

FEDERALISM, REBELLION, AND THE RULE OF LAW IN NORTHERN SYRIA AND WESTERN KURDISTAN: CONSTITUTIONS AGAINST THE NATION-STATE

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In contrast to the nation-state’s centralist, linear, and bureaucratic understanding of administration and the exercise of power, democratic confederalism poses a type of political formation where society governs itself and where all societal groups and cultural identities can express themselves in local meetings, general conventions and councils.

—Öcalan Abdullah¹

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¹ DEMOCRATIC CONFEDERALISM 24 (International Initiative ed., 2017).

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INTRODUCTION

In 2014 the Islamic State of Iraq and Syria appeared unstoppable.² This new Emirate had swept across Northern Iraq, from Tikrit to Mosul to Raqqa, defeating forces supplied by Western powers and Iran, seizing modern weapons and military vehicles poised for further conquest.³ Standing against this newly emerged power were the “People’s Protection Units,” or YPG, militias formed to protect Kurdish communities in the face of state hostility and the “Women’s Protection Units,” or YPJ, a separate collection of all-women militias, formed in the face of a larger culture of women’s oppression; these groups had taken up arms and were fiercely defending their homes.⁴ The YPG and YPJ held firm, their steadfast resistance eventually attracted significant aid from the West, and in a coalition with the broader “Syrian Democratic Forces,”⁵ delivered the first major defeats to ISIS, defended

² See, e.g., Theodore Karasik, *Is ISIS’s Global Growth Unstoppable?*, AL ARABIYA ENGLISH (Sept. 21, 2014, 3:00 PM), <https://english.alarabiya.net/views/2014/09/21/Is-ISIS-s-global-growth-unstoppable-> [<https://perma.cc/T35D-YSW7>].

³ See, e.g., Richard Sisk, *ISIS Captures Hundreds of US Vehicles and Tanks in Ramadi from Iraqis*, MILITARY.COM (May 20, 2015), <https://www.military.com/daily-news/2015/05/20/isis-captures-hundreds-of-us-vehicles-and-tanks-in-ramadi-from-i.html> [<https://perma.cc/ND4T-UMNF>]; Douglas Birch, *U.S. Now Faces Threat of U.S.-Made Weapons in Iraq*, CTR. PUB. INTEGRITY (Aug. 21, 2014), <http://publicintegrity.org/national-security/u-s-now-faces-threat-of-u-s-made-weapons-in-iraq/> [<https://perma.cc/Z7EV-7G3L>]; *Timeline: The Rise, Spread, and Fall of the Islamic State*, WILSON CTR. (Oct. 28, 2019), <https://www.wilsoncenter.org/article/timeline-the-rise-spread-and-fall-the-islamic-state> [<https://perma.cc/9PBC-CS2K>].

⁴ “People’s Protection Units” [hereinafter YPG], and their all-female offshoot, “Women’s Protection Units” [hereinafter YPJ] started as local militias in response to Syrian state attacks on the Kurdish communities in Northern Syria, and have in more recent years claimed to be the “official” military of AANES. See *About the People’s Defense Units (YPG)*, PEOPLE’S DEFENSE UNITS, <https://ypgprojava.org/about-us> [<https://perma.cc/ERJ9-358L>] (last visited Apr. 30, 2024) (giving a brief history, and explaining who they, and the YPJ, are).

⁵ The Syrian Democratic Forces (SDF) also claim to be the official armed forces of AANES. The YPG, however, does make up the bulk of the SDF forces, so the two claims are not necessarily at odds with each other. See Wladimir van Wilgenburg, *Syrian Democratic Forces (Syria)—Guns and Governance: How Europe Should Talk with Non-State*

places like Kobani against invasion and even pushing back the invading ISIS forces, and liberated villages and freed slaves held in captivity since the initial invasion.⁶ This looming apocalypse, through the heroic efforts of the men and women of the YPG and YPJ, had become an opportunity to build something new. These fighters, now battle-tested, had created space for civil societies to organize, to define how a better society, a better government could work. These militias are ideologically connected with the Kurdistan Workers Party (PKK), and their success in the defense of their homes led to these ideas being core to the new political structures which were established.⁷ To codify and define this new order, a social contract was drafted.⁸ This document acts very much like a constitution, setting out basic principles of government and laying out the ideological foundations of the nascent Autonomous Administration of North and East Syria.⁹

This Note will be examining the way in which this social contract, the “Social Contract of the Democratic Federation of Northern Syria,” and the social order it proposes, “Democratic Confederation,” represents a significant departure from the constitutional order of ethnic nation-states that arose in the postcolonial, and particularly the post-Ottoman, Middle East.

Constitutions that were drafted in the states carved out of the ailing Ottoman Empire had a distinctly nationalist character, granting rights to citizens on the basis of a shared nationality, a confluence of unifying traits, such as ethnicity and history, culture and language.¹⁰ This can be conceptualized as a rejection of the existing Ottoman political order, in which membership in the polity was defined in relationship to the Sultan; the rights and responsibilities outlined in the Ottoman Constitution are conferred on “subjects of the Empire,” not on members of some hypothetical Ottoman nationality.¹¹ These two frameworks, nationalist and imperial, can be contrasted with

Armed Groups in the Middle East, EUR. COUNCIL ON FOREIGN RELS., <https://ecfr.eu/special/mena-armed-groups/syrian-democratic-forces-syria/> [<https://perma.cc/6LMS-7KGJ>] (last visited Apr. 30, 2024).

⁶ See, e.g., Rodi Said & Ellen Francis, *Revenge for Sinjar: Syrian Kurds Free Islamic State Slaves*, REUTERS (June 14, 2017, 6:04 AM), <https://www.reuters.com/article/us-mid-east-crisis-syria-yazidi-idUSKBN1950M2> [<https://perma.cc/M5U4-U5PF>]; *Battle for Kobane: Key Events*, BBC NEWS (June 25, 2015), <https://www.bbc.com/news/world-middle-east-29688108> [<https://perma.cc/5RB8-BKVF>].

⁷ See *What is the PKK?*, THE ECONOMIST (June 28, 2022), <https://www.economist.com/the-economist-explains/2022/06/28/what-is-the-pkk> [<https://perma.cc/MK7H-LRDQ>].

⁸ ROJAVA INFO. CTR., BEYOND THE FRONTLINES: BUILDING A DEMOCRATIC SYSTEM IN NORTH AND EAST SYRIA 17–21 (Dec. 2019).

⁹ See *id.*

¹⁰ Syria and Egypt both define themselves as Arab nations, with articles explicitly stating as much, while the preamble of the Turkish constitution focuses on Turkish identity. See, e.g., Türkiye Cumhuriyeti Anayasası [Constitution] 1982, pmb. (Turk.); CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 1; SYRIAN ARABIC REPUBLIC CONST. (2012), art. 1.

¹¹ See OTTOMAN EMPIRE CONST. (1876), art. 8.

the Democratic Confederalist framework which, while it does acknowledge the existence of nations and nationality, does not draw its legitimacy from that concept, nor defines the polity as representing any one nation in particular.¹²

To show the importance of this change in self-conceptualization, this Note begins by discussing the background of the Arab Spring and the historical moment which allowed advocates of Democratic Confederalist ideas to come to prominence in North Syria.¹³ The popular movements pushing for greater democracy across the Middle East turned into violent clashes, and ultimately a bloody civil war in Syria.¹⁴ Kurds, long disenfranchised by the Syrian political establishment, began establishing self-rule. This was the context in which this polity continues to exist within, and it is against that backdrop that their social contract was drafted. Legitimacy, an integral part of any constitution, was thus of utmost concern as this political order exists in a state of competition with other possibilities. Most prominently, the dominant order, a web of territorial nation-states, consists of not only the Syrian Regime and Turkish State, but also by Kurdish nationalists across the border in Iraq. Simultaneously, this prospective Democratic Confederalist political order must also contend with the revolutionary Islamist ideology of the Islamic State, which also seeks to supplant the conceptual framework of the nation-state, with a model legitimized by shared religious belief and practice.

This Note then contrasts the “Social Contract of the Democratic Federation of Northern Syria” with the Syrian constitutions, first the 1973 Constitution that had been in effect until the outbreak of the Syrian Civil War, followed by a brief look at the changes represented by the 2012 revision.¹⁵ It also examines differences in treatment of nationality in those documents, with a focus on how the Democratic Confederalist Social Contracts differ.¹⁶ This Note then addresses a brief survey of criticisms of this post-nationalist social order in North and East Syria, and the ways in which the lived reality of the folks living in this region do not match with the rhetoric of these founding documents.¹⁷

I. BACKGROUND AND CONTEXT ON AANES

The establishment of a radical experiment in the organization of society such as the Autonomous Administration of Northern and Eastern Syria is largely a product of a unique set of historical circumstances. A power vacuum, created by the Syrian

¹² See SOCIAL CONTRACT OF THE DEMOCRATIC FEDERATION OF NORTHERN SYRIA (2016), pmb.

¹³ See *infra* Part I.

¹⁴ *Id.*

¹⁵ See *infra* Parts II, III.

¹⁶ See *id.*

¹⁷ See *infra* Part IV.

Civil War, wherein the regime shifted forces away from the north to bolster the garrisons in the south in the face of growing unrest, combined with the heroic resistance to the ISIS invasion by nascent Kurdish defense forces were both required to create the conditions in which this experiment was possible.

A. Explanation of Acronyms and Abbreviations

There are several entities referenced repeatedly in this Note with non-English names, which are primarily referred to by acronyms. In an attempt to reduce confusion, the abbreviations used are introduced when an entity is first mentioned, as well as in this section, for easier reference.

