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PROJECT ON ARAB TRANSITIONS

PERSONNEL CHANGE OR PERSONAL CHANGE?
RETHINKING LIBYA'S POLITICAL ISOLATION LAW

ROMAN DAVID AND HOUDA MZIOUDET

PROGRAM ON ARAB REFORM
AND DEMOCRACY, CDDRL

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Brookings Doha Center-Stanford Paper, Ellen Lust

Drafting Egypt's Constitution: Can A New Legal Framework Revive A Flawed Transition?
Brookings Doha Center-Stanford Paper, Tamir Moustafa

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EXECUTIVE SUMMARY

In the aftermath of the Arab Spring, each of the transitioning countries faces the question of how to handle personnel inherited from preceding authoritarian regimes. Personnel reform is a critical aspect of political transitions and can affect a state's security, legitimacy, and ability to function. Libya addressed this issue in 2013 with the adoption of its Political Isolation Law (PIL), which effectively disqualified anyone involved in Muammar Qaddafi's regime from the new administration, armed forces, and other entities.

The PIL was passed with strong support in Libya's parliament and under significant pressure from the country's militias. The law is an example of an exclusive system, in which former regime officials are automatically banned from the new state apparatus. While this method is common, Libya's democratization would be better served by a reconciliatory system that is based on the principle of the conditional second chance.

Personnel reforms usually seek to contribute to the establishment of a trustworthy government, political and social reconciliation, transitional justice, and human rights. An analysis of personnel reform in Eastern Europe and reconciliation in South Africa reveals that a reconciliatory approach is more likely than the PIL to accomplish these goals in Libya.

People in transitioning countries are more likely to trust their governments if they have purged compromised individuals, but an exclusionary system may merely reverse the roles of the regime and opposition. An exclusionary approach can also cripple countries like Libya that suffer from a lack of qualified professionals and talented political leaders, exposing them to the risk of becoming failed states. Reconciliatory approaches also increase trust in government and, through enabling the retention of qualified personnel, may boost the state's performance and win further trust over time.

Reconciliation is badly needed in Libya, but the PIL is divisive and risks institutionalizing historical divisions. Considering the effects of de-Baathification in Iraq, the broad applicability of the PIL could realistically create new destabilizing elements in Libya by swelling the number of "losers" of the transition. Socially, the PIL effectively passes judgment on individuals and groups, putting them at risk of discrimination. Reconciliatory systems, conversely, have an enormous capacity to contribute to social reconciliation. They provide incentive for inherited personnel to make a commitment to the new regime and its rules.

Personnel reforms are motivated by past abuses of power and are measures of transitional justice. The PIL condemns the old regime and is to be implemented by independent lawyers using judicial procedures, but it may also create new injustices. It excludes large groups without considering individuals' behavior, and bars excluded personnel from even non-government posts. Reconciliatory systems are based on confession and pursue restorative—rather than retributive—justice. The PIL is more efficient in processing a large caseload, but it undermines social justice. Reconciliatory systems are more sensitive to individual redemption.

Human rights are important to the internal and external legitimacy of the regime. By removing elected representatives from office, the PIL may violate citizens' rights of representation as enumerated in the International Covenant on Civil and Political Rights, which Libya has signed. There are also questions over the rights of individuals to hold office and to not testify against themselves. The PIL should be subjected to a review to assess its conformity to international human rights standards. Conversely, A reconciliatory system is a human rights-friendly approach that allows individuals to decide whether to pursue a position that requires exposure.

The Arab Spring countries continue to influence one another, and similarities can be seen in the personnel reform policies considered by Libya, Egypt, and Tunisia. Of those, Libya's PIL is the most exclusionary, and its uncompromising logic may affect the political situation in pre-transition countries like Syria. It signals to Bashar al-Assad that he should reject compromise and warns opposition sympathizers that defecting may not benefit them. Reconciliatory methods can inspire other countries. While implementing them may seem unrealistic, particularly in the Middle East, it looked similarly daunting in South Africa, which has become an iconic model of political reconciliation. Libya now has an opportunity to provide a positive example.

Voices questioning the legitimacy of Libya's revolution are growing louder as the country's stalemate continues. The country faces major security issues and difficulty in building viable state institutions. The enactment of the PIL has further weakened Libya; even former Prime Minister Ali Zeidan has admitted the country is a failed state. The democratic transition is under threat.

Libya needs a broad coalition government that can agree on fundamental principles about the course of the country and major reforms, including personnel reform. Personnel reform—in order to serve the interests of the Libyan people—needs to be based on inclusion rather than exclusion and on reconciliation rather than revenge. A reconciliatory system is the only approach that can facilitate reconciliation, retain qualified personnel, uphold human rights standards, and serve as a positive example to others.

