

# UNREVOLUTIONARY REVOLUTION?

YANIV ROZNAI\*

---

## I. THE OXYMORON OF CONSTITUTIONAL REVOLUTION

The definition of the term “revolution” in juridical studies, as very often understood, concerns a constitutional change not according to the existing legal rules of change. This derives from Hans Kelsen’s approach to revolution that focused on the compatibility of legal changes with the formal constitutional procedure for change. According to Kelsen: “[A] revolution . . . is every not legitimate change of this constitution or its replacement by another constitution. . . . From the point of view of legal science. . . . Decisive is only that the valid constitution has been changed or replaced in a manner not prescribed by the constitution valid until then” (Kelsen 1967, 209). With this presupposition in mind, it is clear why the idea of a constitutional revolution may be regarded as an oxymoron. As Gary Jeffrey Jacobsohn and I highlight in our introduction to our book, *Constitutional Revolution*, “If a certain constitutional change is revolutionary, it must be unconstitutional. If it is a constitutional change—how can it be revolutionary?” The book is a conceptual and comparative journey in exploring this alleged oxymoron in order to explain how this term could and should be understood.

It might be useful to note that there could be similar variations to this oxymoron. Consider, for example, the concept of the *Partido Revolucionario Institucional* in

---

\* Associate Professor, Harry Radzyner Law School, Reichman University (IDC Herzliya). I would like to thank the contributors and Constitutional Studies, and especially Prof. Howard Schweber, for hosting this symposium.

Mexico. The Institutional Revolutionary Party that dominated Mexican political institutions from 1929 until the end of the twentieth century was originally called the National Revolutionary Party, or Partido Revolucionario Nacional. In 1946 the party changed its name to the current Institutional Revolutionary Party, which was considered by many to be the perfect oxymoron, as revolutions are usually associated with the destruction of institutions. How can there be such a thing as an institutional revolution? As Rubén Gallo explains, the idea behind this apparent paradox was to institutionalize the Mexican revolution (Jacobsohn and Roznai 2020, 5).

Alternatively, consider the Quiet Revolution (*Révolution tranquille*) in Québec during the early 1960s. After the election of Jean Lesage, his administration conducted dramatic reforms in almost all aspects of society. From the outset, in light of their significance and implications these reforms were described in newspapers as revolutionary, while various adjectives such as “peaceful,” “legislative,” or “democratic” were attached to it to clarify the meaning of this revolution (Warren 2016). While the precise origins of the expression “*Révolution tranquille*” remains questionable, clearly it was gradually integrated into the existing lexicon and became the prevailing description of the change experienced in Québec at that time.<sup>1</sup> Nevertheless, although becoming prevailing, the expression consists of two *prima facie* contradictory terms that caused confusion. As Dorval Brunelle wondered:

[H]ow can a revolution be quiet? How can “tranquility” on a social or individual level constitute a revolutionary ferment? Are we not duped by these terms? The first difficulty raised by this expression is thus an interpretation of the events in question: we do not really know what we are talking about when we use the phrase “Quiet Revolution,” except that, in one sense or another, it was both revolutionary and quiet. (Brunelle 1978, 3, cited in Warren 2016, n.4)

Or, consider the idea of “The Democratic Coup d’État.” Traditionally, the image we have of military coups is that of military officials overthrowing the existing regime in order to concentrate power in their hands in an authoritarian manner, and so a threat to democracy. However, Ozan O. Varol has shown how democracy often emanates through a military coup (Varol 2017). Likewise, in his article “Democratic Revolutions,” Richard Albert asked to abandon the procedural and mechanical theories of revolution – according to which revolution occurs suddenly

---

1. René Durocher, “Quiet Revolution,” *The Canadian Encyclopedia*, <http://www.thecanadianencyclopedia.ca/en/article/quiet-revolution/>.

and with violence, commonly not through democratic procedures, and shift the focus to value-judgment of the revolution's merits and its outcomes (Albert 2011).

Similar confusions arise concerning the concept of the constitutional revolution. What makes the revolution constitutional? Is it the process—a revolutionary change through constitutional means? Or is it the outcome—a revolution that creates a constitutional regime? Such ambiguities have led to the concept of constitutional revolution to be used or described in different terms and contexts.

