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# The Ottoman Tanzimat and the Constitution\*

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## Abstract

This study is rooted in the various contexts in which the Ottomans adopted the *Tanzimat*, a series of reforms in the 19<sup>th</sup> century, which later gave rise to a constitution. These reforms came about as a result of the impact of competitive forms of rising capitalism, a growing awareness among local elites on the importance of reforms, and the tensions borne out of the diversity and complexity of the Ottoman Empire's ethnic composition. This study seeks to describe these reforms in terms of what they strived to achieve—a Western concept of citizenship represented in the formation of a nation-state, which implied the rise of civil society, human rights, and the rights of citizenship—and what was prevalent at the time of the Ottoman Empire—a system that conceptually embodied the idea of a state founded on a dominant, over-arching social community (or social solidarity – *asabiya*) in a community composed of multiple ethnicities.

# Table of Contents

<b>Historical Context of the Tanzimat</b>	<b>1</b>
Representation within the Administrative Councils	3
The Municipal Councils	4
Representation in the Constitution (Fundamental Law)	4
The Notables	5
The Delegates	5
<b>The Impact of Ottoman Reforms and the Constitution on Society: “Subject” versus “Citizen”</b>	<b>7</b>
<b>Citizenship and the Nation in the early Phases of Constitutional Thought</b>	<b>14</b>
On the Nation, Citizenship, and “the Son of the Homeland”	14
Constitutional Rule as a Way to Fulfill the Nation’s Interests	16
<b>Conclusion</b>	<b>22</b>

## Historical Context of the Tanzimat\*

The philosophy behind the Ottoman *Tanzimat* in the 19<sup>th</sup> century was based on the notion of modernization, understood by Ottoman local elites throughout the Empire as the adoption of European political modernity within Ottoman institutions and bureaucracy. The military establishment was the Tanzimat's first priority. At the time, traditional Ottoman armies—the Janissaries and the Sipahi—had fallen from their glory and their weakness contrasted highly with European armies, which, since the 18<sup>th</sup> century, began displaying a high level of organization, training, and skill.

The second priority was the empire's administrative apparatus, which was the main focus of Ottoman reformers from 1839 onwards, which is also the year the first Tanzimat edict, *Hatt-i-Sharif of the Gulhane*, was issued. The edict's main objective was the abolishment of the traditional land-tenure regime (*iltizam*). A number of measures, decrees, and organizational and legal edicts were subsequently issued, most notably *Hatt-I Humayun* (1856), which focused on equality between different communities and classes, followed by the new *Wilayat* law (provincial law) in 1864, which decreed that administrative councils should be elected, from the district level to that of the provinces (*wilayat*). These were followed by a succession of laws regulating the status of "Ottoman affiliation" (meaning citizenship) in 1869, and the reorganization of the judiciary, which was divided between Islamic, communitarian, and secular courts. Additional laws were also issued to organize the matters of trade, official transactions, the registration of land, and municipalities and their powers.

In that same context, the 1876 constitution was issued under the name "the Fundamental Law of the Sultanate," though during that period, the term constitution generally referred to the entirety of the Tanzimat, not only the fundamental law. There is no doubt that a multitude of historical factors led to the decision to adopt the Tanzimat. At the time, pressure was mounting with regards to Europe's expanding and competing capitalism, which found European countries seeking new markets and zones of influence, and required reforms necessary for such capitalist expansion, such as

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\* *Tanzimat*, (Turkish: "Reorganization"), series of reforms promulgated in the Ottoman Empire between 1839 and 1876 under the reigns of the sultans Abdulmecid I and Abdulaziz. These reforms, heavily influenced by European ideas, were intended to effectuate a fundamental change of the empire from the old system based on theocratic principles to that of a modern state.

commercial laws. The Ottoman Empire's local elites, including ambassadors, ministers, and intellectuals, were becoming more aware of the necessity of reform as the entryway to salvaging and strengthening the state, by adopting what they believed to be the ingredients of the West's prosperity and power.

At the time, tensions were also mounting among the different ethnicities comprising Ottoman society—a complex mix of social, cultural, and religious communities. The crisis of the *Millet* system was a sign of this tension, particularly when set against the emerging system of foreign privileges, immunity, and interventions. This question was further complicated by the growth of new forms of national awareness and "identities," which found a large audience among the different elites in Ottoman territories.

The reforms that came with the Tanzimat, along with its notion of modernization, meant different things to different stakeholders in the Ottoman Empire. For European capitalist powers, these reforms represented a facilitation of commercial exchange, an expansion of the capitalist market, and the ability to protect foreign communities and their local trade representatives. For Ottoman elites, especially those who were enlightened, modernization was understood as a way to neutralize any potential justification for intervention through the enactment of popular representation and the provision of the rights of Ottoman citizenship. For the Ottoman communities (*millets*), particularly those that were non-Muslim, these measures were understood as an application of the right to equality, while non-Turkish ethnicities and nationalities saw them as an opportunity to achieve a measure of participation. This was true even before secessionist demands began to crystallize within the Ottoman Empire.

Trying to understand the cultural and social dimensions of the Ottoman Tanzimat can prove challenging, especially when it comes to popular representation and the repercussions of the transformation of Ottoman "subjects" into "citizens". The differences between the notion of popular representation, as part of the rights of citizenship in a nation-state (inspired by Ottoman reformers motivated by European democratic experiences), and the culture of political "subjects," which was well-entrenched in the culture and the empire's political mentality, as well as part of an old lifestyle and political communities that continued to exist under the Tanzimat—strained relations in the empire.

Representation through subjects alludes to those social units on the sectarian, communal, tribal, and familial, and professional levels who had acquired a "power system" Ibn Khaldoun termed *asabiya* (social solidarity), which is characterized by

mechanisms that are based on a balance of forces and a constant struggle between “conquering asabiyas,” “defensive asabiyas,” and “affiliated asabiyas”. The same concept states that loyalty or affiliation has conditions related to the extent of one’s ability to dominate in order to impose submission, or their ability to “unify the hearts” and gain people’s loyalty by offering services, distributing benefits, protection, or even intermarriage.

