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Praxis for Peace

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ABSTRACT

Praxis for Peace reviews legal scholarship in the fields of peace negotiation, constitutional reform and international criminal accountability, and explores how legal scholars have created applicable theories in these fields which peace practitioners apply in a variety of

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contexts. These applications create new case studies which provide the basis for evolution and refinement of the legal theories. The Article further provides examples of how scholars associated with the Public International Law & Policy Group have significantly contributed to the *Praxis for Peace*.

I. Introduction

I was honored to participate in Case Western Reserve University ("CWRU") School of Law's symposium on "The Academy and International Law: A Catalyst for Change and Innovation" in recognition of the Cox International Law Center's 30th Anniversary and the 25th Anniversary of the founding of the Public International Law and Policy Group ("PILPG"). As a member of the panel on the "Academy and the Pursuit of Peace and Human Rights," I presented my reflections on *Praxis for Peace*—the contributions that legal scholars have made to the pursuit of peace and human rights through the development of applied theories on peace negotiation, constitutional reform and accountability for human rights abuses. These theories have formed the bedrock for significant *praxis* (theoretical application) by organizations such as PILPG, whose work has helped to evolve the theoretical frameworks. PILPG is a global nonprofit law firm founded by American University Professor Paul Williams and CWRU Law School Dean Michael Scharf twenty-five years ago.[1] As legal scholars and former attorneys in the U.S. State Department Office of Legal Adviser, they both understood from experience the important ways that legal scholarship and practice in the public international law field are mutually reinforcing, and they created an organization that contributed significantly to this dynamic relationship. As a legal scholar and former State Department attorney who serves in a senior position with PILPG, I appreciate the dynamism of *Praxis for Peace*. I have regularly drawn from the work of legal scholars in my work at the State Department and within PILPG. As a legal scholar, I have sought to evolve the *Praxis for Peace* with my own scholarly contributions. This Article explores key legal theories that contribute to *Praxis for Peace* in the areas of constitutional reform, peace negotiation, and human rights accountability. I conclude the piece with an overview of some key contributions that practitioners with PILPG have made to *Praxis for Peace*.

1. *See* Pub. Int'l L. & Pol'y Grp., https://www.publicinternationallawandpolicygroup.org [https://perma.cc/99GE-7DVE].

II. CONSTITUTIONAL REFORM: PROCESS AND DESIGN

In the area of constitutional reform, legal scholars have made important observations about constitutional reform processes and constitutional design approaches that have greatly influenced *Praxis for Peace* in the transitional justice space. In the area of constitution-making, these applicable theories have focused on the importance of the inclusive participatory process referred to as participatory constitution-making. I have added my own theoretical framework about the dangers of pursuing constitution-making during active conflict called conflict constitution-making. The theoretical frameworks for participatory constitution-making and conflict constitution-making are explored herein.

A. Participatory Constitution-Making

Since the late twentieth century, constitution-making after conflict has trended towards greater transparency, citizen engagement, and inclusivity.[2] Scholars have advocated for participatory constitution-making in post-conflict and transitioning States in order to help resolve long-standing disputes by fostering consensus among a diverse array of groups on national principles and by addressing the concerns of previously marginalized citizens.[3] Participatory constitution-making describes a set of transparent and inclusive drafting processes that have been utilized in post-conflict and transitioning States to ensure broad societal acceptance of a new regime or constitutional order, particularly those following a political revolution or the resolution of a civil conflict.[4] As a hallmark of legitimacy for modern constitutions, participatory constitution-making emphasizes citizen involvement and participation in the drafting of constitutions.[5] Participatory processes have frequently

2. For example, transition leaders in an array of countries, including Kenya, Uganda, Brazil, Thailand, Papua New Guinea, and South Africa have utilized participatory constitution-making processes. JASON GLUCK & MICHELE BRANDT, PARTICIPATORY AND INCLUSIVE CONSTITUTION MAKING: GIVING VOICE TO THE DEMANDS OF CITIZENS IN THE WAKE OF THE ARAB SPRING 5–6 (2015).

3. *Id.*; Angela M. Banks, *Expanding Participation in Constitution Making: Challenges and Opportunities*, 49 WM. & MARY L. REV. 1043, 1046–48 (2008); Vivien Hart, *Constitution-Making and the Transformation of Conflict*, 26 PEACE & CHANGE 153, 154 (2001); GLUCK & BRANDT, *supra* note 2.

4. *See* Hart, *supra* note 3 (describing the importance of constitutions and the process of constitution-making to completing the establishment of a new polity).

5. Banks, *supra* note 3 at 1046; Alicia L. Bannon, Note, *Designing a Constitution-Drafting Process: Lessons from Kenya*, 116 YALE L.J. 1824, 1826–27 (2007). *See generally* Kevin L. Cope, *The Intermestic Constitution:*

been post-conflict tools that have followed or been concomitant with the resolution of a political revolution or violent civil conflict. Best practice suggests that a cessation of hostilities and political settlement should be agreed to prior to the initiation of an effective participatory constitution-making process.[6]

For example, participatory constitution-making was successfully utilized in Tunisia following the Arab Spring and in South Africa following decades-long civil strife between minority groups and the apartheid government.[7] Transition leaders in countries such as Kenya, South Africa, Thailand, Papua New Guinea, Uganda, and Brazil have also pursued participatory constitution-making processes for many purposes, including to foster consensus on fundamental national principles, incorporate the aspirations of previously marginalized citizens, broaden the constitution makers' understanding of citizens' challenges, break from an autocratic past by laying a foundation for democratic practices, and make the constitution and future governments more legitimate in the eyes of citizens and the world.[8] These participatory constitution-making processes were largely viewed as legitimate by their citizenry and international experts because they were deliberative and transparent, occurred in phases, and provided opportunity for public feedback, participation, and acceptance (either directly or through elected representatives) among a diverse array of citizens with divergent racial, religious, and ideological backgrounds.[9]

The concepts of internal and external participatory systems help to describe the types of bodies and processes used in post-conflict participatory constitution-making.[10] Internal systems enable citizens to

Lessons from the World's Newest Nation, 53 Va. J. Int'l L. 667 (2013) (discussing the influence of transnational and domestic forces on constitutional rights and structural provisions).

6. Kirsti Samuels, *Post-Conflict Peace-Building and Constitution-Making*, 6 Chi. J. Int'l L. 663, 664 (2006) ("Constitution-making after conflict is an opportunity to create a common vision of the future of a state and a road map on how to get there. The constitution can be partly a peace agreement and partly a framework setting up the rules by which the new democracy will operate.").

