

Post-conflict Decentralisation in MENA: The Potential Role for Non-State Actors, Extra-legal Arrangements, and Non-territorial Autonomy

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Abstract

Decentralisation is a buzzword commonly utilised in relation to post-conflict state-building and peacebuilding efforts, including in the MENA region. However, its theory and practice are still burdened by the Western heritage of classical political thought. Instead, the author proposes a more tailored approach, in which those common assertions are confronted with the conditions on the ground. Throughout the paper, the tradition of limited statehood, the prevalence in many areas of non-state political actors, as well as the importance of traditional law are analysed. The evidence suggests that non-state actors are likely to play a significant role after the conflict ends, whether it is desired by politicians or not. As such, accommodating them based on contemporary and historical examples as well as innovative mechanisms, and accepting the possibility of legal pluralism and non-territorial autonomy arrangements, may result in new, promising decentralisation initiatives tailored for the particular conditions of Middle Eastern states.

Keywords

Decentralisation, MENA, legal pluralism, non-state actors, non-territorial autonomy

About the author

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1. Introduction

The MENA (Middle East and North Africa) region has been an area for various inter- and intra-state conflicts since its inception in the modern form after World War I. A number of factors, including the region's geopolitical importance, natural resources, ethnoreligious makeup, and perpetuated clashes of ideas and interests of local and outside actors, have contributed to this state of affairs. In the interwar and Cold War periods, these issues were dealt with through the prism of pragmatist interests of then-colonial overlords and global and regional powers. The lack of concern for the values and the style and methods of governance presented by various rulers was evident in the Western support for highly centralised, authoritarian regimes throughout the region,¹ which themselves are the outcome of European colonialism and the mandate system. However, as the Cold War came to an end, bringing many of them down, a new set of concepts and discourses was introduced into the language of world politicians and scholars alike. The most prominent ones were “democratisation” and “democracy promotion”, the very ideas behind increased US interventionism around the globe.² At the same time, in the context of newly “democratised” states and those which experienced internal armed conflicts, federalism and decentralisation (that is, transfer of certain powers to subnational units) started to be discussed as well, becoming a buzzword for theoreticians and practitioners of politics. However, the theory and practice resulting from this push for decentralisation are still burdened by the Western heritage of classical political thought, including the dogma of the nation-state, as well as the emphasis on technical aspects of decentralisation such as capacity building and fiscal decentralisation. As a result, such initiatives and proposals, lacking insight into and interest in the particular history, tradition, and contemporary conditions encountered in conflict-ridden MENA states, are often doomed to fail. Instead, in this paper we propose an enriched approach in which those common assertions about decentralisation are confronted with the particular conditions on the ground. The paper consists of three main parts. In the first part, I will analyse some of the assumptions and political traditions informing the traditional Western approach to decentralisation and federalism in the Middle East. In the second part, I present some of the elements of

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- 1 Jeffrey Fields, “Why repressive Saudi Arabia remains a US ally,” *The Conversation*, 03/03/2021, <https://theconversation.com/why-repressive-saudi-arabia-remains-a-us-ally-156281>; Bethany Allen-Ebrahimian, “64 Years Later, CIA Finally Releases Details of Iranian Coup,” *Foreign Policy*, 20/06/2017, <https://foreignpolicy.com/2017/06/20/64-years-later-cia-finally-releases-details-of-iranian-coup-iran-tehran-oil/>; Peter J. Schraeder, Jerel A. Rosati, “Policy Dilemmas in the Horn of Africa: Contradictions in the U.S.-Somalia Relationship,” *Northeast African Studies* 9, no. 3 (1987): 19–42.
 - 2 Nicole Bibbins Sedaca, Nicolas Bouchet, *Holding steady? US democracy promotion in a changing world* (London: Chatham House, 2014), https://www.chathamhouse.org/sites/default/files/home/chatham/public_html/sites/default/files/170214DemocracyPromotion.pdf; Emiliano Alessandri, Oz Hassan, Ted Reinert, “U.S. Democracy Promotion from Bush to Obama”, *Euspring Working Paper* 1 (2015), http://aei.pitt.edu/66143/1/us_dem_promotion_april15.pdf.

the Middle Eastern mosaic which may lead to failure or at best lesser effectiveness of decentralisation efforts based on Western assumptions. In the third part, a few elements of a possible decentralised solution are proposed, which could make such efforts more adaptable and suitable to conditions on the ground. Due to the scope of the article it is by no means an exhaustive study of Middle Eastern decentralisation, but rather an exploration of often neglected aspects of decentralisation in the regional context. It is based on parts of my PhD dissertation,³ as well as a conference presentation for SPADE conference in Doha in 2021.

2. The general approach to decentralisation in the MENA region

Before attempting to provide elements of a solution suitable to the region, it would be useful to provide a short overview of the current approach of politicians and scholars alike. It is crucial to stipulate that, while this approach will be deemed as “Western”, not only Westerners exhibit it. The local theoreticians and practitioners of politics follow the same line of thinking, as it provides them with certain benefits which I will discuss below. While there are many elements that could be discussed here, only a handful of crucial ones will be presented for the sake of brevity.

2.1 The “tradition” of unitary statehood

The origins of nations and nation-states are a subject of continuous debate. Some, like Gellner, suggest the ties between nationalism and resulting nation-states, and the emergence of industrial society characterised by the prevalence of “high culture” and deems them simply a product of the “age of nationalism”.⁴ A similar understanding of the emergence of the nation is shared by Benedict Anderson, who accredits the development of communication and transportation technologies with the emergence of nations, his “imagined communities”.⁵ Nonetheless, the emergence in Europe of nations as we know them was a painful process, which started back in the 18th (according to Anderson) or 17th (Gellner) century.⁶ Nationalism and movements driven by it gained momentum only in the late 18th and throughout the 19th century. Even then, the new ideology of common heritage and the existence of a “nation” was shared by an educated minority, with lower classes

3 Jan Gwidon Byczkowski, *Decentralisation in the Middle East: Towards a Regional Model* (Istanbul: Marmara University, PhD Thesis, 2022).

4 Ernest Gellner, *Nations and Nationalism*, (Oxford: Basil Blackwell, 1983), 52–55.

5 Benedict Anderson, *Imagined Communities. Reflections on the Origin and Spread of Nationalism*, (London: Verso, 2006), 37–46.

6 B. Anderson, op.cit., 5; E. Gellner, op.cit., 4, 39–43.

and people living in rural areas largely oblivious to this revolution. Changes in social and economic structures and technological developments paired with political turmoil resulted after centuries in the emergence of European nations and first nation states. Many emerging nations were at the time ruled by others and conducted uprisings and liberation movements to emerge as independent states. As such, even in Europe, the process was a relatively recent one, starting to play an important political role in the 18th and 19th centuries.

Despite this, the existence of a “nation” and the tradition of a unitary nation-state is accepted by many as given in the context of the Middle East. The root cause of widespread adoption of this essentially European concept is the parcellation of the region by colonial powers, forcing many freedom movements to adopt the terminology of the enemy and, initially for pragmatic reasons, to accept the borders imposed by the Western powers.⁷ This pragmatism, however, was never accepted en masse, prompting the popularity of various pan- movements (Pan-Syrianism, Pan-Arabism, Pan-Islamism).

The acceptance of the unitary status quo among political elites is expressed in two distinct ways. On the one hand, it may be explicit. One may say that “Middle Eastern governments have historically featured unusually powerful unitary governments with few constraints on their authority”,⁸ or that Iraq got its first constitution in 1876 as a unified country.⁹ One may claim that the centralisation in post-colonial states was demanded by the population without questioning the colonial design of these polities, as well as majoritarian character and reliability of referenda in authoritarian settings.¹⁰ Politicians may issue calls for national unity and deem them a high priority of the state.¹¹ On the other hand, this assumption may be expressed implicitly in the distrust towards attempts at decentralisation/federalisation of states in the region. They may be thought of as either unsuitable for the traditionally unitary states, as causes of armed conflicts, or as foreign plots to destroy this unity.¹² Even nationwide protests may be portrayed this way.¹³

7 Philip Shukry Khoury, *The Politics of Nationalism: Syria and the French Mandate, 1920–1936* (Cambridge: Harvard University, PhD Thesis, 1980), 57–58, 103–106, 164–167, 185–188, 515–534; Susan Gilson Miller, *A History of Modern Morocco* (Cambridge: Cambridge University Press, 2013), 130–134, 143–156; Alf Andrew Heggoy, “The Origins of Algerian Nationalism in the Colony and in France”, *Muslim World* 58/2 (April 1968), 128–140.

