

## Constitutional Experiences in the Middle East and North Africa (from approx. 18<sup>th</sup> to 20<sup>th</sup> century)

Conference at the *Orient-Institut Beirut*  
6-7 November 2014



The conference is aimed at exploring political concepts and practices which are related to constitutional experiences prior and parallel to the occurrence of written constitutions. Combining political, intellectual, legal and social history across the region, the conference combines papers on legal and organizational frameworks, administrative bodies, associations, councils, corporative structures, customs, as well as discourses of rule, power and statehood aimed at containing authority. Constitution can in its broadest sense be understood as the internal governmental norms and practices that establish the institution and system of government and define and limit the scope of governmental sovereign powers. Adopting a cross-temporal approach and taking account of diverse historical trajectories, we are interested in exploring the extent to which social practices of power sharing, especially when legally framed, as well as Islamic and other conceptual systems or habitual institutions provide a context that is akin to constitutional thought.

We therefore suggest that the notion of constitutional experiences be extended beyond the occurrence of written constitutions. Analog to the western experience of constitutional thought, which cumulated in the widespread emergence of the idea of written constitutions between 1815 and 1848, the Middle East also witnessed different phases of constitution-making processes, the first of which resulted in the short-lived Tunisian Constitution of 1861, the Ottoman Constitution of 1876 and the Egyptian Constitution of 1882. Although they adopted elements of European constitutions, ideas and practices which bore elements of constitutional thought were by no means alien to political theory and practice in the Middle East. Against this background, the conference invites participants to study in greater detail the extent to which political discourse and legal and administrative frameworks of the 18th and 19th centuries anticipated, paralleled or informed the rising demand for and gradual drafting of written constitutions. Such local customs and practices of power sharing may also have been superseded by the new power structures of an increasingly globalized world. It remains to be asked, however, whether the development highlighted here can be described as consistent with a shift in values which advocated the benefits of the state and the subjects of political authority, a shift propelled and accompanied by the demand for organizational principles from an early form of a, to all intents, self-organized 'civil society'.

## CONFERENCE PROGRAMME

Thursday, November 6-2014

10.00 – 10.15

**Stefan Leder**  
*Welcome and Introduction*

10.30-13.00

***The Emergence of Modern Constitutions and Their Contexts***  
Chair: Nadine Méouchy (Institut français du Proche-Orient, Beirut)

**Zülâl Muslu**  
(Ouest Nanterre La Défense University, Paris / Max-Planck-Institute for European Legal History, Frankfurt)  
*The fundamental law of 1876: The constitution of the Ottoman changing sovereignty*

Coffee Break

**Nora Lafi**  
(Zentrum Moderner Orient, Berlin)  
*Constitutional debates in their context in late Ottoman Tunis (1857-1881): Reinterpreting the roots and development of political modernity*

**Michelle Brunelli**  
(Bergamo State University)  
*The ideological roots of the constitutional revolution in Persia. Different souls for one goal*

Lunch

14.00-17.30

***Containing Authority: Norms and Frameworks of Legal Thought***  
Chair: Martha Mundy (The London School of Economics and Political Science)

**Bettina Dennerlein**  
(University of Zurich)  
*Negotiating political authority. Contention and compliance in pre-colonial Morocco*

**Ismail Warscheid**  
(German Historical Institute, Paris / Institut des mondes africains (CNRS), Paris)  
*The ḡamāʿa and its jurists: Islamic legal thought and community structures in pre-modern Saharan societies (1600-1800)*

Coffee Break

**Malek Sharif**

(Beirut/ Münster)

*Debates and deliberations of Ottoman Syrians during the first constitutional period*

**Hassan Hallak**

(Beirut Arab University)

*The Ottoman constitutional process, interior and exterior instigations*  
Lecture in Arabic, translation provided

Friday, November 7-2014

9.30-13.30

***Legal Practice and Discourse in the Vicinity and Wake of Constitutions***

Chair: Astrid Meier (Orient-Institut Beirut)

**Will Hanley**

(Florida State University, Tallahassee)

*Sharing hegemony: Constitutional pluralism in practice in late nineteenth century Egypt*

**Ghina Mourad**

(Université Libanaise, Tripoli)

*Local authorities and institutions and their transformation in constitutional law*

