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Negotiating Pluralism: Dilemmas of Decentralization in the Middle East

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Articles

Negotiating Pluralism: Dilemmas of Decentralization in the Middle East

ASLI Ü. BÂLI[†] & OMAR M. DAJANI^{††}

This Article explores the potential of decentralized governance and territorial arrangements to address the overlapping governance crises and identity conflicts in the Middle East and North Africa (the “MENA”). Despite an extensive literature on decentralization and federalism in comparative law and politics, few studies have considered such initiatives in this region. By undertaking a qualitative comparison of decentralizing initiatives in four MENA countries—Tunisia, Iran, Syria, and Yemen—this Article provides the first sustained examination of these understudied cases and in the process suggests a variety of region-wide implications.

The cases are generative both in addressing ongoing debates about the merits of decentralization and in suggesting new design solutions for grappling with intertwined crises of conflict and governance. In this Article, we surface five important dynamics. First, we highlight the striking breadth of the local political coalitions that have supported decentralizing reforms—a phenomenon evident both before and after the uprisings and protest movements of the last decade. Second, we point to a paradox at the heart of the MENA region’s approach to decentralizing government. Whereas decentralization has been a leading item on governance reform agendas, the idea of deploying it as a strategy for addressing identity groups’ self-determination demands has tended to be too politically incendiary to allow reasoned public discourse about its merits. In this Article, we offer explanations, rooted in the region’s encounter with colonialism, for why this paradox has emerged and argue that decentralization may have greater potential as a framework for accommodating competing claims to self-determination than as a vehicle for democratization. Third, our cases point to the value of pursuing decentralization through incremental and bottom-up processes, rather than attempting to impose it in one fell swoop. Fourth, we reveal that decentralizing reforms by authoritarian regimes in the region not only do little to advance democratization but may to the contrary help entrench authoritarian rule. Finally, we identify new models for plural territorial arrangements that have emerged out of grassroots, innovative experiments with decentralization. These models, which have emerged in some of the

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least likely places in the run-up to and even in the midst of brutal conflict, offer a promising path to inclusive governance without revisiting the borders of the states of the region.

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INTRODUCTION

The Middle East is in turmoil. Conflicts and catastrophes have consumed lives on an industrial scale in recent years, with 2023 proving especially deadly. The year began with massive earthquakes that devastated southeastern Turkey and northwestern Syria on February 6, 2023, leaving almost 50,000 people dead¹ and more than 1.2 million homeless,² and causing more than \$34 billion in direct physical damage in Turkey alone.³ The year closed with more death, this time in Israel-Palestine. The attacks of October 7, 2023 resulted in the deaths of some 1200 Israelis, at least two-thirds of whom were civilians. Israel's response killed more than 23,700 Palestinians and injured over 60,000⁴ while cutting off food, water, medicine, fuel, and sanitation to the entire Palestinian population of 2.2 million⁵ and destroying the majority of the civilian infrastructure of the Gaza Strip, including housing, roads, communications, utilities and the health sector.⁶ As of this writing, the war continues with more than eighty percent of Gaza's population displaced and ninety-three percent of Gazan civilians facing "crisis levels of hunger" and dispersion of infectious diseases.⁷

The scale of these calamities is all the more tragic because they are human made. The attacks of October 7 and Israel's campaign of bombardment and ground invasion of Gaza are clearly attributable to deliberate choices made by political and military leaders. But the cataclysmic damage following the earthquakes in Turkey and Syria is the result of policy choices, too. Among the

1. AJLabs, *Turkey, Syria Earthquake Current Death Toll: Live Tracker*, AL JAZEERA (Feb. 20, 2023, 8:17 AM), <https://www.aljazeera.com/news/2023/2/6/turkey-syria-earthquake-death-toll-and-devastation-live-tracker#:~:text=Earthquake%20death%20toll,is%20likely%20to%20keep%20rising>.

2. Press Release, World Bank, *Earthquake Damage in Türkiye Estimated to Exceed \$34 billion: World Bank Disaster Assessment Report* (Feb. 27, 2023), <https://www.worldbank.org/en/news/press-release/2023/02/27/earthquake-damage-in-turkiye-estimated-to-exceed-34-billion-world-bank-disaster-assessment-report#:~:text=ANKARA%2C%20February%2027%2C%202023%E2%80%94,damage%20assessment%20report%20released%20today>.

3. *Id.*

4. *Israel-Hamas War Live Updates*, NBC NEWS (Jan. 12, 2024, 10:33 PM), <https://www.nbcnews.com/news/world/live-blog/israel-hamas-war-live-updates-rcna133605>.

5. *Israel: Starvation Used as Weapon of War in Gaza*, HUM. RTS. WATCH (Dec. 18, 2023, 12:00 AM), <https://www.hrw.org/news/2023/12/18/israel-starvation-used-weapon-war-gaza>.

6. Julia Frankel, *Israel's Military Campaign in Gaza is Among the Most Destructive in History, Experts Say*, PBS NEWS HOUR (Dec. 21, 2023, 4:22 PM), <https://www.pbs.org/newshour/world/israels-military-campaign-in-gaza-is-among-the-most-destructive-in-history-experts-say>. In addition, Israel killed Palestinians in the West Bank in record numbers during 2023. See *2023 Was the Deadliest Year on Record for Palestinians in the West Bank*, DRS. WITHOUT BORDERS (Dec. 15, 2023), <https://www.doctorswithoutborders.org/latest/palestinians-west-bank-2023-was-deadliest-year-record>.

7. *Lethal Combination of Hunger and Disease to Lead to More Deaths in Gaza*, WORLD HEALTH ORG. (Dec. 21, 2023), <https://www.who.int/news/item/21-12-2023-lethal-combination-of-hunger-and-disease-to-lead-to-more-deaths-in-gaza>.

tens of thousands of buildings that collapsed in Turkey,⁸ many had been erected in violation of construction codes. The government of President Recep Tayyip Erdoğan issued thousands of “amnesties” for code violations⁹ in its effort to maintain the pace of the decade-long construction boom over which it had presided—and richly benefited.¹⁰ The emergency response mounted by the government following the earthquakes was stymied, moreover, by successive measures it had taken to centralize authority in the office of the President, marginalize opposition figures, and suppress dissent. Following a 2017 referendum that ended Turkey’s parliamentary system and gave Erdoğan sweeping powers,¹¹ disaster management was consolidated in a central agency and placed in the hands of inexperienced party loyalists, and the military was brought under tighter presidential control—both measures hampering the government’s ability to assist persons trapped under rubble during the critical forty-eight hour period after the earthquakes.¹² Further exacerbating the situation, the government’s imprisonment and/or removal from office of dozens of local officials—typically on the ground of alleged membership in the outlawed Kurdistan Workers Party (“PKK”)—has hamstrung local efforts to provide disaster relief.¹³ Indeed, even after the earthquakes, Ankara has been so loath to strengthen opposition parties that it has seized humanitarian aid provided by them, insisting that all assistance be channeled through the state.¹⁴

The dynamics that produced these tragedies in Turkey and Israel-Palestine are instances of a broader set of dynamics that run across the post-colonial Middle East. Two profound and intertwined challenges run like fault lines across

8. According to one estimate, 61,000 buildings collapsed as a consequence of the earthquakes. Alec Luhn, *How Erdogan’s Obsession with Power Got in the Way of Turkey’s Earthquake Response*, TIME (Feb. 18, 2023, 3:00 AM), <https://time.com/6256540/erdogan-turkey-earthquake-response>.

9. Zeynep Bilginsoy & Susan Frazer, *Turkey’s Lax Policing of Building Codes Known Before Quake*, AP NEWS (Feb. 10, 2023, 12:45 PM), <https://apnews.com/article/politics-2023-turkey-syria-earthquake-government-istanbul-fbd6af578a6056569879b5ef6c55d322>.

10. For a discussion of the patronage relationship between the Erdogan regime and Turkey’s construction industry and its consequences with regard to earthquake preparedness, see Anil Kemal Aktas & Kubilay Cenk Karakas, *The Massive Death Toll from Turkey’s Earthquake is No Natural Disaster*, JACOBIN (Feb. 25, 2023), <https://jacobin.com/2023/02/turkey-earthquake-disaster-relief-neoliberalism-erdogan>; Isaac Chotiner, *How Erdogan Set the Stage for Turkey’s Disastrous Earthquake Response*, NEW YORKER (Feb. 14, 2023), <https://www.newyorker.com/news/q-and-a/how-erdogan-set-the-stage-for-turkeys-disastrous-earthquake-response>.

11. Patrick Kingsley, *Erdogan Claims Vast Powers in Turkey After Narrow Victory in Referendum*, N.Y. TIMES (Apr. 16, 2017), <https://www.nytimes.com/2017/04/16/world/europe/turkey-referendum-polls-erdogan.html>.

12. Gonul Tol, *How Corruption and Misrule Made Turkey’s Earthquake Deadlier*, FOREIGN POL’Y (Feb. 10, 2023, 4:16 PM), <https://foreignpolicy.com/2023/02/10/turkey-earthquake-erdogan-government-response-corruption-construction>.

13. Andrew Wilks, *Turkey’s Kurdish Opposition Says Government Obstructing Quake Relief Efforts*, AL-MONITOR (Feb. 23, 2023), <https://www.al-monitor.com/originals/2023/02/turkeys-kurdish-opposition-says-government-obstructing-quake-relief-efforts>.

14. Aktas & Karakas, *supra* note 10.

much of the region. The first is a crisis of governance, in which the basic social contract between existing regimes and their constituents has been irreparably ruptured.¹⁵ The second is a crisis of identity, in which repression of ethnic, religious, linguistic, and regional diversity has produced polarization challenging the foundations of the region's nation-states and resulting in forms of repression that have grown more extreme in their violence.¹⁶ The genocidal destruction being visited on Gazans may well be the most acute expression of the repressive ethno-sectarian violence that states have deployed to quell or destroy identitarian challenges to their rule. But the centralization of power and hostility to Kurdish elected officials in Turkey reflect a difference of degree not kind. In several contexts, endemic problems of governance have converged with conflicts over the management of ethno-sectarian and regional diversity in states that have increasingly lost both the consent of the governed and the monopoly on coercion in their territories. Although the brittle autocracies of the region—with their highly centralized authority structures and concentrations of power in despotic presidents and monarchs—have partially succeeded in retrenching power following the uprisings against them a decade earlier, they have fundamentally failed to regain actual governing legitimacy or to stem the tide of civil conflict.

The fact that so many of the region's states simultaneously confronted similar challenges has set the past decade apart from earlier periods of crisis. Since 2011, borders have been no match for a transnational wave of protests. Over the past several years, new uprisings have erupted in Sudan, Algeria, Lebanon, Iraq, and, most recently, Iran, with demonstrators explicitly identifying their demands with those given voice elsewhere in the Middle East.¹⁷ This region-wide character of the protests has drawn attention to, and called into question, the shared characteristics of the states in the Middle East and North Africa ("MENA"). Some have developed explanations for the region's destabilization that run deeper and further than the immediate demands of the protesters themselves. Indeed, one common approach taken by analysts has been to argue that the region as a whole may be intrinsically committed to a political

15. See generally Perry Cammack, Michele Dunne, Amr Hamzawy, Marc Lynch, Marwan Muasher, Yezid Sayigh, & Maha Yahya, *Arab Fractures: Citizens, States, and Social Contracts*, CARNEGIE ENDOWMENT FOR INT'L PEACE (2017), <https://carnegieendowment.org/2017/02/01/arab-fractures-citizens-states-and-social-contracts-pub-66612>.

16. For a survey examining minority politics across the states of the region, see generally MINORITY POLITICS IN THE MIDDLE EAST AND NORTH AFRICA (Eva Pfössl & Will Kymlicka eds., 2018).

17. The similarities in demands and the explicit identification of the current protesters with the earlier uprisings has been remarked on by many. See, e.g., Michael Young, *Are We Seeing a New Wave of Arab Spring Uprisings in 2019?*, CARNEGIE MIDDLE E. CTR. (Nov. 7, 2019), <https://carnegie-mec.org/diwan/80260>; Noura Doukhi, *The Iranian Uprising: A Sense of Déjà Vu in the Region*, L'ORIENT TODAY (Oct. 10, 2022, 3:51 PM), <https://today.lorientjour.com/article/1314104/the-iranian-uprising-a-sense-of-deja-vu-in-the-region.html>.

culture of authoritarianism and intolerance.¹⁸ Some commentators have fixated on claims of a general preference for highly centralized rule, or even stated bluntly that the post-colonial Middle East is simply not a place where multicultural, multi-confessional polities are possible.¹⁹ These views are perhaps best expressed by a flurry of scholarly and policy pieces proposing partition and arguing that the only solution to ethnic conflict in the region is to divide existing societies into new, more homogenous territories.²⁰

This Article begins by rejecting such prescriptions and advances a diametrically opposed assessment of the reasons for the region's crises and how best to address them. Advocates for new borders self-consciously argue that more homogenous nation-states will be less prone to ethno-sectarian conflict.²¹ By contrast, we argue that the more promising avenue for responding to both the governance and identity crises in the Middle East is through meaningful decentralization of government in the states of the region, rather than attempts to break them into yet smaller units. In our view, it is the equation of nation with state—the presumption that territory should be identified with a majority communal identity—that lies at the root of the crises of governance and identity conflict that now plague the region. The nation-state arrived in the Middle East, as it did in much of the nonwestern world, through the colonial encounter.²² In

18. See, e.g., Steven A. Cook, *How Should Culture Affect Foreign Policy?*, ATLANTIC (Oct. 26, 2016), <https://www.theatlantic.com/international/archive/2016/10/middle-east-egypt-tunisia-saudi-arabia-politics-culture/505424> (arguing that “after decades of socialization and assimilation of its functions, citizens [in the Arab world] remain predisposed toward the dependencies that Arab leaders [cultivated]” and may be unwilling to accept reforms because they would undermine “a large, patriarchal Arab state” in countries like Egypt). For another discussion of such approaches and an alternative explanation, see generally Eva Bellin, *The Robustness of Authoritarianism in the Middle East*, 36 COMP. POL. 139 (2004).

19. In arguing for the partition of existing states in the region into smaller, more homogenous territories, Jeffrey Goldberg commented that the colonial powers that brought the modern Middle East into existence “roped together peoples of different ethnicities and faiths (or streams of the same faith) in what were meant to be modern, multicultural, multi-confessional states. It is an understatement to say that the Middle East isn't the sort of place where this kind of experiment has been shown to work.” Jeffrey Goldberg, *The New Map of the Middle East*, ATLANTIC (June 19, 2014), <https://www.theatlantic.com/international/archive/2014/06/the-new-map-of-the-middle-east/373080>.

20. This flurry occurred on the centenary of an earlier set of imperial agreements that divided the region and set in motion the processes that created current borders. See, e.g., John R. Bolton, *John Bolton: To Defeat ISIS, Create a Sunni State*, N.Y. TIMES (Nov. 24, 2015), <https://www.nytimes.com/2015/11/25/opinion/john-bolton-to-defeat-isis-create-a-sunni-state.html>; Stephanie Kirchgaessner & Julian Borger, *Trump Aide Drew Plan on Napkin to Partition Libya into Three*, GUARDIAN (Apr. 10, 2017, 2:00 AM), <https://www.theguardian.com/world/2017/apr/10/libya-partition-trump-administration-sebastian-gorka>; Carol E.B. Choksy & Jamsheed K. Choksy, *To Resolve the Syrian Crisis, Partition is Necessary*, YALEGLOBAL ONLINE (May 9, 2017), <https://yaleglobal.yale.edu/content/resolve-syrian-crisis-partition-necessary>.

21. For a detailed review and critical assessment of contemporary writing that treats partition as a conflict resolution strategy for the region, see generally Asli Ü. Bâli, *Artificial States and the Remapping of the Middle East*, 53 VAND. J. TRANSNAT'L L. 405 (2020).

22. Recent scholarship has shown that decolonization was largely equated with the “universalization of the nation-state” as the accepted institutional form of self-determination in most of the Global South. See, e.g., ADOM GETACHEW, *WORLDMAKING AFTER EMPIRE* 16 (2019).

the multi-ethnic, multi-sectarian territories that comprised the post-Ottoman Middle East, defining membership in the polity by elevating one communal identity as the basis for national belonging carried real costs.²³ The ethno-majoritarian model for state-building and political membership entailed projects of top-down homogenization and centralization in the name of nation-building and state-formation that did violence to the underlying pluralist makeup of the Middle East.²⁴

If the logic of ethno-majoritarianism, demographic engineering, partition, and centralized power have produced the contradictions that now drive crises in the region, how might decentralizing approaches present an alternative to top-down authoritarian governance and assimilationist nation-building? The following pages explore the potential of decentralized governance and territorial arrangements to address the overlapping crises in the Middle East. There is extensive literature on decentralized governance reforms and territorial arrangements in comparative law and politics scholarship.²⁵ Yet, there has been very little sustained study of the application of these models in the MENA region. The few scholarly examinations of decentralization in the Middle East have typically been by country specialists studying reform efforts in a single country or narrower inquiries about the prospects for decentralization in a specific issue area.²⁶ The growing literature on federalism as a tool for managing

23. Interestingly, Michael Klarman observes in his remarkable foreword in the Harvard Law Review that the peaceful coexistence of diverse ethnic and religious groups was facilitated in previous centuries “by monarchies like the Hapsburg and Ottoman Empires” rather than by the nation-state. Michael J. Klarman, *Foreword: The Degradation of American Democracy—and the Court*, 134 HARV. L. REV. 1, 107 (2020). He goes on to argue that the world generally has limited experience with what he terms “true multiracial democracy,” arguing that the nation-states of Europe were able to sustain democratic politics only after eliminating ethnic heterogeneity in two world wars. *Id.* He also notes that for most of its history, the United States has had “a large politically dominant white majority” that was overwhelmingly Christian. *Id.* In explaining what he terms “the degradation of American democracy,” he argues that changing racial and religious demographics have produced a politics of identity-based resentment that has committed to democracy provisional for an aggrieved portion of the American electorate. *Id.* at 127, 177. In this sense, the ethno-majoritarian model of the nation-state may be tied to political crises well beyond the Middle East. *See id.*

24. *See infra* Part II.

25. *See infra* Part II. A large proportion of the academic study of these questions has been by scholars of comparative politics rather than comparative law. This is partly due to the greater interest in the governance challenges of the Global South generally among political scientists compared to legal scholars. Yet the core questions being addressed are about law and constitutions, institutional design, and theories of democracy, all of which should be of equal interest to comparative law scholars. In addressing other gaps in the literature on decentralization in the Middle East, this Article also offers a contribution to the limited but growing comparative law scholarship on issues of decentralization.

26. For example, Morocco has been the subject of many such single-country case studies following the monarchy’s introduction of nominally decentralizing reforms to address self-determination claims in Western Sahara and governance demands in the Moroccan protests of 2011. *See, e.g.,* Annabelle Houdret & Astrid Hamisch, *Decentralisation in Morocco: A Solution to the ‘Arab Spring’?*, 24 J. N. AFRICAN STUD. 935 (2018). The only attempt at a comparative study of decentralization in the region was prepared by the Lebanese Center for Policy Studies, with funding from the Open Society Foundation. The study examined local government

ethnic conflict spans many other regions of the world—including Eastern Europe, South and East Asia, and Africa—but has largely ignored the potential of these strategies in the Middle East,²⁷ though two very recent studies represent a welcome initial effort to correct that omission.²⁸

One reason for this limited scholarly attention is that there have been few successful examples of decentralization in the Middle East.²⁹ A selection bias that favors studying successful instances of governance reforms or shifts in territorial configurations raises a number of challenges. Scholarship that is based on experiences in other regions produces prescriptions that policymakers, donors, international financial institutions, and technical advisors then apply in the MENA, sometimes to disastrous effect.³⁰ In addition, the failure to study the Middle East means that the region's distinctive lessons concerning prospects and pitfalls in implementing decentralizing reforms are missed.

This Article is an initial effort to address these gaps in the literature. We engage in a qualitative comparison of four MENA countries' experiences with decentralizing initiatives, suggesting a variety of region-wide implications. The

performance in urban service provisions in the cases of Jordan, Lebanon, Morocco, Tunisia, and Yemen. See MYRIAM ABABSA, SAMI ATALLAH, ALI BOUABID, OMAR ABDULAZIZ HALLAJ, MONA HARB, AZIZ IRAKI, SAMI YASSINE TURKI, & ERIC VERDEIL, LOCAL GOVERNMENTS AND PUBLIC GOODS: ASSESSING DECENTRALIZATION IN THE ARAB WORLD (Mona Harb & Sami Attalah, 2015), https://www.academia.edu/16664557/Local_Governments_and_Public_Goods_Assessing_Decentralization_in_the_Arab_World.

27. The classic comparative studies of federalism began with the United States and a small set of additional cases, including Australia, Canada, and Switzerland. See, e.g., WILLIAM H. RIKER, FEDERALISM: ORIGIN, OPERATION, SIGNIFICANCE I (1964); KENNETH WHEARE, FEDERAL GOVERNMENT, at v (1947); RONALD WATTS, NEW FEDERATIONS: EXPERIMENTS IN THE COMMONWEALTH, at vii (1966); DANIEL ELAZAR, EXPLORING FEDERALISM, at xii-xiii (1987). But as the comparative literature moved beyond these standard cases, attention turned to federal arrangements that might mitigate ethnic conflict in the Global South. See, e.g., Jan Erk, *Federalism and Decentralization in Sub-Saharan Africa: Five Patterns of Evolution*, 24 REG'L AND FED. STUD. 535, 535 (2014); Jorg Broschek, *Federalism in Europe, America and Africa: A Comparative Analysis*, in FEDERALISM AND DECENTRALIZATION: PERCEPTIONS FOR POLITICAL AND INSTITUTIONAL REFORMS 23, 24 (Wilhelm Hofmeister & Edmund Tayao eds., 2016); Amy Poteete, *The Capacity of Decentralization to Promote Democracy and Development in Africa*, in OXFORD RESEARCH ENCYCLOPEDIA OF POLITICS (2019); George M. Guess, *Comparative Decentralization Lessons from Pakistan, Indonesia and the Philippines*, 65 PUB. ADMIN. REV. 217, 217 (2005); FEDERALISM AND ECONOMIC REFORM: INTERNATIONAL PERSPECTIVES I (Jessica S. Wallack & T.N. Srinivasan eds., 2006) (including case studies of Argentina, Australia, Brazil, Canada, China, India, Mexico, and Nigeria); Philip G. Roeder, *Soviet Federalism and Ethnic Mobilization*, 43 WORLD POL. 196, 197 (1991).

28. See generally LIAM ANDERSON & VAUGHN SHANNON, FEDERAL SOLUTIONS FOR FRAGILE STATES IN THE MIDDLE EAST: RIGHT-SIZING INTERNAL BORDERS (2021); LEONID ISSAEV & ANDREY ZAKHAROV, FEDERALISM IN THE MIDDLE EAST: STATE RECONSTRUCTION PROJECTS AND THE ARAB SPRING (2021).

29. A survey of decentralization conducted by the World Bank in 2007 confirms the view that the worldwide trend of increasing decentralizing reforms has not penetrated the MENA region beyond modest initiatives aimed at deconcentration. See generally WORLD BANK, DECENTRALIZATION AND LOCAL GOVERNANCE IN MENA: A SURVEY OF POLICIES, INSTITUTIONS AND PRACTICES (2007).

30. For a discussion of how decentralization programs have strengthened some authoritarians in the MENA, see Janine A. Clark, *The Dismal Failures of Efforts to Empower People in the Arab World*, THE CONVERSATION (Mar. 26, 2018, 7:01 PM), <https://theconversation.com/the-dismal-failure-of-efforts-to-empower-people-in-the-arab-world-93425>.

cases—Tunisia, Iran, Syria, and Yemen—were selected to examine variation across a number of dimensions, including regime type, the objectives being pursued through decentralization, and the unitary or disaggregated territorial organization of the state.³¹ Because the study of the region has not informed the comparative literature on decentralization, the examination of these cases is generative both in addressing ongoing debates and in suggesting new design solutions for grappling with the overlapping governance crises and identity conflicts that characterize the MENA.

Beyond offering the first sustained comparative law examination of these understudied cases, we make three further contributions. To begin with, the Article challenges the bifurcation in the literature that treats decentralization by unitary states for governance reform purposes separately from decentralization to address identity conflicts through territorial pluralism. In recent decades and in considering other regions, comparative scholarship on decentralization has treated reforms to improve governance separately from studies of federal, or territorially plural, arrangements—with the latter often studied as a way to address conflict in deeply divided societies. But in the Middle East, crises in governance have converged with identity-based conflicts over territorial autonomy, making this binary approach untenable.³² Considering governance- and identity-based drivers of decentralization together sheds light on the full range of reform strategies that have been deployed by regimes and civil society movements to address, or divert attention from, the demands that they confront.

Second, this Article provides a critical assessment of decentralization in both democratizing and authoritarian contexts. While there has been some interest in authoritarian decentralization, notably in the case of China,³³ much of the scholarly focus has been on democratic or democratizing cases. Yet the

31. As discussed in detail in Part III, during the period examined in this Article—2011 to 2021—both Tunisia and Yemen were going through democratizing transitions while Syria and Iran remained authoritarian regimes. In addition, the cases reflect a mix of governance- and identity-based objectives in pursuing decentralization, and while Tunisia and Iran are unitary states, both Yemen and Syria have experienced de facto territorial fragmentation. See *infra* Part III.

32. It is worth noting that federalism was classically conceived to address challenges related to governance and managing diversity. For instance, James Madison argued that the federal system would serve as a safeguard against tyranny and the states would bring government closer to the people, while also addressing concerns about pluralism and the protection of minority rights from majority rule. THE FEDERALIST NOS. 10, 45, 51 (James Madison). But the more recent comparative literature has treated federal arrangements as primarily designed to address identity conflict through territorially plural arrangements, while studies focused on improving governance have examined decentralizing initiatives in unitary states. This bifurcation is discussed in Part I. See *infra* Part I.

33. See, e.g., PIERRE F. LANDRY, DECENTRALIZED AUTHORITARIANISM IN CHINA: THE COMMUNIST PARTY'S CONTROL OF LOCAL ELITES IN THE POST-MAO ERA 11 (2008); ZHENG YONGNIAN, DE FACTO FEDERALISM IN CHINA: REFORMS AND DYNAMICS OF CENTRAL-LOCAL RELATIONS 9 (2007). It is worth noting, however, that more recent studies suggest that Xi Jinping has decisively turned against the forms of de facto federalism discussed in these earlier works. Taisu Zhang & Tom Ginsburg, *China's Turn Toward Law*, 59 VA. J. INT'L L. 306, 312–13 (2019).

reality of widespread advocacy of decentralizing reforms for countries of the Global South suggests the value of developing more detailed assessments of their impact in non-democratic contexts. The mix of democratizing and authoritarian states that have experimented with decentralization in the MENA region provides rich terrain for important and, at times, counter-intuitive lessons based on the qualitative comparison of such reforms across regime types.

Finally, this Article contributes to the literature by identifying new models for plural territorial arrangements that have emerged from grassroots, innovative experiments with decentralization. These models indicate alternative paths for addressing both governance crises *and* identity-based conflicts. And, perhaps most noteworthy, they have emerged in some of the least likely places, in the run-up to and even amid brutal civil wars. For this reason, such efforts have been largely overlooked, treated as failed experiments or, at best, provisional de facto arrangements. Yet paying close attention to these experiences yields surprising and even promising lessons. Strikingly, one of the most thorough-going attempts to implement decentralized governance arrangements from the ground up has been undertaken by a community famously denied a nation-state.³⁴ The Article examines, among other things, the autonomous administrative arrangements developed by the Kurdish community in the Syrian territory of Rojava over the last five years.³⁵ The Rojava experience illustrates one of the central arguments of this Article, that plural territorial (or federal) arrangements in the region may offer a path not to fragmentation but rather to inclusive governance within existing borders.

The rest of the Article builds this argument by situating the MENA region in a historical context and explaining why decentralization is an important antidote to the legacies of centralized state formation and top-down nation-building.

Part I offers an overview of the scholarly literature on decentralization with a brief introduction to the key definitions and current debates in the scholarship. This Part also explains why the literature is bifurcated between studies of

34. 2020 marked the centenary of the Treaty of Sèvres, concluded between the defeated Ottoman Empire and the Allies of World War I but was never implemented. This treaty recognized Kurdistan as a successor state to former Ottoman lands. Peace Treaty of Sevres, Great Britain–France–Italy–Japan–Turkey, Aug. 10, 1920, (superseded by Treaty of Lausanne). For a discussion of the significance of the treaty and the failure to realize a nation-state for the Kurdish community, see Loqman Radpey, *The Sèvres Centennial: Self-Determination and the Kurds*, AM. SOC'Y OF INT'L L. (Aug. 10, 2020), <https://www.asil.org/insights/volume/24/issue/20/sevres-centennial-self-determination-and-kurds>.

35. The Kurdish community is the fourth largest ethnic group in the Middle East, after Turks, Arabs, and Iranians. *Who Are the Kurds?*, BBC (Oct. 15, 2019), <https://www.bbc.com/news/world-middle-east-29702440>. The contiguous territory historically known as Kurdistan is comprised of four corresponding regions that each have traditional geographic Kurdish designations: southeastern Turkey (known as Bakur, or “north” in Kurdish, because it is the northernmost portion of Kurdistan), northeastern Syria (known as Rojava or “west” in Kurdish), northwestern Iraq (known as Bashur or “south” in Kurdish) and western Iran (known as Rojhilata or “east” in Kurdish).

decentralization in unitary states and studies of federal contexts, and the reasons why this split is inapposite in the MENA context where the drivers of the two approaches to decentralization converge.