Democracy requires democratic political culture, and democratization should be accompanied by social transformation. The exclusive nature of the PIL inhibits such a transformation. It merely redistributes power and preserves the past conflict. The application of the PIL weakens the state and enlarges the ranks of its opponents. To promote democratic transformation, Libya and other transitioning countries would benefit from pursuing personal changes rather than personnel changes. Nearly three years after the fall of the Qaddafi regime, Libya again needs a fresh start. A reconciliatory system could provide it.

Introduction

Personnel reform of the state apparatus is undoubtedly one of the most critical political tasks in nascent democracies. The inability to address the problem of personnel inherited from past regimes can undermine the prospect for democratization, as shown by transitions in Chile in the 1990s, South Africa in 1990-1994, and Slovakia in 1994-1998.[1] At the same time, personnel reforms may go wrong for a number of reasons. For instance, the law on background checks of public officials in Hungary has not prevented the old elite from using their contacts to enrich themselves, the vetting program in Bosnia and Herzegovina circumvented the right to be heard, and the de-Baathification in Iraq has fuelled ethnic conflict.[2]

Yet, in spite of its import for policymakers, the topic of personnel policies has been neglected by academics. Scholars examine institutional choices in the constitutional layout of the country, such as the advantages and problems of parliamentary and presidential systems, unicameral and bicameral legislatures, majoritarian or proportional representation, and consociational models.[3] They discuss civilian control of the armed forces—a vital task in many post-military dictatorships[4]— and enormous attention is devoted to the first democratic elections.[5] This neglect of personnel reform is striking given the fact that it impacts security, the everyday operation of the state, and the legitimacy of state institutions to a similar extent as oversight of the military, constitutional models, and elections.

Indeed, such a broad impact has been attributed to Libya's PIL, which was passed under controversial circumstances in 2013. Libya's newly elected General National Congress (GNC) approved the law to deal with inherited personnel, effectively disqualifying anyone involved in the regime of Muammar Qaddafi between 1969 and 2011 from the new administration and armed forces. Commentators have contended that the law undermines national reconciliation, violates human rights, derails democratization, destabilizes internal and external security, and causes the collapse of numerous state functions and public services in post-Qaddafi Libya.[6]

Thus, it seems that the prospect for democratic transition may be fatally hurt by the implementation of such personnel laws. The absence of personnel laws may do similar harm, resulting in abuses of power, violations of human rights, and a continued lack of trust in the government and armed forces. How to overcome this conundrum? This paper shall review the Libyan Political Isolation Law of 2013 in light of the objectives of personnel reforms in transitional democracies, and propose an alternative model that could better serve the interests of Libya's democratization. It will contribute to the debate on personnel reform in nascent democracies in general and in Arab Spring countries in particular, providing a blueprint for other Arab Spring countries. The PIL follows the logic of traditional personnel policies which exclude, to varying degrees, former regime members, as in the examples of de-Nazification in postwar Germany or the de-Baathification in post-Saddam Iraq. The proposed alternative is a reconciliatory approach based on the observation of major institutional innovations in Eastern Europe,[7] where the principle of the conditional second chance emerged.

THE POLITICAL ISOLATION LAW AND ITS ALTERNATIVES

Libya's Political Isolation Law, officially Legislation No. 13 of 2013 of the Political and Administrative Isolation, was passed by the GNC on May 14, 2013 and came into force on June 5, 2013. The GNC is a 200-member unicameral legislature which was freely elected in 2012 national elections. Owing to the body's electoral system, independent candidates were awarded 120 seats, while the National Alliance Forces of Mahmoud Jibril, which won the largest share of votes with 48 percent, received 39 seats. Finishing second, the Justice and Construction Party, which is the Libyan Muslim Brotherhood's political party, won 17 seats for its 10 percent of votes. Some 164 MPs voted for the legislation, 4 were against, and 19 were absent from the vote, which aired on Libyan state television.[8]

The PIL was passed at a time when the number of Libyan voices in favor of purging Qaddafi loyalists was growing. It came amidst calls from the Libyan public to ban anyone who worked under the Qaddafi regime. Colonel Qaddafi became the the the de facto leader of the country after heading a coup-d'etat against King Idris on September 1, 1969. Through his comrades in the Free Unionist Officers, Qaddafi proclaimed the Libyan Arab Republic, later establishing a socialist-populist *jamahiriya*, or "republic of the masses," as he termed it. The regime spied on ordinary Libyans, suppressed opposition, detained dissenters, and imprisoned and tortured those

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suspected of acting "against the revolution of September 1st, 1969." Qaddafi's rule lasted for more than 40 years, but in February 2011, following revolutions in neighboring Tunisia and Egypt, large numbers of Libyans rose up against the authoritarian regime. After months of civil conflict, Qaddafi was driven from power and ultimately killed in October 2011.

