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IS IT DEMOCRATISATION?

The Rule of Law and Political Changes in Jordan since 1989

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A thesis submitted by

Anu Leinonen

In fulfillment of the requirements for the degree of

Doctor Philosophy

UNIVERSITY OF DURHAM
Institute of Middle Eastern and Islamic Studies
2006

11 JUN 2007

Acknowledgements

Have you ever wondered what keeps a boxer fighting, returning to the ring after every match, even after being defeated and badly bruised? Whatever is the reason keeping the boxer on her feet, I am sure that the team behind the boxer has something to do with it. If anything, completing a doctoral degree is a project that requires a great deal of joint effort. Fortunately I have been blessed with the best team and advisers. So many people have contributed to this study and I am ever so grateful to every single one of them. Yet I wish to express that any weaknesses or flaws in the end product are duly my own making. Unfortunately it is not possible to express my gratitude individually to all the kind-hearted, brave people, who have helped and supported me. Yet, I wish to name some people who I have burdened more than others.

Dr Emma Murphy, my supervisor, has provided scholarly guidance, as well as encouragement throughout this project. I met wonderful, courageous people in Jordan, where I was to conduct my field research. I would like to thank all the people who agreed to be interviewed, to share their thoughts and insights with me. I am greatly indebted to Professor Muhammad Hammouri for his knowledge, invaluable tutelage and his inspiring presence. Alma Khasawneh, Mutayyam al-Oran and Axel Wabenhorst all participated in some many ways, above all made my stay in Amman a wonderful experience. I wish to thank Randa and Neil Quilliam for rescuing me in middle of the night and offering me refuge. I would also like to express my gratitude to Dr Mustafa Hamarneh and the staff at the Center for Strategic Studies, the University of Jordan for offering me a safe haven to conduct my field research.

I also had the privilege of finding the best test audience: Zubeda Limbada, Paul McClarty, Robin and Piiastiina Brown-Tikka, who all bravely agreed to read my writings. My thanks are also due to Nada Elzeer for translations of the legal texts and to Mahjoob Zweiri. Finally, this project would have not been possible without the foundation laid at my other *alma mater*: the Department of International Relations and Political Science, University of Tampere and Professor Helena

Rytövuori-Apunen. Helena did not only supervise me with my Master's dissertation but also encouraged me to keep on fighting and not to throw the gloves away after the first match.

This research would have not been possible without the funding received from the Academy of Finland (2000-2003) and Oskar Öflund Stiftelse (Summer 2004).

Finally I my thanks are due to the nearest and dearest: for being very patient and sympathetic, and for tolerating my whims and me. Most importantly, I am thankful to the lovely Leinonen family who has supported me unconditionally. I wish to express my love and gratitude to my parents Anna-Kaisa and Olavi who involuntarily but bravely survived the heart-breaking separation. I owe apologies to my brilliant sisters for being occasionally absentminded and intolerable. Anne, who is not only much better boxer than I am, is without a doubt the wisest coach and the most generous sponsor one could have. My family not only had faith in me and in this project, but they also managed bring sunshine into days which seemed gray and hopeless - and their support showed no limits. I have dedicated this study to my parents whom I love very dearly and who have taught me so much.

DECLARATION

No part of this dissertation has previously been submitted for a degree in this or any other university and any contributions of other researchers.

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Anu Leinonen

ABSTRACT

IS IT DEMOCRATISATION?
The Rule of Law and Political Changes in Jordan since 1989

This dissertation examines the role of the rule of law in democratisation. The aim here is to identify whether the political changes in Jordan since 1989 can be correctly understood as indicating a process of democratisation. This is done through examining all elements essential to democratisation: embedded rule of law and transfer of power.

Democracy is understood here in procedural sense following the definitions by Schumpeter and Dahl, as a democratic system of governance of a modern state. The essential elements of a modern political democracy are electing governmental officials, free and fair elections, universal suffrage, free press and political rights of the citizenry. The rule of law, defined in formal terms, is seen as an inseparable part of modern political democracy. Therefore it is argued here that modern political democracy is not possible without embedded rule of law practices, although the rule of law is independent of political system. The main idea of modern political democracy is not only provide the citizens with the right to participate in legislating, but also protecting them from arbitrary behaviour of the ruler, and from each other.

Through an examination of constitutionality, the independence of the judiciary and political participation I demonstrate that no significant changes have occurred within the political system in Jordan. No significant transfer of power from the ruler to the ruled has occurred. The political elite are still in charge of the law-making, yet they are themselves not subordinate to legal system. Furthermore, the independence of the judiciary is not achieved in Jordan. Thus the predictability of socio-political affairs has not improved, nor is the citizenry better protected from the arbitrary behaviour of the state.

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INTRODUCTION

The Purpose of the Study

Studying systems of governance, and systemic transformations, has always been an interest of Political Science. Why does a system of governance start to change? What triggers the change and is there a pattern to be found? Currently the systemic changes focused are the ones leading to the establishment of democratic regimes. Democratisation began, argues Grugel, in the twentieth century, but the roots of the "contemporary democratisation" can be traced in the 1970s, when signs of democratisation were observed in the Southern Europe.[1] The scholarly interest was then revived, and soon encouraged by similar occurrence elsewhere: in the Eastern Europe, Latin America, sub-Saharan Africa and in China. Since a great deal of scholarly efforts has been devoted to examine the dynamics of contemporary democratisation processes.

This dissertation is no different; it is interested in a contemporary political system showing signs of political changes. The political changes of interest here have been taking place in the Hashemite Kingdom of Jordan since the late 1980s. These changes are not only significant at the national level but also in relation to changes simultaneously occurring outside the Jordanian borders. The aim of the study is two-fold. First it aims at participating in the discussion on the pre/requisites to democratisation. It is argued here that the rule of law is an essential element of modern political democracy. Thus there cannot be democratisation without embedded rule of law. The second aim is to contribute to the literature on the role of the rule of law in democratisation: is the rule of law embedded prior to democratisation or does it occur simultaneously with democratisation process. The aim is to examine the political changes if they can correctly be identified as democratisation. This is done through examining the rule of law in Jordan together with aspects of political participation. The objective is to assess whether the rule of law is embedded and whether a significant degree of transfer of power has occurred in Jordan.

2. The Structure of the Dissertation

The Arab Middle East has remained a region hardly touched by the global trend of democratisation. Explanations have been sought for the incompatibility, and later for the compatibility, of democracy and Middle Eastern culture, Islam and economic structures. The aim of *Chapter One* is to introduce the literature on Arab Middle Eastern 'exceptionalism' in order to find out whether there are any components which may contribute to this study. Another objective is to identify the special challenges facing the student when studying political systems of the Arab Middle East. The central arguments of the exceptionalism debate will be presented in this chapter. The arguments have divided into essentialist and developmentalist ones, as suggested by Zubaida. Essentialist arguments, discussed here, will cover aspects of political culture covers such as Islam and Arab culture. The developmentalist literature is more focused on socio-economic structures and their possible peculiarities in the region.

The aim of the *Chapters Two and Three* of this study is to introduce and assess the utility of the current academic discourse on democracy and on democratisation. It is worthy of stressing here that although part of the same body of literature, 'democracy' and 'democratisation' are different concepts. Democracy is a political system and democratisation is process or processes through which a non-democracy becomes a democracy. Undoubtedly both theories of democracy and of democratisation are ultimately tackling the fundamental question of the democracy discourse: how to define democracy. Nevertheless, theories of democracy are focused on the elements of the system and have (traditionally) been more normative, while theories of democratisation emphasise how those systems are constructed.

These two inter-related concepts are discussed here separately: democracy in the second chapter and democratisation in the third one. The aim of *Chapter Two* is to review the contemporary literature on democracy in order to define the key concepts used within this study and locate the relevance of the concept of the rule of law. The most common definitions of democracy are presented, as well as the difficulties of

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[1] Grugel, 2002, 37 and 44.

finding the definition of (modern political) democracy due to the existing "conceptual chaos". The object of the study is a modern state (the Hashemite Kingdom of Jordan), 'democracy' in this study equates with a democratic system of governance of modern state. Therefore, pre-modern democratic practices and entities are excluded from the review, as well as democracies in entities larger, or smaller, than a state (e.g. factory democracies, global democracy). The second part of the second chapter will focus on the concept of the rule of law. The rule of law is here seen as an integral part of the modern political democracy. The most common understandings of the rule of law are presented in the chapter, as well as the linkage between the rule of law and democracy. The foundation of the main argument of the dissertation will be laid: the rule of law is a necessity for democracy. Modern political democracy guarantees the citizens' right to participate in collective decision-making, yet this is not possible without a legal system that supports the implementation of the legislation.

The latter part of the second chapter presents the literature on the rule of law in the Arab Middle East. This literature can roughly be divided into two groups. Some studies are focused on the debate over the term itself, while others examine the actual functioning of some (or all) elements of the rule of law, or elements seen as essential to the rule of law. The research on the elements of rule of law in the Middle Eastern context is concentrated on two aspects: constitutionalism and the judiciary. Constitutionalism and the judiciary are the main elements of the rule of law, in a formal sense, that cannot be ignored anywhere. Islam is naturally a factor that cannot be ignored when studying legal matters in the Arab Middle East. Although the literature on the rule of law, or rather legal development, in the Arab Middle East has devoted a considerable amount of effort to human rights, this will be excluded from this review, as the definition of the rule of law adapted here does not include substantial requirements. The compatibility of Islam and 'universal' human rights is seen by some as a part of the debate on exceptionalism. The distinction between the judiciary and constitutionalism are not clear-cut, as the constitutional courts can be seen belonging to both elements. The aim of this chapter is to find out what is already known about legal-political development in the region, and to identify the elements that will be useful for the purposes of this thesis.

In *Chapter Three* the focus is moved to approaches to the study of democratisation in order to identify the challenges of studying transforming political systems. The aim of the chapter is to present the achievements of the current literature and identify the possible weaknesses. It is worth noting that the objective here is not to provide a comprehensive review of literature on democratisation, not least since this would be a massive task. The objective is to present the central elements and main contributors, as well as the main differences between the three principal approaches. The approaches to the study of democratisation will be introduced using the classification of David Potter. Potter's classification was chosen, as Potter is concerned with factors explaining the construction of democratic systems. There are classifications based on the modes of research or on a crude distinction between structuralist theories and others. According to Potter, approaches are divided into the modernisation approach, the structural approach and the transition approach. It is also relevant for the purposes of this study to examine how the different approaches have perceived the role of the rule of law in the democratisation process, if at all.

The empirical part of the dissertation examines the political changes in Jordan since 1989. This is done through analysis of three elements identified through the discussions so far central to modern political democracy: constitutionality, the judiciary and political participation. Before examining the three elements, the object of this study - the Hashemite Kingdom of Jordan- will be introduced in *Chapter Five*. The chapter aims to provide a brief introduction to Jordan. This is done to familiarise the reader with the political context (the political elite and the challenges they face), and to provide a background to the context of this study. The chapter aims to enable the reader to understand the relevance of the recent political changes in Jordan, in relation to the political elite in particular. How have the political changes that have taken place since the late 1980s made the political setting different? The latter part of this chapter discusses the interpretations of the political changes offered in the existing literature. How have scholars perceived the political changes taking place in Jordan, and how have they reached their conclusions?

The constitutional framework, as described by the constitution, will be examined in *Chapter Six*. The first step to examine the rule of law is to define the legal framework: state powers, powers granted to them and the relationship between state powers and the citizenry. This is done by analysing the constitution, a written 9-chapter document, describing the ground rules of the kingdom. Does the constitutional framework support the principles of the rule of law and political democracy? In the case of Jordan it is significant to acknowledge that the constitution - albeit promulgated in 1952 - has been amended several times since the 1950s. How have the contents of the constitution changed since promulgation, and how have the amendments altered the constitutional framework in the country? It is also relevant to this research to identify what events and individuals initiated in amendments and the actors who benefited from the amendments.

A constitution here is not seen as an instrument automatically constraining the rulers, or a guarantee of democratic governance, but rather as a charter for the government. It is relevant for this thesis to examine whether these principles (democracy and the rule of law) are included in the constitution. It is worth noting that constitutions, like any other documents, can include contradictory elements. Thus, if included in the constitution, how does the structure of the constitutional framework support realisation of these principles? In addition to analysing the constitutional text, the realisation of the constitution is analysed, in this chapter and in the rest of the dissertation. Is it justified to see Constitutionalism as being part of the Jordanian political system? It is important to define whether constitutionality has been part of the system prior to 1989 and after. Have the stipulations of the constitution been respected even during the unexceptional circumstances any state will experience? The latter part of the chapter will examine the role of temporary laws in the Jordanian legislation in order to establish whether their usage compromises any constitutional stipulations.

Chapter Seven analyses the independence of the judiciary in Jordan. The aim of the chapter is to assess whether the constitution and the existing institutions provide the judiciary with a working environment in which the judges are free from interference and pressure. It intends to discover, through interviews and analysis of the current

legislation, whether the judiciary has exclusive jurisdiction in all judicial matters in Jordan. The United Nations' *Basic Principles for the Independence of the Judiciary* is used here to help to approach the vast and complex object. The Basic Principles approaches the independence through six categories, which enables us to highlight those elements with any possible shortcomings. Due to the complexity of judicial independence another distinction will be used here; analysis of the 6 categories of the Basic Principles will be done in two sections. The analysis will be based on the distinction of structural and decisional independence. The chapter starts with presenting the existing legal system, in order to find out whether the structure of the legal system enables the independence of the judiciary, then moving on to examination of the decisional independence.

Chapter Eight examines political participation in Jordan between 1989 and 2003. The focus is on parliamentary elections, political associations and press freedoms. Political participation will be approached through existing legislation, the constitution included, and implementation of the legislation. How has the legislation changed since 1989, if at all? Have there been any changes in citizens' participation and even in their perceptions of the possibilities offered to them?

The aim of final chapter is to provide a detailed answer to the research question: can the political changes be understood as democratisation. *Chapter Nine* aims to offer a summary of the political changes and their impact on the political system in Jordan. Has the political system really changed since 1989? If the political system has been changing, can the process rightly seen as political liberalisation or even democratisation? Has transfer of political power occurred in Jordan, and if has what has been the role of the rule of law in this process? It is argued here that there have been no significant improvements in the rule of law situation in Jordan. Neither has transfer of political power occurred since 1989. Therefore, the only conclusion to draw is to say that the political changes in Jordan are not democratisation.

The data used in this study has been collected in Amman, Jordan during the spring 2003. The primary data was collected mainly by interviewing key actors: legal experts, politicians, journalists and civil society actors. The interviews were

conducted in English, with the exception of the interviews of Farouq Kilani and Ahmad Shunnaq. The full list of interviews conducted can be found in the *Bibliography*. Both the Bibliography and footnotes are composed in accordance with the University of Durham Library's Guidelines. When analysing the pieces of legislation English translations are used, including the 1952 constitution and the constitution in force. With the exception of the Press and Publications law, the legal documents used are official translations. The Press and Publications law was translated by Sae'da Kilani. Also some articles in Arabic, which were received from interviewees, have been translated into English.

The transliteration of Arabic terms is done following the modified *Encyclopedia of Islam* system.[2] The macrons and dots are omitted from personal names, names of political parties and organisations and titles of books. For example, the names of the Hashemite kings used within the study are Hussein and Abdullah. The exceptions to the above-mentioned transliteration rules are place names with accepted English spellings and names of political leaders and cultural figures, which are spelled in following English norms. Also the words listed in unabridged English dictionary are written without indication of *'ayn* or *hamza*. It is worth noting that all the sources used are written using the Roman alphabet, thus hardly any transliteration was required as such. Furthermore, when reviewing the existing literature this study is using the terms as transliterated by the authors. In the case of several authors transliterating the same terms in different ways, the most common transliteration is used. The names of the interviewees are written according to the preferences of the interviewees themselves.

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[2] Following this transliteration system *qaf* is written as q (not k), *jim* as j (not dj), the roman double letter consonants are not underlined, and the letter l in the definite article al is not assimilated into the word it is defining, *ta marbuta* is indicated as a instead of ah.

1. STUDYING POLITICAL CHANGE IN THE ARAB MIDDLE EAST

Introduction

Since the late 1980s a fair deal of scholarly work has been produced on the political changes associated with the third wave of democratisation. The only island in the developing world untouched by the great waves of democratisation is the Arab Middle East (AME). Contemporary political life in the Arab Middle East has been characterised as an "uninterrupted rule of authoritarian leaders".[3] The continuity of authoritarian rule has been possible through family succession, the foundation of which was established in the early post-colonial years. Some of the Arab dynasties were deposed later, but a majority of the ruling dynasties have since been able to consolidate their power.[4] The rulers have succeeded in doing this primarily by concentrating the power in hands of a few, a small ruling elite.[5]

Therefore, it is not surprising that the Arab states have not been at the centre of the contemporary democracy discourse. According to a majority of writers reviewing the recent major research projects on democratisation, the Middle East[6] has gained relatively little attention.[7] Brynen (*et al*) claims that throughout the 1980s transition theorists and comparativists ignored the Middle East, as did Western area specialists and the Middle Eastern scholars. Western scholars saw nothing worthy of research, and scholars within the region were preoccupied with other topics or considered democracy too risky a topic to tackle.[8] Since the early 1990s, however, there has been a growing academic interest in the Middle East. Middle Eastern exceptionalism,

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[3] Salame, Small is Pluralistic: democracy as an instrument of civil peace(2001), p. 1.
[4] Zubaida, Islam, the People and the State(1993), p.124.
[5] Owen, State Power and Politics in the Making of the Modern Middle East(1992), p. 46.
[6] The term 'Middle East' is used here when referring to a region sometimes referred as 'Middle East and North Africa'. The definition of Middle East therefore includes the Arab countries in North Africa (Morocco, Algeria, Tunisia, Libya and Egypt) but excludes Sudan. Iran and Turkey, the non-Arab states in this dissertation are not included, as the focus here is on the Arab countries of the region.
[7] Ross, Does Oil Hinder Democracy?(2001), p. 325; Tessler, Islam and Democracy in the Middle East(2001), p. 5; Addi, Political Islam and democracy: the case of Algeria(1997), p.105; Brynen, Rex and Korany, Bahgat and Noble, Paul, Introduction: Theoretical Perspectives on Arab Liberalization and Democratization(1995), p. 5. Majority refers to the 'world-wide' research projects on 'transitions' by O'Donnell, Guillermo and Schmitter, Philippe, Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies(1986) and by Diamond, Larry and Marks, Gerry (eds.), Re-examining Democracy: Essays in Honor of Seymour Martin Lipset(1989).

the alleged immunity (or hostility) of the region to democratisation has drawn mounting attention. The debate on exceptionalism is something that cannot be avoided when studying political developments in the Arab Middle East. In the 1980s and the 1990s demands and hopes for democratisation increased both internationally and domestically while democratisation processes were occurring in other developing countries. However, while the developments elsewhere bred optimism, the most striking event in the political field in the Arab Middle East was the emergence of the Islamic revivalism, and particularly the Iranian Islamic revolution in 1979.[9]

This chapter aims to present the central arguments for the exceptionalism followed by the responses given. Regarding the critique directed at the exceptionalists, only the general lines will be presented here, as a detailed critique would be beyond the scope of the chapter. The purpose of the chapter is not to provide a detailed list of the weaknesses of each individual piece of work, but a general idea of the exceptionalism debate. This is done in order to find what this literature can offer to this study and if there *is* something exceptional that has to be taken into account when studying the Arab Middle East. The body of literature will be here approached with the help of Sami Zubaida's classification. According to Zubaida, there are two types of positions among exceptionalists: cultural and historical "essentialism" and "developmentalism"[10]. Essentialists view that there is something unique in the history and/or the culture in the Arab Middle East determining the cause of political development. The developmentalist position considers that there are certain historical processes and stages of development, linked to international developments that will take place in all societies.[11] The essentialist arguments are presented first, followed by the developmentalist ones.

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[8] Brynen *et al* (1995), p. 5.
[9] Sadowski, The orientalism and the democracy debate(1997), p. 34; Bakhash, The Prospects for Democratization in the Middle East(1993), p.157. Brynen (*et al*) remark that 'exceptionalism' in relation to the lack of democratisation has not been limited to the Middle Eastern context; there are similar arguments presented regarding other religions/cultures (e.g. Catholicism, Confucianism). Brynen *et al* (1995).
[10] Zubaida (1993), p.122.
[11] Zubaida (1993), pp.122-123.

1.1. Essentialist Arguments

Political culture as an explanation for the Arab Middle East is lack of democracy, whether moulded by Islam or Arab culture, or both, emphasises the ideological (ideational) side of political behaviour. This body of literature examines idea(l)s more appealing to Arabs than democracy (whether originating from Islam, Arabism, tribalism), thus assuming *values* to be primary driving forces in political life. Some scholars argue that the resistance of democratic ideas in the Arab Middle East is due to certain values, beliefs and attitudes predominant in the Arab and/or the Islamic culture. Regarding the current debate, those values and beliefs are considered antithetical to democratic principles.[12]

The main essentialist argument is the incompatible nature of Arab culture with democracy. Arabs are seen as irrational ("rude, proud and ambitious and eager to be the leader")[13], and Arab culture is being plagued by a conspiratorial mentality and primordialism, in contrast to modern or post-modern characteristics of the residents of established democracies.[14] Kedourie, among others, assumes that, due to the nature of the Arab culture, a vibrant civil society is not possible in the Middle East.[15] Claims of Arab culture's non-democratic nature are often based on a "trans-historical"[16] view of Arab politics: *traditions* are seen to be to determining factors in political life. Values and attitudes uncongenial for democratic developments have been evolving through history. It is argued that history has made Arabs consider dictatorship as a norm: taught them to play according undemocratic rules and also expect others to do so.[17] Talbi claims that Oriental Despotism, an age old tradition in the Arab world, differs from the despotic governance elsewhere as it has not yet been replaced by democratic procedures.[18] Ayubi argues, however, that the historical Islamic state was a direct democracy of a kind. However, over time the

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[12] Brynen *et al* (1995), p. 6; al-Suwaidi, Arab and Western Conceptions of Democracy(1995), pp. 85-86.
[13] Patai, the Arab Mind(1973), p. 20.
[14] Brynen *et al* (1995), p. 7. See also Hudson (1995a).
[15] Kedourie, Democracy and Arab Political Culture(1992), p. 15. See also Milton-Edwards, Contemporary Politics in the Middle East(2000), p. 156.
[16] Salame (2001), p. 4.
[17] Salame (2001), p. 4.

system was transformed, as first the practice of *shura* (consultation) was abandoned and the other elements (*bay'a*, '*aqd*) not long after.[19] Therefore, scholarly efforts should be focusing, suggests Ayubi, on the reasons why the system of the state was turned into a despotic state.[20] Esposito and Voll point out that the Middle Eastern countries have common characteristics, but also each one of them has a unique history.[21]

Some authors have aimed to offer explanations as to why traditional culture has proved resistant in the Arab societies. It is worth noting that, for the majority of contributors to the exceptionalist debate, *Islam* is a/the main explanatory factor in the 'evolution' of Arab culture. Thus the Islam versus democracy debate is at the centre of the essentialist literature. Elie Kedourie claims that democracy is alien to the Middle East, as "there is nothing in the political traditions of the Arab world - which are the political traditions of Islam - which might make familiar, or indeed intelligible, the organising ideas of constitutional and representative government".[22] The arguments claiming Islam to be the main or the sole contributor to the immunity of the Arab countries to democratic principles, or modernity in general, are based on what is seen as the 'essence' of Islam or on particular precepts of Islam. Some, mainly classical orientalists, see Islam as an all-encompassing philosophy, a way of life.[23] According to Mehran Kamrava, Islam is the only ideology that "meticulously constructed a social and cultural, as well as political, universe of its own".[24] Kamrava argues that in the Muslim Middle East "Islam is reality" with the result that Islam "naturally lends itself to political expressions".[25] Some see the universalism of Islam as the root of its incompatibility with Western values. The faith of Islam is not confined to a certain group of followers or to a certain territory, but to all and

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[18] Talbi, A Record of Failure. Arabs and Democracy(2000), p. 59.

[19] The tri-partite principle of *shura* consisted of *'aqd* (ruler-ruled contract) and *bay'a* (oath of allegiance). Ayubi, Political Islam Religion and Politics in the Arab World(1997), p. 13; Leca (2001), p. 60.

[20] Ayubi (1997), pp. 347-348.

[21] Esposito & Voll, Islam and Democracy(1996), p. 4.

[22] Kedourie (1992), p. 5.

[23] Bill and Springborg, Politics in the Middle East(2000), p. 34; Huntington (1991), pp. 307-309. See also Kamrava, Democracy in the Balance(1998).

[24] Kamrava (1998), p. 170.

[25] Kamrava (1998), p. 171. Kamrava refers to the studies by Ernest Gellner, Muslim Society(1981); Bassam Tibi, Islam and Cultural Accommodation of Social Change(1990) and Max Thornburg, People and Policy in the Middle East(1964).

everywhere regardless of race, nationality and place of origins. All believers belong to the same polity, the community of believers (*umma al-Islamiyya*). Thus the concept of *umma* contradicts the Western idea of nation-state, making Islam incompatible with nationalism. In this respect, Zionism, Bill and Springborg argue, has "a clear advantage over Islam".[26] According to Samuel Huntington, the comprehensiveness of Islam excludes one of the key elements of modernisation: the separation of church and state. Islam makes no distinction between the political and religious spheres, as Islam is seen both as a religion and a state (*al-Islam din wa-dawla*).[27]

There seems, however, to be no consensus on the exact impact of Islam on political life. The older generation of orientalists argued that Islam has made the Arab societies too weak and the states too strong. Islam, a religion calling for submission of the believers, has promoted a culture of 'quietism', silent acceptance of authoritarian rule.[28] Nevertheless, the Iranian revolution in 1979 elucidated that the societies were not as weak, or as submissive, as assumed. The neo-orientalists reversed the argument: it is not the state that is too strong, but the society. "Tribes, mullahs and mamluks" are too powerful in relation to the state, which is getting weaker and weaker due to growing economic problems.[29]

One of the main problems with the essentialist arguments on the significance of Islam is the "assumption of univocality".[30] Huntington, for instance, refers to the Islamic doctrine, as do Bill and Springborg ("the organization of Islam, like its political

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[26] Bill and Springborg (2000), p. 33.

[27] Huntington, The Third Wave: Democratization in the Late Twentieth Century(1991), p. 307. Huntington has been criticised making too far-reaching conclusions based on a study measuring correlations between religions and democratic governing systems. Another weakness is the limited use of sources: only one reference was used when defining the 'Islamic doctrine', a one by acknowledged orientalist. Huntington himself, however, has since modified his widely criticised views about Islam's antidemocratic nature, and now argues that there could be elements incompatible and compatible to democracy. Despite the shortcomings of his (early) work, Huntington's impact on the exceptionalism debate has been remarkable; his work are the 'best-sellers' of contemporary political science and widely cited outside the academia.

[28] Sadowski (1997), p. 35. See also Kamrava (1998). A classical Islamic scholar al-Ghazali (d. 1111) is often cited to back the claim of orthodox Islam promoting 'queitism'. According to al-Ghazali, a despotic ruler is better than anarchy.

[29] Sadowski (1997), pp. 40-41.

[30] Stepan, Religion, Democracy, and the "Twin Tolerations"(2000), p. 44.

doctrine").[31] As Western Christianity has been multivocal in relation to democracy, it would not be logical to examine other religions in a different manner.[32] Even those scholars who focus on particular precepts of Islam when explaining the 'immunity', or 'hostility', of Islam to modernisation fail to recognise the diversity within Islam. There are fundamental disagreements among Islamic scholars, and among Islamist movements, on how political life should be organised. There is no consensus among Islamic scholars, classical and contemporary, on any formula for political governance, thus there can be no agreement on democracy and its compatibility with Islam either (or democracy's desirability).[33] Islam has been used to justify several forms of governance: democracy, dictatorship, republicanism and monarchy.[34] Furthermore, the contemporary (self-claiming) 'Islamic states' differ from each other and do not recognise each other's Islamic nature.[35]

This study is in an agreement with scholars who are claiming that the doctrinal foundation of Islam, or any other religion, does not matter as much as assumed. It is argued that Islam, or any other religion, cannot seen as pro- or anti-democratic, as no religion takes sides on political matters. The ways Islam is interpreted matter and the use of religious concepts ought to be the focus of (further) studies.[36] Esposito and Voll remark that in Western Europe the "reconceptualization of premodern institutions"[37] was at the core of the democratisation processes. There are concepts once of 'pre-modern' nature that have 'democratic' meaning today. Therefore, it cannot be assumed that some parts of the world would be totally immune to democracy (idea and practice). What matters are the ways various actors interpret the concepts (indigenous dimensions interact).[38]

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[31] Huntington (1991), p. 307; Bill and Springborg (2000), p. 36.
[32] Stepan (2000), p. 44.
[33] Ayubi (1997), p. 349; Esposito and Piscatori, Democratization and Islam(1991), p. 434.
[34] Esposito and Piscatori (1991), p. 434.
[35] Esposito and Voll (1996), pp. 45-50; Ayubi (1997), p. 356. See also Kamrava (1998) and Addi (1997).
[36] Esposito and Voll (1996), pp. 23-27; Kamrava (1998), p. 22; Engineer, The Islamic State(1994), p. 86; Binder, Exceptionalism and Authenticity: The Question of Islam and Democracy(1998), p. 48-49. When considering democratisation in Southern Europe, Huntington stressed the significance of transforming Catholicism, which he saw as the main obstacle.
[37] Esposito and Voll (1996), p. 22.
[38] Esposito and Voll (1996), p. 22. See also Abed, 1995, 119. Abed stresses that transformation of concepts by Islamic scholars have occurred before.

The notion of secularism as being a central requirement of democracy has been criticised for several reasons. There are some who see secularisation as a historical process that has already transformed the Arab societies. Ansary-Filaly argues that the term 'secularisation' has a negative connotation in the Arab Middle Eastern context, as it is associated with atheism. Yet, it does not mean that secularisation is a process unknown in the region. According to Ansary-Filaly, signs are there: Islamic law has been replaced by positive law, new modern institutions have been adopted and the values of the people have been transformed.[39] It is also argued that democratisation does not necessarily require secularisation. There is not enough empirical evidence from the established democracies supporting the claim of the necessity of secularism and the separation of church and state for democratisation. In some European democracies there are established churches, and nearly in every EU country there are (at least *de facto*) religious parties.[40]

Furthermore, studies conducted in North America and in Western Europe on the relationship between normative beliefs and political behaviour have produced mixed results. In the North American context religious values have shown a connection to political conservatism and support for militarism, whereas some European studies have found a link between religious values and internationalism and support for development aid. Regarding the Middle East, there have been only a few attempts to examine the impact of religious values on political behaviour. Mark Tessler argues, after conducting studies on the relationship between (religious) values and political behaviour in Algeria, Morocco, Palestine and Egypt, that religious (Islamic) values do not have as great an impact as has been assumed. Tessler claims, however, that secular societies might differ from non-secular ones. He thinks that in religious societies religious values do not seem to have a connection with political conservatism, unlike in secular societies. Therefore, comparisons with the Western countries might not be appropriate. There is still not enough empirical evidence on the impact of religious values (or normative beliefs in general) on political behaviour, not from other regions and especially not from the Middle East.[41] However, it is worth

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[39] Filaly-Ansary, 1999, 19-20 and 24. See also Salame (2001), p. 7.
[40] Stepan (2000), p. 40.
[41] Tessler, Islam and Democracy in the Middle East(2002), pp. 5-6.

noting that the studies on values as being the factor responsible for the incompatibility of Islam with democracy seem to be suggesting that values are permanent. Currently it is widely recognised within social science literature that values are transformable.

The normative literature on the compatibility of Islam with democracy, Binder argues, is concentrated on doctrinal questions. Some see that there are no reasons to discuss the possibility of democracy, others view the proving of the compatibility of Islam with democracy as the only necessity. Either way, assuming that democracy is 'Islamic' or Islam 'democratic', does not say much as to how democratisation may be possible. The majority of scholars have been basing their claims on an assumption that normative beliefs do drive politics. This leads to the question of the foundation of normative beliefs. According to Binder, the assumption of normative beliefs as a driving force of politics is based on an idea of normative beliefs as "product of acts of cognition and states of consciousness"[42]. Yet there is an alternative view of normative beliefs being shaper by "strategic interaction".[43] In either case normative beliefs are not God-given or permanent constructs, but merely products of conscious human intervention.

There are also "essentialists" who agree that political changes *have* taken place in the Arab Middle East, but that the impact of the changes has been unique. Hisham Sharabi argues that modernisation in the region has not, unlike in Europe, replaced traditional, patriarchal structures, but strengthened them.[44] The reason for this is a stalled course of development that has stopped half way between traditional and modern.[45] According to Sharabi, Arab societies can be characterised as neo-patriarchal: societies with some modern (material) trimmings yet with traditional values.[46] Neo-patriarchal societies are decentralised, the people being dependent on smaller social entities like clans, tribes and families.[47] Sharabi considers the secret police that exists alongside the "military-bureaucratic structure" to be the most

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[42] Binder (1998), p. 41.
[43] Binder (1998), p. 41.
[44] Sharabi, Neopatriarchy: a theory of distorted change in Arab society(1988), pp. 4-5.
[45] Sharabi (1988), p. 8.
[46] Sharabi (1988), p. 9.

developed institution in the Arab states. The petty bourgeoisie is "incapable of carrying out the tasks either bourgeoisie or proletariat".[48] The processes of capitalism unique to the Middle East have led to the emergence of neo-patriarchal societies. Sharabi assumes, influenced by Marx and Weber, that capitalism is the force required for transforming societies. Unfortunately for the Middle East, the world market is a western dominated sphere, hindering the positive developments and departures from neo-patriarchies witnessed elsewhere.[49]

Sharabi is not alone; others (e.g. Pryce-Jones, Bill and Springborg) have emphasised the patriarchal structures of the Arab societies. Anderson considers, however, patrimonialist theory to be insufficient in explaining the impacts of current trends of migration and population growth in the Arab societies.[50] The theory of neo-patriarchy acknowledges that Arab societies are capable of transforming themselves. It is not Arabs, or the local culture, stopping or distorting the course of development but the *structures of the world economy*. Therefore, it can be suggested that only changes in the world economy would bring some winds of change to neo-patriarchal systems. Whether such changes would take place one day is another matter. More importantly, it is stressed here that Arab societies are thus not utterly static, as some signs of transformations have already been observed. Thus, it is logical to assume that when the appropriate conditions are met, Arab societies will change. If the structure of the world economy is seen as the main factor hindering the development in the Middle East, as Sharabi and others suggest, it should have the same effect on the other developing countries.

Despite the numerous efforts to examine the lack of democratisation in the Middle East the results have not been encouraging, and many questions are unanswered.[51] Many of the studies are "riddled with logical flaws and methodological obscurantism"[52], some even with ethnocentrism and racism.[53] The literature on Arab

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[47] Sharabi (1988), p. 7.
[48] Sharabi (1988), p. 9.
[49] Sharabi (1988), p. 5.
[50] Anderson (1995b), pp. 84-85.
[51] Brynen *et al* (1995), p. 6; Esposito and Piscatori (1991), p. 428; Zubaida (1993), p. 122.
[52] Ghadbian, Democratization and the Islamist Challenge in the Arab World(1997), p. 9.
[53] Krämer, Islam and Pluralism(1995a), p. 113; Ghadbian (1997), p. 3; Hudson (1995a), p. 61.

culture is criticised for several weaknesses: reductionism, ethnocentrism, "gross overgeneralisation", "crude Orientalism", "Eurocentric chauvinism", "anthropologic reductionism" and "media sound-bites".[54] Furthermore, some notions are "vulgarised" and used for political purposes, like those presented by Kedourie and Pryce-Jones.[55] Lisa Anderson accuses the literature of "violating the ordinary conventions of social science methodology". For instance, Anderson refers to a work by Pryce-Jones primarily based on "anecdotal evidence".[56]

In spite of the various shortcomings of the existing body of literature, some writers call for the revival of studies of political culture. Michael Hudson refers to the weaknesses of political economy pointing out that values have an impact on rational choice and economical considerations.[57] For Hudson, political culture might function as the "indispensable linking concept" between political science and area studies.[58] Bearing in mind the earlier caveats, students of area studies should be aware that political culture is not only horizontal and vertical (mass, sub and elite cultures), but also multi-layered (formal ideologies, individual opinions and attitudes, collective values). This places certain methodological requirements, aiming at more multifaceted use of methods: texts, interviews, survey data, historical narratives.[59] However, the critical question is still the unscientific nature of political culture. Measuring tradition, or the impact of religion on attitudes, is challenging when dealing with another cultural reality. As Lisa Anderson points out, political culture cannot be ignored, but yet methodological problems are still evident.[60] Most of the scholars participating in the debate on exceptionalism see that no conclusive results, however needed, have been reached.[61] The significance of the debate, as suggested by Milton-Edwards, is that important themes that need further attention have emerged.[62] More importantly, there is no disagreement on the insufficient quantity of

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[54] Hudson (1995a), p. 61.
[55] Hudson (1995a), pp. 61- 66.
[56] Anderson (1995b), pp. 78 and 82.
[57] Hudson (1995a), pp. 64-65.
[58] Hudson (1995a), p. 65.
[59] Hudson (1995a), p. 73.
[60] Anderson (1995b), pp. 89-90.
[61] Ghadbian (1997), p. 3.
[62] Milton-Edwards (2000), p. 147. Milton-Edwards suggests six themes: Arab/Islamic civilisation, political liberalisation, economic liberalisation, civil society, Islam and the Arab-Israeli conflict.

research on the factors hindering (or preventing) and promoting democratisation in the Middle East.[63]

[63] Brynen *et al* (1995), pp. 8-9; Deegan, Middle East and Problems of Democracy (1993), pp. 13-14; Tessler (2002), pp. 3-4 and p. 9; Hudson (1995a), p. 69.

1.2. Developmentalist Arguments

Developmentalist explanations stress the significance of structural and economic factors for the lack of political development in the region.[64] This group of arguments does not see values as the primary driving force for human behaviour. It is not the degree of economic development achieved that matters, but the *processes* of economic development, and their consequences on the structures of society. A primary aim is to discover the elements essential for political development that are absent in the Arab Middle East. The focus has been on two elements: class structures and the primary sources of income for national economies.

The absence of the "entrepreneurial bourgeoisie"[65] in Arab societies is considered by some to be the reason for the stability of the authoritarian systems. This argument is based on the view of the order of the development in the established democracies. Democratisation in Europe was largely due to the activism of the entrepreneurial bourgeoisie. In the Middle East all the groups historically essential for democratisation are significantly different, as they are tied to the state.[66] Furthermore, the structure of the society as a whole differs remarkably from that of the 'Western European model'. There are "state bourgeoisies" and "state intelligentsias", as well as fragmented private bourgeoisies.[67] Members of Arab middle classes are (financially) dependent on the state and thus have vested interests in maintaining the domestic status quo. According to Roger Owen, the entrepreneurial classes are more likely to use their influence on the government to secure their own interests than to pressure for political developments.[68] The ambiguous stance of the middle classes towards democratisation is not unique for

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[64] Sharabi's neo-patriarchy is related to this debate, as he has examined the impact of the development processes (stalled modernisation processes) on the 'mentality' of the people. However, developmentalist arguments are interested in the structures of societies.

[65] Waterbury, Democracy without Democrats?: the potential liberalization in the Middle East(2001), p. 28.

[66] Harik, Pluralism in the Arab World(1996), pp. 280-283.

[67] Waterbury (2001), p. 27.

[68] Owen, Socio-economic Change and Political Mobilization: the case of Egypt(2001), p. 192.

the Middle East. Exceptional is, stresses Waterbury, the dependency of middle classes on the state compared to the other 'democratising' regions.[69]

Co-optation of the middle classes has been possible through external rents received by states. The role of the state in a rentier state[70] differs fundamentally from a conventional modern (Western) state. The citizens of a rentier state are unlikely to make demands for political representation, as long as their (material) needs are fulfilled.[71] In a rentier state "only a few are engaged in the generation of this wealth, the majority being involved only in the distribution or utilization of it".[72] A crucial element of rentierism is the productivity of its citizens. A state with a high degree of import revenues does not qualify as a rentier state, as the majority of citizens are involved in generating the revenues.[73] The form of accruing revenues creates a "rentier mentality". This mentality differs from conventional "work-reward" logic, as rewards are "situational or accidental".[74] The role of oil[75] has been central to the theory of rentierism. In the Middle Eastern oil states external rents cover 90 to 95 percent of state budgets. Also, only 2 to 3 percent of the labour force is involved in creating the rents.[76] Nevertheless not all Middle Eastern states are rentier states, currently only the Gulf states are justified in carrying the label. Furthermore, the economic diversity among the Arab states is remarkable. Yet there are rentier economies receiving rents as workers remittances or as foreign aid from the oil states.[77]

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[69] Waterbury (2001), p. 27.
[70] The pioneering study on renterism in the Middle East was conducted by Mahdavy, and later modified by Beblawi and Luciani. See Anderson (1995c,) p. 29fn; Ross (2001), p. 329.
[71] Luciani, The Oil Rent, the Fiscal Crisis of the State and Democratization(2001), p. 132.
[72] Beblawi, The Rentier State in the Arab World(1988), p. 51. Beblawi stresses that defining rentier state is not straightforward, as there is no 'pure' rentier economies. However, a distinction between rentier state and economy is clear: in rentier state the state is the principal recipient of the external rents while in a rentier economy the minority creating the revenues enjoys the revenues.
[73] Beblawi (1988), p. 51. A class earning major part its income as domestic rents can be considered as rentier class, yet the state cannot be seen as a rentier state.
[74] Beblawi (1988), p. 52.
[75] Michael Ross' quantitative and statistical analysis shows a strong correlation ("valid and statistically robust") between lack of democratisation and oil. Ross stresses that the findings prove not to be a Middle Eastern feature: it is not only oil, but also "nonfuel mineral wealth" in general that obstructs political development. Ross (2001), p. 356.
[76] Beblawi (1988), p. 53.
[77] Luciani, Resources, Revenues, and Authoritarianism in the Arab World: Beyond the Rentier State?(1995), pp. 212-214.

The question of taxation is an integral part of this debate. Lisa Anderson, among others, argues that the absence of political representation can be explained by the absence of taxation. Historically states' increased reliance on taxing the subjects has led to increased political representation. In the Middle East, on the contrary, with external rents being the main source for government's revenues, there is little need for (heavy) taxation. Once the state is economically supporting the citizens, there is little justification, and few demands, for accountability.[78] Waterbury, however, disputes this explanation. There are states in Asia with heavy taxation and very little representation. Furthermore, compared to the rest of the developing world, the citizens in the Middle East are not more fortunate to be less taxed. On the contrary, the rates of taxation in many countries in the region are higher than elsewhere in the developing world. The Middle Eastern states are, however, undertaxed compared to European states.[79] An important element of Anderson's argument, Waterbury points out, is the *nature* of taxes. Indirect taxation contributes the biggest share to the tax revenues in many states in the region. Therefore, citizens by and large might be unaware of the taxes they are paying.[80]

The necessity for taxation in the Arab states, given financial realities, is changing. The golden age of rentierism started to wane in the mid-1980s, shifting the focus of the scholarly debate to the future of rentier economies.[81] Many Arab states are facing fiscal crises with the declining revenues and "over-dependence on unearned oil-based incomes".[82] As rentier economies have a cyclical nature, the rentier economies are prone to fiscal crisis. Fiscal crises are hitting hard, particularly on the states relying on indirect rents.[83] Fiscal crises are considered as potentially providing an opening for democratisation. When states are facing severe financial problems and fear a degradation of their legitimacy, there are three ways to tackle the fiscal crises. States can choose between cutting expenditures, increasing taxation or relying on deficit spending. The last option has proved the most attractive. Yet the World Bank and the International Monetary Fund have been promoting policies of

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[78] Anderson (1995a), p. 64. See also Beblawi (1988), pp. 53-54; Waterbury (2001), p. 29.
[79] Waterbury (2001), p. 29.
[80] Waterbury (2001), p. 30.
[81] Sivan (1997), p. 104.
[82] Ehteshami and Murphy (1996), p. 759.
[83] Luciani (1995), p. 214.

structural adjustments. Luciani claims those fiscal crises are closely connected to structural adjustments.[84] This situation has inspired some scholars to figure out possible solutions. El Sayid points out that democratisation has often co-incidenced with fiscal crises. Citizens are hit hard by the deteriorating economies, their views of current regime are changing, and they are demanding reforms.[85] Another peculiarity in the Middle Eastern is the durability of these structures. In other 'developing' countries, however, the structure did not prove persistent. [86]

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[84] Luciani (1995), pp. 211-213.
[85] Leca, Democratization in the Arab World: uncertainty, vulnerability and legitimacy. A tentative conceptualization and some hypotheses(2001), p. 61.
[86] Brumberg, Authoritarian Legacies and Reform Strategies in the Arab World(1995), p. 229.

Summary

Contributors in the exceptionalism debate have been looking for either something that exists only in the Arab Middle East or something that exists everywhere else but not in the Arab Middle East - whether these elements are attitudes, mentalities, socio-economic development processes or sources of state revenue. Not a great number of these studies have succeeded in making great discoveries. On the contrary, some of the studies are even worryingly ignorant of some common principles of the social sciences. Not only have many writers failed to define the basic concepts used (e.g. democracy, secularism), but some also appear to have been ideologically motivated. The role of secularism in democratisation is a good example. Some authors seem to focus merely on finding 'evidence' to back their arguments, whether to prove the existence, or the absence, of secularism in the Arab Middle East. Often signs for secularism, or lack of them, are described, although there is little, or even no, explanations on the (in)significance of secularism.

This chapter was looking for anything that can be used for the purposes of this study, not to find answers for the alleged exceptional nature of Arab Middle East *per se*. Will studying Islam, political culture or rentierism in Jordan reveal the nature of the political changes since the late 1980s, and their significance to the kingdom's political development? Disappointingly, the reviewed literature offers very little: the theory of rentierism seems most relevant in this context. The significance of socio-economic factors is acknowledged also outside the Arab Middle East. Furthermore, Jordan is a classic *semi-rentier state*; the rents consisting of expatriate earnings, foreign financial assistance and small-scale oil production.[87] The dependence on external rents is remarkable, but the central government is not the direct recipient of the rents, unlike in rentier states (such as the Gulf oil-producers).[88] However, as mentioned earlier, the economic reality in the Middle East has been changing since the mid-1980s and the theory of the rentier state has been losing some of its strength.

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[87] Brynen, The Politics of Monarchial Liberalism: Jordan(1998), p. 72.
[88] Brand, Economic and Political Liberalization in a Rentier State: The Case of Jordan(1992), p. 168; Schlumberger, Transition to Development (2002a), p. 226.

It is not argued here that political culture does not deserve the scholarly attention called for by Hudson and others. The findings of this study will hopefully contribute to the future studies on Jordanian political culture, which is here seen not only as a wider subject but also somewhat different topic to be studied. However, it is stressed here that the argument of Islam as the blockage for political development is not sustainable, as many scholars have shown. When examining the impact of normative beliefs on the political sphere, it is believed here, the most essential question is the origins, or the source, of beliefs. Islam as a belief system, as mentioned earlier, is not univocal. Islam has been seen as the *opinions* of the clergy, the opinions of the believers, or as *behaviour* of the either of these groups, or of the political rulers of Muslim societies or of the followers of Islamist movements. Thus, there are a number of *actors* significant in constructing 'Islam', as a belief system and, perhaps more importantly, as a political force. The history of the Arab Middle Eastern societies, as well as the observation/s of contemporary 'Islamic' politics, has shown that religious concepts have been a matter of 'innovative' reading. Again it is highlighted that studying normative beliefs is not the primary object of this dissertation; the aim is not to study the attitudes of Jordanians, but political changes within the political system in the country. This is, nevertheless, not to argue that normative beliefs have no significance in politics.

It is suggested here that the focus when examining political development should be on elements more 'political'. Students searching for the prospects for democratisation in the Middle East should thus be focusing on the 'political game', as suggested by Leonard Binder. The same applies when studying political life in Jordan. When scholars studying political developments elsewhere have examined political actors and the structures and functioning of political systems, a great number of scholars focusing on the Arab Middle East have been examine significantly different elements. The major research projects examining the third wave of democratisation studied the main actors and the structures of the political systems.[89] In the Arab Middle East a great deal of scholarly attention has been devoted in studying beliefs and attitudes, and belief systems. Thus Jean Leca's

suggestion to bring the Arab Middle East back to the comparative studies of democratisation sounds more than necessary.[90] The basic requirement again is to study the same elements that are studied elsewhere. This is not to argue that there have been absolutely no significant studies made on the Arab Middle East.[91] Yet these cannot be seen as the cornerstones of the exceptionalism debate, but rather a very welcome addition to the Middle Eastern Studies.

Politics, understood here as the pursuit of power and the use of it, is more or less a *human driven* process. Normative beliefs are not God-given, but products of intentional human intervention and thus not permanent constructions. If concepts are seen as tools of persuasion, more accurate questions are ones asking who is interpreting the central concepts and why. It is thus suggested here that the focus should be on the political system in question, the main actors within the system in particular. In the case of Jordan, it will be noteworthy to see whether any changes in the power structures have taken place since 1989 and whether the relationships between the main actors have altered. Bearing in mind what has been argued about the role of Islam within the literature on exceptionalism it will be interesting to see whether religious rhetoric or religious actors have had a role in the political changes in the Hashemite kingdom.

To avoid conceptual vagueness, a sin too many have committed, is one of the aims of this dissertation. Thus defining the key terms used within this study is a very important task and will be done next, prior to moving on to the study of the changes themselves. The next chapter will search for a working definition of democracy and the rule of law, as well as discuss the linkages between these two terms.

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[89] O'Donnell *et al* (1986) and Diamond *et al* (1989).
[90] Leca (2001), p. 75.
[91] Brynen (*et al*), Political Liberalization and Democratization in the Arab World(1998) Volumes 1 and 2. Salame (ed.), Democracy without Democrats. The Renewal of Politics in the Muslim World(2001).

2. DEMOCRACY AND THE RULE OF LAW

Introduction

The aim of this chapter is to review the literature on democracy in order to define the key concepts around which this study will be constructed. This review will bring to the reader's attention the relevance of the concept of *the rule of law* when defining democracy itself, and the importance of establishing the precise nature of the relationship between the two concepts. The first part of the chapter focuses on the contemporary discourse on democracy by studying the challenges faced in defining the term, while the second part of the chapter identifies the role played by the rule of law and the relationship between the concepts.

Owing to the popularity of 'democracy', there is a massive body of literature to review. Therefore, it is not possible, or relevant, to provide a comprehensive analysis of the existing literature. The same also applies to the discourse on the rule of law. Thus, instead of one body of literature, there are two vast bodies of literature to review. The aim in both cases is to focus on the most commonly applied definitions to identify their weaknesses and strengths, to help us to find workable definitions of democracy and the rule of law for the purposes of this study.

It is worth remembering that the object of the study is the Hashemite Kingdom of Jordan: a modern[92] state in the "non-originating" world. Hence the emphasis here is on definitions understanding democracy as a political system of modern state. Furthermore, the objective is to find definitions appropriate to be applied in the context of "non-originating" countries, in which political systems are not established democracies, often not even democracies at all. Also, the latter part of this chapter aims is to identify the state of the studies on the rule of law in the Arab Middle East.

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[92] The word 'modern' here is used to refer "the period in history from the end of the Middle Ages to the present", to stress the contemporary nature of the political system studied here. Collins, Concise Dictionary(1996). This is done to emphasise the structural differences between the democratic systems of the Greek city states and the contemporary political system. Contemporary states are facing challenges that differ fundamentally of those of the Greek city states in degree and nature.

The objective is to summarise what is known, and what not, about the rule of law in the Arab Middle East, in Jordan in particular.

2.1. Modern Political Democracy

Finding a working definition of democracy for the purposes of this study is a challenge. Despite the consensus on the desirability of democracy among contemporary Western scholars there is no consensus on the definition of democracy.[93] W. B Gallie termed democracy "the appraisive political concept par excellence".[94] It is argued by some that the post-War period is "the age of confused democracy".[95] Democracy has become a "diffuse, multifaceted" term.[96] It is even claimed that democracy has been turned into a meaningless concept.[97]

Not only has the word 'democracy' been used in the last 2500 years to describe different political systems, but, as Tatu Vanhanen argues, to describe "very different, even contradictory states of affairs".[98] Democracy is used to refer both to systems of government and to "other social relationships"[99], to various social entities, both within a framework of state and beyond it.[100] Besides using the term democracy with reference to social entities other than political systems, there is another cause for confusion: the attachment of attributes and other qualifiers to the term. A recent dramatic increase in the number of democratic regimes, as well as the increase in the number of regimes claiming to be democratic, has stimulated this tendency.[101] There are hundreds of "subtypes" of democracy based on classification by Collier and Levitsky (e.g. pseudo-democracies, semi-democracies, electoral democracies,

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[93] Diamond, Developing Democracy: Toward Consolidation(1999), pp. 2-7; Held, Democracy: From City-states to a Cosmopolitan Order?(1992), p. 10; See also Fierlbeck, Globalizing Democracy. Power, Legitimacy and the Interpretation of Democratic Ideas(1998).

[94] Gallie, Essentially Contested Concepts(1956), p. 184.

[95] Sartori, The Theory of Democracy Revisited(1987), p. 6.

[96] Sartori (1987), p. 3.

[97] Holden, The Nature of Democracy(1974), p. 1. See also Birch, Concepts and Theories of Modern Democracy(2001), p. 71.

[98] Vanhanen (1990), p. 7.

[99] Birch (2001), p. 72.

[100] One of the best-known other 'democracies' is social democracy, which is commonly associated with Alec de Tocqueville and the idea of social equality. Social democracy does not only entail political equality (the basis of liberal democracy), but also social and economic equality. Sartori (1987), pp. 8-10 and p. 386. There are 'democracies' designed for smaller communities (e.g. universities, churches, industrial plants), as well as for entities larger than state (cosmopolitan democracy), even 'democracies' inspired by the advance of modern technology (teledemocracy). See Sartori (1987); Birch (2001); Parry, Types of Democracy(1992).

[101] O'Donnell, Democratic Theory and Comparative Politics(2000b), p. 5; Collier and Levitsky, Democracy with Adjectives: Conceptual Innovation in Comparative Research(1997), p. 431.

tutelary democracies).[102] There have been attempts to use "standardized" concepts, but the proliferation of terms and concepts used to "precise" the concept is causing more confusion and miscommunication.[103]

A few clarifications are in order here before competing definitions of democracy are discussed in further detail. This also helps to narrow down the amount of literature to be reviewed. The term democracy is used here to refer to *modern political democracy*.[104] According to Sartori, "political democracy" (democratic system of governance of a state) is a "macrodemocracy", whereas the other democracies are "microdemocracies", subordinate to political democracy. Political democracy is the "superordinate sovereign democracy" in the world of sovereign states, and therefore "the requisite condition" for microdemocracies.[105] It is acknowledged here that there are differing perceptions too. Held argues that in the contemporary world an international democracy is a requisite for democracies at national level.[106] The requirement for international democracy is easy to adopt as a political ideal, yet the aim here is to find a workable definition to be used for the purposes for the study. It is argued here that it is more useful to refer to 'political democracy' as it exists at a *national level*. Political democracy at a national level is a possibility (evidence found) with or without international democracy and is thus the meaning referred to within this study when using 'political democracy', not to mention that the object of this study is a national political system, the Hashemite Kingdom of Jordan.