8 Mila Versteeg, “Federalism in the Middle East: A Collection of Essays”, *Lawfare*, 13/08/2018, <https://www.lawfareblog.com/federalism-middle-east-collection-essays>.

9 Saad N. Jawad, “The Iraqi Constitution: Structural Flaws and Political Implications,” *LSE Middle East Centre Paper Series /01*, 11/2013, p. 6, http://eprints.lse.ac.uk/54927/1/SaadJawad_Iraqi_Constitution_LSE_Middle_East_Centre_WP01_Nov2013.pdf.

10 Radwan Ziadeh, “Why Federalism Is a Bad Idea for Syria,” *Arab Center Washington DC*, <https://arabcenterdc.org/resource/why-federalism-is-a-bad-idea-for-syria/>.

11 “Algerian president urges for preservation of national unity”, *CGTN*, 25/03/2018, <https://africa.cgtn.com/2018/03/25/algerian-president-urges-for-preservation-of-national-unity/>.

12 Ziadeh, “Why Federalism Is”; Isa Blumi, *Destroying Yemen. What Chaos in Arabia Tells Us about the World* (Oakland: University of California Press, 2018), 193–199.

13 “Yemen unrest: Thousands join protests against Saleh,” *BBC News*, 01/03/2011, <https://www.bbc.com/news/world-middle-east-12608932>; James Reynolds, “Turkey’s Erdogan and year of ‘foreign plot’,” *BBC News*, 27/12/2013, <https://www.bbc.com/news/world-europe-25497127>; Heba Saleh, “Egypt’s rulers warn

No matter the form it takes, the assumption of the unitary, centralised nature of statehood in the MENA region brings about the further assumption of its monopoly over the political affairs of the people and its penetration of the society, similar to the Western counterparts. This, in turn, brought about highly centralised, authoritarian regimes which through the politics of clientelism, sectarian or ethnic violence, and marginalising certain groups in their respective societies, have laid the groundwork for many of the conflicts we witness today or have witnessed in the not-so-distant past.

2.2 The fixed distinction between “federal” and “unitary” and the resulting approach to decentralisation in “unitary” states

The field of federal studies is by no means a new one and has enjoyed the interest of scientists since the emergence of the first modern federation – the United States. As the old federations such as the USA, Canada, and Australia underwent changes throughout the 20th century, and the new federations emerged especially as the result of decolonisation, the interest in federations only grew over the decades. This development introduced so-called “holding-together” federations established from previously unitary states, as opposed to the “getting-together” federations of old.¹⁴ However, despite the increasingly diversified federal landscape and increasingly sophisticated federal studies to describe this new reality, certain assumptions still hold sway among political scientists. The primary one is the dichotomy between “federal” and “unitary” states, which seems untenable once one embarks on investigating the peculiarities of many supposedly federal yet highly centralised states, as well as ones which are outwardly “unitary” while maintaining high degrees of autonomy for their constituent units (CU). As an example, Nigeria and Malaysia are federations, yet their CUs are largely marginalised and stripped of most powers usually associated with federal subnational governments.¹⁵ At the same time, Spain and the UK are unitary, yet Spanish autonomous communities and the UK’s Scotland enjoy autonomous rule to a degree not seen in Malaysia and Nigeria.¹⁶ To tackle this discrepancy between the

state faces ‘foreign plot’,” *Financial Times*, 21/12/2011, <https://www.ft.com/content/2b899de8-2bfc-11e1-b194-00144feabdc0>.

- 14 Alfred Stepan, “Federalism and Democracy: Beyond the U.S. Model,” in *Theories of Federalism: A Reader*, ed. Dimitrios Karmis, Wayne Norman, 257–258 (London: Palgrave Macmillan, 2005).
- 15 Kai Ostwald, “Federalism without Decentralization: Power Consolidation in Malaysia,” *Journal of Southeast Asian Economies* 34, No. 3 (December 2017): 488–506, <https://ssrn.com/abstract=3048550>; Dele Babalola, *The Political Economy of Federalism in Nigeria* (Cham: Palgrave Macmillan, 2018), 103–106.
- 16 Jose M. Ruano, “Functional Federalism in a Complex State: The Case of Spain,” in *The Palgrave Handbook of Decentralisation in Europe*, ed. Jose Manuel Ruano, Marius Proftiroiu, 77–102 (Cham: Palgrave Macmillan, 2017); June Burnham, “Fragmentation and Central Control: Competing Forces in a Disunited Kingdom,” in *The Palgrave Handbook of Decentralisation in Europe*, ed. Jose Manuel Ruano, Marius Proftiroiu, 123–156 (Cham: Palgrave Macmillan, 2017).

theory and reality many scholars employ intermediary categories, talking of states with “federal qualities” or “elements”.

As the result of this fixed distinction, the decentralisation in unitary states, including in the context of the MENA states, be it administrative, fiscal, or political, is often treated as just a matter of efficiency and at best as an additional tool to strengthen democracy rather than a political process as long as it is not presented as “federalisation.”¹⁷ In the Middle East, historical examples of this utilitarian and technical approach focused on “efficiency” and solving economic/administrative issues or – in radical cases – creative booking include Yemen’s decentralisation schemes,¹⁸ Sudan’s failed federalism,¹⁹ and one-sided Kurdish autonomy schemes during the reign of Saddam Hussein.²⁰

This approach negates the observations of many scientists that the “unitary” and “federal” or even “confederal” are the radical ends of a very complicated and continuous spectrum, within which some federations may be less decentralised politically than some officially unitary states with high levels of regional autonomy.²¹ Moreover, the classical notion of federation and decentralisation as territorial leads to largely ignoring the possibility of non-territorial autonomy (NTA), autonomy granted to people without consideration for their location as opposed to territorial autonomy, as a viable alternative. While there is a growing body of literature regarding the historical examples of NTA in Europe and the MENA region as well as contemporary attempts at establishing it, it remains a fringe topic, suppressed by the focus on territoriality.²² NTAs are discussed further in subchapter 4.3 of this paper.

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- 17 Mehmet S. Tosun, Serdar Yilmaz, “Centralization, Decentralization and Conflict in the Middle East and North Africa,” *Middle East Development Journal* 2/1 (2014): 1–14; “Fiscal Decentralization and Poverty Reduction,” *UNDP*, <https://www.undp.org/content/undp/en/home/librarypage/poverty-reduction/fiscal-decentralization-and-poverty-reduction.html>; “What, Why, and Where,” *The World Bank*, <http://www1.worldbank.org/publicsector/decentralization/what.htm>; OECD, *Making Decentralisation Work. A Handbook for Policy-Makers*. (Paris: OECD Publishing, 2019), 107–118.
- 18 Charles Dunbar, “The Unification of Yemen: Process, Politics, and Prospects”, *Middle East Journal* 46/3 (Summer 1992), 456–476.
- 19 Atta El-Hassan El-Battahani – Hassan Ali Gadkarim, “Governance and Fiscal Federalism in Sudan, 1989–2015”, *Sudan Report* 1 (Chr. Michelsen Institute, March 2017); Dennis A. Rondinelli, “Administrative Decentralisation and Economic Development: the Sudan’s Experiment with Devolution”, *The Journal of Modern African Studies* 19/04 (December 1981), 595–624.
- 20 Kerim Yildiz – Tom Blass, *The Kurds in Iraq. The Past, Present and Future* (London: Pluto Press, 2004), 17–22; Charles Tripp, *A History of Iraq* (Cambridge: Cambridge University Press, 2007), 203–206.
- 21 Stanislaw Ehrlich, “Theoretical Reflections on Federations and Federalism,” *International Political Science Review / Revue internationale de science politique* 5, No. 4 (1984): 359–367; Liam Anderson, *Federal Solutions to Ethnic Problems. Accommodating Diversity* (Oxon: Routledge, 2013), 264; Dawn Walsch, *Territorial Self-Government as a Conflict Management Tool* (Palgrave Macmillan, eBook, 2018), 3; Jonathan Rodden, “Comparative Federalism and Decentralization – On Meaning and Measurement,” *Comparative Politics* 36, No. 4 (July 2004): 481–500.
- 22 John Coakley, “Conclusion: Patterns of Non-Territorial Autonomy,” *Ethnopolitics* 15:1 (2016): 166–185; Arend Lijphart, “Consociational Democracy,” *World Politics* 21, no. 2 (January 1969): 207–225; David J. Smith, John Hiden, *Ethnic Diversity and the Nation State. National cultural autonomy revisited* (Oxon: Routledge, 2012), 26–45.