The Tanzimat, in contrast, spoke of a new form of popular representation through new channels, such as administrative councils that were formed by the Wilayat Law, starting at the district level up to the general councils at the provincial level (in 1864), the municipal councils (1871), and the fundamental law (the constitution), which was announced in 1876. The fundamental law decreed the formation of two councils: an appointed council of notables and an elected council of delegates. In principle, this representation was based on “Ottoman affiliation,” a law from 1869 that attempted to transform “subjects” into “citizens”.

### Representation within the Administrative Councils

In accordance with the 1864 Wilayat system, a general council was created within each province (*wilaya*), headed by the governor (*wali*), and set up in the following manner:

- Four members from each district’s administrative council congregated in an administrative division (*liwaa*). For example, if an administrative division included five districts, 20 council members who represent these districts would participate in the electoral meeting.
- After convening, the members elected three members to represent the administrative division in the province’s general council.
- The representatives of each district transmitted a written request of their district’s demands to the general council for discussion.

Members of the district councils had the authority to discuss matters related to the building and maintenance of roads, support for agriculture and trade, and proposals to modify the taxes imposed on the administrative divisions, districts, and villages. The

general council was purely consultative; its recommendations were forwarded to the governor, who, in turn, relayed them to the government.<sup>1</sup>

## The Municipal Councils

Article 111 of the 1871 law for provincial administration decreed that a municipal council was to be formed in order to manage municipal affairs in the capitol city of the province, administrative divisions or, or district (*wilaya*, *liwaa*, *qada*). The members of the municipal council served in unpaid positions, including the head, an assistant, six fixed members, and a number of counseling members, including the city's doctor and architect, a clerk, and a treasurer. Each person on the council was elected in the same manner as the province's administrative council, with an elected term being two years on a rotating basis—half of the members were replaced each year. The council met twice a week, with the meetings chaired by the head, or their assistant in case of absence.

## Representation in the Constitution (Fundamental Law)

The constitution was announced on December 19, 1876. According to Engelhardt, the constitution was inspired by the constitutions of Belgium, France, and England, and was composed of 119 articles, including the sultan's rights. The law decreed that the sultan was sacred and not politically responsible; he was also given the power to appoint and replace officials, issue money in his name, and have his name mentioned during the Friday sermons, as well as hold the power to sign treaties, declare war, impose punishments, and convene and disband the general council. The law also included articles discussing the freedom and equality of Ottoman citizens, and even went into the duties and responsibilities of workers in the Ottoman Empire.<sup>2</sup>

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<sup>1</sup> The Constitution, translated by Nawfal Nimat Allah Nawfal, reviewed by Khalil al-Khury (Beirut, the Literary Press, 1883), pp. 412-414. This work includes the texts of the Ottoman Tanzimat and the text of the Fundamental Law, which is the 1876 constitution. Also see the commentary on some of the constitutional articles in: Abd al-Aziz Muhammad Aawad, *The Ottoman Administration in the Wilaya of Syria, 1864-1914*, (in Arabic) prefaced by Ahmad Izzat Abd al-Karim, the Modern Arab History Library (Cairo: Dar al-Maarif, 1969).

<sup>2</sup> Articles 1, 2, 3, 4, 5, 6, 7. Available with commentary in: Edouard Engelhardt, *La Turquie et le Tanzimat, ou histoire des réformes dans l'Empire Ottoman, depuis 1826 jusqu'à nos jours*, 2 vols. (Paris: A. Cotillon, 1882-1884). Also see the following constitutional articles: 1, 2, 3, 4, 5, 6, and 7 in: *The*

The general council was composed of two committees: the notables and the delegates. Both committees convened each year on November 1 in two ordinary sessions that lasted for four months; the sultan had the right to convene the general council and launch sessions at his own convenience.

The constitution also ensured that members of the general council could freely express their views and offer proposals with immunity to any charges that may be directed against them for doing so. It was prohibited to be a member of both committees.<sup>3</sup>

### The Notables

The sultan was responsible for choosing the members of the notables' committee from among those who made important and notable contributions to the state, such as ministers, governors, military commanders, ambassadors, and former patriarchs. Membership was for life and the committee's main mission was to review the laws and regulations formulated by the delegates' committee. The committee also reserved the right to veto these decisions or send them back to the delegates' to be revised and modified. The proposals that received the approval of the committee were forwarded to the prime minister (Grand Vizier).<sup>4</sup>

### The Delegates

This committee was elected on the basis of one member for each 50,000 male Ottoman citizen, through a secret vote electoral process. In order to become a member, one needed to satisfy certain conditions, such as Ottoman citizenship and knowledge of the Turkish language. They could not combine membership with any other government position, with the exception of ministerial positions.

The committee's electoral system was managed through a temporary system in the form of electoral directives that gave the administrative councils in the provinces, administrative divisions, and districts the right to elect delegates, with the justification being that these councils were elected by the people. The directives explained the electoral process, which began with the province receiving a list of how many deputies should be elected, as well as the number of Muslim and non-Muslim deputies. The

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*Fundamental Law* (in Arabic), (Beirut, the Scholarly Press of Yusuf Ibrahim Sadir, 1908) (Official Arabic translation).

<sup>3</sup> *The Fundamental Law*, article 42 and 59.

<sup>4</sup> *The Fundamental Law*, articles 60 and 64.

province's administration informed the administrative division and district governors of the list's content and explained the electoral process. In accordance with those directives, government officials were banned from interfering in the elections. Subsequently, the various administrative councils in the provinces, and its administrative divisions and districts, were to elect their Muslim members. The members of the district's council were instructed to write the names of their candidates and place them in sealed envelopes that were handed to the lieutenant (*qaimmaqam*), an Ottoman administrative rank), who in turn relayed it to their local Ottoman administrator (*mutasarriif* local Ottoman administrator). The same process took place in the capitol of the province and the administrative division, after which the sealed envelopes were sent to the governor (wali). The votes were then counted and all the electoral sheets were sent to the two state councils in Istanbul in order to be re-examined and verified.<sup>5</sup>

There were 16 Arab deputies in the first delegates' council from provinces (wilayas) across the empire, including five representatives from the Wilaya of Syria, two from the Hijaz, four from Aleppo, three from Baghdad, and two from Libyan Tripoli Wilayat. There were a total of 115 members of the Chamber of Deputies, in addition to the chair and his two deputies, for a total of 118 representatives.