Also political democracy in this context (and in most cases within the contemporary democracy discourse) is equivalent to *modern* political democracy, limiting the term to the contemporary political reality (as distinct from any previous historical contexts). Political democracy is a *modern* invention made in Western industrialised countries,

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[102] Collier and Levitsky (1997), p. 431. See also Markoff, Waves of Democracy. Social Movements and Political Change(1996), p. 104.
[103] Collier and Levitsky (1997), pp. 430-431 and pp. 447-449.
[104] Huber and Rueschemeyer and Stephen, The Paradoxes of Contemporary Democracy: Formal, Participatory, and Social Dimensions(1999), p. 169; Diamond, Is the Third Wave of Democratization over?(1996b), p. 1.
[105] Sartori (1987), p. 11. The "other democracies" referred to by Sartori are democracies designed to be implemented at a state level. It does not exclude the idea of superordinate nature of political democracy, as the current world still is state-centred.
[106] Held (1992), p. 11.

in a contrast to democracy whose roots can be traced to the Ancient Greece.[107] Sartori, among others, believes comparing different concepts of democracy to be a pointless exercise: "Modern democracy does not simply consist of the Greek ideal plus some subsequent additions".[108] The language and ideals of politics have changed, as well as the "historical settings".[109] Above all, the political system under scrutiny here is a modern state: the Hashemite Kingdom of Jordan. Thus the qualities of ancient democracies have very little relevance when the changes within this political system are examined.

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[107] Held (1992), p. 11.
[108] Sartori (1987), p. 290.
[109] Sartori (1987), pp. 278-279. According to Dahl, the differences are mainly related to the fundamental changes in the nature of polities (increased number of participants, size of territory and diversity). Dahl, Democracy and its Critics(1989), p. 19.

2.1.1. Procedures or Substance?

Narrowing the scope down to modern political democracy still leaves us with a great deal of literature to study, as there is no single (uncontested) definition of modern political democracy. After considering a large number of definitions it is decided here to use a Schumpeterian-Dahlian definition of democracy. It is believed that the definitions by Joseph Schumpeter and Robert Dahl are the most appropriate ones for the purposes of this study, as they are currently standard definitions of political democracy, the definitions used as such or as a basis for new definitions.[110] Therefore, in the case of "non-originating" [111] country a basic definition is a good analytical starting-point.

Schumpeter defines democracy as: "the democratic method is that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote".[112] According to Schumpeter, the main elements of political democracy are political parties, autonomy of the elected political elite from the state, independent bureaucracy, political culture of tolerance and compromise, and the existence of opposition and of civil society.[113] Dahl's definition, which could be seen as one elaborated from Schumpeter's definition, is as follows: "a unique process of making collective and binding decisions", a process which "produces - or at least tends to produce – desirable solutions".[114] Dahl's polyarchy is based on the following elements: elected officials, free and fair elections, universal suffrage, right to run for office, freedom of expression, alternative information and associational autonomy.[115] Both of the definitions emphasise institutional elements required to guarantee the fairness and effectiveness of collective decision-making. Political participation in Jordan will be

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[110] Burton, Michael and Gunther, Richard and Higley, John, Introduction: elite transformations and democratic regimes(1995), p. 1; Collier and Levitsky (1997), p. 431. See also Kamrava (1998); Vanhanen, The Process of Democratization. A comparative study of 147 states, 1980-88(1990).

[111] The term "originating" countries have been borrowed from Guillermo O'Donnell. With "originating" countries O'Donnell refers to the countries where modern political democracy originates. In this paper the term is also used to refer to the origins of the rule of law principle, as both political democracy and the rule of law have their roots in the same countries. See O'Donnell (2000b), p. 13.

[112] Schumpeter, Capitalism, Socialism, and Democracy(1959), p. 269.

[113] Schumpeter (1959), pp. 268-270.

[114] Dahl (1989), p. 5.

[115] Dahl (1989), p. 221.

assessed in this study through analysing the six elements suggested by Dahl. Dahl's list does not differ fundamentally from Schumpeter's, but it is a well-structured approach to study of political participation which requires no further definitions.

Choosing a Schumpeteria-Dahlian definition of democracy is a conscious decision to favour procedural definitions over substantial ones. The fundamental difference between the two disparate types of definitions of democracy is their perceptions of *equality*. What is the most important dimension of equality: political or socio-economic? Does equality encompass all dimensions of equality, or is one of the dimensions a pre/requisite of the other? Is political equality possible without social and economic equalities, and vice versa?[116] Substantive definitions are rooted in a Tocquevillean idea of social democracy: to "redistribute power" to increase social equality.[117] The very essence of democracy, it is argued, is not mere political contestation, but something broader. Democracy, as a "system that can meet the demands of ordinary people", does not contain only democratic institutions, but also democratic politics. Democratic institutions are above-all products of democratic politics.[118] This definition is based on a view that political equality is not possible without social equality.[119] Examples of substantive definitions are not easy to find, as procedural definitions are predominant in modern democratic literature.[120]

It is not argued here that social equality is an irrelevant, undesirable element in a modern political democracy, but rather that political equality (the minimum) is the foundation for more advanced political democracies (aiming at eliminating all types of inequalities). This decision is made while acknowledging the criticism directed at procedural definitions. Within the contemporary democracy discourse Schumpeter's

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[116] Holden (1974), p. 19. The main elements of the latter tradition are 'popular will' and the 'common good', while the former is primarily interested in democratic decision-making procedures and routines. Paloheimo and Wiberg, Politiikan perusteet(1996), p. 138. There are other classifications of definitions of democracy. Przeworski makes a distinction between "participationist" and "contestationist" views of democracy. Participationist view is predominant in Western Europe where universal suffrage has considered a more important goal than government's accountability. Przeworski, Democracy and the Market: Political and Economic Reforms in Eastern Europe and Latin America(1991), p. 10.

[117] Luckham, and Goetz, and Kaldor, Democratic Institutions and Politics in Contexts of Inequality, Poverty, and Conflict. A Conceptual Framework(1998), p. 10.

[118] Luckham, and Goetz, and Kaldor (1998), pp. 9-11.

[119] Luckham, and Goetz, and Kaldor (1998), p. 12.

[120] O'Donnell (2000b), pp. 8-10. O'Donnell shows that majority of scholars have chosen minimalist definition, including the most prominent research projects.

and Dahl's definitions are labelled as "minimalist" definitions (or "procedural", or "formal") focusing on the processes and procedures of democratic governance (a method of governing) instead of the substance of the policies produced (outcomes).[121] Procedural definitions are sometimes criticised for encouraging purely formalistic approaches.[122] Focusing on processes is seen as dangerous, as it might lead to "electoral fallacy", to equal democracy with free elections.[123] It is worth noting that it is easy to examine elections empirically, whereas other dimensions of political democracy are not that simple to measure. According to Collier and Levitsky, the "expanded minimum" was born as a response to the criticism. While a "procedural minimum" contains free and fair elections and guarantees of civil liberties, an "expanded minimum" adds an effective power of government to guarantee to the list.[124] Also, Guillermo O'Donnell argues that it is not justified to consider Schumpeter's definition as minimalist, or proceduralist. Schumpeter does not, stresses O'Donnell, limit democracy to a mere method: other elements are required in addition to competitive elections, such as basic freedoms (e.g. freedom of press). Elections are not viewed as a "one-shot event", but rather as a long-term process where elections are institutionalised.[125] Based on this argument, O'Donnell claims that Schumpeterian definitions are not minimalist, but "realistic" definitions, as it is possible to assess them empirically.[126] There are, argues O'Donnell, also definitions "purporting" to be realistic without succeeding: characteristics included can neither be assessed empirically nor be found in any existing democracy. Prescriptive definitions, on the other hand, which suggest what democracy should be, are also

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[121] Diamond (1996b), pp. 1-2. Some view that a third category of definitions should be added: "intermediate" definitions, definitions between the minimalist and substantive ones. According to Huber, and Rueschemeyer, and Stephens, minimal ("formal") democracy is a primitive form of democracy, a requisite of social democracy. Diamond (1996b) p. 3; Huber, and Rueschemeyer, and Stephens (1999), p. 169; Tilly, Roads from Past to Future(1997), pp. 198-199.

[122] Beetham, Conditions for Democratic Consolidation(1994), pp. 158-159.

[123] Linz and Stepan (1996a), p. 4.

[124] Collier and Levitsky (1997), pp. 432-434.

[125] O'Donnell, Democracy, Law, and Comparative Politics(2000a), pp. 7-8.

[126] Realistic definitions have been presented by Adam Przeworski, Samuel Huntington, Larry Diamond, Juan Linz, Seymor Martin Lipset, Di Palma, Rueschemeyer, Huber, Stephens, and Robert Dahl, all of whom are the most distinguished scholars in the field of democratic theory today. O'Donnell (2000a), pp. 8-9. On the contrary Collier and Levitsky define 'minimal' definition of democracy as one that entails smallest possible number of attributes. Collier and Levitsky (1997), p. 433.

problematic. They do not entail how to treat existing systems or to narrow the gap between realistic and prescriptive definitions.[127]

Following O'Donnell's clarification of the procedural definition of political democracy, it is acknowledged here that free and fair elections are not an independent political event, but something closely related to the existence and functioning of other state institutions. The other elements listed by Dahl are equally important for democracy and for free and fair elections. Being aware of the critique directed at the procedural definition of modern political democracy, it is nonetheless considered here as the most appropriate definition available for the purposes of this study. In the case of "non-originating" countries, a minimal definition of democracy (excluding social equality) is a good starting point. It is not too broad, albeit including all the required elements of modern political democracy. The procedural definition is not limited to analysing elections alone, thus it is not minimal in the sense of political institutions. As O'Donnell rightly stresses, modern political democracy (even) in a procedural sense is so much more than free and fair elections. Guaranteeing the freeness and the fairness of electing representatives, universal suffrage, associational autonomy, free press and alternative information requires the existence and competence of (other) state institutions. According to Dahl, "the democratic process must somehow be actualized in the real world – in actually existing procedures institutions, associations, states and so on".[128] Therefore, attention here needs to be shifted to another term, independent as such, yet an integral part of modern political democracy: *the rule of law*. To start with, a working definition of the rule of law is sought, after which the connection between the two terms is discussed.

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[127] O'Donnell (2000b), pp. 8-10.
[128] Dahl (1989), p. 117.

2.2. THE RULE OF LAW

2.2.1. Another Confused Concept

Like democracy, 'the rule of law', or the Rule of Law[129] as preferred by some, is a contested but nevertheless popular concept in the contemporary world. The concept of the rule of law is currently everywhere: "One cannot get through a foreign policy debate these days without someone proposing the rule of law as a solution to the world's troubles".[130] The rule of law, as a solution to the problem of controlling the power of political authority, has been part of the legal tradition of Western countries[131] for centuries, but the current global desirability of the term has been on increase since the Second World War.[132]

Finding a definition of the rule of law for the purposes of this study is not a straightforward task. There is no definition of the rule of law that is widely accepted, rather there is a "centuries-old" debate about the possible meanings.[133] Bearing in mind the extensive history of the rule of law and its current popularity, it is not surprising that there are many definitions of the concept. It must be also remembered that the core idea of the rule of law principle (to protect citizens from despotism) has been implemented in various ways in the "originating" countries.[134] As Grote points

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[129] de Walker, The Rule of Law. Foundation of Constitutional Democracy(1988), p. 1. Some prefer the Rule of Law (instead of the rule of law), as a legal and political ideal including certain agreed principles, to make a distinction from legal rules in other contexts.

[130] Carothers, The Rule of Law Revival(1998), p. 95. See also Craig, Formal and Substantive Conceptions of the Rule of Law: An Analytical Framework(1997), p. 467.

[131] The rule of law is a "venerable part of Western political philosophy" (Carothers (1998), p. 95), often associated with the Western liberal thought. The rule of law is seen as a necessity for liberalism, an "institutional realization of liberal ideas". Thus many consider the rule of law inseparable from ideas of democracy and market economy. Li, What is Rule of Law?(1999), p. 5; Scheurmann, The Rule of Law under Siege: selected essays of Franz L. Neumann and Otto K(1996), p. 1.

[132] The first revival occurred in the wake of the peace movement of the 1940s which made the rule of law a widely recognised principle in "western liberal democracies". Later, at the beginning of the globalisation era, "the age of transitions" made the idea a universally recognised, and politically desirable aim outside the established democracies. Although the United Nations Declaration of Human Rights was among the first efforts 'globalise' the rule of law, it is argued that during the age of transitions, the third wave of democratization, for the first time states outside the 'Northwestern' sphere are aiming to implement the principles of rule of law.

[133] Shapiro, The Rule of Law(1994), p. 4; O'Donnell, Polyarchies and the (Un)Rule of Law in Latin America(1998), p. 5.

[134] The rule of law principle (or its applications) has varied from country to country. The British concept, influenced greatly by the work of A.V Dicey, is based on the unwritten constitution, while the American counterpart on a written one. In many Western European states there were already well-

out, the very definition of the concept depends on how the terms 'law' and 'public authority' are defined. As the meanings of neither of these terms are permanent, the definition of the rule of law cannot be unchanged either.[135] Furthermore, the expansion of democratic practices (e.g. elections, multipartyism) has placed new challenges for the concept of the rule of law. A principle originally implemented in a non-democratic system has been adopted by democratic and democratising countries.[136] Also, international investors are calling developing countries to build rule of law systems to improve the accountability, transparency and predictability of their economies.[137] This situation resembles the context where the early version of the rule of law emerged in the sixteenth and seventeenth centuries. The demands for legal and political reforms were also inspired by commercial interests. The difference is that in those early days developments were taking place within the boundaries of the states, while today the impetus for change comes partly from outside the state.

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established bureaucracies which were more concerned with welfare issues than the British government. The American version of the rule of law principle inspired by the Enlightenment consists not only of the constitution, but also of the Montesquieuan idea of the separation of powers. In the American system congress is, unlike in Britain and in the continental Europe, a legislature, not a court. The German *Rechtstaat* like the American counterpart was inspired by the Enlightenment, however in the German case based mainly by the writings of Kant. Yet *Rechtstaat* does not include the idea of separation of powers. In France the *Etat de droit* on the other hand includes the principle of separation of powers, but no real mechanisms to implement it.

[135] Grote, Rule of Law, Rechtstaat and "Etat de droit"(1999), p. 304.

[136] Grote (1999), pp. 284-286; Kirchheimer, The Rechtstaat as Magic Wall(1996), pp. 245-246.

[137] Carothers (1998), p. 98; Sachs, The Global Capitalist Revolution(1998), p. 2.

2.2.2. Source or Contents, Democracy or Not?

There are two questions to be answered when assessing the usefulness of different definitions of the rule of law for the purposes of this study. These questions are about the main elements that concern political and legal theorists striving to provide a satisfactory definition of the rule of law, or to classify the various definitions: the question of the defining property ('law') and the system of governance necessary to the realisation of the principle ('rule').[138]

To start with it must be stressed that regardless of the competing definitions of the rule of law there are certain basic qualities of law that are included in almost all the definitions. It is also not possible to understand the concept of the rule of law without defining the fundamental characteristics of *law* and the legal precepts derived from it.[139] The common denominator to most definitions is the legal liberty of the citizens, protection from the political authority and from each other. The equality of the citizens is stressed as well as the prospectivity of the law. Clarity, generality, predictability and prospectivity are also the basic qualities of law. Law has to be applied equally in every case, regardless of the social or political status of the citizens. The subjects of the law have to be aware of the laws in advance.[140] The main rule of law principle is the idea of the superiority of the law above men. While 'men' are seen as impartial, irrational and liable to error, 'law' is considered as something opposite to those characteristics, "reason without passion"[141]. Law aims at protecting individuals (subjects of law) from arbitrary behaviour of men (in power), bringing the element of *predictability* into the lives of citizens.[142] The great paradox, argues Ingram, is that the law is created by men. However, the superiority of law stems from the requirement that law must be created according to certain standards

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[138] de Walker (1988), p. 3.
[139] Craig (1997), p. 467.
[140] Flathman (1994), p. 303; Li (1999), p. 4; Sejersted, Democracy and the rule of law: some historical experiences of contradictions in the striving for good government(1988), pp. 134-135; Carothers (1998), pp. 96-97; de Walker (1988), pp. 23-30.
[141] "Reason without passion" is expression used by Aristotle. Flathman, Liberalism and The Suspect Enterprise of Political Institutionalization: The Case of the Rule of Law(1994), p. 302.
[142] The early contributors, from the Greek philosophers to medieval lawyers and Montesquieu, were first and foremost concerned with limiting political power and authority, not with the form or method of governance. In the early ('pre-democratic') days when citizens had no access to political power the emphasis was on 'law'. Flathman (1994), pp. 302-303.

and procedures. The idea of laws as independent rules is the foundation of the rule of law. Laws must both "endure and bind" the subjects.[143] According to Ingram, the fundamental requirement for the rule of law is that it has "to be followed to a significant extent".[144] The citizens have to be obedient to the law and there must be regular punishment for disobedience.[145]

The first question is not about the qualities of law but about the *substance* of the law. Formal conceptions are interested in the source of the law, the clarity of the laws and their temporal dimensions. For substantive definitions of the rule of law it is essential not just to create laws, but specifically to create (morally) good laws.[146] Both formal and substantive definitions include basic requirements for the law as a normative rule. The substantive definition simply places additional requirements on the term. As this study examines the rule of law in the context of modern political democracies, it is believed here that the substance of laws is not relevant as such. It is argued here that in a modern political democracy the citizens, subjects of the law, are the ones making judgements on the legislation. In a world where different belief systems exist it is not justified to expect a set of universal rights to be automatically part of the legislation of any state. Human rights will, for example, be included in the legislation in a modern political democracy only if so decided by its citizens. For the purposes of this study, how laws are passed and implemented is of more interest. It is also worth noting that it is not any easier to maintain system where all procedures are followed than to produce morally good laws.

The second matter to consider is the institutional, or structural, requirements for the rule of law. What are the elements that are needed to the rule of law to be embedded? This study is adopting a *juristic* understanding of the rule of law, as it places fewer requirements on the system of governance.[147] It is argued here that the

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[143] Ingram, Maintaining The Rule of Law(1985), p. 361.
[144] Ingram (1985), p. 375.
[145] Ingram (1985), p. 361.
[146] Craig (1997), p. 467.
[147] There are, however, differences among the various juristic definitions of the concept. In the narrowest sense the concept of the rule of law is understood as referring only to 'law and order' in a society, as opposed to an anarchic state with no (or a few) rules. This 'limited' view is based on the idea of peaceful settlement of disputes, but it ignores the (liberal) idea of political rights. Subjects of law do not choose the executive, nor do they have much (or any) impact on the legislation. Courts are

rule law can exists, and has existed, in various political systems. de Walker argues that, regarding Islam for instance, it "would be hard to find a worldview more different from the guiding principles of modern secular Western society. But it would be wrong to conclude that a recognizable form of the rule of law could not exist in a strictly Islamic society".[148] This understanding of the rule of law can thus be applied, at least in principle, in a theocratic, socialist or communist state. Very often scholars who see substantive qualities such as political and civil liberties as being inseparable from the rule of law, place more attention on state institutions beyond the judiciary, many even on the system of government.[149] When seen as a *political* ideal, the ideal context for the rule of law is a "liberal democratic free-market economy".[150] While no special attention within this dissertation is placed on the substance of the laws, it is also believed that the rule of law is possible in any form of governance, requiring that all the basic requirements are fulfilled. This does not mean, however, that the juristic understanding of the concept adopted here has no institutional requirements. Juristic conceptions stress the significance of both the legislative body and the courts, whereas the rule of law as a political principle is focused only on the government officials (as understood narrowly).

Juristic definitions focus on governmental procedures; stressing the significance of *legality* and *constitutionality*.[151] Constitution as the superior law defines the legal framework for all the actors. In a democracy, for instance, elected representatives have a mandate to pass laws, providing that they do not contradict the constitution. The constitution itself is not static, nor permanent; there are ways, yet restricted and publicly known, to amend the constitution.[152] The authority of the rulers must be based on legislation and the legislation must be passed through pre-known procedures. Any member of the society has also the right to challenge the legality of a governmental action. With a regard to the legality of the system there is one more

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not independent; thus they settle mainly disputes between citizens. Disputes involving governmental officials are tried only when allowed by the executive. Bradley and Ewing, Constitutional and Administrative Law(1997), p. 105; de Walker (1988), p. 3.

[148] de Walker (1988), p. 12.

[149] Carothers (1998), p. 96-97.

[150] de Walker (1988), p. 13.

[151] The rule of law and the idea of constitutionality have been related since the 19th century.

[152] Horn, The Fundamental Characteristis of the Rule of Law as Laid Down in the Basic Law(1997), p. 38.

condition; all citizens must be equally subject to law. In a system with truly embedded rule of law, the government, like any other actor, is subordinated to the law. This is not the reality in the "rule by law" systems. In a system characterised as "rule by law", law places limits on the actions of the people, not on the government itself.[153] The courts as guarantors of legality must have a certain degree of independence from the legislative bodies. The procedures to prosecute governmental officials vary, yet they all aim to serve the same purpose. In the British system ordinary courts have the responsibility to test the legality of the government's actions, whereas in Germany and France there are special administrative courts for this purpose.[154]

There is one requirement for the rule of law regardless of the form of the system of governance, or the governing ideology. The majority of the citizens have to accept the form of governance existing, as the realisation of the concept is possible only when the subjects of the law accept its existence to a certain degree. The rule of law requires obedience to the law not only from governmental actors, but also from ordinary citizens.[155]

As this study considers the rule of law to be an integral yet independent element of modern political democracy, the focus here will be on those definitions that see the rule of law and democracy as inseparable. It is worth noting that, theoretically and historically, the rule of law can exist, and has existed, in governing systems other than political democracy. Next a closer look will be paid to literature that examines a (fundamental) connection between modern political democracy and the rule of law. The aim is not only to present definitions, but also perceptions of the relationship between these two.

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[153] Carothers (1998), p. 97.
[154] Bradley and Ewing (1997), p. 105; de Walker (1988), p. 4. See also Sartori (1987), p. 321.
[155] de Walker (1988), pp. 10-13. See also Allan, Legislative Supremacy and The Rule of Law Democracy and Constitutionalism(1985), pp. 113-114; Kenyon, Democratisation and the Rule of Law. Evaluating Ethical Significance(1997), pp. 23-24.

2.3. The Conceptual Connection between Democracy and the Rule of Law

The two terms central to this chapter, the idea(l) of modern political democracy and the rule of law are currently two political idea(l)s that dominate the discourse on power in a society. According to Ferejohn and Pasquino, modern political democracy and the rule of law are "both desirable attributes of a political system".[156] These two concepts are currently seen as inter-related, at least when talking about the contemporary meaning of the concepts.[157] The aim here is to present the way the two terms are connected to each other and to show how they are both essential to the understanding of modern political democracy adopted here.

Historically speaking, the rule of law and political democracy were not considered as related concepts. The rule of law and democracy were seen as two different ways of "overcoming the contradiction between state and society".[158] Francis Sejersted argues that the early rule of law theorists, "constitutionalists" saw a fundamental contradiction between democracy and the rule of law. As state-building was seen as a necessity, the power of the state was at the same considered as a threat to the society. Whereas the rule of law was aimed at curbing the state authority, democracy's goal was to mobilise the society to defend its interests against the state power. The principle of the rule of law served the interests of newly-emerged middle classes. The early conception of the rule of law was more about negative liberty (controlling the power) than about positive liberty (seizing the power).[159]

The rule of law as an element of social and political order has, however, existed longer than liberalism, or political democracy. As mentioned earlier, the origins of the word democracy can be found in the Ancient Greece, but democracy became political reality in the twentieth century, after the emergence of liberalism.[160] Therefore, it is justified to say that conception of the rule of law is part of wider

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[156] Ferejohn and Pasquino, Rule of Democracy and Rule of Law(2003), p. 242.
[157] Stankiewicz, In Search of a Political Philosophy: ideologies at the close of the twentieth century(1993), p. 109.
[158] Sejersted (1988), p. 132.
[159] Sejersted (1988), p. 131.

politico-philosophical tradition: the debate about the political freedoms, which in its turn is focused on the significance of laws. Liberalism is one of the outcomes of this debate.[161] Thus, as O'Donnell points out, it is essential to note that the construction of the individual as a legal person is "the legacy of capitalism and of state-making, not of liberalism or political democracy"[162], as capitalism and nation-state building are older phenomena. In addition to capitalism and state-building, the emergence of territorially-bound markets contributed to the development of *subjective rights* that were profoundly embedded in the "originating" countries well before the advent of the liberal democratic ideas.[163]

The question of the linkages between the rule of law and democracy naturally depends on the definitions of the two concepts. As both of them are contested concepts, it is not surprising that there is a considerable degree of disagreement among the scholars about the matter. According to a political definition of the rule of law, as mentioned earlier, modern political democracy is the only appropriate context for the rule of law, while the juristic definitions of the conception do not place any requirements regarding the system of governance.[164] Yet, scholars who define the rule of law in substantive terms consider it as incompatible with democracy. For those scholars the supremacy of law clashes with the supremacy of the majority will. The people making decisions according to the majority principle will not guarantee that laws produced fulfil the requirements set for the law.[165] According to Peter Ingram, to combine law-making with the rule of law distorts the true meaning of the concept: political processes cannot be "part of the rule of law, or more nominally subject to it".[166]

Scholars who consider the rule of law to be a juristic principle defined in formal terms, on the other hand, see no contradiction between democracy and the rule of

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[160] Sejersted (1988), pp. 131-132; Marks, The Riddle of All Constitutions. International Law, Democracy and the Critique of Ideology(2000), pp. 30-31; Li (1999), pp. 5-6.
[161] Sartori (1987), pp. 306-307. See also Allan (1985), p. 112.
[162] O'Donnell, Democratic Theory and Comparative Politics(1999), p. 38.
[163] O'Donnell (2000a), p. 38.
[164] Rose and Mischler and Härffer, Democracy and its Alternatives. Understanding Post-Communist Societies(1998), p. 33; Carothers (1998), p. 96.
[165] Shapiro (1994), p. 2; Eskridge and Ferejohn, Politics, Interpretation, and the Rule of Law(1994), p. 266.

law. The principle of the formal rule of law places requirements only on the legality of the law, not on the contents. Fundamental to formal definitions of the rule of law is that the laws are created according to the constitutional standards, regardless of the contents, and the government and citizens alike obey the laws.[167] T.S. Allan considers the rule of law as "a standard by which legal order can be measured and assessed".[168] According to this view, legal order consists of both the parliament and the courts; thus they are the bodies responsible for the functioning of the legal order.[169] Furthermore, argues Allan, it is a misconception to think that the judiciary would be totally subservient to the legislative body. The duty of the courts is to guarantee the legality of statutes according to the "recognised and publicly articulated constitutional standards".[170] Therefore, courts are seen as mediators between the state and the citizens.[171] Sartori sees liberty and legality as originally "extraneous" to democracy, but yet incorporated by the modern democracy. He points out that the principle of legality is the guarantee of citizens' liberties in modern (democratic) societies, and it is this principle that places "a *limit* and a *restriction* on pure and simple democratic principles".[172] Therefore, for Sartori, the liberties are best protected through the rule of law, not through democracy. Nevertheless he sees no reason for democracy to clash with the rule of law.[173]

The most influential democratic theories, the contemporary classics, do not pay much attention to the concept of the rule of law.[174] They either do not explicitly stress the significance of the rule of law (or the legal system) to democracy, or they ignore the concept altogether. The rule of law is not included in the definitions of democracy, nor has the rule of law been object of research. Timothy Kenyon argues that procedural definitions of democracy are currently associated with the rule of

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[166] Ingram (1985), p. 381.
[167] Allan (1985), pp. 122-123; de Walker (1988), p. 3.
[168] Allan (1985), p. 114.
[169] Allan (1985), p. 114.
[170] Allan (1985), p. 124.
[171] Allan (1985), p. 124.
[172] Sartori (1987), p. 310. Italics added
[173] Sartori (1987), p. 310.
[174] O'Donnell (2000a), p. 59. See also Dahl (1989).

law.[175] However, neither of the classical procedural definitions mentions the rule of law nor includes any requirements for the legal system as such.

It is argued here that Schumpeter's and Dahl's definitions of political democracy can be seen as being based on the same underlying ideas as the concept of the rule of law. Both of the procedural definitions rely on the ideas of *equality* and *separation of powers*. These definitions include the aim of curbing the power of state and preventing the state's interference in the non-political aspects of social life. Schumpeter states it more clearly: the independence of the decision-makers and bureaucracy from the state, whereas Dahl's polyarchy is concentrated on the elements of elective democracy. Moreover, the definitions are based on a presumption of the existence of political freedoms.[176] These freedoms (or "guarantees"), O'Donnell points out, are *legally defined*: "assigned by the legal system".[177] Therefore, democracy defined in procedural terms is not possible without a legal system that defines the freedoms and guards their realisation.[178] Thus the most common (procedural) definitions of democracy do not exclude the principle of the rule of law (at least when seen in formal terms), even if the concept of the rule of law as such does not appear that frequently in the classical writings.

Though the concept of the rule of law has gained less attention from the democratic scholars than from the legal theorists, there are some political scientists who explicitly see democracy as being inseparable from the rule of law, and the number of those theorists has been lately increasing.[179] According to Domingo, the rule of law has come to the "forefront" of academic discourse due to the democratisation and economic liberalisation that has taken place since the late 1980s.[180] Guillermo

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[175] Kenyon (1997), p. 23.
[176] Rose *et al* (1998), p. 33.
[177] O'Donnell (2000a), p. 19.
[178] O'Donnell (2000b), p. 53.
[179] Schmitter and Karl, What Democracy Is...and Is Not(1996), p. 55; Handelman and Tessler, Democracy and its Limits. Lessons from Asia, Latin America, and the Middle East(1999), p. 24. See also Huber, Assessments of State Strength(1995); Between States: Interim Governments and Democratic Transitions(1995).
[180] Domingo, Judicial Independence and Judicial Reform in Latin America(1999), p. 151.

O'Donnell is a scholar whose name is often mentioned in connection to democracy and the rule of law.[181]

For O'Donnell, the rule of law is more than a mere collection of legal rules: it is "legally-based rule of democratic state"[182]. Therefore, O'Donnell sees the rule of law and political democracy as part of the same package. According to O'Donnell, there are four fundamental features of political democracy (or polyarchy) that distinguish it from other governing systems. Essential for a democratic regime are competitive and institutionalised elections, and the existence of a collective wager. In democracy a political citizen has a right to vote in the elections and to be elected. Only in a political democracy is there an "institutionalised, universalistic, and inclusive wager".[183] In all other systems the wager is either restricted or suppressed. With a wager O'Donnell means a "legally enacted and backed institution to which everyone is expected to acquiesce within the territory delimited by a state".[184] Citizens are aware of their rights but also of the fact that every one else has the same rights. Thus the outcome of democratic processes is always uncertain. The rights and duties guaranteed by the political citizenship, O'Donnell stresses, are not matter of choice, but something that is automatically applied to all citizens.[185] The two other fundamental features of democracy are requirements directed at the *legal system*. The democratic legal system guarantees the rights and freedoms of all citizens. Furthermore, there can no one acting outside the legal system (as *de legibus solutus*). Citizens' political freedoms are part of a wider set of rights and obligations attached to a legal person.[186] Besides the civil and political rights O'Donnell's idea of the rule of law requires that the "networks of responsibility and accountability" are well-defined.[187]

O'Donnell's conception of the rule of law resembles a formal (or juristic) definition of the rule of law that is also adopted here. Nevertheless, it has to be stressed here that

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[181] Handelman and Tessler (1999), p. 24. See also Rose *et al* (1998).
[182] O'Donnell (1998), p. 14.
[183] O'Donnell (1999), p. 30.
[184] O'Donnell (1999), p. 31.
[185] O'Donnell (2000a), pp. 29-31. The characteristics of law referred by O'Donnell are defined by Raz. See O'Donnell (1998), p. 13.
[186] O'Donnell (2000b), p. 53; O'Donnell (1998), p. 6.

O'Donnell's understanding cannot be seen as a pure formal concept, as O'Donnell's rule of law includes moral standards. He claims that moral standards can be locally defined (in a constitution) or they can be universal (human rights).[188] It is currently not uncommon to find these hybrid definitions of the rule of law, formal definitions with a substantive touch, in a contemporary discourse and practice. They do not deny the formal elements of the rule of law, but also a certain minimum requirement for the substance of the laws is included. This minimum requirement very often consists of human rights. This study, as expressed earlier, includes moral standards only in the form of constitutional requirements. It is expected that whatever the substance of the laws passed their form and contents cannot compromise the constitution of the country. Therefore, this study agrees with the arguments presented by O'Donnell about the necessity of the rule of law for a modern political democracy, but not fully with his understanding of the rule of law.

There is, however, one element to O'Donnell's rule of law that is seen here as essential to the debate. O'Donnell stresses that his definition of the rule of law, unlike the common English expression, is used to refer to state agencies other than the court/s, as it includes the entire state apparatus.[189] For O'Donnell, democraticness refers to qualities of a *state*, not merely of a regime. Instead of focusing on the regime (e.g. elections and political rights), more attention should be paid at the various "non-elected" bodies of the state, such as the police, the judiciary, the bureaucracy and the security forces. The significance of these bodies to the functioning of the elected bodies, and thus to functioning of democracy, has not been fully understood by democracy theorists. Democracy would be meaningless if the laws were passed according to the will of people, but the police, the bureaucrats and the military force would act outside the law.[190] As Timothy Kenyon describes: "Nevertheless, even granting that democracy bears a contingent and not necessary relation to the rule of law, there is a strong case for believing that democracy is in

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[187] O'Donnell (1998), pp. 14-15.
[188] O'Donnell (1998), p. 13.
[189] O'Donnell (1998), p. 14.
[190] O'Donnell (2000b), p. 52; Grugel, Democratization. A Critical Introduction(2002), p. 76.

poor health, a sickly child in the case of newly-founded democracies, if the rule of law is either absent or precariously founded".[191]

As the term rule of law is central to this study, it is essential to find out what is known about the rule of law in the context of the Arab Middle East, and Jordan in particular. Is there something that is of particular significance when examining the rule of law in this context? Furthermore, it is also important for the purposes of this study to identify the areas not yet examined in detail.

[191] Kenyon (1997), p. 26.

2.4. THE RULE OF LAW IN THE ARAB MIDDLE EAST

Perhaps the global wave of democratisation has not truly hit the Arab Middle East, but the principle of the rule of law is certainly not an alien concept in the region, at least not at the official level. The rule of law is a principle included in the constitutions of most Arab countries.[192] Whether the principle is being implemented is another matter. In spite of being a constitutional principle, argues al-Mukhtar, the rule of law cannot be found in the Arabic law books.[193] To determine whether the rule of law is more than in a principle in the Arab Middle East is a true challenge, not least resulting from the shortage of systematic scholarly work on the rule of law in the region. Currently the workload on the rule of law relies on a few research projects and even fewer scholars.[194] It must be acknowledged, however, that legal studies as such are not absent and since the late 1990s there has been a growing interest in the rule of law.[195] Furthermore, in spite of the scarcity on studies on the rule of law in the Arab Middle East, there are studies focusing on some elements of the rule of law.[196]

When studying developing countries, it is often argued, the classical theories on political development are inappropriate. In the case of the Arab Middle East this argument seems relevant. The existing legal systems in the Arab world are truly *modern* creations, in contrast with the legal systems in established democracies. Furthermore, Nathan Brown points out that the creation of the modern legal systems

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[192] Brown, The Rule of Law in the Arab World. Courts in Egypt and the Gulf(1998), p. 241; Ray, Human Rights Protection and the Rule of Law: Case Studies in Israel and Egypt(2000), p. 43.
[193] Al-Mukhtar, The Rule of Law in Iraq: Does It Exist?(2000), p. 74.
[194] Brown, Accountability Through and Within Arab Judiciaries(2001). Nasr and Brown, Criminal Justice and Prosecution in the Arab World(2004). These studies are prepared for the United Nations Development Programme (Programme on Governance in the Arab Region, POGAR). See www.pogar.org. Brown, Arab Administrative Courts and Judicial Control of the Bureaucracy(*1997*); Cotran & Sherif, Democracy, the Rule of Law and Islam(1999); Cotran & Sherif, The Role of the Judiciary in the Protection of Human Rights(1997). For comparative legal studies, see Forte, The Comparative Lawyer and the Middle East(1978), p. 306.
[195] Western observers have been interested in the structures and functioning of the legal systems in the Arab Middle East and Islamic Law since colonial times. The early systematic studies on the Middle Eastern legal systems produced 'guidebooks' for colonial administrators in the nineteenth century. The majority of the studies, particularly the early ones, are descriptive, explaining the structures and elements of the various legal systems. Thielman, A Critical Survey of Western Law Studies on Arab-Muslim Countries(1999), p. 47.
[196] Thielman (1999), p. 41.

in the Arab world occurred in a relatively short period of time.[197] Therefore, it is obvious that the course of legalo-political development differs fundamentally from that of the established democracies in Western Europe, where legal institutions were embedded before the beginning of democratisation.

It is also worth noting that there is a considerable degree of *diversity* among the Middle Eastern legal systems and practices. Scholars have started to acknowledge the diversity only recently, although the roots of the diversity go back to the pre-colonial times. Even in the Ottoman Empire the procedures (and rules) varied from one administrative unit (*Sarjak*) to another.[198] The differences among the legal systems in the Arab Middle East have been explained by many factors, such as the degree of external influence or the role of Islamic Law. Many early Western observers considered the legal systems in the region as a unified 'Middle Eastern Legal System' equating it with Islamic law and tradition. However, nation-building in the Arab Middle East has resulted in national legal systems differing from each other, regardless of the fact that Shariah had a central role in each.[199] Later the colonial powers contributed to the differing development in the Arab countries. The legal systems under the British colonial rule resemblance the British legal system, while the legal systems in former French colonies are similar to those of colonial occupier's.[200] Therefore, it seems more that obvious that each one of the legal systems in the Arab Middle East deserves scholarly attention, and in relation to the rule of law an increase in the degree of the attention is also welcome.

Bearing in mind the space of legal development and diversity of the legal systems it is not justified to use the 'Western model' as a measure for the legal developments in the Middle East.[201] Furthermore, scholars examining the legal development argue

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[197] Brown (1998), p. 2.
[198] Mallat, Introduction – On Islam and Democracy(1993). The origins of the modern legal systems in the Middle East are found in the Ottoman Empire, particularly the reforms (the Tanzimat movement) made in the nineteenth century. Nevertheless, the legal reforms did not have the same effect on all parts of the Empire. Brown (1998), p. 2.
[199] Amin, Middle East Legal Systems(1985), p. 1.
[200] Sherif, Separation of Powers and Judicial Independence in Constitutional Democracies: The Egyptian and American Experiences(1999), p. 28. Egypt is an exception, as there the British influence can be seen in other areas, while the legal sphere was left largely alone.
[201] Amin (1985), p. 1. The classical scholars on Middle Eastern Law; Schact, Noel Coulson, Milner, de Leon. Strawson, Encountering Islamic Law(1996), pp. 10-12.

that the influence of foreign forces on the legal systems in the Arab Middle East has been exaggerated. Brown argues that his studies on the courts in Egypt and in the Arab Gulf states show that the most significant factor (or actor) in judicial development has been the ruling elite.[202] Ideologies based on the rule of law, like stressing the importance of the independent judiciary, have been used primarily only as a tool to gain legitimacy: "support for the officially sanctioned order".[203] Brown's studies led him to conclude that it is not justified to see codified law, centralised courts systems and independent judiciaries as universal, nor "western innovations".[204]

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[202] Brown (1998), p. 237.
[203] Brown (1998), p. 237.
[204] Brown (1998), p. 239. Enid Hill's analysis of the creation of the administrative courts in Egypt seems to support Brown's views, at least partly. According to Hill, the administrative courts were constructed using the French *Counseil d'Etat* as a model, but the Egyptian counterpart was never a "carbon copy". The administrative courts in Egypt were constructed to adapt to the Egyptian context. Hill, Majlis al-Dawla: The Administrative Courts of Egypt and Administrative Law(1993), p. 208.

2.4.1. Arab Judiciaries

The role and the significance of the Middle Eastern judiciaries have gained perhaps more attention than any other topic of legal research among western scholars. This is not surprising, as the role of the judiciary is often seen as an elementary part of the rule of law, indeed as the cornerstone. Once the judiciary has gained enough autonomy to fulfil its role effectively, the implementation of the rule of law can expand to other elements such as to the review of constitutionality.[205] Studies on the Arab judiciary are scarce; no systematic attempts have been made to analyse all the Arab legal systems, or even some of the central elements. It is justified to say that the Egyptian judiciary, the Supreme Constitutional Court (SCC) in particular, has gained far more attention than any other judiciary in the region.[206]

According to Cotran and Yamani, the Supreme Constitutional Court of Egypt is "the only effective and active constitutional court in the Arab world".[207] The decisions made by the Supreme Constitutional Court are closely observed in other Arab countries. Hence the unbalanced attention is at least partially justified when considering the importance of the SCC beyond the Egyptian borders. Egypt is also often considered as the Middle Eastern country that has come closest to implementing the rule of law, regardless of its flaws. It is has to be said, conversely, that many of the contributors to the discourse on the Middle Eastern rule of law are Egyptian legal professionals, many even members of the SCC. Perhaps partly for this reason, the studies on the Egyptian judiciary have generally been optimistic,

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[205] Rosberg, Roads to the Rule of Law. Emergency of an Independent Judiciary in Egypt(1998), p. 19.
[206] El-Morr, Judicial Sources for Supporting the Protection of Human Rights(1997), p. 229; Bälz, Human Rights, the Rule of Law and the Construction of Tradition: The Egyptian Supreme Administrative Court and Female Circumcision (Appeal no. 5257/43, 28 December 1997)(2000a), p. 41. See also Sherif, Unshakable Tendency in the Protection of Human Rights: Adherence to International Instruments on Human Rights by the Supreme Constitutional Court of Egypt(1997a); Sherif, The Supreme Constitutional Court of Egypt and Vicarious Criminal Liability(1997b); Sherif, The Rule of Law in Egypt from a Judicial Perspective(2000); Nosseir, The Supreme Constitutional Court of Egypt and the Protection of Human Rights(1997); Gabr, Recent Judgements of the Supreme Constitutional Court of the Arab Republic of Egypt Upholding Human Rights(1997); Bälz, The Secular Reconstruction of Islamic Law (2000b).
[207] Cotran and Yamani, The Rule of Law in the Middle East and the Islamic World(2000), p. vii.

stressing the importance of the Supreme Constitutional Court and its significance in promoting the rule of law and (thus) political development.[208]

It seems evident that the judiciary is not solely in charge of the legal development.[209] Studies are suggesting that the development of legal systems in the Arab Middle East has been very closely connected to the deliberate strategies of the rulers to strengthen their power.[210] Thus it is not only the judiciary itself that is of interest when studying the rule of law reality, or simply the effectiveness of a legal system, but the relationship between the judiciary and other state powers, the executive in particular. Needless to say that it is very unlikely for a ruler to face external or internal opposition when announcing intentions to build an effective and centralised legal system. The primary aim, however, has not been pleasing audiences home or abroad, but to build a legal system to function as a tool to monitor and control the citizenry and the state apparatus.[211] In a closed society where the political rights are oppressed there are no alternative sources of information. At the same time it is crucial for the ruler to monitor his subjects, particularly the potentially dissident citizens, closely.[212]

It has to be acknowledged, nevertheless, that although being the primary actor the executive has not been able to fully manipulate all the developments within the legal system. Studies suggest that despite the hidden agenda of the executive, the judiciary in Egypt has been able to use the changing circumstances to their own benefit. Rosberg claims that the Egyptian judiciary has increased its autonomy and independence since the 1970s.[213] According to Brown, courts in Egypt and the Arab Gulf appear to be relatively effective.[214] In addition, there are also factors outside the

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[208] El-Morr (1997), p. 239 and p. 245; Hill, Establishing the Doctrine of Judicial Review in Egypt and the United States(1997), pp. 312-313; Gabr (1997), p. 278-280; Khalil, The Judicial Review on the Constitutionality of Legislative Apportionment in Egypt: A Comparative Study(1999), pp. 306-307.

[209] Rosberg (1998), p. 12.

[210] Brown (1998), pp. 237-238.

[211] Brown (1998), p. 237.

[212] Rosberg (1998), pp. 10-12. Rosberg has classified three ways of the presidency gaining information in Egypt. First, the citizens were allowed to make formal complaints about civil servants. The courts could monitor the police and security forces, while the constitutional court's duty was to guarantee that contents of the laws are in line with the intentions of the law-maker.

[213] Rosberg (1998), p. 9.

[214] Brown (1998), p. 16.

state apparatus that have an impact on the legal systems, at least indirectly. According to Brown, Cairenes consider the legal forum only as one way of solving disputes, "simply one tool among many".[215] Thus it is not surprising that the rulers and the ruled perceive courts in a "very different but quite complementary" way.[216] Citizens evaluate (and use) the courts based on their usefulness, not according to the fairness of the judgements made. Thus both rulers and ruled judge the courts based on (personal) benefits gained, regardless of 'justice' or 'fairness'. So, can it be argued that the positive developments can be partly coincidental? Or are the other actors able to 'exploit' the situation for their benefits?

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[215] Brown (1998), p. 238.
[216] Brown (1998), p. 238.

2.4.2. Arab Constitutions

Constitutions are not recent phenomena in the Middle East, yet studying the contemporary constitutional law by western scholars is.[217] According to Nathan Brown, the study of constitutions has been unjustifiably neglected for a century owing to cynicism both among the scholars and lay men and women.[218] This is not, stresses Brown, exceptional for the Arab Middle East. According to Brown, constitutions are actually more frank and less hypocritical than assumed.[219] Studying constitutions is important not only to define the relationships between the main state actors, but also in order to see whether the constitutional design enables and/or supports the rule of law. Implementing constitutions according to the spirit of the constitution (as they were meant to be enforced) does not guarantee the realisation of the rule of law as long as the elements required are missing from the constitution.

In the Arab countries the constitutions have rarely been vehicles of constitutionalism.[220] This is what distinguishes the Arab constitutionalism from its western counterpart. In the West constitutions were constructed to answer the competing demands from different political groups, both ruler and the ruled. Constitutions in the developing world, argues Nathan Brown, are outcomes of different development processes and are born in more divergent historical contexts than the constitutions of established democracies. The constitutions from the colonial era, more or less imposed by the colonial powers, were created to protect the interests of the external powers, not primarily the interests of the subjects of the constitution. In addition, in some cases the colonial actors were not subject to local legislation at all.[221]

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[217] Vogel, Conformity with Islamic Shari'a and Constitutionality under the Article 2: Some Issues of Theory, Practice, and Comparison(1999), p. 525. The western interest in the constitutionality and the contemporary laws began in the 1990s, while the first constitutions in the Middle East were drafted in the nineteenth century. Brown, Constitutions in a Nonconstitutional World(2002), p. 16. The very first written constitution in the Arab world was created in Tunisia in 1861. The other Arab countries wrote their constitutions when gaining independence in the twentieth century. Brown (2002), p. 54.

[218] Brown (2002), p. 3.

[219] Brown (2002), p. 6. Research on Soviet and Nazi systems can be seen at least as a partial explanation for the scarcity of research on constitutionalism. The Soviet and Nazi constitutions were found to be relatively useless when explaining the political 'reality': constitutions were seen as pure façades.

[220] See Brown (2002), p. 93.

[221] Brown (2002), p. 62.

In the case of the Arab Middle East there seem to be only one main function of constitutions. Since the colonial times constitutions have been used to augment political authority: to guarantee the autonomy of the state structures and to define the relationships among the rulers. It could be also justified to perceive some constitutions in some cases as expressions of newly-gained sovereignty, depending on the contents and the timing of the documents. However, there is little to show that the Middle Eastern constitutions have been used to make grand ideological statements, unless considering the Iranian constitution as such.[222] The early 'independent' constitutions were created to promote fiscal and political reforms seen as necessary by the executive. The more recent constitutions were promulgated to define the political structures, processes and succession mechanisms. Instead of constraining political power and empowering citizens, Arab constitutions have been aiming at clarifying the power relations and the chain of command among the members of the ruling elite/s. Consequently constitutions do not necessarily have anything to do with democratisation of the regime, but with the political realisation of the workings of the regime.[223] The aim has been more to "force rulers to live by rules they make for themselves".[224] This gradual movement is possible as long as the rulers do not feel (too) threatened and see it as a stabilising force.[225]

Thus political democracy and constitutionalism are not part of the same historical movements. Combining the two has been a result of more recent developments.[226] Therefore, it is justified to assume here that democratisation processes that have taken place in (pre)industrialised Western-Europe and in the post-modern "non-originating" countries have (at least) some fundamental differences. Once again it would be logical to argue that theories founded on the developments in one part of the world, or over different historical period might not be appropriate explaining (predicting) developments in all contexts and all periods. Perhaps in the case of the

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[222] Brown (2002), pp. 10-12. Constitutions in the Arab Middle East, argues Brown, are generally designed to serve one of these three purposes: to augment political authority, pursue constitutionalism or serve as a symbol of sovereignty or an ideology.
[223] Brown (2002), pp. 195-196.
[224] Brown (2002), p. 197.
[225] Brown (2002), p. 197.
[226] Brown (2002), p. 198.

Arab Middle East, like the rest of the developing world, the 'one-size-fits-all' approaches should be abandoned.

Arab constitutionalism, argues Nathan Brown, has made parliaments and judiciaries in the Arab countries constitutionally weak. The two other state actors are not guaranteed those institutional elements essential for their autonomy as parts of political democracy. Brown, nevertheless, believes that some steps have been taken on the "constitutionalist path", albeit relatively modest ones.[227] The basic requirement is guaranteeing the autonomy of the legislative and judicial powers in order for the three powers to place constitutional checks on each other. The conclusions made by Brown contradict the conclusions presented earlier regarding the success of the Egyptian judiciary in promoting the rule of law and democracy. According to Brown, in Egypt, and regardless of the consistent attempts of the SCC to promote the rule of law there is no effective check on the government, nor is there a mechanism of constitutional accountability.[228]

When studying the Arab Middle East, as shown in the previous chapter, one cannot escape the debate on the role of Islam in socio-political life. The same applies to the constitutionalism discourse. The debate on Islamic constitutionalism[229] is, or has been until recently, more or less theoretical. The primary aim has been to analyse the compatibility of Islam as a foundation of a constitutional order. Islam, as stated earlier, is not of primary interest here. It is assumed here that theocracy, Islamic or other, does not exclude constitutionalism. Furthermore, the interest here is more on existing political systems than on theoretical (or theological) possibilities.

Recent trends to islamicise constitutions, however, are of interest here. In Egypt the constitution was amended in 1981 to alter the role of Shariah from being *a* source to *the* source of legislation. It is argued that by amending the constitution the political

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[227] Brown, Islamic Constitutionalism in Theory and Practice(1999).
[228] Brown (1999), p. 505.
[229] Nathan Brown stresses that there are fundamental differences between Western constitutionalism and Islamic constitutionalism. In the West the source of the constitutional texts is human beings and the foundation of the constitutions is the sovereignty of the people. Islamic constitutionalism stresses that all law, including the constitution, the superior state law, is God-given. Furthermore, western

elite sought support from the religious groups.[230] There is no disagreement over the executive's involvement in the islamisation, but the impact of the amendment on the independence of the judiciary is another matter. Some scholars argue that, regardless of the intentions of the rulers, the strengthened position of the Shariah has given the Supreme Constitutional Court more freedom to interpret the Islamic law through *ijtihad*, independent reasoning. Others have reached different conclusions. Murray and El-Molla consider the Shariah to be a dominant force in shaping the SCC's decisions.[231] According to Brown, Iran and Egypt, the states experimenting with islamisation of constitutions, have not borrowed enough from Western constitutionalism. Brown claims that the failures to limit the power of the executive using the Shariah are caused by an excessive focus on the substance at the expense of the procedures. The Egyptian constitution has not defined what are the appropriate legal procedures within the Islamic law. This has not restricted the rulers, but rather left them with space to (freely) manoeuvre. In Iran, on the other hand, there is a body of religious scholars monitoring the implementation of the divine laws.[232] Thus, once again 'Islam' does not have a fixed, easily predicted impact on either legal or political system.

It would be fair to say that so far there has not been a vast number of studies on any elements of the rule of law in the Arab Middle East. Therefore, it is easy to claim that studies on any element of a legal system in any given state in the region are welcome. This is particularly true in the case of the object of this study. While Egypt, and the SCC, has gained most of the scholarly attention, there is hardly anything written about legal developments in Jordan, not to mention a shortage of work on the rule of law in Jordan. It is not claimed here that this study alone can fill the vacuum. On the contrary, more systematic approaches to study the 'rule of law reality' in the Arab Middle East, Jordan included, are needed.

Therefore, it is important to acknowledge that when examining constitutions in the context of democratisation, there is not necessarily a definitional relationship

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constitutionalism has been procedure-centred, whereas Islamic constitutionalism is more concerned with the substance of the laws. Brown (1999), p. 492. See also Brown (2002).

[230] Brown (1999), p. 504.

[231] Murray and El-Molla, Islamic Shari'a and Constitutional Interpretation in Egypt(2000), p. 523.

between constitution and democracy, or between a constitution and human rights. Contemporary democratic discourse sees constitutions as essential for democracy, but constitutionalism does not need democracy.[233]

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[232] Brown (1999), p. 504.

[233] Brown (2002), pp. 8-9. Brown defines 'constitution' as "the basic legal framework for governing" and 'constitutionalism' as "ideologies and institutional arrangements that promote the limitation and definition of means of exercising state authority".

Summary

Democracy and rule of law are currently both popular but disputed concepts; thus they are among those terms that require the strictest of definitions. The terms have been part of political reality only in a majority of states so far, yet both terms are currently widely used. There is a great demand for democracy and the rule of law among non-scholarly actors, such as politicians and international development agencies. There is presently no shortage of projects and programmes aimed at fostering democracy and/or the rule of law. Thus for sake of clarity it is essential to provide a clear definitions of the terms used for the purposes of this study.

The aim of this chapter was not to solve the problem of competing, and sometimes conflicting, definitions, but rather to find working definitions for the purposes of this study. As the body of literature on democracy is massive, and ever growing, it must be noted that only the very key elements were presented here. 'Democracy' in this study equates with 'modern political democracy', a system of political governance of a modern state. Therefore, literature on other socio-political entities is not central for the purposes of this study, neither is the literature on non-modern democracies. It is assumed, following Birch and Sartori, that comparing the differences between democracies of different periods is not only very hard, but makes little sense when examining the elements of modern political democracies.

Furthermore, this study has adopted the Schumpeterian-Dahlian definition: first and foremost democracy is a system providing the citizens the right to participate in public decision-making. This definition includes electing governmental officials, free and fair elections, universal suffrage, availability of information other than official and political rights provided to the citizens. These elements establish requirements for the entire state, not just for the legislative body. For citizens there is very little use in having the right to (indirectly) pass laws, if there is no body guaranteeing implementation of the laws passed. Thus modern political democracy is not only 'electoralism' (electing representatives); a functioning legal system embodying the rule of law is required as well.

Here the rule of law will be defined in formal terms, including only juristic requirements. Qualities of laws (distinguishing laws from other collective norms) are important but the substance of laws as such is not. The contents of laws, like human rights, are thus excluded: whether laws are morally good is irrelevant to this understanding of the rule of law. It is believed here that in a modern political democracy the right to cast critical judgements on the laws is primarily reserved for the citizens of that particular state. The substance of laws will become a matter of interest only if they are in contrast to the central legal principles (e.g. being unconstitutional). Although the formal definition places no requirements for the substance of the laws, the definition is based on certain ideas of 'law'. It is important that all citizens are obliged to obey the laws regardless of their social status; law being the same for all. A law has a number of other qualities: clarity, prospectivity, and generality. Furthermore, the practice of the rule of law is seen to include certain legal principles, such as rights to open access to court and fair trial. *Legality* is the foundation of this understanding of the rule of law. The laws are to be followed in every sphere of the socio-political life, both by ordinary citizens and the state actors.