2.3 The utilitarian approach to non-state actors and legal pluralism

The assumption of the paramount and profound role of the state in the MENA region and its supposed naturally unitary and centralised character leads also to a certain attitude towards non-state political actors within the state, as well as other legal systems such as customary law. Regarding the latter, customary law rather than an element of a larger legal system is often perceived as a threat to the constitutional order, which needs to be eliminated, as it threatens the monopoly of the state. Nevertheless, the deep-rooted attachment to customary law in especially rural and tribal societies throughout the region leads to the persistence of this system alongside formal state justice. Hence, although many states attempted to eliminate customary law throughout the 20th century within the scope of their nation-building efforts, nowadays many tentatively tolerate or accept the existence and even verdicts of tribal courts. This accommodation is driven by utilitarian concerns, as the states are aware that their previous decades-long attempts to eradicate customary practices did not bring expected outcomes.

To provide an example, this is the case of customary laws in countries with Bedouin populations such as Israel, Palestine, Egypt, Jordan, and Saudi Arabia, which today tentatively accept the customary law in some instances.²³ Meanwhile, in Egypt, the customary law persists despite the efforts of the government to bring Bedouins into the regular Egyptian justice system, mainly due to the remote location of Bedouin tribes (desert in the West and unruly Sinai Peninsula in the East).²⁴ Customary law also persists among Amazigh in Morocco, where it is partially accepted as a part of the legal system, and in

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- 23 Frank H. Stewart, "Customary Law Among the Bedouin of the Middle East and North Africa," in *Nomadic Societies in the Middle East and North Africa*, ed. Dawn Chatty, 239–279 (London: Brill, 2006); Kassim Alsrailha, "Deconstruction and Reconstruction: The Case of the Naqab's Tribal Courts in the Shadow of the Israeli Military Government," *The Arab World Geographer* 22, no. 3 (2019): 186–205; Clinton Bailey, *Bedouin Law from Sinai and the Negev* (New Haven: Yale University Press, 2009), 4, 37; Nurit Tsafrir, "Arab Customary Law in Israel: Šulḥa Agreements and Israeli Courts," *Islamic Law and Society* 13, No. 1 (2006): 76–98; Ann Furr, Muwafaq Al-Serhan, "Tribal Customary Law in Jordan," *South Carolina Journal of International Law and Business* 4, issue 2 (Spring 2008): 17–34; Nadav Samin, "Kafā'a fī l-Nasabīn Saudi Arabia: Islamic Law, Tribal Custom, and Social Change," *Journal of Arabian Studies* 2, no. 2 (2012): 109–126; Sebastian Maisel, "Tribes and the Saudi Legal-System: An Assessment of Coexistence," *MEI*, 1/10/2009, <https://www.mei.edu/publications/tribes-and-saudi-legal-system-assessment-coexistence#:~:text=As%20a%20core%20principle%2C%20the,and%20the%20worshipping%20of%20idols>.
- 24 Lila Abu-Lughod, "Change and Egyptian Bedouins," *Cultural Survival Quarterly* 8, no. 1 (March 1984), <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/change-and-egyptian-bedouins>; Sarah El-Rashidi, "Lawlessness Engulfs Sinai's Bedouins," *Atlantic Council*, 17/06/2013, <https://www.atlanticcouncil.org/blogs/menasource/lawlessness-engulfs-sinai-s-bedouins/>.

Algeria,²⁵ as well as among Arab tribes of Libya²⁶ and Iraq.²⁷ No matter the circumstances, considering the past practice and the precarious contemporary status of contemporary law, the approach of state authorities to traditional law could be at best described as utilitarian and conditional, depending on their ability to exert their influence over the rural/tribal populace. If the state capacity was to increase, we could expect a resurgence in efforts to suppress the use of customary law in these communities. Still, even if it is not willingly, tolerance for customary law could be termed as informal decentralisation, as it provides *de facto* power to those tribes.

A similar approach is exhibited towards various non-state political actors maintaining their influence as representatives of particular groups within the state, be it ethnic, tribal, religious, or certain political ideologies. In times of war, those groups are often co-opted to boost the military potential of the state. However, they often remain unrecognised by the government and are supported only unofficially. The authorities resort to using their help since such armed groups often have better ties with local communities and know the terrain. Moreover, they may easily employ tactics unacceptable in light of human rights and international treaties. If crimes or atrocities are committed by a group with no official ties to the government, the latter may easily declare that it had no knowledge of them taking place or deny any cooperation with the said group. One example of such an approach to armed non-state groups is Egypt, where the government unofficially cooperates with Bedouins to fight the Sinai offshoot of IS²⁸. Saudi Arabia, too, continues to depend on tribal forces to man the National Guard, but as the case of its own Border Guard suggests, it

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- 25 Leila Hanafi, *The Legal System of Morocco. An Overview* (n.d.: Konrad Adenauer Stiftung, 2020), 4–6, <https://www.kas.de/documents/265308/265357/Legal+System+of+Morocco.pdf/23060d5a-26e0-64a0-7b8f-8b3640d68865?version=1.0&t=1596788324505>; Mohammad Smouni, “Tribal authority rules supreme in Morocco’s highlands,” *The New Arab*, 28/01/2015, <https://english.alaraby.co.uk/english/features/2015/1/28/tribal-authority-rules-supreme-in-moroccos-highlands>; Judith Scheele, “A Taste for Law: Rule-Making in Kabylia (Algeria),” *Comparative Studies in Society and History* 50, No. 4 (Oct., 2008): 895–919.
- 26 Mohamed Almenfi, “In Libya, Only One System of Law is Function, and it’s Not a State Law,” *The Libya Observer*, 27/07/2017, <https://www.libyaobserver.ly/opinions/libya-only-one-system-law-function-and-it%E2%80%99s-not-state-law>; Peter Cole, Fiona Mangan, “Tribe, Security, Justice, and Peace in Libya Today,” *United States Institute of Peace Report* (2016), <https://www.usip.org/publications/2016/09/tribe-security-justice-and-peace-libya-today>; Igor Cherstich, “Libya’s revolution: tribe, nation, politics,” *Open Democracy*, 3/10/2011, <https://www.opendemocracy.net/en/libyas-revolution-tribe-nation-politics/>.
- 27 UNHCR, “Tribal Conflict Resolution in Iraq”. (n.d.: UNHCR, 2018), <https://www.refworld.org/pdfid/5a66f84f4.pdf>; Katherine B. Carroll, “Tribal Law and Reconciliation in the New Iraq,” *Middle East Journal* 65, No. 1 (Winter 2011): 11–29; Patricio Asfura-Heim, “No Security Without Us”: *Tribes and Tribalism in Al Anbar Province, Iraq* (n.d.: CNA, 2014), https://www.cna.org/CNA_files/PDF/COP-2014-U-007918-Final.pdf.
- 28 Nicholas A. Heras, “Can The Sinai’s Bedouin Become a Counterterrorist Force?,” *Refworld*, 31/10/2013, <https://www.refworld.org/docid/5295dda94.html>; Brian Rohan, “Egypt arming Sinai tribesmen in fight against Islamic State,” AP, 27/09/2018, <https://apnews.com/article/40170c54b5b349afb1681fb8d2a26ab1>; Taha Sakr, “Egyptian Bedouin trackers: the irreplaceable guide for security forces,” *Egypt Independent*, 26/10/2017, <https://egyptindependent.com/egyptian-bedouin-trackers-irreplaceable-guide-security-forces/>.

is only a temporary solution until the state can organise recruitment on its own.²⁹ Similarly, Assad's regime in Syria seemingly considers or attempts to gradually integrate various militias and armed groups with the national army, including possibly local, identity-based formations such as YPG as the conflict loses its intensity.³⁰

3. The reality in the Middle East

Having presented the common approach to decentralisation and its expressions in the region, fuelled by theoretical considerations adopted from the West such as the supremacy of the unitary state, perception of decentralisation as a means of increasing material wealth and systemic efficiency, and pragmatic use of non-state actors and laws as temporary fixes to be eradicated once the state reaches its "full capacity", we could ask ourselves what is the reality on the ground. Does the history of the region suggest that such mythical unity was ever a thing in the region? Were the pre-colonial/pre-mandate governments really unitary in the modern understanding of the word? Or were they decentralised? How were post-independence unity and nationalism introduced? Was it the expression of real sentiment among the people? Finally, is it even possible to simply eradicate/reintegrate various non-state actors, especially armed ones? In this part of the article I will attempt to picture the Middle Eastern realities concerning these questions, as they all should inform the approach to post-conflict state reconstruction.

