



CENTER FOR CONSTITUTIONAL DEMOCRACY

MAURER SCHOOL OF LAW
Bloomington

june 2017

democracy in action

IN THIS ISSUE

- Burma update
- Liberia update
- Jordan update
- Spring seminar series
- PhD plenary
- CCD research symposium
- Workshop for Burmese visitors
- End-of-year banquet
- New building

BURMA UPDATE

After our three trips to Burma in the spring and summer of 2016, we have remained in close contact with our partners, and we anticipate returning to the region soon. Several of our partners have signed the Nationwide Ceasefire Agreement (the signatory groups), while others have not (the non-signatory groups). During our trips last year, we helped our partners to prepare for the next round of peace talks, which were finally held in May. The

negotiating teams preliminarily agreed that the state governments would be allowed to write their own constitutions, but at the conference itself, that consensus broke down in the face of disagreement on other issues. Still, the issue is very much on the table, and the two sides are working to find a way forward. We anticipate that in fact, the states will ultimately be allowed to develop their own constitutions. This development is deeply confirming to the CCD: we got our start helping people from the states to write proposed state constitutions; last summer, we developed four key position papers - four critical demands - and one was state constitutions; and we are already involved in the drafting of some of the state constitutions. Both the signatory and non-signatory groups have asked us to come this fall, and we anticipate that we will spend at least two weeks there.

LIBERIA UPDATE

Our partner in Liberia, former CCD PhD fellow Jallah Barbu is currently running for President of Liberia. During the presidential campaign, no progress is possible on the constitutional reform agenda, so we are awaiting the outcome of the election in October of 2017. If the new President is interested in constitutional reform, we will become re-engaged at that point. Whether or not Jallah is elected, his recent political activities promise interesting routes of cooperation for the CCD in Liberia in the future.

JORDAN UPDATE

In the early evening of April 29th, the CCD team arrived in Jordan. As we drove north into the capitol of Amman, the sounds of the call to prayer reverberated around the hills which underlie the city. We watched the villas which line the road into the city disappear, to be replaced by a vast sea of limestone apartment buildings. We were finally here; everything we had planned and worked towards for the past semester was finally underway.

Back in Bloomington, we had a team of 12 that had been researching and discussing Jordan every Wednesday for four months. Together, we examined Jordan's history, its geopolitical context, as well as the Constitution and its recent amendments in depth. In every meeting there were at least two Jordanians present, in addition to other Arabic-speakers and people with extensive experience in the region. This



The CCD Team with the President of Jordan's Constitutional Court, Judge Taher Himat (third from the left) and member of the Constitutional Court, Judge Mansour Hadidi (left).

helped the team to form a cultural context, to understand the translations of documents, and to research information only available in Arabic. Susan and David Williams, the Directors of the CCD, led the team and kept our focus on how Jordanian legal and political frameworks are designed. Every week our PhD and JD students would present their research to the team, on topics ranging from the electoral law, to the anticorruption commission, to the newly-formed constitutional court. After they presented, we would fact-check and discuss the implications of whatever they had uncovered.

But why Jordan?

As always, the CCD does not enter into a country without having been invited. Our Assistant Director Elizabeth Adams has extensive professional and familial ties in Jordan, and during a visit in January, she spoke with a few of these contacts about the work that the CCD does. They were so interested that they asked to speak with Susan and David in regards to how they could start a program in Jordan. Susan and David agreed, and after some preliminary conversations, we decided that an exploratory trip to Amman would take place in early May.



The CCD Team being presented with a plaque by the President of the Circassian Charity Association, His Excellency Zuhdi Janbek.

