Many scholars can readily identify a rich history of constitutional ideas and practices among the countries that now form the modern Middle East. A recent work on Arab constitutions reminds us of their “long and lively history,” while another study notes that there were constitutional systems in the Middle East about the same time as or even before some countries of eastern and southern Europe. There is considerably less agreement, however, over their origins, content and significance. In particular the larger question of why constitutionalism in recent times has failed to take permanent root in much of the area, and under which conditions it might do so in the future, is much debated. This question is of huge contemporary importance at a time when the spread of liberal democracy and its putative association with global peace has revived interest in the theory and practice of constitutionalism worldwide and drawn attention to its relative absence in many Middle Eastern countries. As Laurence Whitehead writes, liberal democracy and constitutionalism are “familiar traditions with century-long histories in Europe and the Americas, in Asia and Africa they arrived more recently, whereas in much of the Middle East democratisation may be harder to imagine.” Nevertheless, one consequence of this renewed interest in constitutionalism has been the attempt to craft new constitutional forms in such countries as Palestine, Iraq and Afghanistan. These experiments, together with the equally tumultuous experiences of the Balkan states since the ending of the Cold War, have brought sharply into focus the challenge of constitution-making in regions of religious, ethnic and cultural diversity, where hitherto authoritarianism has been the rule.

1 I would like to thank Jose Harris for her very helpful comments and suggestions.
3 R. Khalidi, Resurrecting Empire: Western Footprints and America’s Perilous Path in the Middle East (Boston, 2004), 12.
In addressing these problems, this paper has two aims: one mainly historical, the other more speculative. First, it does not attempt to provide a detailed analysis of present-day constitutionalism (or its absence) in the Near and Middle East, but rather to provide a comparative backdrop and frame of reference for a theme-issue primarily concerned with the history of constitutional regimes in Europe. In particular, it examines the hidden range of historical assumptions that lurk behind much current constitutional discussion about the Middle East and similar territories. These assumptions relate particularly to the question of just how far the constitutional deficit currently perceived in many Near and Middle Eastern countries stems from an earlier cultural inheritance that was intrinsically different from that of European countries, or whether, on the contrary, that inheritance may suggest points of similarity as well as contrast and itself help to illuminate the chequered history of constitutionalism in Europe. At the centre of such an enquiry lies the history of the Ottoman empire and its successor states; a history that offers a particularly rich field for addressing such comparative themes, not just because of the diversity of Ottoman governing institutions, but also because the Ottoman and post-Ottoman territories straddled the borders of Europe, Africa and Asia (a fact that calls into question any simple assumption that constitutionalism is somehow generically European). Thus, although the main focus of the paper is on those Asian and African territories that were still part of the Ottoman Empire at the time of its demise, the paper also considers its European, mostly Balkan domains, many of which had achieved independence by the later nineteenth or early twentieth centuries. In addition, passing comparison is also made to constitutional movements within the Ottoman Empire’s close rival and neighbour: Persia, what is today Iran. Secondly, on a more speculative and conjectural plane the paper reflects upon the wider implications of that earlier history of constitutional practice and ideas, and draws out some lessons that may be helpful in illuminating opportunities and challenges for constitutionalism in the Middle East at the present time.

These themes are considered here in relation to three broad constitutional moments. The first is the late Ottoman period, which saw significant, though mostly short-lived attempts at constitutional practice within and around the Ottoman Empire, in Tunisia, Egypt and Iran. These followed or ran parallel with constitution-making in the European domains like Greece or Serbia that had already separated themselves from the Empire by the mid- to late nineteenth century. The

6 The European dominions of Turkey reached their greatest extent in the latter half of the 17th century, but witnessed steady decline thereafter. Asia, in contrast, had always been the stronghold of the Turks. W. Miller, The Ottoman Empire and its Successors 1801–1927 (London, 1966), 15–16. For an excellent discussion of how to define the successor states to the Ottoman Empire, see C. E. Black / L. C. Brown, Modernization in the Middle East. The Ottoman Empire and its Afro-Asian Successors (Princeton, 1992), 1–9.
second is the immediate post-Ottoman period in which the roots of modern Turkish constitutionalism were established alongside parallel efforts, guided by the colonial powers, to promote constitutional government in Egypt, and the British and French mandates of Iraq, Syria, Lebanon, Jordan and Palestine. The Balkan states, in contrast, were left relatively free at this time to undertake their own forms of government – constitutional or otherwise. The third is the post-independence period, in which most states – with a few notable exceptions – experimented, often briefly, with types of constitutional government, only to replace them with authoritarian regimes, whether monarchies or republics. This authoritarian trend, though displaying a variety of forms, still prevails in much of the region. Here, again, a comparison is made with the Balkan region, which initially (excepting Greece) fell under Soviet-style authoritarian governments, to be replaced by constitutional or quasi-constitutional regimes at the Cold War’s end. For each episode the domestic and external conditions favouring constitutionalism and constitutional survival are considered. Finally, the paper sketches out the current constitutional arrangements and future prospects.

1. Competing Positions

Scholars disagree on the nature and meaning of constitutionalism within the Ottoman Empire and its successor states. A number of preliminary positions can be identified which will help to inform the following discussion over constitutional practices and developments. The first and perhaps most popular view is that constitutionalism had shallow, if diverse roots in the region and that efforts to promote it within the Ottoman Empire in Asia were doomed to fail. The association between constitutionalist practices and intrusive Western powers, their identification with narrow elites, centralising processes and often secular orientation all conspired against early attempts at constitutionalism. Even if the Balkan states were admitted to be more receptive, the Eastern territories were deemed as inherently unripe for constitutional government.