Lecture in Arabic, translation provided

**Başak Tuğ**

(Istanbul Bilgi University)

*Constitutional experiences in Ottoman legal practice, 18th & 19th centuries*

Coffee Break

**Huseyin Yilmaz**

(George Mason University, Fairfax)

*From Kanun-i Kadim to Kanun-i Esasi: Law and constitutionalism in late Ottoman*

**Farouq Hoblos**

(Université Libanaise, Tripoli)

*The Tripoli Sharia Court in the context of political administration and juridical institutions*

Lecture in Arabic, translation provided

Lunch

14.30 -17.00

***Legal and Ideological Dimensions of Constitutional Processes***

Chair: Stefan Leder (Orient-Institut Beirut / Martin Luther University of Halle-Wittenberg)

**Elizabeth F. Thompson**

(University of Virginia, Charlottesville)

*Rashid Rida & the 1920 Syrian Constitution: The last stand of Islamic liberalism*

**Maaïke Voorhoeve**

(Ecole des Hautes Etudes en Sciences Sociales, Paris)

*The first constitution of the Arab world: The Tunisian Qanun al-dawla between fact and fiction?*

Coffee Break

**Hafidha Chekir**

(Association Tunisienne des Femmes Démocrates, Tunis)

*L'histoire constitutionnelle de la Tunisie: une histoire singulière marquée par des réformes modernes et des contestations sociales*

17.00 – 17.15

**Stefan Leder**

*Conclusion*

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**Michelle Brunelli:**

**The ideological roots of the Constitutional Revolution in Persia. Different souls for one goal.**

The constitutional revolution is often presented as the starting point of modern Iran, but it is in fact the arrival point of a very long debate – if not a struggle – among different and dichotomic ways to interpret the reality and to build the future of a country. A debate which animated the ideological and political debate at the end of the XIX century. The external influences, as well as a new generation of intellectuals, prepared the ground for a new era, in which the Shāh's arbitrary power had to be replaced with a representative government, rights of the people and social justice. Despite the image of unity, the revolution reflected different intellectual trends, social backgrounds and political demands of the main players involved: the king and his authoritarianism, the *mojtaheds*, the *bāzāris*, and so the people. Monopolised by the pan-Islamism discourse of Al-Afghānī, the agnosticism of Kermānī, the nationalism of Ākūndzāda, the constitutionalism and pragmatism of Korāsānī and by the institutional and terminological reformism of Mīrzā Malkom Khan, among the others, the constitutional revolution took shape and arrived to show its enduring social and cultural consequences, not only in Persia, but in the neighbouring countries as well, representing a part of a wider process defined by Lenin as “*the awakening of Asia*”. This paper intends to analyse the main endogenous and exogenous (European, Ottoman and Azeri) political ideas and religious precepts (shi'a and babi/usuli) which led to the revolution, and brought to the elaboration of the 1906 constitution, trying to demonstrate the complex ideological structure this event had and how all these different ideas merged into a unique final result: the *qānūn-e asāsī* (the Persian fundamental law) and its supplement (*Motammem-e qānūn-e asāsī*).

**Hafidha Chekir:**

**L'histoire constitutionnelle de la Tunisie: une histoire singulière marquée par des réformes modernes et des contestations sociales**

**1861-1959-2014 : 3 dates importantes dans l'histoire constitutionnelle de la Tunisie**

Dans la région arabe et méditerranéenne, la Tunisie représente un pays où le mouvement constitutionnaliste s'est enraciné depuis bien longtemps.

Déjà, en 814 avant J.C, la fondation de Carthage s'est accompagnée par l'adoption d'une constitution connue sous le nom de Constitution de Carthage pour organiser la vie politique de la cite

Au XIXème siècle, une première constitution écrite a été adoptée en 1861 sous l'influence du mouvement réformiste soutenu par les puissances coloniales pour organiser les institutions beylicales et les assemblées législatives qui ont été créées. Cette Constitution a été précédée par l'adoption d'une Déclaration des droits et des libertés, le Pacte fondamental de 1857. Mais elle fut de courte durée parce que, à la suite d'une insurrection populaire, elle fut suspendue par les autorités de l'époque, en 1864 et resta inapplicable jusqu'à l'indépendance de la Tunisie

