

About Constitutional Principles

A constitution stands for the collective international legal thoughts regarding governance and state, comprising the level of respect for the rights and freedom of citizens and the attempt to protect individuals from the tyranny and exploitation of ruling authorities. This is achieved by the distribution of powers and the specification of its competences. Thus securing the stability of the state through keeping its internal balance on one hand, and protecting the fundamental rights of individuals, serving as a guarantee for safeguarding this balance in all its depth on the other hand.

The task of the constitution and its principles is not restricted to defining the current situation in a country, but also includes striving for a consolidation of these principles and constitutional rules in the future (should they not be established, when agreeing on the constitution). From this standpoint, a constitution can be considered as a **social contract** a nation agrees upon, or a **working program** it aspires to achieving and committing itself freely to in the future. From this point of view, the nation utilizes the constitution as an instrument for social progress and human development, which is only possible if this constitution is legitimate and agreed upon by all components of the nation. In order to realize this legitimacy, a constitution has to fulfill the following conditions:

Firstly: A legitimate constitution represents **the highest legal parameter** which establishes the society's approach in legislating, implementing and setting the general conditions of the implementation of its laws. Thereby, no law can be considered legitimate, if it violates the essence or literal meaning of these general conditions.

For the constitution to function in a society as the highest legal parameter, it has to be **fair**, i.e. it has to be built upon **"...full and equal citizenship, the acknowledgement that power flows from the people and that no individual or group shall have power over the people..."**

Secondly: A legitimate constitution reflects **the will and general spirit of the people** and includes the clear attestation of rights and freedoms.

Considering that freedom is the key condition for maintaining human dignity and that freedom is the noblest goal of a state – as per the principle of Montesquieu, which was later also adopted by Rousseau and Hegel –; in order for the people to achieve this freedom, it should be able to rule itself using laws which stem from its will and which represent its interests.

To sum up, from this point of view, a legitimate constitution is one which protects the citizens' rights, since achieving social progress is not feasible without freedom. Humans deprived of their rights cannot rule themselves and are in consequence merely "objects". They can't exercise their will in thought, feeling or action, since the will of others or of an external power is imposed upon them. This affirms the necessity for the legitimate constitution to attest human rights and guarantee provisions in favor of these rights, especially the individual and collective rights concerning **right to freedom of thought, conscience and religion, right to freedom of opinion and expression, right to own property, right to peaceful assembly and association, freedom of movement, right to vote, right to security, etc.**

Thirdly: A legitimate constitution recognizes the **rule of the law and abides by the separation of powers:**

A modern state is a democratic one, ruled by law and not by individual will. This law operates through the three separated powers of the state, which have been agreed upon in the legal spheres since Montesquieu:

- The legislative power, responsible for law making.
- The judiciary power, responsible for interpreting and applying the law.
- The executive power, responsible for enforcing the law.

This separation of powers aims at preventing misuse or seizure of power by an individual or a group, which led the leaders of the French Revolution to include in the constitution of 1791 that: “...**any society in which freedom is not guaranteed or the separation of powers not determined, has no constitution at all...**”

Upon examining the Syrian Constitution (in **both** versions: The “permanent” of 1973 and “the crisis” of 2012) and their conformity to the principles of the state of law, following conclusions can be drawn:

- 1- The constitution did not serve its function as a **social contract**, which was agreed upon by the nation; i.e. it was **illegitimate** since it hasn’t served its purpose as the **highest legal parameter**.
- 2- It wasn’t built on the basis of **full and equal citizenship**, fully acknowledging that power flows from the people.
- 3- It wasn’t able to express the **general will of the people**, having neither adhered to individual freedoms and rights nor respected the will of the people.
- 4- It didn’t establish the **principle of separation of powers**, which allowed the executive power, represented by the President of the Republic, to legally encroach upon both the legislative and judicial powers.
- 5- It didn’t recognize the **rule of law**, thus undermining the principles of a modern democratic state ruled by law and not by individual will.
- 6- It weakened the chance of **exercising judicial control over administration** to a great extent, leaving the door wide open for the executive power – uncontrolled, unrestrained and fearless of any accountability or punishment – to prey on the whole society and turn it into barren land.
- 7- It didn’t form **intrinsic mechanisms allowing civil society** to express itself and its ambitions in a peaceful and democratic manner (such as forming parties, syndicates, associations, etc.). This contributed to the stimulation of destructive and explosive forms for expressing different trends in society.
- 8- Passing a new constitution, the so-called “crisis constitution”, in 2012, in an attempt of the Political Syrian Authority to flee forward, has failed to produce the desired effect, since it was only a poorly **amended and revised** version of the original. The Political Authority did not even attempt to turn it into a democratic alternative or try to include the basic constitutional principles, which would have provided this new social contract with the ability to express the will of a nation heading towards building its new future. So, from the very first moment of its conception, this new constitution was not at all viable