Part II provides an account of the particularities of the region's colonial history and the circumstances of independence that produced its modern state system. These distinctive historical experiences of territorial fragmentation and state formation help explain both the limited penetration of decentralizing reforms in the region to date and their enormous potential.

Part III provides qualitative case studies of four countries in the region that have experimented with decentralizing reforms for governance and/or conflict management purposes. The cases considered in this section are from Tunisia, Iran, Syria, and Yemen. In Tunisia and Iran, decentralizing reforms have primarily been designed to address ongoing governance challenges, including the concentration of power in the executive branch of the central state, poor public services, gaps in official accountability, and unequal allocation of resources across regions within the countries. The experiences with decentralizing initiatives in Yemen and Syria, by contrast, reflect a mix of motivations including the same governance challenges as well as more fundamental questions of the distribution of power between the central state and regions seeking greater territorial autonomy on the grounds of identity. There are many more cases worthy of study in the region, including recent governance reform-based decentralization initiatives in Jordan and Iraq, and both top-down and bottom-up experiments with decentralization to manage identity conflict in Morocco and Libya, to name additional countries grappling with overlapping crises of governance and pluralism.³⁶ The cases canvassed in this Article were selected to reflect both democratizing and authoritarian contexts and demands for decentralization articulated in terms of governance failures and territorial autonomy. Each of the case studies includes short descriptions of the record of decentralization efforts in the country and the major debates they occasioned.³⁷

Part IV develops theoretical insights concerning decentralization based on a comparative examination of the four cases. While each of the cases results to some extent in frustrating the ambitions of would-be reformers, taken together the cases also serve to cast our understanding of the prospects for decentralization in a new light. They reflect efforts to decentralize that generate

36. This Article draws on a larger project that encompasses eleven country case studies, including the additional cases named here, as well as those of Turkey, Israel-Palestine, and Iraqi Kurdistan. *See generally* FEDERALISM AND DECENTRALIZATION IN THE CONTEMPORARY MIDDLE EAST AND NORTH AFRICA (Aslı Ü. Bâli & Omar M. Dajani eds., 2023).

37. The research for these cases draws on primary sources, secondary literature, and collaborative work with other comparative law and comparative politics scholars over the course of a series of panels, workshops, and conferences. These collaborations include conferences convened at McGeorge School of Law, University of the Pacific, with the support of the Global Center on Business and Development, and at UCLA School of Law, with the support of the UCLA Center for Near Eastern Studies and the Promise Institute for Human Rights at UCLA Law.

indigenous solutions to overcoming longstanding hostility to plural governance arrangements and imagining more context-appropriate territorial configurations and allocations of authority. Through the four cases, we argue that the right question for the MENA region cannot be whether decentralization is a good or bad approach for development, democratization, or conflict resolution. The region is already experiencing a significant degree of decentralization through persistent grassroots efforts and the emergence of de facto arrangements. The question, instead, is whether the experiments currently underway have the potential to generate viable alternatives to improve governance and manage pluralism. In evaluating this question, Part IV revisits the significance of post-colonial anxieties about territorial fragmentation and identifies serious limitations to top-down governance-related decentralizing reforms while arguing for the more robust potential of bottom-up efforts to design plural territorial arrangements. The conclusion places these insights about decentralization in the Middle East in conversation with recent scholarship in post-colonial theory, underscoring the need for institutional experiments that move away from the historic and destructive bind that has long fused together nation and state.

I. DECENTRALIZING GOVERNMENT: DEFINITIONS & DEBATES

Over the past four decades, decentralization has swept across the globe—a “quiet revolution”³⁸ that has gripped most developed and many developing countries.³⁹ “Even France,” as one commentator wryly observes, “now values local government.”⁴⁰ The aims driving this turn toward decentralized government, like the forms it has taken, have varied significantly—from enhancing the efficiency, equity, and quality of public service delivery to bolstering government accountability and nurturing engaged citizens to providing a stable framework for managing diversity in states whose populations are divided by religion, ethnicity, or geography. In this Part, we offer an overview of the key definitions and debates in the comparative scholarship on decentralized government, with a view toward offering context for the experiments and initiatives with decentralized government in the Middle East that we present later in the Article.

A. DEFINING DECENTRALIZATION

38. The expression was first used to describe decentralization in Latin America, TIM CAMPBELL, *THE QUIET REVOLUTION: DECENTRALIZATION AND THE RISE OF POLITICAL PARTICIPATION IN LATIN AMERICAN CITIES* (2003), but it has since been applied to the global phenomenon. *See, e.g.*, OECD, *MAKING DECENTRALIZATION WORK: A HANDBOOK FOR POLICY-MAKERS* 16 (2019).

39. Andrés Rodríguez-Pose & Nicholas Gill, *The Global Trend Towards Devolution and its Implications*, 21 ENVIR. & PLAN. C: POL. & SPACE 333, 335 (2003).

40. Daniel Halberstam, *Federalism: Theory, Policy, Law*, in *THE OXFORD HANDBOOK OF COMPARATIVE CONSTITUTIONAL LAW* 576 (Michel Rosenfeld & Andrés Sajó eds., 2012).

Decentralization generally refers to the transfer of authority from a central government and its agencies to subnational government units.⁴¹ The process may unfold along one or more of three dimensions: *political* decentralization, through which policymaking and legislative powers are shifted to subnational governments whose officials, at least in part, are locally elected; *administrative* decentralization, through which subnational governments assume responsibility for delivery of public services; and *fiscal* decentralization, through which subnational governments are assigned responsibility over public revenues and expenditures.⁴² Decentralized government, moreover, may take a variety of forms, from deconcentration to delegation to devolution. As described below, these forms differ significantly from each other, rendering the choice among them consequential.

The least ambitious of these forms, deconcentration, involves a shift of authority *within* the central government from the capital to regional and/or local field offices.⁴³ To the extent that decentralizing reforms are intended to bring the implementation of policies to the local level to adapt them to the exigencies of local communities, this goal may be served by deconcentration. But deconcentrated units are typically staffed with officials appointed by and accountable to the central government rather than local constituencies.⁴⁴ Thus, deconcentration does not typically advance the goals of local empowerment, capacity-building, subsidiarity, or improving transparency. Nor does it serve the purpose of greater political participation, as subnational officials are not elected but appointed.

An intermediate form of decentralization, delegation, involves a transfer to subnational governments or administrative units of authority and resources for

41. We use the term “subnational government units” to refer generally to units of government serving areas smaller than a country as a whole. Although the term is used widely in the policy literature on decentralization, it is not without issues, since federations designed to accommodate the self-determination claims of national minorities are sometimes called “multinational federations.” Alain G. Gagnon, *Multinational Federalism: Challenges, Shortcomings and Promises*, 31 REG’L & FED. STUD. 99 (2021). For our purposes, subnational government units include local/municipal governments, as well as units at an intermediate level, whether they are called states, provinces, regions, cantons, autonomous communities, regions, or by some other name. For examples of countries applying each of these designations, see ELLIOTT BULMER, FEDERALISM: INTERNATIONAL IDEA CONSTITUTION-BUILDING PRIMER 12 8 (2017), <https://www.idea.int/publications/catalogue/federalism>. Although we use the term “decentralization” here as a broad category that encompasses a range of different forms, it is used in some studies to refer to an intermediate transfer of administrative authority to subnational governments that falls short of devolution. See, e.g., Sujit Choudhry & Nathan Hume, *Federalism, Devolution and Secession: From Classical to Post-Conflict Federalism*, in COMPARATIVE CONSTITUTIONAL LAW 356, 358 (Tom Ginsburg & Rosalind Dixon eds., 2011) (“devolution is thought to entail larger and more powerful subunits than decentralization”).

42. CTR. FOR CONST. TRANSITIONS, INT’L INST. FOR DEMOCRACY AND ELECTORAL ASSISTANCE & THE U.N. DEV. PROJECT, DECENTRALIZATION IN UNITARY STATES: CONSTITUTIONAL FRAMEWORKS FOR THE MIDDLE EAST AND NORTH AFRICA 23–25 (2014).

43. See, e.g., Joanna Regulska, *Decentralization or Deconcentration: Struggle for Political Power in Poland*, 20 INT’L J. PUB. ADMIN. 643 (1997).

44. *Id.* at 650.

the implementation of central government-defined policies, as well as decision-making concerning clearly specified functions.⁴⁵ It differs from deconcentration because the officials, offices, or units to which authority is transferred are either locally controlled or at least semi-autonomous from the central government. Here, the lower levels of government receiving the transfer of power may be either appointed or elected, but in either case, they are at least partly accountable to the local constituencies to which they are more proximate.

Within this tripartite scheme, devolution entails the most far-reaching assumption of authority by subnational governments. Devolved units are separate from the central government and are usually run by officials whose legal authority derives from elections at the subnational level. For this reason, devolution usually involves some measure of political decentralization.⁴⁶ By devolving certain kinds of authority to these government units, the central government formally relinquishes its direct control over policymaking and implementation in those domains. Often, fiscal authority is also transferred to subnational levels of government, which are tasked with raising revenues to finance the local policies they design and implement. The scale of the authority assumed by subnational units in devolved systems generally requires the existence of a parallel structure of government, as well as legal definition of the relationship between the levels of government, setting forth which authorities reside exclusively with the central government, and which are transferred to local government as well as arrangements for areas of concurrent jurisdiction.⁴⁷

Although decentralization is typically associated with unitary states, it also occurs in states with federal systems. A few key features distinguish federal from unitary states, though definitions vary. First, and perhaps most importantly, the allocation of authority between the central government and intermediate-level subnational governments (such as states or provincial governments) in federal states is entrenched in constitutional provisions that the central government lacks the power unilaterally to amend. Whereas in unitary states the central government is able to modify the allocation of authority, often through ordinary legislation.⁴⁸ Second, federal states usually assign to subnational governments ultimate authority with regard to at least certain substantive areas.⁴⁹ Third,

45. See, e.g., UNITED NATIONS DEVELOPMENT PROGRAM, *DECENTRALIZATION: A SAMPLING OF DEFINITIONS* 7 (1999).

46. US AID, *DEMOCRATIC DECENTRALIZATION PROGRAMMING HANDBOOK* 10 (2009).

47. On the need for formal allocation of authorities, see WILLIAM H. RIKER, *FEDERALISM: ORIGIN, OPERATION, SIGNIFICANCE* (1964); see also John McGarry & Brendan O'Leary, *Territorial Pluralism: Taxonomizing Its Forms, Virtues, and Flaws*, in *TERRITORIAL PLURALISM: MANAGING DIFFERENCE IN MULTINATIONAL STATES* 19 (Karlo Basta, John McGarry, & Richard Simeon eds., 2015).

48. Choudhry & Hume, *supra* note 41, at 358; BULMER, *supra* note 43, at 26. Thus, what distinguishes the devolved but unitary system in the United Kingdom from federal states is the British Parliament's authority unilateral authority to alter each unit's level of autonomy. *Id.* at 40.

49. William H. Riker, *Federalism*, in *HANDBOOK OF POLITICAL SCIENCE: GOVERNMENTAL INSTITUTIONS AND PROCESSES* 93, 101 (Freed I. Greenstein & Nelson W. Polsby eds., 1975).

federal systems provide for the representation of subnational units within the central government, typically in one of the chambers of a bicameral legislature.⁵⁰ Despite these features, federal states, counter-intuitively, may be highly centralized.⁵¹ Accordingly, federal systems may also be sites of deconcentration,⁵² delegation,⁵³ and devolution.⁵⁴

It bears emphasizing that the definitions of the forms of decentralization in the abstract are often detached from the actual practices of implementing reforms. The neat divisions between deconcentration, delegation, and devolution, as well as the discrete policy domains to which they might be applied, bleed together on the ground. As discussed further in Part IV, policies that appear to contemplate robust devolutionary power transfers on paper are often realized through modest deconcentration measures in practice. Functions are transferred without the necessary resources being made available to local officials, or overlapping authorities are multiplied in ways that obscure accountability instead of enhancing transparency. In short, beyond the formal spectrum of policies and practices described in the literature, there is enormous variation in implementation and a broad array of strategies to subvert rather than advance the ostensible goals of reform.

B. DECENTRALIZING GOVERNMENT: TWO WAYS

On the menu of institutional reform options, decentralized government tends to be served one of two ways: either as a means of enhancing governance—whether narrowly, through improved public service delivery, or more broadly through democratization⁵⁵—or as a framework for managing

50. BULMER, *supra* note 43, at 35.

51. See Philip Oxhorn, *Unraveling the Puzzle of Decentralization*, in *DECENTRALIZATION, DEMOCRATIC GOVERNANCE AND CIVIL SOCIETY IN COMPARATIVE PERSPECTIVE: AFRICA, ASIA, AND LATIN AMERICA* 3, 21 (Philip Oxhorn, Andrew D. Selee, & Joseph S. Tulchin eds., 2004) (observing that Mexico, which has a federal system, is among Latin America's most centralized states).

52. See David Fontana, *Federal Decentralization*, 104 VA. L. REV. 727, 741 (2018) (describing examples and functions of decentralization in United States' federal system).

53. See generally Hannah J. Wiseman, *Delegation and Dysfunction*, 35 YALE J. ON REGUL. 233 (2018) (critically appraising regulatory approaches involving delegation by U.S. Congress of authority to implement federal requirements to subfederal actors).

54. See generally TIMOTHY CONLAN, *FROM NEW FEDERALISM TO DEVOLUTION* (1998) (describing certain measures adopted by the Nixon administration, such as block grants and General Revenue Sharing, as devolutionary).

55. On service provision, see Regina Birner & Joachim von Braun, *Decentralization and Public Service Provision—A Framework for Pro-Poor Institutional Design*, in *DOES DECENTRALIZATION ENHANCE SERVICE DELIVERY AND POVERTY REDUCTION?* 287, 287 (Ehtisham Ahmad & Giorgio Brosio eds., 2009); *IS DECENTRALIZATION GOOD FOR DEVELOPMENT? PERSPECTIVES FROM ACADEMIA AND POLICY-MAKERS* 9 (Jean-Paul Faguet & Caroline Pöschl eds., 2015). On enhanced accountability, see Bert Hofman & Kai Kaiser, *Decentralization, Democratic Transition, and Local Governance in Indonesia*, in *DECENTRALIZATION AND LOCAL GOVERNANCE IN DEVELOPING COUNTRIES: A COMPARATIVE PERSPECTIVE* 81, 114 (Pranab Bardhan & Dilip Mookherjee eds., 2006); and ANJALI T. BOHLKEN, *DEMOCRATIZATION FROM ABOVE: THE LOGIC OF LOCAL DEMOCRACY IN THE DEVELOPING WORLD* 4 (2016).

diversity in heterogeneous countries.⁵⁶ This bifurcation, which runs through much⁵⁷ of the scholarly and policy literature across a number of disciplines, stems in part from the historical evolution of the discourse. As discussed below, these two agendas emerged at different junctures and in response to challenges faced in different regions of the world.

Across much of the developing world, the formation of states in the aftermath of the colonial encounter was characterized by state-driven modernization processes, post-independence security dilemmas, and fears of ethnic fragmentation, all of which encouraged highly centralized models of political authority.⁵⁸ But this approach was displaced in the 1970s as economic crises in the West brought conservative governments to power in key capitals and an ideological reorientation among international financial institutions. As has been ably chronicled in recent work, the neoliberal turn represented a clean break with the top-down models of state-driven economic development that had been widely advocated after decolonization.⁵⁹ The result was the emergence of a set of policy prescriptions centered on economic liberalization and decentralization of public institutions.

The consequences of the changing orthodoxy of economic governance in the West coincided with an accelerated economic destabilization in the Global South. Maturing debt from public spending in the state-formation period collided with the neoliberal turn to disastrous effect. The resulting debt crises prompted international financial institutions to undertake interventions in the “developing” world that “initially took the form of structural adjustments aimed at ‘rolling back the state,’ requiring dramatic reductions in government services, balanced budgets, privatization, deregulation, and the reduction of barriers to international trade.”⁶⁰ These reform packages were increasingly accompanied by policy recommendations for the decentralization of government authorities as part of a project to shrink the central state bureaucracy, reduce expenditures,

56. On decentralization for ethnic conflict resolution see, for example, Liam Anderson, *Ethnofederalism and the Management of Ethnic Conflict: Assessing the Alternatives*, 46 *PUBLIUS* 1, 2–3 (2016); Nancy Bermeo, *The Import of Institutions*, 13 *J. DEMOCRACY* 96, 96 (2002). On decentralization and the protection of minority rights, see WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS* 129 (2001).

57. Notable exceptions include: WORLD BANK, *Decentralization: Rethinking Government*, in *ENTERING THE 21ST CENTURY: WORLD DEVELOPMENT REPORT, 1999/2000* 107, 107; Oxhorn, *supra* note 51, at 1; *DECENTRALIZATION IN DEVELOPING COUNTRIES 1* (Jorge Martinez-Vazquez & François Vaillancourt eds., 2011).

58. Andrew Selee & Joseph Tulchin, *Decentralization and Democratic Governance: Lessons and Challenges*, in *DECENTRALIZATION, DEMOCRATIC GOVERNANCE AND CIVIL SOCIETY IN COMPARATIVE PERSPECTIVE: AFRICA, ASIA, AND LATIN AMERICA* 295, 295–309 (Philip Oxhorn, Andrew D. Selee, & Joseph S. Tulchin eds., 2004).

59. GUY FITI SINCLAIR, *TO REFORM THE WORLD: INTERNATIONAL ORGANIZATIONS AND THE MAKING OF MODERN STATES* 24 (2017).

60. *Id.*

and improve efficiency in service delivery.⁶¹ Indeed, decentralization was advocated as a strategy to create more efficient and globally competitive states.⁶²

These developments occurred against the backdrop of other notable transformations in international affairs. In the 1980s, transitions from military rule to democratization in Latin America provided a context for expanded international advising on the rule of law and political liberalization.⁶³ Decentralizing reforms were often advocated as part of a broader repertoire of good governance policies.⁶⁴ From the Latin American context much of this advice migrated to other regions where international financial institutions offered advisory services and development assistance, bringing advocacy for decentralization to parts of Africa and Asia.⁶⁵

Then, in the 1990s, post-Cold War transitions brought attention to the prospects—and risks—of using decentralized government as a strategy for managing ethnic diversity, as the collapse of the former communist dictatorships of Eastern and Central Europe (“ECE”) placed federalism squarely on the agenda of international organizations. The federations of the communist era—the Soviet Union, the Federal Republic of Yugoslavia, and Czechoslovakia—were not only transitioning away from communism, but also entering into processes of dissolution and secession.⁶⁶ While the unitary states of the communist bloc emerged from their transitions territorially intact, the federations disintegrated, giving rise to new skepticism about the stability of federal arrangements in contexts marked by ethnic divisions.⁶⁷ Conversely, the multiplication of secessionist claims in the post-Cold War period also raised the specter of new territorial conflicts if strategies of internal self-determination

61. In the 1980s, international financial institutions (“IFIs”) come to view development as dependent on robust decentralization involving power sharing, market liberalization, and shifting management authority to subnational units to promote efficiency while the UN reconceptualizes governance to include a role for civil society, private actors, and local government. G. Shabbir Cheema & Dennis A. Rondinelli, *From Government Decentralization to Decentralized Governance*, in *DECENTRALIZING GOVERNANCE: EMERGING CONCEPTS AND PRACTICES* 1, 9–10 (G. Shabbir Cheema & Dennis A. Rondinelli eds., 2007).

62. Andrew Selee, *Exploring the Link Between Decentralization and Democratic Governance*, in *DECENTRALIZATION AND DEMOCRATIC GOVERNANCE IN LATIN AMERICA* 3, 3 (Joseph Tulchin & Andrew Selee eds., 2004).

63. On the Latin American transitions, see generally *DECENTRALIZATION, DEMOCRATIC GOVERNANCE AND CIVIL SOCIETY IN COMPARATIVE PERSPECTIVE: AFRICA, ASIA, AND LATIN AMERICA* 33–140 (Philip Oxhorn, Andrew D. Selee, & Joseph S. Tulchin eds., 2004).

64. See generally WORLD BANK, *GOVERNANCE: THE WORLD BANK’S EXPERIENCE* (1994).

65. On applications in the Philippines and Uganda, see Satu Kahkonen, *Decentralization and Governance: Does Decentralization Improve Public Service Delivery?*, in *WORLD BANK NOTES* (June 2001), <https://openknowledge.worldbank.org/bitstream/handle/10986/11382/multi0page.pdf?sequence=1&isAllowed=y>.

66. See, e.g., Philip G. Roeder, *Peoples and States after 1989: The Political Costs of Incomplete National Revolutions*, 58 *SLAVIC REV.* 854 (1999).

67. Philip G. Roeder & Thomas Chapman, *Partition as a Solution to Wars of Nationalism*, 101 *AM. POL. SCI. REV.* 677, 680 (2007).

proved insufficient.⁶⁸ These pressures led to renewed interest in the conflict resolution potential of federal arrangements.⁶⁹

The distinctive regional contexts in which the impetus for decentralizing government arose in the final decades of the twentieth century generated a bifurcation in the literature. Some studies focused on decentralization for governance-reform purposes (typically within unitary states), while others explored federalism, and similar forms of territorial pluralism, as means of facilitating management of identity conflict.⁷⁰ As a vehicle for improving governance, decentralization has been packaged together with economic liberalization recommendations as a way to enhance the efficiency of service delivery.⁷¹ In this context, decentralization was seen as enabling local authorities to tailor services to the specific needs and conditions of their constituents, thereby enhancing accountability and multiplying opportunities for policy experimentation and innovation.⁷² As a framework for managing diversity, decentralized government was presented as a strategy to enable identity groups—typically, ethnic, linguistic, or religious minorities—to exercise a measure of autonomy without challenging the territorial integrity of the state.⁷³ Here, the approach was envisaged as a vehicle to achieve internal forms of self-determination through territorial pluralism rather than incremental improvements in governance.

Although improving governance and managing diversity tend to be treated as distinct goals, the line separating them often blurs in practice. Poor governance by the central government can be a driver of demands for self-determination.⁷⁴ Conversely, resistance to decentralizing reforms is sometimes

68. Marc Weller, *Settling Self-Determination Conflicts: Recent Developments*, 20 EUROPEAN J. INT'L L. 111, 114 (2009).

69. Choudhry & Hume, *supra* note 41, at 356.

70. The discussion of this bifurcation, as well as concepts and definitions in the comparative politics literature, draws on our co-authored chapter. Aslı Ü. Bâli & Omar M. Dajani, *Introduction: From Revolution to Devolution?*, in FEDERALISM & DECENTRALIZATION 1, 12 (Aslı Ü. Bâli & Omar M. Dajani eds., 2023).

71. Some have characterized the breadth of the consensus around good governance advocacy centered on decentralization as a model of imperial constitutionalized governance promulgated by the West to the Rest. See, e.g., James Tully, *Modern Constitutional Democracy and Imperialism*, 46 OSGOODE HALL L.J. 461, 485 (2008).

72. See, e.g., Ehtisham Ahmad & Giorgio Brosio, *Does Decentralization Enhance Service Delivery and Poverty Reduction?*, in DOES DECENTRALIZATION ENHANCE SERVICE DELIVERY AND POVERTY REDUCTION? 3 (Ehtisham Ahmad & Giorgio Brosio eds., 2009); Richard C. Schragger, *Decentralization and Development*, 96 VA. L. REV. 1837, 1858 (2010); IS DECENTRALIZATION GOOD FOR DEVELOPMENT, *supra* note 55.

73. See, e.g., KRISTIN M. BAKKE, DECENTRALIZATION AND INTRASTATE STRUGGLES: CHECHNYA, PUNJAB AND QUÉBEC 2 (2015); DAWN BRANCATI, PEACE BY DESIGN: MANAGING INTRASTATE CONFLICT THROUGH DECENTRALIZATION THROUGH DECENTRALIZATION 6–26 (2009); Anderson, *supra* note 56, at 2–3; Bermeo, *supra* note 56, at 99; John McGarry & Brendan O'Leary, *Federation as a Method of Ethnic Conflict Regulation*, in FROM POWER SHARING TO DEMOCRACY: POST-CONFLICT INSTITUTIONS IN ETHNICALLY DIVIDED SOCIETIES 263, 264 (Sid Noel ed. 2005); Choudhry & Hume, *supra* note 41, at 356.

74. In Iraq, for example, interest in regional autonomy arrangements has been directly related to the decline in the capacity of the central state to provide basic services from security to urban electricity infrastructure. Ali

animated by concerns that even modest steps toward decentralization will strengthen secessionist or irredentist movements.⁷⁵ Indeed, while most studies give attention to only one or the other of these goals, it is the link between them that arouses controversy about decentralization in the MENA region.

C. DEBATING DECENTRALIZATION

The benefits of decentralizing government continue to be the subject of intense debate.⁷⁶ Experts disagree about whether it contributes to, or undermines, states' political stability and territorial integrity.⁷⁷ There is also disagreement about its effects on governance. Some evidence suggests that decentralization exacerbates regional inequalities and increases opportunities for corruption.⁷⁸ In addition, because giving greater power to provincial and local governments is expensive, decentralization requires a higher degree of macroeconomic stability and local capacity than possessed by many states contemplating it.⁷⁹

The literature identifies a number of limitations to what decentralization can offer in terms of governance improvements and managing identity conflicts. Many of these limitations are especially salient in the Middle East. To assess the degree to which the experiences with decentralization in the region confirm expectations in the literature or offer new insights as to both the risks and benefits of decentralization, it is helpful to begin by canvassing some key debates.

As discussed above, the main goals of decentralization in the governance literature are to increase subnational actors' authority with a view to enhancing local political participation, responsiveness, accountability, and service delivery. The capacity of decentralizing reforms to deliver on these ambitions is affected by a series of obstacles. The first issue is that certain kinds of decentralizing reforms may actually *decrease* the power of subnational actors. In particular, where administrative decentralization is not accompanied by the resources needed to meet new responsibilities, local government may become *more*

al-Mawlawi, *Exploring the Rationale for Decentralization in Iraq and its Constraints*, ARAB REFORM INITIATIVE (July 31, 2019), <https://www.arab-reform.net/publication/exploring-the-rationale-for-decentralization-in-iraq-and-its-constraints>.

75. This dynamic is well-illustrated by the southern Hirak movement in Yemen, discussed *infra* Part III.B.1.

76. See generally Rémy Prud'homme, *The Dangers of Decentralization*, 10 WORLD BANK RSCH. OBSERVER 201 (1995).

77. See generally, e.g., Philip G. Roeder, *Ethnofederalism and the Mismanagement of Conflicting Nationalisms*, 19 REG'L & FED. STUDS. 203 (2009); John McGarry & Brendan O'Leary, *Must Pluri-national Federations Fail?*, 8 ETHNOPOLITICS 5 (2009).

78. Donald Horowitz, *The Many Uses of Federalism*, 55 DRAKE L. REV. 953, 963 (2007).

79. See generally Jonathan Rodden & Erik Wibbels, *Beyond the Fiction of Federalism: Macroeconomic Management in Multitiered Systems*, 54 WORLD POLS. 494 (2002).

dependent on the central state.⁸⁰ A second issue is the degree to which decentralization may produce uneven outcomes between regions, particularly where fiscal resources depend on the underlying wealth of the subnational unit.⁸¹ Wealthier regions may gain greater autonomy from the center and retain resources that are disproportionate to their relative share of the country's population while poorer regions' governance issues may be magnified by reduced interregional transfers and pre-existing capacity limitations. A third issue is that decentralization in itself is not necessarily a liberalizing measure. This is because decentralization neither produces democratic governance nor can it overcome existing capacity limitations, clientelistic patterns of relations, or corruption.⁸² Decentralization may shift authority from the center to subnational units, but institutional arrangements, state-society relations, and resource endowments will determine whether such transfers have liberalizing effects. If the goal of decentralization is to alter existing patterns of corruption, patronage, or inequality, then additional measures directly addressing the sources of these problems are also required.

The purported benefits of decentralizing government as a strategy for managing identity conflicts are even more contested in the literature than the governance prescriptions. Following the dissolution of the Soviet Union and the break-up of Yugoslavia in the 1990s, a number of scholars of Eastern Europe developed theories arguing that federations exacerbate risks of secessionist violence in societies that are divided along identity lines.⁸³ Such studies drew lessons from the fact that unitary states like Poland, Hungary, Romania, and Bulgaria were able to preserve territorial integrity following the collapse of communism, while the federal states of the region either dissolved or descended into fratricidal wars. Analysts argued that where subnational units are defined along identity lines, federal arrangements would reinforce incompatible national identities, incentivize zero-sum decision-making, and enable identity groups to retain escalatory options.⁸⁴ Instead, scholars writing in this vein have argued that partitions are likelier to keep the peace and foster democratization than the principal alternatives involving territorial autonomy arrangements within shared

80. The problem of transferring responsibilities to local government without the necessary resources may take several forms. The issue arises if subnational units are denied the power to collect taxes locally, or if they lack the administrative capacity to collect taxes, or if they are denied transfers of resources from the central government commensurate with the authorities they are assigned. Tulia G. Falletti, *A Sequential Theory of Decentralization: Latin American Cases in Comparative Perspective*, 99 AM. POL. SCI. REV. 327, 329 (2005).

