# GOVERNING DIVERSE SOCIETIES AND THE LIMITS OF CONSTITUTIONALISM IN SYRIA

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ABSTRACT

*This Article attempts to show how episodes of constitutional bargaining reinforced, consolidated, and institutionalized the patterns of ethnic or sectarian political exclusion and marginalization that warped the meaning and practice of citizenship, and contributed to conditions that eventually sparked the Syrian uprising of 2011. Beginning in the Ottoman period, and ending with President Bashar al-Assad's amendments of 2012, this Article examines the role of various ethnic and sectarian components, and when they managed to bargain, if at all, with political leaders at various historical junctures for their interests. The Article then discusses the author's participation in the most recent constitutional drafting process, the UN facilitated constitutional committee, and how various conflicts from Syria's history continue to permeate its constitutional discussions. The Article also reflects on constitutionalism within contemporary Syria, ultimately arguing that liberal constitutionalism is unlikely to provide an appropriate blueprint for a harmonious, diverse Syrian society.*

CONTENTS



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## I. INTRODUCTION

Anyone looking at Syria today will immediately recognize how physically divided and destroyed the country is following a decade of brutal warfare. The current leader of Syria, President Bashar al-Assad, has ruled over a country that witnessed a bloody uprising since March 2011, leaving hundreds of thousands of dead,[1] at least 100,000 disappeared, and 12.3 million displaced within and outside of Syria.[2] Syria's capital, Damascus, was once home to one of the first Arab parliaments in 1920, and produced a constitution by an elected parliament in 1950. Yet a more critical view of Syria's constitutional history and its most recent uprising offers disturbing evidence of the limits of constitutionalism in the creation of inclusive, accountable forms of governance.

Since the fall of the Ottoman Empire, the country's various leaders have utilized constitutions as a means to undergird the creation of an independent state called Syria. Ironically, both the earliest (1920) and latest attempts (today's committee) to unify the population involved the drafting of a constitution. Syria has had multiple experiments with constitutional drafts—eleven different enacted constitutions since 1920 to be exact.[3] But even

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[1] *Civilian Death Toll*, SYRIAN NETWORK FOR HUM. RTS. (June 14, 2023), https://snhr.org/blog/2021/06/14/civilian-death-toll/.

[2] HUM. RTS. WATCH, WORLD REPORT 2022: EVENTS OF 2021, at 639 (2022), https://www.hrw.org/sites/default/files/media_2022/01/World%20Report%202022%20web%20pdf_0.pdf.

[3] *Constitution of the Syrian Arab Republic,* SYRIAN L.J., https://www.syria.law/index.php/main-legislation/constitutional-law/ (last visited Mar. 13, 2024). There were also

President Bashar al-Assad's feigned attempt to quell protesters in 2012 with non-substantive amendments to the constitution only confirms that in the Syrian context, constitutional design is a tool that continuously reinforces political, social, and economic exclusion of various parts of society. With every new constitution, with limited exceptions for particular articles, the constitution is not a manual delineating the "rules of the game" of a diverse society, but rather a document that enshrines an almost total monopoly on power, governance, and resources by the ruling party and/or ideology at the time.

I joined the most recent constitutional experiment in 2019, in a process dubbed the UN-facilitated Syrian constitutional committee, as a member of the civil society portion of the committee. I initially had high hopes that liberal constitutionalism would prove to be the antidote to Syria's woes. I was under the impression that Syria's struggle with citizenship, inequality among its diverse citizens, and the constant struggle for power between a central and local government could all be effectively addressed with a liberal constitution—if only it could be written and implemented. I further hypothesized that such a constitution, once written, would easily receive the support of the majority of Syria's population. The only thing preventing this was the absence of a document and the will to apply its articles in practice. But my front-row participation in this process left me with the undeniable fact that in Syria, to many of its ethnic and sectarian components, compromise can and often does lead to exclusion and subjugation. It also left me with the realization that liberal constitutionalism, despite enjoying success in many western countries, was simply not a replicable model for Syria, whose history and society requires a different model to achieve lasting, genuine stability and peace.

This Article attempts to show how episodes of constitutional bargaining reinforced, consolidated, and institutionalized the patterns of ethnic or sectarian political exclusion and marginalization that warped the meaning and practice of citizenship, and contributed to conditions that eventually sparked the Syrian uprising of 2011. Beginning in the Ottoman period, and ending with President Bashar al-Assad's amendments of 2012, I examine the role of various ethnic and sectarian components, and when they managed to bargain, if at all, with political leaders at various historical junctures for their interests.

I then discuss my participation in the most recent constitutional experiment—led by the UN in 2019 and still technically ongoing—and how various conflicts from Syria's history continue to permeate and sometimes dominate its constitutional discussions.

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two drafts that were not formally adopted in 1920 and 1949. There were also a number of constitutive texts that were not officially presented as constitutions but had constitutive powers.

Finally, I reflect on constitutionalism within contemporary Syria. I ultimately argue that liberal constitutionalism is unlikely to provide an appropriate blueprint for a harmonious, diverse Syrian society. While I do not have an alternative model that fits Syria's context, I do believe it is an important conclusion nonetheless to acknowledge that constitutionalism does not offer the solutions Syrian society is searching for.

## II. SYRIA'S CONSTITUTIONAL HISTORY

To understand Syria's ethno-sectarian dynamics and the impact this had on its constitutional outputs, it is best to start with waning years of the Ottoman Empire—a time period that proved to be formative for Syria's varied ethnic and sectarian communities during the mandate period and after independence.

Beginning in 1839, the Ottoman Empire was fairly identified as a vulnerable, declining Empire. Deteriorating economic conditions opened a pathway for Europe to stipulate conditions, including what is most relevant to this Article: the legal status and equality of non-Muslim citizens in the Empire.[4] The *tanizmat* reform period, which began in 1839 and continued until the end of the nineteenth century, was first and foremost an attempt by the Ottomans to prevent collapse of the Empire and to recover from the Capitulations the Ottomans had made to Europe, particularly financial capitulations to European merchants.[5] Although the *tanizmat* were independent from the Ottoman Constitution of 1876, they nonetheless help us understand the grievances of local non-Muslim communities both during this time period and in some cases long after the Empire's collapse.

During the *tanzimat* reform period, Europeans, in addition to enforcing protection of their own merchants, enforced protection for their local agents—usually indigenous religious minorities, Christians and Jews.[6] In some cases, they funded education in those communities to prepare "them to serve as agents of European commercial and diplomatic interests."[7] *Tanizmat* reforms, on paper at least, required equality in treatment for all the subjects of the Sultan regardless of religion, and established separate court systems

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[4] Benjamin White, *The Nation-State Form and the Emergence of 'Minorities' in Syria, 1919-1939*, 7 STUD. ETHN. NATL. 1, 220 (2007). White expertly explains here that non-Muslims were not subordinated because they were a *minority*—because they were not always a minority—but rather because they were "non-Muslims."

[5] *Ottoman Empire: The Tanzimat Reforms (1839-76),* BRITANNICA, https://www.britannica.com/place/Ottoman-Empire/The-Tanzimat-reforms-1839-76 (last visited Mar. 13, 2024).

[6] PHILIP S. KHOURY, URBAN NOTABLES AND ARAB NATIONALISM: THE POLITICS OF DAMASCUS, 1860-1920, at 6 (Univ. Press 1st ed. 2003).

[7] *Id.*

for the various confessions.[8] It expanded the rights and freedoms of non-Muslims to organize their communities, practice their beliefs, engage in missionary work (proselytizing only to non-Muslims),[9] and build houses of worship. The concessions made by the Sultan to European powers were carried out by an Ottoman system ill-equipped to translate changes from the top to the average social bases, ultimately resulting in the decentralization and devolution of power in a way that irreversibly weakened the Sultan's authority.[10]

It was largely, but not entirely, externally driven pressures—European-Ottoman tensions and the Capitulations to be precise—that eventually spurred the drafting of the first Ottoman Constitution in 1876. By this time, the *tanzimat* had also produced a class of bureaucrats that began to demand space for their visions and interests as well. In a desperate attempt to salvage the Empire from internal and external forces, a group of senior officials, military leaders, and religious scholars were appointed by Sultan Abdel Hamid II to draft the constitution.[11] It was published in several languages, including the original in Ottoman Turkish, Arabic, and Persian. Other "non-Muslim" were versions produced, mostly translated from the original into French, and then into Armenian, Bulgarian, Greek, and Ladino.[12] The translations contained minor differences on the issues of minorities' engagement with local level governance bodies.

The constitution can best be described largely as a communal constitution. In other words, it did not rely on recognizing the right of individuals, but rather recognized the rights of particular community components within the Empire. For example, in Article 11, the constitution guaranteed religious freedom for recognized religious communities, but not freedom of conscience and belief for individuals.[13] Islam remained very much the state religion, and remained dominant in institutional and symbolic ways, reinforced in Articles 3 and 4, for instance, that affirmed the Sultan as the "protector of the Muslim religion" ruling over the "Supreme Caliphate of

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[8] *Tanzimat*, BRITANNICA, https://www.britannica.com/event/Tanzimat (last visited Mar. 13, 2024).

[9] FABRICE BALANCHE, SECTARIANISM IN SYRIA'S CIVIL WAR: A GEOPOLITICAL STUDY 110 (2018), https://www.washingtoninstitute.org/policy-analysis/sectarianism-syrias-civil-war-geopolitical-study.

[10] *Ottoman Empire - The Tanzimat Reforms (1839-76)*, *supra* note 5.

[11] NATHAN J. BROWN, CONSTITUTIONS IN A NONCONSTITUTIONAL WORLD: ARAB BASIC LAWS AND THE PROSPECTS FOR ACCOUNTABLE GOVERNMENT 23 (State Univ. of N.Y. Press 2002).

[12] Johann Strauss, *A Constitution for a Multilingual Empire*, *in* THE FIRST OTTOMAN EXPERIMENT IN DEMOCRACY (Christoph Herzog & Malek Sharif eds., 2010).

[13] E-mail from Dr. Nathan Brown to Jomana Qaddour (Dec. 5, 2022) (on file with author); THE OTTOMAN CONSTITUTION Dec. 23, 1876, art. 11.

Islam."[14] Article 16 focused on education provided by the state and under state supervision, but ensured the right of religious community schools to exist, allowing Jews and Christians to run legally-sanctioned schools for their own communities, often funded by foreign philanthropy.[15]

In theory, the constitution attempted to further the notions of equality between Muslims and non-Muslims. In Article 17, the constitution states that "all Ottomans are equal in the eyes of the law. They have the same rights, and owe the same duties towards their country, without prejudice to religion."[16] Additionally, criteria for government employment, outlined in both Articles 18 and 19, articulates that merit, fitness, and ability would be the only factors considered for public employment, with the caveat that one speaks Turkish, with no mention of religion.[17]

Meanwhile, the Empire's attempt to reduce the perception of Muslim domination triggered sectarian clashes among citizens. A series of events, beginning in Mount Lebanon between Druze landlords and Christian farmers,[18] led to massive violence and displacement between sects. In 1847 in Aleppo, riots against the Jewish community and their businesses caused the death of seventy-five Jews and hundreds were injured.[19] In 1850 the city was the site of a pogrom against the Christians of the city killing seventy and injuring thousands, including Peter VII Jarweh, the Syriac Catholic Patriarch.[20] In 1860, another massacre occurred in Bab Tuma against the city's Christians, resulting in the death of at least 6,000.[21] The "top-down

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[14] THE OTTOMAN CONSTITUTION Dec. 23, 1876, arts. 3-4.

[15] E-mail from Dr. Nathan Brown to Jomana Qaddour, *supra* note 13; THE OTTOMAN CONSTITUTION Dec. 23, 1876, art. 16.

[16] THE OTTOMAN CONSTITUTION Dec. 23, 1876, art. 17.

[17] *Id.* at arts. 18-19.

[18] *The Massacres of 1840-1860 in Mount Lebanon,* KOBOYAT, https://www.kobayat.org/data/documents/historical/massacres1840.htm (last visited Mar. 13, 2024).

[19] *Anti-Jewish Riots in Syria*, N.Y. TIMES (Dec. 3, 1947), https://www.nytimes.com/1882/10/01/archives/the-antijewish-riots.html.

[20] Bruce Masters, *The 1850 Events in Aleppo: An Aftershock of Syria's Incorporation into the Capitalist World System,* 22 INT'L J. MIDDLE E. STUD. 3 (1990); *see also* Feras Krimsti, *The Aleppo Incidents of 1850: A Study in the Form and Impetus of Urban Violence During the Early Ottoman Tanzimat*, 1 OSTOUR 120 (2015), https://ostour.dohainstitute.org/en/issue001/pages/art07.aspx.

[21] The Bab Tuma massacre was an infamous incident that took place in the heart of Damascus, in what is known as the Bab Tuma Christian quarter. In July 1860, mobs of Bedouin, Druze, and other neighboring villages, and Kurdish auxiliaries, took part in an eight-day massacre and pillage that led to the deaths of approximately 6,000 people. This particular incident sparked a mass exodus of Christians to Mount Lebanon and Beirut, most of whom did not return because they did not feel Damascus would be safe enough for their return. This particular incident also re-empowered the Ottoman government, which made a point of coming to the Christian community's aid, arguing that the Sunni Arab elite in Damascus had proven unable and/or unwilling to provide adequate protection of the city's Christian

disestablishment of a system of symbolic and legal Muslim supremacy" (without preparing its elite or subjects for the changes) spurred resentment within a Muslim majority.[22] To some scholars, it is likely that the Empire pushed forth these constitutional mandates simply to slow the Empire's death and stymie growing separatist demands.[23]

After a mere two years, attempts by "some parliamentarians to realize the constitutionalist potential of the 1876 constitution," including the removal of some powers away from the sole authority of the Sultan, led to the document's suspension until 1908.[24] In 1908, a coup by the Young Turk movement forced the Sultan to reinstate the constitution with amendments, permitting some genuine power sharing opportunities with Parliament.[25]

### *A. Fall of Empire, Syria is Born*

By the last decade of the Empire, much of the elite in Damascus, dubbed the 'urban notables' by scholar Philip Khoury, had successfully secured their local stature, monopolized the highest local posts in Ottoman civil bureaucracy, and enjoyed significant landholdings and access to markets.[26] Although most of Arab society had no access to the privileges held by the urban notables, they too were relatively comfortable with the status quo of the Empire, which increasingly looked more like an "Islamic State of Turks and Arabs."[27] In general, the "Syrian-Arab masses were loyal to their [local] leaders and Islam and generally those leaders were loyal to the Sultan."[28] To some extent, even the Christian and Jewish communities had come to feel more comfortable with the status quo in the last decade, given the protections and access that European powers had secured for them via the Capitulations.[29]

Nonetheless, tensions between Turkish-centric policies of the Empire and the Arab elites were growing, partly due to the fact that Arab elites were wary of losing their economic and local standing. Following the Young Turks' rise

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population. KHOURY, *supra* note 6, at 8.

[22] Ussama Makdisi, *The Problem of Sectarianism in the Middle East in an Age of Western Hegemony*, *in* SECTARIANIZATION: MAPPING THE NEW POLITICS OF THE MIDDLE EAST 28 (Nader Hashemi & Danny Postel eds., 2017).

[23] BROWN, *supra* note 11, at 23.

[24] *Id.*

[25] *Id.* (exploring the specifics of the fall out between the Parliament and cabinet (implicitly the Sultan here), over a variety of issues, including the parliament voting no confidence for five of the ministers and attempting to pursue criminal accountability of the former grand wazir).

[26] KHOURY, *supra* note 6, at 3.

[27] *Id.* at 54.

[28] *Id*. at 58.

[29] *Id.* at 6.

to power in 1908, the Committee of Union and Progress (CUP)—the party associated with the Young Turks—increasingly and aggressively Turkified the state.[30] The imposition of Turkish as the mandatory and primary language in government schools, the judicial system, and local administration angered the Syrian Arab population.[31] Arab officials—including the elites—were replaced with Turkish officials.[32]

It was in response to the forceful measures promoted by the CUP to Turkify the Arab components of the dying Empire that the ideology of Arab nationalism (both secular and religious forms) found oxygen—an ideology that ultimately impacted all Syrian constitutions to come. Secular Arab nationalist ideology, developed by Christian Arabs in the last half of the nineteenth century, was designed by Syrian Christians, who, culturally Arab, sought a way to be recognized as equals with Muslims.[33] Meanwhile, religious Arab nationalists sought to reinstate a time when Arab Islam dominated the religious culture. They blamed corruption and incompetent Turkish rule for the decline of Islam and the Empire.[34]

Until the Empire dissolved, Arab nationalists attempted to strike a bargain focused solely on establishing a decentralized model of governance with the Empire, whereby Arabs would have more autonomy but would still remain part of the Ottoman political structure. Syrian Arabists were a minority and devoid of any real power on the ground to create military momentum to accompany their ideological rebellion, and they did not openly push for cessation. It was only years later, in 1918, when European troops, as well as Sherif al-Hussain's troops (King of Hijaz and caretaker of Mecca) occupied the Empire that the idea of a separate Arab state was seriously considered.[35]

During World War I, the Arabs, as Ottoman subjects, initially fought alongside the Empire's forces. A year into the war, the British became desperate for an ally in their battle against the Ottomans at Gallipoli. To secure additional troops, the British entered into what is now known as the McMahon-Hussain correspondence. In the correspondence, Sherif al-Hussain agreed to organize a revolt against the Ottoman Empire to "defend the sovereignty of Arabs and Islam."[36] In exchange, the British would ensure Arabs an independent state in Greater Syria, Iraq, and the Arabian Peninsula, with the exception of the Levantine coast, and southern Iraq, along the Arabian Gulf border, which was occupied by the British and their local

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[30] *Id*. at 58-59.

[31] *Id.*

[32] *Id.*

[33] *Id.* at 96.

[34] *Id.*

[35] *Id.* at 97-98.

[36] ELIZABETH F. THOMPSON, HOW THE WEST STOLE DEMOCRACY FROM THE ARABS 5 (First Grove Atl. 2021).

clients.[37] What the British failed to disclose during this time was the secret Sykes-Picot agreement of September 30, 1916, that awarded France the Syrian-Lebanese coast and southeastern Turkey, and gave Britain Iraq from Baghdad to the South, and would create an international zone in Palestine.[38] In other words, Sykes-Picot essentially created a semi-independent Arab state split between the French and British zones of influence.[39]

To uphold his father's end of the bargain, Faisal, son of Sherif al-Hussain, sought to recruit Arab support to fight alongside British forces. It was not with ease that he would be able to do so: despite growing tensions and grievances, the Empire was still revered as *the* Islamic Empire.[40] Locally at play was also the politics of the urban elite, especially in key cities like Damascus, where the "aristocracy of service" was committed to whatever ruling entity would assume power.[41] They needed assurances that their interests would remain preserved if the Empire was to fall.

Eventually, Faisal galvanized a force of close to 12,000 troops (mostly Syrians, especially those deserting the Ottoman army during its retreat).[42] But immediately after German and Ottoman flight from Damascus in October 1918 (the latter of which left with sizable tax revenues),[43] it became apparent that the British did not intend to uphold their end of the McMahon-Hussain letter promises. The British sent troops to lay claim to Damascus, and Faysal was informed that he would be reporting to a French liaison and that Syria would only include landlocked Syria only, but no territories beyond this.[44] In response, Faysal created a regime staffed by soldiers and bureaucrats from across Greater Syria (modern day Syria, Lebanon, Jordan, and Palestine/Israel).[45] The Arab Army continued northward toward Homs, then to Aleppo, in their attempt to create a *fait accompli* to challenge the British and French's delineation of territory, which would remain contentious for the entirety of the mandate period.[46]

In the years following the Empire's collapse, millions of Syrians were hungry, homeless, and jobless; most homes were led by widows.[47] Faisal and

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[37] *Id.* at 13-14; *see also* Royal Inst. Int'l Affs., *The McMahon Correspondence of 1915-16*, 16 BULLETIN INT'L NEWS 6, 7-9 (Mar. 11, 1939), https://www1.udel.edu/History-old/figal/Hist104/assets/pdf/readings/13mcmahonhussein.pdf.

[38] THOMPSON, *supra* note 36, at 14.

[39] *Id.*

[40] KHOURY, *supra* note 6, at 78.

[41] *Id*. at 81.

[42] THOMPSON, *supra* note 36, at 6.

[43] *Id.* at 23.

[44] *Id.* at 8-12.

[45] *Id.* at 16.

[46] *Id.* at 17.

[47] *Id.* at 24-26.

his government desperately tried to rally local support outside of the Muslim and Arab communities. He knew that European powers were primarily interested in non-Muslim communities in the region, and he quickly attempted to negotiate with minority communities about their needs in exchange for their pledging support to an Arab state.[48] Using Arab nationalist ideas, he was able to secure some Christian support: the Greek Orthodox leadership hailed the creation of an "Arab nation;" meanwhile, some of the Maronite community also stood behind him.[49] Aleppo, however, posed a real challenge to Faisal's attempt to rule, given the city's strong ties to the Ottomans and the Turks and what it stood to lose as a result of it being a crucial "transition zone between Arabic-speaking Syria, Kurdish highlands to the north and east, and Turkish and Armenian regions to the north and west."[50] The presence of a major Armenian refugee community in Aleppo also resulted in a massacre of Armenians in 1919, as competition for food and jobs in the now destitute city raged on—an issue the French seized on to show Christian neglect by Muslims and their inability to govern an independent state.[51] It was eventually the opposition to French encroachments that led Aleppo to agree to unify with Damascus—and it did so in the name of Arabness, given Syrianness was not an active rallying call

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[48] For example, Faisal and his administration made specific overtures to the Jews of Damascus, vowing that there would be no distinction based on religion, race, or community. But in the peak era of nation state creation, the Jews of Damascus were torn between overtures made by the Zionist Movement and their seemingly utopian cause to build a Jewish state in Palestine, or maintaining their familiar, communal identity, separate and distinct from the majority of society, within a new Arab state. YARON HAREL, ZIONISM IN DAMASCUS: IDEOLOGY AND ACTIVITY IN THE JEWISH COMMUNITY AT THE BEGINNING OF THE TWENTIETH CENTURY (I.B. Tauris 1st ed. 2015). Throughout the book, the author details the evolution of the Syrian Jewish community in Damascus between the years 1908 and 1923, from rise of the Young Turks, to the fall of the Ottoman Empire, and the positioning of this community between various movements, including Turkish and Arab nationalism, the French mandatory power, and the Jewish Zionists that were attempting to make inroads into the community geographically closest to Jerusalem of any other Jewish community. This Article does not discuss the role of the Jewish community in Syria primarily because they did not have much impact on constitutional drafting throughout modern Syria. *See also* JOSHUA CASTELLINO & KATHLEEN A. CAVANAUGH, MINORITY RIGHTS IN THE MIDDLE EAST 90 (Oxford Univ. Press 2013). The Jewish population numbered close to 430,000 by 1948, at which point mobs attacked the Jewish community, and in Aleppo in particular, more than 200 schools, homes, and business were attacked. As of the early 2010s, the Jewish community in Syria was estimated to be 100-200 maximum; today, only four known Jews live in the country. *Jews in Islamic Countries: Syria*, JEWISH VIRTUAL LIBR., https://www.jewishvirtuallibrary.org/jews-of-syria (last visited Apr. 1, 2024); *see also* CASTELLINO & CAVANAUGH, *supra* note 48, at 90.

[49] THOMPSON, *supra* note 36, at 26.

[50] *Id.* at 30.

