

Review of Zaid Al-Ali, *Arab Constitutionalism: The Coming Revolution*

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Zaid Al-Ali's book *Arab Constitutionalism: The Coming Revolution* is a journey through the numerous constitutional transformations that have taken place in the Arab world since the 2011 uprisings. The volume not only explains why in most cases the new constitutional frameworks failed to respond adequately to the people's demands and needs, but it also indicates what choices and actions should be made in the future, in case of new mass protests or uprisings, in order to contribute to the creation of more democratic and better-functioning societies in the region. Al-Ali convincingly argues that "there was nothing inevitable" in the failure of these constitutional processes, and that "there was a period in time in all of the countries that were impacted by the 2011 uprisings where everything was possible."¹ He observes that state officials who held the reins of power especially during the first years of the transitions often made wrong decisions that had very negative consequences on the outcome of these processes. Al-Ali's central claim is that countries that are now experiencing a constitutional transition or that are likely to experience it in the future should learn from the mistakes made during the post-2011 processes. In this regard, he offers a series of alternative approaches to constitutional design and processes, arguing that "reshaping society along more democratic lines is achievable."² In this way the *pars destruens* (i.e., what went wrong following the 2011 uprisings) is complemented by the *pars construens* (i.e., what should be done in future processes). Thus, in a nutshell, the book is about how a (constitutional) failure can be transformed into a (constitutional) hope.

All this is reflected in the structure of the book, which is divided into two parts. The first one, titled "The Uprising," examines the constitutional transitions in Tunisia, Egypt, Yemen, Libya, Jordan, Morocco, Sudan, and Algeria, following a country-by-country approach. After briefly recalling the main steps of the constitutional history in each of these states, Al-Ali provides a very detailed analysis of the most important procedural and substantive issues that each country had to face following the 2011 upheavals. Furthermore, he provides an assessment of the new (provisional or permanent, depending on the cases) constitutional arrangements. In the second part of the book, titled "Revolution," Al-Ali develops the argument according to which "real revolution has yet to be achieved,"³ proposing alternative paths for future constitutional processes in the region. Here the author abandons the country-by-country approach and proceeds thematically. Specifically, he explains what a constitution's purpose should be, and how the relationship between the individual and the state should evolve. Furthermore, he calls for the end of the hyper-presidential systems that have thus far characterized almost all Arab countries, and argues that future constitutional reform processes should guarantee greater inclusivity. Finally, he explores how international actors could provide better assistance during constitutional negotiations and suggests that these actors should be subjected to some form of institutional or individual accountability mechanisms to ensure they "will invest greater effort to offer more constructive advice on constitution building."⁴

The combination of Part I and Part II is rewarding. On the one hand, Part I—which is more descriptive—provides the details and nuances of each constitutional process that only a country-by-country approach can offer. On the other hand, Part II—which is more analytical—offers a bird's-eye view on a series of cross-cutting topics and issues that are relevant to all countries

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1. Zaid Al-Ali, *Arab Constitutionalism: The Coming Revolution* (Cambridge University Press, 2021), 3.

2. *Ibid.*, 8.

3. *Ibid.*

4. *Ibid.*, 311.

involved in the uprisings. What is missing is a concluding chapter at the end of both Part I and Part II. Al-Ali might consider adding these final chapters in a second edition of the volume. This addition should be aimed at bringing things together, recalling the main arguments made in the preceding sections and drawing some concluding remarks. In my opinion, these final chapters would convey the author's message even more clearly, thus making the book all the more powerful.

Another major strength of the book consists in the fact that Al-Ali—in his capacity of senior adviser in constitution-building in the Arab region for International IDEA—experienced firsthand many of the post-2011 constituent processes. As Tom Ginsburg put it in his endorsement to the book, “for a decade, Zaid Al-Ali has had a front row seat to the most turbulent period of constitutional reform the Arab world has ever seen.”⁵ Hence the numerous references made by the author to episodes, dialogues, and meetings he experienced, a fact that allows readers to better understand certain dynamics, practices, and ways of thinking in a region that is not always easy to decipher. The result is that, in addition to the theoretical dimension typical of an academic book, *Arab Constitutionalism* combines a practical and concrete approach, which is a distinguishing feature of the practitioner who has worked extensively on the ground. From this point of view, the book is in continuity with Al-Ali's previous monograph,⁶ in which he explains, also in the light of his experience as legal adviser to the United Nations in Iraq, the main reasons for the failure of the Iraqi constitution-building process. It comes as no surprise, then, that *Arab Constitutionalism* contains a number of references to the 2005 Iraqi Constitution adopted after the fall of Saddam Hussein, a text that represented a sort of anticipation of the ‘post-Arab Spring’ generation of constitutions.