AANES—Autonomous Administration of North and East Syria, the polity set up in northern and eastern Syria, defended by the YPG and YPJ, whose structure is outlined in the “Social Contract of the Democratic Federation of Northern Syria” discussed at length in this Note.¹⁸

SDF—Syrian Democratic Forces, a coalition of rebel groups and militias, of which the YPG and YPJ are members, but does contain other non-Kurdish units as well.¹⁹ The official defense force for AANES, and close partner of U.S. forces in combatting ISIS.²⁰

YPG—People’s Protection Units (or People’s Defense Units) armed Kurdish militia, associated with the PYD, these units make up the majority of the defense forces of AANES.²¹

YPJ—Women’s Protection Units (or Women’s Defense Units). An all-female militia, linked with the PYD.²² Originally part of YPG, but as they grew and, in an effort to ensure women had an independent power base, it was split off and constituted as its own, separate entity.²³

PYD—Democratic Union Party, primary political party inside AANES, supports Democratic Confederalism.²⁴ The YPG and YPJ are the military wing of this party, and were key in defeating ISIS in Syria.²⁵ Closely allied with, and ideologically similar to, the PKK in Turkey.²⁶

¹⁸ See ROJAVA INFO. CTR., *supra* note 8, at 17–21.

¹⁹ *Who Are the Syrian Democratic Forces?*, THE ECONOMIST (Jan. 19, 2023), <http://www.economist.com/the-economist-explains/2023/01/19/who-are-the-syrian-democratic-forces> [<https://perma.cc/EY9Z-TDR6>].

²⁰ *Id.*

²¹ *About the People’s Defense Units (YPG)*, *supra* note 4.

²² *Id.*

²³ Nesrin Abdullah, *The YPJ: Why We Exist*, NEW COMPASS (Oct. 31, 2017), <http://new-compass.net/articles/ypj-why-we-exist> [<https://perma.cc/ZS6C-YDP3>].

²⁴ ROJAVA INFO. CTR., *supra* note 8, at 5, 13.

²⁵ See *Who Are the Syrian Democratic Forces?*, *supra* note 19.

²⁶ *Id.*

PKK—Kurdistan Worker’s Party, the political party, active primarily in southern Turkey, whose main ideology is Democratic Confederalism.²⁷

ISIS—The Islamic State of Iraq and Syria. Also known as ISIL (The Islamic State in Iraq and the Levant), IS (The Islamic State), and Daesh.²⁸ This is an insurgent group, ideologically descended from Al-Qaida, with the stated goal of establishing an Islamic Emirate modeled on the state ruled by the Prophet Mohammad.²⁹

B. Arab Spring and Syrian Civil War

On December 17, 2010, a 26-year-old man named Mohammad Bouazizi, who sold fruit from a small cart, immolated himself in front of a municipal building to protest his treatment by the Tunisian police.³⁰ His suicide was the first act of protest in a movement that soon spread across much of the Arab world, later referred to as the “Arab Spring.”³¹ These protests swelled and soon toppled long-standing regimes in Tunisia,³² Yemen,³³ and Egypt,³⁴ while threatening those in Bahrain,³⁵ Algeria,³⁶ and Jordan.³⁷ However, prior to March 2011 the Syrian Regime seemed immune to the waves of social unrest sweeping the rest of the Middle East.³⁸

²⁷ *Id.*

²⁸ *Mapping Militants Project: The Islamic State*, STAN. CTR. FOR INT’L SEC. COOP. (Apr. 2021), <https://cisac.fsi.stanford.edu/mappingmilitants/profiles/islamic-state> [<https://perma.cc/23S8-TVD2>].

²⁹ *See id.*

³⁰ Marc Fisher, *In Tunisia, Act of One Fruit Vendor Sparks Wave of Revolution Through Arab World*, WASH. POST (Mar. 26, 2011, 8:04 PM), https://www.washingtonpost.com/world/in-tunisia-act-of-one-fruit-vendor-sparks-wave-of-revolution-through-arab-world/2011/03/16/AFjfsueB_story.html [<https://perma.cc/VE8B-2SSB>].

³¹ *Id.*

³² *Tunisia’s President Vows to Uphold Revolution*, AL JAZEERA (Dec. 13, 2011), <https://www.aljazeera.com/news/2011/12/13/tunisi-as-president-vows-to-uphold-revolution> [<https://perma.cc/S26B-ZBYW>].

³³ *Political Transition Settlement Reached in Yemen—UN Envoy*, UN NEWS (Nov. 23, 2011), <https://news.un.org/en/story/2011/11/395992-political-transition-settlement-reached-yemen-un-envoy> [<https://perma.cc/6X9A-MT7K>].

³⁴ Wael Hussein, *Egypt’s Revolution: I Saw the Unimaginable Happen*, BBC NEWS (Feb. 8, 2021), <https://www.bbc.com/news/world-middle-east-55887869> [<https://perma.cc/H8G2-VK7F>].

³⁵ *Timeline: The 2011 Uprising in Bahrain and What’s Happened Since*, REUTERS (Feb. 16, 2021, 8:45 AM), <https://www.reuters.com/article/us-bahrain-uprising-timeline-idUSKBN2AG1K6> [<https://perma.cc/24D7-836V>].

³⁶ *Algeria Protesters Push for Change*, AL JAZEERA (Feb. 13, 2011), <https://www.aljazeera.com/news/2011/2/13/algeria-protesters-push-for-change> [<https://perma.cc/X7SE-C4CW>].

³⁷ In Jordan the King promised democratic reforms and largely headed off significant unrest. *Arab Uprising: Country by Country—Jordan*, BBC NEWS (Feb. 16, 2011), <https://www.bbc.com/news/world-12482679> [<https://perma.cc/4HQJ-8WHL>].

³⁸ Hassan Abbas, *The Dynamics of the Uprising in Syria*, 51 ARAB REFORM INITIATIVE 1 (Oct. 2011).

A month prior, in February, the police arrested and tortured a group of teenagers, accusing them of burning a police kiosk and painting the slogan “it’s now your turn, doctor”³⁹ on a wall in the city of Daraa.⁴⁰ The treatment of these children and their families culminated in protests around the city, which were met with tear gas and gunfire. The crackdown led to deaths, which led to funerals, where further protests were held, which were met with new, deadlier crackdowns.⁴¹ This violent cycle continued to escalate, and soon protestors turned into revolutionaries and began forming anti-regime militias across Syria.⁴² These groups had a wide range of ideological motivations, but four primary coalitions⁴³ arose: (1) primarily pro-democracy groups making up the bulk of the Free Syrian Army, (2) supporters of an extremely fundamentalist view of Islam looking to reestablish an international caliphate in the form of ISIS, (3) somewhat more moderate Islamicist revolutionaries who intended to replace the Syrian state with one which was explicitly Sunni Muslim, and (4) supporters of the Assad⁴⁴ regime bolstered by forces from Russia, Iran, and Hezbollah.⁴⁵

³⁹ In Arabic, the phrase “اجاك الدور يا دكتور” [Your turn, Doctor] was written on a wall in the city. The president of Syria, Bashar al-Assad, was an ophthalmologist before succeeding his father as president of Syria. See Andrew Tabler, *How Syria Came to This*, THE ATLANTIC (Apr. 15, 2018), <https://www.theatlantic.com/international/archive/2018/04/syria-chemical-weapons/558065/> [<https://perma.cc/UQ6E-VWP9>].

⁴⁰ See Avi Asher-Schaprio, *The Young Men Who Started Syria’s Revolution Speak About Daraa, Where It All Began*, VICE (Mar. 15, 2015, 9:30 AM), <https://www.vice.com/en/article/qv5eqb/the-young-men-who-started-syrias-revolution-speak-about-daraa-where-it-all-began> [<https://perma.cc/Z54R-8B3K>].

⁴¹ Tabler, *supra* note 39.

⁴² *Id.*

⁴³ This is not to imply that Islamicist and Pro-Democracy agendas were mutually exclusive; there was often significant overlap between groups, and many alliances and rivalries shifted with the geopolitical situation on the ground. See, e.g., Nabih Bulos, *Al Qaeda-Linked Group Routed in Syrian Rebel Infighting*, L.A. TIMES (Jan. 5, 2014, 5:34 AM), <https://www.latimes.com/world/worldnow/la-fg-wn-syrian-rebel-infighting-20140105-story.html> [<https://perma.cc/FGV5-BW52>]; Erin Banco, *In Syria’s North, Opposition Is Making a Major Comeback Thanks to One Rebel Group, and to Turkey*, INT’L BUS. TIMES (June 19, 2015, 2:49 PM), <https://www.ibtimes.com/syrias-north-opposition-making-major-comeback-thanks-one-rebel-group-turkey-1975411> [<https://perma.cc/BJF7-QCCG>].

⁴⁴ The core of the Syrian regime had traditionally been composed of a small religious minority, Alawites; however, as the civil war intensified the regime attempted to frame itself as the best protector of minority rights, going as far as to add language to the constitution issued in 2012. See *infra* Section III.B. This made the regime natural allies of Iran and their proxies in Hezbollah, which saw themselves as international protectors of Shi’a Muslims.