Avec la proclamation de l'indépendance, une Assemblée Nationale a été élue dès 1956 pour doter le pays d'une nouvelle constitution qui a été promulguée en 1959. Cette Constitution consacra les droits et libertés des citoyens et organisa les nouveaux pouvoirs politiques mais l'évolution du régime politique vers un régime de dictature et l'instrumentalisation de la constitution pour légitimer et fonder la dictature ont conduit, en 2011, à une révolte populaire contestant le régime en place, appelant au départ du Président de la République ,à la dissolution de toutes les institutions politiques qui étaient à son service et à l'abrogation de la constitution

En 2014, une nouvelle constitution a été adoptée après des débats houleux notamment par rapport à la nature civile ou religieuse de l'État tunisien, des sources de la législation et du statut des femmes et des pressions de la société civile pour garantir l'adoption d'une constitution, au niveau des attentes des tunisiens et des tunisiennes à plus de liberté, d'égalité et de droits humains pour tous sans aucune forme de discrimination et consacrer le passage d'une République à une autre et d'une dictature policière à l'amorce d'une démocratie .

Ces trois constitutions s'inscrivent dans un mouvement de réformes politiques, elles ont toutes les trois consolidé les bases d'un État moderne mais elles sont fortement imprégnées par les spécificités arabo-musulmanes et se heurtent à des difficultés d'application de toutes sortes

Ce sera l'objet de cette intervention.



**Bettina Dennerlein:**

**Negotiating political authority. Contention and compliance in pre-colonial Morocco**

The paper will be devoted to a scholar and a text that are usually not directly associated with political activism or protest during the period in question – i.e. with Muḥammad b. Ǧaʿfar al-Kattānī (1857/58-1927) and his book “*Naṣīḥat Ahl al-Islām*” written in the aftermath of the so called *ḥafīziyya* (1907/1908) in the course of which the ruling sultan was finally deposed and replaced by his brother. During the events, public performances of reference to Islamic law and the respective procedures involved to guarantee the regularity of the whole process were of utmost importance. The main argument of the paper is that contrary to standard narratives of the period, there did not exist a clear cut division between state centred reformism on the one hand, traditionalist opposition on the other with the latter ranging from activism to quietism. Rather, if we look at the textual production that accompanied the major political crisis constituted by the *ḥafīziyya*, what we can observe is an ongoing process of negotiating and re-configuring a dynamic network of power and complex forms of mutual recognition that allowed for constant re-adjustments and/or re-alignments. During the so called *ḥafīziyya*, new forms of popular mobilization and the participation of new collective actors (the “masses”) led to increased competition over religious authority and its organizing potential.

**Ghazaleh Faridzadeh:**

### **The Modification of the legal language and legal Concepts within the first Iranian Constitution”**

Iran in the 19th century is marked by a process of modernization, which could be called as a process of translation. The eager attempt to translate foreign institutions, ideas and concepts into the Iranian context brought about a crisis situation, which led to the evaluation of a field of discourse over modernity. In this discourse, in which the first intellectual struggles over establishing new concepts have taken place, we can see how a rebuilding phase began. One could compare this era with Reinhart Koselleck's "Sattelzeit", "saddle time" or "threshold time", during which language changed into the language of modernity. According to Koselleck one of the main characteristics of the saddle times is the semantic struggle for the definition of political and social position, defining or occupying these positions by deploying a given definition. In the process of translating new ideas and concepts into the Iranian context by means of applying the already existing old words and expressions, the Iranian language and text underwent sequences of change. My paper seeks to explain these modifications by reference to Koselleck's "space of experience" and the "horizon of expectation". Up to the 19th century the Iranian socio-political and legal language essentially contained a registry of experiences (Erfahrungsregistratur). When the speakers used a legal concept, experiences of this concept, which have a long-term effect and which have entered into the concept at and as its foundation, were linguistically stored in it. The various meanings of these concepts were bound to the historical experiences that had made their way at one time or another into these concepts.