The abovementioned practical approach is reflected in the writing style. First, the language used by the author, while technical, is very clear, concise, and direct, without unnecessary elaboration. Second, paragraphs are labeled throughout the book: labeling not only helps highlighting key concepts, but also allows readers to find more easily what they are looking for (e.g., a country, an event, a topic, a period of time . . .). Third, the book constantly alternates profound and wide-ranging reflections on constitutional design and processes with specific, concrete examples of the post-2011 transitions, in a way that implicitly reminds that even the noblest form of lawmaking (i.e., *constitution* making) always needs to be embedded in the context. All these aspects make the book extremely accessible. It should also be noted that the volume is characterized by an interdisciplinary approach, which is essential for this kind of work. Thus, although *Arab Constitutionalism* is clearly a book on comparative constitutional law, it also largely relies on the contribution of political scientists, historians, and economists.

Al-Ali's most pressing call is to rethink the relationship between the individuals and the state so that the demands of the former are better addressed in the future constitutional frameworks. With the only (partial) exception of the 2014 Tunisian Constitution, all other post-2011 constitutional texts and processes continued to be characterized by a series of major democratic shortcomings that prevented the people from becoming the real sources of power. Indeed, the impression is that far from belonging exclusively to the people, sovereignty in most Arab countries continues to be *held* (and not only exercised) also by other subjects, namely political (and sometimes also military) leaders.⁷

From a procedural standpoint, Al-Ali invites Arab drafters, *inter alia*, to favor inclusivity as much as possible during the constituent processes in order to facilitate the adoption of consensual constitutions, which are more likely to enjoy legitimacy among the population. He also recommends paying special attention to the drafting of the rules of procedure, as they often have a profound impact on the outcome of the constitution-making processes. Furthermore, the author highlights the importance of adopting provisional constitutions after the collapse of longstanding autocratic

5. Tom Ginsburg's endorsement to the book can be found here: www.cambridge.org/core/books/arab-constitutionalism/06A2B9B1D551755CC62751AAAC00B283#fndtn-information.

6. Zaid Al-Ali, *The Struggle for Iraq's Future: How Corruption, Incompetence and Sectarianism Have Undermined Democracy* (Yale University Press, 2014).

7. Francesco Biagi, *Constitution-Building after the Arab Spring: A Comparative Perspective* (Cambridge University Press, 2025), 138.

regimes. These interim arrangements should guarantee a temporary system of government and should also “prioritize specific areas for reform in order to deliver immediate improvements to the general population.”⁸

From a substantive point of view, Al-Ali argues that future constitutions should abandon the over-concentration of power (both in horizontal and vertical terms), rethink judicial culture, and ensure that the role of judges (including constitutional judges) is that of protecting “personal freedom from the abuse of executive authority while at the same time helping to achieve social justice.”⁹ Moreover, he stresses the need to reinforce the mechanisms aimed to protect fundamental rights (for example through the inclusion of “limitation clauses” in the constitutions) and facilitate the enforcement of these rights (particularly socio-economic rights, which in many cases have remained little more than a dead letter). Al-Ali shows that the causes for many current pathologies affecting Arab constitutional systems can be found in their constitutional history. For example, the over-concentration of authority in the hands of a single individual or institution date back to the colonial rule, was then perpetuated during the post-colonial period, and still nowadays remains (with very few exceptions) one of the major weaknesses of Arab constitutional frameworks. Marking a clean break with these past practices is thus a *condicio sine qua non* in order to establish democratic states based on the principles of constitutionalism.

