



# Bibliography of Resources Relating to Constitutional Law

France • Indonesia • Iraq • Kenya • South Africa  
Bibliography of Arabic Resources

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### FRANCE

#### BIBLIOGRAPHY OF RESOURCES RELATING TO CONSTITUTIONAL LAW

##### I. Introduction

France's current constitution, the Constitution of the Fifth Republic, went into effect on October 4, 1958, after it was adopted by popular referendum. The Constitution was largely inspired by Gen. Charles de Gaulle, who was called back to power during a major political crisis caused by the revolt of part of the French military forces in Algeria that backed the "French Algeria" movement.<sup>1</sup> De Gaulle was asked to form a new government that took office on June 1, 1958. This government was charged, through the Constitutional Law of June 3, 1958, to draft a constitution implementing the following principles:

1. Universal suffrage shall be the sole source of power. Legislative and executive power shall emanate from universal suffrage or from bodies elected thereby;
2. The executive power and the legislative power must be separated effectively in such a manner that the Government and the Parliament shall each, for itself and on its own responsibility, exercise fully the powers attributed to it;
3. The Government must be responsible to the Parliament;
4. The judicial authority must remain independent in order that it shall be capable of assuring respect for the essential liberties defined by the Preamble to the Constitution of 1946 and by the Declaration of the Rights of Man to which it refers;
5. The Constitution must permit organization of the relations of the Republic with the peoples associated with it.<sup>2</sup>

Parliament did not participate in the Constitution's drafting as it did for the former constitutions of 1875 (Third Republic) and 1946 (Fourth Republic). The 1958 Constitution was drafted by the government with the aid of the Constitutional Advisory Committee and the Council of State (France's Supreme Court for administrative matters and legal adviser to the State).<sup>3</sup> The new Constitution combined elements of parliamentary government with a strong

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<sup>1</sup> MARTIN A. ROGOFF, *FRENCH CONSTITUTIONAL LAW: CASES AND MATERIALS* 3 (2011).

<sup>2</sup> *Id.* at 42, as translated in GEORGE A. BERMAN ET AL., *FRENCH LAW: CONSTITUTION AND SELECTIVE LEGISLATION*, ch. 2, at 8 (1998).

<sup>3</sup> COMITÉ NATIONAL CHARGÉ DE LA PUBLICATION DES TRAVAUX PRÉPARATOIRES DES INSTITUTIONS DE LA V<sup>E</sup> RÉPUBLIQUE [NATIONAL COMMITTEE IN CHARGE OF THE PUBLICATION OF THE PREPARATORY WORKS OF THE INSTITUTIONS OF THE FIFTH REPUBLIC], *I HISTOIRE DE L'ÉLABORATION DE LA CONSTITUTION DU 4 OCTOBRE 1958, PRÉSENTATION GÉNÉRALE* [HISTORY OF THE ELABORATION OF THE CONSTITUTION OF OCTOBER 4, 1958, GENERAL PRESENTATION] vii (1987).

executive, and referenced in its preamble the 1789 Declaration of the Rights of Man and the Citizen and the social and humanitarian values listed in the Preamble of the 1946 Constitution.<sup>4</sup> It has since been modified twenty-four times, either by way of amendment adopted by a three-fifths vote of the two houses of Parliament sitting together in Congress or by popular referendum.<sup>5</sup>

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<sup>4</sup> ROGOFF, *supra* note 1, at 3.

<sup>5</sup> *Id.* at 5.

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### INDONESIA

## BIBLIOGRAPHY OF RESOURCES RELATING TO CONSTITUTIONAL LAW

### I. Introduction

The current Constitution of Indonesia was originally brought into force in 1945. It was replaced in 1950 by a temporary constitution, but was subsequently reinstated by presidential decree in 1959. Between 1999 and 2002, following the fall of the authoritarian Suharto regime after thirty-one years in power, four major amendments to the 1945 Constitution were made. These amendments, and accompanying reforms enacted during the 2000s, included changes relating to the role of the military, the structure and powers of the branches of government, election laws, decentralization, and the establishment of a Constitutional Court.