The PIL's aim was to rid the Libyan political scene of people who worked directly or indirectly for the Qaddafi regime. Opponents of the law considered it to be excessive and punitive, but its proponents argued that it was necessary to bar those who participated in prolonging the Qaddafi regime for over four decades. The GNC passed the law shortly after the April 2013 attack on the French embassy, (which followed the attack on the U.S. Consulate in Benghazi in September 2012), in an atmosphere of growing discontent. It passed while armed militias had placed the GNC under a military siege. The militias concurrently blocked a number of other ministerial buildings in Tripoli and were actively intimidating individual members of the GNC. The involvement of the armed militias raises serious questions about the legitimacy of the law.

The PIL disqualifies anyone who held any of the state apparatus positions listed in Article 1, Category 1 of the law between September 1, 1969 and October 23, 2011

from holding any public positions in the new government. The disqualifying positions specified include leading political, administrative, and security posts; ambassadors; chancellors of universities; heads of student unions; researchers at propaganda institutes; and anyone who belonged to an international organization that threatened Libya. The law also disqualifies those who exhibited the behaviors listed in Category 2, which it says led to "the corruption" of political, economic, and administrative life in the country." The list includes collaboration with the regime resulting in human rights violations, glorification of the Qaddafi regime, taking a hostile position to the 2011 revolution, committing criminal offenses, and using religion to support the regime.

Article 2 specifies the range of positions that disqualified personnel cannot hold, but some are incompatible with positions listed in Article 1. Article 2 includes not only leading state, administrative, and security positions, but also membership in judicial and legislative bodies, as well as leadership in the media, universities, and political parties. The law is administered by a special Commission for Implementing the Political Isolation Law Standards. Its members are supposed to be Libyan nationals older than 35 years of age with legal training but without political affiliation, as stipulated in Article 5.

The PIL belongs to the category of exclusive personnel systems.[9] Exclusive systems are defined as personnel systems which provide for the automatic exclusion of officials associated with the old regime from the state apparatus of the new regime. Though common, the dismissal of inherited personnel from the state apparatus is not the only path of personnel reform in transitional countries. Research has overlooked the significance of some Central European experiences with lustration laws. Lustration laws can be defined as special public employment laws that regulate the participation of people associated with the former regime in the successor political system.[10] While scholars have viewed personnel laws through a prism of lesser or greater exclusions,[11] they have disregarded this major institutional innovation, which introduces an entirely new dimension to the resolution of the personnel conundrum.[12] While unified Germany, the Czech Republic, and many other countries oscillated in the degree of exclusion, Hungary and Poland have employed a variety of inclusive methods. Through these methods the discredited personnel have been given a second chance: they could retain public employment under particular conditions.

The condition for retaining public office under the Hungarian "inclusive" personnel system was exposure. People associated with the old regime were given the option to either resign or to have their past roles and activities publicized. The new government could thus retain the qualified personnel and establish transparency. Empirical evidence shows that the method of exposure has positive, though marginal, effects on establishing trust in government.[13] The positive gains resulting from the transparency of government are counter-balanced by two negative factors. First, the shaming of government officials by their exposure raises the question of why these people are not dismissed right away. Second, almost all of the exposed officials deny, downplay, or excuse their involvement in the past.

The Polish "reconciliatory" personnel system offered a considerably more promising avenue than Hungary's simple inclusive system. It also applied the principle of the second chance, but was based on the confession of the inherited personnel. A person who aspired to hold a public post had to submit an affidavit that disclosed all relevant activities and positions in the past regime. As the essence of the affidavits was published, the public had

an opportunity to scrutinize them. A special prosecutor then verified the affidavits and, if a case raised suspicion, he or she handed it to the court, which made the final decision about its completeness. If the individual disclosed all relevant facts, he was given a second chance to hold public office. If he concealed any fact, he was dismissed and barred from holding a public post for ten years. Thus, collaborating with the previous regime did not result in exclusion in Poland; only subsequently lying about past collaboration led to dismissal.

The Polish reconciliatory personnel system resembles the South African truth and reconciliation process.[14] While in Poland tainted personnel were given an opportunity to hold a public post in exchange for self-revelation, in South Africa gross human rights violators were offered amnesty for making a full disclosure of all relevant facts. Both countries thus incorporated the authentic personal experience of confessing wrongdoing into an essentially macro-political process to smooth complicated political transitions.

In reconciliatory systems, self-revelation serves as a loyalty test. It provides the inherited personnel with an opportunity to demonstrate that they are disassociating themselves from the old regime and are willing to play by the rules of the new regime. It is a forum where they can publicly explain their past actions and motives and express that they have learned from their experiences and are changing their attitudes. Indeed, many people may have been forced to collaborate with authoritarian regimes and may not have gained anything from their collaboration.