This study aims to stress the significance of the rule of law to modern political democracy. Therefore, it would be tempting to see 'rule' purely in democratic terms. Yet here the rule of law is understood as something independent, a juristic principle able to exist without the 'higher' (or the 'highest') form of governance. Modern political democracy, on the other hand, is here seen as a political system of a modern state that cannot exist without an embedded practice of the rule of law. Therefore, it is assumed here, following de Walker, that the rule of law is independent of the system of governance, modern political democracy in this case. In the case of democratising countries, the existence of rule of law is a useful indication of democratisation. It must, nevertheless, be remembered that the rule of law is a significant, but not a sufficient element of political democracy. The mere existence of the rule of law is not enough to make a state democratic, but without the rule of law the state will not be democratic either. The legality in a modern political democracy is guaranteed when law-making - electing of representatives, passing laws and implementing them - is done without violating pre-known procedures. In

many systems there is a superior law, a constitution, to draw the lines for the legality of that particular system establishing what the procedures to be followed are. When considering the rule of law as something central to democracy, it must be seen as essential to the process/es of democratisation. Therefore, the literature on democratisation needs to be analysed, including the attention reserved for the rule of law within that literature.

It is acknowledged that the rule of law and democracy can be seen in extremes as contradictory principles. The rule of law to some equates at worst with the monopoly of the judiciary ("rule of judges")[234], while in a modern political democracy the power should be in the hands of the citizens. The general aims of the two terms are, however, compatible, when viewed in proceduralist and formal terms. It is worth noting that the definitions of the terms are particularly significant to this debate.[235] The rule of law aims at reducing arbitrariness in the governance to provide autonomy for the subjects (citizens), whereas, broadly speaking, modern political democracy is providing the subjects with the right to participate in governing (making laws). The original aim of the rule of law, obeying laws not masters, was to introduce laws as methods of protecting the citizens from the political authority and each other, while democracy (rule by many) is about expanding the governance to all except the few (or one).

There are some further challenges when studying the rule of law in the Middle Eastern context. The legal developments have been different in the Middle East (and elsewhere in the "non-originating" world) in comparison with the developments in the "Northwest". The pace of the emergence of the modern legal systems has been faster, and the role of external influence has been greater, (although, as some stress, the foreign influence has not been as profound as assumed). Furthermore, in the western context constitutionalism and human rights were connected to the wider political movements aiming at improving the status of citizens.

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[234] Maravall and Przeworski, Introduction(2003), p. 12.
[235] See Maravall and Przeworski (2003).

The role of the different cultural context cannot be wholly ignored. Yet, contributors sometimes rush into conclusions regarding the role and significance of Islam. The research on the rule of law and Islam can be seen as a part of a wider political discourse, the discourse on the Middle Eastern exceptionalism. Once again the western orientalists claim the incompatibility of Islam and the rule of law (seen as sovereignty of secular law), and the Middle Eastern scholars and younger generation of western academics aim to prove otherwise. It has to be remembered that there is no monolithic Islam. Furthermore, Egypt, the country seen as most progressive in relation to the rule of law, has a constitution that stresses the role of Islamic law as its guiding force. Not only has that been a goal mentioned in the text of constitution, but it has also been consistently enhanced by the decisions of the Supreme Constitutional Court.

The existing literature on the rule of law in the Arab world has focused on the Egyptian judiciary. This is also the reason why in the latter part of this chapter Egypt has received more attention: the literature on the rule of law is simply unbalanced. This can be justified when considering the significance of the Egyptian example beyond its borders, and Egypt's role as a progressive Arab country. Nevertheless, other Arab Middle Eastern countries cannot be ignored due to the lack of legal positive developments. It would be in actual fact useful to examine why countries sharing same cultural beliefs (broadly defined) and similar historical background (colonialism, under-development) have turned out to be so different regarding the rule of law. Therefore, the incompatibility-compatibility debate seems irrelevant and unnecessary. Furthermore, democratic scholars working on the Arab Middle East are not different from the main stream democratic scholars: both have neglected the role of the rule of law (and the role of the legal systems) in relation to the democratisation. The main academic projects on democratisation in the Middle East have paid little, or no, attention to the legal matters.[236] To conclude, there is still not enough evidence on the legal developments in the Arab Middle East that far-reaching conclusions could be made. Therefore, shifting some of the attention to the legal institutions when examining the political developments it is argued here might

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[236] Brynen *et al* Political Liberalization and Democratization in the Arab World(1998); Ghassan, Democracy without Democrats(1994).

make the existing literature a significant contribution, particularly when examining democratisation.

3. DEMOCRATISATION

Introduction

The working definitions of 'democracy' and the 'rule of law' were identified in the previous chapter. It is now time to move on to the next challenge. In spite of all the conceptual challenges of defining democracy it is still far easier to find a definition of democracy than to identify requirements for democratisation. One reason for the lack of consensus within the contemporary democratisation discourse might be the recent nature of democratisation as a global phenomenon. Modern political democracy, as Birch points out, is a relatively recent phenomenon: the earliest democracies were constructed in the nineteenth century Europe.[237] Furthermore, democracy remained a Western phenomenon until the very end of twentieth century.[238] The so-called third wave of democratisation has inspired a remarkable number of scholars and undoubtedly provided them, if nothing else, with a fair deal of material to be studied.

This chapter aims to present the approaches to the study of democratisation. The literature of democratisation is examined in order to identify the challenges of examining democratisation, as well as achievements and shortcomings of the current literature. There are a few classifications of democratisation, of which David Potter's classification was chosen here. According to classification by Potter, there are three main approaches to the study of democratisation: the modernisation approach, the transition approach and the structural approach. Potter's classification is used here, as Potter is concerned with factors explaining the construction of democratic systems. There are other classifications based on direction of development (top-down vs. bottom-up) or a crude distinction between structuralist theories and others.[239]

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[237] Birch (2001), p. 72.
[238] Linz, Transitions to Democracy(1990), p. 143; Held (1992), p. 10.
[239] Potter, Explaining Democracy(1997), p. 10. There are also other classifications, some of which do not differ much from Potter's classification. For instance, Jean has classified three approaches into modernisation theory, historical sociology ("sometimes called structuralism") and the transition school. Grugel (2002), p. 46. Brynen *et al* (1995), p. 3. See Sannerstedt, Teorier om Demokratisiering(1994), p. 58; Hadenius, Democracy and Development(1995), p. 21; Waterbury, Fortuitous Byproducts(1999), p. 261; Rueschemeyer and Stephens and Stephen, Capitalist Development and Democracy(1992); Tilly (1997), p. 193.

It is important to note that the terms of democratisation and liberalisation describe differing states of affairs, or different processes. O'Donnell and Schmitter remind us that democratisation and liberalisation are not synonymous, as the latter can exist without the former.[240] Political liberalisation is "an expansion of public space through the recognition and protection of civil and political liberties".[241] Democratisation can be defined as being a *process* by which a state becomes a democracy. Brynen (*et al*) defines political democratisation as: "an expansion of political participation in such a way as to provide citizens with a degree of real and meaningful collective control over public policy".[242] The aim here is to find out how the theories perceive the democratisation process: what are the requirements for democratisation and once begun how is it maintained? Who are the main actors or elements to be studied, and how?

The latter part of the chapter will examine the attention given to the rule of law within the existing literature on democratisation. The rule of law, as discussed in the previous chapter, is seen here as an integral part of modern political democracy - albeit also possibly existing independently. Thus the aim here is to study the literature in order to find out how the approaches to study democratisation perceive the role of the rule of law in democratisation? Does the literature on democratisation acknowledge the necessity of the rule of law? Is the rule of law seen as a condition for democratisation, or vice versa?

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[240] O'Donnell and Schmitter, Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies (1986), pp. 9-10.
[241] Brynen *et al* (1995), p. 3. See O'Donnell and Schmitter (1986), p. 7.
[242] Brynen *et al* (1995), p. 3.

3.1. STUDYING DEMOCRATISATION

3.1.1. Modernisation Theory

The core of modernisation theory, originating from the works of Seymour Martin Lipset[243], is an assumption of a correlation between the degree of democratisation and socio-economic development. Lipset argues that more prosperous nations are more likely to maintain democracy.[244] Modernisation (e.g. industrialisation and urbanisation) is believed to improve human well-being both in material and intellectual terms. With prosperity education will be available for a greater number of people, increasing literacy rates and thus personal insights into political issues.[245] The modernisation school examines relationships between different variables employing quantitative methods, in order to find universal (unilinear) correlations.[246]

Since the early days, the ideas of Lipset have been adopted for the purposes of hundreds of studies.[247] Hadenius considers modernisation theory to be the greatest one "in terms of adherents and research pursued".[248] Lipset's studies were followed by many, such as Daniel Lerner, Philip Cutright, James Coleman and Bruce Russet, all of whom examined the impact of various socio-economic factors on democratisation (or political development). Nearly all the studies employing quantitative methods for examining the impact of socio-economic development on democratisation have found a positive correlation between socio-economic development and democracy.[249]

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[243] Potter (1997), p. 11. Lipset conducted a comparative studies on western industrialised countries and countries in Latin America. Based on the findings, he classified three different types of countries: democracies, unstable dictatorships and stable dictatorships.

[244] Lipset, 1980, p. 469. Lipset himself considers both Max Weber and Schumpeter as the biggest sources of inspiration regarding the definition of democracy. Lipset, Political Man, The Social Bases of Politics(1960), p. 27.

[245] Hadenius (1995), pp. 77-79.

[246] Potter (1997), p. 12.

[247] Modernisation theory was inspired by the optimism felt in the West due to the impressive democratic developments in the 1950s-1960s. See Potter (1997).

[248] Hadenius (1995), p. 77.

[249] Hadenius (1995), pp. 78-79; Diamond, Economic Development and Democracy Reconsidered(1992), p. 96.

However, modernisation theory has since the 1960s lost its predominant position within the democratisation literature. The theory has been criticised due to several methodological and conceptual weaknesses, both in Lipset's studies and in the studies that followed.[250] The case of the Arab Middle East works as a telling example of the insufficiency of modernisation theory in explaining democratisation. There have been no notable differences in economic development in the Arab countries in comparison with other "non-originating" countries, yet results in political development have not been alike. Parts of the Arab world are even more economically developed than the rest of the developing world. [251]

Rather interestingly the increased prosperity in the Arab Middle East has not brought with it great political developments. On the contrary, there are a few 'peculiarities' in the region. The rate of basic education in some Arab countries is lower than in Asia and in Latin America. There are less Internet users in some of the Arab states than on an average 'developing' country. In relation to per capita income, following the modernisation paradigm, the number of literates should be higher in the Arab world, and the Internet access available to a larger number of people. The reason for the low literacy rates is more political than economic. Adult literacy campaigns have not been common in the Arab states, as they are considered to be politically sensitive matters by the executive. It is feared that increased literacy rates might lead to radicalisation of the impoverished classes.[252] Also the modest number of Internet users is rather a sign of authoritarianism (lack of individual freedoms) than a factor explaining the existence of authoritarian regime. This reminds us of the significance of the concept of political culture; or simply of insufficiency of pure material factors determining political development. First and foremost, the modernisation argument of the causal relationship between the degree of wealth and education can not truly be supported. Perhaps the appropriate question to ask is not whether the societies are wealthy enough but who is the wealth used and by whom? It must be also noted that

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[250] Diamond (1992), pp. 94-95. Among the weaknesses are the static analysis of data, assumptions on linearity and limited use of the methods available at the time (e.g. multivariant analysis). Lipset's decision to divide the sample into two parts (European and Latin American non-democracies), which were treated according to different criteria, resulted in an anomaly.

[251] Sadiki, Towards Arab liberal governance: from the democracy of bread to the democracy of the vote(1997), p. 133; Bromley, Rethinking Middle East Politics(1997), p. 329.

[252] Richards and Waterbury, A Political Economy of the Middle East(1996), p. 120.

Lipset's argument was born after studying the 'originating' countries. Perhaps the order or the course of democratisation, or both, are different this time around.

Modernisation theory since loosing its attractiveness has been challenged by two more recent theories. Both structural theory and the transition theory are born out of scholarly dissatisfaction with the core arguments of the modernisation approach and the methods used. They will be presented next.

3.1.2. Structural Theory

Structural theory, also known as historical sociology, is not concerned primarily with the degree of socio-economic development, but rather with changing power structures. Studies of democratisation should, it is argued, concentrate on different aspects of power (class power, state power and transnational power), as "democracy is above all matter of power".[253] According to structuralists, certain power structures are more significant than others for democratisation. Over time economic, social and political structures keep changing gradually, altering the circumstances offering either constraints or opportunities for political development and democratisation.[254] In contrast to modernisation theory, structural theory acknowledges the role of external factors in national political development. The findings of Rueschemeyer (*et al*) show that all of the three "clusters" of power are significant in democratic development, although they admit that it is too early to define the degree of external influence.[255]

Barrington Moore[256] defines the "development of democracy" as "a long and certainly incomplete struggle" to replace arbitrary rulers and rules through widening participation in rule-making gaining an opportunity to participate in rule-making.[257] The class-based struggle triggered by economic inequality would lead to increased participation and eventually to improved social and economic equality.[258] No one single "highway" to democracy has been found and modernisation does not seem to always automatically lead to democracy.[259] Furthermore, the starting point does not determine the course of the process, but some starting points are more favourable to democracy than others.[260] Historical circumstances of each country, it is argued, are

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[253] Rueschemeyer *et al* (1992), p. 4.
[254] Potter (1997), pp. 18-20.
[255] Rueschemeyer *et al* (1992), p. 159.
[256] Barrington Moore Junior's work laid the foundation for the structural theory. He examined transformations from agrarian societies into industrialised ones, aiming to explain why only some became democracies. While Moore has examined democracies of the first wave, Rueschemeyer (*et al*) used more recent case studies to modify the foundation of the theory. Moore, Social Origins of Dictatorship and Democracy. Lord and Peasant in the Making of the Modern World(1966), pp. 413-414.
[257] Moore (1966), p. 414.
[258] Moore (1966), p. 414.
[259] Moore (1966), p. 159; Huber, Rueschemeyer and Stephens, (1999), pp. 168-169.
[260] Moore (1966), p. 415.

important, but there are also worldwide conditions (economic and technological development) to be taken into account.[261]

The starting point of structuralist studies is an assumption that a positive correlation between economic development and democracy is a fact everyone should acknowledge. The best way to search for the explanation is the use of comparative historical studies. It gives "insight into sequences and their relations to surrounding structural conditions".[262] Furthermore, *comparative studies*, Rueschemeyer (*et al*) argue, go beyond historical particularism.[263] Structuralism-inspired studies are not easy to find among the contemporary literature on democratisation due to the dominance of the transition approach. As Grugel points out, structuralism has become "unfashionable".[264] Historical sociology generally speaking with its roots in Marxism has become unattractive since the 1970s. Scholarly criticism is primarily directed towards the ontological and epistemological foundation of the theory. Some argue that the theory is based on a too simplistic world view, while others perceive it as entirely inappropriate. Furthermore, its emphasis on long-term structural changes has been contradicted by unexpected events in eastern and central Europe in the late 1980s.[265]

While the structuralist theory has more to offer than modernisation theory, adapting it here would be slightly problematic, not least to due the different definitions of democracy adapted. While the benefits of "formal democracy" are acknowledged, structuralists see "social and economic equality" as the ultimate goal of democratisation.[266] Furthermore, the comparative historical approach is not the most practical when this study focuses only a single country. Yet there is no denying the significance of the history of the country for its political development or the relevance of external factors. Once again it is stressed that it seems logical not to expect democratisation in the "non-originating" countries to occur in an identical order and

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[261] Moore (1966), p. 427.
[262] Rueschemeyer *et al* (1992), p. 4.
[263] Rueschemeyer *et al* (1992), p. 4.
[264] Grugel (2002), p. 55.
[265] Grugel (2002), p. 55.
[266] Huber (*et al*) (1999), pp. 168-169.

manner with the “originating” countries. Finally, the argument of central role of the class struggle does not necessarily explain political changes in all countries.

3.1.3. Transition Theory

Transition theory was born as a critique to Lipset's "functional concerns".[267] The fundamental idea of the transition theory is to see democratisation as a process proceeding through stages. The first stage leads to the establishment of democratic institutions and the second stage enables institutions to survive and endure, connecting the new institutions to other spheres of social life. These two stages - *transition* and *consolidation* - are analytically differentiated, although they might overlap or coincide.[268]

O'Donnell and Schmitter who were among the first to examine transition processes define 'transition' as "the interval between one political regime and another".[269] Democratic transition is a process that starts with the breakdown of the existing regime, "dissolution of an authoritarian regime"[270], and ends with establishment of democratic government, or at least some essential parts of democratic regime.[271] The first studies focused on the role of domestic factors in the breakdown. The role of external influence is not denied, but transition studies, like the one by O'Donnell and Schmitter (1986), have shown that most democratic transitions have been set off by domestic factors.[272]

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[267] Potter (1997), pp. 13-14. Rustow criticised Lipset of presupposing that correlation and causation are same things. The 'founding father' of the theory, Dankwart Rustow claims that the focus of research should be shifted from "functional inquiry" (how to maintain democracy) to the "genetics" of democracy. The question how democracy comes into being is a more relevant one particularly when focusing on "developing regions".Rustow, Transitions to Democracy(1970), pp. 340-342.

[268] Encarnacion, Beyond Transitions. The Politics of Democratic Consolidation(1999), p. 485.

[269] O'Donnell and Schmitter (1986), p. 6.

[270] O'Donnell and Schmitter (1986), p. 6.

[271] O'Donnell and Schmitter (1986), p. 6; Rustow (1970), p. 355. Here the difference between political liberalisation and democratisation is seen clearly. Democratisation refers to a fundamental change in a political system (a change of regime), whereas political liberalisation occurs within the existing regime. Liberalisation does not necessarily lead to democratic transition (change of regime). It might bring extension of political rights, like freedom of association, freedom of speech, but the power would still be in the hands of the same non-democratic leading coalition. Mainwaring, Transitions to Democracy and Democratic Consolidation: Theoretical and Comparative Issues(1992), pp. 298-299.

[272] Rustow (1970), p. 352; O'Donnell and Schmitter (1986). According to Linz and Stepan, transitions have begun with uprising of civil society, collapse of non-democratic regime, armed revolution or non-hierarchically led military coup. A push towards democracy might also come from outside the borders, as a form of foreign intervention (war or occupation). However, studies by Linz and Stepan showed that nearly all transitions began with serious divisions within the regime. Linz and Stepan, Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe(1996a), pp. 71-72. Shain and Linz (1995), p. 7; Di Palma, To Craft Democracies: An Essay on Democratic Transitions(1990), p. 32. O'Donnell *et al* (1986); Fishman, Rethinking State and Regime:

> *The strategic problem of transition is to get to democracy without being either killed by those who have arms or starved by those who control productive resources.*[273]

Unlike the two previous theories, transition theory focuses on actors. Democratic transition is seen as a product of negotiations.[274] As Schmitter puts it, "democracy still has to be chosen, implemented, and perpetuated by "agents"".[275] Transition theory stresses that democratisation does not necessarily require 'democrats' but is rather born out a compromise of various competing interests. During the second phase, however, all actors regardless of their original commitment to democratic principles learn to accept the existence of the democratic institutions.[276] It is also argued that actors who are contributing positively in democratisation are not necessarily the same actors through all the phases. The task of political leaders during the final phase is to make other politicians and citizens to respect and believe in democratic procedures.[277]

While there is consensus on the definition of transition (a change of regime), defining consolidation has proved more challenging. A pioneering definition was offered by Przeworski, who sees a democracy as being consolidated when it is "the only game in the town".[278] There are no main political groups who wish to act outside the democratic system, even if they had lost the competition. Instead, they will try again by playing by the rules.[279] Playing by the rules, however, does not eliminate the uncertainty in the political system. Although a majority of the actors plays according to the rules, no one can predict the outcome of democratic processes with absolute certainty.[280] As Przeworski puts it, democracy is "a system of ruled open-endedness,

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Southern Europe's Transition to Democracy(1990), p. 426; O'Donnell (*et al)* concluded their 4-volume research stating the priority of domestic factors in transition.

[273] Przeworski (1991), p. 51.

[274] Przeworski (1991), p. 80.

[275] Schmitter, Interest Systems and the Consolidation of Democracies(1992a), p. 159.

[276] Rustow (1970), p. 358.

[277] Rustow (1970), p. 346.

[278] Przeworski (1991), p. 26. Przeworski's definition is widely used by other transition scholars. See Linz and Stepan (1996a), p. 5; Diamond (1999), p. 69; Sørensen, Democracy and Democratization: Processes and Prospects in a Changing World(1998), p. 39.

[279] Przeworski (1991), p. 26.

[280] Przeworski (1991), pp. 10-11.

or organized uncertainty"[281]. The biggest challenge of examining 'consolidation' is measuring it: when is a political system consolidated? There are minimalist and maximal definitions of consolidation; more recently also intermediate ones. While minimal definition focuses primarily, or exclusively, on institutions, the broader understandings include also attitudes and behaviour of the central actors. According to Linz and Stepan, who have been named as the founders of "consolidology"[282], consolidation can be assessed in three dimensions.[283] The beliefs and attitudes of political leaders as well as the existence of rules and institutions enforcing democratic rules are central to this assessment.[284]

Since the 1970s, when Rustow published his work, transition theory has become the dominant theory of democratisation. The 1990s can be rightly named the era of transitology, as the third wave of democratisation not only inspired the transition studies but also offered a great deal of cases to be studied.[285] Potter stresses that Rustow laid the foundation, but other scholars elaborated the ideas into *the* transition approach.[286] There is, nevertheless, no coherent or elaborated body of literature, rather a massive body of literature on transition theme.[287]

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[281] Przeworski (1991), p. 13.

[282] Schmitter and Karl, *The Conceptual Travels of Transitologists and Consolidologists:* How Far to the East Should they Attempt to Go?(1994), p. 173. Bunce, Should Transitologists be Grounded?(1995), pp. 111-127. Schmitter and Santioso (1997).

[283] Schmitter, Clarifying Consolidation(1997), p. 173; Diamond (1996b), p. 33; Merkel, Theorien der Transformation: Die Demokratische Konsolidierung postautoritärer Gesellschaft(1996), p. 38.

[284] Schmitter and Karl (1994), p. 173.

[285] Transitology is term adopted in the 1990s both by Economics and Social Science. While social science understands the transition as process towards democracy, economics see it as movement towards market economy. Boenker *et al* (1995). See also Schmitter and Karl, (1994); Bunce (1995).

[286] Potter (1997), p. 15.

[287] Pridham and Vanhanen, Democratization in Eastern Europe. Domestic and International Perspectives (1994), p. 3; Hadenius (1995). There are three extensive research projects that can be seen as the foundation of transition literature. A project by Juan Linz and Alfred Stepan examined the reasons behind the collapse of democratic regimes in periods of democratic crisis, the 1960s and 1970s (*The Breakdown of Democratic Regimes, 1978*). The increase in the number of democratic countries inspired two projects: Scott Mainwaring, O'Donnell and Samuel Valenzuela's Issues in Democratic Consolidation(1986) and O'Donnell and Philippe Schmitter's Transitions from Authoritarian Rule(1986). The framework of these three studies has influenced the research agenda of later research to a great deal. Munck (1994), p. 356. See Linz and Stepan (1996a), p. 16; Berins Collier, Paths Toward Democracy(1999), p. 5; Fishman (1990), p. 423. Transitions from Authoritarian Rule results from 'the Transition' project begun in 1979 at the Woodrow Wilson Center. The project aimed to examine the transitions occurred and occurring in Latin America and Southern Europe. See the Foreword by Abraham Lowenthal in *Transitions from Authoritarian Rule.*

The theory has been criticised for its overly optimistic view of democratisation. While the other two theories consider democratisation only as an exception globally speaking, transition school perceives democratisation as almost something inevitable.[288] The optimism is to a degree due to the timing of the theory. In spite of acknowledging the protracted nature of democratisation, the transition studies have concentrated only on short-term changes, ones located immediately prior to or immediately after the regime change.[289] However, this surely is not a co-incidence bearing in mind the emergence and the expansion of the theory alongside the third wave of democratisation. The optimistic tone could also be partly explained by the narrower definition of democracy. Unlike structuralism, the transition literature is based on a procedural definition of democracy. The theory has also been criticised for the lack of empirical evidence on which it is based. The major work has been done in Southern Europe and Latin America, which has led some to question the universal applicability of the findings.[290] Furthermore, transition theory-inspired studies focused on the central domestic actors and gave little or no attention to culture, development, history or international politics, argues Jean Grugel. [291]

In sum, there is no clear agreement on the various aspects to examine, or the definitions or methods to be used, or even the results to be achieved. This is partly explained by the large number of studies, and perhaps owing to the rather tolerant core arguments. The common denominator is the perception of gradual change through two stages. Pridham and Vanhanen summarise the contribution of the "theoretical school" within the transition literature as being less impressive than that of the "empirical school". The "theoretical school" has neglected the significance of international factors for regime change. The focus on the elites has perhaps been the most criticised. Some view that the concept of civil society should be included and the Eastern European experience has shown the central role of the masses. Finally, the historical background of transitions has not gained as much attention as it should have.[292]

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[288] Grugel (2002), p. 57.
[289] Grugel (2002), p. 59.
[290] Grugel (2002), p. 62.
[291] Grugel (2002), p. 61.
[292] Pridham and Vanhanen (1994), pp. 3-4.

Before the question of the usefulness of these three approaches to this dissertation is discussed the attention these approaches have given to the role of rule of law is to be examined.

3.2. THE RULE OF LAW AND DEMOCRATISATION

As within the democracy discourse, research on the rule of law has been neglected within the literature on democratisation. Mainstream theories of democratisation in their classical form do not pay much, or any, attention to the role of the legal system, or the concept of the rule of law.[293] Their primary concerns have been economic factors (Lipsetian modernisation theory), aspects of power (structuralists) and processes of negotiation and pact making (transition theory), as discussed earlier.[294] There is, however, a small body of research, inspired by the classical approaches to the study of democratisation which has included the rule of law. This group of scholars has been growing over the last few years.[295] It is argued here that this group of scholars should be far bigger, because currently a majority of the classical-inspired research is based on the procedural view of democracy. Thus, following the previously presented assumption of the rule of law as a significant (but not sufficient) part of modern political democracy, the rule of law should be included in studies examining democratisation.

The aim here is to identify what is known about linkages between the rule of law and democratisation. Unlike with other democracy literature, there is not much to be reviewed or many theories to asses. There is a severe lack of empirical evidence to support any theories or claims presented. As O'Donnell remarks, regarding the role of the rule of law, at the present it is only justified to present hypotheses.[296] Identifying a linkage between democratisation and the rule of law is challenging, as Grugel points out, due to the absence of an agreement on requirements to democraticise.[297] As long as is no consensus on requirements for democratisation,

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[293] O'Donnell (2000a), p. 42; Rose *et al* (1998), p. 33.
[294] Grugel (2002), pp. 48-49 and pp. 52-53 and pp. 56-59; Potter (1997), p. 11.
[295] Maravall and Przeworski (2003). The book edited by Maravall and Przeworski is mainly focused on the debate on the compatibility between the rule of law and democracy. Linz and Stepan stress, for example, that there are three pre-requisites for consolidation: a state, elections and rulers who govern according to the rules. These three elements need to be assessed at five different interacting arenas of a consolidated democracy. The interacting arenas are civil society, political society, *the rule of law*, bureaucracy and economic society. Linz and Stepan, Toward Consolidated Democracies(1996b), pp. 12-15.
[296] O'Donnell (2000b), p. 50.
[297] Grugel (2002), p. 68.

or pre-requirements, within the existing democratisation literature, it will be challenging to stress the significance of the rule of law.

Some scholars think that democracy will strengthen the rule of law, others see that it is the development of the rule of law that will lead to democratisation. O'Donnell argues that it is the "incompleteness of a state", particularly its legal incompleteness, that causes the problems for democratisation. In Latin America, democratisation seemed to worsen the failures of the state.[298] Other political scientists stress that functional state apparatuses do not automatically lead to democratisation, but they will make it easier to tackle already enormous social and political challenges.[299]Hills, on the other hand, assumes that it is democracy that will strengthen the rule of law, even if not fully guaranteeing its existence.[300] There is also a group of writers who see the role of the rule of law as being significant in a certain phase of democratisation, namely the consolidation of democracy. These writers stress the importance of the independent judiciary to the success of consolidation efforts.[301]

The question of the rule of law is of particular importance in the case of the new democracies and democratising countries. It is important for this study and the entire body of literature to find out whether contemporary democratisation processes are fundamentally different from the processes that led to the establishment of democratic regimes in the "originating" countries. It is worth noting that the "originating" countries the inclusion of civil rights occurred well before the inclusion of political rights. However, the construction of a citizen as a legal agency took place before the constructing of democratic systems, as a part of state-making processes. O'Donnell points out that in the case of the "non-originating" countries both the legal and political systems are imported. The state building and democratisation are taking place more or less simultaneously, making implementation of the rule of law even more challenging. This makes, O'Donnell argues, the democratisation process

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[298] O'Donnell (1998), p. 11.
[299] Carothers (1998), p. 98; Larkins (1996), p. 604; Gruger (2002), p. 83.
[300] Hills, The Rule of Law and Democracy in Hong Kong – Comparative Analysis of British Liberalism and Chinese Socialism(1994), p. 1/18.
[301] Diamond, Toward Democratic Consolidation(1996a), p. 239; Shain and Linz (1995), p. 10; Przeworski (1991); Larkins, Judicial Independence and Democratization: A Theoretical and Conceptual Analysis(1996), p. 607.

fundamentally different in these countries. The rule of law is thus seen as a part of a modern state and a part of modern democracy. Furthermore, the "non-originating" countries are facing other fundamental problems that need to be solved as well (such as poverty, demographic explosion).[302]

This study is aiming to contribute to the current literature on the requirements to democratisation through examining the relationship between the rule of law and democratisation, providing that the political changes in Jordan since 1989 can be identified as democratisation. If democratisation is truly taking place in Jordan, it will be relevant for this purpose to identify the role of the rule of law in the democratisation process. Has the rule of law been embedded prior to the start of the democratisation process or has the rule of law been embedded during the process? This study does not only contribute to the literature by providing more evidence on the role of the rule of law in the democratisation process, but it also aims to contribute to the debate on the possible different nature of contemporary democratisation processes compared to the ones occurred in the "originating" countries.

[302] O'Donnell (2000a), pp. 40-43; Rose *et al* (1998), p. 33.

Summary

This chapter aimed to introduce approaches to the study of democratisation. Drafting a general picture of the contemporary literature on democratisation was done in order to explain the challenges of examining democratisation. Not only was one of the goals to familiarise the reader with the commonly used terms, but also to define the main achievements and weaknesses of the main approaches.

Regardless of the massive interest in democratisation and the ever increasing number of studies, there are still many unanswered questions. There is no consensus on the pre/requisites of democratisation, or on the dynamics of democratisation process/es. Also the question of the universal validity of the existing empirical data is at the centre of the debate. The existing literature has not yet answered satisfactorily whether democratisation will be a fundamentally different process in the contemporary world in comparison to democratisation processes that led to the emergence the first modern democracies. Despite the lack of consensus on many aspects of democratisation, it is widely agreed that democratisation is not a linear process initiated by a single group of factors. Rather, democratisation is perceived as a complex and lengthy process.

What then have the three approaches presented in this chapter to offer for this dissertation? A bulk of unanswered questions? To start with it has to be acknowledged that some approaches are making a bigger contribution than others. Not surprisingly modernisation theory, already abandoned by many, is not offering much, and in the context of the Arab Middle East even less. The other two approaches have succeeded in drawing a less simplistic, nonlinear picture of democratisation. Furthermore, they have widened the methodological choices from the unjustified reliance on quantitative methods only. Structuralist theory is the only one to draw the attention to the role of external factors as a theory. While structural theory has stressed the role of external factors as one of the three main factors, it has to be acknowledged that later contributions have also recognised the existence of the external influence. This is an interesting point in relation to the 'third wave' of democratisation, a large number of countries democratising simultaneously.

However, the comparativist approach does not serve the purposes of this study, as only one state will be examined here. Once more is known about the Jordanian situation, and any of the states in the Arab Middle East, comparative studies could be a logical next step. More importantly, the core argument of structuralist theory differs from the core assumption of this study. It is not assumed here that only a class struggle would start democratisation. Perhaps this has occurred in the past, but certainly will not explain all beginnings to democratise. Furthermore, the structuralist view of democratisation is based on a substantive view of democracy than that which has adopted here. As stated earlier, in the context of a "non-originating" country it is believed here that 'maximum' definition is not realistic as a starting point. In addition, social equality is still a goal unachieved by many established democracies.

Great contributions of the transition theory are the emphasis given to the gradual nature of democratisation and the role of actors. Establishing institutions of political participation (e.g. elections, multi-party system) does not mean that an authoritarian state becomes immediately and automatically a democracy. It does not mean either that all the actors involved are necessarily democrats. Thus the theory acknowledges the complexity of the democratisation process. Nevertheless also transition literature has failed to find satisfactory answers to the core questions of the democratisation discourse. Owing to the massive size of transition literature to pinpoint the most common weaknesses is a time-consuming task and does not serve the purposes the study. The aim here was not to assess the quality of the entire transition literature, but to identify any elements that could be useful for the purposes of this study through evaluating the core arguments of the theory. Based on the brief summary presented above it is possible to raise some general concerns.

The main weakness of the theory, however, is the ambiguity of the core terms. The term consolidation is criticised being a challenging term to use as an analytical tool. How democratic does a state need to be before it can be considered as an established (consolidated) one? Is it beliefs, behaviour or central institutions that are at the core of consolidation? Acknowledging the challenges facing the students studying consolidation is perceived sufficient here, as the term transition is more central for the purposes of this study. Jordan needs to be identified as transitional

before consolidation becomes a relevant term. The theory has defined the start of the transition ("the process of dissolution of an authoritarian regime"[303]) and the end (an authoritarian regime replaced by a democratic one). The transition process itself is left for lesser attention. Why does it start and what makes the process to reach the 'right' destination? Transition theory stresses that transition can slow down, be stalled, change direction or stop altogether. Based on the uncertainty of the outcome it is argued here that it is not justified to label anything as 'democratic transition'. There are no guarantees that the dissolution of the existing regime will actually lead to an establishment of a democratic regime, although the optimistic label might suggest so. It is argued here that only in cases where the democratic outcome is known it is justified to label the process as 'democratic transition'.

If it is argued that the methods and arguments of modernisation theory, the core assumptions of structural theory and definitional weaknesses of transition theory are not taking us any closer in finding answers, how then should democratisation be examined? Following the basic assumptions of this study, the rule of law should not be ignored when studying democratisation. The rule of law (as a term) has been neglected by the contemporary classics among the democratisation literature, particularly by modernisation theory and structuralism. Only a minority of scholars acknowledge the centrality of the rule of law to democracy, and thus also to democratisation. This study aims to draw attention to this weakness by examining the political changes taking places in Jordan through assessing the rule of law in the country.

The attention of this study cannot be exclusively on the rule of law, as it is also claimed that a state does not have to be a democracy to have an embedded rule of law. In order for the citizens to participate in the law-making a significant degree of transfer of power from the non-democratic political elite has to take place. Not only has the small political elite to share the legislating with the citizens, but they must also be subordinate to law like any other citizens. In the context of democratisation, "dissolution" of the existing regime, as suggested by the transition school, is considered here as a preliminary sign of fundamental change taking place within the

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[303] O'Donnell and Schmitter (1986), p. 6.

political system. A state to be qualified as democratising has to show serious signs of transferred power: the political elite that has had the monopoly of legislating and the luxury of being above the law has to give up these privileges. Currently not enough is known about the role of the rule of law in democratisation in order to make any assumptions of the order of the development. There are, however, two possibilities with regard to the rule of law. The rule of law can exist prior to democratisation or to be seriously embedded during the democratisation process. In the latter case signs of transfer of political power is not in itself sufficient enough, there must also be convincing attempts to improve the rule of law situation. If in the case of Jordan, there are evidence of both (the rule of law and transfer of power), the political changes can be justly identified as democratisation. Yet if there is only evidence of transfer of power, political changes cannot be perceived as democratisation, as the new democratic practices are not protected from arbitrary behaviour of the political elite. In the case that there is evidence of embedded rule of law but no transfer of power, it is argued that a pre-condition for democratisation exists.

So far the attention within this study has been devoted to the developments within the democracy and democratisation discourses. Therefore it is time to move the focus closer to the object of this study. The next chapter will offer a summary of the theoretical arguments that are the basis of this study. The aim of the fourth chapter is to introduce the elements to be examined this study and how they are going be approached. The fifth chapter will introduce the object of this study: the Hashemite Kingdom of Jordan. This done to familiarise the reader with the context of the study and to present the reader with the unique factors related to the political life in Jordan. The current political elite in Jordan will be introduced in order to be able later in the study to judge whether any transfer of power is taking place within the current regime. Are the political changes signs of the dissolution of the current political elite?

4. EXAMINING THE RULE OF LAW AND DEMOCRATISATION IN THE HASHEMITE KINGDOM OF JORDAN

4.1. The Research Challenges

The aim of this study is to examine whether the political changes that have taken place in Jordan since 1989 can be correctly understood as indicating a process of democratisation. Studying (alleged) democratisation, it must be acknowledged, is not the most straightforward task, not least due to the challenges raised by the terms used. In spite of the vast body of literature on democratisation the role of the rule of law remains an uncovered element of democratisation. There is not much empirical evidence on the relationship between the rule of law and democratisation. In the "originating countries" the rule of law as an element of political practice has existed longer than political democracy. Some scholars argue, nevertheless, that in the contemporary world the order of the development is reverse. Therefore, it will be of interest here to examine, whether the rule of law (the judiciary in particular) has contributed to democratisation, or vice versa. To make it more challenging the object of this study – the Hashemite kingdom - is a "non-originating" country from a region where lack of democratisation is more the norm than the exception.

Defining how to assess the rule of law in Jordan proved to be one of the most challenging tasks of this study. This was not least to do with the failure of the existing literature to produce satisfactory measures for the rule of law. Carothers argues that the current growing interest in the rule of law, particularly on the donors' side rests on "disturbingly thin base of knowledge at every level – with respect to the core rationale of the work, the question where the essence of the rule of law actually resides in different societies, how change in the rule of law occurs, and what the real effects are of changes that are produced".[304] It is acknowledged here that finding all-encompassing measures for the rule of law is a massive project, something that is beyond this study. In addition, there are not excessive amounts of literature either on the rule of law in Jordan or on any other legal matters in Jordan either. There are

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[304] Carothers, Promoting the Rule of Law: the Problem of Knowledge(2003), p. 13.

studies of some of the elements of the rule of law, but no real comprehensive efforts. Thus, there are no previous studies to use as a starting point or whose (measuring) approaches may be developed further. The lack of basic research on the rule of law in Jordan, however, is in itself an invitation and an encouragement.

One option to examine the rule of law is to import measures developed elsewhere into the Jordanian context. There are no comprehensive sets of measures for the rule of law, but performance of a legal system has been routinely measured in many countries. It has to be noted that most of the performance measures have been designed to be applied in more established legal systems. Thus, they are not necessary always very useful for studying less established systems and should be used with a certain amount of caution. Those measures do not necessarily take into account the special problems in a developing context, such as corruption, traditional dispute resolution mechanisms and rights-consciousness. They can also be too expensive and time-consuming. Moreover, some of the data required is not necessarily even collected in some countries.[305] Furthermore, partly due to the above mentioned limitations, the aim of this study is not to assess the effectiveness of the entire legal system in Jordan. The objective here is to make one of the first attempts to assess whether the rule of law exists in Jordan. Measuring the effectiveness of the Jordanian legal system is a challenge due both to the sensitive nature of the exercise and to the serious lack of reliable data.

Bearing in mind all the limitations, it was decided to tackle the research question by examining *constitutionality, the independence of the judiciary and political participation*. These three elements are central to modern political democracy. The first two are fundamental to the rule of law, while the third one is an element often focused primarily or exclusively when studying political democracy. Adapting an juristic understanding of the rule of law means that instead of the substance of laws the attention here will be on the *constitutionality* of the Jordanian political system. It is relevant to examine whether the 'rules of game' are respected, whether the laws are passed and implemented as described in the constitution. The judicial independence can be part of constitutionality, but as such is also a cornerstone of the rule of law. It

must be stressed that when examining only the rule of law, analysing the third element is not a necessity. However, when examining democratisation analysing the elements of the rule of law is not optional.

[305] See Messner; http://www1.worldbank.org/publicsector/legal/performancebrief.htm

4.2. Constitutionality

The constitution of the Hashemite kingdom is the first element to be studied. Constitution here is understood as "systems of laws, customs and conventions, which define the composition and powers of organs of the state, and regulate the relations of the various state organs to one another and to private citizens".[306] The Jordanian constitution as a text will be examined in two respects: as a charter for government and a potential vehicle of constitutionalism. The constitution does not automatically function as the great passage - expressing Constitutionalism, or as the grand symbol of democratic governance, but as a blueprint on how to organise the state actors.[307] This is not to say that the Jordanian constitution is automatically considered unconstitutional or undemocratic, but rather that it is not necessarily either. The starting point for the analysis is that the constitution is primarily a charter for government, but can also be a guarantee of political freedoms.

Firstly, the constitution, whether a vehicle of constitutionalism or not, has a significant function in defining the basic rules to be followed, the state actors and the powers granted for them. Institutional powers do not only differ from post to post, and sometimes from situation to situation, but different powers are provided to the central participants in different systems. It will be of interest here to examine whether signs of "Arab Constitutionalism", as suggested by Nathan Brown, can be observed in the Jordanian case. Is the constitution used to guarantee the autonomy of the state structures and to define the relationships among the rulers? Does the executive use any elements, such as the legal system, to strengthen its own position? The second reason to study the Jordanian constitution is to find out whether as a text it provides the required elements for the rule of law and for modern political democracy. It is relevant for this study to examine if the constitution in force includes elements of

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[306] Hood and Philips and Jackson, Constitutional and Administrative Law (2001), p. 5.

[307] 'Constitutionalism' is a term normally used to refer to a Western ideology aiming at constraining the state powers (via constitutions). It has been acknowledged since that constitutions are not necessarily either the vehicles of political progress or breakthroughs in great liberalisation struggles. Furthermore, constitutions do not necessarily guarantee any degree of democracy. See Brown (2002). Brown distinguishes between 'liberal constitutions' and 'constitutions', to stress that not all constitutions are necessarily 'liberal' documents.

modern democratic systems. Furthermore, as the object of the study is a country in the Arab Middle East, is Islam given a special role or status in the constitution? It will be relevant to identify whether so-called islamisation of the constitution has occurred in Jordan, like in Egypt and Iran. If islamisation has occurred, it will be important to find out the motive behind it. Has Islam used as a tool to manipulate the citizens or is there another reason for the possible islamisation?

In addition to analysing the text of the constitution, the aim here is also to assess the implementation of the constitutional framework: the *constitutionality* in Jordan. Have the central actors respected the constitutional constraints? Are weaknesses in the constitutional framework, if there are any, due to the design or the implementation? The question of the implementation of the constitutional framework will be analysed in the context of the other two elements: the judiciary and political participation.

Defining the constitutional framework is naturally done by examining the Jordanian constitution, or more precisely the constitutions. Here with 'the constitution' it is referred to the current constitution in a form it exists today (with the amendments) while 'the 1952 constitution' is used when referring to the non-amended constitution, the original text of the constitution as it was in 1952. Special attention will be given to the amendments made since the early 1950s. Have the amendments significantly changed the constitutional framework? Who is behind the amendments and what might their motives have been?

In both cases English versions of the constitutions will be used. Quite unexpectedly one of the most difficult challenges when collecting data for the purposes of this study was to get hold of a copy of the original constitution. The Law Faculty of the University of Jordan, the only law faculty in the country, did not have a copy of the non-amended one. When a '1952 non-amended' copy was specially requested, (after several days of waiting) an amended copy of the constitution was received. Also the collections at the university library (University of Jordan) did not include the original 1952 constitution, nor did the library at the Parliament. The original copy was finally found at the collections of the British Library, when back in England after the field research. Yet it must be stressed that it is not argued here that the above

mentioned institutions do not have copies of the original constitution in Arabic, as such was not searched for. It is acknowledged here the primary aim should be examining documents in their original language. However, in this case Prof. Hammouri kindly checked the usage of the legal terms in the English version of the 1952 constitution.

Regarding the constitution, Professor Muhammad Hammouri has proved to be the most valuable source of legal expertise. He is a rare legal scholar in the Jordanian context, as he is not only practicing law but also actively researching Jordanian contemporary public law. Therefore, this study relies heavily on materials produced by Hammouri, particularly on his article on the temporary laws.

The National Archives at Kew have been consulted for the purposes of this study. Yet it has to be stressed that many British Foreign Office documents useful for the purposes of this study were not yet available. The file FO437 is confidential print and remains closed until 2007, FO816/176 until 2012 and the file DEFE11/173 is retained by the department under section 3.4. However, in spite of these closed files the documents that were accessible are used here whenever appropriate.

4.3. The Judicial Independence

The judiciary, the second element to be studied, is the foundation of the rule of law. "Judges are both part of the apparatus of the state and part of the mechanism that holds the state actors accountable. This requires them simultaneously to uphold the public order and to correct the actions of public authorities".[308] In order to be able to fulfil its responsibilities the judiciary should enjoy a sufficient degree of independence from the other state actors.

It would be ideal to examine the functioning of *all* state institutions – elected and non-elected – when analysing the rule of law. This study focuses on the judiciary, the backbone of the legal system, as the resources available are limited. It would not be justified, or very useful, to concentrate solely on the other parts of the state apparatus when no basic study has been done on the judiciary. Once the basic research is done, then the natural next step would be to expand the focus to other elements of a state apparatus: the police force, the armed forces, the bureaucracy. This would be a massive task, too massive for this study, particularly considering the limitations placed by shortage of basic research and limited data.

The *Basic Principles of the Independence of the Judiciary* of the United Nations General Assembly (1985)[309] will be used here to assess the independence of the judiciary. The inspiration to use the UN Basic Principles comes from Sherif and Brown, who used the principles when conducting a comparative study on the independence in the Arab countries.[310] Not only does Jordan belong to the UN family, but also the UN Basic Principles have been accepted and adopted by the Arab Center for the Independence of the Judiciary and the Legal Profession, as part of the Beirut Declaration of 1999.

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[308] Sherif and Brown, Judicial Independence in the Arab World(2002), p. 1.
[309] UN Basic Principles on the Independence of the Judiciary. http://www.unhchr.ch/html/menu3/b/h_comp50.htm
[310] Sherif and Brown (2002).

The Basic Principles, twenty in total number, are divided into six categories: (1) independence of the judiciary, (2) freedom of expression and association, (3) qualifications, selection and training, (non-discrimination) (4) conditions of service and tenure, (5) professional secrecy and immunity and (6) discipline, suspension and removal. It is worth noting that some of these elements are easier to assess than others in the case of Jordan, mainly due to the availability of data. It also worth acknowledging, as Sherif and Brown point out, that the second set of principles is less straightforward. In some legal systems political activism of judges is restricted, since the neutrality of judges is considered as one of the main requirements of a modern legal system.[311] However, the aim here is to cover all six categories, yet acknowledging that some can be covered in more detail than others.

Considering the limitations set by the resources available and the subject to be studied, the emphasis is on the first set of principles, as it is considered here as the most essential one. According to this set, independence must be guaranteed in the *constitution* and respected by the *state agencies*. There cannot be extrajudicial bodies; judges should be the only actors authorised to practice legal authority. This means also that judicial procedures cannot be subjected to revision and appropriate resources must be provided for the judiciary. On the other hand judges themselves must guarantee that the cases are dealt within a legal and fair manner.[312]

It must be stressed that, as useful as the UN principles are in suggesting the elements to study, there is no minimum degree of independence defined. The Basic Principles do not include any indication of when the judiciary is independent enough, nor is there any hierarchy among the principles. As the judicial independence is a vast matter to tackle, the elements studied here are divided into 'structural' and 'decisional' independence. With the structural independence is meant material, physical working conditions and with decisional to procedural (and psychological) conditions constraining judicial decision-making. This distinction, like any, is slightly artificial. Sometimes it can be debatable whether something is more structural than decisional (or vice versa), like the matters of recruiting and promoting judges.

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[311] Sherif and Brown (2002), p. 3.
[312] Basic Principles (1985).

Assessing the judiciary is one of the most challenging tasks of the study, as the means to do it are scarce. Naturally the first task is to analyse the Jordanian constitution (and other relevant legislation) in order to define the rights and responsibilities of the judiciary as well as define the structure of the legal system. To assess whether the existing legal system supports the independence of judiciary is then a different matter. As shown earlier, very little is written on the Jordanian legal system, even less on the judiciary in Jordan. The scholarly legal discourse on the legal developments in the country rests on the shoulders of one or two Jordanians. In addition to Professor Hammouri mentioned above, another legal scholar is worth mentioning here. HE Farouq Kilani, former Chief Justice, is among the few legal scholars producing legal studies in and on Jordan.

A very obvious problem is the lack of data produced by Jordanian governmental agencies. The reasons for this are either the real lack of data or simply the unwillingness of the agencies to co-operate. Thus alternative sources of data collecting data were needed. There were two approaches to choose from: either to interview the providers of the services or the consumers. Interviewing the users of the judicial services proved a too massive task, as the resources (time and money) were rather limited. Also the timing of the field research (spring 2003, the ongoing invasion to Iraq) might complicate conducting large or medium-scale survey work by a European student. More importantly, interviewing citizens would provide views on the functioning of the legal system, not on the independence of the judiciary, which is the main object of this study. It is also worth noting that the consumers of the legal systems are biased by their own interests. It cannot thus be argued that they would have a universal perception of the legal systems. Therefore, the only workable solution was to collect the data needed through interviewing legal experts and practitioners.

The understanding of the rule of law here, as stated earlier, places no requirements for the *quality* of the laws. It is argued here that the substance of the laws is an internal matter, something that the citizens of the state in question are responsible for, naturally within the restrictions made by international agreements joined and

ratified. Thus, the aim here is not to place Jordanian laws *per se* under scrutiny. The contents of law are, however, important if they contradict the constitution or each other significantly. Also the substance of the laws will be taken into consideration if brought up by a legal expert. The legal texts used here are either official or unofficial translations from Arabic to English. It is acknowledged here that some of the meanings may alter in the translated versions of the laws.

4.4. Political Participation

The third element to be examined, political participation, is the one conventionally associated when studying democratisation. It is stressed here that while the attention cannot be solely on political participation when studying democratisation, it cannot be ignored either. The political changes taking place since the late 1980s to equal democratisation requires embedded rule of law and transfer of power. Dissolution of the non-democratic regime is considered here, as suggested by transition theory, as a sign of significant systemic change within the regime. In order for the citizens to gain the opportunity for collective decision-making, the role of the political elite has to be changed. The old non-democratic elite has to give up its privileges; to share its political power with the rest of the citizenry. The new elected political elite is chosen according to pre-known procedures and every citizen has an equal right to influence the selection of the political elite and to be selected.

Political elite has clearly received more attention than the other two elements together and thus there is more data available. The attention here will be placed on the three elements at the core of the Schumpeterian-Dahlian definition of modern political democracy: free and fair elections (incl. universal suffrage), freedoms of political association and expression. Here political participation is analysed through parliamentary elections since 1989, political associations and press freedoms. This is done in order to find out whether the Jordanian citizenry is provided with a genuine opportunity to participate in law-making (e.g. electing legislators and to be elected) and whether the freedoms of association (political and other) and expression are guaranteed for the citizenry. The time period to be analysed is the period from 1989 to 2003, starting with the parliamentary elections in 1989 and ending with the most recent parliamentary elections in June 2003.

The starting point for analysing these three activities is the *legislation* covering political participation: the legislation in force and the amendments made since 1989. Does the existing legislation support political participation? Do the laws related to political participation respect the constitutionality in Jordan? Has the legislation

changed significantly since 1989? If it has, does it currently provide the citizenry with a better environment for political participation? The legislation studied here includes the current constitution, laws on elections (1986, 1989 and 1993) and political parties (1992) and the media freedoms (2001). The official English versions of the laws were used here, with the exception of the Press and Publications Law (2001). The official translations are all available on the website of the Jordanian government. The version of the Press and Publications law used here is an unofficial version translated by Sae'da Kilani.

In addition to analysing the legislation, the reality of political participation is examined as well. How are the rights of the citizenry in relation to political participation secured? Have there been any significant changes since the late 1980s? This is done by interviewing commentators, Jordanians involved in domestic politics or civil society activities either through political parties or professional and civil society associations. Professional syndicates have had a significant role in the Jordanian society, particularly when political parties were illegal until 1992. Therefore, including the biggest professional syndicates was seen as being central to the effort to draft a realistic picture of political activism in Jordan. The aim is to examine the election turn-outs, the attractiveness of political parties and other associations. Are the rights guaranteed in the legislation part of political reality? Have there been any significant changes in the political reality for the Jordanians since the late 1980s? Have there been any differences in the three parliamentary elections organised since 1989?

4.5. Data Used

The politically sensitive nature of the topic studied and the scarcity of reliable data on the legalo-political developments in Jordan has placed a few limitations on the methods for the purposes of this study. Thus it was decided that collecting qualitative data was the most appropriate method available. Interviewing Jordanian experts and key actors was the only way to find out detailed information on the *implementation* of the constitutional framework in Jordan, topic currently little examined. Interviews are also a good way to find "attitudinal information on a large scale".[313]

The "interview guide approach" was used as the model for the interviews.[314] A series of open ended questions was made to the interviewees. The core of the questions, and the wording of the questions, remained the same, yet the order of questions was not necessarily unchanged. Depending on the answers given by the interviewees, the order of the questions was not perceived to be significant, as long as all the core questions were answered. The different groups of interviewees were, however, given a slightly different set of questions. For example, the legal experts were all asked about the significance of a constitutional court, whereas this was not considered a question to be asked from the other groups. If respondents from the other groups brought up the questions of the necessity of the rule of law, they were allowed to express their views. The main strength of the unstructured interview was to find out how key actors and internal observers understand the situation in relation to the rule of law and what do the interviewees consider as central or important to the topic.[315] If the interviewee in question wanted to discuss the other elements studied here in more detail, s/he was allowed to do so. This was done not only to gain the trust of the person, but also as a way to gain information not anticipated prior the interview. Another advantage of using unstructured, open-ended interviews was to be able to make further questions about issues that were not known for the interviewer prior to the interview.

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[313] www.trentfocus.org.uk/Resources/using%2interviews.pdf

[314] Rossman and Rallis, Learning in the Field. An Introduction to Qualitative Research(1998), p. 124.

There were four groups of interviewees recruited: legal professionals, representatives from the executive, politicians and civil society activists and 'commentators' (researchers and analysts). The sampling method used here to recruit the interviewees was a mixture of two methods: a list of experts and the so-called snowballing method. A preliminary list of interviewees was drafted *prior* to the field research. Participants were chosen from names referred to in the literature reviewed, such as Leila Sharaf, the first female minister in Jordan. Not only the names mentioned in the texts, but the aim was also to interview contributors of documents such as the *Jordan First* initiative. General secretaries of the most central political parties and the biggest professional associations were included in the list due to their current positions. In addition, all interviewees were asked to recommend people who they thought were central to the debate. Once the recommendations made by the interviewees started to include no unknown respondents (experts already interviewed), it was considered as an indication of meeting the most central figures.