Of course, being invited isn't enough - we always want to make sure that we can bring something to the table that will promote peace and stability. Right now, Jordan seems to be in a place where our expertise could be useful. After the demonstrations which took place during the so-called "Arab Spring," His Majesty King Abdullah II called for a national dialogue process, which resulted in amendments to one-third of the Jordanian constitution. This was no small thing. As we were told many times in Jordan, they considered the constitution to be "untouchable" prior to this effort. Some of the notable changes were the formation of a Constitutional Court, and the formation of an Independent Elections Commission. Since then, there have been further rounds of constitutional amendments in 2014 and in 2016. His Majesty also began to publish royal discussion papers which focused on the steps that he believes the country must take if Jordan is to continue along the path of democratic reform. The titles of these papers speak for themselves: "Our Journey to Forge our Path Towards Democracy", "Making our Democratic System Work for All Jordanians", "Each Playing a Part in a New Democracy", "Towards Democratic Empowerment and Active Citizenship", "Goals, Achievements and Conventions: Pillars for Deepening our Democratic Transition", "Rule of Law and Civil State", and "Developing Human Resources and Education Imperative for Jordan's Progress". Thus, it is safe to say that King Abdullah supports the effort to work towards finding a type of democratic system that is appropriate for Jordan, as determined by Jordanians.

That being said, there are other factors at play which require careful consideration from Jordan's leaders, such as national security and economic issues. Too much change too fast could completely upset the delicate balance that Jordan maintains, plunging the country into strife. Jordan is situated between Iraq, Syria, Israel and Palestine, and Saudi Arabia. Each of these states is involved in an active conflict which destabilizes Jordan, not only by the mere presence of the conflict, but also by the influx of refugees into Jordan seeking safe haven. Over a million Syrian refugees currently reside in Jordan, and over half of the Jordanian population are originally from Palestine. These people have been welcomed with typical Jordanian hospitality, but the boom in population has caused a large strain on Jordan's natural resources and its economy. After the wave of Iraqi refugees post-US invasion, housing and food prices have skyrocketed, leaving many Jordanians struggling economically. Most Jordanians that we spoke with were extremely concerned by the state of the economy, stressing that it was the first thing that needed to be changed.



The CCD team with His Royal Highness Prince Hassan bin Talal.

Of course, the CCD's expertise is not in economics; we are constitutional designers. However, there is a very important connection between the legal and political frameworks that structure a country and its economy. For example, if a country has the rule of law - with a functioning, independent judiciary and reliable enforcement of clear rules - it makes the country more attractive for investors and entrepreneurs, both foreign and domestic. Similarly, if a country encourages the participation of women in public life, that has a positive effect on the overall economy. And, most fundamentally, if the government of a country is more accountable to the whole population, it is more likely to address the economic issues that concern the people.



The CCD team with Sheikh Talal al Maadi, sheikh of the 'issa clan in Mafraq.

During our trip to Amman, we met with:

- His Royal Highness Prince Hassan bin Talal
- His Excellency Dr. Mohammad al Momani, Minister of State and Media Affairs
- Dr. Abeer Dababneh, Center for Women's Studies at the University of Jordan

- His Excellency Dr. Ibrahim al Jazy, former Minister of Justice and current Dean of the Law School at the University of Jordan
- Leaders from the Circassian community
- A group of former government officials from Prime Minister Awn Khasawneh's government
- An official from UNRWA
- Sheikh Talal al Maadi, sheikh of the 'issa tribe in Mafraq, and Dr. Bader al Maadi of the University of Jordan
- Judge Taher Hikmat, President of the Constitutional Court
- Judge Mansour Hadidi, Member of the Constitutional Court
- His Excellency Khalid Kalaldeh, President of the Independent Elections Commission
- His Excellency Samih Bino, former President of the Integrity and Anti-Corruption Commission, as well as Mr. Ramzi Nuzha who also sat on the commission
- His Excellency Dr. Marwan Muasher, former Minister of Foreign Affairs, former Deputy Prime Minister, first Jordanian ambassador to Israel

In the month since we returned from Jordan, we have been working to develop plans for cooperation with several potential partners, including the Constitutional Court and the Center for Women's Studies at the University of Jordan.

Special thanks for organizing this initial trip go to Tagreed Odeh, one of our contacts in Jordan who will be joining us as a student in the PhD program in Law and Democracy. Also, thanks to Yazeed Rabadi, who is our Jordanian consultant and sat in on every weekly meeting, and who also reached out to his contacts in Jordan to help organize the trip. Finally, thanks to His Excellency Dr. Abdul Latif Wreikatt, former minister of health, who was instrumental in connecting us with people who could offer us insight into Jordan.