7. *See generally* Darin E.W. Johnson, *Beyond Constituent Assemblies and Referenda: Assessing the Legitimacy of the Arab Spring Constitutions in Egypt and Tunisia*, 50 Wake Forest L. Rev. 1007 (2015) (discussing the constitution-making processes in conflicted regions); Ziyad Motala, *Constitution-Making in Divided Societies and Legitimacy: Lessons from the South African Experience*, 15 Temp. Pol. & C.R. L. Rev. 147 (2005) (using South Africa as an example of successful participatory constitution-making).

8. Gluck & Brandt, *supra* note 2, at 5–6.

9. *See* Samuels, *supra* note 6, at 664.

10. Angela M. Banks, *Challenging Political Boundaries in Post-Conflict States*, 29 U. Pa. J. Int'l L. 105, 108 (2007).

participate directly or through representatives in the drafting process.[11] External systems exist where the government appoints a drafting body's members and citizens are excluded from the drafting body but may participate through public meetings and written submissions.[12]

B. Conflict Constitution-Making

Building on this scholarly framework, in my work at the U.S. State Department during the Arab Spring, I observed the phenomenon of conflict constitution-making and developed this into a theoretical framework in my scholarship.

Many of the goals of participatory constitution-making processes are frustrated when constitution-making occurs during active conflict. Participatory constitution-making encourages deliberative negotiation and public participation in State creation and institutional design, but constitution-makers are unable to pursue these goals when the security environment does not permit widespread public engagement. Further, politically aligned armed actors can use violent civil conflict to manipulate constitution-making processes. Conflict constitution-making occurs when warring belligerents that seek to achieve political objectives through armed force co-opt ongoing constitution-making processes to achieve their political ends under the threat of force. These armed actors effectively transform the constitution-making process into another site of battle. The markers of a conflict constitution-making process include (1) extreme conflict amongst constitutional drafters that mirrors the positions of warring belligerents; (2) an inability of drafters to reach consensus on these political issues; and (3) boycott and rejection of non-consensual constituent assembly choices by major blocs. The incorporation of these conflicts into constitutional texts risks the creation of conflict constitutions with embedded conflicts, rather than embedded consensus solutions. By adopting constitutional provisions that are highly divisive, conflict constitution-making can exacerbate and prolong rather than reduce societal divisions.

For example, the initial constitution-making processes undertaken in Iraq and Afghanistan during the U.S.-led military interventions and occupations, and in the creation of South Sudan, had limited scopes due to ongoing violent conflict and could hardly be articulated as broadly participatory. Nevertheless, these constitution-making processes were initiated with the goal of moving the respective countries' political transitions forward. Despite ongoing civil conflict in each country, the constitution-making processes arguably advanced the political transition and consolidated authority within the new successor government in each country. In the extreme circumstance of ongoing violent civil war with competing governments, such as in Libya and

11. *Id.* at 109.

12. *Id.* at 108–09.

Yemen, the pursuit of constitution-making not only frustrates consensus-building with diverse constituencies, it fosters further conflict.[13]

In Libya and Yemen, the political transitions heralded by the Arab Spring devolved into civil wars that are ongoing at the time of writing this piece.[14] As the political transitions in Libya and Yemen devolved into civil war, the constitution-making processes also devolved into conflict over the same outcomes that armed elites sought on the battlefield by force.[15] As a consequence of these devastating civil wars, constitutional reform processes that were intended to cement political transitions from authoritarianism to democracy were instead held hostage by the armed perpetrators of the protracted civil conflicts. The violent intensity of the civil conflicts in Yemen and Libya undermined the conciliatory objectives of participatory constitution-making in both countries. The undermining of conciliatory processes, in turn, imperiled the creation of consensus constitutional texts and risked the creation of "conflict constitutions" that would prolong, rather than remedy, the sources of conflict. During civil war, unless a political detente can be reached that commits armed actors to a consensual and participatory constitution-making process, armed power brokers exploit the process and drive constitution-makers away from accommodation and into conflict. Such a conflict constitution-making process produces a "conflict constitution" that enshrines rather than ameliorates the sources of conflict.

The transition governments in Libya and Yemen each initiated a constitution-making process before the countries devolved into civil war. The declining security environment in each country prevented broad-based, inclusive participatory constitution-making. Warring political blocs began to press for their political aims within constitution-making bodies. The constitution-making processes themselves were inappropriate fora for much needed peacemaking as they did not allow for timely political negotiation and bargaining among key

13. Darin E.W. Johnson, *Conflict Constitution-Making in Libya and Yemen*, 39 U. Pa. J. Int'l L. 293, 297 (2017).

14. *See* Jacob Mundy, *A Decade Later, No End in Sight for Libya's Political Transition*, The Conversation (Jan. 25, 2022), https://theconversation.com/a-decade-later-no-end-in-sight-for-libyas-political-transition-175531 [https://perma.cc/AK7J-YL6P]; Johnson, *supra* note 13. The "civil wars" in Libya and Yemen began after the NATO intervention supporting the Libyan opposition's ouster of Muammar Gaddafi in Libya, and after the U.N. and U.S.-brokered departure of President Hadi in Yemen. Although civil conflict occurred immediately following the Arab Spring uprisings in both countries, the "civil wars" discussed in this piece began in 2014 when dual governments in each country arose, violently clashing with one another and claiming authority in the wake of the initial Arab Spring political transitions.

15. Johnson, *supra* note 13, at 297.

stakeholders.[16] Internationally-backed, external peace negotiations became necessary to open space for meaningful constitutional reform.

III. Constitutional Design

In multiethnic sectarian societies, intergroup conflicts (hereinafter "interethnic conflicts") are frequently a source of civil discord. Transitioning States have sought to address the problem of interethnic conflicts in various ways. Some States achieve this end by accommodating ethnic cleavages explicitly within constitutional structures.[17] States also employ various forms of federalism and decentralization to diffuse interethnic conflicts, which are frequently regional in nature.[18]

Scholars have generally referred to two constitutional design approaches for addressing interethnic conflicts in highly divided societies: consociationalism and centripetalism.[19] Both design features are both incorporated into constitutions and electoral laws to secure multiethnic support for a state's democratic institutions of governance.[20] Consociationalism accommodates various ethnic groups by guaranteeing group representation in governing bodies.[21] Centripetalism moderates ethnic group views through the election of moderate officials that represent multiethnic constituencies.[22]

A. Consociationalism—Ethnic Accommodation

Under consociational democracy, ethnic groups are granted a significant amount of autonomy over their affairs, a veto or partial veto over the central government's decisions, and proportional representation in government institutions.[23] Consociationalism is designed to protect ethnic groups from harm by other ethnic groups or

16. Jason Gluck, *Constitution-Building in a Political Vacuum: Libya and Yemen in 2014*, *in* Annual Review of Constitution-Building Processes: 2014, at 43, 44 (Melanie Allen et al. eds., 2015).

