The Constitutional Question in Syria: A Political Approach

Dr. Najib Ghadbian

Analysis Paper

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About the Author

Dr. Najib Ghadbian is a Syrian academic and activist. He is a professor of Political Science and Middle East studies at the University of Arkansas in the United States. He was the Special Representative of the Syrian National Coalition to the U.S. and the UN from 2013-2018. His research interests include democratic transition, Syrian politics, and U.S. policy in the Middle East.

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Executive Summary

This study examines the constitutional question in Syria from various political perspectives. The first section focuses on the importance of the constitutional drafting process, with emphasis on the conditions that must be included in the constitution's final product to give it legitimacy. The second section examines contentious issues that the constitution's final product raises for Syrian citizens, i.e., the question of identity, rights and freedoms, decentralization, and the shape of the political system. The third section includes a synopsis with proposals for experts and policymakers.

First Section: The first section provides an overview of the importance of the constitutional drafting process itself as a key source of legitimacy in the constitutional process. It presents examples of both failed drafting processes (e.g., Iraq and Egypt) and successful drafting processes (e.g., South Africa and Tunisia) to illustrate ways in which divergent sociohistorical and political backgrounds can inform the current political approach to Syria. The section concludes by stipulating the necessary components of a sound drafting process.

Second Section: The second section tackles key issues facing Syria today: the question of identity; the relationship between religion and state; the issue of basic rights and freedoms; the genuine and effective participation of women; the importance of assurances from the ruling majority to minorities blocs composed of various ethnic, religious, and sectarian groups; decentralization; and, finally, agreement on the structure of the political system. The discussion of these issues takes place in the context of constitutional experiences of Syria as well as other Arab countries, for comparative political analysis.

Third Section: The third section presents conclusions based on the analysis laid out in the previous two sections, and makes recommendations about the following:

- The constitution drafting process, with emphasis on the foundational importance of a set of core principles—transparency, inclusivity, promotion of the spirit of consensus and national ownership (a Syrian-led process for Syria)—in its composition.
- The appropriate treatment of contentious issues that are emerging from this drafting process which Syrian voters must grapple with. Among these issues is the respect for majoritarian rule without marginalizing minority rights, including religious minorities, and the foundational role of religion it should play in shaping a viable national identity. It is also of central importance to promote a spirit of consensus based on assurances provided by the majority to minorities through a sound drafting process.
- Based on the elucidation of these aspects, the paper recommends a constitutional draft that provides the greatest possible margin for rights and freedoms available. This emphasis is based upon the international framework for human rights and expansion of the local governance experience that developed in parts of Syria where the regime has lost control. Finally, the paper recommends adopting a semi-presidential political system ("hybrid system") that both preserves the most important features of the parliamentary system and divides executive authority between a president elected for a limited term, and a prime minister that is both selected by the party that holds majority seats in parliament and is also accountable to that parliament.

Finally, the logical process of drafting a new constitution for Syria should start with creating a Transitional Governing Body (TGB). The TGB should supervise the election of a constituent assembly that undertakes the drafting process and lead a societal dialogue about the constitution in the context of the political solution described in the Geneva Communique of June 2012 and UN Security Council Resolution 2254. This drafting process should be accompanied by processes of national reconciliation, transitional justice, and restructuring of the security sector.

Introduction

The paper provides an original analysis to the constitutional question facing Syria today: a political solution for Syria is inextricably tied to the proper drafting of its constitution. Although recent discussions regarding a new constitution make mention of the drafting process, they have not given it a level of attention that is proportional to its real significance in initiating and effectuating a political solution for Syria. The paper investigates two critical aspects of the constitutional question: 1) the importance of the process of designing the constitution itself; and 2) contentious issues that are raised by or that result from this process. The conclusion section provides recommendations that unite the theoretical and pragmatic for experts and decision-makers to consider. Hopefully, these recommendations prove useful and relevant in the drafting and implementation of a new constitution for Syria.

The constitution is the primary law that shapes a political system and governs the behavior of a state. The constitution is founded on the established principles of a social contract based on the collaboration among society's components and also a political contract based on the relationship between state and society. Most constitutions structure their country's political system, regulate the relations between various institutions, and check and balance governmental functions by specifying the powers and legitimate practices of various branches of government. Modern constitutions reflect the limits and practices of political power through the inclusion of institutional mechanisms to protect the interests, freedoms, and rights of all their citizens.

Importance of the Constitutional Process

Certain experiences in constitutional drafting offer success stories that can provide useful lessons for how to fulfill important goals in the Syrian progress. However, other countries' experiences included failures that necessitated repeating the drafting process several times until the drafts were acceptable to both political and societal forces. It is worth mentioning here that there have been some exceptional cases in the world wherein during the state-building process, the country's political leadership postponed the constitutional process indefinitely. Such was the case in Israel, where after declaring statehood, politicians decided to postpone drafting a constitution because they knew that addressing certain issues—such as the definition of who is a Jewish person and the disputes between religious and secular Jews—may lead to a conflict. The Israeli leaders then concluded that the nascent state could do without a constitution, and ultimately, they did not adopt a written constitution. The United Kingdom, which has a well-established parliamentary tradition, does not have a written constitution. Instead it has a body

of documents, norms, traditions, laws, and precedents that officially serve as the constitution of the state.

The other important issue in the constitutional drafting process is that it is important that political actors take a serious approach to reach a constitutional state that reflects the principles agreed upon by different components of society, thus laying the foundations for legitimate rule of law, separation of the roles of institutions, and identification of the rights and obligations of citizenship. For example, most authoritarian states have constitutions that include all the necessary components to be the nucleus of genuine constitutionalism, however in practice, they are applied quite differently. In his book *Constitutions in a Non-Constitutional World*, Nathan Brown summarizes the motives behind the move to adopt constitutions in the Arab region before the Arab Spring. He argues that the real goal was to augment the position of the political authority in Arab states, as opposed to creating a constitutional life/state based on the rule of law. Brown lists three objectives for these constitutional processes in the Arab region: 1) Using the constitution drafting process as a symbol for the sovereignty of nascent states, especially in the post-independence period; 2) Using the constitutional process to identify the ideological orientation of the political system, the constitution of the Baathist period in Syria is a case in point; and 3) Clarifying the shape of the political system and the methods of transfer of power.[1] Nevertheless, constitution drafting processes in the Arab region have helped highlight the importance of constitutionalism, which means predicating governance on the legitimacy that stems from rule of law, especially in terms of the inclusion of basic rights for citizens in the Arab constitutions, vis-à-vis over-sized executive authorities. However, political elites in Arab states, both republics and monarchies, managed to void these documents of any meaning through strategic measures including:

- **Suspending the Constitution**: Several political regimes in the Arab region have used this strategy by imposing a "state of emergency" under the pretext they were confronting an external enemy and combating terrorism, thus they were putatively establishing security and stability. The Syrian regime, which instituted a state of emergency in 1963 that lasted until 2012, marks a stark example of this tactic.

- **Partial Implementation of the Constitution**: Arab regimes have often resorted to the implementation only of the provisions that serve their interests, especially the ones that provide the head of the executive branch with expanded powers. For instance, according to the Syrian Constitution of 1973, the Syrian president is the head of state and has the following powers: he appoints and dismisses the prime minister and the cabinet, he holds legislative and judicial powers, the president is the commander in chief of the armed forces, the secretary general of the ruling party, and the head of the National Progressive Front (a coalition of a small parties headed by the Baath party and supportive of the regime). Thus, the Syrian president is in effect a "constitutional dictator."

- **Prejudiced Interpretation of the Constitution**: Although most of the constitutions in authoritarian countries create an "independent" judicial authority and in some cases they stipulate the creation of constitutional courts to investigate the constitutionality of legislation, in actual practice they subordinate the judicial authority to the executive

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[1] Nathan J. Brown, Constitutions in a Nonconstitutional World: Arab Basic Laws and the Prospects for Accountable Government. Albany, NY: State University of New York Press, 2002, p. 195-6.

authority. Such practices undermine the judiciary's power to undertake its functions by deferring matters to the executive authority through a distorted judicial process, through judges "affiliated" with the head of the executive branch, or through security agencies.

The conclusion of the paper discusses how constitutionalism is not just about the existence of a written constitution with lawful provisions for political life, but it is also about its proper application. This paper underscores the importance of consistency between word and deed, theory and practice, in addressing the constitutional questions facing Syria. The successful application or institution of a written constitution, one that expresses thoughtful consideration, depends on an appropriate seriousness informing the attitudes of the political elites, especially those ruling the country. Their practices should reflect and embody the written constitutional provisions, the legitimacy of which they recognize and abide by. Therefore, during periods of transition from a dictatorship to the rule of law, the constitution drafting process is the first step towards legitimizing legal governance.

The following section provides a summary of some of the failed and successful experiences of constitutional drafting processes.

First: Failed Experiences

- **The Iraqi Experience in 2005**

Iraq's Constitution, adopted in 2005, included a number of important elements for reorganizing political life in Iraq, including federalism, an accepted formula for the identity of the state, more rights for citizens and, finally, a parliamentary system after the single-party governance that ruled Iraq from 1968 to 2003. The primary weakness of the Iraqi Constitution was in the drafting process itself, which lacked the basic inclusiveness, transparency, and national ownership required to make the final product legitimate. The drafting process was conducted under the American occupation authority, whose policy centered on punishing the Sunni Arabs. Paul Bremer was the first administrator of the American occupation authority, the Coalition Provisional Authority (CPA) after the U.S. invasion of Iraq in 2003, conceived of a policy of exclusion. Mr. Bremer believed that Saddam Hussein's regime was like the Nazi regime and that the Iraqi government had to be purged of those who had any prior leadership roles. Prior to the constitution drafting process, concrete measures were taken to exclude Sunni Arabs and restitute the majority Shiite by pursuing the policy of de-Baathification, excluding former members of the Baath party from any future political roles, and dissolving the Iraqi army. These measures meant the systematic marginalization of Sunni Arabs, especially the bureaucrat/technocrat class, although a wide segment of Sunni Arabs suffered under Saddam's rule just as other sects did. Saddam Hussein was an equal opportunity oppressor.

Iraq's constitutional drafting took place in a political environment that was not a healthy environment for a process that lasted less than three months. The election for the National Assembly was boycotted by most Sunni Arabs (it included 17 Sunni Arab members out of 275 members) and a high proportion of members from the other two ethnic components (Shiite Arabs and Kurds). This led some Sunni Arabs, especially loyalists of the former regime, to resort to violence after the Constitution was adopted. The years of 2006 and 2007 witnessed

the highest levels of violence against American troops in Iraq and marked the beginning of the sectarian conflict between Sunnis and Shiites.[2]

The lesson learned from Iraq is that excluding any demographic group from participation in the constitution drafting process, regardless of its size, undermines the legitimacy of the final document no matter how good its content are. After the arrival of al-Qaeda to Iraq in 2004, the U.S. military tried to rectify its prejudiced policy of excluding Sunni Arabs by recruiting young members of this community to combat al-Qaeda, in what was called the *Sahwat*, or the Awakening forces. While these forces succeeded in defeating al-Qaeda militarily, the process of creating the *Sahwat* did not correct the sectarian imbalance in Iraq's newly created security institutions. The failure to correct this imbalance can be attributed to then Prime Minister Nouri al-Maliki, who came to power through the political process established by the 2005 Constitution, because he refused to fulfill his promise to the Americans to integrate the *Sahwat* forces into the armed forces and security agencies. Al-Maliki's rejection sparked a popular peaceful protest movement in Sunni regions. The protestors' demands were dismissed while its leaders were either detained or killed, and the movement itself was later crushed. This led to the emergence of a second terrorist group called the Islamic State of Iraq and Sham (ISIS), which inflicted further violence and agony on all components of Iraqi society and required an international coalition to defeat it. One of the inadvertent consequences of these developments was consolidating the Iranian hegemony over the Iraqi political system.[3]

- **The Egyptian Experience in 2012 and 2014**

Egypt's first post-Arab Spring constitution was drafted under the presidency of Muhammad Morsi. It was put to referendum in 2012 with the participation of 33 percent of eligible voters and it received a majority percent of votes (64 percent) of those who participated in the referendum. Despite some of the criticism of the Constitution, especially by those who were against the Muslim Brotherhood and the presidency of Muhammad Morsi, many analysts considered this Constitution to be the most advanced and progressive in Egypt's history. Among its strengths were the expansion of the section on rights and obligations and the addition of clear limits on the powers of the president. Critiques of the constitution focused on ambiguities in some of its articles, such as Article 219, which explains the principles of Islamic Shariah. Such ambiguity may give interpreters tools to derogate some of the rights that were adopted if they were found to be in contradiction with Shariah law according to their understanding.

The main problem was that the drafting process did not fulfill the prerequisite of the participation of all components of Egyptian society, which undermined the legitimacy of the new document. For example, it was agreed that the drafting committee should include equal representation of Islamist and liberal forces, but the boycott of the drafting process by the majority of non-Islamic forces pushed the Islamist members to insist on carrying on with the

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[2] About the Iraqi constitutional drafting process, see Jonathan Morrow, "Iraqi Constitutional Process II: An Opportunity Lost," USIP Special Report 155, November 2005; and Julia Choucair-Vizoso, "Iraq" in Ellen Lust, ed. The Middle East, 14th ed. Thousand Oaks, CA: SAGE, 2017, pp. 498-9.