The CCD team with His Excellency Dr. Mohammad al Momani, Minister of State for Media Affairs.

We hope to return to Amman in August or September of 2017.

SPRING SEMINAR SERIES

Every year, the CCD is honored to host a group of academics who are helping to build the fields relevant to constitutional design. One cannot effectively design a constitution without a knowledge of history, political science, anthropology, law, gender studies, and economics. So we invite speakers from a wide range of disciplinary

and practical backgrounds, in order to learn about new approaches which might make our research and work more meaningful and sustainable. The following is a list of the speakers that visited the CCD in the spring of 2017.

- January 26: "Constitutional Reform in Turkey," Tim Waters, Indiana Law
- February 9: "Justice during Armed Conflict," Cyanne Loyle, IU Political Science
- February 16: "Puerto Rico: The 1898 Colony becomes Visible Again," Arlene Diaz, IU History
- February 23: "The Future of Constitutional Dignity in the United States," Steve Sanders, Indiana Law
- March 2: "Law, Governance and Resources: A View from a US Legal Case," Michael Watts, University of California, Berkeley
- March 3: "Spectral Laws of the Golden Lands in Ghana," Lauren Coyle, Princeton, Anthropology
- March 23: "Language Use and Identity among High-School-Aged Refugees from Burma," Maureen Hoffmann
- March 29: "International Assistance in Constitution-Building - Theory and Practice," Sumit Bisarya, International IDEA

PhD PLENARY PANEL

On April 6, the CCD organized its first Plenary Panel as part of the annual symposium. The purpose of this panel is to give our PhD students the opportunity present their research in an academic setting, developing their professional skills and offering JD students exposure to the next level of academic research. The three students who presented are in the process of writing their dissertations, so they benefitted from the feedback on their research and the lively debate with other students who are interested in their these topics. The following students presented:



The CCD team after the PhD panel.

- **Zulfia Abawe**'s paper looked at the anthropology of human rights literature and multiculturalism literature to explore how the discourse of women's human rights is shaped within these two sets of scholarships. Though the focus of the anthropology of human rights is more bottom-up, with an emphasis on understanding community practices, the multiculturalism literature shared common notions with the anthropological approaches when it came to women's rights, in particular. The

two disciplines converged on the understanding of culture as being fluid, changing, and transformative. She explored several models developed in these literatures that focus on women's agency as the key to advancement of rights. Zulfia then placed the above discussion in context through a discussion of Baad (a customary practice prevailing in Afghanistan where girls are given away or married off to settle disputes). She argued that combining the elements in each model with the shared notion of understanding culture as fluid and transformative, Baad practice may be shaped in favor of women, without generating a backlash. The combined model pays equal attention to the role of State, Intermediaries [NGOs and Civil Society activists], women's agency from within the community, and the role of traditional authority figures. This would be a gradual and complex process, but effective and worth investment.

- **Yiqiao Wang's** talk was about the interaction of nation-building and constitutional design in Hong Kong. Hong Kong has been returned to China from the United Kingdom for 20 years as a special administrative region. The "One Country, Two Systems," arrangement keeps the capitalist system in Hong Kong within socialist China and the central government delegates to Hong Kong a very high level of autonomy. The autonomy and democracy of Hong Kong, after the handover, is higher than it was in the colonial period, but the Hong Kong independence and Hong Kong nationalism movement has risen with impressive support, which was marginal under the rule of the British colony. The rise of separatism and Hong Kong nationalism may have been facilitated by the constitutional design of the "One Country, Two systems" policy in certain ways. As Benedict Anderson's nationalism theory of the imagined community points out, if the people in an area were excluded from political participation in the empire's bureaucratic system, their sense of alienation and local identity would be increased, which would create a new national identity and nationalism. The "One Country, Two Systems" policy prevents the socialist system of China from overwhelming Hong Kong, on the one hand, but also, excludes the people of Hong Kong from national political participation in the bureaucratic system. The original purpose of this arrangement was to promote the Chinese identity of the people of Hong Kong by privileging Hong Kong with greater autonomy than during the colonial period. However, the consequences were opposite to the original expectation. In order to ease the political gridlock of Hong Kong, the "One Country, Two System" policy should be reformed to provide the people of Hong Kong with an opportunity to participate in national political affairs.
- **Muhammad Zubair's** paper addresses the question: should parliamentary majorities in deeply divided societies have the power to amend the constitution without being subject to any substantive limitations, beyond the procedural limitations laid down by the constitution itself? The Indian Supreme Court had answered the question in the negative through its basic structure doctrine. This paper analyzed and situated the doctrine within the theoretical landscape laid out by theorists like Emmanuel Joseph Sieyes, Carl Schmitt, and Walter F. Murphy. It argued that the basic structure doctrine borrows support from these theorists, all of whom believe that constitution amending powers of parliaments are not unlimited and that there are indeed some inherent limitations on their powers. The Court's conception of democracy, underlying the doctrine, is different from and indeed the exact opposite of a majoritarian conception of democracy. Instead, this conception