It is known that this constitutional experiment did not last for more than one year (from March 19, 1877 to February 14, 1878), when Sultan Abd al-Hamid decided to disband the parliament and suspend the constitution indefinitely. The suspension of the constitution continued until the 1908 coup, when the new rulers forced its reinstatement, leading to a new, short-lived constitutional era that ended with the outbreak of World War I, ending the second constitutional experiment as well as the Ottoman Empire as a whole.

It is worth mentioning that Mount Lebanon, an autonomous province (*mutasarrifiya*), did not participate in the first or the second constitutional experiments as it represented an "exception" because of its special status guaranteed by foreign powers. Egypt was also excluded for the same reason, in addition to the fact that the Union and Progress Party feared that the Egyptian deputies would dominate the delegates' council in Istanbul, given that the Egyptian representatives alone would have exceeded 120 members (in accordance with the size of the population).

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<sup>5</sup> Aawad, p. 43.

In sum, the Arabs were represented in the delegates' council by 60 deputies while the Turks had 150 representatives, revealing a flaw in parliamentary representation between Arabs and Turks. In fact, this issue was part of a larger structural defect that characterized the rebuilding of institutions within the Ottoman administration, according to a strict model of centralization that was infused with a nationalistic hierarchy that gave primacy to Turkish officials in the administration. These and other factors led to the emergence of a national Arab awareness that expressed itself, at the time, through demands for administrative decentralization and independence.

## The Impact of Ottoman Reforms and the Constitution on Society: "Subject" versus "Citizen"

The theoretical expression of the concept of representation in the Ottoman Tanzimats, can be found primarily in the literature of the so-called "New Ottomans" or "Young Ottomans," both of which were predecessors of the "Young Turks". This movement led to the creation of several parties and associations that were Turkish, Arab, or both, the majority of whom viewed Ottomanism as a "collective belonging" and a political affiliation for all Ottomans. Some even expressed Ottoman belonging through terms such as "homeland" and "nationalism," in a throwback to the style of romantic nationalism that dominated the culture of European elites at the time; the most renowned intellectual to use the term, "Ottoman Homeland," in his writings was the Turkish poet Namik Kemal.<sup>6</sup>

Practically and legally, this trend was expressed through the law of "Ottoman affiliation," which was issued in 1869 and was akin to a modern law of nationality. The nationality law was composed of nine articles determining who was eligible for "Ottoman citizenship," or as it was referred to at the time: Ottoman affiliation. The law was also notable for its flexibility in determining Ottoman affiliation:

**Article 1:** Those born of two parents, or one parent, carrying Ottoman affiliation could obtain affiliation.

**Article 2:** Those born in Ottoman territories to foreign parents could obtain Ottoman affiliation within three years of reaching adulthood.

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<sup>6</sup> Bernard Lewis, *The Emergence of Modern Turkey*, no. 135, 2<sup>nd</sup> ed. (London: Oxford University Press, 1968), pp. 141 and 150.

**Article 3:** A foreign adult who has resided in Ottoman territories for five successive years could apply for citizenship through either the Ministry of Foreign Affairs or an agent.

This “flexibility” in providing Ottoman affiliation was epitomized in the ninth article, which states: “All those residing in the Ottoman state are considered to be of Ottoman affiliation, and are treated as subjects of the Ottoman state.” Later on, the eighth article of the constitution stated: “[T]he title “Ottoman” is granted to any affiliated individual without exception, regardless of his religion and sect. [These individuals] are allowed to obtain Ottoman citizenship....”<sup>7</sup>

The rationale behind these laws was for a person to achieve the desired goal of “citizenship,” as understood from the emergence of civil society in Europe and the rise of the modern state with its civic authority, which was independent from the religious authority. It is known that this state of affairs came to existence after a long and complex path of national and democratic revolutions, and scientific and intellectual advancement. It was in this context that the project of the nation-state and “the rights of man and the citizen” were created, and on this basis that the majority of the articles of the Ottoman constitution were formulated. Articles 9 and 10 guarantee personal freedoms, article 12 guarantees the freedom of the press, article 15 states the freedom of education, and article 17 affirms that all Ottomans are equal in the eyes of the law.

Prevalent in this era was the notion of “Ottoman subjects,” which surpassed nationalities and ethnicities and was the product of a historical legitimacy enshrined by the historical Islamic experience, which was based on acknowledging the legitimacy of a Sultanistic rule that rose through conquest and social solidarity (*asabiya*), which, in the words of Ibn Khaldoun, was reinforced by a religious call that further strengthened it. This model persisted because of the mechanisms of affiliation and loyalty that were closely linked to the hierarchy that determined the division of power and wealth and the distribution of rents and tax contracts in the regions, in addition to mechanisms that deterred competing communities with the least military cost possible—utilizing loyal communities to battle competing ones in order to affirm the sultan’s legitimacy and sovereignty over society.

Thus, there was a large dependence on mechanisms that were already available within the local communities themselves, as these communities constantly provided their

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<sup>7</sup> *The Fundamental Law*, article 8.

services to the sultan through their sectarian, civic, familial, tribal, and professional institutions. In addition, there was a broad political community composed of the religious institutions, the *Millet* system, and various customs and traditions, some of which became the basis for the religious laws, *Qawanin Nama*, which differs from the rulings of the Islamic *Sharia*, though they were promulgated after the sultan obtained religious *fatwas* authorizing them.

In sum, the notion of "subjecthood" was promulgated across the empire by diverse political and cultural organizations based on mechanisms of authority that were provided by the local communities and regulated by mechanisms of loyalty, as well as willful and forced affiliation. These mechanisms, however, were always effectuated through communities: religious and sectarian, tribal or familial, local or professional, and so forth.<sup>8</sup>

At this point, two questions bring us back to a central dilemma: was the Tanzimat able to combine the notion of citizenship and the citizen in its Western connotation with the notion of "subjecthood" derived from the concept of social solidarity (*asabiya*), inspired by the model of the conquering state and *asabiya*? And, if so, how was this possible?