The reconciliatory method can be implemented in various forms. Self-revelation can take the form of written submissions, public hearings, an oath, or some combination of the three. In Libya, self-revelation could stem from cultural and religious practices. Every culture stipulates conditions for repentance, such as the Islamic concept of *tawba*, involving expressions of remorse and promises to not return to previous, immoral actions. The revelations can be verified through a judicial system, a broad-based political or parliamentary commission, or participation of the public, which would come forward with any relevant information. Various models of the reconciliatory system have already been proposed for Iraq[15] and Myanmar.[16]

Assessing the PIL and its Reconciliatory Alternatives

Having reviewed the types of personnel reform systems, the question of which model best serves Libya's democratization can be examined. Public policies are traditionally assessed against whether they accomplish their purported objectives, but many have unintended consequences that may not have been desired or discussed. We shall therefore assess the competing personnel policies in light of the objectives identified in the available literature. Based on our literature review, we can distinguish five clusters of goals, effects, and areas of impact that transitional personnel reforms may have: establishment of a trustworthy government, political and social reconciliation, justice, human rights, and international impact.[17] We can thus examine the exclusionary PIL and reconciliatory alternatives against the extent to which similar systems have achieved these objectives. To assess the likelihood of success, we draw on analyses of personnel reforms in Eastern Europe and the reconciliation process in South Africa.[18]

The establishment of a trustworthy government is an even more pressing and daunting task in societies undergoing transitions from authoritarian rule after experiencing years of abuse in power.

ESTABLISHMENT OF A TRUSTWORTHY GOVERNMENT

Trustworthy administration and security forces are cornerstones of any democratic system. To ensure political stability and security, governments need laws, political decisions, and programs to be implemented by bureaucracy and armed forces that are loyal, professional, and efficient. Ideally, citizens would have confidence that the government and members of the state apparatus are bound by law and will not act against their interests.[19] Trustworthy governments can better implement policies, enforce security, and collect taxes than governments facing a crisis of public confidence. The establishment of a trustworthy government is an even more pressing and daunting task in societies undergoing transitions from authoritarian rule after experiencing years of abuses of political power.[20]

In stable democracies, exclusive personnel systems would be the most efficient method of reforming the state administration and armed forces. Empirical research in transitional countries shows that new government and security departments are better off without those who have been compromised in the past.[21] Clearly, victims of the Qaddafi regime would not like to seek assistance from those officials who persecuted them in the first place. In addition to these positives, however, exclusive personnel systems have several drawbacks.

The first problem is that personnel change does not guarantee a change of political methods. Widespread dismissals can win trust in the government among the former opposition but they can hardly reach the entire society. Without additional reforms, an exclusionary system merely leads the former opposition and the former

government to switch roles.[22] The regime may change but the methods of political exclusions remain in place. Indeed, an observer pointed out the similarity between the PIL and the Revolutionary Committees established by Qaddafi in 1969.[23] The Revolutionary Committees set up by Qaddafi could be compared to the Stasi system set up by East Germany's Communist regime. These committees aimed to control the daily lives of the Libyan people and monitor dissent against the Qaddafi's regime.

The second problem is that most transitional countries—with the notable exception of unified Germany—do not have a sufficient number of qualified professionals available to replace large parts of the state apparatus. This has been the case in Libya, which according to former Prime Minister Ali Zeidan (who may be affected by the law) lost a lot of middle management experts due to the application of the law, weakening already fragile state institutions.[24]

Finally, the PIL depletes the pool of political leaders. Prominent leaders play an important role in democratic transitions. They are sources of personalized trust during the interim period before formal trust in government institutions is established. Libya does not have an abundance of political talent; there is no Aung San Suu Kyi, Nelson Mandela, Vaclav Havel, Ellen Johnson Sirleaf, or Muhammad ElBaradei who can speak to the masses and is known beyond the region. The resignation of Muhammad Magariaf, the first permanent chairman of the GNC, may be an example of such a loss of talent. Magariaf was the President of the Government Accounting Office and the Ambassador to India in the 1970s before defecting and co-founding

Most transitional countries do not have a sufficient number of qualified professionals available to replace large parts of the state apparatus.

the opposition National Front for the Salvation of Libya in 1981. He became head of parliament in August 2012, but resigned from his post shortly after the PIL was passed.[25]

Concern over the loss of political talent was echoed in an interview with Hajer al-Gaied, a GNC member from the National Alliance Forces (NAF).[26] Although she was a member of the commission charged with implementing the Political Isolation Law Standards, she found the final version of the law too excessive because it reached non-political positions such as those in academia, and was unfair to many "Libyan patriots." In her view, the way the PIL is being implemented will "deprive Libya of good and honest Libyans such as Mustafa Abduljalil (former president of the National Transitional Council) and Mahmoud Jibril (president of NAF)."

Another interviewees, an academic who originally supported the PIL, said he already found the law too excessive in general terms. He added, "At one point, we realized that there were people who wanted to isolate school teachers when we meant it to ... isolate the military, security, and diplomatic personnel who ideologically supported the former regime and participated in its duration."[27]

Like exclusionary policies, a reconciliatory system is perfectly capable of establishing trust in government. Unlike in an inclusive system, the effect of a confession of a government official on establishing trust in government is significantly positive in a dataset from the three countries in Central Europe,[28] though it may be considerably weaker than that of dismissals.[29] It is not surprising that a government department that dismisses a compromised member may be viewed in a better light than a department

that retains such a member, even if he has completed a proscribed reconciliation process. In the long term, however, providing an acceptable path for the inclusion of compromised, but qualified, personnel into the new administration may boost the state's ability to function and provide services, thereby winning public trust.