One advocate of this kind of argument was Elie Kedourie.\footnote{E. Kedourie, Arabic Political Memoirs (London, 1974); E. Kedourie, Politics in the Middle East (Oxford, 1992).} Constitutional government, he reminds us, is usually and rightly said to originate in Western Europe… [H]owever constitutional government is described, and whatever the particular social structure with which it may be associated, we may safely say that it is far removed from, if not antithetical to, what usually obtains in «oriental despotism». The latter, he claimed, was the most appropriate term to describe the Ottoman Empire.\footnote{Kedourie, Political Memoirs, 1.} Shades of the Kedourie thesis, in which the Ottoman Empire is painted as a relic of the past, out of kilter with the modernising and liberalising
trends of the late nineteenth and early twentieth centuries, resonate elsewhere in the historical literature.⁹

In related vein, other analysts, whether of constitutionalism or more recently of related democratisation processes in the Ottoman and post-Ottoman territories, point to aspects of traditional political culture, whether Arab or Islamic, as crucial variables in explaining failure. One study by Alfred Stepan finds that the democracy deficit lies in Arabism;¹⁰ another finds in Islam the key to explaining differences. Bernard Lewis writes of how the experience of Muslim countries with democratic institutions has been one of «almost unrelieved failure».¹¹ One implication of this analysis, which will be explored later, is that the non-Muslim or non-Arab territories of the Ottoman Empire might be expected to have fared better in constitutional terms than their Muslim or Arab counterparts.

Still other authorities focus on the negative and contradictory effects of exposure to and imposition of Western norms and practices. The West was (and to some extent still is) both agent and controller of the process of constitution-building, and seen as responsible both for its introduction and its demise. Indeed, Rashid Khalidi asserts that the evolution of Middle Eastern countries towards constitutional rule and democracy was repeatedly thwarted by Western powers.¹² Similarly, Nathan Brown claims «The imperial powers shut down constitutions where they found them, or when they left attempted to place their post-imperial position beyond constitutional reach.»¹³

It is not, of course, that Western ideas about constitutionalism had no role – few would deny that most early attempts at constitution-making whether in the Balkans, Middle East or elsewhere were heavily influenced by Western practices and models. It was the context and timing of their introduction within colonial-style state-building practices – often inimical to local traditions – that is singled out as particularly damaging. As the British historian Elizabeth Monroe notes, the younger generation of the region wanted the freedom to experiment with democracy in its own way, yet «were obliged to try it in leading strings held by foreign mentors».¹⁴ Further, as discussed below, even the assumed «liberality» of contemporary Western ideas is open to question.

Were either oriental despotism or foreign colonialism the main explanation for the failure of constitutionalism, we might expect to find differences between those

⁹ See, for example, D. Fromkin, Peace to End all Peace. The Fall of the Ottoman Empire and the Creation of the Modern Middle East (New York, 1989).
¹² Khalidi, Resurrecting Empire, 18–19.
areas of the empire where such despotism or colonialism had left fewer or lighter traces. Or, were Arabism or Islam to be the explanation for constitutional failure, we would similarly expect to find predictable patterns in states of either type. Certainly among Balkan historians there is often the suggestion that their distinct region merits separate and special treatment. The European domains of the empire mostly achieved independence in the nineteenth and early twentieth century and were not subsequently subject to colonial tutelage. Its Asian domains, in contrast, saw a variety of different outcomes, including independent states, formal colonies and mandates.

This point, alongside other considerations that may help explain the varied constitutional experience of the Ottoman Empire and its successor states – whether the prevalence of conflict, the impact of demographic change, or the political economy of the region – will be considered further in the conclusion. A preliminary finding, however, when looking at the spread of regional experience from Lebanon to Saudi Arabia or from Greece to Albania, is that simplifying theses are inadequate. Neither Arabism nor Islam nor indeed colonialism or European influences in or of themselves provide sufficient explanation for the absence or presence of constitutionalism. Even if the European successor states obtained earlier independence they did not necessarily achieve better constitutional outcomes, at least until after the end of the Cold War.

Supporting of this view, Dankwart Rustow refutes the notion that the slow pace of political development in any region can be understood in terms of tradition versus modernity. The divide, he suggests, is an artificial one: «It becomes clear on closer reflection that modernity and tradition are never fully distinct in reality, that political culture of even the most modern countries is, in fact, a blend of traditional and modern traits.»

The claim that constitutionalism is part of a «modernising trend» and that its failure reflects the resistance of traditional and unreformed societies and polities is hard to sustain when one considers the complexity and diversity that characterises the post-Ottoman region. Similarly, Westernisation per se cannot be regarded as a constitutional panacea, or necessarily even synonymous with liberalism. The application of liberal ideas by Western powers was necessarily a selective process both during and after the Ottoman period, more often than not tempered by the exigencies of realpolitik. In Britain’s case, for instance (a comparison here might be made with US policy in the early Cold War), Ottoman stability in Asia took precedence over support for local nationalist or confessional groups, and any sympathy felt for Persian constitutionalists in the first decade of

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16 D. Rustow, Political Culture and Political Development (Princeton, 1965), 171.
the twentieth century was constrained by the prospects of an agreement with Russia.

One alternative line of thinking is suggested by Albert Hourani, a singular scholar of Arab liberalism. Writing of the region’s experience with modernisation in the nineteenth century, he wrote that “It would be better … to see the history of this period as that of a complex interaction: of the will of ancient and stable societies to reconstitute themselves, preserving what they have of their own while making the necessary changes in order to survive in a modern world increasingly organised on other principles and where the centres of power have lain for long, and still lie, outside the Middle East.” This framework is useful not because it imagines constitutionalism where it has never existed, but because it allows us to consider constitutional opportunities alongside failures and to see constitutionalism as an evolutionary if interrupted process which has left many traces and opened avenues for future development. In this regard understanding the region’s constitutional history demands multiple explanations – some of which can only be briefly touched on here – and involves searching for both continuity and change.