[51] KHOURY, *supra* note 6, at 82.

yet.[52]

*B. The 1920 Draft Constitution*

In parallel to events taking place at the League of Nations to solidify mandatory claims, Faysal sought to create an Arab state that Britain and France would be forced to recognize as worthy of independence. On June 17, 1919, in Damascus, the first General Syrian Congress was formed "(1) to represent the nation before the [American King Crane] commission;[53] (2) to *enact a constitution that preserved minority rights*; and (3) to prove to the world that the Arab nation deserved to be free."[54] The second prong became the impetus for the Arabs to draft a constitution designed to challenge any accusation that Arabs could not govern themselves or that they could not guarantee the rights of minorities within their territory. The committee to draft the constitution consisted of twenty members and was headed by Hashim al-Atassi.[55] King Faisal was coronated in March 1920 and Syrians proceeded as though they were independent, continuing to draft their own constitution.[56] But the French halted the Syrian independence experiment in July of that year, leaving the constitution of 147 articles unratified. The French gave King Faisal an ultimatum to fight or surrender. He surrendered, but his Minister of Defense, Yousuf al-Azmeh, insisted on fighting. On July 24, 1920, the Battle of Maysaloun took place, during which Syrian forces

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[52] *See* KARIM ATASSI, SYRIA, THE STRENGTH OF AN IDEA: THE CONSTITUTIONAL ARCHITECTURES OF ITS POLITICAL REGIMES 89-91 (Christopher Sutcliffe trans., Cambridge Univ. Press 2018).

[53] The King-Crane Commission traveled to Syria, producing a report in late 1919 (only publicly released in 1922), confirming that seventy percent of the population polled desired independence. THOMPSON, *supra* note 36, at 124-26. The King-Crane Commission's findings would ultimately be overruled by actions executed by Italy, France, and Britain, each of which sought to delineate its own mandate and zones of influence. *Id.* at 127.

[54] *Id.* at 111.

[55] ATASSI, *supra* note 52, at 69. It is important to note here that prior to Atassi, Rida Rikabi had headed the government had had resigned due to the fact that he thought the government was not sufficiently confronting the French.

[56] ZEDOUN AL ZOUBI ET AL., FROM FEDERALISM TO HYPER-CENTRALISATION: THE HISTORY OF DECENTRALISATION IN THE SYRIAN CONSTITUTIONS 11 (2022) (article only published in Arabic, short English summary available at https://syrianconstitution.org/project/from-federalism-to-hyper-centralisation-the-history-of-decentralisation-in-the-syrian-constitutions%ef%bf%bc/). In November 1919, Britain withdraw from Syria, and an agreement between Faisal and the French initially allowed him to be coronated as the King of the Arab Kingdom of Syria, so long as the France alone would provide advisors and technical experts to the country. But many Syrians who had watched France's motives and their insistence on declaring Syria a country unfit and undeveloped enough to rule itself (while allowing Bulgaria, Czechoslovakia, and other localities to do so), forcing him to reverse this agreement, which he did. *Id.*

crumbled in one day in the face of the advanced French military.[57] The very next day, on July 25, 1920, Damascus surrendered and ʻAlaa al-Din al-Drubi was installed as head of Syria under a French mandate authority.[58]

Although never ratified,[59] there are a few noteworthy observations regarding the 1920 Syrian draft constitution. Unlike the Ottoman Constitution that preceded it, there was public debate concerning the language of the constitution, as can be found on the pages of the daily periodical *al-Asimah* (the capital).[60] For example, the debate concerning women's right to vote elicited strong reactions among the public.[61] However, not too dissimilar from the Ottoman constitution, when it came to the country's religious communities, it was a communal pact, permitting individual freedoms while focusing on religious and ethnic rights as rights of communities, not individuals. Specifically, Article 10 states that "all Syrians shall have equal rights and duties in law"[62], but it goes on to state that Syria was a constitutional monarchy with a civil parliamentary system based on equality between different religious *communities*.[63] In constitutional history transcripts, expertly reviewed by scholars Rim Turkmani, Mazen Gharibeh, and Zedyoun al-Zoubi, there is evidence of discussions regarding communities of Muslim sects (Alawites and Ismailis, in addition to the majority Sunni population) as well as the rights of non-Muslims (Jews and Christians).[64] The Constitution declared that the religion of its King would be Islam (as opposed to the religion of the *state*).[65] Scholars assessing memoires of the authors of the constitution determined that there was an agreement "to refrain from defining the states as either secular or Islamic, in return for stipulating that the *religion of the King* be Islam."[66] Meanwhile,

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[57] Gov't, Pub. Serv., & Int'l Stud., *French Syria (1919-1946)*, UNIV. OF CENT. ARK., https://uca.edu/politicalscience/home/research-projects/dadm-project/middle-eastnorth-africapersian-gulf-region/french-syria-1919-1946/ (last visited Apr. 1, 2024).

[58] ATASSI, *supra* note 52, at 69, 81. Al-Drubi was assassinated only four weeks later by nationalists. *Id.*

[59] *See id.* at 4. By the time the French intervened, only seven articles had been adopted by the First Syrian Congress. *Id.*

[60] *Statement of the Syrian Ministry*, AL-ASIMAH, Mar. 29, 1920.

[61] *See Women in the Syrian Congress: Minutes of the Session of the Congress that Debated Women's Right to Vote (1920)*, TABAYYUN, (2013), https://tabayyun.dohainstitute.org/en/issue003/Pages/art13.aspx.

[62] Projet de Constitution [Draft Constitution] 1920, art. 10 (Syria); ATASSI, *supra* note 52, at 73.

[63] *See* ATASSI, *supra* note 52, at 4.

[64] AL ZOUBI ET AL., *supra* note 56, at 21.

[65] ATASSI, *supra* note 52, at 72.

[66] Rim Turkmani & Ibraim Draji, The Question of Religion in the Syrian Constitutions: Historical and Comparative Review 6 (London Sch. of Econ. & Pol. Sci., Working Paper, 2020) (emphasis added), http://eprints.lse.ac.uk/103660/5/The_question_of_religion_in_the_

the religion of the prime minister, who held more power in this system, was not stated.[67] This was likely a gesture to show European authorities of the Arab ability to administer inclusive governance while respecting the will of the majority of society, which was predominantly Muslim.

Article 14 granted religious courts and sectarian councils to determine personal status according to each religious community's laws.[68] Freedom of religion and belief was protected, as was the freedom for religious groups to assemble, so long as it did not undermine public security.[69] Thus, despite Faisal's best attempts, even his thinking on minority rights was to remain top-down and confined to the communal, Ottoman perspective as opposed to freedom for individual rights and responsibilities as citizens of a new state.[70]

Importantly, however, decentralization was a key aspect of the draft, proposed by members that had suffered at the hands of an expansive, and unresponsive, hyper-centralized political system during the Ottoman years.[71] This was the only Syrian constitutional draft to ever adopt a bicameral system: one Legislative Council to include representatives from the provinces (and based on population, not equal representation), and the other, called the Chamber of Deputies.[72] The notion of quotas appeared in Article 67, where it states that:

> [T]he elected minorities in the Senate shall constitute a quarter of its deputies, and they shall be allotted out of the total number of delegates of each province. The Congress should legislate the election method for minority Senators and their number in each of the provinces. Similarly, this quota should be taken into account with the King's appointed members.[73]

Thus, minorities were to be granted a proportion of seats in the Senate from the provinces, as well as a portion of the King's appointees.[74]

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Syrian_Constitutions_English.pdf.

[67] *Id.*

[68] ATASSI, *supra* note 52, at 73.

[69] AL ZOUBI ET AL., *supra* note 56.

[70] Of course, this was not just emblematic of the Ottoman constitutions. Some European constitutions also interacted with their minority communities in a similar fashion. Additionally, most religious minority leaders did want to relinquish the communal model as it would have loosened their grips on their constituencies who are at risk of converting to western missionary ideas.

[71] AL ZOUBI ET AL., *supra* note 56, at 19.

[72] *Id.* at 23.

[73] Projet de Constitution [Draft Constitution] 1920, art. 67 (Syria).

[74] AL ZOUBI ET AL., *supra* note 56, at 23.

### *C. The French Mandate Years*

The Covenant of League of Nations[75] Article 22(4) created mandates in the former territories of the Ottoman Empire, while the French Mandate for Syria and Lebanon[76] delineated the specific rights and responsibilities of the French mandatory power in Syria. The latter document enshrined France's responsibility to create, within three years of the mandate coming into force (in 1923), organic laws,[77] or constitutional order, for Syria. In Article 1, it specifies that "this organic law shall be framed in agreement with the native authorities and shall take into account the rights, interests, and wishes of all the population inhabiting the said territory."[78] Given the tensions that were to play out over the French mandate years regarding the drafting of the constitution and its contents, it is fair to say that Syrians did not feel that France abided by the full spirit of Article 1 in the years it controlled Syria.

The Mandate document is silent about details delineating internal boundaries of Syria and Lebanon, although the mandate was tasked with preserving the political identities of the people living under those mandates.[79] The French felt comfortable, however, altering municipal boundaries because to them they were only administrative. Thus, the Syria that the French received remained divided into statelets, not too dissimilar from the territorial boundaries of the Ottomans before them.[80] Under the French there were four states in Syria: the State of Aleppo, connected with Deir ez Zor in southeast Syria and to the north with the Port of Alexandretta;[81] the Alawite State, which included the administrative authorities of Latakia and Tartous on the Syrian coast;[82] the State of Damascus, which included the cities of

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[75] League of Nations Covenant arts. 1-26.

[76] *French Mandate for Syria and the Lebanon*, 17 AM. J. INT'L L. 177, 177 (1923), http://www.jstor.org/stable/2212963.

[77] Constitution of October 4, 1958 (as amended up to the Constitutional Law No. 2008-724 of July 23, 2008, on the Modernization of the Institutions of the Fifth Republic), https://www.wipo.int/wipolex/en/text/503815.

[78] *French Mandate for Syria and the Lebanon*, *supra* note 76, at 177.

[79] *Id.*

[80] Ayse Tekdal Fildis, *The Troubles in Syria: Spawned by French Divide and Rule*, MIDDLE E. POL'Y COUNCIL, https://mepc.org/journal/troubles-syria-spawned-french-divide-and-rule (last visited Apr. 9, 2024). Under the Ottomans, there was the Sanjak of Zor, Aleppo Vilayet, Syria Vilayet, and Beirut Vilayet (which contains Syria's modern-day coastal cities but also included all of modern-day Lebanon). Jabal al-Druze had historical been part of the Syria Vilayet.

[81] *Alexandretta*, ENCYCLOPEDIA.COM, https://www.encyclopedia.com/places/asia/turkey-political-geography/alexandretta (last visited Apr. 9, 2024). Alexandretta was incredibly diverse, it is estimated that about 40% of the population was Turkish, 28% Alawi, 11% Armenians, 10% Arab, and 8% various Christians. It was conceded by France to Turkey out of fear of Italian expansionism in 1939.

[82] ATASSI, *supra* note 52, at 88.

Damascus, Homs, and Hama;[83] and *Jabal al-Druze* (Druze Mountains).[84] During the mandate period, the French fostered autonomies in each of these states to varying degrees, but also controlled the extent to which they were able to exercise autonomy.

These divisions of Syria were not random or ad hoc—the French attempted to carve up rump States ultimately along lines that they believed would counterbalance any emerging homogenous Arab state, and so they were drawn along the administrative lines that corresponded with ethnic and sectarian enclaves. The French also spent their time in Syria deliberately recruiting from minority communities; by the time the French had left, the army had become the primary avenue for social advancement for poor and marginalized communities, like the Alawites.[85] To add to this, the Sunni Arab landowning class—too focused on ensuring their economic and political survival during a time of upheaval—were particularly "insensitiv[e] to the needs of Syria's minorities," permitting "the seeds of separatism planted" by the French would fall "on fertile ground."[86]

But French actions that were ultimately in the favor of the country's minorities did not necessarily foster love for the French by those very same minorities. A closer look at Syria's two "compact minorities" is crucial to understanding this. The first community, the Druze community, is considered to be an "off-shoot" of Shi'a Islam, and is Arabic speaking and populated ninety percent of Jabal al-Druze.[87] Up until the French mandatory period, they had enjoyed relative isolation from central government authority[88] and more or less sought to maintain that above else.[89] As the Ottoman Empire began to collapse, they were simultaneously worried about both Arab nationalist groups and the French, who were allies with Maronites in Lebanon, their historical enemies.[90] Although the French granted the Druze the State of Jabal al-Druze, the Druze could not be satisfied solely with the appearance of autonomy, and protested about the lack of implementation of the Franco-Druze Agreement of 1921 that specified that the governor of the autonomous region should be a Druze, but had remained a French officer for four years.[91] Their revolts during the French mandate years were well-known, particularly the Druze Rebellion of 1925, which sparked a wider

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[83] *Id.*

[84] *Id.*

[85] PHILIP SHUKRY KHOURY, SYRIA AND THE FRENCH MANDATE: THE POLITICS OF ARAB NATIONALISM 1920-1945, at 525 (Princeton Univ. Press 1989).

[86] *Id.* at 515.

[87] *Id.* at 152; ROBERT BRENTON BETTS, THE DRUZE 86 (Yale Univ. Press 1988).

[88] KHOURY, *supra* note 85, at 515.

[89] BETTS, *supra* note 87, at 86.

[90] *Id.*

[91] *Id.* at 87.

revolt against the French throughout the country, lasting months.[92] By the time the French managed to restore its power over the Druze Mountains, the Druze would be perceived by Arab nationalists as a necessary component to defeating European domination in Syria.[93]

The other compact community, the Alawite community (referred to as the Nusayris until the French mandate period), were also considered to be an off-shoot of Shi'a Islam, and held a historical base in Latakia, Syria.[94] During the Ottoman years, they were deemed an extremist creed and heretics, with multiple fatwas issued against them that led to the murder of large numbers of Alawites.[95] Unlike the Druze, who held most of the Druze Mountain, the Alawite State's Alawite population made up sixty-two percent of the population, although most of that population was in the mountains and in plains behind the coastal towns.[96] Until the end of the Ottoman Empire, a harsh edict had actually prohibited Alawites from entering the cities, which were populated by the wealthier Sunnis landowners from Hama and Latakia.[97] Like the Druze, the Alawites were wary of both the Sunni Arabs—under which they had experienced harsh rule—as well as the French, who they feared would try to interfere with their internal affairs.[98]

In addition to the Druze and Alawite communities, northeast Syria, referred to as al-Jazira, also presented a conundrum to the French authorities. Previously, al-Jazira had been linked Turkish areas (at times Diyarbakir and other times Urfa). Now, Arab nationalist politicians were neglecting to pay attention to the area now included as part of the State of Aleppo.[99] During the French years, this region attracted a whole host of groups, including Arab tribes that pre-existed in this area, pre-existing Kurds as well as Kurds which had been expelled from Turkey in the 1920s, Armenians and Syrian Catholic settlers from Aleppo and elsewhere, and Assyrian refugees from Iraq.[100] These many groups were naturally competing over jobs, resources, water,

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[92] *Id.*

[93] *Id.*

[94] Yvette Talhamy, *The Fatwas and the Nusayri/Alawis of Syria*, 46 MIDDLE E. STUD. 175, 176 (2010), https://www.jstor.org/stable/20720657. The Alawites were not considered Muslims until the twentieth century, when the first major pronouncement was made by Mufti of Jerusalem Haj Amin al-Husayni, made a fatwa that they were Muslim in effort to bring them closer to Arab nationalism and thwart French attempts to cultivate a separate Alawite state.

[95] *Id.* at 186. According to Alawite historian Mohammed Amin Galib al-Tawil, about 40,000 Alawites were killed in the area surrounding Aleppo, as well as 9,400 Alawite sheikhs and leaders, by Ottoman Sultan Selim I.

[96] KHOURY, *supra* note 85, at 520.

[97] BALANCHE, *supra* note 9, at 6, 118.

[98] KHOURY, *supra* note 85, at 520.

[99] *Id*. at 525.

[100] *Id.* at 525-27.

and agricultural lands in this new underdeveloped Syria. Thus, the "separatism in the Jazira," which exists to this day, partly derives from the "political underdevelopment, where the principal loyalty of its mixed population was to family, clan, tribe, ethnic, and religious community, locale, or some combination thereof," and stems from this time.[101] According to Khoury, "the idea of a unified Syrian state and nation was foreign to most of the Jazira's inhabitants."[102] Locally based French officers also reinforced separatist tendencies, as they sought to reinforce justifications for their mandatory authority in Syria.

With little experience in governing themselves and the mandatory powers having the backing of the League of Nations, the Syrians reluctantly accepted the authority of the French. By 1927, the French finally managed to stabilize the Syrian mandate territory. France permitted elections for the Constituent Assembly to strike a compromise with nationalist leaders in the political space. The elections brought to office a variety of constituent assembly members,[103] and those assembly members appointed seven delegates to draft a constitution.[104] The election of a constitutional assembly—and the selection of constitutional committee members from an elected assembly—is a primary reason why historians argue that a genuine and representative process took place prior to the ratification of the 1930 Syrian organic law.[105]

The most organized and potent group in the Assembly was the National Bloc, despite not winning the majority of the seats (only twenty-two out of seventy).[106] Perceived as the "secular liberals," the National Bloc was comprised largely of notable elites who sought to preserve their status, while remaining largely aligned with the colonial, in this case French, power.[107] As a result, the Bloc struggled to garner votes outside of the main cities of Damascus, Homs, and Hama areas.[108] Rural areas and minority-dominated

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[101] *Id*. at 527.

[102] *Id*. Indeed, the territory that was coalescing together to eventually become Syria had not been unified for almost 1200 years. It was therefore a strange idea for many in Aleppo, Deir-ez-Zor, and al-Jazira at the time to desire union with Damascus.

[103] DUSTUR SURIA [CONSTITUTION OF SYRIA] May 14, 1930, art. 37, 113. The rules regarding who could stand in elections was still based on the Ottoman election procedures: only men of certain ages could vote and run for office, and special electoral laws applied to Bedouins (Art. 113) and sectarian minorities (Art. 37), delineated in laws outside of the constitution. In Damascus, for example, Josef Laniado, a Jewish merchant, was elected to the assembly because of such laws. *See* EYAL ZISSER, *Writing a Constitution: Constitutional Debates in Syria in the Mandate Period, in* LIBERAL THOUGHT IN THE EASTERN MEDITERRANEAN: LATE 19TH CENTURY UNTIL THE 1960S 195, 202 (Brill ed., 2008).

[104] ZISSER, *supra* note 103, at 201.

[105] *Id*. at 215.

[106] *Id*. at 202.

[107] THOMPSON, *supra* note 36, at 319.

[108] ZISSER, *supra* note 103, at 202.

areas voted for their own local notables, and the French were more able to influence election outcomes there.[109] Aleppine voters, maintaining their skepticism of a Damascene-dominated governance scheme, protested by not participating in the vote altogether.[110]

In August 1928, the local population ultimately produced a draft constitution that would actually become an organic law (founding document, constitutive principles) comprised of 115 articles.[111] It took two years to go into effect as an organic law.[112] Despite the French approving most of the language, they were vehemently opposed to six articles: those that defined Syrian borders (which the document indicated would be lands separated from the Ottoman Empire); the unity and indivisibility of the Syrian state; the formation of a national army; and the right of the president of the republic to issue presidential decrees countersigned by concerned ministers, "receive ambassadors and grant pardons, and . . . declare martial law and a state of emergency."[113]

In 1930 organic law was approved with two vital modifications by the French. The first was the addition of Article 116, which ensured France its rights as the mandatory power and voiding any laws that intervened in France's ability to fulfill its obligations as the mandatory power.[114] The second dealt with a most sensitive issue, which stated that "Syria is an indivisible political unit"—and did not define Syria's borders the way Syrians did.[115] Instead, the French reasserted their claims that Syria would be divided up Syria into three official states, referred to as the Syrian League: State of Syria (most of modern day Syria and which now included Aleppo and the Sanjak of Alexandretta), State of Lattakia (on Syria's coast), and the State of Jabal al-Druze (in Syria's southwest).[116] Each of these states would also have their own organic laws, or constitutions, which were not identical across the League.[117]

There are a few articles worth pointing out in the 1930 organic law that touched directly upon ethnic and sectarian concerns. Article 3 affirmed that, "the religion of its President shall be Islam."[118] It went on in Article 6 to state that, "Syrians are equal before the law. They shall enjoy the same civil and

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[109] *Id.* at 202.

[110] *Id.* at n. 9.

[111] *Id.* at 202-03.

[112] *Id*. at 205.

[113] *Id.* at 204; *see also* ATASSI, *supra* note 52, at 102, 108.

[114] ATASSI, *supra* note 52, at 108-09.

[115] DUSTUR SURIA [CONSTITUTION OF SYRIA] May 14, 1930, art. 2.

[116] AL ZOUBI ET AL., *supra* note 56, at 28.

[117] *Id*. For example, Jabal al-Druze's constitution did not authorize the creation of a parliament, while Lattakia did have a parliament. *Id.*

[118] DUSTUR SURIA [CONSTITUTION OF SYRIA] May 14, 1930, art. 3.

political rights. They are bound by the same duties and subject to the same encumbrances. There shall be no unequal treatment among them because of religion, sectarian origin, race or language."[119] Although the 1930 organic law was of a communal typology, it articulated important personal rights, among them the right to language. It would be the first-time the Syrian constitution would recognize differences in language among citizens, and the right to speak such languages.

Within Constituent Assembly transcripts, there is evidence of debates between Muslim and non-Muslim representatives regarding the role of religion. Christian representatives objected to Article 3, arguing that "if the religion of the president is limited to a particular religion, this would be in abandonment of the spirit of Article 6, which stipulates that Syrians are equal in their enjoyment of civil and political rights."[120] Secretary of the Constituent Assembly and also a fellow Christian representative Fa'iz al-Khoury argued that "restricting the president's religion to Islam would also pose a restriction for the Muslim majority—those who might want to elect a president from another religion."[121] Notwithstanding the inconsistencies and objections regarding Article 3 and 6, both were preserved with the majority citing that, "constitutions . . . should not deviate from the country's traditions and customs, or the opinions and beliefs of its people."[122]

Article 15 is also worthy of mention here. It requires that:

> [T]here shall be absolute liberty of conscience; the State shall respect all creeds and religions established in the country; it shall guarantee and protect the free exercise of all forms of worship consistent with public order and good morals; it shall also guarantee for all peoples, of whatever creed they belong, the respect of their religious interests and their personal rights.[123]

However, it is important to mention that while all faiths were guaranteed rights, it is not clear *what rights* these were in terms of details.[124] The only articulated right for religious communities—namely the right to establish religious education—can be found in Article 28: "The rights of the various religious communities shall be guaranteed and these communities shall be entitled to establish their own schools to teach *minors* in their own language provided that they respect the principles specified by law."[125] Representative

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[119] *Id*. at art. 6.

[120] Turkmani & Draji, *supra* note 66, at 7 (quoting representative Nicolas Janji).

[121] *Id.* at 8.

[122] *Id.* at 9.

[123] DUSTUR SURIA [CONSTITUTION OF SYRIA] May 14, 1930, art. 15.

[124] ZISSER, *supra* note 103, at 209.

[125] Turkmani & Draji, *supra* note 66 at 32 (emphasis added). The 1930 organic law was the only constitution to article this particular right for religious communities (as opposed to

Nicolas Jangi, a Christian, objected to the phrasing, in that it might restrict teaching languages to minors of linguistic minorities—but his objection was overruled.[126]

This Constituent Assembly also grappled with one of Syria's most difficult questions—and one that, given the author's experience in the current constitutional committee, continues to be debated today (and will be discussed later in more detail).[127] Should Syria's constitution speak of 'minorities' or should the constitution remain silent and establish through this document that all of Syria's citizens are equal? Is the omission or inclusion of such language in the interest of all Syrians? In order to place every community in Syria on equal footing, was it necessary to recognize each of its components by name, or was it strategically wiser to have language that was blind on its face, and to couple it with grass-roots efforts to help create a reality of a flatter Syria over the longer-term?