[3] See for the relationship between the rise of ISIS and the marginalization of the Arab Sunni community in Iraq:

"The Rise of ISIS," Frontline, 28 October, 2004. https://www.pbs.org/wgbh/frontline/film/rise-of-isis/

process, completing it, adopting the document, and putting it to a public referendum to then be signed by the president. This insistence to rush into the process made the forces who felt that they were excluded to oppose the new constitution. Those political groups that did not take part in the drafting process, refused to recognize the legitimacy of the new constitution, despite its many positive aspects. One of the demands of the opposition who demanded the departure of Morsi after less than one year of assuming the office of presidency was the amendment of some of the provisions that provoked the opposition who boycotted the drafting process.[4] Many reports stated that president Morsi accepted the demands to amend some of the contentious items in the constitution as a result of the growing protests and opposition against him, and that he also agreed to form a national accord government. However, his refusal to step down and call for a new election was the main reason behind the military coup against him in 2013.[5]

The Egyptian Constitution of 2014 addressed some of the shortcomings of the 2012 Constitution, especially the abovementioned controversial provisions. However, the exclusion of key Islamic forces, especially the Muslim Brotherhood after the military coup against President Morsi, repeated the same mistake in the drafting process. In addition, the 2014 Constitution was tailored to fit the military establishment and General Abdul Fattah al-Sisi. The Constitution again excluded political Islam by adopting an article that explicitly prohibited the establishment of political parties based on race, sex, and religion.[6] The adoption of the new Constitution in a public referendum preceded the decision of the new military regime to dissolve the Muslim Brotherhood and designate it as a "terrorist" organization, even though this group had won over 37 percent of the votes in the first free and fair elections for the People's Assembly and the *Shura* Council.[7] The Muslim Brotherhood's political candidate, Muhammad Morsi, won the first free and fair competitive presidential election in Egypt's modern history. Despite the constitutional provision prohibiting the establishment of political parties on a religious basis, the Salafi al-Noor party was exempted because it supported the military coup against Morsi. Furthermore, it was rewarded a few seats in the parliamentary elections held under al-Sisi in 2015.

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[4] For a summary of the constitutional crisis under Morsi, see:
"Q & A Egypt Constitutional Crisis," BBC News, 24 December 2012.
  https://www.bbc.com/news/world-middle-east-20554079
[5] For the details about the final hours of Morsi's rule, see the Arabic documentary, "the last hours before the coup: How Sisi managed the strategic deception against Morsi," Al-Jazeera Documentary, 24 February, 2019.
  https://www.aljazeera.net/programs/al-jazeeraspecialprograms/2019/2/24/
[6] Article 47 of the Egyptian Constitution 2014.
  https://www.constituteproject.org/constitution/Egypt_2014.pdf
[7] The Muslim Brotherhood was designated a terrorist group in December 2013, while the constitution banning the formation of parties based on religion was passed on January 18, 2014.

Second: Two Successful Experiences

- **The South African Experience in 1991**

By contrast, the experience of South Africa in drafting a constitution after the end of the apartheid regime in 1991 was a success story. The elements of success can be summarized in the following points: first, the main two parties that led the transition to democracy (the African National Congress led by Nelson Mandela and the ruling regime of the white minority, the National Party, led by F. W. de Klerk) agreed on a document that served as an interim constitution that governed the two-year period of democratic transition. It included an annex of 34 articles forbidding that it being breached. Those articles expressed principles that provided for majority rule, led by the African National Congress, without taking away some of the privileges and powers possessed by the white minority, especially in matters of individual property rights. A second element of Constitution's success was the concomitance of applicable mechanisms to this agreement, including the establishment of a constitutional court that had the power to review the new Constitution after it was adopted by the constitutional assembly, whose membership was dominated by the African National Party, before being put to public referendum. Indeed, the constitutional draft reviewed by the constitutional court was sent back to the constituent assembly. This was the result of the draft's breach of the supra-constitutional principles agreed upon to a peaceful, democratic transition. This showed that there was a genuine demand to establish new rules of the political game. These rules put an end to the apartheid regime and returned basic rights to the country's black majority, including the formation of a majority government, without marginalizing the white minority—a compromise formula that contributed to the success of the drafting process.[8]

- **The Tunisian Experience in 2011-2014**

The Tunisian experience in drafting a constitution following their revolution was successful, as they learned from the shortcomings of the experiences of other Arab spring countries. The process reflected the serious political will of Tunisian forces to establish a new political regime based on a complete break with the former regimes of Habib Bourguiba and Zine El Abidine Ben Ali, both of which had excluded political Islamists in the name of secularism and progressiveness. A key factor of success in the Tunisian drafting process was that it followed the proper steps for peaceful democratic transition, including the withdrawal of the military. This, in turn, allowed political forces to forge their agreements and allowed all political forces to engage and participate in the political process, including the Ennahda Movement, the most formidable opposition, and the mediation of technocrats and civil society leaders at a critical point during the transition. Unlike the Libyan experience, the departure of Tunisia's President Ben Ali did not leave behind an institutional void. Technocrats from the old regime—including the speaker of the former parliament Fouad Mebazaa, an interim president, and the former minister Beji Caid Essebsi, a transitional prime minister who was later elected a president— played roles in administering the transitional period and handing over power to the government

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[8] For a summary of the constitutional design in South Africa, see: "The Drafting and Acceptance of the Constitution," South African History Online, no date. https://www.sahistory.org.za/article/drafting-and-acceptance-constitution

that resulted from the Constituent Assembly elections in October 2011. The factors of success in Tunisia's constitutional drafting process were as follows:[9]

- The first factor of success was the willingness of Ennahda Movement, which won the largest number of seats in the Constituent Assembly (89 out of 217), to share power. Although Ennahda Movement did not win a majority of seats, it did manage to get more seats than next three parties combined. Nevertheless, Ennahda decided to act cooperatively with other parties to administer the transitional period, including the constitution drafting process, through political inclusion and power sharing.

  Ennahda created a troika with two other parties that came in second and fourth in terms of the number of seats they won in the Constituent Assembly. An Ennahda member assumed the position of prime minister, but it was agreed that the human rights activist and leader of the Congress for the Republic party, Moncef Marzouki, would be the president; and the leader of the Ettakatol (aka the Democratic Forum for Labor and Liberties) Mustapha Ben Jafar as the speaker for the national Constituent Assembly.

- The second factor of success was the spirit of understanding, consensus building, and compromise that dominated the drafting process. Several committees were established with members from all political parties, and each one was tasked to deal with one of the most contentious or controversial issues. A consensus committee was established by the chairperson of the assembly and the heads of the blocs within the assembly to reach satisfactory solutions.

- The third factor of success was the majority Ennahda Movement's acceptance of the need to make concessions to reassure the minorities, especially secular and leftist forces, that it would not seek to impose its position upon others. This was proven in Ennahda's acceptance of ambiguous wording around the role religion should play in the state. Following a responsible internal discussion, the Ennahda Movement agreed with secular forces not to have the Islamic Shariah as a source of legislation. It accepted what was stipulated in the former Tunisian constitutions that Islam is the religion of the state and the positive neutrality of the state towards religion, with guarantees of the freedom of belief, rejection of takfir (labeling anyone as a disbeliever), and rejection of the incitement of hatred.(10) Ennahda also did not support legislation in parliament to exclude individuals affiliated with former regime officials from participation in the new political system.

- The fourth factor of success in Tunisia's experience was the role that civil society and the professional and trade unions played in facilitating the dialogue. This intervention was critical at a time where polarization had increased after the assassination of two leftist activists, Chokri Belaid and Mohamed Brahmi, and the attempt by opposition forces to carry out a coup against the constitutional process, taking advantage of the regression that other Arab Spring countries witnessed, especially the military coup against President Muhammad Morsi of Egypt. Civil society forces, especially the Tunisian General Labor Union; the Tunisian Confederation of Industry, Trade and Handicrafts; the Tunisian Order of Lawyers; and the Tunisian Human Rights League, played the role of mediator in the dialogue between the troika group (the ruling political coalition) and the other opposition parties, some of whom represented the ancient regime and were supported by the counter-revolutionary forces in Tunisia and abroad. The settlement reached through the

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[9] For the constitutional drafting process in Tunisia, see: Laryssa Chomiak & Robert Parks, "Tunisia," in Ellen Lust, ed. The Middle East, 14th ed. Thousand Oaks, CA: SAGE, 2017, pp. 808-854; Mohamed-Salah Omri, "The Tunisian Constitution: The Process and the Outcome," Academia, February 12, 2014. https://www.academia.edu/6166557/The_Tunisian_Constitution_The_process_and_the_outcomes

About the compromising attitude of Ennahda during the constitutional drafting process, see, Monica Marks, "Tunisia," in Shadi Hamid & William McCants, Rethinking Political Islam. Oxford: Oxford University Press, 2017.

[10] Articles One and Six, the Tunisian Constitution 2014, https://majles.marsad.tn/uploads/documents/TnConstit_final_1.pdf

mediation of the civil society forces was perhaps the one that saved the democratic process in Tunisia, ultimately leading the four civil society organizations to be awarded the Nobel peace prize.(11) The constitutional drafting process took longer than agreed. However, this shows that rushing the process at the expense of the spirit of participation and consensus building, which are two requirements of the drafting process, is counterproductive to a careful and cautious process that requires more time.

In summary, reviewing these four experiences of the constitution drafting process, all of which are characterized by various degrees of success and failure, allows for a way to model legitimizing the final constitutional draft for Syria. The more inclusive the process is of all political players—with a spirit of consensus and participation, reflecting the demands of the majority but without neglecting those of any minority—the more legitimate the constitution will be.

If we were to apply the requirements for drafting constitutions to the historical Syrian constitutional experience, the Constitution of 1950 would be the most successful precedent from which to model the drafting of Syria's new constitution. The 1950 Constitution was imbued with a spirit of consensus that led to historically unparalleled coordination among societal and political forces in Syria. But this consensus moment did not last. Eventually, the political and ideological competition led to a state of polarization that pushed many political forces, especially the revolutionary nationalistic ones, to justify the exclusion of others by all legal and non-legal means. This atmosphere gave Colonel Adib Shishakli a reason to circumvent the constitutional accomplishment as exemplified in the 1950 Constitution and attempt to forge a ''presidential'' political system that was enshrined in the country's subsequent constitution, which was tailored to fit him. It can be argued that Syria's most failed constitutions due to their lack of legitimate drafting requirements, were the constitutions of 1973 and 2012. It is noteworthy that the first of these constitutions was drafted while Hafez al-Assad had complete control over the political process, and the second was drafted against the backdrop of the brutality of Bashar al-Assad in repressing the biggest popular opposition movement in the history of the Assad family.

Contentious Issues in the Constitutional Process

Elements of success for any constitution include: an attempt to provide solutions for the current political problems a country is facing, the reflection of a spirit of consensus that goes beyond the drafting moment; and keeping available options for amendments to address emerging issues. The fundamental problematic political issues that are facing Syria today can be categorized under the following topics: the question of identity; the relationship between religion and the state; fundamental rights and obligations including the genuine and effective participation of women; reassurances to ethnic, religious, and sectarian components of the society; and agreement on the structure of the political system. These issues will be tackled in the context of how previous constitutions in Syria dealt with them, as well as constitutions in Arab countries that went through similar experiences.

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(11) "The Quartet Sponsoring the National Dialogue in Tunisia Won the Nobel Peace Prize," Al-Jazeera.net, 11 October 2015.
http://www.aljazeera.net/encyclopedia/events/2015/10/11

Before getting into a detailed examination, it is worth mentioning that the Syrian state, although not very old, went through several experiences in constitution drafting and constitutionalism, most importantly:[12]

- The Basic Law (the constitution of 1920): This was the basic law of the Kingdom of Syria. Dignitaries and representatives of Syria in the first Syrian congress of 1919 called for Emir Faisal bin al-Hussein to be the king of Syria. The congress adopted a constitution during its sessions, which were held from 3 March 1919 to 19 July 1920.

- The Constitution of the Syrian state issued on 14 May 1930: This Constitution was the result of the draft adopted by the Syrian Congress in 1928 under the French Mandate. The French high commissioner objected to certain articles under the pretext of the contradictions between its provisions and the French mandate instrument. However, the high commissioner issued the Constitution after adding an article that gave the commissioner the right to suspend it. This Constitution was put into force immediately after Syria's independence from France on 17 April 1947, after Article 116, the one that was added by the French high commissioner, was revoked.

- The Constitution of 1950: This Constitution came as a result of the elections of the constituent assembly that was formed after toppling Marshal Husni al-Zaim, after which the constitutional state was restored. This Constitution remained in effect until the second coup by Colonel Adib al-Shishakli, when it was suspended on 29 November 1951.

- The Constitution of 1953: This Constitution was drafted haltingly to replace the Constitution of 1950. It was tailored to fit Shishakli, and it was adopted on 11 July 1953. It was suspended after the resignation of Shishakli on 24 February 1954.

- The return to the Constitution of 1950: This revival of the 1950 Constitution took place in the period between the fall of the rule of President Shishakli and the creation of the United Arab Republic on 23 February 1958. In this period, the parliament (the constituent assembly) that was elected in 1949 was reconstituted to continue its term following the Constitution of 1950, with additional amendments.

- The 1958 Constitution of the United Arab Republic: The Constitution of the United Arab Republic of Egypt and Syria was put into force from 22 February 1958 until Syria's secession from the union on 28 September 1961.

- The Constitution of the Syrian Arab Republic of 1962: This was the same constitution as 1950, with some amendments. The 1962 Constitution remained in force until the coup of 8 March 1963.

- The interim constitutions of 1964 and 1969 after the Baath party came to power.

- The interim Constitution of the Syrian Arab Republic of 1971: This was issued following the so-called Corrective Movement (Hafez al-Assad's coup) on 16 November 1970.

- The draft constitution of the Federation of Arab Republics between Egypt, Syria, and Libya, which was issued on 1 September 1971. This draft never went into effect.