2. Constitutional Yardsticks

In what follows, some constitutional snapshots of Ottoman and post-Ottoman history are offered to help frame some general observations and form some preliminary conclusions. However, we must first ask what kind of constitutional yardstick we are using. When is a regime a constitutional regime? What, indeed, is an ideal constitution? This question is just as relevant today – as Iraq’s dilemmas have given rise to sustained discussion about constitution drafting – as it was one hundred years ago. Only the answers might look rather different.

Constitutions are not fixed: there is no agreement on how the basic institutions of a constitutional democracy should be organised. Indeed, the very way we consider democracy and the practices and institutions we regard as necessary evolve and change. Today’s debate takes place against an assumption that democratic self-determination is a necessary condition of constitutionalism, but this has by no means always been the case.

At its most basic a constitution is a frame of government. This in itself is important. As Malcolm Yapp notes in discussing the post-Ottoman state system,
although the provisions of the new constitutions were flouted, they were im-
portant because they defined the nature of the state and the arena in which
political activity could legitimately take place. Further, constitutions could serve
other useful if non-constitutional purposes, including, for example, the con-
solidation of sovereignty and authority as a valuable defence against predator
external powers.

However, most contemporary analyses of constitutionalism are rightly more
demanding and encourage us to look for limits to government according to some
clearly articulated principles, or alternatively, forms that structure and discipline
states’ decision-making processes. Taking this one step further, John Rawls
speaks of his idealised constitutional government as establishing «a just and
workable political procedure embodying equal political liberties and freedom of
thought».

Any discussion of constitutionalism in the Ottoman Empire and
its successor states cannot stray too far from these fundamental principles. In
other words, though we can agree that constitutions are «pathways» that evolve
and change, we should also be looking for concrete limits to government and
fundamental freedoms.

It can be argued that in and around the empire during the nineteenth century
or even before, there were increasing attempts to introduce discipline and
structure in decision-making. Long before paper constitutions existed, there were
other important constitutional features of Ottoman government, including a
wide measure of religious freedom and provincial autonomy: «Non-Muslims
lived under the Sultan’s protection, organised into communities or millets, each
regulating its communal life according to its own law.» In the successor states,
on the other hand, while parchment constitutions became the norm, and did
indeed establish structures of authority, even workable procedures, they did not,
with few exceptions, either limit or discipline authority or provide the freedoms
demanded by Rawls. On the contrary, as was the case in many former imperial
domains, whether in Latin America, Asia or Africa, constitutions came to serve the
interests of incumbent regimes. Indeed, one could argue that Rawls’
constitutional ideal in its fullest sense does not pertain in any modern successor
states, whether in the Middle East, or even (with a few exceptions) in the Balkans.

23 M. Yapp, The Near East Since the First World War
25 Sartori, Constitutional Engineering, 200.
26 Rawls, Political Liberalism, 335, 337.
27 Sartori, Constitutional Engineering, 199.
and Other Essays (Beirut, 1961), 74.
Our discussion of constitutionalism in the Ottoman period takes place against the background of the 'Tanzimat' (literally regulations) stage of the Ottoman reform movement characterised by the two great reforming edicts of 1839 and 1856.\[29\] '[The] Tanzimat has been variously interpreted as the beginning of modernisation, dawn of secularism, acceptance of Western superiority, breakdown of oriental way of life ... it was a little of everything.'\[30\] It saw the introduction of military, educational, fiscal, administrative and local government reforms designed to revitalise the empire against a backdrop of extraordinary external and growing internal pressures for change and renewal, facilitated by a revolution in communications and technologies, and the transmission of new ideas.\[31\]

The first Ottoman constitution of 1876 – one hundred years after the first written constitution in the United States – grew out of the Tanzimat reforms, but went much further in its provision for an elected chamber and can be seen as the birth of representative government within the empire. The parliament that met was thus the 'culmination of nearly forty years of experiment with the representation idea'.\[32\] It was but one of a number of experiments with at least the idea of constitutional government within and around the Ottoman territories. In this regard, the earlier experience of the Balkans was important. Greece, already fully independent, had adopted a constitution in 1844 which provided for a limited constitutional monarchy. Serbia, also autonomous since 1830, had a relatively democratic constitution by 1869. In the Turnovo Assembly (1879), Bulgarians were granted unprecedented rights and freedoms, and indeed the Bulgarian constitution became a source of emulation elsewhere.\[33\] In the Balkan domains, the looser nature of Ottoman control, the desire for independence among Christian populations and the greater influence of Europe all appear significant in determining the pace of events.\[34\]

In 1861, Tunisia became the first Arab province to acquire its own constitution – the result of efforts by a small group of Westernisers – following the reformist reign of Ahmad Bey. The Ottoman constitution itself originated in the efforts of a group of young reformers who sought to reduce the Sultan’s power, check the threat from Europe and grant equal rights and liberties to all subjects of the empire. In Egypt the demands of a revolutionary group of officers, who wished...
to free the country from foreign control, resulted in the election of a Chamber of Deputies which in 1882 adopted a constitution. Finally, Iran’s experiment with constitutional government, which came after the turn of the century, was promoted by developments in the 1890s which also sought to limit external influence in the country’s affairs.\(^{35}\)

The above experiments were late from a comparative constitutional perspective and mostly short-lived, demonstrating the contradictory effect of external pressures and influences; yet each revealed certain constitutional potential and left important legacies. In the Ottoman case, for example, it is true that the constitution did not bring about any immediate prospect of representative government, for the Sultan retained wide-ranging powers and soon overruled it. It also opened up new divides among ruling elites, «between those who believed in government by officials in council, guided by their own consciences and principles of justice, and those who believed in representative government».\(^{36}\) Nonetheless it represented a new balance of power between the People, the Palace and the Porte. The deputies who were chosen showed «an amazing degree of independent thought and constructive criticism of government».\(^{37}\)

For Kedourie, the Istanbul constitution, like those of Tunisia, Egypt and indeed the later Ottoman experiment, was a top-down affair, not a symbol of compromise between state and society, but the gift of the sovereign, «a parody of what happened in Europe».\(^{38}\) In oriental despotism, he writes, «The state is always stronger than society … no interest in society can resist the demands of the ruling institution or withstand its powers.»\(^{39}\) Yet this seems too blinkered a view, even given the constitutional reverses that occurred. Certain societal elements did resist the demands of the ruling institution; and if their resistance proved to be short term, it contained within it the potential for further development and growth.