Representative Fa'iz al-Khoury highlighted during the debates the contradiction between calling for unity on the one hand and highlighting differences that exist among the population on the other.[128] "We are striving, as I mentioned earlier, for unity in words, in everything, and for there not to remain between members of this nation a difference of any sort. The nation has not yet reached the level at which [one] would be able to say, 'we are all brothers; religion is for God and the homeland is for all.'"[129]

Nonetheless, it important to note again that not all of Syria's minorities opposed delineation of their communities, as in the case of the Sanjak of Alexandretta, or the use of the term minorities. For example, members from the coast and Jabal al-Druze did not object to the use of the term minorities, while some Christian representatives did.[130] Further, some Assembly members wanted to include the specific mention of certain minorities while excluding others; they feared that widening the aperture to include other types of minorities, such as ethnic and linguistic minorities, would weaken the category of religious minorities and provoke disputes among them about which type of minorities were authentic and would be representative.[131]

The 1930 organic law would last for nine tumultuous years; in between, a power struggle played out between the French and the Syrian national movement.[132] In 1939, in the midst of World War II, the document was

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the right of teaching religion in school more generally, to come in subsequent constitutions).

[126] AL ZOUBI ET AL., *supra* note 56, at 40.

[127] *Id.* at 30.

[128] Turkmani & Draji, *supra* note 66, at 8.

[129] *Id.* at 8-9; *see also* Meeting records of the 1928 Syrian Constituent Assembly, 12th Sess. at 261 (Aug. 2, 1928).

[130] Turkmani & Draji, *supra* note 66, at 13.

[131] *Id.* at 12-13.

[132] ATASSI, *supra* note 52, at 120-21.

suspended while the Vichy government ruled in France.[133] It was reinstated in 1943; that same year, parliamentary elections were held in Syria and the government abrogated Article 116, ensuring France its rights as the mandatory power and voiding any laws that intervened in France's ability to fulfill its obligations as the mandatory power.[134] Additionally, Article 2 concerning Syria's boundaries was not challenged by the Syrian Congress, finally ending attempts to include Palestine, Transjordan and Lebanon as part of Syria. Instead, the 'Syrian League'—which included Jabal al Druze and the Alawite regions, but now excluded the Sanjak of Alexandretta from the administration of Aleppo[135]–would become the borders of modern-day Syria.[136] On April 17, 1946, the last French soldier left Syria.[137]

### *D. Independent Syria*

The declaration of Syria's independence did not end the country's struggles. Immediately following independence, the 1930 organic law was reinstated, and Syria's leadership—which had grown famous for its political resistance to the French—was suddenly faced with all the challenges of governing, as well as domestic and regional power struggles.[138] The constitutions developed during this period, until the 1950 constitution, were hyper-presidential. Overall, they consolidated power in the office of one individual, and reflected a struggle between the military components and more traditional urban landholding elites that continued to dominate the political scene. They allowed limited room for mention of individual rights and liberties but were more focused on the levers of power as opposed to any populist demands.

The schism between Damascus and Aleppo, which had existed before among each city's respective elite, rose to the surface. Within Syria's new

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[133] *Constitutional History of Syria*, CONSTITUTIONNET, https://constitutionnet.org/country/syria (last visited Apr. 11, 2024).

[134] ZISSER, *supra* note 103, at 212.

[135] It was ceded by the French to Turkey in 1939 in exchange for Turkey's neutrality during WWII. *Alexandretta*, *supra* note 81.

[136] *Constitutional History of Syria*, *supra* note 133. In 1932, the French High Commissioner Henry Ponsot argued for Syria's membership in the League of Nations, but without the Alawite and Druze states, citing their "economic backwardness and need for development." ATASSI, *supra* note 52, at 113. In 1936, however, the Franco-Syrian Treaty would reverse this, and would allow the reattachment of the Alawi and Druze regions. French troops would be stationed in Druze and Alawite regions; they would be able to maintain an airbase in Damascus and one in Aleppo; and they would train Syrian armed forces and provide military equipment and munitions. ATASSI, *supra* note 52, at 119. Unfortunately, however, the French parliament would never ratify this document, and thus the unification of Syria was not completed until 1943. ATASSI, *supra* note 52, at 121.

[137] ATASSI, *supra* note 52, at 142.

[138] *Id.* at 144.

borders, Aleppo found itself suddenly cut off from Mosul, Alexandretta, and Anatolia—all of which utilized Aleppo as their major regional trading city.[139] The rivalry between Aleppo and Damascus would remain for decades to come, with Aleppine traders accusing Damascene businessmen of "exploiting their proximity to the halls of power in order to unfairly monopolize markets."[140] In response to a Damascene-led vision of Syria, Aleppines made no secret of attempting to federate Syria with Iraq to create a "Fertile Crescent" where cities like Mosul, Baghdad, and Aleppo would recapture control.[141]

In 1948, the document was amended to allow for then-President Shukri al-Quwatli to run for a second term, and he did—but his term would not last long.[142] On March 30, 1949, Syria witnessed its first coup, launched by General Husni al-Zaim,[143] to depose Quwatli. This would end the First Republic of Syria. But this first coup of many to come underscores a vital aspect of Syrian politics: the leadership of Syrian landholding nationalist notables, formerly able to counter the French mandate to a limited extent, would now struggle to provide stable governance for areas outside of Damascus.[144] The constitutions and governing structures that Damascene landholders would create, would—time and time again—solidify their rule and oversight over Syria, but would constantly fail to account for rural populations and the crisis of insufficient political representation from across the country.[145]

Immediately upon seizing power, Zaim dissolved the assembly, abolished the 1930 organic law, and set up a new committee to draft a constitution.[146] Although the constitution never came into force, it is interesting to note that the draft included no reference to religion of the head of state and no sectarian

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[139] *Id*. at 145-146.

[140] BALANCHE, *supra* note 9, at 13.

[141] ATASSI, *supra* note 52, at 167. This idea did not appeal to most of the Syrian political class, however, because they saw incompatibility between a monarchy in Iraq and a republic in Syria; further, they did not want to be tied to alliances with former mandate powers, which they had achieved in ridding themselves of in 1946.

[142] *Id*. at 149. Under the French Mandate, Syria still had presidents, albeit with powers limited by the constitution and those reserved for France. However, the elections were not public referendums but instead they were selected a by the publicly elected Chamber of Deputies, which ranged in number (at this point in time there were twelve).

[143] HUGH WILFORD, AMERICA'S GREAT GAME: THE CIA'S SECRET ARABISTS AND THE SHAPING OF THE MODERN MIDDLE EAST 100-01 (2013). Al-Zaim is known to have been a Kurdish, secular, pro-American politician. Some historians put forward the possibility that the United States assisted in the coup to empower al-Zaim.

[144] ATASSI, *supra* note 52, at 152.

[145] *See id.*

[146] *Id.* at 151.

electoral quotas, which had been a fixture since the Ottoman constitution.[147] It is possible that this was connected to the fact that Syria had voted in favor of the Universal Declaration of Human Rights, which dictated equal rights for all citizens regardless of religion.[148] Additionally, during his rule, women's right to vote was debated, although it would not be formalized until after Zaim's departure.[149] Zaim's leadership lasted only 137 days, however, and he was deposed August 14, 1949.[150]

General Sami Hinnawi led a coup against Zaim and placed himself as head of Syria.[151] Hinnawi asked a former president, Hashim Atassi, who was president during the French mandate years of 1936-1939 and who had led the production of the 1920 and 1928 drafts, to create a provisional government and cabinet of national unity, to which almost all political parties were invited to join.[152] Elections were to be held and a new electoral law was adopted that granted women the right to vote and reaffirmed minority representation, but limited it to religion (Christian, Muslim, and Jew) instead of sect (Ismaili, Alawite, etc.) as it had been under the French; there was also a law concerning a quota for Bedouins, as there had been in the 1930 version.[153] The electoral decree would divide the 114-member assembly to eighty-six Muslims, fifteen Christians, one Jew, and six Bedouins.[154]

Despite the election of a new assembly as well as a new president, and the adoption of a new provisional constitution, there would be one last coup before the end of 1949, on December 19. The target of the coup was to remove President General Sami Hinnawi, whose opponents purportedly sought to unify Syria with Britain-allied Iraq (a fact which has never been confirmed).[155] The provisional constitution, as well as the newly elected president Hashim al-Attasi and the newly elected assembly, were left untouched. But by now, interjection of the army in Syria's governmental affairs had become normalized. The year 1949 also ended with a series of

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[147] *Id.* at 161.

[148] *Id.*

[149] Jomana Qaddour, *Women's Quotas: Making the Case for Codifying Syrian Women's Political Participation*, 26 WM. & MARY J. RACE, GENDER, & SOC. JUST. 557, 583 (2020).

[150] ATASSI, *supra* note 52, at 156. It is possible that the coup against Zaim was done in response to his pro-American and pro-French decisions to allow the US petroleum company Aramco to build a pipeline from Saudi Arabia to Lebanon via Syria, as well as entering into a financial agreement with France. There are also scholars who believe Zaim's willingness to meet with Ben Gurion also deeply worried the Syrian military.

[151] Memorandum by the Secretary of State to the President, OFF. OF THE HISTORIAN 890D.01/9-1949 (Sept. 19, 1949).

[152] ATASSI, *supra* note 52, at 166. Interestingly, the Communist Party was not allowed to join.

[153] *Id.*

[154] *Id.* at 169.

[155] *Id.* at 174.

regional concerns for the country, including the competition over whether Syria would join the Hashemite alliance (which included Jordan and Iraq) or the Saudi Arabia and Egypt alliance.[156] There were also rising concerns over the establishment of the new State of Israel next door. [157]

*E. The 1950 Constitution*

Under the supervision of President Hashim al-Atassi, Syrians would draft the most significant constitution in the country's short modern history, adopted on September 5, 1950.[158] The oft-discussed 1950 constitution is important for a few key reasons related to the topic of this Article. It was drafted during a period of Syrian history when new ideological parties were beginning to gain traction. Although more traditional parties and candidates, such as those focused on regional ties (candidates who ran as part of Damascus-based or Aleppo-based platforms), still dominated the political space, during this period parties such as the Ba'athist, Arab Socialist, Syrian Socialist Nationalist Party (SSNP), Muslim Brotherhood, and the Syrian Communist Party began competing for influence over youth and rural populations, as well as members of the Syrian military.[159] The French had deliberately enlisted from among Syria's poorer communities, including marginalized groups like the Alawites, because of the social mobility the Army offered.[160] These political parties now provided youth, rural populations, and members of the military avenues to power and acceptance that traditional Arab nationalist parties had blocked them from previously.

The 1950 constitution is best categorized as a nationalist-populist constitution, rooted in the popular preferences of the majority of Syria's population and no longer confined solely to countering European influence or the economic and power preferences of Sunni urban notables. Previously, the 1930 organic law had focused on countering the French mandatory power at every opportunity in effort to prove that the country could lead itself and protect its own non-Muslim minorities. Now, a few years following independence, the 1950 constitution reflected a very different moment: Syrian nationalist ideology was maturing, the relationship between the state and provisions to its citizens was emerging, and open discussion regarding religion was no longer taboo now that the Europe was less interested in day-to-day governance in Syria. Further, the 1950 constitution pivoted away from a hyper-executive structure, likely a legacy of the Ottoman Empire, to a more European-centric parliamentary structure, with more power vested in a prime

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156 *Id.* 172-74.

157 *Id.* at 167, 177.

158 *Id.* at 179.

159 *Id.* at 174.

160 *Id.* at 184-92.

minister and an expansion of the role of the Supreme Court, which had previously been very narrow.[161] The constitution was now also relying on documents such as the Universal Declaration of Human Rights that Syria voted in favor of in 1948.[162]

Syria's first democratically elected 114-member Constituent Assembly was made up of the following blocs: the League of Nationalist Action, the Shahbandar Group, the People's party, the National Party, religious organizations like the Muslim Brotherhood (and even some independent sympathizers), the Syrian Social Nationalist Party, the Socialist Cooperative Party, the Arab Ba'ath Party, the Arab Socialist Party, and independents, including clans.[163] The Constituent Assembly then elected thirty-three members to serve on the constitutional committee from all the above-mentioned party blocs, with the exception of the National Party, with the independents drafting the constitution. The text itself, beginning from the preamble, does include points of interest. It states that:

> [W]hereas the majority of the people are believers in the Islamic religion, the Government declares its attachment to Islam, and its ideals. We also declare that our people are determined to cement the ties of friendship and cooperation with the peoples of the Muslim and Arab World, and to build their modern state on those sound ethical bases advocated by Islam and the other Theistic Religions and to combat atheism and moral decadence. And furthermore, we declare that our people are a part of the whole Arab nation, bound to it with its past, present and future, and is looking forward to the day when our Arab nation shall be united in one State.[164]

Although not operational as part of the preamble, these sections reflect the change in the Syrian nationalist movement, increasing instinct to tie Syria to the rest of the Arab world, namely through Islam. Although considered counterproductive during the French mandate years given Europe and France's fixation on the plight of religious minorities, many Syrian nationalist Assembly members now saw few consequences to codifying the issue in the constitution. This is best understood as part of the constitution's *populist* tone. Under the Ottoman Empire, concepts such as the Muslim world were imposed from the top-down. But even after the demise of the Empire, average Syrians, most of whom identified as Sunni Arabs, did continue to conceive of such a concept as the Muslim world, and sought to keep Syria as part of it—not necessarily as a component of an Empire—but as one state

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[161] *Id.*

[162] Qaddour, *supra* note 149, at 583.

[163] AL ZOUBI ET AL., *supra* note 56, at 53.

[164] DUSTUR SURIA [CONSTITUTION OF SYRIA] Sept. 5, 1950, preamble, *translated in* WORLD STATESMEN, *available at* https://shorturl.at/gzNVW.

connected to other Muslim-majority states.

Article 3 mentions the religion of the president and the relationship Islamic law would have with the state.[165] While the religion of the president of the republic was again declared as Islam (Chapter I, Article 3(1)), it was quickly followed by Article 3(2): "Islamic law shall be the main source of legislation," to appease to more conservative forces like the Muslim Brotherhood.[166] Christian Representative Elias Damer attempted to convince the assembly not to proceed with this second clause, stating that:

> The West delights in seeing Arabs build their national identity on the basis of religion, and in seeing the non-Muslim communities in these countries feel less of a sense of nationalism than their Muslim compatriots. I believe the separation of religion from the State would be akin to a fatal blow from the inside to any claim of this kind.[167]

The heads of the Christian sects met to issue a statement also rejecting the proposal of the committee, declaring that "this designation [imposes] discrimination and divides between people of the nation . . . in contradiction with the resolutions taken by the United Nations (UN) which Syria adopted as part of its being a member state."[168] Despite push back, the clause was included, and was followed up with the additional articles: "Freedom of belief shall be guaranteed. The State shall respect all Abrahamic religions and shall protect the free exercise of all forms of worship consistent with the public order."[169] The Scholars Association of Damascus, a conservative Muslim association, was not happy about the final outcome, and instead wanted Article 3 to enforce Islam as *the religion of the state* (and not just religion of the president), arguing that it was consistent with constitutions of neighboring countries.[170] However, Mustafa Sibai, founder of the Syrian Muslim Brotherhood Assembly, and constitutional drafting committee member, pushed back, stating that the compromises regarding the "texts have achieved unity and protected the nation against the disaster of sectarian division, which no reasonable religious person and no loyal patriot could accept."[171]

Article 3(4) also included a clause that was to be found in many subsequent Syrian constitutions: "Personal rights of religious communities shall be

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[165] *Id*. at art. 3.

[166] *Id*. at arts. 1-6.

[167] Turkmani & Draji, *supra* note 66, at 12.

[168] *Id.* at 13.

[169] DUSTUR SURIA [CONSTITUTION OF SYRIA] Sept. 5, 1950, art. 3(3), *translated in* WORLD STATESMEN, *available at* https://shorturl.at/gzNVW.

[170] Turkmani & Draji, *supra* note 66, at 15.

[171] *Id.*

respected and observed."[172] According to scholars, this particular right was seen as contradictory to other sections of the constitution by Abdel Salam Haidar from the Nabak district, namely Article 3(3), which allowed religions free worship, and the later-written Article 32(2), which declared that the state would "protect and encourage marriage and shall *remove material* and social obstacles that hinder it."[173] Haidar objected to the fact that the dowry, stipulated by Islam and Christianity, were "material obstacles" that hindered marriage and thus posed a dilemma, but he was overruled because the Assembly had no interest in meddling with long-established and particular religious requirements for marriage.[174]

Chapter II, Article 7, highlighted the constitution's desire to promote equality: "All citizens shall be equal before the law in obligations, rights, dignity, and social status."[175] Further, Article 8 went on to add that the "State shall guarantee freedom, security, and equal opportunities for all citizens."[176] Quotas for sectarian and/or religious minorities disappeared in this constitution. However, Bedouins were still recognized as having a special temporary status until they were finally settled.[177] Syria also became the first country in the Arab world to allow women to vote and stand as candidates in the elections, although no women served on the constitutional committee.[178]

As in the 1930 organic law, religious instruction in schools is mentioned in the 1950 constitution, but this time it stated: "religious instruction for each religion in accordance with its faith shall be compulsory in primary and secondary stages," as opposed to the right of each community to establish its own schools and teach minors its own religion and language.[179] For the first time, religious teaching would be mandatory for all religions in Syria's primary and secondary schools.

One cannot discuss the constitution and its impact on Syria's varied communities without mentioning the debates that waged on regarding decentralization. During the Ottoman Empire, especially in the late nineteenth century, Syrians had come to fear consolidation of central power

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[172] *See* DUSTUR SURIA [CONSTITUTION OF SYRIA] Sept. 5, 1950, art. 7, *translated in* WORLD STATESMEN, *available at* https://shorturl.at/gzNVW. This would disappear in the temporary Ba'ath constitutions as well as the 1973 constitution, only appearing again in 2012.

[173] *Id.* at art. 32(2) (emphasis added).

[174] Turkmani & Draji, *supra* note 66, at 25.

[175] DUSTUR SURIA [CONSTITUTION OF SYRIA] Sept. 5, 1950, art. 7, *translated in* WORLD STATESMEN, https://shorturl.at/gzNVW.

[176] *Id*. at art. 8.

[177] *Id.* at art. 158. It is also elaborated upon in electoral laws.

[178] Qaddour, *supra* note 149, at 581. Some sources indicate that the interpretation of the constitution was such that women could only elect, not be elected, a right they gained in 1953, according to such scholarship.

[179] DUSTUR SURIA [CONSTITUTION OF SYRIA] Sept. 5, 1950, art. 28(1), *translated in* WORLD STATESMEN, https://shorturl.at/gzNVW.

given the struggle that had transpired over local control in Arab regions and then the Turkification promoted by the Committee of Union and Progress (CUP) in later years.[180] Immediately following the French mandate years, however, decentralization became more acutely troubling for Syrians who believed decentralization permitted outside powers to exploit them, and nurtured secession and/or asymmetrical autonomy of certain regions. The mere discussion of decentralization to empower authentic, local representation, had become intimately associated with Syrian disunity. For this reason, most of Syrian society resisted the concept.

With that in mind, there indeed was a limited debate concerning the concept of decentralization in Syria in Article 128, which dictated an "established council in each governorate, three quarters of it which would be elected, and one quarter which would be appointed."[181] This same body would then elect, not appoint, its president and executive committee, and all other details would be determined by law.[182]

According to scholars al-Zoubi, Turkmani, and Gharibeh, this article's language outlined the minimum, not the maximum, amount of authority and evolution the governance council was meant to have.[183] Nonetheless, the minutes of the meetings of the Assembly establish that the representatives did not intend on giving governorate councils anywhere near the same type of power as the Assembly, nor to award them the right to collect taxes.[184] As representative Qadri al-Mufti stated in one of the sessions:

> [W]e have adopted a very simple principle, which is the principle of expansion of mandates, so that many matters and actions are decided locally [and limited to specific tasks]. The reason is that this would make it easier for citizens who live in remote locations . . . there is nothing more than that.[185]

Hama Representative Husni al-Barazi wanted to ensure that this article would not lead to expansion of local powers:

> [T]here is no use of granting powers to the governorate councils as if they were equivalent to this council with its powers. The use of powers

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[180] KHOURY, *supra* note 6, at 11.

[181] DUSTUR SURIA [CONSTITUTION OF SYRIA] Sept. 5, 1950, art. 128, *translated in* WORLD STATESMEN, https://shorturl.at/gzNVW. It is important to note that the appointed members were not meant to be drawn from the minority communities; rather, they were appointed from lists of experts that were members of the Chamber of Commerce, Industry, Agriculture and Municipal Councils. AL ZOUBI ET AL., *supra* note 56, at 41.

[182] DUSTUR SURIA [CONSTITUTION OF SYRIA] Sept. 5, 1950, art. 128, *translated in* WORLD STATESMEN, https://shorturl.at/gzNVW.

[183] AL ZOUBI ET AL., *supra* note 56, at 37.

[184] *Id.* at 42.

[185] *Id.*

> in this manner is dangerous . . . I want the honorable council to . . . preserve the unity of the Syrian homeland, which, [should not be treated] as more than one [united] governorate.[186]

In addition to the paranoia of Syrians concerning the dismemberment of their country, there were also concerns about the underdevelopment of certain provinces, such as Hama, Homs, and the coast, and the representation and financial allocation that such provinces would receive from a government dominated by representatives from Damascus and Aleppo.[187] Meanwhile, Aleppine representatives struggled to avoid falling under Damascus' control.[188] This competition between Damascus and Aleppo directly impacted the willingness of the Assembly to permit provincial decentralization: Aleppine representatives (who held the greatest number of seats in the Assembly) wanted decentralization to translate into not only more locally-based decision-making, but also an increased budget for Aleppo that reflected what the province contributed to state coffers.[189]

Relatedly, decentralization articles were silent regarding the distribution of natural resources from any one governorate, although Article 130 directed the governorates to utilize mineral waters, promote afforestation and planting of trees, and organize and exploit hunting and fishing in the sea and rivers.[190] That said, the assumption was that actual control of resources would remain with the central authority (and here it was *delegating* it, so the power originated from the central governing authorities).[191] Not giving this due consideration of course would only further contribute to marginalization of several of Syria's peripheral governorates which were not major power centers but where much of Syria's natural resources originates. Despite the unfairness in the outcome of Article 130, Assembly representatives from Jabal al-Druze, the al-Jazira region, Lattakia, and the southwestern province of Daraa did not comment during the sessions regarding the topic of resource control.[192]

Syria's pattern of coups was far from over, however, and shortly after the

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[186] *Id.* The authors have extracted this from the meeting minutes of the 59th Assembly session.

[187] HUGO SLIM & LORENZO TROMBETTA, SYRIA CRISIS COMMON CONTEXT ANALYSIS 16 (2014).

[188] Aron Lund, *The Fall of Aleppo*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Dec. 13, 2016), https://carnegieendowment.org/2016/12/13/fall-of-aleppo-pub-66469.

[189] SLIM & LORENZO, *supra* note 187, at 23-24.The authors point out that under Damascene Mohammad al-Mubarak, for example, who headed the Ministry of Works, the budget for Damascus was 45%, while Aleppo was allocated only 11.5%.

[190] DUSTUR SURIA [CONSTITUTION OF SYRIA] Sept. 5, 1950, arts. 129-30, *translated in* WORLD STATESMEN, https://shorturl.at/gzNVW.

[191] AL ZOUBI ET AL., *supra* note 56, at 39.