Since the 19th century onward and in the course of importing new ideas and institutions, the Iranian legal language obtained an essentially new function. The new introduced central concepts started to describe a future that had never before existed. Instead of referring to past experiences, these new concepts sought to influence or even to create political activities in form of new experiences before their occurrences. They gained an experience-founding quality (erfahrungstiftend) and can therefore be called as "mere concepts of expectations" (reine Erwartungsbegriffe). So, language in the 19th century was typified by its containment of numerous concepts (Begriffe) that were more exactly anticipations (Vorgriffe). These concepts were based on the experience of the loss of experience, and so they had to preserve or awaken new expectations. This is above all true for legal concepts like "ḥurrīyat", "ḥaqq", "qānūn", "musāwāt", "dawlat" and "millat". All these concepts obtained in the 19th century the status of neologism, although they have existed as old expressions long-time before, but indicated essentially different circumstances. So it can be shown that from the time that expectations have distanced themselves evermore from all previous experience, a competitive struggle develops over the proper interpretation and usage of basic concepts. The concepts become catchwords

**Hassan Hallak:**

**The Ottoman constitutional process, interior and exterior instigations**

This paper tries to reassess the significance of laws and stipulations concerning the status of foreign consuls and consulates, and associated privileges and exceptions, for the political process in which the Ottoman constitution has to be placed. Attention is given to the dynamics of this process propelled by demands of the Ottoman opposition. We will ask in how far the process leading towards the revolt against Sultan Abdul Hamid II in 1908 and his dethronement in 1909 can be related to the case of Jewish control over Palestine. From this perspective, a survey of the development of Ottoman laws will be given covering the reign of Sultan Abdul Majid (1839-1860) and the reign of Sultan Abdul Aziz (1861-1876) as an introduction to the issuing of the Constitution during the reign of the Ottoman Sultan Abdul Hamid II (1876-1909), who instituted Ottoman chamber of deputies. This survey serves to foreground the idiosyncrasy of some constitution articles, which had been applied for about ten months only and were re-worked the revolution of 1908.

**Will Hanley:**

**Sharing Hegemony: Constitutional Pluralism in Practice in Late Nineteenth Century Egypt**

This paper aims to conceive of late nineteenth century Egypt, where real power was shared by at least half a dozen different authorities, in terms of constitutional pluralism. I pay particular attention to the justice system, which is my own area of expertise, but I attempt to extend my analysis further. I attempt to account for several problems: the presence of laws, statutes, and even constitutions that were not observed in practice; the diverse sources of law at play in the relatively coherent system of power-sharing between military, administrative, policing, and judicial branches in Egypt; the apparent disregard of this constitutional regime for the majority of the territory's inhabitants, and vice versa.

**Farouq Hoblos:**

**The Tripoli Sharia Court in the context of political administration and juridical institutions**

A statistical account of the various documents preserved in the registers of the Sharia court in Tripolis indicates that the duty of the judge (qāḍī al-sharʿ) in this city was generally not confined to the examination and decision of lawsuits. Surveillance of other officials in the province took up a large part of his time, and his competencies stretched out to all parts of the province and their inhabitants, irrespective of their religion and thus inclusive of Christians and Jews.

Concerning the manners of how court decisions were produced the following observations can be made:

1. Judges passed their legal rulings based on their individual decisions without consulting any other court or juridical body. An exception from this rule were unprecedented cases in the realm of inheritance law, when they would turn to the muftis' expertise to find guidance. This circumstance of course may seem to cause a problematic discrepancy between the absence of any counsel of defence in the court and the wide spread ignorance concerning law and procedures, as well as poverty among the people who mostly were illiterate and thus unable to defend their case.
2. Decisions were taken regularly within a very short time span of three days maximum after the institution of proceedings.
3. The absence of a codified positive law on which the judges would base their rulings was partly filled by the record (jadwal) of documentary testimony (asānīd) concerning prior trials. This constituted a major source for the judges' rulings. The testimony of witnesses whose trustworthiness was accepted and the testimony on oath thus were the most prolific methods of conducting the trial. They determined court decisions in about 50% of the cases. In contrast, established customs and the paragon established by prior dealings with comparable cases were the nearly unique juridical approach to lawsuits concerning crafts and labour. Comparison between these traditions and customs which were important criteria for judges in court as well as for reconciliatory councils and feudal jurisdiction in the period before the Tanzimat on the one side, and the clauses and matters documented in the journal of legal decisions (majallat al-aḥkām al-ʿadliyya) with respect to agriculture, tenure, irrigation, transport and crafts on the other side, offers a key to understanding how the Ottoman lawmaker in the period of the Tanzimat moulded these traditions in to a legal code thus transforming them into positive law.