While the first Ottoman constitution was suspended, the Tunisian and Egyptian experiments were overturned by circumstances over which the reformers had little control. In Egypt, British occupation ensued and constitutional developments now closely followed foreign directives, though the slogan «Egypt for the Egyptians» never disappeared. In independent Serbia by contrast, the constitution survived and was strengthened after revisions in 1888. However, in the Serbian experiment, as was the case of later Arab constitutions, «liberalism was not an alternative to nationalism, but a promoter of it».\(^{40}\) And here, a more general observation about the ultra-nationalist nature of much mid- to late nineteenth-


\(^{38}\) Kedourie, Political Memoirs, 2.

\(^{39}\) Kedourie, Politics, 12, 14.

\(^{40}\) J. Snyder, From Voting to Violence. Democratization and Nationalist Conflict (New York, 2000), 176.
century European liberalism (in contrast to the liberal internationalism of a later period) can be made.

The constitutional moment was far from over, however; indeed, it had only begun – and the Ottoman constitution, suspended by Abdulhamid, now directed to more nationalist goals in the hands of the reformers of the Committee for Union and Progress, would be restored some thirty years later. In neighbouring Iran, European influence and pressures also yielded a different constitutional outcome in the revolution or ‘Mashrutiyyat’ of 1905–1909. Unlike the Arab and Ottoman experiences noted above, Iran’s revolutionary movement was unusual in that anger at the Shah’s granting of concessions to foreign powers, which damaged local economic interests, sparked off widespread protest among different sectors of the population. Prolonged pressure on the weakened Shah resulted in the granting of a constitution, which gave the majlis considerable powers, including the negotiation of foreign treaties. It also supported semi-autonomous authority in the regions, equality for religious minorities, press and other freedoms. However, there were tensions in the new regime as the desire for modernisation and renewal implied centralisation and the transformation of Persia from a linguistically diverse population into a Farsi-speaking state.

Iran’s constitutional moment was unusual in its involvement of wide sectors of civil society. The Ottoman constitution, restored in 1908, was likewise seen as remarkable in ushering a new period of freedom. An American missionary wrote of the change from ‘an irresponsible rule of hungry and bribe-taking pashas, to a parliament of representatives from all parts of the empire, elected by people from all sects, Moslems, Christians and Jews’. But if reform was the cure for the disease of rebellion, it unleashed forces that the empire could no longer control. The Ottoman experiment, like the colonial experiments which followed, gave rise to nationalist forms which trumped or postponed constitutionalism. Its secularity had rather different consequences, ‘The revolt of Moslem subjects pushed Turkish nationalism to its logical conclusion: the rejection of the multinational empire.’

Timing was critical. The onset of wars, the growth of contradictory nationalisms among subject peoples and the role of ruling elites – aided and abetted by intervening powers – ended the Ottoman’s multi-communal empire. Also in Iran, foreign intervention, war, the passing of an old dynasty and the consolidation of a new centralising monarchical regime saw the flouting of Iran’s constitutional provisions, though the constitution itself remained in force. If constitutionalism

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41 See the classic work by E. G Browne, The Persian Revolution 1905–6 (Washington, D.C., 2005).
43 Cited in Hourani, History, 281.
44 Hourani, Vision of History, 84.
‘failed’, however, it left important traces: the constitutional trails of the late Ottoman period would have profound implications, both positive and negative, for political development in the modern period.

4. Constitutionalism in the Inter-war Period

The war brought the end of the Ottoman Empire and the post-war settlements separated its remaining Arab and European domains from the new (mostly Asian) state of Turkey. In considering the successor states, our set of cases expands as the former Arab territories of the empire were reconstituted, not as the single Arab state of which early pan-Arabists dreamed, but as separate states, some independent, some under a form of colonial tutelage. Its Balkan domains, now formally independent, would also undergo significant readjustments. However, the principles governing the new territorial arrangements in these areas were very different with important political consequences.

In the area that became known as the Middle East, the settlement was largely imposed amid major territorial and demographic changes which created new tensions and pressures. Little reference was made to the wishes of the local populations most affected by these changes. It was not that the application of Wilsonian ideals of self-determination produced settled outcomes elsewhere, as Balkan history reveals, but their absence in the Middle East was unpropitious. The settlement was also affected by the collaboration of notables who enjoyed special relations with the colonial powers and local officials trained in Ottoman ways. This had important ramifications for the constitutional arrangements that were put in place particularly where new elites and colonial powers endeavoured to exclude local actors and interests – those of Islamic groups, for example.