Claiming that modern Japan had experienced two constitutional revolutions, Lawrence W. Beer, for example, used the concept to describe “a long process in which a fundamental shift takes place in constitutional values diffused throughout society by means of law, administrative actions, judicial decisions, and education, both formal and informal” (Beer 1982). The Persian Revolution of 1906–1911 is often defined as a constitutional revolution (See, e.g., Afary 1996; Bonakdarian 2006; Ansari 2016;). In contrast with Beer's definition, Ervand Abrahamian describes it as a “true revolution,” as it was “sharp, sudden, and violent” and “caused an immediate shift in the social location of power from the royal court ruled by the Qajar Shahs to a national parliament dominated initially by the urban middle classes” (Abrahamian 1979, 386). What, then, makes this revolution constitutional? Is it the result of a new constitution or the revolutionary claim to create a constitutional system of rule (For the latter approach see Sohrabi 1995)?

The ambiguity surrounding the term is also visible with regard to the transformation that occurred in Israel in the mid-1990s, which is commonly referred to as “the constitutional revolution,” to which we dedicate a lengthy discussion in our book (Jacobsohn and Roznai 2020, chap. 6). Yet even now, a quarter of a century after the dramatic constitutional change, it remains unclear whether the term “revolution” refers to the process of transition—that is, to the chosen legal process—or to the outcome, which involves the new constitutional arrangement that followed the adoption of the new basic laws on human rights and the famous United Mizrahi Bank judgment (CA 6821/93 United Mizrahi Bank Ltd. v. Migdal Cooperative Village, 49(4) P.D. 221 (1995)). According to our account, “[A] constitutional revolution can be said to exist when we are confronted with a paradigmatic displacement, however achieved, in the conceptual prism through which constitutionalism is experienced in a given polity” (Jacobsohn and Roznai 2020, 19). Our definition, which focuses on the substance rather than the process of the change, can encompass various constitutional transformations such as those that occurred in Iran, Japan, and Israel.

Our focus on substance provides, to my mind, a better description of constitutional revolutions than does Kelsen's somewhat formalistic definition. Consider

drastic constitutional changes that often take place while observing the formal constitutional change procedure—for example, the known transformation of democratic regimes to fascist or totalitarian regimes as occurred in Weimar or Vichy. Can these changes be described as “revolutionary”? After all, they occurred according to the prescribed procedures. Referring to Vichy and the July 1940 constitutional transformation, Andrew Shennan writes, “[I]t was . . . more a question of how, rather than whether, a constitutional revolution would occur” (Sherman 2017, 53). It seems inevitable to treat that constitutional change as revolutionary. The constitutional order was completely transformed. It has been completely modified. It was more than a mere amendment and perhaps even more than “a dismemberment”;<sup>2</sup> it was a complete replacement of constitutional ordering. Indeed, as we demonstrate in the book, in various countries, such as in Hungary, certain constitutional transformations, even if compatible with the formal rules of change, should be regarded as revolutionary.

So, the term “constitutional revolution” seems to be, *prima facie*, an oxymoron. To make sense of the meaning of the constitutional revolution, we should release ourselves from our previous understanding of revolutions. Some revolutions are unrevolutionary.

## II. CONSTITUTIONAL REVOLUTIONS IN SHAM OR AUTOCRATIC CONSTITUTIONS

Our conceptual account seeks to examine the change by which constitutionalism is experienced in a given polity. This, of course, raises difficult questions on sham constitutions or constitutions in nonconstitutionalist settings. Giovanni Sartori famously distinguished between “proper” constitutions, which “restrain the exercise of political power”; “nominal” constitutions, which “frankly,” “describe a system of limitless, unchecked power”; and “façade” constitutions, which neither constrain the state nor provide “reliable information about the real governmental process” (Sartori 1962, 861). In his study on constitutions in the Arab world, Nathan Brown showed how constitutions there can be described as nonconstitutional in the sense that they “organize power without limiting it” (Brown 2002, 12).