Many elites aspired to develop the notion of Ottoman affiliation and representation into a national ideology. The first attempts to formulate the ideological notion of an "Ottoman homeland," found in the "New Ottomans" or the "Young Ottomans" literature, written by the poet Namik Kemal. However, these elites were not exclusively Turkish, as there were Arab elites, Muslim and Christian, who also employed the term "Ottoman homeland," "Ottoman nation," and "Ottoman citizen" to advance the demands of freedom, equality, "the rights of the citizen," and representation along the lines of the European democratic parliamentary experience. For example, Suleiman al-Bustani's book, *A Memory and a Lesson: The Ottoman State before and after the Constitution*,<sup>9</sup> was written a mere twenty days after the 1908 constitutional coup, publishing it just four months later. Since it was written before the Turkish Unionists began to adopt the "Turkification" policy, authoritarian rule, and the exclusion of other nationalities from

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<sup>8</sup> These ideas were expanded in: Wajih Kawtharani, "Authority, Society, and Political Action: From the History of the Ottoman Wilayat in Syria," (in Arabic), the Doctoral Dissertations Series, 13 (Beirut: Center for Arab Unity Studies, 1988), pp. 33-77.

<sup>9</sup> Suleiman al-Bustani, *A Memory and a Moral: The Ottoman State before and after the Constitution*, (in Arabic) Edited by Khalid Ziadeh, the *Contemporary Arab Legacy Series* (Beirut: al-Taliaa Publishing, 1978).

the senior government positions—and before the state began to interfere in the election of the delegates' councils in the provinces—the book is highly optimistic .

Suleiman al-Bustani saw in the “constitution” liberal and democratic principles, and described it as the miracle of the 20<sup>th</sup> century, noting that these principles came at a very high cost to Europe, beginning with Cromwell’s revolution in Britain, the French Revolution, and the democratic and social revolutions that took place throughout the 19<sup>th</sup> century. In contrast, the Ottoman constitutional coup, prefaced by the previous Tanzimats, provided a similar constitution, but it was achieved peacefully and without the shedding of blood. He exhibits even more optimism when explaining the constitution’s principles in light of other representative and constitutional experiments in the West, including the initiatives for the freedom of writing, media, education, formation of associations, parties, and industrial and agricultural projects. Al-Bustani was of the opinion that it would take 25 years to reap “the fruits of this [constitutional] renaissance,” meaning the Ottoman experiment: “If we assumed that it would take a quarter of a century to reap the fruits of this recent renaissance, [...] a quarter-century should be sufficient to produce a new generation with a new spirit not affected by the influences of despotism.”<sup>10</sup>

Regardless, the constitutional coup’s resulting optimism—the Arab intellectual elite was generally optimistic as can be gleaned from Arab cultural, literary, and political discourse during that period—was mixed with doubt and a realization of the difficulties entailed in such project. This response was due not only to the differing nationalist demands between the Arab and Turkish elites, and their diverging views on the rights of nationalities, communities, and the proportion of representation that should be allocated to each ethnicity, but also to an existing social and cultural awareness that perceived “representation” at all levels from the perspective of political subjecthood. This subjecthood entailed that an individual must be part of a quasi-closed community that finds its unity through social solidarity (*asabiya*), and its interests fulfilled through close bonds and exchanges, where those in power were in possession of the tools of strength and repression.

Despite al-Bustani’s optimism in achieving freedom and equality for the Ottoman citizen under Ottoman affiliation through the constitution, he also reminds readers of the 1876 experiment when the delegates’ council was held for the first time:

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<sup>10</sup> Ibid., p 244.

While it was expected of the delegates' council, especially in its first year, not to distract or sidetrack the government from achieving reforms, it was also the duty of the nation's subjects not to bother the members with demands that could distract them from fulfilling their mission. We realized, after the meeting of the first council in 1876, that the subjects of each province believed that their delegate was exclusively representing them, and that it was his duty to fulfill all their wishes and desires, and to transmit their complaints, regardless of their nature. In fact, letters from some provinces were falling like rain on the heads of the delegates, with demands that would expose the delegate, causing his colleagues to mock him were he to discuss them with the other members. Some [of the letters] were demanding the dismissal of a personal enemy and the transfer of his post to the person who sent the complaint, while some asked for ranks and medallions, and others demanded that a governor be ordered to address the person in question ... [I]t is even recounted that among these letters was a request from a muleteer whose donkey was stolen who wrote to his delegate demanding that he orders for its return.

Al-Bustani refers to this as "ignorant" practices, adding that "we were not blamed for such ignorance until that moment".<sup>11</sup> Even if such behavior was linked to a lack of education, it remains true that traditional forms of social behavior tend to persist within communities, villages, and neighborhoods. This explains why the muleteer went to his province's delegate, with the assumption that the latter is a "sovereign," and responsible for everything that takes place within his region, willing to take matters to the supreme sovereign: the sultan. This type of traditional relationship is also determined by the behavior of those in power. Previously, those in power practiced this form of authority through traditional institutions, such as tax farming, and regimes of princes, sheikhs, and local officials (*naqibs*). Later, this authority was practiced through administrative councils, parliament, municipalities, and general administration. In other words, the same families that occupied positions of power in the old regime were attempting to occupy the posts of authority in the new administrative and representative system.

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<sup>11</sup> Ibid., p. 240.

Based on extracts from Muhammad Rafiq al-Tamimi and Muhammad Bahjat in their book *The Wilayat of Beirut*,<sup>12</sup> it becomes clear that a new type of behavior emerged whereby those from the previous leadership tried to impose their authority on the new institutions based on the idea that people are “political subjects”. In fact, the first noteworthy change regarding the powers of the municipal council and its chair, as stipulated by municipal law, was that a number of privileges were allotted to the head of the city’s merchants’ association (*naqib*), the city’s treasurer (*muhtasib*), and head of the city’s guild (*sheikh al-hirfa*), in addition to other functions relating to the organization and upkeep of the city. In addition to being a source of benefits and protection, this institution, like other representative and executive institutions created at the time, ended up being a tool to affirm the old power system, which was shaken by the new Tanzimat, and communicate with the administration, which was represented by the governor (*wali*), the Ottoman administrator (*mutasarriif*), and the district director (*Qaim Makam*).