81. Selee & Tulchin, *supra* note 58, at 311.

82. Decentralization must not be conflated with (subnational) democratization as the two proceed separately and either one may precede the other. Oxhorn, *supra* note 51, at 21.

83. Roeder, *supra* note 77, at 204.

84. Chapman & Roeder, *supra* note 67, at 677.

borders.⁸⁵ Thus, partition is presented as a more viable alternative to federal and other territorially decentralized arrangements.

Advocates of federal arrangements have offered both empirical and normative critiques of arguments for partition. As an empirical matter, methodological debates about how to code different conflicts and territorial arrangements lie at the heart of a dispute over whether partitions increase stability or deter the recurrence of conflict in any context.⁸⁶ Normative critiques have focused on the degree to which partition internalizes imperial arguments concerning the necessity of physically separating ethnically and communally defined populations as a means of managing non-Western populations.⁸⁷ In addition, critics note that the communist federations were exceptional for having been “put together” by the Soviets, making them far more brittle and likely to give way to centrifugal forces during the post-communist transition.⁸⁸

Recent scholarship approaches federalism as a way of thinking about cultural diversity, competing nationalisms, citizenship, and stability, in the context of deeply divided societies facing significant risk of civil conflict.⁸⁹ These are different questions than those posed in the original theories of federalism developed through the study of standard Western cases like Australia, the United States, and Canada.⁹⁰ Studies of countries like India, Ethiopia, and Nigeria have yielded new insights into how territorial pluralism can serve conflict resolution purposes by accommodating communal identity-based demands.⁹¹

While the turn to a more robust literature on understudied cases is welcome, it has also revealed enormous variety in how to approach territorial decentralization as a method of identity conflict regulation. There is variation

85. See generally Carter Johnson, *Partitioning to Peace: Sovereignty, Demography, and Ethnic Civil Wars*, 32 INT'L SEC. 140 (2008).

86. Nicholas Sambanis & Jonah Schulhofer-Wohl, *What's in a Line?: Is Partition a Solution to Civil War?*, 34 INT'L SEC. 82, 83 (2009); Chapman & Roeder, *supra* note 67, at 678. In addition to coding concerns, critics have also pointed out that scholars of Eastern Europe who analyze the centrifugal pressures on federations based on the experiences of the post-communist transitions were selecting on the dependent variable by focusing exclusively on failed federations. Choudhry & Hume, *supra* note 41, at 368.

87. A. Dirk Moses, *Epilogue: Partitions, Hostages, Transfer: Retributive Violence and National Security*, in PARTITIONS: A TRANSNATIONAL HISTORY OF TWENTIETH-CENTURY TERRITORIAL SEPARATISM 257, 257 (Arie Dubnov & Laura Robson eds., 2019).

88. By contrast to consensual federal arrangements that reflect collective decisions to either form a new federation (coming together) or transform a unitary state into a federation to accommodate diversity (holding together), Al Stepan identified those federal arrangements based on coercion as having been “put together.” See generally AL STEPAN, *Toward a New Comparative Politics of Federalism, (Multi)Nationalism, and Democracy: Beyond Rikerian Federalism*, in ARGUING COMPARATIVE POLITICS (2001).

89. See, e.g., THEORIES OF FEDERALISM: A READER 229 (Dimitrios Karmis & Wayne Norman eds., 2005). Part V of the volume is titled “The Contemporary Debates: Federal Citizenship in Culturally Diverse Democracies.”

90. See Choudhry & Hume, *supra* note 41, at 359 for a helpful distinction between these standards cases and a later second wave of federal arrangements.

91. See, e.g., *id.* at 365; STEPAN, *supra* note 88, at 330–31.

across many design dimensions: the degree of decentralized power, the size and number of subnational regions, the drawing of internal boundaries to consolidate or divide minority communities, the methods for representing (or overrepresenting) regions in upper chambers of parliament, and the provision of special voting rights to block or require super majorities for critical constitutional decisions. Finding a common vocabulary to describe different arrangements can also be a challenge, with subtle distinctions between terms like ethnofederalism, ethnic federation, ethnoterritorial federation, and federacy sometimes blurred.⁹² What all of these strategies have in common is that they rely on territorially plural arrangements by affording aggrieved communities a measure of autonomy within existing borders and in ways that remain tied to power-sharing arrangements at the center.

There remains a debate, of course, about other design elements for each of these configurations, from the degree of decentralized authority to voting rights. To the extent that the principal correlates of enduring multiethnic polities include their consensual origins, the prosperity of the underlying society, and the willingness to embrace meaningful power-sharing arrangements at the center, the viability of these proposals in a region confronting severe resource constraints, highly centralized authority structures, and raging civil wars is also, necessarily, an open question.⁹³ In addition, accommodating communal identities may reproduce similar problems with respect to other, smaller communities that may not be territorially concentrated or may not be large enough to constitute a plurality in a region. In those cases, the new regional homelands may confront their own internal minorities issues on a smaller scale.⁹⁴ Still, these approaches offer the possibility of accommodating self-determination claims without threatening the territorial integrity of states.

As explored in Part II, these debates assume particular salience in the Middle East, where attitudes toward decentralized government have been shaped by a long and very mixed experience.

II. POST-COLONIAL TERRITORIAL ANXIETIES IN THE MENA

The Middle East may be the part of the world with the highest degree of centralized rule.⁹⁵ Yet decentralized rule was the default indigenous pattern of political authority across the region until the nineteenth century. Throughout the Ottoman territories and Iran, the nineteenth century imparted an enduring lesson: that decentralization plays into foreign strategies and compromises the capacity

92. For detailed discussions of these distinctions, see LIAM ANDERSON, *FEDERAL SOLUTIONS TO ETHNIC PROBLEMS: ACCOMMODATING DIVERSITY* 1–10 (2013); and McGarry & O’Leary, *supra* note 73, at 263.

93. McGarry & O’Leary, *supra* note 73, at 274–78.

94. As will be discussed in Part III.B.2., the Kurdish experiment in Syria offers a promising example of solving for this problem by decentralizing all the way down in ways that afford all communal groups opportunities to exert both influence and control in disaggregated political institutions. See *infra* Part III.B.2.

95. See WORLD BANK, *supra* note 29, at i.

of the state to defend itself against external threats, risking territorial fragmentation.⁹⁶ The result is a shared legacy that unites Turkey, the Arab world, Israel-Palestine, and Iran—all countries that were formed on territories with a long history of decentralized rule punctuated by a sudden defensive need to centralize authority.

This set of common historical experiences continues to shape attitudes within these countries regarding decentralization, producing similar path dependencies across otherwise divergent circumstances. They also share a broadly similar time frame for state formation and nation-building exercises that took shape in the early to mid-twentieth century. Studies in comparative politics have identified a number of distinctive challenges of late development common to these states ranging from security dilemmas producing excessive investment in military and security services to an emphasis on centralized authority to foster rapid economic growth and industrialization.⁹⁷ Understanding the shared historical context of the region sheds important light on common determinants of decentralization that both explain centralized concentration of power and ethno-majoritarian politics and highlight why, nonetheless, decentralization holds real promise.

One commonality across much of the region, with the notable exceptions of Iran and Morocco, was the experience of Ottoman rule.⁹⁸ From the sixteenth through much of the nineteenth century, the Ottoman Empire provided a political and administrative framework for governance that extended across the territory encompassing modern-day Turkey, Syria, Lebanon, Iraq, Kuwait, Jordan, Palestine, Israel, Egypt, Libya, Tunisia, and Yemen.⁹⁹ Three key dimensions of this experience have had particularly far-reaching effects on regional attitudes toward decentralized governance. First, although this vast, heterogeneous region was united within a single sovereign realm, it was organized into largely self-governing administrative units.¹⁰⁰ The provinces—with their diverse ethnic and religious composition—enjoyed substantial autonomy for much of the empire's history, while the central state retained fiscal authority and military control.¹⁰¹

96. See Nikki R. Keddie, *The Iranian Power Structure and Social Change 1800-1969: An Overview*, 2 INT'L. J. MIDDLE E. STUD. 3, 11 (1971) (discussing Iranian preference for centralized rule following colonial encounters). See generally VIRGINIA AKSAN, *OTTOMAN WARS 1700-1870: AN EMPIRE BESIEGED* (2007), (describing the adoption of centralizing reforms to avoid dismemberment by European powers).

97. See generally DAVID WALDNER, *STATE BUILDING AND LATE DEVELOPMENT* (1999). On the specific pathologies that plagued mid-twentieth century state formation in the region, see *FRAGILE POLITICS: WEAK STATES IN THE GREATER MIDDLE EAST* (Mehran Kamrava ed. 2016).

98. See generally JANE HATHAWAY, *THE ARAB LANDS UNDER OTTOMAN RULE 1516-1800* (Routledge 2d ed. 2020); ALBERT HOURANI, *A HISTORY OF THE ARAB PEOPLES* (2d ed. 2010).

99. HATHAWAY, *supra* note 98, at 33–44.

100. See, e.g., İ. Metin Kunt, *Devolution from the Centre to the Periphery: An Overview of Ottoman Provincial Administration*, in *THE DYNASTIC CENTRE AND THE PROVINCES: AGENTS AND INTERACTIONS* 30, 42 (Jeroen Duindam & Sebine Darginhaus eds., 2014).

101. See generally Karen Barkey & George Gavrilis, *The Ottoman Millet System: Non-Territorial Autonomy and its Contemporary Legacy*, 15 ETHNOPOLITICS 24 (2016).

In addition, legal pluralism in matters governed by religious law was institutionalized, allowing religious communities broad latitude to manage their own affairs.¹⁰²

Second, centralization emerged as a dominant strategy for responding to both external threats and internal governance challenges. During the nineteenth century, the Ottoman territories experienced significant political, fiscal, and administrative reorganization as the empire undertook modernizing reforms designed to keep pace with European powers.¹⁰³ From a relatively decentralized and thin system of government, the empire implemented a range of centralizing measures, including the adoption of a comprehensive plan for state education, strengthening of centralized fiscal collection, and legal reforms such as the promulgation of commercial and penal codes to be administered through new state courts outside of the traditional religious court system.¹⁰⁴ These moves engendered resistance from religious authorities as well as local governors reluctant to surrender their autonomy to the center.¹⁰⁵ For example, Muhammad Ali, the local ruler in Egypt, resisted central control from Istanbul, but implemented centralizing and modernizing reforms in his own domain to enhance his control over Egyptian territory.¹⁰⁶ Thus the strategy of centralizing power was adopted across the region, even in those Ottoman lands that resisted centralized control from the imperial capital.

Third, new regimes for managing religious diversity were introduced in response to pressure from outside. Early in the nineteenth century, western European governments intervened in support of Greek independence and, later, to protect Christian communities elsewhere in the empire.¹⁰⁷ In a number of contexts, their efforts contributed to the establishment of new administrative units that were governed pursuant to arrangements for sectarian power-sharing and/or enhanced autonomy. These arrangements “politicized religious diversity in a manner that entrenched, magnified, and made central the idea of the sectarian community.”¹⁰⁸ The result was not only that religious diversity was seen from the capital as a lever to fragment the authority of the Ottoman state,

102. Karen Barkey, *Aspects of Legal Pluralism in the Ottoman Empire*, in *LEGAL PLURALISM AND EMPIRES 1500-1850* 83, 86 (Lauren Benton & Richard J. Ross eds., 2013).

103. See generally M. ŞÜKRÜ HANIOĞLU, *A BRIEF HISTORY OF THE LATE OTTOMAN EMPIRE* (2008).

104. See generally Halil İnalcık, *Centralization and Decentralization in Ottoman Administration*, in *STUDIES IN EIGHTEENTH CENTURY ISLAMIC HISTORY* 27 (Thomas Naff & Roger Owen eds., 1977).

105. See generally NIYAZI BERKES, *THE DEVELOPMENT OF SECULARISM IN TURKEY* (1964); STANFORD J. SHAW & EZEL KURAL SHAW, *HISTORY OF THE OTTOMAN EMPIRE AND MODERN TURKEY*, VOL. 2: REFORM, REVOLUTION AND REPUBLIC (1977).

106. See generally Mordechai Abir, *Modernisation, Reaction and Muhammad Ali's 'Empire'*, 13 *MIDDLE E. STUD.* 295 (1977).

107. See generally, e.g., ALEXIS HERACLIDES & ADA DIALLA, *Intervention in the Greek War of Independence 1821-32*, in *HUMANITARIAN INTERVENTION IN THE LONG NINETEENTH CENTURY: SETTING THE PRECEDENT* 105 (2015).

108. USSAMA MAKDISI, *AGE OF COEXISTENCE: THE ECUMENICAL FRAME AND THE MAKING OF THE MODERN ARAB WORLD* 63 (2019).

but also the development of “transnational patronage networks that undercut a cohesive Ottomanism.”¹⁰⁹ Suddenly religious minority communities were understood as having dual loyalties that provided a toehold for European powers within the empire. Subsequent, direct colonial rule by the British and the French further entrenched the equation of decentralization with forms of accommodation of minority groups that were seen in the region as part of an external divide-and-rule strategy designed to subordinate Muslim majorities.¹¹⁰

Together, these dimensions of the Ottoman (and post-Ottoman mandate) experience foreshadowed—and helped explain—the contradictory attitudes toward decentralization reflected across the contemporary region. On the one hand, there is widespread attraction to decentralized governance among reformers despite the reflex toward centralization as a vehicle for state- and nation-building among governing elites. On the other hand, there is a widely shared tendency to regard the idea of managing diversity through decentralizing reforms as both foreign and subversive.

Beyond the confines of the Ottoman realm, Iran, too, experienced many of the same pressures. In nineteenth century Iran, Qajar rule was perhaps even more decentralized than Ottoman governance. As one scholar of Iran has noted, in the early nineteenth century the Qajars lacked the attributes of a centralized state such as a standing army or bureaucracy, depended on tribal levies rather than centrally-collected taxes, and much of the day-to-day governance of the provinces had to be delegated to local governors due to the difficulty of rule from the center over a vast and mountainous terrain.¹¹¹ By the early twentieth century, the Qajars—much like the Ottomans—faced a growing financial crisis related to foreign economic power and domestic demands for reforms to keep pace with the West.¹¹² The constitutional revolution of 1905 to 1911 gave Iran a constitutional structure that undermined the decentralized political structures of the previous century. These developments, in turn, were quickly overtaken by encroachment from British and Russian forces in 1911, followed by the First World War and growing British influence in Iran.¹¹³ What emerged from this cauldron was a modernizing government under Reza Shah that pursued centralization through the development of a national army and bureaucracy and the establishment of secular legal and educational systems displacing the once powerful *ulema*.¹¹⁴ By the 1920s there was little to distinguish Iran’s centralizing

109. *Id.*

110. *See, e.g.*, KRISTIN FABBE, DISCIPLES OF THE STATE? RELIGION AND STATE-BUILDING IN THE FORMER OTTOMAN WORLD 30 (2019) (“European colonizers often became overly reliant on alliances with traditional elites from certain (and typically minority) religious groupings. Reform patterns were influenced by such reliance . . . [resulting in] complex dynamics that emerged as a result of ‘divide and rule’ policies . . .”).

111. Keddie, *supra* note 96, at 3–20.

112. ABBAS AMANAT, IRAN: A MODERN HISTORY 313–14 (2017).

113. *Id.* at 315–85.

114. Keddie, *supra* note 96, at 9–10.

and modernizing reforms from post-Ottoman state formation exercises elsewhere in the region. Morocco, the other non-Ottoman MENA kingdom, similarly pursued centralizing reforms to resist Spanish incursions beginning in the 1860s, though with somewhat less success.¹¹⁵

If the association of centralization with the imperatives of economic development and modernization is the shared post-imperial legacy of the region from the former Ottoman territories to Morocco and Iran, the aftermath of the First World War and the territorial partition of much of the region produced a further set of shared experiences with lasting implications. During and after the First World War, European powers concluded a series of agreements amongst themselves, almost entirely to the exclusion of local populations, concerning the subdivision of Ottoman lands that would fall under their respective authorities.¹¹⁶ In the same period, the British cultivated relations with local leaders with promises of post-war independence, to encourage a revolt against the Turks and hasten the military defeat of the Ottomans.¹¹⁷ Beginning with the notorious, never-implemented Sykes-Picot Agreement, British and French diplomats negotiated from 1915 until 1918 to determine the apportionment of Ottoman territories that would fall to each.¹¹⁸

When local representatives were finally invited to join deliberations about the partition of former Ottoman lands, the European proposals under discussion were met with hostility. At the Paris Peace Conference of 1919, the Arab delegation realized the gap between their expectations of an independent and united Arab state in the Levant—based on negotiations with the British during the war—and the Anglo-French Agreements that divided the territory under European tutelage.¹¹⁹ In the same year, the British also sought to conclude a treaty with Iran—which that country's parliament refused to ratify—that was

115. On Moroccan reforms, see EDMUND BURKE, *PRELUDE TO PROTECTORATE IN MOROCCO: PRE-COLONIAL PROTEST AND RESISTANCE, 1860-1912* 220 (1976).

116. The Sykes-Picot Agreement of 1916 was the first such agreement appending a map of the Ottoman territories subdivided into British and French zones. Sykes-Picot Agreement, Gr. Brit.–Fr., May 16, 1916, 221 Consol. T.S. 323. That agreement was superseded by a series of further agreements at the end of World War I and then further modifications through the 1920s. See generally EUGENE ROGAN, *THE FALL OF THE OTTOMANS: THE GREAT WAR IN THE MIDDLE EAST* (2015); DAVID FROMKIN, *A PEACE TO END ALL PEACE: THE FALL OF THE OTTOMAN EMPIRE AND THE CREATION OF THE MODERN MIDDLE EAST* (1989); M.E. YAPP, *THE MAKING OF THE MODERN NEAR EAST 1792-1923* (Routledge 2013). Other parts of the region were also subjected to European administration in this period. For instance, prior to the war, in 1912, the French and Spanish established protectorates in Morocco. RYO IKEDA, *THE IMPERIALISM OF FRENCH DECOLONISATION: FRENCH POLICY AND ANGLO-AMERICAN RESPONSE IN TUNISIA AND MOROCCO* 13–23 (2015).

117. MICHAEL PROVENCE, *THE LAST OTTOMAN GENERATION AND THE MAKING OF THE MODERN MIDDLE EAST* 63 (2017).

118. On the course of this period of negotiations, see James Barr, *Part One: The Carve-Up: 1915-1919, in A LINE IN THE SAND: BRITAIN, FRANCE AND THE STRUGGLE THAT SHAPED THE MIDDLE EAST* 64, 64–92 (2011).

119. *Id.* at 65–67.

widely seen as intended to establish a client state with little independence and exclusive British control over Iranian oil.¹²⁰

Resistance to European efforts to partition territory and establish hegemony in the region took multiple forms throughout the 1920s: Arab independence movements in Iraq and Syria,¹²¹ the Turkish war of independence in Anatolia,¹²² and Iranian nationalist resistance culminating in a coup in 1921 that opened a new chapter in that country's history, with the rise of Reza Shah.¹²³ By the 1930s, British and French mandates successfully partitioned Ottoman Arab lands, while the new Turkish republic and Iran's monarchy under Reza Shah launched modernizing reforms in part to stave off territorial fragmentation by strengthening central state capacity.¹²⁴

The trauma of divide-and-rule governance in the Levant, the fragmentation of Greater Syria, and the partition of Palestine all marked the region as a whole, even beyond the territories that were directly affected.¹²⁵ The interwar period was characterized by a high degree of centralized administrative control, with the introduction of territory-wide institutions governing everything from education and taxation to security.¹²⁶ At the same time, the British and French pursued strategies of territorial fragmentation within each of their mandates designed to undercut Arab nationalist mobilization.¹²⁷ The result was twofold: first, the experience of mandatory rule reinforced the view that state formation and effective governance required the forms of centralized authority established by mandatory powers. Second, the experience of British and French divide-and-rule strategies produced enduring skepticism about territorial decentralization to accommodate ethnic or religious minorities. That colonialism reinforced centralist tendencies in governance is not unique to the MENA region—much

120. See generally Homa Katouzian, *The Campaign Against the Anglo-Iranian Agreement of 1919*, 25 BRIT. J. MIDDLE E. STUD. 5 (1998).

121. ROGAN, *supra* note 116, at 317–18.

122. *Id.* at 395.

123. ALI M. ANSARI, *THE POLITICS OF NATIONALISM IN MODERN IRAN 70–73* (2012).

124. On the Turkish Kemalist project to build social cohesion through ethnic nationalism, see AVIEL ROSHWALD, *ETHNIC NATIONALISM AND THE FALL OF EMPIRES: CENTRAL EUROPE, RUSSIA AND THE MIDDLE EAST, 1914–1923* 57–63, 105–11, 183–86 (2001). On comparable efforts at Persianization under Reza Shah, see ERVAND ABRAHAMIAN, *IRAN BETWEEN TWO REVOLUTIONS* 123–63 (1982); AMANAT, *supra* note 112, at 472–79.

125. For discussion of the divide-and-rule strategies of the mandate era and their consequences for the region, see generally D.K. Fieldhouse, *WESTERN IMPERIALISM IN THE MIDDLE EAST 1914–1958* (2006); Ayşe Tekdal Fildis, *The Troubles in Syria: Spawned by French Divide and Rule*, 18 MIDDLE E. POL'Y 129 (2011).

126. On colonial state-formation during the mandate system and its relationship to centralized rule, see generally James McDougall, *The British and French Empires in the Arab World: Some Problems of Colonial State-Formation and Its Legacy*, in *SOVEREIGNTY AFTER EMPIRE: COMPARING THE MIDDLE EAST AND CENTRAL ASIA* 44 (Sally N. Cummings & Raymond Hinnebusch, eds 2011).

127. On French rule, see generally DANIEL NEEP, *OCCUPYING SYRIA UNDER THE FRENCH MANDATE* (2012). On British rule, see generally SARA PURSLEY, *FAMILIAR FUTURES: TIME, SELFHOOD, AND SOVEREIGNTY IN IRAQ* (2019).

the same could be said for Latin America and Africa.¹²⁸ The post-colonial anxiety that decentralization is both intrinsically foreign and inevitably represents a threat to territorial integrity may, however, be more acute in the MENA than in the rest of the post-colonial world.

These shared traumatic experiences marked the state-formation processes of the MENA. Two features of this common legacy stand out as having significant implications for subsequent administrative and political developments. First, nineteenth-century reform efforts to resist Western encroachment produced a tendency towards centralized authority, which was reinforced and accelerated under the colonial mandate administrations.¹²⁹ Second, the experience of Ottoman dismemberment produced an enduring belief that maintaining territorial integrity requires both social cohesion—formed through state cultivation of ethnonationalism—and strengthening the state’s security apparatus to address threats from within and without. The nation-building ideologies of Kemalism in Turkey, Pahlavism in Iran, and Arab nationalism—more particularly Baathism in Syria and Iraq—all share an emphasis on cultural homogenization, assimilation of minorities, and fear of ethnic fragmentation together with massive military investment.¹³⁰

The combined effect of these legacies was a state formation period marked by “defensive modernization.”¹³¹ The post-independence state was focused first and overwhelmingly on securing its borders and establishing control over society through the development of an overweening security apparatus.¹³² This preoccupation lent to an emphasis on developing the policing capacities of the state producing, in turn, a durable tendency towards concentration of power in the executive.¹³³ This investment in the security apparatus, often supported through external funding and arms supply, diverted (and depleted) the resources

128. See, e.g., Oxhorn, *supra* note 51, at 19.

129. By contrast, in Libya, “the Italians destroyed the Ottoman bureaucracy, military, and financial establishment and imposed an entirely Italian administration, leaving Libya to gain independence after World War II with virtually no experienced local bureaucrats and little by way of a state, modern or otherwise.” Lisa Anderson, *The State in the Middle East and North Africa*, 20 COMPAR. POL. 1, 5 (1987).

130. Charles Tilly has argued that the emergence of nationalism was directly linked to modern state formation processes in Europe. Charles Tilly, *States and Nationalism in Europe 1492-1992*, 23 THEORY & SOC’Y 131, 142–43 (1994). Scholars of the Middle East have argued that such “state-led nationalism” was broadly adopted in the MENA on the logic that “modern states require the cultural homogenization of the population and the creation of a uniform sense of nationhood for two reasons[: f]irst, linguistic standardization and homogenization are crucial for bureaucratic efficiency. . .[and s]econd, because of the [state’s] increased need for social compliance and loyalty.” SENEM ASLAN, NATION BUILDING IN TURKEY AND MOROCCO: GOVERNING KURDISH AND BERBER DISSENT 20 (2015).

131. Anderson, *supra* note 129, at 5.

132. On the praetorian states of the Arab world and the role of the security apparatus in distorting state investment, see Robert Springborg, *Arab Armed Forces: State Makers or State Breakers?*, MIDDLE E INST. (July 14, 2015), <https://www.mei.edu/publications/arab-armed-forces-state-makers-or-state-breakers>.

133. RAYMOND HINNEBUSCH, *State Formation and International Behavior*, in THE INTERNATIONAL POLITICS OF THE MIDDLE EAST 73, 88–90 (2018).

necessary to build administrative capacity to provide other public services.¹³⁴ Meanwhile, international prescriptions for rapid development of national economies following decolonization also emphasized the role of centralization, in this case, to implement top-down internationally sanctioned reforms for economic growth.¹³⁵ The conventional wisdom of the 1950s and 1960s held that late development required massive spending, in part to reverse colonial legacies of de-industrialization and exploitative resource extraction.¹³⁶

The resulting post-independence social contract was premised on acquiescence in centralized, homogenizing, and repressive top-down central state control in exchange for public sector largesse.¹³⁷ As in much of the post-colonial world, the spending commitments necessary for modernization became unsustainable for most MENA states (outside of the petro-monarchies of the Gulf) when international loans came due in the 1970s and 1980s.¹³⁸ Ensuing austerity and structural adjustment packages radically reduced public spending, ushering in a period of economic contraction and rising unemployment.¹³⁹ Under the pressure of economic crises, the authoritarian social contract in the region unraveled, giving way to new idioms of legitimacy and cohesion—including that of political Islam following the 1979 revolution in Iran. Cyclical efforts to “upgrade authoritarianism”¹⁴⁰ by the regimes of the region through selective reforms designed to benefit key elites while deflecting demands for liberalization periodically served to contain aspects of this governance crisis but were unable to achieve a lasting equilibrium.

The regional failure of authoritarian reforms became apparent in the uprisings of the last decade.¹⁴¹ Shared frustration across the region with autocratic and increasingly kleptocratic governments, dysfunctional economies, and the lack of basic public services was the common context for public revolt. The transformation of nonviolent protests around governance demands into full-blown civil wars marked by ethno-sectarian conflict reflects how the twin crises of the region have converged. The historical trajectory of the region explains

134. Mehran Kamrava, *Weak States in the Middle East*, in FRAGILE POLITICS: WEAK STATES IN THE GREATER MIDDLE EAST SUMMARY REPORT 1, 1–2 (2016).

135. SINCLAIR, *supra* note 59, at 75–76. See generally Oxborn, *supra* note 51.

136. For a discussion of these strategies in the Turkish and Syrian cases, see WALDNER, *supra* note 97, at 5–7.

137. On the authoritarian social contract in the Middle East, see generally Eric Rougier, *Fire in Cairo: Authoritarian-Redistributive Social Contracts, Structural Change and the Arab Spring*, 78 WORLD DEV. 148, 160, 162 (2016).

138. Melani Cammett & Ishac Diwan, *The Roll-Back of the State and the Rise of Crony Capitalism*, in THE MIDDLE EAST ECONOMIES IN TIMES OF TRANSITION 63, 64 (Ishac Diwan & Ahmed Galal, eds., 2016).

139. *Id.* at 88–90.

140. See generally STEVEN HEYDEMANN, UPGRADING AUTHORITARIANISM IN THE ARAB WORLD (The Saban Ctr. at The Brookings Inst. 2007).

141. Note that even Israel experienced a wave of protests over the deteriorating standard of living and corruption, with the Rothschild Boulevard protests in Tel Aviv in 2011. Uri Gordon, *Israel's 'Tent Protests': The Chilling Effect of Nationalism*, 11 SOC. MOVEMENT STUD. 349, 353–54 (2012).

both why the states of the region are centralized—and depend on top-down homogenization projects to stave off threats to territorial integrity—and why centralized control has failed. This context is important because the failures in both the reigning governance models and the frameworks for managing diversity point to the potential of decentralizing reforms to provide alternative approaches to configuring state power.

III. EXPERIMENTATION WITH DECENTRALIZATION

The four case studies presented in this section illustrate the different ways in which a range of political actors have made recourse to decentralizing frameworks as a technique for addressing governance crises and/or identity-based conflicts in the MENA region.¹⁴² In some instances, the reforms have been proposed in the context of constitution-drafting or far-reaching legislative overhauls of the existing distribution of power within a given state. In other cases, decentralized frameworks involving federal arrangements have been proposed in constituent assemblies or peace negotiations following the outbreak of conflict. Overall, the four cases demonstrate a range of different constitutional and legislative strategies to use decentralizing reforms to address governance failures or mitigate intense identity or territorial conflicts. While the cases differ in the particular challenges they are solving, they share common legacies of centralized rule. They also highlight competing, at times existential, demands for *both* improved governance and more pluralist territorial arrangements.