There are two separate issues here: the first is whether a constitution restrains governmental power, and the second is whether the constitution actually applies in practice. David Law and Mila Versteeg rightly classify a constitution as a sham

---

2. Richard Albert distinguished between a constitutional amendment—a “correction made to better achieve the purpose of the existing constitution”—and constitutional dismemberment, which is a self-conscious effort “to repudiate the essential characteristics of the constitution and to destroy its foundations” (Albert 2018, 1–3).

because “its provisions are not upheld in practice” (Law and Versteeg, 2013, 880). For them, even if a constitution fails to incorporate certain rights or substantive values, or even if it describes a tyrannical government, but it is upheld in practice, it cannot be labeled a sham constitution. Using this definition, it would be easier to examine how the idea of constitutional revolution applies in sham constitutions or autocratic regimes.

In fully sham constitutions, even dramatic constitutional reforms cannot be considered as revolutionary because they do not affect how constitutionalism is experienced in the polity. Consider the Hungarian communist Constitution of 1949, which was modeled after the 1936 Constitution of the Soviet Union. In 1972, the Hungarian Constitution was broadly amended—for example, by recognizing private producers and guaranteeing fundamental rights for all citizens (instead of only for workers). Nonetheless, as we mention in our book, these constitutional changes “were in fact window dressing for foreign policy purposes and had no real practical influence; the 1949 Constitution was widely viewed as a sham” (Jacobsohn and Roznai 2020, 17). Of course, formal amendments even to sham constitutions can be considered revolutionary if they have an actual and practical effect on the constitutional order and how constitutionalism is experienced. And so, the formal constitutional amendment of 1989 and 1990, which thoroughly transformed the Hungarian constitutional order from communism to a liberal democracy, were revolutionary, as the nature of constitutionalism (and the Hungarian Constitution itself) has been completely transformed (Jacobsohn and Roznai 2020, 78–88).

But what if there is no transitory context, Anna Fruhstorfer asks? Can there be a constitutional revolution? (Fruhstorfer, in this volume). Indeed, a constitutional revolution can take place in an autocratic regime even without a complete regime transition. Constitutional identity is not just the form of government or the regime type but can include such other features of the constitutional order as the core values or structure.. Constitutions in autocratic regimes, as aforementioned, should not be considered as sham if they apply in practice; and even if they empower rather than limit governmental power, they are still constitutions.<sup>3</sup>

Fruhstorfer shows that in an autocratic context (which for her includes several subtypes of authoritarian and hybrid regimes that build the opposite of a consolidated democracy), amendments can be dramatic although they do not transform the authoritarian nature of the regime. Focusing on Russia, she claims that a series of reform laws concerning the central-region relations have created a “a substantial

---

3. On constitutions as “power maps” that reflect the political power distribution within the polity, see Duchacek (1973, 18).

reorientation in the constitutional practice, and understanding of federalism and regionalism in Russia” and “offer a paradigmatic example of a constitutional revolution under autocracy” (Fruhstrofer, in this volume). Federalism can certainly be considered—though not in every case—as an essential feature of the constitutional order. For example, federalism is considered as an unamendable feature in various constitutions, such as the Brazilian Constitution of 1988 (Art. 60.4) or the German Basic Law of 1949 (Art. 79.3). In India, judges of the Supreme Court have suggested that federalism is considered one of the unamendable features that make the Indian Constitution’s basic structure (*Kesavananda Bharati v. State of Kerala* 1973), and likewise in Pakistan, Chief Justice of the Supreme Court Sajjad Ali Shah observed that federalism is among the salient features of the Constitution of Pakistan, features that are beyond the constitutional amendment power (*Mahmood Khan Achakzai v. Federation of Pakistan*, PLD 1997). And, in Austria, the Constitutional Court has declared federalism as a leading principle, and thus altering it should be regarded as a total revision of the constitution (Decision of Mar. 10, 2001, G 12/00, G 48-51/00). Accordingly, one can see why a paradigmatic shift in the federal structure can be regarded as revolutionary.

