Law and Revolution: Legitimacy and Constitutionalism After the Arab Spring by Nimer Sultany

Priyasha Sai Ukil

The Arab Spring brings about images of upheaval and protest along with feelings of agitation, unrest, anxiety and anticipation for change. Amid these strong emotions and uprisings, the legal aspects of revolution might appear to be comparatively unimportant and too intrinsic and technical. In his book, ‘Law and Revolution: Legitimacy and Constitutionalism After the Arab Spring’, author Nimer Sultany emphasizes that in addition to these initial impressions of the Arab Spring, the role of law is extremely significant, presenting arguments which are both, theoretical and pragmatic in nature. While his primary focus is on Egypt and Tunisia, he has comparatively analysed other Arab countries such as Bahrain, Jordan, Oman, Morocco and Algeria. Furthermore, he has scrutinized the American Revolution, French Revolution and transformations in Eastern Europe following the collapse of the Soviet Union to review the historical context of revolutions and the role of law in each of the cases. Not only has he compared constitutions and legal systems of countries during different periods of time, but he has also drawn a continuous comparison and contradiction between concepts such as ‘rupture’ and ‘continuity’, ‘reform’ and ‘revolution’ and ‘revolution’ and ‘constitution’, which may or may not be dichotomous in nature; examining them from lenses of legitimacy and the law. The book is divided into three sections, each of which discusses legitimacy, the link between revolution and legality, and the relation between revolution and constitutionalism respectively.

The first section deconstructs different forms of legitimation crises the Arab states have faced before the Arab Spring, the first being the Ottoman and European colonial constitutional theory, followed by the post-colonial constitutional theory. During these stages, most Arab states with similar constitutional structures were normatively weak and lacked inclusivity in the form of discrimination against minorities and patriarchy. Consequently, Arab authoritarianism stagnated to corruption, growing
fonder of capitalism, increasing inequalities and igniting dissent. This part concludes with the claim that even though revolutions can be reactionary in nature and are in response to legitimacy deficit, they create their own shortcomings of legitimacy. It also paves the way for the larger argument of the book, that in addition to political crises, the popular uprisings of the Arab Spring disclosed the conceptual crises of law and legality. These conceptual crises highlight the gaps within the law, and case studies of Egypt and Tunisia prove how the legal system undermined the revolution and deprived it of the aspirational retributive justice because the judgements were clouded with personalised conceptualisation of the law and legitimacy. Sultany analyses the complicated relationship between revolution and the legality in the following section, critiquing the dichotomy between the rupture and continuity of the legal system; concepts which can be said to form the ontological basis for the rest of the book. He further argues that law, whether before or after revolution, is incoherent and as a result, the relationship between revolution and legality is not simple and difficult to present systematically. This has been illustrated through examples of division of ideologies within the judiciary.

The following chapters explain how revolution, legality and constitution are all either indirectly, or paradoxically related to legitimacy within the principles of rupture and continuity. The final section discusses whether higher constitutional order abides by the binary relation between rupture and continuity. Sultany analyses post-Arab Spring constitutional changes which were either evolutionary and reformative in nature, unveiling their similarities, differences and the challenges faced. Both forms of constitutional change, whether it was revolutionary, like in the cases of Egypt, Tunisia or Libya, or non-revolutionary and reform oriented through amendments, like in the cases of Morocco, Bahrain, Jordan, Oman and Algeria, suffered from a crisis of legitimacy; which is a combination of constitutional rupture and continuity. The final chapter of the book presents arguments surrounding popular sovereignty, primarily focusing on the assumption of a dichotomous relationship between those who fear the liberated democratic will and those who fear its containment. He argues that this assumption of a dichotomy between both fears is false, suggesting the existence of a fine line between them, which even facilitates them to coincide on occasions. This is backed by examples of the judiciary taking contradictory actions, which also concretes his argument about the law being incoherent and conflicting in nature.
Sultany has used an array of comparative examples to assert that the concept of revolution and discourses around legitimation cannot be analysed separately. A wide range of cases and legislative documents as primary sources have also been used to argue that legal theories and norms intensely impacted the essence of revolutionary demands and political transitions in Egypt and Tunisia. The judiciaries in both countries promoted institutional continuity but inevitably became a part of the political and social rupture by getting caught up in conflicts they were actually supposed to resolve. The role of law in these cases was compromised because the legal systems succumbed to political pressure. The citizens of Egypt were prosecuted in military courts, while Hosni Mubarak, along with members of his ruling circle, were tried in the civilian courts. Although the overthrown dictator was found guilty in the first trial, he was acquitted in the following trial and therefore, the revolution was denied justice. Similarly, in Tunisia, the military courts dominated the jurisdiction which ultimately led to ineffective and lenient sentences; and the quasi-revolutionary body which was set up to adopt rupture, still sought to dismiss all elements of the older regime, which was the post-revolutionary government. Critiquing the failure of trials that undermined revolutionary legitimacy, Sultany questions the failure of Arab Spring in bringing about the required change for a new beginning. Looking at revolution from a realist point of view, his examples demonstrate that theory is not sufficient without non-theoretical evidence. In this instance, theory is probed with the question of how to practically legitimize and legalize revolution, with the broader goal of preventing counter-revolution.

Finally, the author suggests that if the main actors at the time of the Arab Spring were not conceptually limited, the revolutions may not have lost their strength and momentum. He hopes that his work enables the re-examination of existing theoretical toolkits and serves as a more realistic and constructive guide for the legal dimension of revolutions, if they were to come again. Changing the way scholars, politicians, judges and social activists look at the law, this book has successfully been able to show that the Arab Spring led to conceptual crises which have led to the transformation of perspectives. Therefore, it is an important book on the subject of revolutions and must draw attention of scholars from across academic specialisations. Although Nimer has drawn a rather pessimistic image of constitutional experiences in Arab states before, during, and after the movement, he concludes with the clarification that he does not aim to instil despair. Instead, he wishes to encourage a more realistic way of understanding the role of law and constitution during the process of
Not many scholars have delved into the relationship between law and revolution at the time of upheaval, leading to lacunae in the understanding of these fields. For that purpose, Nimer Sultany’s book, associating theory with practice, presents a supremely complicated, but fresh outlook and interpretation which can be used as a legal handbook for further empirical and comparative research in the intricate relationship between the law, revolution, legitimacy and the constitution.