It would not be possible not to interview the two legal experts mentioned earlier, Hammouri and Kilani. In addition to their extensive legal experience, both are still actively researching the legal system in the country. Other legal experts interviewed were practicing legal professionals, some with very extensive professional careers, some even held ministerial posts. Also the aim was to recruit legal professionals who participated in the *Jordan First* initiative's working group on the constitutional court. One of the legal practitioners interviewed, Dr. Anis Qassim, has even been involved in drafting the Palestine National Charter. One clarification has to be made at this point. Although the interviewed legal experts are without a doubt the best legal experts in Jordan, none of them is currently working as a judge. Unfortunately no judge in office was available for an interview. Thus the interviewed legal experts can provide first hand answers from the perspective of an acting judge only from the period when they were still working. Yet quite a few of the interviewed legal experts still work as attorneys and have contact with the courts on a regular basis, thus being able to provide views from a different point too.

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[315] Rossman and Rallis (1998), p. 124-126.

Recruiting interviewees from the executive proved to be the biggest challenge of the field research. Unfortunately no one from the Ministry of Justice or from the Ministry of Interior agreed to participate, despite numerous requests by the researcher herself and members of support staff at the Center for Strategic Studies, University of Jordan. However, former governmental officials such as former ministers and ambassadors, were recruited. The Research Department at the Ministry of Development and Planning offered help with matters indirectly related to the rule of law.

The group of politicians consisted former and present Members of Parliament as well as members of the opposition. The aim was to recruit politicians from various political parties and politicians who have involved in the domestic politics long enough to cover the period in question (1989-2003) and also preferably prior to 1989. There are a few parliamentarians like Toujan Faisal, the first ever female parliamentarian in Jordan and Leith Shubeilat who simply could not be excluded from the list of interviewees due to their very visible role in the domestic politics in Jordan. As there are a large number of civil society organisations in Jordan, it has to be acknowledged that only a small fraction of the societies could be interviewed. Interviewing all civil society organisations was not even seen as necessary. The civil society activists were selected to represent the Jordanian civil society working on issues directly related to the rule of law: human rights and women's rights groups. To examine whether foreign civil society organisations were treated equally with the Jordanians, it was decided to recruit representatives from a number of international development organisations.

The role of the commentators was two-fold: to share their perceptions on the rule of law in Jordan and to provide recommendations for recruiting interviewees. Commentators, like Mustafa Hamarneh (the Center for Strategic Studies, University of Jordan) and Hani Hourani (Al-Urdun al-Jadid Research Center), had also a central role in the snowballing exercise. As directors of well-known research institutions their help to recruit interviewees proved very useful, particularly to access the Jordanian parliament.

All interviewees were told in advance that the interviews are used for the purposes of this study only. Everyone agreed to be interviewed was explained that as their comments might be used as direct quotes their identities can be protected. The majority of the interviewees did, nevertheless, not feel that it was necessary.[316] Furthermore, all people who were contacted, except the ministries and acting judges mentioned earlier, agreed to participate, even sometimes in very short notice. No recording was done as a measure to gain trust due to the sensitive nature of the topics discussed. The only exception was the interview of HE Farouq Kilani, as the interview was conducted in Arabic, assisted by an interpreter Dr. Axel Wabenhorst. HE Kilani gave a verbal consent for the recording prior to the interview and permitted using him as a reference. During the other interviews notes were taken and the notes were transcripted immediately after the interviews.

It is acknowledged here that there are no perfect methods. Qualitative interviews like any other scientific methods have their flaws. First of all, the personality of the interviewer plays a significant role in the interview situation.[317] Therefore, the aim of the interviewer was to approach the issue as tactfully as possibly and to guarantee the confidentiality of the interview. The time of the interviews was particularly challenging, as the US invasion on Iraq had just began. Thus it was anticipated that during the course of the interview the interviewees might want to touch the issue of the legitimacy of the war on Iraq, even if not necessarily directly related to the interview topic. To avoid possibly confrontation, a special attention was placed on the wording of the questions. It was decided not to mention the word 'democracy' unless the interview introduced the term during the conversation. This was also done to find out whether the interviewees would consider Jordan democracy or not.

As most of the interviews were conducted in English, it is acknowledged here that the choice of interviewing language might have limited the recruitment of the respondents. However, it was also perceived that the nature of interviews (expert interviews)[318] would allow the use of English, as most of the experts interviewed are

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[316] Rossman and Rallis (1998), p. 49.
[317] Rossman and Rallis (1998), p. 125.
[318] Rossman and Rallis (1998), p. 134.

well-educated and several of the interviewees have studied or worked outside the Arab world. All interviewees were offered an interpreter. Only two interviews were conducted in Arabic: interviews of Farouq Kilani and Dr. Ahmad Shunnaq, the Secretary General of National Constitutional Party. The former interview was recorded and later translated by Dr. Axel Wabenhorst and the latter was translated by Alma Khasawneh.

Another limitation is the possible "social desirability bias", respondents presenting themselves or the organisations that they are representing in the best light possible.[319] Bearing in mind that the interviewees might not provide entirely honest answers, triangulation[320], collecting data from diverse sources, was done prior to and after the interviews. The background of the interviewees was examined prior to the interview, most extensively in the rare cases where the interviewee was less known. In addition, at the beginning of the interview the interviewees were asked briefly to summarise their professional backgrounds. If an interviewee made 'factual statements', s/he was asked to provide evidence supporting the arguments. The core arguments presented by interviewees were checked through examining other sources: newspapers, statistics (whenever available), other studies, other interviews. Some of the interviewees had made their opinions publicly known through the local and international media, thus in those cases finding newspaper articles or other published material to back up the arguments.

All interviewees were allowed to make comments on the other elements studied if they made the initiative, even though they necessarily would not have direct information of the other 'spheres', like politicians on the independence of the judiciary and legal professionals on the integrity of parliamentarians. These views and comments were treated as such, secondary comments, unless more evidence was presented. Sometimes these comments, however, provided impetus for further questions when interviewing people who might know more about the issues mentioned by non-experts. Naturally the source of the original comment was not

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[319] Silverman, Interpreting qualitative data: methods for analysing talk, text and interaction(2001), p. 4.
[320] Marshall and Rossman, Designing Qualitative Research(1995), p. 144.

disclosed. Most often, such arguments were made in passive voice: "Sometimes it is argued that...".

In addition to the primary data collected there are also some survey data available, produced by the Center of Strategic Studies, University of Jordan, and statistical data collated by the Jordanian government and the al-Urdun al-Jadid Research Center. The Center of Strategic Studies, University of Jordan conducts annual surveys on the attitudes of the Jordanians on political life in the country and the al-Urdun al-Jadid Research Center has produced statistical data on parliamentary elections in Jordan.

Analysing these elements is done in order to see if any real transfer of power has occurred in Jordan since the 1989 elections. If transfer of power has occurred, has it occurred to the extent that it is justified to see the political changes since 1989 as democratisation?

5. THE HASHEMITE KINGDOM OF JORDAN

Introduction

The year 1989 was a remarkable one in Jordanian history, as the first parliamentary elections were held since 1967.[321] Political changes did not stop with the elections. Further national elections have been held in 1993, 1997 and 2003. A committee was appointed in 1991 to draft a new national agenda: the National Charter. Political parties were legalised in 1992 and a year later the second martial law period formally ended. The press were granted more freedoms. New Political Parties Law and Elections laws were passed.

These changes were not unnoticed; indeed a fair deal of scholarly attention was paid to the changes. This literature on the political changes will be reviewed in this chapter. The aim of the review is to summarise how scholars have perceived these changes (their nature and significance), as well as how the conclusions were reached. The core of this debate is whether the changes that began with the parliamentary elections of 1989 constitute political liberalisation or democratisation, or something else.

Before this can be done the object of the study, the Hashemite Kingdom of Jordan, is introduced. The objective of the summary is to introduce the main challenges the rulers of the kingdom have been facing since its creation and to establish the nature of the political system *prior* to the political changes that began in 1989. A concise summary of the main factors influencing the domestic political setting is provided. This is done to familiarise the reader with those political factors that are unique to Jordan, factors that must be taken into account when ruling the country and factors

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[321] Cooper and Tilly, The Road to Democracy in Jordan. 1952-1993(1994), pp. 8-9; Brynen (1998), p. 71; Rath, The Process of Democratization in Jordan(1994), p. 535. Parliamentary elections before 1967 were firmly controlled and between the years 1967 and 1989 none were held. The lower house was dissolved in 1974, leaving the king and the senate to administer and legislate. In 1978, a National Consultative Council (NCC) was established. The 60 members of the council were appointed by the king. Their task was to discuss important matters but not to legislate.

that must be taken into account when studying the country. It is worth noting that no detailed historical narrative will be provided, as it is believed to be out of the scope of this study.

An essential part of the political setting is the key actors, the political elite in this case. Alongside with the major political challenges, the Jordanian political elite will be introduced in this chapter. As defined in the first part of the dissertation, it is believed here that democratisation requires a significant transfer of power. The transfer of power will be examined in the next chapters through study of three elements: the constitution, the judiciary and the political participation. In order to assess whether any changes have been taken place within the political elite it is necessary to know the composition of the elite prior to and after the late 1980s. However, the objective here is not to provide the reader with a precise list of names and titles, but to present the general agencies of elite recruitment, and the rights and responsibilities of elite members.

5.1. Creating Modern Jordan: Challenges for the New Kingdom

The Hashemite Kingdom of Jordan is "among the most artificial states in the modern Middle East"[322], a region where artificiality seems to be a common denominator among most of the states. Even by Middle Eastern standards the Jordanian state is of recent origin[323]. The British made Abdullah bin Al-Hussein from Hijaz of Saudi Arabia the local ruler of the East Bank, the first (and only) Emir of Transjordan in 1921. The colonial state was created "to accommodate the interests of a foreign power and an itinerant warrior in search of a throne".[324] The Emirate of Transjordan, later the Hashemite Kingdom of Jordan, had not only new and artificial borders drawn by the European colonial powers and a new capital, but also had no "quasi-national tradition"[325]. The state was constructed, as Yorke and others point out, in a territory that has never been a separate political entity, nor was the territory an ancestral land of the ruling monarchs.[326] The common elements of national identity - a shared ideology, history and social culture - were all missing from the young Transjordanian state, a former Syrian region under Ottoman rule.[327]

Thus the construction of the national identity and legitimising the 'artificial' ruling family were the main objectives of the initial state-building in Transjordan, as well as objectives adapted by later Hashemite kings.[328] Neither of the goals was easy to achieve but the geopolitical location, an artificial nation-state in the "heartland" of the

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[322] Ryan, Jordan in Transition(2001), 5. See also Roberts, Prospects for Democracy in Jordan(1991), p. 120; Krämer, The Integration of the Integrists: a comparative study of Egypt, Jordan and Tunisia (2001), p. 218. Aruri, Jordan: A Study in Political Development (1921-1965)(1972).

[323] Roberts (1991), p. 120.

[324] Aruri (1972), p. 3. The Hashemite Kingdom of Jordan acquired independence in 1946, but the foundations for the state had been laid two decades earlier. After the First World War (and the collapse of the Ottoman Empire), the British governed Transjordan under a League Nations mandate. The British government officially recognised the colonial state in 1923, an event considered as a declaration of independence by Emir Abdullah, and ever since celebrated as the official Day of Independence.

[325] Roberts (1991), p. 123.

[326] Yorke, Domestic Politics and Regional Security: Jordan, Syria and Israel(1988), p. 7; Massad, Colonial Effects. The Making of National Identity in Jordan(2001), p. 11; Ryan (2001), p. 4. Abdullah bin al-Hussein from Hijaz arrived in Jordan with the intention of fighting the French army in order to restore his brother Faisal's rule in Syria.

[327] Sayigh, Jordan in the 1980s: legitimacy, entity and identity(1991), p. 167.

Arab world, certainly did not make it any easier.[329] In total two 'projects' of coercion and co-option have been required since the birth of the state: to make residents from the both sides of the River Jordan to accept the Hashemite rule. Creating a brand new national identity is never uncomplicated, but it gets even tougher when a set of new 'domestic' actors is unwillingly annexed to the young state. While Abdullah I aimed at consolidate his position among the East Bankers, King Hussein aimed to "Jordanize" the Palestinians.[330] The degree of success of these projects is debatable. According to some, despite the constructed nature of the state, Jordanians' feeling of national identity is relatively well-rooted. Others argue that the goal has still not been reached fully, since the division between the Palestinian population and East Bankers still exists along with tribal loyalties.[331] Yet it is commonly agreed that the Hashemite rulers have succeeded in creating a common national identity shared by the East Bankers.

The lack of a shared national identity, and the political developments home and abroad have not been the only constraints the Jordanian rulers have had to cope with. There are very limited natural resources in Jordan, and there is a chronic shortage of water. The state relies heavily on imported food, raw materials and energy. Despite the significance of the agricultural sector for the national economy Jordan is not self-sufficient in food production.[332] In order to survive revenues were sought elsewhere. Jordan has been dependent on external funding "from the very beginning": Emir Abdullah received monthly allowance from the British.[333] During the early years, until 1939 one third of the annual revenues were received from British, later the USA replaced the Britain as the main source of foreign aid. [334]

Jordan is a classic semi-rentier state, as mentioned in the first chapter. The rents consist of expatriate earnings, foreign financial assistance and small-scale oil

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[328] East Bank (then a "subvision of villayet Syria") had been sending their representatives to the regional councils during the Ottoman rule. Abu Jaber, The Legislature of the Hashemite Kingdom of Jordan: A Study in Political Development(1969), p. 220.
[329] Milton-Edwards and Hinchcliffe, Jordan a Hashemite Legacy(2001), p. 1.
[330] Massad (2001), p. 12; Baaklini *et al*, Legislative Politics in the Arab World(1999), p. 140.
[331] Krämer (2001), p. 219.
[332] Rath (1994), p. 536.
[333] Brynen (1998), p. 78.
[334] Milton-Edwards and Hinchcliffe (2001), p. 23; Brynen (1998), p. 78.

production.[335] The dependence on external rents is remarkable, but the central government is not the direct recipient of the rents, unlike in rentier states (such as the Gulf oil-producers). Jordan also battles with chronic trade and budget deficits. The country's "indigenous economic productive forces" are ineffective in comparison with the financial needs of the country.[336] The decrease in oil prices since the 1980s has had a detrimental effect on the Jordanian economy. Another blow was caused by the Kuwaiti crisis which forced nearly 300,000 Jordanian expatriate workers to return to Jordan.[337] As the rents decreased, the government sought funding through borrowing. The government as the main provider of social services and benefits is also the biggest employer in the country. The lack of natural resources has increased the dependency of Jordanians on government employment.[338] Moreover, owing to its location next to Israel/Palestine and to a large number of residents with "questionable loyalty"[339], Jordan's foreign and domestic policies are heavily influenced by the political developments in the region.[340] These vulnerabilities, political and economic, have made Jordanian governments very conscious of the importance of external relations. As a result, Jordan is characterised as a state that is "traditionally pro-Western and Gulf-subsidised".[341]

In spite of all the challenges the Hashemite family has succeeded in establishing and maintaining a dynasty for a remarkable period. Even more surprising is the fact that they have done so when many Arab monarchies have not survived in the course of history. Thus the secrets of the Hashemite survival will be examined next. The aim is to identify the key strategies and agencies of the Hashemite rule, as well as to introduce the composition of the current political elite in the country.

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[335] Brynen (1998), p. 72.
[336] Brand (1992), p. 168; Schlumberger (2002a), p. 226.
[337] Milton-Edwards and Hinchcliffe (2001), p. 77.
[338] Abu-Odeh, Jordanians, Palestinians and the Hashemite Kingdom in the Middle East Peace Process(1999), p. 25.
[339] Brand, Liberalization and Changing Political Coalitions: The Bases of Jordan's 1990-1991 Gulf Crisis Policy(1991), p. 3.
[340] Owen, Government and Economy in Jordan: Progress, Problems and Prospects(1983), p. 87.
[341] Brand (1991), p. 2.

5.2. The Political Elite in Jordan

5.2.1. The Secrets of Success

A great deal of hard work and balancing skills have been required since Abdullah's arrival in his new country, which was at the time a "strictly hierarchical tribal society" [342] with no centralised power base and "the entire population organized along tribal lines"[343]. The task ahead was by no means a modest one and was not expected to be completed overnight. The very first challenge was to survive in an environment where nomadic tribal groups opposed any attempts to establish a centralised authority and the nationalists opposed the foreign presence in the area.[344] It was not until the 1970s when the scepticism of the longevity of the Hashemite rule began to disperse. During the two previous decades in particular there were serious doubts about the future of the kingdom, especially among British and American observers.[345] Two main vehicles, the army and the royal court, and a strategy of balancing between competing external and internal interest groups have been required to consolidate the Hashemite dynasty.[346]

The Hashemite monarchs have faced one challenge after another, particularly during the early years of the reign. There have been riots and protests, radical political ideas imported into the country and attempts on the lives of the Hashemites, and their closest supporters.[347] Both the army and the tribal groups have had a significant role in the survival of the Hashemites, particularly since the dismissal of the British in the late 1950s. The way King Hussein handled the domestic political crisis in 1957 shows how the army and the tribes were used to secure the king's power. The 1957

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[342] Milton-Edwards and Hinchcliffe (2001), p. 22.
[343] Alon, The Tribal System in the Face of the State-Formation Process: Mandatory Transjordan, 1921-46(2005), p. 213.
[344] Massad (2001), p. 11; Aruri (1972), p. 4. There were popular uprisings, as the newly established state agencies (particularly the police and the army) were filled with people from outside the country. This was done, as the original population was mainly nomadic or semi-nomadic
[345] Susser, Jordan. Case Study of a Pivotal State(2000), pp. 17-18.
[346] Milton-Edwards and Hinchcliffe (2001), p. xvii.
[347] Milton-Edwards and Hinchcliffe (2001), p. 39. Not only did the king abandon the Baghdad Pact, but also decided to dismiss Glubb Pasha, the last symbol of British dominance in Jordan. Singh, Liberalisation or Democratisation? The Limits of Political Reform and Civil Society in Jordan(2002), p. 70.

constitutional crisis was also a turning point in the history of the Hashemite rule: it was the point when King Hussein had to show that he is charge of the country.[348]

The forced resignation of al-Nablusi's socialist government in 1957 led to public outrage and protests in the country and to counter demonstrations by the Islamists.[349] It was apparent that the democratically elected government was more popular among Jordanians than the monarch.[350] The inexperienced king was not only facing political pressure home, the political atmosphere was also "volatile" and "turbulent" in the region. There were new and radical political ideas arriving in Jordan and gaining popularity particularly among the "unwilling citizens".[351] Not long after the announcement of the resignation of al-Nablusi an attempted *coup d'etat* led by Ali Abu Nuwar, came to light.[352] Syria was believed to be supporting Nuwar, the head of the army known for his sympathy for the Left.[353] Ironically King Hussein had appointed Nuwar to succeed Glubb Pasha as the head of the army.[354] It is important to note that at the time the army was not controlled by king and its loyalty to the monarchy was questionable. There were units loyal to the king and units loyal to the dismissed government, the latter receiving support from abroad.[355] To solve the crisis King Hussein used his personal authority and US support to secure his position as the *de facto* leader of the army. The 1957 crisis taught the king that while democracy might threaten his position by bringing new actors the control of the army was essential for his survival.

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[348] Milton-Edwards and Hinchcliffe (2001), p. 39.
[349] Snow (1972), p. 106.
[350] VJ1015/69 British Foreign Office Records.
[351] Baaklini et al (1999), p. 140. Cooper and Tilly (1994), p. 6; Rath (1994), p. 532; Singh (2002), p. 69; Brynen (1998), p. 74; Dieterich, The Weakness of the Ruled is the Strength of the Ruler: The Role of the Opposition in Contemporary Jordan(2002), p. 129. Monarchies in Iraq and Syria were replaced by Ba'athist regimes and Arab Socialism was also gaining increasing support in Jordan.
[352] VJ1015/3 British Foreign Office Records, April 14th 1957.
[353] VJ1015/29. April 14th 1957 and VJ1015/118 British Foreign Office Records. Brand, The Effects of the Peace Process on Political Liberalization in Jordan(1999); Massad (2001), p. 13. Some believe that the coup was just a "palace coup", orchestrated by the king alone or together with his American and British allies, while majority of scholars perceive it as an authentic attempt to overthrow the Hashemites. Massad and Brand argue that there was no genuine *coup d'etat* planned. See Brynen (1998), p. 75 and Rath (1994), p. 534.
[354] Snow (1972), p. 95 and pp. 107-108; Abu-Odeh (1999), p. 80.
[355] Snow (1972), p. 95.

While the army were to guarantee the physical safety of the Hashemites during the most turbulent times, the function of the royal court (*diwan*), consisting of tribal leaders and local notables, was to safeguard the legitimacy of the monarchy once the situation had calmed down. It was clear to Hussein that while the army was able to keep him alive, it alone could not win sympathy and support of the key groups. The tribal leaders worked as a channel between the king and the local groupings. Once agreed within the confines of the palace the tribal leaders would seek support for the decisions from their own clans. In return they were generously compensated in terms of financial gains and social status by the king.[356] The use of the *diwan* since the late 1950s resembles the tactics used by the emir, with the exception of the absence of formal institutional framework. Actually *diwan* has become an essential element, the "new elite-based power-house of Jordanian politics", since the late 1950s.[357] The foundation for the symbiotic relationship between the Hashemite court and the tribal leader was laid at the very beginning of the Hashemite rule. The emir had established the foundation of support base by granting certain tribes informal autonomy and offering them preferential treatments.[358] By the 1930s tribes had become dependent on financial assistance of the central state owing to the lack of natural resources. The tribal groups had transformed from fairly autonomous units into actors who were delivering goods and services received from the central authority.[359]

It would have not been possible to use either the army or the royal courts without "extensive network of senior and influential contacts in the West"[360]. During the chaotic days in 1957 the survival of the monarchy depended on the American military support.[361] The resource poor kingdom had to search for alternative sources of income to equip the army and to buy the loyalty of the local notables. The main discovery of the monarchs was to use the main liability, the geopolitical location between Israel and the Arab world, as an asset.[362] Playing their cards well the

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[356] Milton-Edwards and Hinchcliffe (2001), p. 41.
[357] Milton-Edwards and Hinchcliffe (2001), p. 40.
[358] Alon (2005), pp. 219-220.
[359] Alon (2005), p. 215.
[360] Ryan (2001), p. 89.
[361] Susser (2000), p. 10.
[362] Susser (2000), p. 10; Milton-Edwards and Hinchcliffe (2001), p. xvi.

Hashemites have been able to gain financial and military support from the opposing sides. Once one source dried out another one was located. Arab states assisted Jordan due to its strategic position bordering Israel and the Americans due to the Jordan's stand against Communism during the Cold War. Most recently after signing the peace treaty with Israel Jordan has received financial support from diverse sources.[363] Owing to the strategy of balancing between the regional and international interests there has rarely been a domestic crisis without an external element or at least concerns over allies' interests. In the midst of the 1957 crisis, for instance it was announced that the US government would provide Jordan with financial support if the country were to fall a victim of foreign aggression.[364]

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[363] Milton-Edwards and Hinchcliffe (2001), p. 82.
[364] Abu-Odeh (1999), pp. 80-81.

5.2.2. Who is Who and How?

There is no doubt who is currently controlling the political elite in the Hashemite kingdom. Jordan is a neopatrimonial society where the political elite is centred around the monarch.[365] Regardless of the significance of the *diwan* for the Hashemite dynasty, the king is nevertheless the key actor who calls "most of the shots"[366]. The king has vast executive and legislative powers, (detailed in the next chapter) which enable him to "manage exclusively"[367] the inner circles. These inner circles of the political elite have been constructed through clientelist relationships and systems of patronage.[368] It is argued that it is the small size of the population that contributed to the king's strengthening position. King Hussein was able to meet himself several local notables frequently enough to maintain the feeling of loyalty.[369] Alon argues the role and the significance of the royal court has been unique in Jordan, even when compared to other Middle Eastern diwans.[370]

Identifying the members of the current political elite, the so-called "King's men"[371], is not a straightforward task, not least due to the "stratified" nature of the elite[372]. It is not easy to gain access to the elite or to find information on the core elite.[373] Furthermore, the composition of the political elite is not permanent. Some members might be on the rise, while others are working on maintaining their status, and not always succeeding to do so. This can be partly explained by the nature of the political elite itself and by the different challenges the facing the kings and the different strategies chosen.[374] It is apparent that there are both informal and formal

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[365] Ryan, Jordan in Transition. From Hussein to Abdullah(2001), p. 88; Bank and Schlumberger, Jordan: Between Regime Survival and Economic Reform(2004), p. 35; Susser, Jordan. Case Study of a Pivotal State(2000), pp. 2-3; Abu-Odeh (1999), p. 266.
[366] Milton-Edwards and Hinchcliffe (2001), p. 40.
[367] Bank and Schlumberger (2004), p. 35.
[368] Bank and Schlumberger (2004), p. 36.
[369] Milton-Edwards and Hinchcliffe (2001), p. 41.
[370] Alon (2005), p. 234.
[371] Susser (2000), p. 2.
[372] Milton-Edwards and Hinchcliffe (2001), p. 40.
[373] Bank and Schlumberger (2004), p. 37.
[374] It is worth noting that differences can be observed between the elites under King Hussein's reign and King Abdullah's. Whereas King Hussein's focus was more on security issues, Abdullah's primary interest has been on economic development. Abdullah's early years have not been easy, not least for him being the black horse in the succession speculation. Abdullah II, has faced some criticism and perhaps even some unfaith due to his modern approach and lack of experience. Rather ironically the

agencies maintaining the political elite. Some members move between the two types of agencies and others are part of both simultaneously. The combination of the informal and formal structures enables the king to dismiss members without shaking the foundation of the political elite. It is argued here that the existence of these informal structures is one of the main obstacles to embedding the rule of law, and thus democratisation in Jordan. Thus the political changes to be democratisation should be breaking down these structures in particular.

There are a few members of the political elite whose position is more secure than others'. These are the members who are the closest and the most important to the king. The head of the General Information Department (GID), the heads of the army, the security forces and the police are the "backbone of the dynasty"[375]. Sa'd Khair, the current head of the GID (*mukhabarat*), is believed to be the closest adviser to King Abdullah II.[376] As shown earlier, the survival of the Hashemite rule would have not be possible without a tight control of the coercive resources. Traditionally the parliament, the senate in particular, has functioned as the vehicle of "recruitment and positioning".[377] Abu-Odeh, part of the political elite himself, describes how during his time in service "a ministerial portfolio was the preserve of community leaders, notables, members of prominent tribes or clans and sometimes senior officials".[378] Also the speaker of the senate has often been a close ally of the monarch. The speaker has had a special role in communicating the wishes of the palace to the parliament.[379] King Abdullah II has introduced a new informal body of recruitment, the Economic Consultative Council (ECC), which is perceived by some to have decreased the significance of the senators within the elite. Many of these new members have been Abdullah's generation, western educated and economically focused. Some of the older members of the elite have been suspicious of the suitability of the new recruits, criticising them primarily for lack of experience.[380] It is

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well-loved late King Hussein was also considered too young and too modern at the beginning of his reign.

[375] Susser (2000), p. 2; Abu-Odeh (1999), p. 79; Ryan (2001), p. 89; Bank and Schlumberger (2004), p. 37.

[376] Bank and Schlumberger (2004), p. 37 and p. 44.

[377] Bank and Schlumberger (2004), p. 37.

[378] Abu-Odeh (1999), p. 3.

[379] Bank and Schlumberger (2004), p. 37.

[380] Bank and Schlumberger (2004), pp. 40-41. Interviews in Amman 2003.

also worth noting that not all agree on the changes within the elite. Milton-Edwards and Hinchcliffe argue that the *diwan* lost its significance while the prime minister's offices have got stronger.[381]

Some Jordanians are guaranteed a place in the political elite due to their position and others due to their last name. According to Abu Jaber, there were 36 prominent families who dominated the legislative council and the first parliaments in Jordan.[382] It appears that with this regard not much has changed since the early years. The al-Majalli, al-Tarawneh and al-Lozi families are among the most influential families, argues a Jordanian commentator.[383] This is not to claim that there are no other families belonging to the elite, this is just to suggest a few names.[384] The names of these three families appear frequently on the list of senators and prime ministers, both past and present. In the acting, fourteenth senate, the Minister for Social Development is Suleiman Tarawneh, and there are senators from each of three families (Fayez Tarawneh, Ahmad Lozi, Abdul Salam Majalli).[385] There are also family ties connecting these families to the royals; King Hussein's brother Muhammad is married to Taghreed Majalli, daughter of the former prime minister Hazzaa' Majalli.[386] Furthermore, the offices of the royal court are well populated by the representatives of these three families.[387]

Rather interestingly in Jordan members of the royal family have never been appointed as ministers or members of the parliament, unlike in the Gulf states. The Hashemites have, however, maintained control and influence through patronage of societies, organisations and institutes, as well as the army.[388] Abdullah II, for instance, served in the military prior to acceding to the throne. Princess Basma, sister to late King Hussein, is the head of the Jordanian National Commission for

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[381] Milton-Edwards and Hinchcliffe (2001), pp. 40-41.
[382] Abu Jaber (1969), p. 226.
[383] Zweiri, Interview in October 2005.
[384] Another source suggests that Huda, Majalli, Badran, Hashim, Tal, and Qassim families are among the prominent families. See http://reference.allrefer.com/country-guide-study/jordan/jordan107.html
[385] 4th House: Hazzaa' Majalli and Ahmad al-Tarawneh, 11th House: Ahmad al-Tarawneh, 12th House: al-Lozi, NCC: al-Lozi and al-Tarawneh. Khair, (1988). See also http://www.jordanembassyus.org/new/govlisting.shtml#lowerhouse.
[386] http://www.kinghussein.gov.jo/rfamily_immediate.html
[387] http://www.kinghussein.gov.jo/royal_offices.html
[388] Ryan (2001), p. 88.

Women, the biggest women's organisation in the country. Queen Noor chairs a great number of "national institutions working in the areas of women's welfare, child development, health, humanitarian relief work, environmental and archaeological conservation and protection, the arts, aviation, and athletics".[389] This enables the royals to have a significant role in the domestic agenda setting as well as represent the 'Jordanian view' abroad.

There is a group of actors of the elite of a lesser significance. Brand and Schlumberger argue that this group is not as dependent on the king as it is on the public opinion. Nevertheless, the less powerful members of the elite have their functions too. For example, the lower house, or some members of it, is expected to rubber-stamp the decisions made by the inner circles.[390] The members of the elite have thus been chosen according to their contribution to the aim, the survival of the Hashemite family. When the loyalty is compromised, the disloyal member will be removed, perhaps just temporarily. It is not unheard for a member once dismissed to be appointed again; elite circulation and reshuffling is a permanent element of 'elite maintenance'. A disloyal member could be dismissed, but not always totally excluded, perhaps only moved to a post of lesser significance. The royal court is considered as an institution "absorbing senior politicians...whose political shelf life has expired", a chance to carry an impressive title but not much political authority.[391] First and foremost the faith of the disloyal member depends on the 'sins' committed. For instance, Zaid al-Rifa'i has been inseparable part of the core elite, first as a close friend to the late king and currently as the speaker of the senate.[392] He has secured his place despite the corruption accusations directed at him.[393] (See Chapter 6) Also, Ali Abu Nuwar involved in the attempted *coup* of 1957 was later forgiven; after 10 years of exile he was appointed as an ambassador.[394] However, not all have been as lucky. It is worth noting that criticising the fundamental elements of the political elite

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[389] http://www.kinghussein.gov.jo/queen_noor.html
[390] Bank and Schlumberger (2004), p. 47.
[391] Milton-Edwards and Hinchcliffe (2001), p. 41.
[392] Zaid Rifa'I is son of Samir Rifa'I, again a close friend and political adviser to King Hussein. The al Rifa'I family were among the very first civil servants brought to the emirate.
[393] Bank and Schlumberger (2004), p. 39.
[394] Snow, Hussein. A Biography(1972), p. 111.

is a taboo; no one survives without punishment when criticised the royal family, the security establishment or those closest to the king.[395]

The former head of the GID, Samih Battikhi was once one of the closest men to the late King Hussein. It is claimed that during King Hussein's last months, Battikhi was running the country, even to the extent that the idea to replace Prince Hassan as the successor to the king is believed to have originated from Battikhi.[396] Eventually his power, and perhaps even his ambitions, grew too much to be tolerated. According to Bank and Schlumberger, King Abdullah II perceived Battikhi as a too big threat and decided to act.[397] However, it is also rumoured that it was primarily the newly appointed prime minister Ragheb who considered Battikhi as a risk to his survival. An observer claims Ragheb wanting the "total monopoly of the king's ear".[398] Whatever is the reason behind Battikhi's dismissal, it is likely that the king, although being the major player, is not the only one concerned about the composition of the political elite.

It is not easy to shake the foundations of the power base, as a removal of a single person would not have drastic effects on the elite as whole. The wide base of the elite has enabled the kings apply 'divide and rule' tactics to control the numerous groups.[399] The conscious decision to create as broad base for power as possible has also been central to the Hashemite strategy. Ethnic and religious minorities (e.g. Christians, Circassians, Chechens) have been included in the political elite, as well as members of the tribal groups. The Majalli and the Tarawneh families, for example, are one of the most influential southern tribal families in Jordan.[400] There is, however, no consensus on the degree of involvement of Palestinians in the political elite. Abu-Odeh, Palestinian himself, argues that over the last decades the barriers have been rising, as a policy of "Transjordanization of the public sector" has been

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[395] Mahafzah, Restricted Democracy: The Case of Jordan: 1989 – 1999(2001), p. 358.
[396] G2 Bulletin, September 2003. http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=34589
[397] Bank and Schlumberger (2004), p. 40. Battikhi was made to resign and later faced a a corruption trial and house arrest. Battikhi is believed to be behind to the dismissal of Mustafa Hamarneh as the director of the Center for Strategic Studies, University of Jordan.
[398] Al Ahram, November 2000. http://weekly.ahram.org.eg/2000/508/re6.htm
[399] Ryan (2001), p. 89.
[400] Ryan (2001), p. 89; Bank and Schlumberger (2004), p. 45-47. Interview with Zweiri October 2005.

implemented.[401] "Transjordanian elite" has, claims Abu-Odeh, for long considered Palestinians as a threat to the state's stability.[402] Palestinians are barred from certain roles, primarily from the senior posts in the army and the security forces. On the contrary to Abu-Odeh, some see that the number of Palestinians in ministerial posts has gradually been increasing.[403] The country's first (and so far only) Palestinian prime minister, Taher al-Masri, however, was appointed as late as in 1991.

In the next chapters it is examined whether any dissolution of the existing political elite has occurred since 1989, whether the political changes are signs of the existing political elite losing its special privileges. However, before moving to examine constitutionality, the judiciary and political participation in Jordan, it is important to find out how others have perceived the political changes.

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[401] Abu-Odeh (1999), p. 276.
[402] Abu-Odeh (1999), p. 274.
[403] Milton-Edwards and Hinchcliffe (2001), p. 52.

5.3. Political Changes Since 1989

Since the 1989 parliamentary elections a great deal of literature has been produced on the political changes taken place in Jordan. These changes have been followed by both Jordanian and international observers. The views presented on the nature of the changes are varied. Some, such as Brynen and Rath, see the changes which have taken place as a genuine "transition" towards democracy or "democratisation"[404], others (Brand, Shull, Lust-Okar) as "political liberalisation"[405]. The most sceptical observers (Anderson, Greenwood, Singh) consider the changes a way for the monarch to consolidate his power[406], terming this "managed liberalisation"[407] or "de-liberalisation".[408] Naturally while the general interest has focused on the political changes themselves (their impact on political system), the early scholarly attention offered explanations of *why* the 1989 elections were held in the first place after a long gap.

According to the "establishment view", as Brynen observes, the time was ready for democracy in Jordan: democratisation began as maturity was reached. Since its emergence the kingdom has valued and supported pluralism and tolerance, the foundation for democracy.[409] Thus there are some scholars who see democratisation as a longer process dating back from the early years of the independence. The first element of citizen involvement was created already in 1928 when Transjordan under the British mandate got a national conference - albeit non-accountable and non-representative.[410] The true foundations for representation were, however, laid later. In the 1950s elections were held and, although not entirely free and fair, trade union and political party activism was tolerated, press freedoms respected, all to a

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[404] Dunne (2003); p. 17; Brynen, Economic Crisis and Post-Rentier Democratization in the Arab World: The Case of Jordan(1992), p. 93; Rath (1994), p. 553.

[405] Shull, Political Liberalization in Jordan: An Analysis of the State's Relationship with the Muslim Brotherhood(1996), p. 527; Brand (1991), p. 11; Lust-Okar, The Decline of Jordanian Political Parties: Myth or Reality?(2001), p. 565; Roberts (1991), p. 72; Brynen (1998), p. 71; Freij and Robinson, Liberalization, The Islamists, and the Stability of the Arab State: Jordan as a Case Study(1996), p. 4.

[406] Singh (2002), pp. 77-78.

[407] Brand, In the Beginning was the State: The Quest for Civil Society in Jordan(1994), p. 184; Anderson, The Status of "Democracy" in Jordan(1997), p. 75.

[408] Greenwood, Jordan's "New Bargain": The Political Economy of Regime Security(2003), p. 249.

[409] Brynen (1998), pp. 81-82.

degree.[411] Nevertheless, acknowledging the existence of some structural elements does not explain why King Hussein decided to 'liberalise'.

Official explanations aside, there appears to be consensus on the force behind the political changes: the true source of initiative came from above.[412] A majority of analysts consider rentierism, or "budget and regime security", as the explanation for King Hussein's decision to announce elections to calm down the rioting masses. The decline in the 1980s of oil prices had a drastic impact on Jordan's economy as did the diminishing foreign aid. The economic reforms needed to receive IMF assistance were compensated for by political liberalisation, or rather 'acts' of political liberalisation.[413] Greenwood asserts that the political developments represent a "new political bargain" between the monarch and the two domestic constituencies: the traditionalists and the local business community. Earlier, during the martial law era, based on the "authoritarian bargain" the king 'traded' the support of these constituencies for his rule by offering the traditionalists "public jobs and subsidies" and "regulatory protection and state contracts" to the business elite. The king was forced to create a new bargain, when there were fewer rewards to be delivered to loyalists. Political opening would widen the business community's chances to influence on trade policies, while the traditionalists could be elected as deputies. Greenwood even rejects the impact of the external influence on 'democratisation' in Jordan arguing the liberalisation to be "almost entirely a creation of the monarch".[414]

Some people close to King Hussein do not support Greenwood's view of the insignificance of external influence. It is argued by these Jordanian observers that the king wanted to become known as a great democrat beyond the domestic borders.[415] Hussein had noticed that Eastern European states experimenting with democratic practices were 'rewarded' by western donors. To be able to 'play along' with the democracy game would benefit the state economically at a time when the

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[410] Rath (1994), p. 530.
[411] Rath (1994), pp. 532-534; Brand (1991), p. 13, Jayuusi, Democracy and Regime Survival in Jordan(1998), p. 1.
[412] Rath (1994), p. 543.
[413] See Brynen (1998); Brand (1994); Robinson (1998); Singh (2002).
[414] Greenwood (2003), pp. 249-251.
[415] Interviews in May-June 2003 Amman.

government was facing serious financial difficulties. Jordanian observers often argue that the king's primary motives were to improve his image abroad and to obtain financial gains. It is also argued that the 'side effects' of liberalisation took the king by surprise. The political scene proved to be more difficult to control than expected, as in the absence of political participation the king had become used to being the only true actor.[416] Ali Kassay, a Jordanian analyst, argues that while most observers have been offering the rentierism explanation not enough attention has been placed on external factors, the increased civil society activities brought about by international NGOs and the "global consensus on democracy".[417]

There seems to be a greater degree of consensus on the motives behind the changes than on the impact of these changes on the political system. There is also some dissonance in labelling the changes. It is also worth noting that reviewing the differing opinions on political changes in Jordan is not a straightforward task, not least owing to the time span (1989-2003), covering the reigns of two monarchs. Furthermore, over the 14-year period the 'flow' of changes has not been even. Therefore, it is pretty normal for the observers to modify their views when the course of changes is taking a different course.[418] Not surprisingly the literature produced immediately after the 1989 elections is more optimistic, albeit somewhat cautious. Roberts claimed in 1991 that whether the changes are democratisation remains to be seen. Yet, he saw the elements as already being there: "the opportunity for institutional compromise is apparent", referring to the National Charter.[419] More sceptical views are of more recent origin. Ryan argues that there was true transition until the Israeli-Jordan peace agreement was signed in 1994.[420] Greenwood argues, however, that the peace treaty cannot alone be used as an explanation for "shifting tides". According to Greenwood, these were simply signs of the limitations of the "liberal bargain".[421] Despite the hiccups the changes in Jordan are nevertheless

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[416] Kassay, The Effects of External Forces on Jordan's Process of Democratisation(2002), p. 61.
[417] Kassay (2002), p. 61.
[418] See Brand (1991); Brand (1994); Brand (2000).
[419] Roberts (1991), p. 172.
[420] Ryan (2001), 41.
[421] Greenwood (2003), p. 249.

considered significant: limited but unique in the Middle East, "going further than in any other Arab country"[422] and within a short period of time.[423]

Promises of free and fair elections[424], legalisation of political parties, opening up of the political climate, a freer press and the lifting of martial law are the changes that convinced optimistic observers to classify Jordan as a democratising country. Brand also argues that, based on the reforms made between 1989 and 1991, Jordanians had learnt to believe that their political rights would be protected and that being politically active (within the legal boundaries) was no reason to fear a visit from the *mukhabarat*.[425] Moreover, the creation of the National Charter in 1991 is seen by many as a 'culmination of democratisation'. The Charter is seen as a negotiated 'pact' between the regime and opposition (opposition groups). As Brand puts it the National Charter is "reminiscent of democratic transitions".[426] Singh argues, however, that the National Charter is a "conserving, not democratising, pact"[427]. The Charter was primarily designed to justify and strengthen the Hashemite rule. It was not a great opportunity for all groups to negotiate the rules of the new system, but rather to agree on the general principles of political participation within the existing system.[428] Unlike the situation in the 1950s, the political groups were given a chance to participate but only within the existing system. The National Charter was constructed in a less impressive, less democratic manner. The 60-member royal committee appointed by the king did not represent all political sections, the critics claim, but only the pro-regime groupings. Furthermore, the committee was chaired by a former head of the *mukhabarat*. Moreover, the legal status of the Charter, as well as its relationship to the constitution remains unclear. The Charter is sometimes characterised as supplementing the constitution, albeit in reality it has no legal status whatsoever.[429]

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[422] Ryan (2001), p. 16; Fischbach, Jordan(1999), p. 83.
[423] Brynen (1998), pp. 71-72.
[424] It must be noted here that defining the elections free and fair is not the greatest strength of the existing literature. There are some authors who made no points of the 'quality' of the elections, and many simply referred to one single study by Piro.
[425] Brand (1991), p. 22. See also Robinson, Defensive Democratization in Jordan(1998).
[426] Ryan (2001), p. 40; Brand (1991), p. 22; Brand (1994), p. 149; Wiktorowicz (2002), p. 11.
[427] Singh (2002), p. 80.
[428] Singh (2002), p. 80.

In spite of acknowledging the same signs, authors do not necessarily agree on their significance. According to Laurie Brand, who acknowledged the above-mentioned positive developments, Jordan is not a democracy, nor democratising.[430] Riedel on the other hand sees some elements fundamental to democracy lacking but nonetheless defines Jordan as democratising. Having analysed the 1989 and the 1993 elections, he considers that democratisation has begun in Jordan despite the "lack of political debate, their nonideological results, the unsatisfactory degree of representation, the low participation, and the yet persisting irrelevance of political parties and of parliament as such".[431] Rath stresses that democracy was not reached (by 1994), but rather a "democratized form of rule", the Jordanian state being in "a phase which can be termed transitional".[432] Thus Rath argues that Jordan is on in its way to becoming a democratising country; the power of the authoritarian leader is moving across to people who rule through democratically elected representatives.[433]

There are also differing views of the transfer of power in Jordan. Yayyusi labels Jordan a "guided democracy" as "government remains accountable for non accountable forces and centres of power".[434] Beverley Milton-Edwards argued in 1993 that the political process in Jordan was "slow, incremental and completely dictated by the palace" and thus would qualify only as "façade democracy".[435] Milton-Edwards points out that three of the prime ministers appointed between 1989 and 1993 were King Hussein's close friends, a clear indication of the power the king still had over the government. She claims that among the main motives for allowing political liberalisation was a desire to weaken the Islamists by offering other political groups the chance to get organised.[436] Anderson sees the more recent developments in Jordan as being due to the "managed" aspect of "managed liberalisation" breaking down. The political freedoms given to the opposition have made it difficult for the government to manage both the opposition and the course of

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[429] Rath (1994), p. 549.
[430] Brand (1992), p. 85.
[431] Riedel (1994), p. 51.
[432] Rath (1994), p. 543.
[433] Rath (1994), p. 553.
[434] Yayyusi (1997), p. 8.
[435] Milton-Edwards, Jordan and Façade Democracy(1993), p. 196.
[436] Milton-Edwards (1993), pp. 196-198.

the developments.[437] According to Kassay, the "objective of democratisation was not to reform the clientelist system, but to acquire the means to preserve it".[438]

An important reason for the diversity of opinions on the Jordanian experiment is a confusing usage of the central terms in some studies. Liberalisation, transition and democratisation have occasionally been given different meanings in different texts, or curiously in some texts used as synonyms. Often little or no time has spent on defining the core concepts, thus the meaning given to the terms used is implicit. For instance, Nanes (2003) argues that currently there is a consensus on the nature of the "democratic experiment" in Jordan. It is seen primarily as a government's survival strategy. Nanes refers to three labels given to the situation: "negotiated transition" (by Springborg, 1992), "regime survival strategy" (by Brand 1994, Mufti 1999 and Wiktorowicz 2002) and "defensive democracy" (by Robinson, 1998).[439] However, while 'regime survival strategy' is actually the situation all these labels seem to refer to, following Nanes, nonetheless conceptually these three labels refer to differing state of affairs. Springborg's "negotiated transition" is a modification of 'democratic transition', while Robinson's "defensive democratisation" is bit of everything, as well as transition-inspired. The consensus Nanes is referring to seems to be a superficial one. Although the idea of 'survival strategy' is part of all these views, not all the authors see the developments as democratisation, or democratic transition. Robinson and Springborg are the authors who define the developments as democratisation, while the others do not.

There is another thing common to Springborg and Robinson: the influence of the transitology on their work. Yet, these authors appear to understand 'transition' in slightly different ways. According to Springborg (also Baaklini *et al*), "negotiated transition" or "transition from above" is a useful approach in the Arab world. Transition is regime initiated and led; the (old) regime remains the dominant participant and often initiates political liberalisation as a strategy to stay in power. Gradually through three stages the state is democratising. "Negotiated transitions"

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[437] Anderson (1997), p. 75.
[438] Kassay (2002), p. 54.
[439] Nanes, Fighting Honor Crimes in Jordan(2003), p. 116.

are often durable as the elite groups with most to lose are given an opportunity to participate in negotiating the rules for the new system.[440] "Negotiated transition" starts with the survival strategy, progresses to "national dialogue" and eventually leads to the final stage when the parliament reaches its full authority. Robinson defines "defensive democratization" as a "state strategy to maintain the dominant political order in the face of severe fiscal crisis". Robinson points out that "defensive democratisation" occurs "without altering the core structures". This term, Robinson argues, is a "nuance to understanding of democratic transitions", in a context of a rentier state.[441] The outcome of the defensive democratisation is freer press, open political activism and the diminished role of the secret police, while many problems still remain. According to Robinson, progress in the future ("deepening the democratic transition") is not likely, as an end to the Arab-Israeli conflict might terminate the transition.[442] The fundamental problem of Robinson's analysis is the labelling: Robinson treats transition as synonymous with democratisation and liberalisation.

The majority of the scholars have focused on parliamentary elections, civil society and the press freedoms. Some authors have examined the political changes in relation to power relations among the ruling elite/s. Very little has been written on the working conditions of the legislative, with the exception of Baaklini (*et al*). Importantly, Baaklini (*et al*) stress the role of the legislative for the process of democratic transition in the Arab world. The authors argue that while the Jordanian parliament has become a more important actor, the facilities available to it are generally poor. There is a lack of competent staff and technical facilities, and the committee work is undeveloped. Also the 5-month term for the parliamentary session is too short and the lower house is not entitled to draft laws. Baaklini (*et al*) acknowledge that the king is still the central actor. Yet, they conclude that Jordan has reached the second of three stages of transition towards democracy.[443]

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[440] Springborg (1995); Baaklini *et al*, 1999, 29.
[441] Robinson (1998), p. 389.
[442] Robinson (1998), p. 407.
[443] Baaklini *et al* (1999). There is a technical weakness in Baaklini's study, as no references are indicated in the work.

The rule of law (or the judiciary) in Jordan in relation to political developments is neglected by scholars, almost ignored. There are a few articles, or rather an article combining three writings, produced by Jordanian legal practitioners.[444] Yet this article deals with the rule of law without covering any other aspects of modern political democracy. Furthermore, none of the previously discussed scholars working on the political changes since the 1989 elections has focused on the rule of law in Jordan.

[444] See Wazani (2000); Halasa, The Defendant's Rights in the Criminal Process and Trials(2000).

Summary

Jordan is a modern state in the true meaning of the word; the independence was gained in the aftermath of the Second World War. The first decades were spent building the new state with the assistance from the British. This state-building has been a particularly ambitious project, including consolidating a ruling family originating outside the country. The history of the Hashemite Kingdom has by no means lacked political challenges. Further challenges were faced owing to the scarcity of natural resources and geographical location bordering Israel/Palestine. One of the major dilemmas in Jordan has been the ethnic divide between the Transjordanians and Palestinians.

The Hashemites have succeeded in securing their rule through a "supracommunal, supratribal, supraregional and suprasectarian"[445] approach, using coercion and co-optation while tightly controlling the security establishment and buying the loyalty of local notables. This would have not been possible in a resource-poor country without help from the foreign allies. While it has been central for the survival of the Hashemite dynasty to balance between competing interests, it has been equally important to keep finding new sources of assistance in the changing international political setting.

While the king is without a doubt the most powerful actor in the kingdom, yet the survival of the Hashemite is dependent on the support of the army and the royal court. For supporting the Hashemites, the members of the political elite are rewarded in terms of financial gains and social status, also the matters significant to the members are under a special patronage of the monarch. The core of the political elite (the inner circles) is without a doubt the most persistent element. In spite of the characteristic elasticity of the composition of the Hashemite elite, certain members of the elite appear to be almost irreplaceable. Although King Abdullah II has introduced a new agency of recruitment, the Economic Consultative Council, it seems that the number of recruits is not excessive, rather the opposite. Abdullah II has inherited

some of Hussein's men, like Zaed 'Samir's son', Rifa'i. This is partly owing to the practicalities of managing the members and to the significance of support of the core members. It is essential for the king not to shake the power base before his has consolidated his position. Yet there is no denying that Abdhullah's new recruits stress his priorities. The constant elite reshuffling is more like the regular members playing musical chairs when the monarch is in charge of the music. Abdullah has just chosen a different tone and brought along a few new players. The reshuffling is done to ensure that the power of an individual member does not grow too strong and perhaps also fool the public. It appears that violations of the laws of the country are more likely to be tolerated than the violations of the laws of the elite. There is one rule above all: the survival of the Hashemite family.

Democratisation to start in Jordan, it is argued here, requires the current political elite to share their political power with the rest of Jordanians and to give up their special privilege being above the law. Therefore, the latter part of this dissertation will be examining whether the current political elite is showing any signs of "dissolution"; whether the political changes started in 1989 can be considered as "dissolution". This study is not the first attempt to identify the nature of political changes in Jordan. It was important to examine how others have perceived these political changes for the sake of the main argument of this study. It is argued that democracy cannot exist without the rule of law; thus it cannot be ignored when studying (alleged) democratisation. The main goal here was to find out whether different perceptions of the nature of the political changes in Jordan were due a limited scope of analysis (excluding the rule of law).

The majority of scholars have analysed the same 'signs' of political change, yet have reached differing conclusions. Some see them as political liberalisation or even democratisation, others only as a regime's survival strategy or de-libaralisation. The current popularity of the transition school has not left this body of literature untouched. At least the term 'transition' is very widely used. There are, however, some general observations shared by a majority of involved scholars. It is widely

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[445] Abu-Odeh (1999), p. 279.

agreed that economic factors had a role in initiating the changes and the series of changes has been regime-led.

The majority of the literature has focused on the conventional elements: elections, the economic factors and the role of the monarch at the expense of the legislative, political parties or the citizens. It is argued here that expanding the scope of the analysis would provide a more detailed (clearer) picture of the political changes. If the core of the debate is to define whether the changes are democratisation, then ignoring central elements of modern political democracy is not justified. Therefore, the goal of this study is to widen the scope of analysis from political participation to elements discussed in the previous chapters: the constitution and the judiciary. It is stressed that political participation will not be ignored here, but neither will it deserve exclusive attention.

6. THE CONSTITUTIONAL FRAMEWORK IN JORDAN

Introduction

The aim of this chapter is to define the constitutional framework in Jordan: the state actors and their powers. This is done in order to be able to identify whether constitutionality, or even Constitutionalism, has been part of the political reality in Jordan prior to and since 1989. It is important to make a distinction between the design and its implementation. For the purposes of this study not only was it important to define the constitutional framework, but also to examine whether the design has been implemented as intended by its creators.

In 1952 Jordanian nationalists succeeded in their long-lasting battle: a new constitution guaranteeing a representative government was promulgated. The 1952 constitution defined the new system of government as a parliamentary monarchy.[446] This constitution was the second one in the Jordanian history, promulgated 5 years after gaining independence. Thus it is not far-fetched to claim, following Nathan Brown's argument, that the Jordanian constitution was to be a symbol of newly-gained sovereignty, like introducing a national anthem or flag.[447] This is logical particularly considering that the colonial power had protected its interests by a conscious decision not to create a constitution during the early years of the mandate period. Furthermore, the first ever constitution was imposed by the British to protect their interests, not to promote political development.[448]

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[446] Jordanian legislation in the pre-independence period was based on the Ottoman laws, as the British mandate powers left the legal system intact. An-Na'im, Jordan, Hashemite Kingdom of(2002), p. 119. See also Abu Jaber (1969).

[447] Brown (2002), p. 31. Nathan Brown argues, after examining the constitutional texts and the contexts they were born, that there are three functions for Arab constitutions: to act as the expression of the sovereignty of (newly) independent state, to manifest the governing ideology or just simply to organise the state powers.

[448] Brown (2002), pp. 46-47. The British opposed the idea of a representative government, as it could potentially cause a threat to their colonial interests in the country. The British saw at later stage a constitution necessary in order to place more control on the Emir, particularly on his financial actions.

However, the primary aim of the nationalists was to constrain the power of the domestic ruling elite, not to celebrate the sovereignty. It seems unjustified to perceive the 1952 constitution primarily or solely as a manifestation of national sovereignty. In spite of the formal independence gained in 1942, the British still dominated the political setting until the late 1950s. Furthermore, the 1952 constitution is argued to be based on the Iraqi constitution the British imposed a few years earlier.[449] Bearing in mind the object of the nationalists it appears more realistic to perceive the 1952 constitution as a tool to organise the power relations among the key actors. The Jordanian constitution is thus seen here as a text indicating composition and powers granted to each of the Jordanian state powers and the relationship between them, as well as between the state powers and the subjects of the state authority. The emphasis is on analysing the relations between the actors defined in the constitution (state powers and citizens). It is central to define how the powers of the executive are limited, if at all.

According to Brynen, the Jordanian constitution, in practice, has been "much more than a meaningless piece of paper".[450] The constitution has, claims Brynen, been a significant element defining "politics and political liberalisation" in Jordan. Brynen argues that "Jordan's kings[451] have generally endeavoured to maintain the appearance (and often more than the appearance) of constitutionalism".[452] The aim is also to analyse whether Brynen's view is valid and whether there has been any signs of constitutionalism in Jordan. In addition, it is important to identify whether the role of the constitution has been central to the political developments in the country. Or are there only signs of Arab constitutionalism?