In an analysis of the municipal councils in the towns and cities of the Beirut Wilayat, the authors of *The Wilayat of Beirut* wrote:

We, Orientals, are still far from understanding the real meaning of the term ‘municipality’; we understand the word municipality as referring to an official organ whose function is to strengthen and uplift the notables and those with influence, and to fill the pockets of the ‘poor’ chieftains (*beys*). We saw no evidence of a single action or behavior that shows the true, or official, meaning of the word ‘municipality’. In fact, the head of the municipality and his employees identify themselves as employees who only enact the orders of the district director (*Qaim Makam*) or the Ottoman administrator (*mutasarriif*) verbatim, without objection or hesitation. In almost all of the places that we have observed, we could not witness a single municipality functioning in accordance with the meaning used in Western countries.<sup>13</sup>

The above analysis can be better understood through the link between the administration, as the power in place, and the land as the source of wealth and prestige. The same political and social behavior that was based on protection, loyalty,

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<sup>12</sup> Muhammad Rafiq al-Tamimi and Muhammad Bahjat, *The Wilayat of Beirut*, vol. 2, (in Arabic), (Beirut: al-Iqbal Press, 1916).

<sup>13</sup> *Ibid.*, p. 93.

and favors, and which operated within the neighborhood and the family, persisted in the socio-political life of Ottoman provinces.

In sum, the same behavior that dominated the pre-Tanzimat period was prevailing in the new administration. The new administrative posts became the main position that provided political prestige and achieved, in parallel, the expansion of land holdings with the creation of the land registration (*Tapu*). The new system also provided for the persistence of favors and the policies of affiliation, loyalty, and protection vis-à-vis the residents of the neighborhood and the villagers. Thus, the large families in the main cities (especially in the capitols and districts) were keen to place their sons in the various councils and government administrations, so much so that they would procure unofficial hereditary rights for some positions, even if bribery was necessary.<sup>14</sup>

Popular representation rapidly showed elements of opportunism, not because the administration provided much wealth, but because it afforded an executive authority. The authors of *The Wilayat of Beirut* present a meaningful description of this behavior among the notables in the administration of a city like Nablus:

The members of this clique are attached to small posts in the government whose salaries do not exceed hundreds of piastres, even though the wealth of each of them exceeds thousands. Still, they stick to the offices of the government, remaining there from dusk to dawn [...] because many benefits are realized through this position. [The government officer] uses his position in order to facilitate, first and foremost, his personal business with ease. Moreover, [they] are the target of the requests of those in need that prefer to resort to them rather than to foreign officers, since they tend to be known local notables in their towns. We see [the government officer] receiving presents, and he does not refrain from using the influence of his position in order to pillage the land of a farmer. At the same time, these (officers) tend to resolve the problems of their close rivals quickly and immaculately.<sup>15</sup>

Still, the notables' domination of the Tanzimat, especially the urban notables, also had a positive element among the intellectual and reformist elites throughout the Muslim world. After all, these reforms led to the introduction of the notion of "citizenship" in its

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<sup>14</sup> More on this theme in: Kawtharani, *Authority and Society*, pp. 92-96.

<sup>15</sup> Al-Tamimi and Bahjat, *The Wilayat*, pp. 109-110.

legal (constitutional) meaning, as well as the participation of the “nation” through elections and limiting the ruler’s power. In other words, an ideology and a constitution began to emerge in the modern sense of the term.

## Citizenship and the Nation in the early Phases of Constitutional Thought

In the era of reforms and their repercussions on the Arab and Islamic worlds, and when local elites were beginning to pursue modern European education and experience some of the achievements of modern Western civilization, early calls to adopt constitutional ideas began to emerge along two main lines: that of constitutional government, which strove for collective, national participation in the government and a limiting of the sultan’s power, and one that focused on constitutional rights of the individual within the community, which was a preamble to the endorsement of the “citizen” as part of a social pact based on the equality of rights and obligations.

In this regard, there were many instances of proto-constitutional thought deriving from key reformers at the time, including Riffa Rifa al-Tahtawi, who took part in a cultural exchange promoted by Mohammad Ali’s experiment of state building in Egypt and his policy of sending Egyptian scholars to Europe, and Butrus al-Bustani who led a movement of protest against a sectarian civil war in Syria. Al-Bustani spoke of the European religious wars and the means to avoid conflict based on the teachings of John Locke, who called for a separation between religious and civic authorities. Others include Islamic reformer Rachid Rida, a proselytizer who avidly defended the Ottoman constitutional coup, and Husain al-Naini, a Shia reformer in Najaf, who was part of, and influenced by, the constitutional revolt in Iran and who defended it on Islamic legal grounds.

### On the Nation, Citizenship, and “the Son of the Homeland”

It is likely that the Arab usage of a term equating the term “citizenship” first appeared in the writings of Riffa al-Tahtawi (1801-1873) and Butrus al-Bustani (1819-1883), both of whom employed the concepts “the son of the homeland,” “patriotic,” and “patriotism”.

In the fourth chapter of his book, *The Faithful Guide for Girls and Boys*, entitled “On the Homeland, Urbanism, and Education,” al-Tahtawi writes:

The son of the homeland who has become attached to it, lived in it, and adopted it for a home, is sometimes called 'patriot,' which means that he enjoys the full rights of his homeland. A patriot is not described as free unless he submits to the laws of the homeland and aids in their application. Acquiescing to the laws of the homeland is reciprocated with the nation's guarantee of [the citizen's] civic and municipal [local] rights. In this sense, the [citizen] is both a patriot and a member of a city; that is to say he is considered to be a member of the city, which is one of the most important privileges among the advanced nations.