17. Johnson, s*upra* note 13, at 329–30.

18. *Id.* at 330.

19. *See* Donald L. Horowitz, *Conciliatory Institutions and Constitutional Processes in Post-Conflict States*, 49 Wm. & Mary L. Rev. 1213, 1216–17 (2008) (explaining the difference between the consociationalism design, which is centered on a "regime of guarantees," and the centripetalism design, which focuses on electoral incentives).

20. Johnson, s*upra* note 13, at 330.

21. *Id.*

22. *Id.*

23. *See* Karol Edward Soltan, *Constitution-Making at the Edges of Constitutional Processes in Post-Conflict States*, 49 Wm. & Mary L. Rev. 1409, 1424 (2008) (elaborating on the defining characteristics of a constitutional democracy).

by the central government.[24] Because consociationalism seeks to protect competing groups, one scholar has described consociationalism as "a peace treaty extended into the workings of government."[25] Consociationalists recognize and accommodate ethnic group identity and give them status *qua* ethnic groups within democratic institutions.[26] Consociationalists advocate for multiethnic governing coalitions, favoring systems in which parliamentary, executive, and administrative positions are allocated on a proportional group basis through proportional parliamentary electoral systems, multiethnic cabinets operate by consensus, and proportional hiring is used in the civil service and the military.[27] Consociationalists guarantee multiethnic outcomes through multiethnic seats in bodies. Under consociational models, a majoritarian democracy accommodates ethnic diversity through the explicit guarantee of ethnic representation in political bodies.[28] However, some have critiqued consociationalism by saying that it accommodates ethnic extremists because group representatives represent "their" ethnic group exclusively.[29]

B. Centripetalism—Ethnic Moderation

Centripetal democracies are designed to reward moderate behavior at the expense of extremists. Centripetal design features incorporated into constitutions and electoral laws incentivize moderate politicians within ethnic groups to compromise with moderate politicians in other ethnic groups.[30] Centripetal democracies contain mechanisms to elevate moderate ethnic representatives and parties, such as multiethnic electoral districts and interethnic coalitions.[31] Centripetalists believe that these approaches support moderation because individual representatives and coalition members must represent a multiplicity of views, rather than the views of their ethnic group exclusively.[32]

24. *Id.* at 1424.

25. *Id.*

26. Johnson, *supra* note 13, at 331.

27. *See* Horowitz, *supra* note 19, at 1216 (emphasizing that the consociationalist design is rooted in the principle of proportional inclusion and a group culture).

28. Johnson, *supra* note 13, at 331.

29. *See* Horowitz, *supra* note 19, at 1216–17.

30. *See* Soltan, *supra* note 23, at 1424 (explaining that the centripetal approach focuses on collaboration among moderate politicians at the expense of excluding extremists).

31. *See* Horowitz, *supra* note 19, at 1217 (explaining that the underlying mechanism of the centripetal approach consists of politicians compromising on ethnic issues in order to appeal for voter support from disparate ethnic groups).

32. *Id.* at 1218.

Centripetalists apply a wide range of tools to support moderates such as the alternative vote (a system that allows for the interethnic exchange of second and subsequent voting preferences) or requirements that candidates receive a plurality of the vote across an ethnically diverse territorial area in order to secure electoral victory.[33] In short, whereas consociationalism manages multiethnic diversity through autonomy and ethnic group representation, centripetalism attempts to manage multiethnic diversity through bolstering moderation across ethnic groups.

IV. Models for Allocation of State Power in Divided States

The allocation of state power between the central and local governments can drive civil conflict, as occurred in Libya and Yemen.[34] In light of this, comparative constitutional scholars have suggested various models of allocating state power through constitutional provisions to address ethno-regional conflict.[35] These models include ethnic federalism and political decentralization, which focus on the devolution of state power in a manner intended to reduce ethnic divisions.

A. Ethnic Federalism

Federalism refers to the sharing of state power between a national authority and subnational or regional authority.[36] Ethnic federalism is "a term used to describe a particular set of governmental arrangements specifically designed to ameliorate conflict among or between [ethnic] subgroups in a sharply divided state."[37] Ethnic federalism is a form of consociationalism as it reflects the elements of that system: "(1) executive powersharing among the representatives of all significant groups; (2) a high degree of internal autonomy for groups that wish to

33. *See id.* at 1217–18.

34. *See* Research Handbook on Post-Conflict State Building 15 (Paul R. Williams & Milena Sterio eds., 2020).

35. *Id.*

36. *See* Alemante G. Selassie, *Ethnic Federalism: Its Promise and Pitfalls for Africa*, 28 Yale J. Int'l L. 51, 56–58 (2003) (explaining that federalism contains two essential attributes: (1) dispersion of power among many centers of authority and (2) existence of constitutional mandates that legitimize the various centers of authority's claims of rights against the central government).

37. *Id.* at n.20 (internal citations omitted); *see e.g.*, Hallie Ludsin, *Peacemaking and Constitution-Drafting: A Dysfunctional Marriage*, 33 U. Pa. J. Int'l L. 239, 290 (describing the insertion of ethnic federalism clauses into Nepal's 2006 Interim Constitution, which led to the signing of the Comprehensive Peace Accord later that year).

have it; (3) proportional representation and proportional allocation of civil service positions and public funds; and (4) a minority veto on the most vital issues."[38] As with other forms of consociationalism, some scholars have questioned whether ethnic federalism exacerbates or ameliorates ethnic conflict.[39] While systems of federalism often differ, some of the characteristics of a constitutional system premised on ethnic federalism are discussed below.