**Vangelis Kechriotis:**

**The political thought of Pavlos Carolidis (1849-1930): Constitutionalism and history writing**

The constitutional experience in the Ottoman Empire after 1908, revealed the tension between the notion of 'equality before law' and that of freedom. For the non-Muslims, in particular, *hürriyet* was to be understood as the full recognition of their autonomous status, and even its enhancement. Instead, the implementation of a parliamentary system of representation that offered to the new regime legitimacy through the popular verdict paved the way for an understanding of 'freedom' as the expression of the will of the majority, a clearly Muslim one, over that of the non-Muslim minority. It was the first time in Ottoman history that the population of the Empire was perceived in terms of majority and minority.

Regarding the Ottoman Greeks, the prevalent view has been that the elite was divided into two groups, those described as *Yunancılar*, who endorsed the expansion of the Hellenic state and those referred to as *Bizanscılar*, who supported the integrity of the Ottoman Empire, albeit with the explicit purpose of transforming it into a Christian Empire. What has escaped historiography's attention until recently is the fact that a number of Greeks, inspired by Ottoman patriotism and a sincere commitment to the necessity of cooperation with the Turkish-Muslim element for protecting the integrity of the Empire, identified politically with the CUP in ways which do not fit the categorization mentioned above.

Broadly acknowledged as a history professor in Athens, Carolidis also became known in Istanbul, during the Second Constitutional Period, when he served as a deputy in the Ottoman Parliament while he was also one of the few non-Muslim members of the Council for Ottoman History (*Tarih-i Osmani Encümeni*). Carolidis' origin from a Turcophone region of Cappadocia as well as his thorough knowledge of Ottoman history and language played a role in his endorsing a peculiar version of Ottomanism which, while encouraging political participation, it resisted the cultural integration of Greek-Orthodox populations. Based on his speeches in the Ottoman Parliament, as well his introductions to some of his historical essays, this paper aims at reflecting on the political thought and possible affinities with other Ottoman intellectuals of one of the most controversial figures of the period.

**Nora Lafi:**

**Constitutional Debates in their context in late Ottoman Tunis (1857-1881): Reinterpreting the Roots and Development of Political Modernity**

The interpretation of debates in Tunis about the enactment of a constitution have long been read according to a double-sided dominant interpretative key with on the one side aspects pertaining to the growing foreign influence over this Ottoman province and on the other side a local maturation of constitutional ideas, embodied by figures like Ibn Abi Diyaf and Khayredine. In this dichotomic situation, the imperial Ottoman context has long been underestimated, a fact that has resulted in a persisting bias. The object of this proposed article is to try and reconnect these three spheres of the international, imperial and local contexts, through a study of the local Tunisian, imperial and foreign archives. The aim is to critically reexamine existing interpretations based upon an excessive attention given to one of the spheres, and to underline the force of mutual influences and various entanglements between the various figures involved as well as between their political imaginaries. The aim is also to study how constitutional ideas were part of diverging political and ideological projects, ranging from local autonomy to imperial regeneration and to colonial domination. Ideas about a constitution, indeed, need to be interpreted in their broader context, and not just as expressions of a renewed conception of political philosophy. They also need to be reconnected to previous forms of political regulation, embodied for example in the Ottoman world by the petitioning system, in order to revise perceptions of a strong paradigmatic rupture between old regime and modernity in the Ottoman world. This perspective might allow one to critically discuss the very interpretation of the relationship between constitutional ideas and political practices in the region.

**Ghina Mourad:**

**Local authorities and institutions and their transformation in constitutional law**

As we want to demonstrate with reference to the Lebanese city of Tripoli for the 18th century, local authorities and their legal and administrative practices were subject to rules and conventions that regulated the living conditions and well-being of the population in its different aspects through local authorities.

Local authorities, such as the heads of craft associations, the elders of neighborhoods and leaders of religious communities expressed and represented the interests of their members on the ground of binding rules and stipulations. They also played an important role in resolving disputes and disagreements, often in cooperation with, or in support of the judge who was the link between these local authorities and the Ottoman state governor (wali).