The implementation of a reconciliatory system does not suggest that Qaddafi loyalists should retain leading posts in new Libya. Such a system would not suspend the standard selection criteria for hiring members of public administration and armed forces. It would merely provide conditions for incorporating those experts, professionals, and experienced personnel who are deemed qualified for the post but were in some capacity at a certain point in history associated with the Qaddafi regime. A reconciliatory system would not limit political leaders in their attempt to select particular officials for state positions. The PIL certainly does.

POLITICAL AND SOCIAL RECONCILIATION

Reconciliation should be considered an imperative of personnel reforms in societies that are overcoming deep historical divisions. Inherited divisions can be identified at the macro-political level and at the social level, and each have distinct social dynamics that impact reconciliation. At the macro level, political elites should agree on basic principles of political struggle, such as non-violence, respect for election results, and adherence to the rule of law. At the societal level, reconciliation comprises inclusiveness, trust, and tolerance.[30] The prospect for reconciliation in Libya is hindered both by grievances from Qaddafi's reign and more recent scars acquired in the aftermath of the regime change. Deep resentment, tribal divisions, and internal conflicts in the GNC and the government are among the major inhibitors of reconciliation at the political and social levels.

At the political level, the PIL is very divisive. Critics pointed out that the PIL institutionalizes historical divisions, even ones that were originally artificial. The law does not accurately reflect reality since it excludes anyone who had at any time worked in the Qaddafi regime, even if he emigrated, defected from the regime, supported the uprising, or all three. It adopts a rigid conception of human nature, assuming that all people somewhat associated with the Qaddafi regime are unchangeable and incapable of moral development. The law also labels as enemies those who are not enemies in the first place. In view of the consequences that de-Baathification had in Iraq, it is not far-fetched to say the law has the capacity to transform allies into enemies.

The PIL also has the potential to aggravate the so-called "spoiler problem." According to Stephen Stedman, who coined the concept, the biggest risk to peace comes from various leaders and parties who emerge after a civil war ends.[31] If these actors believe the ongoing transition threatens their interests they will consequently try to undermine the peace. This problem has been identified in Egypt where a variety of spoilers operate: from limited spoilers— who seek a share of power within a constitutional framework—to total spoilers, who see the world in all-or-nothing terms.[32] In Libya, the PIL would swell the number of losers of the transition by depriving former regime members the opportunity to participate in the new system. The enforcement of the PIL would even isolate some of the original winners of transition, especially the militias, from the rest of the population. The prospect for the militias to enter the democratic process would become increasingly difficult, given their unpopularity.

At the societal level, the law impacts the public perception of the people who are penalized by its implementation. It effectively passes judgment on the social standing of the excluded person, labeling him or her as a persona non grata.[33] This may lead to further social exclusion and discrimination against the person in the labor market, or, depending on his or her social status, may turn the person's entire social group—such as a tribe or a political party—against the proponents of the law.[34] Reconciliation is thus undermined by the individual as well as collective consequences of the law.

An interview with Abdulhakim Mounem, a Libyan civil society activist, was particularly telling.[35] His opposition to the law was very much guided by human rights ideals and abstract principles of justice. In his view, "the PIL was done to exclude political opponents from the NAF and to benefit parties such as Justice and Construction Party (an Islamist party). These were illegitimate, undemocratic, and unethical practices." Mounem went on to criticize the exclusion of Mahmoud Jibril, the head of the NAF, who is from the same hometown and tribe, in a clear demonstration of how sowing divisions between leaders spills over to society and polarizes their followers.

Reconciliatory systems have an enormous capacity to contribute to social reconciliation. The only way for inherited personnel to be incorporated into the new regime is to forge an agreement with the former opposition about the illegitimacy of the former regime. This presumes unequivocally distancing oneself from the previous regime and demonstrating a commitment to the new regime and its rules. The reconciliatory tone at the macro-political level is likely to reverberate at the individual level. Similar "spill over" effects have been observed in the reconciliation

process in South Africa. Although the South African reconciliatory process concerned a limited number of cases, it has been able to inspire reconciliation in the entire society.[36]

The reconciliatory system, however, is vulnerable to fundamentalist politics, which can appeal for a principled stance and offer swift, uncompromising solutions. Its application requires either strong leadership or a broad collation of political forces, both being supported by prominent players in society. In other words, the reconciliatory system in itself cannot deliver reconciliation, but can give it a significant boost when the political will to reconcile is present. For instance, South Africa was on the verge of civil war and territorial disintegration before the Kempton Park negotiations paved the way for amnesty and the Truth and Reconciliation Commission.[37] The cessation of violence and the end of secessionist tendencies in the Free State and in KwaZulu-Natal are evidence that at least minimal social reconciliation has taken place. On the other hand, political parties in Poland always undermined the process of lustration; some viewed it as being too excessive, while others saw it as insufficient. The inability of major political actors on the left as well as the right to honor barely-reached agreements weakened the implementation of the system in Poland.