1. Protections for Cultural and Linguistic Identity

The protection of an ethnic group's distinct cultural and linguistic identity within a broader national culture frequently underlies an ethnic group's desire for political autonomy. For instance, the South African Constitution recognizes ethnic groups' rights to their own languages and cultures and reinforces those rights through a federal form of government that empowers provinces to protect those rights.[40]

2. Ethnicity-Based "Self-Rule"

Some States have permitted subnational "self-rule" on the basis of ethnic identity to address ethnic groups' desire for cultural, linguistic, and political autonomy. For example, the Ethiopian Constitution provides for a model of ethnic federalism that allows subnational groups to have self-governing status on the basis of their ethnic identity.[41] The entire Ethiopian State is organized along an ethnic federal form of government that consists of nine ethnic-based federal states.[42] Most Sub-Saharan African States have avoided Ethiopia's model of constitutional recognition of federal self-rule, but ethnic groups have continued to press for ethnic-based federal self-rule in a number of sub-Saharan African countries, often because of their historic presence and concentration in particular regions of a country.[43]

38. David Wippman, *International Law and Ethnic Conflict on Cyprus*, 31 Tex. Int'l L.J. 141, 173 n.220 (1996).

39. *See* Selassie, *supra* note 36, at 86 (asserting that ethnic federalism exacerbates ethnic distrust and social discord because it deliberately and openly highlights ethnic differences that might otherwise fade with time).

40. *Id.* at 54.

41. *See id.* (discussing the inclusive approach to ethnic identity that the Ethiopian Constitution provides).

42. *See id.* at 54–55 (noting that eight of the nine provinces were organized along ethnic lines to make the province the principle vehicle for aggregating major ethnic groups' political, cultural, and linguistic identity). The Ethiopian model of ethnic federalism goes much further than South Africa's model which does not organize provinces primarily along ethnic lines.

43. *See id.* at 60 (highlighting the fact that many ethnic groups within African countries have staged uprisings against the central government to demand official recognition of their separate social identities).

3. Subnational Constitutions

Some, but not all, federal systems permit subnational units to create their own constitutions. Some subnational constitutional scholars have argued that merely the authority to create a subnational constitution, even if it is not exercised, can serve important conflict reduction goals.[44] The transitional constitutions of South Africa and Iraq both included provisions which allowed regional governments to develop subnational constitutions as part of the power-sharing arrangement negotiated among major ethnic groups.[45] In some circumstances, difficult issues that could not be resolved during national constitution-making processes can be deferred to the regional constitution-making process.[46]

4. Political and Legal Autonomy

Federal systems are designed to provide a degree of autonomy to regional governments to resolve legal and political and governance matters left to their competency by the national constitution.[47] Though rare, some federal arrangements, such as the Ethiopian Constitution, provide an option for a region to secede.[48] It is more typical, however, for negotiators to grant significant autonomy, short of secession, to

44. *See* Jonathan L. Marshfield, *Authorizing Subnational Constitutions in Transnational Federal States: South Africa, Democracy, and the KwaZulu-Natal Constitution*, 41 VAND. J. TRANSNAT'L L. 585, 589–90 (2008) (discussing how, although certain provinces did not create their own subnational constitutions, gaining the authority to do so was an important part of the political settlement to mitigate inter-ethnic conflict).

45. *See id.* at 622 (describing the strategic provisions in transition constitutions that help create a smooth transition of power); *see also* Michael J. Kelly, *The Kurdish Regional Constitutional Within the Framework of the Iraqi Federal Constitution: A Struggle for Sovereignty, Oil, Ethnic Identity, and the Prospects for a Reverse Supremacy Clause*, 114 PENN ST. L. REV. 707 (2010) (discussing the creation and adoption of the Kurdish regional constitution).

46. *See* Kelly, *supra* note 45, at 746 (discussing that one such issue left unresolved in the federal constitution was the status of the oil rich city of Kirkuk in Iraq, wherein both Baghdad and the Region of Kurdistan wanted to maintain control of Kirkuk and the Iraqi constitution deferred resolution of the issue to a referendum; ultimately, the regional Kurdish constitution defined Kirkuk as part of the Kurdish region).

47. *See* ELLIOT BULMER, FEDERALISM: INTERNATIONAL IDEA CONSTITUTION-BUILDING PRIMER 12, at 7 (2d ed. 2017).

48. *See* Selassie, *supra* note 36, at 64 (discussing how the ethnic-federal system of government in Ethiopia enables it to accommodate ethnic groups' cultural, linguistic, and political decisions).

ethnic groups, such as the Kurds in Iraq, in order to keep the regional ethnic group within the State.[49]

B. Political Decentralization

Whereas federal governments share political power with regional governments, unitary States decentralize singular national administrative authority to local governments.[50] Federal systems create subnational (regional) governance structures such as governors, regional parliaments, and regional courts that exercise exclusive or concurrent powers with the central government. In contrast, unitary State decentralization does not require the creation of subnational regional governance structures to share power with the central government. Decentralization is an administrative delegation of central authority to subordinate geographic or functional units.[51]

The objectives of federalism and decentralization may also differ. As discussed above, federalism can ease tensions in highly divided societies with ethnic groups centered in different regions by providing a degree of ethno-regional autonomy.[52] In a democratic system, decentralization goes beyond the mere administration of central authority in also fostering democratic stability by supporting individual rights and collective self-government.[53] One scholar argues that democratic decentralization gives people better incentives, more opportunity to exercise their rights, and less reason to oppress one another.[54] These are the precise interests that individuals in highly divided ethno-regionally diverse societies have in a reconstructed State—the ability to exercise their rights free of oppression.

In examining the different forms by which democratic decentralization may occur, it is helpful to use Professor Roderick Hills'

49. *See* Kelly, *supra* note 45, at 726 (explaining that the Kurds settled for a federal structure of autonomy and regionalism).

50. Ctr. for Const. Transitions, Decentralization in Unitary States: Constitutional Frameworks for the Arab States Region 11–12 (2014) [hereinafter Decentralization in Unitary States].

51. Edward L. Rubin & Malcolm Feeley, *Federalism: Some Notes on a National Neurosis*, 41 UCLA L. Rev. 903, 910 (1994).

52. *See* Decentralization in Unitary States, *supra* note 50, at 12 (noting that one goal of a federal system of governance is to ease tensions between different groups in society).

53. *See* Roderick M. Hills, Jr., *Is Federalism Good for Localism? The Localist Case for Federal Regimes*, 21 J.L. & Pol. 187, 190–91 (2005) (critiquing Edward Rubin and Malcom Feely for characterizing the value of decentralization as primarily being administrative efficiency, and stating that it serves fundamental purposes crucial to democracy).