The general effects of constitution-writing were not necessarily negative, however. As noted earlier, they were important in defining the nature of the state and the arena of political authority. Hence Turkey adopted a republic; Iran remained within the 1906 monarchical constitution; in Egypt, under the constitution of 1923, a delicate balance was established between king and politicians. Crucial was the failure to include a timetable for the introduction of an organic law in the Palestine mandate, which meant that there was no constitution other than the mandate itself. This helped to dictate Palestine’s future: it was the one state of the 1923 settlement outside Arabia not to survive.45

Such constitutional templates, or their absence, were therefore of great significance. The element of imposition, however, together with the sense of artificiality, both as regards the nature of the political arrangements and also the very state system itself, along with the privileging of certain local actors, lent a fragility

45 Yapp, The Near East since the First World War, 36, 52.
to the new structures. This was compounded both by their short life – this was, after all, the twilight of European Empire – and the often limited commitment and resources of their mentors.

The era of “partial sovereignty”, which stretched from 1920 – 1950, did not provide the basis for strong states or constitutional regimes; instead we see how Arab leaders end by rejecting constitutionalism.\footnote{E. F. Thompson, “Sovereignty and Constitutionalism in the Middle East, 1875–1950”, paper presented at “Partial Sovereignties: A Workshop”, Columbia University, 2006.} Indeed, this was the beginning of a prolonged crisis of legitimacy for the Middle East with profound political and social consequences for the region.\footnote{M. Hudson, Arab States, the Search for Legitimacy, New Haven 1977.} And this was not because of a shortage of liberal ideas and thinking among Arab (or for that matter Iranian) intellectuals about the kind of principles that should inform government, as a seminal work by Albert Hourani has shown.\footnote{A. Hourani, Arabic Thought in the Liberal Age 1789–1939, (Oxford 1962).} Here again, the contrast with the Balkans may be instructive. The period hardly saw a new dawn of constitutionalism for the Balkan region – the rise of fascism meant that the promise of the 1920s was also short-lived – but constitutional choices were less conditioned by external actors.

Above all, this was a period of confusion in which opportunity and circumstance combined to thwart political consolidation. In 1914, Britain ended the formality of Ottoman sovereignty of Egypt, and by 1918 the Arab provinces of the Ottoman Empire were occupied by Britain and France, to become League of Nations mandates. The compromises evolved for Egypt and the mandated territories were “different in letter, but alike in spirit: a cross between liberalism and adherence to war aims”.\footnote{Monroe, Britain’s Moment, 71.} They were not old-style colonialism because the charter implied a limit and accountability to the League and this was important. In Iraq – a state created out of three disparate Ottoman provinces – a hereditary constitutional monarchy was installed under the Organic Law of 1925. This constitution, based on the Ottoman model, and including the principle of popular sovereignty, on paper at least appeared “as powerful as any that existed”, but was nonetheless subject to the constraints that the mandate dictated. In Jordan, the constitution proclaimed in 1928 was a fragile construction which did little to limit royal authority.\footnote{Brown, Constitutions, 45–50.} In Egypt, a more comprehensive experiment in constitutional government was undertaken between 1923 and 1939, reflecting the idea of democracy as a “cure-all”, but the triumph of the 1924 parliament was dampened by the strength of the nationalist majority led by Zaghlul, a nationalism which would ultimately oust both the British and the constitutional experiment itself. P. J. Vatikiotis writes how in its first eight years of constitutional life, the Egyptian parliament was dissolved four times, while in the fifteen-year period 1923–1938 there were seven general elections and no parliament survived its full term.\footnote{P. J. Vatikiotis, The History of Modern Egypt, 4th edition (London, 1991), 273–297.}
In all the new states the colonial powers found that they must accommodate nationalist forces. Nationalism was now the dominant ideology, including an Arab nationalism which aspired to reunify the Ottoman provinces – an idea which had been given practical expression by King Faisal’s attempt to defy France and form an independent Arab state with Damascus as the capital. His efforts were quickly frustrated but not before he had briefly convened an Arab assembly in Damascus.\footnote{Brown, Constitutions, 68.} Indeed, Syrians continued to thwart the efforts of France to impose its own elaborate administrative and constitutional structures, again with long-standing consequences.\footnote{Yapp, Near East, 85–95.} Working at another level were ever present, if often subdued ideas of Islamic law and morality that had dominated until the later Ottoman period. Such ideas found formal expression in the new state of Saudi Arabia, together with growing informal expression in the growth of Muslim Brotherhoods.

Of the mandates, only Lebanon’s constitutional formula, which owed its origins to the governing principles of the Ottoman reglement organique entailing the setting up of an autonomous province with administrative councils reflecting its confessional composition, survived into the modern period, to be later torn apart by civil war.\footnote{Kedourie, Politics, 225–229.}

Turkey alone emerged as fully independent, building a new state around old Ottoman structures based on national and secular lines: the logical conclusion, if you like, of the later Ottoman experiment, though its constitutional trajectory remained uncertain under Kemal Ataturk and his immediate successors. Indeed, early reforms often tended to increase rather than reduce authoritarianism, as can be seen by Ataturk’s attempt to forge a uniform national identity and his crushing of cultural pluralism, highly visible in the case of the Kurds.\footnote{E. Y. Zurcher, Turkey: A Modern History (London, 1998), 176–180.} The Hijaz and Yemen also became independent, with the first absorbed into Saudi Arabia under the leadership of Ibn Saud, a successful if traditional nation builder who eschewed modern institutions and established only the rudiments of a government apparatus in this period. Iran’s independence and constitution survived the destabilising events of the First World War, but the new self-styled Pahlavi monarchy increasingly distanced itself from constitutional practices.