The Library of Congress holds a large number of resources relating to the Indonesian Constitution and democratic reforms in the Indonesian language. In addition, both the Law Library of Congress collection and the general collections of the Library of Congress contain books and journal articles on these subjects in English. The following is a selected bibliography of those materials, as well as articles and other documents that are available from subscription databases. The information is presented in chronological order. If there is special interest in a particular subject area, it may be possible to find additional reports, articles, or books that discuss the topic.

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[b]y proceeding as they did, the Indonesians averted the conflict that would have arisen between adherents of the old constitution and proponents of radical, immediate reform. Gradual reform also made possible the adoption of institutions that preserved pluralism and pushed politics toward the center. The resulting democracy has a number of prominent flaws, largely attributable to the process chosen, but is a better outcome than the most likely alternatives.

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### IRAQ

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Iraq's constitution-making process was conducted in two stages. In the first stage, the Iraqi governing council, a body appointed by the United States-led Coalition Provisional Authority, drafted an interim law known as the Law of Administration for The State of Iraq For the Transitional Period (TAL). Pursuant to the TAL, a transitional national assembly was elected in January 2005, which appointed a Constitution Drafting Committee. This Committee was given the responsibility of drafting a final constitution. The final draft constitution was ratified through a referendum held on October 15, 2005.

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### KENYA

## BIBLIOGRAPHY OF RESOURCES RELATING TO CONSTITUTIONAL LAW

### I. Introduction

Kenya's current Constitution was enacted by a popular referendum on August 4, 2010, as required by the country's law<sup>1</sup> after the Kenyan Parliament unanimously adopted the draft on April 1 of the same year.<sup>2</sup> For a successful ratification the proposed new Constitution needed the support of more than 50% of the total votes cast in a popular referendum and at least 25% of the votes cast in at least five of Kenya's eight provinces.<sup>3</sup> According to the Kenyan Interim Independent Electoral Commission (IIEC), it was successfully ratified by 67% of voters (6,092,593 votes) and by at least 25% of the votes cast in all eight Kenyan provinces.<sup>4</sup>

The 2010 Constitution was not Kenya's first attempt to overhaul its constitutional framework. Kenya's 1963 Constitution (also known as the Independence Constitution) saw over thirty amendments that had the effect of eliminating its central tenets, including autonomous regional governments and political parties.<sup>5</sup> However, in the early 1990s, Kenya began to undo some of these changes, starting with the restoration of political pluralism in 1991.<sup>6</sup> Since then, the country has been engaged in an ongoing constitutional reform process, including numerous piecemeal reforms and one attempt at a complete overhaul that failed in a popular referendum in November 2005.<sup>7</sup> This drawn-out process, which culminated in the enactment of the 2010 Constitution, has left the country with rich experience and literature on constitution making, particularly on developing policy on and materials for civic education, which could be of tremendous help to any country considering constitutional reform.

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A study comparing the 1963 Constitution and two draft constitutions on a list of issues, including the executive and its relationship to the legislature, devolution, the judiciary, electoral system, bill of rights, land and property, and minority rights.

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Evaluates the potential role and capacity of the proposed county governments to effectively address local conflicts in Kenya.

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### SOUTH AFRICA

#### BIBLIOGRAPHY OF RESOURCES RELATING TO CONSTITUTIONAL LAW

##### **I. Introduction**

South Africa's current Constitution, its fifth, came into effect on February 4, 1997. South Africa's interim constitutional process began after two formal multiparty negotiations that led to the drafting of an Interim Constitution, which came into force on April 27, 1994. The Interim Constitution led to the election of a Constitutional Assembly empowered to draft a final Constitution. Schedule 4 of the Interim Constitution contained thirty-four constitutional principles with which the final Constitution had to comply. Such compliance had to be certified by South Africa's Constitutional Court. The Constitution was first adopted by the Constitutional Assembly on May 8, 1996. However, a judgment of the Constitutional Court issued on September 6, 1996, denied certification and the draft text was referred back to the Constitutional Assembly for review. The draft was subsequently amended to comply with the Constitutional Principles contained in Schedule 4 of the Interim Constitution. The Constitution was then signed into law on December 19, 1996, and came into effect on February 4, 1997. Since its adoption, the Constitution has been amended sixteen times.