He adds, "the quality of patriotism is not limited to a [citizen] demanding his rights that are to be provided by the homeland, as he must also fulfill the obligations that he owes to the homeland; if none of the countrymen fulfilled their national dues, their civic rights, which they are in principle entitled to, would also be squandered".<sup>16</sup>

In 1860, Butrus al-Bustani, Tahtawi's contemporary, published articles in a journal, *The Trumpet of Syria (Nafir Suria)*, under the heading "patriotisms". Despite his vacillation between Ottoman affiliation and Syrian nationalism, he writes in his fourth article: "Syria, which is also known as Bilad al-Sham and Arabistan, is our homeland with its plains and coasts and mountains; the people of Syria, despite their various religions, races and origins, are our countrymen".<sup>17</sup> Al-Bustani also gave a legal context to this relationship between the individual and the homeland:

Oh countrymen, the people of the homeland have rights upon their nation, and the nation, in turn, has rights upon its people [...] among the rights that the countrymen are expected to provide for their citizens is the security of their most precious belongings: their lives, ownership, and wealth; [citizens] also have the right to be free in their civil, literary, and religious practices, especially the freedom of conscience over matters of sects....<sup>18</sup>

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<sup>16</sup> Riffa Rafi al-Tahtawi, *The Complete Works of Riffa Rafi al-Tahtawi* (vol. 2), (in Arabic), edited by Muhammad Amara, (Beirut: the Arab Institute for Studies and Publications, 1973-1977), pp. 120-121.

<sup>17</sup> Jean Dayeh, "The Teacher Butrus al-Bustani: A Study and Documents," (in Arabic) in *The Trumpet of Syria*, 4, October 25, 1860. (Beirut: Fikr Magazine publications, 1981)

<sup>18</sup> Ibid., pp. 120-121.

These two texts are of key importance because they capture a moment of transformation in the use of the Arabic term, which was endowed with a new meaning and content inspired by the lexicon of the Western national democratic experience. By alluding to human rights in Western constitutional thought, the modern Western tradition produced a notion of citizenship that could be theorized and universalized. In their preliminary use of the terms “homeland,” “national,” and “patriotic,” al-Tahtawi and al-Bustani were infusing traditional Arabic terms with new, contemporary meanings that were the product of a comparative historical awareness that was sensitive to the experiences of other cultures. This process of cultural exchange led to the creation of this legal-constitutional concept, which determines the status of the individual as part of a national community residing on a land that is ruled by a state which regulates the rights and obligations of the individual within the formula of “nationalism” and “countrymen”.

### Constitutional Rule as a Way to Fulfill the Nation’s Interests

Rachid Rida and Husain al-Naini, though residing in different parts of the Islamic world—the Ottoman Empire and Persia respectively, were both engrossed with the model of the “reforming scholar” who sought the means to fulfill the interests of the nation through its rulers and political system. They both struggled for a constitutional revolution in their respective countries. Rachid Rida supported the Ottoman constitutionalists (Turks, Arabs, and others), while Husain al-Naini stood in the camp of the Iranian constitutionalists, defending the notions of the constitution and the limiting of the powers of the ruler.

The common ground between the two was the principle of *shura* (consultation), which they employed after endowing it with a democratic meaning. For both scholars, *shura* also meant the “shura of the Umma,” which was also employed in the modern sense of the “nation-state”. In other words, the nation would share the function of government with the sultan, whose powers would be limited by the provisions of the constitution. It is worth noting that both reformist scholars did not stress the notion of the individual citizen; rather, they focused on the concept of the “freedom of the nation” as the point of departure.

These two men were also bound by an Islamic point of reference that was adapted to a Western one through a circumstantial historical condition that Rida termed “the European stimulation” of the old concept of *shura*, which corresponds to democracy. Al-

Naini, however, referred to his democratic call as an instinctive human tendency that he termed “the natural laws,” which, in his view, were harmonious with “Islamic law”.<sup>19</sup>

In a debate with a Muslim reader in *al-Manar* journal, Rida provided an answer for those who argued that *shura* was an Islamic concept that had no relation to constitutional democratic government as it existed in Europe:

Oh Muslim, do not say that this form of rule [democracy] is among our religious principles, as we have reaped its benefit from the Holy Quran and the biographies of the rightly guided Caliphs, and that we did not learn of it from dealing with Europeans and from examining the state of the Westerners. In fact, had you not seen the state of these people, you, and your likes, would have never seen [democracy] as a constituent of Islam; otherwise, the most enthusiastic advocates for the enactment of this religious principle [democracy] would have been the senior scholars in Istanbul, Egypt, and Marrakech, the majority of whom still support the despotic authoritarian government and are considered to be among its main allies.

I do not deny that our religion helps us in this matter [...] however, I say that, had we not mixed with the Europeans, we would not have been stimulated as a nation – or nations – to this great notion [democracy], even though this matter is clearly stressed in the Wise Quran.<sup>20</sup>

When the constitutional coup succeeded in Turkey in 1908, he wrote extensively about the joy that overtook the Arab and Islamic worlds, defending the new constitutional rule and the Ottoman bond based on the constitution. At the time, Rida wrote,

On this day—the Ottoman nation’s celebration of a constitution and freedom—the Ottomans feels that they are a nation, which has rights upon its state, and shared interests upon which their unity is based, and that they owe duties and obligations toward their government, and that

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<sup>19</sup> For a more expanded discussion of this idea, see: Wajih Kawtharani, *The Scholar and the Sultan: the Dialectic of Religion and Politics in Safavid-Qajar Iran and the Ottoman State*, 2<sup>nd</sup> edition (in Arabic), (Beirut: al-Taliaa Publishing, 2001).

<sup>20</sup> Rachid Rida, “The vices and benefits of Europeans – despotism,” *al-Manar*, year 10, issue 4 (1907), p. 83; and Muhammad Rachid Rida, *Political Selections from al-Manar Journal*, (in Arabic), edited by Wajih Kawtharani (Beirut: al-Taliaa Publishing, 1980).

they are under a law that promotes equality, and that they are in possession of a communal nationality that groups them all – despite their differing affiliations, languages, sects, and religions.<sup>21</sup>

In the midst of this constitutional battle occurring in Turkey and Iran, and engaging the interest of all elites in the Arab and Islamic world, numerous important writings emerged in all literary fields, including prose and poetry, and in sociology and politics, as well as in jurisprudential studies. Specifically, Husain al-Naini's book *Exhortation of the Faithful and Purification of the Nation* presented a fundamental contribution to the ongoing debate.<sup>22</sup>

Al-Naini presented a defense of constitutional political practice from an Islamic standpoint. He argued that constitutionalism is the participation of the nation's members in decision making, and "their equality with the person of the Sultan in all properties, financial and non-financial"; moreover, constitutionalism, for al-Naini, is the nation's right to practice accountability and control and to determine the responsibility of the public employees.<sup>23</sup> He also argued that the liberation of Western peoples from absolutist monarchy "was in keeping with the natural principles and conforming to the teachings of Islamic laws"; on the other hand, he felt that "the deteriorating state of the despots of the Muslim Nation has led to the current situation".