The inter-war period was of huge constitutional significance both positively and negatively. If constitutions were vehicles for projecting the interests of colonial powers, they also became important statements of sovereignty, authority and national identity, to be remoulded in the independence period. In Turkey, Jordan and Lebanon, constitutions endured, but only the Turkish constitution continued to evolve and develop into its modern and more recognisably liberal form. In no case, however, did the post-1918 European-inspired constitutional moment provide
a durable foundation for subsequent political development. In the Balkans, as elsewhere, the constitutional experiments of the 1920s gave way to authoritarian-style solutions in the following decades, first fascist, later Stalinist or Titoist.56

5. Constitutionalism since 1945
The third and final phase to consider is that of the post-independence period stretching from the Second World War to the present. It was marked initially by the end of European empires and the withdrawal of Britain and France from most of the former Ottoman territories, though considerable Western influence remained, and both Britain and France retained a significant foothold in the region until well into the 1960s. It ends at a time of continuing change and uncertainty throughout the region, with still feeble and often contradictory impulses towards greater constitutionalism among Arab states and to some extent also Iran; a mixed and still fragile picture in much of the Balkans; continuing constitutional consolidation in Turkey (made more pressing by the prospect of EU entry) and the return of the phenomenon of «imposed constitutionalism» in at least one state: namely, Iraq. The one constitutional model and possible source of emulation, Israel, has not proved to be a focal point for liberal developments elsewhere. This is because the nature and very existence of the Israeli state from the day of its birth has been a source of continuing conflict and contestation, making it part of an explanation for arrested rather than accelerated constitutionalism elsewhere in the region. Here the contrast with Europe – where the EU and its member states have acted as constitutional beacons – is striking.

The Early Independence/Post-Second World War Era
As the former Balkan domains of the Ottoman Empire, excepting Greece, fell under Soviet control, or that of Tito in the case of Yugoslavia (all of them with model, though often deeply «unconstitutional» constitutions), many states of the modern Middle East at least started their independence with some form of constitutional government. In most cases this proved ephemeral. In two of the more robust examples, Turkey and the Sudan, there was alternation of constitutionalism and military rule. Most monarchies adopted constitutional texts; however, in none were durable constitutional regimes established. In a number of Arab states, populist military coups quickly brought forward radical regimes which ended the earlier liberal experiment. As Saad Ibrahim notes, the new social contracts that were forged saw the postponement or marginalisation of liberal politics.57 A few examples suffice to illustrate this point.

56 See J. Rothschild, East-Central Europe between the Two World Wars (Seattle, 1974), 355.
In Egypt, the monarchy and constitution were overthrown in 1952 in a military coup led by Nasser. Military coups followed in Syria and Iraq, ending the fragile constitutional experiments in these new states.\textsuperscript{58} In Syria’s case this was despite the conditions of ‘exceptional freedom’ prevailing in the elections of 1954, which for many had signalled ‘a return to parliamentary rule’.\textsuperscript{59} Patrick Seale notes tellingly how the United Arab Republic (UAR) established between Syria and Egypt in 1958 was revealing for its absence of appropriate institutional arrangements. ‘For the UAR to grow and have life … a new constitutional formula was required, Egypt and Syria together could not be governed by Egypt alone.’\textsuperscript{60}

Revolution in Yemen brought about the end of monarchical rule in 1962. In the surviving monarchies, traditional forms of rule continued. Jordan enjoyed a period of limited constitutional government from 1952–1957, though the combination of internal and external crises led to strengthening of the monarchy and security services, and a corresponding reduction of freedoms thereafter.

Iran between 1941 and 1953 enjoyed a period of political opening partly brought about by the Allied occupation during the war. Although the young Shah, Mohammed Reza, moved to consolidate his position with US support, the vulnerability of his position was revealed by the rise of the nationalist politician Mohammed Mossadeq. Appointed Prime Minister in 1951 on a wave of popular approval, Mossadeq led a national front coalition which aimed to reduce the power of the Shah, restore constitutional government and nationalise oil.\textsuperscript{61} The subsequent thwarting of Iran’s constitutional moment – Mossadeq was removed in a covert action orchestrated by Britain and the US – can be understood only in a Cold War context in which oil and strategic concerns predominated, but the consequences for subsequent political development were profound.

Only in Lebanon did the ostensibly more liberal set of arrangements survive, such that in 1968, Kedourie could write that excepting Lebanon, ‘The countries of the Middle East have known constitutionalism only as a device which factions within the official classes have used to prosecute their rivalries.’\textsuperscript{62} Soon he would have to revise his views on the Lebanon also. And here, it was constitutional rigidities which flew in the face of demographic changes and popular sentiment that hastened the demise of that regime.

If the pursuit of sovereignty, the consolidation of authority and the warding off of imperialism all helped to explain the peculiarities of early constitution-building in the modern Middle East as well as other developing states, why then did the non-constitutional outcome persist? States remained fragile, many beset by a continuing crisis of legitimacy and a hostile external environment. The

\begin{itemize}
\item \textsuperscript{58} Hourani, Modern Middle East, 15–16.
\item \textsuperscript{59} P. Seale, The Struggle for Syria, (London, 1965), 182.
\item \textsuperscript{60} Ibid., 325–326.
\item \textsuperscript{61} See H. Katouzian, Mossadeq and the Struggle for Power in Iran (London, 1999).
\item \textsuperscript{62} Kedourie, Political Memoirs, 26.
\end{itemize}
frozen constitutionalism of the late Ottoman/early independence period had been part of a wider struggle between different visions of change and reform which help to explain the often clumsy and incomplete attempts at nation-building. The continuation of this struggle into the era of oil wealth, the Cold War and the Arab-Israeli Wars provided the region with only limited opportunities to test and further its constitutional experiments. Unlike other regions, this peculiar mix of hostile internal and external conditions has continued to the present.

The Contemporary Scene

Until the 1980s the Middle East could hardly be regarded as exceptional in its democratic and constitutional deficits, for these were a common feature of many developing countries. As Roger Owen notes, the difficulties experienced in the first post-independence decades do not seem so very different to other areas where «ambivalent commitments to pluralism and parliamentarianism also tended to give way to military or one-party rule». Further, as transitions to democracy and moves to greater constitutionalism became more widespread globally from the middle 1980s, they also left a mark on the Middle East. Authors like Nazih Ayubi and Ghassan Salame describe democratisation’s modest achievements, including increased electoral competition and multi-party activity, or the revival in Lebanon of consociational democracy after the Ta’if accord of 1991. But the mark has been rather slight in comparison to other areas.