3.1 The decentralised character of Middle Eastern ancien régimes

The Ottoman and Qajar Empires, who together covered most of the MENA region before the European encroachment into the region and particularly before World War I, were characterised by high levels of political decentralisation, be it formal, quasi-formal, or informal. The scope of this article does not permit a long discussion of various types of Ottoman and Qajar decentralisation, but it suffices to say that it included the autonomy

29 Anthony H. Cordesman, *Saudi National Security and the Saudi-US Strategic Partnership: Part One: The Civil & Economic Aspects of Security* (Washington, DC: CSIS, 2010), 25, https://csis-website-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/publication/100517_SaudiaBrief_complete.pdf; Eleonora Ardemagni, "The Evolution of the Saudi Border Guard: Not Exactly a Local Force," *ISPI*, 10/09/2020, <https://www.ispionline.it/en/publicazione/evolution-saudi-border-guard-not-exactly-local-force-27326>.

30 Haid Haid, "Reintegrating Syrian Militias: Mechanisms, Actors, and Shortfalls," *Carnegie Middle East Center*, 12/12/2018, <https://carnegie-mec.org/2018/12/12/reintegrating-syrian-militias-mechanisms-actors-and-shortfalls-pub-77932>.

of regular provinces, autonomous provinces and subordinate statelets, as well as non-territorial autonomies of religious and tribal communities.³¹

One decentralisation measure which should attract our attention in the context of today's post-conflict state reconstruction efforts in the Middle East is the autonomy enjoyed by tribes and tribal confederations – they were granted their own particular books of law (*kanunname*) and were treated as provinces of sorts. Moreover, their tribal leaders were nominated as governors.³² A similar system was in place in neighbouring Qajar Iran, where powerful confederations such as Bakhtiyari, Qashqa'i and Khamsa remained important political actors and autonomous units until the end of the Qajar dynasty.³³ In principle, both Ottomans and Qajars accepted the fact that many tribes/tribal confederations are transhumant, nomadic, or live in remote areas not easily accessible by regular government administration, and at least for a time preferred to engage them with the state by accepting their autonomies.

Outside of the Ottoman and Qajar realms, local states also utilised decentralised forms of governance, be it voluntarily or out of necessity. In Morocco, Berber tribes enjoyed virtual independence. Only in the 19th century, sultans attempted to stretch their control over the Atlas Mountains, but even then the tribes remained largely autonomous, forced only to provide some taxes and levies for the Moroccan army.³⁴ At the same time, tribes constituting the Zaydi Imamate in Yemen maintained their autonomy against the imam and were able to negotiate the conditions of their participation in the state due to them being militarily stronger than the imam, whose army was largely drawn from tribal levies.³⁵ Similarly, the Ibadi Imamate of Oman was maintained through a tribal alliance where

31 Some sources include: Gábor Kármán, Lovro Kunčević (ed.), *The European Tributary States of the Ottoman Empire in the Sixteenth and Seventeenth Centuries* (Leiden: Brill, 2013); Hakan Özöglü, *Kurdish Notables and the Ottoman State* (New York: State University of New York Press, 2004); Houari Touati, "Ottoman Maghrib," in *The New Cambridge History of Islam. Volume 2: The Western Islamic World Eleventh to Eighteenth Centuries*, ed. Maribel Fierro, 506–518 (Cambridge: Cambridge University Press, 2010); Arash Khazeni, *Tribes and Empire on the Margins of Nineteenth-Century Iran* (Seattle: University of Washington Press, 2009); Shaúl Bakhash, "Center-Periphery Relations in Nineteenth-Century Iran," *Iranian Studies* XIV, No. 1–2, (Winter–Spring 1981).

32 Reşat Kasaba, *A Movable Empire. Ottoman Nomads, Migrants, and Refugees* (Seattle: University of Washington Press, 2009), 20–25.

33 Gene R. Garthwaite, *Khans and Shahs. A History of the Bakhtiyari Tribe in Iran* (London: I.B. Tauris, 2009), 51–56, 62–82; Arash Khazeni, *Tribes and Empire on the Margins of Nineteenth-Century Iran* (Seattle: University of Washington Press, 2009), 20–29.

34 C.R. Pennell, "Makhzan and Siba in Morocco: an examination of early modern attitudes," in *Tribe and State. Essays in Honour of David Montgomery Hart*, ed. E.G.H. Joffe, C.R. Pennell, 159–180 (Cambridgeshire: Middle East and North Africa Studies Press, 1991), https://minerva-access.unimelb.edu.au/bitstream/handle/11343/29103/277426_pennell_makhzansiba%28hart%29.pdf?sequence=1&isAllowed=y; Michael Peyron, *The Berbers of Morocco. A History of Resistance* (London: I.B. Tauris, 2021), 79–90, 96–99.

35 Shelagh Weir, *A Tribal Order. Politics and Law in the Mountains of Yemen*. (Austin: University of Texas Press, 2007), 229–268; Paul Dresch, *Tribes, Government, and History in Yemen* (Oxford: Clarendon Press, 1989), 158–167.

the tribal leaders chose the imam and were entitled to depose him if he did not fulfil his duties.³⁶ These cursory examples will not do justice to the intricacies of rule across the Middle East until World War I and the destruction of the old order, but show a larger tendency for decentralised, especially tribal-oriented arrangements existing within them.³⁷

3.2 The prevalence of non-state political/military actors

Despite the state-centric narrative, apart from governments, particular identity-based and/or local armed organisations were/are the main actors in large-scale conflicts in the region. They may either fight the government to overthrow it/achieve secession of their region or ally with it to make up for the inefficient national army.

Using the example of Syria and Iraq, there is a plethora of non-state actors involved in the current conflict, either on the government or the opposition side. A similar situation has developed in neighbouring Iraq, and due to the transborder character of the war with the Islamic State as well as the fact that some of those forces are active in both countries at the same time, they can be considered simultaneously. Among those forces, I could roughly sketch the following categories:

1. **religion-based groups** such as Shia militias, Alawi-dominated militias, and Sunni/Salafi militias³⁸
2. **ethnicity-based groups** such as Kurdish groups YPG and PKK³⁹, Turkmen militias including Sultan Murad and Seljuq Brigades⁴⁰, and Palestinian militias⁴¹
3. **ethnoreligious groups** such as Salafi-Kurdish groups of the Kurdish Islamic Front and Ansar al-Islam fi Kurdistan⁴²

36 Adam R. Gaiser, *Muslims, Scholars, Soldiers. The Origin and Elaboration of the Ibadī Imamate tradition* (Oxford: Oxford University Press, 2010), 132–138; Hussein Ghubash, *Oman – The Islamic Democratic Tradition* (Oxon: Routledge, 2006), 33–44.

37 For further exploration of various decentralised arrangements from the perspective of formality, see the author's article: Jan Gwidon Byczkowski, "The Formality of Decentralisation in The Ottoman Empire," *Osmanlı Mirası Araştırmaları Dergisi*, 10/26 (2023): 157–178.

38 Phillip Smyth, "From Karbala to Sayyida Zaynab: Iraqi Fighters in Syria's Shi'a Militias," *CTC Sentinel*, vol. 6, issue 8 (2013): 28–32, <https://ctc.usma.edu/from-karbala-to-sayyida-zaynab-iraqi-fighters-in-syrias-shia-militias/>; András Derzsi-Horváth, Erica Gaston, Bahra Saleh, "Who's Who: Quick Facts About Local and Sub-State Forces," *GPPI*, 16/08/2017, <https://www.gppi.net/2017/08/16/quick-facts-about-local-and-sub-state-forces/>; Aron Lund, "Who are the Pro-Assad Militias?," *Carnegie Middle East Center*, 02/03/2015, <https://carnegie-mec.org/diwan/59215>.

39 "Flight of Icarus? The PYD's Precarious Rise in Syria," *Middle East Report no. 151* (N.d.: Crisis Group, 08/05/2014), <https://www.crisisgroup.org/middle-east-north-africa/eastern-mediterranean/syria/flight-icarus-pyd-s-precarious-rise-syria>.

40 Kamal Sheikho, "Why the battle for al-Bab is pivotal in Syria," *Al-Monitor*, 15/09/2016, <https://www.al-monitor.com/originals/2016/09/syria-battles-al-bab-manbij-sdf-isis-withdrawal-aleppo.html>.

41 Ömer Behram Özdemir. "Pro-Regime Palestinian Militias in Syria," *ORSAM*, 02/08/2021, <https://www.orsam.org.tr/en/pro-regime-palestinian-militias-in-syria/>.