- The Constitution of 1973. This can be called the Constitution of Hafez al-Assad. It remained in force from its promulgation on 13 March 1973 until 2012.

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[12] Up to the 1973 Constitution, the Syrian constitutions were collected in Mazen Youssef Sabbagh, Sejel al-Dostour al-Souri (The Record of the Syrian Constitution). Damascus: Orient House for Printing and Publishing, 2010.

- The Constitution of 2012: The Constitution of Bashar al-Assad came as an attempt to accommodate some of the demands of the Syrian revolution, while retaining many provisions to keep Bashar al-Assad in power. It was adopted at the end of February 2012.

Studying the various past attempts at constitution drafting in Syria provides informative clues for the most appropriate approaches to the contentious issues delineated throughout this paper. In general, the Syria's constitutional experiences in can be divided into three categories: the first category includes those that were never implemented, such as the Constitution of 1920 and the Constitution of the Federation of Arab Republics; the second category includes those that functioned during interim periods, such as the Constitution of the United Arab Republic and the interim constitutions of 1964, 1969 and 1971 that were issued by the Baath party after it assumed power in Syria; and the third category includes constitutions that were put into force, such as the constitutions of 1930, 1950, 1973, and most recently, 2012. This study focuses on the third category of constitutions when tackling contentious issues.

First: The Question of Identity and the Role of Religion in the State

Most constitutions refer to the identity of the nation, which is the main component of any state. The constitutions of most Arab states refer to the Arab-Islamic identity of the respective states. Practically speaking, most modern Arab states, including Syria, suffer from identity crises because they were formed by western colonial powers that did not take into consideration the desires and demands of local populations. Political scientists refer to the identity crises in modern Arab states as the incongruity between the state and the nation (the political community) composing it.[13] In other words, the territory forming the state and the political community composing it lack coordination and harmony. There was no "Syrian nation" before the independence of Syria, but rather diverse communities with an Arab and Muslim majority (from the Sunni denomination), Kurds (most of whom are Sunni Muslims), Armenian and Circassian minorities, Arab Christian religious minorities (the majority of whom are orthodox), Alawites, Druze, and Jews. All of these religious minorities, except the Armenians and Circassians, are Arabs. Following the short-lived failed ruling experience of king Faisal, the European colonial countries, i.e. Britain and France, divided Greater Syria into four states: Syria, Lebanon, Jordan, and Palestine. The attempt at creating a "Syrian" nation faced challenges related to the narrow loyalties of the Syrian people, including affiliations with sects, ethnicities or tribes, and supra-national affiliations such as pan-Arabism and Islam.

Building a national identity for the Syrian people, with all its diverse groups, presented a formidable challenge to the ruling elites since the country's independence. Nevertheless, the ruling elites realized that they needed to refer to the Arab-Islamic identity of Syria as a kind of recognition that the separate states created by the British-French colonial powers were artificial entities, with no role in their creation for the indigenous populations. Therefore, reference to the Arab-Islamic identity of Syria has not been only a reflection of the demographic reality (90 percent of the population is Arab and 74 percent is Sunni Muslim), it has also been an attempt

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[13] One account of the contradiction between the nation and state in the Syrian case, see: Raymond Hinnebusch, The International Politics of the Middle East. 2nd edition. Manchester: Manchester University Press, 2015.

to deepen the independence of the emerging state, and to change the division created by the colonial powers by reconfiguring the separate states within a wider national/pan-Arab framework. It was not surprising that successive constitutions recognized the Syrian people as part of the "Arab nation" and referenced its Islamic identity. This reflected the identity of the majority, but not in a way that was satisfactory for all, because some minorities felt excluded by these references. Perhaps the largest challenge to the Arab-Islamic identification of Syria came from the minorities who felt alienated, as they were not included in either component of this identity. For example, the Kurds, the second largest ethnic group in Syria, have never liked the use of the phrase "Syrian Arab people" for the Syrian people. A similar grievance has been felt by non-Muslims, as consecutive constitutions since the Constitution of 1950 required the president of the state to be a Muslim.

Consecutive Syrian constitutions tried to provide different descriptions for the identity of the Syrian state and the role of religion in the state, reflecting the debate taking place at those respective times. Through a quick review of former Syrian constitutions, it is clear that reference to Arab identity has been a consistent element in all of them. However, it gained greater importance from 1950-1970—the period of the pan-Arab nationalist movement—as the discussion of Arab identity was not a theoretical matter anymore, but rather it was transformed into reality during Syria's union with Egypt (1958-1961), as well as several other attempts at Arab federations, the last of which was the 1971 Federation of Arab Republics between Syria, Egypt, and Libya. Sudan was supposed to join this federation, but it has never seen light apart from its documents and has never been put into force in practice. What follows is a brief overview of how the different Syrian constitutions tackled the question of the Arab identity and the relation of religion to the state.

Syria's first constitutional drafting attempt ever, the **Basic Law** (the Constitution of 1920) drafted by the Syrian Congress, stipulated in its general provisions that "the government of the Syrian Arab Kingdom is a civil parliamentary government with Damascus as its capital and the religion of its king is Islam."[14] Article three stipulated that Arabic was the official language in all of the Syrian Kingdom. In terms of the role of religion in the nascent kingdom, Article six of Chapter two stipulated that "the King upon sitting on the throne shall take the oath before the congress to respect the divine religions, honesty towards the nation and respect of the Basic Law." The Basic Law repeatedly referenced Syria's Arab character by requiring governors of a region (in reference to the three regions composing the Ottoman Syrian Kingdom, i.e. the Center, the Coast and the South) to be "Syrian Arabs" who met the conditions of the Senate membership.[15] Finally, there were several references to the Arab nation in the statement from the Syrian Congress in which Faisal I bin al-Hussein was made the king of Syria. In one particular statement, attendees of the Syrian Congress, said that: "we met here as full representatives of the Syrian nation all over the Syrian Arab country, and we unanimously decided the independence of our Syrian country, which includes Palestine in its natural borders…"[16] This mention of Syrian Arab identity was consistent with the period the country

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[14] Article 1 of the first chapter of the Basic Law - Constitution - of the Kingdom of Syria, included in Sabbagh, op. cit., p. 81.
[15] Article 134 of the Basic Law.
[16] The statement is included in Sabbagh, op. cit., pp. 169-175.

was going through, when Turkish forces were withdrawing from Syria under the pressure and leadership of Western allies.

The Basic Law document sought to include the new identity of the country to distinguish it from the Ottoman Empire, under which the Islamic bond was the source of legitimacy for the whole empire. By drafting the Basic Law, attendees of the Syrian Congress wanted to stress that the Syrian nation was capable of acquiring its independence and autonomy in the face of the ambitions of Western countries, which did not give the nascent country more than three months before putting Syria under the French colonial mandate that replaced Ottoman rule. Under the Basic Law, the role of religion in the nascent kingdom was limited to the requirement that the king should be Muslim, provided that he shall respect "all divine religions," without any reference to a specific role for Islamic law (Sharia) or Islamic jurisprudence in legislation. Although the Basic Law was not clear in adopting a constitutional monarchy in the modern sense, it tried to apply this model without the explicitly naming it. King Faisal was given more executive and legislative powers than those given to the monarchs of Western democracies. The fact that the king had real powers and was not just a figurehead of the state meant that non-Muslims were excluded from holding this crucial position. However, the position of the prime minister, which is the main executive position in constitutional monarchies, could be held by a non-Muslim.

In the **Constitution of 1930**, references to the Syrian Arab identity were removed. That constitution was drafted by the Constituent Assembly, which had been elected under the French mandate in 1928. Although the mandate authority had a responsibility to provide a basic law for the country, French mandate officials delayed allowing Syrians to draft a constitution for their country for years. When the Constituent Assembly finally agreed upon a draft constitution, the French High Commissioner objected to six articles that stipulated the complete independence of Syria and its territorial unity. The High Commissioner considered these articles to be in contravention of the French mandate. Ultimately, after several attempts to stop the Constituent Assembly, which rejected the interventions of the French ruler, from holding its sessions, the High Commissioner was forced to promulgate the Constitution as adopted by the Constituent Assembly, whose membership was dominated by members of the National Bloc. The High Commissioner added one last article stipulating that no provision of the Constitution could contradict the pledges made by France, as the state given administrative control of Syria under a League of Nations mandate.[17]

On the question of identity, the 1930 Constitution included the following articles: 1) Syria is an independent sovereign state, no part of the territories thereof may be conceded; 2) Syria is one indivisible political unit; 3) Syria is a parliamentary republic; the religion of its president is Islam and its capital is Damascus.[18] These articles reflected the keenness of previous national leaders to stress Syria's right to its independence and its unity after Lebanon, Palestine, and the Emirate of East Jordan were separated from it, and the Iskenderun region was granted limited autonomy. Under the French mandate, Syria was divided into four statelets: Damascus, Aleppo, the Alawites, and the Druze statelets. The language of the second article drafted by the

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[17] Article 116 of the Syrian Constitution 1930.
[18] The first three articles, in addition to the fourth article dealing with the Syrian flag, are the basic provisions of Chapter I, entitled the State and Its Territory, the Syrian Constitution 1930.

constituent assembly stipulated "The Syrian country that separated from the Ottoman state is an indivisible political unit, with disregard to any division that was imposed on it from the World War until today."[19]

The role of religion in the 1930 Constitution was limited to stating the religion of the president of the republic, in addition to the next to last article which gave the "Islamic denomination" the right to run the Islamic endowments through elected representatives.[20] The law defined how to elect the Islamic endowments' councils and secure their powers. The political system determined by the 1930 Constitution was semi-presidential and most likely influenced by the fourth French republic, where the position of prime minister was open to members of all communities. The Constitution stated that the president would share the executive powers with the prime minister, which means that non-Muslims were excluded from the position of the president. Unlike the Constitution of the Syrian Kingdom, the 1930 Constitution was put into effect within the limits allowed by the French mandate, especially in the period following the signing of the 1936 treaty between France and Syria.

Following the 1936 treaty, elections were held in Syria in accordance with the 1930 Constitution and a national government was forced that was presided over by Hashim al-Atassi as president and Jamil Mardam Beikas the head of the cabinet. Interestingly, the government included a ministry for foreign affairs and another for defense for the first time since the era of Faisal. This government remained in place until the French High Commissioner suspended the Constitution and dissolved the parliament in July 1939. When Syria gained its independence in 1946, the 1930 Constitution was put back into force and Article 116—which gave the High Commissioner the right to suspend any article in contravention with the French mandate—was abolished.

Syria's third constitutional document, which was considered the most democratic in its modern history, was the **Constitution of 1950**. The first four articles of chapter one defined the identity of the new republic. Although the word Arab was not included in the name of the republic, as it was called simply the "Syrian Republic," the following articles explicitly stated the Arab-Islamic identity of Syria. Article one stipulated the following: 1) Syria is an Arab democratic parliamentary republic with full sovereignty; 2) Syria is an indivisible political unit and no part of its territories may be conceded; 3) The Syrian people are part of the Arab nation. Article two stipulated that sovereignty is vested in the people and no individual or group may claim it for themselves. In terms of the role of religion, Article three stipulated the following: 1) The religion of the president of the republic is Islam; 2) Islamic jurisprudence shall be the main source of legislation; 3) The freedom of belief shall be guaranteed and the state shall respect all divine religions and guarantee the practice of all rituals thereof, without infringing on public order; 4) The personal status of religious denominations shall be guaranteed and respected. Finally, article four stipulated that "Arabic shall be the official language."[21]

From a quick analysis of the way the 1950 Constitution addressed the question of identity, the following points are worth noting. First, the Constitution of 1950 was the first constitution that

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[19] The second article as stated in the 1928 draft constitution, but it was amended by the French High Commissioner when it was promulgated in 1930.
[20] Article 114 of the Syrian Constitution 1930.
[21] The 1950 Syrian Constitution is included in Sabbagh, op. cit., pp. 245-298.

was drafted away from threats and influences of colonialism. It was a result of the deliberations of a constituent assembly during a unique moment of inclusion and consensus, which makes many Syrians today view that constitution nostalgically. That period stands as a realistic alternative model to the practices of the political system under the more recent monopoly of authority by the Baath party and the Assad family.

Second, although the word Arab was not included in the name of the Syrian Republic, the Arab identity of Syria was strong and palpable, reflecting the rise of Arab nationalism. More evidence of the influence of the rise of Arab nationalism could be seen in the oath to be taken by Syrian parliament members, the legislators in the country, which read: "I swear by the Almighty God to be faithful to the constitution of the country, to defend it and defend the independence of the country and the freedoms, interests, funds and dignity of the people, and to respect laws of the country and undertake the mission of parliament membership honestly, faithfully and truthfully, and to work to achieve the unity of Arab countries."[22] The oath of the president of the republic was similar in terms of respecting the constitution, the freedoms of the people, showing faithfulness to the republican system, maintaining the independence of the homeland, "and defending the integrity of its territories and to work to achieve the unity of Arab countries."[23]

Third, as was the case with the Constitution of 1930, the requirement for the religion of the president of the republic to be Islam remained in place in 1950 Constitution. But if the political system implemented the rules of a pure parliamentary system by giving the executive powers to the prime minister who is selected because he is the leader of the largest parliamentarian blocs, it would mean the position of the prime minister—the highest executive position— would be available for non-Muslims and the position of the president would be a ceremonial position, just as the case with a pure parliamentary system. The novelty of the 1950 Constitution was that it stipulated that Islamic jurisprudence was the "main source of legislation," with an equal stress on freedom of belief, respect of all divine religions by the state, and the guaranteed right to practice all rituals. This addition perhaps was due to the influence of political Islam, which was present in the parliament through the Muslim Brotherhood group and some independent Islamic figures.