When examining the Jordanian constitution, there is a significant aspect that cannot be ignored. Since the promulgation of the constitution there have been two kings, protests against the rulers and their allies, attempts of *coup d'etat* and a civil war in

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[449] Milton-Edwards and Hinchcliffe (2001), p. 37.
[450] Brynen (1998), p. 76.
[451] Based on the time frame referred by Brynen it is assumed here that with the kings Brynen is referring to Kings Abdullah I and Hussein bin Talal. Thus it is argued here that it would be more justified to talk about the king, as the 'constitutional' period of Abdullah's reign was rather short: 1947-1951. Furthermore, in the very beginning it is argued that there was a gap between the constitution and the practice. See Abu Jaber (1969).

Jordan. The kingdom has been involved in regional conflicts directly and indirectly. The 1952 constitution has existed through turbulent and traumatic times and changing political circumstances to date. A number of amendments have been made since 1952. The focus here is on the two 'systems': the one defined by the non-amended constitution (1952) and the other by the current amended one (the 1952 one vs. the current one).

The constitution is a text created in a certain political context by certain actors with a certain goal they believed the constitution would help to achieve. It is relevant for this study to examine the amendments in order to see whether they have made any significant changes in the constitutional framework. It is assumed here that the constitution declares the higher aim of the political entity (core of the constitution) and means to this end. Has the impact of the amendments been more favourable to the spirit of the constitution, or has the spirit (core) been changed? How do the two 'systems' differ from each other? Do the systems both provide the elements needed for rule of law and/or a democratic governing system? If not, what are the main elements missing? What was the context where amendments were made? It is assumed here that analysing the amendments made in relation to the context in which they were made reveals motives behind the amendments. Furthermore, amendments are outcomes of different creative processes such that the constitution itself and thus the motives behind it are themselves very interesting. It is also not that uncommon that there is a different set of actors creating the original constitution than the actors amending it.

In addition to the amendments this chapter also examines a further element particular for the Jordanian constitution: the temporary laws. It is not uncommon for a constitution to include stipulations for exceptional circumstances (mainly emergencies). It is acknowledged than in certain situations the normal rules can prove inappropriate and another set of rules are thus required. It is relevant here to find out if these unexceptional situations are acknowledged in the Jordanian constitution. If they are, then when does a situation qualify as an emergency and what do the 'emergency' rules include?

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[452] Brynen (1998), p. 77. Bold added

6.1. THE SYSTEM OF GOVERNMENT: THE FRAMEWORK DEFINED

The Jordanian constitution begins with defining the system of government in the Hashemite Kingdom of Jordan as "parliamentary with a hereditary monarchy".[453] The parliamentary system is based on the separation of powers - the rights and responsibilities of the executive, the legislative and the judiciary are clearly defined in the constitution, each in a chapter of their own.[454]

The monarch is a central figure both in the executive and legislative politics, or rather he is *the* central figure. The king does not only share the executive power with his ministers, he appoints the members of the Senate (ministers) for the four-year term.[455] These powers alone are enough to keep the monarch at the centre of the political elite. Not only does the king form the executive with "his Ministers"[456], but he also possesses the legislative power with the National Assembly consisting of the Senate (*Majlis al-A'yan*) and the Chamber of Deputies (*Majlis al-Nuwwab*).[457] The monarch can dissolve the parliament or discharge individual representatives. The monarch can also declare martial law.[458] Any draft law has to be ratified by the king after having been accepted by the parliament.[459] As Gregory Mahler has put it; "The King exercises all of the powers that the Queen of England has in theory but that the prime minister of England exercises in practice".[460]

It is apparent that the separation of powers in the Jordanian constitution is not

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[453] Constitution, Chapter 1, Article 1. http://www.jordanembassyus.org/new/aboutjordan/1952constitution.shtml#1

[454] Constitution, Chapter 4 (executive powers), Chapter 5 (legislative powers) and Chapter 6 (the judiciary). Here when referring to the current constitution no year of promulgation is indicated to distinguish between the constitution in its non amended form and the amended current constitution. The non-amended constitution is referred as the 1952 Constitution.

[455] Constitution (1952), Chapter 3, Articles 25-26.

[456] Constitution, Article 26.

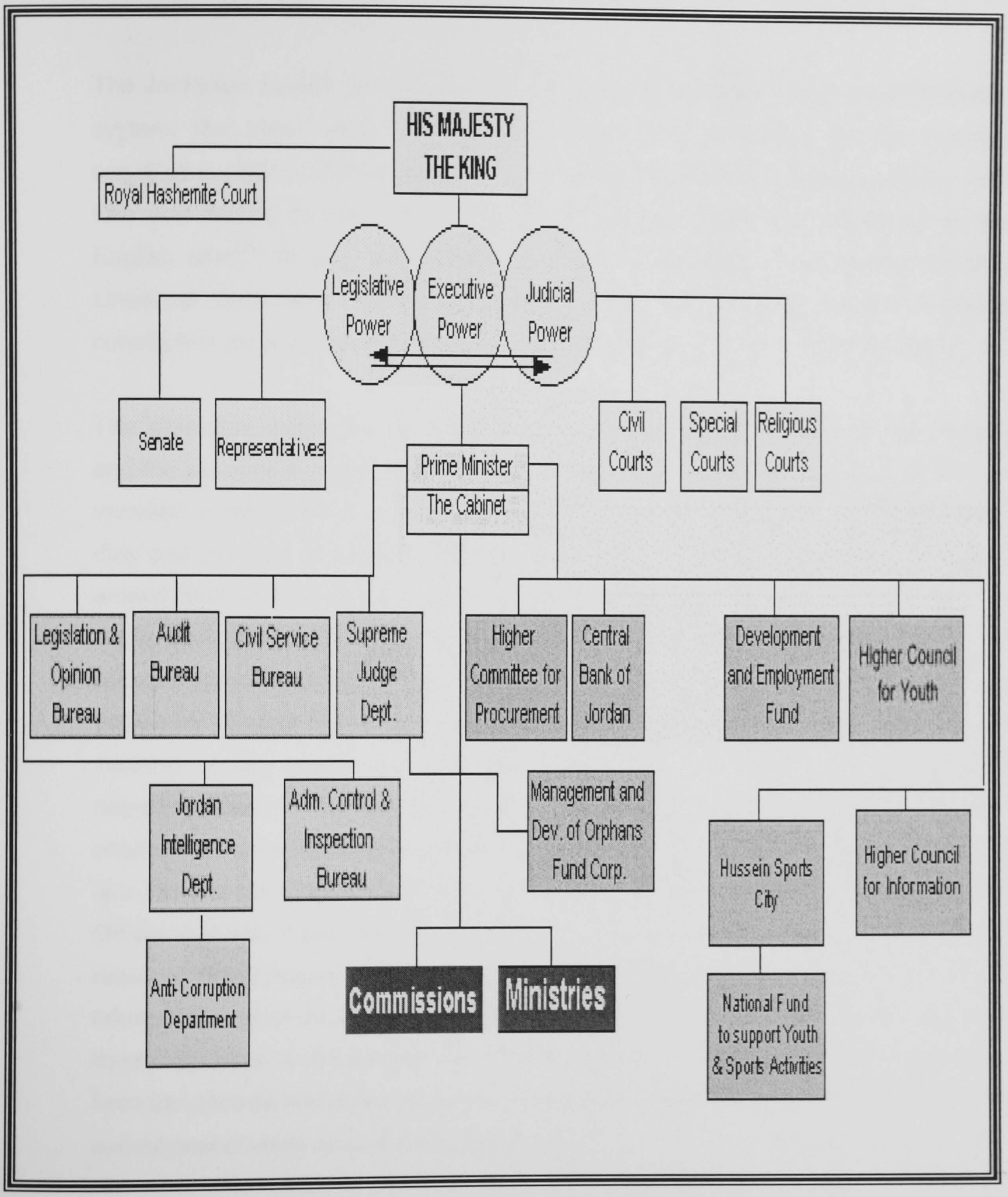
[457] Constitution, Chapter 3, Articles 25, 26 and 27. The Senate is also called House of Notables in some contexts, and the lower house the House of Deputies.

[458] Constitution (1952). King Hussein has declared a martial law in 1957 and then again after the 1967 war. The martial law declared in 1967 was in force over thirty years. See Wazani, The Role of the Judiciary in the Protection of Human Rights(2000), p. 84.

[459] Constitution, Article 93, (iii)- (iv).

[460] Mahler, Constitutionalism and Palestinian Constitutional Development(1996), p. 69.

defined in the strictest sense; each of the three state powers having clear-cut authorities, as well as resources to monitor and constrain the other powers. The Jordanian constitution defines the roles and relationships of the state powers (acknowledging their existence and defining the relationship to each other). It is clear that the model for the separation of powers has been the conventional 'executive-legislative-judiciary' with each of the state powers able to constrain or balance each other. The executive drafts and proposes laws, and is responsible for the legislative. The elected legislative makes decisions to reject or to pass the laws proposed, and has the authority to change the ministers when dissatisfied with their work. The judiciary is authorised to monitor the implementation of the legislation, and conduct of the other state powers. The role of the Hashemite monarch, provided with both legislative and executive powers, is clearly a disruptive factor to the counter-balancing design. The king as the head of the state is granted immunity, but at the same time he as the head of the executive is heavily involved in the legislative and executive matters. He also appoints the senate.



Picture 1: The Organisation Chart of the State of the Hashemite Kingdom[461]

[461] www.nis.gov.jo/En/government/eorgchrt.htm

The Jordanian constitution lays out a fairly standard framework for the parliamentary system, like many other constitutions. This is not surprising, as the Egyptian constitution (1923) was the model for the constitution. The Egyptian constitution in its turn was based on the 1831 Belgian counterpart, which was influenced by the English one.[462] Al-Jazy also argues that also the impact of the United Nation's Universal Declaration of Human Rights (1948) can be seen in the Jordanian constitution, as the Constitution includes many of the rights of the Declaration.[463]

The legislative makes the laws, the executive deals with the administrative matters and the judiciary is responsible to monitor the legality, while the head of the state is involved in the first two processes. According to the constitution, legislation is the duty and the right of the National Assembly. The lower house can reject, accept or amend draft laws presented by the Prime Minister. To be passed a law has to be accepted by both houses: the senate and the lower house. In case of a draft law rejected twice or of disagreement between the houses, the Speaker of the House will call a joint meeting where the draft will be discussed once more. To be passed in this meeting, a law requires a majority (two-thirds) of the number of Senators and deputies to vote in favour. If it happens that the draft is rejected in this meeting, it shall not be presented to this house during the same session.[464] In order to come into force a law once passed has to be ratified by the king and published in the Official Gazette. If the king for some reason does not want to ratify a law, he has to return it to the house within six months, stating the reasons for its refusal. If the house still decides to pass the law, it can do this with two-thirds of votes. In this case royal ratification is not needed for the law to come into force.[465] The only exception from the general principles upon which most parliamentary systems are based is the exceptional powers vested in the monarch.

The very first article of the constitution, non-amended since 1952, states that the

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[462] Hammouri, Temporary Laws. Between Constitutional Provisions and Political Sins(2003), p. 3; Abu Jaber (1969).
[463] Al-Jazy, Interview in Amman 2003.
[464] Constitution, Articles 91-92.
[465] Constitution, Article 93.

Hashemite Kingdom is a parliamentary system. This wording was one of the greatest achievements of the nationalists demanding an accountable government in early 1950s. The 1947 constitution defined Jordan as a "hereditary monarchy".[466] The wording was changed in 1952 to introduce the word 'parliamentary'.[467] This change (or reform), legal critics claim, was made to stress the superiority of parliament over the monarchy: to emphasise that the parliament should be the primary power in the system, not the monarch.[468] The constitution (1952) provides the king with extensive powers, larger than those of the legislative. The monarch is given not only immunity as the head of the state but powers far greater than any other state actors'. So great are his powers that in some parts the separation of powers gets somewhat blurred. Is the Jordanian constitution a contradictory piece of work: promising something yet providing tools for something else? Is a parliamentary system a vague promise forgotten, or neglected, by the creators of the text, or the implementers, the actors defined by the very text?

Analysing the constitution as a text that has been evolving over the decades provides more answers. It is worth noting that there have been many amendments made since 1952. Soon after the promulgation of the constitution the first amendments were made. In matter of fact the majority of the amendments were made within a decade. In comparison, out of the total 31 amendments, only two amendments were made in the 1960s, six in the 1970s and one in the 1980s.[469] It is of interest here whether the constitution in its current form contradicts the very core of the original constitution. The interest here is in the impact of the new elements on the unchanged core of the constitutional text. The reasons for the contradictions in the constitution, argue the critics, are caused by the amendments made, or some of them to be more precise. Consequently this is a matter that requires further attention. It must be noted that the focus here will be only on the amendments concerned with the relationship between the legislative and the executive. The amendments on the judiciary will be analysed later.

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[466] Constitution (1947), Article 2. In Miller Davis (1953), p. 235.
[467] Constitution, Article 1.
[468] Hammouri, Faisal and Shubeilat, Interviews in Amman April-June 2003.
[469] Constitution, Articles 33, 45, 54, 59, 73, 74, 78, 84, 94, 95, 102 and 123.

6.2. BENDING OR BREAKING

Constitutions are documents that are written under some historical conditions to regulate actions of government under future conditions. When these future conditions depart far from anticipations, constitutions either bend or break.[470]

6.2.1. Amendments

Bending - it is assumed here - can either occur through ignoring some elements of the constitution or amending the original text to suit the changed conditions, or changed aims, while still keeping the core untouched. The noble aim of amending a constitution is to improve it, to adjust the constitution to better suit changed realities. It worth noting, however, that the people who created the original text are usually not the ones amending it. Thus the people behind the amendments may have different goals in mind. In 1952 the newly elected Jordanian representatives from the both banks of the River Jordan pressured King Talal to issue a new constitution. The new constitution made the government accountable for the first time in Jordanian history, the goal the nationalists had been aiming at since the early 1920s. It is another matter, however, whether King Talal's objective was to make a historical step towards representative government or, in the rather unstable political climate, to stabilise the political setting.[471] It is also worth noting that King Abdullah had promised a new constitution and an accountable government not long before he was assassinated.[472] Thus considering the political circumstances it looks likely that King Talal at the start of his reign, would not want further worries. A more important question than the true nature of Talal's intentions is the impact amendments had on the constitution. Regardless of the motive of the monarch in producing the text, it will live on, guiding the actions of the state actors, at least in theory.

A majority of the Jordanians – politicians, legal scholars and practitioners -

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[470] Przeworski, Constitutions, Democracy and the Rule of Law (2003), p. 1. http://c250columbia.edu/constitutions

[471] Abu Jaber (1969), p. 231.

interviewed for the purposes of this research stressed the progressive nature of the Jordanian constitution. Almost all of them, however, stressed that the constitution they talked about is the 1952 constitution, not the current one.[473] Professor Mohammad Hammouri, a leading Jordanian legal scholar, argues that in its 'original' form the Jordanian constitution (1952) was a "piece of art", balancing the three state powers in a democratic manner: each had a clear role and means of controlling the powers of the other two.[474] Hammouri considers the 1952 constitution as one of the most mature constitutions in the Arab world.[475] This balance, however, began to be disrupted soon after the creation of the constitution. The first amendments were already made in 1954, only a few years after the promulgation of the constitution.[476] From the 131 articles of the constitution 19 articles have been amended, some more than once. In total there have been 31 amendments, the most recent ones in the 1980s.[477] It has to be acknowledged that some amendments have in some parts been improvements, and that not all the amendments are in contradiction with the spirit of constitution (parliamentary monarchy). These amendments, however, are few in number compared to the negative amendments.

The positive amendments, it has to be stressed, were the first amendments made. According to the article 53 of the current constitution, the senate can be given a vote of non-confidence with the absolute majority of votes from the lower house. Until 1954, this was possible only when two-thirds of votes were gained.[478] Once the article 54 was amended in 1954, the lower house could not be dissolved anymore, if the vote of confidence was postponed (from a maximum of 10 days).[479] After amending the article 65 in 1955, the term of office for senators was shortened from eight to four years.[480]

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[472] Abu Jaber (1969), p. 230-231.
[473] Hammouri; Hikmat, Wazani, Shbeilat, Faisal, Qaddomi. Interviews in Amman April-June 2003. The government representatives tend to be the only ones praising the current, amended constitution. See Jordan Times 12-14/03/04. The current prime minister Faisal El Fayez describes the Jordanian constitution as "good and one of the best in the world."
[474] Hammouri, Interviews in June 2003 Amman.
[475] Hammouri (2003), p. 3 and Interview in June 2003, Amman.
[476] Constitution, Articles 53, 74, 78 and 84.
[477] Constitution. http://www.jordanembassyus.org/new/aboutjordan/1952constitution.shtml
[478] Constitution (1952), Article 53 and Constitution, Article 53.
[479] Constitution, Article 54 and Constitution 1952, Article 54.
[480] Constitution, Article 65 and Constitution 1952, Article 65.

No political decision is born in a vacuum, neither is a decision to amend the constitution. Analysing amendments in relation to the political context where they have arisen helps to find the motives behind the amendments. Rath argues that due to the liberal policy adopted by young King Hussein the early years of his reign were a time of liberal experiments. She claims that a liberal attitude was seen in the 1954 and 1955 amendments that strengthened the role of the parliament.[481] The very same lower house that succeeded in creating the current constitution was the first house to amend the constitution, two years after the promulgation.[482] In fact it was not only the first to amend the constitution, but it is the only house to manage to improve the constitution.

These are by no means insignificant amendments. In relation to the other (negative) amendments their positive progressive value diminishes. Thus the focus here is on the 'less-progressive' amendments, which means all the amendments made since 1955. In all fairness there are chapters with no amendments made at all. The chapters that have not been amended deal with "rights and duties of Jordanians", "powers: general divisions" and "enforcement and repeal of laws". Most importantly the very first chapter "the state and system of government" is intact.[483] The chapters that have been amended deal with rights and responsibilities of the king, the senate, the lower house and the judiciary. Thus the basic frame defined in the constitution "parliamentary with a hereditary monarchy" as the system of the government has been the unchanged since 1952. What have been changing, or rather (intentionally) changed, are the elements *within* that frame. The motive for amending the constitution can be identified when connecting the amendments to the political context in which they were made. Thus the emphasis here is not only on the changes in the text of the constitution (contents), but also on the time of the amendment.

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[481] Rath (1994), p. 532.
[482] Hourani and Yassin, Who's Who in the Jordanian Parliament 1997-2001(1998), p. 37.
[483] Constitution and Constitution (1952).

The King

A great deal of the amendments seems be aiming at one particular goal: to strengthen the king by broadening his powers either directly or indirectly limiting the powers of the other state actors. First, there are the amendments blurring the 'original' allocation of rights and responsibilities among the executive. The responsibility of the ministers is to administer "all affairs of the state", unless "any other person or body" is authorised to share some of the administrative responsibilities.[484] According to the original article 45, authority can be assigned to someone in "laws and regulations", whereas according to the amended article (1958) authorisation can be made in "any other legislation", including basically any legislative act.[485] This expands the authority considerably, as laws are issued by the legislative, regulations by the government and instructions by an individual minister.

Another aspect to be considered is the publicity of the decisions. It is a constitutional requirement for laws are to be published in the Official Gazette. Publishing regulations in the Official Gazette has become a common practice, yet administrative rulings are rarely published.[486] This amendment makes it easier for the king to get involved (or interfere) in the work of the government. While laws are passed through known and public procedures, the less significant legislative acts can be done by non-elected actors through procedures less public and including fewer actors. One could even argue that the re-distribution of responsibilities could be done in a less open and public way, at least if so wanted. It is worth noting that while the ministers are accountable for the elected lower house, administrative bodies are not. Therefore, at least in theory this stipulation could be used as way of compromising transparency and accountability.

The amendments on the articles dealing with the powers of the king are rather subtle yet simply suited to their purpose. Amending the article 33 gave the king the right not only sign treaties but "treaties and agreements".[487] As treaties are pacts between

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[484] Constitution, Article 45.
[485] Constitution, Article 45 and Constitution (1952), Article 45.
[486] WTO: The Legal Regime in Jordan, pp. 2-3.
[487] Constitution, Article 33.

nations, the original article defined the king as the leader of foreign policy. The amendments of the article 33 (May 1958 and September 1958) increased the powers of the king in domestic politics. One of the main reasons leading to the political crisis of 1957 was the differences between the elected house and the king.[488] As mentioned earlier (see chapter 5) the Jordanian foreign policy was one of the main issues causing disparity between the al-Nablusi cabinet and King Hussein. Al-Nablusi wanted to establish an Arab Union with Iraq, while the king preferred the Eisenhower plan, and the Baghdad Pact before that. The relationship between King Hussein and Al-Nablusi began dramatically detoriate when al-Nablusi took steps to establish diplomatic relations with the Soviet Union.[489] The final straw for King Hussein was when foreign minister Rimawi argued that in Jordan the monarch would not be the chief policy maker anymore, but the parliament.[490] At that stage the king felt that the future of the Hashemite rule was at stake; initiated by the government appointed by the monarch himself and supported by the democratically elected deputies. The political reality and his aspirations made King Hussein feel that the threat was more imminent from within, or that the foreign actors might be able to influence through certain Jordanians. The amended article stresses the role of the king as an authorised actor *both* in domestic and foreign policy.

According to the article 34 in its current form, the king can dissolve either the entire senate or individual senators. Earlier, until 1974, it was possible to dissolve the senate only as a whole.[491] Thus the amendment makes it easier for the monarch to control potential dissidents. Naturally it is easier and more economical for the king to remove dissident senators than the entire senate. However, the timing of this amendment indicates that the amendment might be also related to the Israeli occupation of the West Bank.

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[488] After the 1956 elections, the freest elections in Jordan so far, the king appointed Sulaiman al-Nablusi, the leader of the National Socialist Party, as prime minister. It was soon evident that the policies of king and of his prime minister were far too different to coexist. The king was known, and regularly criticised, for his pro-Western sympathies. Hussein was aiming to shift his (financial) reliance from the British to the Americans, after being forced to abandon the Baghdad Pact. According to the Eisenhower Doctrine, Jordan was to receive financial aid from the US in return for the fight against Communism. Cooper and Tilly (1994), p. 8.
[489] Snow (1972), p. 105.
[490] Singh (2002), p. 73.
[491] Constitution (1952), Article 34.

Amending article 68 in 1960 enabled the king to prolong the term of the chamber for a period ranging from 12 to 24 months. According to the original constitution, the term was fixed to four years.[492] Therefore, in theory the king can now, when satisfied with the existing chamber, prevent the citizenry to change the chamber, or rather to postpone the citizenry electing a new chamber. This can be an attractive option when the monarch suspects that the voters might elect a less sympathetic or co-operative chamber, or a chamber full of deputies with radical ideas. The 1960 amendment could be easily seen as an attempt to avoid holding parliamentary elections. At the time of the amendment parliamentary life was frozen. After dissolving the al-Nablusi cabinet, the radical deputies had been replaced by pro-Hashemite ones. However, it has to be remembered that during the last days of the al-Nablusi government the senate had gained an almost unanimous vote of confidence, and overwhelming support, from the lower house. This support for the senate was difficult for the king to undermine or ignore, even when the parliament had long since dismissed.[493] After turbulent years the king simply might have wanted to prevent radicalisation of the parliament. Allowing fair elections with uncertain outcomes was a greater risk than Hussein was willing to take. At this point it is worth noting that the parliaments elected since the 1957 crisis (6^{th} - 9^{th}) were conservative, and also not the outcomes of free elections.[494]

The other one of the 1960s amendments dealt with the king's succession. The king's succession was changed in 1965. If he so wished, the king could select one of his brothers as heir apparent, instead of his eldest son.[495] The attempts on the king's life made the monarch worried about his safety and also that of his successors. The assassination of the prime minister Hazzaa' Majalli, also a close friend of Hussein, in 1960 was one more incident to convince King Hussein of the probability of him being murdered.[496] As the king's eldest son was very young at that time, this amendment was made to prevent Abdullah II succeeding while still a child himself and ensuring

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[492] Constitution, Article 68 (i) and Constitution (1952), Article 68 (i).
[493] Rath (1994), p. 533.
[494] Abu Jaber (1969), pp. 240-242.
[495] Constitution, Article 28(a) and Constitution (1952), Article 28(a).
[496] Snow (1972), p. 104 and p. 135.

that there would be strong enough ruler for the Hashemite kingdom.[497]

[497] Milton-Edwards and Hinchcliffe (2001), p. 118.

The Senate

The amendments that have more clearly disrupted the original balance of powers, the democratic foundation of the constitution, were made on the articles dealing with the other state powers: ministers (the senate) and the lower house. It must be remembered that the king is a part of the senate, in fact the most powerful element of the senate. The king appoints the senate and can dismiss senators or the entire senate.[498] Expanding the powers of the senate can be seen as another channel for the monarch to get involved in legislating, as well as controlling the deputies. Furthermore, it must be remembered that even the original 1952 constitution provides the king with authority unlike the other actors, a position very difficult to weaken.

The accountability of the senators - who are appointed by the king to start with - is seriously challenged by some of the amendments. The senate, according to the constitution, after its formation has to present a "statement of its policy" to the lower house, which then votes on confidence. The original constitution defined clear time-limits for doing this: one month if the lower house is in session, two if it is not. After amending the article (in 1958), it only includes the 1-month limit, but no time limit is defined in case the lower house is not in session. Further, if the chamber is not in session, or is dissolved, "the Speech from the Throne" will equal as the statement.[499] Earlier such an option was not available. The amendment enabled the king to continue ruling his country although the when the government of al-Nablusi was dissolved and many oppositions politicians in exile.

Furthermore, the articles that deal with the High Tribunal, a body where senators would be prosecuted, have been amended. According to the original article 57, the High Tribunal should be chaired by the president of the highest civil court. After amending the article 57 (1958) the speaker of the senate will be acting as the president of the High Tribunal.[500] These amendments have been changing the

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[498] Constitution, Articles 34-35.
[499] Constitution, Article 54, Paragraphs (i-iii); Constitution (1952), Article 54 Paragraphs (i-iii).
[500] Constitution (1952), Article 57.

delicate balance between the state powers in two ways. The High Tribunal is the body that has the authority to interpret the constitution, when either the cabinet or the chamber so requests (with "absolute majority").[501] Thus giving the speaker of the senate (belonging to the executive) the role of the chairman of the tribunal is interfering in the powers of the judiciary. It is worth at this point the possible position the speaker of the senate has within the political elite. This amendment put one of the "king's men" in charge of the tribunal. Monitoring of the executive is partly in the hands of the executive itself, partly in hands of the legislative. The High Tribunal is not only chaired by the speaker of the senate, but three of its eight members are senators. Yet it is more difficult for the elected deputies to monitor and discipline, as to displace senators or the entire senate a vote of confidence is easier to gain. Ironically the High Tribunal was one of the main improvements of the constitution 1952, the main elements guaranteeing the responsibility of the government to the elected representatives.[502] Following Nathan Brown's study on Arab constitutions, this is a common feature in Arab monarchies: to include the principle of ministerial responsibility to the elected bodies, yet making it a difficult principle to exercise.[503] According to Mahafzah, a Jordanian political historian, the absence of the formal monitoring arrangements is one the main reasons for the lack of political development in the country. There are simply no means to monitor the political elite nor the administrative bodies in Jordan.[504]

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[501] Constitution, Article 122.
[502] See Abu Jaber (1969), pp. 231-232.
[503] Brown (2002), pp. 63-64.
[504] Mahafzah (2001), p. 358.

The Legislative

There are clearly two sets of amendments: ones related to the domestic politics of the 1956 elections and others dealing with the occupation of the West Bank. If the 1950s was the decade of amendments, 1958 is the year of the amendments. Nineteen of the thirty-one amendments ever made were undertaken in 1958. Moreover, 1958 was the only year when the constitution has been amended more than twice: on May 4th and September 1st.[505] One reason explaining how it was possible to have amendments distorting the liberal constitution made, is the political setting in 1958. The majority of the constitutional amendments, two-thirds, were made during the first martial law period. The martial law was declared on April 25th 1957 and it ended in November 1958.[506] Thus it was easier (for the king) to amend the constitution, as radical deputies were replaced by moderate ones, not to mention that after April 1957 many of the opposition figures were arrested or in exile. Also the press was tightly controlled.[507] The political setting of 1958 does not only explain how the amendments were made but also why. It is apparent that the main aim of the amendments was to constrain the parliament and to stop the al-Nablusi incident ever repeating itself.

The legislative process seems at first to be intact.[508] The amendments have not changed the core of the legislative procedures, yet some details have been altered. Earlier it was enough for a single deputy or senator to make a proposal, but once amended in 1958 the article 95 requires at least ten senators or deputies to do it.[509] This is a remarkable amendment, yet more drastic in the relation to the size of the parliament of the time. At that time there were fewer members in the parliament than there are today: forty deputies and no more than twenty senators, while since 1989 the number of deputies has increased to 80 and in 2003 to 110.[510] Thus the requirement of ten deputies or senators was rather strict when it was made, stricter than today. In order to propose a law in the pre-1989 era a deputy had to be

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[505] Constitution, Articles 33, 45, 54,102 and 103.
[506] Cooper and Tilly (1994), p. 8; Rath (1994), p. 534.
[507] Baaklini *et al* (1999), p. 142; Rath (1994), p. 534. See Abu Jaber (1969).
[508] Constitution, Article 91.
[509] Constitution, Article 95 (i) and Constitution (1952), Article 95 (i).

supported by a quarter of the lower house, and a senator by half of the senate. Another amendment related to the right of deputies to propose laws was made on article 95. The committee, to which the proposal is sent to be investigated, is currently within the house, whereas previously the committee was an *ad hoc* one located in either in the House or in the senate.[511]

One of the most significant amendments is made in 1958 to article 74 which deals with the core principle of the separation of powers. In democracy it is essential that both the legislative and the executive can balance each other, to "kill" each other, as Professor Hammouri puts it.[512] The legislative can give the executive a vote of non-confidence, whereas the executive can dissolve the legislative. Yet there are some rules to this. The original article 74 included only the sentence: "If the Chamber of Deputies is dissolved for any reason, the new Chamber shall not be dissolved for the same reason".[513] The amendment made was to add a sentence: "A Minister who intends to nominate himself for election shall resign fifteen days at least before the beginning of nomination".[514] This article indirectly reveals a fundamental change. According to the original version, under normal circumstances there would be no senators left to consider whether or not to stand in the forthcoming parliamentary elections. According to the 1952 constitution, the government should resign within a week of the dissolution of the lower house. A new government would be appointed only to administer the period leading to the election of the new deputies, and would thus be dissolved once a new lower house had been formed. Extending that period would be justified only if a case of emergency would occur.

Many of the 1958 amendments deal with exceptional situations, exceptions to the ordinary parliamentary practice. Under normal circumstances the senate should present a statement of its policy to the lower house within a month after its establishment. Once the 1958 amendments were made, there were no time-limits for the senate to present its policy if the chamber were absent. The king's speech could

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[510] http://www.jordanembassyus.org/new/aboutjordan/dp2.shtml
[511] Constitution, Article 95; Constitution (1952), Article 95.
[512] Hammouri, Interviews in Amman in May-June 2003.
[513] Constitution (1952), Article 74.
[514] Constitution, Article 74 and the Constitution (1952), Article 74.

substitute the statement of the policy (article 54). The executive was given a wider mandate to legislate; in the absence of the parliament it could pass temporary laws (article 94). Prior to 1858 the power of the executive to legislate alone was restricted to three clearly defined emergency situations. These amendments describe what happens when the normal parliamentary bodies are absent or dissolved. Perhaps it was not anticipated six years earlier that there would be a need to make rules for exceptional situations. The aim of the nationalists was to create a constitutional framework with a parliament and an accountable government. The objective was to limit the powers of the executive, not to find situations when passing powers 'back' to the executive. If the 1952 constitution were seen as a first attempt to create a functional parliamentary system, then it would be understandable that after a few years of 'test-driving' some readjustments might be required. In the case of test-driving, however, it is important to identify whose comfort should the constitution guarantee. These amendments have only weakened the other state actors in favour of the king. Therefore they seem to be made with different goals in mind. The goals differ, as the people who succeeded to create the 1952 constitution were not the ones (or the one) amending it. When the 'creators' of the constitution were amending the constitution (1954-1955) the amendments were of a progressive nature.

Israel occupied the West Bank in 1967 shortly after the parliamentary elections.[515] Elections were suspended in the 1970s, as half of the Jordanian voters (West Bankers) were not able to participate in the political life. Regardless of the absence of parliament, or because of it, the constitution was amended in 1973, 1974 and 1976. The constitution was amended to adjust to the changed political reality. However, it is argued here that the occupation gave the king a reason to make some of the constitutional constraints less constraining. According to the 1973 amendment, if during an emergency (*force majeure*) a seat in the chamber becomes vacant ("for any reason") and elections cannot be held, the chamber is authorised to elect a new member from the constituency in question.[516] This is not the most dramatic of the changes made (in relation to the rule of law or parliamentary system), rather a necessity stemming from the regional political developments, since due to Israeli

[515] Massad (2001), p. 97.
[516] Constitution, Article 88.

occupation no elections would be possible in the West Bank. Interestingly this amendment was made four years after the 1967 war. Thus the amendment might indicate that in 1967 the occupation was not anticipated to last as long as it has.

The current constitution differs fundamentally from the original constitution also when it comes to the defining the extraordinary circumstances. In 1974 the paragraph 4 was added to the Article 73: if *force majeure* circumstances occur and the senate considers holding parliamentary elections impossible, they can be postponed.[517] Another added paragraph states (73/5) that in such a case the king has also the powers to reinstate and convene the dissolved senate until it is considered safe to hold elections to elect the next parliament. While the lower house is absent the executive is authorised to take care of legislative responsibilities by issuing temporary laws.[518] The right of the king to authorise the executive to take care of legislative matters in the absence of the legislative was absent in the 1952 constitution.

Amending article 94 has made it easier for the executive to issue temporary laws. Currently the circumstances where it is possible to issue laws in the absence of the chamber is described in a far less detailed manner than the original Article 94. In its present form the article states that the senate has a right to issue temporary laws "covering matters which require necessary measures which admit no delay or which necessitate expenditures incapable of postponement"[519]. According to the non-amended article (1952 constitution), the conditions are defined as follows: "[a] A general calamity, [b] A State of war or an emergency, [c] Urgent expenditure which cannot be delayed".[520] The current article 94 does not even include the word 'emergency', only a situation where postponing decisions is not possible. There are two ways of understanding this amendment. A strict reading of the article would suggest that the amendment is corrupting the principle of parliamentary system, as the executive is given wider freedoms to hijack the responsibilities of the legislative. There are some legal experts, however, who argue that even the current wording of

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[517] Constitution, Article 73, Paragraph 4.
[518] Constitution, Article 73, Paragraph 5.
[519] Constitution, Article 94.
[520] Constitution (1952), Article 94, Paragraph 1.

the article does not authorise the executive to freely issue temporary laws whenever it feels like it. Article 94 still deals with exceptional situations.[521] The matter of temporary laws is so significant for this discussion that it will be given a closer look in order to see which one of the understandings has been closer to the implementation of the article.

A series of amendments made to article 73 between 1974 and 1986 is rather interesting. Not only were new paragraphs added but at the same time also existing paragraphs were amended. A significant element in this chain of amendments is the involvement of the legislative, which was only to convene to rubber-stamp the amendments. Another important element is the function of the constitution in Jordan; when the constitution began to be too constraining, it was amended. According to the original article, under normal circumstances parliamentary elections must be held within four months after dissolving the lower house, otherwise the lower house can consider dissolution annulled.[522]

The first amendment was made on November 10th 1974 when the fourth paragraph was added.[523] The paragraph stated that in a *force majeure* situation the king can postpone elections for *a year* without reinstating the lower house.[524] A month earlier the Rabat Declaration was issued, defining the PLO as the sole representative of the Palestinians.[525] Hussein is said to have opposed the Rabat Declaration, as Jordan could not consider the West Bank as part of the country anymore.[526] This exceptional situation, loosing a part of the country, can be seen as a justified reason for postponing the elections. The role of the parliament was rather exceptional in the amendment. The ninth house had already served a full constitutional term and a 24-month extension.[527] Still no elections were held and no lower house formed. The ninth house was called by a royal decree for an extraordinary session in November to discuss the constitutional amendments, and was dissolved immediately after the

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[521] Hammouri, Interviews in Amman May 2003.
[522] An exception to this was a case where the house is convened in extraordinary sessions.
[523] Constitution, Article 73.
[524] Constitution, Article 73, (iv).
[525] Abu-Odeh (1999).
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[527] Khair, Brief Survey of Parliamentary Life in Jordan. 1920 -1987(1988), p. 56.

session.[528] Four months later a 'need' for the fourth paragraph appeared: the king announced the postponement of parliamentary elections for a year (March 17th 1975 - March 17th 1976).[529]

It is worth noting that no elections were nevertheless organised after the 12 months; instead the constitution was amended again in March 1976. The time-limit for the postponement of elections was omitted. Also a new paragraph was added: under *force majeure* circumstances, when elections are postponed, the king can reinstate a dissolved house if the *constitution requires amending*.[530] This amendment thus enabled the king to postpone the elections for an indefinite period.[531] In 1976 the house was convened for an extraordinary session by a royal decree. The amendments were made within 24 hours and the parliament was dissolved again afterwards (while the senate was not dissolved).[532]

In 1984 the article 73 was amended again, this time to authorise the king simply to reinstate a dissolved house with no specific reason.[533] The last amendment of this series made in 1984 authorises the king to hold elections under *force majeure* in constituencies where holding elections are considered possible.[534] A royal decree was issued to reinstate the dissolved house to discuss constitutional amendments. Once the reinstated house had made the amendment it was dissolved.[535] The 1984 amendment was done just before the 1984 by-elections. There were popular demands for holding elections. Some observers say that the by-elections were a trial election for the king to see who would win after the long absence of elections.[536] There were only seven deputies to be elected in the by-elections, thus in the worst case the 'favourable balance' in the house could be maintained. The decision to hold elections would also have helped to create and/or maintain liberal image of the king.

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[528] Hourani and Yassin (1998), p. 41. See also Baaklini *et al* (1999), pp. 146-147; Khair (1988), p. 59.
[529] Hourani and Yassin (1998), p. 41.
[530] Khair (1988), p. 52.
[531] Khair (1988), p. 60.
[532] Baaklini *et al* (1999), p. 143.
[533] Khair (1988), p. 71.
[534] Constitution, Article 73 (vi).
[535] Khair (1988), p. 61.
[536] Shubeilat, Interview in Amman June 2003.

To conclude, not only were most (if not all) of the negative amendment made at the most turbulent times, but also when the lower house was absent or convened to an extraordinary session. Thus these amendments were initiated by the executive and other actors were given hardly any chance to oppose the plans. Although it is safe to say that the people appointed into the parliament in the aftermath of the 1957 crisis were unlikely to oppose any plans of the king. Despite the regional political events the amendments can also be seen to have worked in the favour of the executive.

6.2.2. Temporary Laws: Emergencies

Drafting constitutions - making rules for future conditions that at the time of constitution drafting can only be anticipated - is a tremendous challenge. Although the constitution defines the rules for normal circumstances ('business as usual'), it is acknowledged that there are times when the normal procedures might prove difficult, if not impossible, to follow for the interests of the state (even for the survival of the state). Consequently there are different, alternative sets of rules to be followed in the case of an emergency. In a parliamentary system, the ordinary legislative process can prove too time-consuming when drastic and/or speedy measures are needed. The rights and responsibilities of state powers are re-defined, usually in favour of the executive. Hence there are also clear restrictions when these measures can and will be used in order to eliminate possibilities to the executive (or any other actor) to hijack the legislative powers.

The Hashemite Kingdom is not an exception. The executive has two ways to use legislative power: regulations and temporary laws. The executive can issue regulations in matters dealing with administering state affairs, public funds or government's deposits. The right to pass regulations is strictly limited to these matters only and the parliament has no authority to deal with these matters.[537] Article 94 of the constitution gives the senate the power to issue temporary laws (with the king's approval) providing that "the National Assembly is not sitting or is dissolved".[538] Thus the senate can use legislative powers only when there is no legislative body to pass laws. Furthermore, there is a distinction between laws and temporary laws. Once the next national assembly is in session temporary laws issued will be presented to it in the beginning of its first session. The deputies can either reject or accept the law (or make amendments). If the national assembly decides not to pass the temporary laws the executive powers have to cancel them.[539]

Temporary laws have been issued in Jordan since the 1950s, but never before has a

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[537] Constitution, Articles 45, 114 and 120. See also Hammouri (2003), p. 4.
[538] Constitution, Article 94.
[539] Constitution, Article 94.

government issued so many temporary laws as Ali Abul Ragheb's second government between June 2001 and April 2003. Since the dissolution of the lower house in June 2001 until the parliamentary elections on June 18th 2003 the Ragheb government issued nearly 200[540] temporary laws. According to Hammouri's calculations, on average eight laws were issued each month.[541] The Ragheb government had sessions twice a week, thus one new temporary law was discussed in each of the sessions. When compared to the rate previous parliaments have issued (ordinary) laws one can easily see the difference. The three previous legislative bodies produced 146-190 laws each in a 4-year term, which would make 3 laws a month.[542] This is a rather modest estimate, as this calculation was based on 160 temporary laws, instead of the 200 laws.

The matter is controversial due to the number of temporary laws issued as well as the circumstances of that period. Based on the amount of temporary laws issued by the government in those 21 months one could easily conclude that either Jordan seriously lacked laws or the *force majeure* situation was extremely severe. First, as Professor Hammouri points out, Jordan "was not a barren desert with no legislation to organize life in it".[543] Also the political situation hardly qualified as an emergency. Hammouri stresses that although the current constitution does not define the emergency situation in detail (unlike the 1952 constitution) not every exceptional situation can be considered as an emergency. Article 13, Hammouri points out, describes reasons for a possible emergency: war, public, danger, fire, flood, famine, earthquake, serious epidemic. In June 2001 when King Abdullah II postponed elections no emergency endangering the safety of the population had occurred in Jordan.[544]

Yet the degree and the amount of the temporary laws issued suggest something else. The first temporary law was issued on July 19th, the parliament having been

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[540] Hammouri (2003), p. 11.
[541] It is important to note that Prof. Hammouri made these calculations based on the assumption that there were 160 temporary laws, but the amount of temporary laws was increased to closer to 200 by the end of the period of emergency law.
[542] Hammouri (2003), pp. 12-13.
[543] Hammouri (2003), p. 11.
[544] Hammouri (2003), p. 11. See also Constitution, Article 13 (i).

dissolved just a few weeks earlier. Why then to dissolve the parliament if new laws were needed urgently? It is not realistic to assume that between June 16th (the house dissolved) and July 19th (1st law passed) there would be enough time to start drafting the law from scratch, particularly when the king announced postponing the elections on July 24th after passing the first temporary law. Based on this, the contents of the first temporary law are rather surprising (in the context of the '2001 emergency'): "the Law of General Election to the House of Deputies" (July 19th).[545] Even analysing the titles of the temporary laws makes it no easier to find justification for them. The temporary laws passed between 2001 and 2003 deal with a wide range of issues, but no only matters of urgency or emergency in a conventional sense of the word: from veterinary syndicate to orphans fund and insurance execution. Yet hastiness in issuing the laws seems rather apparent. For instance, the temporary law on public universities in Jordan (no. 42) was issued in 2001 and amended twice the following year, while the companies law (no. 4) issued in 2002 was amended twice the same year and once the following year. These are just examples of many similar cases of temporary laws passed and amended within the period of 2001-2003. Thus the velocity of issuing laws implies that the government in question, Hammouri argues, has broken the principle of "mature formulation" of laws. [546]

Not only is the speed of issuance of temporary laws of a concern, but the government's actions have other consequences too.[547] These temporary laws have placed an enormous burden on other actors. According to Hammouri, if the next parliament tried to discuss all the temporary laws issued thoroughly (spending as much time as the parliaments before it), it would not have enough time to do so. Thus the next parliament would not have time to discuss any laws of its own, and it would have to leave some of the temporary laws for the parliament after it.[548] Thus the second Ragheb government, in the absence of the elected house, has been busy keeping the next two chambers busy. The situation is equally challenging for legal scholars and practitioners, as they are facing the tremendous task of keeping

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[545] Hammouri (2003), p. 12.
[546] Hammouri (2003), p. 16.
[547] Hammouri (2003). Interview with al-Oran in Amman 2003.
[548] Hammouri (2003), p. 13.

themselves informed of the changes in the legislation.[549] Legal practitioners feel that it is an enormous burden to keep up with the fast changing legislation. It requires money and time on their part.[550] Hammouri is not the only Jordanian legal practitioner who sees the situation reaching the limits of unconstitutionality. Asma Khader, appointed as the Minister of State and the government's spokesperson after the 2003 elections, describes the last three decades as "three decades of emergency laws" where "the constitution and laws have been frozen".[551]

Hammouri also considers the clarity of these temporary laws as questionable. It is "hard not to regard these laws but as a black mark".[552] According to Hammouri, among these laws there are several including the following stipulation (as "unified text"): "no provision of any other legislation may be applied should its application incur a contradiction with term of this law".[553] This stipulation, argues Hammouri further, is unique in any existing legal system. Many Jordanian laws issued before the (Ragheb) temporary laws, or parts of them, have been cancelled. Yet it is not clarified which of already existing laws have affected and which not. Hammouri stresses, that this stipulation (and its impacts) is such a significant matter that it requires urgently massive amounts of comparative legal research. This will probably, claims Hammouri, produce at least partly controversial results.[554] To make an already complicated situation even more complicated there is another stipulation that requires attention in this context. The Jordanian constitution, as shown before, authorises the next legislative to discuss any temporary laws, yet with the condition that nullification "shall not affect any contracts or acquired rights".[555] Hammouri suggests that in theory it would be possible to issue temporary laws in order to make financial agreements and arrangements that would stay "valid and financially binding" although the temporary laws enabling them would be rejected. This has, to say the least, a rather unbalancing impact on the whole governmental system not

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[549] Hammouri (2003), pp. 14-15. Interviews with Hammouri and al-Oran in June 2003 Amman.
[550] Al-Oran interview in Amman May 2003, Hammouri interviews in April-June 2003.
[551] Interview with Khader in June 2003 in Amman.
[552] Hammouri (2003), p. 14.
[553] Hammouri (2003), p. 14.
[554] Hammouri (2003), p. 14.
[555] Constitution, Article 94.

least to the principle of the rule of law. [556]

The temporary laws issued by the Ragheb government do not qualify as temporary laws (as defined in the constitution) on the substance matter nor on the context (non-emergency). Yet why are the laws issued and who is to blame? In a parliamentary system it is a right and responsibility of the elected representatives to "improve and modernise" the legislation. So, why then was the chamber dissolved and elections postponed? In a parliamentary system it is a "constitutional sin" to make the law-making body absent and thus to gain the (temporary) right to pass laws, particularly in the absence of a genuine emergency.[557] Hammouri argues that it is not possible for the government "to seek protection or take cover with the King", as the monarch decides on the dissolution of the chamber and the postponement of elections. According to the constitution, Hammouri points out, the king cannot do it without the prime minister and the minister/s concerned signing the royal decree as well.[558] To summarise, Hammouri perceives the government's decision to postpone elections as a "flagrant legal mistake" and the nearly 200 temporary laws another "flagrant legal mistake". The paragraphs (iv-vi) of the article 73 were added when the West Bank was occupied. The occupation can be justified as an emergency.[559]

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[556] Hammouri (2003), p. 15.
[557] Hammouri (2003), pp. 17-18.
[558] Hammouri (2003), pp. 18-19.
[559] Hammouri (2003), p. 21.

Summary

The Jordanian constitution defines the governing system of the Hashemite kingdom as a parliamentary monarchy. It describes a rather standard parliamentary system based on the principle of separation of powers. The exception to the liberal parliamentary system is the strong position guaranteed to the monarch. Not only is the king the head of the state but he is granted executive and legislative powers as well. The legislative powers are shared by the monarch and the parliament. The members of the lower house are elected, but the senate is appointed by the king, while the lower house has no constitutional authority to influence the composition of the senate.

The aim of this chapter was to find out whether there have been any significant changes in the constitutional design or constitutionality in Jordan as a consequence of the political changes. It is justified to state that there have been no significant improvements in either respect. Changes have been made in the constitutional design, yet *prior* to 1989. It is also worth noting that these changes were by no means improvements. The constitution in force today was promulgated in 1952, yet the text has been altered through several amendments since. All amendments were made before the political opening of 1989 and there have been no plans to make any since 1989. The amended constitution includes the same basic elements as the 1952 constitution, yet the powers of the king have grown bigger at the expense of the legislative. Hammouri describes the current situation as a table with uneven legs. The system of governance defined in the original constitutional text was a solid table standing on equally strong legs, while the current system stands on unequal legs: one has grown massively while others have shrunk.[560] Owing to the amendments, the way they were made and their impact on the constitution, it is questionable whether constitutionalism and constitutionality exist in Jordan, prior to or since 1989.

The constitutional design has thus not changed since 1989, nor have there been any improvements with a regard to constitutionality. In accordance with Brynen's view it

is admitted here the Jordanian constitution has certainly been more than a "meaningless piece of paper".[561] The constitution has not fully constrained the rulers, but nevertheless has not been ignored either. The Jordanian rulers have acknowledged the significance of the constitution as the superior law and the primary source of legality. However, the point of disagreement with Brynen is the degree to which the constitution actually has "defined politics and political liberalization" in the country. It is argued here that it is politics that has defined the contents of the constitution, both before and after the 1989 parliamentary elections. At times when obedience to the constitution seemed less attractive (or impossible), whether threatened by leftwing radicals or Islamists, King Hussein chose to amend the constitution instead of ignoring it altogether. It is stressed here that the aim of using the constitution was to guarantee the survival of the Hashemite rule, not to promote political development. Despite this Brynen argues that the "constitutionalism" in Jordan has been "often more than appearance".[562]

It has not been very difficult for the kings to keep up with the 'constitutional appearance', either prior or since 1989. The space for the king to manoeuvre was extended significantly in the 1950s and the 1960s, particularly when considering that even without amendments the king was the most powerful actor. Another point to be made on Brynen's argument is his understanding of "Jordanian constitutionalism". As defined in the beginning of this chapter the term constitutionalism here refers to an ideology aiming at constraining the state powers. King Hussein does not appear to be the most constrained ruler. Whenever he needed the backing of the constitution (to legitimise his actions), he did not hesitate to amend the constitution, even to reinstate a dissolved chamber of deputies just to amend the constitution. To be fair all this occurred before the political opening. However, the amendments made the constitutional design so flexible that it might simply be the reason why no further amendments were made since. The only remarkable change occurred is not related to the political opening, but to a fundamental change in the political elite.

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[560] Hammouri, Interview in Amman June 2003.
[561] Brynen (1998), p. 76.
[562] Brynen (1998), p. 77.

A new king has brought with him a different approach. King Abdullah has chosen an approach that combines something old with something new. To keep up with the constitutional appearance Abdullah II has chosen not to amend the constitution but to interpret it loosely to suit his purposes. Abdullah's decision to postpone parliamentary elections in 2001 and to use the emergency clause of the constitution without comprehending, or respecting, the meaning of the constitutional text is a "constitutional sin", as Hammouri argues. An emergency that requires urgent changes in the car insurance legislation or in the laws on private universities is a pretty unusual national emergency. According to King Abdullah II the decision was justified: "We have last year deemed appropriate to postpone parliamentary elections, until a modern elections law is finalized, and the necessary arrangements are in place to conduct elections. When this was concluded, we found that the *difficult regional* circumstances dictate that we postpone these elections, even if for a while, although we sincerely wished for different circumstances, that would enable us to conduct elections on time. But our wish for these elections to be free and fair, and *unaffected by regional influences* and circumstance, left us no choice but to postpone them".[563] In the king's statement there is no reference either to the constitution or the looming national emergency. The king's primary concern appears to be the impact of the regional influences might have on the outcome of the elections, not the safety of the nation. A skeptical mind reads the king's statement as an attempt of electoral engineering.

The argument about keeping appearances loses its relevance in this context. It must be said that true constitutionalism (constraining the ruling powers) has not existed in Jordan, prior to 1989 or since. Furthermore, it is argued that Brynen's understanding of constitutionalism resemblances of the understanding of constitutionality adapted here. It is, however, evident that Jordan is another case of Arab Constitutionalism. The constitution has perceived by the king first and foremost as a tool to augment political authority of the Hashemites. Whether this has weakened the judiciary and the legislative in practice will be discussed in the next two chapters.

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563 Address to the Nation by the HM King Abdullah II, Amman, Jordan. http://www.jordanembassyus.org/hmka08162002.htm Italics added.

To argue like Baaklini (*et al)* that the amendments were done to within "the rule of law" is not justified. Unless Baaklini's (*et al)* understanding of the term differs fundamentally from the one adapted here. Constitutionality of the amendments was seriously compromised by reinstating the house only to rubberstamp the amendments. Based on the findings of this study it does not appear that King Hussein was as concerned about staying within the rule of law as he was concerned about staying in power. It is also argued here after analysing the constitutional design and its implementation that the rule of law is not upheld in Jordan. Not during the period the study by Baaklini *et al* covered, and not during the reign of King Abdullah II so far. More importantly there is no evidence the political opening to have any impact on the rule of law after examining the constitution and constitutionality in Jordan. In addition to the possible different understanding of the term it has to be acknowledged that they studied the legislative, not the judiciary. More precise picture of constitutionality in Jordan can be given after analyzing the judiciary and the political rights in the next chapters.

Reforming the constitution in force, or even going back to the original text, it is argued here, is not required for democratisation to commence in the Hashemite kingdom. The amendments of the late 1950s and the 1960s left the fundamental elements of the system untouched: no amendments were made on the very first chapters defining the aim of the constitution (parliamentary monarchy), nor on the chapters on the citizens' rights. The matter is primarily dependent on the *implementation* of the constitution, and thus above all on political will. The current constitution provides an adequate framework, yet rather elementary for a democratic state. It is not argued here that the constitution in force is a flawless document. Nevertheless it is stressed that the lack of constitutionalism in Jordan is not owing to the flaws in the constitution, but the flaws in using it.

Brynen predicted in 1998 that "in the post-1989 period, both the constitution itself and a legacy of Jordanian constitutionalism will play a central role in defining the legal terrain upon which the ebb and flow of liberalization is played out".[564] This interesting view will be discussed further in the next chapters. Based on this chapter

there are no grounds to perceive the political changes as 'democratisation', but it is too premature to make the final conclusion, as there are two more elements to study. The independence of the Jordanian judiciary will be analysed, followed by a chapter on political participation.

[564] Brynen (1998), p. 77.

7. THE JUDICIARY IN JORDAN

Introduction

An independent judiciary is not only crucial for an effective legal system, but also a cornerstone of the rule of law. Regardless of the understandings of the rule of law, the basic requirement for the rule of law is the existence of the judiciary able to provide the subjects of the law effective legal services. The Hashemite kingdom is no exception. Therefore, the aim of this chapter is to examine whether this cornerstone of the rule of law exists in Jordan. To identify whether the rule of law is embedded in Jordan it is important to examine both the design and the implementation. The former is done through analysing the current constitution and other related legislation. Do the structures of the legal system defined in the legislation support the independence of the judiciary? Special attention will be given to structural elements that compromise the independence of the judiciary: the state security courts, tribal law and the question of judicial review.

The judicial independence in Jordan is assessed with the help of the *United Nations Basic Principles*, as to make the vast and complicated matter more approachable. The Basic Principles suggest approaching the independence through six subcategories. This will make it easier to highlight the elements that might be compromising the independence. To give the analytical task more structure the elements assesses are also divided into structural and decisional independence. The former is used to refer the physical working conditions of the judges and the latter the sense of freedom to practice law without external interference experienced by the judges.