### III. A GENERAL CONSTITUTIONAL THEORY?

So, constitutional revolution can occur in both constitutional democracies and autocracies. But is it a general constitutional theory? In her comment, Fruzina Gárdos-Orosz challenges the idea by claiming that “it is difficult to understand how the notion of a constitutional revolution helps us in qualifying substantive major constitutional change as revolutionary in a legal sense if the steps and elements of this legal inquiry cannot be generally identified as applicable to all constitutional regimes.” “If the claim cannot be generalised,” she argues, “it cannot form a part of a general legal theory” (Gárdos-Orosz, in this volume).

In order to respond to this comment, it might be valuable to explain the type of theory we are proposing. Constitutional revolution is not a “grand theory” in the sense of “seeking to articulate the best general theory of the (liberal) constitution, the inquiry [of which] tends to take the form of a search for the ‘good constitution’” (Poole 2007). Our theory is grand or general only in the sense that it refuses to reduce the constitutional discourse to a particular jurisdiction. It does not focus on any specific jurisdiction and confronts the inquiry from a general perspective, transcending any specific boundaries. It accommodates and embrace many and diverse constitutional systems, from diverse frameworks (global south, global north, democratic and nondemocratic, etc.). But, importantly, it does not seek some moral

universalism. It neither aims nor attempts to provide a normative scheme of an ideal character of political phenomena. As Martin Loughlin notes, “[C]onstitutional theory does not involve an inquiry into ideal forms, since otherwise it would be completely absorbed into political philosophy. If constitutional theory is to form a distinct inquiry, it must aim to identify the character of actually existing constitutional arrangements” (Loughlin 2005, 186). We aim to provide, what Ran Hirschl terms “concept formation through multiple descriptions of the same constitutional phenomena across countries” (Hirschl 2008, 26), conceptualizing what constitutional revolution is and exemplifying it by a careful comparative analysis of several case studies (Germany, Hungary, India and Israel), although the concept may surely be applicable beyond the case studies. Thus, while the term “constitutional revolution” appears widely and frequently concerning constitutional events taking place around the world, we fill it with content, explicating its meaning.

True, our abandonment of procedural legality for a more substantive examination makes our approach somewhat less mathematical or scientific; there is no clear binary answer, and the analysis may be open to a discussion or contestation—precisely the type of interpretative discussion we seek to invite and encourage in our work. Yet, as we highlight, while constitutional transformations according to our account are “more open to interpretative contestation,” this does not make them “less revolutionary” (Jacobsohn and Roznai 2020, 20).

Gárdos-Orosz is worried that our theoretical approach may “open a door that leads to another world of normativity where we might get easily lost without clear standards” (Gárdos-Orosz, in this volume). Our conceptual account neither assumes nor provides clear standards of legality. Our claim is, as Jeffrey K. Tulis rightly puts it in his comment, that “some amendments are unconstitutional and some revolutions are constitutional” (Tulis in this volume, \_\_). And this statement also provides the beginning of an answer to the question posed by Gárdos-Orosz, “[I]s there, however, anything that can serve a specific element of a new normative theory?” (Gárdos-Orosz in this volume, \_\_). I believe the answer is yes. Our conceptual account may indeed serve some elementary basis for normative theories in at least two ways.

The first issue concerns the doctrine of unconstitutional constitutional amendments. And again, Tulis can serve as the reference point. He correctly notes that “all constitutions, no matter how democratic and open to revision, presuppose some limit to change in order to maintain the integrity of the constitutional design” (Tulis in this volume, \_\_). The core of the of the constitutional identity is in many jurisdictions implicitly or explicitly protected from formal amendments (Roznai 2017; Jacobsohn 2010, chap. 2). The doctrine of unconstitutional constitutional

amendments prohibits constitutional changes that harm the core characteristics of the constitutional order and in fact replace its identity with a new one. But, as we show, constitutional revolutionary changes are often an incremental process over time. This poses a challenge to the doctrine, which is meant to oppose formal constitutional changes that basically abandon the fundamental principles of the constitutional order and replace them with new ones, not minor or delicate changes inherent in the disharmonic constitution (Jacobsohn 2010, chap. 1).