54. *See id.* at 191 (arguing that decentralization feeds into the goals of self-government).

rubric of federalist, unitary, and localist democracies.[55] The attributes of a federalist democracy were discussed above. A unitary democracy exists where the central government may devolve power and responsibilities to a subnational local entity but that entity or subnational unit receives no protections in the national constitution or law—its authority and existence are at the whim of the central government.[56] In a unitary democracy, the local subnational unit exists merely as an instrumentation of the central government and carries out national law in accordance with local conditions.[57] In a localist democracy, the local government is granted authority under the national constitution, which protects it from interference by the national government (or regional government, if one exists) in its areas of competency.[58]

In ethno-regionally divided societies, a federalist or localist democracy may be beneficial, as both approaches provide constitutional guarantees that ethnic groups will have control over their affairs at the regional and/or local level. In some circumstances, a decentralized localist democracy might be preferred to a federalist democracy. For example, national governments might fear that an ethnically-defined regional government might seek to declare independence from the highly-divided State—a recurring fear of the national governments of Iraq, Iran, Syria, and Turkey, regarding Iraq's Kurdish Region.[59] Devolving power to local authorities rather than to regional governments is an alternative constitutional design option that supports local autonomy, without empowering a regional government that might compete with the State. In divided multiethnic States, such as Kosovo, the creation of decentralized local governments helped to

55. *See id.* at 195–99 (distinguishing decentralized regimes into "federalist," "unitary," or "localist" based on the central government's power to regulate and interfere with local governments).

56. *See id.* at 198–99.

57. *See id.* at 198 (discussing how subnational governments in a unitary democracy do not receive legal protection, and thus function to carry out national law).

58. *Id.* at 199.

59. *See* Kelly, *supra* note 45, at 726 (noting Syria, Iran, and Turkey's concern that an independent Kurdistan may lead to secessionist movements among their own Kurdish populations). This fear of ethnic secession is not unfounded. As the International Court of Justice determined in its Advisory Opinion regarding Kosovo's Unilateral Declaration of Independence, such declarations of independence by ethnically defined regions are not violations of general international law and may represent a people's appropriate exercise of their right to self-determination. *See also* Elena Cirkovic, *An Analysis of the ICJ Advisory Opinion on Kosovo's Unilateral Declaration of Independence*, 11 German L.J. 895, 900 (2010) (discussing the dialogue surrounding the right to external self-determination and the recognition of states that do break off within the broader arena of international law).

prevent the partition of the state along ethnic lines by creating local institutions in which Kosovo Serbs and Albanians cooperated.[60] In such environments, local decentralization may foster national unity and stability to a greater degree than regional federalism.[61] However, the quality and nature of the political decentralization in a specific State will determine whether it fosters greater democratic accountability and local citizen engagement.

V. Peace Processes and Accountability for Atrocity Crimes

Legal scholars have examined how issues of legal accountability for grave human rights violations are addressed during peace negotiations.[62] These scholars have offered theoretical frameworks for understanding this dynamic. For example, peace scholars have long debated the question of peace versus justice.[63] The debate centers around the issue of whether parties to a peace process, some of whom may have been engaged in the commission of international crimes, would agree to negotiate peace if there is the potential that they themselves would subsequently be subjected to justice through criminal accountability.[64]

Historically, amnesty played a central role in many twentieth century peace agreements and was often seen as a necessary trade-off for peace. For example, Turkish forces, who many considered responsible for the massacre of eight hundred thousand to one million Armenians[65] during World War I, were given amnesty in the 1923 Treaty of Lausanne.[66] In another instance of impunity, French and Algerians soldiers who massacred thousands of civilians during the

60. *See* Cirkovic, *supra* note 59, at 896, 908–09.

61. *See* Decentralization in Unitary States, *supra* note 50, at 30–34 (explaining that decentralization preserves national stability by broadening citizenship participation and fragmenting central power).

62. For an examination of this issue in the context of the Sudan peace process, see generally Darin Johnson, *Revolution, Peace and Justice in Sudan*, 43 U. Pa. J. Int'l L. 187 (2021).

63. *See generally* Richard J. Goldstone, *Peace Versus Justice*, 6 Nev. L.J. 421 (2005–2006).

64. *Id.* at 422–23.

65. *See* Geoffrey Robertson, *Was There an Armenian Genocide?*, 4 U. St. Thomas J.L. & Pub. Pol'y 83, 100 (2010) (describing the number of Armenians massacred).

66. Treaty of Peace with Turkey [Treaty of Lausanne], ch. VIII, July 24, 1923, *in* 2 The Treaties of Peace 1919–1923 (1924).

Algerian War were given amnesty under the Évian Agreement of 1962.[67] During the 1980s, in Argentina, Chile, El Salvador, Guatemala, and Uruguay, former regime officials who had engaged in widespread atrocity crimes against thousands of their citizens, including torture and killing by death squads, were given amnesty as part of the political transition to new governments.[68]

These blanket amnesties contributed to an initial peace, but in many instances it was not a durable peace. Often amnesty resulted in perpetrators returning to positions of power and recommitting atrocities, or the amnesties fed lingering societal resentments that led to a lack of social cohesion and recurrence of the conflict. For example, a century after the Armenian genocide, many in the Armenian community are still seeking a form of acknowledgement or reparations related to the massacre by Turkish forces during WWI.[69] Regarding recurrence, many of the Algerian combatants receiving amnesty during the Algerian War were involved in committing similar atrocities in the Algerian Civil War.[70]

A move away from blanket amnesty in exchange for peace began to occur in the late twentieth century, as hybrid international criminal tribunals in Rwanda and Yugoslavia were established,[71] and the Rome Statute of the International Criminal Court was completed.[72] These new institutions reflected a growing consensus within the international legal community that accountability following conflict is an integral part of long-term peace in post conflict environments.[73] The peace versus justice dilemma evolved into a general consensus that transitional justice arrangements should provide for both peace and justice.[74] Despite this general consensus, peace versus justice tradeoffs continue to abound. Different frameworks that transitional justice scholars and practitioners have developed to explore the ongoing peace versus justice

67. Paul R. Williams, *Lawyering Peace: Infusing Accountability into the Peace Negotiations Process*, 52 Case W. Rsrv. J. Int'l L. 491, 494 (2020).

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.* at 499–502 (discussing the creation of the Rwanda and Yugoslavia Tribunals and the ICC).