JUSTICE

Transitional personnel reforms are motivated by the abuses of power of previous regimes. Thus, they may inevitably be seen as corrective measures which aim to rectify the deficiencies and injustices of the past. Although they do not take effect at the level of criminal law, they may be considered measures of transitional justice, whether they aspire to achieve minimal justice,[38] non-criminal sanctions,[39] or administrative justice.[40] Undoubtedly,

the PIL can be considered a measure of transitional justice. It is a response to the injustices of the Qaddafi era, during which the selection of personnel for public positions was restricted by political criteria and allegiances, be they personal, tribal, or as a reward for a rendered service. The PIL sends a clear signal of condemning the old regime and its practices. On the positive side, the law is governed by judicial procedures (Article 9) and is supposed to be implemented by independent legal professionals (Article 5). Yet several substantive provisions of the law appear excessive as they even bar excluded personnel from posts far beyond the state apparatus. Such positions include the "chairmanship and membership of governing bodies of political parties, entities, institutions, and Commissions of a political nature," the presidency of higher education institutions, and "leadership positions in various media and publishing institutes" (Article 2). These are non-state posts which should not be regulated by what is effectively a special public employment law.[41]

Concerns about creating new injustices were apparent in an interview with Muhammad Younes Toumi, another supporter-turned-opponent of the law.[42] As a member of the GNC, Toumi headed the commission charged with drafting the Political Isolation Law Standards. He later became disillusioned, however, with the way it was manipulated by some political entities as well as public figures, such as Libya's grand mufti Sadegh al-Ghariyani. Toumi also deplored the pressure from some media outlets and young rebels who wanted to turn the law into a tool of oppression. Consequently, he resigned from the commission. "The law does not meet my expectations," Toumi explained.

> *Reconciliation systems are based on confession, which can be viewed as a method of restorative justice or a form of sanctions that are alternative to dismissal.*

"It should facilitate and support national reconciliation and transitional justice. But the fact that it excludes a large section of people without considering their behavior, I can consider it as unfair."

Assessing the alternative model in light of justice requires going beyond the notion of retributive justice. Reconciliatory systems are based on confession, which can be viewed as a method of restorative justice or a form of sanctions that are alternative to dismissal. The ability of alternative sanctions to deliver justice depends on their expressive power.[43] What messages do these measures convey? How convincing are they? Dismissals clearly signal that a particular behavior is unacceptable, while confessions signal a change in behavior and moral development of the individual. Empirical research shows that confession increases the positive perception of the public about justice, although this increase is considerably smaller than the effect of dismissal.[44]

Another dimension of justice is its procedural character. A transitional justice measure may be viewed as fair in its essence but it may violate due process guarantees. Clearly, the PIL is based on sweeping collective dismissals, while reconciliatory systems adopt an individual approach. The former is undoubtedly more effective in processing a larger number of cases in a short time span, but it also carries the larger social risk of creating new injustices. By collectively labeling the former personnel as tainted, it effectively inhibits their prospects for participating in the labor market, undermining social justice. To be sure, the claim that those who benefitted in the past should not retain their privileged public positions may be legitimate, but people who underwent a change of heart a long time ago and defected or

criticized the Qaddafi regime, such as Magariaf and Abdul Jalil, are effectively "punished" by the law as well. Hence, reconciliatory systems, with their case-by-case approach, are more sensitive to individual redemption than the PIL, which treats anyone associated with the former regime as unchangeable and intractable.

HUMAN RIGHTS

The need to uphold human rights may seem a controversial demand in the eyes of those who have been disappointed with the human rights record of major Western powers after September 2001. Nowadays we can observe that countries which advocate for human rights kill without trial, detain without trial, and torture detainees. Yet the political hypocrisy cannot compromise the principle itself. Human rights still matter for the internal and external legitimacy of the regime. Personnel reform may impact human rights of the inherited personnel as well as the victims of the former regime.

Libya is a party to the International Covenant on Civil and Political Rights of 1976, but the PIL infringes on the right to vote as it concerns the members of the GNC.[45] By eliminating elected representatives it invalidates the active right of citizens to vote and be represented by a particular deputy, and the passive right of the deputies to hold elected positions. In doing so, it effectively alters the outcomes of elections and modifies the parameters of the free political contest. Moreover, the questionnaires that are collected from persons holding public positions may violate the right to not testify against oneself.[46]

To assess the PIL's conformity to international human rights standards, it would be very useful to subject it, the process of its approval, and its application to a judicial or constitutional review.