[192] *Id.*

constitution went into effect, in December 1950, Adib Shishakly staged his second coup. The constitution was suspended, and a new one written and issued in 1953. Likened to the American constitution in terms of the powers of the presidency—the constitution under him was a hyper-presidential model and removed the position of prime minister.[193] But a countercoup in 1954 brought down Shishakly, and the 1950 constitution was reinstated until Syria's union with Egypt in 1958.[194]

### *F. The United Arab Republic (UAR)*

To effectively explain why Syria joined Egypt to form the United Arab Republic in 1958, it is first necessary to explain the Syrian Ba'athist Party's platform, because its core ideology would lend itself well to pursuing a union with the most influential Arab country at the time.

The Ba'ath Party was founded in 1940 by Salah al-Din Bitar (Damascene, Muslim) and Michel Aflaq (Damascene Christian) during the French mandate years.[195] By the time Syria had gained independence, the conditions in the country were hugely inspirational to the Ba'ath Party founders: Syria was having difficulty adjusting as an independent state, unemployment was high, its relationship to other Arab states uncertain and the country was still led by the same men that had traditionally filled the political, oligarchical class: urban landowners, merchants, and professionals.[196] The lower classes remained excluded from politics. The Ba'ath Party believed that "Arab unity and social revolution" would offer the cure for the Arab world.[197]

In 1947, the Party issued its constitution with a preamble that highlighted the Ba'ath Party's staunch opposition and commitment to fighting imperialism, colonialism, and Zionism. The constitution went on to reject "feudalism, regionalism, sectarianism, and intellectual reaction," all concepts that it claimed would work to divide, not unite, the Arab peoples.[198] The Ba'athist message of Arab unity—and its "censure of discrimination between the sects" resonated especially with the "sons of relatively well-off Druze, Ismaili, Alawi, and Christian Orthodox peasants as members of minorities and descendants of a long neglected and subdued class . . . [who could] ascen[d] to a life in which they would be on a par with all other citizens."[199]

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[193] *Drafting a Modern Constitution for Syria,* ISTITUTO UNIVERSITARIO CAROLINA ALBASIO 75, 76 (2013), https://constitutions.albasio.eu/wp-content/uploads/Saggio-3-Siria.pdf.

[194] *Id.*

[195] Gordon H. Torrey, *The Ba'ath: Ideology and Practice*, 23 MIDDLE E. J. 445, 445 (1969).

[196] *Id*.

[197] *Id*. at 447.

[198] *Id*. at 448.

[199] HANNA BATATU, SYRIA'S PEASANTRY, THE DESCENDANTS OF ITS LESSER RURAL

The Ba'ath Party now offered these groups access to power, regardless of generational wealth and religion.

The Ba'ath, although secular, still acknowledged the Arab empire's "'Islamic cultural heritage" 'which it now redefined as "'Arab cultural values."'[200] It rejected "racial nationalism" and "restrictive state nationalism," while simultaneously rejecting the internationalism promoted by the communists that "attempted to bind everyone with synthetic economic bonds."[201] The Party's constitution also stated that there would be "absolute equality before the law for all citizens, and education was to be secular, free, and compulsory."[202] It also endorsed a decentralized system with a democratically elected parliament holding key power, although there the state should have an independent judiciary.[203] On the micro level, however, Ba'athism endorsed a Communist-like system of local governance. For example, policy was to be debated democratically at the local level (so long the policy was consistent with the confines of the party constitution), and a National Command would be made up of representatives from branch national parties, each with their own regional commands.[204] They would operate clandestinely, and decisions would not be public.[205]

Ironically, Ba'athist ideology warns about the tyranny of the group over the individual (like in communism) while prioritizing "the supremacy of the Arab nationalist movement."[206] According to Aflaq, "the individual through education will be awakened to the necessity of conformity to the nationalist movement."[207] And until the masses naturally reach this point in their education, they will be guided by leaders who already are in this higher state of prioritizing Arab nationalism.[208] It is from this particular idea that centralization is embedded in the Ba'athist ideology—the notion the flourishing of the Arabs can happen only through nationalism in a unified Arab state, while everything else, including religion, sectarianism, and regionalism must be suppressed.[209]

Gamal Abdel Nasser saw great value in pursuing unity with the Syrian Ba'athists, who sought to deliver on both of his promises of Arab unity and

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NOTABLES, AND THEIR POLITICS 142 (Princeton Univ. Press Core Textbook ed. 1999).

[200] Torrey, *supra* note 195, at 449.

[201] *Id*.

[202] *Id*. at 450.

[203] *Id*. at 452-53.

[204] *Id*. at 459.

[205] *Id*.

[206] *Id*. at 453-54.

[207] *Id*. at 454.

[208] *Id*.

[209] *Id*. at 449; *see generally* BATATU, *supra* note 199.

expanding his prominence.[210] For the Ba'athists, countering the communists was also a goal, and unifying with Nasser would help in marginalizing them and pushing them underground.[211] Given their similarities their focus on economic and pan-Arab ideology, it proved possible to merge the Nasserist and Ba'athist ideologies, despite their differences.[212] The Egyptians agreed to assist the Ba'ath in their rise to prominence, and the UAR was established in January 1958.[213]

From the outset there was trouble.[214] The Syrians came to resent how much control Nasser had: he appointed all political appointees in Syria, who were usually Egyptians. [215] He also alienated the elite of Syria, which over time helped fuel rebellion and secession from the UAR.[216] The Ba'athists wrongly believed that under the UAR, they would be the sole party representing Syria within the union.[217] Nasser had other plans: to him, the Ba'athists were only one of many factions he would use to achieve his aims of domination over both Egypt and Syria in the union.[218] He even began to alienate the Ba'athists themselves; he prevented Ba'ath candidates from running in elections, and some Ba'ath Party strongholds, including the unions, universities, and even the Aleppo paper *al-Jamahir*, were shut down.[219] Nasser also strategically transferred Egyptian officers to Syria and vice versa to prevent Syrian military units from coalescing inside of Syria against him.[220]

Under the UAR, a temporary constitution was enacted to be implemented in both Syria and Egypt, with insufficient attention paid to the Syria's "political background, temperament, and institutions."[221] The UAR's constitution was the first constitution centered around socialist and Arab nationalist values. The union decreed "socialist-type measures for peasants through agrarian reform, and/or works through nationalizations."[222] The first major agrarian reforms in Syria were triggered during the UAR period: the changes impacted 1.1% of the population that controlled one-third of the

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[210] John F. Devlin, *The Baath Party: Rise and Metamorphosis*, 96 AM. HIST. REV. 1396, 1398 (1991).

[211] *Id.*

[212] Torrey, *supra* note 195, at 456-57. Devlin, *supra* note 210, at 1398.

[213] Torrey, *supra* note 195*,* at 457.

[214] *Id*.

[215] *Id.* at 456-57. Devlin, *supra* note 210, at 1398.

[216] ATASSI, *supra* note 52, at 202-03.

[217] *Id.* at 202.

[218] Torrey, *supra* note 195*,* at 457.

[219] *Id.*

[220] *Id*.

[221] ATASSI, *supra* note 52, at 208.

[222] *Id.*

cultivated land in Syria.[223] Beginning in this time period and continuing even into the Ba'ath years, Syria's provinces underwent changes due to nationalization policies and redistribution of agricultural land enacted during this time.[224]

By the early 1960s, the Ba'athists were increasingly becoming frustrated with Nasser's neglect of Syrian officer corps as well as Sunni business elite demands. They were also becoming envious of Nasser's personal popularity in Syria among the less wealthy classes, who found his example much easier to understand than the complicated world view the Ba'athists were promoting.[225] By September 1961, the Ba'ath broke away from Egypt.[226] The Ba'ath reverted to the 1950 constitution with minor amendments.[227]

Even after the collapse of the UAR, Nasser and Nasserism still enjoyed mass support in Syria. The Egyptian leader accused the Ba'athists of sabotaging the union because of their lack of practical political experience.[228] In March of 1963, there was a short-lived attempt to unite Iraq, Syria, and Egypt under a reconstituted United Arab Republic, wherein the Syrian Ba'athists were adamant about a federal system with autonomy for each of the three regions (countries). Despite going through the movements of forging this union, Nasser continued to try and subdue the governments in Baghdad and Damascus under his rule.[229] By the summer of 1963, this attempted had failed; Nasser publicly refuted that there were attempts to continue unity between the three countries.[230]

Following the collapse of the attempts to create a Syrian-Iraqi-Egyptian union, the Syrian Ba'athists attempted to forge a Syrian-Iraqi union in October 1963 with the Iraqi Ba'athists, but such talks did not last long. In short order, moderate and hardliner Ba'thists on both sides disagreed openly.[231] Following the two attempts to create a pan-Arab union, the Syrian Ba'athists were now isolated by most of the Arab world.

The Ba'ath knew that Nasserism still enjoyed wide public support in Syria, as did the Egyptian leader personally. In reality, there still remained more similarities in their ideologies than differences. The Ba'athists decided to rename Syria from the Syrian Republic to the Syrian Arab Republic, to echo

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[223] BATATU, *supra* note 199, at 32.

[224] *Id.*

[225] Torrey, *supra* note 195, at 459.

[226] SAM DAGHER, ASSAD OR WE BURN THE COUNTRY: HOW ONE FAMILY'S LUST FOR POWER DESTROYED SYRIA 23-27 (2019).

[227] Omar Abdulaziz Hallaj, Online Private Lecture Series on the History of the Syrian Constitutions and the Political Context of Constitution Building in Syria (June-Sept. 2019).

[228] Torrey, *supra* note 195, at 462.

[229] *Id*. at 462-63.

[230] *Id*. at 463.

[231] *Id*. at 464.

the name of the union of the United Arab Republic.[232] This name change was alarming to non-Arab components of Syrian society, however, and particularly to the Kurds, who feared the official name change was a hostile signal to non-Arab communities in the country. Such alarm was not unfounded. Arab nationalists at the time were busy carrying out one of the most deliberate anti-Kurdish policies to date in Syria. During census counts in 1962, as many as 120,000 Syrian Kurds—about twenty percent of the area's population—were stripped of their nationality.[233] The decree authorizing the 1962 census required Kurds to prove, by documentation, that they had resided in Syria since 1945.[234] Ba'athists argued that only sixty percent of Kurds were actually true Syrians, the rest having originated in Turkey or Iraq as a scheme to force the creation of a Kurdish state.[235] Their exclusion led to 120,000 Kurds being listed as "aliens," with documents stating that a particular individual "was not on the registration lists of Syrian Arabs specific to Hasakeh."[236] As a result, many Kurds not only lost their citizenship—and were now stateless—but were also stripped of their property and land, for which they did not receive compensation.[237]

During this time, the Ba'athists also nationalized large sectors of the economy. According to Bitar and Aflaq, the purposes of Ba'athism was not to "feed the hungry and clothe the naked," but instead to destroy the aristocracy and the economic dominance they had over the lower classes.[238] It also called on Arab countries with more resources and capital to share their wealth with Arab brethren who had less.[239] Trade would be managed entirely by the state and workers would partake in profit sharing from factories.[240]

The Ba'athists set about nationalizing private banks, the textile sector, mining and petroleum resources, all foreign trade, and over one hundred private firms.[241] They expropriated farmland, prohibiting anyone from owning over fifty hectares total.[242] Martial law was instituted, and the military council, known as the National Council for the Revolutionary Command (NCRC), became the official legislative body which would include representatives of mass organizations—labor, peasant, and

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[232] *Constitutional History of Syria*, *supra* note 133.

[233] JORDI TEJEL, SYRIA'S KURDS: HISTORY, POLITICS AND SOCIETY 51 (2009).

[234] *Id.*

[235] *Id.*

[236] *Id.*

[237] *Id.*

[238] Torrey, *supra* note 195, at 451.

[239] *Id.*

[240] *Id.*

[241] *See* DAGHER, *supra* note 226, at 33.

[242] *See* ATASSI, *supra* note 52, at 262.

professional unions.[243] These massive economic transformations caused panic among the business community, and merchants in the cities began to go on strike.[244]

Amin Hafiz, a Ba'athist military officer, was placed as head of the Presidential Council.[245] A new temporary constitution was enacted, the first of the Ba'ath Party constitutions to dictate Syrian state terms over the people. The constitution, and the other Ba'athist constitutions to follow, would highlight the organizing principles of the Ba'ath: the supremacy of Arab unity and the need to thwart all enemies—both domestic (regionalism, sectarianism, and Islamism) as well as foreign (imperialism, Zionism, and colonialism). It would hyper-centralize power in the hands of the Party and its leadership and endorse the idea that the State was in the best position to manage the economy and lead the masses to economic liberation from the aristocratic Syrian families of the past.

Some articles in the constitution are worth noting. The article concerning the "religion of the President of the Republic" was amended slightly to "religion of the President of the State should be Islam."[246] The 1964 temporary constitution did state in Article 3(2) that "Islamic jurisprudence shall be *a main* source of legislation" (as opposed to the previous wording of *the main* source).[247] But, consistent with the Ba'ath Party principles, there was no mention of the rights of any religious or sectarian communities in Syria, including the right of religious education. Instead, the constitution included more than sixteen articles regarding civil and political rights, many taken from the 1950 constitution.[248]

The Syrian Army, officer corps, and state institutions would be completely shaken up. On paper, anyone disloyal to the values of Unity, Freedom, and Socialism was dismissed; the reality, however, was that only personal patronage and loyalty to the leadership mattered.[249] By 1965, figures like Col. Salah Jadid began solidifying sectarian undertones in the Ba'athist structure. Backed by other Alawites and Druze officers, his growing wing of the Ba'athist Party were ensuring military dominance over both the Party and the State, permanently sideling individuals like the intellectual founders of the Ba'ath.[250] The sectarian undertones were becoming increasingly obvious and Head of the Presidential Council Amin Hafiz worried about the

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[243] *See* U.S. Dep't of State, Bureau of Near Eastern Affs., Background Note: Syria 13 (2012), https://2001-2009.state.gov/r/pa/ei/bgn/3580.htm.

[244] *See* Torrey, *supra* note 195, at 467.

[245] *Id*.

[246] Turkmani & Draji, *supra* note 66, at 16.

[247] *Id.* at 28.

[248] *See supra* text accompanying note 227.

[249] *See supra* text accompanying note 227.

[250] *See* BATATU, *supra* note 199, at 156.

destabilization of Syrian society and growing social tensions.[251]

Amin Hafiz did not last long in power. Within a year, local populations started to stage protests in Homs to denounce the takeover by the Ba'athist regime; they were ordered to be killed and deemed "Zionists and colonial agents."[252] In Hama, radical Islamists staged protests and rebellions in Homs began as well.[253] Damascenes also staged strikes.[254] President Hafiz was aware of the societal dynamics boiling to the top in Syrian society: the country's Sunni majority was wary of the "secular . . . godless minority-led regime" that the Ba'athists had brought to power, but the Ba'athists ignored these protests and continued to solidify their control.[255]

In February 1966, Salah Jadid led the Ba'ath Military Committee to launch a coup to overthrow Amin Hafiz. Meanwhile, Hafiz al-Assad, who was serving as Defense Minister, began to openly disagree with Jadid, who he believed was not investing enough energy in rebuilding the army, a prerequisite to reclaiming the Golan Heights from Israel.[256] Instead, Jadid harassed unions and other institutions he believed would possibly challenge his rule. By doing so, Jadid alienated many in the Ba'ath Party who agreed with Assad. Others in the Ba'ath feared a complete splinter in the Party which would ultimately remove them from power. The compromise was that the Party would draft a provisional constitution to bridge the divide between the two leaders.[257] The provisional constitution formalized the Arab Socialist Ba'ath Party as the ruling party and went into detail regarding the Ba'athist governance in the modern Syrian state concerning the relationship between central and local governments.[258] The document abolished the Council of Representatives and replaced it with the People's Assembly, a legislative body not rooted in territorial representation, but instead structured around sectoral representation, such as farmers and engineers.[259] Assad insisted on this, based on his understanding that removing all representation based on regions would rile up the urban and rural local notables. He chose instead to give the appearance of limited decentralization to the urban elite by facilitating local representation of various sectors.[260]

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[251] *See* ATASSI, *supra* note 52, at 267.

[252] *See* DAGHER, *supra* note 226, at 29.

[253] *Id.*

[254] *Id.*

[255] *Id*.

[256] *Id*.

[257] *See* Torrey, *supra* note 195, at 469.

[258] AL-DUSTUR AL-MUAQAT LIEAM 1969 [THE INTERIM CONSTITUTION OF 1969], art. 128 (Sy.), http://parliament.gov.sy/arabic/index.php?node=5518&cat=414.

[259] *Id*. at art. 9.

[260] *See supra* text accompanying note 227.

In the document, Assad also proposed the Local People's Councils.[261] The Local People's Councils did not offer any decentralization mechanism for state power, but instead were a mechanism for maintaining the appearance of local participation in politics, an issue the Ba'athists knew they could not eliminate entirely in cities like Damascus and Aleppo where Syria's governing power historically lied. The reality was, however, that the People's Councils were chapters of associations that were actually administered, managed, and directed by the central government.[262] Locals elected their own representatives to these associations, who would then report to and represent central governing authorities in their local areas.[263] In other words, those elected would simply be the custodians of state assets *to the local areas*, not local emissaries *to the central government*.[264] Under this system, local representation was diverted towards the new, Ba'thist-sponsored elites.[265]

Tensions between Jadid and Assad continued to grow and Assad launched Syria's final coup with Ba'athist officers on November 17, 1970—a moment which came to be known as the "Corrective Movement." Assad and his comrades capitalized on local grievances about Jadid's communist and extreme nationalization policies that urban notable merchants rejected to justify their intervention.[266] Assad was appointed as Secretary General of the ruling Ba'ath Party, as well as Defense Minister and Prime Minister of Syria.[267] He arrested and jailed those that had sided with Jadid, and only kept the individuals that had expressed loyalty to Assad and his vision.[268]

In 1971, another provisional constitution was drafted and included hyper-centralized language the Ba'athists desired for Syria and enshrined a hyper-presidential system. Like the 1964 temporary constitution, it affirmed that the ruling party was the Ba'ath. It also determined that the president nominees would be approved by the Ba'ath Party and then elected through a popular referendum.[269]

Assad wanted to act quickly, fixing the State in the shape of his vision for Syria, launching a constitutional project to cement his vision and control over the Ba'ath Party. The 1973 constitution, allegedly drafted by a committee drawn from an appointed People's Assembly in 1971,[270] was in actuality

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[261] AL-DUSTUR AL-MUAQAT LIEAM 1969 [THE INTERIM CONSTITUTION OF 1969], arts. 67-68 (Sy.), http://parliament.gov.sy/arabic/index.php?node=5518&cat=414.

[262] ZAID AL-ALI, ARAB CONSTITUTIONALISM: THE COMING REVOLUTION 240 (2021).

[263] *See supra* text accompanying note 227.

[264] AL ZOUBI ET AL., *supra* note 56, at 46.

[265] *See supra* text accompanying note 227.

[266] *See* BATATU, *supra* note 199, at 175.

[267] *See* ATASSI, *supra* note 52, at 299.

[268] *Id.*

[269] *See* PROVISIONAL CONSTITUTION OF SYRIA, Apr. 25, 1964, arts. 7, 48(2), 52.

[270] *See supra* text accompanying note 227. Assad would take this opportunity to appoint

drafted by a small committee of Assad's closest advisors, overseen by Mazhar al-Anbari.[271] In most ways it drew from the Ba'ath's 1969 and 1971 temporary constitutions. The preamble again focuses on the centrality of socialist principles and the Arab nation; it also tells the story of the Socialist Arab Ba'ath Party and its ascension to power.[272] It affirms the Syrian Arab state's commitment to defeating the enemies of Zionism, imperialism, and separatist movements, and rejects any attempts to divide the region.[273]

The 1973 constitution, however, grappled with issues concerning religion a bit differently. When the draft of the constitution was completed by Assad's advisors, it was sent to the official 'constitutional committee,' made up of members of the People's Assembly, and within a few weeks was sent to the full People's Assembly to be approved.[274] A copy of it was leaked however, and protests erupted in Damascus, Aleppo, Homs, and Hama concerning the small committee's initial deletion of Article 3, which removed any requirement of the president being Muslim, and paragraph two, which stated only that "Islamic jurisprudence was a *principal source* of legislation," and not a main source of legislation.[275] This would be the last and only time that the Assad government would bargain with Syrian society on an issue deemed too explosive for Assad to ignore. Assad also needed to work with Egyptian President Sadat to launch the 1973 invasion of Israel to regain the Golan, which had been lost under Assad's reign as Minister of Defense, and such constitutional disputes were taking focus away from that.[276] Thus, the article was hastily amended.[277] The stipulation that the "religion of the President of the Republic shall be Islam" was reinserted,[278] and paragraph two was finalized as "Islamic jurisprudence shall be a *main* source of legislation."[279]

The power-sharing dynamics in the 1973 constitution are one of its most defining features, and warrant further analysis. While it does mention "Local People's Councils," like the other Ba'athist constitutions before it, it does not seek to empower the periphery nor the urban centers that historically

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particular local notables, such as Ahmed Kuftaro, who later became the Mufti of Syria, along with former Jadid loyalists from the Ba'athist cadres, including women.

[271] *See supra* text accompanying note 227.

[272] AL-DUSTUR AL-SUWRIU [THE SYRIAN CONSTITUTION], 1973, pmbl., *translated in* https://carnegie-mec.org/diwan/50255?lang=en; *see also* AL-ALI, *supra* note 262, at 175.

[273] AL-DUSTUR AL-SUWRIU [THE SYRIAN CONSTITUTION], 1973, pmbl., *translated in* https://carnegie-mec.org/diwan/50255?lang=en.

[274] *See supra* text accompanying note 227.

[275] *See supra* text accompanying note 227.

[276] *See supra* text accompanying note 227.

[277] AL ZOUBI ET AL., *supra* note 56, at 45.

[278] *See* Turkmani & Draji, *supra* note 66, at 15; DUSTUR AL-SUWRIU [THE SYRIAN CONSTITUTION], 1973, art. 3(1), *translated in* https://carnegie-mec.org/diwan/50255?lang=en;

[279] Thus, it is ultimately a distinction without any practical difference.

clenched power. The 1973 constitution ultimately placed all power in the hands of Assad, by his own design, and with little input from anyone but his closest advisors, almost all of whom were his military comrades.[280] Again, this constitution is best categorized as a hyper-centralized Ba'athist constitution with the most significant authorities in the hands of the president: he can dissolve the People's Assembly,[281] he can legislate in certain circumstances and can put to a public referendum laws that he proposes (and the Supreme Court is actually disbarred from reviewing such laws),[282] and he is entirely responsible for appointing the Supreme Court.[283]

Like the Ba'athist constitutions that came before it, the 1973 version reinforces the central governement's authority by extending its tentacles to local communities through the previously mentioned "Local People's Councils" with a focus on sectors as opposed to any other societal components like ethnicity, sect, or class. This ultimately became another way of injecting central governing power in local associations and administrative bodies, limiting their work to "guid[ing] the [central government-centered] economy, develop[ing] work conditions, safety, health and affairs pertaining to the lives of organization [union and association] members."[284]

The constitution was adopted by a popular referendum on March 12, 1973.[285] That same year, the Shi'a cleric, Musa al-Sadr, issued a fatwa pronouncing Alawis to be Shi'a, and therefore mainstream Muslims, in an attempt to end the accusation of Alawis as heretics and enabling Assad to serve as its Muslim president in accordance with Article 3.[286]

### *G. Hafez al-Assad's Syria and the End of Public Discourse for Syria's Constitution*

The 1973 constitution would be the final constitution incorporating any

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[280] Najib Ghadbian, *The Constitutional Question in Syria: A Political Approach*, OMRAN CTR. STRATEGIC STUD. (Dec. 10, 2019), https://omranstudies.org/index.php/publications/papers/the-constitutional-question-in-syria-a-political-approach.html.