of democracy is in agreement with consociationist theorist Arend Lijphart, that in culturally fragmented and ethnically divided countries like India, majoritarianism and democracy often become antithesis. Avoiding ethnic conflicts and ensuring political stability in such societies requires an anti-majoritarian conception of democracy, i.e., consociational or power-sharing democracy. Given that in India the constitutional and institutional mechanism is based on majoritarian conception of democracy, the court has for the most part played important anti-majoritarian function and stabilizing role. The paper also examines the ways in which the doctrine has influenced the constitutional jurisprudence of Pakistan, where the courts have found it difficult to resist its beauty and utility and yet stopped short of adopting it. Muhammad argued that, given the multiethnic, multicultural, and multilingual character of both India and Pakistan, and given that the constitutions in both countries establish majoritarian democracies, it is important to provide the superior judiciaries in both countries with the power of reviewing constitutional amendments, so that they can play a significant anti-majoritarian role and thus contribute to the stability of the system and prevention of conflict that is otherwise inherent in such societies with a majoritarian system.

CCD RESEARCH SYMPOSIUM

The day after the PhD Plenary Panel, our JD Affiliates had the opportunity to present their research at our annual CCD Research Symposium. This year we had eight JD Affiliates presenting six papers, (two were joint papers).

Alex Thibodeau

"What Does it Mean to be the Commander-in-Chief?"

Alex's paper explores the role of the commander-in-chief, focusing on the foundations of power for the commander-in-chief as well as the practical duties that the position entails. Alex concludes that while the duties of the Commander-in-Chief vary instance-to-instance, origins of power follow a very consistent pattern. Alex argues that at its most simplified core, the authority of a Commander-in-Chief does not lie in the practical exertion of control over armed forces; rather, it is more accurately the procedural ability to assign military power to a particular construction. Ultimately, it is this assignment of power that provides the clearest commonality between various instances of command.

Lisa La Fornara

"Taxonomy of Minority Governments"

Lisa's paper serves as a taxonomy of minority governments in recent history. First, it provides a working definition of minority governments, explains the different types of minority governments, and identifies how minority governments relate to coalition governments. It then explores the ways minority governments form and examines the relationship between minority governments and constitutional design. Ultimately, this taxonomy asserts that a democracy's stability is not of particular relevance to the formation of minority governments and, once formed, minority governments do not threaten a country's democratic performance

Jackie Brooks and Allie Hendrickson

"Military Representation in the Governance of Countries Around the World"

In this paper Jackie and Allie discuss how, according to their research, there has been a noticeable trend both in the susceptibility of government to use the military to achieve political standing as well as the inclination of a given electorate to push back against such power-grabbing moves.

Allison O'Brien and Anasuya Shekhar

"Taxonomy of Domestic Use of Armed Forces"

Allison and Anasuya's paper discusses different ways in which armed forces are used domestically, including to suppress unrest, in peace-keeping missions, and as an economic power. Their observations are that: 1) several countries have provisions in their constitutions that stipulate governing mechanisms for the military and limit its power in domestic politics, 2) there is a general trend of concentration of military power in the executive across many geopolitical regions, and 3) many countries that were formerly military dictatorships have made constitutional and legislative provisions preventing military intervention in the civilian sphere.