A. TUNISIA: 2011-2020: DEMOCRATIZING DECENTRALIZATION

Tunisia was the first country to experience an uprising in the Arab world and, until recently, was routinely described as the sole successful example of democratizing transition in the region.¹⁴³ Tunisia's authoritarian ruler, Zine El Abidine Ben Ali, had governed the country for nearly a quarter century before his overthrow in January 2011. Ben Ali was preceded by Habib Bourguiba, the first president of Tunisia, who had governed for thirty years until declining health led to his removal from office. The system that Bourguiba built and Ben

142. Each of the cases is considered through 2020, with the exception of the Yemeni case, for which the case study runs to the end of 2015 when the country descended into a war that led to state disintegration and brought an end to de jure efforts at decentralization. The war has produced forms of de facto decentralization that are briefly discussed at the end of the case. Developments in the cases from 2021 onwards would be difficult to assess in real-time and are thus beyond the scope of the paper, with the exception of brief references.

143. See, e.g., Dhafer Malouche, *Arab Spring Success Story: Tunisians Vote*, YALEGLOBAL ONLINE (Sept. 12, 2019), <https://archive-yaleglobal.yale.edu/content/arab-spring-success-story-tunisians-vote>; Dore Feith, *Why Tunisia Is the One Lasting Success of the Arab Spring*, WASH. EXAM'R (Jan. 11, 2018, 9:40 AM), <https://www.washingtonexaminer.com/?p=1866809>; Shelly Culbertson, *Tunisia Is an Arab Spring Success Story*, OBSERVER (Apr. 20, 2016, 4:16 PM), <https://observer.com/2016/04/tunisia-is-an-arab-spring-success-story>; Larry Diamond, *Tunisia Is Still a Success*, ATLANTIC (Mar. 23, 2015), <https://www.theatlantic.com/international/archive/2015/03/tunisia-is-still-a-success-terrorist-attack/388436>.

Ali continued was a highly centralized presidential system that functioned effectively as a form of one-party rule with strict limitations on opposition parties and widespread censorship.¹⁴⁴ Ben Ali added to Bourguibism a massively expanded clientelistic system of patronage relations as he introduced privatization measures and diverted public funds to private cronies.¹⁴⁵ While economic reforms under Ben Ali's watch contributed to significant growth in Tunisia's GDP, development largely benefited Tunisia's coastal areas resulting in substantial interregional inequality.¹⁴⁶

The Tunisian uprising began on December 17, 2010, when a Tunisian street vendor, Mohammed Bouazizi, set himself on fire in one of the poorest regions of Tunisia, the rural town of Sidi Bouzid, in protest after the local governor rebuffed his appeal against police confiscation of his wares due to his inability to pay expected bribes.¹⁴⁷ Bouazizi's name became synonymous in Tunisia and later elsewhere in the Arab world with protests against the repression, corruption, and inequality of authoritarian rule. But self-immolation in this case also gave voice to underlying cleavages present in Tunisia between the coastal regions of the country and its largely rural interior that correlated to differences in grievances and, hence, different orientations to any possible transition. This regional dimension of the Tunisian protests reflects the interconnections between governance-based grievances and other social cleavages that might require attending to not only political reforms but also identity questions in post-uprising transitions. Protests soon spread across the country, and by January 17, 2011, Ben Ali fled Tunisia, resulting in the first regime change triggered by the uprisings.¹⁴⁸

In the wake of Ben Ali's ouster, Tunisians began a transitional process focused on elections, convening a constituent assembly and drafting a new constitution. The demands of the uprising meant that democratization and economic development were leading reform agenda items. Regional inequality

144. Christopher Alexander, *Back from the Brink: Authoritarianism and Civil Society in Tunisia*, 205 MIDDLE E. REP. 34, 35 (1997); HUM. RTS. WATCH, TUNISIA'S REPRESSIVE LAWS: THE REFORM AGENDA 6 (2011).

145. The World Bank undertook a report after Ben Ali's ouster detailing the extent of corruption under his regime. BOB RIJKERS, WORLD BANK, CAROLINE FREUND & ANTONIO NUCIFORA, ALL IN THE FAMILY: STATE CAPTURE IN TUNISIA 3 (2014).

146. See, e.g., Joulan Abdul Khalek, *Tunisia's Challenge After Ben Ali: Tackling Inequality*, BOULEVARD EXTÉRIEUR (Feb. 25, 2012), <https://www.boulevard-exterieur.com/Tunisia-s-challenge-after-Ben-Ali-tackling-inequality.html> (noting that the Ben Ali regime's "economic paradigm created shocking levels of inequality between regions").

147. Peter Beaumont, *Mohammed Bouazizi: The Dutiful Son Whose Death Changed Tunisia's Fate*, GUARDIAN (Jan. 20, 2011, 3:02 PM), <https://www.theguardian.com/world/2011/jan/20/tunisian-fruit-seller-mohammed-bouazizi>.

148. David D. Kirkpatrick, *Tunisia Leader Flees and Prime Minister Claims Power*, N.Y. TIMES (Jan. 14, 2011), <https://www.nytimes.com/2011/01/15/world/africa/15tunis.html>. For a discussion of the causes of the Tunisian revolution, see generally Michele Penner Angrist, *Understanding the Success of Mass Civic Protest in Tunisia*, 67 MIDDLE E. J. 547 (2013).

was an important element of this agenda because of the marginalization of the country's rural interior, with eighty percent of public investment focused on coastal regions.¹⁴⁹ While there were many disagreements among opposition forces in Tunisia concerning the constitution-drafting process, the one issue on which there was broad consensus was the need to decentralize the authority of the state and specifically transfer resources and power to regional and local authorities.¹⁵⁰ Decentralization held the potential to redress both governance failures of the Ben Ali regime and the regional divergences that were produced by earlier disinvestment from the rural interior. Moreover, the consensus on decentralization also reflected a shared conviction among Ben Ali's opponents that centralizing power in Tunisia had consolidated and entrenched authoritarian rule.

The contentious constitution-drafting process took over two years and was nearly derailed by violence and growing political instability in the country, but a new constitution was ultimately adopted in January 2014.¹⁵¹ One of the most dramatic breaks from Tunisia's earlier constitutional order was contained in Chapter VII of the new constitution, which accorded financial and administrative autonomy to elected municipal and regional councils.¹⁵² These provisions of the constitution set in motion a four-year decentralization process that involved fraught negotiations over a new legislative framework for local elections. The process was marked by tensions over the scale and pace of the redistribution of power from the center to the regional and local levels.¹⁵³

149. Hamza Meddeb, *Tunisia's Geography of Anger: Regional Inequalities and the Rise of Populism*, CARNEGIE MIDDLE E. CTR. (Feb. 19, 2020), <https://carnegie-mec.org/2020/02/19/tunisia-s-geography-of-anger-regional-inequalities-and-rise-of-populism-pub-81086>.

150. Intissar Kherigi, *The Role of Decentralization in Tunisia's Transition to Democracy*, FLETCHER F. WORLD AFF. (Oct. 29, 2018), <http://www.fletcherforum.org/home/2018/10/14/the-role-of-decentralization-in-tunisias-transition-to-democracy>.

151. For a complete English language translation of the 2014 constitution, see Tunisia's Constitution of 2014, translated by CONSTITUTE PROJECT (UNDP & International Institute for Democracy and Electoral Assistance eds.), available at https://www.constituteproject.org/constitution/Tunisia_2014.

152. Chapter VII of the Tunisian Constitution consists of Articles 131 to 142. In addition, Chapter I, which sets forth the general principles of Tunisian constitutionalism, also includes two articles that provide a framework for decentralization (Articles 14 and 15). Article 14 commits the state to "decentralization and to apply it throughout the country, within the framework of the unity of the state." *Id.* art. 14. The spirit of the article reflects the consensus on decentralization among constitution drafters, but the phrase "unity of the state" was reportedly a concession made to the Ministry of Interior and its Bourguibist traditions. Intissar Kherigi, *Decentralization Reforms in Post-Revolution Tunisia: The Struggle Between Political and Bureaucratic Elites*, in *FEDERALISM AND DECENTRALIZATION IN THE CONTEMPORARY MIDDLE EAST AND NORTH AFRICA* 140, 150–51 (Ashi Ü. Bâli & Omar M. Dajani, eds., 2023).

153. Oumayma Ben Abdallah, *What Will Change After Tunisia's Municipal Elections?*, TAHRIR INST. FOR MIDDLE E. POL'Y (June 19, 2018), <https://timep.org/2018/06/19/what-will-change-after-tunisias-municipal-elections/> (noting, in connection to decentralization at the municipal level, that the "pace of reform had been slow and subject to pressure from the political elites who enjoyed more authority").

The initial constitutional consensus emerged while former ruling party members were banned from competing in elections.¹⁵⁴ Without Ben Ali loyalists to contend with, the elected National Constituent Assembly (“NCA”) brought opposition political actors to power.¹⁵⁵ These groups had spent decades outside of government and their leaders had a shared experience of repression, detention, and exile.¹⁵⁶ While the opposition parties reflected a wide ideological spectrum, they agreed on shared opposition to the centralization of authority, and the need for guardrails to prevent the reconstitution of an authoritarian central state apparatus.¹⁵⁷ Still, while the new constitution that they drafted entrenched a strong commitment to decentralization, even these actors framed the “general principle” of decentralization carefully. The spirit of the article reflects the consensus on decentralization among constitution drafters, but the phrase “within the framework of the unity of the state” was added as a concession to the Ministry of Interior and its Bourguibist traditions.¹⁵⁸ Thus, even in a country with no underlying communal divisions—and despite broad, popular support for decentralization—the reflexive regional concern that decentralization might threaten unity resurfaced.

After the NCA completed its work, national elections allowed former regime officials to re-enter the political arena, and their newly constituted party won a plurality of the vote.¹⁵⁹ With former ruling elites once again controlling the presidency, the bureaucracy of the central state was empowered to slow reforms. The Ministry of Interior, whose Department of Local Government had the authority to oversee local authorities until the new legislative framework was put in place, appointed a commission to draft regulations to govern local authorities.¹⁶⁰ The appointed body ensured that political actors previously represented on the NCA were sidelined.¹⁶¹ The drafting commission worked

154. *Tunisia Bans Ruling Party Officials from Vote*, AL JAZEERA (Apr. 27, 2011), <https://www.aljazeera.com/news/2011/4/27/tunisia-bans-ruling-party-officials-from-vote>.

155. *Final Tunisian Election Results Announced*, AL JAZEERA (Nov. 14, 2011), <https://www.aljazeera.com/news/2011/11/14/final-tunisian-election-results-announced>.

156. News Wires, *Islamist Leader Ghannouchi Returns to Tunisia After 22 Years in Exile*, FRANCE 24 (Jan. 30, 2011, 9:07 AM), <https://www.france24.com/en/20110130-tunisia-rached-ghannouchi-islamist-leader-returns-exile-ennahda-party-london>.

157. Lofti Tarchouna, *The Tunisian Experience of Decentralization Since 2014*, ARAB REFORM INITIATIVE (July 31, 2019), <https://www.arab-reform.net/publication/the-tunisian-experience-of-decentralization-since-2014>.

158. See Tunisia’s Constitution of 2014, translated by CONSTITUTE PROJECT art. 14 (UNDP & International Institute for Democracy and Electoral Assistance eds.), available at https://www.constituteproject.org/constitution/Tunisia_2014.

159. Tarek Amara & Patrick Markey, *Tunisian Islamists Concede Election Defeat to Secular Party*, REUTERS (Oct. 27, 2014, 7:28 AM), <https://www.reuters.com/article/us-tunisia-election/tunisian-islamists-concede-election-defeat-to-secular-party-idUSKBN0IG0C120141027> (noting that the elections brought to power the Nidaa Tounes party, “open[ing] the way for the return of some Ben Ali-era figures”).

160. Kherigi, *supra* note 150, at 153.

161. *Id.*

behind closed doors and relied largely on technical experts drawn from the legal academy rather than the political constituencies that had advocated for decentralization.¹⁶²

From 2014 to 2018, the state bureaucracy, with its traditions of centralized rule, shaped the trajectory of decentralization. The result was that robust constitutional principles in favor of decentralization were offset by a weak legislative framework.¹⁶³ The Local Government Code (the “Code”) was ultimately enacted only ten days before scheduled municipal elections and provided for political decentralization but limited initial administrative and fiscal decentralization.¹⁶⁴ The Code did not clearly allocate specific policy functions to the local level, and while it committed to the eventual transfer of financial resources, it did not provide local governments additional fiscal resources of their own.¹⁶⁵ Indeed, the newly established Ministry for Local Affairs—itsself a product of the recently enacted Code—suggested that the implementation of decentralization would have to be a gradual and negotiated process, envisaging a twenty-seven-year time frame for completion of the transfer of authorities.¹⁶⁶

The argument for this very long time frame rests largely on the need for subnational actors to develop the necessary capacity to govern and provide services. A significant proportion of the municipalities in Tunisia were created for the first time as part of the decentralization process to bring local government to areas of the country that had previously been unrepresented.¹⁶⁷ In this context, the transition from a highly centralized system with no tradition of local governance to far-reaching decentralization is necessarily incremental. Yet without significant redistribution of resources to the subnational level, the measures adopted do little to immediately address the interregional inequalities that were among the catalysts of the uprising. The combined effect of path-dependent preferences in the state’s bureaucracy and the return of former ruling

162. *Id.*

163. Analysts warned that the constitution left the degree of financial and administrative independence of local authorities to subsequent legislation by the central government, running the risk that recentralizing tendencies might obstruct the allocation of powers and resources to the subnational level. JÖRG FEDTKE, *TUNISIAN CONSTITUTIONAL REFORM AND DECENTRALIZATION: REACTIONS TO THE DRAFT CONSTITUTION OF THE REPUBLIC OF TUNISIA 3* (Zaid Al-Ali & Richard Stacey eds., 2013).

164. *Tunisia’s Parliament Adopts New Local Govt Code Ahead of Municipal Polls*, AFRICANEWS (Dec. 9, 2019), <https://www.africanews.com/2018/05/01/tunisia-s-parliament-adopts-new-local-govt-code-just-days-before-municipal-polls>.

165. SARAH YERKES & MARWAN MUASHER, *CARNEGIE ENDOWMENT FOR INT’L PEACE, DECENTRALIZATION IN TUNISIA: EMPOWERING TOWNS, ENGAGING PEOPLE* 12 (2018), <https://carnegieendowment.org/2018/05/17/decentralization-in-tunisia-empowering-towns-engaging-people-pub-76376>.

166. *Id.*

167. Eighty-six of Tunisia’s three hundred and fifty municipalities are new, and nearly 20 percent of Tunisians live in new municipalities that, at least initially, have very limited technical capacity or even physical infrastructure. *Id.* at 11.

elites to power diminished the force of the constitutional transformation achieved by the NCA.¹⁶⁸ Civil society advocates for decentralizing reforms complained that the state had produced a new “centralization of decentralization.”¹⁶⁹

The first municipal council elections—four years after the constitution established decentralized government—raised public expectations but also produced significant risk. The Code both established a framework for creating local governments and a context in which these elected bodies may not have the power or resources to meet local demands.¹⁷⁰ Still, over seven thousand municipal councilors were elected in May 2018, forming a new constituency that may increase pressure on the center for further redistribution of power.¹⁷¹ Moreover, the creation of the municipal councils has itself highlighted the need for resource transfers, placing pressure on central government to dedicate both financial and human resources to local capacity building, including during an initial period transferring staff locally to meet immediate needs.¹⁷² The elections brought a large proportion of independent candidates to office—rather than enabling central parties to better penetrate the provinces.¹⁷³ And these independent candidates’ first demands were related to greater resource transfers, which suggests that initial measures of political decentralization may help maintain pressure for greater administrative and fiscal decentralization. But one year after the elections, some analysts warned that limitations due to insufficient funding, capacity, and service delivery amidst an economic crisis risked undermining public support for decentralization—and, more broadly, for the country’s democratic transition.¹⁷⁴

In some ways, these warnings proved prescient as the COVID-19 pandemic intensified the economic crisis, pushing the political system as a whole to the

168. *Id.* at 13.

169. *Id.* at 14.

170. SARAH YERKES & ZEINEB BEN YAHMED, CARNEGIE ENDOWMENT FOR INT’L PEACE, TUNISIA’S POLITICAL SYSTEM: FROM STAGNATION TO COMPETITION 12 (2019), <https://carnegieendowment.org/2019/03/28/tunisia-s-political-system-from-stagnation-to-competition-pub-78717> (noting that after the elections, local officials were “‘under the most pressure of anyone in Tunisia—they do not have the tools, means or position’ to do what they need to do”); Nidhal Mekki, *Local Elections in Tunisia: Implementing the Constitution and Reinforcing the Transition*, CONSTITUTIONNET (June 1, 2018), <https://constitutionnet.org/news/local-elections-tunisia-implementing-constitution-and-reinforcing-transition>.

171. Bouazza Ben Bouazza, *Tunisia: Independents Draw Most Votes in Local Elections*, ASSOCIATED PRESS (May 10, 2018, 8:20 AM), <https://apnews.com/article/d60a28b9b3ce406a84826b2802a3a231> (noting that “approximately 7,000 municipal council seats” were filled across the country).

172. Intissar Kherigi, *Deepening Democracy in Transitional Tunisia: A New Chapter for Local Governance*, ECDPM GREAT INSIGHTS (Nov. 8, 2018), <https://ecdpm.org/great-insights/north-africa-hope-in-troubled-times/deepening-democracy-transitional-tunisia/> (noting the “resource challenge” laid bare following the 2018 local elections and central state commitment to “transfer staff locally” to meet immediate capacity needs).

173. Bouazza, *supra* note 171.

174. *Decentralisation in Tunisia: Consolidating Democracy Without Weakening the State*, INT’L CRISIS GRP. (Mar. 26, 2019), <https://www.crisisgroup.org/middle-east-north-africa/north-africa/tunisia/198-decentralisation-en-tunisie-consolider-la-democratie-sans-affaiblir-letat>.

brink. The first local elections in Tunisia took place only months before the beginning of the pandemic, which began to affect the country in spring 2020. The country suffered one of the highest case rates in Africa well into 2022, deepening widespread economic hardship. By the beginning of 2021, the tenth anniversary of the uprising witnessed mass protests against the government's handling of the economy and the pandemic.¹⁷⁵ The subsequent political crisis in the country provided a window of opportunity for President Kais Saied to abrogate the constitution in July 2021, suspend parliament, and eventually rule by decree while calling for a new constitution.¹⁷⁶ The country's rural interior, having experienced none of the promised benefits of the transition, posed no obstacle to this seizure of power. Saied's actions amount to authoritarian resurgence due, partly, to the throttled commitment to decentralization in Tunisia's post-uprising institutional trajectory. Although the constitutional provisions concerning decentralization were not among those initially suspended, Saied's actions resulted in de facto recentralization of power in the presidency, effectively suspending Tunisia's nascent experiment in democratization, and later enshrining the changes de jure through a referendum that replaced the 2014 constitution in 2022.¹⁷⁷

B. IRAN: 1995-2020: AUTHORITARIAN DECENTRALIZATION

Iran shares in common with the rest of the region a history of highly centralized government. While the 1907 constitution made local government part of the republican institutions of the state, the establishment of the Pahlavi dynasty following a coup in 1921 effectively undermined local autonomy.¹⁷⁸ The Pahlavis pursued modernization along the same lines as other states in the region, adopting a developmental paradigm that concentrated power in the central state's executive branch.¹⁷⁹ Like other countries in the region, Iranian nationalism under the Shah was an assimilationist project, sidelining and repressing ethnolinguistic diversity whether of the sizeable Arabic speaking

175. Sarah Yerkes & Maha Alhomoud, *One Year Later, Tunisia's President Has Reversed Nearly a Decade of Democratic Gains*, CARNEGIE ENDOWMENT FOR INT'L PEACE (July 22, 2022), <https://carnegieendowment.org/2022/07/22/one-year-later-tunisia-s-president-has-reversed-nearly-decade-of-democratic-gains-pub-87555>.

176. *Id.*

177. *Tunisia's President to Ignore Parts of the Constitution and Rule by Decree*, GUARDIAN (Sept. 22, 2021, 5:59 PM), <https://www.theguardian.com/world/2021/sep/22/tunisia-president-to-ignore-parts-of-the-constitution-and-rule-by-decree>. Eventually, Saied replaced the constitution altogether in a referendum with record low turnout, yet he retained the local councils established under the 2014 constitution. Yerkes & Alhomoud, *supra* note 175 (noting that "Saied's actions since July 25 orchestrate his vision of a presidential system in Tunis, with a decentralization of power through establishing local councils"); Elie Abouaoun, Thomas M. Hill, & Leo Siebert, *Tunisia's New Constitution Expands Presidential Power. What's Next for its Democracy?*, U.S. INST. PEACE (July 28, 2022), <https://www.usip.org/publications/2022/07/tunisia-new-constitution-expands-presidential-power-whats-next-its-democracy>.

178. ERVAND ABRAHAMIAN, *A HISTORY OF MODERN IRAN* 68 (2d ed. 2018).

179. AMIN BANANI, *THE MODERNIZATION OF IRAN: 1921-1941* 119 (1961).

minority of Khuzestan or the large Kurdish minority of northwestern Iran.¹⁸⁰ The establishment of the Islamic Republic of Iran following the 1979 revolution in no way disrupted the Persian nationalism of the state-building project, but it did produce renewed interest in local government.¹⁸¹ The outbreak of war with Iraq delayed implementation of such initiatives, occasioning instead rapid reconcentration of power in the central state and its security apparatus.¹⁸² Provisions for elected local councils were included in the 1979 constitution of the Islamic Republic,¹⁸³ but it was not until 1995 that the first local council law was passed.¹⁸⁴ When a reformist government came into office following the election of Mohammad Khatami as president in 1997, the 1995 law enabled reformists to move forward with decentralizing measures.¹⁸⁵

Given the authoritarian character of the Iranian regime, it is perhaps surprising that political decentralization may be more extensive in Iran than in any other country in the region. Moreover, the best explanation for the momentum driving decentralization in Iran corresponds very closely to the arguments advocated for decentralization in democratic and democratizing contexts. The reformists that led decentralization efforts in Iran drew on three constituencies: those who favored decentralization to enhance economic modernization, those who viewed decentralization as a proxy for political

180. As of 2023, there are estimated to be five million Ahwazi Arabs in Iran, comprising nearly 10 percent of the population, and some ten million Kurds, representing close to 12 percent of the population. See *Iran's Khuzestan: Thirst and Turmoil*, INT'L CRISIS GRP. (Aug. 21, 2023), <https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/iran/241-irans-khuzestan-thirst-and-turmoil>; *Iran's Minority Kurds in Focus After Woman's Death in Custody*, REUTERS (Oct. 10, 2022, 5:59 AM PDT), <https://www.reuters.com/world/middle-east/irans-minority-kurds-focus-after-womans-death-custody-2022-10-10>. These communities are regionally concentrated and, at different times in modern Iranian history, have been treated as a possible fifth column. For an overview of ethnic minorities in Iran, see RASMUS CHRISTIAN ELLING, *MINORITIES IN IRAN: NATIONALISM AND ETHNICITY AFTER KHOMEINI* (2013). On more recent repression in Khuzestan, see, for example, Golnaz Esfandiari, *Poverty, Separatism and Bloody Memories of War: Why Iran's Khuzestan Matters*, RADIO FREE EUROPE/RADIO LIBERTY (Sept. 28, 2018), <https://www.rferl.org/a/iran-khuzestan-poverty-separatism-bloody-war-memories/29515269.html>. The death of an Iranian Kurdish woman sparked protests across Iran in 2022 that the government has repressed in part by disproportionately targeting Kurdish areas. See, e.g., Alexander Smith, Matthew Mulligan & Matteo Moschella, *Iran's Violent Crackdown Against Protesters Escalates in Parts of the Country*, NBC NEWS (Nov. 26, 2022, 2:29 AM), <https://www.nbcnews.com/news/world/iran-protests-mahsa-amini-crackdown-kurdistan-government-forces-shoot-rcna58496>.

181. QANUNI ASSASSI JUMHURII ISLAMAI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1358 [1980], arts. 100–06.

182. AMANAT, *supra* note 112, at 387.

183. QANUNI ASSASSI JUMHURII ISLAMAI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1358 [1980], arts. 100–06.

184. Kian Tajbakhsh, *Political Decentralization and the Creation of Local Government in Iran: Consolidation or Transformation of the Theocratic State?*, 67 SOC. RSCH. 377, 380 (2000).

185. KIAN TAJBAKSH, WORLD BANK, *MUNICIPAL MANAGEMENT AND DECENTRALIZATION STUDY: IRAN* 19 (2003).

liberalization, and those who believed that empowering local government would enhance popular participation in ways supportive of the regime.¹⁸⁶

While the goals of decentralizers in Iran correspond to some of the expectations in the governance literature, they do so with a twist. For example, Islamist regime supporters were among the groups advocating for decentralization to enhance popular participation.¹⁸⁷ Their interest in greater participation, however, was based in the view that popularly elected local councils would become a source of grassroots support for the regime.¹⁸⁸ In other words, they viewed enhanced participation as generating greater local support for the state's ideology and building a stronger social base for the central state. Those interested in decentralization to improve economic modernization were largely state bureaucrats—described by some as “nonideological administrators”—who believed that transferring greater authority to subnational jurisdictions would improve the efficiency of public services.¹⁸⁹ This is a relatively standard account of the benefits of decentralization, albeit one decoupled from any interest in democratic accountability. The final group advocating for decentralization had democratizing goals.¹⁹⁰ These were the liberal Islamist reformists in the Khatami camp who oversaw an extensive reorganization of the state system in order to create a robust system of elected local councils in Iran.¹⁹¹ Nearly a quarter century later and following five rounds of competitive nationwide local elections, the democratizing goals of these more liberal reformists have been largely eclipsed even as local government has delivered on the ambitions of the other two sets of advocates.¹⁹²

186. Kian Tajbakhsh, *Decentralization, Ideology, and Law in the Islamic Republic of Iran*, in *FEDERALISM AND DECENTRALIZATION IN THE CONTEMPORARY MIDDLE EAST AND NORTH AFRICA* 99, 105 (Aslı Ü. Bâli & Omar M. Dajani eds., 2023).

187. Tajbakhsh, *supra* note 184, at 383.

188. *Id.*

189. Colin Barraclough, *Rise of Technocrats Challenges the Powers of Iran's Muslim Clerics*, *CHRISTIAN SCI. MONITOR* (Dec. 8, 1995), <https://www.csmonitor.com/1995/1208/08051.html> (describing pragmatic municipal actors and some state bureaucrats as “nonideological administrators” who were persuading “Tehran’s leadership circles that the economy must be managed more efficiently”).

190. For a discussion of Iranian reformists’ ultimately disappointed aspirations of using decentralization to achieve democratization, see generally KIAN TAJBAKHS, *CREATING LOCAL DEMOCRACY IN IRAN: STATE BUILDING AND THE POLITICS OF DECENTRALIZATION* (2022).

191. Kian Tajbakhsh, *Authoritarian State Building Through Political Decentralization and Local Government Law: Evidence from the Islamic Republic of Iran*, 10 *ONATI SOCIO-LEGAL SERIES* 1040, 1048 (2020).

192. For an argument that even within the period of Khatami’s administration, local elections reflected the triumph of regime supporters over the goals of liberal reformers, see Ray Takeyh, *Iran’s Municipal Elections: A Turning Point for the Reform Movement?*, *WASH. INST. FOR NEAR E. POL’Y* (Mar. 6, 2003), <https://www.washingtoninstitute.org/policy-analysis/view/irans-municipal-elections-a-turning-point-for-the-reform-movement>. On the other hand, more recent elections saw reformists gain seats in the Tehran municipal council. Amir Vahdat & Jon Gambrell, *Iran Reformists Sweep Tehran Municipal Council Election*, *CHIC. TRIB.* (May 22, 2017, 11:23 AM), <https://www.chicagotribune.com/nation-world/ct-iran-tehran-elections-20170522-story.html>.

The context of the initial impetus for decentralization was the aftermath of the ruinous war with Iraq and the need for reconstruction and economic growth. Rapid urbanization and economic contraction produced unrest in major cities, and many saw the decentralization of some functions of public administration as a means of addressing local grievances as well as improving services.¹⁹³ The first local council law was, in essence, a managerial response to urban protests supported by the state bureaucracy. President Hashemi Rafsanjani, elected just after the end of the war, favored a pragmatic economic development agenda and pursued a broader economic liberalization policy in the 1990s.¹⁹⁴ During his second term, the Iranian parliament put in place the legal framework for local government, but its implementation was left to his successor. The Khatami government built on Rafsanjani's economic reform agenda but added the objective of political liberalization.¹⁹⁵ The first local council elections were held in 1999, and the Khatami government worked to bring new actors into electoral competition.¹⁹⁶ The local councils, in turn, used their new authorities to experiment with participatory approaches to local policy, including more inclusive urban planning and incorporating local input in the design of municipal services.¹⁹⁷

Elected local councils in Iran operate alongside a centrally appointed municipal bureaucracy that constrains their independence.¹⁹⁸ Local government is accorded a limited degree of financial autonomy, with the power to administer some local sources of revenue and incorporate local priorities in expenditure decisions.¹⁹⁹ Similarly, local councils enjoy a measure of legislative authority over urban planning and current debates in Iran suggest the possibility of expanding the scope of policy decentralization.²⁰⁰ To date, the introduction of administrative, fiscal, and policy decentralization in Iran has resulted less in

193. For a discussion of the ways in which the reforms of the 1990s presented neoliberal prescriptions to respond to public grievances, see M. Stella Morgana, *Precarious Workers and Neoliberal Narratives in Post-revolutionary Iran: Top-down Strategies and Bottom-up Responses*, MIDDLE E. INST. (Jan. 28, 2020), <https://www.mei.edu/publications/precarious-workers-and-neoliberal-narratives-post-revolutionary-iran-top-down>.