[281] AL-DUSTUR AL-SUWRIU [THE SYRIAN CONSTITUTION], 1973, art. 107, *translated in* https://carnegie-mec.org/diwan/50255?lang=en.

[282] *Id*. art. 146.

[283] *Id*. art. 139.

[284] *Id*. art. 49.

[285] *See* Peter B. Heller, *The Permanent Syrian Constitution of March 13, 1973*, 28 MIDDLE E. J. 53, 53 (1974).

[286] *See* Talhamy, *supra* note 94, at 175, 190. This was not the first time there had been fatwas regarding the nature of Alawi Islam being in line with mainstream Islam. In the twentieth century alone, this was the third attempt to mainstream this issue. Previous fatwas had come from the Hajj Amin al-Hussain, Mufti of Jerusalem in 1936, in order to bring Alawis into the fold and prevent the French from making inroads with the Alawi community; the second fatwa was by Ayatollah Hasan Mahdi al-Shirazi in 1972.

semblance of public demands. Hafez al-Assad's Syria would come to be an Arab nationalist state, absorbing all its various ethnic and sectarian components so long as those communities remained loyal and unquestioning of the Ba'ath Party and Assad. The Ba'ath Party was keen to emphasize Arab unity over any other feature of society, be it linguistic, ethnic, religious, or regional particularities. This would essentially eliminate the ability of Syrians to gather collectively socially, or even politically, around any other collectivist forces mentioned above. By doing this, the Ba'ath effectively removed the entire discussion of minority rights, Islam's role in society, and the ability of ethnic groups to speak their language. In the eyes of the Syrian regime, these were all negative factors that only divided Syria and made it more vulnerable to attack by outside forces.

Under Hafez, the regime abandoned Jadid's more socialist, state-centered approach for a more business friendly environment—recognizing that economic stagnation would weaken Syria's national security. The Sunni urban mercantile class took note of this and saw that this would be their opportunity to exchange loyalty for access to markets and wealth, as they had done under the Ottomans.[287] Thus, instead of confronting the regime, many chose to participate openly in the Damascus Chamber of Commerce to secure concessions for the class as a group.[288] These would remain quiet over the years, prioritizing their economic holdings even as ordinary citizens in Aleppo, Deir ez Zor, Hama, Homs, and Idlib revolted in the late 1970s.[289] By the early 1980s, Hafez had also shut down the democratic aspects within the Ba'ath Party, cementing his rule within his own ranks.[290]

Outside of the Damascene merchant class, tensions grew between the Muslim Brotherhood and the Assad regime; a series of violent incidents took place between Assad's opponents—including the Muslim Brotherhood and the Communists—and the regime.[291] Beginning in 1979, there was an uptick in security check points (where place of birth on an ID card could alone create suspicion if an individual was from an area that had rebelled), assassinations, disappearances, and kidnappings of both regime supporters and opponents, particularly in the city of Hama.[292] In February 1982 the government launched a twenty-seven—day assault against Hama, with estimates ranging

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[287] *See* Bassam Haddad, *The Syrian Regime's Business Backbone*, 262 MIDDLE E. REP. 1, 3 (2012), https://merip.org/2012/03/the-syrian-regimes-business-backbone/.

[288] *Id*.

[289] DAGHER, *supra* note 226, at 50.

[290] *See supra* text accompanying note 227.

[291] *See Syria: 30 Years on, Hama Survivors Recount the Horror*, AMNESTY INT'L (Feb. 28, 2012), https://www.amnesty.org/en/latest/news/2012/02/syria-years-hama-survivors-recount-horror/.

[292] *Id.*

from 10,000 to 30,000 deaths.[293] This assault effectively paralyzed all opposition to the regime until the reign of Hafez's son, Bashar.

After the Hama massacre, although the army remained a conscripted force recruited from across the population, the top commanders were made up of Alawi soldiers. Most were from Assad's own tribe of al-Kalbiyy, but others, like Mustafa Tlass – a deep loyalists – were Sunni and hailed from the peripheral village of Rastan, Homs.[294] By the end of Hafez's reign, over 60 percent of the chief figures in the armed forces, security, and intelligence apparatus were Alawis, and Assad's dependence "on his own kinsmen and the Alawi base intensified and became the indispensable safeguard of his paramount power."[295] With such positions came attractive benefits: being in the officer corps meant regular "salaries, pensions, state loans on easy terms, cheap goods from army cooperatives, and other privileges, such as subsidized housing" that many of Syria's marginalized communities found attractive.[296] Syria's military might and its economic power had increasingly come to serve the Assad regime, its benefactors, and loyalists—from across Syria's ethnic and sectarian communities.

Meanwhile, non-Arab components, namely the Kurds of Syria, increasingly found themselves in the crosshairs of the Assad regime's policies in the northeast. While Assad criminalized any threats to the nation as an "enemy within," and declared any challenge to the Arab nation as "foreign,"[297] Assad knew that curbing Kurdish access to land and resources would be key to quelling any nationalist Kurdish movements. Assad launched policies to seize lands from Kurdish elites, redistributing them to peasant Kurds in the name of socialism and social justice, deliberately undermining large Kurdish landholders and financially crushing their traditional leadership.[298] He also displaced Kurds to interior parts of Syria, facilitating colonization of Kurdish lands by Arabs, and denying their right to vote or hold office without knowledge of Arabic.[299] Importantly, in 1973, Assad facilitated militarization of the "northern Arab belt" and deported Kurds from the Turkish-Syrian border under the guise of building the Tabqa Dam, negatively impacting 335 Kurdish villages and creating thirty-nine new Arab villages along the border.[300] Displaced Arab families received special

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[293] *Id.*

[294] *See* Quiades Ismael, *The Hamah Massacre – February 1982*, SCIENCESPO (Dec. 22, 2009), https://www.sciencespo.fr/mass-violence-war-massacre-resistance/en/document/hamah-massacre-february-1982.html.

[295] BATATU, *supra* note 199, at 226.

[296] *Id.* at 225-30.

[297] TEJEL, *supra* note 233, at 56-57.

[298] *Id.* at 59.

[299] *Id*. at 61.

[300] *Id.*

property rights and generous benefits from the government in exchange for their move to Kurdish-held areas.[301]

The Kurds also suffered from the curtailing of their civil and social rights. Kurdish Nowruz celebrations led to arrests and violence and banning of the holiday; meanwhile, Kurds that protested the stripping of their citizenship were arrested by the Assad regime.[302] The Kurdish language was banned in marriage ceremonies, festivals, and even in the workplace.[303] Naming children with Kurdish names was only possible by paying administrative employees bribes.[304] Names of Kurdish and Turkmen villages were strategically changed to Arab names to confer Arab dominance where necessary.[305]

Simultaneously, the Assad regime integrated 'harmless' Kurds into the political structure. Non-nationalist Kurds were placed in select positions where the regime believed it could promote a facade of 'inclusion' to keep the rebellion of Kurdish nationalist movements at bay.[306] Meanwhile, Hafez's shrewd political impulses inspired him to weaponize limited aspects of the Kurdish nationalist movement in his political conflicts with Turkey, which had become tense in 1990 when Turkey's erection of the Euphrates Dam decreased Syria's water supply up to fifty percent, devasting Syria's agriculture.[307] To pressure Turkey, Assad supported the Kurdistan Workers' Party (PKK), a Marxist Kurdish nationalist militant organization designated as a terrorist group by Turkey for its use of violence against Turkish civilians to achieve Kurdish autonomy in Turkey. Assad utilized the PKK by allowing

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[301] *See* Himbervan Kousa, *The "Arab Belt": The Story of the Largest Demographic Change in Syria*, RASEEF22 (Aug. 20, 2019, 1:36 PM), https://raseef22.net/article/1074813-the-arab-belt-the-story-of-the-largest-demographic-change-in-syria.

[302] *See* Ali Haj Suleiman & Husam Hezaber, *A Sad, Subdued Nowruz for Syria's Kurds*, AL JAZEERA (Mar. 21, 2023), https://www.aljazeera.com/features/2023/3/21/a-sad-subdued-nowruz-for-syrias-kurds.

[303] *See* TEJEL, *supra* note 233. at 63.

[304] *Id.*

[305] *See* BALANCHE, *supra* note 9, at 52.

[306] One such way to integrate Kurds was by appointing them as state-sanctioned sheikhs. Syrian Kurds were known for practicing Sufism, a strain of Islam perceived less threatening to power structures than the Muslim Brotherhood. As such, the appointed first mufti of Syria, Shaikh Ahmad Kuftaro, was a Kurd, as well as the prominent Shaikh Muahmmad Ramadan al-Buti. In addition to religious elites, a few Syrian Kurds were also active politically in the Ba'ath years, such as Prime minister Mahmoud al-Ayoubi, and chief of Military Intelligence and chief of staff Hikmat al-Shihabi. All of these figures, however, were selectively chosen due their rejection of any form of Kurdish consciousness and nationhood. *See* TEJEL, *supra* note 233, at 64-66; *see also* THOMAS PIERRET, RELIGION AND STATE IN SYRIA: THE SUNNI ULAMA FROM COUP TO REVOLUTION 13 (2013) (for a more elaborate discussion on Syrian ulama).

[307] *See* TEJEL, *supra* note 233, at 77.

the group to use Syria as a passage route from Lebanon to Turkey, as well as permitting the group's leader to remain in its territory from 1980 to the late 1990s.[308] It was only after Turkey shut down the Euphrates River and bombings took place in Syrian cities like Damascus, that the regime officially withdrew its support for the PKK in 1996.[309]

During Hafez's tenure, Syria experienced dramatic economic development and upward mobility of populations in the periphery and in rural areas. Potable water, previously not provided across the country, became common place.[310] Education across the country, including higher education, and particularly in the rural areas, became widespread.[311] Syria's Alawis, in particular but not exclusively, felt the Ba'ath Party alone offered upward mobility and was representative of their interests.[312] Populations in militarily sensitive areas, like Quneitra on the Israeli-Syrian border, joined the ranks of the Ba'athist Party given the Party's targeted interest in attracting membership to maintain Syria's border security. Students and the armed forces were forbidden from joining non-Ba'athist organizations, and so they too—if interested in promotion—would join the ranks of the Party and reap benefits.[313] And while initially membership in the Ba'ath was low in the larger cities of Damascus and Aleppo, over time membership among rural Aleppine residents grew.[314]

By the end of Hafez's tenure, the Ba'ath Party had established a welfare system that was near universally accessible to most Syrians.[315] Subsidized commodities, energy, and housing reached most Syrians in one way or another.[316] The new Ba'ath supporting communities, as well as the new elites, were supportive of the Ba'ath because they had gained access to public goods through the Ba'ath. Furthermore, Assad had regained some good will with the Arab Gulf countries because of his support for Kuwait during the Iraqi invasion of Kuwait, which assisted in improving the country's economic standing. In the final year before his death, there was limited space provided by the government to think about economic reforms, which included reports by individuals like Omar Aziz Al Hallaj, but Hafez died before seeing the reports.[317] Shortly after Bashar assumed power, he issued

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[308] *Id*. at 76.

[309] *Id.* at 77.

[310] *See* BATATU, *supra* note 199, at 66.

[311] *Id.* at 71-72.

[312] *Id.* at 180.

[313] *Id.* at 187.

[314] *Id.* at 185.

[315] E-mail from Steven Heydemann, Dir., Program in Middle E. Studs., Smith Coll., to Jomana Qaddour, Author (May 10, 2023, 10:58 AM ET) (on file with author).

[316] *Id*.

[317] *Id.*

laws that completely contradicted the reform reports that had been prepared for his father.[318] It became clear very quickly that the old Ba'ath guard that had surrounded Hafez were not going to surrender power or advise Bashar to do so.

*H. The Reign of Bashar, Unpredictably Bloodier than Hafez*

Bashar al-Assad was not meant to inherit his father's reign. He was studying medicine in London and was only called back to Syria 1994, following his brother Bassel's sudden death—whom Hafiz initially hoped would succeed him.[319] After Bashar's return to Syria, Hafez and regime loyalists fast-tracked Bashar's integration into the military and upper echelons of regime business.

The day Hafez al-Assad died, the Assad family and regime loyalists acted swiftly, fearing chaos as power transferred to Bashar. On June 10, 2000, the same day of Hafiz's death, an orchestrated session was convened in the People's Assembly, where members called for amending Article 83 of the 1973 Constitution to lower the age requirement to be president from forty to thirty four to allow for Bashar to assume the role.[320] The constitutional amendment happened within hours.[321] Soon after, he was appointed as both Ba'ath Party chief and commander of the army, and then was nominated as president.[322] On July 11, 2000, a referendum took place that formally confirmed Bashar as Syria's new president.[323]

In the early years of Bashar al-Assad's reign, western countries were hopeful that he, and his London-raised Sunni wife, Asma al-Assad, would offer the country a new, modern beginning. Immediately after Bashar assumed power, a series of Syrian pro-democratic initiatives, launched largely by middle class intellectuals, attempted to push the regime into a more democratic path in hopes that there would now be a listening ear. But very quickly, these initiatives failed one by one, and many of their participants were exiled or arrested.[324]

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[318] *Id*.

[319] *See* DAGHER, *supra* note 226, at 82-83.

[320] SAM SOLIMAN DALLAH, THE PRINCIPLES OF CONSTITUTIONAL LAW AND SYSTEM OF POLITICS: THE STUDY OF THE CONSTITUTIONAL SYSTEM IN THE UNITED ARAB EMIRATES (Arabic) 796 (U. Sharjah ed., 1st ed. 2005).

[321] John Kifner, *Syrians Vote to Confirm Assad's Son as President,* N.Y. TIMES, July 11, 2000, at A13.

[322] *Id*.

[323] *Id*.

[324] The movement did not demand regime change or challenge Bashar al-Assad's legitimacy as president, but instead saw the transition in power from Hafiz to Bashar as an opportunity to appeal to the young president who had spent time abroad. In 2005, one last, major, public attempt would be made to appeal to Bashar to pressure him into making reforms.

Shortly after he came to power, Bashar's regime faced renewed confrontation in northeast Syria where many of Syria's Kurds resided. In 2002, Bashar visited al-Hasakeh Province, and spoke of Kurds being part of the Syrian social fabric.[325] Some believed this was a sign of relaxation of the principles of Arab nationalism that had quashed all expressions of ethnic nationalism within Syria. Kurdish political parties took this as a sign of possible forthcoming reform, and lobbied to amend laws concerning the Kurdish language (including recognizing Kurdish as an official language in Kurdish-dominated areas and allowing local radio and books to be in Kurdish).[326] They also sought to modify the Syrian constitution to acknowledge the existence of the Kurdish nation within Syria.[327] Additionally, they demanded rectifying the forced demographic changes that had taken place during his father's reign, and pleaded for citizenship to be awarded to those who had been unjustly stripped of it before.[328] Such demands, however, were dismissed by Bashar.

On March 12, 2004, during a soccer match in the al-Hasaskeh Province's capital of Qamishli between a local team and an Arab team from Deir-ez-Zor province, riots broke out concerning Arab sympathies toward Iraqi president Saddam Hussain, infamous for his gassing of Iraqi Kurds.[329] During the riots, Syrian security forces opened fire at protestors, ultimately killing six Kurds, three of whom were children.[330] This incident led to Kurds and other locals (including the area's Christians and Arabs) joining demonstrations that were

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The Damascus Declaration, signed by many of the members of the Statement of 99 and the 1000 signatures, demanded "gradual and peaceful transition to democracy and the equality of all citizens in a secular and sovereign Syria." There was clearly no tolerance for this activity by this point. Following this statement, members of the Declaration were harassed, jailed, or forced into exile. *See* FREEDOM HOUSE, FREEDOM IN THE WORLD 2009 – SYRIA (July 16, 2009), https://www.refworld.org/reference/annualreport/freehou/2009/en/68997; *see also* Susan Sachs, *Assad Looks at Syria's Economy in Inaugural Talk*, N.Y. TIMES, July 18, 2000, at A10. In his inaugural address on July 18, 2000, Bashar al-Assad stated that freedom of expression should be encouraged to allow for "positive criticism" of the government, but that democracy as it is practiced in the West should not be "grafted onto Syria" and political reform that disturbed the one party system would be prohibited. In follow-up interviews, he would double down, and declare that his focus was on "social and intellectual development" of Syria, not political change. *See* DAGHER, *supra* note 226, at 106.

[325] *See* HUM. RTS. WATCH, A WASTED DECADE: HUMAN RIGHTS IN SYRIA DURING BASHAR AL-ASAD'S FIRST TEN YEARS IN POWER (July 16, 2010), https://www.hrw.org/report/2010/07/16/wasted-decade/human-rights-syria-during-bashar-al-asads-first-ten-years-power.

[326] *See* TEJEL, *supra* note 233, at 112.

[327] *Id*.

[328] *Id*. at 127.

[329] *Id*. at 115.

[330] *Id.*

then attacked by security forces and neighboring loyalist Arab tribes.[331] Kurds across Syria joined them, including in areas like Aleppo and Damascus, and statutes of Hafez were destroyed.[332] These riots and the regime's violence carried on for a couple of weeks, and by the end of March, forty three Kurds were dead, hundreds were wounded, and 2,500 were arrested.[333] Neighboring Arab governments applauded Bashar quelling "Kurdish acts of sedition," leaving Syria's largest non-Arab minority vulnerable and unprotected.[334] Much of Syria's Arab population also sided with the position of the Assad regime and the Arab governments. To them, the Kurdish rebellion was an attempt to weaken Syria's vulnerable unity and Arab identity, which foreign elements like the imperialists and Zionists were always keen to destroy.

Following this incident, what existed of a 'Syrian opposition' realized it had to voice clear opposition to the abuses that Syria's Kurds were facing under the Assad regime. The opposition began to integrate the "Kurdish problem" as part of its political agenda, endorsing a commitment to the national, cultural, and linguistic rights of the Kurds.[335] However, the opposition did so only within the confines of "unity of the *Syrian land and people*,"[336] and would decline to support any separatist or autonomous inclinations such as the Kurds of Iraq and Turkey had demanded.

After the assassination of Lebanese Prime Minister Rafik al-Hariri,[337] with which Assad was allegedly involved in, Lebanon began to witness decreasing Syrian influence and simultaneous growth of Iranian influence through its proxy, Hezbollah.[338] In 2006, Bashar signed mutual defense pacts with Iran and formalized mutual military cooperation, including granting Iranians access to valuable facilities.[339] Bashar met regularly with head of the Iranian Revolution Guard Corp, Qassem Soleimani, as well as Hezbollah commander Emad Mughnieh.[340] Similar to his father's carefully calibrated and strategic affiliation with Iran, Bashar maintained it cautiously, retaining an advantage in the relationship.[341] Additionally during this time, Bashar also

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[331] *Id.*

[332] *Id*.

[333] *Id.* at 116.

[334] *Id.* at 117.

[335] *Id*. at 126-27.

[336] *Id*. at 127.

[337] *See* DAGHER, *supra* note 226, at 119. *See also* Ronen Bergman, *The Hezbollah Connection*, N.Y. TIMES, Feb. 10, 2015, at A13, available online at https://www.nytimes.com/2015/02/15/magazine/the-hezbollah-connection.html.

[338] DAGHER, *supra* note 226, at 123.

[339] *Id.* at 126.

[340] *Id.*

[341] *See id.* at 151-52.

attempted to feign cooperation with the West, which it feared had its eye on invading Syria after Iraq. Bashar knew the West was desperate to defeat al-Qa'ida Iraq, and the Syrian government strategically announced the arrest of 1,2000 al-Qa'ida terrorists that it had purportedly captured at the Iraq-Syrian border. In reality, many of these terrorists had actually been allowed by the Syrian government to transit through Syria initially attack American forces.[342]

Domestically, Bashar began to sanction limited religious activities that assuaged his urban Sunni base. Most prominently, he authorized the previously secretive women-led Qubaysi movement to operate openly in 2003.[343] The group, notorious for its apolitical nature and therefore considered nonthreatening to the regime, spread among elite Sunni circles in places like Damascus and Aleppo.[344] The Qubaysi movement allowed women from Sunni elite families that wanted to practice and preach religion to do so without triggering the regime's traditional harsh response to most religious movements.

Economically, however, conditions were worsening. In the several years leading up to the 2011 uprising, unlike Hafez, Bashar permitted the "World Bank and the IMF to intervene in the process of economic liberalization."[345] But, like his father, Bashar would keep foreign reserves high and state debt low, and this could happen only because the state continued to draw "from key areas of [state] social welfare provision, aggravating already existing socio-economic problems."[346] During this period, the state passed laws to relinquish control over critical sectors to the private sector—the state-adjacent private sector.[347] The government cut down on its spending in all sectors, including social security, health and education spending, and subsidies for key food products, gas and other energy sources.[348] Land ownership was concentrated in the hands of a limited number of state-adjacent businessmen, and land privatization displaced thousands of peasants in northeast Syria which drove them to urban centers.[349] Infamous businessmen, like Rami Makhlouf, Bashar's maternal cousin and formerly

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[342] *Id.* at 150.

[343] *Id.* at 151.

[344] Raphaël Lefèvre, *The Rise of the Syrian Sisterhood*, CARNEGIE ENDOWMENT FOR INT'L PEACE (April 25, 2013), https://carnegieendowment.org/sada/51633.

[345] JOSEPH DAHER, THE POLITICAL ECONOMIC CONTEXT OF SYRIA'S RECONSTRUCTION: A PROSPECTIVE IN LIGHT OF A LEGACY OF UNEQUAL DEVELOPMENT 7 (2018). This should not be confused, however, with the ability of the West, including the United States, to influence Syrian internal matters, which it ultimately could not do.

[346] *Id*.

[347] *Id*.

[348] *Id*. at 8.

[349] *Id*. at 9.

the richest man in the country, "represented the mafia-style process of privatization led by the regime."[350] At his peak, Makhlouf's financial empire included telecommunications, oil and gas, construction, banks, and the airlines industry. Meanwhile, small and medium-sized businesses, which had previously made up more than ninety-nine percent of all businesses in Syria, all suffered negative consequences from this massive economic liberalization.[351]

But what would really lead Syria into the becoming one of the bloodiest revolutions was that it was suffering from an unaddressed youth bulge, compounded by the global economic crisis of 2008-2009.[352] Youth unemployment was near twenty percent, and the younger, more interconnected generation understood what little hope lied ahead of them compared to youth in other countries.[353] It is not a stretch at all to claim that the Syrian uprising was an uprising of Syria's youth—youth that had few economic opportunities in Syria. These same youth were watching state-sponsored elites become richer and economic growth in the country increase, but without any positive trickle down to the generation of average Syrians. Instead, the youth were lengthening their time in school since jobs were not available, and living at home with their parents.[354] The rebellion in Syria was became not just a rebellion against the government, but a rebellion against the patriarchal system that pervaded Syria, beginning from their parents, for whom they blamed for their plight (accepting to live under such autocratic conditions) and with whom they continued to live with into their mid-20s.[355]

### *I. Syria's 2011 Uprising Begins*

It is under this backdrop, and alongside other Arab Spring movements, that the 2011 Syrian uprising began. In mid-March 2011, both in Damascus and immediately following in the southwest province of Dar'a, civilians gathered in mosques and protested, demanding reforms and an end to corruption, police brutality, and joblessness.[356] Although initially there were no calls to topple the Assad regime, the regime responded with full military might to

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[350] *Id*. at 10.

[351] *Id*.

[352] Omar Abdulaziz Hallaj, Member of the Syrian Const. Comm. Civil Society Group, Presentation to Constitutional Committee Members (Feb. 20, 2020).

[353] Steven Heydemann & Jihad Yazigi, *Syrian Uprising 10-Year Anniversary: A Political Economy Perspective*, BROOKINGS (Mar. 26, 2021), https://www.brookings.edu/on-the-record/syrian-uprising-10-year-anniversary-a-political-economy-perspective/.