⁴⁵ For a discussion of the size and ideological leanings of major rebel groups, see Michael B. Kelley, *Here’s The Extremist-To-Moderate Spectrum Of The 100,000 Syrian Rebels*, BUS. INSIDER (Sept. 19, 2013, 9:59 AM), <https://www.businessinsider.com/graphic-the-most-accurate-breakdown-of-the-syrian-rebels-2013-9> [<https://perma.cc/3UDV-AVS6>]. For examples of Iranian, Hezbollah, and Russian support to the Assad regime, see *Two More Iranian*

C. Ideologies of Kurdish Resistance

Against this backdrop of popular uprisings and civil war existed an older tradition of Kurdish independence movements.⁴⁶ These movements have split into at least two distinct strands, with distinct ideological differences, developed in conversation with each other.⁴⁷ One strain, older, is primarily nationalist, drawing inspiration from postcolonial independence movements across the global south.⁴⁸ The goal of these revolutionaries is the creation of a primarily Kurdish polity, based on the principle that Kurds are best ruled by other Kurds.⁴⁹ This movement has been most successful in Iraqi Kurdistan, which has succeeded making significant gains towards self-rule, as a nation within the Iraqi state, following traditional notions of nation-state formation.⁵⁰ The second ideological strain, currently the organizing principle for the AANES in Syria, sees itself as distinct from, and in opposition to, the nation-state as a model.⁵¹

Looking forward, the ongoing uprising in Iran is in some ways rooted in a Kurdish struggle against the Islamic Republic of Iran.⁵² There too Kurdish resistance has parties representing both ideologies, with the Democratic Party of Iranian Kurdistan (PDKI) adopting a nationalist program⁵³ while the Free Life Party of Kurdistan (PJAK) advocates for an approach rejecting nationalism, placing local self-rule at the forefront,⁵⁴ noting however that both groups are currently prioritizing unity of

Commanders Killed in Syria, AL JAZEERA (Oct. 14, 2015), <https://www.aljazeera.com/news/2015/10/14/two-more-iranian-commanders-killed-in-syria> [<https://perma.cc/R3PE-74FL>], Anne Barnard & Hwaida Saad, *Hezbollah Aids Syrian Military in a Key Battle*, N.Y. TIMES (May 19, 2013), <https://www.nytimes.com/2013/05/20/world/middleeast/syrian-army-moves-to-rebel-held-qusayr.html> [<https://perma.cc/6P4J-MKL9>], and Martin Chulov, *Russian Airstrike on Rebel-Held Region in Syria Kills Seven People*, THE GUARDIAN (June 22, 2022, 10:26 AM), <https://www.theguardian.com/world/2022/jul/22/russian-airstrike-on-rebel-held-region-in-idlib-syria-kills-seven-people> [<https://perma.cc/7NPD-N9R3>].

⁴⁶ See Yasin Sunca, *The Bifurcated Trajectory of Nation Formation in Kurdistan: Democratic Confederalism, Nationalism, and the Crisis of Capitalist Modernity*, 26 NATIONS & NATIONALISM 979, 980 (2020).

⁴⁷ See *id.* at 979–81.

⁴⁸ ROJAVA INFO. CTR., *supra* note 8, at 13–14.

⁴⁹ See Sunca, *supra* note 46, at 979–80.

⁵⁰ See *id.*

⁵¹ See *id.* at 983, 988.

⁵² Miriam Berger & Sanam Mahoozi, *At the Center of Iran's Uprising, Kurds Now Face a Mounting Crackdown*, WASH. POST (Oct. 18, 2022, 2:00 AM), <https://www.washingtonpost.com/world/2022/10/18/iran-kurds-protests-mahsa-amini/> [<https://perma.cc/8Q67-TF9E>].

⁵³ The about section of the PDKI website calls for a democratic federation of the various nationalities of Iran, to replace the current Islamic Theocracy. *About*, DEMOCRATIC PARTY OF IRANIAN KURDISTAN, <https://pdki.org/english/about/> [<https://perma.cc/24R9-E9N4>] (last visited Apr. 30, 2024).

⁵⁴ *Our Perspectives to Approach the New Revolution of the Iranian People*, PJAK

opposition to the Islamic Republic through the Cooperation Center of the Iranian Kurdistan Political Parties.⁵⁵

D. Establishment of AANES

The Syrian state long defined itself by its Arab identity.⁵⁶ In the 1960s many Kurds were stripped of Syrian citizenship by a census in which they were forced to prove they had lived in their villages since 1945 or be classified as foreigners.⁵⁷ Large swaths of the Kurdish population of Syria was thus barred from participation in civic life.⁵⁸ During this period, the Syrian state set itself up as a bastion for Turkish opposition fighters, particularly Kurds from among the PKK.⁵⁹ Those revolutionaries organized within the Kurdish communities, communities that were already self-reliant in many ways due to government neglect, the ideologies of Democratic Confederalism, that each community should have elected councils handling local affairs fit the reality they were living.⁶⁰ When the regime sought closer ties with Turkey and exiled or imprisoned the PKK cadres they had previously been harboring, the local councils that had been established remained.⁶¹ Marginalization of the Kurdish population of Syria continued until the beginnings of the civil war, when the Syrian regime allowed some of the disenfranchised Kurds to gain citizenship and hold jobs.⁶² Opposition groups skeptical of these appeasement offers continued to organize and form councils for self-defense and to provide missing services as the government withdrew.⁶³ As time went on and greater cooperation was needed to

(Oct. 21, 2022), <https://pjak.eu/en/our-perspectives-to-approach-the-new-revolution-of-the-iranian-people/> [<https://perma.cc/D65V-L6GT>].

⁵⁵ This report from the UAE outlines the 5 main Kurdish political parties in Iran and the center through which they coordinate their activities. Firas Elias, *Iran and the Conundrum of the Kurdish Opposition Groups in Northern Iraq*, EMIRATES POL’Y CTR. (Oct. 21, 2022), <https://epc.ae/en/details/featured/iran-and-the-conundrum-of-the-kurdish-opposition-groups-in-northern-iraq> [<https://perma.cc/N6ZL-5UW2>].

⁵⁶ Going as far as to explicitly state as much in the constitution. The 2012 revision softened this somewhat expressing a desire to embrace minority cultures. For further discussion, see *infra* Part III.

⁵⁷ See MICHAEL KNAPP ET AL., *REVOLUTION IN ROJAVA: DEMOCRATIC AUTONOMY AND WOMEN’S LIBERATION IN SYRIAN KURDISTAN* 19 (Janet Biehl trans., 2016); Vittoria Federici, *The Rise of Rojava: Kurdish Autonomy in the Syrian Conflict*, 35 SAIS REV. INT’L AFFS. 81, 81 (Dec. 2015).

⁵⁸ See Federici, *supra* note 57, at 81.

⁵⁹ Michael Knapp, *The Roots of Democratic Autonomy in Northern Syria—Rojava*, in *ROUTLEDGE HANDBOOK ON THE KURDS* 382, 387 (Michael Gunter ed., 2018).

⁶⁰ *Id.* at 385, 387.

⁶¹ *Id.* at 388–89.

⁶² *Id.* at 392.

⁶³ *Id.* at 392–93.

resist attack from outside forces and to better coordinate across multiple cities, these local councils began banding together in larger and larger regional councils, eventually forming the Autonomous Administration.⁶⁴

II. POST-NATIONALIST CONSTITUTIONALISM

Nationalism has been a key driver in the creation of the postcolonial order. Empires covering wide, diverse regions, made up of multiple religions, ethnicities, nationalities, and cultural groups slowly gave way to homogenous⁶⁵ “Nation-States.”⁶⁶ The central argument driving this process, the claim being made by these nascent states rising from imperial ashes, was that there was this existing shared identity, a nation, and that it would be better to be ruled by those of that nation than by groups of foreigners.⁶⁷

In the Middle East, from Syria to the Arabian Peninsula this phenomenon followed the collapse of the Ottoman Empire. The various regions that had at one time been ruled from Istanbul began clamoring for “self-rule,” drafting constitutions and identifying rulers from among themselves.⁶⁸ In the Arabian Peninsula and surrounding lands these new nations were centered around an Arab identity.⁶⁹ This central argument of the importance of the nation was codified in various constitutions,⁷⁰ this

⁶⁴ *Id.* at 393.

⁶⁵ The concept of the nation, and nationality, is tied up with ethnicity, culture, and race. Regardless, within the borders of most modern nation-states live those who do not consider themselves, or are not considered, of that nationality. *See, e.g.*, JAMES MINAHAN, NATIONS WITHOUT STATES: A HISTORICAL DICTIONARY OF CONTEMPORARY NATIONAL MOVEMENTS (1996); Gidon Gottlieb, *Nations without States*, 73 FOREIGN AFFS. 100, 101–03 (1994). *See generally* JAMES MINAHAN, ENCYCLOPEDIA OF THE STATELESS NATIONS: ETHNIC AND NATIONAL GROUPS AROUND THE WORLD A–Z (May 2002).

⁶⁶ One definition of Nation is as follows: “A large group of people having a common origin, language, and tradition and usu. constituting a political entity. When a nation is coincident with a state, the term *nation-state* is often used.” *Nation*, BLACK’S LAW DICTIONARY (11th ed. 2019). *See generally* Andreas Wimmer & Yuval Feinstein, *The Rise of the Nation-State Across the World, 1816 to 2001*, 75 AM. SOCIO. REV. 764 (Oct. 2010).

⁶⁷ *See generally* Wimmer & Feinstein, *supra* note 66.

⁶⁸ *See generally* Benjamin C. Fortna, *The Ottoman Empire and After: From a State of “Nations” to “Nation-States,”* in STATE-NATIONALISMS IN THE OTTOMAN EMPIRE, GREECE AND TURKEY 1 (Benjamin C. Fortna et al. eds., 2013).

⁶⁹ *See, e.g.*, Wimmer & Feinstein, *supra* note 66, at 768. For a more skeptical discussion of the importance of Arab nationalism in the “Great Arab Revolt,” *see generally* ADEED DAWISHA, ARAB NATIONALISM IN THE TWENTIETH CENTURY: FROM TRIUMPH TO DESPAIR ch. 2 (2d ed. 2016) (making a case that nationalism largely followed from the desire for more local rule rather than being a cause of such a desire). In either case, rule became more local and eventually took on a nationalist character.