72. Juan Menendez, Keynote Address at the McCulloch Center for Global Initiatives, Justice and Imagination: Building Peace in Post-Conflict Societies Conference, Justice or Peace? Can We Have Both? 4 (Mar. 1, 2014), https://www.mtholyoke.edu/sites/default/files/global/docs/Keynote.pdf [https://perma.cc/QS87-WVBD] (discussing the emergence and importance of the Peace with Justice framework).

73. Williams, *supra* note 67, at 498–99.

74. *Id.*

debate include "Peace First," "Justice First," and "Peace with Justice." This section explores each in turn.

A. Peace First Approach

The first theoretical framework in the Peace versus Justice dilemma is referred to as the Peace First approach. The Peace First approach prioritizes peace over accountability, and is singularly focused on achieving an end to a conflict through a negotiated peace to save lives as quickly as possible.[75] Under this view, scholars have noted:

> The singular role of [peace] negotiators is to seek an agreement that brings the most immediate end to the violence. All other goals and concerns that may impede immediate peace should be pushed aside. In this way, the approach is single-minded and pragmatic: peace is the priority and any obstacle to peace should be avoided or eliminated.[76]

Advocates of the Peace First approach generally assert that accountability should not be pursued immediately if doing so would prolong the immediate conflict.[77] Within a peace process, negotiating parties who have committed atrocities are often seen as advocates for a Peace First approach, as they hope to avoid accountability for their crimes.[78] Advocates of a Peace First approach would say that its benefits include saving lives as quickly as possible and ending the destructive harm that violence brings.[79]

An example of a Peace First approach is the Arab Spring conflict in Yemen that arose in 2011.[80] The Government security forces responded to a Yemeni student uprising with violence that led 250 deaths, 1,000 injuries, and 100,000 displacements in ten months.[81] The Gulf Cooperation Council ("GCC") stepped in and negotiated an end to hostilities and a peace agreement that gave Yemeni President Saleh immunity from prosecution for any crimes that he committed during his thirty-five-year tenure, as long as he stepped down and transferred

75. Paul R. Williams, Lisa K. Dicker & C. Danae Paterson, *The Peace vs. Justice Puzzle and the Syrian Crisis*, 24 ILSA J. Int'l & Compar. L. 417, 421 (2018).

76. *See id.* at 420–21 (describing the theories underpinning the Peace First approach and how one the most salient priorities under this approach is ending the violence).

77. *Id.* at 424–25.

78. *Id.*

79. *Id.* at 421.

80. *See* Johnson, *supra* note 13, at 321–22 (discussing how Yemen President Saleh was provided amnesty for some human rights violations to leave office with the goal of quelling the Arab Spring conflict).

81. *Id.* at 321.

power to his Vice President.[82] The GCC-mediated resolution involving Saleh reflects the overall benefits and drawbacks to a Peace First approach—although Saleh's departure and amnesty agreement may have ended the early phase of the conflict in Yemen, the agreement ultimately allowed Saleh to retain his freedom and political influence.[83] He later returned to Yemen to work with the armed Houthi secessionist movement that devolved the country into a protracted civil war.[84]

B. Justice First Approach

The second theoretical framework is known as a Justice First approach. In a peace process, a Justice First approach prioritizes justice through accountability measures such as prosecution.[85] A Justice First approach might tolerate a prolonged peace process so long as prosecution for atrocity crimes is part of any negotiated settlement.[86] Parties to a conflict whose members have been the primary victims of atrocity crimes and individual victims of atrocity crimes are often seen as proponents of a Justice First approach.[87] External entities such as States that have ratified the ICC Statute and international institutions, such as the ICC, are seen as advocates of a Justice First approach.[88]

The mechanisms that are used in a Justice First approach are the ICC, ad hoc international criminal tribunals, hybrid tribunals, specialized domestic courts, universal jurisdiction, and the prohibition of any form of amnesty that violates international law.[89] For example, the ICC has prioritized justice by initiating investigations of its own volition or at the request of States while parties are amid negotiating peace.[90] In the Sudan context, some peacemakers, including former U.S. Envoy to Sudan Andrew Natsios, argued that the ICC's 2008 issuance of an arrest warrant for Omar al-Bashir's international crimes in Darfur would undermine the peace process with Darfur and the regime's

82. *Id.* at 321–22.

83. *See id.*

84. Shuaib Almosawa & Ben Hubbard, *Yemen's Ex-President Killed as Mayhem Convulses Capital*, N.Y. TIMES (Dec. 4, 2017), https://www.nytimes.com/2017/12/04/world/middleeast/saleh-yemen-houthis.html [https://perma.cc/8BKR-NGGK].

85. Williams, Dicker & Paterson, *supra* note 75, at 430.

86. *Id.* at 430–31.

87. *Id.* at 431.

88. *Id.*

89. *Id.* at 434.

90. *Id.* at 442.

implementation of the 2005 North-South peace accord.[91] However, following Bashir's toppling by the 2019 revolution, observers have argued that Bashir's prosecution by the ICC will further the cause of peace[92] and the Sudanese transition government has publicly stated that it will turn Bashir over to the ICC.[93]

C. Peace with Justice Framework

Peace with Justice is an emerging framework that argues that peace and justice are mutually enforcing rather than mutually exclusive and that both objectives can and should be pursued concurrently.[94] Peace with Justice advocates observe that by combining peace with justice during a peace process, the form of justice pursued naturally shifts from retributive to restorative, because participants in a post-conflict peace process may see restorative justice as an effective tool for reconciliation.[95] Restorative justice principles focus on reconciling the wrongdoer with the victim through participatory processes that acknowledge wrong-doing and seek reparation and healing.[96] These principles have informed transitional justice mechanisms such as truth and reconciliation processes.[97] Additional non-prosecutorial restorative justice measures in transitional contexts include localized traditional justice measures, memorialization, reparations, and institutional reform.[98] The long-term peace envisioned by Peace with Justice relies upon the strategic sequencing and phasing of various transitional justice mechanisms that embody restorative justice values.[99] Strategic sequencing anticipates that parties will seek justice following the completion of a peace agreement, so justice and peace are not prioritized

91. Opheera McDoom, *ANALYSIS—Justice Clashes with Peace on Darfur Bashir Warrant*, REUTERS (July 14, 2008, 7:09 AM), https://www.reuters.com/article/idUSMCD424646 [https://perma.cc/LS2K-UQBD].