[354] Hallaj, *supra* note 352.

[355] *Id*.

[356] Aron Lund, *The Politics of Memory: Ten Years of War in Syria*, CENTURY FOUND., (Mar. 15, 2021), https://tcf.org/content/commentary/politics-memory-ten-years-war-syria/.

shut them down.[357] After an initial violent confrontation, in April, Bashar considered legal measures to quell protestor demands and deflect international attention. A new prime minister was named, and new decrees issued, including ending the 1962 martial law, permitting peaceful demonstration, and abolishing state security courts—none of which could satisfy protestor demands that were more far-reaching and deeper seated.[358] By year's end, the battle between the regime and the opposition had become a military confrontation, and the death toll was rising. The government used violence in response to protests, and weaponized paramilitary groups and Syria's massive security and military apparatus to shut down the rebellion.[359] To do this, the regime activated key tools it had cultivated: it relied on kinsmen, especially Alawis and Christians, who it knew would be loyal, and those it had placed in leadership positions, including elite Sunni businessmen and appointed Sunni clergy.[360]

As part of the reform package, in October 2011, Bashar announced Presidential Decree No. 33, creating the National Committee of thirty members[361]—legal and political notables, as well as members from the People's Assembly—to amend the 1973 constitution.[362] Proposed amendments were approved on February 26, 2012 by a general referendum.[363] The revised constitution added fourteen articles and amended

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[357] *Id.*

[358] *Syria Protests: Bashar Al-Assad Lifts Emergency Law*, BBC NEWS (Apr. 21, 2011), https://www.bbc.com/news/world-middle-east-13161329.

[359] Ali Haj Suleiman, *Anti-Government Protests in Syria Continue for Sixth Day,* AL JAZEERA (Aug. 25, 2023), https://www.aljazeera.com/news/2023/8/25/anti-government-protests-in-syria-continue-for-sixth-day.

[360] Dagher, *supra* note 226, at 217.

[361] Although there were 30 members, ultimately only 29 participated because one member refused to be on the committee. Moreover, it became clear quickly that the committee was too big, and a smaller drafting committee was selected. However, it is important to note that all critical questions were reverted to the Presidential Palace for answers. This information is based on a series of private lectures delivered online by Omar Abdulaziz Hallaj on the history of the Syrian constitutions and the political context of constitution building in Syria. Lectures were delivered from June to September 2019 and covered 1920 through the 2012 constitutions. Hallaj, *supra* note 352.

[362] AL ZOUBI ET AL., *supra* note 56, at 49. Initially, the committee was smaller and included a limited number of constitutional scholars and some elite presidential advisors, such as Buthayna Sha'ban, Dr. Aboud Sarraj, and Sam Dallah. Suddenly, the number was expanded to 29, to include more presidential advisors and Ba'ath regime operatives. The result was that legal advice was not taken seriously, and vetoed by political members who wanted limited, superficial changes to the text and wanted to ensure power remained firmly in control of Bashar. Some of these people had never even read the constitution. Interview with Dr. Sam Dallah, Syrian Const. Scholar & Former Member of the 2012 Const. Drafting Comm., in Dubai, U.A.E. (Mar. 21, 2019) [hereinafter Interview with Dr. Sam Dallah].

[363] AL ZOUBI ET AL., *supra* note 56, at 57.

47 out of 157 articles.[364] Although Syrian constitutional scholars attempted to provide Bashar with language that provided the impression of superficial reforms, members of the committee, like Dr. Sam Dallah, recall that Bashar's closest advisors on the committee confirmed to them that there was no intention for Bashar to ever relinquish power to the committee, let alone to Syrian citizens or local communities.[365] Bashar's lack of constitutional knowledge, and the lack of institutional methodology for the regime's decisions, essentially meant that "everything can happen, and nothing could happen, all at the same time."[366]

The amended constitution now omitted Article 8, which previously stated, "The leading party in the society and the state is the Socialist Arab Baath Party. It leads a patriotic and progressive front seeking to unify the resources of the people's masses and place them at the service of the Arab nation's goals."[367]

The revised article now consisted of five paragraphs, with the most relevant sections stating that:

> 1. The political system of the state shall be based on the principle of political pluralism, and exercising power democratically through the ballot box;
>
> 2. Licensed political parties and constituencies shall contribute to the national political life, and shall respect the principle of national sovereignty and democracy;
>
> 3. The law shall regulate the provisions and procedures related to the formation of political parties;
>
> 4. 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.[368]

By now, Bashar did not need the Ba'ath to justify his hyper-presidential rule. The constitution was a hyper-presidential constitution, with full monopoly of power placed directly in the hands of the President and his elite circle.

In less than a hundred years, Syria had gone from being a country with

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[364] *Id.* at 49.

[365] Interview with Dr. Sam Dallah, *supra* note 362.

[366] *Id*.

[367] AL-DUSTUR AL-SUWRIU [THE SYRIAN CONSTITUTION] 1973, art. 8, *translated in* https://carnegie-mec.org/diwan/50255?lang=en.

[368] Dustur Al-Jumhuriat Al-'Arabiat Al-Suwriat Li'am 2012 [SYRIAN ARAB REPUBLIC'S CONSTITUTION OF 2012], art. 8, *translated in* https://www.constituteproject.org/constitution/Syria_2012.pdf?lang=en.

active and informed debate (but not necessarily a resolution) about who constituted being a Syrian, how its various components would be categorized, and what that would mean for the trajectory of ethnic and sectarian components in the country—to a country that was now defined by a one family rule. Prior to Hafez, there was still some semblance of debate between the Ba'ath Party members themselves about organizing political structures. By 2011, the state had entrenched rejection of diversity, the illegitimacy of ethnic and sectarian identities other than Arab nationalism, and the use of state-corporate structures to organize society into unions, peasants, and students to dictate regime authority down to the local population. This only became more clear in the constitutional committee discussions of 2012 when, according to committee members like Dallah, they advised against the overuse of "Arabism," "Arab nation," and "Arab identity," in the constitution, but were immediately shut down.[369] Dallah and others advised that changing the name to the Syrian Republic—without the Arab—could possibly stymie Kurdish nationalist rebellion, but their advice was again rejected.[370] Bashar and his trusted circle insisted on the same one-party rule structure that the Ba'ath had insisted on during their rise in the UAR period, no matter how irrelevant the Arab socialist ideology had become by 2012.

Article 33, paragraph 3, re-inserted the notion of citizen equality, stating, "Citizens shall be equal before the law and equal in duties and rights, and there shall be no distinction between them on the ground of sex, origin, language, religion, or belief." This echoed the 1950 constitution that not only pronounced citizen equality but also prohibited discrimination on the grounds of sex, origin, language, religion or belief, which had been omitted for the past several constitutions.[371] There was also a reversion to the pronouncement of observing and safeguarding "the personal status of religious communities," absent in Syrian constitution since 1962.[372] The inclusion of this article cast doubt on the aforementioned article of equality for all citizens and the prohibition on discrimination for sex, origin, language, religion, or belief, which personal status courts often impose (and is beyond the scope of this Article).[373]

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[369] Interview with Dr. Sam Dallah, *supra* note 362.

[370] *Id*.

[371] Turkmani & Draji, *supra* note 66, at 23.

[372] *Id.* at 25; Dustur Al-Jumhuriat Al-'Arabiat Al-Suwriat Li'am 2012 [SYRIAN ARAB REPUBLIC'S CONSTITUTION OF 2012], art. 3(4), *translated in* https://www.constituteproject.org/constitution/Syria_2012.pdf?lang=en.

[373] DAAD MOUSA, SYRIAN PERSONAL STATUS LAWS 1, 8-9 (2018). Although outside the purview of the discussion of this Article, it is relevant to note that personal status courts were always a complex issue in Middle Eastern societies, but what is rarely discussed is the fact that systems with personal status courts obligate men to legally take care of their immediate female relatives financially. Such a legal obligation often replaces welfare funds that the State would either not have or not be willing to spend on the population. Additionally, because most

Finally, power sharing, and the inclusion of local voices into any decision-making body in Syria, remained very narrow in the 2012 constitution. The constitution instituted a limit to the number of terms a president could serve (it was now limited to two, after the current term was complete),[374] and a reference was made to "democratically elected Local Councils at the national or local level shall be institutions through which citizens exercise their role in sovereignty, state-building and leading society."[375] The regulations concerning these Local Administrative Councils are outlined in Articles 130 and 131. The word "decentralization," was also included for the first time in a Syrian constitution, but it is important not to overemphasize the widening it provided in Syria's structure. Article 131 outlines that the organization of "local administrative councils will be based on applying the principle of decentralization of authorities and responsibilities." If one looks here to the additional laws on the subject, as Article 130 tells one to do, there are two differences worth highlighting. First, the law describes an end state after the implementation of the national plan for decentralization where all local services will be under the direct management of the local authorities, along with their budgets.[376] Second, while it did retain the critical role of the governor in the hand of central-government appointed individuals, it now eliminated all appointed posts beneath that.[377] Within the Assad regime, what would appear to be a minor difference was important for local leaders and organizations that were desperately trying to carve out minimal space for local initiatives. The true test here would have been whether or not this difference would be honored by the government, or if it would be, like many other laws, just another empty promise.

As we close the conversation on Syria's constitutional drafts, it is essential to highlight a few trends that created a *fait accompli* on the ground in Syria,

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of these systems did not have a fully developed female workforce and job opportunities were slim for both men and women, women were not given the space to provide for themselves. As a result, some Middle Eastern women would prefer to have a system of consistent, ensured provision for them (and possibly children) and would accept the exchange this would often have in terms of lesser rights for women within the religious legal framework implemented by religious personal status courts.

[374] Dustur Al-Jumhuriat Al-'Arabiat Al-Suwriat Li'am 2012 [SYRIAN ARAB REPUBLIC'S CONSTITUTION OF 2012], art. 88, *translated in* https://www.constituteproject.org/constitution/Syria_2012.pdf?lang=en.

[375] *Id*. at art. 12.

[376] Omar Abdulaziz Hallaj, Lecturer, History of the 1920-2012 Syrian Constitutions and the Political Context of Constitutional Building in Syria, lecture series (June - Sept. 2019). Information in this paragraph based on a series of private lectures delivered online by Omar Abdulaziz Hallaj on the history of the Syrian constitutions and the political context of constitution building in Syria. Lectures delivered from June to September 2019 and covered 1920 through the 2012 constitutions.

[377] *Id*.

that were structured around—more or less—ethnic or sectarian components. Whether or not everyone in each component was in favor of these trends has in some ways become irrelevant, as critical majorities in groups have been left with little choice but to flee Syria or rally behind the "leaders" of their groups for their survival. The result has been a very real increase in sectarian segregation, attacks, discrimination, and kidnapping, and outright violence that continues in today's Syria between and among Sunnis and Alawites, Sunnis and other religious minorities (and those religious minorities between and among each other), and Arabs and Kurds. Thus, all of these groups' fears are not unfounded as trust was broken and communities looked inward for protection and security.

There are two groups worth mentioning, however, that managed to create on-the-ground realities to influence their security and constitutional bargaining capabilities. The first is the Kurdish nationalist community in northeast Syria. Shortly after the mid-March 2011 protests began, Bashar, fearing Kurdish revolts, restored citizenship to the 120,000 Kurds previously stripped of their Syrian identity.[378] Following this move, the Kurds demanded serious reforms to their national rights. Having felt abandoned by most Syrians in 2004, Kurds of northern Syria did not see the broader 2011 uprising as an opportunity to join other Syrians in unified rebellion against the regime, instead focusing on survival and securing as much autonomy as possible. The regime could foresee these dynamics, and it authorized the informal return of the Kurdistan Workers Party (PKK) to return to Syria in the spring of 2011, which kept both Arab opposition groups and the regime out of its territories; the regime believed that Kurdish domination in northeast Syria could provide a feasible, temporary fix while it focused on the Syrian armed opposition in other areas.[379]

The rise of the Islamic State of Iraq and Syria (ISIS) and the subsequent creation of an internationally backed military force, known as the Syrian Democratic Forces (SDF), has placed the Kurds in a position to both help defeat ISIS and simultaneously create a de facto state under their leadership in northern Syria, now called the Autonomous Administration.[380] The creation of the SDF, and the delineation of the Autonomous Administration region led by Kurdish nationalists in the most resource-rich region of Syria has been met with ire from local Arab tribes and other Syrians across the country, as well as neighboring Turkey. The SDF and creation of the

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[378] *Stateless Kurds in Syria Granted Citizenship,* CNN (Apr. 8, 2011), http://www.cnn.com/2011/WORLD/meast/04/07/syria.kurdish.citizenship/index.html. The number had now grown to about 300,000 individuals. *Id.*

[379] BALANCHE, *supra* note 9, at 16.

[380] Gregory Aftandilian, *Syrian Kurds in an Increasingly Precarious Position*, ARAB CTR. WASH. D.C. (Oct. 18, 2023), https://arabcenterdc.org/resource/syrian-kurds-in-an-increasingly-precarious-position/.

Autonomous region has spurred Turkey to invade northeastern Syria multiple times—including in 2016,[381] 2018, and 2019, in an effort to preventing a Kurdish statelet from coming to fruition.[382] That said, the region organizes and governs the area as though it were pseudo-independent from the rest of Syria, even drafting constitutions (*Nizam Dakhili*, as they called them), to be discussed further below.

The second community worth noting is Syria's Druze community. The Druze maintained almost exclusive control over their historical province in the southwest of Sweida, home to a population of approximately 380,000, where both regime and opposition forces have never been able to penetrate.[383] From the outset, Sweida's citizens participated in protests like many other cities in Syria, but encouraging a viable mass in this vulnerable province to do so created a challenge of organizing "a sizeable demonstration that could withstand any likely attack" by the Army.[384] The regime's approach to a province like Sweida—a homogenous one with a heavy minority-concentrated population—would not be identical to its tactics in Sunni areas. As the analyst Mazen Ezzi stated, "[t]he first demonstrations in Syria were not bigger than Sweida's demonstrations, but murder and the savage violations of human rights gave it momentum, whereas in Sweida, the regime attacked the demonstrators and arrested some of them but never killed anyone."[385]

The regime needed to maintain its reputation as the protector of minorities, and therefore carefully calculated before launching mass attacks on minority-heavy areas such as Sweida.[386] The political history of Sweida has fluctuated over the course of the uprising, and suffers from multiple divisions, including divisions along secular, religion/tribal, and loyalist lines. But one unified calculation by the Druze community which has been vital to its survival and autonomy during this uprising is the fact that they threatened the regime that men of conscripting age would only serve in Sweida and protects its own residents, or they would not serve at all.[387] Unlike the Kurdish-dominated

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[381] BALANCHE, *supra* note 9, at 64.

[382] *Questions and Answers: Turkey's Threatened Incursion into Northern Syria*, HUM. RTS. WATCH (Aug. 17, 2022), https://www.hrw.org/news/2022/08/17/questions-and-answers-turkeys-threatened-incursion-northern-syria.

[383] Mazen Ezzi, *A Static Revolution: The Druze Community, in* PLAYING THE SECTARIAN CARD: IDENTITIES AND AFFILIATIONS OF LOCAL COMMUNITIES IN SYRIA 39, 39 (Friederike Stolleis ed., Ali Barazi et al. trans. 2015).

[384] *Id.* at 48.

[385] *Id.* at 49.

[386] *Id.* at 51.

[387] MAHMOUD AL-LABABIDI, THE DRUZE OF SWEIDA: THE RETURN OF THE REGIME HINGES ON REGIONAL AND LOCAL CONFLICTS 9 (Yaaser Azzayyat & Alex Rowell trans., Eur. Univ. Inst. 2019), https://op.europa.eu/en/publication-detail/-/publication/189b741d-3385-11eb-b27b-01aa75ed71a1/language-en (over 50,000 men from Sweida have absconded military

Autonomous Administration, the "Druze have not sought to establish alternatives to Syrian state institutions, despite their poor performance and frequent interruptions of their services."[388] Thus, while Autonomous Administration continuously takes steps toward independence from Syrian government authorities, the Druze do not seek autonomy from the Syrian state, but rather insist on minimal outside interference by ruling powers, as they historically have done in every location where Druze exist.

## III. TODAY'S SYRIAN CONSTITUTIONAL COMMITTEE AND ETHNO-SECTARIAN BARGAINING

After countless attempts to broker a political solution to the Syrian uprising, the international community could only agree on one political process in Syria so far: the UN-facilitated Syrian constitutional committee.[389] It cannot be emphasized enough how little the process was endorsed by Syrians, both inside and outside of Syria, as a way to resolve the Syrian crisis because it did not address the root cause of the conflict. In addition to Bashar al-Assad and his and his state's human rights and security abuses, most would argue that constitutionalism, or the ability to implement rule of law and the constitution on the ground, was the problem, and not the text of the constitution per se. In 2019, Syria and Syrians would again be in a conundrum involving the drafting of constitution that required them to prove that they could govern the state and achieve peace. Whereas in 1920, Prince Faisal attempted to convince the French that Syria's woes could be addressed with a document that articulated freedoms and rights for all Syrians (even if the conditions on the ground were not yet ripe to enforce it), now, the international community would mandate that Syrians agree to a solution to the conflict via a constitutional process. Again, Syrians would be *required* to

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service).

[388] *Id*. at 11.

[389] Assad's ally, Russia, sits on the UN Security Council, and vetoed countless attempts to hold the Syrian government accountable or to pass resolutions that would refer Syria to the ICC, halt fire on opposition communities, or facilitate aid distribution to opposition-held territories. Michelle Nichols, *Russia, Backed by China, Casts 14th U.N. Veto on Syria to Block Cross-Border Aid,* REUTERS (Dec. 20, 2019), https://www.reuters.com/article/idUSKBN1YO23S/; Press Release, Security Council, Security Council Fails to Adopt Draft Resolution on Syria That Would Have Threatened Sanctions, Due to Negative Votes of China, Russian Federation, U.N. Press Release SC/10714 (July 19, 2012); Press Release, Security Council, Special Envoy Calls Launch of Constitutional Committee for Syria 'Historic Movement,' but Warns Security Council Conditions on Ground Must Improve, U.N. Press Release, SC/14032 (Nov. 22, 2019) [hereinafter U.N. Press Release, SC/14032]; *UN Security Council: Vetoes Betray Syrian Victims*, HUM. RTS. WATCH (May 22, 2014), https://www.hrw.org/news/2014/05/22/un-security-council-vetoes-betray-syrian-victims#:~:text=(New%20York)%20%E2%80%93%20The%20Russian,other%2013%20Security%20Council%20members.

draft a constitution, even if that wasn't the root of their conflict and even in the absence of a broker who would enforce its words on the ground. The reality was that the regime especially but not exclusively—indeed, the opposition was guilty of this too—were in no mood to compromise, and coming around the table to draft a constitution for the country after a decade of war meant that compromises were going to have to be made. After all, there were two opposing sides, as well as a civil society group, that all had different views, all of them competing for ways influence how Syria would look in the next phase.

And so, in October 2019, the UN convened and appointed 150-member constitutional committee in Geneva.[390] The method of selection of the committee members was opaque from the start, and there was no clear formula for how names were vetoed or approved.

There was one quota for the committee—the quota for women, which the UN determined would be thirty percent of the committee.[391] Beyond this, there were no religious, ethnic, or class-based quotas, and Kurds from northeast Syria, affiliated with the Democratic Union Party (PYD), were banned from participating by the Turkish Republic due to claims that the PYD enjoyed close ties to the PKK, a designated terrorist organization in both Turkey and the United States .[392]

Of the 150 members, fifty members were sponsored by the Syrian regime (many of whom were members of the People's Assembly, others Ba'ath Party apparatchiks, and a few security agents), and represented the interests of various individuals within the regime.[393] Fifty of them were sponsored by various opposition platforms (platforms ranged from those sponsored by Moscow, to Egypt, to Turkey, along with former armed opposition fighters).[394] The last third were made up of fifty 'civil society' actors, and in addition the UN selecting some of them, foreign governments also proposed

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[390] U.N. Press Release, SC/14032, *supra* note 389. Members were selected based on a non-transparent process by several governments, including France, United States, United Kingdom, Russia, Germany, and Turkey. *Id.*

[391] *A Group of Women Has Bridged Differences Towards Peace in Syria,* U.N. WOMEN (Nov. 1, 2022), https://arabstates.unwomen.org/en/stories/feature-story/2022/11/a-group-of-women-has-bridged-differences-towards-peace-in-syria; Karam Shaar & Ayman Dasouki, *Syria's Constitutional Committee: The Devil in the Detail*, MIDDLE E. INST. (Jan. 6, 2021), https://www.mei.edu/publications/syrias-constitutional-committee-devil-detail (women ultimately represented 27% of the committee).

[392] *Id*.

[393] *See* Jomana Qaddour, *The Constitutional Committee Must Be Part of a Holistic Syrian Peace Process*, MIDDLE E. INST. (Nov. 26, 2019), https://www.mei.edu/publications/constitutional-committee-must-be-part-holistic-syrian-peace-process. This would include individuals like Buthayna Sha'ban, Asma al-Assad, Ammar Saati, among others influential regime figures.

[394] *Id*.

names, including Damascus, Turkey, Europe, and the United States.[395] Of the fifty-member civil society group, more than half came from Damascus, but did not necessarily represent Damascus' interests, although the regime ensured they were not there as free agents. The other half, dubbed "independents," were from across the world, and included me.[396]

It should be noted that neither the regime nor the opposition were enthused about the concept of an independent civil society group. In fact, when the drafting committee (a smaller group of twenty-one individuals, seven from each of the three groups) met the second time, no substantive meeting took place, due in large part to disputes regarding seating arrangements. The regime side instigated this conflict, insisting that the Damascus-based civil society group would have to sit next to the regime delegation's drafting committee, and that they strictly across the room from the opposition side, not in between the opposition and regime delegations, as originally planned by the UN.[397] In other words, the regime insisted that the room be divided into two, to reinforce the notion that this was an adversarial endeavor, not one where a compromise can be struck between various actors. Faced with this, the opposition too began asking that the independent civil society members be seated next to the opposition drafting committee, a position that some of the independent civil society members refused to comply with.[398] Through this maneuver, both the regime (who was enthused to use this as a stalling tactic), as well as the opposition, attempted to force the drafting committee into an adversarial, zero-sum game.

Under these conditions, it is no wonder that little has been achieved at the eight Geneva meeting rounds. Both parties have so far required the other to make public concessions, resulting in deadlock and insufficient progress. The regime demands that the opposition conceded that the Syrian regime successfully defeated and won the 2011 revolution, which it refuses to do. Meanwhile, the opposition wants the regime to admit that it is immoral and does not represent the Syrian people, which the regime will never concede. During meeting rounds, the regime is adamant about discussing national Syrian symbols, such as the flag and the state song (both of which it seeks to preserve), while the opposition prefers to discuss necessary changes in the structure of the political system, which it perceives as a more urgent priority.[399] While both topics are vital to any constitutional discussions—they both rest on a shared understanding of the definition of a Syrian identity (which cannot be the same as pre-2011), as well as mutual agreement on how and why the uprising occurred in order to propose solutions for the root

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[395] *Id*.

[396] *Id*.

[397] Author's knowledge from participation; *see supra* note 393.

[398] *Id.*

[399] *Id.*

causes of the uprising. At this point in time, it is impossible to envision a scenario where the opposition and government delegations to the constitutional committee can come to a shared understanding on either of these two issues.