⁷⁰ *See, e.g.*, SYRIAN ARABIC REPUBLIC CONST. (1973), pmbll., *translated in* Peter B Heller,

was the belief that Arab rulers are better for Arab subjects and that the people in these states were Arab and Arab identity unites them.⁷¹ Much of the promise of these postcolonial nation-states was never realized: many living within their borders remain disenfranchised, security forces continue to crackdown on dissent, and officially sanctioned injustice and neglect persist. Kurds, living in the border regions of Syria, Iraq, Turkey, and Iran have never had their own nation. Against a backdrop of neglect, revolution, and invasion, Kurdish revolutionaries, critical of a global order that has left them so vulnerable, have proposed a new framework for a modern polity. To effectuate this, these revolutionaries have drafted a social contract, a constitution by a different name.⁷² This document frames a system of government whose legitimacy is grounded in democratic representation of the Kurdish cities and towns in Northern Syria had been left to fend for themselves in the face of the sudden, explosive growth of ISIS against a backdrop of revolution, invasion, genocide, and war.

III. CONSTITUTIONS IN SYRIA

A. Previous Syrian Constitutions

No system of law exists entirely in a vacuum, and the constitutional order proposed by the Autonomous Administration must be situated within the broader context of the Syrian state. To that end, a short discussion of other attempts at establishing a constitutional order in Syria follow, starting with the first attempt at parliamentary monarchy before the French conquest, followed by longest running, most stable constitutional order in Syrian history, in effect from 1973–2012, and finally looking at the 2012 reforms put forward to try and quash the nascent civil war.

1. First Syrian Constitution

The constitutional tradition within Syria can be traced back to the Damascus Program, a proposal submitted to a U.S. delegation⁷³ as part of the peace process

The Permanent Syrian Constitution of March 13, 1973, 28 MIDDLE EAST J. 53 (1974); Article 1, al-Dustūr al-‘Irāqī al-Mu’aqqat [The Interim Iraqi Constitution] of 1964.

⁷¹ See, e.g., Wimmer & Feinstein, *supra* note 66, at 768.

⁷² *The Rojava Revolution—A Decade On*, ROJAVA INFO. CTR., <https://rojavainformationcenter.org/2022/07/10-years-of-the-rojava-revolution-much-achieved-still-much-to-come/> [<https://perma.cc/6BRD-JAHX>] (last visited Apr. 30, 2024).

⁷³ This delegation, known as the King-Crane commission, was sent by President Wilson during deadlocked peace negotiations about modification of the infamous Sykes-Picot agreement. British and French representatives declined to participate so it included only two representatives, both from the United States. KARIM ATASSI, SYRIA, THE STRENGTH OF AN IDEA: THE CONSTITUTIONAL ARCHITECTURES OF ITS POLITICAL REGIMES 53 (Christopher Sutcliffe trans., 2018).

ending the First World War.⁷⁴ This proposal laid a series of principles which have remained an important through line to the justification and legitimacy of the Syrian State.⁷⁵ These ideals can be summarized into the following 3 principles: (1) the protection of the rights of minority religions through a secular government; (2) territorial integrity of Syria, including a rejection of Zionism; and (3) resistance to Foreign dominion or control.⁷⁶ The same congress which drafted the Damascus Program the following year created the first, but never implemented, Syrian constitution of 1920.⁷⁷ Motivated by a fear that Syrian society, ruled by sultans with absolute authority for so long needed a more gradual transition towards greater participation, integration, and democracy, the government envisioned by this constitution was a heavily decentralized, parliamentary constitutional monarchy.⁷⁸ This document, based primarily on the constitution of the Third French Republic and the 1876 Ottoman constitution had two primary goals, outlined by one of its authors, (1) protecting the rights of religious minorities; and (2) preempting any foreign, particularly French, efforts to impose their own rule over the peoples of Syria.⁷⁹ It failed to achieve these goals, as it was never fully implemented after a French army defeated the ill-prepared and ill-equipped forces defending Damascus in July of 1920 and shortly after captured the city, putting an end, for a time, to Syrian aspirations towards independence.⁸⁰

The document itself consisted of 147 articles, divided into chapters.⁸¹ Defined this constitution were sections on (1) the basic principles of the Syrian state;⁸² (2) the powers reserved to the king;⁸³ (3) the rights of citizens;⁸⁴ (4) the structure and powers, both legislative and executive, of the bicameral parliament;⁸⁵ and (5) the decentralized structure of the provinces.⁸⁶ The position of king was hereditary, with certain provisions for the parliament to choose the successor when no male heirs existed.⁸⁷ The parliament consisted of two chambers.⁸⁸ The upper chamber, or senate, had its size fixed as a fraction of the lower chamber.⁸⁹ Two-thirds of whose members

⁷⁴ *Id.* at 62–64.

⁷⁵ *See id.* at 62–63.

⁷⁶ *Id.*

⁷⁷ *Id.* at 69–71.

⁷⁸ *Id.* at 71–80.

⁷⁹ *Id.*

⁸⁰ JOHN MCHUGO, SYRIA: A HISTORY OF THE LAST HUNDRED YEARS 6667 (2015).

⁸¹ ATASSI, *supra* note 73, at 71–80.

⁸² *Id.* at 72.

⁸³ *Id.* at 74–76.

⁸⁴ *Id.* at 73–74.

⁸⁵ *Id.* at 74–78.

⁸⁶ *Id.* at 79–80.

⁸⁷ *Id.* at 74.

⁸⁸ *Id.* at 76.

⁸⁹ *Id.* at 77.

were elected by the provincial assemblies, and the remaining third appointed by the king, additionally one-quarter⁹⁰ of the total members were required to be minorities.⁹¹ The members of the lower house were to be elected in a two-tier system whereby citizens voted for electors who in turn elected the members of the general assembly of deputies.⁹² The last center of power in this envisioned structure were individual provinces, which were largely left to define their structure for themselves, the only constitutional limits were a requirement that decisions be submitted to the king for constitutional review⁹³ and proclamation and that they could not usurp any powers reserved to the king or parliament.⁹⁴ Notably, there was no independent judiciary, the general assembly of deputies was the final arbiter of constitutional law, and while courts could be established their power derived purely from legislative statute with no independent constitutional basis.⁹⁵

2. The 1973 Constitution

Political order in Syria was largely stable from the 1970 coup d'état until the uprising that began in March 2011.⁹⁶ In 1973, this structure was codified in a permanent constitution which governed Syrian politics until the recent reforms in 2012.⁹⁷ This document consisted of four sections, "Fundamental Principles," "Concerning Governmental Powers," "Amending the Constitution," and "General and Temporary Provisions."⁹⁸

The first section, "Fundamental Principles," laid out general principles and goals, and was itself divided into four chapters.⁹⁹ The first chapter defined the presidency and law as Islamic,¹⁰⁰ the government as a republic, a set of people's councils which were to be popularly elected and administer the state, and the army and the national

⁹⁰ The allotment of quotas for minority members, election rules, and division of members between provinces was to be defined and adjusted by congressional statute. *Id.*

⁹¹ *Id.*

⁹² *Id.* at 78.

⁹³ Here, the King's power is not absolute, the general assembly of deputies can overrule his determination of unconstitutionality. *Id.* at 79.

⁹⁴ *Id.*

⁹⁵ *See id.* at 71–80.

⁹⁶ Hafez Assad came to power as president of Syria in a coup d'état in 1970 and remained in power until the succession of his son, Bashar Assad, the current president, in 2000. *See id.* at 354–55.

⁹⁷ *Id.* at 252, 386–87.

⁹⁸ *See generally* Peter B. Heller, *The Permanent Syrian Constitution of March 13, 1973*, 28 MIDDLE E.J. 53–65 (1974).

⁹⁹ *Id.* at 55–58.

¹⁰⁰ This was a controversial topic during drafting and ratification, leading to resistance by members of the Muslim Brotherhood, to whom this was a relatively minor concession. *Id.* at 55.

progressive front of the Ba'th party as ideological institutions devoted to "Union, Freedom, and Socialism."¹⁰¹ The second chapter defined a set of economic principles, namely that the state was to be a planned, socialist economy, recognizing three categories of property: (1) property belonging to the people, managed by the state, (2) property belonging to collectives, and (3) private property, the use of which "cannot run counter to the interests of the people."¹⁰² Chapter 3 defines the goals, and existence, of the educational system.¹⁰³ Notable here is the focus on the citizenry being fundamentally "Arab," this concept inherently excluding the Kurds from civic life.¹⁰⁴ The fourth chapter lays out fundamental rights and responsibilities citizens have, and consists of 24 articles.¹⁰⁵ The rights enumerated broadly are as follows: (1) Freedom and Equality;¹⁰⁶ participation in political, social, economic, and cultural life;¹⁰⁷ basic due process rights, explicitly enumerated;¹⁰⁸ an explicit bar from expelling anyone from their homeland, nor can travel be restricted without judicial ruling or law for public health or security;¹⁰⁹ political refugees are protected;¹¹⁰ free exercise of religion;¹¹¹ a constitutional right to work and corresponding wage, the parameters of both defined by the state;¹¹² education;¹¹³ speech;¹¹⁴ assembly;¹¹⁵ citizenship, with particular focus on Syrian Arab citizens, and other citizens of "the Arab homeland."¹¹⁶ Intermixed with the above mentioned rights are certain responsibilities, restrictions on how rights may be exercised, and duties attendant to citizenship.¹¹⁷ These are to exercise rights and freedoms in accordance with the law;¹¹⁸ included in right to

¹⁰¹ *Id.*

¹⁰² *Id.* at 56.

