

## Regulatory Governance as a De-Parliamentarization Process: A Contextual Approach to Global Constitutionalism and Its Effects on New Arab Legislatures

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**Abstract :** The paper aims to analyze an often-overlooked dimension of global constitutionalism, which is the rise of the regulatory state and its impact on parliamentary dynamics in transition regimes. In contrast to Majone's technocratic vision of convergence towards a single regulatory system based on competence and efficiency, national transpositions of regulatory governance and, in general, the relationship to global standards primarily depend upon a number of distinctive parameters. These include policy formation process, speed of change, depth of parliamentary tradition and greater or lesser vulnerability to the normative conditionality of donors, interstate groupings and transnational regulatory bodies. Based on a comparison between three post-Arab Spring countries -Morocco, Tunisia, and Egypt, whose constitutions have undergone substantive review in the period 2011-2014- and some European Union state members, the paper intends, first, to assess the degree of permeability to global constitutionalism in different contexts. A noteworthy divide emerges from this comparison. Whereas European constitutions still seem impervious to the lexicon of global constitutionalism, the influence of the latter is obvious in the recently drafted constitutions in Morocco, Tunisia, and Egypt. This is evidenced by their reference to notions such as 'governance', 'regulators', 'accountability', 'transparency', 'civil society', and 'participatory democracy'. Second, the study will provide a contextual account of internal and external rationales underlying the constitutionalization of regulatory governance in the cases examined. Unlike European constitutionalism, where parliamentarism and the tradition of representative government function as a structural mechanism that moderates the de-parliamentarization effect induced by global constitutionalism, Arab constitutional transitions have led to a paradoxical situation; contrary to the public demands for further parliamentarization, the 2011 constitution-makers have opted for a de-parliamentarization pattern. This is particularly reflected in the procedures established by constitutions and regular legislation, to handle the interaction between lawmakers and regulatory bodies. Once the 'constitutional' and 'independent' nature of these agencies is formally endorsed, the birth of these 'fourth power' entities, which are neither elected nor directly responsible to elected officials, will raise the question of their accountability. Third, the paper shows that, even in the three selected countries, the de-parliamentarization intensity is significantly variable. By contrast to the radical stance of the Moroccan and Egyptian constituents who have shown greater concern to shield regulatory bodies from legislatures' scrutiny, the Tunisian case indicates a certain tendency to provide lawmakers with some essential control instruments (e. g. exclusive appointment power, adversarial discussion of regulators' annual reports, dismissal power, later held unconstitutional). In sum, the comparison reveals that the transposition of the regulatory state model and, more generally, sensitivity to the legal implications of global conditionality essentially relies on the evolution of real-world power relations at both national and international levels.

**Keywords :** Arab legislatures, de-parliamentarization, global constitutionalism, normative conditionality, regulatory state

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