*A. Syria's Society, Riddled with Divisions*

From the outset of the uprising, I spoke to Syrians of varied backgrounds, and asked them candidly about how they felt about other sects or ethnic groups other than theirs. I realized that sometimes, the distrust of one another would come out eventually, an issue that is in no small part a phenomenon reinforced by a regime that capitalized on fracturing and isolating Syria's components from one another. I still remember listening to a Sunni doctor from Homs, for example, who kept insisting that Syria would not be safe "until it was pried out of the hands of Alawis" and it occurred to me that despite all the genuine attempts to unite Syria and paper over societal differences, many Syrians were motivated by feelings and fears that were often not spoken in polite company.[400]

This was the irony of the Ba'ath regime: while on paper it had suppressed all natural and free expression of one's language, ethnicity, or religion in the name of 'unifying' Syria, all it had really done was force those differences to be concealed in public, discussed only in hushed tones among community members themselves. Under the layers of this faux unification, there was fear of the other and whispers of communities among themselves of how other communities had treated them, or that they practiced flawed belief, or how backward the other communities were. The result is that Syria's components live in isolation out of fear and ignorance of the another because they do not have a safe, public space to become familiar with one another. The Assad regime has made every effort to foster that fear, both overtly and covertly, while claiming secularism and Arab unity on paper.[401] This is precisely why the fear that exists among these communities would quickly rise to the surface after the uprising broke out, becoming a real factor in the political demands of these communities.

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[400] The particular doctor the author spoke to had treated a psychologically impaired patient, a woman who had been locked in a closet as soldiers she identified as Alawi by their coastal accents burned her baby alive in the next room. She is scarred and traumatized for the rest of her life; the doctor insisted that after this incident, the utopian world where traumatized Sunnis could live side by side next to Alawis who murdered her baby could not be. Author's conversation with a doctor from Homs in Amman, Jordan (2015).

[401] *See* Dustur Al-Jumhuriat Al-'Arabiat Al-Suwriat Li'am 2012 [SYRIAN ARAB REPUBLIC'S CONSTITUTION OF 2012], pmbl., *translated in* https://www.constituteproject.org/constitution/Syria_2012.pdf?lang=en.; Kheder Khaddour, *The Alawite Dilemma, in* PLAYING THE SECTARIAN CARD: IDENTITIES AND AFFILIATIONS OF LOCAL COMMUNITIES IN SYRIA 11, 12 (Friederike Stolleis ed., Ali Barazi et al. trans., 2015).

Many authors I respect insist that the divisions among Syrians are contrived and that they are imagined, and that only autocrats see use for them.[402] But I disagree with this conclusion, because I do not think it accurately captures why Syrians—or any community for that matter—cling to identities. The issue is not that communities insist on their identities, but that they feel the need to adhere those identities to protect themselves from others, often resorting to isolation just to survive as a community. Despite the fact that it may very well create a line in the sand between any one community and another, positive associations stemming from ethnic or religious identities, like religious traditions or speaking one's language, can sustain a community's existence. Forcing communities to be seen as part of one unified community, which has proven to be unrealistic, can become an oppressive task, demanding one erase parts of his or her identity.[403] Further, expecting Syrians to put aside these markers, particularly the historical focal points that shed light on grievances a community has suffered requires rectifying the past as well as providing adequate assurances built on trust that a community will not be vulnerable again. A task like this cannot solely come from top-down institutions and documents, such as a constitution. It must be nurtured from the bottom up, through grass roots organizations and leaders able to convince society to create both a common understanding of the role of the state as well as a transparent and inclusive understanding of 'the other' in Syria.

While many Syrian individual experiences see past the narrative of oppression, 'community-think' still dominates baseline community narratives. In some ways, the Syrian uprising actually reinforced each community's narrative of oppression. The Sunnis further resented their status as a majority ruled by what many perceived was a ruthless minority. The Kurds feared being sidelined, as they always have in Syria. The Alawis feared both an Islamist take over as well as revenge crimes for the actions of the Assad family and its beneficiary circle. The Ismailis, Druze, and Christians feared an Islamist majority controlling the country and enforcing *shari'a* law, relegating them, yet again, to second-class citizenship. These communities simultaneously feared being dominated by *any* oppressive central government that might exploit their size and geographic concentration. All the while, political and military demagogues have not lost the opportunity to exploit genuine grievances by insisting that their individual community's

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[402] Yassin Haj Saleh, *The Just Oppressors: Middle Eastern Victimhood Narratives and New Imagined Communities*, ALJUMHURIYA (Abdul-Wahab Kayyali trans, Sept. 7, 2015), https://aljumhuriya.net/en/2015/09/07/the-just-oppressors-middle-eastern-victimhood-narratives-and-new-imagined-communities/.

[403] Rahaf Aldoughli, *Assad Remakes Syrian Faith to Suit the Regime's Needs*, NEW LINES MAG. (June 27, 2022), https://newlinesmag.com/argument/assad-remakes-syrian-faith-to-suit-the-regimes-needs/.

oppression entitles them to certain political and economic privileges. The Muslim Brotherhood, for example, remains a relevant political actor eager to secure certain privileges for what it claims are demands of the majority, particularly the fact that Syria's president must always be Muslim.[404] Debating this issue is a non-starter for many Brotherhood members.

### *B. The Dilemma of Quotas*

Both prior to and during the constitutional committee debates, the issue of quotas was a hotly contested one. Unsurprisingly, it was an ongoing discussion for communities in northeast Syria, where Assyrian, Yezidi, and Kurdish communities feared being outnumbered in any pan-Syrian legislative structure.[405] But even outside of that area, smaller components of Syrians, including the Druze, were concerned about being cut out of power structures.[406] According to some individuals in these communities, the idea of relying on elections to guarantee them representation was unrealistic, given their strong distrust in the government and the Syrian people.[407] They based this assessment on their communities' historical experiences, which previously led to intense power struggles with Syria's central governments. Further, some Syrians wanted to explicitly include quotas for their religious leaders from across Syria's communities to ensure that they could be the community's official representatives in a decision-making body.[408] During these discussions, secular individuals from across Syria's various components would come to the realization that they were a minority in their own country in trying to identify beyond confessional or ethnic markers.

But anti-quota Syrians, such as myself, respond to these concerns by stating that genuine elections, in a bicameral legislative system, might address community concerns without entrenching an outdated model of representation. Although never explored previously in Syria and most of the Middle East, a bicameral system may offer a possible solution for managing Syria's diversity. A bicameral system allows for local representation at the district level in a lower house, as well as an upper house to permit representation at the provincial level, enabling more actors to be represented in government, and inherently allows for more decentralized power and participation—and thus the feeling of having a stake—in the political system.

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[404] Thomas Pierret, *Syria: Old-timers and Newcomers,* WILSON CTR. (Aug. 27, 2015), https://www.wilsoncenter.org/article/syria-old-timers-and-newcomers.

[405] Author's knowledge from discussions with members of the committee.

[406] Friederile Stolleis, *Preface, in* PLAYING THE SECTARIAN CARD: IDENTITIES AND AFFILIATIONS OF LOCAL COMMUNITIES IN SYRIA 6, 6 (Friederike Stolleis ed., Ali Barazi et al. trans. 2015).

[407] Author's knowledge from discussions with members of the committee.

[408] Author's interview with religious and ethnically diverse Syrians at a workshop in Sarajevo, Bosnia (Sept. 2019).

Such a model, if created in a truly democratic society with free and fair elections, can more accurately capture the needs of locals and still require individuals to have to earn votes. The model of ethnic and religious quotas has inevitably led to feelings of entitlement and nepotism among community representatives. To most Syrians, simply mentioning quotas invokes Iraq, Bosnia, and Lebanon-like models that weaponize and buttress sectarian and identarian politics. [409]

Historically, when discussions surrounding quotas have taken place in Syria or elsewhere, they are often one of the first panaceas suggested. Even Syria's early constitutions proposed some type of quotas to ameliorate French concerns.[410] But looking at countries where quotas are utilized, such as Bosnia, provides no helpful example of stability. The reality is that quotas drawn along ethnic and religious lines are troublesome because while they include some groups, they manage to alienate other groups of citizens. In the case of Bosnia, each of the country's ethnic and religious groups—Croats, Serbs, and Bosniak Muslims—are guaranteed a third of positions within every layer of government.[411] The Bosnian constitution even creates a rotating three-president system to accommodate all three communities.[412] But such a system does not recognize any individual that does not feel strong ties to his/her ethnic or sectarian background, or those who reject their community's leadership, or the children of mixed marriages.[413] Such delineations along ethnic and sectarian identities only creates more problems over time: Syrian society has gone through a massive upheaval, and while a minority of Syrians have defied traditional community structures, for most Syrians, the uprising hardened traditional community markers that will be challenging to overcome in the future.

The illustrious examples of Bosnia and Iraq reveal that implementing quotas entrenches how traditional community members define themselves and incentivizes and rewards those who insist on maintaining those markers because seats in parliament are awarded based on particular identity attributes, even if doing so is not in the best interest of the community. Again, Bosnia is an excellent example of this: today, a party trying to rally Bosnians across ethnicities and religious backgrounds around a unified political platform, Nasa Stranka, is only marginally successful—and even then, its success is largely limited to Sarajevo, the most cosmopolitan city in the

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[409] Author's knowledge from discussions with members of the committee.

[410] AL-DUSTUR AL-SUWRIU [THE SYRIAN CONSTITUTION] 1973, art. 53, *translated in* https://carnegie-mec.org/diwan/50255?lang=en.

[411] Jomana Qaddour, The Legacy of Dayton: Bosnia's Constitution and the Institutionalization of Divided Society (Oct. 2021) (Ph.D. dissertation, Georgetown University) (on file with author).

[412] ANNEX 4: CONSTITUTION OF BOSNIA AND HERZEGOVINA, art. V (1995).

[413] Qaddour, *supra* note 411, at 18.

country.[414] The rest of the country's politics are rooted firmly in ethnic and sectarian Croat, Bosniak, and Serbian parties, with lesser attention paid to basic needs such as education and much needed economic development of the country.

What makes the question of quotas particularly difficult, however, is that foreign governments have thrown their backing behind various minority communities in Syria, making the majority fear them as a fifth column, as was the case during the waning days of the Ottoman Empire. This includes Swedish, American and French support for the Kurdish-dominated Syrian Democratic Forces[415] or selective concern over Christians in Syria,[416] or the few hundred Jews that were evacuated by Israelis during the 2011 uprising.[417] While anxieties over the extermination of Syria's smaller communities is completely warranted, preferential support for non-Arabs or non-Muslims has conjured up historical traumas for the Sunni Arab majority, which statistically was displaced, disappeared, and killed in higher numbers by the Assad regime for the past forty years more than any other group in the country.[418] And although political backing for Sunni Arabs was provided during the uprising—mostly from Arab or Muslim-majority governments such as Turkey or Qatar, and to some extent the United States—it was not sustained and ultimately waned, leading to military defeat of the opposition on the ground.[419] This half-hearted support to the Sunnis of Syria, both real

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[414] *Nasa Stranka VP Elected Mayor of Sarajevo Centre in Local Elections*, ALL. OF LIBERALS & DEMOCRATS FOR EUR. (Nov. 18, 2020), https://www.aldeparty.eu/nasa_stranka_vp_elected_mayor_of_sarajevo_centre_in_local_elections.

[415] Simon Johnson, *Sweden's Kurds Fear They May Pay Price for NATO Bid as Turkey Fumes*, REUTERS (June 28, 2022), https://www.reuters.com/world/europe/swedens-kurds-fear-they-may-pay-price-nato-bid-turkey-fumes-2022-06-28/.; Wladimir van Wilgenburg, *Syrian Democratic Forces (Syria) – Guns and Governance: How Europe Should Talk with Non-State Armed Groups in the Middle East*, EUR. COUNCIL ON FOREIGN RELS., https://ecfr.eu/special/mena-armed-groups/syrian-democratic-forces-syria/.

[416] *France's Action to Help the Victims of Ethnic and Religious Persecution in the Middle East*, FR. DIPL. MINISTRY EUR. FOREIGN AFFS., https://www.diplomatie.gouv.fr/en/country-files/north-africa-and-middle-east/france-s-action-to-help-the-victims-of-ethnic-and-religious-persecution-in-the/ (last visited Apr. 28, 2024).

[417] Khushbu Shah, *Rescuing the Last Jews of Aleppo*, CNN (Nov. 28, 2015), https://www.cnn.com/2015/11/27/middleeast/last-jews-aleppo-syria/index.html.

[418] *See 2.11.1. Sunni Arabs*, EUR. UNION AGENCY FOR ASYLUM (Sept. 2020), https://euaa.europa.eu/country-guidance-syria/2111-sunni-arabs; U.S. DEP'T OF STATE, OFF. OF INT'L RELIGIOUS FREEDOM, SYRIA 2021 INTERNATIONAL RELIGIOUS FREEDOM REPORT 1, 7-9 (2021).

[419] REPUBLIC OF TÜRKIYE, MINISTRY OF FOREIGN AFFS., RELATIONS BETWEEN TÜRKIYE-SYRIA, https://www.mfa.gov.tr/relations-between-turkiye%E2%80%93syria.en.mfa (last visited Apr. 28, 2024); Michael Stephens, Commentary, *Syrian Politics in Doha*, THE ROYAL UNITED SERV. INST. FOR DEF. & SEC. STUD. (Nov. 14, 2022), https://www.rusi.org/explore-our-research/publications/commentary/syrian-politics-doha.

and imagined, only exacerbated the community's fears. Thus, real and imagined perceptions of support take have taken on a life of their own and entrenched community markers for even the majority during violent warfare.

Ultimately, it is unhelpful and inaccurate to respond to communities in Syria that their fears are exaggerated. Given the massacres that have taken place throughout the country, and the growing sectarian rhetoric that has become widespread among average people, including casual references to the "godless Alawites" or "Kurdish separatists" or "Sunni extremists," pretending that formal or informal sectarianism does not exist in Syria prevents us from dedicating thought or resources to addressing the root of such grievances.[420] It also hinders our ability to forge trust, which is a prerequisite for constitutionalism to exist in Syria. Jointly authoring any real constitution requires transparent and honest discussion, particularly at the grass roots level, as well as an investment in political parties and civic education that broadens issue-based—as opposed to identarian—politics.

### *C. Who is Syrian Today?*

As part of the Syrian constitutional committee process, it became clear very quickly that consensus on a unified document required a common understanding of what Syria is and who Syrians are—an issue no leader of Syria ever successfully dedicated resources to. Today, Syrians forced into exile must answer difficult questions that will determine whether or not they can still conceive of a state in similar terms.

The uprising exposed a reality that not one of Syria's leaders since the fall of the Ottoman Empire has acknowledged: no leader crafted a sense of nationhood for the country's citizens, and no leader instituted a trans-confessional, trans-ethnic governing model rooted in rights, responsibility, inclusion, democracy, and genuine common interest. This was now exposed during an uprising ravaging the country. The citizens of Syria had largely been left with little in terms of national identity outside of what Arab nationalists and pan-Syrian leaders shaped and promoted, and what Ba'athists had extracted from each of the two ideologies and cultivated into a myth of what a Syrian was. Their demands for a socialist economic system and state-sponsored welfare programs, for the majority of Syrians, had produced little more than words on paper over the longer-term.

Looking back at the history of Syria discussed in this Article, it is glaringly obvious that because there was "little ethnic, geographic, or historical continuity to form the basis of this national community, Syrian state nationalism [ultimately focused] on the Ba'ath Party."[421] According to

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[420] Author's conversations over the last thirteen years of the war.

[421] Marc J. Sievers, Note, *The Ideology of the Ba'th Party and Syrian Politics*, 34 J. INT'L AFFS. 187, 187-90 (1980).

scholar Dr. Rahaf al-Doughli, the Syrian state project today centers around a "constructed primordialism" promulgated by the Assad regime that relies on "mythical arguments on metaphoric kinship, horizontal solidarity, common history, and common fate."[422] As a result, Ba'athist-promoted primordialism emphasizes "family ties, bonds of love and loyalty and involuntary belonging" to ensure legitimacy and loyalty to the Assad regime.[423] In a context where the veneer of Arab unity and nationhood are finally shed—like in today's uprising—Ba'athism and its precursors, pan-Syrian and Arab nationalist ideologies, fall short of explaining the meaning of belonging. Although Bashar attempted to seize the declining interest in the insufficient ideology of Arab unity and redirect it allegiance to himself and his kin, over the last decade, the dissatisfaction with him individually as well as with the individuals around him has left Syrians with little to believe in. The reality is that today, the Syrian government has come to represent Bashar and state-adjacent actors, not the Ba'ath Party, and not the Syrian people. Syrians therefore are faced with a legitimate crisis of national identity.

Is a Syrian only someone who is located between the geographic confines of today's Syria? Is it someone of a particular ethnicity or religion? Is it simply someone with a Syrian passport? Or is it someone with a Syrian mother as well, despite the fact that a woman cannot legally pass along her citizenship to her children? What physical traits do Syrians share? Or is a Syrian someone imbued with certain values? And if it is values, what values are those exactly? Can Syria be a country that identifies Arab, as well as Kurdish, Circassian, and Assyrian as official languages in provinces where a majority resides? Or does Syria solely seek to remain an Arab country, with Arabic as the only official language? Can a Syrian identity be genuinely inclusive of both rural and urban citizens alike? Do Syrians have commonalities with individuals outside of their local neighborhood, city, or province? If yes, what are those shared elements? Can a Syrian identity be developed and hold in the event a president is not Muslim?

To outsiders, perhaps the answers to these questions may seem intuitive, or easy to answer, but to most Syrians they are not. Upon sitting down to discuss basic constitutional principles during the constitutional committee debates, it quickly became clear that each individual, as well as each community, had a different answer for what being a Syrian meant and how a constitution should capture such a definition. For some committee members, Syria needed to be anchored in Islamic principles, with a Muslim president

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[422] Rahaf Aldoughli, *What is Syrian Nationalism? Primordialism and Romanticism in Official Baath Discourse*, 28 NATIONS & NATIONALISM 125, 125, 128 (2022), https://onlinelibrary.wiley.com/doi/epdf/10.1111/nana.12786 (quoting Viera Bacˇová, *The Construction of National Identity - On Primordialism and Instrumentalism*, 8 HUM. AFFS. 29, 37-38 (1998)).

[423] Aldoughli, *supra* note 422, at 128.

and with Arabic as its only official language in order to rectify the grievance of the majority, which had been ignored for decades.[424] For others, such as the Druze, Syria had become as small as their province, and they fought for a measure of autonomy and resources for their region and spent little energy fighting with other members about how the rest of the country would be governed.[425]

*D. Ideological Obstacles*

One of the most striking patterns among the current constitutional committee members was the fact that many members, from among all three groups (government-backed, opposition, and civil society), were committed to various ideologies and therefore were inflexible and lacked pragmatism when it came time to negotiate with others. Obviously, this did not just pertain to ethnic and sectarian bargaining in the process, but also included those committed to communist, selective anti-imperialist, and class-based ideologies. While the flexibility-inflexibility divide did not necessarily run along age lines, many of those who had spent years persecuted or exiled for their beliefs by the Assad regime were keen to include some aspects of their ideology into the constitution. The main issue here is, of course, that over the past several decades, Syria's needs have changed since the time many of them were persecuted. Many dominant ideologies of past have been put to the test in other theatres—and failed—and yet those ideas remain unlived and unfulfilled in the minds of some participants on the constitutional committee.

For example, during the Arab Spring, the Egyptian Muslim Brotherhood led the country for one year under President Mohammed Morsi.[426] His experiment of ruling a country immediately tested how an Islamist political party could compromise on values that it deemed Islamically forbidden, but tolerated by some Muslim and non-Muslim citizens. Although the Syrian Muslim Brotherhood watched this episode at the same time as the rest of the region, the group nonetheless remains committed to much of the ideological values that the failed Egyptian Muslim Brotherhood relied on. There seems to be little attempt to understand the complexity of societies and why theocratic platforms cannot create long-term, democratic, just, and stable governance. Instead, many proponents of the Syrian Muslim Brotherhood read the failure of the Egyptian Muslim Brotherhood as an isolated incident, unsuccessful only because of conspiracy theories revolving around the

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[424] Author's knowledge from the conversations with committee members.

[425] TAIM ZAIDAN, SWEIDA: CONFLICT DYNAMICS AND THE ROLE OF CIVIL SOCIETY, CONFLICT RSCH. PROGRAMME 1, 5-6, 23, 25 (2020), https://eprints.lse.ac.uk/103144/7/Sweida_Conflict_Dynamics_English_21_Jan_2020_.pdf?fbclid=IwAR2xoOEXJAV3Am5krMnPbIKIZQuxd39MDF5lTB-2Nvl6u5hehUn_ZnbaV6o.

[426] Zachary Laub, *Egypt's Muslim Brotherhood*, COUNCIL ON FOREIGN RELS., (Aug. 15, 2019), https://www.cfr.org/backgrounder/egypts-muslim-brotherhood.

United States signaling support for a coup that was threating to Western interests, and not as one rejected by the majority of Egyptian citizens.

Related to this is the romanticism of various ideologies. Syria's modern history is one dominated by experimentation with one dogma or another: Arab nationalist, pan-Syrian, Marxist, socialist, and Ba'athist. But in each of these instances, the State's foundational documents relied on philosophy and theory, with little focus on the pragmatic challenges of governing a society. As will be expanded upon below, in the constitution drafted by northeast Syria's Autonomous Administration, principles of Marxism dominate—but the day-to-day aspects of improved governance through pragmatic compromises to ensure stability and peace are little discussed. What will define Syria's success will not only be determined by whether or not Syrian identity can be properly delineated, but more practically speaking how Syria is managed and governed and how Syrians' *daily* needs are addressed. Such thinking has yet to inform broader constitutional committee discussions today.

A discussion on the Syrian constitutional committee cannot be complete without noting that the a significant number of the drafters are exiled or diaspora Syrians.[427] With the exception of the government-backed members and select members from among the 'civil society' group who are based in Damascus, it is not safe for members to remain in Syria and act independently.[428] Thus, many Syrians, rightfully so, complain that membership on this committee includes individuals who are divorced from Syria, some exiled from the country for decades and out of touch with Syria's realities today.[429] This also contributes to the phenomenon of romanticizing of unfulfilled ideologies. That said, given the ongoing conflict in Syria today and particularly the way Bashar continues to govern through violence and intimidation, it is impossible to imagine opposition-leaning or independent membership on the committee able to live in peace and security in the country. Many of these exiled Syrians are exiled precisely because they were chased out of the country by a government who now claims they are divorced from the realities on the ground.[430]

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[427] Shaar & Dasouki, *supra* note 391.

[428] Author's knowledge from serving on the committee, and the lack of freedom in Syria as evidenced by the war and the history of the behavior of the Assad regime.

[429] Diana Rahima, *Four Principles and Three Disappointments in the Eighth Round of Syrian Constitutional Committee's Talks*, ENAB BALADI (June 15, 2022), https://english.enabbaladi.net/archives/2022/06/four-principles-and-three-disappointments-in-the-eighth-round-of-syrian-constitutional-committees-talks/.

[430] Most of Syria's refugees since the start of the war fled and have no intention of returning, due to the lack of livelihood opportunities or legitimate security concerns, especially in areas held by the Syrian regime or subject to attacks by the Syrian regime. *See* Lily Hindy & Sima Ghaddar, *A "Nation in Pieces": Views from Syrians in Exile*, THE CENTURY FOUND. (Nov. 30, 2017), https://tcf.org/content/report/nation-pieces-views-syrians-exile/.

Approximately half of the committee is located outside of the country, unfortunately allowing room for external influence that can be at direct odds with Syrian desires.[431] While it is important to note that Western democratic nations engage less, if at all, in such behaviors, regional countries can provide directives to their Syrian counterparts taking part in these negotiations.[432] It is difficult to prevent such maneuvers from occurring when individuals such as defected politicians rely on the mercy of friendly countries to live and remain safe with their families.