He sought the origins of freedom as a concept, which negates enslavement, injustice, and despotism, in the text of the Quran and the biography of the Prophet (PBUH), as well as the sayings of the infallible imams.<sup>24</sup> He argued that despotism is based on two pillars of slavery: "enslavement toward the Sultan, which manifests itself in the nation's

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<sup>21</sup> Rachid Rida, *al-Manar*, year 11, issue 6 (July 1908), p. 417.

<sup>22</sup> The book was published in Farsi in 1909, then re-printed in 1955 with a preface by Ayatullah Talaqani following the Musaddaq movement in Iran. It should be noted that an Arabic translation of some of the book's chapters appeared in the Lebanese *al-Irfan* journal, translated by Salih al-Jaafari in 1930 under the title "Despotism and Democracy". In writing this paper, the following translation has been used: Husain Naini, "Despotism and Democracy," *al-Irfan* (Saida), year 20, issues 1, 4, 5 (1930).

It should also be noted that the use of the example of al-Naini (an Iranian) on the subject of constitutionalism in Islamic thought is because of the influence his book garnered among the Shia Arab elites in many Arab countries, especially among the educated modernists in South Lebanon and Najaf, especially in the latter city where the senior *Mujtahids* (the sources of emulation) held a great influence over the masses of the faithful peoples.

<sup>23</sup> *Ibid.*, p. 44.

<sup>24</sup> *Ibid.*, p. 45-46.

submission to his all-powerful will in matters of politics and of property. Additionally, [despotism is based on] enslavement toward the heads of the sects and communities under the cover of the sacred nature of religion....<sup>25</sup> Al-Naini further argued that “enslavement, in the former form, relies on power and conquest, while, in the latter, it is based on ruse and deception”. In sum, an alliance was struck between political and religious despotism: “had it not been for the pact between these two despotic authorities, political and religious, and their accord and mutual-reinforcement, both of which enslave us, we Iranians, would not have been as pronounced as it is today.”<sup>26</sup>

In his analysis of coalitions between the political and religious authorities, al-Naini stresses the responsibility of the scholars, as some have turned into “scholars of misconduct” and “illiterates who are not aware of their ignorance,” comparing the position of the masses who emulate these scholars to that of the Jews who follow [misguided] Rabbis.<sup>27</sup> Subsequently, he explains the equality of the nation with the ruler or the sultan: “equality in rights, equality under the law, and equality in terms of punishment and reward”.<sup>28</sup> While these demands, which were raised by the constitutional movement in Iran, sought to free the nation from despots, be they rulers or scholars:

The religious despotic branch saw it as its duty to protect the vile tree of despotism, under the pretext of preserving religion, and to ignore the noble call, and it began resisting, with all its might, these two principles—the freedom of the nation and the equality between the nation and the sultan, which are the origin of happiness and the nation’s greatest asset, having preserved the people’s rights as well as the responsibilities of those in charge.<sup>29</sup>

According to al-Naini, the religious authority did not stop at declaring constitutional reform to be religiously prohibited, they “labored to present [reforms] in the worst possible light in order to push the masses away from this virtuous path”.<sup>30</sup> He went on to present a doctrinal defense of the constitutional political system, evoking the

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<sup>25</sup> Ibid., p. 72.

<sup>26</sup> Ibid., p. 175.

<sup>27</sup> Ibid., p. 174.

<sup>28</sup> Ibid., p. 176.

<sup>29</sup> Ibid., p. 178-179.

<sup>30</sup> Ibid.

principle of *shura*, which was applied in the age of the Prophet (PBUH) and the righteous Caliphs, and adding that there was a great opportunity for a Sunni-Shia accord over this formula. Since Imami Shiism requires authority to be the legitimate right of the infallible imam, in the time of the *ghayba* (the absence of the Imam), it is necessary to clearly limit the power of the sultan in order to avoid despotism and dictatorship. He says, "thus, an Islamic Sultanate should be based mainly on the avoidance of despotism and the monopoly of power while also dispensing with the criteria of the infallibility of the ruler, especially when it comes to our school [Shiism]; this limit can meet the agreement of both parties [Sunnis and Shias] ... and it is also a fundamental Islamic requirement...".<sup>31</sup>

It is clear that al-Naini's arguments were prompted by a real political concern, in addition to a political vision. His point of departure was not focused on the differing views, particularly between Sunnis and Shias, regarding the principle of the *imama* and its historicity and validity, but on the lived reality of Muslims who suffered under the yoke of despotism, a problem that has come with most Islamic societies throughout Islamic history, until it became "a vile tree," to use al-Naini's expression, within Sunni and Shia "Sultanates". Accordingly, he writes: "This would be the true path to changing the despotic authority and transforming it by limiting despotic practices and dissuading [Sultans] from excessive injustice and coercion; the question is not one of elevating a certain individual and lowering the rank of others."<sup>32</sup>

The notion of *shura*, as understood by al-Naini, does not conflict with the role of the jurisprudential scholar in Imami Shiism; in other words, the scholar takes the imam's place through supervision, but is unable to have authority over all functions.<sup>33</sup> Such would form the basis for a *shura* system in which "the comprehensive consultation of the community would be realized, and not only with the clique close to the person of the ruler ... but with the entirety of the nation".<sup>34</sup> Al-Naini also relied on a Quranic verse—"and consult with them in the affairs of the community," stating that its significance is that it refers to everybody; "the fact that (the Prophet) was asked to consult with knowledgeable people within the nation is not under dispute, as everyone knows that the article 'them' in the verse refers to the entirety of the nation and to all

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<sup>31</sup> *Al-Manar*, year 20, issue 4 (1930), p. 434.

<sup>32</sup> *Ibid.*, p. 435.

