



CONSTITUTIONAL SYSTEMS OF THE WORLD

# The Constitutional Systems of the Independent Central Asian States

*A Contextual Analysis*

Scott Newton

B L O O M S B U R Y

## THE CONSTITUTIONAL SYSTEMS OF THE INDEPENDENT CENTRAL ASIAN STATES

This book undertakes the first comparative constitutional analysis of the Kyrgyz Republic and Republics of Kazakhstan, Turkmenistan, Uzbekistan and Tajikistan in their cultural, historical, political, economic and social context. The first chapter provides a general overview of the diverse and dynamic constitutional landscape across the region. A second chapter examines the Soviet constitutional system in depth as the womb of the Central Asian States. A third chapter completes the general picture by examining the constitutional influences of the 'new world order' of globalisation, neo-liberalism and good governance into which the five states were thrust. The remaining five chapters look in turn at the constitutional context of presidents and governments, parliaments and elections, courts and rights, society and economy, and culture and identity. The enquiry probes the regional patterns of neo-Sovietism, plebiscitary elections, weak courts and parliaments, crony capitalism and constraints on association, as well as the counter-tendencies that strengthen democracy, rights protection and pluralism. It reveals the Central Asian experience to be emblematic of the principal issues and tensions facing contemporary constitutional systems everywhere.

### Pictorial Narrative

The Independent Central Asian Republics: *Mythical Frontiers*.

The Romanov Imperial crown on double-headed eagle, to the left, and Soviet Union's sickle and hammer with red star, to the right, converge on a yurt etched with the year 1991. This part of the composition refers to the continuous Russian political dominance from the 19th century up to 1991 when the Central Asian Republics achieved independence. Over the yurt, the crescent moon with rising star symbolises Islam, the common religion of the Republics.

To the right Tamerlane(\*), the iconic founder of the Timurid Empire, recalls the medieval Turco-Persian splendour of the 'heart of the world.' Tajikistan's flag forms part of Tamerlane's crown—a blazing sun radiates from Kyrgyzstan's flag and envelopes his left arm. Adjoining the yurt is Norman Foster's Pyramid of Peace and Accord in Astana (capital of Kazakhstan). Uzbekistan's flag occupies the other side of the pyramid. Kazakhstan's flag is stretched across the bottom right corner. Turkmenistan's flag is spread in front of the pyramid. The composition concludes with a solitary swordsman and his white horse(\*\*) under a starry night—capturing the nomadic past of the steppes and the spirit of adventure.

Putachad  
Artist

\* From forensic facial reconstruction of Tamerlane, from his tomb in Uzbekistan, by Gerasimov.

\*\* Inspired by a Soviet poster 'we cannot dispense with the horse', Russian and Uzbek, Tashkent 1933, Mardjani.

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In the era of globalisation, issues of constitutional law and good governance are being seen increasingly as vital issues in all types of society. Since the end of the Cold War, there have been dramatic developments in democratic and legal reform, and post-conflict societies are also in the throes of reconstructing their governance systems. Even societies already firmly based on constitutional governance and the rule of law have undergone constitutional change and experimentation with new forms of governance; and their constitutional systems are increasingly subjected to comparative analysis and transplantation. Constitutional texts for practically every country in the world are now easily available on the internet. However, texts which enable one to understand the true context, purposes, interpretation and incidents of a constitutional system are much harder to locate, and are often extremely detailed and descriptive. This series seeks to provide scholars and students with accessible introductions to the constitutional systems of the world, supplying both a road map for the novice and, at the same time, a deeper understanding of the key historical, political and legal events which have shaped the constitutional landscape of each country. Each book in this series deals with a single country, or a group of countries with a common constitutional history, and each author is an expert in their field.

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Scott Newton



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For Victoria and Sylvan, wife and son, companions  
throughout, with love and gratitude.