Finally,

This theoretical introduction does not aim at detecting the discrepancy between the Syrian constitution and the parameters of a state of law or the fact that it has resulted in a state, in which the executive

power monopolizes all other powers (as well as society). Furthermore, it does not aim at identifying its intrinsic contradictions – both intentional and unintentional – turning it into a tool of the executive power. It is rather intended to shed light on its shortcomings, which stand for a certain way of ruling the country, and thus overcoming these defects in the process of building the new and desired society. This can be realized by endeavoring to bring forward new **Chartism principles** as a basis for a new social contract, which takes the aspirations of the Syrian people into account, in regard to **freedom, dignity and the establishment of a state of law**.

Five years ago, the Syrian people, who have been suffering under the political void and the lack of freedoms for more than half a Century, rose in demand of its freedom and dignity. It rose amidst complex and interwoven – ethnical and confessional - domestic conditions on one hand, and a regional intertwined situation on the other hand. Regionally “the Syrian crisis”, which has been devastating both for the people and the country, is dealt with according to narrow and personal agendas, which couldn’t be further from the aspirations of the Syrian people regarding freedom, dignity and the establishment of a democratic state. In order to enhance the social fabric on the basis of **equal citizenship** consolidated in a constitution, which adheres to the principles of the state of law, today, more than ever, this society is in urgent need of producing **Chartism principles and concepts** to serve as a compass and a guideline for giving birth to a new constitution.

The basic constitutional principles

What the Syrian people strive for today and what needs to be agreed upon is a set of constitutional (or **supra constitutional**) principles, which guarantee the establishment of a new nation based on the fundamental parameter of **full and equal citizenship** for all individuals and components of the Syrian society, without any discrimination, exclusion or marginalization.

According to our point of view the most important principles can be summarized as follows:

- 1- Syria as a geographical and political unit with complete sovereignty stemming from the power of the people, as part of the Arab community.
- 2- It is a state acknowledging the ethnical rights of minorities in the frame of the unity of Syrian soil and people.
- 3- It is a state built on the basis of the rule of law and abiding to the principle of separation of powers and their complimentary nature as well as guaranteeing the independence of the judiciary.
- 4- It is a state acknowledging that the people hold the sovereignty. Being the source of all authority the people thus practice this sovereignty through councils - elected in free, fair and transparent elections - within a framework of a broader administrative decentralization.
- 5- It is a state of institutions and citizenship, treating all its citizens equally as per and before law and providing for equal rights and duties without discrimination based on religion, ethnicity, gender, political opinion, wealth, etc.
- 6- It is a civil pluralistic democratic state, which abides by and respects international law regarding human rights, especially women’s rights and commits itself to adhering to it.
- 7- It is a state, which emphasizes the respect for the freedom, dignity and rights of the individuals in equal citizenship, especially concerning the right to life, the right to political participation and posts, the right to form parties and institutions of the civil society, the right to freedom of opinion and expression and the right to information exchange.

8- It is a state acknowledging the right of its citizens to the freedom of adopting and practicing a religion, but prohibits accusing people of apostasy and the incitement of hatred and violence between all religions, confessions, gender and ethnicities, abiding by the principle: "Religion is for God, the Homeland is for All".

9- It is a state providing the right to receive the minimal level of social justice to all its citizens; through social welfare, healthcare, compulsory education and the necessity of providing work opportunities to safeguard a decent life.

10- It is a state providing an access to justice for all its citizens before legal authorities, whose independence, neutrality and integrity is guaranteed by the state as the protector of public rights and freedoms.

11- The state guarantees its citizens the right to direct appeal before the relevant constitutional court, in consistence with the law. Furthermore, the state guarantees the neutrality, independence and fairness of this court.

Note: The enumeration of the above mentioned principles is based on their importance and is not at all exclusive.

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