This paper looks into the range of activities of such authorities, and their mediating interaction between representatives of political rule and higher juridical administration on the one side, and with the population on the other side. Evidence here is based on court documents, which allow the reconstruction of not only the living conditions, but also of the role and function of civil administrative bodies, their ideological constraints, creating rifts and distinctions, and potentials in the practical politics of organizing the community.



**Zülâl Muslu:**

### **The Fundamental Law of 1876: The Constitution of the Ottoman Changing Sovereignty**

The first Ottoman constitution – the *Kanûn-u Esâsî* (1876) – is the outcome of a deep administrative and legal reorganization movement, called the Tanzimat reforms (1839-1876). Usually perceived through the only prism of westernization, this constitution has mostly been studied as the result of a linear and monolithic European legal diffusion or imposition motivated by expansionist leanings. This paper will attempt to nuance these common assumptions by arguing that the Ottoman Empire, which was indeed ruled under the capitulatory regime and constant foreign pressure for reforms, had also appropriated Western ideas and laws for its own purposes. However this process was not only a strategic mean. Willing to protect the Empire from foreign interferences, the constitution was proclaimed in the very name of Western principles and reflected the internal political reflection inspired by the liberal nation-state model.

Urged by the Western positivism and the territory-based sovereignty that shaped the new international law and nations, the Sublime Porte had to rethink –and actually conform– its concept of sovereignty to be fully recognized both as civilized society and as fully sovereign on the international stage. If the *Kanûn-u Esâsî* mirrored this paradigmatic shift – e.g. territory or citizenship provisions– it also showed how the Ottoman sultan remained the cornerstone of the State, letting the national sovereignty beyond the scope of current debates. Meaningful was the impact of the Young Ottomans in the constitution-making. This new political formation, contested the sultan’s reformatory despotism and the excessively westernized reformers, constituted a “parallel constituent power”, which claimed together with a Western constitution the maintenance of Islamic laws and traditions. Thus, in its elaboration, words and even failure the constitution bears the stamp of Ottoman spirit and aspirations in a global tumultuous context.

**Malek Sharif:**

**Debates and Deliberations of Ottoman Syrians during the First Constitutional Period**

The Ottoman constitution, the parliament established in accordance to its letter and the laws promulgated by it are described by the historians of the period as innovations. Findings in European archives show that some contemporary observers assumed that these changes were imposed from the top down, hence, ignoring many agents, currents and factors leading to this moment. My paper will not test the validity of these observations and statements, but it will try to show and reconstruct how and why these changes were made possible at a provincial level, namely in Syria. I will try to show how the ideas and will for change were more widespread than so far assumed. I will argue that the protagonists of the peaceful gradual reforms in the empire hailed not only from the elite of the capital, but from far away urban centres as well. This will be shown by analysing the public debates and the deliberations of some Syrian deputies in the first Ottoman parliament.

**Elizabeth F. Thompson:**

**Rashid Rida & the 1920 Syrian Constitution: The Last Stand of Islamic Liberalism?**

On July 5, 1920, the constitutional congress at Damascus ratified a 148-article constitution for the Syrian Arab Kingdom. After two months of stormy debate, it had produced the most democratic constitution yet in the Middle East. King Faysal would rule in concert with an elected parliament and cabinet, which he could not dismiss at will. Provincial governments retained a degree of autonomy. And citizens were guaranteed full list of civil rights to free speech, association, and assembly. Muslim and non-Muslim citizens were fully equal under the law. In contrast to earlier constitutions, Islam was not the official state religion; indeed, its only Islamic component was that the king had to be Muslim.

Most surprising was that the president of the congress was Rashid Rida, a well-known Islamic reformer and publisher of the most widely read Islamic magazine in the Arab world, *al-Manar* (The Lighthouse). Scholars have ignored Rida's crucial role in forging this liberal constitution; rather, they have cast the 1920 government as a nationalist triumph.

