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BOOK REVIEW

Law and revolution: legitimacy and constitutionalism after the Arab Spring, by Nimer Sultany, Oxford University Press, New York, 2017, 408 pp., \$65 (hardback), ISBN: 978-0-19-876889-0

Law and Revolution: legitimacy and constitutionalism after the Arab Spring, part of the Oxford Constitutional Theory series, is a significant contribution to literature on law and legality in times of mass revolt and political upheaval. Although the empirical focus is primarily on Egypt and Tunisia, Nimer Sultany draws on a range of examples—including the French revolution and post-Soviet transformations in Eastern and Central Europe as well as Libya and other Arab countries—to develop his comparative analysis and to advance a larger theoretical intervention of two sorts: He situates Arab legal and constitutional ideas and experiences within broader debates about the role of law and he expands the theoretical toolkit for analysing revolutions.

This book was written more than six years after the revolts that began in Tunisia in late 2010 and Egypt in early 2011 and then spread to other countries in the region. During the Arab Spring and over the years since, as Sultany documents using an array of primary sources, the substance of Egyptian and Tunisian revolutionary demands and the political changes that ensued in both countries were heavily influenced by legal ideas, norms and processes. His point of departure and the driving concern of the book is the contention that the Arab revolts generated not merely a series of political crises but also conceptual crises. He probes these conceptual crises to illustrate the limits or inadequacies of legal theories as well as to explain why and how the workings of law on the ground, particularly through the judiciary, undermined the bold and aspirational goals of the revolutions and enabled counter-revolutionary outcomes.

Revolution, legality and constitutionalism each relate to legitimacy, but in contradictory ways vis-à-vis their associations with norms and rubrics of continuity and rupture. Sultany uses empirical events and processes to highlight that law operates both as a juridical field that aspires to semi-autonomy and as an integral part of political and social struggles. For example, judges in Egypt and Tunisia ultimately maintained institutional continuity by relying on the prerevolutionary legal order and this served to undermine the aspirations that galvanized the revolutions. Similarly, the judges maintained legal continuity by their responses to demands for accountability for the old regimes, and their commitments to constitutional continuity impeded a political reconstitution of the state and state-society relations. These outcomes highlight the importance of judges who, guided by their own conceptions of legitimacy, became the ultimate arbiters of which revolutionary demands could or could not take hold.

If we comprehend the Arab Spring as a collective response to a legitimation crisis, what is the actual nature of crisis in this region? Sultany situates the recent revolutions in the historical context of Arab states' legitimation crises dating back to the latter years of the Ottoman era. He argues that constitutions were a part of these crises because they enabled the exclusion of citizens from true self-governance, the weakness of rights as checks on executive power, and the economic dependency of Arab countries within the global economy. In the post-colonial era, Arab states that adopted republicanism, as contrasted to the regional monarchies, derived legitimacy and

authoritarian power from their roles as 'modernizers'. Yet their legitimacy failures are manifest in the rise of Islamist politics as an oppositional legitimacy competing for power, as well as durable discrimination against minorities, persisting patriarchy and tribal loyalties. In the decades preceding the revolutions, Arab authoritarianism ossified into crony capitalism and corruption compounded by state-sanctioned neoliberalism which increased inequalities and fostered unrest.

The Arab revolutions were not, by any stretch, the first instances of mass protests against authoritarian regimes and their neoliberal and corrupt policies. But they were sufficiently large and cross-cutting to achieve one revolutionary objective in both Egypt and Tunisia: to bring down those countries' authoritarian leaders. The significance of this, as Sultany argues, demonstrated the political existence of the people who transformed themselves from atomized individuals into collective actors. For one thing, readers can understand how political instability that results from sweeping demands for change contains the seeds of its own negation: counter-revolution. Sultany terms this 'advantages as disadvantages'. The initial inclusiveness of the revolution undermined the formation of a programmatic agenda, and the instability that toppled the regimes became a problem that was resolved through a reassertion of state-led order. But why did the post-revolutionary order not institutionalize the democracy- and equality-seeking goals that the mobilized masses sought? Why did the Arab Spring fail, ultimately, to create a 'new beginning'?

Sultany engages the realism of revolution; he demonstrates by example that practice should inform theory, and that the Arab Spring should be taken seriously by scholars of revolution regardless of whether they are Middle East Studies experts. The practical stakes turned on how to 'legalize' the revolution, which turned into concrete legal disputes among the judiciary. This split was vividly evident in the debates and processes pertaining to the revolutionary demand for accountability and the counter-revolutionary moves to prosecute regime opponents. The positions and activities of judges in conservative and reformist camps were mediated by contrasting ideologies of legitimacy interacting with shifting political tides. In Egypt, while citizens were prosecuted in military courts, deposed dictator Hosni Mubarak and some of his ruling circle were prosecuted in civilian courts. In the first trial, they were found guilty of aiding and abetting violence against demonstrators, but in a second trial, they were acquitted on technical grounds, thus depriving the revolution of its demand for retributive justice. In Tunisia, there was a similar result through a different course of judicial action: military courts asserted jurisdiction and delivered relatively lenient sentences. Ultimately, these 'failed trials' undermined revolutionary legitimacy. They also illustrated the shift in judicial narratives from celebrating the revolution to disavowing it in keeping with changes in the public's mood over time.

If these revolutions were by and for 'the people', how did the concept of popular sovereignty fare? The answer exemplifies law's incoherence, which was conspicuous in judicial deployments of contradictory notions of the political community. The Egyptian Supreme Constitutional Court (SCC), which had functioned as a liberal defender of the rights against the old regime, continued that liberal individualist vision by staying the proceduralist course. In contrast, administrative courts adopted a republican vision and embraced rupture by pursuing courses of action attuned to substantive revolutionary demands. In Tunisia, a quasi-revolutionary body was established which embraced rupture and pursued lustration to purge some elements of the old regime from the post-revolutionary government.

Sultany concludes with two thoughts: First, the purpose of his critique is not to instill pessimism but to encourage more realistic understandings of the role of law and constitutions in revolutionary processes. Second, and more fancifully, he suggests that these

revolutions may not have faltered if judges and activists had not been so bound by confining conceptual binaries that impeded the reconstitution of the polity. The optimistic implication is that, if revolutions come again, now they have a legal handbook.

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