# *Contents*

<b>INTRODUCTION.....</b>	<b>1</b>
First Principles: Constitutional Orders, Constitutional Functions, Constitutional Processes .....	5
Methodology and Schools of Thought .....	7
Plan of the Work.....	11
Further Reading.....	13
<b>1. CONSTITUTIONAL OVERVIEW:</b>	
<b>LIE OF THE 'STANS .....</b>	<b>15</b>
Uzbekistan.....	17
Turkmenistan.....	23
Kazakhstan.....	31
Tajikistan.....	38
Kyrgyzstan.....	44
Further Reading.....	52
<b>2. RED ORIGINS: DOING JUSTICE TO SOVIET CONSTITUTIONALISM.....</b>	<b>55</b>
Soviet Constitutional Order .....	56
Soviet Authority (CPSU).....	58
Soviet Federalism and Nationalities Regulation .....	63
Soviet Government.....	68
Soviet Planning and Ownership .....	70
Soviet Social Regulation and Protection.....	73
Soviet Rights Protection .....	77
Soviet Ideology.....	78
Soviet Local Variation .....	79
Constitutional Order and the Constitution.....	82
Soviet Constitutional Problems and Solutions.....	84
Further Reading.....	91
<b>3. NATAL CHART: CONSTITUENT INFLUENCES AND PROCESSES.....</b>	<b>93</b>
The Post-Soviet Moment and the Exigency of Sovereignty.....	93



The Constituent Process and the Texts	
Themselves .....	97
Property, The Market and Welfare .....	107
Culture and Constitution .....	109
Transition Tutelage: Good Governance,	
Rule of Law, Democratisation.....	113
Conclusion .....	123
Further Reading.....	123
<b>4. SUPER-PRESIDENTS AND SUPERPOWERS.....</b>	<b>125</b>
Imbalance of Power .....	125
Presidential Particulars: Presidency and President.....	130
Presidential Power: Government and its Subordinate	
Agencies; Local Administration .....	132
Presidential Power: Parliament.....	136
Presidential Power: Judicial Structures.....	137
Presidential Power: Elections/Referenda.....	138
Presidential Power: Administration/ <i>Apparat</i> and	
Directly Subordinate Agencies .....	139
Presidential Power: National Security .....	141
Presidential Power: Lawmaking .....	144
Immunity and Impeachment.....	145
Doing Justice to Super-presidentialism.....	148
Further Reading.....	152
<b>5. TALKING SHOP OR GOVERNING BODY:</b>	
<b>PARLIAMENT .....</b>	<b>153</b>
Parliamentary Basics: Composition,	
Parliamentarians and Parties .....	154
Parliament as Institution: Structure,	
Leadership, Development .....	160
Parliamentary Powers: Lawmaking.....	163
Other Parliamentary Powers.....	166
The Meta-rules of Representation .....	170
Elections and Term of Office .....	174
A Tale of Two Parliaments, and Two Constitutions:	
Tajik and Kyrgyz.....	178
Further Reading.....	186

<b>6. HONOUR IN THE BREACH: RIGHTS, COURTS AND JUSTICE.....</b>	<b>187</b>
Constitutional Role and Functions of the Central Asian Judiciaries.....	190
Constitutional Evolution of the Central Asian Judiciaries.....	194
Governance: Judicial Personnel Management and Court Administration.....	198
Structure and Functions: The Five Court Systems.....	201
Constitutional Basis of the Central Asian Justice System: Internal Affairs, Justice and the Procuracy .....	205
Rights and Remedies .....	214
Judicial Protection.....	227
International Protection.....	228
Supplementary Protection: Procuracy and Human Rights Institutions.....	230
Further Reading.....	232
<b>7. PLAN TO CLAN: TRANSITIONS, ECONOMIC AND SOCIAL.....</b>	<b>233</b>
Constitutional Regulation of the Economy: Basic Rules.....	234
Constitutional Regulation of the Economy: Basic Institutions .....	237
Economic Constitutionalism: Foreign Investment and International Integration .....	241
The 'Material Constitution': Crony Capitalism, Corruption, Crime.....	244
Social Provision and Protections (Pensions, Unemployment, Poverty, Gender) .....	257
Further Reading.....	264
<b>8. CENTRAL ASIA CONSTITUTIONS AND CENTRAL ASIAN DIFFERENCE: THE REGULATION OF PLURALISM .....</b>	<b>267</b>
Identity: Who, the People?.....	267
Citizenship and Ethnicity ('Nationality') .....	271
Federalism, Devolution.....	275