On the other hand, some of the criticisms of human rights groups seem to be too harsh. Although the PIL violates some human rights, there is not a right to be appointed to public office and to public employment. Article 25 of the covenant allows reasonable restrictions of the right to take part in the conduct of public affairs. Although countries should not discriminate in employment,[47] the European jurisdiction, for instance, takes into account the particular historical situation in a country under scrutiny.[48] It is also significant that the UN vetting program in Bosnia and Herzegovina did not conform to human rights standards.[49] Most notably, in order to facilitate a speedy reform of the police force, the program suspended the right to be heard and relaxed the standard of proof.[50]

To assess the PIL's conformity to international human rights standards, it would be very useful to subject it, the process of its approval, and its application to a judicial or constitutional review. The NAF and some human rights activists and lawyers have actually come forward to challenge the law at the Constitutional Court. According to Hajer al-Gaied, an NAF GNC member, the court should also look into allegations that the final wording of the enacted law was manipulated and did not match its approved version.

A reconciliatory system is a human rights-friendly model of personnel systems. Although the Polish reconciliatory method was challenged at its Constitutional Tribunal on the pretext that the affidavits submitted as conditions for public employment violated the right of the applicants to not testify against themselves, the court rejected that claim. It convincingly argued that this right could not be violated since

merely testifying did not constitute a prohibition to hold public office. The applicants would be barred from holding office if their testimonies were incomplete, inaccurate, or untruthful, but the law did not force the applicants to be dishonest. Moreover, the applicants for public office decided, on their own election, to undergo the process during which they subjected themselves to exposure. Finally, it has been recognized that the scope of privacy for public officials is considerably smaller than in cases of private citizens.[51]

INTERNATIONAL IMPACT

Political transitions among neighboring countries often affect one another. This so-called "contagion effect was first described in Latin America.[52] The existence of such effects can hardly be doubted in the Arab Spring countries, which continue to influence and inspire one another. We can expect that a major policy adopted in one country would be emulated or avoided in another. An observable resemblance among a cluster of countries eventually emarges in one region, although it would be impossible to claim a causal link of influence in complex political processes involving many actors.

The PIL affects and is affected by the situation in neighboring countries. It may have been inspired by a similar exclusionary law in Egypt with the same name. The Egyptian Political Isolation Law was approved in 2011 before it was invalidated by the country's Supreme Constitutional Court the following year. A similar law was adopted in neighboring Tunisia in 2013. Although less exclusionary than Libya's PIL, Tunisia's "Law for the Immunization of the Revolution" seeks to bar persons who worked in prescribed capacities in the Ben Ali regime or the former ruling party during the past ten years from holding office under the new government or leading a political party for six to seven years.[53] Curiously enough, shortly after Libya began to apply the PIL, the supporters of the Immunization Law in Tunisia backed down. The Immunization Law is currently suspended and may not be enforced before the next parliamentary elections, which are tentatively scheduled for 2014.

The contagion effect is not necessarily limited to legal development. The uncompromising logic of the PIL may also affect the political situation in pre-transition countries like Syria. It may send a signal to the regime of Bashar al-Assad to ignore calls for dialogue and to fight to the very end. Once gross human rights violations are committed, the threat of facing retribution may lead to defiance, not deterrence. It also sends a signal to opposition sympathizers within the government ranks that defecting from the regime will not guarantee them a role in a future state. Once they are tainted, they may be excluded and punished in the future, regardless of their support for the opposition.

Reconciliatory methods can become an inspiration for other countries in the region and beyond. Middle East politics, characterized by strife and revenge, seem to be in urgent need of reconciliation. The events in Egypt in 2012-13 show yet again that one group cannot use force to prevail over another. To be sure, implementing a reconciliatory system may seem unrealistic in many countries. The prospect for any reconciliatory scenario in South Africa and Poland looked unrealistic, especially given the state of emergency both countries experienced in the 1980s, as well as their complicated transitions.[54] Yet both South Africa in 1996-2001 and Poland in 1999-2005 were able to implement reconciliatory systems.[55] The South African truth and reconciliation process has since become an iconic model of political reconciliation. If Libya were to embrace a reconciliatory system, it too could provide an example for the future.

RECONCILIATORY SYSTEMS AND LIBYA

More than two years after the death of Qaddafi, the voices questioning the very legitimacy of the Libyan revolution are growing louder in light of the country's continuing stalemate. Libya faces increasing insecurity, uncertainty about its future, and difficulty in building a stable state apparatus with a viable police force, army, and judiciary. Libya's prospects for democratization are significantly hindered by the inability of any political force to control the armed militias that often target civilians, be they Qaddafi loyalists or opponents. The state apparatus, the police, and the army are too weak to secure order, which is the most essential function of the state. The operation of the state has been further weakened by the enactment of the PIL. Continued implementation of the PIL puts Libya at risk of becoming a failed state.