7.1. THE STRUCTURE OF THE JORDANIAN LEGAL SYSTEM

The Jordanian constitution defines the structure of a rather 'standard' legal system, one belonging to the civil law family.[565] It is a "dual system", like many legal systems in the Arab Middle East. It is a combination of two "conceptually different legal traditions": Western and Islamic.[566] The legal system is constructed according to Western (constitutional) models, yet also incorporates the Islamic law. This is usually done basing criminal and civil law on Western examples and the personal status code on the Shariah law.[567] The main influences on the Jordanian system have been the legal traditions of the foreign (occupying) powers, the Ottomans and the European colonial rulers.[568] The Jordanian constitution defines Islam as the religion of the state.[569] Yet, there are, as al-Jazy points out, no stipulations that would give (or not give) Shariah a special role "as 'a' main source or 'the' main source of legislation".[570] Unlike in Saudi Arabia or Unified Yemen, Islamic law in Jordan is only the basis for personal status code, (e.g. matters to deal marriage, divorce and child custody), and there are separate courts for the Shariah law.[571]

The constitution is the highest legal authority defining the Jordanian legal system.[572] According to the constitution, the judiciary in Jordan is built on three sets of courts:

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[565] Simplified the civil law tradition is based on broad legal principles and interpretation of doctrinal writings, while the common law tradition is based on traditional unwritten law, based on custom and usage.

[566] Warrick, Law in the Service of Legitimacy: Gender and the Political System in Jordan(2002), p. 8 and p. 20.

[567] Warrick (2002), p. 8 and p. 20. See also 'Jordan – the Judiciary', http://countrystudies.us/jordan/57.htm (US Congress Library).

[568] Massad (2001), pp. 23-24. Joseph Massad argues that the British influence has been greater than has been acknowledged, particularly by the Jordanian nationalists.

[569] Constitution, Article 2.

[570] Al-Jazy, Civil and Political Rights in the Constitutions of the Arab States: A Comparative Analysis with Special Reference to Egypt(2000), p. 45. Unlike in Jordan, for instance, the Egyptian constitution defines the Shariah as the main source of legislation.

[571] Constitution, Article 103, Paragraph (ii). In some dual systems despite personal status code being based on different legal tradition all civil matters are tried in the same courts. See Warrick (2002).

[572] Recently new documents has been produced, although their status, particularly in relation to the constitution itself, is under dispute. The National Charter was produced by "60-member royal commission" in the early 1990s to mark the 'new beginning'. The role of the document is unclear, yet it clearly cannot be taking the role of the constitution. It is not a legal text and has no legal authority. It is more a declaration of a governmental agenda. According to a government source, however, the National Chart "along with the Jordanian Constitution, provides a compass the national debate on fundamental issues". (http://www.kinghussein.gov.jo) There are some who keep referring to it when

civil, religious and special courts. Several judicial principles are acknowledged in the constitution: equality of the subjects of the law, publicity of legal affairs and the independence of the judiciary. Regardless of their type, all "courts shall be open too all and shall be free from any interference in their affairs".[573] Sessions of the courts are public, with the exception of matters that require *in camera* sessions due to the nature of the matter (public order or morals). The decisions made *in camera* trials must be made public.[574] While the constitution draws the general lines for the legal system, details are often left to "provisions of laws", such as regarding the "various courts, their categories, their divisions, their jurisdiction and their administration".[575] Furthermore, the amount of details varies depending of the type of the court.

Civil courts, from Magistrate Courts to the Supreme Court and the Court of Cassation, adjudicate civil and criminal matters that are not assigned to the other courts, religious or special.[576] The civil courts are structured on four levels: magistrates courts, courts of first instance, appeal courts and the Court of Cassation. While the 14 magistrate courts deal only with minor civil claims[577], the first instance courts adjudicate all cases. The Court of Cassation also acts as the Supreme Court. The decisions of the Supreme Court consisting of a president and seven judges are final.[578] The president of the court, the seven judges, the Administrative Attorney General and the assistant are appointed by a royal decree upon decisions by the Higher Judicial Council, a 10-member administrative body consisting mainly of senior judges.[579]

Religious courts include the Shariah courts and "Tribunals of other Religious Communities", (currently the Christian churches). The Shariah courts exercise jurisdiction according to the Shariah law in three types of cases: personal matters

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talking about the system of governance in Jordan. See Obeidat, Democracy in Jordan and Judicial Control(1995) and Hikmat, Democracy and Judicial Control in Jordan(1995).

[573] Constitution, Article 101 (i).

[574] Constitution, Article 101.

[575] Constitution, Article 100.

[576] Constitution, Article 99.

[577] Minor claims are cases that are worth up to 250 Jordanian dinars or criminal cases of worth 100 dinars or maximum one year sentence.

[578] Wazani, Interview in Amman May 2003 and Afif Amin, (Judicial Institute), Interview, in Amman June 2003.

[579] McDermott, (2003), p. 6.

when all of the parties are Muslims, or the cases dealing with "blood money" (*diya*) if one of the parties is Muslim, or if all non-Muslim parties agree to the case being brought to a Shariah court, and in matters related to Islamic *waqfs* (charity).[580] Inheritance law, both for Muslims and non-Muslims, is also based on Shariah.[581] Standard cases are decided by five judges, more severe cases by all seven. In the Shariah courts there is only one judge (*qadi*) in each court to hear the cases and make decisions, while in the Christian courts there are three judges.[582]

The *Supreme Court* acts as the administrative judiciary. The Supreme Court as an administrative court was given a wider range of competencies when the law on the Supreme Court was amended in 1992.[583] The Court deals with election appeals of civil society associations (professional and civil associations and the Chambers of Industry and Commerce) while earlier appeals could only be made on elections at municipal, local and administrative councils. The court's jurisdiction includes all appeals against *final* administrative decisions, even the ones that include an immunisation clause. Prior to 1992 the cases with immunisation clause were excluded from the court's the jurisdiction.[584] The Supreme Court is also a court for compensation and court for annulment, while it was earlier only a court for annulment.[585] Ahmad Obeidat, former prime minister and the chairman of the National Human Rights Commission, sees the 1992 law as "a really positive step towards completion of the judiciary authority" and "democratic development".[586]

The only *special courts* mentioned in the constitution are the High Tribunal and the Special Tribunal (*Diwan Khass*). The High Tribunal, as discussed before (see the previous chapter), is authorised to interpret the constitution and the Special Tribunal the constitutionality of laws.[587] While the constitution is rather vague about the civil and the religious courts, it leaves even more details open about the special courts. Out of the fourteen articles of the constitution dealing with the judiciary only one

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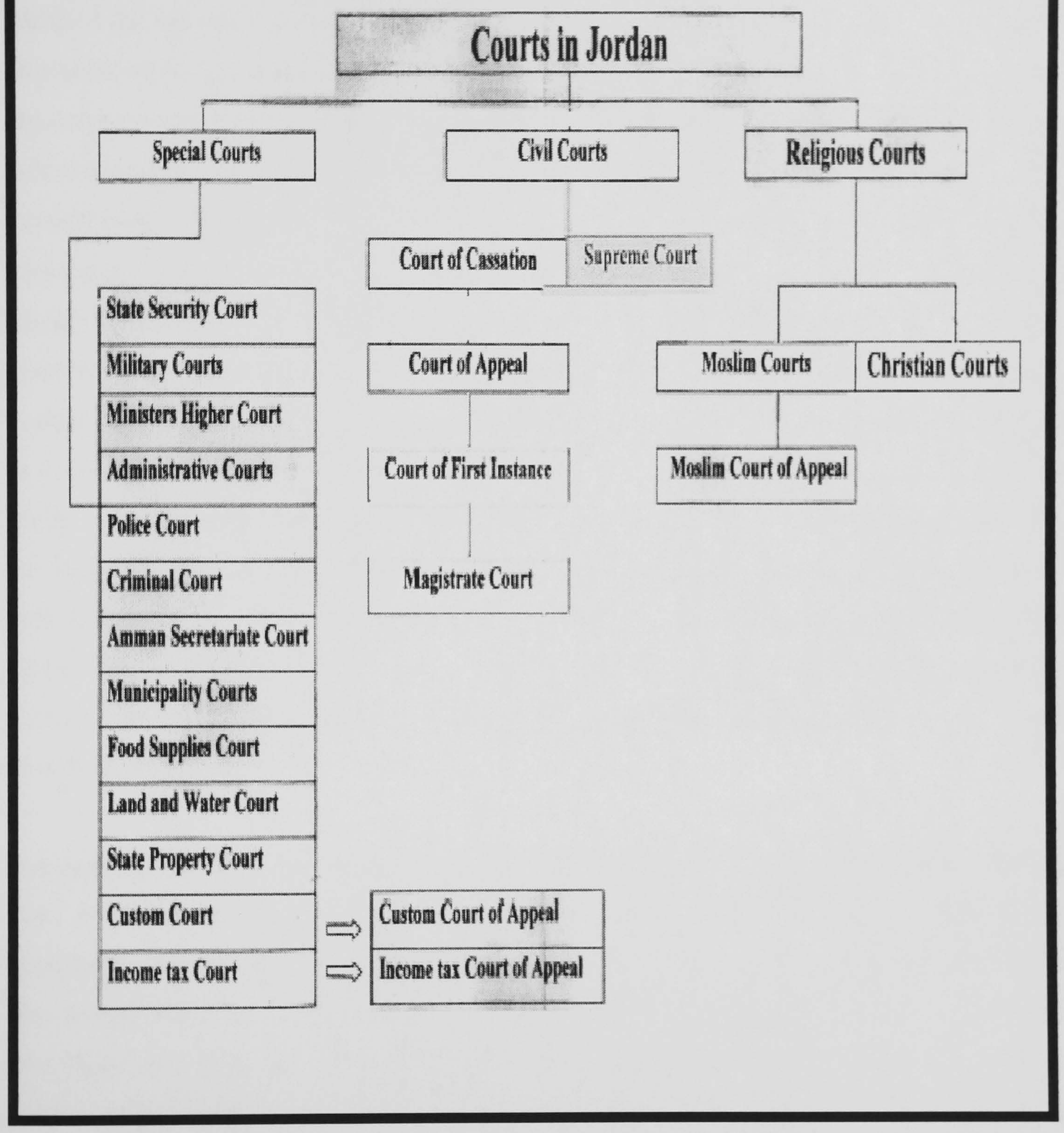
[580] Constitution, Article 105 and 106.
[581] Jordan 2002 Report, 2003.
[582] Jordan - The Judiciary, 1. http://countrystudies.us/jordan/57.htm (US Congress Library)
[583] Obeidat (1995), p. 43.
[584] Obeidat (1995), p. 44; Hikmat (1995), p. 76.
[585] Obeidat (1995), pp. 43-44.
[586] Obeidat (1995), p. 43.

deals with the special courts. All the constitution says about special courts is that "special courts shall exercise their jurisdiction in accordance with the provisions of the laws constituting them".[588] Thus not much is revealed in about special courts' jurisdiction, role or their composition. The appointment of judges for civil and religious courts, the constitution defines, is done by a royal decree. Yet nothing is said about the appointment of judges for the special courts.[589] This makes the courts unequal in relation to each other and the legal system in this respect is 'unbalanced'. More importantly these stipulations are in a contradiction with the judicial independence guaranteed by the constitution.

[587] Constitution, Article 122.
[588] Constitution, Article 110. See Chapter Six (the Judiciary): Articles 97-110.
[589] Constitution, Article 98.



The Structure of the Legal System in Jordan
Source: The Judicial Institute, Amman, 2003.

In the constitution there are a number of stipulations to ensure that everyone is subject to the law. The only exception is the king who as the head of the state is provided with immunity against criminal prosecution. While there are ways of state agencies monitoring each other, citizens can seek to restore their rights if any administrative decision violates their constitutional rights. According to the constitution, citizens have the right to "address the public authorities" in matters regarding public affairs affecting them or their relatives.[590] State agencies are subjected to civil law regulations and are treated as a single individual. People can demand annulment of any non-constitutional administrative procedures or suspension of unconstitutional temporary law or by-law. Quite surprisingly annulment is justified only if the procedure is based on unconstitutional law (or by-law). Yet it does not include the unconstitutional law itself. Also the suspension of an unconstitutional law is not applied to the final law itself. Thus the Supreme Court is not authorised to deal with the constitutionality of laws, only with procedures and by-laws. Taher Hikmat sees, however, the difference between annulment of procedures based on unconstitutional law and declaring laws unconstitutional as "merely theoretical".[591]

According to the constitution, ministers can be tried in the High Tribunal. Senators can impeach ministers when two-thirds from the lower house supports the impeachment. In such a case the Penal Code will be used or a special law in case the Penal Code is not applicable. Minister will be suspended from the office during the trial, and trial will continue even if the minister/s resign.[592] The constitution is vague regarding the terms of minister's immunity. Some see it to be applying to only current ministers, others to all ministers, previous and current. There have been (major) corruption cases in which both former and then current ministers involved have not been prosecuted, as there has been confusion on the legal details. It was argued that previous ministers should be tried in regular courts, which they later argued did not have the authority to deal with such matters. This interpretation

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[590] Constitution, Article 17.
[591] Hikmat (1995), p. 77.
[592] Constitution, Articles 56, 58 and 59.

considers that the constitution refers only to current ministers; in effect, Sakijha and Kilani point out, would provide 450 Jordanian ministers with immunity. Thus ministers who committed criminal offences while in office cannot be tried when they are not in the office anymore.[593]

The constitution guarantees a number of legal rights central to the rule of law: equality before law, the right to appear in front of an independent court and protection against illegal detainment or imprisonment.[594] There are, however, no references in the constitution to principles and procedures such as the presumption of innocence, suspension procedures, or the right of defence. This does not necessarily mean that these rights would be utterly excluded from the Jordanian legal system. In effect, some argue that the articles guaranteeing equality of all and non-discrimination are wider guarantees and include the missing ones.[595] Furthermore, more rights are guaranteed in other legislation. According to the law, litigation procedures in Jordan are based on the principle of presumption of innocence, and defendants are entitled to counsel.[596]

To summarise, the legal system described in the constitution is a 'standard' dual system. Islam, the state religion, is acknowledged as a part of the legal system, yet not the predominant element. The constitution recognises the principle of the independence of the judiciary: judges must be free from any interference and subject to nothing but the law.[597] It also includes the guarantee of the independence of courts.[598] Regardless of the acknowledgement of these principles the legal system contains tribunals and courts that are not fully controlled and administered by the judiciary. The existence of extrajudicial bodies compromises the monopoly of the judiciary. The special courts in particular have a controversial role. The legislation regarding the special courts is easier to change, as they are (almost totally) outside the constitutional framework. As mentioned earlier, the constitution is less detailed

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[593] Kilani and Sakijha, National Integrity Systems(2001), p. 6. The corruption cases referred to: a case that ministers had been involved in buying gold from the Jordanian Central Bank and cases that some ministers had been involved in bigger construction projects.
[594] Constitution, Articles 6 (i) and 8.
[595] Al-Jazy (2000), p. 57, p. 117 and p. 121.
[596] Halasa (2000), p. 86; McDermott (2003), p. 7.
[597] Constitution, Article 97.

regarding the special courts, which makes the situation even less satisfactory. Not only are the special courts 'extrajudicial' with the regard to their composition (military judges) and the role of the executive in monitoring special courts, but with the regard to their stability. The legislation covering special courts can be approached through 'ordinary' legislation, while amending the jurisdiction of the other courts requires amending the constitution.

[598] Constitution, Article 101 (i).

7.2. EXTRA-JUDICIAL POWERS

7.2.1. State Security Courts

State security courts belong to the 'less transparent' part of the Jordanian judiciary. The organisational details, as mentioned earlier, are left open in the constitution and are mainly defined in the provisions of laws. State security courts deal with cases of "sedition, armed insurrection, financial crimes, drug-trafficking, and offences against the royal family"[599]. Unlike those of other courts, the sessions of the state security courts are not open to the public, yet most decisions are customarily published in the Official Gazette. The courts' verdicts will be automatically reviewed by the Court of Cassation, but no appeals can be made.[600] A questionable element of the state security courts is the *composition* of the court. There are three judges: two military officers and one civilian. Civilian legal practitioners have criticised the military officers' role in the cases where civilians have been tried. It is argued that military officers do not possess the legal expertise, yet the government reports suggest otherwise. In the past there have also been allegations of the defendants being psychologically and physically tortured while in detention. There have also been reported cases of pre-trial detention where defendants have been denied the right to meet their legal representatives.[601] The amendments made to the state security court laws as a temporary law in 2001 weakened the rights of defendants. The amendments expanded the prime minister's powers to refer cases to state security courts. The maximum length for incommunicado detention was increased from two to seven days. The right to appeal was abolished for the minor misdemeanors (3 years or less).[602]

The state security courts seem to have been busy with cases which some might consider as being nothing but attempts to silence political opposition in Jordan. The two cases referred below have two things in common. The cases have been

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[599] US State Report (2003), p. 9.
[600] Al Ahram (2002), p. 2. http://weekly.ahram.org.eg
[601] US State Report (2003), p. 5.
[602] McDermott (2003), p. 7.

controversial; the most vocal members of the opposition have been accused of expressing their critical opinions in public. The defendants in both cases were very popular and outspoken Jordanian opposition politicians, yet from different ends of the political spectrum. Leith Shubeilat is an independent Islamist, a former deputy and the president of the Jordanian Engineers Association (JEA) - the most powerful professional syndicate in Jordan. He characterises his significance himself: "We have no opposition in Jordan, I am the only opponent".[603] According to Shubeilat, the government's representatives have indirectly made threats to his and his family's safety. He claims that his telephone calls have been intercepted, his house placed under surveillance and his family received threats.[604] Shubeilat, known for his anti-normalisation policy towards Israel, has been tried in the state security court three times, and even sentenced to death once. On all occasions late King Hussein intervened and pardoned Shubeilat.

The first time around Shubeilat was arrested and tried in the state security court in 1992. He was accused, together with three other people, of belonging to a terrorist organisation, *Al-Nafir al-Islami* (Islamic Herald). All accused were given a death penalty. Shubeilat argues that the testimonies were false and the organisation did not even exist. The work of the defence team was made challenging as the witnesses' identities were sealed. The sentences were turned into life sentences and 48 hours later all those convicted were pardoned by the king.[605] Rather conveniently Shubeilat's trial interrupted his ongoing campaign against corruption. It was publicly known that Shubeilat was about to indict Zayd al-Rif'ai, a close friend of King Hussein.[606] Shubeilat was rearrested in December 1995 and his second trial began in January 1996. This trial demonstrated yet again the lack of respect for defendant's rights or a regard for the process of law. Shubeilat was arrested without the possibility of bail and his family was not allowed to meet him. There were accusations of "procedural errors including illegal alteration of documents (such as the changing of page numbers and dates of his interrogation), questioning of Mr. Shubailat beyond the scope of the charges against him, denial of legal counsel prior

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[603] Shubeilat, Interview in Amman in June 2003.
[604] Shubeilat, Interview in Amman in June 2003.
[605] Al Ahram, 2002. http://weekly.ahram.org.eg/2002/615/re1.htm
[606] Brand (2000), p. 110.

to (but not during) his trial, the court's arbitrary veto of all of the defense's questions to state witnesses, and the state's refusal to call upon all of the witnesses for the defense".[607] The evidence produced by the prosecution were speeches written by Shubeilat, some only drafts never publicised anywhere.[608] Shubeilat was given a 3-year prison sentence for slander, but later the same year released by the king. Ironically King Hussein - the target of Shubeilat's slander - drove to the prison himself to release Shubeilat and gave him a lift home.[609]

Shubeilat was arrested again in 1998 after giving a speech at a mosque in Ma'an, southern Jordan. Shubeilat was sentenced to three years imprisonment based on a "shameful act that is directed against the king". Shubeilat was later pardoned by King Hussein, but he refused to accept the pardon as he was expecting the sentence to be overturned. The appeal was rejected and Shubeilat served the full sentence. An alarming, new element of this trial compared to the previous two trials was a publication ban declared by the executive. Although in the state security courts cases are not public their details have customarily been reported in the media. In this case it was not even a possibility. A series of letters were sent to provide the press with 'guidance'. The first letter from the Ministry of Information was sent to the press to ban all press coverage, "any news or commentary".[610] The contents of the letter and the response by legal experts was published in Jordanian newspapers. This is believed to have upset the executive who sent another letter. The second letter reminded the press of the ban and stressed that violating the ban would lead to criminal prosecution. Also a third letter was sent, this time from the state security court on the day the trial against Shubeilat began. Once again the members of the press were made aware of the publication ban and the consequences of disregarding it.[611]

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[607] AAAS Human Rights Action Network: http://shr.aaas.org/aaashran/alert.php?a_id=28 and Human Rights Watch: http://www.hrw.org/press98/aprl/jordan2.htm
[608] Human Rights Watch / Middle East (1997), p. 21.
[609] Human Rights Watch / Middle East (1997), p. 21.
[610] Human Rights Watch / Middle East (1998) 04/09. http://hrw.org/english/docs/1998/04/09/jordan1091.htm
[611] Al-Ahram (2002). http://weekly.ahram.org.eg

The other opposition politician tried in the state security court is Toujan Faisal, the first Jordanian female deputy.[612] Faisal, a member of the Circassian minority, is a controversial politician known for her outspoken views. Faisal had made public accusations against the Abu Ali Ragheb's government in 2002. In an online letter addressed to King Abdullah, she accused the prime minister, a member of the political inner circle, of issuing a law for private financial gains and of the judiciary of being corrupted. In the same year in Baghdad, Faisal also expressed her frustration regarding the government's Iraqi policies. She was charged under an anti-terrorist act of four counts of seditious libel in 2002. Once again the reports from the trial are not the most encouraging in response to it being a fair trial with due process. Furthermore, Faisal had no choice other than to act as her own defence, as all the defence lawyers quit as a protest against the restrictions laid by the state security court. Her lawyers wanted Farouq Kilani, former Chief Justice, and Abu Ragheb himself to be called as witnesses, but the court refused to subpoena them.[613] Faisal was sentenced to an 18-month term of imprisonment for "disseminating information abroad and in Jordan, undermining the reputation of the state and that of its officials, defaming the judiciary and offending religious sentiment"[614]. Faisal was pardoned by King Abdullah II in June 2002, after a 29-day hunger strike. The special pardon was made by the royal decree on the basis of "humanitarian grounds".[615]

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[612] Faisal was charged for apostasy in 1989, even though there is no apostasy law in Jordan. The shari'a appeals court finally declared Faisal not guilty. The dispute was regarding Faisal's perceptions on interpretation of the Islamic law. See Brand (2000), p. 146.
[613] http://www.fidh.org/communiq/2003/jo2605a.htm. See also Amnesty International.
[614] Al-Ahram (2002), 23-29 May.
[615] Jordan Times (2002) June 27. http://www.jordanembassyus.org/06272002001.htm

7.2.2. Tribal Law

There is an element that cannot be left out when talking about a legal system in Jordan. As in many other Arab countries there is a more traditional, or 'original', ('legal') institution that lives alongside the formal - 'modern' - legal system: tribal law. Tribal law, common in the most Arab countries, has its origin in the pre-Islamic era or the early Islamic period, thus is not necessarily 'Islamic' in content.[616] In cases of settling disputes, tribal status and loyalties are sometimes the (primary) carrying force, and the formal legal procedures are passed.

To start with it has to be said that among the Jordanian legal experts interviewed for this study the opinions on tribal law are divided in two respects. Some dispute the very existence of tribal law in Jordan, arguing that it is an element belonging to the past. According to Taher Hikmat, former Chief Justice and former Minister, tribal law ceased to exist in Jordan in May 1976 when a law was issued to abolish it. Hikmat argues that tribal law exists only in societies where the state is not strong enough.[617] Thus Hikmat appears to believe, while denying the existence of tribal law in Jordan, that there is no need for tribal law in Jordan. The Jordanian state is strong enough to provide alternative means for receiving justice. Among those who reckon that tribal law is an existing institution, there is no consensus on its significance. Regardless of differences in opinion all the interviewees stressed that tribal law is not codified; it is not included in the formal legal system. The constitution does not even mention the tribal law, although there was still a considered need to abolish it in the 1970s. Sonbol argues, however, that when the tribal law was abolished in 1976, "certain aspects" of tribal law, including *diyya* (blood money) traditions, were integrated into existing legislation. Sonbol even considers tribal law as "an important basis for the way judges rule in Jordanian courts".[618]

It is another issue as to whether the law in the mid-1970s had the impact expected. Leila Sharaf claims that tribal law was indirectly the reason leading to her resignation

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[616] Sonbol, Women of Jordan(2003), p. 44.
[617] Hikmat, Interview in Amman 2003. Also Wazani, Interviews in May 2003 and Qaddomi June 2003.
[618] Sonbol (2003), p. 21. Sonbol has studied the Jordanian legislation on women.

from the post of the Minister of Information in 1983. Sharaf, one of the first women in the Jordanian parliament[619] was in dispute with King Hussein, as she refused to accept the limitations on the freedoms of expression and press placed by the king. Hussein had sent a letter to the prime minister, disregarding Sharaf, the minister concerned, to inform him that there would be stricter measures to control the press. The reason behind the king's plan was a publicised debate in the parliament. This debate, explains Sharaf, was about the tribal law. Members of the national assembly were making inquiries as to the status of the plans to integrate tribal law into the civil law. The media coverage on this debate aggravated tribal groups. Sharaf explains that she was publicly expressing concerns about the power of tribal law present in Jordanian society, regardless of the formal law. She said that despite the promises given by King Hussein she was asked to leave this issue untouched. Sharaf believes that the king was pressured by tribal groups who favoured the institution as an inseparable part of their lives.[620] Since her resignation Leila Sharaf has been appointed to other ministerial posts; she is an appointed deputy in the current senate.[621]

Tribal law today can be seen as a method of reconciliation of disputes before they are dealt within the formal (legal) system, or sometimes *instead* of it. For instance, when accidents leading to serious injuries or loss of human lives occur, relying on tribal law ('tribal reconciliation') is not uncommon. The concept of *diyya* (blood money) is central to these procedures. According to Sonbol, after abolishing tribal law as an entity, "diyya traditions" were codified into the legislation. Rather interestingly, the current constitution defines the cases involving *diyya* belonging to the jurisdiction of the Shariah courts.[622] A list of crimes to be compensated by money (*diyya*) was included, as well as the reasonable amounts of *diyya* to be paid for each type of crime. Sonbol also claims that for the crimes not listed a practice for defining for the amount of *diyya* was established: percentage from the maximum amount of *diyya* (causing death) is calculated according to the seriousness of the crime

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[619] Leila Sharaf was the first woman to be appointed as a 'political' minister. She is currently a Senator in the government.
[620] Sharaf, Interview in Amman May 2003. See also Hourani (2000), p. 45.
[621] http://www.jordanembassyus.org/new/govlisting.shtml#lowerhouse
[622] Constitution, Article 105, ii.

committed.[623] The victim's brother is taken to police custody, to be protected from potential vengeance. The first step is for the guilty person's father to mobilise dignitaries of their tribe to visit the victim's tribe. The size of the 'delegations' can be anything from twenty to two hundred men[624], depending on the importance of the tribes involved and the seriousness of the accident. So too does the length of the visit/s vary. The aim of the first visit is to pay condolences and for parties to define the length of a 'calming down' period together. According to tribal law, the party which suffered the loss has a right to get even. If a life is lost, it is justified to make the guilty party to suffer an equal loss. During the agreed period the aggrieved party waives the right to revenge. After this period the delegation returns to ask forgiveness and to pay compensation as requested by the other side.[625]

There are legal experts who see tribal law as something positive and constructive, an alternative way of restoring peace at times when people are extremely emotional and irrational. Wazani considers tribal law only as a "way of reconciliation", not something solving the matter. He also stresses that it is only used in the most serious cases.[626] According to Rehab Qaddomi, an attorney of law, the involved parties save public resources when aiming to solve the problem among themselves. The settled cases are usually given milder sentences. When there is no settlement, the penalty is harsher. Qaddomi also stresses that this way of settling is not compulsory, yet "high percentage of cases" are thus decided.[627] Sonbol argues in particular in a case of so-called honour crimes the existence of *diyya* is an encouragement, as people are aware of the likelihood of receiving reduced sentences.[628] Anis Qassim, another attorney, considers these procedures "extremely costly" and thus unnecessary. These formalities take a great deal of time and resources in a society where resources could be spent (more) wisely. Throughout the reconciliation process the victim's brother is held in 'protective' custody; to prevent the male relatives of the victim to get even. The legal system is on hold waiting for the matter to be solved by the involved parties. The court will not proceed with the case unless the legal

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[623] Sonbol (2003), p. 47.
[624] Tribal reconciliation/mediation is a 'men-only' activity.
[625] Anis Qassim, Interview in Amman June 2003.
[626] Wazani, Interview in Amman May 2003.
[627] Qaddomi, Interview in Amman June 2003.

representatives can produce evidence of the waived right of retribution. Qassim also argues that there have been no genuine attempts to abolish tribal law practices in Jordan. He believes that the younger generations benefit from the system and the executive relies on the support of the tribal groups. Regardless of what the people close to the executive might say, even in the 1990s a programme on tribal law was shown on national TV. Qassim concludes: "If tribal law did not exist, why would there be a reason to broadcast such a programme?" [629]

The relevance of tribal law to the rule of law in Jordan is not straightforward, as it depends on the perception of the role of the tribal law in Jordan one chooses from the above-mentioned. The fact that tribal law is a part of a traditional system or society does not necessarily make it inadequate, inappropriate or unwanted. It seems that some observers deny the existence of tribal law due to its 'primitive' nature. Yet it must be stressed here that within this study tribal law *per se* is not something automatically undesirable, or incompatible with the rule of law. As a method of rebuilding damaged relationships and dealing with stressful experiences, it can be a valuable method.

There are, however, elements that should be treated with caution. Once tribal law interferes with the formal legal system, it becomes problematic. Once a way of settling disputes exists outside the formal (legal) system, it becomes a source of instability and unpredictability. Tribal law in Jordan, as mentioned earlier, is not in the code; there are no formal written rules about the tribal law practices. Thus there are also no way of monitoring its functioning, at least by state agents. As tribal settling is not compulsory, what happens in cases where only one party is willing to settle in a tribal way? Perhaps in some cases it might be tempting for the more powerful tribe to use their bargaining power. If the court is (only) expecting to receive documents of 'waived rights of retribution', they are not necessarily interested how the 'agreement' was reached. The equality of the citizens might be compromised, when one party belongs to a less important tribe. There have also reportedly been cases where the police have not carried out any investigations, nor pressed any charges, because the

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[628] Sonbol (2003), p. 47.
[629] Qassim, Interview in Amman 2003.

accused belongs to a powerful tribal group. The argument of the people involved to be better suited to investigate the alleged violation seems to be on shaky grounds. Imagining a violation investigated by police, a neutral outsider, or by people personally related to the violation (through the violator or the victim): which actors would be less irrational and emotional? Therefore, tribal law as long as it is not an acknowledged and codified (and thus in theory monitored) element of the formal legal system is compromising the rule of law.

7.2.3. Constitutional Court

The constitution - the highest legal authority in Jordan - has no stipulations on who is responsible or authorised to control constitutionality in Jordan. Monitoring constitutionality is a task that has not been reserved to anyone in particular nor denied it from someone particularly.[630] As shown before, the High Tribunal is authorised to interpret the constitution, but only when so *requested* by the Senate or the lower house. Thus it cannot take the initiative on interpreting constitution. The request by the lower house has to be supported by an absolute majority.[631] The responsibility of the Special Council (or Special Tribunal) is to interpret constitutionality of laws if requested by the prime minister, as long as no other court has done it. The members of the Special Council - the president of the highest civil court and two judges from the same court and a senior administrative official – are appointed by the Council of Ministers. The Minister concerned is also entitled to appoint one member from the ministry.[632]

The lack of precision in the Jordanian constitution has led to constitutional confusion. According to Abu Wendi, a legal scholar, all Jordanian courts, both ordinary and administrative, have reacted in a similar manner to this confusion. From 1952 until the late 1960s, courts including the Supreme Court of Justice, simply denied having any responsibility to discuss the constitutionality of laws. Thus the Jordanian judiciary, unlike the Supreme Constitutional Court in Egypt, was not actively seeking to get involved, but rather choosing to remain passive.[633] The decision by courts to deny themselves the duty 'to guard' constitutionality can be interpreted as a precautionary measure. Courts were avoiding the responsibility of becoming involved in unpleasant political situations. On the other hand the decision can simply be an allegiance to the spirit of the law (as they understand it). Judges might have considered the constitution but had given the duty of guarding the constitutionality to some other actor.

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[630] Abu Wendi, The Role of the Judiciary in the Control of the Law's Constitutionality(2000), p. 81.
[631] Constitution, Article 122.
[632] Constitution, Article 123.
[633] Abu Wendi (2000), p. 81.

There are two developments that altered the situation (reduced the confusion); one concerning laws and the other parliamentary acts. In 1967 the Supreme Court authorised itself to interpret the constitutionality of laws (Case no. 91). The other event was the promulgation of Law no.12, 1992, a long expected and welcome addition. The law no. 12 provided the Supreme Court with the task of interpreting the constitutionality of laws, yet with one remarkable restriction: the duty of interpretation is to be applied only to temporary laws, laws issued by bodies other than the legislative. According to Abu Wendi, the 1992 law was a disappointment, as it is "distorted, leading to strange and illogical results".[634] The other shortcoming of the law was its vagueness. If the Supreme Court declares a law an unconstitutional law, it only ceases the enforcement. It does not provide any answers as to what to do with decisions that have been based on a temporary law that has been later decided unconstitutional. Neither does it cover any acts issued by parliament.[635] Law number 12 (1992) is the same law both Hikmat and Obeidat praised in relation to the Supreme Court of Justice as the administrative court (See Chapter 7.1.).

Not surprisingly the question of who should be guarding the constitutionality is one of the main debates in contemporary Jordan. Only a small minority of legal practitioners is content with the existing situation. These individuals are mainly former ministers or are in some other way connected to the government. Some experts think that there is no need for a separate legal body, as according to the constitution every court ("of all degrees and kinds")[636] has responsibility to interpret the constitution. [637] No court is allowed to make decisions that contradict the constitution. Yet the 'current method' is restricted by a case-by-case principle. Whatever decision the court in question makes will be applied only to the case in question and changes no legislation as a whole. Thus the unconstitutional law itself will not be annulled, but will stay intact. Another court might consider the same law constitutional and make a differing ruling. Even the same court can make a differing ruling on the same law on a different case.[638] Hence this situation is a true challenge for the rule of law. Citizens affected

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[634] Abu Wendi (2000), p. 83.
[635] Abu Wendi (2000), p. 82.
[636] Abu Wendi (2000), p. 82.
[637] Kilani, Wazani, Hikmat, Interviews in Amman Jordan 2003.
[638] Abu Wendi (2000), p. 82.

by potentially unconstitutional laws are not treated in an equal manner. Furthermore, this challenges the predictability of laws.

Taher Hikmat admits that the competence to review constitutionality is "not stabilized yet" into a system wide approach, yet he considers it better than establishing a constitutional court.[639] Hikmat prefers the 'legal status quo', as a constitutional court would require amending the constitution, which Himat perceives as an activity that is always risky.[640] Rateb Wazani argues that the current 'method' is better that a constitutional court, as instead "a small group monitoring" all judges have the same responsibility. Wazani, like Taher Hikmat, considers the constitutional court potentially vulnerable to outside pressure.[641] However, these experts seem to consider judges currently monitoring the constitutionality immune to such pressures. Taher Hikmat is also worried that there is not yet enough legal expertise in Jordan for the needs of a constitutional court.[642] Both Wazani and Hikmat see demands for a constitutional court as a political slogan ("propaganda weapon") used by "certain" political groups. Wazani stresses that the underlying reason for these demands is the lack of understanding among these politicians. They simply do not comprehend how the Jordanian legal system functions. Different legal systems consist of different elements. "There are not even any unconstitutional laws in Jordan", concludes Wazani.[643]

The 'dissatisfied' experts can be divided into two groups. Some see the problem as structural, while for the others it is a matter of power relations. The former group thinks that in order to improve the situation there is a simple solution: to establish a constitutional court, like the Supreme Constitutional Court in Egypt.[644] Among the supporters of the proposed constitutional court is Farouq Kilani, former Chief Justice. According to Kilani, there should be just one court monitoring the constitutionality of

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[639] Hikmat (2000), p. 77.
[640] Hikmat, Interview in Amman 2003.
[641] Wazani, Interview in Amman May 2003; Hikmat, Interview in Amman June 2003.
[642] Hikmat, Interview in Amman 2003.
[643] Wazani, Interview in Amman 2003.
[644] Kilani, Interview in Amman May 2003; Shubeilat Interview in June 2003 and Faisal in Amman June 2003.

all laws, not just some.[645] Hani Khasawneh supports the idea of constitutional court, as he thinks that the court would be needed also to interpret the vague articles of the constitution, not only to review the constitutionality of laws.[646] Qaddomi supports the idea of a constitutional court as the only reform that is needed for the Jordanian judiciary. Qaddomi mentions the case of the Kuwaiti election law as an example. Critics saw the elections law as a violation of the constitution as it did not allow women to vote, and took the matter to the Kuwaiti constitutional court. The court decided in their favour on the basis that the law contradicted the constitution. In Jordan the same could be done for the nationality law that does not allow women to pass the nationality to their children, or for any other unconstitutional law.[647] Others think that whether or not there is a constitutional court does not make a big difference as long as the executive is not willing to be constrained by the constitution. If there are (state) actors wishing to break the constitution they will always find a way or another to do so.[648] There are also people who feel that the time is still not ready for the constitutional court. A majority of all interviewees stressed that complying with constitutionality depends on political will. As long as the separation of powers does not exist in Jordan, any structural improvements will prove meaningless. Even those favouring the existing system, the less critical observers, like Hikmat, emphasise the centrality of political will in the functioning of the state apparatus, the judiciary included.

At the formal level the need for a constitutional court has both been acknowledged and denied. In the 1991 report to the Human Rights Committee, the government announced that it has decided to establish a constitutional court. The announcement was made "without further elaboration".[649] Later more details were revealed. The National Charter (1991), the document created to symbolise 'the new beginning' in the early 1990s, considered establishing a constitutional court to be as "imperative". The duties of a constitutional court would be interpretation of the constitution when so requested by the Council of Ministers and discussing constitutionality of cases

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[645] Kilani, Interview in Amman May 2003.
[646] Khasawneh, Interview in Amman June 2003.
[647] Qaddomi, Interview in Amman June 2003.
[648] Qassim, Interview in Amman June 2003; Al Oran, Interview in May Amman 2003.

brought to its attention by courts as well as of laws and decrees.[650] More recently, under King Abdullah's reign, the government's attitude towards constitutional court has changed. The recommendations by 'Jordan First' - the government led reform initiative[651] - stated that the time is not right for a constitutional court. It decided: "to consider the possibility of establishing a Constitutional Court *at the appropriate time*".[652] The five-member committee on Constitutional Court, Hikmat and Wazani being among the members, produced the recommendation either formulating the recommendation in the most diplomatic manner possible (not at all) or simply suggesting that the time is not right (at present).[653]

An example of constitutional confusion is the case of Toujan Faisal. After being pardoned by King Abdullah in 2002, Faisal was even more determined to continue her political career. A natural step was candidacy in the 2003 parliamentary elections. Faisal was, however, disqualified by the Governor of Amman. The elections committee rejected Faisal's candidacy on the grounds of a temporary Elections law (no. 34 article 8). According to the Elections Law, citizens are ineligible for candidacy if they are convicted of a non-political crime, for longer than 12 months or pardoned by a *special* pardon.[654] However, according to the constitution, convicted citizens are denied the right to vote, if convicted of a non-political crime and not *pardoned* by the king.[655] There is thus a small but significant difference between the law and the constitution: there are no requirements for the *type* of the pardon defined in the constitution. It was exactly this difference Faisal was basing her appeal on. Faisal argues that she is entitled to participate in elections both as a candidate and a voter, as she was convicted of a political crime. A further piece of evidence justifying her candidacy is the fact that Faisal's name appeared on voters' timetables issued by

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[649] Report of the Human Right Committee, General Assembly Official Records, 46th Session, UN DocA/46/40, p.141, paragraph 572. Al-Jazy, 2000, 174.
[650] National Charter (1992), Chapter 2. Second Recommendation.
[651] Jordan First is a "philosophy of governance". Five committees were formed to transform the concept 'Jordan First' into something practical, tangible. The committees are Constitutional Court, Political Parties Law, Women's Parliamentary Quota, Anti-Corruption and Professional Associations and Civil Society.
[652] Jordan First: Recommendations. http://www.mfa.gov.jo/pages.php?menu_id=437 Italics added.
[653] http://www.amanjordan.org/english/daily_news/wmview.php?ArtID=683
[654] Jordan Times May 20th 2003. "161 candidates registered in capital for 5th District; 2 rejected" (page 3).
[655] Constitution, Article 73 (i) e.

the Ministry of Interior in 2003. Thus, argues Faisal, if she can elect, she also has the right to be elected. Faisal says that the rejection was something she had already anticipated. Faisal wanted to contest the decision made by the committee, and took the matter to Amman's court of first instance. The aim was to attack the temporary law no. 34 which Saleh Al Armouti, Faisal's lawyer and (then) the President of the Jordanian Bar Association argues as being unconstitutional, and thus cannot be applied. The court ruled against Faisal's appeal, on the grounds of her conviction.[656] Faisal, and many legal experts, were astonished to hear the court's decision. According to Amman's court of first instance, it does not have jurisdiction to argue the temporary election law to be unconstitutional. The right institution would have been the High Tribunal.[657] Faisal also believes that the 2003 elections should have been postponed while her case was still pending. Faisal argues further that none of the Jordanian newspapers dared to publish her comments after receiving the court's decision on the appeal. Faisal also sent a letter to the prime minister and the king, neither of whom replied.[658]

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[656] Faisal, Interview in Amman June 2003. Jordan Times 29th May 2003: "Toujan Faisal blasts the legality of her ban". Jordan Times May 22nd (2003). "Toujan Faisal challenges elections committee". Ibtisam Awadat.
[657] Jordan Times May 25: "Full elections list to be released soon; 2 appeals rejected". Jordan Times May 20th (2003). "161 Candidates registered in capital for 5th District; 2 rejected".
[658] Faisal, Interview in Amman June 2003.

7.3. THE INDEPENDENCE OF THE JUDICIARY

7.3.1. Resources: Structural Independence

In order to work independently the judiciary has to be provided with appropriate working conditions: reasonable compensation and facilities needed. The views of the independence of the Jordanian judiciary by the "informed observers"[659] are divided, perhaps even more than on constitutional review or tribal law. Not surprisingly the experts close to the government are less critical of the judiciary in general. They see fewer problems and very few (or no) improvements being needed. According to Rateb Wazani, in the late 1990s a commission was formed to investigate the functioning of the judiciary. The commission chaired by Ahmed Obeidat, former prime minister, found no real problems.[660] Unfortunately no documents on the outcomes of the work by the commission were available for this study. Regardless of different perceptions, most experts agree that there have been major changes since the early 1990s, the most remarkable changes in the last six to seven years.[661] Once again there is no consensus on the consequences of the changes or on their usefulness.

No legal expert interviewed complained about the compensation judges receive. Generally speaking judges' salaries are "significantly higher" than most of the other governmental employees.[662] According to Farouq Kilani, the judges' salaries are better in Jordan than in the most Arab countries, including the Gulf states.[663] Judges also receive substantial benefits packages: subsidised housing is available and schooling benefits for judges' offspring are offered. Despite the lack of complaints on the part of the legal practitioners there have been announcements from the

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[659] One clarification has to be made at this point. Although the interviewed legal experts are the without a doubt the best legal experts in Jordan, none of them are currently working as a judge. Unfortunately no current judge was available for an interview. Thus they can only provide first hand answers from the period when they were still working. Yet quite a few still work as attorneys, and have contact with the courts on regular basis.
[660] Wazani, Interview in Amman May 2003.
[661] Qaddomi, Interview in Amman June 2003.
[662] McDermott (2003), p. 6.
[663] Kilani, Interview in Amman 2003.

government's side to increase the allowances and benefits for judges.[664] There are, however, claims that the 'benefits' are not distributed equally among judges. Judges following the executive's 'recommendations' will receive more 'bonuses' than the others.[665] Also differing opinions were expressed regarding the working conditions at the courthouses. Over the last decade the number of support staff has increased and new computer systems have been provided. Despite the increased number there is still not enough support staff, but Qaddomi reckons that the government has acknowledged the problem.[666] Also the number of the judges has increased. Currently there are nearly 600 judges employed, while the situation was not that good some years ago.[667] Furthermore, there are plans to appoint more judges; in 2001 the government announced a plan to spend nearly two million Jordanian dinars to recruit 280 judges and to computerise courtrooms.[668] According to a recent announcement, made on 27th June 2004, the aim is to increase the numbers of judges to 800.[669] Also the number of female judges has increased. Ten years ago there were no women appointed as judges, while at the moment there are nineteen female judges.[670] Tagreed Hikmat, the first ever female judge in Jordan, was appointed in 1996.[671] The result of the reforms made, as aimed, is faster processing time. According to Qaddomi, in the last two years the judges are producing the decisions faster. Earlier it took two to four years, while nowadays the maximum time spent on giving a judgement is a year.[672]

Not all consider the current situation to be satisfactory: either the degree of changes has been exaggerated or their impact has not matched the expectations. Qassim argues that the processing of cases has become faster only in an administrative sense. Generally speaking the legal process is still too time-consuming and over-

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[664] Jordan Times, November 11 (2001).
[665] Khader, Interview in Amman June 2003.
[666] Qaddomi, Interview in Amman June 2003.
[667] Kilani, Interview in Amman May 2003; Wazani Interviews in May 2003; Hikmat Interview in Amman June 2003.
[668] Jordan Times November 24 (2001). "Minister finalises plan to overhaul judiciary" by Rana Husseini.
[669] Jordan Times June 27th (2004).
[670] http://www.jordanembassyus.org/02112004006.htm There are currently 1500 women registered as lawyers at the Jordanian Bar Association and 6000 men.
[671] http://www.jordanembassyus.org/03112003002.htm Qaddomi, Interview in Amman June 2003.
[672] Qaddomi, Interview in Amman June 2003.

burdened judges have gained little from the 'speeding-up' of reforms.[673] On the contrary, the government's determination to speed-up the legal procedures is putting more pressure on the judges. Due to the piling up of cases and shortage of judges, judges do not have enough time to discuss and research the cases.[674] It is argued that either the insufficient number of judges is not most acute problem, nor is the drastic recruitment the best approach to improve the judiciary. Some see that the rapid increase of the number of judges has lead to the recruitment of incompetent judges.[675] McDermott even argues that there are civil court judges lacking "both knowledge of the law and adequate legal skills".[676] It is argued that the training programme offered by the Judicial Institute places legal practitioners in unequal positions. Normally a legal practitioner has to work ten years before being eligible to become a judge, while clerks at the ministry of justice can be trained to be judges through a training programme with less actual legal work experience.[677]

The reforms were made in order to speed-up the legal proceedings, as by many the biggest challenge is to tackle the "snail's pace of court proceedings".[678] Providing (more) computer facilities, argues Kilani, improves the writing of judgements made, but does not ease the judges' burden, as making the judgements is the core of the legal process. Kilani argues that there are no computers available for the judges. Computer systems would enable the judges to find out information on previous cases and rulings. Thus the increased number of judges, and the IT systems made available for administrative purposes, will not (necessarily) make processing the cases faster.[679] Kilani criticises the state of recording the minutes of sessions and file keeping. Statements given by defendants/plaintiffs are passed to the clerk recording the session by the judge involved in the way s/he understands (or even remembers) the statement. Kilani argues that "recordings are often twisted", as judges do not report everything from the session. Recording prolongs the proceedings of the case, as it is time-consuming. Also the minutes are not always produced in a clear manner

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673 Qassim, Interview in Amman June 2003.
674 Khasawneh, The Legal Profession between Yesterday and Today(2000), pp. 84-85.
675 Kilani, Interview in Amman May 2003; Qassim, Interview in Amman June 2003.
676 McDermott (2003), p. 6.
677 Al-Oran, Interview in Amman May 2003.
678 Jordan Times 23rd May 2000, By Rana Husseini; Kilani (2000), p. 78.
679 Kilani, Interview in May 2003; Kilani (2000), p. 76.

due to handwriting being used which leads judges to spend too much time trying to read the recordings. Kilani also criticises the way the files are stored. He considers the filing practices and the storage facilities very "primitive".[680]

Furthermore, faster litigation processes do not necessarily mean that the quality of the decisions has got any better. There is also an obstacle to the independence of the judiciary from within; from judges themselves. According to Kilani, some judges are "resisting enlightenment efforts" and any attempts to reform the judiciary. In the late 1990s there was a plan to enhance the judicial independence "through bringing in enlightened people" (legal experts). Judges excluded from the group of enlightened "fought ferociously", and the plan was never implemented.[681] Kilani also sees the "scientific backwardness", meaning "lack of follow-up studies", as one of the main obstacles to the Jordanian judiciary becoming "independent and capable". When the judiciary lacks the interest for study and self-development, this will show in the decisions made. The critique directed to the education of judges is not only limited to the lack of studies, or unwillingness to study. Kilani argues that modern legal systems are built on the idea of specialisation. Kilani is referring to a recommendation made in 1958 in the International Conference of Judges in Rome. In Jordan even the highest courts have no specialised judges. Judges in the Court of Cassation should be experts in civil, criminal and commercial law, while judges in the High Court of Justice (administrative court) in administrative law.[682]

Kilani brings attention to some cases that seem to have been inaugurated with very little awareness of the Jordanian constitution. The Court of Cassation has given a ruling that confirmed "instructions" by the director of the Land and Areas Department to have the "power of legislation". Kilani finds this decision outrageous. Law students learn already during the first years in a law school that only a constitution can "define the forms of legislation and their binding power". "In the middle ages, personal opinions of directors and ministers were considered as laws", Kilani points out.[683] The Court of Cassation has made a decision in 1985 on 'Astaneh' Chambers of

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[680] Kilani (2000), p. 79.
[681] Kilani (2000), pp. 74-75.
[682] Kilani (2000), pp. 75-76.
[683] Kilani (2000), p. 72.

Commerce. Curiously the Astaneh Chambers of Commerce did not exist any longer at the time of the ruling (or afterwards). Furthermore, the Court of Cassation based this decision on "the Ottoman Brokers Law". This is not possible, as all Ottoman laws have been "null and void" since the termination of Ottoman rule. Surprisingly, this decision by the Court of Cassation is considered effective even today despite the inaccuracy. The decision was made on an institution that has ceased to exist and was based on a law that did not exist any longer either.[684]

In 1998 the Court of Cassation declared a recommendation by the Chief Justice illegal and to be nullified. The Chief Justice had sent a letter to the Minister of Justice recommending a provisional retirement of some judges, indicating that the matter had been discussed in the meeting of the Judicial Council. A Deputy President of the Council, however, wrote another letter to inform the minister that such matters were not discussed in the meeting. Kilani, deemed the court's decision as being illegal, as the letter by the Chief Justice did not infringe the soundness of an administrative decision. The Chief Justice is entitled to make recommendations and the Minister concerned can either refuse or accept them. The Minister of Justice in this case did not claim to be forced to follow the recommendation. Therefore, the Court of Cassation based its decision on assumptions, as there were no accusations of the Chief Justice forcing the minister made. Furthermore, recommendations are part of the formal procedures, and thus cannot violate judges' rights. Kilani also argues that there was no "twisting facts", as the deputy President was present at the meeting. If the recommendations were not recorded in the minutes, it does not necessarily mean that they were not discussed at all. The Court of Cassation's decision was based on the "litigant and judge" principle that cannot be applied to an administrative judge, only to a civil or criminal judges. The "Litigant and judge" principle is applicable only in cases which are of personal matter, not administrative ones.[685]

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[684] Kilani (2000), p. 73.
[685] Kilani (2000), pp. 73-74.

7.3.2. Decisional Independence

As defined in the list of the Basic Principles, judges should have the ability to make decisions based only on facts and the laws. There must be no interference on the decision-making process of an individual judge, nor any revisions on the decisions once they are made.[686] Some say that the judiciary in Jordan is indeed given freedom to work and make independent decisions. Others have commented conversely on the significance of outside influence on formal judicial processes. According to Rateb Wazani, the Jordanian judiciary has been independent for over 40 years.[687] Nevertheless there are others accusing the executive of using its powers to interfere in the work of the judges. According to Farouq Kilani, former Chief Justice, there was significant amount of outside interference when he was working as a judge.[688] A study by McDermott argues that judges experience interference not only from the executive, but also from the security forces.[689] Nevertheless there is some disagreement on the degree of the success of such attempts. According to Rateb Wazani, despite the executive's attempts to control the judiciary during the martial law period (1967-1991), the judiciary has been able to protect its independence. When martial law is declared the government is entitled to issue temporary laws in matters of defence of the country. The Supreme Court can annul any temporary law that does have no relation to defence, and has done so in number of occasions.[690] Thus while Wazani does not deny the attempts of interference by the executive, he stresses the "incorruptible" nature of the judiciary.

According to Asma Khader, there are some mechanisms that are legal not yet constitutional enabling the executive to interfere.[691] The procedures of appointing and promoting judges and administrative personnel for courts are not fully satisfactory. The constitution does not define the terms of the appointment; the terms are defined in the law on the Independence of the Judiciary. Only since 2001 have judges themselves had the responsibility to select, promote and transfer judges.

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[686] UN Basic Principles, 1986.
[687] Wazani (2000), p. 84.
[688] Kilani, Interview in Amman May 2003.
[689] McDermott (2003), p. 6.
[690] Wazani (2000), p. 84.