92. *See e.g.*, Ali Anzola, *Al-Bashir's Trial at the ICC Will Be a Victory for the Popular Revolution*, MIDDLE E. MONITOR (Feb. 20, 2020, 5:00 PM), https://www.middleeastmonitor.com/20200220-al-bashirs-trial-at-the-icc-will-be-a-victory-for-the-popular-revolution/ [https://perma.cc/CUA6-FL6E].

93. *Sudan Says Will 'Hand Over' Al-Bashir to ICC for War Crimes Trial*, AL JAZEERA (Aug. 12, 2021), https://www.aljazeera.com/news/2021/8/12/sudan-omar-al-bashir-icc-war-crimes-darfur [https://perma.cc/5Y8Z-EWUK].

94. *See generally* Menendez, *supra* note 72 (discussing the emergence and importance of the Peace with Justice framework).

95. Williams, Dicker & Paterson, *supra* note 75, at 444.

96. Carrie Menkel-Meadow, *Restorative Justice: What Is It and Does It Work?*, 3 ANN. REV. L & SOC. SCI. 10.1, 10.4 (2007).

97. *Id.*

98. *See id.* at 10.3

99. Williams, Dicker & Paterson, *supra* note 75, at 445.

over one another in separate processes, but rather carefully planned together as part of a long-term process.[100]

D. Goal: Durable Peace with Justice

Within the peace and justice dialogue, there is a general consensus today that both peace and justice are required for long-term stability arising out of conflict, and minimizing either aim threatens that stability. Justice and accountability mechanisms cannot achieve their objectives of deterrence and non-recurrence if peace is not established. Weak peace without justice is likely to result in a recurrence of the conflict. Peace negotiators need to "carve out space for accountability and justice in order to achieve a durable peace."[101]

The importance of justice for durable peace can be seen in the present-day response to the Latin American transitions of power during the twentieth century that emphasized peace without justice through blanket amnesty for government perpetrators.[102] Over the last two decades, victims challenged these amnesty laws in domestic and regional courts.[103] Domestic pressure and persistent calls for accountability culminated in 2005, when the Argentine Supreme Court of Justice formally declared blanket amnesties unconstitutional and void.[104] Following in the footsteps of Argentina, and in compliance with international law, Uruguay, Peru, and El Salvador have all formally or informally annulled their amnesty laws and are now bringing former regime perpetrators of human rights atrocities to justice.[105] After several decades, the survivors of these atrocity regimes continue to demand justice as a core element of long-term peace.

VI. PILPG Scholarship and the *Praxis for Peace*: Looking to the Future

Legal scholars affiliated with PILPG have significantly contributed to the legal theories undergirding the *Praxis for Peace*, drawing from their work with PILPG and the broader transitional justice field. This section highlights some of the more recent scholarship that contributes to the *Praxis for Peace* produced by PILPG scholars.

100. *Id.*

101. Williams, *supra* note 67, at 511.

102. Santiago A. Canton, *Amnesty Laws*, *in* Victims Unsilenced: The Inter-American Human Rights System and Transitional Justice in Latin America 167, 167–68 (Catherine A. Sunshine ed., Gretta K. Siebentritt trans., 2007).

103. *See generally id.*

104. *Id.* at 181.

105. *See generally id.*

The scholarship of PILPG scholars has been particularly helpful in contributing to the *Praxis for Peace* as the contributions have focused on complex issues of public international law that arise in the transitional justice space. PILPG scholars have sought to distill lessons from these environments that may be useful to scholars and practitioners working in these spaces. Three recent books by PILPG scholars reflect this goal. PILPG founder and American University Professor of Law and International Relations Paul Williams has recently published a book that draws from thirty years of lessons learned during peace negotiations with PILPG to help practitioners understand and address the key issues that arise in the unique context of negotiating a peace process.[106]

Paul Williams and PILPG Cofounder and Case Western Law Co-Dean Michael Scharf partnered with PILPG Managing Director and Cleveland State University Law Professor Milena Sterio to author an important book that examines the ways in which the Syrian conflict has impacted the development of international law.[107] The book benefits from the unique insights that the authors were able to add from PILPG's work assisting with the Syrian peace process. Paul Williams and Milena Sterio also coedited a third recent book, called the Research Handbook on Post-Conflict State-Building. This book is essentially a *Praxis for Peace* guide for scholars and practitioners in State-building after conflict and includes chapters from PILPG scholars and practitioners, including myself, on a broad range of topics including post-conflict constitution-making, electoral reform, security infrastructure, civil society, the rule of law and human rights.[108]

PILPG scholars have written extensively in the areas of atrocity prevention and international criminal law. Some of the more recent contributions of PILPG scholars to the *Praxis for Peace* in international criminal law are discussed herein. Jane Stromseth, a Georgetown University Professor of international law, a PILPG Senior Peace Fellow, and the former Deputy Ambassador of Global Criminal Justice at the U.S. State Department, has contributed to the *Praxis for Peace* with scholarship that has focused on the challenges of strengthening the rule of law in the aftermath of armed conflict.[109] In a recent piece, she emphasizes the importance of a synergistic approach to rule of law building that is ends-based and strategic; adaptive and

106. Paul Williams, Lawyering Peace 2 (2021).

107. Paul Williams et al., The Syrian Conflict's Impact on International Law (2020).

108. *See generally* Research Handbook on Post-Conflict State Building (Paul Williams & Milena Sterio eds., 2020).

109. *See, e.g.*, Jane Stromseth, *Post-Conflict Rule of Law Building: The Need for a Multi-Layered, Synergistic Approach*, 49 Wm. & Mary L. Rev. 1443, 1446–47 (2008).

dynamic; where external actors have better cultural understanding of the contexts in which they operate and where women and other progressive local actors are empowered to advance human dignity and human rights within their own societies.[110] Drawing upon her experience serving as Deputy to the Ambassador-at-Large in the State Department's Office of Global Criminal Justice, she has also written a recent piece that examines the importance of U.S. engagement and support for global criminal justice in addressing and preventing atrocity crimes and highlights the ways in which thoughtful U.S. support to international, hybrid and domestic justice mechanisms is consistent with U.S. values and interests.[111]

Margaret deGuzman, James E. Beasley Professor of Law at Temple University, a PILPG Senior Peace Fellow, and a recent appointee to serve as a Judge on the U.N. International Residual Mechanism for Criminal Tribunals, has written extensively in the area of international criminal law. Her recent book explores the central role that the concept of gravity has played in the development of international law and proposes strategies for regimes and practitioners aimed at increasing the legitimacy of international criminal law.[112] Her recent scholarship has also encouraged international criminal law practitioners to focus on the goals of the communities that they serve, so that any tension between local and global goals does not become an impediment to the legitimacy and effectiveness of international criminal law.[113] Her recent scholarship has also examined sentencing in the International Criminal Tribunal for Yugoslavia and made recommendations for international criminal sentencing in line with community goals and values.[114]

110. *Id.* at 1452, 1456–57, 1459.