This challenge is exacerbated in the context of democratic erosion whose central element is incrementalism consisting of many small steps. As Tom Ginsburg and Aziz Huq show “democratic erosion is typically an aggregative process made up of many smaller increments. But those measures are rarely frontal assaults on one of the three institutional predicates of liberal constitutional democracy, of the kind that might be associated with an overly totalitarian or fascist regime” (Ginsburg and Huq 2018, 90–91). Nonetheless, when these measures are considered cumulatively, the effect is momentous. As they state, “[A] sufficient quantity of even incremental derogation from a democratic baseline . . . can precipitate a qualitative change that merits a shift in classification” (Ginsburg and Huq 2018, 45). Likewise, Wojciech Sadurski writes that in Poland the “broad assault upon liberal-democratic constitutionalism produces a cumulative effect, and the whole is greater than the sum of its parts” (Sadurski 2019, 58). This is the crucial point. Often, each constitutional change on its own does not transform the constitutional order or is not considered as a constitutional replacement, but when these incremental changes are examined cumulatively, they too may lead to a revolutionary constitutional change. Quantity turns into quality (see Roznai 2021).

It is this danger that the dissenting judges saw in the German *Klass* case, disagreeing with the majority that the unamendable provision prohibits only a “fundamental abandonment” of the protected values: “Art. 79, par. 3 means more,” they held. “The constituent elements” protected by the unamendable provision “are also . . . to be protected against a gradual process of disintegration” (*Klass* 30 BVerfGE 1 (1970); see English translation in Murphy and Tanenhaus 1977, 662–64). Accordingly, to face the challenge of incrementalism, perhaps it is time to consider an aggregated examination when reviewing constitutional amendments.

The second issue concerns the formal constitutional replacement according to an explicit constitutional provision. Indeed, some constitutions regulate not only the process of their amendment but also their own replacement (Landau and Dixon 2015). Tulis writes that this idea, “that constitutions themselves, in some instances, license fundamental change is the third meaning of *Constitutional Revolution* and it



poses a conundrum or puzzle that appears the reverse, or mirror image, of the unconstitutional constitutional amendments puzzle” (Tulis in this volume, \_\_\_). Here too, our book can provide the seeds for a normative theory. As we claim, when constitutional revolution take place by the exercise of constituted organs, such as courts, or even by constitutional amendments but without the popular inclusiveness that usually accompanies a new constitution-making process, democratic legitimacy suffers, which in turn strengthens counterrevolutionary voices and movements. Thus, we write that

[t]o be successful and to endure, to become the very plenipotentiary imagination of the people’s constituent power, constitutional revolutions should aim to include the people in a meaningfully inclusive, proactive, and deliberative way. Regardless of how historically accurate the story we tell ourselves about “the people” as constitution makers, facilitating the process of popular participation in the authorship of their constitution enhances the legitimacy of a constitutional revolution. (Jacobsohn and Roznai 2020, 260)

This notion should guide constitution-makers and amenders when they design mechanisms for constitutional replacements and fundamental revisions. One such recent attempt can be found in the work of H el ene Landemore, who suggested a model of ‘open democracy’ in which ordinary citizen have access to power and being able to deliberate and affect the agenda (Landemore 2020). This is particularly important in constitutional amendments (Col on-R os 2012; Contiades and Fotiado 2017) and a fortiori constitutional revolutions.

#### IV. CONSTITUTIONAL POLITICS AND POLITICAL MOVEMENTS

As I hinted in the previous section, when the democratic legitimacy of the constitutional revolution is weak, the claims for counterrevolution are strengthened. As we emphasize in our book:

The characteristic of constitutions prevalent in all forms of constitutionalism is a condition of disharmony that functions as the engine for change, sometimes culminating in the radical displacement of constitutional norms and practices. This disharmonic condition remains a continuing source of potential counterrevolution, which may follow a constitutional revolution encumbered by a legitimacy deficit. (Jacobsohn and Roznai 2020, 15)

But what is the role of politics and political movements in this disharmony? In his comment, Mark Graber writes that “[c]onstitutional politics plays a greater role in constitutional disharmony than *Constitutional Revolution’s* conditions for constitutional disharmony might suggest. Constitutional ‘incongruities’ are created by the interaction of constitutional politics and constitutional law. They are never purely internal. Constitutional incongruities occur when during the creation, amendment, and interpretation of constitutional texts, political actors, political movements and political factions dispute fundamental constitutional principles” (Graber in this volume, \_\_\_\_).