The **Constitution of 1953**, which was presented by Adib al-Shishakli, was no different from the former one in terms of its references to the Arab and Islamic identity of the Syrian Republic, except for the addition of a phrase to the first article that read: "and the Syrian people are part of the Arab nation, and the state should seek, under its sovereignty and the republican system, to achieve the unity of this Arab nation."[24] This addition can be explained by al-Shishakli's recognition of the rise of nationalistic sentiment in the country, which made him want to keep up with nationalistic groups, including the Baath and other parties. It is noteworthy that the 1953 Constitution maintained the requirement that "religion of the president of the republic is Islam," in a system that is closer to a presidential system, depriving non-Muslims of the

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[22] Article 46 of the Syrian Constitution 1950.
[23] Article 75 of the Syrian Constitution 1950.
[24] Article 1 of the 1953 Syrian Constitution, included in Sabbagh, op. cit., pp. 307-369.

opportunity to reach that position. This carried a different meaning than when the system was closer to a parliamentary system under former regimes.

Following the resignation of al-Shishakli due to popular pressure and the demands of some military units, on 25 February 1954, President Hashim al-Atassi resumed the office to complete his constitutional term and to form a government to oversee the holding of new parliamentary and presidential elections. President Shukri al-Quwatli was elected president of the republic on 6 September 1955. The Constitution of 1950 remained in force until the establishment of the unification of Syria and Egypt as the United Arab Republic in February 1958, when the constitution that was drafted under president al-Shishakli became null and void. The **Constitution of the United Arab Republic**, which was brief in its 73 articles, reflected a sentimental national moment, and rushed to establish institutions without proper preparation or organization in a way that protected the interests of both countries composing the united republic. The part related to identity did not take up a lot of space in the constitution of the United Arab Republic. Article I of the Constitution stated that "the United Arab Republic is a sovereign independent democratic republic and its people are part of the Arab nation."[25] Interestingly, the role of religion in the state was left undefined, whether in terms of the identity of the state, conditions for presidency, or the role of Shariah or Islamic jurisprudence in legislation. National Arab sentiment was more explicitly reflected in the statement made about the declaration of the United Arab Republic and in the speeches made by President Shukri al-Quwatli and President Gamal Abdel Naser to the Syrian parliament and the Egyptian Ummah Council.

The failure of the first unification attempt between Arab countries represented a strong blow to nationalistic ideologies, especially for Nasserism, Baathism, and the Arab Nationalists. The failure of the unification drove some political elites to think rationally about strengthening their national identity before rushing into unification experiences without proper preparation. This failure made some nationalist parties resort to non-democratic means including military coups to reach power, in order to provide a nationalistic model that was different from the Nasser regime. This was especially true of the Baath party whose leaders felt that they had been used by the Egyptian regime. Therefore, the cessation of the UAR was temporary, as the pan-Arab political forces in Syria started to speak over each other, each claiming that they would repeat the unification experience but based on a better and more mature model. The period of Cessation Rule 1961-63 was unable to produce a new constitution, so during this period Syria was governed by the Constitution of 1950 with a few amendments. The only positive thing that happened in Syria in the period after the separation from Egypt was free and fair parliamentary elections, which the country witnessed for the last time, with the participation of most political forces.

Between the coup of 8 March 1963 and the adoption of the Constitution of 1973, two interim constitutions were issued by the Baath party in Syria. The first was issued on 25 April 1964 and the second on 1 May 1969, which was further amended after the coup that brought Hafez al-Assad to power in 1971. Those interim constitutions were like the earlier ones in terms of addressing the question of identity, but with more focus on the commitment to realizing Arab

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[25] Chapter One the United Arab State, of the Constitution of the United Arab Republic, is included in Sabbagh, op. cit., pp. 429-446.

unity, and in defining the political system as a "popular democracy" and adopting socialism as the economic system. For example, Article one of the **Constitution of 1964** stated the following: 1) Syria is a sovereign popular democratic socialist republic which is part of the Arab homeland, 2) the Arab people of Syria are part of the Arab nation and they believe in unity and struggle to achieve it, and 3) sovereignty in the Syrian country is vested in the people.[26] In terms of the role of religion, article three of the Constitution of 1964 stipulated that the religion of the president of the republic shall be Islam (this article was removed from the interim constitutions of 1969 and 1971), and Islamic jurisprudence would be "a main" source of legislation rather than "the main" source, as had been stipulated in the Constitution of 1950. This illustrates how those interim constitutions were viewed through the lens of the Socialist Arab Baath Party.

For the first time, an article was added to the **Constitution of 1969**, which read: "The leading party in society and the state shall be the Socialist Arab Baath Party."[27] This article remained in the interim Constitution of 1971, and the Constitution of Hafez al-Assad of 1973. There were also some details related to Syria's Arab identity in the changes made by the constitutions of the Baath party, including repeated reference to the commitment of the regime to realize the Arab unity goals of the Baath party. For example, Article 37 of the Constitution of 1964 stipulated the oath that shall be taken by members of the National Council, which read: "I swear by the Almighty God, to be faithful to the constitution of the country, defend it and defend the independence of the homeland, the interests of the people and to respect the laws of the country, undertake my tasks with honor and to work to fulfill the goals of the revolution in unity, freedom and socialism."

In the Baath party's interim constitutions, the role of religion retreated, which is to be expected from a "progressive secular" party. Yet this retreat did not abolish the role of religion in the state altogether, but rather decreased it, making the Islamic jurisprudence "a main" source of legislation rather than "the main" source, as it had been stipulated in former constitutions. In another noteworthy matter, the reference to God was removed from the oath stipulated for the members of the People's Assembly in the constitutions of 1969 and 1971, which become the following: "I swear by my honor and belief to faithfully maintain the popular democratic system and to respect the constitution and the laws, and to watch over the interests of the people and the integrity of the homeland, and to work and struggle to realize the goals of the Arab nation in unity, freedom and socialism."[28]

Finally, there are similarities between the constitutions of 1973 and 2012 (the constitutions of Hafez and Bashar al-Assad) in terms of the question of identity and the role of religion in public life, but also some meaningful differences. In the **Constitution of 1973**, chapter one, which included political principles, described the identity of the country as follows: "1) The Syrian Arab Republic is a democratic, popular, socialist and sovereign state. No part of its territory can be ceded. Syria is a member of the Union of the Arab Republics. 2) The Syrian Arab region

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[26] The text of the 1969 Constitution is included in Sabbagh, ibid., pp. 518-533.

[27] This article comes under Article 7 of the Constitution of 1969 and 1971, but amended in the 1973 Constitution of Hafez al-Assad, to read as follows: "The Baath Arab Socialist Party is the leading party in society and the state, and leads a progressive national front that unites the energies of the masses of the people and puts them in the service of the goals of the Arab nation." Article 8.

[28] Article 51 in both constitutions.

is a part of the Arab homeland. 3) The people in the Syrian Arab region are a part of the Arab nation. They work and struggle to achieve the Arab nation's comprehensive unity."[29] The **Constitution of 2012** stipulates the following in article one : "1) The Syrian Arab Republic is a democratic state with full sovereignty, indivisible, and may not waive any part of its territory, and is part of the Arab homeland. 2) The people of Syria are part of the Arab nation."[30] The clear difference in the language between these constitutions highlights the 2012 Constitution's absence a popular socialist character, as well as the retreat of the Syrian people's commitment of the to work and struggle to achieve Arab unity. Both issues reflect the ideology of the Baath party, and these changes indicate the abandonment of those aspects of Baath ideology under Bashar al-Assad.

There is another difference between Syria's 1973 and 2012 constitutions in the constitutional oath, which was included in article seven of both constitutions. In the Constitution of 1973 it read: "I swear by God the Almighty to sincerely preserve the republican, democratic and popular system, respect the constitution and the laws, watch over the interests of the people and the security of the homeland, and work and struggle for the realization of the Arab nation's aims of unity, freedom and socialism." In the 2012 Constitution of Bashar al-Assad, this oath became: "I swear by the Almighty God to respect the country's constitution, laws and Republican system, to look after the interests and freedoms of the people, to safeguard the homeland's sovereignty, independence, freedom and to defend its territorial integrity and to act in order to achieve social justice and the unity of the Arab Nation." There is once again a departure from the three goals of the Baath party, which were the goals of the Arab nation, namely: unity, freedom and socialism. Nevertheless, the oath in the Constitution of 2012 maintained a pledge to achieve "social unity and the unity of the Arab nation." These more ambiguous goals are certainly a clear abandonment of the goals of the ruling Baath party.

There is similarity in the language in both the 1973 and 2012 constitutions in relation to the role of religion, with a logical addition in the Constitution of 2012. The Constitution of 1973 stipulated the following: "1) The religion of the President of the Republic has to be Islam. 2) Islamic jurisprudence is a main source of legislation."[31] The Constitution of 2012 adopts the same language in Article three, adding the following two items: 1) "The State shall respect all religions, and ensure the freedom to perform all the rituals that do not prejudice public order;" and 2) "The personal status of religious communities shall be protected and respected."[32]

Second: Rights and Freedoms

Although fundamental rights and freedoms were sometimes constrained in Syrian constitutions, previous constitutional instruments never uniformly omitted them. However, it is essential to note the Syrian constitutions, especially under the Baath rule, intended to diminish political rights, which constitute the most substantial bulk of these rights. A close analysis of the sections on rights, freedoms and citizenship shows how most prior Syrian

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[29] Items one to three of Article I, the Constitution of 1973, included in Sabbagh, op. cit., pp. 671-711.
[30] Article 1 of the Syrian Arab Republic's Constitutions of 2012.
   https://www.constituteproject.org/constitution/Syria_2012.pdf?lang=en
[31] Article 3 of the 1973 Constitution.
[32] Article 3 of the 2012 Constitution.

constitutions were close to the international standards of human rights and freedoms. The following is a comparative study of the language used in earlier Syrian constitutions:

First, it is noteworthy that Syria's first constitutional experience (the constitution of the Syrian Kingdom of 1920) was very advanced in its section on rights and freedoms. Chapter three of the mentioned constitution was titled "On the Rights of Individuals and Groups," and included 17 articles covering the following rights: citizenship, equality before the law, respect for individual freedom, freedom of belief and the performance of religious practices, freedom from torture, the right to association, the sanctity of houses, respect for private property, liberty of publications, free early education, the right to be tried before competent courts, and the prohibition of administrative exile.[33]

Second, the Constitution of 1930 maintained the rights and freedoms stipulated in the former constitution and provided more details on some of them. In the area of the freedom of belief and practice of religious rituals, for example, it included more information than its predecessor. Article 15 stipulated the following: "freedom of belief shall be absolute. The state shall respect all faiths and religions present in the country and shall guarantee and protect the freedom of performing all religious practices without prejudice to the public order or morals. The state shall also guarantee to all people, regardless of their denominations, the respect of their religious interests and personal status." Article 28 added a guarantee of the rights of all religious denominations, including the establishment of their schools.[34]

Third, the Constitution of 1950 is considered the most detailed and comprehensive one in terms of rights and liberties. The constitutions that followed it introduced the limitations on some of these rights and freedoms. The section on rights and freedoms in the 1950 Constitution came in chapter two, under the title "Basic Principles." What distinguishes this constitution from the previous ones is that it increased the rights and fully detailed them. For example, in regards to the right to assembly and peaceful protest, it added the following article: "Syrians shall have the right to establish political parties, provided that they shall have legitimate aims and work by peaceful means and adopt democratic systems."[35] Another example is the details included in Article 10 on the right of citizens to a fair trial. The Article included 11 specific items, including the assumption of innocence, the method of arrest, criminalizing torture, the right to defense, a rejection of extraordinary and military tribunals, and the right to appeal. This attention that was given to the rights and freedoms in the 1950 Constitution is one of the reasons it was considered the most "democratic" among the previous constitutional endeavors. It not only highlighted basic freedoms, but also underscored socioeconomic rights, such as the right to work, to education, and to social insurance.

Fourth, President Shishakli abolished the Constitution of 1950 and had another constitution drafted. The new Constitution of 1953 borrowed provisions from the Constitution of 1950. President Shishakli also tried to improve some of the provisions of the abolished constitution. For example, the 1953 Constitution adopted most of the articles from the basic principles chapter of the abolished constitution, which were entitled "Democratic Guarantees." There was

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[33] Chapter III: "On the Rights of Individuals and Groups", Article 9 to 16 of the 2012 Constitution.
[34] Rights and freedoms are included in the second chapter of the constitution, "On the Rights of Individuals," the 1930 Constitution.
[35] Item 1 of article 18, the1950 Constitution.

also an increase in the level of detail in the explanation of the rights and freedoms. Article 39 detailed how the state should protect the right to work, including: working hours, compensation to be paid for workers in situations such as illness and disability, and the creation of special conditions for the work of women and juveniles in a way that guaranteed their protection. In the next paragraph, it stated: "wages of women who work in the same circumstances of those of men shall be made equal."[36] However, it was also the only constitution that explicitly stipulated, "It shall be forbidden for women to run for the office of president."[37]

The rollback of rights and freedoms in constitutions that followed he Constitution of 1950 became obvious. This was done through shrinking their space or limiting them, and most importantly, by circumventing their application. In the Constitution of the United Arab Republic for example, rights and freedoms were reduced under chapter three, which was entitled "General Rights and Obligations." Apart from Article 11 which tackled the duty to defend the homeland and compulsory conscription, the Constitution had only four articles pertaining to rights and freedoms, which were: 1) equality before the law; 2) no crime or punishment shall be considered unless by virtue of a law; 3) the prohibition of extraditing political refugees; 4) public freedoms are guaranteed within the limits of law.[38] The language of Article four reflects the spirit of limitation by linking public freedoms to the confines of laws that most likely would be issued by the executive authority.

