a resurgent dictatorship.

Other countries, such as Libya, are just beginning to deal with the hard politics of constitution-making, while dealing with other problems that have been highlighted by our discussion, such as the balance between human rights and security. Tunisia, despite its recent crisis over the surge of Salafist attacks and the growing tensions between the religious and the secular trends within society, seems to have at last found a middle ground between competing

visions of the constitution. Nevertheless, even there the transition rests on rather weak foundations and unpleasant surprises may well arise.

This is therefore a work in progress, as these transitions will not end soon. The idea of writing an edited volume collecting the work that was presented during the conference (and some which was not) is not meant to provide the reader with the 'ultimate narrative' of past events, but rather to experiment with a new perspective, based on past experience, in order to understand what is next.