There are, of course, a wide variety of cases to consider even among the twenty-one Arab countries. Ibrahim has found encouraging evidence of the growth of civil society and the linked process of democratization, leading to a dilution of the post-independence social contract that suspended the earlier liberal constitutional experiments. Constitutional features have presented themselves in the Kuwaiti, Bahraini and Qatari parliaments; Yemen and Morocco have seen multi-party elections and the opening up of political spaces; the Egyptian constitutional court has demonstrated activism.

Outside the Arab states, Turkey has further consolidated its democracy and institutions, but as debates in 2007 over the running for president of an Islamist candidate showed, the limits of its constitutionalism are still being tested. In Iran, after a period of promise under President Khatami, whose liberalism at home was...
matched by his advocacy of a «Dialogue among Civilisations» abroad, conservative and reformist factions offer competing visions of Islamic-style democracy.

Space permits only the briefest discussion of the constitutional possibilities within Islamic revivalism, but a few comments will suffice to demonstrate that Islamic political thought is not inherently or necessarily unfriendly to limited government even if the current environment is unfavourable. Writers like Ernest Gellner have demonstrated Islam’s flexibility, noting how «Under modern conditions, its capacity to be a more abstract faith, presiding over an anonymous community of equal believers could reassert itself».

Amid the radical manifestations of the new emphasis on the Shari’a seen in different parts of the Middle East, intellectuals have also tried to (re)discover in Islamic sources «the duties, limits and procedures of governance», or to reveal what Hamid Enayat called the «democratic temper» of Islam. The possibilities of Islamic constitutional government may have been overshadowed by recent events, but this does not imply that attempts to construct a theory of Islamic democracy are «an unfounded and desperate presentation of Islam». There is an important distinction to be made between fundamentalism and Islamism tout court.

The two contemporary examples of Egypt and Iran are fraught with difficulties from a liberal perspective, but also offer possibilities. To return to Iran’s revolutionary moment, it is worth noting that the 1979 constitution, like its predecessor, was rooted in European precedents, closely resembling that of the French Fifth Republic, but introducing also the prospect at least of a new understanding of constitutionalism within an Islamic framework, as the Khatami presidency briefly revealed.

Alongside the options suggested above, another alternative, constitutional imposition has returned to the Middle East, but hitherto with no more success than in the earlier period. When considering the Iraqi case, such imposition is markedly different from the kind of inducements the United States and Western Europe offered to the Central and East European states in their moves towards democratic institutions; constitutional inducements which have yielded relatively successful results by comparison. Here, aside from the complex internal conditions, the absence of a broader, international, institutional-legitimising framework may be significant.

68 H. Enayat, Modern Islamic Political Thought (London, 1982), 120.
69 Ibid.
6. Conclusions

To return to the necessary conditions suggested at the outset, it remains the case that «the constitutional mechanisms which characterise a rights-based state [and] are intended to guard the individual against abuses of power» are still largely absent in much of the modern Middle East.\(^{72}\) Even in the two most democratic states of the region, Turkey and Israel, individual liberties and freedom of expression are still curtailed for certain groups. In Iran and Egypt, constitutional advances have been sorely tested by regimes subject to the often contradictory pulls of internal and external pressures. It is difficult to ignore the fragility and present limits to constitutionalism in the region, stressed in the introduction and confirmed by the findings of the yearly *Arab Human Development Reports* published under UN auspices. In detailing existing constitutional arrangements, the 2004 report noted bleakly how, even if Arab constitutions contain «paper freedoms», these are severely curtailed by restrictive legislation.\(^{73}\)

Yet this article has suggested that the constitutional history of the region is not merely one of thwarted opportunity or arrested development. The discouraging, yet still mixed contemporary evidence does not endorse the popular view that the Middle East is different or exceptional in the categorical way reiterated in a recent work by John Grey: «Liberal democracy cannot be established in most of the countries of the modern Middle East … there is a choice between secular despotism and Islamist rule.»\(^{74}\) Nor do the findings here support the general thesis that the wider Islamic world is inherently hostile to constitutionalism, though some would cite developments in South-East Asian states or the «secular authoritarian» style of the new Muslim republics of Central Asia as further evidence of this.\(^{75}\) Here, three points can be made. First, much of the Ottoman/Islamic period, for all its weaknesses and contradictions, was remarkable for its degree of toleration of minorities, both national and religious – a reality once admired, but later obscured by publications like William Gladstone’s *Bulgarian Horrors*. Secondly, the post-Ottoman period repeatedly demonstrated elements of constitutional promise in Turkish, Iranian and different Arab settings. Thirdly, the degree of liberalisation that has recently been afforded to the region has seen the rise of Islamic opposition parties advocating the principle of democratic participation, whether in Egypt, Turkey, Tunisia or Kuwait.\(^{76}\) Will the very democratisation that has permitted them to gain a political space be spurned? The evidence here is far from clear, and by no means always negative. Further,

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\(^{75}\) W. L. Cleveland, A History of the Modern Middle East (Boulder, 2006), 518 –519.

throughout the wider world, Islamic minorities regularly participate in and thus foster different forms of democratic governance.