The three interim constitutions that were issued in the era of the Baath party continued imposing limitations to rights and freedoms. They were in harmony with the pioneering vision of the Baath party as a leader for society and the state. Those constitutions redefined some concepts such as freedom, to mean the freedom of the homeland first, then the freedom of the individual. The Constitution of 1969 for example, which was similar to both the constitutions of 1964 and 1971, reduced rights and freedoms to: equality before law, equal opportunities, the right to trial (however the criminalization of torture and the prohibition of extraordinary tribunals disappeared from these two constitutions), confidentiality of correspondence, the prohibition against exiling citizens, the right to education and work, and the right for citizens to participate in political, economic, social, and cultural life, but in accordance with the law.[39] A closer look at these rights reveals that the right to participate in political life, for example, was constrained by Article seven of the 1969 Constitution, which stated, "the leading party in society and the state is the Arab Socialist Baath Party." In other words, under this article— which is copied from the experiences of communist states—the only political framework for political life and trade union activity would be through the aforementioned party. Even when the interim Constitution of 1969 added a reference to support the right of women to participate in public life, it came under the Baathist regime's definition of public life as follows: "The state shall guarantee women all opportunities enabling them to effectively contribute to public life. The state shall work on removing the restrictions that prevent women's development, in a way that allows them to contribute to building the socialist Arab society."[40]

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[36] Section (E) of item 3, article 39, the 1953 Constitution.
[37] Article 82, the 1953 Constitution.
[38] Articles 7 to 10, in Section 3, the Constitution of the United Arab Republic, 1958.
[39] Articles 21 to 41 under "the Rights and Duties of Citizens, Mass Organizations and Cooperative Societies," the Interim Constitution of the Syrian Arab Republic, 1969, included in Sabbagh, op. cit., pp. 541-573.
[40] Article 24, Section 2, the Interim Constitution of the Syrian Arab Republic, 1969.

The constitutions of 1973 and 2012 followed the path of the previous interim constitutions in constraining a number of freedoms and rights, in comparison with the Constitution of 1950. This constraint is visible in the following practices: 1) linking rights and freedoms with the ideas of the ruling party; 2) suspending these stipulated rights and freedoms by enacting martial law, which was imposed from 1963-2012; 3) and ignoring those provisions completely or partly. One example of the retreat of certain freedoms was the absence of articles that prevented trying citizens before extraordinary or military tribunals. A case in point is the article that cites the freedom of expression in the Constitution of 1973, which stated: "every citizen has the right to freely and openly express his views in words, in writing and through all other means of expression. He also has the right to participate in supervision and constructive criticism *in a manner that safeguards the soundness of the domestic and nationalist structure and strengthens the socialist system.* The state guarantees the freedom of press, of printing and publication *in accordance with the law*."[41]

The constitutions of 1973 and 2012 included most of the rights and freedoms found in modern constitutions, but the problem is that they were disregarded in practice. For example, the constitutions of 1973 and 2012 restated the article related to criminalizing torture, but Syria, especially after the Syrian revolution of 2011, could be considered the worst county in the world in terms of the number of political detainees who were systematically killed under torture.[42] The Constitution of 2012 even removed the conditionality of the rights and freedoms as they were worded in the previous constitution, but they remained theoretical stipulations that were never implemented. For instance, some of the rights stipulated in the Constitution of 2012 included the following language: "Citizen shall have the right to assemble, to demonstrate peacefully and to strike from work within the framework of the principles of the constitution, and the law shall regulate the exercise of these rights."[43]

Third: Decentralization

Decentralization and the structure of the political system usually have correlative configurations. The more democratic a system is, the greater the number of powers delegated to the units that make up that political system. Generally speaking, authoritarian regimes prefer centralized governance because it makes control easier for them. It is noteworthy that the different constitutional instruments of the Syrian state have tended to be brief and worded in general terms when they address decentralization. In most cases, they referred to subsequent laws to provide more detail on the matter.

In the first constitutional experience, representatives to the Syrian Congress in 1919 created provisions for minimal decentralization, which was more like a federal system. The Constitution included an entire chapter on the "regions," which were the units of the Syrian Kingdom: the center (Syria), the coast (Lebanon), and the south of Syria (Jordan). Chapter 11 of the Constitution of 1919 defined "the principle of administering regions through decentralization in their internal administration, except for public affairs that come under the

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[41] Article 34, Section 4, the Constitution of 1973. Italic added for emphasis.
[42] See for example, "If the Dead Could Speak: Mass Deaths and Torture in Syria's Detention Facilities," Human Rights Watch, December 16, 2015. https://www.hrw.org/report/2015/12/16/if-dead-could-speak/mass-deaths-and-torture-syrias-detention-facilities#
[43] Article 44, Section 2: "Rights, Freedoms and the Rule of Law," the Constitution of 2012.

jurisdiction of the general (central) government." The following articles laid out a way of administering the regions through elected parliaments and a general governor appointed by the king, with mechanisms for dispute resolution arising among the regional councils and the central government through the senate.[44] Although the French occupation of Syria and Lebanon prevented the implementation of the 1919 Constitution, it still provided an advanced view on proper decentralization and local governance for Syria.

The Constitution of 1930 did not provide details on decentralization. It only stipulated in its last chapter, called "Miscellaneous Provisions," that "[a] special law shall be enacted for the administrative borders of regions, organization, and powers thereof, taking into account the peculiarity of some regions."[45] However, one can see a distinct approach in the Constitution of 1950, which included an entire chapter on "Administrative Divisions." Perhaps the most critical elements of that chapter were the division of the territories of the republic into governorates that should be administered by councils, three-quarters of which should be elected, and the remaining quarter appointed. It included the provision that councils should elect their chairperson and executive office. Chapter 11 identified essential powers, including health, literacy, the provision of potable water, vitalizing tourism, philanthropy, organizing and investing in sea and river fishing as well as land hunting. Finally, it defined the resources of governorates and how they should distribute their respective projects.[46]

Arguably, Syria's biggest failure in ignoring the importance of decentralization was manifested through the experience of the United Arab Republic. The Egyptian side and some pro-Egyptian Syrians insisted on creating a unitary merged state instead of a federal system that respected the peculiarity of each country. The interim Constitution of the United Arab Republic strengthened the idea of the centralized unified state, as well as the active practice in which Egyptians did their best to institute it. It is important to remember that most of those who were enthusiastic about the idea of unification with Egypt did not abandon the idea in principle. Still, they presented the idea of a federation between the two countries instead of the model of the unitary merger model. The political divisions and the claims and promises of the idea of unification, as well as the regional and international interventions, drove Syrian politicians and military figures to accept all the conditions of Gamal Abdel Naser for the merger model of unification, including: holding public referendum on unification, dissolving political parties, and the withdrawal of the military from politics. Although those conditions seemed logical at first sight, their purpose was weakening and neutralizing Syrian political leaders to secure the subordination of the Syrian region to Egypt. One account evaluating the centralized merger model, said: "It was a grave mistake made by the Egyptians to apply the centralized system existing in Egypt to Syria. The purpose of that was to create a merged state, ignoring or not knowing the peculiarities of the Syrian society, and the political, social, and geographical differences between the two countries."[47]

After the Baath party coup in Syria, the term "popular democracy" entered the three interim constitutions of 1964, 1969 and 1971, linking governance, including local governance, to the

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[44] Articles 122-144, the Constitution of 1919.
[45] Article 109, the Constitution of 1930.
[46] Chapter 6, "Administrative Divisions," the Constitution of 1950.
[47] Amal Mikhail Bashour, A Study in Syria's Contemporary Political History. Beirut: Distribution of Jross Press, no date, p. 455

Baath party. The Constitution of 1964 had no reference to decentralization, whereas the other two interim constitutions included a chapter on "local people's assemblies." Those two constitutions adopted the same language by referring to local people's assemblies as state organs in the administrative units, along with the delineation of the administrative units by law. The following article then detailed that: "The law of local administration shall define the jurisdictions of people's assemblies and the way of election and composition thereof and the rights and duties of their members, as well as all relevant provisions."[48]

The 1973 Constitution of Hafez al-Assad deferred the question of decentralization to the executive authority and used the same language stated in the two preceding constitutions. Since the constitution referred the matter to the law, basically following Law No. 15 of 1971. This law regulated the administrative divisions. After the Ministry of Local Administration was established, it expanded the law. Several conclusions follow from Law No. 15 of 1971 and its implementation under Hafez al-Assad. For one, the dominant character of the relationship between the government and local councils leaned towards too much centralization. Secondly, it resulted in the dominance of the Baath party over local administration, as it was the leading party for society and the state.[49] Finally, local administration units, just like other state bodies, was subject to strict security monitoring.

Although the 2012 Constitution of Bashar al-Assad deferred the issue of local administration to a subsequent law, the new character of this constitution marked the transparent adoption of the principle of decentralization when it stated: "The organization of local administration units is based on applying the principle of decentralization of authorities and responsibilities…"[50] The following clause in the constitution declared, "Local administration units shall have councils elected in a general, confidential, direct and equal manner." The new law of local administration issued in the post-revolution environment demanded more liberties and rights at the expense of the center; however, it was adopted before the Constitution of 2012. Law 107 revised the administrative divisions to become: governorates, cities, districts, and townships. It also stressed the decentralization of authorities and their localities. Two conclusions can be drawn from studying this law: first, both in theory and practice, the dominance of the central government over the local administrations continued. Second, local councils continued to be subordinated to the Baath party, despite omitting the reference to the Baath party as the leading party of the state and society.[51]

Fourth: The Political System

Syria has witnessed several models of political systems under its different constitutions. In the short interim period between the departure of the Turks from Syria and the beginning of the French occupation, members of the Syrian Congress adopted a constitutional monarchy system, and Faisal bin al-Hussein was named king of the country. The political logic behind adopting that political system was predicated on two arguments: the first was that the constitutional monarchy was a gradual step from the despotic absolute monarchy of the

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[48] Chapter 3, articles 67 and 68, the Interim Constitutions of 1969 and 1971.
[49] Group of Researchers, Centralization and Decentralization in Syria: The Concept and Practice. Istanbul: Omran for Strategic Studies, 2018, p. 162.
[50] Article 131, the Constitution of 2012.
[51] "The Regime's of Local Administration System: Structures and Mechanism of Formation," ibid, P. 165-168.

Ottoman era, to a republican system that the Syrian people may not be ready for. The second argument was the need to reward prince Faisal for his role in liberating Arab countries from Turkish rule, and because of his experience in dealing with Western countries.[52] This system did not last more than a few months, when a warning from French General Gouraud put an early end to Syria's first parliamentary experience with the constitutional monarchy. However, the outlines of that the system defined a government accountable before an elected parliament under King Faisal, and granted of more powers to him than the usual ones found in constitutional monarchies. This was not an unlikely conclusion in an interim period where political forces lacked political organization and experience.

Interestingly, in the brief interim political system, a kind of administrative decentralization was adopted that brought the three regions of the Syrian Kingdom closer to a federal system. Such an administrative structure gave expanded powers to the regions, including the establishment of their own parliaments, and the ability of these parliaments to have oversight over the governors appointed by the king. Another interesting aspect was that the Syrian Congress adopted a bicameral legislature composed of a senate and a house of representatives, with significant powers given to the senate in order to strike a balance between the center and the regions. Of course, the fact that this system was never implemented deprived Syrians of a unique experience which could have established a constitutional monarchy, or perhaps another type of system somewhere between absolute and constitutional rule, similar to the rule of the Hashemite family in Jordan.

Syria had its first experiences with a parliamentary republican system with the constitutions of 1930 and 1950. In both models, the characteristics of a system that was close to a parliamentary system began to materialize, as did characteristics of a hybrid (semi-presidential) system. In both constitutions, powers granted to the president of the republic, who was elected by the parliament, were more than those usually granted in a pure parliamentary system. For example, the Constitution of 1930 gave the president the power to conclude and sign treaties. The president could select the prime minister, and the also ministers of the cabinet after their nomination by the prime minister.[53] Moreover, the president had the right to dissolve the parliament with the approval of the cabinet.

In the Constitution of 1950, the president of the republic enjoyed greater powers, including the power to declare war and to sign treaties by a decision of the cabinet after consulting the Council of National Defense. The president was the commander-in-chief of the military and the head of the council of national defense.[54] The lack of an explicit mention that the president was obliged to select the prime minister from the parliamentary majority or a ruling coalition that enjoyed the support of the majority provided the president, in both cases, with a more significant role in the political system at the expense of the prime minister. However, the parliamentary republican political system, with its general principles established in both constitutions, represented a very advanced step towards adopting a democratic system, but did not last long because of the military intervention in politics.

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[52] See, "Minutes of the Reasons for the Constitution (Basic Law)," adopted by the Syrian Congress in 1919, included in Sabbagh, op. cit., pp. 109-132.
[53] Articles 72-74, the Constitution of 1930.
[54] Articles 82-83, the Constitution of 1950.