194. Massoud Karshenas & M. Hashem Pesaran, *Economic Reform and the Reconstruction of the Iranian Economy*, 49 MIDDLE E. J. 89, 100 (1995).

195. Tajbakhsh, *supra* note 191, at 1049.

196. *Moderates Sweep Iranian Local Elections*, N.Y. TIMES (Mar. 8, 1999), <https://www.nytimes.com/1999/03/08/world/moderates-sweep-iranian-local-elections.html> (noting that the Iranian press reported that “moderates and independents had taken most seats outside the capital”).

197. Tajbakhsh, *supra* note 191, at 1050.

198. Tajbakhsh, *supra* note 186, at 99, 113–14.

199. TAJBAKSH, *supra* note 185, at 10–19 (reviewing amounts allocated at the provincial and municipal levels and the scope of discretion for local authorities).

200. Aram Khatam & Arang Keshavarzian, *Decentralization and Ambiguities of Local Politics in Tehran*, MIDDLE E. INST. (Jan. 14, 2016), <https://www.mei.edu/publications/decentralization-and-ambiguities-local-politics-tehran>.

liberalization than in central state capture of local government politicians.²⁰¹ The system within which the local councils operate reflects the principal substantive objective of decentralization in Iran: enhanced state capacity and improved economic efficiency in public sector management. What it has not facilitated is liberalization, even in those municipal councils—like in Tehran—where reformists have, at times, governed.²⁰²

The Iranian case reflects the degree to which decentralization is a reform strategy appealing across regime types. Indeed, lessons from Iran suggest that decentralization may be adopted by political elites in ways that strengthen authoritarian regimes by enabling them to mobilize or harness local support. The perhaps surprising result is that political decentralization—including the embrace of electoral mechanisms that enhance local participation—has, on balance, served to consolidate non-democratic rule in Iran even as it has expanded electoral competition. This is because the state has succeeded in using local government as a means of extending the regime’s organizational networks at the subnational level.²⁰³ In addition, the central state indirectly benefits when local needs are met through improved service delivery by subnational bureaucracies.²⁰⁴ In some respects, this may be understood as a cautionary tale in keeping with recent studies of authoritarian decentralization elsewhere.²⁰⁵ The widespread protests that erupted in Iran in September 2022 following the killing of Mahsa Amini were unsuccessful in challenging the resiliency of the regime.²⁰⁶ On the other hand, the Iranian case also points to the meaningful potential for decentralizing reforms to yield tangible benefits even in authoritarian contexts. Improved public service delivery, local experimentation in urban policy planning, and enhanced local input in defining resource allocations suggest that even where decentralization is decoupled from

201. Recent turmoil in the Tehran municipal council illustrated these issues. “Critics have also likened the political drama, scandals and lack of transparency at the Tehran city council to a miniature model of the way Iran is being run.” *Why Tehran’s Reformists Changed Three Mayors in 18 Months*, RADIO FARDA (Nov. 13, 2018), <https://en.radiofarda.com/a/iran-reformists-controlling-tehran-city-council-elect-mayor/29598451.html>.

202. *Id.* In the most recent June 2021 local elections, hardliners won a landslide victory due in large part to low voter turnout as a consequence of a boycott of the presidential election, which took place on the same day. *Tehran Municipal Elections Marks Yet Another Big Loss for Iran’s Reformists*, IRAN INT’L (June 24, 2021, 12:25 PM), <https://old.iranintl.com/en/iran/tehran-municipal-elections-marks-yet-another-big-loss-irans-reformists> (noting that in some respects Iran’s local elections are as significant as the presidential election because of the tangible financial interests at stake and the higher degree of meaningful contestation).

203. Tajbakhsh, *supra* note 191, at 1041 (arguing that “extending participation through subnational elected government in an ideological Islamist regime contributes to authoritarian nation-state building.”).

204. On the regime stabilizing benefits across regime types of improved service delivery, see ANDREAS WIMMER, *NATION BUILDING: WHY SOME COUNTRIES COME TOGETHER WHILE OTHERS FALL APART* 69 (2018).

205. See, e.g., LANDRY, *supra* note 33, at 10; BOHLKEN, *supra* note 55, at 246.

206. Vali Nasr, *Iran’s Hard-Liners Are Winning: How Months of Protests Forged an Even More Intransigent Regime*, FOR. AFFAIRS (Feb. 6, 2023), <https://www.foreignaffairs.com/iran/irans-hard-liners-are-winning>.

democratization, it may nonetheless offer governance gains that are non-trivial to affected constituencies.²⁰⁷

C. YEMEN: 2011-2015: FEDERALISM DERAILED

Yemen today is mired in a civil war exacerbated by external intervention that has produced a devastating humanitarian crisis with tens of thousands killed and millions on the brink of famine.²⁰⁸ Yet within recent memory, the country was on a far different trajectory with peaceful protests resulting in the overthrow of its longstanding authoritarian regime and a constitutional transition underway, led by civil society activists, one of whom received the Nobel Peace Prize for her efforts.²⁰⁹ That process was derailed when the government sought to recentralize control over the inclusive transitional process that had endorsed a federal arrangement for the country's post-transition future.²¹⁰

Yemen is perhaps the country in the region best suited to decentralized government. With a long history of political fragmentation, the country was formally divided when the south was colonized by the British and remained so for much of its history after independence.²¹¹ Since its unification in 1990, Yemen has faced centrifugal pressures, including a failed campaign to redivide the country in 1994 and repression of a northern insurgency against the

207. Tajbakhsh, *supra* note 185, at 8.

208. *Yemen: Civilians Bombed, Shelled, Starved: War Crimes by Saudi-Led Coalition, Houthi Go Unaddressed*, HUM. RTS. WATCH (Jan. 17, 2019, 4:22 AM), <https://www.hrw.org/news/2019/01/17/yemen-civilians-bombed-shelled-starved>; *Yemen War Deaths will Reach 377,000 by End of the Year: UN*, AL JAZEERA (Nov. 23, 2021), <https://www.aljazeera.com/news/2021/11/23/un-yemen-recovery-possible-in-one-generation-if-war-stops-now> (noting that most deaths were a result of indirect causes such as hunger and preventable disease).

209. For a detailed discussion of the uprising in Yemen, see Laurent Bonnefoy and Marine Poirier, *Dynamics of the Yemeni Revolution*, in *SOCIAL MOVEMENTS, MOBILIZATION AND CONTESTATION IN THE MIDDLE EAST AND NORTH AFRICA* 228, 228–45 (Joel Beinin and Frederic Vairel eds., 2nd ed. 2013). On the Nobel Peace Prize awarded to Yemeni feminist human rights activist Tawakkul Karman, see Laura Smith-Spark, *Three Women's Rights Activists Share Nobel Peace Prize*, CNN (Oct. 7, 2011, 2:41 PM), <https://www.cnn.com/2011/10/07/world/world-nobel-peace-prize/index.html>.

210. See, e.g., Tobias Thiel, *Yemen's Imposed Federal Boundaries*, MIDDLE E. RSCH. & INFO. PROJECT (July 20, 2015), <https://merip.org/2015/07/yemens-imposed-federal-boundaries> (describing the attempted imposition without consensus of a federal map by President Hadi).

211. The British established a protectorate in the south of Yemen for over a century, eventually creating a “federation” of protectorates just before granting independence. The experience of colonial “federation” has served to discredit the concept of federalism in Yemen, even as de facto forms of territorial decentralization have become entrenched as a result of the country's civil war. For a brief history of British rule and the opposition it engendered, see SHEILA CARAPICO, *CIVIL SOCIETY IN YEMEN: THE POLITICAL ECONOMY OF ACTIVISM IN MODERN ARABIA* 84–106 (1998). The country that is today Yemen is comprised of a territory that was divided between two republics from the 1960s until 1990. The collapse of communism witnessed the merger of the socialist People's Democratic Republic of Yemen (1967–1990) in the south (which had its capital in Aden) with the Yemen Arab Republic in the north of the country (with its capital in Sana'a). For a history of these divisions, see STEPHEN W. DAY, *REGIONALISM AND REBELLION IN YEMEN: A TROUBLED NATIONAL UNION* 22–55 (2012).

government beginning in 2004.²¹² It may be the sole country in the region that has had widescale and consistent grassroots calls for greater decentralization and local autonomy throughout its post-colonial history.²¹³ Under its longstanding authoritarian ruler, Ali Abdullah Saleh—who governed from reunification in 1990 until his ouster in 2012—promises of decentralization resulted in a legal framework that was largely honored in the breach. Centrally appointed governors and local branches of central ministries ensured that subnational government was under the direct control of the central state and largely staffed by Saleh loyalists.²¹⁴ Opposition to this highly centralized model eventually resulted in legal amendments over the 2000s that created elected local councils in 2008 and greater accountability mechanisms between elected bodies at the district, governorate, and national levels.²¹⁵

The Arab uprisings that began in Tunisia quickly spread to Yemen, with protests beginning in mid-January 2011.²¹⁶ Opposition to President Saleh mirrored the anti-authoritarian demonstrations in Tunisia and Egypt. But resistance to Saleh went beyond the common uprising demands for dignity, social justice, and liberalization. Territorial resentments were layered on to the broader popular movement against government repression and corruption, with the southern HIRAK movement and the northern Houthi movement each demanding greater autonomy.²¹⁷ In addition, a cluster of opposition political parties formed a joint platform—known as the Joint Meeting Parties (“JMP”)—against Saleh’s ruling party. The JMP listed decentralization among their demands to reverse the concentration of power in Sana’a and restore an earlier legacy of political pluralism in the country.²¹⁸ Of the three main movements

212. Clashes between the central government and forces in the south seeking to regain independence turned into a civil war in 1994. It resolved in favor of Sana’a but left a lasting legacy of Southern resentment. Opposition to the central state from the northern Houthi tribe was based on their criticism of the corruption of the government led by Ali Abdullah Saleh and the dependence of his regime on external support. The leader of the Houthi movement was killed by the Yemeni military in 2004, sparking an ongoing insurgency. For a history of the Houthi conflict, see MARIEKE BRANDT, *TRIBES AND POLITICS IN YEMEN: A HISTORY OF THE HOUTHIS CONFLICT* 154 (2017).

213. JOSHUA ROGERS, *LOCAL GOVERNANCE IN YEMEN: THEORY, PRACTICE AND FUTURE OPTIONS* 22 (2019).

214. *Id.* at 11.

215. BADR BASALMAH, *LOCAL GOVERNANCE IN YEMEN: CHALLENGES AND OPPORTUNITIES* 3–4 (2018).

216. Sheila Carapico, *Yemen*, in *DISPATCHES FROM THE ARAB SPRING: UNDERSTANDING THE NEW MIDDLE EAST* 101, 103 (Paul Amar and Vijay Prashad, eds., 2013).

217. “Hirak al-Janubi” translates to southern movement in Arabic, and HIRAK is a colloquial name for the movement in Yemen. The Houthi movement is named for the leader of the movement, Hussein Badreddin Houthi, who was killed in fighting with the central government in 2004. Houthi was a religious leader of the Zaidi community and had also served as a member of parliament in Yemen in the 1990s. For background on these movements, see generally HIRAK JYOTI DAS, *INTERESTS AND CONTESTS OF HOUTHIS AND AL-HIRAK MOVEMENTS IN YEMEN CRISIS* (2020).

218. On the role of the Joint Meeting and its vision for decentralization in Yemen, see Mohamed Al-Mekhlafi, *Yemen’s Federal Alternative: A Path to an Enduring Peace?*, ARAB REFORM INITIATIVE (May 17, 2018), <https://www.arab-reform.net/publication/yemens-federal-alternative-a-path-to-an-enduring-peace>.

united in their opposition to Saleh, two—Hirak and the JMP—viewed decentralization as a major demand of the uprising.

The Saleh government responded to the uprising with brutal repression, ordering security forces to open fire on unarmed protesters, killing over fifty and injuring hundreds more on a single day.²¹⁹ Defections from the government followed the repression and Saleh's external supporters intervened, negotiating a managed transition that would see the removal of Saleh and his replacement by his deputy—Abd-Rabbu Mansour Hadi—in a caretaker government committed to various reforms demanded by protesters.²²⁰ The GCC Initiative, as the “managed transition” was known, committed the government to undertake constitutional review and called for new parliamentary elections.²²¹ The transition under GCC auspices was backed by the United Nations, with a Security Council resolution inviting the formation of an all-inclusive National Dialogue Conference (“NDC”) to undertake constitutional reforms.²²² The NDC eventually came into existence in March 2013, comprised of sixteen constituent blocs with a total of 565 delegates representing all of the main political factions in Yemen.²²³

The NDC conducted its consultations through numerous working groups, including one specifically tasked with addressing the demands of the southern movement and another dedicated to the Houthi question.²²⁴ The nine thematic working groups also addressed questions of transitional justice, state-building, good governance and development, among others.²²⁵ Demands for decentralization spanned arguments about territorial autonomy, pressed by Hirak representatives, and arguments for deconcentrating power and embracing political pluralism as governance reform, championed by JMP delegates.²²⁶ Where issues were especially contentious, a separate small committee made of eight northerners and eight southerners (known as “the 8+8 committee”) would

219. Hakim Almasari & William Branigan, *Saleh Suffers String of Major Defections After Protesters Gunned Down in Yemen*, WASH. POST (Mar. 21, 2011), https://www.washingtonpost.com/world/saleh-suffers-string-of-major-defections-after-protesters-gunned-down-in-yemen/2011/03/21/ABhbbJ7_story.html.

220. EDWARD BURKE, EU-GCC COOPERATION: SECURING THE TRANSITION IN YEMEN 2 (2013).

221. *Id.*

222. S.C. Res. 2051, ¶ 3 (June 12, 2021).

223. The composition of the NDC was designed to overcome regional divisions and achieve a fully representative assembly. Half of the delegates were of southern origins, twenty percent were “youth” (under 40), and thirty percent were women. Charles Schmitz, *Yemen's National Dialogue*, MIDDLE E. INST. (Mar. 10, 2014), <https://www.mei.edu/publications/yemens-national-dialogue>.

224. Thania Paffenholz & Nick Ross, *Inclusive Political Settlements: New Insights from Yemen's National Dialogue*, 6 PRISM 199, 204 (2014).

225. For details of the process and the working groups, see *id.*

226. Stephen Day, *Can Yemen Be a Nation United?*, in YEMEN'S NATIONAL DIALOGUE 10, 12 (2013) (noting that a federal solution is the one agenda item that was demanded equally by the supporters and al-Hirak in the south and al-Houthi in the north).

work with the United Nation's advisor to Yemen, Jamal Benomar, to find a compromise.²²⁷

In the end, the NDC worked for over nine months, completing their negotiations and issuing a final document with nearly 1800 recommendations on January 21, 2014.²²⁸ Among the recommendations was the establishment of a new Federal Republic of Yemen that would entail “broad national partnership, representation of the regions and enable citizens to exercise their political rights and participation in governance.”²²⁹ The detailed document was written to offset concerns that federalism would lead to southern secession by combining territorial pluralism with an emphasis on the unity of the country.²³⁰ Recommended voting provisions also gave the Hirak movement incentives to remain committed to participating in the federal government.²³¹ However, the NDC did not come to a consensus on how many new federal regions should be created nor their specific boundaries.

The NDC had suggested that a thirty-member committee of legal and constitutional experts be appointed as a Constitution Drafting Committee (“CDC”) to implement the recommendations through a new constitutional framework.²³² In addition, a Committee of Regions was to be convened to determine the number and boundaries of the federal regions through representative deliberations, including all sixteen of the constituent factions represented in the NDC.²³³ Both of these recommendations were disregarded by President Hadi, who appointed a small committee that delineated six new federal regions through two weeks of discussions that were neither consultative nor representative.²³⁴ Where the NDC had called for a new constitution that would curb presidential powers, the President's control over the process for implementing the recommendations ultimately derailed the process.²³⁵ The six-region federal division engendered opposition across the political spectrum but met with the strongest rejection by the Houthi movement, whose northern

227. STEVEN A. ZYCK, INT'L PEACE INST., *MEDIATING TRANSITION IN YEMEN: ACHIEVEMENTS AND LESSONS* 9 (2014).

228. ERICA GASTON, U.S. INST. OF PEACE, *PROCESS LESSONS LEARNED IN YEMEN'S NATIONAL DIALOGUE* 4 (2014), https://www.usip.org/sites/default/files/SR342_Process-Lessons-Learned-in-Yemens-National-Dialogue.pdf; *Yemen's National Dialogue Conference Concludes with Agreement*, BBC (Jan. 21, 2014), <https://www.bbc.com/news/world-middle-east-25835721>.

229. REPUBLIC OF YEMEN, *FINAL COMMUNIQUÉ OF THE NATIONAL DIALOGUE CONFERENCE* 11 (2013–14).

230. *Id.* at 8.

231. The special voting rights recommended for the south made their way into the 2015 draft constitution, see Benoit Challand, *Decentralization in Yemen: The Case of the Federalist Draft Constitution of 2015*, in *FEDERALISM AND DECENTRALIZATION IN THE CONTEMPORARY MIDDLE EAST AND NORTH AFRICA* 365, 376–77 (Aslı Ü. Bâli & Omar M. Dajani eds., 2023).

232. Paffenholz & Ross, *supra* note 224, at 203.

233. Thiel, *supra* note 210.

234. *Id.*

235. Ashraf al-Falahi, *Yemen's Fraught Constitution Drafting Committee*, CARNEGIE ENDOWMENT FOR INT'L PEACE (May 2, 2014), <https://carnegieendowment.org/sada/55496>.

territory's boundaries were drawn by the map to cut off access to the sea and deprive the region of a resource-rich governorate within its traditional sphere of influence.²³⁶

The constitutional draft proposed by the Hadi-appointed CDC in 2015 adopted a bicameral federal system with the upper chamber made up of directly elected regional representatives and a degree of additional asymmetric rights for the south to assuage concerns about northern control.²³⁷ The bicameralism, asymmetric voting rights for the South, and principles of subsidiarity in the draft constitution all reflected important achievements of the uprising and the NDC process. But what might otherwise have been seen as a reasonable compromise document was undercut by the non-inclusive character of the CDC and contestation over President Hadi's fait accompli imposition of a federal map.²³⁸ The 2015 draft constitution was never put to a referendum, as the Houthi insurgency mobilized to overthrow Hadi in fall 2014, seizing control of the capital.²³⁹ The Houthi advance was countered by an external military intervention that has since consumed the country in an internationalized civil war.²⁴⁰ In 2017, the Hiraq movement formed the Southern Transitional Council and captured Yemen's second city—and unofficial capital of the south—Aden, establishing de facto autonomy over five southern governorates.²⁴¹

Today, Yemen is characterized by de facto decentralization in two distinct senses: first, the country is again divided between north and south, with further territorial subdivisions between territories in the north under Houthi control and those held by forces loyal to the Hadi government. Secondly, across the entire territory, decentralized forms of de facto governance have taken hold as a consequence of the collapse of central state institutions. In a country that has experienced path-dependent demands for decentralization since independence this de facto decentralization has been channeled into familiar divisions. The NDC process and the flawed constitutional draft that followed represent the high-water mark for sustained political attention to the possibility of a federal arrangement in the country. Despite the many valid criticisms of the CDC, the draft federal arrangement it produced might have commanded public support

236. Thiel, *supra* note 210.

237. For a detailed description of the CDC's draft constitution, see Challand, *supra* note 231, at 375–77.

238. Thiel, *supra* note 210.

239. *How Yemen's Capital Sanaa Was Seized by Houthi Rebels*, BBC (Sept. 27, 2014), [bbc.com/news/world-29380668](https://www.bbc.com/news/world-29380668).

240. For an overview of the war, see Ahmed Nagi, *Five Years of Yemen Conflict Yield Muddled Picture for Saudi Coalition*, CARNEGIE MIDDLE E. CTR. (Mar. 31, 2020), <https://carnegie-mec.org/2020/03/31/five-years-of-yemen-conflict-yield-muddled-picture-for-saudi-coalition-pub-81406>.

241. For background on the Southern Transitional Council, see Peter Salisbury, *Yemen's Southern Transitional Council: A Delicate Balancing Act*, INT'L CRISIS GRP. (Mar. 30, 2021), <https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/yemen/yemens-southern-transitional-council-delicate-balancing-act>.

had it not been attached to a six-unit federal map that deliberately sought to establish borders to disadvantage key stakeholders.

Whenever the external sponsors that fuel conflict in Yemen decide to desist, the country will likely have to negotiate a new political settlement within its existing borders.²⁴² The ceasefire achieved through the shaky United Nations-led peace process may produce negotiations sooner than previously hoped,²⁴³ but it is difficult to foresee how the war in Gaza will affect prospects for a durable end of conflict in Yemen.²⁴⁴ Because the south has now achieved a measure of de facto autonomy that enhances its bargaining leverage, it may be able to demand even greater regional independence in a future federal arrangement that would then more closely resemble a federacy. Even so, there is reason to believe that the draft constitutional framework developed based on the NDC's recommendations—without the Hadi-imposed map—provides the best starting point for imagining a future trajectory for the country. The critical features of any political settlement will have to address the balance of political pluralism, territorial autonomy, and reconstruction at the heart of the last round of inclusive, representative, and transparent negotiations that tragically derailed in 2014.

D. SYRIA: 2011-2020: TOP-DOWN AND BOTTOM-UP DECENTRALIZATION

Syria, like Yemen, has been consumed by a civil war that has destroyed a substantial part of the country's physical infrastructure and produced a humanitarian catastrophe of staggering proportions.²⁴⁵ Millions have fled the country resulting in one of the worst refugee crises of the century, millions more are internally displaced, and for much of the last ten years, the central state has

242. The international context has long disfavored the division of the country and Yemen's neighbors appear unwilling to countenance such an outcome even after the devastation of the civil war. But within its current borders, anything less than full territorial decentralization would have to be imposed top-down by force and the course of the war has demonstrated that none of the parties are in a position to assert the kind of control that would be necessary for such an imposition. Thus, de facto decentralization will most likely yield de jure federalism in a post-conflict settlement.

243. *Yemen Warring Parties Commit to Ceasefire, UN-led Peace Process, Says Envoy*, AL JAZEERA (Dec. 23, 2023), <https://www.aljazeera.com/news/2023/12/23/yemen-warring-parties-commit-to-ceasefire-un-led-peace-process-says-envoy>.

244. See Alexandra Stark, *Don't Bomb the Houthis: Careful Diplomacy Can Stop the Attacks in the Red Sea*, FOREIGN AFFS. (Jan. 11, 2024), <https://www.foreignaffairs.com/africa/dont-bomb-houthis> (arguing that Western air strikes are unlikely to deter Houthi strikes against commercial shipping and could contribute to destabilizing Yemen).

245. See, e.g., Fran Kritz, *UN: Humanitarian Crisis in Syria Reaches 'Horrifying New Level'*, NPR (Feb. 25, 2020, 3:12 PM), <https://www.npr.org/sections/goatsandsoda/2020/02/25/809273845/u-n-humanitarian-crisis-in-syria-reaches-horrifying-new-level>; *Syria: 10 Years of War Has Left at Least 350,000 Dead*, UN NEWS (Sept. 24, 2021), <https://news.un.org/en/story/2021/09/1101162>; Abd Almajed Alkarh, *Devastated by a Decade of War, Syria's Idlib is Running Out of Water*, NATIONAL (UAE) (Dec. 21, 2021), <https://www.thenationalnews.com/mena/2021/12/22/devastated-by-a-decade-of-war-syrias-idlib-is-running-out-of-water/> (detailing destruction of Syria's water infrastructure).

lost control of large swathes of the country's territory.²⁴⁶ The emergence of the Islamic State ("ISIS") and its declaration of a new state-building project across Syrian and Iraqi territory was just the most troubling example of the rise of armed non-state actors asserting de facto control over different regions of the country.²⁴⁷

The disintegration of the Syrian state from 2012 to 2016 resulted in numerous de facto experiments in decentralization where the loss of central state control produced both risks and opportunities for opposition groups to experiment with establishing new forms of local governance. Today, as the Syrian state has retaken territory with Russian and Iranian assistance, only one of those experiments survives at the margins.²⁴⁸ Yet, the recent experiences of local governance may be the basis for ongoing demands for greater local participation in policymaking in any post-war reconstruction. Moreover, the Syrian regime's severe crisis of legitimacy and the need to manage reconstruction efforts across the country suggest that the post-war Syrian state might have reason to consider robust decentralization to advance its interests.

Like much of the post-Ottoman Arab world, Syria's history includes a long experience of decentralized governance under the Ottomans and a post-independence legacy of highly centralized state-led modernization. The French mandate-era strategy of governing Syria divided the country into communally defined subunits designed to undercut anti-colonial Syrian nationalism.²⁴⁹ The experience of divide-and-conquer colonial rule left a particularly bitter legacy in Syria, where decentralization and federalism were equated with external actors' attempts to weaken the country and dismember its territory.²⁵⁰ As with Egypt and Iraq, a tumultuous first decade after independence concluded with a military coup that brought an authoritarian Arab nationalist leader to power.²⁵¹ Under

246. As of March 15, 2021, the United Nations High Commissioner for Refugees reports that there are 5,684,672 registered Syrian refugees in five countries of the MENA region (out of a total of 6.6 million Syrian refugees) and 6.7 million internally displaced persons. *Syrian Regional Refugee Response*, UNHCR OPERATION DATA PORTAL, <http://data2.unhcr.org/en/situations/syria> (last visited Jan. 15, 2022). See generally *Syria Emergency*, UNHCR, <https://www.unhcr.org/en-us/syria-emergency.html> (last updated Aug, 2023).

247. *VIOLENT NON-STATE ACTORS AND THE SYRIAN CIVIL WAR 7* (Ozden Zeynep Oktav, Emel Parlar Dal & Ali Murat Kursun, eds., 2018).

248. For a detailed discussion of how Russian and Iranian support enabled the regime to retake control of most of Syria, see generally INT'L CRISIS GRP., *LESSONS FROM THE SYRIAN STATE'S RETURN TO THE SOUTH* (2019).

249. PHILIP SHUKRY KHOURY, *SYRIA AND THE FRENCH MANDATE: THE POLITICS OF ARAB NATIONALISM, 1920-1945* 40 (1987).

250. While most of the administrative units created during the mandate were reincorporated into post-independence Syria, France ceded Alexandretta to Turkey and also encouraged the independence of Lebanon, resulting in a clear association between decentralization and territorial fragmentation in the Syrian experience. *Id.* at 41–42.

251. For an account of the role of Arab nationalism in consolidating the states of Egypt, Syria, and Iraq, see ADEED DAWISHA, *ARAB NATIONALISM IN THE TWENTIETH CENTURY: FROM TRIUMPH TO DESPAIR* 136, 151 (2002). On the rise of Hafez al-Assad and Ba'ath ideology in Syria, see generally LISA WEDEEN, *AMBIGUITIES OF DOMINATION: POLITICS, RHETORIC AND SYMBOLS IN CONTEMPORARY SYRIA* (1999).

Hafez al-Assad's Ba'ath Party, the state undertook a project of nation-building that emphasized a secular Syrian Arab identity as a source of social cohesion.²⁵² This strategy was accommodationist towards the country's religious minorities—including Christians, Alawites and Druze—but assimilationist towards its large non-Arab Kurdish minority.²⁵³ The accompanying state-building project reflected the developmentalist orthodoxy of its time with power concentrated in the central state. To the extent that the various Syrian constitutions provided for administrative decentralization,²⁵⁴ it was to enable the central state's party apparatus to extend and consolidate its control across the national territory.²⁵⁵

The death of Hafez al-Assad in 2000 and the succession of his son, Bashar, ushered in a period of economic liberalization that was accompanied by interest in decentralization.²⁵⁶ A new decentralization law was drafted in 2008 by a committee of Syrian officials working in consultation with European experts.²⁵⁷ The draft law provided for substantial delegation of administrative competencies to provincial and municipal levels and diminished the powers of centrally appointed governors. Though it remained in draft form, the law sparked debates over and advocacy for decentralization among Syria's new business elites as

252. For a discussion of secularism in Syrian Ba'ath ideology, see generally Gordon H. Torrey, *The Ba'ath: Ideology and Practice*, 23 MIDDLE E. J. 445 (1969). For a short discussion of secularism as a component of Arab nationalism after decolonization across the region, see generally Paul Salem, *The Rise and Fall of Secularism in the Arab World*, 4 MIDDLE E. POL'Y 147 (Mar. 1996).