¹⁰³ *Id.* at 56–57.

¹⁰⁴ *See id.* at 56.

¹⁰⁵ *Id.* at 57–58.

¹⁰⁶ *Id.* at 57.

¹⁰⁷ *Id.*

¹⁰⁸ Presumption of innocence, no unlawful search or arrest of a person, no torture or degradation, right to a trial, no punishment or penalty without an existent law, no *ex post facto* application of the law in criminal matters, no unlawful search of a home, and privacy of postal correspondence and telecommunications. *Id.*

¹⁰⁹ *Id.*

¹¹⁰ Here, the text "political refugees cannot be surrendered because of their political beliefs or for their defense of the [Arab] homeland" appears to be implicitly referring to Palestinian refugees who may be wanted by Israeli authorities. *See id.*

¹¹¹ With the notable caveat that the exercise of religion may not interfere with public order. *Id.*

¹¹² *Id.*

¹¹³ Education is free at all levels. *Id.*

¹¹⁴ Freedom of speech is framed in an unusual manner, protecting opinions and "constructive criticism." *Id.*

¹¹⁵ This right is limited to exercise "within the context of constitutional principles." *Id.*

¹¹⁶ *Id.* at 58.

¹¹⁷ *Id.* at 57–58.

¹¹⁸ *Id.*

work, above, allows the state to define the hours, wages, leaves, bonuses, and social security.¹¹⁹ Education, noted above is also mandatory at the elementary level and this constitution lists sets a goal to make higher levels mandatory as well in time;¹²⁰ defense of the homeland;¹²¹ payment of tax;¹²² and outlines a framework of purposes that unions and other social groups must work towards for the betterment of society to be considered valid.¹²³ Notable in any discussion of Syrian Presidential authority is the indefinite state of emergency declared in 1963.¹²⁴ It was within this context of emergency presidential power that both Assads ruled largely via legislative decree.¹²⁵ Much of the most extreme forms of repression the Syrian state engaged in was justified and legalized by this continuous state of emergency.¹²⁶ Additionally the president could define the election laws, modifying the electorate and method of election to ensure a government that remained firmly in hand.¹²⁷

3. Analysis

This constitution was in effect from 1973 until 2012. It governed the Syrian state against whom the civil war began and best defines the system the framers of the later social contracts of AANES were rebelling against.¹²⁸ Taken together, this constitution has a number of features which might be concerning to the Kurdish minority of northern Syria. First, this conception of liberty is one in which the individual is subservient to the state.¹²⁹ The freedoms outlined all contain caveats and exemptions prioritizing the needs of the collective, as defined by the state, over those of the individual—emblematic of this framework is the freedom of speech, wherein only “constructive criticism” is enumerated as allowed, and thus by the principle of *expressio unius est exclusio alterius*¹³⁰ criticism that is not deemed to

¹¹⁹ *Id.* at 57.

¹²⁰ *Id.*

¹²¹ The choice of defense of the “homeland” here appears to also be a deliberate choice, allowing for the possibility of offensive actions against Israel, or other forces located anywhere in the state’s definition of the Arab homeland. *Id.* at 57–58.

¹²² *Id.* at 58.

¹²³ The first priority listed is the success and protection of the regime, while the third is welfare of individuals, and the fifth and final priority is popular control of government. *Id.*

¹²⁴ The state of emergency was declared by one of Hafez al-Assad’s predecessors, part of the Ba’ath coup of 1963. See MCHUGO, *supra* note 80, at 185.

¹²⁵ The Legislative Decree in the Syrian context is a presidential decree that has the force of law, circumventing the legislature, which was, notably, also controlled by the Hafez and later Bashir al-Assad. ATASSI, *supra* note 73, at 314–15.

¹²⁶ MCHUGO, *supra* note 80, at 185. For further discussion on Bashir al-Assad’s decision to end the state of emergency during the Syrian Civil War, see *id.* at 222–24.

¹²⁷ ATASSI, *supra* note 73, at 316–17.

¹²⁸ See *Profile: Syria’s Ruling Baath Party*, BBC NEWS (July 9, 2012), <https://www.bbc.com/news/world-middle-east-18582755> [<https://perma.cc/3NVK-Z5P2>].

¹²⁹ See generally Heller, *supra* note 98.

¹³⁰ *Expressio Unius est Exclusio Alterius*, BLACK’S LAW DICTIONARY (11th ed. 2019).

be constructive likely falls outside of these free speech protections.¹³¹ This creates multiple avenues for an unfriendly regime to pass laws, and enforce them, in ways that target opposition groups. Even more concerning for non-Arab minorities such as the Kurds is the numerous references to the state as explicitly Arab.¹³² Particularly concerning is the article which appears to define citizenship in reference to being Arab, and education as having an Arab element, a threat to exclude non-Arab Syrians¹³³ while potentially attempting to “Arabize” the children of those who are treated as citizens of the republic.¹³⁴

B. 2012 Syrian Constitution

In response to the Syrian uprising in 2011, Assad commissioned a constitutional committee¹³⁵ to draft a revised constitution as part of a program of reforms that attempted to address the demands of the opposition.¹³⁶ This document was largely a modest revision to the constitution of 1973, and did little to quell the anger or prevent a civil war.¹³⁷ Compared to the 1973 Constitution, it contained two extra titles, bringing the total to six. They are: I. Basic Principles; II. Rights, Freedoms, and the Rule of Law; III. State Authority; IV. Supreme Constitutional Court; V. Amending the Constitution; VI. General and Transitional Provisions.¹³⁸ Title I, Basic Principles defines the basic ideological underpinning of the Syrian state.¹³⁹ Here the state is still fundamentally Arab, part of the “Arab Homeland,” and the people are of the “Arab Nation.”¹⁴⁰ The law is still based on Islamic jurisprudence.¹⁴¹ The largest change is the removal of the Ba’th party, and the authorization of multiple, independent political organizations.¹⁴² This had been a primary demand of the opposition, and

¹³¹ See Heller, *supra* note 98, at 57.

¹³² See, e.g., *id.* at 57–58.

¹³³ The Syrian regime attempted to use relaxing of such exclusion to quell dissent on the eve of the civil war, granting citizenship to roughly 300,000 Kurds in 2011 to whom it had been previously denied on the basis of a census in 1962. ATASSI, *supra* note 73, at 386.

¹³⁴ Heller, *supra* note 98, at 56 (“The system of instruction and education tends to create an Arab . . . Generation.”); *id.* at 58 (“Syrian Arab Citizenship is regulated by law which must provide for special facilities for Syrian Arab migrants, their children, and citizens of other countries of the Arab homeland.”).

¹³⁵ This committee was chaired by Mozhar al-Anbari, the same man who presided over the committee which drafted the 1973 Constitution. ATASSI, *supra* note 73, at 308, 386.

¹³⁶ *Id.* at 385.

¹³⁷ *Id.* at 386; David Rieff, *Blood Law*, FOREIGN POL’Y (July 18, 2012, 12:07 AM), <https://foreignpolicy.com/2012/07/18/blood-law/> [<https://perma.cc/AUK2-MRRT>].

¹³⁸ See generally SYRIAN ARABIC REPUBLIC CONST. (2012).

¹³⁹ *Id.* tit. I.

¹⁴⁰ *Id.* art. 1.

¹⁴¹ *Id.* art. 3.

¹⁴² Compare Heller, *supra* note 98, at 55, with SYRIAN ARABIC REPUBLIC CONST. (2012), art. 10.

represents a significant shift in how the Syrian state is structured.¹⁴³ Additionally, there is explicit recognition and protection for the cultural diversity of Syrian society, nominally as an avenue for ensuring territorial integrity.¹⁴⁴

Notable here is that even with the new constitutional curtailment of indefinite presidential rule, one of the primary demands by rebels in the initial stages of the Syrian uprising, these new term limits are not retroactive.¹⁴⁵ This means that Bashar al-Asaad's first presidential term which counted began in 2014, and was able to run, and win, again in 2021 for an additional seven years.¹⁴⁶ This means that under the current constitution, he will be able to stay in power until 2028. A feature of the previous constitutional order that was central to opposition demands in the leadup to the civil war was an end to the perpetual state of emergency that had granted Bashir al-Asaad and his father broad executive powers.¹⁴⁷ The regime granted this demand in April 2011, before drafting this version of the constitution.¹⁴⁸ Continuing controversy over the possibly of returning to a similar state of emergency is addressed in article 103, requiring that:

The President of the Republic declares the state of emergency and repeals it in a decree taken at the Council of Ministers chaired by him with a two thirds majority, provided that the decree is presented to the People's Assembly in its first session. The law sets out the relevant provisions.¹⁴⁹

This change, in theory, places a democratic check on the unchecked executive power provided to respond to genuine emergencies.

C. Analysis

The reforms this constitution institutes do address many of the earlier concerns raised by the constitution it replaced.¹⁵⁰ However, trust in the regime had already been lost, and the modest reforms that may have been met with rejoicing before the

¹⁴³ See ATASSI, *supra* note 73, at 388–90; SYRIAN ARABIC REPUBLIC CONST. (2012), art. 8.

¹⁴⁴ SYRIAN ARABIC REPUBLIC CONST. (2012), art. 9.

¹⁴⁵ *Factbox: Referendum on Syria's New Constitution*, REUTERS (Feb. 25, 2012, 9:05 AM), <https://www.reuters.com/article/us-syria-constitution-idUSTRE81O0BT20120225> [<https://perma.cc/K87Q-R2NQ>].