Syria had three coups in 1949 and a fourth one (the second by Colonel Shishakli) in 1951, followed by the rise of the ideological nationalistic parties and fierce propaganda rivalry among them. This situation pushed political leaders to hand over the country to Gamal Abdel Naser under the rubric of United Arab Republic. Additionally, foreign interventions from Iraq on the one hand and Saudi Arabia and Egypt on the other, had a significant role in deepening internal differences and divisions among Syrian political parties and forces, which felt that they needed the support of other Arab countries to face the growing Israeli ambitions.[55]

Before going further into assessing the experiences that followed, it is important to address the advantages of a republican parliamentary system, even though it falls short of a pure parliamentary system. In both cases (1930 and 1950), nationalist leaders followed a sound process of constitution drafting by an elected constituent assembly. Even in the case of the 1930 Constitution, they tried to assert some sort of independence and national ownership despite the objection of the French occupying authority. The French authorities suspended the constitution altogether, as did the French High Commissioner on several occasions. Syrian representatives belonging to both assemblies, had to deal with the vital issues of their day, i.e., the independence of Syrian territories as outlined in the 1930 Constitution, and Syria's sovereignty as broached in the 1950 Constitution's preamble. Nationalist leaders outlined ambitious aspirations they wanted to achieve in both of these documents, including: serving justice; guaranteeing fundamental freedoms for citizens; promoting the spirit of brotherhood; raising social awareness among citizens; supporting the duty of defending the homeland, the republic, and the constitution; freeing citizens from poverty, sickness, and ignorance; guaranteeing equality in obligations and rights; and strengthening the character of individuals.

A second advantage of the republican parliamentary system as stated in the Constitution of 1950, was the explicit declaration that "The sovereignty is vested in the people, which cannot be claimed by an individual or a group."[56] An item was added to the basic principles included in the chapter on rights and freedoms that provided for the right of Syrians to establish political parties, provided that they should have peaceful purposes and means and democratic systems. With that addition, the Constitution established the most democratic standards for political practice in Syria's history.

An addition comment on the republican parliamentary system is that granting the president of the republic some executive powers has both pros and cons. One distinct advantage is that the role of the president of the republic, elected by the parliament, can be vital in steering the political process during transitional periods. Moreover, when partisan life is weak, the president plays a national role that brings people together, a role that goes beyond parties and political competition. The absence of clear checks on the president's powers, however, creates the risk of dictatorship. Drafters of the documents of 1930 and 1950 were aware that both constitutions ran this risk, so they limited the president's term to five years, which may not be renewed until five complete years after the end of their term in office.[57]

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[55] About the role of the regional countries and its relations to the Syrian political parties, see, Patrick Seale, The Struggle for Syria: A Study of Post-War Arab Politics 1945-1958, 2nd ed., London: I B Tauris, 1986.

[56] Item 2 of article 2, the Constitution of 1950.

[57] Article 68 of the 1930 Constitution, and 73 of the 1950 Constitution.

However, the Constitution of 1950 ambiguated a president's obligation to select the prime minister from the parliamentarian majority (or a coalition of the majority), as is the traditional practice in parliamentary systems. In short, the composition of the political system in its parliamentary republican form was characterized by the expansion of rights and freedoms, finding consensus-driven formulas for the question of identity, not allowing any individual or group to monopolize representation of the people, and the lifting of constraints on forming political parties—all of these things made the Constitution of 1950 the most democratic constitution in Syrian history.

Although Colonel Shishakli kept most of the provisions of the Constitution of 1950, he manipulated the composition of the political system to lean more toward a presidential system. Shishakli' s 1953 Constitution arranged for the president's election to be conducted directly by the people to reinforce his power. It also abolished the position of the prime minister, putting the entire executive authority into the hands of the president, which he wields on behalf of the people.[58] This Constitution lacked legitimacy because of the way it was adopted. Colonel Shishakli, as the military chief of staff, sent the Constitution to the prime minister, General Fawzi Silo, to replace the Constitution of 1950. The presidential election which Shishakli won in 1953, was held despite a general boycott by the political forces. Following Shishakli's resignation on 25 February 1954, there was a unanimous decision to nullify the Constitution of 1953 and reinstate the 1950 Constitution.

The political system of the United Arab Republic was presidential. The appointed Ummah Council was unable to provide any checks or balances on the powers granted to the president, which meant that the political system turned into an authoritarian system, especially with the presence of a charismatic personality like Nasser. The absence of partisan life and the high level of centralization, with Cairo being the center that made most of the decisions, made it difficult for Syrians to accept the unified political system.[59]

With the military coup of 8 March 1963, Syria moved to a political system based on a single party, one that was influenced by the communist model of one-party rule. The period between the first coup in 1963 and the coup by Hafez al-Assad on 16 November 1970 was considered a transitional period. In this period, the Baath party got rid of its partners of the 1963 coup, who were Nasserites and independent figures. Then after 1966, the Baath party got rid of the traditional "rightist" leaders of the National Leadership of the Baath party, including the founders of the party. Ultimately, the conflict between Salah Jadeed and Hafez al-Assad ended with the victory of the latter, who managed to build a unique political system, as engineered in the 1973 Constitution.

The Constitution of 1973 (aka the constitution of Hafez al-Assad), identified five key foundations of the political system: 1) An Arab revolution is necessary to achieve the Arab nation's goals of unity, freedom, and socialism; 2) No genuine accomplishments may be achieved by any Arab country under the reality of partition; 3) The socialist system deemed it a necessity to organize the struggle of the public in their battle against Zionism and

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[58] See Chapter 2, "Executive Power: President of the Republic," the 1953 Constitution.

[59] This was one of Naser's conditions for unity: the dissolution of political parties, including the Baath Party; and structuring political life through one-party rule.

imperialism; 4) Freedom is a sacred right and "popular democracy is considered to be the perfect formula which guarantees that citizens practice their freedom which makes them decent human beings." The freedom of citizens is tied to the freedom of the homeland, and "the freedom of citizens can only be complete through their economic and social freedom;" 5) The Arab revolutionary movement is a key part of the universal liberation movement.[60]

Apart from the fourth point listed above, which limits the issue of freedom to a "popular democratic" system, the other four points similar to slogans that were popular in the literature of nationalist parties at the time. Popular democracy, as translated by the practices of political systems that adopted that form of governance, was an expression of the rejection of the representative democratic system in its Western form and the adoption of an authoritarian system under the name of a single party, or an inspired ruler, or a revolutionary council.

One result of the Constitution of Hafez al-Assad was the monopoly of the Baath party over Syrian political life.[61] However, Assad allowed some figures from the remnants of the other nationalist parties to form parties just for show, and included them under the umbrella of the "Progressive National Front." A second aspect of the political system established by Hafez al-Assad was the massive centralization of presidential powers, without checks and balances by the legislative and judicial authorities, or limits on the term of office for the president. The Constitution of 1973 provided a legal framework for continuity of Assad in power indefinitely and concentrated all power in his hands. Both the Baath party and the People's Council provided a procedural tool for presidential referenda that were held once every seven years and which were won by Hafez al-Assad by percentages that never went below 99.9 percent.

The other provisions of the 1973 Constitution stipulated the vast executive, legislative, judicial, and partisan powers enjoyed by the president of the republic. Despite the similarities between Assad's regime system and other authoritarian rules that adopted one-party rule, the Syrian regime was characterized by the following unique features: 1) One individual, President Assad, controlled the political institutions and succeeded in eradicating or taming all forms of political opposition, thus ending decades of political upheaval and chaos; 2) The pivotal role played by the security and military establishment in ensuring the continuity and stability of the regime; 3) The delicate balance between the work of the security services controlled by Alawite figures, and the official and bureaucratic institutions mentioned in the Constitution. Recruitment for the non-military security institutions represented very close reflection of the composition of the Syrian population, with advantages given to rural people at the expense of urban populations in both cases.[62]

Hafez al-Assad established duality in the composition of the political system between the formal institutions stipulated by the Constitution (the People's Council for the legislative authority, the Supreme Judicial Council and the Supreme Constitutional Court for the judicial authority, and the Baath party as the ruling party) and the multiple security agencies as well as the security officials in the military establishment who had sectarian and family ties with Assad himself. In this way, Assad created a kind of functional division between formal institutions

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[60] "Introduction," the Constitution of 1973.

[61] Article 8, the Constitution of 1973.

[62] For details on the structure of the Syrian regime, Najib Ghadbian, "Continuity and Change in the Syrian Regime," Al-Ahram Strategic File, No. 67, July 2000.

and his decision-making circle (the president and his assistants from among the leaders of security agencies) as well as other state institutions and the party. The latter was limited to implementing and justifying the directions and policies of the regime.

Finally, it would not be possible to understand the composition of the political system and its mechanisms under Hafez al-Assad by merely reading the Constitution because of the "political esotericism" adopted by the regime in practice. It is common knowledge that the first draft version of the Constitution of 1973 removed everything related to religion, such as the condition that the president must be Muslim, or any role for Islamic jurisprudence in legislation, as was stated in previous constitutions. However, under the pressure of mass popular objection by Syrian society, Hafez al-Assad responded to the popular demands. To resolve religious tensions caused by Assad's Alawite background, Hafez ordered the Grand Mufti of the republic, then Sheikh Ahmad Kuftaro, and the head of the Higher Shiite Council in Lebanon, Mousa al-Sader, to issue a religious verdict (*Fatwa*). The verdict affirmed that the Alawite denomination is part of Islam and affiliated with the Jafari (*Ithna Ashari*), Shiite school of jurisprudence. That was the solution to the constitutional problem.[63]

Another example of the separation of the 1973 Constitution from reality is the fact that the section on freedoms and rights faced obstructions to being implemented. This was done both through the state of emergency that was in force starting in 1963, and in some cases by fully ignoring these provisions in the name of other priorities, such as resistance to the Zionist and imperialist enemy and confrontation of foreign conspiracies.

Bashar al-Assad has been aware that any reform in the political system he inherited may lead to its entire collapse. The world witnessed an unprecedented "constitutional elasticity" in the amendment of Article 83 of the 1973 Syrian Constitution, a change conducted in less than twenty minutes. The amendment changed the requirement for the age of the president from 40 to 34 years. After Bashar assumed his position in 2000, there were popular demands for gradual political reform and move towards a pluralistic system that would put an end to single party rule, at least by abolishing Article 8 of the 1973 Constitution, lifting the state of emergency, and promoting basic freedoms. The young Assad did not respond to any of those demands more than a year after the eruption of the Syrian revolution in 2011.

A careful analysis of the changes to the political system in the 2012 Constitution shows that Bashar al-Assad wanted to prove that he made key amendments that met most of the popular demands. In theory, the constitution did offer some concessions, such as eliminating the single party rule, but the new Constitution was tailored to ensure that Assad remained in power until at least 2028. The concessions offered in the new 2012 Constitution included: 1) The Preamble of the Constitution includes references to the rule of law and a number of fundamental principles including the "rule of the people based on election, political and party pluralism and the protection of national unity, cultural diversity, public freedoms, human rights, social justice, equality, equal opportunities, citizenship and the rule of law".[64] 2) The Constitution abolished the Article 8 that had been included in previous Baathist constitutions, which named

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[63] This issue is mentioned in various studies, see for example, Patrick Seale, Asad of Syria: The Struggle for the Middle East. Berkeley: University of California Press, 1988, p. 173.
[64] "Introduction," the Constitution of 2012. The English document is available at:
   https://www.constituteproject.org/constitution/Syria_2012.pdf?lang=en

the Socialist Arab Baath Party the leading party in society and the state. It replaced it instead with an article stipulating that the principle of political pluralism and the democratic exercise of power through the ballot box should form the basis of the political system.[65] 3) The 2012 Constitution guarantees the protection of cultural diversity in Syrian society with all of its components, and the multiplicity of its tributaries, as a national heritage that promotes national unity.[66] 4) The Constitution abandoned the socialist economic system.[67] 5) It expanded the chapter on rights and freedoms and added a chapter on the rule of law. 6) And it adopted the principle of competitive presidential elections, instead of holding a referendum on one candidate, as was stipulated in the regime's prior 1973 Constitution.

Many of those positive aspects of the 2012 Constitution, from a theoretical point of view, are diminished by the constraints placed on partisan life through the condition stipulated in item four of Article 8, which stipulates the following: "Carrying out any political activity or forming any political parties or groupings on the basis of religious, sectarian, tribal, regional, class-based, professional, or on discrimination based on gender, origin, race or color may not be undertaken."[68] Although some of these constraints may be logical for a political system that is serious about a democratic transition, the general objective of these items, in the case of the constitution of Bashar al-Assad, was to exclude political movements from politics. This includes the movements of political Islam, Kurdish parties, or any party not in line with the agenda of the ruling authorities tasked with deciding the proper implementation of this article.

The manner of selecting the president laid out in the 2012 Constitution makes it tailored to fit Bashar al-Assad. In addition to the condition that the president be "Muslim" and forty years of age, Article 84 added the following qualification for any candidate: The person must "enjoy civil and political rights and not convicted of a dishonorable felony, even if he was reinstated;" and must "Not be married to a non-Syrian wife;" and additionally candidates must "be a resident of the Syrian Arab Republic for no less than 10 years continuously upon being nominated." Furthermore, the only way a candidate can run for the presidency is by acquiring the support of at least 35 members of the People's Assembly.[69]

Considering the Syrian catastrophe, it is apparent that these conditions and provisions merely stopped Syrians who opposed Bashar al-Assad and were forced to leave the country from competing for the most critical position in the political system of Syria. This had meant that the majority of potential opponents are excluded from the right to run for president of Syria. In the Syrian experience, as in other Arab countries, those who are allowed to run for the office of president from inside their countries are usually regime loyalists, and they are allowed to do so solely to give the elections the veneer of competition. So, even if we ignore the lack of legitimacy of the Constitution of 2012 because its creation lacked a proper constitutional process, the big failure in the Constitution is in the cited articles which aim to abolish the principle of peaceful transfer of power, one of the foremost goals of the revolutions of Arab Spring. The concessions made in the Constitution of Bashar al-Assad pertain to issues that do

not impact the structure of the political system. In this respect, they are similar to those made by the Egyptian regime in 2005, which allowed for multiple presidential candidates, but which did not provide genuine democratic change.