Provided below is a bibliographical listing of resources on South Africa's Constitution available at the Library of Congress and from other sources (including subscription databases). These resources include primary sources, books, law journals, discussion papers, and reports. All secondary materials are further divided under thematic constitutional issues.

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Cass R. Sunstein, *Social and Economic Rights – Lessons from South Africa*, 11 CONST. F. 123 (1999–2001), available at HeinOnline, [http://heinonline.org/HOL/Page?handle=hein.journals/consfol1&div=22&g\\_sent=1&collection=journals](http://heinonline.org/HOL/Page?handle=hein.journals/consfol1&div=22&g_sent=1&collection=journals).

Mark Kende, *The South African Constitutional Court's Embrace of Socio-Economic Rights: A Comparative Perspective*, 6 CHAP. L. REV. 137 (2003), [http://www.sabinet.co.za/abstracts/ju\\_sajhr/ju\\_sajhr\\_v23\\_n2\\_a8.html](http://www.sabinet.co.za/abstracts/ju_sajhr/ju_sajhr_v23_n2_a8.html).

Paul Nolette, *Lessons Learned from the South African Constitutional Court: Toward a Third Way of Judicial Enforcement of Socio-Economic Rights*, 12 MICH. ST. J. INT'L L. 91 (2003–2004), <http://lccn.loc.gov/2004250073>, available at HeinOnline.

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### BIBLIOGRAPHY OF ARABIC RESOURCES RELATING TO CONSTITUTIONAL LAW

#### I. Introduction

This bibliography includes resources in Arabic that address the following constitutional law topics: human rights, system of government, separation of powers, and the constitution-making process. It also covers constitutional law in Iraq, Libya, and Egypt. Links are provided to the full text of articles. All translations of titles are by the author.

#### II. Books

العراق مستقبل بدستور غامض: نقد قانون ادارة الدولة العراقي للمرحلة الانتقالية-2005 (فراس عبد الرزاق)  
FARIS ABD AL RAZZAQ SUDANI, IRAQ'S FUTURE WITH AN AMBIGUOUS CONSTITUTION: CRITICISM OF THE LAW OF THE STATE ADMINISTRATION OF IRAQ FOR THE TRANSITIONAL PERIOD (2005), LC Call No. KMJ2101 .S83 2005, <http://lcn.loc.gov/2005338142>

اصول التشريع الدستوري في الاسلام-2009 (ابراهيم نعمة)  
IBRAHIM NI'MAH, ASSETS OF CONSTITUTIONAL LEGISLATION IN ISLAM (2009), LC Call No. KBP2101 .N56 2009, <http://lcn.loc.gov/2010520528>

العراق : الدستور والدولة من الاحتلال إلى الاحتلال-2004 (عبد الحسين شعبان)  
ABD AL HUSAYN SHA'BAN, THE CONSTITUTION AND THE STATE FROM OCCUPATION TO OCCUPATION (2004), LC Call No. KMJ2101 .S43 2004, <http://lcn.loc.gov/2005311364>.

#### III. Academic Journals

##### A. System of Government

الجدل حول الدولة المدنية و الدينية-2011 (المستشار طارق البشري)  
هذا المقال يتحدث عن الفرق بين الدولة المدنية و الدينية فيقول الكاتب في مستهل مقاله ان المقصود بتعبير «مدنية الدولة» هو التنظيم المؤسسي للدولة وللمجتمع و اما عن «الدولة الدينية» في هذا التصور يكون مقصودا بها المرجعية الفكرية والثقافية العامة التي تقوم وراء هذا التنظيم المؤسسي و ينهى الكاتب مقاله بان الدولة يمكن ان تكون مدنية بمرجعية دينية.  
(Tarek el-Bishrey, *A Debate over the Civil and Religious State*, SHOROUKNEWS.COM, <http://shorouknews.com/columns/view.aspx?cdate=07112011&id=b8c9c1e2-6774-4dae-9c8c-82d6cc7e494c> (last visited Mar. 19, 2012)).