¹⁴⁶ *Id.*

¹⁴⁷ Khaled Yacoub Oweis, *Syria's Assad Ends State of Emergency*, REUTERS (Apr. 20, 2011, 7:53 PM), <https://web.archive.org/web/20230527172215/https://www.reuters.com/article/us-syria-idUSTRE72N2MC20110421>.

¹⁴⁸ *Id.*

¹⁴⁹ SYRIAN ARABIC REPUBLIC CONST. (2012), art. 103.

¹⁵⁰ See *infra* Part IV.

conflict started were instead met with deep skepticism.¹⁵¹ Notably, the president is still left with broad powers, and few limitations on how those powers may be used.¹⁵² While there has now been some allowance made for “cultural diversity” the document still defines a state in which “Arab” identity is central as justification for its legitimacy.¹⁵³

IV. SOCIAL CONTRACTS IN THE AUTONOMOUS ADMINISTRATION OF NORTHERN AND EASTERN SYRIA

A. *The “Constitutions” of AANES*

AANES has promulgated several “social contracts” since 2014.¹⁵⁴ Additionally, they are currently in the process of drafting an updated version, which would account for the new territories added in recent years, and the different demographics of those areas.¹⁵⁵ First, a note on the terminology. While these documents are structured like constitutions¹⁵⁶ and serve many of the functions constitutions traditionally serve¹⁵⁷ the drafters chose the term “social contract” in deliberate contrast with “constitution” in order to highlight the differences envisioned in the relationship between this document, the state, and the people whose affairs it would organize; in their view, a constitution defines itself as the supreme authority, whereas here the “social contract” is meant to be equal with the will of the people.¹⁵⁸ Where this philosophy seems to prove most relevant is how frequently the document has

¹⁵¹ Martin Chulov, *Syria Votes on New Constitution as Shelling of Homs Continues*, THE GUARDIAN (Feb. 26, 2012, 7:43 PM), <http://www.theguardian.com/world/2012/feb/26/syria-referendum-constitution-homs-shelling> [<https://perma.cc/GUF5-2RUW>].

¹⁵² *Id.*

¹⁵³ See SYRIAN ARABIC REPUBLIC CONST. (2012), art. 9.

¹⁵⁴ *The Rojava Revolution—A Decade On*, *supra* note 72.

¹⁵⁵ Hasaka Basel Reshid, *Elizabeth Gowriye: Aim Is a Social Contract Embodies Syrian People*, HAWAR NEWS AGENCY (Dec. 12, 2021), <https://web.archive.org/web/20211213194227/http://www.hawarnews.com/en/haber/elizabeth-gowriye-aim-is-a-social-contract-em-bodies-syrian-people-h28046.html> (reporting that the aims of the broadening project is to include all segments of society); *The Rojava Revolution—A Decade On*, *supra* note 72.

¹⁵⁶ *Charter of the Social Contract in Rojava (Syria)*, KURDISH INST. (Feb. 7, 2014), <https://www.kurdishinstitute.be/en/charter-of-the-social-contract/> [<https://perma.cc/6Y8T-GH8T>]; Stefano Marinelli, *The 2016 Rojava Social Contract: A Democratic Experiment of Civil and Social Rights in Northern Syria*, INT’L L. BLOG (Oct. 24, 2016), <https://internationallaw.blog/2016/10/24/the-2016-rojava-social-contract-a-democratic-experiment-of-civil-and-social-rights-in-northern-syria/> [<https://perma.cc/JBS7-VYAM>].

¹⁵⁷ Discussed further in Section V.B. At the most basic level, constitutions can be seen to serve 4 functions. They (1) provide legitimacy, (2) channel political conflict, (3) limit agency costs, and (4) create public goods. ASSESSING CONSTITUTIONAL PERFORMANCE 15 (Tom Ginsburg & Aziz Z. Huq eds., 2016).

¹⁵⁸ See *The Rojava Revolution—A Decade On*, *supra* note 72; SOCIAL CONTRACT OF THE DEMOCRATIC FEDERATION OF NORTHERN SYRIA (2016), pmb1.

been revised.¹⁵⁹ This may be the natural result of the need to identify and iron out problems inherent in the creation of a new system, or result from the current, particularly dynamic, situation, with the territorial boundaries governed by the document shifting along with the demographics of the people who would be cooperating under the system it defines.¹⁶⁰

1. Social Contract of the Autonomous Regions of Afrin, Jazira, and Kobane

The 2014 “Social Contract of the Autonomous Regions of Afrin, Jazira, and Kobane” was divided broadly into 9 titles, consisting of 96 articles.¹⁶¹ After first title, containing a few articles covering general principles the remainder were further separated into two sections.¹⁶² The first, “Structure of Government,” defined basic governmental structures and purposes, as well as basic rights of all people in the Autonomous Regions.¹⁶³ Here, the YPG, a Kurdish military associated with the Syrian Democratic Confederalist party, is defined as the defense forces of the Autonomous Administration.¹⁶⁴ The second, “Democratic Self-Rule Administration Project,” outlined in more detail how each of the legislative, judicial, and executive bodies was to function at a relatively high level.¹⁶⁵ The key articles here are articles 2 and 3, which outline basic principles upon which the state authority and legitimacy are based.¹⁶⁶ Article 2 consists of two parts, first clarifying the people, and their democratically elected councils as the source of all authority: “Authority resides with and emanates from the people of the Autonomous Regions. It is exercised by governing councils and public institutions elected by popular vote.”¹⁶⁷ The second, on the other hand, explicitly defines the people as the source of legitimacy within the Autonomous Administration thus: “The people constitute the sole source of legitimacy all governing councils and public institutions, which are founded on democratic principles essential to a free society.”¹⁶⁸ Article 3 meanwhile first discusses the territorial extent of the Autonomous Administration, as well as outlining their vision for a democratic, and decentralized, Syria.¹⁶⁹ This article goes on to state that “The Canton of Jazirah¹⁷⁰

¹⁵⁹ See, e.g., SOCIAL CONTRACT OF THE DEMOCRATIC FEDERATION OF NORTHERN SYRIA (2016); *The Rojava Revolution—A Decade On*, *supra* note 72.

¹⁶⁰ See *The Rojava Revolution—A Decade On*, *supra* note 72.

¹⁶¹ See generally SOCIAL CONTRACT OF THE AUTONOMOUS REGIONS OF AFRIN, JAZIRA, AND KOBANE (2014).

¹⁶² See generally *id.*

¹⁶³ See *id.* arts. 1–9.

¹⁶⁴ See *id.* art. 15.

¹⁶⁵ See *id.* §§ IV–IX.

¹⁶⁶ See *id.* arts. 2–3.

¹⁶⁷ *Id.* art. 2.

¹⁶⁸ *Id.*

¹⁶⁹ See *id.* art. 3.

¹⁷⁰ This version of the social contract appears to only discuss the canton of Jazirah in depth, despite the title’s claim to cover the entire Autonomous Administration. The document

is ethnically and religiously diverse, with Kurdish, Arab, Syriac, Chechen, Armenian, Muslim, Christian, and Yazidi communities peacefully coexisting in brotherhood. The elected Legislative Assembly represents all three Cantons of the Autonomous Regions.”¹⁷¹ Here, the drafters attempt to lay out all the nationalities and identities which exist within the Autonomous Administration, trying to demonstrate their intent to be multi-ethnic by enumerating the recognized ethnicities.

2. Social Contract of the Democratic Federation of Northern Syria

The Social Contract was amended and reissued in 2016, with a new name, the “Social Contract of the Democratic Federation of Northern Syria.” This new charter was in many respects similar to the 2014 version it superseded, containing an expanded preamble and improved organization.¹⁷² It has eighty-three articles split into the following four titles, “General Principles,” “Rights and General Freedoms,” “The Societal System,” and a second title, also named “General Principles.”¹⁷³ Further, the title on “The Societal System” is composed of nine separate chapters, laying out the structures of the democratic federalist system.¹⁷⁴ The first four chapters lay out a series of councils, exercising legislative and executive power, each covering a larger geographic area, starting by defining basic rules for the formation of councils in general then moving on to laying out a place for district (representing a single city or similar geographic region), canton (representing a region, potentially containing multiple districts), and finally a “Democratic Peoples’ Conference” in which all peoples of the “Democratic Federalism of Northern Syria” are represented.¹⁷⁵ The remaining five chapters define various special purpose elected bodies, including military,¹⁷⁶ media oversight,¹⁷⁷ two judicial systems,¹⁷⁸ and

has explicit, detailed articles discussing Jazirah specifically, while leaving the other cantons to define for themselves their governing principles. *See id.*

¹⁷¹ *Id.*

¹⁷² *See generally* SOCIAL CONTRACT OF THE DEMOCRATIC FEDERATION OF NORTHERN SYRIA (2016).

¹⁷³ *See generally id.*

¹⁷⁴ *See id.* § III.

¹⁷⁵ *See id.* § III, chs. 1–4, arts. 47–58.

¹⁷⁶ Article 64, which discusses the “Syrian Democratic Forces” mentions a “self-defense duty” in addition to voluntary military service, creating an explicit constitutional sanction on conscription. *See id.* ch. 6.

¹⁷⁷ This chapter does not create a national media company, rather it forms a body that is in part elected by representative councils and in part chosen by the national media institutions themselves. It is tasked primarily with preventing a monopoly and ensuring media and publishing receive sufficient financial support. *Id.* ch. 5.