Conclusions and Recommendations

The first thing to consider in any constitutional drafting process is that the final document gains a great deal of its legitimacy from the process itself. The second point, is the that the drafters must have conviction that consensus-based solutions for all pending and contentious issues are reachable if there is a political will among the key societal components, represented by responsible political forces with leaders whose concerns extend beyond immediate fixes. Third, any constitutional process that does not make its main objective to change the foundations of the political system—to move from a state of totalitarianism, corruption, from the rule of one family and the mafia—to the vast space of democracy and the rule of law, promoting the principle of peaceful transfer of power, is doomed to fail. The following is a detailed analysis of these points.

First: The Importance of the Constitutional Process

Any individual or research group can write down principles and provisions that regulate the work of a political system. These can support typical values and desired goals and can be used as the basis for a constitutional instrument. However, such efforts cannot amount to a sound constitutional process, because what makes such principles and provisions valid terms of reference is the recognition and the approval they gain through the drafting process. German social scientist Max Weber presented this simple idea in a 1918 lecture "Politics as a Vocation," in which he identified the three forms of legitimacy: 1) legitimacy derived from traditional values; 2) legitimacy based on the extraordinary qualities of the charismatic individual; 3) legitimacy based on the foundations of "accepted legal rules."[70] Weber was correct that human development was heading towards rational law-based legitimacy premised on accepting the "rules of the game," i.e., something institutionalized through the constitutional process. What gave the Syrian constitutions of 1919, 1930, and 1950 legitimacy, was the fact their drafting occurred through a process in which most components of the Syrian political community at the time participated. This process allowed for critical discussion during the phases of legal drafting and political discussion within constituent assemblies that were elected in 1928 and 1950 for that purpose. Finally, they had a number of discussions and deliberations, and ultimately acceptance of these ideals, first in their respective constituent assemblies and then by public referenda.

Based on analysis of the Syrian experience and some other contemporary experiences, the team of The Day After project (TDA) held meetings for over six months in the early days of the revolution in the first half of 2012, to provide a roadmap for the democratic transition in Syria. The team concerned with constitutional design provided some requirements for the necessary elements of a legitimate constitution drafting process in Syria, including:

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[70] Max Weber, "Politics as a Vocation," from H. H. Gerth and C. Wright Mills, eds. Trans. From Max Weber: Essays in Sociology. New York: Galaxy, 1958, pp. 77-87.

- The process of constitution drafting should go beyond the mere writing of a new constitution. It should also contribute to strengthening a Syrian national identity, promoting the principle of national unity, and deepening trust among the different components of the Syrian political community.

- Several essential principles should structure the constitution drafting process, including: transparency, participation, the promotion of a spirit of consensus and harmony, and national ownership of a Syrian-led process for Syria.

- They must find a transitional legal framework that guarantees fundamental rights and freedoms, provides a blueprint for negotiating the drafting of a permanent constitution, and preserves supra-constitutional principles upon which agreement is possible.

- The discussion and drafting of the constitution should occur in an elected constituent assembly, one in which all components of Syrian society can be represented. The process can lead then to a genuine public referendum on the constitution, as opposed to a phony referendum held by authoritarian regimes.

- It is necessary to educate and empower citizens on the ideals and practices of a democratic system and to promote awareness and reach out to all societal components throughout all phases of the constitution drafting process.[71]

An examination of Syrian political reality today shows that current international efforts and discussions about the constitution have lacked efficacy towards advancing a political solution. There are two reasons for this stagnation. The first, is that these efforts have tried to hijack the matter from Syrians, such as when the Russians offered a ready-made constitution to the Syrian negotiators in Astana, one which ensured that Bashar al-Assad would remain in power.[72] The second reason is the attempts to reduce the political process to the "constitutional basket" only. Accordingly, the recent formation of the 150-member Constitutional Committee (50 appointed by the regime, 50 representing the opposition, and 50 selected by the UN from Syrian civil society) is unlikely to deliver the adequate requirements for a sound constitutional design process. Finally, there are the attempts to reduce the role of the "constitutional basket" to simply proposing some amendments to the Constitution of 2012 that would reduce the powers of the president, giving some of those powers back to the prime minister, delegate some powers to local councils, create a second chamber in the parliament, and stress the impartiality of the military and security institutions.[73] Most of these efforts are being orchestrated by the Russian leadership to crown the "military victory" —which they achieved with their Iranian ally and their junior partner, the Assad regime—with a political victory.

So far, all of the efforts described above have failed because they tried to ignore Syrians, or because they did not meet the requirements of a proper constitutional drafting process, including the logical sequencing of matters. Syrian opposition parties, including the Syrian National Coalition, the first High Negotiations Commission (HNC), and the second Syrian Negotiation Commission (SNC), all agree to the Geneva document of 2012 and UN resolutions, especially the UN Security Council Resolution 2254. These parties accept that

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[71] The Day After Project, "Chapter Five: Constitutional Design," Supporting Democratic Transition in Syria. Istanbul: The Day After Organization, 2012, pp. 91-109.

[72] In response, forty Syrian civil society organizations signed a statement confirming that the Syrians themselves must write their country's constitution and refused any talk about a permanent constitution in these circumstances. See, The Day After, Survey: Which Constitution Does Syria Need? Istanbul: The Day After Organization, July 2018, p. 1.

[73] It was reported that a "non-paper," entitled "Constitutional Reform," was presented by the United States, Britain, France, Jordan and Saudi Arabia, to the UN envoy, Staffan de Mistura, ahead of the Vienna meeting at the beginning of 2018.

Resolution 2254 should set the terms of reference for the process because it provides a logical context for enacting a transitional governing body with full executive powers to lead in the interim period. One of its tasks should be electing a constituent assembly that will draft a new constitution for the country, provided that it will be accompanied by national reconciliation, transitional justice, and reform of the security sector. After that, presidential and parliamentary elections should be held per the new constitution.

Attempts to manipulate the constitutional process may only prolong the crisis because they are only addressing the symptoms and not the root causes of the crisis. In a 2017 survey, Syrians asked about their opinions regarding priorities for drafting a new constitution said that they were aware of this issue. A sweeping majority of the surveyed people in regime, opposition, and Kurdish-held areas, as well as Syrians in the diaspora, believed that the conditions were not appropriate for drafting a constitution for the country. They said the priorities should be dealing with a ceasefire, releasing detainees, lifting sieges, defeating ISIS, and expelling foreign fighters from the country. For respondents, drafting a permanent constitution for Syria was at the bottom of their priorities; it was supported only by 18 percent of those surveyed.[74] The majority of polled individuals said that instead, they preferred that Syria adopt an interim constitution or a constitutional declaration to govern the transitional period. As for the method of drafting the eventual constitution: 40.6 percent of the survey respondents they preferred that a consensus be reached between political forces at the end of the interim period; the second most popular option was drafting a constitution through an elected constituent assembly, which 30.3 percent said they preferred; while the choice of using an ad hoc committee of experts to draft the constitution came in third, as it was selected by 25.3 percent of respondents.[75] Finally, no discussion about any political process related to a political transition, including the constitution drafting process, can take place without finding the most appropriate mechanisms to allow approximately six million Syrian refugees in diaspora, and a more significant number of internally displaced persons, to participate in such a process. This will require international effort and the cooperation of host countries.

Second: Contentious Issues

The lessons of history drawn from similar experiences to what Syria is going through indicate to reach the necessary compromises requires: the engagement of all political forces, promotion of the spirit of consensus, and majority assurances to minority groups. The following proposals are drawn from past Syrian constitutional experiences about the key contentious issues:

- **The Syrian Identity**

The consistent mention of Arab identity in all successive constitutional experiments in Syria reflects the demographic reality of the country (the percentage of Arabs has never fallen below 90 percent of the population at any period). This assertion of Arab identity has also been an attempt to deal with the identity crisis stemming from the formation of the separate Arab states by colonial powers. From the 1950s to 1970s, hyperbolic identification of Syria's goals with the ideology of the Baath party as a path to "Arab unity" was disconnected from its actual

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[74] The Day After, Survey: Which Constitution Does Syria Need? Istanbul: The Day After Organization, July 2018, p. 7-10.
[75] Ibid., p. 12-14.

practice. The reality of the Baath rule engendered deepening the division between the Sunni majority and the rule of a family of a particular minority group since the 1970s. The second-largest ethnic group in Syria, the Kurds, reacted negatively to the government's constant and exaggerated emphasis on Arab identity, especially language describing Syrians as an Arab people. The Kurds were treated as "subjects" living under a regime that did not treat them as citizens—which was the dominant grievance for all Syrians—and treated them in a particularly repressive manner just for being Kurdish. Kurds experienced the loss of their basic rights, including cultural, social, and economic rights, and part of the Kurdish community was deprived of the right to citizenship in the infamous census incident of 1962.

The discriminatory practices against the Syrian Kurds resulted in growing discontent, which reached its peak with the demands of some Kurdish politicians to create a separate entity from Syria. For several decades, the suffering of Kurds was different from one country to another but demands for equal rights with other people in their respective countries remained a common denominator. In Syria, Kurdish voices demanded equal rights, at the minimum, to demanding an independent Kurdish state at the other extreme. With the eruption of the Syrian revolution, the majority of the Kurds were part of the opposition movement. They struggled in different phases of the conflict to extract promises from the Arab opposition factions to recognize the Kurdish rights that had been neglected for several decades. Despite heated discussions, stubbornness, and tensions between both parties, they reached compromises that became the foundation for a discussion about the question of identity in the future Syria.

Indeed, one of the lessons learned from the discussions among the opposition ranks was that having angry discussions and making extreme demands could not create a healthy environment in which they could reach compromises acceptable to everyone. For example, opposition Kurdish factions pushed to remove the word "Arab" from the name of the republic so that it would become "The Syrian Republic," as it was called in the Constitution of 1950. The fact is that removing this word would not change the identity of the Arab majority and would not impact their sense of Arabism, just as its presence in the prior periods did not bestow upon the Arab community any additional advantages under the regimes of the Assad the father and the son. Nevertheless, demographic realities, transparency, and thoughtful discussion should form the foundation of consensus on these issues. Therefore, keeping the word Arab in the name of the Syrian republic, or its basic principle documents, may be acceptable to the Kurds and the other non-Arab components of society no matter how small their numbers are, if this counterbalanced the recognition of diversity and inclusivity of those components both in words and deeds.

The constitutional workshop run by the team at The Day After project has generated plausible suggestions for compromises predicated on important principles for the future constitution. To counterbalance the recognition of Syria's unity, independence, and that it is part of the Arab world (as some reject the term of "Arab homeland"), the constitution can mention Syria's inclusivity of all components, first and foremost would be the Kurds. The proposed wording

was: "recognizing the Kurds, Turkmens, Syriacs, Assyrians, Circassians, and Armenians as part of the Syrian national fabric."[76]

In short, a participatory approach leading to consensus is the only possible path to solve this question. For example, Arab political forces (especially the liberal ones) might accept the Kurd's demand to remove or water down references to the country's Arab identity. However, sharp language and unrelenting insistence during discussions on this matter could create a radical reaction on the other side. This would lead to the use of a national referendum to judge the matter, which unfortunately will not benefit the minority. These factors could explain the support for retaining the language about Arab identity among the majority of respondents to TDA's 2017 poll. 77.8 percent of respondents wanted to mention Syria's Arab identity in the future constitution and 67 percent opposed the removal of the word "Arab" from the official name of the Syrian republic.[77]

- **The Role of Religion in the State**

As seen in the overview of the history of the constitutional experience in Syria, religion has always been present in previous constitutions. Here, it is crucial to state the following points: first, it is essential to differentiate between references to religion, especially Islam, religion's relationship to the state as a kind of identity, and the role of religion as a source of legislation. Most constitutions of Arab states indicate that Islam is the religion of the state, which reflects that Islam is the religion of the majority in these countries and is an indication more of identity than about Islam's role in administering the state. Nevertheless, the previous Syrian constitutions, including the Constitution of 1950, did not say that Islam was the religion of the state, even though the majority of Syrians are Muslim. Most statistics indicate that Sunni Muslims constitute about 80 percent of the population of Syria. The inclusion of Alawites under the umbrella of Islam (as has been the case during the regimes of Hafez and Bashar al-Assad), drives the percentage of Muslims to over 90 percent of the Syrian population. This demographic change reflects a decrease in the percentage of the Christian demographic since independence, which was the reason previous constitutions replaced the reference to the religion of the state to the religion of the president, since he comes from the Muslim majority.

When Hafez al-Assad tried to evade the constitutional provision regarding the president's religion, there were many protests, so he ultimately kept the provision as it was in previous constitutions. He was always keen to utter the Shahadah (the testimony of being a Muslim) and to pray in mosques on religious occasions with official religious leaders, especially in the early 1980s, during the state's campaign against the Muslim Brotherhood and other Islamic groups outside the state control. As mentioned before, the provision that Islam must be the religion of the president of the republic under a pure parliamentary system would not be a big deal in terms of discrimination, since the more critical executive position, the prime minister, would be available for all. This provision matters much must under a presidential or semi-presidential system, where the president enjoys executive powers. In this case, non-Muslims (no matter what percentage they constitute of the population) are deprived of the right to compete for that

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[76] The Day After Project, op. cit., p. 104.
[77] Survey, op. cit., p. 20.

position. Most Syrians, including devoted Muslims, would prefer a democratic president, even a non-Muslim one, to a Muslim dictator.