I argue that Islamic liberalism, not just the Arab nation, was defeated on July 25, when the French army occupied Damascus and sent Faysal, Rida, and the Congress into exile. The defeat at Maysalun was a critical turning point in Arab political history. Arab leaders' dominant response to the trauma of World War I – and the military rule of the Young Turks—was to revive Ottoman-style constitutionalism. But when the League of Nations assigned France and Britain mandates over Greater Syria, it sealed Arabs' exclusion from the family of nations that would enjoy full rights under international law. Only then did Rida turn against liberalism, as based on false universalism of Europeans. When Mustafa Kemal abolished the caliphate in 1924, he embraced the Wahhabis as a model of the just Islamic state, and inspired Hasan al-Banna to found the Muslim Brotherhood. This paper is based on Rida's own accounts of the congress published in *al-Manar* as well as on accounts in other memoirs, government documents, and periodicals of the period.

**Başak Tuğ:**

**Constitutional Experiences in Ottoman Legal Practice, 18th & 19th centuries**

This paper will concentrate on the reciprocal legal discourse constructed between the Ottoman state and its subjects since the eighteenth century. It traces the notion of honor both as a legitimizing motive and a sexual discourse of violence in eighteenth-century legal practice and discourse. Furthermore, by analyzing the discourse of the Tanzimat Edict as well as the criminal codes of the period, it aims to follow continuities and changes in governmental and punitive techniques of the Ottoman power over moral order from the mid-eighteenth century to the early decades of the Tanzimat era.

The paper argues that the recurring presence of honor in the correspondence especially between the central government and the Ottoman subjects in the eighteenth century reflects the development of new parameters between the state and its subjects in moral terms. Although the idea of the “circle of justice” (*daire-yi adliyye*) already conceptualized a reciprocal relationship between the government and subjects on the basis of legitimacy and justice, a persistent emphasis on honor—with regard to sexual violence but not necessarily restricted to it—in the legal terminology of both the eighteenth and the nineteenth centuries points to a new moral discourse that emerges during this period. The Ottoman central government’s claim to protect the honor of its subjects in the eighteenth century reflects a dialogic process in which subjects started to use new types of legal terminology and concepts to elicit the intervention of state in local matters that threatened their well-being. On the one hand, the motto of “life, honor and property” featured in the Tanzimat Edict represents a continuation of the discourse of honor as a legitimizing mechanism. Yet, on the other hand, the legal codification of honor in the Criminal Codes of the nineteenth century reflects a novel constitutional construction of gendered citizenship around reproduction in the conjugal family through the partnership of the patriarchal state and male subjects.

**Maaïke Voorhoeve:**

**The first constitution of the Arab world: The Tunisian *Qanun al-dawla* between fact and fiction**

The Tunisian *Qanun al-dawla* of 1861 is generally considered to be the first constitution in the Arab world. However, the title of the text suggests otherwise: that it carried the name *qanun* (code) instead of *dustur* (constitution), raises the question as to what extent 'being the first constitution' was projected on this text later on. This is especially true because another code issued in the same year, a codification of civil and penal law, also carried the term *qanun* (*qanun al jinayat wa-l-ahkam al-'urfiya*). Moreover, the *Qanun al-dawla* did not so much aim at protecting basic rights for Tunisians, but was an implementation of a pact (*ahd al-aman*) between the Tunisian ruler Sadok Bey and the consuls of Britain and France, merely aiming at securing the interests of the latter.

The paper traces the narrative to call the text of 1861 a 'constitution'. It argues that not only in the nationalist movement before independence (led by Thalbi's *al-hizb al-dusturi*), but also in the authoritarian discourse of presidents Bourguiba and Ben Ali, projecting a constitution back onto the *Qanun al-dawla* had a mere rhetorical function that became part of the government propaganda. By tracing the use of the *Qanun* in the authoritarian discourse, the paper offers an original and detailed example of the production of truth by the authoritarian regimes, and the power of such state propaganda. This power becomes painfully clear when realizing that even talented academics belonging to the opposition never questioned whether a *qanun* could really have been a *dustur*.