<sup>33</sup> *Ibid.*, p.434-435

<sup>34</sup> *Ibid.*, p.435.

the immigrants and the loyalists (the two social groups that formed the early Islamic community), not to specific individuals".<sup>35</sup>

This argument led al-Naini to consider the constitutional committee—represented through the national assemblies, parliaments, and representative councils—as the contemporary formula that has resulted from of the advancement of human civilization in accordance with the “natural principles” and the “Islamic laws,” but without any contradiction between these principles and laws. In fact, according to him, the Western democratic system finds its origins in Islam and the principle of *shura*, a fact that he stresses when he states: “This is our merchandise, and it has been returned to us.”<sup>36</sup>

The existence of such a committee in the Sultanate is essential so as to prevent dominion from oppression. According to al-Naini, it is a type of regulating, deterring, and rectifying force. It is a committee in line with the Sunni approach, in terms of having a scholarly and just caliph, and in accordance with the Shiite viewpoint in terms of the infallibility of the imam. He adds that it is a necessity of our time, stating: “At this time when we have become unripe not just in terms of our capacity to hold on to the inerrant infallibility, but also in that those who are faced with a situation are not characterized by virtues of piousness, justness, and genuine knowledge; rather, they are judged by the very opposite.”<sup>37</sup>

For al-Naini, the representative committee stipulated by the constitution as being representative of the nation is: “an entity of divine infallible power according to the fundamentals of our Imami [Shiite] sect, and is in the position of a scientific power and a source of piousness and justice, according to Sunni [Islam]”.

Both scholars, Rachid Rida and Husain al-Naini, offer a similar theological argument as the solution to the entirety of the problems afflicting the Muslim world in the late stages of the Sunni and Shia Sultanistic states. In the face of despotic authoritarianism, in addition to the injustice and impoverishment that were inflicted upon the nation, the two scholars invoked the concept of *shura* as one of the pillars of Islamic governance, but also as a synonym to representative democracy, as they were fully aware of the requirements and needs of their historical time. In fact, they argued, [political] activism in favor of the constitutional movement, which was undertaken by liberal intellectuals,

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<sup>35</sup> *Al-Manar*, year 20, Issue 5 (1930), p. 568

<sup>36</sup> *Ibid.*, p. 570.

<sup>37</sup> *Ibid.*

jurisprudence experts, and reformist scholars throughout the urban centers of the Muslim world, was legitimate and religiously authorized from the perspective of the “natural principles” as well as that of the “Islamic principles” as understood and defined by them.

Husain al-Naini’s defense of the constitutional movement in Iran (1906-1911) represented a novel doctrinal argument on several levels: firstly, it legitimated the concept of the constitution by appealing to the foundational texts, and “adapted” the concept for the current historical era and the Muslim reality. His methodology was in line with the perspective of the two major schools of Islamic thought: Sunni Islam and the specifications that it sets for the Just Caliphate, and Shia Islam’s concept of relative infallibility [in the absence of the Imam]. The ruler’s authority, argued al-Naini, must be regulated by a “general committee” representing the nation. Secondly, his arguments were not only influential in Iran, but also among the Arab Shias, especially in Iraq and Lebanon, and mostly through the *al-Irfan* journal. Al-Naini’s writings have also left a mark on the Arab constitutional culture in general. Finally, his opinions are, today, among the major arguments presented to critique the *Wilayat al-Faqih* theory (“the guardianship of the jurist”) formulated by Khomeini. Unlike Khomeini, al-Naini decided that the nation takes the place of the jurist, who represents, in turn, the occult Imam, a notion that was later developed further by Muhammad Mahdi Shams al-Din in his argument on “the guardianship of the nation upon itself”.

## Conclusion

In conclusion, the achievements that were made through the Ottoman Tanzimat during the 19<sup>th</sup> and early 20<sup>th</sup> centuries, including the constitution that was enacted in 1876 and in 1908, were a critical juncture in Arab and Islamic history, and the cornerstone for modern constitutional thought.

Despite the arduous path of the Tanzimats and the constitutional reforms in civil and local societies, the experiment presented a refined, progressive, rich intellectual expression of Tanzimat philosophy and of the constitution’s meaning and place within the project to build a modern state. At the same time, these reformist texts attempted to implant new concepts in the Arab political culture: the nation-state, the citizen, representation, voting, and elections, as well as notions of civic freedoms, the separation of powers, accountability and so forth. Simultaneously, innovative religious schools that attempted to, boldly and confidently, consolidate the deeply Islamic

character of political modernity emerged. These scholars have also influenced the intellectual innovations of the 1920s, such as Ali Abd al-Raziq's work on Islam and government and al-Sanhuri's interpretation of the question of the Caliphate, in addition to other manifestations of the constitutional culture, which marked the 1920s in many Arab countries (Egypt, Syria, Lebanon, and Iraq).

Following the First World War, the Iranian constitutional movement received a setback due to a military coup against the Qajar Shah led by an army officer, Reza Shah Pahlavi, (1923) resulting in a new "Shahenshahi" state—a new form of Sultanism with a modern military facade. In the Arab region, the Levant fell under the grip of Western domination, leading to the formation of regional states whose borders were determined by the zones of influence of Western powers. Nevertheless, despite the state of "division" that characterized the post-WWI era, a certain continuity with constitutional culture and constitutional political activism remained with the Arab elites that inherited its methods and mentality from the Ottoman constitutional activism. This was clearly expressed in the so-called "constitutions of the 1920s" in Egypt, Syria, and Iraq, which laid the cornerstone for constitutional republics and monarchies; these constitutional systems emerged because of two historical factors that should remain alive in the Arab historical memory and Arab historical research.

First, the Ottoman modernizing effort, which saw the participation and interaction of Arab elites, some of whom participated in the Ottoman constitutional struggle, such as Khalil Ghanim—one of the founder of the Young Turks, Suleiman al-Bustani, Sati al-Husari, Rafiq al-Azm, and Rachid Rida. Secondly, though the relationship with the West was rooted in colonization and the reactionary independent and anti-Western movements—an element that has marked the national movements of independence in many Arab states—it also provided a modernizing influence that led to an important constitutional achievement in contemporary Arab history: the building of constitutional democracy.

A final question remains: why was this constitutional achievement ignored in the past, but witnessed a revival recently as the ongoing Arab revolutions began to erupt? The answer to this is that history is not written only once; important junctures in history often require a re-reading of the past, and the Arab world is currently undergoing a momentous detour.