## B. Human Rights

حقوق المرأة بين الشريعة الإسلامية والقانون المصري والقضاء الدستوري-2008 (المستشار: محمود محمد غنيم) هذا المقال يتحدث عن الحقوق الدستورية للمرأة في الدستور المصري والشريعة الإسلامية ويوضح الكاتب في مقاله وضع المرأة قبل وبعد الإسلام والتطورات الإيجابية لحقوق المرأة في ظل الدستور المصري منذ أوائل القرن العشرين ثم يطرح الجدل القانوني حول حق المرأة في ارتداء النقاب في دور التعليم ثم يختتم الكاتب مقاله بعبارة "إن العيب ليس في الإسلام، ولكن في مسلك قلة من المسلمين الذين اتسم مسلكهم بالعنف ضد المرأة، متسترين بعباءة الدين".

(Mahmood Mohamed Gonem, *Women Rights under Islamic Shari'a, the Egyptian Law and Constitutional Court*, EGYPTIAN CONSTITUTIONAL COURT, <http://www.hccourt.gov.eg/elmglacourt/gonem15.htm> (last visited Mar. 19, 2012)).

الحماية الدستورية لحقوق السياسية و العدالة الاجتماعية-2009 (المستشار: حاتم بجاتو) المقالة تتكلم عن دور القانون الدستوري في حماية الحقوق السياسية ويعطى الكاتب في هذا المقال امثلة عن القانون الدستوري المقارن في عدد من الدول ومنها ألمانيا والامارات العربية ومصر والفلبين و ملطا وليبيا والهند والدنمارك والبرازيل واليونان وروسيا وتركيا واستنتج الكاتب في نهاية مقاله ان أن الحقوق والحريات السياسية، على مستوى التنظير، تكاد أن تتطابق في كافة الأنظمة القانونية في شتى الدول.

(Hatem Bagato, *The Constitutional Protection for Political Rights and Social Justice*, EGYPTIAN CONSTITUTIONAL COURT, <http://www.hccourt.gov.eg/elmglacourt/hatem15.htm> (last visited Mar. 19, 2012)).

## C. Separation of Powers

مبدأ الفصل بين السلطات ومركزه في الدستور العراقي-2011 (دكتور بشرى العبيدي) الكاتب في هذا المقال يشرح مبداء الفصل بين السلطات ويعطى نبذة تاريخية عنه ثم يقول ان مبدأ الفصل بين السلطات يمثل ضماناً كبيرة وأساسية لقيام الدولة القانونية كما يقوم بشرح المواد التي تحدد مبدأ الفصل بين السلطات في الدستور العراقي وينهى الكاتب مقالته بقوله لا ينبغي للدولة أن تكون اداء لقمع الناس أو منع قدراتهم ولذلك يجب أن تخضع الحكومة للقانون حتى تحقيق مصالح الافراد وتحمى حقوقهم ضد تعسف السلطة واستبدادها .

(Dr. Boshra al-Obaidi, *The Principle of Separation of Powers and How It Functions Under the Iraqi Constitution*, MADARIK, <http://www.madarik.net/mag5and6/15.htm> (last visited Mar. 19, 2012)).

مركزية الرقابة الدستورية-2009 (الدكتور فتحى فكرى) هذا المقال يتحدث عن عمل واختصاصات المحكمة الدستورية العليا في رقابة القوانين و يبدا الكاتب في مقدمة مقاله بالقول ان المحكمة الدستورية حريصة كل الحرص على حفظ الحق وصيانة الحريات الدستورية ثم يستطرد الكاتب في حديثه ان غاية المحكمة هو منع التسلط باشكاله و ينهى الكاتب مقاله بتوجيه النداء الى السلطة التشريعية بالتقيد بالأحكام الدستورية شكلاً وموضوعاً.

(Dr. Fathie Fikrey, *Constitutional Judicial Review*, EGYPTIAN CONSTITUTIONAL COURT, <http://hccourt.gov.eg/elmglacourt/fathefkr17.htm> (last visited Mar. 19, 2012)).