In rejecting the incompatibility of constitutionalism with post-Ottoman culture, whether Islamic or Arabic, one still cannot avoid the conclusion that the region’s exposure to Western constitutionalism has so far been seemingly unpropitious. Here, it is important to retain a flexible understanding of constitutionalism and the democratic practices with which it is associated. Both are subject to multiple meanings and interpretations. What is normal and what is exceptional in constitutional history? There are, of course, differences between Western notions of democracy and Islamic traditions, but this does not mean that the ‘Islamisation of democracy’ cannot or indeed has not occurred, and here the contemporary Turkish case may be suggestive.\textsuperscript{77}

Without denying the slow and interrupted pace of constitutionalism, this article has thus attempted to highlight some constitutional traditions and practices in Ottoman, post-Ottoman and modern constitutions; to suggest patterns of continuity and emphasise how older constitutional traditions have remained relevant, even if disrupted and subject to reinterpretation and change. The successes of constitutionalism relate to the ability of modernisers to balance old and new ideas, as well as the influence of external and internal pressures – the kind of balance between different rhythms of change that Albert Hourani has referred to. If a flexible and evolving definition of constitutionalism is employed, then there is a huge variety of experience to draw upon, making it impossible to generalise about the experience of the post-Ottoman system. For example, the more coherent nations or territories like Egypt or Tunisia (the earliest Arab ‘constitutional’ states), have not necessarily fared better than those states with more artificial boundaries or fragmented peoples. Colonialism has had both positive and negative effects, and so has proximity to or affinity with Europe. The European domains of the Ottoman Empire, despite their earlier exposure to constitutional practice, subsequently did little better than their Asian counterparts, at least until the end of the Cold War.

It may seem trite to say that geography, timing and circumstance – rather than inherent cultural difference – have all conspired against constitutional government. But there is truth in this claim, and luck clearly has had some part to play in the process. The lateness of the Ottoman and post-Ottoman constitutional moments was unpropitious from a broader international perspective. Geopolitics has persistently intervened. And recent studies of democratisation indicate how timing and circumstance can be crucial: ‘Introducing democratic institutions where there is no little tradition of liberal constitutionalism can foment nationalism, ethnic conflict and even war in societies that are

\textsuperscript{77} Ibid., 217.
divided.\textsuperscript{78} In this respect, if certain Balkan states have benefited from the post-Cold War environment, others have entered the twenty-first century facing enormous difficulties (despite being geographically close to the heartland of Europe).\textsuperscript{79} The hoped-for 'post-Cold War dividend' has been even slower to arrive in the Middle East, where internal conflict and external intervention retain a significant and negative influence on political development at all levels.

In answering the question why the region still looks different to many others, it has been suggested that – in addition to traditional culture – a sharper focus on the problems posed by external intervention, and by very rapid economic and demographic change might advance further understanding. The attempt to craft new democratic states against the conflicting pulls of tradition and modernity, colonial interference and war produced an atmosphere of confusion and uncertainty in the post-Ottoman world and gave rise to centralising regimes whose primary concern was their own security. The authoritarian moment thus became frozen in time. It was reinforced by the Cold War and by the discovery of oil, which enriched such regimes and provided the means for their survival, but also encouraged further outside interference. The ensuing 'rentier-state' phenomenon, facilitated by the region’s huge oil reserves, has further militated against political pluralism.\textsuperscript{80} Radical Islamic movements, like radical nationalism in a previous era, have been in part a reflection of this imperfect liberalisation, but have themselves further complicated and arrested political developments.

From a global and comparative perspective, we can detect two contrasting extremes of constitutionalism in the two very different contexts: that of the European Union, discussed in another article in this issue, and that of the Middle East. While Europe has aspired to a constitutionalism 'beyond the state', the Middle East has yet to make constitutional peace within the domestic context of its individual states. There is a synergy between the role of a supranational institution like the EU and the consolidation of constitutionalism both within and between its constituent states. Given that international institutions have played an important role in helping to embed democracy and constitutionalism even among states where those practices are not fully established, we only need to reflect on the singular weaknesses of an institution like the Arab League, or any other comparable institution within the Middle Eastern world, to be aware of the difference. The EU as an aspirational goal has actively beckoned Balkan states and their East European neighbours to greater constitutionalism. To which constitutional goal should modern Middle Eastern states aspire, and who should inspire them?

\textsuperscript{78} F. Zakaria, «The Rise of Illiberal Democracy», Foreign Affairs 76 (1998), No. 6, 22–43, 35.
\textsuperscript{79} R. Crampton, The Balkans since the Second World War, (London, 2002).
\textsuperscript{80} For the rentier-state argument see H. Beblawi / G. Luciani, The Rentier State (London, 1987).
Weder traditionell noch modern: Konstitutionalismus im Osmanischen Reich und seinen Nachfolgestaaten


Entre traditionalisme et modernité: Constitutionalisme dans l’Empire ottoman et ses Etats successeurs

Cet article examine l’histoire et le développement des idées et pratiques constitutionnelles dans l'Empire ottoman et ses Etats successeurs. Il couvre la période ottomane tardive jusqu’à aujourd’hui, et esquisse quelques sujets généraux qui pourraient servir à éclairer les opportunités actuels et défis constitutionnels dans le Proche-Orient moderne et les Balkans. Il nous propose également une perspective comparative plus large pour le débat constitutionnel européen. Il se focalise sur les territoires afro-asiatiques faisant partie de l’Empire ottoman au temps du déclin, mais inclut également des références et comparaisons avec ces territoires européens dont la majorité fut perdue à la fin du 19ème siècle, et avec la Perse (Iran), pays voisin qui fournit aussi des points de comparaison utiles. Alors que l’article affirme que le Proche-Orient moderne apparaît rarement en déficit constitutionnel, il prétend que ces déficits sont attribuables à des facteurs multiples tant nationaux qu’internationaux. A travers ces promesses et ses échecs, il montre la complexité de l’histoire politique de la région ottomane et post-ottomane qui ne peut se réduire à l’influence de la culture traditionnelle ou du colonialisme.

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