253. The Kurdish community is the largest non-Arab ethnic minority in Syria, accounting for nearly ten percent of the population immediately prior to the 2011 uprising in Syria. On the history of the Ba'ath party's denial of Kurdish identity in the name of promoting Arab nationalism, see generally HUM. RTS. WATCH, GROUP DENIAL: REPRESSION OF KURDISH POLITICAL AND CULTURAL RIGHTS IN SYRIA (2009).

254. Syria's first post-independence constitution was adopted in 1950 but was repeatedly overridden as a result of military coups and other political transformations. Once Hafez al-Assad consolidated his regime, a new constitution was promulgated in 1973, reflecting the Ba'ath ideology of socialist-nationalist principles and concentrated power in the presidency. The constitution provided for local councils in theory but left their powers, regulation, and boundaries to legislation. The 1973 constitution was replaced, following the uprising, with a new constitution in 2012 drafted behind closed doors and put to a referendum in the midst of a civil war. The 2012 constitution reduced the role of the Ba'ath party in the structures of the state but did not differ significantly from the 1973 constitution in terms of centralized state authority, concentration of power in the presidency, or local government administration (defined under Article 131). The Constitution of the Syrian Arab Republic [2012] art. 131. Still, the constitution was presented by the regime as its response to the uprising's call for a political transition.

255. The legislative framework for local administration was Law No. 15 (1971) that ensured the complete dominance of the Ba'ath party over local council membership and placed control over local government in the hands of centrally appointed governors. OMRAN CTR FOR STRATEGIC STUDIES, CENTRALIZATION AND DECENTRALIZATION IN SYRIA: THE CONCEPT AND PRACTICE 159–60 (2018).

256. On economic liberalization reforms in the first decade of Bashar al-Assad's rule, see Samer Abboud, *Economic Liberalization and Social Transformations in Pre-War Syria*, CRISIS (Oct. 1, 2019), <https://crisismag.net/2019/10/01/economic-liberalization-and-social-transformations-in-pre-war-syria>.

257. For background on efforts to negotiate a Syrian-European Association Agreement and the various partnerships envisaged by that framework, see Michael Jorg Dorstal & Anja Zorob, *Syria and the Mediterranean Partnership*, in ST. ANDREWS PAPERS ON CONTEMPORARY SYRIAN STUDIES (2009).

well as technocrats in the state bureaucracy interested in advancing a trade partnership with the European Union.²⁵⁸

The eruption of anti-authoritarian protests in Syria in March 2011 was met with brutal repression by the regime that quickly led to the militarization of the uprising.²⁵⁹ As the government crackdown grew more violent, the Assad regime tried to signal openness to reform to both domestic audiences and international critics. The regime issued a new administrative decentralization law—Law 107—in October 2011, partly based on the 2008 draft.²⁶⁰ This measure was quickly followed by constitutional amendments in 2012, presented as responsive to demands for a political transition.²⁶¹ Yet neither document made any concession to the protesters—both were drafted behind closed doors and imposed top-down, more as a diversionary strategy than a path to liberalization.²⁶²

By 2012, control of the country was divided among three groups—the government, opposition groups, and the Syrian Kurdish community—with fluctuating control over territory. The regime-held areas' experience with Law 107 was consistent with earlier efforts by the state to use decentralization to consolidate control by extending the Ba'ath party's reach to the local level.²⁶³ On paper, the law devolves a measure of political authority to locally elected councils, with budget transfers from the central to the governorate level giving them resources to oversee some local development projects.²⁶⁴ However, because governors are centrally-appointed, in regime-held areas this remains

258. Samer Araabi & Leila Hilal, *Decentralization in State Disintegration: An Examination of Governance Experiments in Syria*, in *FEDERALISM AND DECENTRALIZATION IN THE CONTEMPORARY MIDDLE EAST AND NORTH AFRICA* 342, 348 (Ashi Ü. Bâli & Omar M. Dajani eds., 2023).

259. Katherine Marsh, Matthew Taylor & Haroon Siddique, *Syria's Crackdown on Protesters Becomes Dramatically More Brutal*, *GUARDIAN* (Apr. 25, 2011, 3:02 PM) <https://www.theguardian.com/world/2011/apr/25/syria-crackdown-protesters-brutal>; Zachary Laub, *Syria's Civil War: The Descent into Horror*, *COUNCIL ON FOREIGN RELS.* (Feb. 14, 2023), <https://www.cfr.org/article/syrias-civil-war>.

260. *Law 107 in Constitutional Law*, SYRIAN L.J., <https://www.syria.law/index.php/main-legislation/constitutional-law>. For details about Law No. 107, the Local Administration Law of 2011, see 'Decentralization' *From the Ba'ath Party's Viewpoint*, *ENAB BALADI* (Sept. 5, 2018, 3:44 PM), <https://english.enabbaladi.net/archives/2018/09/decentralization-from-baath-partys-viewpoint/>. For a discussion of the preceding 2008 initiative, see UN HABITAT, *DECENTRALISATION AND LOCAL GOVERNANCE: PURSUING AREA-BASED APPROACHES THAT SUPPORT ACCOUNTABILITY IN THE RESTORATION OF BASIC SERVICES AND ECONOMIC RECOVERY IN SYRIA* 90 (2022).

261. *Law 107*, *supra* note 260.

262. Neil MacFarquhar & Alan Cowell, *Syria Said to Approve Charter as Battles Go On*, *N.Y. TIMES* (Feb. 27, 2012), <https://www.nytimes.com/2012/02/28/world/middleeast/syrian-violence-continues-as-west-dismisses-new-charter.html> (noting that the constitutional amendments were adopted by a regime orchestrated referendum that reported 90 percent approval by voters allowed to participate).

263. One study indicates that Ba'ath party members made up as much as 70 percent of the candidates for elected positions in local administration. *Decentralization From the Ba'ath Party's Viewpoint*, *supra* note 260.

264. *Law 107*, *supra* note 260.

very much a top-down form of administrative decentralization.²⁶⁵ Local elections conducted by the Syrian government in 2018, for instance, reflected the very limited investment in political decentralization by the regime. The elections were marked by low voter participation, a high degree of Ba'ath party control, and “the return of faithful [party] members to positions of local power.”²⁶⁶ As a result, analysts noted that while actual political decentralization would be vital to post-war reconstruction—as it had been in Iran decades earlier—the legal provisions for decentralization were instead being used to “tighten regime control over the country’s localities.”²⁶⁷

In contrast to the experience in regime-controlled areas, opposition-controlled areas engaged in far more robust decentralized governance by necessity. Much of northwestern Syria came under opposition control in 2012²⁶⁸ and the government’s local administration system was used by these groups as a reference point in developing local councils to assume governance functions.²⁶⁹ Civil society actors on the ground viewed the opposition-held territories as a laboratory for experimentation with self-administration to fill the vacuum left by the central state.²⁷⁰ Local councils arose in six hundred cities and towns in the provinces of Idlib, Aleppo, and Dara’a, as well as the outskirts of Damascus.²⁷¹ These councils sought to provide a minimum level of services and over time also developed a regulatory framework for decision-making and popular participation.²⁷² Some local councils came to be dominated by powerful families, others faced problems of corruption in the distribution of donor aid,

265. Samer Araabi, *Syria’s Decentralization Roadmap*, CARNEGIE ENDOWMENT FOR INT’ PEACE (Mar. 23, 2017), <https://carnegieendowment.org/sada/68372>.

266. AGNES FAVIER & MARIE KOSTRZ, EUR. UNIV. INST. MIDDLE E. DIRECTIONS, LOCAL ELECTIONS: IS SYRIA MOVING TO REASSERT CENTRAL CONTROL? 2 (2019), https://cadmus.eui.eu/bitstream/handle/1814/61004/MED_RR_2019_03.pdf?sequence=4&isAllowed=y.

267. *Id.* Favier and Kostrz argue that, in fact, Decree 107 and the subsequent decrees and laws adopted by the regime in connection to decentralization have become mechanisms to consolidate top-down control in anticipation of post-conflict reconstruction: “The regime could now be set to head up the reconstruction process its ability to set parameters ensured by a legal structure streaming power to the top and a newly installed set of local government allies defending its interests and following its policy orientations from below.” *Id.*

268. *See, e.g.*, Hugh Macleod & Annasofie Flamand, *Syria: Rebels Appear to Control Large Parts of Northwest*, WORLD (July 31, 2016), <https://theworld.org/stories/2012-07-04/syria-rebels-appear-control-large-parts-northwest>.

269. The opposition local councils tried to form an overarching executive branch known as the Syrian Interim Government (“SIG”) at a conference in Istanbul in 2013. The SIG promulgated its own version of Law 107, known as the Rules of Procedure for Local Administration, that was designed to provide a framework for decentralized governance in opposition-held areas. Araabi & Hilal, *supra* note 258, at 352.

270. Claudia Mende, *Local Government Under Syria’s Opposition: Of the People, by the People for the People*, QANTARA (Dec. 20, 2018), <https://en.qantara.de/content/local-government-under-syrias-opposition-of-the-people-by-the-people-for-the-people>.

271. *Id.*

272. For a detailed appraisal of the functioning of five such local councils, see generally BAHJAT HAJAR, CORINNE VON BURG, LEILA HILAL, MATINA SANTSCHI, MAZEN GHARIBAH & MAZHAR SHARBAJI, *THE EXPERIENCE OF LOCAL ADMINISTRATIVE COUNCILS IN OPPOSITION-HELD SYRIA* (2017).

and many had limited representation of women.²⁷³ Still, the creation of the councils achieved more civic representation than most Syrians had experienced in their lifetimes.²⁷⁴ In the end, the opposition was outmatched militarily once Russia and Iran intervened on behalf of the regime. By 2018, most of the experiments in local governance had ended due to the loss of territory by the opposition.²⁷⁵ Still, analysts with experience with the experiments undertaken by the local coordination councils in opposition-held areas argue that the perceived legitimacy of decentralized governance in these areas has been an important catalyst for imagining a roadmap for post-conflict transition in Syria.²⁷⁶

The third group to establish separate governance arrangements in Syria following the uprising were the Syrian Kurds. The trajectory of decentralization in the Syrian Kurdish region bore no relation to Law 107 and instead was based on the political framework developed by imprisoned Kurdish political leader Abdullah Öcalan.²⁷⁷ Known as “democratic confederalism,” Öcalan conceptualized this model of democratic devolution as a way to build a transnational confederal arrangement that would unite Kurdish communities in Turkey, Syria, Iraq, and Iran without altering existing territorial boundaries.²⁷⁸ He has written thousands of pages on the philosophical underpinnings and framework for democratic confederalism during the more than two decades that he has been held in solitary confinement in Turkey.²⁷⁹ Still, the *de facto* independence of Syrian Kurdistan when the central government withdrew its forces from the region represented the first real opportunity to implement Öcalan’s ideas.

An important characteristic of democratic confederalism is the rejection of the nation-state model. Öcalan’s cosmopolitan conception of confederalism requires the delinking of nation from state, allowing for pluralist communal

273. Araabi & Hilal, *supra* note 258, at 342, 354–55.

274. Mende, *supra* note 270.

275. The absence of a coordinated donor strategy for supporting local councils and civil society organizations, while funding flowed in to armed opposition groups from the Gulf, also played a role. Many of the councils were left competing for support from the same handful of foreign donors, undermining their ability to cooperate with one another or consolidate their different local administrations into a cohesive overall structure. *Id.*

276. Araabi, *supra* note 265.

277. HARRIET ALSOPP & WLADIMIR VAN WILGENBURG, THE KURDS OF NORTHERN SYRIA: GOVERNANCE, DIVERSITY AND CONFLICTS 63 (2019).

278. ABDULLAH ÖCALAN, DEMOCRATIC CONFEDERALISM 34 (2011).

279. In his writing, Öcalan notes that he has been influenced by such Western political theorists as Michel Foucault, Immanuel Wallerstein, and the lesser-known Murray Bookchin, an American eco-communitarian theorist. See generally Damian Gerber & Shannon Brincat, *When Öcalan Met Bookchin: The Kurdish Freedom Movement and the Political Theory of Democratic Confederalism*, 24 *GEOPOLITICS* 976 (2018). Much of Öcalan’s writing has been submitted in lieu of a defense in different legal proceedings in Turkey and before the European Court of Human Rights. For example, see ABDULLAH ÖCALAN, PRISON WRITINGS: THE ROOTS OF CIVILISATION (Klaus Happel trans., 2007).

politics both within and across borders. Within each of the four states where Kurds are present, he argues for radical devolution to local democratic councils with power flowing upward from consensus-based local representative bodies to regional or national assemblies comprised of elected delegates from the regions.²⁸⁰ The central state is conceived as a thin structure to support a confederation of regions, providing for common economic and defensive needs, but otherwise devolving substantive policy authority to the lower levels.²⁸¹

A version of this model has been implemented in the Syrian Kurdish regions—commonly referred to as Rojava—since 2014.²⁸² Led by the Democratic Union Party (“PYD”), a socialist communitarian Kurdish political party aligned with Öcalan, this innovative system of autonomous administration does not describe itself as independent of the Syrian state, but embraces a more ambiguous form of asymmetric autonomy within Syria’s borders.²⁸³ The political system in Rojava—formalized through the adoption of a constitution, known as the Social Contract of the Federation of Northern Syria-Rojava—lays out a non-sectarian, non-ethnic model of democratic federal governance.²⁸⁴ The region is divided into three cantons: Jazira, Kobane, and Afrin, each designated a Democratic Autonomous Administration (“DAA”), with devolved responsibility for all areas of policy with the exception of collective defense, for which the federal entity has primary responsibility.²⁸⁵ The DAAs are guided by the principles of decentralization in the Social Contract, though each constituent body also maintains its internal regulations. Legislative assemblies at the canton level pass laws, draft budgets, appoint members to a Supreme Constitutional

280. ÖCALAN, *supra* note 278, at 21.

281. *Id.*

282. For a discussion of the toponym “Rojava,” see *supra* text accompanying note 35.

283. The ambiguity of the relationship between Rojava and the Syrian government is an intentional attempt to avoid triggering anxieties about Syrian territorial integrity while maintaining a tacit agreement with the Syrian central state apparatus to recognize the de facto autonomy of the region. Stefano Marinelli, *The 2016 Rojava Social Contract: A Democratic Experiment of Civil and Social Rights in Northern Syria*, INT’L L. BLOG (Oct. 24, 2016), <https://internationallaw.blog/2016/10/24/the-2016-rojava-social-contract-a-democratic-experiment-of-civil-and-social-rights-in-northern-syria>.

284. *Social Contract of the Democratic Federation of Northern Syria*, ROJAVA INFO. CTR. (Dec. 29, 2016), <https://rojvainformationcenter.com/storage/2019/12/2016-Social-Contract-of-the-Democratic-Federation-of-Northern-Syria.pdf>. The preamble announces itself to be the constitution of a democratic federal arrangement for the “peoples of Rojava-northern Syria,” and expressly includes not only Kurds but “Arabs, Syrians, Assyrians, Turkmen, Armenians, Chechens, Circassians, Muslims, Christians, Yezidis and different doctrines and sects” that make up the demographic composition of the region. *Id.*

285. The PYD’s armed wing, the People’s Protection Units (“YPG”), has carried responsibility for the defense of Rojava, evolving into the Syrian Democratic Forces, a multi-ethnic, multi-religious force that includes not only Kurdish fighters, but all of the communal groups present in the region. The SDF, with U.S. support, was the ground force most directly responsible for the defeat of ISIS. For a discussion of the relationship between the SDF and the United States, see for example, Ruby Mellen, *A Brief History of the Syrian Democratic Forces, the Kurdish-Led Alliance That Helped the US Defeat the Islamic State*, WASH. POST (Oct. 7, 2019, 1:38 PM), <https://www.washingtonpost.com/world/2019/10/07/brief-history-syrian-democratic-forces-kurdish-led-alliance-that-helped-us-defeat-islamic-state>.

Court, and retain authority to oversee all administrative and executive bodies.²⁸⁶ Governance structures in the DAAs also contain strict guidelines for gender, ethnic, and religious inclusion at all levels of authority.²⁸⁷

The model of self-administration adopted in Rojava, based on Öcalan's conception of democratic confederalism, is explicitly designed to be a non-statist form of self-determination. The emphasis on developing self-organization from the bottom-up as a means of self-determination is reflected in the structure adopted for the region's DAAs. In practice, this has meant strengthening administrative capacities through the creation of neighborhood assemblies at the most local level that feed upward to the district, city, and provincial canton levels, with elected representatives at each level and every council led by male and female co-chairs.²⁸⁸ Elections held in 2017 across the region saw participation by seventy percent of all eligible voters with over three thousand elected commune councils formed, each feeding into a networked form of administration connected from the bottom-up through the canton-level executive councils.²⁸⁹ Moreover, the elections included candidates and councils made up of Kurds, Turkmen, Arabs, Yazidis, Assyrians, and other ethnic and religious communities present in the region.²⁹⁰ Having rejected a statist model of political organization, the democratic confederal experiment in Rojava also embraced an inclusive and pluralist model of councils that ensured decentralized governance all the way down, enabling each communal group to self-administer cultural and religious policies while connecting to the broader structural administration of the region on economic, justice, and security matters.²⁹¹

The somewhat utopian character of governance in Rojava has inspired broad international attention,²⁹² particularly because the region's federal

286. ALSOPP & WILGENBURG, *supra* note 277, at 89.

287. On gender parity rules in the Kurdish political movement in Syria and in Turkey, see generally Hazal Atay, *What We Need to Learn About Gender Parity in Turkey's Kurdish Municipalities*, CONVERSATION (Apr. 3, 2019, 3:16 PM), <https://theconversation.com/what-we-need-to-learn-about-gender-parity-in-turkeys-kurdish-municipalities-113799>; Bahar Şimşek & Joost Jongerden, *Gender Revolution in Rojava: The Choices Beyond Tabloid Geopolitics*, 26 GEOPOLITICS 1 (2021).

288. Joost Jongerden, *Governing Kurdistan: Self-Administration in the Kurdistan Regional Government in Iraq and the Democratic Federation of Northern Syria*, 18 ETHNOPOLITICS 61, 70–71 (2019).

289. *Id.* at 70.

290. Wladimir van Wilgenburg, *Syrian Kurds Voting For Local Leaders Want a Democratic System After ISIS*, GLOBE POST (Sept. 23, 2017), <https://theglobepost.com/2017/09/23/syrian-kurds-rojava-election>.

291. For detailed discussion of this model and the administration of its justice system, see generally Michael Knapp & Joost Jongerden, *Peace Committees, Platforms and the Political Ordering of Society: Doing Justice in the Federation of Northern and Eastern Syria*, 8 KURDISH STUD. 297.

292. See, e.g., Wes Enzinna, *A Dream of Secular Utopia in ISIS' Backyard*, N.Y. TIMES (Nov. 24, 2015), <https://www.nytimes.com/2015/11/29/magazine/a-dream-of-utopia-in-hell.html>; Dor Shilton, *In the Heart of Syria's Darkness, a Democratic, Egalitarian and Feminist Society Emerges*, HA'ARETZ (Israel) (June 9, 2019), <https://www.haaretz.com/middle-east-news/.premium.MAGAZINE-amid-syria-s-darkness-a-democratic-egalitarian-and-feminist-society-emerges-1.7339983>; Sarah Lazarus, *Women. Life. Freedom. Female Fighters of Kurdistan*, CNN (Jan. 27, 2019, 10:06 AM), <https://www.cnn.com/2019/01/27/homepage2/kurdish-female-fighters/index.html>.

institutions were established in a historically resource-deprived and war-ravaged part of Syria under attack by ISIS.²⁹³ While Rojava's political experiment has outlasted the local councils created in opposition-held regions of Syria, it nonetheless faces intense military pressure from the Turkish state, which has intervened in Syria to forestall the creation of an independent Kurdish entity on its border.²⁹⁴ Following the defeat of ISIS, the Trump administration withdrew its support for Rojava's defense forces (a move the Biden administration has not reversed), clearing the way for a Turkish offensive against the region.²⁹⁵ As a result, Rojava's federal government has had to pursue a more formal entente with the Syrian government.²⁹⁶

Syria's three experiments with decentralization have not been concluded. In regime-held areas, the lack of a political resolution, massive ongoing state violence, the destruction of infrastructure, and non-existent government services continue to sustain grievances against the regime. Any post-war reconstruction will require the government to undertake reforms that will likely require some decentralization of responsibility for local towns and urban planning to rebuild. While the opposition has lost a territorial base for local governance, the experience with significant local self-administration will remain a collective memory that informs negotiations with the central state as it faces the necessity of reintegrating those who opposed the regime in a post-war transition. Lastly, negotiations between the government and Rojava's representatives, still in command of significant defensive forces, suggest that both sides may accept de facto asymmetric autonomy as a pragmatic means of accommodating pluralism without triggering anxieties about territorial integrity. Overall, the experiments in de facto decentralization during the war in Syria could provide a foundation for post-conflict reconstruction if a political settlement is eventually reached between the government and opposition groups.²⁹⁷

293. Interestingly, the success of the SDF in defeating ISIS and providing defense for the Rojava experiment has attracted non-Kurdish Syrian fighters from outside of Rojava to its ranks. See Amy Austin Holmes, *Arabs Across Syria Join the Kurdish-Led Syrian Democratic Forces*, MIDDLE E. RSCH. & INFO PROJECT (July 28, 2020), <https://merip.org/2020/07/arabs-across-syria-join-the-kurdish-led-syrian-democratic-forces>.

294. See Mireille Court & Chris Den Hond, *Is This the End of Rojava?*, NATION (Feb. 18, 2020), <https://www.thenation.com/article/world/rojava-kurds-syria>; Michael Rubin, *Joe Biden's Betrayal of the Syrian Kurds Is as Great as Donald Trump's*, AM. ENTER. INST. (May 27, 2022), <https://www.aei.org/op-eds/joe-bidens-betrayal-of-the-syrian-kurds-is-as-great-as-donald-trumps>.

295. Dan Lamothe, *'I Can't Even Look at the Atrocities': U.S. Troops Say Trump's Syria Withdrawal Betrayed an Ally*, WASH. POST (Oct. 15, 2019, 4:54 PM), https://www.washingtonpost.com/world/national-security/i-cant-even-look-at-the-atrocities-us-troops-say-trumps-syria-withdrawal-betrayed-an-ally/2019/10/15/4e79b600-ecca-11e9-b648-76bcf86eb67e_story.html.

296. Joost Hiltermann, *The Kurds Once Again Face American Abandonment*, ATLANTIC (Aug. 30, 2018), <https://www.theatlantic.com/international/archive/2018/08/syria-kurds-assad-ygp-isis-iraq/569029>.

297. Several international efforts to forge a political settlement in Syria have proposed a new decentralized model of governance for the country. The Syria Small Group (including the United States, the United Kingdom, France, Germany, Jordan, and Saudi Arabia) has proposed decentralization as a principle for post-war Syrian

IV. LESSONS FROM THE CASE STUDIES

The foregoing cases offer a glimpse of the degree to which centralized autocracies have condemned generations of Middle Easterners to ruinous governance arrangements and brutal violence. If the antidote is to decentralize power and develop plural territorial arrangements, how can these ends be accomplished? The challenge is to unpack the tension between the obvious and urgent need for decentralization as a framework and the reality that decentralizing reforms engender resistance from a range of actors—from autocrats to would-be reformers. Understanding the question in this way places the risks and benefits of decentralization in a somewhat different light than is ordinarily considered. The following sections engage in greater detail divergent attitudes toward decentralizing government, the potential and real limitations of decentralization for governance purposes, and the implications of surprising innovations in territorial decentralization.

A. DEVOLUTIONARY FERVOR

Decentralization has figured prominently in international reform proposals for improving public sector performance in the countries of the MENA region.²⁹⁸ In view of the extreme centralization, poor service delivery, and deficit of democracy that characterizes the states of the region, any political reform that might open space for improved governance and accountability is likely to be welcome. But what is striking is the breadth of the local political coalitions that have supported decentralizing reforms—a phenomenon evident both before and after the uprisings and protest movements of the last decade.

In both democratizing and authoritarian states, calls for decentralization have emanated from diverse segments within and outside government. In Iran in the 1990s, actors across the political spectrum were united in their support for decentralization. Its supporters included Islamist reformists, technocrats, and even some of the ruling clerical elite, who regarded decentralization as a means of mobilizing popular support for the regime.²⁹⁹ In Syria, too, decentralization attracted broad support—both prior to the uprising and civil war and once they

governance, and the Russian government prepared a draft constitution with a bicameral parliament in which the upper chamber would represent the regions. See *Statement of Principles for the Syria Small Group*, VOLTAIRE NETWORK (Sept. 18, 2018), <https://www.voltairenet.org/article202982.html>; see also Suher Adi, Yaniv Cohen & Steven Sherry, *Russia's Syrian Constitution Reveals More Than Anticipated*, OPENDEMOCRACY (May 23, 2017), <https://www.opendemocracy.net/en/north-africa-west-asia/russia-s-syrian-constitution-reveals-more-than-an> (discussing a draft Syrian constitution including a bicameral legislature presented by Russia to the Astana Group during talks held in January 2017, concerning a post-war Syrian state).

298. See e.g., *Decentralization and Local Development in the Middle East & North Africa*, DECENTRALIZATION NET (Nov. 14, 2022), <https://decentralization.net/2021/11/decentralization-and-local-development-in-the-middle-east-north-africa-mena> (A Global Webinar Series organized by the World Bank and other international financial institutions advocating for decentralization in the MENA region.).

299. Tajbakhsh, *supra* note 184, at 377.

had commenced.³⁰⁰ As in Iran, its different advocates envisaged differing objectives for decentralization.³⁰¹ Considered a complement to Bashar Assad's privatization spree,³⁰² the European Union identified it as a priority area in its strategic framework for Syria.³⁰³ Similarly, following Tunisia's 2011 revolution, virtually all of the blocs engaged in the constitution-drafting process advocated decentralization.³⁰⁴ Both liberal and Islamist critics of the ousted regime saw in it a way to rein in a central state that had long been too powerful, as well as a means of redressing the economic gap between the country's prosperous coastal regions and its marginalized interior.³⁰⁵ Finally, in Yemen, the National Dialogue Conference recommended decentralization as a way to reconcile territorial demands for greater autonomy with the shared goal of constraining the central state—especially the presidency.³⁰⁶

The breadth of these coalitions advocating decentralization appears, at least in part, to be a function of the concept's elasticity. Decentralization, after all, encompasses very different kinds of arrangements. It can be the centerpiece of a democratization program with meaningful devolution of authority to subnational governments and robust mechanisms of downward accountability. Or it can be understood to refer to a far narrower set of reforms aimed at enhancing administrative efficiency without challenging the central government's authority or creating new accountability mechanisms.

This elasticity in decentralization's meaning makes it easy to support. Governments eager to impress domestic or international audiences can claim they are reformists by championing decentralization while leaving themselves significant latitude to decide on actual policy changes. At the same time, decentralization can serve as a framework and vocabulary for promoting democratic change without requiring democratizers to reveal the full scope of their aspirations. As a result, it may be easier to reach a consensus at the outset about the need for decentralizing reforms, even if it becomes more difficult later on to formulate and implement specific structural reforms. As discussed further below, decentralization's conceptual elasticity has enabled it both to serve as a genuine vehicle for reform and to be instrumentalized *defensively* by regimes in

300. See *supra* Part III.D.

301. See *supra* Part III.B.

302. See George Somi, *Syria Under Pinheiro: Reformulating Syrian Domestic Law for Decentralized Reconstruction*, 43 BROOKLYN J. INT'L L. 717, 725–33 (2018) (discussing privatization under Assad prior to the uprising).

303. The express objectives of the initiative for decentralization were far broader than those of the Assad regime and included: "Instigate the process of political reform; achieve good governance and separation of powers; strengthen the protection of human rights and develop democracy, while maintaining the remarkable diversity in society and peaceful inter-religious and inter-community relations." EUROPEAN NEIGHBORHOOD AND PARTNERSHIP INSTRUMENT 3, 8 (2006) (on file with author).

304. See *supra* Part III.A.

305. See *supra* Part III.A.

306. See *supra* Part III.C.

ways that allow them to consolidate and even expand the reach of central government power.

B. LEGACIES OF FRAGMENTATION

There is, however, a paradox at the heart of the MENA region's relationship to decentralizing government. Whereas decentralization has been a leading item on governance reform agendas, the idea of deploying it as a strategy for addressing identity groups' self-determination demands has tended to be too politically incendiary to allow reasoned public discourse about its merits. Indeed, while decentralization offers an array of potential design alternatives for addressing identity-based cleavages, it is rarely explored in earnest by the central states that try to manage these long-standing conflicts. The failure to address self-determination and regional autonomy demands has numbered among the catalysts for violence that have led to various degrees of state collapse from Syria to Yemen to Libya.³⁰⁷ Still, devolutionary alternatives that might preserve territorial integrity remain off-limits.