Accordingly, the recommendation is to keep the provision that the religion of the president must be Islam in the case of a pure parliamentary system, because in this case, Syria would be no less democratic or more religious than the United Kingdom. However, if Syrians prefer a presidential or semi-presidential system, which gives the president executive powers, it would be preferable to remove that religious requirement, with an insistence on constitutional checks and balances that prevent the president, regardless of his religion, from abusing his power. The other observation is that the reference to religion in Syrian constitutions continued to be constant even under the Assads, despite their claims that they were promoting a highly secular order. The role that religion played in pre-Baath era constitution was reduced in the constitutions drafted under the Baath party, which made Islamic jurisprudence "a main source of legislation" instead of "the main source" of legislation, as was the case in the 1950 Constitution.

Syria under the Baath party did not turn into a secular civil state, in the full sense of the term. Syria witnessed a growth in the Islamic revival, just like other countries in the region. The regime also controlled and manipulated the country's formal religious institutions. Although the regimes of Hafez and Bashar al-Assad tried to marginalize religion from public life, as the political Islamic parties perceived it, they were unable to limit the spread of religious manifestations in Syrian society in past decades. As is the case with the section on rights and freedoms in the previous constitutions under the Baath rule, the section related to the role of Islamic jurisprudence as "a source of legislation," was not fully implemented under the Assad regimes. Finally, the "Islam" of Hafez and Bashar and the stipulation that Islamic jurisprudence was a source of legislation, did not stop the two "Muslim" presidents from violating the rights of Muslims, and specifically of Islamists, who were the historical enemies of the regime and who suffered more at its hands than any other component of society.

Syria is facing pressures in this regard. One source of pressure is external, by Russia and some Western countries who have been keen to marginalize the role of religion in the documents they draft. They have insisted on the secular nature of the Syrian state under the pretext of protecting minorities, especially the Alawite minority. This trend is supported by religious and ethnic minorities, such as Alawites, Druze, and non-Muslims (specifically Christians), in addition to some Sunnis, like a large part of the Kurds, and the secular individuals within the Arab Sunni commmnuity. On the other side, there is the practicing and religiously-committed Sunni component, or those affiliated with the political Islam current, in addition to the Salafi entities that grew larger under the repression of the Assad regime during the revolution. These groups, which are not small in terms of numbers or influence, believe that the future constitution should explicitly provide a role for Islam in public life. It was not surprising that 77.9 percent of people surveyed in the 2017 poll from TDA project supported the idea that the constitution should name Islamic Shariah to be "a main" source for legislation, as did the previous constitutions, including the 2012 Constitution of Bashar al-Assad.[78]

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[78] Survey, ibid., p. 19.

In the face of these different views, some of the recommendations made by TDA's team in 2012 might be useful. The two elements agreed upon by representatives of different religious and secular forces were: 1) Islamic Shariah, Christianity, and other religious and other human traditions are sources to inspire legislation; and 2) the state is neutral toward religion, respects its values, and neither compels nor impedes its practice.[79]

For Islamists, the language is much weaker than the wording in the Constitution of 2012. In that constitution, Article 3 declares: 1) The religion of the president of the republic is Islam; 2) Islamic jurisprudence shall be a main source of legislation; 3) The state shall respect all religions, and ensure the freedom to perform all the practices that do not prejudice public order and; 4) the personal status of religious communities shall be protected and respected.[80] The consensus that was reached and accepted by a majority of Islamists was the acceptance of Syria as a "civil democratic" state. Although some of them define the civil state as opposed to a military ruling (which is by definition is not democratic), the civil attribute still means that it is not a theocratic state. This term was accepted by Islamists more than the ill-reputed term "secular" and especially militant secularism.

Perhaps one way to reach a consensus on this issue is to launch an awareness-raising campaign among Islamists to differentiate between secularism that is hostile to religion (the *Laïcité* school of secularism that came from the French experience) and the Anglo-Saxonian school of secularism, which is a model that is not hostile to religion, but instead deals with it in a positive, neutral way. This is the case in the U.S. constitutional model, which does not adopt a religion (or a specific Christian interpretation), but rather respects all religions. It may be useful here to remind Islamists that the accomplishment made by the Justice and Development Party (AKP) in Turkey was in its redefinition of secularism from a concept that is hostile towards religion to one that is neutral towards religion. That could be the main reason for the success of the AKP, which is coming from a religious background to govern a well-established secular country.

- **Rights and Freedoms**

One constructive repercussion of having despotic rule is that it strengthens the feeling of its victims about the importance of upholding and preserving basic human rights and freedoms. On this issue it will not be hard to expand the adoption of human rights and freedoms, benefiting from lessons of the other peoples who also struggled for freedom and dignity. In this context, three questions are worth asking which may require further detailed discussion. First, what are the acceptable terms of reference for human rights in the future Syrian constitution? Second, what are the constitutional guarantees necessary to protect the rights of individuals and religious and ethnic minorities? Third, what level of representation of women that reflects a move towards gender equality in the constitution?

In response to the first question, this issue takes top priority based on the extreme and prolonged suffering of the Syrian people at the hands of the regimes of Hafez and Bashar al-Assad. The Syrian people sacrificed heavily for freedom and dignity and paid a high price in the number

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[79] The Day After Project, op. cit., p. 104.
[80] Article 3, the Constitution of 2012.

of killed, injured, detained, and displaced people. So, it is only logical to expect that if Syrians were free to choose on this issue, they would push for inclusion of all of the political, intellectual, economic, and social rights and freedoms stated in previous constitutions. The Universal Declaration of Human Rights can provide the terms of reference so that no ruler can circumvent political freedoms and civil rights under any pretext, such as cultural peculiarity, resistance and steadfastness, or any other slogan. The poll conducted by TDA project reaffirms this result. A significant majority, 91.6 percent of the people surveyed, supported this when asked about a constitutional provision stipulating the commitment of the Syrian state to international human rights.[81] Also, the more guarantees stated in the constitution for minorities, the more successful the constitutional process is likely to be. The practical experience of the Syrian state since independence has not been one that discriminated against minorities, except in the case of the minority-based Baathist regime against the Kurds.

Since the Baathist coup in 1963, members of the Alawite community enjoyed exceptional advantages, particularly their exclusive leadership of the security institutions and their gradual control over the military establishment, through which they have controlled many critical political and bureaucratic positions in the state. Later on, they extended their control over significant economic sectors in the country, through the privatization of economy almost exclusively to the benefit of Rami Makhlouf, Bashar al-Assad's cousin who has monopolized vital economic activities in Syria under Bashar al-Assad. Significant guarantees are required in any future constitution to reassure minorities, especially the Alawites, that there will be no retaliatory acts against them by victims of the violence practiced by the Assad regime. The best guarantee perhaps is to accompany constitutional guarantees with transitional justice and national reconciliation.

For other minorities, it is vital to address the injustices suffered by the Kurds and to reassure the Christians that they are part of their country so they do not feel alienated in their homeland. As for the majority of the Syrian people, the adoption of administrative decentralization will be a practical complement to their rights and freedoms.

The third issue, gender equality, may benefit from some positive recent developments, the first of which is the fact that women participated in the Syrian revolution and sacrificed as much as men and even more. The Syrian revolution opened new horizons for Syrian women, compared to the Assad regime, which exploited women issues in the name of secularism and a progressive approach. The revolution helped women reach the conviction that gender equality should not be limited to "progressive" regimes, nor should women accept at face value the call for equality by the opposition forces that called for freedom and democracy. Some Syrian women activists made specific demands related to the importance of women's representation in all phases of the political process, including the process of seeking a political solution and drafting a constitution, and ultimately representation in political institutions in the future Syrian state. Syrian feminist groups have also proposed gender-sensitive constitutional principles, such as the full equality between women and men in citizenship rights, equal rights for women and men to hold all positions in the state, and opportunities for representation in all decision-

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[81] Survey, op. cit., p. 19.

making positions.[82]   These principles reflect an emphasis on empowering women to participate publicly in political, economic, and social life. Women have also lobbied and successfully implemented requirements that women make up at least 30 percent of the roles in Syrian opposition institutions. The HNC adhered to that percentage in its vision for a political solution. Finally, upon the adoption of the constitution, there should be a legal framework to protect women's rights, including finding mechanisms to help women get involved in politics through the provision of opportunities for education, training, and family support services. It could be useful in the early stages to create affirmative action-like programs by requiring political parties to allocate advanced posts to women on their lists for elections, following the lead of many countries in Northern Europe.

- **Political System**

The historical experience of Syria shows that the country adopted different forms of political systems for brief intervals, including parliamentary, semi-presidential, and presidential systems. In this context, it is noteworthy that the political system engineered by Hafez al-Assad based on the Constitution of 1973, which continued in the era of his son, is not a presidential system. A presidential system, like that of the United States, is founded on a system of checks and balances between separate branches of government: the legislative, executive, and judicial. In the Assad regime, there is one authority, the president, who dominates over all other institutions. The legislative institution (the People's Council) and the judicial institution (the Constitutional Court and the Supreme Judicial Council) play decorative roles to give the regime the appearance of a structure similar to that of proper political systems. The description provided by a United Nations report on the state of freedom in the Arab world accurately captured the nature of the Syrian regime, as it described the domination of the executive branch over other branches of government as "a black hole" in the space around which the rest of institutions revolve and from which nothing escapes. In this system, the executive branch controls society through the institutions of repression, i.e. intelligence and security agencies.[83] The Syrian regime is a perfect example of the "black hole" model, relying on all forms of repression to reinforce a state of absolute despotism.

The biggest challenge for building a genuine constitutional state for the future of Syria is adopting a political system that provides institutional foundations, most importantly, reducing the powers of the executive branch or presidency. Since the eruption of the revolution in 2011, the Syrian opposition has always preferred a parliamentary system over a presidential system. The idea of a parliamentary system stirs up a nostalgia for the Constitution of 1950, which is considered the most democratic constitution in the history of Syria. However, discussions about the best political system for countries in democratic transition do not necessarily conclude that the parliamentary system is superior to the presidential. Some of the current literature recommends the adoption of a parliamentary system over a presidential system in transitional periods. Arend Lijphart's "Constitutional Choices for New Democracies" highlights that presidential systems, with an electoral system of a single member districts, are more likely to strengthen majoritarian democracy, which usually adopts such a system in transitional periods.

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[82] Syrian Women for Democracy, Gender Sensitive Constitutional Principles for Syria. Brussels, 2016. Similar position is advocated by the newly created organization, The Syrian Women's Political Movement.
[83] UNDP. Arab Human Development Report 2004. New York, NY: UNDP, 2005.

Lijphart recommends parliamentary systems if they are accompanied by proportional representation electoral systems, which would encourage the spirit of consensus in political life and incentivize partnership between political forces. Lijphart concludes that parliamentary systems are better in the following areas: the strengthening the rights of minorities, increasing political participation, and reducing the economic disparity between different components of society.[84] Although Lijphart's recommendations were mainly addressing Latin American states, most of those countries adopted a presidential or semi-presidential system in their transitions.

The point is that regardless of what political system is adopted, legislative authority should be undertaken by an elected parliament that thoroughly performs its legislative powers, in addition to performing oversight of the executive branch of government. However, the main weakness of adopting a parliamentary system while in transition, if applied in the Syrian context, is in the lack of strong political parties, which represent the pillar of the success of the parliamentary system in other contexts. Therefore, this report recommends adopting a semi-presidential system (aka the hybrid system), which maintains the key advantages of the parliamentary system and divides the executive authority between a president, who is elected for a specific term, and a prime minister, who is chosen by the majority party or a coalition with a majority in parliament and who is also accountable to the parliament.

The advantages of a semi-presidential system include: 1) a compromise between the presidential and the parliamentary systems that tries to overcome the shortcomings of each; 2) the weakening of presidential powers, which reduces the likelihood of a president becoming a dictator; 3) reducing the likelihood of instability in transition, with a president overlooking political parties to control their competition and; 4) a balance in authority among the three political bodies: the president, the parliament, and the government led by a prime minister, who is chosen by a parliamentary majority.

Of course, a semi-presidential system has its disadvantages as well, especially if the president has populist tendencies like Putin of Russia, or a specific party like the military holds control, as was the case with Bouteflika of Algeria. With a weak parliament and party system, the structure of a semi-presidential regime can deviate to become a dictatorship. Some steps that might increase the prospects of success of a semi-presidential system are: establishing an independent judiciary; adopting administrative decentralization, which can be further strengthened by a bicameral parliament (a house of representatives and a senate) where the senate represents governorates; and selecting a non-partisan president.

In conclusion, drafting a new constitution for Syria requires, in theory, a process that meets the requirements of inclusiveness, public participation, consensus, national ownership, and deliberation. The process should start by having an impartial transitional governing body that includes representatives of all components of Syrian society, regardless of their size, to supervise the election of a constituent assembly to be tasked with drafting a new constitution based on the historical experiences of Syria and the success stories of similar countries. It is vital that the submission of the draft constitution to a genuine referendum be preceded by

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[84] Arend Lijphart, "Constitutional Choices for New Democracies," in Larry Diamond and Marc F. Plattner, eds. The Global Resurgence of Democracy. Baltimore, MD: Johns Hopkins University Press, 1996, pp. 162-74.

serious dialogue and an awareness-raising campaign about the constitutional process and dissemination of the culture of consensus. It is only reasonable that this process come in the context of a political solution on the bases adopted by the United Nations, accompanied by national reconciliation, transitional justice, and restructuring of the security sector. Finally, a sound process for drafting a constitution will mark the beginning of a constitutional state for Syria that lays the foundations of the rule of law, preserves the rights and freedoms of citizens, and empowers citizens to be creative. Since democratic systems, which are the fruit of constitutionalism, might be vulnerable to decline, such systems require vigilant and constant care.