Previously the ministry alone was fully in charge of the appointing the judiciary. According to the Law of the Independence of the Judiciary, the Judicial Council is the only body that can appoint, promote and discipline civil court judges, both in the civil and the Shariah courts (trial courts). The Council is presided over by the president of the Court of Cassation. The other members are all senior judges.[692] The Higher Judicial Council's authority to appoint, however, is restricted to select judges from a list of candidates recommended by the Ministry of Justice.[693] It is also worth noting that the members of the council are appointed by the Minister of Justice. Prior to 2001 the Council of Ministers had the power to decide the length of the appointment, as well as to make decisions regarding the retirement age. Yet currently the Minister of Justice can only make recommendations.[694] The support staff and the judicial panels, however, are still appointed by the justice minister.[695] This, argues Faruq Kilani, is not only unconstitutional, but also in contradiction with the principle of the independence of the judiciary.[696]

Regardless of the amendments this law contradicts the constitution. Although the constitution does not provide details on the appointment of judges, it provides the core principle that should be followed; a principle that should be one of guiding an issuing any laws on the judiciary. Regardless of how the appointment is done, it should never compromise the independence of the judges. Therefore, it is rather peculiar that passing such a law was possible. Even more surprising is the lack of judges (or anyone else for that matter) disputing the law. Another 'legal' way to interfere is through the administrative monitoring of judicial decisions. The court of first instance in Amman and the Court of Reconciliation have been authorised to examine the documents and decisions from the other courts. The president of the court either agrees on the decisions or amends them. According to Kilani, this is a gross violation of the constitution. The judiciary should be independent, not subordinated to any form of administrative control. Monitoring of the decision can

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691 Khader, Interview in Amman June 2003.
692 Wazani (2000), p. 83.
693 McDermott (2003), p. 6.
694 Kilani and Sakijha, Wasta: The Declared Secret. A Study on nepotism and favouritism in Jordan(2002), p. 66.
695 Kilani (unknown year), Chapter 1, Point 2.
696 Kilani (unknown year), Chapter 1, Point 2.

only be done by a higher court. Administrative control can be extended only to purely administrative matters outside the judicial work.[697]

According to Farouq Kilani, when he was working as a judge, ministers used their 'legal' rights frequently, giving recommendations on matters of appointment. The influence has been mainly indirect; judges are made aware that the terms of their appointments can be re-negotiated unilaterally. There are claims of judges being transferred from one court to another in order to influence of the outcome of legal processes.[698] According to Kilani, when Riad Al-Shakaa was acting as minister of justice in the late 1990s the greatest violations in appointing and promoting were made. Kilani argues that there have been occasions where the executive has been involved in transferring and promoting judges and courts, yet never as much as while al-Shakaa was the minister. During al-Shakaa's term, it was decided by the recruitment panel, consisting of members of the Judicial Council, that only those graduates from the Institute of Justice who scored more than 60 percent in the final exams should be recruited. Yet, in contradiction to this decision, instead of the 16 fulfilling the criteria all of the 36 graduates were recruited.[699]

Furthermore, the appointment of judges is normally for life, but judges are fully aware that there are no legal obstacles for the executive to shorten the appointment. It must be stressed here that the retirement age varies. In trial courts judges serve until they are 68, and in the higher courts until 74. Yet the Higher Judicial Council is authorised to terminate the term of judges after 25 years of service.[700] Judges work knowing that there is a (at least a theoretical) possibility to be given sudden and unexpected transfer to any court anywhere in Jordan, or even an early retirement. It was not uncommon for the Minister of Justice to contact the presidents of courts to make them know what is the favoured outcome of certain important cases.[701] Kilani argues that one reason for senior judges to interfere is tribal pressure. "The burden of *Jaha*", dignitaries contacting the person in charge (usually the judge on the case) to solve

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[697] Kilani (2000), pp. 77-78.
[698] US State Department (2002), p. 9.
[699] Kilani, (unknown year), Chapter 1, Point 2.
[700] McDermott (2003), p. 6.
[701] Kilani, Interview in Amman May 2003.

the case, is something that some judges might not be able to resist. According to Kilani, "The dominance of tribal traditions opens the door for violations and makes corruption cases exonerated". Kilani mentions an incident when a judge was removed from one court to another when refusing to let a defendant on bail as requested by his senior.[702] Senior judges have taken cases from individual judges, to guarantee the desired outcome or possibly to punish judges. Kilani argues that this has been a regular phenomenon for quite some time. It leads to further prolonged litigation processes, as the work done by the first judge is wasted and the new judge has to study the case. According to Kilani, cases have even been lost while extracting them from one judge to another. At times senior judges may even request to see pending cases. Kilani defines this as a clear violation of independence of the judge working on the case in question. No judge shall be "subject to no authority other than that of law". Monitoring at this stage is not justified nor necessary, as the rank of the judge is irrelevant when making judgements.[703] It must be remembered here that while the executive's role in the appointment of judges is not against any laws (but the constitution), it is not legal for the executive to dictate judges to make certain judgements.

Perhaps the most striking case of the executive's influence is the early retirement of the Judge Farouq Kilani himself in 1998. Less than three months after he was appointed as the President of the Higher Council of Justice and the Court of Cassation (the highest legal authority in Jordan) he was forced to retire. According journalist Amy Henderson, Minister of Justice Riyad Shakaa refused to comment on the reasons behind Kilani's retirement. Yet Shakaa was the very person who recommended Kilani to be appointed to the post 80 weeks earlier. Shakaa insists, however, that the decision was reached unanimously after Kilani himself requested such a possibility.[704] Kilani himself refutes this categorically. He argues that the sole reason for his dismissal was of him criticising the government. According to Kilani, he had made open accusations of corruption among members of the Jordanian judiciary. Furthermore, Kilani finds it rather convenient that the "retirement" occurred

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[702] Kilani (2000), p. 79.
[703] Kilani (2000), p. 76.
[704] Jordan Times, 4th March (1998). "Justice minister maintains silence on rationale behind judge's retirement." by Amy Henderson.

just before he intended to implement the removal of the judges he considered corrupted.[705] Kilani was also at the beginning of his short term involved in overturning the amendment of the Press and Publication Law (1997), a temporary law heavily criticised as violating press freedoms (see chapter 8). This decision of unconstitutionality of the law by the Supreme Court is widely assumed to be the real reason behind the early retirement.[706]

In addition to recruiting judges and administrative staff, the ministry has also been involved in naming judges for particular cases. This is a violation of the "natural judge" principle. According to this principle, courts cannot be established, nor judges named, for particular crimes after the crimes have been committed. This principle aims at protecting the right of the litigant for a fair trial. Kilani argues, however, that this has not fully been followed in Jordan: "The Jordanian legal thought has not grasped this principle". In 1997, for instance, the minister interfered in forming a special panel to deal with an appeal case (no. 144/97) by recommending the judges for the panel. It is also claimed that the decision made was recommended by the minister, and afterwards the minister recommended the head of the panel to be promoted. The Chief Justice (Kilani himself) considered this to be a reward from a job well done, and refused to follow the recommendation. Two other members were given an opportunity to travel to the UAE "on business". [707]

The threat of losing one's job, or of a forced relocation, are not the only ways to convince judges to make preferred decisions. Alternatively, there is the 'carrot' method, although not all interviewed agree on its existence. Taher Hikmat disputes the existence of corruption among Jordanian judges. He says that corruption was never a problem in Jordan when he was working, and hopes that it is still not the case.[708] Yet Farouq Kilani, Hikmat's predecessor as a Chief Justice, considers corruption and *wasta* (nepotism and favouritism) to be the core obstacles for the rule of law in Jordan. He goes even as far as naming the possible culprits. During Faisal

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[705] Kilani, Interview in Amman in May 2003.
[706] Jordan Times (1998). "Former judge reiterates charges that judiciary lacks independence"; Interview with Yahia Shukkeir, June 2003 Amman.
[707] Kilani, (unknown year), Chapter 1, Point 1.2.2.
[708] Hikmat, Interview in Amman June 2003.

Firawny's premiership the executive interfered in the matters of the judiciary on several occasions. Taher Hikmat, then acting Chief Justice, simply "complied" with that. According to Kilani, forty of Ahmad Firawny's relatives were appointed as judges when Firawny was acting Chief Justice. Even before Firawny was appointed as Chief Justice several officials protested against the appointment on the basis of him being corrupt.[709] Regardless of the opinions of the legal scholars and practitioners, there are other sources that consider corruption as a serious problem in Jordan. According to the Arab Archives Institute, corruption among the judiciary is one of the main reasons why Jordanians do not have faith in the legal system and often prefer tribal law settlement.[710]

The Inspection Department from the Ministry of Justice is in charge of monitoring the judges. According to Wazani, the inspectors are judges themselves. Monitoring does not apply to ongoing litigation processes, as it would mean interfering in the independence of the judiciary. Monitoring is done without any complaints placed. If inspectors find anything worth mentioning, the judge in question needs to answer the inspectors. Yet there are no penalties and no sanctions. Monitoring, stresses Wazani, is used for evaluation purposes only. Moreover, continues Wazani, there has been no need for any drastic disciplinary action.[711] A royal committee was established in the early 1990s to monitor the judiciary. The committee appointed by King Abdullah was chaired by the prime minister Abu Raghed. Other members were then senator Ahmad Obeidat, the Head of Judiciary, deputy Prime Minister, Minister of Justice and Minister of State for Administrative Development. The aim of the commission was to review the courts, legislation and the judges, and then possibly to investigate the opportunities to offer judges better "allowances, salaries and incentives" to improve the situation in Jordan.[712] Establishing the commission was a mistake in Hikmat's opinion, as it violated the very principle of the independence of the judiciary. When a body consisting (almost) entirely of administrative actors monitors the work done by judges it can easily be seen as a way of controlling the

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[709] Kilani, Interview in Amman May 2003.
[710] Kilani and Sakihja (2002), p. 66.
[711] Wazani, Interviews in Amman May and June 2003.
[712] Jordan Times, September 1-2 (2000). "Commission judiciary finds favour among veterans of the bench, officials." by Rana Husseini.

judiciary.[713] Furthermore, an anonymous member of the judiciary ("veteran judge") argues that providing judges "psychological security" is far more important than financial security. The same expert also sees the monarch's decision to establish the commission as "a clear indication of a malfunctioning judiciary". [714]

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[713] Hikmat, Interview in Amman June 2003.
[714] Jordan Times, September 1-2 (2000). "Commission judiciary finds favour among veterans of the bench, officials" by Rana Husseini.

Summary

The Jordanian constitution guarantees basic elements of the rule of law, including one of the most essential ones: the independence of the judiciary. The degree to which the principle has been implemented is another matter. In spite of acknowledging the principle of judicial independence, the constitution does not provide the judiciary with the appropriate working environment. The independence of the judiciary can be compromised either legitimately (within the legal system) or unofficially through other channels, by extrajudicial actors. The political opening of 1989 has had, it is claimed here, no significant impact on the implementation of the judicial independence.

While the constitutional design acknowledges the independence of the judiciary, the structure of the legal system does not support it. There are three legal institutions at the centre of this debate, two existing (special courts and tribal law) and one fictional (constitutional court), at the moment at least. It is worth noting that the existence of the third institution (tribal law) is a matter of dispute; whether it still exists, and if it does in which form. Furthermore, special courts are only one of these institutions included in the constitution. It is worth stressing that in spite of this 'constitutional existence', the details of the composition of the special courts is left for the legislators to decide.

The existence of special courts does not only jeopardise the independence of the judiciary, but also the principle of fair trial. The type of special courts considered problematic is the state security courts, where the jurisdiction is in the hands of non-civilian judges. In addition, compared with the ordinary courts, the state security courts are less transparent and trial procedures are often lacking stability. As the high profile cases of Shubeilat and Faisal have shown, the executive has effectively used the state security courts to silence the opposition. It is important to stress that the cases of Shubeilat and Faisal have all been tried in the state security courts since 1989: Shubeilat in 1992, 1995 and 1998 and Faisal in 2001. Therefore it is justified to argue that the political opening has had no positive impact on the usage

of the state security courts, rather *vice versa*. It appears almost as the political opening has increased the regime's reliance of the state security courts. The temporary law of 2001 to strengthen the courts' position is another evidence of this, and the lack of any open discussion to alter the status of the courts.

While in the case of state security courts the interference is from the direction of the executive, actors with extrajudicial powers within the framework of tribal law are not included in the state apparatus at all. Thus these actors are functioning outside the formal monitoring and disciplinary procedures. Of these three components the position of the tribal laws is most secured. There have been no public discussions or plans to tackle the tribal law since 1989. In all fairness it seems that there is less focus on the tribal law since the political opening. It is also fair to say that tribal law is still very much of a taboo. Tribal law was officially abolished in the 1970s and still proving to be a persistent institution. The existence of tribal law is a serious restriction to the judicial monopoly of the judiciary. The reliance of tribal law procedures compromises the equality of citizens, and their right to be equally protected by the existing legislation. Whereas special courts are a more structural matter, tribal law is a social and cultural phenomenon. The controversy related to tribal law is revealed in the lack of consensus among the legal experts on the existence and the significance of tribal law. The protected position of tribal law reveals if nothing else the importance of tribal groups for the Jordanian political elite, which has gone to great lengths to shield it.

One of the most fundamental dilemmas regarding the entire Jordanian legal system, or indeed the entire system of governance, is the implementation of the constitution itself. The constitution includes very little on the matter of guaranteeing constitutionality. The absence of clear instructions for the monitoring of the constitutionality is one of the greatest weaknesses of the constitution. Needless to say the contents of the constitution have very little significance, if there are no independent actors authorised to monitor the implementation of the constitution. After several decades the monitoring of the constitutionality is still an undecided issue in Jordan. It is not only unwillingness of the judiciary during the early years, but the more recent decisions by judges (regarding the case of Toujan Faisal, for

instance) that indicate that a degree of confusion and/or reluctance still exists. There have been no improvements since the late 1980s. However, the constitutional court has been the most discussed element of the Jordanian legal system by far. At the official level the attitude towards the importance of the constitutional court has been changing over the last decade. The dividing line has not been the political opening of the 1980s, but the change of a monarch. It appears that during the first years immediately after 1989 the political elite was in favour of the court. Since King Abdullah II succeeded the official stand has changed. It has to be stressed that during both reigns there have been no official plans to establish the constitutional court, only the tone of the formal debate has changed. In case of guaranteeing constitutionality, it has to be said that the matter is more political than merely judicial in nature. The view of Anis Qassim is worth remembering here: no body in charge of monitoring constitutionality is meaningful as long as there is no political will to respect its jurisdiction.

The actual degree of independence of the judiciary is more difficult to assess than the structure of the legal system. However, some comments about the general trends can be made. The situation regarding the working conditions and material resources has been improving since the late 1980s, and it is the most positive and encouraging element assessed here. Within this study there have not been many matters that were the subject of such consensual, yet positive assessments. It is difficult to identify whether these changes are products of conscious decisions to improve the judicial independence or whether the aim has been something else. The legal reforms implemented were of technical nature, thus they are easier to implement without shaking the foundations of the systemic *status quo*. These reforms are not necessarily threatening extrajudicial actors yet still stressing the commitment of the regime to legal improvements. It should be remembered that, regardless of the reforms, the outcome has not been entirely positive. Some argue that the quantity of judges has been improving at the expense of the quality, thus showing the lack of insight and/or commitment on the side of the reformers.

The main obstacle for the independence of the judiciary in Jordan is outside interference. In spite of the constitutional guarantees, the rest of the legislation (in

some parts) compromises the principle of independence. Anyone, whether part of the state apparatus or private citizen, can (illegally) place pressure on judges to produce desired outcomes, yet the executive involved in appointing and promotion has more bargaining power than any other actors. The reform of 2001 to reduce the government's role in recruitment is definitely an improvement. It has to be stressed that with a regard to the judicial independence the greatest problems lie with the implementation not in the design. Again, no serious improvements since 1989 can be observed. The forced retirement of Farouq Kilani in 1998 is a convincing piece of evidence of the executive's continuing influence on judicial matters. The case of Kilani is an indication of what happens to dissident judges who do not comply with the unspoken rules. The greatest weakness of the legal system is the lack of clearly defined terms of service and promotion, or of disciplinary actions, as well as the existing practice to authorise non-judicial actors to participate in administrative matters regarding the legal system. Plans to improve the legal system and the judicial independence have recently been announced by the government, yet the outcome remains to be seen. It is worth noting that it is not the first time such intentions have been made public and thus the political opening of the 1989 appears to have no direct connection to the announcement.

So far it has been established that very little has improved since the 1989 parliamentary elections. There is one more element to examine: political participation. This element is by no means the least important; it is important to study to identify whether any transfer of political power has occurred as a consequence of the 1989 political changes.

8. POLITICAL PARTICIPATION

Introduction

The two previous chapters have been examining elements central to the rule of law. This chapter moves the attention to other, more researched elements of modern political democracy. While the two previous chapters have focused on the state actors, the emphasis of this chapter is on the citizens and their political rights. According to the constitution of Jordan, "the nation is source of all powers: the legislative, the executive and the judiciary".[715] The citizens of the kingdom are guaranteed political rights such as the freedom of expression and association, the rights to hold meetings, to establish societies and political parties, and to express their opinions.[716]

The aim of the chapter is to analyse the central Schumpeterian-Dahlian elements of political democracy: free and fair elections, political associations and press freedoms. This is done through examining the constitution and other related legislation. The object is to identify whether the constitutional design in Jordan in relation to political participation complies with the procedural principles of political democracy. However, it is not only the design that is of interest here, but also the implementation. Have the rights guaranteed in the constitution been part of the political reality in the country? The period examined here is one starting with the 1989 parliamentary elections and ending with the 2003 elections. It is relevant here to examine whether political rights have improved since the late 1980s.

The laws examined here are Elections Law, the Political Parties Law, and the Press and Publications Law. The 1986 law (with amendments) was applied in the elections in 1989, 1993 and 1997, and the 2001 law in the most previous elections in June 2003. The contents of the laws will be examined in relation to the outcomes of the last four elections. When analysing the election laws in relation to the political developments it is worth noting that since 1989 no election law has survived without

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[715] Constitution, Article 24.

amendments from one election to another.[717] The versions of the Elections Law (1986) and Political Parties Law (1992) used here are the official English translations. Due to the failure to obtain an official English translation of the Press and Publications Law Sae'da Kilani's translation is used here. It is also worth noting that while the other two laws are available on the website of the Jordanian government, none of the versions of the press laws is.[718] On the governmental website there is hardly any information on press rights in general. However, the 2001 Elections Law was not available, not even on the official website. As analysing the text of the law is not possible, secondary sources are used instead.

The implementation of the political rights are analysed through experts interviews. There are members of the lower house, former and present, interviewed here, as well as members of other political associations, journalists and civil society activists. When analysing election results it was decided to solely use the statistical data provided by the al-Urdun al-Jadid Research Center, for the sake of consistency.

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[716] Constitution, Articles 15 and 16.
[717] It has to be noted here that the text of the 2001 Election Law was not available for the purposes of this study. An official source (the website of the Jordanian mission in Washington D.C) is still offering the 1986 with a notice of the amendments (without their details). Thus it was decided to use secondary sources and interviews to find out the fundamental changes of the amended law.
[718] See http://www.jordanembassyus.org/new/aboutjordan

8.1. ELECTING REPRESENTATIVES

8.1.1. Electoral Legislation

At first glance, the rights guaranteed for the Jordanian citizens in the constitution appear to comply with the principles of procedural democracy. The constitution provides the citizens with rights to found and join political associations, express their opinions, as well as to elect and to be elected as a deputy.[719] According to the constitution, to be elected to the parliament as a deputy one has be a Jordanian citizen and be at least 30 years of age and 40 years to be appointed as a senator.[720] The right to participate in the elections is not granted to those citizens holding post or privilege that are considered neutral, non-political: the members of the royal family, judges, personnel of armed forces and security forces when in service. Anyone who holds a public office is not eligible. Also no one is allowed to be in the both houses at the same time.[721] Citizens can also loose their 'electoral' rights; for example when given 12-month (or longer) sentence for a non-political crime and have not been pardoned, or convicted for bankruptcy charges and not discharged.[722]

Although the senators are appointed by the king, he is restricted by the criteria defined in the constitution. To be appointed as a senator one has be at least 40 years old and to "belong one of following classes": current or former ministers, ambassadors, speaker of the lower house, judges from the Court of Cassation and appeal courts, retired military officers of higher ranks or "similar personalities who enjoy the confidence of the people".[723] The age limit in case of senators is to guarantee that the candidates are genuine dignitaries, that they have already done remarkable services to the kingdom.

Besides the details on the electoral qualification, the Jordanian constitution does not included further details about the parliamentary elections. The constitution leaves

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[719] Constitution, Articles 16, 17, 64, 70.
[720] Constitution, Articles 64 and 70.
[721] Constitution, Article 76.
[722] Constitution, Article 75.

many practical details to be announced in other legislation, particularly in the electoral law. No amendments have been made to the constitutional articles dealing with the rights and the liberties guaranteed for the citizens, as mentioned earlier. However, other electoral legislation has been changing over the decades, over the last decade in particular. The electoral law especially has been in 'flux' over the years. According to Hourani and Yassin, there have been "five electoral laws and dozens of amendments" issued between 1923 and 1986. This is quite surprising, as there have been no elections between 1967 and 1986.[724] Since 1947, the year of the formal independence, there have been five electoral laws, including the current one issued as a temporary law in 2001.[725] The third and fourth election laws were amended several times. More importantly for this study, the 1986 electoral law was amended in 1988, 1989, 1993, 1997 and 1998.[726] The most recent electoral law was issued in 2001 as a temporary law.

According to the constitution, the electoral law has to be based on "*integrity of the election, right of the candidates to supervise the process of election and the punishment of any person who may adversely influence the will of voters*".[727] Because the electoral details are left to be defined in ordinary legislation, they are easier to amend and it is also possible for the executive alone to decide on the electoral details in the absence of the lower house. Whether the legislators are deputies or the executive the requirements for fair and transparency of elections stated in the paragraph or any other stipulations of the constitution cannot be contradicted. The emphasis here is on any stipulations that might be in contradiction with these requirements or generally compromise the constitutionality of political rights.

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[723] Constitution, Article 64.
[724] Hourani and Yassin (1998), p. 18.
[725] Jordan Times, July 25th (2001).
[726] Law of Election to the House of Deputies (No. 22/86).
[727] Constitution, Article 67 (i)-(iii).

8.1.2. Electoral Peculiarities

The first requirement of the Schumpeter-Dahlian definition, universal suffrage, is fulfilled in the design. All citizens, men and women are entitled to vote in the elections as long as their names are listed on the Final Electoral Lists.[728] The suffrage has been universal since 1976. Women got the right to vote in 1974 and the Bedouin population in 1976. In 1955 the parliament granted women the right to vote provided that they had competed elementary education, but King Hussein cancelled the decision. The 1974 amendment was made by a royal decree. Massad argues that the change of legislation in 1974 initiated by King Hussein was not a coincidence, as it was done just before the United Nations conference on women in 1975.[729] Considering the political circumstances and the amendments of the constitution this was not as progressive a change as it might first appear. It could be argued, based on the previous chapters, that perhaps at the time of making this reform King Hussein was not even planning to hold elections any time soon. It was not until the by-elections in 1984 that women were able to practice the right, due to the absence of elections between 1967 and 1989.

There are two main weaknesses in the electoral law: the nationality requirement and the definition of the constituencies. The election law requires the candidates to have been citizens at least for *ten years*.[730] This time limit was introduced in 1986, it being earlier only 5 years. Joseph Massad points out that this 10-year requirement was also included in the 1987 nationality law, for the first time. Nationality laws did not have any restrictions for naturalised Jordanians until 1987. Therefore, the previous nationality laws guaranteeing nationalised citizens equal rights and the election law restricting their electoral rights contradicted each other.[731] At this point it is worth to reminding us that Jordan announced its disengagement from the West Bank in 1988.[732] Thus while drafting these two laws the government might have anticipated

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[728] Law of Election to the House of Deputies (No. 22/86), Article 3.
[729] Massad (2001), p. 14 and p. 55; Cooper and Tilly (1994), p. 15. The Council of Representatives Electoral Law (1947), Article 3: "Every male Transjordanian, not being a Bedouin...completed eighteenth solar year of his age".
[730] The Elections Law (1986), Article 18 A.
[731] The Elections Law (1986), Article 18 A. See also Massad (2001), p. 43.
[732] http://www.jordanembassyus.org/new/aboutjordan/ph3.shtml

the increase in the number of people applying for citizenship. This amendment can also be seen as an attempt to obstruct the participation of the Jordanian Palestinians.

The constituencies have been uneven since the early years of the representative parliament. The allocation of seats among the constituencies and the number of the constituencies have been the most amended element within the elections legislation. Yet the aim of the amendments has not always been to tackle the disproportionate representation, but rather to use it opportunistically. There are currently 110 seats in the Jordanian parliament elected from 45 multi-seat constituencies. The number of the deputies was increased in 2003 by a royal decree, to suit the requirements for the women's quota. Six seats were added, thus the total number of the deputies was raised to 110. The number of the constituencies was increased from 21 to 45 in 2001.[733] There are seats reserved for the minorities: nine seats for Christians and three seats for Circassians and Chechens to share. There are also nine seats reserved for Bedouins.[734] The number of the deputies elected from the constituencies varies; from one-deputy constituencies to constituencies with five representatives.

The 1986 election law was issued primarily to introduce changes in the constituencies. The 1986 law was drafted after the (shocking) by-elections in 1984. It is claimed that the aim of the executive/king was to curb the opposition. Robins summarises the outcome as a "hotchpotch combination"[735] of small electoral districts and proportionally smaller multiparty constituencies. The smallest constituencies were labelled as "kinship seats" as they encouraged electing on the basis of personal loyalties instead of political convictions.[736] The 1986 law for the first time defined the Palestinian refuge camps on the East Bank as constituencies. Earlier only the camps on the West Bank were treated in such a manner. This change was the most criticised element of the law. Palestinians opposed the idea as it would seem to be

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[733] Jordan Times July 24 (2001).
[734] Jordan Times, June 19th (2003); "The Final Results". As the 2001 temporary law was not available the allocation of the seats were counted from the final election results list.
[735] Robins, Politics and the 1986 electoral law in Jordan(1991), p. 200.
[736] Robins (1991), pp. 200-201.

as an acknowledgement of the camps as a permanent element of the Jordanian state. The East Bankers, on the other hand, were worried that their position would be weakened.[737] According to the 1989 temporary law, there were twenty constituencies with two to nine deputies.[738] Compared to the size of the previous (1989) constituencies the current ones (2003) can also be characterised as 'smaller and even smaller', because currently in terms of the number of seats the constituencies are even smaller than in the 1989 law (1-5 seats vs. 2-9 seats).

The allocation of the seats in the parliament has been a controversial matter. Throughout the period of independence the allocating of seats has been designed to favour the pro-Hashemites at the expense of groups considered as a threat to the Hashemite rule. An impact of the allocation of seats has been the disproportionate representation of Palestinians.[739] First, the areas predominantly Palestinian, such as Amman, have less seats relatively in the parliament than the southern pro-Hashemite districts. Sawalha stresses that in Amman there is a deputy for every 172,000 inhabitants, while in Tafileh there is a deputy for every 18,000 inhabitants.[740] The imbalance can also be seen when considering the seats given to the refugee camps on the East Bank. In 1986 there were 54,307 refugees in the Baqa camp, while in the Talbiyyah camp only 1,508. Yet both were electing a deputy.

Not only is the law favouring the rural areas at the expense of the cities, but also the minorities are over-represented at the parliament. Interestingly these minority groups are also the ones represented in the political elite. According to unofficial estimates, only three percent of the population are Christians, yet they currently have eight percent of the seats (1989 11.25%). According to same estimates, only 1.5 percent of the population are Circassian, yet they have 2.7 percent of the seats. The number of the seats reserved for these minorities has not changed since 1928.[741] Sawalha argues that the implications of the minority quotas can be seen in the 1997 elections. Prominent female candidates Toujan Faisal and Emily Naffa would have been

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[737] Robins (1991), p. 196.
[738] Law of Election to the House of Deputies (1986), Provisional Law no. 23.
[739] Robins (1991), p. 201.
[740] Sawalha, Democratisation in Jordan – The Electoral System(2001), pp. 12-13.
[741] Sawalha (2001), p. 2.

elected if they had been running for the Muslim seats. Naffa got over 2,000 votes and Faisal 4,000, while the candidates for the Muslim seats from the same district have been elected with 1,300 and 1,042 votes. However, in the other districts the ratio is the opposite: Christian candidates have got elected with fewer votes compared to Muslim candidates.[742] Riedel argues, however, that Faisal's success in the 1993 elections was possible only due to the Circassian seat. Running for a minority seat Faisal was competing with only two candidates.[743]

These discrepancies are acknowledged by the government. When the 13th parliament was elected in 1997, the newly-appointed government announced that it would be drafting a new elections law. A proposal was announced in 1999, however it was soon forgotten. Nothing was presented until 2001.[744] The 2001 law was issued as a temporary law, as the lower house had dissolved earlier in 2001 by a royal decree. It was not tested in practice until June 2003, as the elections were postponed. The government justified the postponement with a need to spend at least 10 months to implement the reforms brought by the new law.[745] Abdullah II stressed that the new law should to tackle two problems: the disproportionate constituencies and the allocation of the seats.[746] According to then Interior Minister Khleifat, the 2001 law tackles this problem successfully: "redrawing of constituencies granted justice to all geographic areas of the Kingdom". Khleifat argues that the system introduced in the 2001 law is "close to the British system".[747] Not all agree with Khleifat. Sawalha argues that despite other improvements made the law had almost no impact on the disproportionate districts. The voters-seats ratio is almost the same as in the previous laws, in some places even worse. The most affluent areas of Amman are defined as constituencies on their own in the new law. Irbid, the stronghold of tribal groups, is given sixteen seats for 220,000 eligible voters, while in Amman 1st district gets three seats for 150,000 voters. The number of seats reserved for ethnic minorities in the new law remains the same.[748] The introduction of single-

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[742] Sawalha (2001), p. 2.
[743] Riedel, The 1993 parliamentary elections in Jordan(1994), p. 60.
[744] Sawalha (2001), pp. 8-12.
[745] Jordan Times, 25th July (2001).
[746] Sawalha (2001), p. 12.
[747] Jordan Times, July 25 (2001). "Royal Decree delays elections"
[748] Sawalha (2001), pp. 12-13. See also Greenwood (2003), p. 264.

person constituencies or only one constituency will be done "at a later stage, once political parties will be more consolidated and active in society". Yet Khleifat reminds us that "there is no country in the world where the number of the deputies is precisely proportional to the population".[749]

[749] Jordan Times, July 25th (2001).

8.1.3. Election Outcomes 1989-2003

Before analysing the elections results it is worth noting that finding the exact figures on the turnout is not a straightforward task in Jordan. The literature on the elections in Jordan offers differing figures for the turnout of the elections. One of the reasons for the differences is the electoral registration. The actual number of the votes cast is sometimes compared to the number of election cards collected, sometimes to the number of registered voters or to the number of eligible voters. The figures used here are the ones describing how many eligible Jordanians voted, instead of the percentage of all registered voters or cardholders. It is more relevant to identify how many citizens with the right to vote really cast their votes, instead of comparing the cast votes with the citizens' initial intention to vote. Also to avoid confusion, this study refers to a single source (al-Urdun al-Jadid Research Center), with the exception of the 2003 elections. The changes in the turnouts from an election to another are considered more significant than exact figures. It has to be acknowledged that in this context numerical data is not necessarily exact or reliable. The al-Urdun al-Jadid Centre relies on information from the Ministry of Interior, the body in charge of the voting processes (until 2001). The official sources, however, prefer reporting the results as a percentage from registered voters, which makes the figures look better.

The 1989 Elections

In April 1989 to calm down the protestors the king promised that elections would be held. In July King Hussein announced parliamentary elections would take place in November. Thus the candidates were not given much time to prepare for the elections, particularly considering the prolonged absence of parliamentary elections and the ban on political parties. Officially no political parties took part in the elections, as they were still illegal. Yet candidates represented a broad spectrum of ideological stands.[750] Regardless of the shortness of the campaign it was considered as a lively one.[751] The elections are also considered to have been: "surprisingly free, open and

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[750] Yayyusi (1998), p. 6; Robinson (1998), p. 392.
[751] Baaklini *et al* (1999), p. 144.

outspoken".[752] The opposition protested against the changes in the 1986 election law, yet decided to participate.[753] The turnout, however, was not encouraging, it remains only 41 percent.[754] The low turnout is explained partly by the complicated registration process and partly by the short period of campaigning. There are also differences in turnouts between various parts of Jordan. In the urban Palestinian population districts turnout was lower than in the southern (Transjordanian) districts. It was rumoured that Yasser Arafat encouraged Palestinians not to vote, as active participation would have made them appear to be a part of the Jordanian state.[755]

As with the turnout, there are also discrepancies when reporting the seats gained by different (ideological) groups in 1989. Categorising candidates is difficult, as candidates did not openly announce their political stands. After all political parties were still illegal. The Muslim Brotherhood (*al-Ikhwan al-Muslimeen*) gained 22 seats, independent Islamists 10-14 seats and conservatives 30. A majority of observers stress the surprise victory of the Islamists; independent and the Islamic Brothers.[756] The success of the Islamists was explained by the years of absence of political parties. The suddenness of the elections favoured groups that were already organised and active.[757] Also the multi-vote system favoured Islamists. Yet, not all consider the outcome of the elections to have been surprising. Singh argues that "the palace" anticipated the outcome. Prior to the elections two surveys were made indicating the increased popularity of Islamists at the expense of the leftists. Thus the king would not have been stunned by the election results. From the royal court's perspective the Islamists were a lesser evil than the leftist groups. The Islamists had been supporting the monarchy through the previous domestic crises. According to Singh, despite the number of the seats gained by the Islamists, the outcome of the 1989 elections was still an "extremely loyalist" parliament.[758] Freij and Robinson's

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[752] Riedel (1994), p. 51.
[753] Hourani and Yassin (1998), p. 19.
[754] Brand (2000), p. 101; Brand (1999), p. 53; Riedel (1994), p. 51; Robinson (1998), p. 392; Cooper and Tilly (1994), p. 14; Riedel (1994), p. 56; Robinson (1998), p. 392. According to some, the turnout was around 54 percent of eligible voters and others claim that is 40 percent, even as little as 34 percent.
[755] Brand (2000), p. 102.
[756] Singh (2002), p. 78; Riedel (1994), p. 51; Greenwood (2003), p. 254.
[757] Robinson (1998), p. 392.
[758] Singh (2002), p. 78. There were two cabinet members who confirmed the government using the polls.

argue that in spite of the comments of the victory of the Islamists, they gained less than a third of the seats. Furthermore, King Hussein did not consider Islamist as the greatest threat to the Hashemites. In matter of fact Islamists and the Hashemite monarchy have "coexisted in mutually beneficial relationship".[759] Also the success of Islamists in the 1984 by-elections might have given some indication of the popularity of the Islamists.[760]

In the 1989 elections female candidates were allowed to stand for the first time in the country's history. Yet, none out of the 12 candidates got elected.[761]

The 1993 Elections

The 1993 elections were the first multiparty elections in Jordan since the 1960s, yet they are characterised by Jordanians' lack of interest in political matters. There were fewer candidates running and the election campaign is considered to have had little "political content". The issues talked about were services and "bread and butter issues", leaving many politically sensitive issues with little attention.[762] According to Riedel, Jordanians were disillusioned with the parliament. The parliament had managed to raise important issues and create lively debate on matters. Yet the deputies did not seem to have the power to influence the most important decisions made during the term 1989-1993. The government had the major role in making decisions and implementing matters regarding the IMF programmes, the National Charter, the relations with Israel, and finally the 1993 Elections Law.[763] The resources of the parliament were by no means sufficient: "no private offices, no staff, no funds, no organisational backgrounds".[764]

The government intentionally weakened the chances of political groups in the 1993 elections. By no means was the 1989-1993 period an easy one. In 1990 Iraq's

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[759] Freij and Robinson (1996), .p. 27.
[760] Freij and Robinson (1996), p. 15.
[761] Rath (1994), p. 545; Amawi, Against all odds(2001), p. 35. According to Rath, there were only 9 female candidates.
[762] Amawi (2001), p. 38; Riedel (1994), p. 55.
[763] Riedel (1994), p. 51. See also Robinson (1998), p. 393.
[764] Riedel (1994), p. 52.

invasion of Kuwait created an economic crisis in Jordan. Foreign financial assistance was decreased, as the king had expressed his support for the Iraqi regime. There were also a great many Jordanians working in the Gulf who were forced to return to Jordan. The Madrid Peace Process which began in 1991 had a number of opponents in Jordan. In addition, the PLO signed a peace agreement with Israel in September 1993, just weeks before the elections. Considering the complicated political environment the government's intention to eliminate any surprises and to decrease the possibility of a radical (anti-normalisation) majority being elected was not surprising. First, the government delayed announcing the election date. People were expecting the government to postpone the elections due to the peace negotiations. Only a month prior to the elections it was declared that elections would be held as planned. It is also argued that after the disappointing turnout of the 1989 elections the government was eager to encourage (conservative) voters to participate. It is claimed that the government hoped that postponing the elections until November would give Jordanians returning from Iraq enough time to register as voters. The 300,000 expatriate workers returning from Iraq were considered as 'cautious' voters unlikely to vote for the Islamists. If the majority of the 'returnees' would vote, it would have the increasing impact on the turnout the government was wishing for.[765] The government also forbade public rallying. The decision was in fact overturned by the Supreme Court, but only a week before the elections. These matters both contributed to the fact that the political parties, this time legalised, did not have enough time to campaign.

The greatest attempt to influence the election results was the introduction of the new election law in 1993. The only amendment in the law was the controversial 1-man-1-vote formula. [766] Earlier voters could vote for as many candidates as were elected from their district, while the 1993 amendment restricted the right to only one candidate regardless of the number of the deputies chosen from the particular district.[767] The government justified the reform as an attempt to reduce the

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[765] Freij and Robinson (1996), p. 23.
[766] In 1993 when the one man one vote amendment was made, there were only 20 constituencies. The number was increased to 21 in 1997, as the election law was amended once again. Hourani and Yassin (1998), pp. 21-22.
[767] http://www.jordanembassyus.org/new/aboutjordan/onemanvote.shtml

significance of tribalism. The amendment was criticised for being biased; maintaining voting based on tribal loyalties. A majority of the political parties expressed their unhappiness regarding the change.[768] This amendment has been the most controversial of all amendments, leading to many protests and even to the boycott of the 1997 elections. It is fair to say that more people criticise the amendment than praise it.

According to Professor Shteiwi, the critique is not justified, as in his view the new formula does not support tribalist thinking. The outcome of the 1989 elections was not less tribalist than the outcome of elections after the 1993 amendment, yet the 1989 elections were the last elections in which electors could cast several votes. The current 1-vote formula will "eventually" weaken tribal thinking. Shteiwi argues that when allowed to vote for as many candidates as elected from the constituency, an Islamist is also deciding the success of the Christian seat.[769] It is worth noting here that in contrast to Shteiwi's interpretation of the election results the 1989 parliament has been considered the most democratic one so far. The opponents of the formula are, however, demanding the formula to be replaced by a double-vote formula. This requirement is also included in the recommendations made by the Jordan First committee.[770]

It is claimed that the changes in the election law also contributed to the 'non-ideological' nature of the campaigns. The 1-man-1-vote formula favoured tribal loyalties. Many voters registered in their hometowns instead of the place of residence in order to be able to vote for a relative.[771] It is justified to claim that the law was designed to weaken the Islamists and strengthen the existing unequal allocation of seats in the parliament (favouring East Bankers).[772] The way the amendment was made is very telling. The king announced on June 10th that there would be no changes in the election without appropriate debates and involvement of the actors concerned. The National Charter was issued in 1991. The Charter was

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[768] Robinson (1998), p. 398; Sawalha (2001), p. 2; Roberts (1991), p. 122.
[769] Shteiwi, Interview in Amman June 2003.
[770] Shunnaq, Interview in Amman June 2003; Jordan First Recommendations, 2002.
[771] Riedel (1994), p. 54.
[772] Riedel (1994), p. 53.

seen as a pact between the political groups and the monarchy: political groups promising to support the Hashemite monarchy and the king in return provided an environment which encouraged democratic participation. The opposition groups were worried about possible amendments in the election law and announced their readiness to boycott the forthcoming elections should the election law be amended without the parliament being present. When the 12th parliament was dissolved August 4th, the king promised that no law would be amended. No election date was declared, however. Only two weeks later, however, the amended law was presented. The al-Majalli government presented the amendment, yet the king's involvement was undisputed.[773] Opposition's protests died out, however, when the king expressed his support for the law. Once the Islamic Action Front announced its intention to participate in the elections other parties joined in. The careful involvement of the inner circles of the political elite in introducing the law is seen also when in July the official news agency, Petra, published a poll stating that majority of Jordanians favoured the one-man-one-vote formula.[774]

The turnout of 45.7 percent was higher than in 1989.[775] From 534 candidates only 100 can be identified as political candidates, 55 of them officially running as party candidates.[776] Sixty deputies from the 11th parliament wanted to renew their mandates, but only 26 succeeded.[777] The majority of the candidates were moderate tribal representatives. Islamists gained fewer seats than in the previous elections, only 16 out of 80. Not only did the new election formula favour tribal loyalties, but also the voters were not impressed with the role of the Islamists in the 12th parliament. There were also internal problems weakening their performance.[778] There are also claims of election fraud and vote selling. According to Robinson, several claims were made of the support procedures for illiterate voters being abused. An illiterate voter can request the chairman of the balloting board to assist with writing the candidate's name. The election law (1986) states that the chairman should read the name(s) to the voter "audible within the earshot of the board", while

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[773] Yayyusi (1998), p. 7; Robinson (1998), p. 398; Brand (2001), p. 112.
[774] Cooper and Tilly (1994), p. 21.
[775] Hourani and Yassin (1998), p. 207.
[776] Anderson (1997), p. 60.
[777] Riedel (1994), p. 60.

the regulation issued in September 1986 only requires the chairman to read the names to the voter and make any modifications requested.[779] It is argued that these procedures were used as a way for the person selling her/his votes to prove that the vote really is given to the person who is purchasing the vote.[780]

One of the most remarkable achievements of the 1993 elections was the election of the first female deputy in Jordan. There were only three women running for a seat, whereas in the 1989 elections there were twelve. Toujan Faisal was elected for the Circassian seat from the Amman's Third district, an affluent area with well-educated and progressive inhabitants.[781] It is interesting, argues Robinson, that Faisal's success relied on no significant support groups, political parties or tribes.[782]

The 1997 Elections

Compared to the two previous elections, the 1997 elections were full of controversy. The new election law (1993) encouraging voting based on tribal loyalties had aggravated the Islamists, who had won substantially fewer seats in the 1993 elections. The Muslim Brotherhood declared an election boycott, which other opposition groups soon joined, including among others the Islamic Action Front (IAF) and the Council of Professional Associations (CPA). In addition nearly hundred public figures and ex-parliamentarians joined the boycott.[783] The government negotiated with the opposition groups trying to convince them to cancel the boycott, yet with no success.[784]

The turnout was lower than in the two previous elections: only 41 percent. As in the previous elections in the constituencies where the tribal presence is strong more votes were cast; the turnout being significantly higher than that nation-wide (between

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[778] Baaklini *et al* (1999), pp. 156-157.
[779] Law of Election to the House of Deputies 1986, 46 B; Regulation No. 60 for the Year 1986 Elections Regulation, Article 8.
[780] Robinson (1998), p. 398; Naffa, Interview in Amman June 2003; Faisal, Interview in June Amman; Shubeilat, Interview in Amman June 2003.
[781] Riedel (1994), p. 56 and p. 60.
[782] Robinson (1998).
[783] Sawalha (2001), p. 4.
[784] Sawalha (2001), p. 4.

83-93 percent).[785] Baaklini (*et al*) argue that the boycott was not that successful, as there were not many fewer candidates compared to the previous elections.[786] Thus it is argued here that the number of candidates alone does not necessarily say anything about the success of the elections. It could be argued that the king surely was aware that the observers would focus on the numerical data. Therefore, encouraging people outside the boycotting groups to participate might be useful. The amount of the candidates also tells very little about their quality or the quality of the deputies chosen. The 13th parliament is characterised apolitical and tribal, even 'incompetent' by some critics. Only four from eighty elected deputies belonged to political parties and some were "stealth candidates" from National Constitutional Party (NCP).[787] No women were elected; even Toujan Faisal did not succeed in renewing her mandate.[788]

A majority of observers, as well as the domestic opposition, considered the 1997 elections not to be free, or fair. According to the elections regulation (No. 60) made in September 1986, the presence at the polling station is limited to the candidates, the members of the balloting panel and the voters (a maximum of 5 at the same time).[789] Thus it was possible for the supporters for the opposition candidates to be present, and there are many stories told about electoral flaws at the polling stations. Many claims of fraud were also reported in the press. The Minister of Interior admitted that errors had occurred in registration of voters. In some constituencies "over-registration", repeating names twice or more, reached 150 percent.[790] In order to vote the eligible citizens have to be registered in the electoral lists. All the (registered) voters need election identity cards to be able to vote. According to the 1986 law, anyone can order the cards on behalf of the family members included in the same family book. Registering is done by inscribing a mark in the voter's family book. Family books include all the unmarried members of the family in question. It is

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[785] Sawalha (2001), p. 6.
[786] Baaklini *et al* (1999), pp. 163-164.
[787] Sawalha (2001), p. 6.
[788] Amawi, (2001). p. 47.
[789] Regulation No. 60 for the Year 1986 Elections Regulation. Issued by the Virtue of the Article of 72 of the Law of Election to the House of Deputies 1986, Article 5.
[790] Sawalha (2001), p. 5.

possible for anyone from a family to register the rest of the family members mentioned in the family book.[791]

Toujan Faisal reports being shown forged election cards. The cards were given to deceased Jordanians, members of the army and the security forces.[792] Furthermore, the voting cards needed for balloting, it was argued, were abused and powers of attorneys were forged.[793] It is argued by many that the election frauds were made possible by the vagueness of the new election law or the deliberate interference of the executive, or both. The law did not clearly indicate how the registration should be done. The law was not specific whether the registration should be taken at the place of birth, permanent or temporary residence. Furthermore, it is not indicated whether all unmarried family members mentioned in the family book should be present at the registration.[794] Baaklini *et al* argue, nonetheless, that despite the claims of election rigging the government was sincerely trying to prevent any wrongdoings.[795] The government had appointed an "election spokesman" just a few weeks before the elections. Also some people were charged for election fraud, mainly for forging power of attorneys.[796]

The 2003 Elections

The 13th parliament was dissolved in July 2001; just some weeks before the government issued the 2001 election law. Shortly afterwards the parliamentary elections were postponed. According to the prime minister, it would take at least 10 months to implement the reforms brought by the new law. The following year another announcement was made to postpone the elections, this time owing to 'regional turbulence', the second Palestinian *intifada* and the anticipated Iraqi war. It was believed that the true reason for the postponement of the elections was the negative sentiment towards the Israeli peace treaty. The executive feared that the new lower

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[791] The Elections Law, 1986, Articles 6-9. This excludes the members of press and any (official) observers.
[792] Faisal, Interview in Amman June 2003. See also Sawalha (2001), p. 5.
[793] Al-Khoury, The 1997 Elections in Jordan(1998), p. 378.
[794] Sawalha (2001), p. 5.
[795] Baaklini *et al* (1999), p. 165.
[796] Al-Khoury (1998), p. 10.

house might pursue to annul the treaty.[797] After months of postponement, it was announced in February 2003 that the elections were to be held in June. It is rather interesting that immediately after the 1997 elections the government announced that it was working on a draft election law. The 1997 law, as previously shown, had led to protests by the opposition and to a widespread election boycott. What makes this announcement interesting is that the draft law was finally resented in July 2003 when the elected house had been dissolved, and the law was passed as a temporary law. The need to amend the 1993 election law was acknowledged by the king and the executive throughout the term of 14th parliament, with no practical steps taken.[798]

There were several novelties in the elections. Some of the new elements were definitely improvements, others bit more controversial. One improvement in the new elections law is the age limits. According to the previous law, although a citizen reaches the age of majority at the age of eighteen, s/he is only entitled to vote a year later. This was changed in the 2001 elections law. The first ever election law provided the right to all citizens 18 and over, and in 1960 this was raised to 21 years.[799] It has to be noted at this point that there were 'radical' political activism at the universities in the late 1950s. Thus the increased age limit appears to be obstructing the opposition forces. In the 2003 elections for the first time the voter's identity card was personal and could not be used by any other family member.[800] Previously it was possible for any of the members from the same family to register and vote on the behalf of the other family members.[801] This reform was initially the official reason for the postponement of the parliamentary elections in 2001. The government announced that to implement the amendments it needed at least ten months.[802]

The transport of ballot boxes had caused criticism earlier, as there had been claims that the transport would enable the boxes to be tampered with. According to the

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[797] McDermott (2003), p. 2.
[798] Sawalha (2001), p. 8.
[799] Hourani and Yassin (1998), p. 20; Massad (2001), pp. 54-55. The 1947 electoral law the right to vote was guaranteed to citizens aged 18, and then raised to 21 in 1960.
[800] Instructions Governing The Election Identity Card, 1986, Articles 2 and 4.
[801] Constitution, Chapter 6.
[802] Jordan Times, July 24th 2001; Jordan Times, July 25th 2001.

1986 law, after the balloting centre has closed, the ballot boxes were moved to the constituency headquarters where the votes will be counted.[803]For instance, there have been accusations that transporting the boxes has taken more time than it should have, giving reason to expect election fraud.[804] The temporary law 2001 has changed this practice and for the first time in the 2003 elections the votes were counted at the ballot stations.[805] The ballot boxes are opened by the central committee in the presence of the candidates and their delegates. Candidates are entitled to be present during the canvassing of the votes. The results will be announced "openly in the presence of the candidates or their delegates".[806]

Previously the Ministry of Interior has announced the election results within two days of receiving the results.[807] The 2001 law improves the transparency of the elections by defining the judiciary as the body in charge of supervising the elections, instead of the Ministry of Interior. Judges will also be responsible for declaring the validity of the elections instead of the deputies themselves.[808] However, only one judge will be appointed to each supervising committee because there are currently not enough judges in Jordan. Deputy Prime Minister Khleifat points out the problem: there are 6000 balloting centres and a 3-member committee supervising in each. Thus in total 18,000 judges are needed to have judges-only committees. Khleifat reminds us that there are currently only 430 judges in Jordan.[809]

A real controversial reform was the disputed women's quota. The implementation of the women's quota failed to meet the expectations of the promoters. Jordanian women's groups were actively promoting the quota for female deputies (or "positive discrimination") since the 1997 elections. The women's groups saw the quota only as a temporary measure for next three to four elections. Unlike many other quota models, in Jordan no demands were made to place a minimum requirement for the

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[803] Law of Election to the House of Deputies 1986, Article 48 C.
[804] Naffa, Interview in Amman June 2003 and Faisal, Interview in Amman June 2003.
[805] Jordan Times, July 24th 2001; Sawalha (2001), p. 13.
[806] Law of Election to the House of Deputies 1986, Article 56.
[807] Law of Election to the House of Deputies 1986, Article 9.
[808] Sawalha (2001), p. 13
[809] Jordan Times 2001.

number of female candidates.[810] The supporters of the quota aimed at twenty percent of the seats at first, but then reduced the demand to 12 seats, and finally to eight seats.[811] Thus the quota of six seats was a compromise and to some a disappointment. According to the quota, there are six seats reserved for female candidates who are not elected through the ordinary process. The votes gained by each female candidate are counted as a percentage of the votes given in her constituency, then compared nationally. The six candidates with the highest percentage of votes will be elected. This way of counting is criticised by many, because the more women who run from the same district the smaller their chances are in the national comparison.[812] In addition to the way the votes are counted, another controversial element of the quota is the involvement of the government. In contrast to the counting of the 'ordinary' votes, the Ministry of Interior, and not the judiciary, count the votes given to the female candidates and also announce the results. Thus counting the votes of the female candidates lacks transparency.[813]

Emily Naffa, a prominent left wing politician, decided to boycott the 2003 elections to show her disapproval of the way the quota is implemented. The procedure whereby female candidates are chosen based on the proportion of the total vote obtained within their constituency is argued to favour those candidates who run in districts with smaller population.[814] According to the calculation by Sean Dunne, candidate A with 4,000 votes from the total of 10,000 votes cast in a district of 12,000 registered voters might have fewer chances than the candidate B with 450 votes from the total of 1,000 votes from a district of 1,500 registered votes. Candidate B has 45 percent of the votes from her district, while candidate A has 40 percent.[815] This prediction seems to be accurate, as all six women elected in 2003 elections were outside Amman. Tafilef with 20,000 inhabitants is represented by two women, whereas Amman by none. However, it must be acknowledged that the woman with the highest percentage, Hayat Massimi (an Islamic Action Front candidate from Zarqa) almost succeeded in winning an ordinary seat with 7,133 votes (compared with the

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[810] IDEA website, Drude Dahlrup, (2003). http://www.quotaproject.org/discuss.cfm
[811] Salwa Nasser, Interview in Amman May 2003; Lamis Nasser, Interview in Amman June 2003.
[812] Jordan Times, February 14, 2003. http://www.jordanembassyus.org/02142003004.htm
[813] Dunne (2003).
[814] Naffa, Interview in Amman June 2003.

7,174 votes of Salameh Ghweiri).[816] It is worth noting here that when the election results were announced there was no indication of the number of votes gained by percentages of the six female deputies.[817]

The election campaign was considered as 'lame' or uninteresting. After the series of disappointments, argues Hourani, it was difficult for the government to win people's trust.[818] The turnout of 45.7 percent was lower than in the 1993 elections.[819] Yet making comparisons is not that straightforward, as the election age was lowered to eighteen years. In Jordan such a change is remarkable as it is estimated that nearly 60 percent of the population is less than 19 years of age.[820] Again there were regional differences between the turnouts, the voters in Amman being the least active. Seventeen deputies succeeded in renewing their mandates. The majority of the new deputies were conservative tribal figures. Islamic Action Front got 25 seats and the first quota seat for women. According to Mustafa Hamarneh, the outcome of the 2003 elections shows the citizens are becoming more aware and mature in political matters.[821]

Once again claims of election fraud were made. There were claims of an election card machine found in a southern district, and clashes in Karak.[822] Yet one of the greatest controversies of the 2003 elections occurred before the balloting day. The government rejecting Toujan Faisal's candidacy can be considered as such. The 2001 law makes a minor but significant distinction to 'electoral disqualification'. Both the 1986 law and the current constitution state that Jordanians will be disqualified as voters and candidates if they have been convicted for a non-political crime and not

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[815] Dunne (2003), p. 2.
[816] Jordan Times, June 19th (2003). "Tribal, independent figures win most of Lower House seats". Alia Shukri and Dina al Wakeel.
[817] Jordan Times 19 June (2003), Election Results.http://www.jordanembassyus.org/06192003002.htm
[818] Hourani, Interview in Amman June 2003; Shteiwi, Interview in Amman June 2003; Samhouri, Interview in Amman June 2003.
[819] According to the government, there were 2,843,483 eligible voters and 2,326,496 of them registered. It was announced that 58.5 percent of registered citizens cast their votes. Then there would be 1,360,415 citizens voting. That would make the turnout 47.8 percent of the eligible citizens. http://www.jordanembassyus.org/new/aboutjordan/dp3.shtml.
[820] Dunne (2003), p. 5.
[821] Jordan Times, June 19th (2003).

pardoned.[823] The 2001 elections law disqualifies citizens when convicted of a non-political crime and who subsequently received a 'special' pardon by the king.[824] The case of Toujan Faisal presented in the previous chapter shows how such a tiny amendment can actually create great judicial and political dilemmas. According to article 38 of the constitution, the king can "grant a special pardon or remit any sentence, but any general pardon shall be determined by a special law".[825] Thus the king has wider freedoms (more independence) to grant 'special' pardons, as the special pardon is issued though the legislative channels. Not to let Faisal compete was perhaps one of the unwisest decisions made by the government, as it gave the opposition free ammunition against the government. Whether the reason to reject Faisal's candidacy was made entirely on judicial basis, or whether it was an 'extrajudicial' punishment or an attempt to obstruct her political activism is debatable. Whatever the motive behind the decision is, it is also an indication of unpredictability within the system. The decision by the appeal judge to declare it beyond his jurisdiction to interpret constitutionality in Faisal's case, makes the case appear more political than judicial.

To sum up, it is worth noting here that the election results and the interpretations given are a confusing matter. The turnout of the elections since 1989 seems to bring no surprises: 41 percent in 1989, 51 percent in 1993, 47 percent in 1997 and 47.8 percent in 2003.[826] There is a slight increase in the turnout since the 1989 elections. Yet it must be remembered that the turnout should also reflect the 4-percent annual demographic growth. In 1993 there was also an influx of 300,000 citizens returning from the Gulf. Moreover, in the 2003 elections the voting age was lowered making comparisons complicated. There were 647 candidates in 1989, 534 in 1993, 524 in 1997 and 765 in 2003. [827] Analysing these figures as such indicates that political developments since 1989 have not encouraged the Jordanians to participate. The increase in the amount of the female candidates, however, is remarkable. There

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[822] Samhouri, Interview in Amman June 2003; Faisal Interview in Amman June 2003. Jordan Times, June 19th (2003); Star June 19th (2003).
[823] Constitution, Article 75C; Elections Law (1986).
[824] Jordan Times May 20th (2003). "161 candidates registered in capital for 5th District; 2 rejected" (page 3); Law of Election to the House of Deputies (No. 22/86), Articles 4 and 5.
[825] Constitution, Article 38.
[826] Hourani and Yassin (1998), p. 207.

were 12 candidates in 1989, three in 1993, seventeen in 1997 and 47 in 2003. The increase is primarily a consequence of the women's quota.