Graber is correct concerning the role of constitutional politics in constitutional revolutions. Constitutional politics is behind every constitutional revolution, as the engine of the revolutionary—or counterrevolutionary—call. This is visible even when one considers Israel, where constitutionalism generally centers around the judiciary (Bendor 2020). In our chapter on Israel’s constitutional revolution, we explain how the constitutional revolution was originated by political actions—by the enactment of the Basic Laws on Human Rights initiated by Member of Knesset Amnon Rubinstein as private bills. It was thanks to his political actions and compromises, together with the chair of the Constitution, Law and Justice Committee Uriel Lynn, that enabled this partial bill of rights to be enacted. This political stage was crucial for the constitutional revolution. Indeed, it required the judicial daring in the Mizrahi Bank case for the constitutional revolution to be fulfilled; but without the constitutional politics, there would be no constitutional revolution.

And it is likewise in the context of the constitutional counterrevolution Israel is experiencing. “Constitutional revolutions,” Graber writes, “are initiated when new political movements are empowered and seek to make their vision the official constitutional law of the land” (Graber in this volume, \_\_\_\_). In Israel, the right-wing and conservatives parties are pushing for a shift in the “Jewish-Democratic” formula, by which the former would prevail over the latter. This movement has begun to be extremely effective since 2015, by the government dominated by right-wing parties with no moderating influences. But more than just politicians are involved; the movement is strongly supported by the rise of conservative (and relatively new) nationalist civil society organizations, which support and fuel the political maneuvers and are themselves supported by politicians in the government (Kremntizer and Shany 2020; Roznai 2018; Mordechay and Roznai 2017). Rafi Reznik shows how right-wing civil society organizations promote conservative ideas and policies in various spheres and have become extremely powerful and influential in Israeli politics (Reznik 2020). The Kohelet Policy Forum, for example, a conservative right-wing organization that aims to influence policy makers in politics, was one of the main driving forces behind the enactment of

the controversial Basic Law on Israel as the Nation-State of the Jewish People (Slyomovics 2020), which represents a significant achievement for the counter-constitutional movement and is intended “to restore the ‘Jewish’ in Israel’s constitutional identity as ‘Jewish and democratic,’ or rather to strengthen Jewish elements that were perceived to have been diluted by the Court” (Shinar et al. 2020, 722). The political movement, importantly, is not completely external to the judiciary, as one of the aims of former minister of justice Ayelet Shaked was also to fill judicial vacancies with “conservative judges” who would influence rulings and counter the legacy of Aharon Barak (Reznik 2020, 440).

Two decades ago, Graber acknowledged that for constitutional theorists who advance “grand constitutional theories,” constitutional politics is “an oxymoron. Politics is about interest. Constitutionalism is about principle” (Graber 2002, 323). In the “messy reality of lived experience” and “real world observation,” this is clearly not the case (Issacharoff 2019, 5–6). Especially in the current era of populism and democratic erosion, the populist constitutional project intentionally blurs the distinction between everyday politics and constitutional politics and makes an instrumental and frequent use of formal and informal constitutional change mechanisms for narrow political interests (Blokker 2019, 545–47). Rather than being an oxymoron, constitutional politics became the prevailing form of governance. Returning to Israel, in his doctoral project, Nadiv Mordechay shows how in the years following the constitutional revolution, constitutional change has been politicized as political actors began to take ownership of it (Mordechay 2021). Compared to the past, there is greater political involvement in informal and formal constitutional change processes. Whereas the constitutional revolution was described mainly through the lenses of the judicialization of politics, constitutional change in the period after the constitutional revolution, Mordechay correctly argues, can be characterized as politicization of constitutionalism. Constitutional politics is surely crucial for analyzing and understanding constitutional revolutions.