42 Aron Lund, "The Politics of the Islamic Front, Part 5: The Kurds," *Carnegie Middle East Center*, 30/01/2014, <https://carnegie-mec.org/diwan/54367>.

4. **tribal groups** such as the al-Sanadid militia of the Shammar tribe, and other tribes which participate in the Syrian war on either side⁴³
5. **tribal-religious groups** such as Tribal Mobilization Forces comprising Sunni tribes from Iraq⁴⁴

Looking at examples from other countries, in Yemen, Houthis are an identity-based yet regional militia of Zaydis hailing from Northern Yemen, while in the South there are regional militias (like STC) and tribal militias (like various groups from Hadramout and Mehr).⁴⁵ In Lebanon, Hezbollah is a regional Shiite group dominating especially the south of the country.⁴⁶ In Libya, Tuareg militias control the south of the country and act as the third force in the conflict.⁴⁷ Finally, in Turkey, apart from the PKK which is also active in Iraq, there are so-called “village protectors” (*köy korucuları*), ethnic-based militias which are utilised as rural units protecting their villages from the PKK, although their record regarding human rights violations is often disputed.⁴⁸ Moreover, in Israel, Egypt, and Saudi Arabia, ethnic/tribal military units are incorporated into the military.⁴⁹

Those groups/units and their umbrella organisations are evaluated differently by various scholars and states, depending often on their interests and leanings. However, no matter the perspective, these organisations have so far secured footing in their respective states

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- 43 Haian Dukhan, Ammar Alhamad, “Fragmentation and perceived bias: The shortcomings of US policy towards tribes in Syria,” *Atlantic Council*, 20/01/2021, <https://www.atlanticcouncil.org/blogs/menasource/fragmentation-and-perceived-bias-the-shortcomings-of-us-policy-towards-tribes-in-syria/>.
 - 44 Erica Gaston, “Sunni Tribal Forces,” *GPPI*, 30/08/2017, <https://www.gppi.net/2017/08/30/sunni-tribal-forces>.
 - 45 Barak A. Salmoni, Bryce Loidolt, Madeleine Wells, *Regime and Periphery in Northern Yemen. The Huthi Phenomenon* (Santa Monica: RAND Corporation, 2010), 3–8, https://www.rand.org/content/dam/rand/pubs/monographs/2010/RAND_MG962.pdf; Emile Roy, Andrea Carboni, “Yemen’s Fractured South: Shabwah and Hadramawt,” *ACLEDA*, <https://acleddata.com/2019/05/09/yemens-fractured-south-shabwah-and-hadramawt/>; Ahmed Nagi, *Eastern Yemen’s Tribal Model for Containing Conflict* (Washington: Carnegie Endowment, 2020), https://carnegieendowment.org/files/Nagi_Yemen_Mahri1.pdf
 - 46 Kali Robinson, “What is Hezbollah?,” *Council on Foreign Relations*, 26/10/2021, <https://www.cfr.org/backgrounder/what-hezbollah>.
 - 47 Austin Bodetti, “A quiet conflict is raging in Libya’s desertic south,” *The New Arab*, 16/07/2019, <https://english.alaraby.co.uk/analysis/quiet-conflict-raging-libyas-desertic-south>; Tom Westcott, “Feuding tribes unite as new civil war looms in Libya’s south,” *Middle East Eye*, 10/02/2019, <https://www.middleeasteye.net/news/feuding-tribes-unite-new-civil-war-looms-libyas-south>.
 - 48 Evren Balta, Murat Yüksel, Yasemin Acar, “Geçici Köy Koruculuğu Sistemi ve ‘Çözüm Süreci’” (İstanbul: Süreç Araştırma Merkezi, 2020), https://surecanaliz.org/wp-content/uploads/2019/02/gkk_sistemi_ve_cozum_sureci_nihai_rapor.pdf.
 - 49 Seth J. Frantzman, “Meet the IDF’s ‘Beduin battalion’,” *The Jerusalem Post*, 13/10/2016, <https://www.jpost.com/israel-news/meet-the-idfs-beduin-battalion-469972>; Nicholas A. Heras, “Can The Sinai’s Bedouin Become a Counterterrorist Force?,” *Refworld*, 31/10/2013, <https://www.refworld.org/docid/5295dda94.html>; Brian Rohan, “Egypt arming Sinai tribesmen in fight against Islamic State,” AP, 27/09/2018, <https://apnews.com/article/40170c54b5b349afb1681fb8d2a26ab1>; Anthony H. Cordesman, *Saudi National Security and the Saudi-US Strategic Partnership: Part One: The Civil & Economic Aspects of Security* (Washington, DC: CSIS, 2010), 25, https://csis-website-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/publication/100517_SaudiaBrief_complete.pdf.

and particular regions where they operate and have their base populations. Thus, apart from a normative approach to their actions, they warrant a pragmatic consideration of their future once those conflicts are brought to an end.

3.3 The prevalence of tribal affiliations and tribal law

The Middle East is known for the prevalence of tribal identities. Still, the perception of the predominance of tribal affiliation has led over the years to assumptions regarding Middle Eastern societies which are rather orientalist in nature. Tribal allegiance is often explicitly or implicitly assumed to be an expression of backward nature and an inability to adjust to modern conditions. Moreover, the current political climate in many states of the West makes the commentators speak of “tribalism” of contemporary politics, using the term pejoratively to describe the establishment of inflexible, opposed blocks of voters.⁵⁰ No wonder many authors, especially those from the the Middle East, attempt to downplay the prevalence of this phenomenon either qualitatively (tribes exist but do not matter much) or quantitatively (people expressing tribal affiliation are a minute minority).⁵¹

However, some scholars, especially those whose research is primarily focused on tribes and tribe-state relations, point out that the assumption that tribes are necessarily a backward feature, shared evenly by Western Orientalists and Eastern critics of the “tribal” picture of the region, is not necessarily true. As Richard Tapper emphasised in 1979 and reiterated in 2009, tribes are constantly evolving social organisations offering social security and stability, and are one of the valid forms of social organisation. As such, expecting their disappearance as a precondition for “modernity” shows a lack of understanding of the role and functioning of tribal organisations.⁵² Moreover, as pointed out by Cherstich, tribal identity does not negate other identities and constitutes just one of the layers of identity every person possesses, together with national, regional, ethnic, religious, and class-related layers.⁵³ This new perception of tribes is increasingly used to analyse conflicts in the Middle East, particularly in Libya.⁵⁴

50 As shown in: Stevan E. Hobfoll, *Tribalism. The Evolutionary Origins of Fear Politics* (Cham: Palgrave Macmillan, 2018).

51 For example: Alaa al-Ameri, “The myth of tribal Libya,” *The Guardian*, 30/03/2011, <https://www.theguardian.com/commentisfree/2011/mar/30/libya-tribal-myth-national-dignity>.

52 Richard Tapper, “Tribe and state in Iran and Afghanistan: an Update,” *Études rurales* 184 (2009): 33–46.

53 Igor Cherstich, “When Tribesmen do not act Tribal: Libyan Tribalism as Ideology (not as Schizophrenia),” *Middle East Critique* 23, No. 4 (2014): 405–421.

54 Elena Vismara, “The contemporary nature of tribalism. Anthropological insights on the libyan case,” *CMI Working Paper* 12 (2018), <https://www.cmi.no/publications/6695-the-contemporary-nature-of-tribalism>; Mohammed Ben Lama, *The Tribal Structure in Libya: Factor for fragmentation or cohesion?* (Fondation pour la Recherche Strategique: Observatoire du monde arabo-musulman et du Sahel, September 2017), <https://www.frstrategie.org/web/documents/programmes/observatoire-du-monde-arabo-musulman-et-du-sahel/publications/en/14.pdf>; Youssef Mohammed Sawani, “Dynamic of Continuity and Change,” in *The 2011 Libyan Uprisings and the Struggle for the Post-Qadhafi Future*, ed. Jason Pack, 52–84 (New York: Palgrave Macmillan, 2013).