[827] Hourani and Yassin (1998), p. 208. http://www.jordanembassyus.org/06182003002.htm

8.2. ASSOCIATIONAL LIFE

8.2.1. Political Parties

According to the constitution, citizens are free to found and join political parties and societies "*within the limits of law*".[828] Nevertheless, since 1958 political parties were banned until the early 1990s. The first elections of the 'new era' were held although political parties were illegal. The Political Parties Law was passed in 1992, three years after the 1989 elections. [829] The main elements of the Political Parties Law were already agreed within the framework of the National Charter published a year before. The political environment has been changing since the promulgation of the Political Parties Law. Yet this law is the least changed element of the Jordanian political system.

According to the Political Parties Law (1992), Jordanian citizens are free to found parties and join them. In order to found a political party, there have to be at least fifty founding members. A 'founding member' has to be at least 25 years old, to have been a Jordanian citizen for at least ten years, and not to have dual citizenship, to live permanently in the country, to have no criminal convictions (with the exception of political crimes) and to belong to no other party. Furthermore, in accordance with the constitution, members of armed forces, security forces or the civil defence, as well as judges, do not qualify as founding members.[830] They do not qualify as voters or candidates when in the office, thus forbidding active role in political parties is in line with the requirement of political neutrality of people holding special posts. The same criteria are applied for any one who wants to join an existing party, with the exception of age. Anyone who is eighteen or above can hold party membership.[831]

All the offices (headquarters and branches) of political parties have to be within the national borders to ensure that political parties remain independent. Parties are also

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[828] Constitution, Article 16.
[829] Riedel (1994), p. 59.
[830] Political Parties Law, Articles 4-5. http://www.jordanembassyus.org/new/aboutjordan/politicalpartieslaw.shtml

responsible for keeping the records of their funding public, and must not receive any funding from outside Jordan. Donations can be given only by Jordanian citizens and cannot exceed 5000 Jordanian Dinars a year per person.[832] These stipulations are aimed to protect political parties "from foreign subservience and manipulation".[833] The reason for this has its foundation in the developments in the 1950s and 1970s. In the 1950s, at the height of the Pan-Arabism, the Ba'th party, Arab Socialist party and Communist party received support from the counterparts from other Arab countries, mainly Egypt and Syria. The PLO has also been supporting some Jordanian political groups. The government also wanted to minimise the involvement of the PLO in 'domestic politics'.[834] Parties cannot work from the premises of any "public, private, charitable, religious, productive or educational institution", nor can they allow any of such institution use their premises.[835] These stipulations are aimed at limiting the Islamic Action Front and Muslim Brotherhood type of co-operation. It is easier to control actors in an environment where actors have precise roles and functions. The popularity of the Islamic Action Front is largely due to the work done within the Muslim Brotherhood. The Political Parties law guarantees the immunity of the premises of the party and the confidentiality of their records. According to article 18, raids at the party premises are authorised only by a judicial order.[836]

In the early 1990s, after their legalisation, political parties mushroomed in Jordan. There are currently thirty political parties registered.[837] This could be partly explained by the small number of funding members (50) required. It is often argued that the political parties are weak, relatively ineffective and badly organised.[838] The long absence from active participation in political life has left its legacy. The only party whose organisation resembles the western idea of political party is the Islamic Action Front (IAF). While political parties were banned IAF was able to work under the umbrella of the Muslim Brotherhood.[839] The small size of the political parties is a

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[831] Political Parties Law, Article 16.
[832] Political Parties Law, Article 18.
[833] http://www.jordanembassyus.org/new/aboutjordan/ph4.shtml
[834] Singh (2002), p. 69 and p. 71.
[835] Political Parties Law, Articles 6 and 14.
[836] Political Parties Law, Article 18.
[837] http://www.jordanembassyus.org/11242003003.htm
[838] Mahafzah (2001), p. 356.
[839] Brynen (1998), p. 87.

factor explaining their ineffective organisation. Political (party) activism is not very popular in Jordan. In 2001 less than 9000 Jordanians belonged to a political party (25 parties).[840] From the 80 deputies of the 13th parliament only 23 openly represented political parties. Quite telling is the fact that 16 out of these 23 party candidates were members of the National Constitutionalist Party, pro-government party and the second most represented party was IAF.[841] Curiously, neither the list of deputies on the government's website nor that published in the main (English) newspapers indicates the political affiliation of the elected deputies. As shown earlier, the lower house is dominated by independent deputies. Hence the members of the lower house belong to political 'blocs' rather than parties.

After a long period of political activism being illegal it is not surprising that citizens do not consider political parties as attractive or even necessary. According to the surveys (*Democracy in Jordan 2003* and *Democracy in Jordan 2000)* conducted by the Center for Strategic Studies, University of Jordan (CSS), the majority of Jordanians feel that they cannot participate in political opposition activities without a risk of discrimination directed against themselves or their family. This fear of being punished for political activism has been a growing tendency: in 1999 70.9 percent of the interviewees, in 2000 73.5 percent and 77.4 in 2003.[842] According to Leith Shubeilat, even people with indirect connections to opposition politics will not be recruited to public sector posts, including the public universities. He argues that his son-in-law has encountered difficulties finding employment only owing to his father-in-law's political activism.[843] Some Jordanians go even further arguing that Jordanians are generally move interested in prosperity than in political ideals. For many the economy and the prices of basic commodities are more interesting that political rights. Also the frustration about the corruption in Jordan and the government's inability to improve the lives of ordinary citizen is perceived to make

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[840] Jordan Times 2001
[841] Hourani and Yassin (1998), pp. 203-206.
[842] The Center for Strategic Studies: Democracy in Jordan 2003, Democracy in Jordan 2000; Democracy in Jordan 1999. http://www.css-jordan.org/polls/democracy/2003/index.html and http://www.css-jordan.org/polls/democracy/2000/index.html .
[843] Shubeilat, Interview in Amman June 2003.

citizens generally disinterested in anything political. As they cannot see anything changing or benefiting their lives they simply are not interested in politics.[844]

Ahmad Shunnaq from the National Constitutional Party ('the pro-government party') points out that regardless of the legalisation of political parties people are still afraid to join. Yet currently more people joining now (in 2003) than in ten years ago. Thus Shunnaq seems to suggest that the people are slowly learning to trust government's sincerity. There are others who agree with the view of people being wary of joining.[845] The Jordanian Communist Party, for example, to encourage people to join does not publicise the names of its members.[846] According to CSS surveys, only 2 percent of Jordanians are even considering joining a political party. The intention to join a political party has remained very low throughout the 1990s.[847] According to Mahafzah, the local media is partly responsible for the lack of Jordanians to join political parties. The media, controlled and largely owned by the government is delivering messages that political activism is not good, that "politics is not good", argued Mahafzah. This has its roots in the political crisis of 1957[848] It is claimed by some observers that the conservative elements in the 1950s were used to ruling the country without political parties and since the al-Nablusi days have considered the political parties as unnecessary obstacles.[849]

Jordanian political parties are not attracting the citizens because their programmes are perceived as lacking tangible goals. Parties are criticised for offering only slogans, not genuine programmes or agendas. Parties also have a tendency to come alive only during the election campaigns. The surveys by the CSS indicate that Jordanians do not have an interest in political parties; they do not even recognise the parties. The Islamic Action Front is the most recognised party, recognised by 44 percent of the interviewees. The second known party was the Arab Ba'th Socialist Party with 12.1% and the National Constitutional Party with 10.2%. The majority of

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[844] Mahafzah (2001), pp. 358-559.
[845] Shunnaq, Interview in Amman June 2003; Naffa, Interview in June 2003; Sweis, Interview in Amman June 2003; Shteiwi, Interview in Amman June 2003.
[846] Naffa, Interview in Amman June 2003.
[847] http://www.css-jordan.org/polls/democracy/2003/index.html
[848] Mahafzah (2001), p.386.
[849] Interviews in Amman 2003.

the thirty registered parties were hardly recognised at all.[850] In all fairness it has to be said that during the 2003 campaign the IAF got more press coverage than the other parties. This is partly to due to interest in their decision to participate after the 1997 boycott.[851] The fragmented political field is also placing a challenge for journalists. Journalist Jamil Nimri argues that the great number of political parties makes giving the parties equal media coverage a complicated task. More, the media is largely owned by the state and impartiality of the coverage is more complicated issue. Mansour alleged that in the 1997 elections the media coverage on the political parties were unbalanced. The pro-regime National Constitutional Party (NCP) is claimed to have received more attention than the other parties.[852]

Some see parties as concentrating too much on international matters at the expense of domestic issues.[853] Ahmad Shunnaq accuses some parties of importing 'alien' ideologies to Jordan, ideologies that do not suit the Jordanian context. Shunnaq characterises his own party, the National Constitutional Party, as being an "unideological party" offering practical reforms instead of empty slogans. According to Shunnaq, the weakness of the political parties in Jordan is directly related to these imported "revolutionary" ideas.[854] Others argue the political agendas presented are elitist, and thus do not attract the ordinary Jordanians. The only exception is the Islamic Action Front, which has been active in the social field within the framework of the Muslim Brotherhood.[855] Political activism, argues Shteiwi (Professor of Sociology, University of Jordan), whether within a political party, professional syndicate or NGO, is still an upper-class activity.[856] According to the CSS surveys, only a small number of Jordanians are satisfied with the work the political parties have done. In 1997 only 2.3 percent considered the work done by the political parties as very successful. Membership of other associations is more popular than political activism: 10.1

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[850] The Center for Strategic Studies, 2003. Democracy in Jordan 2003. http://www.css-jordan.org/polls/democracy/2003/index.html

[851] Jordan Times and Star.

[852] Al-Wakeel, Experts say media can play valuable role in elections(2002), p. 1; Human Rights Watch/Middle East (1998), p. 3.

[853] Rantawi, Interview in Amman May 2003; Hourani, Interview in Amman June 2003.

[854] Shunnaq, Interview in Amman June 2003.

[855] Shteiwi, Interview in Amman June 2003.

[856] Shteiwi, Interview in Amman June 2003.

percent of the population belongs to other associations, while only a tiny minority carries a party membership.[857]

Not all political parties ceased to exist when banned in the 1960s, some simply went underground. According to opposition politicians, associational life in Jordan has naturally become easier since 1989. There are fewer restrictions and parties are more tolerated. The situation, however, has got worse since the peace negotiations and the outbreak of the second Palestinian intifada. There are restrictions on organising conferences and seminars; even the size of demonstrations is controlled. Some even argue that working underground was easier, as the government did not have so many ways and channels to interfere.[858] The problems related to the political parties in Jordan are widely acknowledged within Jordanian society. The 'Jordan First' initiative has made recommendations to encourage political activism (within organised political parties) including double-vote formula, funding for parties and new monitoring body to replace the Ministry of Interior.[859]

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[857] The Center for Strategic Studies, 1997. Democracy in Jordan. http://www.css-jordan.org/polls/democracy/97/index.html

[858] Opposition politicians interviewed in Amman May-June 2003.

[859] Jordan First, Recommendations (2002).

8.2.2. Other Associations

Besides political parties, professional associations are significant political actors in Jordanian society, offering an alternative forum for citizens to express their views. Their current significance is a 'relict' of the martial law period. Political parties being illegal, professional syndicates acted as substitutes. According to Hourani, professional associations had an advantage over other political groups, as they "monopolized huge material and moral resources, including free head offices in the main cities, organizational structures and communication capabilities".[860] Syndicates have also been powerful due to "the position at the top of the employment pyramid".[861] The members of the professional associations are the "technocratic elite"[862] of the country, educated people with an interest in political matters. All qualified professionals (e.g. engineers, doctors, journalists, dentists) have to be members of their professional association in order to able to practice their profession.[863] When compared with political parties the importance of the professional associations lies in the depth of their membership: there are roughly 30 parties with 9,000 members, while the Jordanian Engineers Association (JEA) alone has 55,000 members.

The active role of the associations in political life has been a matter of growing concern for the executive over the last years. The leaders of the syndicates have often been among the most popular political figures in Jordan, particularly former and current presidents of the Jordanian Engineers Association, Leith Shubeilat being one. The successful female candidate of IAF elected in 2003 had an active 'career' in the pharmacists association before joining the election campaign.[864] It is possibly not the popularity of the syndicate activists but their ideological affiliations that have made the executive worried. The Islamists have been the dominant political group in the professional syndicates since the mid-1980s, and leftist groups before that. This

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[860] Hourani, The Development of the Political Role of the Professional Associations: A Historical Survey 1950-1989(2000), p. 58.
[861] Hourani (2000), p. 55.
[862] Dieterich (2002), p. 139.
[863] Hourani (2000), p. 55.

has proved extremely challenging to the government, as many syndicates have been, and still are, actively expressing 'anti-normalisation' views. Syndicates have protested against the normalisation plans by treating the members of the West Bank as equal to the rest of the Jordanians.[865] According to Hourani, after the 1989 elections the professional associations were warned not to engage themselves in political matters, as it is the task of the political parties. The syndicates affirmed the government that their extended role in politics would only be temporary while the things would fully back to normal. Yet, argues Hourani, this promise has not been kept. On the contrary, the involvement of the syndicates has grown steadily in the 1990s.[866] Shteiwi argues that the double agenda of the professional syndicates has been their downfall; focusing on both professional and political matters has divided the resources and weakened the syndicates.[867] Shteiwi, however, provides no evidence of the syndicates becoming weaker. His view of the role of the syndicates has a resemblance to the view of the government that appears still to be concerned with the power of the syndicates. It has to be acknowledged that the re-emergence of political parties is about to alter the political environment, at least providing the members of syndicates pursue their ideals through other channels.

The professional associates themselves argue that is not always possible to limit their activities to apolitical ones. The legitimate task of the syndicates, as stressed by the executive, is to promote professional matters. Yet the syndicates are not entirely happy with the opportunities to do so. Wael Saqqa, the President of the JEA, points out that there are no formal channels for the associations to express their views on professional matters. The syndicates can make suggestions on work related matters to the government. Yet there are no time limits for the government to move on the proposals, nor are there any guarantees that the government will do something. It can take months, even years, before anything happens. Sometimes the government does absolutely nothing after receiving the suggestion.[868] Thus the syndicates are forced to use other forums. In a parliamentary system contacting the legislative

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[864] Mumseini, Interview in Amman June 2003.
[865] Anderson (1997), p. 62.
[866] Hourani (2000), p. 59.
[867] Shteiwi, Interview in Amman June 2003.
[868] Saqqa, Interview in Amman June 2003.

should be an appropriate channel. On the other hand the activists within syndicates do not see it as possible always to make distinctions between 'political' and 'professional' matters when active within the conventional political life.

The changes in the legislation since the 1989 have had an impact on civil society as whole. There has been a significant increase in the number of NGOs in Jordan. According to El-Khatib, the president of the General Union of Voluntary Societies (GUVS), the number of NGOs has doubled since the early 1990s.[869] It has to be noted here that the increase is not as natural as it might appear. There are many newly-founded government-controlled organisations, royal NGOs (RONGOs) and governmental NGOs (GONGOs). The increase in civil society activities seems to have made the government more anxious to control the NGOs. All Jordanian NGOs have to belong to the GUVS, an umbrella organisation for civil society organisations. Centralising the civil society activities through the GUVS enables the government to extend the control over the increasing number of the NGOs. The GUVS has a significant role, as it is involved in providing licenses for NGOs with the Ministry of Social Development. The GUVS also has financial significance as it has the responsibility for allocating funding to the members.[870] The intention of the executive to define clear spheres/activities for each type of actors is clearly expressed in the Association Law. As Wicktorowicz points out, the Association Law (1996) states that the NGOs cannot be aiming at financial, personal or political gains. Also according to the Associations Law, NGOs are not allowed to use 'partisan' organisations to use their premises or resources for 'partisan purposes'. [871]

The Jordanian executive has many ways for making sure that NGOs stay within the allocated political space. NGOs have to produce annual reports detailing all the elements of their associational existence (funding, activities, leadership). The Association Law entitles the government to send any official to the NGOs' premises to make inspections. The government officials also attend the elections of the NGOs boards. The legislation authorises the government to close organisations if they

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[869] El-Khatib, Interview in Amman May 2003.
[870] Wicktorowicz, Embedded Authoritarianism: Bureaucratic Power and the Limits to Non-Governmental Organisations in Jordan(2002), p. 88.
[871] Wicktorowicz (2002), p. 83.

violate the association laws. The government is also entitled instead of dissolution to re-organise NGOs and change the leaders.[872] Samhouri, the president of the Jordanian Society for Citizens' Rights (JSCR), argues that the JSCR was dissolved in 2002, as it defied the unspoken rule that NGOs should not touch on sensitive issues. Among other things the JSCR demanded that the upper house of parliament should be elected and it also criticised the nationality laws. The formal reason for the closure of the JSCR were the violations of association laws: annual reports were not being delivered on time. Samhouri denies these accusations; he sees this requirement as not applicable as the JSCR was registered as a non-charitable organisation. He stresses that even if there had been any violations the law gives societies one month to 'reform', to correct the mistakes made. Samhouri argues that there are other NGOs who violate the laws but they are not working on sensitive issues, thus their violations are ignored.[873]

Sae'da Kilani argues that the biggest obstacle facing the (real) NGOs is the lack of funding, as there are no official domestic sources. The existence of RONGOs and GONGOs makes the situation more complicated, as the competition for international funding has got harder. The names of the RONGOs and GONGOs imitate the names of the 'original' NGOs and this might confuse the donors. The funding has become more divided, as there are more groups applying for the same funding.[874] Not only have the RONGOs better channels to lobby for international funding, but the legislation limiting the ordinary NGOs does not always apply to them. Wicktorowicz stresses that while NGOs are required to elect their board members, the board of the RONGOs is appointed by the Hashemite family. Furthermore, the two biggest RONGOs define lobbying as one of their primary activities, despite the clear stipulation of the association law.[875] According to Wicktorowicz, the RONGOs and GONGOs serve two purposes. It is easier for the government to control the civil society as such and more specifically helps them to dominate setting the agendas. A sign of the significance of the RONGOs is that the biggest 'civil society' organisations in Jordan are RONGOs. This is particularly evident within the women's organisations.

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[872] Wicktorowicz (2002), p. 84.
[873] Samhouri, Interview in Amman June 2003.
[874] Kilani, Interview in Amman April 2003.
[875] Wicktorowicz (2002), p. 86.

Women's RONGOs dominate the debate on women's rights in Jordan. There were claims that the Princess Basma-led organisation is placing pressure on the smaller ones not to independently pursue matters that outside the set agenda.[876] In March 2004 a group of women's organisations were threatening not to attend a conference organised under the protection of the government. They claimed the document drafted by the organisers did not represent the views of Jordanian women. Many central demands were excluded from the final document. Those reforms were the establishment of a constitutional court, cancelling state security courts and reviewing the Law on the Supreme Court.[877] Interestingly in this case the group of dissatisfied organisations were RONGOs, the biggest women's group in Jordan and the conference was organised under the auspices of Sisterhood is Global Institute (SIGI) whose Coordinator was then the government's spokesperson Asma Khader.

To conclude it has to be said that currently NGOs are involved in drafting a new law on civil society organisations. No significant progress has been made.[878] The Association Law was issued in 1996, and as stated before many of its central elements are criticised by the NGOs.

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[876] Wicktorowicz (2002), p. 87.
[877] Jordan Times March 22nd (2004).
[878] Interviews in NGO representatives in Amman May-June 2003.

8.3. FREEDOM OF EXPRESSION

The constitutional right to express opinions is guaranteed to citizens and for the press and publications, as long as such acts do "not violate the law". The freedom of expression covers newspapers, publications, books and broadcasts. The constitution guarantees the press freedom from censorship as long as "provisions of the law" are not violated. The right will be restricted if national security so requires, or if martial law is declared.[879] The constitution leaves all the practical details of the implementation of the freedom of expression unanswered. The Press and Publications Law deals with the implementation.[880]

In the aftermath of the 1989 riots King Hussein made a promise to liberalise the press along with the announcement of parliamentary elections. The previous Press and Publications Law originated from the year 1973 and included several restrictions due to the martial law.[881] In 1993 a new Press and Publications law was passed to meet the needs of the 'political opening'. The law was amended in 1997 and 1998. The current law (1999) was passed soon after King Abdullah II ascended to the throne. The 1999 law does not differ much from the 1997 and 1998 laws. There are some improvements, but many problematic issues have remained unresolved, in the minds of the subjects at least.

The 1993 Law

The 1993 law was a contradictory piece of legislation. It was definitely a positive step bringing significant changes, but it did not meet the expectations of all journalists.[882] The 1993 Press and Publications Law entitled private people to own and publish newspapers, as well to contest government's decisions contradicting general press ethics. In addition, the right of the government to suspend and close down newspapers was cancelled. In case of violations the newspaper in question would not face an automatic closure but would be taken to a court. Also a limit was placed

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[879] Constitution, Article 15.

[880] When analysing the Press Laws this study has used the translations made by Sai'da Kilani (See Kilani, 2002), as they were the only (translations of) laws available.

[881] Wardam, Civil Society and Press in Confrontation with the Press and Publications Law(1999), p. 3.

on the state's ownership of newspapers; state ownership could not exceed thirty percent.[883] The limitation on the ownership was a great achievement, as in 1986 a "major assault" on the press freedoms was made by forcing private newspapers to sell shares to the government.[884] On the other hand the law introduced penalties for journalists whose articles were endangering "the security of the state" or criticising heads of the friendly states. There was also a ban on publishing confidential governmental statements or reviewing any decision by the senate on licensing matters. The list of forbidden topics included also the royal family, the army and security forces.[885]

The 1997 Law

In 1997 a temporary law was issued by al-Majalli government, as a great surprise to many. Yet it was a 'rational' step from the executive's perspective. Liberalising the press legislation had created a freer environment for the press. It is argued that King Hussein was particularly uncomfortable at the negative press coverage of the Jordan's involvement in the peace negotiations. King Hussein heavily criticised the newspapers before and after signing the peace treaty with Israel in 1994. Prime minister al-Majalli who introduced the law was also one of the chief peace negotiators.[886]

The amended law cancelled many of the improvements made in 1993 and many stipulations of the law were made stricter. Most importantly, the government was again authorised to suspend and close down newspapers. The government was authorised to close down a publication for 3-6 months if it repeated a violation in five years time. The newspapers' capital requirements were raised from 50,000 to 600,000 Jordanian dinars for daily papers and from 15,000 to 300,000 JDs for weekly ones. Publications were given three months (May to August) to meet this requirement.[887] The law also introduced much harsher penalties. The previous law defined the maximum penalty for publishing details of court cases or matters defined

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[882] Najjar, The Ebb and Flow of the Liberalization of the Jordanian Press: 1985-1997(1998), p. 130.
[883] Kilani (2002), p. 6; Sharif, Opposition in the Print Media(1995), p. 14.
[884] Sharif (1995), p. 12.
[885] Najjar (1998), p. 132 and p. 139, fn.
[886] Wardam (1999), p. 5.

as forbidden as a thousand Jordanian dinars, while breaking article 44 (receiving local or foreign funding) brought a penalty of 6,000 JDs. For all these violations the minimum penalty in the 1997 law was 15,000 JDs and the maximum 50,000 JDs. The law would be applied to "any published news, news analysis, commentaries or cartoons that infringe on the royal family, national unity, general ethics, religion, security apparatus, and the head of Arab and friendly states". The list of forbidden subjects was thus expanded from the 1993 law.[888] The Press and Publications Law was be applied also to the publications of political parties. Earlier these publications were exempt from the requirement to obtain a license. Under the new law only Jordanians permanently residing in the country would qualify as editors, after ten years of working full-time as a journalist. This requirement, stresses Najjar, was included in the 1973 law not in the 1993 one.[889] It was argued that the primary aim of this stipulation was to replace Nabeel al-Sharif, the editor of the ad-Dustur. Sharif was not the government's favourite due to his liberal editorial policy.[890] The article (19d) limiting the state's ownership on newspapers was cancelled. Interestingly when the 30-percent limit on the state's ownership was placed in 1993, the state was given four years to reduce its ownership. However, just before the time limit ended in 1997, the entire restriction was omitted.[891]

The immediate reaction to the 1997 amendments was strikes and demonstrations. Some journalists taking part in the demonstrations were beaten and arrested. International human rights organisations condemned the amendments, al-Majalli was even named as one of the archenemies of the free press in the world by Journalists without Frontiers. In despite of the protests the government went ahead with implementing the law. Thirteen small (private) newspapers were closed down as their capital was not sufficient enough under the new legislation.[892] Surprisingly the government decided to close down the newspapers only nine days prior to the 1997 elections.[893] Seven newspapers facing the severe requirements of the law took the

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[887] Wardam (1999), p. 5; Najjar (1998), p. 132.
[888] Kilani (2002).
[889] Najjar (1998), p. 133.
[890] Wardam (1999), p. 6.
[891] Najjar (1998), p. 133; Sharif (1995), p. 12.
[892] Kilani (2002), p. 14; Wardam (1999), p. 3.
[893] Najjar (1998), p. 34.

temporary Press and Publications Law to the Supreme Court of Justice. The court decided that the strict censorship measures were justified only in situations which qualified as *force majeure*, not just in any circumstances. The court also saw the retrospective implementation of the law as unconstitutional. The requirement for greater capitals of newspapers should have been implemented in the 6-month transition period as described in the law. Thus suspending publications in three months was against the law.[894] The government did not welcome the decision. King Hussein even warned against the court making any similar decisions in the future.[895] It is widely believed that the decision made by the court is the reason why Chief Justice Farouq Kilani was forced to retire early in February 1998. The Supreme Court made the decision in January 1998. Farouq Kilani was not directly involved in making the decision; he had left a recommendation to the judges dealing with the case.

The 1998 Law

It was not long after the government had formally accepted the ruling of the Supreme Court when a new draft law was proposed. The law was passed in 1998 after a controversial lobbying process. The lower house rejected the draft in its first session, after which the law was taken to the National Guidance Committee to be amended. At this stage, it is claimed, the executive pressured the deputies strongly and stressed the wish of the king to see the law to be passed. Lobbying was successful and the law was eventually passed in both houses.[896] The reaction to this was not unexpected. The Journalists Association refused to accept the law and many organisations criticised the law. According to Wardam, the 1998 law was "identical" to the previous one. Sae'da Kilani argues that although it was "in letter and in spirit" similar to the 1997 one some of the stipulations were even harder. The 1998 included an article giving the court to right to suspend publication while its case is pending.[897]

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[894] Wardam (1999), p. 3.
[895] Kilani (2002), p. 15.
[896] Wardam (1999), p. 7.
[897] Wardam (1999); Kilani (2002), p. 15.

Wardam points out that unexpected developments in 1998 improved the press freedoms. No improvements were made or amendments cancelled, the government simply got more urgent matters to deal with. In the summer rumours of King Hussein's illness started to spread around and there were concerns about the future of the country. In addition, during the hottest summer season Ammanites were facing a water pollution scandal. It was the independent press that revealed the water pollution crisis despite the denials of the government. The al-Majalli government was forced to resign due to the unsuccessful cover-up attempts. The new government appointed was occupied with sorting out the water crisis and the 1998 Press Law, or the strictest stipulations, was never fully implemented. It is also claimed that the new liberal prime minister Tarawneh was not very eager to implement the press law [898]

The 1999 Law

The press freedoms seemed to be taking steps in a positive direction when Abdullah II came to the throne. He expressed his determination to liberalise the press in Jordan, even attending meetings with the representatives of the Press Association. A progressive draft law was proposed but the new government elected in 1997 did not take this draft any further. Instead, the Rawabdeh government issued a temporary Press and Publications Law in September 1999.[899] The 1999 law is considered an improvement in relation to the 1997 and the 1998 laws, yet not as progressive as wished for by journalist and civil society.

It is worth noting at this point that regardless of the various comments made on the significance of the free press by Abdullah II, there have been very few practical steps taken to prove the king's commitment to the development of an independent, free press in Jordan. King Abdullah II abolished the Ministry of Information in November 2001. The Higher Council for the Media was directed to work for the nation, instead of the government. However, the members appointed in December 2001 were not representative. There were no women, no journalists from the private newspapers or from foreign publications.[900]

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[898] Wardam (1999), p. 9.
[899] Kilani (2000), pp. 18-20.
[900] Kilani (2002), p. 37.

The current law still requires publications to apply for licences from the Council of Ministers.[901] Publishing books is not possible without a permit from the Ministry of Information.[902] The capital required to receive a license is 500,000 JDs for a daily newspaper and 50,000 JDs for a non-daily publication.[903] The capital requirement was not abolished, yet the amounts required are slightly smaller than in the 1997 law. Publications of political parties as well as specialised publications are exempted from license fees.[904] The fines for breaking the press and publications law remain relatively harsh, considering that the journalist's monthly income is below the Jordanian average.[905] According to the current law, the minimum fine for violating the article 38 is 500 JDs and the maximum 1,000 JDs.[906] The fine for violating the article 43 is 100-1,000 JDs.[907] Publication operating without an appropriate license will be given fine of 5,000-10,000 JDs.[908] Jordanian publications as well as educational and research institutions are not allowed to accept funding from foreign sources.[909] Kilani claims that the government has applied this stipulation selectively. Small private research centres have not received permits to conduct joint research projects funded by local and foreign sources. Yet the government research institutions have been permitted to do so. More, research centres accepting foreign funding are accused of compromising national security. In 2000 and 2001 four journalists (Nidal Mansour, George Hawatmeh, Mahasen Imam and Bilal Tal) were facing disciplinary measures for accepting foreign funding for their research centres. Kilani argues that the press and private research centres are stigmatised for accepting foreign funding. Yet there are NGOs and government's projects receiving foreign funding.[910]

While the freedom of expression is guaranteed to all citizens and all citizens have the right to found publications, under the 1999 law journalists have to belong to the Journalists Association, and no one of foreign nationality is allowed to practice

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[901] Press and Publications Law (1999), Article 11c.
[902] Press and Publications Law (1999), Article, 35.
[903] Press and Publications Law (1999), Article 13a-b.
[904] Press and Publications Law (1999), Articles 13d and 14.
[905] Shukkeir, Status of Press Freedom in Jordan(2003).
[906] Press and Publications Law (1999), Article 45c.
[907] Press and Publications Law (1999), Article 46a.
[908] Press and Publications Law (1999).
[909] Press and Publications Law (1999), Articles 39-40.

journalism in Jordan.[911] Foreign correspondents require a permit from the ministry in order to work in Jordan.[912] The requirements for editors are currently less strict. The requirement of 10-year work experience was reduced to four years. There can be only one editor, and an editor can work only at one publication.[913] Sae'da Kilani criticises the strict criteria placed on journalists. In order to be a journalist one has to have a university degree or have trained at a Jordanian newspaper for three years, as well as belong to the Jordan Press Association. To become a member one has to make an oath in the presence of the Minister of Information. It is argued that to make such an appointment is subject to the Minister's busy schedule and it can take weeks or months.[914] Kilani also points out these criteria have been a permanent element of the press laws in Jordan, and it is remarkable that there has been no discussion in parliament to abolish them.[915]

Most content bans were cancelled by the current law.[916] According to the 1999 law, the banned contents are only matters that are classified as anything that "conflicts with the principles of freedom, national responsibility, human rights, and values of the Arab and Islamic nation".[917] However, publishing details of criminal investigations, unless authorised by public prosecutor, is forbidden. Covering court sessions is allowed, unless particularly banned. Foreign news correspondents are exempted from the ban of covering investigations.[918] The elements that were left out of the current press and publications law are interesting as well. There were no guarantees of journalists' basic rights, nor was the pre-trial detention forbidden. The requirement for the state to reduce its ownership in the newspapers was included in the 1993 law, but excluded from all the press laws issued since. The state still owns 60 percent of the al-Ra'I, the main Arabic newspaper and over 30 percent of the second daily

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[910] Kilani (2002), pp. 23-24.
[911] Press and Publications Law (1999), Article 2-3.
[912] Press and Publications Law (1999), Article 9.
[913] Press and Publications Law (1999), Article 23a.
[914] Kilani (2002), p. 21.
[915] Kilani (2002), p. 22.
[916] Kilani (2000), p. 20.
[917] Press and Publications Law (1999), Article 9.
[918] Press and Publications Law (1999), Article 38.

newspaper ad-Dustur. Sae'da Kilani argues that the exclusion was done regardless of King Abdullah's promises to privatise Jordanian TV and radio. [919]

There are two important aspects of all the amendments made since the early 1990s. All of the amendments were temporary laws. The early laws also coincidenced with the parliamentary elections, or rather preceded them. The 1993 law was issued in April and the 1993 elections were held in November 8th. The 1997 amendments were issued in May and the elections in November 8th.[920] Furthermore, the 1997 temporary law was issued by "exploiting the expiration of the constitutional term of the office of the Lower House of the Parliament".[921] Also, as shown earlier, less than two weeks before the elections in 1997 the government suspended thirteen publications on the basis that they could not meet the new financial requirements.[922]

The Penal Code was amended the by Ali Abu Ragheb's government in October 8th 2001, after the September 11 attacks. Sae'da Kilani points out the amendments were made without any public or parliament debate.[923] The amendments included several restrictions on the press and the freedom of expression, as well as harsher penalties. According to article 150a, anyone who publishes documents that "harm the national unity, incite the perpetration of crimes, sow the seeds of hatred and spite and dissension among individuals, incite racial discrimination, harm the dignity of individuals, their reputation and their personal freedoms, or shake the society's political situation through promoting delinquency or immorality or through spreading false and libellous information, inciting demonstrations and sit-ins or public meetings in a way that is contradictory with effective legislation or any action that infringe on the country's dignity and standing, its reputation and its dignity, will *be imprisoned*".[924] Despite the reforms made in 1999 for the Press and Publications Law the amended Penal Code was a major setback. Journalists violating the press laws are sanctioned with fines, but when applying the penal code in all cases journalists are facing imprisonment. Generally speaking the often-changing press legislation is

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[919] Kilani (2000), p. 22.
[920] Hourani and Yassin (1998), p. 48.
[921] Wardam (1999), p. 5.
[922] Najjar (1998), p. 135.
[923] Kilani (2002), p. 24. Article 15 of the Penal Code 2001.

one of the biggest challenges the Jordanian journalists are facing. Jamil Nimri stresses that it is very challenging for journalist to keep pace with the ever-changing legislation. This has increased the wariness of journalists.[925]

One of the main obstacles for journalists is the lack of reliable information. The article 8 of the press law guarantees the right of journalists to information. The government must "facilitate" and provide the information needed.[926] Regardless of this stipulation, there are no formal sources of official information, so journalists rely on secondary sources and personal connections when reporting on governmental decisions. Certain journalists are not allowed to enter ministries and ministries refuse to work with certain journalists.[927] In 1999 prime minister Rawabdeh notified all ministries not to co-operate with journalists who do not belong to JPA. Faleh Nasser, Minister of Health forbade anyone in the ministry to make statements to the press.[928] Journalists argue that the government is 'penalising' the private press by not inviting them to the government's briefings. The government have also 'deprived' the private press of advertising income, as no official adverts are published in the independent press.[929]

More, it is claimed that instead of informing the local newspapers of the domestic developments the government has informed the foreign media instead. The local press was prevented from covering the medical condition of King Hussein. The CNN was the first to report Hussein's fight against cancer and the French news agency AFP announced that Abdullah would be the next king. Jordanian journalists consider this as a sign of distrust in the local media. Also they being unaware of the true developments, or unable to tell the truth, were "broadcasting false denials".[930] Another incident was when Mossad attempted to assassinate a Hamas chief in 1998. The government insisted that the incident was of a private nature, even when Israeli and international media were reporting the truth.[931] The censorship on foreign media was lifted in 1999 while it remained for the local media.[932] It is also argued that it is

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[924] Kilani (2002), p. 24. Italics added.
[925] Nimri, Interview in Amman June 2003.
[926] Press and Publications Law (1999), Article 8.
[927] Shukkeir (2003), p. 4.
[928] Kilani (2002), p. 26.
[929] Kilani (2002), p. 26.
[930] Kilani (2002), p. 29.
[931] Kilani (2002), p. 28.
[932] Kilani (2002), p. 29.

easier for the English language newspapers (Jordan Times and Star) to get articles published. The government considers the audience marginal and these papers less harmful. Also the liberal newspapers give a liberal image of the country to the non-Jordanian readers.[933]

It is not only the likelihood of being prosecuted for breaking the law but also the constant monitoring that is restricting journalists. There have been accusations of the security services placing their officers (infiltrators) in the newsrooms to observe and to report back to the security apparatus. The editor of Jordan Times have admitted that the governmental presence at the newsrooms. Journalists on the senior posts have been working (or still are) for the government or the royal court. Not only have the executive placed their representatives in the newspapers, but there is movement into the opposite direction. Difficult journalists have been appointed to administrative posts, to the royal court or to television to "tame" them.[934] According to journalists, it is not that uncommon to get high-level visitors at the newsrooms. The constant threat from the executive guiding Jordanian journalists is making self-censorship fundamental part of their work.[935] Protests by the journalists on the 1999 press law disappeared when the prime minister personally visited newsrooms to explain the reasons for the law.[936] Shukkeir argues that the executive's influence can easily be spotted when reading the editorials, as they are surprisingly uniform.[937] Moreover, prime minister Rawabdeh is said to have checked headlines of newspaper articles by himself. Even when he was cleared from corruption charges all the newspapers published the news with an identical headline.[938] Sae'da Kilani implies that a consequences of the press restrictions is the stream of (opposition) journalists emigrating from Jordan.

Shukkeir argues that the government (so far) has not guaranteed the freedom of expression and the freedom of press, but the judiciary has.[939] There are several

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[933] Journalists Interviewed in Amman May-June 2003.
[934] Kilani (2002), pp. 29-30.
[935] US State Department, 11. Interviews in Amman May-June 2003.
[936] Kilani (2002), p. 25.
[937] Shukkeir (2003), p. 2.
[938] Kilani (2002), p. 19.
[939] Shukkeir, Interview in Amman 2003.

cases to support this view. For instance, between 1996 and 1997 150 journalists were charged for violations of the press law. According to Jamil Nimri, a fellow journalist, 90 percent of the cases were discharged.[940] Shukkeir also refers to the decision (No. 226/97) made by the Supreme Court on the constitutionality of the 1997 press law. Regardless of the decision made by the Supreme Court, the government insisted the temporary law to be discussed in the lower house. It was argued by the Minister of Information Samir Mutawi that the destiny of this temporary law would be in the hands of the legislative. [941] Thus Mutawi appears to be suggesting that the constitutional powers of the judiciary would be ignored and transferred to the parliament.

It is not only the government that has been opposing the press freedoms. The Islamist movement has repeatedly attacked the independence of the media for "corrupting the local morals". In 1997 an article published in al-Bilal on sexual practices among old married couples caused uproar among the conservative sentiments of the society. The author of the article had used the court cases as sources, yet there was no understanding for the article. Journalists close to the government, conservative deputies and JPA attacked the publication and the author. It was argued by islamists that ethics in the society are far more important than press freedoms. Finally, it was promised by the weeklies that sensitive issues like sexual relations will not be covered in the future.[942] There are also other taboo topics. The unpopularity of Nabil Sharif is due to the articles on tribalism in Jordan he published in ad-Dustur.[943] Sae'da Kilani considers the al-Bilal incident as a turning point in the history of press freedoms in Jordan. The case proved that in a conservative society free press is still an "ambiguous" concept. In Jordan there are still many placing ethics before press freedoms.[944] The Free Media Zone project in Jordan was terminated by the conservatives who claimed that free media has a corrupting impact

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[940] Nimri, Interview in Amman May 2003.
[941] Shukkeir, Interview in Amman 2003; Shukkeir (2003). See also http://www.jordanembassyus.org/012798001htm.htm.
[942] Kilani (2002), p. 27.
[943] Kilani (2002), p. 28.
[944] Kilani (2002), p. 28.

on the Jordanian society.[945] It is these sentiments that governments have used wisely to restrict press freedoms for political purposes.[946]

[945] Kilani (2002), p. 37.
[946] Wardam (1999), p. 3.

Summary

The Jordanian constitution guarantees the citizens a number of political rights: the right to elect and be elected, and freedom of association and of speech, to name the central ones. Central to this study is not to list the rights that might be missing from the constitution, but to examine the implementation of the rights since 1989. It could be argued that since the promulgation of the constitution political rights are the least implemented element of the constitution due to the long absence of democratic practices. The parliamentary elections of 1989, and almost regular elections since, seem to suggest that the executive is showing its commitment to the implementation of political rights. The aim here was to examine whether this was just an appearance or whether there have been genuine respect for political rights of Jordanians since the late 1980s.

Significant changes have been made in the legislation covering political participation between the years 1989 and 2003. This is not surprising considering that political parties were founded, elections held and deputies elected after a long absence of political participation. The surprising element is, however, the identity of the 'legislator'. Regardless of the elected legislators at work, together with the appointed senate, many of the amendments made are not products of ordinary legislative processes. The amendments have been made without the lower house being present, as temporary laws. The amendments on Elections Law and Press and Publications Laws have been made by the executive as temporary laws without a public or parliamentary debate. Interestingly, these laws are the most amended pieces of the legislation dealing with political rights.

The timings of the amendments are also telling; often made prior to parliamentary elections. Since the 1989 elections there have been no elections without controversies over the election laws. The election law was amended before the 1989 elections, again prior to the 1993 elections and then again in 2001. The timing of the amendments is particularly significant regarding the nature of the elections law. The election law only really matters once every four years, a few weeks prior to the

election day. The intention of the executive seems rather evident: to restrict the political freedoms of the citizens without fully denying them. Amending the election law has a resemblance to amending the chapters of the constitution dealing with the legislative: both seem to be motivated by the reluctance of the executive to work together with unrestricted legislators. It is not far-fetched to argue after examining legal texts and the amendments, as well as the ways in which they were made, that electoral engineering has occurred in Jordan since 1989. The executive has justified their actions as essential for the national security and/or fundamental to the morals of Arab society.

Since the beginning of the political opening the crucial flaws (the disproportionate representation of the Palestinians and the overrepresentation of the ethnic minorities) have been permanent elements of the election legislation, as has been the voting formula encouraging tribal loyalties. These flaws are widely acknowledged by the opposition and by the voters, even by the executive. There have been several promises from the direction of the executive to reform the registration, and demands made by the monarch to improve election legislation to promote equal political opportunities. Yet very little has been done so far. The commitment of the executive to reform the election legislation appears not to be the most genuine kind. Over the last decade more has been done regarding the electoral procedures (electoral registration, voting cards, transport of votes) than regarding the most controversial elements such as the disproportionate representation. It is not only the contents of the election laws, but also the way they have been dealt with. Based on the election turnouts of the four parliamentary elections it is justified to say that political opening has made it possible for the citizens to participate through elections but it has not been able to encourage the participation. Also the lower houses elected have been criticised as being “shopacracies”, parliaments with representatives are primarily interested in private gains.

Curiously, there is one law that has not been amended: the Political Parties issued as an ordinary law in 1992. This makes sense when bearing in mind that political parties are relatively insignificant political actors in Jordan. In spite of the large number of political parties registered, the Islamic Action Front is the only genuinely

significant actor in the country. The press laws on the other hand have been a subject to various amendments. Therefore, it is evident that the political elite is aware of it biggest threats. Based on the attempts to control the media through legislation and informal channels it is obvious that the political elite consider the media as a greater evil than the political parties. The media remains largely controlled and owned by the government. Thus the availability of alternative information is questionable. Restraining other civil society organisations, such as professional syndicates and NGOS is an attempt to limit their number. Simply the smaller the number of possible dissidents the easier it is to control them.

The strategy of the elite has been to keep the roles of the other actors strictly defined to make them controllable and more predictable, and most importantly aiming to stop political parties becoming meaningful opposition forces like the socialist in the 1950s. The political elite have been able to do this, because the constitutionality does not exist in Jordan. Also the judiciary is too weak to guarantee the constitutionality in the country. Even since the political opening the Jordanian political system is managed by a few instead of the many. There are no of signs of dissolution of the non-democratic elite, nor are there any signs of transfer of power.

9. CONCLUSIONS

The Rule of Law and Jordan

After examining the rule of law - through constitutionality and the independence of the judiciary - it is argued here that the rule of law is not an embedded part of political reality in Jordan. It is also claimed that the political opening in 1989 has had no great impact on the rule of law. There is no evidence showing that Jordanians are better protected from the arbitrary behaviour of the state powers, or that the law enforcement increases the predictability of socio-political affairs in Jordan.

There are weaknesses in both the design and the implementation. The constitution when promulgated in 1952 was not perfect but included all elements necessary for the designs of the rule of law and political democracy. The constitution acknowledges the three state actors and their separate powers as well legal and political rights of the citizens. Since its promulgation the Jordanian constitution has, however, been bent and broken, both prior to and since 1989. The king who was already provided with an extensive set of powers and judicial immunity has broadened his powers through numerous constitutional amendments. This has clearly made the constitutional design unbalanced. Instead of being a parliamentary system headed by the monarch the Jordanian system has become a monarchy with occasional parliamentary practices.

The constitution, the original and the amended, has thus not constrained the rulers. Whenever the constitution has proved too constraining, more flexibility has been created through amendments or creative interpretation. Therefore, it is not justified to talk about constitutionalism in the context of the Hashemite kingdom. Also the constitutionality of these actions, (e.g. reinstating the dissolved house to rubber-stamp amendments or passing temporary laws in absence of *force majeure* circumstances), is questionable. It has to be stressed that the constitution has not been an insignificant document; it has functioned as a source of legitimacy, again before and after the political opening of 1989. The case of Jordan is another example

of Arab Constitutionalism: the constitution is used primarily, or solely, to augment political authority, a tool defining the roles and responsibilities of the key actors. Though it could be argued that there is not much Arab or cultural specificity in this constitutional practice; the colonial powers used the same approach. The Hashemites seem to have adopted from the British the practice of excluding themselves from the constitutional constraints while manipulating all the others through the constitution.

During the last decade there have been improvements in the working conditions of the judges; the number of judges, both male and female, is increasing, better office infrastructure has been built, and appropriate compensation is guaranteed. It is debatable whether these changes are consequences of the political changes. Furthermore, the most important element is still missing: the independence of the judiciary. It is worth noting that the Jordanian constitution provides the judiciary with independence and the citizens with judicial equality. Unfortunately the existing structure of the legal system, including elements such as tribal law and state security courts, does not support these aims. Both structural and decisional extrajudicial interference exists within the system. At this point it must be stressed that structural and decisional independence are interrelated. Deficiencies in structural independence make the judiciary more vulnerable to decisional interference. In Jordan the executive is in charge of recruitment and appointing of judges, as well as of monitoring activities. This enhances the eagerness of the judiciary to listen to extrajudicial 'recommendations'. It is worth noting that the existing legislation enabling the executive to influence the judicial decision-making is unconstitutional.

Defining the true extent of the interference is not possible based on the number of the judges interviewed. There is nevertheless evidence of extrajudicial interference existing within the legal system in Jordan. The reluctance of the Jordanian judiciary to monitor constitutionality supports this claim. It has been claimed that during the early years of the independence the Jordanian judiciary was reluctant to monitor constitutionality. It is argued here that this did not stop in the 1960s, but has continued until to date. An appeal court judge to declare not to have the authority to review constitutionality in the case of Toujan Faisal's candidacy in the 2003 elections

supports this argument. A reason could be, as Anis Qassim claims, that the Jordanian judiciary is currently a part of the government: "reduced to be a department of executive power".[947] This would explain the disinclination of the legal experts to point the finger at the guilty ones (the executive in this case), particularly when criticising the royal family is illegal in Jordan and criticising the members of the inner circle might take the critic to a state security court. The lack of willingness of the judiciary to review constitutionality reveals the core of the problem. The matter is more political than merely judicial.

It would require more comprehensive analysis of judicial decisions and interviewing a larger number of judges to be able to argue that the judiciary has had absolutely no role in political development in Jordan. However, it can be claimed, based on the data available, that the judiciary in Jordan has not had a great impact on political development. Not to make injustice to the vocal exceptions, it has to be acknowledged that some concerns of unconstitutional practices have been expressed. Nevertheless these judges still remain a minority. In this sense there seems to be differences among the Arab Middle Eastern states. In some countries, like Egypt and the Gulf states, the judiciary has fought hard to defend its rights to review constitutionality, and succeeding occasionally. The Jordanian judiciary as a whole has not worked as a counter force to constrain the executive.

Interestingly the Jordanian constitution, although acknowledging a special status of the Shariah, does not define it as *the* source for legislation. There has been, unlike in Egypt, no substantial trends towards islamisation of the constitution. Thus it can be claimed that Islam as such has had no special role in the legal development, or underdevelopment, in Jordan. Some cultural practices, e.g. tribal law, seem to have more significance in this context.

If anything the case of Jordan highlights the political nature of the rule of law and thus shows the central weakness of currently popular technical approaches to the rule of law. Technical programmes are attractive both to donors and the political authority providing speedy results without threatening the foundation of the political

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[947] Qassim, Interview in Amman June 2003.

rule. Nonetheless they do not work as long as the executive is not constrained.[948] The number of IT equipment or improved administrative procedures make little difference, as long as the judicial independence is not guaranteed. There are no quick-fix solutions; embedding the rule of law is a time-consuming exercise.

[948] In Jordan USAID together with the Jordanian Ministry of Justice "is improving the civil court system through creating case management systems to increase transparency and efficiency". http://www.usaid.gov/locations/asia_near_east/countries/jordan/

In relation to political participation the shortcomings within the rule of law in Jordan are equally apparent. There has been no significant transfer of power as a consequence of the political changes. The executive is still the dominant law-maker, regardless of the representative government guaranteed in the constitution. The executive headed by the king drafts laws and decides the degree of involvement of elected representatives, regardless of the separation of powers described in the constitution. Regardless of the elected legislators, the most important decisions about the kingdom have been made outside the parliament (e.g. the peace treaty with Israel, election laws and constitutional amendments). The influence of the political elite extends itself to the judicial sphere as well; through state security courts and unofficial 'recommendations'.

There is only one conclusion to draw. The political changes that have taken place in Jordan since 1989 cannot be correctly understood as indicating a process of democratisation. Since the late 1980s there have been no substantial developments in relation to either political or legal development. The constitution has been both bent and broken; the independence of the judiciary compromised and political participation 'managed' by the executive. This is in accordance with Nathan Brown's argument of the impact of Arab Constitutionalism on the state agencies. The executive has been able to use the constitution as a vehicle to strengthen its power by weakening the legislative and the judiciary. The existence of informal patronage networks has contributed to the absence of the rule of law and suffocated any attempts for citizens' genuine participation. Consequently, in order the political system to change into a more balanced one a substantial degree of transfer of political power is required; the executive to share the power with citizens, if not pass it over entirely.

How then can the differing opinions on the political changes in Jordan explained? A few reasons are suggested here; both common to democratisation literature and to the Middle Eastern studies. Studying democratisation has been contagious, although

democratisation itself has not.[949] Eagerness to study democratisation might have caused some scholars to see signs of democratisation everywhere. In the case of Middle Eastern Studies the eagerness to study democratisation has occasionally been fuelled by efforts to prove the exceptionalism argument false. As all the regimes studied have not been democratising, it has been a challenge of the "democratization industry"[950] to find appropriate labels to describe 'transformations'. In addition to the use of inappropriate terms, there has been an increase in sub-categories, and in "hybrid democracies".[951] The crucial question is whether labeling imperfect 'democracies' each with their own label is an improvement or a burden to students of democratisation.

In relation to the Arab Middle East at least the excess supply of sub-types and attributes seems unreasonable when compared to the actual political developments taken place. In case of the political changes in Jordan, a fair number of descriptions were offered. For example, the only analytical difference between "managed liberalization" and "negotiated transition" in the context of Jordan seems to be the degree of optimism included in the latter label. In spite of the recent political changes classifying Jordan as 'transitional' is a misuse of the term. The political power is still in the hands of the political elite. There is no evidence of even partial transfer of power taking place. On the contrary, in spite of some doubts King Abdullah II has been able to consolidate his position as the head of the Hashemite rule. Abdullah has done this like the other Hashemite rulers before him, by controlling the security establishment and maintaining broadly based political elite. There are no doubts that the most persistent element of the Jordanian political system is the political elite managed by the king. This group of people has been the one to decide when the citizens are granted 'political concessions' and when not. It is suggested here that the political elite appears to be if not only then the main channel for external influence on the Jordanian politics. As it has been argued by a domestic observer, the foreign allies do not welcome democracy if it might shake the regional status

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[949] Kienle (2000), p. 200. Only a few transitions that started in the 1990s have actually reached consolidation phases. More importantly, authoritarian regimes have survived "without too many difficulties".
[950] Shlumberger (2002), p. 5.
[951] Diamond (2002), p. 23; Sadiki (2004), p. 376.

quo.[952] In addition, maintaining the strength of the Hashemite rule will not be possible without external support in some form.

Some fashionable terms have been imported without placing enough consideration for the intellectual foundation of the imports. The popularity of transition school has made the t-word a permanent element within democracy discourse generally as well as within the literature on political developments in the Arab Middle East. One author writes: "although no Arab country has become a full-fledged democracy, some countries have moved closer to democracy than others. This is why we speak of democratization as transitional process *toward* fulfilment of *some* criteria of democracy".[953] For analytical purposes, however, it is crucial to know how to measure this movement towards some criteria of democracy. When is a state justifiably moving closer to democracy? Eberhard Kienle accuses transition studies of reliance on the assumption of "inescapable transition" eventually leading to democracy.[954] Thus, it could be argued that no system, no state stays the same all the time, and therefore all states are 'transitional' at some point. Within democratisation studies the term 'transitional' implies that democratisation has begun. To argue that a state is heading to a stage where the existing regime might (or might not) be replaced by a democratic one is merely wishful thinking and has no analytical value. The idea of transition is problematic and thus the term 'transition' should be used with caution within democracy studies if used at all.

Ignoring the basic element of democratic transition, the regime change, suggests that some observers have failed to recognise what is actually transforming. In some cases changes are only "non-systemic" adjustments, not "systemic transition".[955] It is not the political system that is transforming into another political system, but the authoritarian regime is adapting to the world around. Regimes, like Jordan, create some "democratic" features around the same, unchanged authoritarian core.[956] Perhaps this is the true impact of global era of democracy. Schlumberger argues that

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[952] Mahafzah (2001), pp. 359-360.
[953] Ghadbian (1997), p. 5. Italics added
[954] Kienle (2000), p. 199.
[955] Schlumberger (2002a).
[956] Schlumberger (2002b), p. 37.

scholars studying political systems in the Middle East have "failed to grasp the structural patters of Arab regime change", which differs from global trends. It is "liberalised autocracies" that are in crease, not democracies.[957] The case of Jordan supports this view. Thus based on this study it is not possible to draw any conclusions on other pre/requisites to democratisation, in addition to the rule of law. It is also not justified either to make conclusions about the order of the development; whether the rule of law is required to precede democratisation. In the case of Jordan, however, it seems apparent that the rule of law would destroy the informal patronage networks preventing political development.

[957] Schlumberger (2002b), p. 12.

Future Research

Suggesting further avenues to explore is not complicated owing to scarcity of empirical research on legal development in Jordan or elsewhere in the Arab world, or on the rule of law in particular. In relation to Jordan logical next steps would be to analyse judicial decisions, the temporary laws passed between 2001 and 2003, and the judicial reform programme announced by the current government[958]. It would be also useful to know more about the working conditions of the judges at the courthouses and of the legislators at parliament, as well as the perceptions of the citizens on legal services.

In matter of fact, any area of the rule of law requires further attention: the bureaucracy, corruption and *wasta*, the police and the army, victim support, defendants' perceptions. Political developments since 1989 in Jordan have received rightly attention. An interesting question related to the political reality in Jordan is the existing power structures, including the tribal support base.

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[958] http://www.jordanembassyus.org/new/me/reformagenda.shtml

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