## D. Constitution-Making Process

من مقتضيات اعداد دستور دائم-2012 ( دكتور عبد الرازق المرتضى يتكلم الكاتب وهو عضو لجنة القانون الدولي بجنيف في هذا المقال عن اهمية التوافق الوطني حول اعداد الدستور ثم يعطى فكرة عن خطوات اعداد دستور دائم كما يؤكد على انه لا يصبح الدستور نافذاً إلا بعد موافقة الشعب عليه و يوضح الكاتب ان مبدأ التوافق بين التيارات السياسية المختلفة يحكم اعداد اى دستور و يختتم الكاتب مقاله بقوله ما زالت فرص الاستفادة من الأمم المتحدة متاحة لكتابة دستور نموذجي يتفق على مع ما هو سائد فى العالم المتحضر و ينطلق من قيم و مبادئ الاسلام.

(Dr. Abdu al-Razik Murtadah, *The Requirements to Draft a Permanent Constitution*, AL-WATAN NEWSPAPER, <http://alwatan-libya.com/more.php?newsid=20423&catid=22> (last visited Mar. 19, 2012)).

قراءة في دساتير بعض الدول المتحولة الى الديمقراطية-2011 (دكتور فتحى فكري) هذا المقال يعطى نبذة عن الحقوق الدستورية للدول التي تحولت من نظام الحزب الواحد الى الديمقراطية التعددية ثم يتحدث الكاتب على تطبيقات ما سبق من تجارب دستورية لدول مثل الهند و المانيا و روسيا و البرازيل.

(Dr. Fathie Fikrey, *The Constitutions of Countries Moved from a Single Party System to Democracy*, EGYPTIAN CONSTITUTIONAL COURT, <http://www.hccourt.gov.eg/elmglaourt/fathiefkry.htm> (last visited Mar. 19, 2012)).

نحو صياغة دستور جديد: 1-المبادئ فوق الدستورية و 2-رقابة التعديلات الدستورية-2011 (المستشار عبد العزيز محمد سالم) يتحدث الكاتب في هذا المقال عن مفهومان هما المبادئ فوق الدستورية و الرقابة القضائية على التعديلات الدستورية و يكمل الكاتب مقاله بقوله أن الكلام حول التدرج في الحقوق والحريات أو تدرج في نصوص الدستور كلام غير صحيح فالمنطق يقضى بان نصوص الدستور قد وضعت من قبل جمعية تأسيسية و احدة و قد استفتى على جميع هذه النصوص في وقت واحد فانها بذلك تحوز مرتبة واحدة دون تدرج و يتساءل الكاتب هل يمكن لجهة الرقابة الدستورية أن تراقب التعديلات الدستورية للتأكد من أن السلطة التأسيسية المنشأة قد التزمت بقيود التعديل.

(Abdu al-Aziz Mohamed Seliman, *Drafting the New Constitution: (1) Principles Above the Constitution and (2) Review of Constitutional Amendments*, EGYPTIAN CONSTITUTIONAL COURT, <http://www.hccourt.gov.eg/elmglaourt/abd%20el%20aziz%2020.htm> (last visited Mar. 19, 2012)).

## E. General

العرف و التشريع في النظام القانونى الفرنسى و النظام القانونى الانجلو سكسونى-2011 (فايز حسين) هذا المقال يتحدث عن الفقه المقارن في تشريع القوانين بين النظام الفرنسى و النظام الانجلو سكسونى ثم يعطى نبذة عن تاريخ التطور القانونى للنظم القانونية الغربية من بداية القانون الرومانى حتى النظم القانونية الحديثة كما يركز الكاتب في مقاله على على محور من محاور علم فلسفة القانون وهو محور علم المنهج القانونى و يختتم الكاتب مقاله بقوله ان الأنظمة القانونية تتطور من خلال متطلبين: 1) وهو المتطلب الذي يشير إلى الرغبة في بناء نظام قانوني متماسك و 2) المتطلب الآخر هو تحقيق العدالة للشعوب.

(Fayez Hussein, *The Custom and Legislation in the French and British Legal Systems*, AL-TAFAHOUM MAGAZINE, <http://www.altasamoh.net/Article.asp?Id=559> (last visited Mar. 19, 2012)).

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