As such, it is possible to claim that in most if not all of the MENA states tribal affiliation is still present, at least in rural areas but in some even among urbanites. This, in turn, results in the dependence on tribal justice. As mentioned in the second part of this article (section 2.3), while in the urban setting the written state law seemingly reigns supreme at least during peacetime, it is not always the case in the rural areas of the MENA region. There, either written or unwritten tribal law can be encountered. I have already mentioned the Bedouin tribal law still used across Northern Africa, the Levant, and on the Arabian Peninsula, as well as Amazigh traditional law in the Maghrib states. Worth mentioning is also the written customary law of Yemeni tribes in the Zaydi north of the state, and tribal laws among Mehri and other peoples of the Yemeni-Omani border.⁵⁵ The previously mentioned cases of Libya and Iraq, where tribal law regained prominence during conflict, suggest too the resilience of this sort of legal system in the region despite continued efforts to marginalise and eliminate it. Even in Syria, some argue that to achieve peace, especially in rural areas, tribal reconciliation may be much more effective if not necessary.⁵⁶ As such, decentralisation efforts as a result of post-conflict state reconstruction efforts may benefit from taking the modern incarnation of tribalism, as well as customary law, into consideration.

4. Possible elements of the future decentralisation schemes

As presented in the second part of this article, decentralisation in the MENA region may have to take into consideration certain features of the region's past and present landscape. In the Ottoman and Qajar Empires, as well as other states in the region, decentralisation was a prominent feature and took various forms, including non-territorial decentralisation of tribes and tribal confederations. At the same time, in most of the states but especially in those which experience armed conflicts, non-state armed actors are prevalent and enjoy support from various identity groups in the society, be they religious, ethnic or tribal. Finally, tribal affiliations are still acknowledged throughout many states in the region. Not only that, but numerous communities, both nomadic and sedentary, resort to customary/tribal law in their affairs, which is either tolerated or persecuted by the governments. How, then, could somebody account for these factors in designing decentralisation for MENA states? Below I propose four arrangements which could deem such efforts more fruitful in the future.

55 Nagi, *Eastern Yemen's Tribal Model*; Weir, *A Tribal Order*, 143–166.

56 Obaida Hitto, "Syria's Tribal Politics Critical to the Country's Future," *Politics Today*, 23/04/2021, <https://politicstoday.org/syrias-tribal-politics-critical-to-the-countrys-future/>.

4.1 The accommodation of political actors in post-war decentralisation schemes

Knowing how prevalent and powerful the non-state actors can be, attempts at decentralisation in the region should account for the accommodation of both their political and armed wings to ensure their participation and support for the newly established political system.

Regarding political life, the participation of armed non-state actors and the transition to normal, non-violent politics could be achieved through several means. The political decentralisation in itself allows for possible appeasement, as it allows especially minority, territorially coherent groups to compete not only in national but also in district/province/state elections and win the latter. Hence, it does away with the phenomenon of permanent opposition and constant displeasure of minorities unable to win national elections, as it could happen in unitary states.⁵⁷ Political decentralisation is a way to establish pluralistic democracy as opposed to the “tyranny of the majority” which is often the case in unitary states, especially those recently transforming from authoritarian regimes.⁵⁸

Apart from these inherent qualities of political decentralisation, states could take other steps to accommodate non-state actors, especially those representing territorially localised minorities, be they religious or ethnic. One such way could be to allow their participation in the delimitation of subnational units (states/provinces, whatever the nomenclature) or at least to allow for future modification and carving out of new units via referendum or actions of subnational legislatures. The primary case of such an approach abroad was the United States.⁵⁹ Contemporarily, the new Iraqi constitution in theory allows for the establishment or modification of provinces⁶⁰ but the unconstitutional actions of the central government, paired with the armed conflicts so far, have not allowed for such schemes to come to fruition.⁶¹ A more functional model is that of Spain, although it took a long time to

57 Carl J. Friedrich, “Federalism and Opposition,” *Government and Opposition* 1, issue 3 (1966): 286–296; Dimitris N. Chrysochoou, “Federalism and democracy reconsidered,” *Regional and Federal Studies* 8:2 (1998): 1–20; Gordon Tullock, “Federalism: Problems of Scale,” *Public Choice* 6 (Spring 1969): 19–29; Jenna Bednar, Willam N. Eskridge Jr., John Ferejohn, *A Political Theory of Federalism* (World Bank, 1999), http://documents.worldbank.org/curated/en/900271468761423846/820140748_200404131103959/additional/28763.pdf.

58 Edmund Burke, *Correspondence of the Right Honourable Edmund Burke; Between the Year 1744, and the Period of His Decease, in 1797* (London: Francis & John Rivington, 1844), 147; Alexis de Tocqueville, *Democracy in America*. Volume 1. (Indianapolis: Liberty Fund, 2012), 410–415.

59 E. Burke; A. Tocqueville op. cit. 58.

60 *Iraq's Constitution of 2005* (n.d.: Constitute Project, 2021), art. 117–119, https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en.

61 M. Knights, *Iraq's Political Crisis: Challenges for U.S. Policy* (The Washington Institute, 2011), <http://www.washingtoninstitute.org/policy-analysis/view/iraqs-political-crisis-challenges-for-u.s.-policy>; G. Carlstrom, “The Breakup: More Iraqis Bid for Autonomy,” *Al Jazeera*, 22/12/2011, <http://www.aljazeera.com/indepth/features/2011/12/201112161177518162.html>; B. Francis, “Ninevah Province May Soon Request Autonomy,” *Al-Monitor*, 14/01/2014, <http://www.almonitor.com/pulse/security/2014/01/iraq-nineveh-province-governor-interview-anbar.html#>; M. Abbas, “Resolution of Anbar Crisis Requires Security, Political Coordination,” *Al-Monitor*, 3/01/2014, <http://www.almonitor.com/pulse/originals/2014/01/iraq-anbar-protests-crisis-security-political-solution.html#>.

form autonomous provinces in such a bottom-up process. Even if in Iraq the process starts to function as intended, it will be long and convoluted.⁶² However, the slow pace and possible complications should not diverge our attention from the fact that the results could provide for much greater accommodation of minorities and non-state armed actors representing them.

4.2 The accommodation of armed non-state actors through association

The political decentralisation elements aimed at political wings of various non-state actors need to be paired with tackling their military wings. Again, the literature and case studies offer a plethora of mechanisms to do so. In the classic paradigm of the state's monopoly on violence, the aim is to either eliminate by military means, disband, or incorporate armed groups into the national army. Leaving aside the war, the popular formula to achieve disbandment and incorporation of militants is the so-called DDR, Disarmament, Demobilization and Reintegration, as promoted by the United Nations.⁶³ Its record is, however, mixed, with many developing countries struggling to provide economic opportunities and reintegrate the ex-militants. This, in turn, often leads to them taking up arms again or other issues.⁶⁴

Instead, the option I would like to draw attention to here is that of association of armed groups within the scope of security decentralisation as an indirect result of political decentralisation efforts. This option, unlike the former, is not necessarily a peacebuilding solution and does not have to involve the belligerents in an intrastate conflict, but also armed groups which operate due to the weakness of the central government. Such association could take two different forms, namely:

- a) Acceptance of a non-state military actor as an autonomous part of a state security system
- b) Establishment of a new regional/communal force

62 Reidar Visser, "Federalism from Below in Iraq: Some Historical and Comparative Reflections," *Historiae.org*, 2006, <https://historiae.org/federalism-from-below.asp>.

63 "Disarmament, Demobilization and Reintegration," *United Nations Peacekeeping*, <https://peacekeeping.un.org/en/disarmament-demobilization-and-reintegration>.

64 Franziska Seethaler, *Addressing the Impact of DDR Programmes: Possibilities and Challenges* (New York: United Nations University, 2016), https://collections.unu.edu/eserv/UNU:5546/Assessing_Impact_of_DDR_Programmes_160322.pdf; Paul Bonard, Yvan Conoir, *Evaluation of UNDP Reintegration Programs. Volume I. Final Evaluation Report* (UNDP, 2013), <https://erc.undp.org/evaluation/evaluations/detail/6162#>; Kirsten Gislesen, "A Childhood Lost? The Challenges of Successful Disarmament, Demobilisation and Reintegration of Child Soldiers: The Case of West Africa," *Norwegian Institute of International Affairs Paper* 712 (2006), <https://www.files.ethz.ch/isn/27910/712.pdf>.