### *E. The Kurdish Question*

The Syrian Kurdish question is perhaps the trickiest question today, given that the Kurdish-controlled area, referred to as the Autonomous Administration, oscillates between independence and reverting to Damascus-centered rule. Geographically, the Autonomous Administration comprises about a third of Syria, about four million Syrians, including Arab tribes, Christian Assyrians, and Kurds—the latter of which are Syria's largest ethnic minority representing ten percent of the country's population.[433]

The Autonomous Administration is prohibited from participating in the UN-facilitated constitutional committee due to the vetoing of their participation by the Republic of Turkey which refuses to reverse this veto so long as the Autonomous Administration's has any relationship to the PKK.[434] Instead, Turkey supports the inclusion of a smaller group of Kurdish nationalists, known as the Kurdish National Council (KNC), which shares a strong relationship with the Kurdistan Regional Government in northern Iraq, and that has, over time, developed strategically warm relations with Turkey.[435] The KNC, while sharing identical grievances against the Assad regime as the Kurds of the Autonomous Administration, pursues a political solution within the Syrian national framework, based on agreements with the formal Syrian opposition political parties and forces.[436]

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[431] *Syria Constitutional Committee: Preliminary Background Note*, CTR. FOR OPERATIONAL ANALYSIS & RSCH. (Oct. 11, 2019), https://coar-global.org/2019/10/11/syria-constitutional-committee-preliminary-background-note/.

[432] Author's knowledge from the conversations with committee members.

[433] *A Wasted Decade: Human Rights in Syria during Bashar al-Asad's First Ten Years in Power*, HUM. RTS. WATCH (July 16, 2010), https://www.hrw.org/report/2010/07/16/wasted-decade/human-rights-syria-during-bashar-al-asads-first-ten-years-power.

[434] Max Hoffman & Alan Makovsky, *Northern Syria Security Dynamics and the Refugee Crisis*, CTR. FOR AM. PROGRESS (May 26, 2021), https://www.americanprogress.org/article/northern-syria-security-dynamics-refugee-crisis/.

[435] *PYD-KNC Peace Talks: Whither Peace in Syria's Northeast?,* CTR. FOR OPERATIONAL ANALYSIS & RSCH. (Sept. 28, 2020), https://coar-global.org/2020/09/28/pyd-knc-peace-talks-whither-peace-in-syrias-northeast/.

[436] *The Kurdish National Council in Syria*, CARNEGIE MIDDLE E. CTR. (Feb. 15, 2012),

The Syrian Democratic Council (SDC), the civilian arm of the Syrian Democratic Forces (SDF), developed its own constitution in response to its exclusion from the UN-facilitated constitutional process, which is not published but to which I had access.[437] The current (but continuously amended draft) of the constitution of the Autonomous Administration is a document written by what seems to be Marxist individuals inspired by Kurdish leader Abdallah Ocalan.[438] The current text is more akin to an ideological framework, as opposed to a pragmatic framework for citizens living in Syria's northeast. It contains many ambiguities, the most important and controversial of which is its silence on any relationship between the Autonomous Administration and the central governing Syrian body.[439] This creates extreme anxiety among the non-Kurdish population of the Autonomous Administration, which is numerically greater than the Kurdish population, and even if it supports decentralization of Syria, does not necessarily support full secession from the country.[440]

The constitution delineates that while sixty percent of the people's assembly within the Administration are elected, forty percent are appointed from among religious leaders and minorities in the area—but it is silent as to *who* should appoint them.[441] As discussed in the section on quotas above, the problems with selecting religious leaders and other 'minority appointees' opens the door for entrenchment of sectarianizing and tribalization, as well as corruption by ethnic or religious leaders who believe they should be the only voice of the group they represent. Furthermore, there is an explicit guarantee for the political, economic, and cultural rights of both Kurdish and Assyrian peoples in a way that preserves the historical characteristics and original demographics of the regions, but the constitution is silent as to the mention of these same rights for Arabs, although the authors argue it is implied given that Arabs are the numerical majority. This is indeed a provocative issue for the Arabs of the region, which numerically constitute the majority living in the Autonomous Administration.[442] Finally, Marxist

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https://carnegie-mec.org/syriaincrisis/?fa=48502.

[437] *Autonomous Administration of North and East Syria*, SYRIAN DEMOCRATIC COUNCIL, https://www.syriandemocraticcouncil.us/1418-2/.

[438] Ocalan is currently imprisoned in Turkey. *See* Richard McHugh, *Abdullah Ocalan: Kurdish Militant Leader*, BRITANNICA (Dec. 14, 2023), https://www.britannica.com/biography/Abdullah-Ocalan.

[439] *See* AL'AUQD AL-AIJTIMAEII LIL'IIDARAT AL-DHAATIAT DLDIYMUQRATIAT LI'IIQLIM SHAMAL WASHARQ SURIA [THE SOCIAL CONTRACT FOR DEMOCRATIC AUTONOMOUS ADMINISTRATION OF NORTH AND EAST SYRIA] [CONSTITUTION] Dec. 12, 2023 [hereinafter THE SOCIAL CONTRACT].

[440] INT'L CRISIS GRP., SYRIA'S KURDS: A STRUGGLE WITHIN A STRUGGLE 39 (2013), https://www.refworld.org/pdfid/510285552.pdf.

[441] THE SOCIAL CONTRACT, *supra* note 439, at art. 69(2).

[442] As with most of the Arab world, census-taking is a highly politicized endeavor.

ideology colors how the document envisions decentralization. Local power is attached to institutions referred to as 'communes' as opposed to local councils, as they are referred to in other parts of Syria. That said, the localization of aid and service delivery through communes is possibly the most successful part of the constitution in practice, according to locals living in the area.[443]

It is unclear what will happen to the Autonomous Administration over the longer term. For now, it will likely maintain its autonomy given the presence of U.S. forces in northeast Syria supporting the Syrian Democratic Forces.[444] However, this trend may be reversed to some extent, as international actors seek to end the Syrian conflict without triggering renewed fighting in northeastern Syria. There is hope for the possible 'Syrianization' of Kurdish-rule in Syria that would sideline PKK cadres from decision-making circles and re-center Syrian Kurds to prevent the northeast from seceding.

If the Autonomous Administration's hopes for autonomy are quashed, it is unclear what will happen to the structure moving forward. Despite names such as the "Syrian Democratic Council" and a message to protect all of Syria's components within the Administration, Kurds that I spoke to admit privately that it is every Kurd's dream to have their own state, which includes, but is not limited to, the Kurdish-dominated parts of Syria. This necessitates that even though such a region would be open to non-Kurds, Kurds would need to remain the dominant authority so that the state would be theirs. This would not be a simple task. The diversity of the Autonomous Administration poses a challenge to its Kurdish authorities, who live and fight side-by-side with Arabs but simultaneously dream about a Kurdish national homeland. [445] Reports from Assyrians,[446] indigenous to the area, as well Arab tribes, Armenians, Turkmens, and Yezidis, reveal that governing such a diverse area will be no easy feat and is filled with threats that are both internal and that outside parties, such as the Syrian government, Turkey, Russia, Iran, and even ISIS can exploit.

Those outside of the Administration, and some non-Kurds within the

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According to anonymous Syrian Kurdish researchers in 2022, the population of northeast Syria (Raqqa, Deir ez Zor, and Hasakeh provinces) is roughly 68% Arab, 28% Kurdish, as well as 4-5% Assyrian, Armenian, and Turkmen. Surveys have been done in the area, but none have been published.

[443] Telephone Interview with Hozan Ibrahim, Syrian Kurdish Scholar (Sept. 25, 2022).

[444] CONG. RSCH. SERV., IF11930, SYRIA AND U.S. POLICY (2024), https://crsreports.congress.gov/product/pdf/IF/IF11930.

[445] KHEDER KHADOUR, CHALLENGES FOR PEACE IN SYRIA WITHOUT EAST EUPHRATES 5 (2020), https://impactres.org/reports/Challenges_for_peace_NES_EN.pdf.

[446] *See Syria,* ASSYRIAN POL'Y INST., https://www.assyrianpolicy.org/syria; *see also* Ammar Hammou & Madeline Edwards, *Discontent Among Assyrians in Syria's Northeast,* ATL. COUNCIL (Oct. 10, 2018), https://www.atlanticcouncil.org/blogs/syriasource/discontent-among-assyrians-in-syria-s-northeast/.

Administration, look to the growing independent region with understandable suspicion. Syrians in regime-held Syria fear an autonomous northeast, knowing that much of Syria's resources are located in northeast Syria—such as agricultural products[447] and oil.[448] The secession of the Autonomous Administration would only further devastate Syria's economy. Those living in opposition-held Syria in the northwest of the country also resent the benefits that the Autonomous Administration has generously received from the West, particularly the military support that allowed them to shield their own populations from outside attacks by the regime and Russia.[449] As a result, some of the militias in northwest Syria have fought alongside Turkish forces to prevent the viability of a contiguous, Kurdish-dominated governing structure like the Autonomous Administration.[450] Meanwhile, the Administration is shut out of any political process in which other parts of Syria participate. Any deal struck without them, in my humble opinion, will always be incomplete, given that the Autonomous Administration's geography, politics, and people remain intertwined with the rest of Syria.

## IV. CONCEDING THE LIMITS OF LIBERAL CONSTITUTIONALISM

In studying Syria, one cannot help but acknowledge the disconnect between what is today heralded as a 'successful' state model and what is not. But it seems to me that the problem with examining Syria, and countries like it, is that they are not understood or discussed in their own right, within their own complex contexts. Instead, they are held to the standard of the western liberal constitutional model that is an unhelpful starting and end point.

The fact of the matter is that the bulk of comparative constitutional scholarship, though prolific, has by and large focused on the "usual suspects . . . all prosperous, stable constitutional democracies of the 'global north' . . . such as Israel, South Africa, the United Kingdom, United States, [and] New Zealand."[451] As a field, its popularity rose after the fall of the Soviet Union, when scholars sought to engage countries previously behind

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[447] KHADOUR, *supra* note 445, at 15. For example, 75% of Raqqa is agricultural lands and produces Syria's wheat and cotton, making it a vital province for the country. *Id.*

[448] Peter Bartu & Maurice Ruttimann, *North East Syria: The Good, the Bad & the Oil*, AUSTL. INST. INT'L AFFS. (June 8, 2021), https://www.internationalaffairs.org.au/australianoutlook/north-east-syria-the-good-the-bad-the-oil/.

[449] Author's impressions from many conversations with populations in northwest Syria since 2015, when the anti-ISIS coalition intervened in Syria.

[450] *See* U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUM. RTS. & LAB., 2021 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: SYRIA (2021).

[451] RAN HIRSCHL, COMPARATIVE MATTERS: THE RENAISSANCE OF COMPARATIVE CONSTITUTIONAL LAW 2, 16 (Oxford Univ. Press ed. 2014); *see also* Cheryl Saunders, *Constitution-Making in the 21st Century*, 2012 INT'L. REV. L. 1 (2012).

the Iron Wall on reforms[452]—to adopt models that they believed would bring budding democracies improved socio-economic conditions and expanded individual liberties in the new American-led world order.

> But beginning with South Africa, then Bosnia, and then Iraq . . . the idea of globalization of constitutional law has diminished from one experience to another . . . and citizens are looking at the various treaties, bodies of human rights, and are wondering if they fit their society.[453]

Countries within the global south are well within their right to question "the genuineness of the comparative in comparative constitutional law and pose a serious challenge to the universality and general applicability of the field's main insights."[454] Additionally, comparativist scholars, particularly those that may participate in constitutional negotiations, often times advise as though there is no past, no present—only the future in a given country.[455] As legal and political science scholar Ran Hirschl points out, history did not begin in 1945 or 1787—as western scholars sometimes believe.[456] This was painfully visible to Iraqi lawyers when the 2005 constitution was being drafted, who knew that their country had ancient legal traditions since the code of Hamurabi (18th century BC), and were justifiably shocked at having outsiders with no contextual experience or appropriate linguistic skills flown in to the country to advise on the writing of the country's constitution.[457]

My research confirms the skepticism toward the bulk of current comparative constitutional literature, especially as it pertains to non-liberal, autocratic contexts (like Syria) where ethnic and religious plurality poses a challenge to stable governance. Superimposing western liberal constitutional models—which includes an enumeration of individual rights, the existence of rights-based judicial review, a heightened threshold for constitutional amendment, a commitment to periodic democratic elections, and a commitment to the rule of law—has fallen short of providing an appropriate model for such countries.[458] And although the western liberal constitutional model has proven effective in the context of other societies, providing antidotes to many of their social ills, the crises of political legitimacy sweeping even established democratic states over the past decade demonstrates that this model is not unassailable even in the context of the

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[452] Saunders, *supra* note 451, at 2.

[453] *Id*. at 3.

[454] HIRSCHL, *supra* note 451, at 217.

[455] *Id.* at 77.

[456] *Id.*

[457] JANE STROMSETH ET AL., CAN MIGHT MAKE RIGHTS?: BUILDING THE RULE OF LAW AFTER MILITARY INTERVENTIONS 322-23 (Cambridge Univ. Press ed. 2006).

[458] *See* Tom Ginsburg et al., *The Coming Demise of Liberal Constitutionalism?,* 85 U. CHI. L. REV. 239, 245-48 (2018).

most politically advanced western societies—out of which this model organically grew.

Wrongfully, liberal constitutionalists previously endorsed exercises such as rule-of-law "check lists" to easily assess whether or not a government is a functional democracy.[459] The assumption was that if a constitutional document merely enumerated all of the rights of the citizens and the duties of the state towards them, a functioning societal order would emerge.[460] In a post-Syrian conflict constitutional drafting exercise, it is possible that scholars would approach Syria's conundrum with a similar check list of articles and institutions to create a new "democratic, liberal 'Syria'"—but, in doing so, would be replicating the failures of the past, such as in Iraq.[461]

Understanding the limitations of the western constitutional liberal model and its blind applicability in other contexts further removed from the western source of liberal constitutionalism is therefore imperative for scholars seeking to develop successful constitutional models for countries like Syria. Comparative constitutional scholars have suggested instead that successful "legal transplants can only occur [when] legal rule is 'understood differently by the host culture and is, therefore, invested with a culture specific meaning at variance with the earlier one.'"[462] Legal corporativist Mark Tushnet brilliantly emphasizes that the:

> [C]ontextualism challenge to the comparative enterprise . . . suggest[s] that the study of the migration of constitutional ideas must be done with great caution . . . perhaps the true object of study should be the way in which those constitutional ideas that do migrate are transferred across the border . . . [or that those ideas that migrated] have deeper indigenous roots than one might think.[463]

Legal scholar Vicki Jackson adds that what is instead needed is "cautious comparativism."[464] What is likely more helpful is to aim for country-specific or regional adaptations of the western liberal constitutional model. In the case of Syria and Iraq, looking at the Middle East itself, with perhaps Egypt as a

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[459] *See* Kim Lane Scheppele, Commentary, *The Rule of Law and the Frankenstate: Why Governance Checklists Do Not Work*, 26 GOVERNANCE: AN INT'L J. POL'Y, ADMIN., & INSTS. 559 (2013).

[460] *Id.*

[461] *See* Jomana Qaddour, *Iraq's Constitutional Moments and the Institutionalization of Ethno-Sectaranism*, 36 EMORY INT'L L. REV. 237 (2022) (discussing lessons from the failed results of the constitutional drafting process in Iraq following the 2003 U.S. invasion).

[462] Sujit Choudhry, *Migration as a New Metaphor in Comparative Constitutional Law*, *in* THE MIGRATION OF CONSTITUTIONAL IDEAS 1, 17 (Suit Choudhry ed., 2006).

[463] Mark Tushnet, *Some Reflections on Comparative Constitutional Law*, *in* THE MIGRATION OF CONSTITUTIONAL IDEAS 67, 83 (Suit Choudhry ed., 2006).

[464] Vicki C. Jackson, *Constitutional Comparisons: Convergence, Resistance, Engagement*, 119 HARV. L. REV. 109, 128 (2005).

model during limited time periods, would prove helpful than relying on the United States or the United Kingdom as relevant models.

While the "rights" or the "rights-based revolution" is a western concept, that by no means dictates that it is unenforceable and unnecessary in the global south.[465] The ability for rights revolutions to plant the seeds of change has always depend on whether or not there is a supportive legal culture for those rights, otherwise known as "hospitable socio-cultural conditions,"[466] which are found across the globe. But, crucially, the way of promoting a rights-based model must *fit* the society that will enforce it. There is no one model to ensure rights, and while in some cases the '"melting 'pot" approach of the United States is applicable, in other contexts it may be found by expounding on the concepts of decentralization or federalism to foster representation, equality, and a more inclusive national identity.

Despite my own commitment to liberal constitutionalism, particularly in the American context, my research on Syria (and previously, Iraq and Bosnia) leads me to believe that the western liberal constitutional blueprint is simply an ill fit for Syria's context, and will not solve its woes. Components in Syrian society have spent enough decades prohibited by the regime to express their social, familial, communal, and religious bonds, or even their various communal symbols, in the name of a united Arab republic. The latest uprising has only proven that forcibly suppressing such expressions can only delay a dangerous outcome between communities that do not recognize one another as fellow citizens with the same needs and hopes for themselves and their families. Today, Syrians do not see the erasure of their particularities—in melting pot fashion—conducive to their survival or synonymous with success.[467] Syria's compact communities, like the Druze or Alawites, historically wanted to exercise autonomy and be left alone, but above all, they wanted to maintain their customs, traditions, and identities, while accepting protection from the state only to keep away outsiders—not to intrude in their daily affairs.

The Syrian historical experience has made the population wary of any grand ideology promising them utopia, if only they would abandon their communal particularities—which have served as their sole safeguards against the region's vicissitudes—in favor of new and untested models. Ba'athism sought to melt away their particularities in a homogeneous "Syrian-ness" that was ultimately a reflection of, and loyal to, the ruling Assadist clan's interests and worldview. Its abject failure—like the failure of Syria's brief dalliance

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[465] *See* D. M. Davis, *Is the South African Constitution an Obstacle to a Democratic Post-Colonial State?,* 34 S. AFR. J. HUM. RTS. 359, 370-72 (2018).

[466] Ran Hirschl, *On the Blurred Methodological Matrix of Comparative Constitutional Law*, *in* THE MIGRATION OF CONSTITUTIONAL IDEAS 39, 57 (Suit Choudhry ed., 2006).

[467] PATRICK J. DENEEN, WHY LIBERALISM FAILED 38 (Yale Univ. Press ed. 2018) (describing hegemony of culture that results from the liberalization of individuals).

with pan-Arabism before it—has ironically made Syrians less amenable to equally utopian western liberalism, whose adoption is also predicated upon the erasure of their communal particularities and structures—now in the name of unfamiliar concepts like individualism and individual liberty.

This brings us to our earlier discussion on internal consensus: without buy-in from across Syria's societal components, implementation of liberal constitutionalism will be perceived by many as, ironically, authoritarian if done against their will, inevitably resulting in backlash. Successful buy-in to a liberal model that adapts to Syria's needs, for example through a bicameral system, will only occur if such a concept of societal ordering is an organic outgrowth of the desires and experiences of Syrians—the exact process by which liberal constitutionalism became widely accepted in western societies. It will also require the development of trust and a concept of supra-communal mutual bonds between the components of Syrian society, and a resulting shared interest in promoting a state that guarantees all of their rights on an individualist basis.

When I first embarked on this research project, I clung to words written by reputable scholars who expanded the concept of constitutionalism to include non-democratic governments to predict legal outcomes in various countries.[468] Even in despotic regimes, most rulers employed constitutionalism to bargain with society to maximize their monopoly on power and increase economic growth, all while preventing various levels of domestic disorder.[469] I searched through the literature for a spark of hope that would elucidate what parts of a constitution—if it employed the correct language and was explained sufficiently to citizens so as to invoke buy-in—could create a formula to produce more functioning Syrian governance. But I found no such formula for Syria. Instead, I learned the limits of constitutionalism, because a constitution ultimately *depends on a society* to become a meaningful, living document. Without societal endorsement, a constitution is merely a piece of paper devoid of legitimacy and can only be enforced through brute governmental force.

Syria's society—its values, its history, and how it defines itself—remains ambiguous. Aside from Syria's borders, demarcated by France and Britain during the mandatory period, Syrians, prior to independence and today, have yet to come to any consensus on what defines them as a nation—on the

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[468] *See* Mark Tushnet, *Authoritarian Constitutionalism*, 100 CORNELL L. REV. 391, 395 (2015) (arguing for pluralizing the category of constitutionalism to provide enhanced understanding).

[469] *See* JENNIFER GANDHI, POLITICAL INSTITUTIONS UNDER DICTATORSHIP 22-23 (2008); *see also* Reinoud Leenders, *Prosecuting Political Dissent: Courts and the Resilience of Authoritarianism in Syria, in* MIDDLE EAST AUTHORITARIANISMS: GOVERNANCE, CONTESTATION, AND REGIME RESILIENCE IN SYRIA AND IRAN 169 (Steven Heydemann & Reinoud Leenders eds., 2013).

languages, religions, urban-rural divides, or political ideologies that will be considered authentically "Syrian." Syrians, then, remain defined by lines drawn by outsiders, without developing an internal or organic definition of their national, cultural, or social identity. Papering over this vital developmental step in the life of a nation is not an option. It is the foundation stone of drafting a constitution that will govern the life of the nation as a whole and its constituent components, as well as the relationship between those components—be they communities or individuals—with the institutions that will manage the state on their behalf.

## V. CONCLUSION

By all measures, the most recent Syrian uprising revealed that the current phase of the Syrian political development remains insufficiently formed. Syria remains trapped between its five-hundred-year history under the rule of the Ottoman Empire and its young history as a modern state. Since 1920, the country has been experimenting with a variety of ideologies—pan-Arabism, pan-Syrianism, socialism, Communism, Ba'athism, and Islamism—all of which have failed to take root in the hearts and minds of Syrians and fallen short of creating a sustainable system of shared governance for the majority of Syria's citizens in a way that legitimizes both the state and its rulers.[470] I do not possess the panacea for Syria's political ills—but I do not believe that these ideologies, or brute force, are the answer.

What has transpired in Syria the last twelve years is a tragedy of unspeakable magnitudes. The destruction of the past decade has shattered with it many of the old myths stunting Syria's political development. I hope that the destruction leads to the will to create a new system of governance—away from Assadism—from Syria's ashes. It is unclear if this will be a Syria with its 1946 borders or different ones—but in the words of Yezid al-Sayigh, the most important issue is what will happen *within* those borders.[471] That will be the only factor in determining whether or not Syria can ever be a functioning state, with an organic system that enjoys societal buy-in that embraces its components and permits sufficient autonomy for people to live consistently with their traditions and way of life.

Despite my hopes, I am under no illusions that this is on the horizon. The old barriers to political development have now been replaced with even more insurmountable obstacles. The Syrian population has been brutalized for more than a decade, suffers from severe brain drain, and is too exhausted to

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[470] *See* WAEL B. HALLAQ, THE IMPOSSIBLE STATE: ISLAM, POLITICS, AND MODERNITY'S MORAL PREDICAMENT (2014). This book discusses the failures of liberalism, promoting instead solutions he believes are more readily found in a Shari'a-based state, with which this author disagrees.

[471] *See* SECTARIANIZATION: MAPPING THE NEW POLITICS OF THE MIDDLE EAST (Nader Hashemi & Danny Postel eds., 2017).

deal with revolutionary change of the system. Their current concerns have been reduced from grand political questions to securing their most basic human needs: avoiding further abuse at the hands of the Assad regime and accessing electricity, food, and water. Moreover, they find themselves confronting entrenched foreign dominance over Syria, reinforcing an Assad regime that is bound to be even more paranoid than before about any political stirrings. For the foreseeable future, it is unlikely that Assadism can be divorced from Syria without further struggle.