## V. CONCLUSION

We are grateful to Anna Fruhstorfer, Fruzsina Gárdos-Orosz, Jeffrey K. Tulis, and Mark Graber for engaging with our book, which is a natural combination of our previous studies on constitutional identity and unconstitutional constitutional amendments (Roznai 2017; Jacobsohn 2010). Graber gracefully, and with his famous humor, described *Constitutional Revolution* as “the Reese’s Peanut Butter Cups of contemporary comparative constitutional theory,” combining “the flavor of chocolate and peanut butter to make a delectable snack” (Graber in this volume, \_\_\_).

I am more than happy we have provided a food for thought to his liking and it is my hope that many more exciting studies—or flavors—will emanated from it.

## REFERENCES

- Abrahamian, Ervand. 1979. "The Causes of the Constitutional Revolution in Iran." *International Journal of Middle East Studies* 10 (3): 381–414.
- Afary, Janet. 1996. *The Iranian Constitutional Revolution, 1906–1911: Grassroots Democracy, Social Democracy, & the Origins of Feminism*. New York: Columbia University Press.
- Albert, Richard. 2011. "Democratic Revolutions" (unpublished, 2011) (copy with author).
- Albert, Richard. 2018. "Constitutional Amendment and Dismemberment." *Yale Journal of International Law* 43 (1): 1–84.
- Ansari, Ali M., ed. 2016. *Iran's Constitutional Revolution of 1906 and Narratives of the Enlightenment*. Gingko Library.
- Beer, Lawrence W. 1982. "Constitutional Revolution in Japanese Law." *Modern Asian Studies* 16 (1): 33–67.
- Bendor, Ariel L. 2020. "The Israeli Judiciary-Centered Constitutionalism." *International Journal of Constitutional Law* 18 (3): 730–45.
- Blokker, Paul. 2019. "Populism as a Constitutional Project." *International Journal of Constitutional Law* 17 (2): 535–53.
- Bonakdarian, Mansour. 2006. *Britain and the Iranian Constitutional Revolution of 1906–1911: Foreign Policy, Imperialism, and Dissent*. New York: Syracuse University Press.
- Brown, Nathan J. 2002. *Constitutions in a Nonconstitutional World: Arab Basic Laws and the Prospects for Accountable Government*. New York: SUNY Press, 2002.
- Brunelle, Dorval. 1978. *La désillusion tranquille* (1978, Cahier du Québec, no. 40. Collection sociologie. Montréal: Hurtubise HMH.
- Colón-Ríos, Joel. 2012. *Weak Constitutionalism: Democratic Legitimacy and the Question of Constituent Power*. London: Routledge.
- Contiades, Xenophon, and Alkmene Fotiada, eds. 2017. *Participatory Constitutional Change: The People as Amenders of the Constitution*. London: Routledge.
- Duchacek, Ivo D. 1973. *Power Maps: Comparative Politics of Constitutions*. Santa Barbara, CA: ABC-Clío Press.
- Ginsburg, Tom, and Aziz Z. Huq. 2018. *How to Save a Constitutional Democracy*. Chicago: University of Chicago Press.
- Graber, Mark A. 2002. "Review: Constitutional Politics and Constitutional Theory: A Misunderstood and Neglected Relationship." *Law & Social Inquiry* 27 (2): 309–38.