In the case of the Middle Eastern states, both of these could be taken into consideration due to the prevalence of armed conflict throughout the region and as a result, the plethora of armed groups which took root in many states. It could be argued that DDR or assimilation of non-state militias into the national army would be sufficient, and in many cases this may hold true. However, as attested by the cases of unsuccessful DDR and assimilation programmes across the globe, and especially in less developed countries, the state does not always possess the resources to conduct successful programmes like this due to insufficient funding, lack of proper control, or inability to prevent ex-militias from desertion and reforming their organisations. This may be an object of concern for many Middle Eastern states, especially those with financial troubles. Moreover, in some states the long-term instability and limited resources, sometimes combined with the interference of external actors, allow for those non-state actors to carve out portions of states where the state authority does not reach or can reach only with their approval. The primary example of such an outcome was the dominance of KDP-PUK in the Kurdish territories in the north of Iraq after 1991, and the role played by various militias in the war against the IS in this state.⁶⁵ Meanwhile, in Lebanon the south of the country is held by Hezbollah and its supremacy in these Shia-dominated territories is unofficially recognised due to the modified consociational agreement maintained there.⁶⁶

The military power held by such actors, and the de facto political power stemming from it, may deem decentralisation a must and, indirectly, force the states to accept their military wings as autonomous elements of their security systems responsible for regional security in their constitutional units within the scope of a peace agreement or through the articles of a new constitution. The key example of such an enemy-turns-ally strategy was the Iraqi constitution of 2005 which grants the federal regions the right to “the establishment and organization of the internal security forces for the region such as police, security forces, and guards of the region”⁶⁷. The main beneficiary of this passage was the KRG and its military forces, the peshmerga, which from being “enemies of the state” during the reign of Saddam Hussein and his predecessors turned into official regional security forces.

Regarding the state-allied militias in military conflicts, the practice of governments around the world suggests that they prefer to maintain only unofficial, de facto ties with such organisations to have a possibility of disbanding them once their contribution is deemed no longer needed. However, theoretically, it may not always be the case. As mentioned before, there are calls for legalisation and association of pro-government

65 Damian Doyle, Tristan Dunning, “Recognizing Fragmented Authority: Towards a post-Westphalian Security Order in Iraq,” *Small Wars & Insurgencies* 29, Issue 3 (2018): 537–559.

66 Daniel Meier, “Hizbullah’s Shaping Lebanon Statehood,” *Small Wars & Insurgencies* 29, Issue 3 (2018): 515–536.

67 *Iraq’s Constitution of 2005*, art. 121.

Bedouin militias in Egypt which so far have gone unanswered, but this may change in the future depending on the outcome of the conflict with the local IS affiliates. Another scenario may be a “conditional alliance”, in which a given militia supports the government during the civil war in return for decentralisation in the future. This is the stated aim of the PYD and its armed wing, YPG (within the wider SDF coalition), which could enter an uneasy alliance with the national army while demanding federalisation or autonomy for regions in Syria.⁶⁸ Similarly, in Yemen, the Southern Transitional Council participates in the Saudi-led coalition under the condition of autonomy for the south of the state, possibly with STC as its regional security force in the future.⁶⁹

The second form of assimilation of non-state militia, the establishment of a new regional security force, is the least popular one. So far, the only example worth noting was the establishment of Special Regional Security Forces for the Muslim autonomy in the Southern Philippines as agreed in the 1976 Tripoli Agreement and reiterated in the 1996 Mindanao Final Agreement.⁷⁰ Still, such a unique solution could, too, be taken into consideration in future agreements with non-state actors participating in conflicts across the Middle East within the wider political agreement on decentralisation.

All these considerations do not mean that all militias/armed groups could count on association agreements with states. There are two groups of factors to consider here. First, let's call it realistic, concerns the strength and persistence of a given group. Once a conflict nears the end, many of the groups may find themselves too weak to successfully negotiate such a special position and either disband on their own or volunteer to join the army. Meanwhile, foreign-sponsored groups may also cease to operate once the conflict reaches its end. On the other hand, we also need to take into account the normative factors. Two types of groups may simply not deserve recognition or pose a continuous threat to either the state or the populace. The first one would be the aforementioned foreign-sponsored armed groups, which hardly could claim legitimacy in the eyes of the government and the people. The second one would be various extremist groups, the foremost example of which would be IS, but also al-Nusra and others. The ideologies of these groups would be in open conflict with any even semi-democratic constitution, employing a *modus operandi*

68 Kirill Semenov, “Syrian officials, SDF look to Russia for support against Turkey,” *Al-Monitor*, 26/09/2021, <https://www.al-monitor.com/originals/2021/09/syrian-officials-sdf-look-russia-support-against-turkey#ixzz7KGf3UOjk>.

69 The Embassy of the Kingdom of Saudi Arabia, *The Riyadh Agreement* (2019), <https://www.saudiembassy.net/sites/default/files/Riyadh%20Agreement%20Fact%20sheet.pdf>; *Riyadh Agreement between the legitimate government and the Southern Transitional Council (STC)*, Yemen – STC, 05/11/2019, <https://www.peaceagreements.org/masterdocument/2235>.

70 *The Tripoli Agreement*, Philippines – MNLF (23/12/1976), Art. 3, Para. 8, http://www.seasite.niu.edu/tagalog/Modules/Modules/MuslimMindanao/tripoli_agreement.htm; *Peace Agreement*, Philippines – MNLF (02/09/1996), Art. 73–90, http://peaceaccords.nd.edu/wp-content/accords/Peace_Agreement_between_the_GRP_and_the_MNLF_1996.pdf.

of terror against civilians, forcing them into submission, and without these tools would hardly enjoy widespread support.

4.3 Role for non-territorial autonomy

Non-territorial autonomy (NTA) is increasingly an object of interest for political and social sciences. As opposed to traditional territorial autonomy, NTA agreements are granted to people of certain minority groups independent of their location. In Europe, the first modern proposer of the idea was Karl Renner, who attempted to accommodate diversity in the late Habsburg Empire.⁷¹ In the interwar period and post-Second World War West, this idea gained prominence as a tool of governance but even more so as a subject of academic inquiry.⁷² Apart from religious/ethnic minorities, other groups suggested to be granted NTAs are tribes since many tribal groups are transhumant/nomadic and granting them territorial autonomy would be counterproductive.

Looking at the experiences of the Ottoman and Qajar Empires and other Middle Eastern polities with decentralisation, they granted NTAs to exactly these two types of minorities: religious minorities (*millet sistemi*) and tribes (treated as autonomous units akin to provinces). As such, NTAs for dispersed/mobile minorities are not only suggested by political scientists but also by the tradition of governance in the MENA region. Not only that, but despite urbanisation, emigration of minorities, and nationalistic policies of the 20th century, there are still groups which could benefit from NTA arrangements. Even considering only citizens and excluding long-term foreign residents, nearly all states have either dispersed religious/ethnic minorities or tribes which could benefit from such arrangements, the latter already mentioned in previous parts of this article.⁷³ As such, including NTAs in future decentralisation schemes in the MENA region, while unorthodox looking at decentralisation schemes worldwide, could be very beneficial.

Regarding the functions that can be performed by non-territorial autonomies, it is

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- 71 Karl Renner, "State and nation," in *National Cultural Autonomy and its Contemporary Crisis*, ed. Ephraim Nimni, 13–40 (Oxon: Routledge, 2005); Will Kymlicka, "Renner and the accommodation of sub-state nationalisms," in *National Cultural Autonomy and its Contemporary Crisis*, ed. Ephraim Nimni, 117–127 (Oxon: Routledge, 2005).
- 72 W. Kymlicka, *Multicultural Odysseys: Navigating the New International Politics of Diversity* (Oxford and New York: Oxford University Press, 2007), 3; John Coakley, "Approaches to the Resolution of Ethnic Conflict: The Strategy of Non-territorial Autonomy," *International Political Science Review* 15/3 (1994): 297–314; David J. Smith, "Non-territorial Autonomy and Political Community in Contemporary Central and Eastern Europe," *Journal on Ethnopolitics and Minority Issues in Europe* 12, No 1 (2013): 27–55.
- 73 Unfortunately, the scope of this work does not allow for elaborating on the location and size of various ethnic and religious minorities. For a general overview, see: Michael Izady, *Middle East, Ethnic Groups* (map) (New York: Columbia University, 2006), https://gulf2000.columbia.edu/images/maps/Mid_East_Ethnic_lg.png; Michael Izady, *Middle East Religions* (map) (New York: Columbia University, 2006), https://gulf2000.columbia.edu/images/maps/Mid_East_Religion_lg.png.