How to explain this paradox? The allure of decentralization for self-determination movements is understandable in that it offers a middle ground between absorption and secession. The region's modern history points, however, to abiding vulnerabilities that help make sense of a reflex toward centralized authority: the weakness of states in the region, the deep divisions within their polities, the challenges of late development, and repeated experience with foreign intervention and imposed partition.³⁰⁸ As discussed in Part II, this experience stretches back to European colonial interventions of the nineteenth and twentieth centuries. Concerns about territorial integrity have seemed, moreover, to be vindicated by the fragmentation wrought by foreign interventions in the civil wars in Iraq, Libya, Syria, and Yemen. The legacy of these conflicting experiences is that while the decentralizing government seems like a cure-all, federalism, in particular, is considered dangerous and even fatal to the continuity of existing states.³⁰⁹

It is consequently in the places where it would seem to make the most sense to decentralize—that is, where minority groups are territorially concentrated (as

307. The sections above have addressed self-determination demands by Kurdish communities in Syria and by regional movements in Yemen. For a discussion of self-determination demands by communities in Libya, see *From Failed State to Regional Autonomy: Amazigh Self-determination in Libya*, NATIONALIA (Apr. 14, 2016, 10:45 AM), <https://www.nationalia.info/opinion/10760/from-failed-state-to-regional-autonomy-amazigh-self-determination-in-libya>.

308. See *supra* Part III.

309. Anxieties about federalism in particular are tied to the imposition during the French mandate of an ethnicity/sect-based federal system in Syria with the clear aim of dividing the polity, along with the attempt—successful in Lebanon, unsuccessful in the Alawite and Druze entities—to translate those divisions into territorial partition. Seda Altuğ, *Suriye Arap Milliyetçiliğinde Vatan ve Suriyelilik (1919–1939) [Homeland and Syrianness in Syrian Arab Nationalism (1919–1939)]*, 39 I.Ü. SIYASAL BİLGİLER FAKÜLTESİ DERGİSİ 71 (2008) (Turk.) (discussing the role of French strategies of territorial division in shaping Syrian nationalism).

in the Kurdish areas of several states) or where the central state is already weak or absent altogether (as in Yemen)—that they give rise to the most intense controversy. It is also in these contexts that foreign involvement arouses the greatest suspicion. In contrast, Iran's experiment with authoritarian decentralization may be explained in part by the muted character of demands from ethnonational or religious minorities in that country during the 1990s. Moreover, given Iran's relative isolation from Western assistance programs, demands for decentralization from within the country could not be as readily dismissed as a form of external imposition. Tunisia's relative success at advancing decentralization as an element of governance reforms may similarly be related to the relative absence of ethnic and sectarian divisions (despite the presence of significant regional cleavages) and perhaps more significantly driven by the fact that the country was already in the midst of a democratizing transition when reforms were undertaken.³¹⁰

The prevailing fear of federalism in the MENA is not merely a peculiarity of political culture. The region's experience points instead to the convergence of three critical factors. First, post-colonial state formation there unfolded in the wake of Western divide-and-rule strategies. Second, the state-building processes in the region also homogenized nation-building projects that privileged majority ethnic identity as a basis of cohesion. The result of these two factors has been a region characterized by weak states in terms of governance capacity and defensive ethnonational commitments (with the frontiers of the nation routinely presented in ethno-majoritarian terms, as in "Arab Syria" or Turkey as the nation of the "Turks").³¹¹ A third factor is the Middle East's centrality to great power competition. The result has been frequent destabilizing interventions, including the wars in Iraq and Libya and the proxy wars in Yemen and Syria, which reinforce ongoing anxieties about intervention and partition. As a result, demands by ethnic or religious minorities for any form of territorial pluralism

310. Middle East analysts have also noted that Tunisia is somewhat peripheral to the geopolitical dynamics that define the region, sparing it the intense involvement of external actors in its domestic affairs. Egypt's post-authoritarian transition—unfolding at exactly the same time—was, by contrast, shaped and eventually derailed by external actors. The anti-authoritarian uprising in Egypt and the ouster of long-standing autocrat Hosni Mubarak sparked anxiety among the monarchies of the Arab Gulf, eventually resulting in heavy counter-revolutionary support from these states to the Egyptian military, bringing to an end the country's brief experiment with democratization with a military coup in 2013. See Maged Mandour, *The Egyptian Counter-Revolution: The Gulf Connection*, OPENDEMOCRACY (Apr. 1, 2014), <https://www.opendemocracy.net/en/north-africa-west-asia/egyptian-counter-revolution-gulf-connection> (discussing the role of the Gulf in the removal of Egypt's first democratically elected president).

311. Here, the MENA region's experience resonates with Partha Chatterjee's classic account of how anti-colonial nationalism remains bound to the very ideas it struggled against, particularly in the conceptions of nation and nationalism. PARTHA CHATTERJEE, *NATIONALIST THOUGHT AND THE COLONIAL WORLD: A DERIVATIVE DISCOURSE* (Univ. of Minn. Press 1993).

produce a ferocious response.³¹² Proponents of decentralization pursuing objectives unrelated to communal identity are also burdened by the treatment of such governance reform proposals as a slippery slope.

While these observations remain apt, the cases surveyed in this Article—and other examples from countries as varied as Libya, Morocco, and Turkey—suggest that there is not only continuing demand for the deconcentration of central state power across the countries of the region but also initiative to experiment with territorial configurations of decentralized authority that might respond to identity conflicts and long-standing (and long-repressed) demands for self-determination. In a region where shifting borders is both unlikely and ill-advised, groups like the Syrian Kurds are seeking strategies of territorial pluralism to address these demands within existing borders. The impediments in the MENA to decentralization are storied and considerable, but the remainder of this section turns to assessing contemporary efforts to design institutional arrangements that avoid triggering anxieties about territorial integrity and seek to advance goals of decentralized governance that may undo some of the most traumatic legacies of past territorial fragmentation.

C. DEMOCRATIZING DECENTRALIZATION

Though the Arab uprisings are often eulogized as having failed, in fact, public mobilization in support of democratization and governance reform continues in many countries.³¹³ Generalizations about the violence that has taken hold in some parts of the region obscure other equally important developments, even in countries where initial post-authoritarian transitions have faced setbacks or reversals. Our cases offer an opportunity to compare instances in which bottom-up approaches to decentralization were a salient feature of attempted democratic transitions in the region, particularly in the cases of Tunisia and

312. Distinct from (but related to) concerns about territorial integrity, there is also hostility to minority politics in the region. Even in cases where fragmentation is not a real concern—like Egypt—such hostility is apparent. Concerns about minority politics and territorial integrity share a common origin in the encounter with Europe and the politicization of religious differences, as discussed in Part I. See USSAMA MAKDISI, AGE OF COEXISTENCE: THE ECUMENICAL FRAME AND THE MAKING OF THE MODERN ARAB WORLD 45 (2019). On allegations of latter-day efforts to foment unrest through minorities in the region, see Seymour Hersh, *Preparing the Battlefield*, NEW YORKER (June 29, 2008), <https://www.newyorker.com/magazine/2008/07/07/preparing-the-battlefield> (arguing that the Bush administration was seeking to use ethnic minorities in Iran to undermine the regime). More recently, Iran's president accused the Gulf Arab states and the United States of manipulating the Arab minority in Iran's Khuzestan province. *Iran's Rouhani Fumes at U.S. After Ahvaz Parade Attack*, BBC (Sept. 23, 2018), <https://www.bbc.com/news/world-middle-east-45617800>.

313. In 2019, long-standing dictators in Algeria and Sudan were removed in response to large scale public protests, while in both Lebanon and Iraq renewed uprisings led to resignations by sitting prime ministers, followed by complex negotiations between protesters and governing elites around reform demands. For a critical discussion of this "second wave" of Arab uprisings, see Jillian Schewedler, *Thinking Critically About Regional Uprisings: A Roundtable*, MIDDLE E. RSCH. & INFO. PROJECT (Fall/Winter 2019), <https://merip.org/2019/12/thinking-critically-about-regional-uprisings>.

Yemen.³¹⁴ Because the region is commonly seen as inhospitable to decentralization for democracy promotion purposes, these cases are all the more interesting.

In fact, outside of the MENA, decentralization is often advocated precisely as a democratizing measure.³¹⁵ Decentralization is understood, in theory, as democracy-promoting first and foremost where political decentralization results in expanded opportunities for popular participation, replacing appointed local officials with those elected by local constituencies.³¹⁶ Decentralization also promises greater democratic accountability for this reason. Locally elected officials are answerable to constituents through periodic elections and other channels of regular communication that increase opportunities for public input into policy-making responsive to local needs. The expectation for governance improvement also stems from having elected officials closer to the point of service delivery—literally bringing government to the people.³¹⁷

In both Tunisia and Yemen, nonviolent mass demonstrations resulted in peaceful transitions of power involving the ouster of long-standing authoritarians.³¹⁸ Once the transitions were underway, the Tunisian and Yemeni cases were characterized by three common factors. First, in both cases, the political transition involved a remarkably inclusive constitution-drafting process with constituent assemblies drawn from a cross-section of society, including historically peripheral regions long excluded from central power. In the Tunisian case, the National Constituent Assembly was an elected body of 217 members.³¹⁹ In Yemen, the National Dialogue Conference's 565 appointed participants were selected by a broad spectrum of political parties and civil society organizations to maximize representation of constituencies from across the country and ensure equal participation of groups from the north and south.³²⁰

While inclusiveness was certainly an important attribute of both transition processes, it also presented drawbacks. On the one hand, the exclusion of critical

314. In other cases, too, bottom-up experiences of de facto decentralization demonstrated meaningful potential for democratic transition. Examples like the local councils that emerged in opposition-held areas of Syria and the robust decentralization and democratic experimentation in the Kurdish regions of Syria exemplify this potential.

315. See, e.g., U.S. AID, *DECENTRALIZATION AND DEMOCRATIC LOCAL GOVERNANCE PROGRAMMING HANDBOOK* 29 (2021).

316. See, e.g., Poteete, *supra* note 27; Jean-Paul Faguet, Ashley M. Fox & Caroline Poschl, *Decentralizing for a Deeper, More Supple Democracy*, 26 *J. DEMOCRACY* 60, 61 (2015); Adriana Molin-Garzon, Tara Grillos, Alan Zarchyta & Krister P. Andersson, *Decentralization Can Increase Cooperation Among Public Officials*, 66 *AM. J. POL. SCI.* 554 (2022).

317. See, e.g., William Dillinger & Marianne Fay, *From Centralized to Decentralized Governance*, IMF: FIN. & DEV. (Dec. 1999), <https://www.imf.org/external/pubs/ft/fandd/1999/12/dillinger.htm>.

318. See *supra* Parts III.A & C.

319. Amine Ghali, *Tunisia's Constitutional Process: The Road Ahead*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Dec. 9, 2011), <https://carnegieendowment.org/sada/46187> (noting that 217 members were elected to Tunisia's constituent assembly in October 2021).

320. Schmitz, *supra* note 223.

constituencies would certainly have resulted in defections that would have undermined the legitimacy of the transition. On the other hand, the inclusiveness resulted in large numbers of participants, making for unwieldy negotiations and slow progress, with talks extending far beyond initially anticipated time frames in both countries. The duration of the process produced public frustration as well as opportunities for spoilers to derail the transition. In the end, the final push to complete the Tunisian draft constitution occurred in the shadow of the 2013 counter-revolution in Egypt that motivated participants in the assembly to regain momentum and break a political deadlock.³²¹ In Yemen, the nearly two-year-long NDC negotiations resulted in over fifteen hundred recommendations to be taken up by a Constitution Drafting Committee (“CDC”).³²² The inclusive, transparent, and slow NDC negotiations gave way to a presidentially-appointed committee of seventeen that was far less inclusive—with most members drawn from just two parties politically favorable to the president—and less transparent.³²³ Without the momentum of the initial transition or an inclusive composition that would secure broad-based support, the constitutional draft produced by the CDC was opposed by key constituencies resulting in a stalled transition.

The second common feature of both the Tunisian and Yemeni cases is that reformists during the transition sought to have a constitutionally entrenched commitment to decentralization. There are competing considerations to bear in mind concerning the constitutional status of decentralization. The principal advantage of entrenchment is to ensure lock in of decentralizing reforms early in the transition process when there is momentum behind such reforms. Subsequent developments might slow or even reverse the commitment to decentralization for a host of reasons, including path-dependent public preferences for centralized authority, a belief that decentralization might prolong the process of pursuing other much-needed reforms, and resistance by central state bureaucrats to reforms that might strip them of erstwhile privileges and powers.

321. CARTER CTR., *THE CONSTITUTION-MAKING PROCESS IN TUNISIA: FINAL REPORT* 28 (2014), (noting the influence of the removal of the Egyptian President Mohamed Morsi by the Egyptian army in 2013 on the course of the constitution-drafting process in Tunisia).

322. As a measure of the degree to which Tunisia and Yemen were proceeding on a similar timetable with prolonged negotiations over the terms of their transitions, the NDC published its recommendations on January 25, 2014, and the new Tunisian Constitution was adopted the next day. *Tunisia Assembly Passes New Constitution*, BBC (Jan. 27, 2014), <https://www.bbc.com/news/world-africa-25908340> (noting the constitution was adopted on January 26); Danya Greenfield, *Yemen Faces Fresh Challenges as National Dialogue Ends*, BBC (Jan. 28, 2014), <https://www.bbc.com/news/world-middle-east-25928579> (noting that the NDC published its recommendations on January 25).

323. *Yemen's President Faces Political Stalemate*, AL JAZEERA (Sept. 10, 2014) <https://www.aljazeera.com/news/2014/9/10/yemens-president-faces-political-stalemate> (quoting Yemenis complaining that the constitution-drafting committee under Hadi's control gave the president the final word rather than being consultative, and that the committee was seen as a “sham”).

All of these factors were at work in the Tunisian case where the first democratically-elected president, Moncef Marzouki, was at times seen by the public as ineffective precisely because he did not impose top-down centrally controlled measures, unlike his authoritarian predecessor.³²⁴ Moreover, concerns with the deteriorating security situation in the country and the pressing need for economic reforms at times diverted public attention away from demands for governance reform and decentralization. Finally, central bureaucrats' resistance to fiscal and administrative decentralization threatened to derail the process, particularly after the reformist government elected in the immediate wake of the transition lost in the next election to an opposition party whose cadres included former Ben Ali-era officials. More generally, evidence from across the developing world suggests that unless they are constitutionally entrenched, devolutionary reforms are easily reversed by a change of circumstance, such as an adverse electoral outcome or shifting public priorities.³²⁵ Especially because the implementation of reforms is likely to be slow—since the requirements of moving from a highly centralized to a decentralized system include capacity-building at the local level—the need to entrench decentralizing measures is more acute.

Yet the Tunisian case also suggests that while constitutionalization may be necessary for decentralization to take hold, such entrenchment strategies may not be sufficient to maintain the momentum of reforms. This is because constitutional provisions invariably require a further legislative framework to establish or fortify local governments and implement decentralization in practice. In Tunisia, the constitution drafters expected to be involved in, or at least influence over, developing the legislative framework for local government, but an election that brought former regime officials to power blocked them from doing so.³²⁶ The result was weak legislation that slowed the decentralizing dynamic set in motion by the constitution. As the momentum of reforms slowed, the inability of the government to address economic grievances underlying the original uprising—and the deepening of the economic crisis due to the COVID-19 pandemic—resulted in a suspension of many of the democratic provisions of the constitution as the elected president of Tunisia declared rule by decree, eventually replacing the constitution altogether with one far less democratic and less likely to advance political decentralization.³²⁷

There is also a risk that constitutionalizing commitments about controversial features of decentralizing initiatives will raise the political stakes

324. See, e.g., Carlotta Gall, *End of Presidential Race Leaves Tunisia Divided*, N.Y. TIMES (Dec. 19, 2014), <https://www.nytimes.com/2014/12/20/world/africa/end-of-presidential-race-leaves-tunisia-divided.html> (citing supporters of former regime official Beji Caid Essebsi as a popular rival to Marzouki because he promises the “stability and security” of the former regime).

325. BOHLKEN, *supra* note 55, at 15–18.

326. See *supra* Part III.A.

327. See *supra* note 176 and accompanying text.

of disagreements about them, delaying or even derailing the reform process. The Yemeni example is instructive in this regard. Commitment to federalism enjoyed consensus among a majority of the wide spectrum of constituencies represented in the national dialogue process negotiating the terms of Yemen's transition. Yet once a smaller, more exclusive, and less transparent constitution drafting committee proposed internal territorial boundaries for a federal union of six regions, key groups rejected the plan.³²⁸ Members of the NDC viewed the proposed six regions as a "coup" against their recommendations in large part because the boundaries of the regions failed to address territorial demands and grievances in the manner agreed on in the preceding dialogue.³²⁹ It is of course uncertain whether addressing internal territorial boundaries through sub-constitutional means, as has been done in other federal states,³³⁰ would have mitigated the controversy, but Yemen's experience does highlight one potential down-side of constitutional entrenchment.

The third shared attribute of the Tunisian and Yemeni cases is the extended duration of the constitutional negotiations. In both cases, a multi-year negotiating process was necessary to enable an inclusive and representative body to forge compromise through robust negotiations. Yet slow progress may have contributed to public impatience with the process and created opportunities for those seeking to derail the process to raise doubts about the reform agenda. Moreover, in both cases the implementation of decentralizing measures would also by necessity be incremental due to the need to develop capacities after decades of highly centralized rule in the Tunisian context, and a long period of institutional disinvestment and atrophy at the local level in Yemen. In the Yemeni case, while the slow negotiating process ultimately yielded consensus on federalism, that consensus was undermined by the attempt to impose a new map in a subsequent process dominated by the president.³³¹ But the rejection of the map proposed by the CDC should not be confused for repudiation of federalism. Given the popular consensus in favor of decentralized government in Yemen through 2015 and the de facto experience of decentralized rule in the midst of conflict ever since, there is every reason to expect a post-conflict decentralized institutional structure in the country.

328. See *supra* Part III.C.

329. See Mohammed Mukhashaf, *Yemen Federation Deal Gives Autonomy, Not Independence, to South*, REUTERS (Feb. 10, 2014, 8:33 AM PST), <https://www.reuters.com/article/2014/02/10/us-yemen-politics-idUSBREA1916S20140210>; *Yemen to Become Six-Region Federation*, AL JAZEERA (Feb. 10, 2014), <https://www.aljazeera.com/news/2014/2/10/yemen-to-become-six-region-federation> (citing NDC participant and former South Yemen interior minister as describing the six-region plan as a "coup against what had been agreed at the [NDC] dialogue").

330. See BULMER, *supra* note 41, at 26 (describing sub-constitutional approaches to defining internal boundaries in India and Spain).

331. Tobias Thiel, *Yemen's Imposed Federal Boundaries*, MIDDLE EAST RSCH. & INFO. PROJECT (July 20, 2015), <https://merip.org/2015/07/yemens-imposed-federal-boundaries>.

In Tunisia, multi-year constitution drafting negotiations were followed by adopting a legislative framework for decentralization that foresaw a twenty-seven-year, incremental-phased plan to transfer authorities to local officials.³³² Moreover, the legislative framework did not provide for the transfer of fiscal control to local authorities, running the risk that local governments would be saddled with an unfunded mandate to deliver services. Both the duration of the process and the failure to frontload fiscal decentralization raised questions about the viability of the Tunisian process, even in the absence of President Saied's extraordinary concentration of powers and eventual abrogation of the constitution. The existing scholarship is divided on the appropriate pace for decentralizing reforms, though even supporters of incrementalism might consider a process that takes more than a quarter century to be an outlier. Implementing decentralization too rapidly risks undermining confidence in local authorities, reducing the quality of services, and producing opportunities for corruption with local officials falling back on patronage to offset poor service delivery.³³³ But implementing too slowly may entail other costs.

Considerations that favor more rapid implementation focus on the risk that spoilers will have more opportunities to derail decentralization over time while enthusiasm and support for reforms will wane if a slow process yields few immediate benefits. Proponents of a "big bang" approach to large-scale and rapid decentralization argue that this is the sole means of ensuring that the window of opportunity produced by a political breakthrough is not missed.³³⁴ Because the vested interests of central bureaucrats and appointed local officials will predictably produce coalitions seeking to protect privileges by opposing decentralization, incremental implementation is likely to face increasingly effective resistance.³³⁵

The *longue durée* approach to decentralization adopted in Tunisia does reflect central bureaucrats' resistance to reforms. Still, it wasn't incrementalism that led to constitutional abrogation and reversal—indeed, the one dimension of Tunisia's post-transition constitutional system President Saied initially left untouched was the decentralization provisions.³³⁶ On balance, the Tunisian case lends greater support to those who favor incremental implementation. Four years passed between the adoption of the constitutional commitment to decentralization and the convening of local elections. While this may have been

332. Kherigi, *supra* note 152, at 162.

333. Paul Smoke, *Rethinking Decentralization: Assessing Challenges to Popular Public Sector Reform*, 35 *PUB. ADMIN. & DEV.* 97, 104–05 (2015).

334. See, e.g., Motohiro Sato, *Intergovernmental Transfers, Governance Structure and Fiscal Decentralization*, 53 *JAPANESE ECON. REV.* 55 (2002).

335. Dani Rodrik, *Understanding Economic Policy Reform*, 34 *J. ECON. LIT.* 9, 31–39 (1996) (noting that "most economists are on the side of speed, stealth and consequently reform from above" to incremental and participatory reform processes).

336. See FEDTKE, *supra* note 163, at 6.

a significant lag, the intervening period witnessed several important reforms: the Ministry of the Interior was removed from oversight over local government; municipal delegations previously appointed by the central government were dissolved; new electoral boundaries were delineated, increasing the number of municipalities to ensure full territorial coverage; and a new law on municipal elections was passed.³³⁷ Expansion of territorial coverage meant that the poorest areas in the country were allocated representation and new resources for training and capacity-building programs in the run-up to the elections. In light of regional cleavages that were the legacy of authoritarian rule, taking the time to make these investments was a crucial first step, even if the later suspension of the process aborted the experiment before its performance could be assessed.

The highly centralized character of the Ben Ali regime justified this incrementalism. Taking time to develop the infrastructure to convene local elections and engage in the knowledge- and capacity-building necessary to transfer authority to local government without adversely impacting government services may be unavoidable after decades of centralized authoritarian rule. Moreover, without a public education campaign to inform Tunisian constituencies about the identity and performance of local officials, the ability of local elections to reflect local preferences and capture the benefits of decentralization would be vastly diminished.³³⁸ While the moderate to slow pace of decentralization in Tunisia may have been a source of public frustration in the interior of the country, the investments in establishing an appropriate institutional framework for sustained decentralization may yet pay long-term dividends, if political decentralization is ever resumed after President Saïed's seizure of power.³³⁹

337. See Sherif A. Elgebeily, *Progress and Pitfalls in Constitutional Reform: Decentralisation in the Wake of the Arab Spring in Egypt & Tunisia*, in *DECENTRALISATION AND CONSTITUTIONALISM IN AFRICA* 417, 418–19 (Charles M. Fombad & Nico Steytler eds., Oxford 2019).

338. David Schleicher has made a related point in the U.S. context, arguing that when voters know little about the identity or performance of local or state officials, state and local elections are unlikely to serve the basic purposes of federalism such as adequately reflecting local preferences. David Schleicher, *Federalism and State Democracy*, 95 *TEX. L. REV.* 763, 802 (2017). The importance of the *quality* of state and local elections in delivering the benefits of decentralization reinforces the need for an incremental, capacity-building approach in the context of simultaneous democratizing and decentralizing transitions in a previously authoritarian context.

339. The contrasting case of Indonesia is instructive. There, the rapid deployment of decentralizing reforms was, for the most part, undemocratic, with the result that “local elites have largely captured local governments, the quality of government services has fallen and disparities among localities have increased.” Oxhorn, *supra* note 51, at 25. More generally, see Syarif Hidayat & Hans Antlöv, *Decentralization and Regional Autonomy in Indonesia*, in *DECENTRALIZATION, DEMOCRATIC GOVERNANCE AND CIVIL SOCIETY IN COMPARATIVE PERSPECTIVE: AFRICA, ASIA AND LATIN AMERICA* 266 (Philip Oxhorn, Joseph Tulchin & Andrew Selee eds., 1994). President Saïed has announced that Tunisia will convene a constitutional referendum followed by new elections in 2022. *Tunisia's President Calls Constitutional Referendum Followed by Elections in 2022*, *GUARDIAN* (Dec. 14, 2021, 1:20 PM), <https://www.theguardian.com/world/2021/dec/14/tunisia-president-calls-constitutional-referendum-followed-by-elections-in-2022>.

In the end, the Tunisian case is a reminder that decentralization is a process, not an event, and the success of decentralizing reforms can only be assessed over a longer time frame than has elapsed since the uprisings of the last decade.³⁴⁰ There is reason, moreover, to be skeptical that the alternative to incremental implementation would succeed in the MENA. First, the benefits of incremental implementation of decentralizing reforms may outweigh the risks in a region where local capacity-building is urgently needed after decades of centralized authoritarian rule. Second, advocates for decentralization must shield decentralizing commitments from easy reversal should a change of circumstance trigger recentralizing efforts. Tunisian national elections brought into power former regime officials opposed to decentralization, and the Hadi government in Yemen sought to capture the transitional process by imposing a top-down map of federal regions. In the Tunisian case, the prior constitutional entrenchment of decentralization limited the Essebsi government's ability to block reforms, though this did not prevent the adoption of a weak legislative framework or slow the pace of reforms. Nor, of course, could any entrenchment strategy prevent the wholesale abrogation of the constitution. In Yemen, the fact that the national dialogue gave way to a constitution-drafting process dominated by President Hadi undermined the transition and prevented the entrenchment of decentralization in a constitutional framework able to command consensus.

One final lesson from these cases is that external actors may play a significant role in supporting or frustrating a bottom-up process in which decentralization contributes to the goal of a democratic transition. In Tunisia, international donors kept the initial reform process on track even after the electoral victory of former regime officials.³⁴¹ In a sense, these donors acted as external guarantors of a domestically-driven process of decentralization. The virtuous cycle produced by the combination of bottom-up decentralizing demands and external support for the first eight years in Tunisia starkly contrasts to the vicious cycle unfolding in Yemen. There external actors backed President Hadi's bid to establish centralized, top-down control over the constitution drafting process. The result derailed the transition and witnessed a military intervention that produced full-blown armed conflict.³⁴²

340. See Smoke, *supra* note 333, at 106 (highlighting challenge of generalizing observations based on data from narrow timeframe).

341. As one example, the European Commission supported decentralization in Tunisia by committing €43 million for decentralization and regional development and, more importantly, by maintaining issue linkage between decentralizing reforms and continued development assistance more broadly. See FRANCES G. BURWELL, AMY HAWTHORNE, KARIM MEZRAN & ELISSA MILLER, ATLANTIC COUNCIL, A TRANSATLANTIC STRATEGY FOR A DEMOCRATIC TUNISIA 12 n.44 (2016), https://www.atlanticcouncil.org/wp-content/uploads/2016/06/A_Transatlantic_Strategy_for_a_Democratic_Tunisia_web_0607.pdf.

342. For an assessment of war crimes committed by the military coalition intervening in Yemen and the possible liability that the United States might incur for its role in supporting that coalition, see generally Oona A. Hathaway, Aaron Haviland, Srinath Reddy Kethireddy & Alyssa Yamamoto, *Yemen: Is the U.S. Breaking the Law?*, 10 HARV. NAT'L SEC. J. 1 (2019).

D. DEFENSIVE AUTHORITARIAN DECENTRALIZATION

Decentralization has long been considered a vehicle for enhancing and preserving democracy.³⁴³ A growing body of research suggests, however, that certain forms of decentralization are not only compatible with authoritarianism; they can enhance the resilience of authoritarian regimes. For example, Landry's study of de facto decentralization in China demonstrates that even as earlier regimes in Beijing presided over far-reaching programs of administrative and fiscal decentralization, they succeeded in preserving the political authority of the center at the local level.³⁴⁴ This was achieved in large part by maintaining Communist Party control over the appointment and promotion of cadres.³⁴⁵ Similarly, Riedl and Dickovick argue that ruling parties at the national level may have strong incentives to decentralize in order to consolidate their power if they can dominate local elections through effective party patronage networks and thereby strengthen their subnational foothold.³⁴⁶ In their comparative study of political decentralization initiatives in Africa, Aalen and Muriass document a range of strategies employed by autocratic regimes to prevent subnational governments from becoming sites of meaningful political participation and contestation.³⁴⁷

The experiences in the MENA region confirm many of these worries about the weak links between decentralizing measures and democratization. In some contexts, regimes have publicized decentralizing reforms—in some cases, explicitly framing them as democratizing measures³⁴⁸—even as they took measures to maintain or strengthen authoritarian rule. Authoritarian regimes in the region have at times proven adept at instrumentalizing decentralizing reforms to blunt any challenge to their hold on power,³⁴⁹ imposing top-down strategies to enhance central government authority in the periphery.³⁵⁰ Three kinds of approaches predominate. First, even in states that have established elected subnational governments, the capacity to promote accountability and

343. James Madison famously argued that the federal system in the United States would serve as a safeguard against tyranny, see THE FEDERALIST NO. 51 (James Madison), and Alexis de Tocqueville credited participation in local government with fostering among citizens a political culture of democratic governance. ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 5 (Harvey C. Mansfield trans., Univ. of Chi. Press 2002). These claims remain central to advocacy for political decentralization as a check on the central government and a means of practicing democratic citizenships. See, e.g., U.S. AID, *supra* note 315, at 5.

344. See generally LANDRY, *supra* note 33.

345. *Id.*

346. See generally Rachel Beatty Riedl & J. Tyler Dickovick, *Party Systems and Decentralization in Africa*, 49 STUD. COMPAR. INT'L DEV. 321 (2014).