Not surprisingly, while making his recommendations for future constitutional reform processes, Al-Ali relies on comparative models. The obvious question that immediately arises is the following: What models should be considered? Al-Ali suggests that Arab drafters expand their horizons. Indeed, he rightly stresses that one of the manifestations of the “cultural limitation” that characterizes most Arab lawyers is “the near constant references to France and the United States as source of inspiration, despite the very significant constitutional developments that were taking place in other parts of the world, including in Africa and Latin America.”¹⁰ Thus, for example, while exploring alternative options for future constitution-making processes, Al-Ali refers to the case of Kenya, which saw the involvement of both a political and a technical body in the constituent process. And when discussing the fact that in most cases the socio-economic rights proclaimed in the new Arab constitutions were not enforced, he examines the mechanisms provided for in South Africa and Colombia to facilitate the implementation of these rights. In recent years, prominent scholars¹¹ have stressed the need to also consider countries of the Global South in comparative studies. Al-Ali’s book shows that going beyond the Euro-Atlantic horizon, especially when it comes to constitution-building processes, is not just a possibility or a show of erudition, but rather an essential need.

Al-Ali’s book is clearly in conversation with other scholarly works that have examined post-2011 constitutional transitions,¹² but more generally it is also an extremely valuable contribution to the studies of comparative constitution-making, which is a growing strand of research among constitutional scholars.¹³ *Arab Constitutionalism* is thorough in its analysis, robust from a methodological point of view, and persuasive in its arguments. It is a must-read not only for scholars and practitioners interested in constitutional reform processes in the Arab region, but also for all those actors who—at different levels and in different ways—are shaping the new constitutional

8. Al-Ali, *Arab Constitutionalism*, 283.

9. *Ibid.*, 224.

10. *Ibid.*, 268.

11. Ran Hirschl, *Comparative Matters: The Renaissance of Comparative Constitutional Law* (Cambridge University Press, 2014), 205ff.

12. See, for example, Rainer Grote and Tilmann J. Röder, eds., *Constitutionalism, Human Rights, and Islam after the Arab Spring* (Oxford University Press, 2016); Nimer Sultany, *Law and Revolution: Legitimacy and Constitutionalism After the Arab Spring* (Oxford University Press, 2017); Tofiq Maboudi, *The “Fall” of the Arab Spring: Democracy’s Challenges and Efforts to Reconstitute the Middle East* (Cambridge University Press, 2022); and Biagi, *Constitution-Building after the Arab Spring*.

13. Tom Ginsburg, Zachary Elkins, and Justin Blount, “Does the Process of Constitution-Making Matter?,” *Annual Review of Law and Social Science* 5 (2009): 201ff.; Claude Klein and András Sajó, “Constitution-Making as a Process,” in *The Oxford Handbook of Comparative Constitutional Law*, ed. Michel Rosenfeld and András Sajó (Oxford University Press, 2012), 419ff.; and David Landau and Hanna Lerner, eds., *Comparative Constitution Making* (Edward Elgar, 2019).

arrangements after the fall of a dictatorial regime. One cannot help but immediately think of current Syria, which is now dealing with an extremely challenging political and constitutional transition after Bashar al-Assad was ousted from power in December 2024. The recommendations on constitutional design and processes made by Al-Ali in this book could not be more timely.

References

- Al-Ali, Zaid. *Arab Constitutionalism: The Coming Revolution*. Cambridge University Press, 2021.
- . *The Struggle for Iraq's Future: How Corruption, Incompetence and Sectarianism Have Undermined Democracy*. Yale University Press, 2014.
- Biagi, Francesco. *Constitution-Building after the Arab Spring: A Comparative Perspective*. Cambridge University Press, 2025.
- Ginsburg, Tom, Zachary Elkins, and Justin Blount. "Does the Process of Constitution-Making Matter?" *Annual Review of Law and Social Science* 5 (2009): 201–223.
- Grote, Rainer, and Tilmann J. Röder, eds. *Constitutionalism, Human Rights, and Islam after the Arab Spring*. Oxford University Press, 2016.
- Hirschl, Ran. *Comparative Matters: The Renaissance of Comparative Constitutional Law*. Cambridge University Press, 2014.
- Klein, Claude, and András Sajó. "Constitution-Making as a Process." In *The Oxford Handbook of Comparative Constitutional Law*, edited by Michel Rosenfeld and András Sajó. Oxford University Press, 2012.
- Landau, David, and Hanna Lerner, eds. *Comparative Constitution Making*. Edward Elgar, 2019.
- Maboudi, Tofigh. *The "Fall" of the Arab Spring: Democracy's Challenges and Efforts to Reconstitute the Middle East*. Cambridge University Press, 2022.
- Sultany, Nimer. *Law and Revolution: Legitimacy and Constitutionalism After the Arab Spring*. Oxford University Press, 2017.