111. Jane Stromseth, *The United States and the International Criminal Court: Why Undermining the ICC Undercuts U.S. Interests*, 47 Ga. J. Int'l & Comp. L. 639, 643 (2019).

112. Margaret M. deGuzman, Shocking the Conscience of Humanity: Gravity and the Legitimacy of International Criminal Law 2 (2020).

113. Margaret deGuzman, *Mission Uncertain: What Communities Does the ICC Serve?*, *in* The Elgar Companion to the International Criminal Court 387, 389 (Margaret M. deGuzman & Valerie Oosterveld eds., 2020); Margaret deGuzman, *Mixed Messages: The Sentencing Legacy of the Ad Hoc Tribunals*, *in* The Legacy of Ad Hoc Tribunals in International Criminal Law: Assessing the ICTY's and ICTR's Most Significant Legal Accomplishments 269, 270–71 (Milena Sterio & Michael P. Scharf eds., 2019); Margaret deGuzman, *The Global-Local Dilemma and the ICC's Legitimacy*, *in* Legitimacy and International Courts 62, 78 (Harlan Grant Cohen et al. eds., 2017).

114. Margaret deGuzman, *Punishing for Humanity: The Sentencing Legacy of the International Criminal Tribunal for Former Yugoslavia*, *in* Legacies of the International Criminal Tribunal for the Former Yugoslavia: A Multidisciplinary Account 391, 391 (Carsten Stahn et al. eds., 2020).

Brianne McGonigle Leyh, Utrecht University Professor of Law and PILPG Senior Legal Adviser and Dr. Julie Fraser, Utrecht University Professor of Law, and PILPG Senior Peace Fellow, have drawn from their practice with PILPG in transitional justice to inform their scholarship. They have co-authored several recent scholarly pieces, including a book on the intersections of law and culture in the International Criminal Court.[115] In a chapter within their book, Fraser examines the relevance of Islamic law for International Criminal Court jurisprudence in cases from Afghanistan, Mali, Sudan, Libya, and other Islamic majority States and observes that the ICC has missed an opportunity to engage with relevant and compatible Islamic norms in order to make justice and accountability more impactful for affected communities.[116] McGonigle Leyh and Fraser also recently coauthored an article on reparations for victims of atrocities that examines the theoretical approaches to repairing victims' harm and identifies many of the shortcomings that exist in practice that must be addressed.[117]

Dr. Kushtrim Istrefi, Utrecht University Professor of Law and PILPG Senior Peace Fellow, has also written extensively in the areas of international crimes and human rights accountability.[118] Drawing from his experience serving as counsel in the case of *Mothers of Srebrenica v. Netherlands* before the European Court of Human Rights, one his recent scholarly articles explores the obligations that State authorities have to protect civilians when faced with situations that require the prevention of genocide (Srebrenica) or hostage taking.[119]

Dr. Istrefi has also written in the area of constitution-making and constitutional reform. One of his recent scholarly pieces explores the emerging practice of domestication of human rights instruments in post-conflict constitution-making, and the inspirational role that such

115. Intersections of Law and Culture at the International Criminal Court (Julie Fraser & Brianne McGonigle Leyh eds., 2020).

116. Julie Fraser, *Exploring Legal Compatibilities and Pursuing Cultural Legitimacy: Islamic Law and the ICC*, *in* Intersections of Law and Culture at the International Criminal Court (Julie Fraser & Brianne McGonigle Leyh eds., 2020).

117. *See generally* Brianne McGonigle Leyh and Julie Fraser, *Transformative Reparations: Changing the Game or More of the Same?*, Cambridge Int'l L.J. *39 (2019).*

118. *See generally* Kushtrim Istrefi, *Kosovo's Quest for Council of Europe Membership*, 43 Rev. Cent. & E. Eur. L. 255 (2018); Kushtrim Istrefi & Emma Irving, *Rights in the Populist Era, A Comment on* Bayev v. Russia *(ECtHR): More Didactic than Persuasive*, 31 Harv. Hum. Rts. J. 159 (2018).

119. *See generally* Kushtrim Istrefi, *The Right to Life in the* Mothers of Srebrenica *Case: Reversing the Positive Obligation to Protect from the Duty of Means to that of a* Result, 36 Utrecht J. Int'l & Eur. L. 141 (2021).

external human rights sources play in post-conflict societies.[120] Similarly, my recent scholarship has made observations about constitution-making in the wake of the Arab Spring. Using the constitution-making processes in several Arab Spring countries including Egypt, Tunisia, Libya and Yemen as case studies, my recent scholarship assesses the extent to which participatory constitution-making has been implemented in each of these case studies and has examined the impact of civil war and conflict on constitution-making processes.[121]

These recent scholarly pieces offer just a small example of the significant ways in which scholars affiliated with PILPG have significantly contributed to the *Praxis for Peace*. The breadth of these recent contributions is indicative of the impact that the PILPG scholarly community has had in its areas of expertise: constitutional reform, peace processes, and international criminal justice. During its first twenty-five years, the PILPG scholarly community has produced over two hundred fifty scholarly pieces that have expanded the *Praxis for Peace*.[122] The PILPG scholarly community will undoubtedly continue to expand the *Praxis for Peace* in significant ways for years to come.

120. Kushtrim Istrefi & Visar Morina, *Judicial Application of International Law in Kosovo*, *in* Judicial Application of International Law in Southeast Europe 165, 165 (Sinisa Rodin & Tamara Perišin eds., 2015).

121. *See generally* Darin E.W. Johnson, *Beyond Constituent Assemblies and Referenda: Assessing the Legitimacy of the Arab Spring Constitutions in Egypt and Tunisia*, 50 Wake Forest L. Rev. (2015); Johnson, *supra* note 13, at 321–22.

122. Bibliography of PILPG Scholarly Community Contributions (on file with author).