347. LOVISE AALEN & RAGNHILD MURIASS, MANIPULATING POLITICAL DECENTRALISATION: AFRICA'S INCLUSIVE AUTOCRATS 47–51 (Routledge 2018).

348. For a discussion of this strategy in the cases of Jordan and Morocco, see Clark, *supra* note 30.

349. See generally HEYDEMANN, *supra* note 140.

350. Erik Vollman, Miriam Bohn, Roland Sturm & Thomas Demmelhuber, *Decentralisation as Authoritarian Upgrading? Evidence From Jordan and Morocco*, 27 J. N. AFR. STUD. 362, 363 (2022).

shape policy is limited due to gaps in the authority delegated to them. Thus, in Iran, elected city councils have been granted only a marginal role in development planning, which is dominated by appointed provincial-level agencies that possess authority over a substantial proportion of municipal budgets.³⁵¹

Second, in some regimes, central governments have devolved responsibilities to local and regional governments, not to empower them, but to deflect calls for central government reform. In Iran, one source of support for decentralizing reforms may have been the regime's desire to produce an intermediate range of elected political actors to absorb responsibility for poor service delivery, diverting public demands for accountability away from the central state.³⁵² Similarly, evidence suggests that recent decentralizing reforms in Iraq were undertaken to divert responsibility for problems with service delivery to local authorities in the areas of education, healthcare, and public infrastructure, while meeting the demands of international donors.³⁵³

Lastly, regimes have shown a preference for deconcentration in lieu of forms of decentralization that give subnational governments robust roles. Where the central state wields authority over key policy choices through deconcentrated local offices, local elected actors tend to be excluded. In 2008, the World Bank observed that in the majority of MENA states, it had examined "powerful and fairly independent networks of deconcentrated functional units—line ministry agencies or state-owned public service enterprises . . . operate in parallel to local governments" and "in some instances tend to marginalize the roles and responsibilities of local governments as service providers."³⁵⁴ In Syria, the government rejected a European Union recommendation that its 2012 decentralization law provides for the election of provincial governors and has

351. Hannah Somerville, *Iran's Local Government Stitch-Up, and How to Resolve It*, IRANWIRE (Apr. 9, 2021), <https://iranwire.com/en/features/69327>. A similar strategy is evident in the Moroccan and Jordanian cases. In Jordan, elected councils at the governorate level lack the authority to raise revenue or to initiate legislation, rendering their role essentially advisory. In Morocco, the monarchy's "advanced regionalization" initiative provides for the election of regional councils without adequate resources and with decisions by elected bodies subject to the supervision of appointed governors. On both the Moroccan and Jordanian examples, see Clark, *supra* note 30.

352. Tajbakhsh notes that critics of the decentralizing reforms in Iran worried that the elected councils would be "scapegoated for economic and social problems beyond their control . . . and will become a target of popular discontent, deflecting attention from the real sources of power and the underlying causes of these problems." Tajbakhsh, *supra* note 184, at 394–95.

353. In implementing decentralizing reforms in 2015, the Iraqi government "realized two things: first that with such a rapidly growing population, it was no longer possible to administer services like education, healthcare and public works under a highly centralized form of governance; and second, that it could potentially divert public disquiet towards local officials. In other words, it was politically expedient for the central government to decentralize blame." Ali Al-Mawlawi, *supra* note 74.

354. WORLD BANK, *supra* note 29, at 6. A 2020 USAID study reached a similar conclusion. LYNN CARTER, RHYS PAYNE & ROBERT SPRINGBORG, U.S. AID, *COMPARATIVE ANALYSIS OF MENA SUBNATIONAL GOVERNANCE: GOVERNANCE INTEGRATION FOR STABILIZATION AND RESILIENCE IN THE MIDDLE EAST AND NORTH AFRICA (GISR MENA)* (2000).

since vested additional powers in presidentially-appointed governors.³⁵⁵ In Iran, the central government continues to assign fiscal and administrative responsibility for local development to centrally appointed and funded provincial planning agencies.

This preference for deconcentration is not unprecedented. In the first wave of decentralizing reforms implemented across the world during the 1970s and 1980s, deconcentration was the most common choice among developing countries.³⁵⁶ But it differs significantly from other forms of decentralization. Deconcentration is not a step toward democratization. By bringing the central government to local contexts, it may help make the delivery of services more efficient and responsive to local needs. But it does not bolster participation by or accountability to citizens in government decision-making. In fact, deconcentration can serve to extend the reach of the central government into citizens' lives. Indeed, where symbolic political decentralization is coupled with far-reaching deconcentration, the effect is to expand central government power—a potent defensive maneuver through which the regimes of the region consolidate control by exploiting rather than resisting reforms. What is interesting about this point is that some decentralizing reforms may not only be weakly correlated to democratization; they may under some circumstances be *inversely* related to both democratization and the empowerment of local actors.³⁵⁷

This analysis is not meant to suggest that the election of local government bodies should be supported only if they are allocated robust powers from the start. While elections for local institutions with limited powers do not create a clear opening for deeper democratization in the experience of the MENA region, they do not rule out such a possibility. The evidence suggests that there are tendencies that cut in both directions. On the one hand, even a modest degree of deconcentration may be a catalyst for demands for greater levels of autonomy by local actors. One impetus for such demands in an authoritarian context could be the “frustrated expectations that the decentralization process itself generates” when it falsely raises expectations for greater local control.³⁵⁸ On the other hand, decentralization can serve as the means that an authoritarian regime or ruling party uses to remain in power when confronted with demands for reform. Both of these tendencies may be evident in any single case, as when a reluctant central

355. Araabi & Hilal, *supra* note 258, at 249–50.

356. Cheema & Rondinelli, *supra* note 61, at 14.

357. Even in a democratic and long-established federal system like the United States, Daryl Levinson has pointed out that greater decentralization does not necessarily serve to empower state or local government. Levinson argues that the individual incentives of state officials are not necessarily aligned with maximizing the power of state governments or preventing federal encroachment. Daryl J. Levinson, *Empire-Building Government in Constitutional Law*, 118 HARV. L. REV. 915, 940–41 (2005). An extension of this point in the MENA context is that even elected local actors may be affirmatively incentivized to advance the interests and control of the central state for a variety of reasons, such as patronage networks or individual career ambitions.

358. Oxhorn, *supra* note 51, at 5.

state embraces decentralizing reforms to signal ambitions for improved governance to international or local audiences without any commitment to meaningful reform. Such a decentralizing initiative might inadvertently generate greater demand for local control on the ground despite the instrumental logic of the regime.³⁵⁹ Landry argues in this vein that “[d]ecentralization corrodes authoritarianism by creating loci of power that can gradually develop into a source of political opposition” and that it may stimulate economic development which, in turn, also tends to undermine authoritarian rule.³⁶⁰

Moreover, deconcentration of central government functions may meaningfully improve the quality of government services even in an authoritarian context. The evidence in Iran suggests that, where mechanisms of upward accountability are put in place, deconcentration can yield significant improvements in public service delivery.³⁶¹ More generally, a recent study examining a range of cases from different regions suggests that “even limited spaces for autonomy associated with deconcentration can lead to demands for greater levels of autonomy as actors emerge within society to take advantage of those spaces.”³⁶²

Ultimately, however, the experience of the MENA demonstrates that deconcentration combined with weak political decentralization is a dangerous combination that tends to strengthen authoritarianism behind a fig leaf of reform. Where the national executive controls the timing, pace, and content of decentralizing reforms, the likeliest trajectory results in little redistribution of power to subnational authorities. Elected institutions with no authorities where local officials have little meaningful power or budgetary control produce relationships of dependency, turning local elected officials into both agents of the national executive and also scapegoats. By exemplifying these risks, the MENA provides useful lessons on how to expose strategies that instrumentalize decentralization for regime objectives and disrupt patterns of international reform assistance that, in practice, consolidate authoritarian governance.

359. Studies of Mexican defensive decentralization suggests a dynamic along these lines. *See, e.g.*, Yemile Mizrahi, *Twenty Years of Decentralization in Mexico: A Top-Down Process*, in *DECENTRALIZATION, DEMOCRATIC GOVERNANCE AND CIVIL SOCIETY IN COMPARATIVE PERSPECTIVE: AFRICA, ASIA AND LATIN AMERICA* 33, 33–58 (Philip Oxhorn, Joseph Tulchin & Andrew Selee eds., 1994); Leticia Santin Del Río, *Decentralization and Civil Society in Mexico*, in *DECENTRALIZATION, DEMOCRATIC GOVERNANCE AND CIVIL SOCIETY IN COMPARATIVE PERSPECTIVE: AFRICA, ASIA AND LATIN AMERICA* 59, 59–80 (Philip Oxhorn, Joseph Tulchin & Andrew Selee eds., 1994).

360. LANDRY, *supra* note 33, at 10.

361. A similar observation of improved service delivery through authoritarian, top-down decentralization in the region has been reported in the Moroccan case. *See* HANNA BRIXI, ELLEN LUST & MICHAEL WOOLCOCK, *WORLD BANK GRP., TRUST, VOICE, AND INCENTIVES: LEARNING FROM LOCAL SUCCESS STORIES IN DELIVERY IN MENA* 93–95 (2015).

362. Oxhorn, *supra* note 51, at 5.

E. DECENTRALIZED TERRITORIAL ARRANGEMENTS TO ADDRESS IDENTITY CONFLICT

Federations are not a common feature of the political landscape in the MENA region. The region's only example is the United Arab Emirates, whose seven members joined together to establish a political union and federal constitutional order following independence in 1971,³⁶³ though halting steps have recently been taken toward the federalization of Sudan.³⁶⁴ Indeed, a history of unimplemented autonomy agreements cast a shadow over efforts to devise federal solutions in countries that would be obvious candidates, such as Iraq and Yemen. For example, in March 1970, Iraq's Ba'ath government issued a declaration in which it committed, among other things, to unify Kurdish-majority areas in northern Iraq into a single self-governing unit, to provide for substantial investment in the region, and to ensure protection of Kurdish cultural and associational rights.³⁶⁵ The implementation of key provisions was conditioned, however, on the taking of a new census, which the government failed to conduct.³⁶⁶ Although Iraq went considerably further toward accommodating Kurdish demands for self-determination than neighboring states, Baghdad's retreat from its earlier commitments contributed to the creation of a crisis of confidence between Kurds and Arabs in Iraq that persisted even after the federal constitution of 2005 was adopted.³⁶⁷ In Yemen, similarly, the central government in Sanaa pledged in 1994 to embark on a program of fiscal and administrative decentralization as a means of addressing the mounting grievances of southerners following unification. There, too, the central government failed to follow through with implementation, stirring southern demands for secession.³⁶⁸

Yet these experiences do not suggest that federalism, or decentralization more broadly, is unlikely to yield benefits for divided countries in the MENA region. In both Iraq and Yemen, for example, self-determination movements initially embraced decentralizing reforms as a compromise solution. What has impeded their success as a framework for holding states together has not so much been unwavering separatism as much as a lack of confidence in commitments arising from poor track records of implementation by central

363. On forming the United Arab Emirates federation, see Malcolm Peck, *Formation and Evolution of the Federation and its Institutions*, in UNITED ARAB EMIRATES: A NEW PERSPECTIVE 145, 145–60 (Ibrahim Al Abed & Peter Hellyer eds., 2001).

364. *Sudan Establishes Federal System of Government*, SUDAN TRIB. (Mar. 4, 2021), <https://sudantribune.com/article67397> (announcing issuance of constitutional decree establishing federal system in Sudan).

365. KERIM YILDIZ, *THE KURDS IN IRAQ: THE PAST, PRESENT AND FUTURE* 18–19 (Pluto Press 2004).

366. *Id.*

367. Saad Naji Jawad, *The Kurdish Question in Iraq: Historical Background and Future Settlement*, 1 CONTEMP. ARAB AFFS. 25, 31–32 (2008).

368. Paul Williams, Tiffany Sommadossi & Ayat Mujais, *A Legal Perspective on Yemen's Attempted Transition From a Unitary to a Federal System of Government*, 33 UTRECHT J. INT'L & EUR. L. 4, 10 (2017).

governments and their use of violence to coerce acquiescence to arrangements that they modified unilaterally.

Yemen's political transition from 2012 to 2014 provides a useful roadmap for what an inclusive and representative process for negotiating a federal arrangement in the region might look like. The central government's failure to abide by NDC recommendations was more a reflection of its negotiations with external sponsors in the GCC than a failure of the process. External hostility to the Houthi movement in particular may well explain the Hadi government's proposed six-region map leaving the Houthis both land-locked and resource-deprived. But the reality of military intervention and Hadi's defection from the political transition say little about the merits of the framework of recommendations produced by the NDC. On the contrary, the NDC's endorsement of a federal arrangement for Yemen and the forging of a consensus that included both the southern Hiraq movement and Houthis speaks to a bottom-up, inclusive negotiating process that produced a real political breakthrough.

The comparative literature on federalism over the last four decades has identified four basic drivers of federal arrangements. These include three purposes of federalism captured in Al Stepan's influential typology and a more recent fourth category addressing circumstances of conflict. Stepan identified three ideal types of federal systems: "coming together," in which pre-existing political units join together to enhance collective security; "holding together," in which a previously unitary state decentralizes to avoid secessionist fragmentation; and "putting together," in which pre-existing units are forced together by a central authoritarian actor.³⁶⁹ To this typology, a fourth category has been added by recent work on "post-conflict federalism," in which federal arrangements are designed to accommodate minority nationalisms to either prevent or resolve conflict.³⁷⁰ The core design features of post-conflict federalism focus on the drawing of internal boundaries to ensure that a national minority constitutes a majority in a region and that the allocation of jurisdiction between the different levels of government enable the minority to protect itself from being disadvantaged. In many ways, the NDC process in Yemen could be described as an exemplary post-conflict federation proposal in which the recommendations were designed to afford the southern Hiraq movement precisely such protections.

Yet today, in countries like Yemen and Syria, the objective of *avoiding* civil war by accommodating minority nationalisms is no longer available with civil wars already raging. Instead, a different kind of post-conflict federalism is required. Indeed, what both country case studies suggest is a variation on the typology that might best be described as "coming back together" in which a

369. The classic examples of each kind of federalism are the United States (coming together), Spain (holding together), and the USSR (put together). See generally STEPAN, *supra* note 88.

370. Choudhry & Hume, *supra* note 41, at 376.

previously unitary state has become de facto decentralized as a result of civil conflict. The question of post-conflict settlement places on the agenda what incentives might be provided to the subnational units that gained autonomy and self-administration during the conflict to agree to join a governance arrangement that would once again encompass the entire territory within existing national borders. The question posed in this circumstance is somewhat different than the one that arises in “holding together” federalism, where the central state remains in control of the territory as the terms for decentralizing are negotiated. In this case, subnational units will have gained significant bargaining power, as is the case of the Houthis and the Hirak in Yemen and the Kurds in Syria. From their strengthened bargaining position, these groups can make more extensive autonomy demands than would have been the case in either country prior to the uprisings.

The literature suggests that the two most stable decentralized territorial arrangements where there is a clash of nationalisms within a single territory are federacy—that is, asymmetric federalism—and ethno-territorial federalism.³⁷¹ Each of these solutions corresponds to aspects of the Syrian and Yemeni example. As discussed in Part III, the Syrian experience with de facto decentralization in opposition-held areas was effectively ended through top-down coercion by the central state, assisted militarily by Russian and Iranian forces. By contrast, Syrian Kurdish democratic autonomy in Rojava has been more resilient, and most recently, Syrian Kurdish leaders have entered into a tacit entente with the Syrian government following their loss of external U.S. support. Under these circumstances, an asymmetrical federal arrangement that accords special autonomy to the Syrian Kurdish region might serve as one component of an eventual post-conflict settlement in Syria. But, given the delegitimization of the Assad regime domestically and its continued reliance on coercion to control formerly opposition-held areas, another option would be an ethno-territorial arrangement in which decentralized autonomy was provided throughout the Syrian territory with only the Kurdish region defined in communal terms. In this way, formerly opposition-held areas would benefit from a measure of territorial autonomy and local self-administration, while the Kurdish region would retain its distinctive identity.

While such a settlement might seem remote at present, with the Assad regime doubling down on repression, the requirements of post-war reconstruction may well force the government’s hand. Just as the Iranian experience of post-war economic reconstruction necessitated decentralization, the Syrian state might find itself reluctantly embracing at least administrative decentralization to facilitate capacity-building, urban planning, and service delivery at a time when the central state’s institutions have all but collapsed. In this context, a post-conflict settlement that formalized decentralized

371. *See supra* Part II.

arrangements while preserving territorial integrity may become more imaginable.³⁷²

In Yemen, too, ethno-territorial federalism corresponds to elements of the post-NDC constitutional draft from 2014. While the six-region federal map was repudiated by the different constituencies represented on the NDC, the idea of a federal arrangement with clearly demarcated territorial boundaries—including ones that would afford the HIRAK movement an autonomous region—was envisaged in the NDC's recommendations. In light of the conflict and the significant territorial control and autonomy commanded by both the HIRAK and the Houthis, it is evident that a post-conflict settlement would result in a weaker central state and much more robust autonomy for the regions. An ethno-territorial federation in which each of the HIRAK and the Houthis were accorded boundary demarcations that afford them plurality control in their respective regions and one or more additional subnational units for the remaining territories could form the basis for preliminary negotiations on a post-conflict settlement. The reality of these groups' increased bargaining power relative to the atrophying central state would produce a different outcome than the one originally contemplated by the NDC, but the roadmap provided by that transition process may nonetheless prove influential.

In short, the conflicts in Syria and Yemen suggest that versions of decentralized territorial arrangements may represent the best-case scenario for a post-conflict settlement. By building on experiences with *de facto* decentralization during conflict while preserving nominal territorial integrity, these arrangements offer a path to accommodating demands for autonomy without the destabilizing and conflict-prolonging specter of secession. An intermediate position of highly decentralized territorial configurations may also emerge as the *de facto*, rather than *de jure*, outcome of conflict.³⁷³ The fact that in some cases, decentralized forms of rule can only be envisioned following armed conflict is a testament to the depth of the resistance by central states to territorial autonomy arrangements—only when their bargaining position is dramatically weakened by conflict and self-determination movements have demonstrated their capacity to impose *de facto* decentralization through armed struggle does a political settlement involving more robust federalism become imaginable.

372. Indeed, there are a range of proposals for decentralization in post-conflict Syria already being debated. See, e.g., Bassma Kodmani, *A Safe Path for Democratic Decentralization in Syria*, ARAB REFORM INITIATIVE (July 23, 2019), <https://www.arab-reform.net/publication/a-safe-path-for-democratic-decentralization-in-syria>; Araabi, *supra* note 265.

373. This has been the case in Somalia where *de facto* decentralization has been the governing framework within the borders of the erstwhile state for decades. Ken Menkhaus, *Governance Without Government in Somalia*, 31 INT'L SEC. 74, 74 (2007) (noting that Somalia is at the forefront of the "rise of informal systems of adaptation, security, and governance in response to the prolonged absence of a central government").

The very hostility to territorial pluralism in the post-colonial MENA has also contributed more recently to innovative thinking about the structure of the state on the part of minority communities. For one, the Kurdish self-determination movement has reconceptualized its ambitions in a way that minimizes the challenge posed to the territorial order and tries to manage the opportunistic bolstering of territorial anxieties by the central government. Democratic confederalism is essentially a model of cosmopolitan federalism that simultaneously accommodates multiple minority nationalisms while pursuing thorough-going decentralized governance and local democracy. Moreover, the Kurdish project solves the classic difficulty of ethno-territorial arrangements, which is the concern that other ethnic groups risk becoming internal minorities of a new ethnically defined regional subunit. By affording decentralized governance down and embracing pluralism within each of the autonomous administrations, the Kurds have improbably modeled fully inclusive governance even as they organized self-protection units to defend their territory from ISIS and the predatory central states of Syria and Turkey. Of course, this points to a different difficulty. When much of the innovative and creative thinking for overcoming widespread aversion to decentralization lies with minority movements facing a powerful and defensive ethno-majoritarian central state, the near term potential of decentralization to address long-standing communal claims may remain limited. That said, the Syrian Kurds have demonstrated by dint both ideological cohesion and military mobilization that they are capable of establishing and defending effective, inclusive, and decentralized governance arrangements in their territory. Rojava remains a compelling model for imagining a plural territorial arrangement to manage diversity in Syria.

This suggests that another important lesson from the cases has heretofore largely been missed. If the promise of governance-based decentralization reforms has been over-estimated, the potential of territorially plural arrangements in the region has been all but overlooked. Because federalism has been seen as an “f-word”³⁷⁴ in the region, reforms involving meaningful devolution of power on a territorial basis have often been deemed non-starters. Perhaps the most important insight from the cases is that efforts in the region to devise arrangements for managing diversity using precisely such territorially

374. Federalism has been described as the “f-word” of the Middle East on numerous occasions. *See, e.g.*, Chibli Mallat, *Federalist Dreams for the Middle East*, LAWFARE (Aug. 16, 2018, 1:59 PM), <https://www.lawfaremedia.org/article/federalist-dreams-middle-east>. A conference at Stanford entitled “Federalism in the Middle East,” asked, in describing a panel on the promise of federalism in the region: “Can we say that the ‘f-word’ (as some have called it) is increasingly accepted in the Middle East?” Sujit Choudhry, *The Promise of Federalism for the Middle East*, Address at Stanford University Freeman Spogli Institute Conference (Feb. 16, 2017).

plural arrangements may hold far greater benefits than previously understood.³⁷⁵ Placing these forms of territorial decentralization in the context of earlier indigenous legacies, rather than the bruising memory of the colonial encounter, is one way current experiences in places like Yemen and Syria may eventually overcome resistance to taking federal arrangements seriously. Both cases reflect innovation by non-state groups exploring institutional design solutions for shared governance within existing territorial boundaries that suggest a way out of the brutal impasse in these countries. In Yemen, negotiations during the failed transition produced the blueprint for a highly devolved federal system that may have become more plausible as bargaining leverage has shifted away from the central state. While the Syrian state has shown little appetite for embracing the political institutions established by the Kurdish community in Rojava, the possibility of managing diversity through territorially plural arrangements now shapes the political imagination of (non-state) actors on the ground in ways that may be highly generative.³⁷⁶

If the Syrian Kurds' experiment provides a framework for de facto and even, in the longer run, de jure asymmetric federalism, then the Kurdish effort to pursue bottom-up territorial pluralism might yield an extraordinary Middle Eastern model for preserving territorial integrity while accommodating internal self-determination. By modeling how fully decentralized democratic governance can be institutionalized, the Kurds offer an example of territorial pluralism that resolves the problem of internal minorities.³⁷⁷ Establishing that

375. The risk that territorially plural arrangements might themselves be captured or pretextually deployed to serve authoritarian ends remains ever-present, however. One example from the region is the case of Morocco, where the monarchy advanced what it describes as a form of territorial pluralism—"advanced regionalization"—as a strategy to quash the independence demands of Western Sahara while, in effect, imposing on the Sahrawis a top-down assimilationist project. The limited scope of the powers devolved by the central government under advanced regionalization makes it more analogous to the limited administrative decentralization adopted by the Syrian government than the kind of federal compact likely to be demanded by groups like the Syrian Kurds and Southern Yemenis. For more on the case of Western Sahara, see Omar Yousef Shehabi, '*Dans ses Frontières Authentiques?*' *Morocco's Advanced Regionalization and the Question of Western Sahara*, in *FEDERALISM AND DECENTRALIZATION IN THE CONTEMPORARY MIDDLE EAST AND NORTH AFRICA* 268, 268–92 (Aslı Ü. Bâli & Omar M. Dajani eds., 2023). Acknowledging the worry that territorial pluralism may be devised in ways that suppress rather than empower minority communities requires careful attention to the design of territorially plural arrangements rather than cautioning against their use altogether, as has often been the case in the MENA region.

376. As discussed in Part III.B.2, the Kurdish community faces challenges well beyond those posed by the Syrian state as they are located across the territory of four states, all exhibiting varying degrees of hostility to Kurdish autonomy. But this is the very context that has led the Kurds to develop a political model of confederalism designed to ease the territorial integrity concerns of these states even as they envision a transnational model of partial self-governance for their community. If they are able to sustain the pilot project for this vision in Syria, then they may be able to slowly build the case for their approach concerning the other three states as well. *See supra* Part III.B.2.

377. The highly disaggregated structure of the democratic confederal model established in Rojava echoes some of the insights about second-order diversity in the U.S. federal context. Heather Gerken, *Second-Order Diversity*, 118 *HARV. L. REV.* 1099, 1139 (2005). This is because the political institutions established in Rojava afford every communal group an opportunity to exercise both control—within their own self-governing unit—

plural territorial arrangements may offer a path not to territorial fragmentation but rather to inclusive governance within existing borders indicates a real pathway for undoing a century or more of nation-state damage. In a similar vein, the Yemeni case provides a roadmap for a representative and inclusive deliberative process producing autonomy arrangements that reflect the balance of power among negotiating constituencies. Here, too, the NDC provides a salutary rejection of the legacies of imperial divide-and-rule governance in the region. That the Yemeni experiment was undermined by central state actors backed by external forces explains why it is not well-studied in the decentralization literature. Still, those facts should not detract from the significance of what was achieved in the dialogue process. Both cases, Yemeni and Kurdish, reflect the degree to which the traditional risks associated with decentralization and federalism in the region have been inverted—it is the failure to pursue meaningful decentralization risks prolonging conflict and producing territorial fragmentation. These cases also suggest an important new research agenda for those interested in institutional design strategies for addressing identity-based conflicts in the region, one that focuses on proposals developed by non-state groups and considers how models of federal (or confederal) arrangements might help accommodate rather than suppress demands for internal self-determination.

CONCLUSION

Taken together, the cases examined in this Article reflect the distinctive experiences with and lessons from decentralization across the Middle East. Whether out of a genuine desire to reform or as a means of deferring meaningful devolution of power, states and non-state groups have experimented with various decentralization strategies. In some instances, this has generated innovative thinking about designing decentralizing reforms to meet the self-determining aspirations of minority communities within existing territorial boundaries. The region also provides lessons in the role of decentralization both in democratizing transitions and authoritarian governance strategies. Each of these approaches to implement or deflect decentralizing reforms is worth exploring in further comparative analysis. Additional work can help us better understand the potential of decentralization to address the profound dysfunctions of post-colonial, centralized, and ethno-majoritarian rule. The urgency of examining the potential of decentralization is underscored by the catastrophic consequences of top-down centralized rule explored in these pages, as vividly illustrated by the hamstrung humanitarian relief efforts and rising death toll following the earthquakes in Syria and Turkey.

and influence through participation in the broader confederal structure. *Id.* The result allows for overlapping segregative and integrative strategies for managing pluralism that provides a novel solution to the question of internal minorities within decentralized subnational territories.

Research on decentralization in the MENA also offers connections to the growing scholarly interest, highlighted in post-colonial theory, in identifying alternatives to the nation-state itself.³⁷⁸ In his latest monograph, Mahmood Mamdani develops an argument about the intertwined logic of colonial statecraft and nation-building.³⁷⁹ For Mamdani, the nation-state introduced into the post-colonial world a regime of permanent majorities and minorities.³⁸⁰ As post-colonial state-builders struggled to consolidate their power, on his telling, their efforts to produce nations and nationalism resulted in an era of blood and terror, ethnic cleansing, and civil wars.³⁸¹ As this Article has argued, the Middle East exemplifies the violence of post-colonial modernity. In their search for alternatives to the nation-state, some post-colonial theorists have returned to mid-century debates on anticolonial federalism in Africa and India.³⁸² The extraordinary experiments in the MENA region, experiments from below and forged in nearly impossible circumstances, offer a contemporary counterpoint to those earlier proposals. The Syrian Kurds, in many ways the prototypical permanent minority, have pursued creative strategies that remind them the nation-state may be hegemonic, but it is also contingent.

An analysis of these real-world attempts to institute decentralized polities has the potential to enrich and even transform debates about the post-colonial state and decentralization at large. At their most imaginative, these are real utopian experiments of thinking beyond the nation-state. But even the less ambitious efforts teach a variety of analytic and normative lessons about the broad dilemmas of decentralization. What the MENA experiences counsel is that some measure of decentralization is the unavoidable future for polities grappling with the dysfunctions of top-down, centralized ethno-majoritarian rule. And for this reason, analyzing the full range of experiences with decentralization in the region—from incremental reforms to top-down defensive appropriation to emancipatory endeavors from below—reveals the real constraints, challenges, and possibilities of finally decoupling nation from state.

378. Adom Getachew & Karuna Mantena, *Anticolonialism and the Decolonization of Political Theory*, in *CRITICAL TIMES: INTERVENTIONS IN GLOBAL POLITICAL THEORY* 359, 373 (2021).

379. MAHMOOD MAMDANI, *NEITHER SETTLER NOR NATIVE* 3 (Harv. Univ. Press 2020).

380. *Id.*

381. *Id.* Mamdani argues that the nation-state as such has these effects, whether in the western, colonial, or post-colonial context.

382. For an overview of this literature, see generally Merve Fejzula, *The Cosmopolitan Historiography of Twentieth-Century Federalism*, 64 *HIST. J.* 477 (2020); and Samuel Moyn, *Fantasies of Federalism*, *DISSENT* (Winter 2015), <https://www.dissentmagazine.org/article/fantasies-of-federalism>.