- Hirschl, Ran. 2008. "The Rise of Comparative Constitutional Law: Thoughts on Substance and Method." *Indian Journal of Constitutional Law* 1 (11): 11–37.
- Issacharoff, Samuel. 2019. "Judicial Review in Troubled Times: Stabilizing Democracy in a Second-Best World." *North Carolina Law Review* 98 (1): 1–58.
- Jacobsohn, Gary Jeffrey. 2010. *Constitutional Identity*. Cambridge, MA: Harvard University Press.
- Jacobsohn, Gary Jeffrey, and Yaniv Roznai, 2020. *Constitutional Revolution*. New Haven, CT: Yale University Press.
- Kelsen, Hans. 1967. *Pure Theory of Law*. Trans. Max Knight. Berkeley: University of California Press.
- Kremnitzer, Mordechai, and Yuval Shany. 2020. "Illiberal Measures in Backsliding Democracies: Differences and Similarities between Recent Developments in Israel, Hungary, and Poland." *Law & Ethics of Human Rights* 14 (1): 125–52.
- Landau, David, and Rosalind Dixon. 2015. "Constraining Constitutional Change." *Wake Forest Law Review* 50 (4): 859–90.
- Landmore, Hélène. 2020. *Open Democracy: Reinventing Popular Rule for the Twenty-First Century*. Princeton, NJ: Princeton University Press.
- Law, David S., and Mila Versteeg. 2013. "Sham Constitutions." *California Law Review* 101 (4): 863–952.
- Loughlin, Martin. 2005. "Constitutional Theory: A 25th Anniversary Essay." *Oxford Journal of Legal Studies* 25 (2): 183–202.
- Mordechai, Nadiv. 2021. "Informal Constitutional Change after the Constitutional Revolution." Unpublished doctoral dissertation.
- Mordechai, Nadiv, and Yaniv Roznai. 2017. "Jewish and (Declining) Democratic State? Constitutional Retrogression in Israel." *Maryland Law Review* 77 (1): 244–71.
- Murphy, Walter F., and Joseph Tanenhaus, eds. 1977. *Comparative Constitutional Law: Cases and Commentaries*. London: Palgrave Macmillan.
- Poole, Thomas. 2007. "The Return of Grand Theory in the Juridical Sciences?" *Modern Law Review* 70 (3): 484–504.
- Reznik, Rafi. 2020. "The Rise of American Conservatism in Israel." *Penn State Journal of Law & International Affairs* 8 (2): 385–471. <https://elibrary.law.psu.edu/jlia/vol8/iss2/5>.
- Roznai, Yaniv. 2017. *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*. Oxford: Oxford University Press.
- Roznai, Yaniv. 2018. "Israel: A Crisis of Liberal Democracy?" In *Constitutional Democracy in Crisis?*, ed. Mark A. Graber, Sanford Levinson, and Mark Tushnet, 355–76. Oxford: Oxford University Press.
- Roznai, Yaniv. 2021. "The Straw That Broke the Constitution's Back? Qualitative Quantity in Judicial Review of Constitutional Amendments." In *Constitutionalism: Old Dilemmas, New Insights*, ed. Alejandro Linares-Cantillo, Camilo Valdiviesos-Leon, and Santiago Garcia-Jaramillo, 147–65. Oxford: Oxford University Press.

Sadurski, Wojciech. 2019. *Poland's Constitutional Breakdown*. Oxford: Oxford University Press, 2019.

Sartori, Giovanni. 1962. "Constitutionalism: A Preliminary Discussion." *American Political Science Review* 56:853–64.

Shennan, Andrew. 2017. *The Fall of France, 1940*. London: Routledge.

Shinar, Adam, Barak Medina, and Gila Stopler. 2020. "From Promise to Retrenchment: On the Changing Landscape of Israeli Constitutionalism." *International Journal of Constitutional Law* 18 (3): 714–29.

Slyomovics, Nattanel. 2020. "The Conservative U.S. Group Trying to Transform Israel's Justice System." *Haaretz*, December 23, 2020. <https://www.haaretz.com/israel-news/MAGAZINE-the-conservative-u-s-group-trying-to-transform-israel-s-justice-system-1.9380164>.

Sohrabi, Nader. 1995. "Historicizing Revolutions: Constitutional Revolutions in the Ottoman Empire, Iran, and Russia, 1905–1908." *American Journal of Sociology* 100 (6): 1383–1447.

Várol, Ozan O. 2017. *The Democratic Coup d'État*. Oxford: Oxford University Press.

Warren, Jean-Philippe. 2016. "L'origine d'un nom. D'où vient l'expression « Révolution tranquille » ?," *HistoireEngagée.ca*. September 14, 2016. <http://histoireengagee.ca/?p=5787>.

## CASES CITED

Decision of Mar. 10, 2001, G 12/00, G 48-51/00 (Austria)

*Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461 (India)

CA 6821/93 United Mizrahi Bank Ltd. v. Migdal Cooperative Village, 49(4) P.D. 221 (1995) (Israel).

*Klass* 30 BVerfGE 1, 24 (1970) (Germany)

*Mahmood Khan Achakzai v. Federation of Pakistan*, PLD 1997 SC 426 (Pakistan)