**Ismail Warscheid:**

**The *ḡamā'a* and its jurists: Islamic legal thought and community structures in pre-modern Saharan societies (1600-1800)**

Islamic legal traditions and institutions are most often considered an essentially urban phenomenon. They are thought to have had little impact on rural contexts where different types of customary law are supposed to have regulated most forms of social interaction. Consequently, Muslim jurists working within agrarian and pastoral societies are perceived as marginal elements engaged in a difficult mission to draw populations closer to the sharia. However, the spread of Islamic legal scholarship in rural areas from the latter Middle Ages onwards attests otherwise. In the tribal communities of the Sahara in particular, the work of Muslim jurists initiated a process of acculturation through which Islamic normative models profoundly reshaped social landscapes. Muslim jurists developed multiple ways to conceive local contexts, and, most important, to integrate vernacular institutions within the framework of the Islamic legal system. Relying on fatwa collections from the seventeenth and eighteenth century, the paper will analyze Islamic law's role in the construction of community structures within different regions in southern Algeria, Mali and Mauretania. Particular emphasis will be placed on the question how Saharan scholars used the notion of *ḡamā'a* to develop a legal theory that allowed the conversion of communitarian and tribal forms of political power into legitimate models of Islamic sovereignty.

**Huseyin Yilmaz:**

**From *Kanun-i Kadim* to *Kanun-i Esasi*: Law and Constitutionalism in Late Ottoman**

My paper will examine the historical trajectory of the idea of *kanun* from the eighteenth century until the making of the first Ottoman constitution, *Kanun-i Esasi* in 1876. I will argue that *kanun*, while originated from sultanic law, gradually gained a constitutional meaning in the sense that it referred to the general set of organizing principles of government based on the Ottoman political and social experience. By the mid-sixteenth century, the *kanun* had already commanded a vast realm in Ottoman legal space and, for at least the *kanun*-conscious statesmen, came to be a binding set of laws for both the ruler and ruled, while the ruler was accorded the prerogative to alter it but not violate it. For later centuries, conformity to the *kanun-i kadim* became the principal benchmark of good government for both the advocates and critics of government alike. The school of declinist authors, for example, from the seventeenth century onwards, discussed a number of different signs of decline but they all agreed on its diagnosis: violation of the *kanun-i kanun*. Most historians, including myself, now think that seventeenth and eighteenth centuries were a period of cultural rejuvenation and social change rather than decline. For those Ottoman believers in decline, however, it simply meant a shift from the rule of law into an arbitrary government. They artificially constructed a sixteenth century golden age whereby the whole state and society operated within the prescribes of the law. The subsequent holy grail of political thought was to recreate this utopia. Thus, from the mid-sixteenth century onwards, Ottoman declinism and constitutionalism had common trajectories. When the grip of sultanic authority got significantly weakened by rising provincial and central institutions, in the eighteenth century, *kanun-i kadim* constituted the principal language of negotiation and settlement between contending political groups. It was this *kanun* language that yielded the *Kanun-i Esasi* of 1876 whose text is not shy of reflecting the historical understanding of the *kanun-i kadim* that was more and more solidified in the course of the eighteenth century.

**Michele Brunelli** is Professor of *History and Institution of Asian Countries* and of *History of the Islamic World*, at Bergamo State University – Italy. He has a PhD in History, Institutions and International Relations of African and Asian Countries. His main research topics are: geopolitics, security and stability in the Near/Middle East, Persian Gulf (with particular attention to Turkey and to the Islamic Republic of Iran). More recently, he started a series of studies and researches on the travelogues and on the cultural, political and military relations among Europe, the Ottoman Empire and the Safavid/Qajar Persia.

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**Hassan Hallak** is Professor at the Beirut Arab University. He wrote several books on the history of Beirut and the history of the modern and the contemporary Arab world and Lebanon, as well as on the Ottoman Empire. He edited documents and manuscripts dating back to the Ottoman era, some of them belonging to the Sharia court and the municipality of Beirut. He also worked on the British archive documents from the collection of the British Ministry of Foreign Affairs.

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**Elizabeth F. Thompson** is Professor of History at the University of Virginia. Her most recent book is *Justice Interrupted: The Struggle for Constitutional Government in the Middle East* (Harvard, 2013). It traces the roots of the 2011 Arab Spring to the first constitutional movements of

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**Huseyin Yilmaz** specializes in cultural and intellectual history of the Ottoman Empire. He received his PhD in 2005 from Harvard University in History and Middle Eastern Studies. He formerly taught at the University of South Florida and Stanford University. His previous fellowships include American Research Institute in Turkey and Internationales Forschungszentrum Kulturwissenschaften, Vienna. He published articles and book chapters on such topics as constitutionalism, imperial ideology, historiography, and cultural geography. He is currently working on a book project examining imageries of the caliphate in sixteenth century Ottoman Empire.



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