¹⁷⁸ These include a separate “social contract council,” a body which acts as a sort of constitutional court, interpreting the social contract and adjudicating disputes involving questions of its application. It also has the authority to hear cases between cantons or cantons and federal bodies. The social contract also broadly calls for the creation of a series of justice

an electoral commission.¹⁷⁹ Here the list of nations and identities represented by the Autonomous Administration is laid out in the preamble thus “We, the peoples of Rojava–northern Syria, including Kurds, Arabs, Syriacs, Assyrians, Turkmen, Armenians, Chechens, Circassians, Muslims, Christians, Yezidis, and the different doctrines and sects,”¹⁸⁰ This language is notable in its apparent effort to be inclusive of a wide variety of identities, particularly relevant is the change, adding the introductory “including,” reflecting a desire to make explicit that the list is not meant to be exhaustive of permissible identities. Making it clear that this language from the preamble is meant to have legal effect, article 1 explicitly states that it is an “integral part of this contract.”¹⁸¹

Mirroring language from the social contract drafted in 2014, article 3 addresses the Autonomous Administrations concept of legitimacy, “The democratic federalism of northern Syria draws its legitimacy from the will of peoples and groups through free and democratic elections.”¹⁸² This is immediately followed by an article making an explicit rejection of the concept of a national or state language, “All languages in northern Syria are equal in all areas of life, including social, educational, cultural, and administrative dealings. Every people shall organize its life and manage its affairs using its mother tongue.”¹⁸³ Also relevant, the following articles repeatedly talk about all peoples, for example, explaining who makes up the cantons of which the Autonomous Administration is composed, makes a point of clarifying that it “consists of cantons based on democratic self-administrations, which depend on the democratic organizations of ideological, ethnic, feminine, cultural groups, and all social segments.”¹⁸⁴

3. Analysis

The differences between the two versions of the Social Contract are relatively minor on the face of things. However, there is a significant shift towards more universal language. Compare the language of the two sections attempting to acknowledge the identity of the peoples within the Autonomous Administration, from the 2014 version, “ethnically and religiously diverse, with Kurdish, Arab, Syriac, Chechen, Armenian, Muslim, Christian and Yazidi communities” to the 2016 “including Kurds,

systems for adjudicating disputes and addressing crime, cases would be delegated based on the issue, handled by feminine justice systems if it is an issue related to women, to a national justice system if related to general interest or security, and for other disputes local councils would establish their own procedures, provided they do not violate the social contract or basic human rights. *Id.* chs. 7–8.

¹⁷⁹ *Id.* ch. 9.

¹⁸⁰ *Id.* pmb1.

¹⁸¹ *Id.* art. 1.

¹⁸² *Id.* art. 3.

¹⁸³ *Id.* art. 4.

¹⁸⁴ *Id.* arts. 5–16.

Arabs, Syrians, Assyrians, Turkmen, Armenians, Chechens, Circassians, Muslims, Christians, Yezidis.” Not only does the updated version add Assyrian, Turkmen, and Circassian identities, it also makes clear the list is not meant to be exhaustive, leaving the possibility of unmentioned, but still valid, identities within their borders.¹⁸⁵ There is also a distinct effort to create more distance between Kurdish identity and the Autonomous Administration. For example, the 2014 social contract places responsibility for defense exclusively in the hands of the YPG, a Kurdish militia, whereas the 2016 social contract assigns this responsibility to the SDF, a coalition that does include the YPG but also militias from other groups which exist within AANES.¹⁸⁶

B. Evaluation of Constitutional Performance

Attempting to evaluate a constitutional framework presents a number of challenges, requiring a number choices about evaluation criteria.¹⁸⁷ One method, an internal, or subjective, approach attempts to identify what the internal goals the community to be governed by the resulting system has in imposing it on themselves, and asks how well does the document satisfy those goals.¹⁸⁸ The alternative method, an external, or objective, approach attempts to define a set of objective criteria independent of any specific community or group which may be applied to any constitutional system.¹⁸⁹

1. External Factor Framework

One particularly broad set of four external criteria of constitutional performance may be defined as: (1) legitimacy; (2) channeling conflict, often away from violence and towards nonviolent, legal, processes; (3) limiting agency costs,¹⁹⁰ and (4) the

¹⁸⁵ See SOCIAL CONTRACT OF THE AUTONOMOUS REGIONS OF AFRIN, JAZIRA, AND KOBANE (2014), art. 3; SOCIAL CONTRACT OF THE DEMOCRATIC FEDERATION OF NORTHERN SYRIA (2016), pmb1.

¹⁸⁶ See SOCIAL CONTRACT OF THE AUTONOMOUS REGIONS OF AFRIN, JAZIRA, AND KOBANE (2014), art. 15; SOCIAL CONTRACT OF THE DEMOCRATIC FEDERATION OF NORTHERN SYRIA (2016), art. 64; *Who Are the Syrian Democratic Forces?*, *supra* note 19; *About the People’s Defense Units (YPG)*, *supra* note 4.

¹⁸⁷ See generally ASSESSING CONSTITUTIONAL PERFORMANCE, *supra* note 157.

¹⁸⁸ *Id.* at 7.

¹⁸⁹ *Id.* at 8.

¹⁹⁰ Agency costs here means something akin to the extra burden these specific processes add to those who must engage with them. For example, poor performance by entrenched, unaccountable, public servants increase agency costs, as do bribes demanded by corrupt ones. Inefficient or unnecessary bureaucracy are further examples. If agency costs are particularly high, citizens will begin seeking extra-legal alternatives to official processes. See *id.* at 20–21.

creation of public goods.¹⁹¹ These criteria are intended to apply to any constitution, even those outside of a western, liberal framework, avoiding a focus on “democracy” and “economic growth” which some constitutions do not appear to strive for as a primary goal.¹⁹²

In the AANES context, the assessment of these factors is difficult, for a number of reasons. A thorough assessment of the legitimacy and conflict channeling effects would require detailed research into Syrian civil society, comparing faith in the system and amount extrajudicial conflict as a gradient both inside and outside the relevant region, while making choices about which polity to attribute a given population. Further, the difficulty in assessing the agency costs and public good creation is illustrated by the response to the recent earthquake which devastated the region.¹⁹³ In the days immediately following the earthquake AANES and the SDF announced they would be offering assistance to any Syrian impacted by the earthquake.¹⁹⁴ However, quickly after this announcement Turkish-backed militias and Syrian state forces began blocking aid flowing from the AANES region to Aleppo city, in an effort to control who received aid, and seeking political concessions from AANES.¹⁹⁵ If these sorts of political conflicts extend into other areas of vital government functions the picture of cost and value of such services quickly becomes complicated. The other political actors are deliberately increasing agency costs—getting aid in this example is most difficult, it costs more in time, effort, and even money—it is more difficult for citizens to give fuel to their neighbors in need because of the political turmoil.¹⁹⁶ Likewise, the efforts of AANES to create public goods—providing this aid as a community rather than as individuals—has also been frustrated.¹⁹⁷ Ultimately then, the polity does have the capacity to create public goods, but the exact extent is uncertain—likewise, the agency costs are unclear as long as other regional actors are deliberately working to increase them.

¹⁹¹ Public goods are those things a society gains by collective action, such as increased trust in strangers encouraged by smooth functioning civil systems. *See id.* at 16–23.

¹⁹² *Id.* at 366.

¹⁹³ *Survivors Are Still Being Found as the Earthquake’s Death Toll Tops 28,000*, NPR (Feb. 12, 2023, 2:33 AM), <https://www.npr.org/2023/02/11/1156313344/turkey-syria-earthquake-death-toll-survivors> [<https://perma.cc/WJ2L-69X3>].

¹⁹⁴ *Syrian Autonomous Administration Ready to Aid All Earthquake-Affected Syrians*, KURD PRESS (Feb. 7, 2023, 11:02 AM), <https://kurdpress.com/en/news/3337/Syrian-autonomous-administration-ready-to-aid-all-earthquake-affected-Syrians/> [<https://perma.cc/6EK4-W3UP>].

¹⁹⁵ *Syria: Vital Earthquake Aid Blocked or Diverted in Aleppo’s Desperate Hour of Need*, AMNESTY INT’L (Mar. 6, 2023), <https://www.amnesty.org/en/latest/news/2023/03/syria-vital-earthquake-aid-blocked-or-diverted-in-aleppos-desperate-hour-of-need/> [<https://perma.cc/8XLE-T7XT>].

¹⁹⁶ *See id.*

¹⁹⁷ *See id.*

2. Internal Factor Framework

When considering internal criteria to apply, on the other hand, it may be worthwhile to recall that these social contracts were drafted in the midst of an ongoing civil war, at a time when the prospective polity doing the drafting was in competition with multiple ideological opponents. These documents were therefore acts of revolutionary, adversarial constitutionalism. Here, as explained above, the Autonomous Administration was competing not just with the previous authoritarian regime for legitimacy but also fending off challenges by the rival orders and world views put forward by the Islamic State, supporters of a western style liberal democracy, and those who sought a majoritarian Sunni Islamic Arabic democracy.¹⁹⁸ Each of these factions had well developed systems and legal traditions, while the PKD was advocating for people to try something new. This required explaining and laying out what that new thing was. Rebel groups, when they do employ law, often do so for ideological reasons.¹⁹⁹ By this measure, then, the Social Contract appears to have been moderately successful. This proto-state has persisted for roughly a decade, weathering challenges by multiple outside forces, and natural disasters.²⁰⁰

3. Constitutional Performance

Under an external factor framework then, the performance of the AANES constitutional order is uncertain, but appears at least minimally functional and able to provide some public goods and reduce agency costs with questions about the legitimacy and internal conflicts left unanswered. Likewise, under a framework of internal factors, wherein the social contract is a tool to legitimize and preserve one specific ideological and political order in the face of competition between other rebel groups and against the central government seemingly succeeds in its purpose. By either measure then, the constitutional order established by the Social Contract of the Democratic Federation of Northern Syria appears moderately functional, despite the many challenges which it has thus far faced. More detailed research, however, could help examine the contours of that success.