The brief abduction of former Prime Minister Ali Zeidan in October 2013 prompted many Libyans to question the competence of the representatives they elected two years prior and to doubt the possibility of building viable state institutions. The fact that some politicians, including Zeidan himself, openly admit that Libya is a failed state confirms the government's helplessness in restoring security. Zeidan's opponents, including Muhammad Savan, the leader of the Muslim Brotherhood, and a group of ultra-conservative Salafis, are capitalizing on the security lapse.[56] If the prime minister is not safe, how can an average Libyan citizen protect himself from the threats these militias pose? The democratic transition in Libya is under threat.

The operation of the state has been further weakened by the enactment of the PIL. Continued implementation of the PIL puts Libya at risk of becoming a failed state.

Libya appears to be in need of a broad coalition government that would agree on fundamental principles about the course of the country and major reforms, including the demobilization of the armed militia and the personnel reform of the state apparatus. Forging such a coalition would hardly be possible without the involvement of and discussion among major international actors, including the United States, France, the United Kingdom, and Qatar. It would be nearly impossible if the efforts of one of these actors are undermined by its allies. An international mediation that could help Libyans create another type of transitional council or a broader coalition government seems an inevitable precondition to pursue security and personnel reform.

Whether managed domestically or with the help of foreign countries, personnel reform—in order to serve the interests of the Libyan people—needs to be based on inclusion rather than exclusion and on reconciliation rather than revenge.[57] The implementation of a reconciliatory personnel system would meet those expectations, providing a number of advantages (see Appendix). Although a reconciliatory system may initially score lower in delivering trust and justice, it is the only system that would be able to facilitate reconciliation, retain qualified personnel, uphold human rights standards, and serve as a positive example to others.[58]

The issue of personnel reform goes beyond the scorecard of its advantages and disadvantages and underpins a broader political and social transformation. Democratization cannot be reduced to organizing democratic elections, writing a new constitution, and building political institutions. Formal rules are conditions that are necessary but not sufficient for democracy. It is not unusual for elections, which are declared free and fair, to result in leadership that publicly opposes democracy and peace.[59] Democracy requires democratic political culture, amenability to compromise, and respect for human rights. It follows that if democracy requires democratic political culture, then democratization should be accompanied by social transformation.

The exclusive nature of the Political Isolation Law effectively inhibits such a social transformation. Similar to elections, it merely redistributes power and enables the former opposition to gain control of the state apparatus. In doing so, it preserves the past conflict with the new actors finding themselves in the old process of exclusion. Political leaders and legions of bureaucrats, who have the expertise and willingness to contribute to the new system, are disqualified from political participation. The application of the PIL weakens the state and enlarges the ranks of its opponents.

In order to promote democratic transformation, Libya and other transitional countries would benefit from pursuing personal changes rather than personnel changes. A reconciliatory system can serve as a vehicle of such a transformation. It gives tainted officials an opportunity to publicly demonstrate whether they are willing to play by the rules of the new system. Such process is not foreign to Arab culture and is in accordance with the Islamic teaching on *tawba*. Observing the drama of confession, the public has a unique opportunity to scrutinize the motives and actions of the officials, engage in a dialogue over the past, and come to terms with their own past. South Africa—a country that was deeply divided along racial, religious, political, and social lines and experienced a brutal regime and violent transition—shows this is not merely an idealistic hope but a realistic option.

The public nature of a reconciliatory process would bring additional advantages. Reform of the armed forces and state administration includes "soft tasks such as overcoming the perception of their association with the former regime."[60] Revelations of inherited personnel, scrutinized for their authenticity by a transparent process with public participation, may provide the new government with a degree of legitimacy and enough breathing space to consolidate the state apparatus. Nearly three years after the fall of the Qaddafi regime, Libya again needs a fresh start. A reconciliatory system could provide it.

Appendix:
Advantages and Disadvantages of Personnel Systems

	Exclusive System: The Political Isolation Law	Reconciliatory System: The Proposed Model
1. **Building trustworthy government**	(+) Effective in building trustworthy government (-) Trust is limited to the sections of the former opposition (-) Deprives the state of experienced personnel (-) Deprives the country of political leaders (personalized trust)	(+) Capable of building trustworthy government, albeit less efficient (+) Trust can stem from all sections of society (+) Retains qualified personnel, which may win trust by effective delivery of services
2. **Reconciliation**	(-) Politically divisive (-) Political divisions spill over to society	(+) Reconciliatory effects on the macro-level (smoothing political compromise) (+) Reconciliatory effects on the micro-level
3. **Justice**	(+) A response to the injustices of the Qaddafi era (-) Excessive provisions create new injustices	(+) Alternative means of justice (restorative justice)
4. **Human Rights**	(+) There is no right to be appointed to public office; public employment can be limited by law (-) Violates the right not to testify against oneself and the right to vote	(+) Human rights friendly model (+) Confession does not violate the right not to testify because it leads to the second chance rather than constituting sanctions
5. **Contagion**	(-) Sends a signal to those dissatisfied with any pre-transitional regime not to defect	(+) Capacity to inspire other Arab countries

(+) Indicates an advantage
(-) Indicates a disadvantage

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