crucial to reiterate that NTAs cover people, not territories. They are enjoyed by persons wherever they find themselves in the state, but in return they do not cover any territory. Looking at any given federal constitution, it usually outlines powers held exclusively by the federal government, powers held by states, joint powers of both, and concurrent powers of both.⁷⁴ However, of dozens of possible powers, most are organically territorial. Some, like territorial defence, environmental issues, agriculture, transportation, and infrastructure, require a hold of the territory they pertain to, be it a border, a forest, or agricultural lands. Others, like health and postal services, usually serve the local population at large. It is hard to imagine separate hospitals and postal services for various groups enjoying NTA, as it would cause problems with equality and a probable overturning by constitutional courts as well as redundancy, as some areas would have more of certain types of services and facilities than it is necessary. While redundancy is praised by Elazar and other theoreticians of federalism, it is the redundancy in political institutions, not ones serving basic human needs.⁷⁵ Thus, in the end, non-territorial autonomies could feasibly enjoy only a handful of powers in matters including culture and religion, education, international relations pertaining to cultural/religious/language matters, judiciary systems, and religious/customary law for punishing petty crimes and/or settling disputes between group members, and to some extent, taxation. The limitation of NTAs to those few areas mentioned, apart from being the logical conclusion drawn from their nature, is attested by historical and contemporary examples.⁷⁶

To sum up the issue of non-territorial autonomy, it could benefit many dispersed minorities as well as tribes in the region, although the exact populations which would be granted such arrangements depend partially on the estimates of government regarding the “accessibility” of rural populations. No matter how big a part of the society would be covered by NTAs, the influence of such a decision would be rather marginal in comparison to territorial decentralisation. The very nature of non-territorial autonomy would allow it to become at most a *minimal non-territorial autonomy*, as the primary fields in which it could be exercised seem to be culture and religion, education, low-level international relations, internal judiciary systems, and in the case of nomadic or “inaccessible” sedentary tribes, taxation. Even if these are not necessarily all fields which can be covered on a non-territorial basis, they would nevertheless present a fraction of modern government functions.

74 Examples: Keith S. Rosenn (ed.), *Brazil's Constitution of 1988 with Amendments through 2017*, (Constitute Project, 2021), art. 21–24; *Sudan's Constitution of 2005* (Constitute Project, 2021), Schedules A-E, https://www.constituteproject.org/constitution/Sudan_2005.pdf; Iraq's Constitution of 2005..., art. 109–115; *The Belgian Constitution* (Legal Affairs and Parliamentary Documentation Department of the Belgian House of Representatives, 2021), art. 127–140, https://www.dekamer.be/kvvcr/pdf_sections/publications/constitution/GrondwetUK.pdf.

75 Daniel J. Elazar, *Exploring Federalism* (Tuscaloosa: University of Alabama Press, 1991), 29–30.

76 John Coakley, “Conclusion: Patterns of Non-Territorial Autonomy,” *Ethnopolitics* 15:1 (2016): 166–185; *The Belgian Constitution*, art. 127–133.

4.4 Legal pluralism and extra-legal decentralisation

The prevalence and persistence of customary laws in tribal affairs and among minorities in many MENA states is an unquestionable reality. As for now, this legal pluralism remains largely unofficial, as the governments either attempt to eradicate it or only tentatively accept it. Instead, in new post-conflict decentralisation schemes, they could come to terms with the *de facto* legal pluralism and turn it into *de iure* part of the legal system. Knowing the aversion of many tribal communities towards the state and its attempts to regulate their internal affairs, the new legal reality may still result in a certain degree of informality. It could be born out of general provisions of law pertaining to customary law. As an example, such a bill could just mention “customary law” as one of the legal sources in cases related to NTA members without providing the list of areas in which it can/shall be applied. On the other hand, the legislation may require NTAs to codify their customary laws or allow them to do so if they so please – such an initiative exists among the Kabyle of Algeria despite no official recognition of the government today.⁷⁷ In both cases, the community may simply decline to do so, leaving the customary law informal. Apart from the pragmatist aspect of accepting the customary law as an unescapable reality in many corners of the region, there is also the fact that tribal law can serve to bring peace to war-torn, conflict-ridden communities due to its simplicity and emphasis on reconciliation rather than severe punishment, contrary to civil law. This potential was acknowledged and promoted by NGOs and scholars in states such as Iraq, Somalia, Yemen, and Libya, although it is suggested to be one element of a bigger strategy of reconciliation.⁷⁸

To sum up, new decentralisation schemes should allow for the inclusion of customary law, and thus a certain level of legal pluralism. The repression of tribal law seems not to be a good strategy due to its resilience. Of other choices, tolerance or accommodation without formal recognition would result in total informality of this aspect of tribal autonomy, general acknowledgement of its existence and role in the justice system would lead to quasi-formality, while the specification of certain fields in which it would operate or codification of customary laws would lead to a near-full formality of customary law or quasi-formality in the case where tribes decline to codify their laws or limit their sphere of influence to boundaries delimited by the law. No matter the degree to which it would be

77 Scheele, “A Taste for Law”.

78 UNHCR, “Tribal Conflict Resolution in Iraq”; Carroll, “Tribal Law and Reconciliation”; Asfura-Heim, “No Security Without Us”; Erica Gaston, Nadwa al-Dawsari, *Dispute Resolution and Justice Provision in Yemen’s Transition*, United Institute of Peace. Special Report 345 (April 2014), https://www.jstor.org/stable/resrep12230?seq=1#metadata_info_tab_contents; Andre Le Sage, *Stateless Justice in Somalia Formal and Informal Rule of Law Initiatives*. Centre for Humanitarian Dialogue Report (July 2005), <https://gsdrc.org/document-library/stateless-justice-in-somalia-formal-and-informal-rule-of-law-initiatives/>.

formalised, this new legal reality would seemingly benefit the decentralisation schemes as it would not antagonise tribal communities utilising customary law. Moreover, examples from around the world and the continued push for maintaining the customary laws by many warring parties suggest that such legal pluralism would actually benefit efforts at post-conflict reconciliation and restoration of order.

5. Discussion

I am aware that in such a short paper it is impossible to delve into all nuances and provide detailed insight into the topic. Instead, the aim was to point out the specific circumstances in the region and elements of a wider decentralised design which could prove to be pragmatic and beneficial in the long run. Moreover, it is quite certain that a successful political decentralisation in the region would require much more than the elements listed out here. For example, as reiterated in the literature, democracy is the key initial condition for introducing political decentralisation.⁷⁹ Only once political decentralisation is introduced on a democratic foundation may it serve its role in preserving inclusive democracy in the long run. In the context of this article, democratic mechanisms would be crucial to ascertain the need and scope of decentralised elements proposed here. Moreover, the supposed consensus democracy would also dictate the adoption of a national constitution protecting the liberties of all its citizens. Thus, the subnational elements such as classical states or NTAs would be constrained by this general catalogue of liberties. This is especially important when empowering tribes and armed movements/militias which often maintain patriarchal structures and practice gender-based segregation, discrimination, or even violence.

Another element of the new democratic foundation for more peaceful and inclusive polities would be non-involvement of foreign powers aiming to “democratise” Middle Eastern states. As the fiasco in Afghanistan and decades of unrest in Iraq show clearly, such “good intentions” almost never bring the expected results. Any political change needs to come from within, and the same holds true for possible democratic movements and resulting decentralised regimes if the people decide that they serve their interests. Other

79 Nancy Bermeo, “A New Look at Federalism. The Import of Institutions”, *Journal of Democracy* 13/2 (April 2002), 96–110; L. Anderson, *Federal Solutions*, 253–254. Ronald L. Watts, “Federal Coexistence in the Near East: General Introduction”, *Federalism: A Tool for Conflict Management in Multicultural Societies with Regard to the Conflicts in the Near East*, Thomas Fleiner (ed.) (Fribourg: Institute of Federalism, 2008), 4–16; Chibli Mallat. “Federalist Dreams for the Middle East”, *Lawfare* (Accessed 10 March 2022). <https://www.lawfareblog.com/federalist-dreams-middle-east>.

elements requiring consideration include the arrangement of proper political and fiscal balance between the central and subnational governments or the international relations of the latter.

6. Conclusion

Throughout this paper, I attempted to emphasise the need to take into consideration the realities on the ground when preparing post-conflict decentralisation schemes in the MENA region. Aware of the prevalence of tribalism, the rich history of decentralisation in Middle Eastern *ancien regimes*, the prominent role tribal law enjoys, and the prevalence of non-state armed actors, decentralisation schemes instead of adhering to decentralisation orthodoxy should focus on incorporating these elements to allow for inclusive change acceptable for all actors involved. The empirical evidence from the region, both historical and contemporary, suggests that political rather than administrative decentralisation would allow for much better results, particularly in terms of accommodating the opposition and minorities. At the same time, a lenient policy of association may be necessary to impose any kind of control over some of the non-state armed groups. At the same time, the relationship between the state, dispersed minorities, and tribes could be strengthened via non-territorial autonomy agreements paired with some acceptance of customary law resulting in legal pluralism.

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