¹⁹⁸ See *supra* Part I.

¹⁹⁹ See generally Tom Ginsburg, *Rebel Use of Law and Courts*, 15 ANN. REV. L. & SOC. SCI. 495, 496 (2019).

²⁰⁰ See, e.g., *U.S. Resumes Patrols with SDF in Northern Syria—Pentagon*, REUTERS (Dec. 13, 2022, 3:07 PM), <https://www.reuters.com/world/middle-east/us-resumes-patrols-with-sdf-northern-syria-pentagon-2022-12-13/> [<https://perma.cc/8EV9-BGAA>]; Anna Rebrii & Jihan Ayo, *Turkey Is Starving the Rojava Revolution*, JACOBIN (Nov. 20, 2022), <https://jacobin.com/2022/11/rojava-turkey-attacks-water-shortage-cooperative-economy/> [<https://perma.cc/XJ85-7KFX>]; *Syrian Autonomous Administration Ready to Aid All Earthquake-Affected Syrians*, *supra* note 194.

V. UNRESOLVED ISSUES

While this does appear to be a sincere attempt to establish a new framework for understanding one's relationship to the state, critics exist both within, and outside, the AANES region. Belief in the post-nationalist principles espoused in the "Social Contract of the Democratic Federation of Northern Syria" is not a requirement to support the state's leadership, or even serve in any of the various militias. It is not unheard of for Kurds to believe this project is one of Kurdish nationalism, and explicitly support it for that very reason.²⁰¹ Other authors have framed this internal debate as one in which a group of educated, foreign, elites have attempted to impose their ideology on an unwilling populace. Both of these views likely derive from the very real debates happening within this emerging polity, however the conclusions are drawn.

A. AANES as a Kurdish Nation-State

While the official documents produced by the AANES councils advocate for a particular vision of post-nation-state social relations,²⁰² on the ground reality may not perfectly reflect these hopes.²⁰³ Many, both within and without, the Autonomous Administration see the project as synonymous with Kurdish national identity.²⁰⁴ This is also evidenced in the continued use of the name, Rojava, or "West"—a shortening of "Rojavayê Kurdistanê" which translates to "Western Kurdistan."²⁰⁵

B. Infringement of Rights and Unconstitutional Governance

One particularly hostile article points to apathy bordering on antipathy towards the social contract by the local population.²⁰⁶ Here, it is claimed that the executive committees chosen by the national council are controlled by the PYD, in a system that amounts to one party rule.²⁰⁷ It is also claimed that the various bodies regulating economic activity do not follow the framework set out by the social contract.²⁰⁸

²⁰¹ See, e.g., Sunca, *supra* note 46, at 980–81.

²⁰² See, e.g., SOCIAL CONTRACT OF THE DEMOCRATIC FEDERATION OF NORTHERN SYRIA (2016), pmb1.

²⁰³ See generally Chaton Chamoun, *Westernization in Rojava: Infatuation with the West* (Spring 2022) (M.G.S. thesis, University of Gothenburg).

²⁰⁴ *Id.* at 44.

²⁰⁵ *Id.*

²⁰⁶ Saleh Malas et al., *Charter of Autonomous Administration: Infringement of Society Components' Rights?*, ENABBALADI (Mar. 7, 2022), <https://english.enabbaladi.net/archives/2022/03/charter-of-autonomous-administration-infringement-of-society-components-rights/> [<https://perma.cc/ZKB7-6BGU>].

²⁰⁷ *Id.*

²⁰⁸ *Id.*

These claims, if true, and the image of a one-party state they invoke is in many ways antithetical to democratic ideals—if the party apparatus can shift the real decision-making processes away from publicly accountable electoral processes and into internal party ones, the party can control outcomes in a way that subverts the desires and expectations of the populace which may not be affiliated with the party. This possibility also exposes a tentative distinction between different sorts of consequences of this emerging constitutional order and differences between *de facto* and *de jure* social organization. A strong argument exists that a constitution that is ignored even by those who drafted it either is fundamentally flawed, or is serving some other purpose, perhaps related to competing forms of legitimacy.²⁰⁹

However, ruling powers ignore their own constitutions rarely²¹⁰—the historical examples often given of Syria and the Soviet Union see documents which do actually give the government the wide, discretionary power that it does in fact wield.²¹¹ Their basic documents grant, rather than restrict the power of the state.²¹² Rather, the reader may be erroneously interpreting the constitution through a lens of their own constitutional expectations. For example, a reader coming from a liberal democracy may expect a document that constrains power and creates rights as a path to legitimacy, while an authoritarian state may have created a constitution for the purpose of defining a framework for later action—to grant that action legitimacy and to constrain other actors in the government, not the ones drafting the document.²¹³ The old Syrian constitution demonstrated this principle; the president was granted broad power, without term limits.²¹⁴ Additionally, during a state of emergency—which he was free to declare at any time for any duration with no oversight—he could rule by decree with no further checks on presidential power.²¹⁵ Notable here, however, is that a regime that could draft a document that would permit such a system did in fact feel bound to obey the basic structures—the state of emergency required by the

²⁰⁹ These various forms of legitimacy may be external or internal in nature. For example, in a rebel context a prospective state could, in theory, draft and issue a constitution with the sole purpose of gaining supporters and delegitimizing other competing political orders. Without sincerely trying to live up to the ideals set forth those ideals could serve to illustrate disagreements with competing orders. Alternatively, the audience could be international in scope. A constitution that was appealing to a Western audience could aid in acquiring Western allies and possibly even be a step towards smoother international recognition.

²¹⁰ Noting that these examples discuss established states, and motivations and context for rebel groups may differ significantly. Rebel constitutionalism may operate in a distinct way due to differing motivations and constraints.

²¹¹ AUTHORITARIAN CONSTITUTIONALISM: COMPARATIVE ANALYSIS AND CRITIQUE 293 (Helena Alviar García & Günter Frankenberg eds., 2019) [hereinafter AUTHORITARIAN CONSTITUTIONALISM].

²¹² *Id.*

²¹³ *Id.*

²¹⁴ See Heller, *supra* note 98, at 53, 61.

²¹⁵ ATASSI, *supra* note 73, at 310–19.

constitution to issue presidential decrees was declared and extended for fifty years, until ended as an attempt to quell the public protests at start of the civil war.²¹⁶ The constitutional order, as it were, was “maintained,” the constitution was followed even as it gave those in power the ability to act in ways that seem to run counter to the rule of law.

Ultimately, therefore, claims about elites totally disregarding their foundational documents, particularly in cases such as this where broadly speaking the same individuals who drafted the document remain relevant, should be treated with skepticism. Here in AANES, the Social Contract of the Democratic Federation of Northern Syria likely serves multiple purposes, true, but none of the evidence marshalled against it seems to support the theory that those who drafted it were anything less than sincere. Rather, the debates and continued disagreements about the very nature of this polity seem fundamental to a project that attempts to provide space for multiple perspectives and interpretations. That is to say, the very evidence of multiple interpretations of what the state should be, that Kurdish nationalists do have some power at multiple levels of the newly formed state speak to the representative nature of that government structure.²¹⁷ Similar to the insight that an authoritarian constitution can be best understood authoritarian lens,²¹⁸ that approaching the document with the wrong set of basic assumptions leads to a misleading reading, that proper constitutional analysis depends on an understanding of the larger social context, and material, such as preambles which may at first appear to be mere fluff is all required to understand the relevant documents. One of these basic understandings that is so essential is the source from which legitimate power flows, who is represented, and what that representation means. It thus remains valuable to analyze this constitutional document, to treat seriously the claims made within it, to look at what the consequences of the ideology that acts as a sort of superstructure around which the specific articles are arranged.

CONCLUSION

The Autonomous Administration of North and East Syria exists in a specific historical context, a specific historical moment wherein a power vacuum allowed a previously oppressed people the opportunity to establish a system that, they believe, can avoid recreating the oppression under which they have previously lived. There is a sincere belief that the disenfranchisement and marginalization they have suffered at the hands of the Syrian and Turkish regimes was due to those states attempts to better the lives of the nationals that they represent, that the problem could be solved by removing the states dependence on the concept of nationhood while

²¹⁶ Oweis, *supra* note 147.

²¹⁷ See, e.g., ROJAVA INFO. CTR., *supra* note 8, at 11–17.

²¹⁸ See generally AUTHORITARIAN CONSTITUTIONALISM, *supra* note 211.

replacing it with a relatively straightforward form of democratic representation. The Social Contract of the Democratic Federation of Northern Syria thus differs in important ways from both constitutions generally, and more specifically the constitutions of Syria, both the long-standing 1973 version and the rewritten 2012 version, attempting to address many of the concerns which led to AANES declaring their autonomy. Despite all this, perhaps even because of it, there remains a very real possibility for AANES to be reintegrated back into Syrian civil society, likely with much of the new federal structure intact, as part of a new, more modern, more federal Syrian state, where more power is devolved to the regional level.

A. Final Remarks

The Autonomous Administration of North and East Syria, in many of its official documents, and particularly in its social contract purports to be an entirely new, entirely unique form of organizing social affairs for the betterment of humanity. The claim is that by rejecting the nation-state whole-cloth true democracy is thus able to flourish. The reality, unsurprisingly, is more nuanced. The social contract does represent an effort to move past certain aspects of the postcolonial order in the Middle East, and does appear to represent an aspirational ideal of replacing governmental and legal legitimacy ordered around the concept of ethnic and cultural “nations” with one in which legitimacy is granted purely by virtue of democratic processes—that is, state decisions are granted legitimacy because the collective has a real say, and they are a result of agreement and consensus.