Brooke Harwood

"Religious Persecution in South Asia: A History of Violence and Proposals for Future Protection"

Brooke's paper looks to three specific countries in South Asia to display how each has addressed religious liberty: Sri Lanka, Nepal, and Bangladesh. Much of the analysis provided is through historical context and comparison of how three relatively similarly situated countries have addressed religious liberty constitutionally.

Chase Stoddard

"Legislative Committee Systems: A Design Perspective"

Chase's paper funnels the existing body of work that focuses on legislative committee systems through a design lens. He does this in order to better understand what a committee system is, what it does, and how it impacts other structures and actors.

Victoria Hicks

"Taxonomy of an Unwritten Constitution"

Victoria's paper explores the concept of unwritten constitutions, and compares four countries that could be said to have unwritten constitutions. The paper not only aims to understand each of the countries, but also to understand what are the successes and dangers of having an unwritten constitution. And, hopefully, through the understanding of these four unwritten constitutions, gain a better insight into the idea of constitutionality and how it does not necessarily have to be codified to function.



WORKSHOP FOR BURMESE VISITORS

In April, members of the CCD had the opportunity to participate in the Youth Leadership Program with Myanmar (formerly the Youth Leadership Program with Burma) as volunteer workshop directors. Each spring, the program selects a group of 15-18 year old students from Burma to spend four weeks in the United States to participate in academic roundtables, community site visits, and project development workshops geared towards democratic deliberation, leadership, and community development.

This year, Brittany Shelmon and Samantha Von Ende (both PhD students in the Law and Democracy program) were chosen to lead a two-hour long workshop which had two goals: 1) teach our visitors the basics of federalism, 2) give them the opportunity to apply these concepts while designing their own constitution. The students listened and participated in the first section somewhat timidly, but when it came to designing their own constitutions, the room was absolutely raucous with laughter and intense discussion. Students were split up into groups of seven or eight, and were told to draw each level of government (federal, state, and local) and to assign powers to each level of government. After an hour, they presented their country and their constitution to the larger group. Their creative solutions to problems such as natural resource sharing, healthcare, and education inspired all of us and fed into a greater discussion within the CCD. We plan to participate in the program in future years as well, helping to spread knowledge of federalism and constitutional design among the next generation of Burmese leaders.



PhD students Brittany SHelmon and Samantha Von Ende teach BURmese youth about Constitutional design.



END-OF-YEAR BANQUET

After the CCD Research Symposium, the CCD family celebrated the end of the semester with our annual banquet. We drank, dined, and laughed the night away with each other - remembering all of the adventures that we have had together and wishing our graduates the best moving forward. We are sad to lose them, but so proud of our eight 2017 graduates!

- Aaron Bonar, PhD in Law and Democracy
- Ashley Lenderman, 2016-17 JD Managing Affiliate, JD
- James Ruley, 2016-17 JD Editorial Affiliate, JD
- Brian Micic, JD
- Sunrita Sen, JD
- Jamal Sowell, JD
- Chris Komari, JD
- Anastasiia Allen, JD



CCD Director Susan Williams toasts our recent graduates at the 2017 CCD Annual Banquet.

NEW BUILDING

As the CCD's mission and team has continually grown, so has our need for a larger space. While we remain fond of our old building as the place where the CCD was founded, we are very happy to have moved right next door to the Henderson House, formerly the Poynter Center. This building, located at 618 E. 3rd Street, has 5,009 sq. ft. spread across three floors - plus a very large basement for storage. We are looking forward to sharing the space with the Center for Law, Society, and Culture, with whom we have many shared interests.

Professors David and Susan Williams will relocate their offices from Baier Hall to the new building in mid-summer, as will Profs. Joe Hoffman and Victor Quintanilla and CLSC Postdoctoral Fellow Frederica Carugati. Most of the third floor will be dedicated to CCD PhD student workspace, with one office being dedicated to CLSC. This building has a large and beautiful conference room, a kitchen, two bathrooms, multiple workspaces for student study, faculty offices, and space for a welcome desk and administrator near the foyer, a big front porch, and huge bay windows. The woodwork is beautiful, with built-in benches all over the building which are great little reading nooks. We are truly thankful to everyone who pulled together to make this move a reality.