Language.....	280
Culture .....	282
Religion.....	284
Local and Regional Government.....	286
Further Reading.....	290
<b>TABLES OF AUTHORITIES .....</b>	<b>291</b>
<b>INDEX .....</b>	<b>347</b>

## Introduction



### First Principles: Constitutional Orders, Constitutional Functions, Constitutional Processes – Methodology and Schools of Thought – Plan of the Work

THE PRESENT VOLUME is a comparative study of the constitutional systems of several states in a common region. These are the former Soviet republics of what has variously been known as Central, Middle, or Inner Asia—a region notable, perhaps before anything else, for the historical obscurity into which it appeared to slip (and the fascination it has thereby exercised) after the decline of the Timurid Empire in the fifteenth century.<sup>1</sup> It remained largely insulated and isolated from the shaping forces of modern constitutionalism even as it was incorporated into the Romanov Empire over the course of the nineteenth century.<sup>2</sup> When constitutionalism did come to Central Asia, it came in its distinct Bolshevik variant, when the region was organised in the 1920s and 1930s as five among 15 constituent polities of a federal state, the Union of Soviet Socialist Republics. In consequence its perennial obscurity and fascination were perpetuated and enhanced for a further seven decades.<sup>3</sup>

<sup>1</sup> For general historical/cultural surveys of the region, reflecting its abiding mystique for Europeans see R Grousset, *Empire of the Steppes* (New Brunswick NJ, Rutgers University Press, 1971); C Thubron, *The Lost Heart of Asia* (London, Vintage, 2004); S Soucek, *A History of Inner Asia* (Cambridge, Cambridge University Press, 2000).

<sup>2</sup> For accounts of the incidents of the Russian annexation of the region and the background Anglo-Russian rivalry, see P Hopkirk, *The Great Game: On Secret Service in High Asia* (Oxford, Oxford University Press, 1991); F Burnaby, *A Ride to Khiva: Travels and Adventures in Central Asia* (New York, Cosimo, 2007).

<sup>3</sup> See F Maclean, *Eastern Approaches* (London, Penguin, 2006) for a rare outside glimpse in the 1930s into the then recently constituted and largely inaccessible Soviet Central Asian republics.

## 2 Introduction

The Central Asian states present a particularly compelling episode in constitutional history, and a unique comparative laboratory of constitutional development, unedifying as the contemporary results might strike a sceptical observer. Like Commonwealth African states, they all became sovereign jurisdictions at a particular historical conjuncture (although of course in the one case that is a matter of more than a decade, in the other of a month, December 1991), as inheritors of a parent constitutional tradition, which they then proceed to modify and adapt, in parallel but revealingly divergent ways. The filial threads binding the Central Asian states to Russian/Soviet constitutional thought and practice are perhaps more fraught than those binding Nigeria, Kenya and other sub-Saharan former crown colonies to British constitutionalism. The decolonisation analogy between Central Asia and Africa will be examined at length in due course.

Kazakhstan, Uzbekistan and their sister jurisdictions acquired sovereignty in the wake of an unprecedented systemic collapse, which definitively discredited the general state socialist and particular Soviet project which had constituted them in the first place. Like Minerva they had sprung forth fully formed, but at a singularly propitious moment. For 1989 and its aftermath were not merely a *fin-de-siècle* springtime of nations, by analogy to the revolutionary year of 1848,<sup>4</sup> but of constitutions and constitutionalism. By the time of communism's collapse, constitutionalism in the form of world or global constitutionalism had become an authoritative, indeed normative, international discourse, integral to the putative 'New World Order' and the foretold 'End of History'.

But the demands of global economic integration, together with the now-unchallenged institutional supremacy of Western industrial democracies, exercised paradoxical effects. They appeared to enhance the significance of constitutionalism for the new post-socialist states but also to delimit the field of choice among constitutional architectures *ex ante*. Of all the Soviet Socialist Republics (SSRs) which comprised the Union, the Central Asian five were perhaps the most exposed to the contrary winds blowing across the twentieth century. Almost entirely Soviet artefacts, they were devoid of any pre-revolutionary political coherence, much less an antecedent modern legal tradition which might furnish constitutional resources (unlike, say, Russia or Georgia). They might therefore be supposed to have been just as much

<sup>4</sup> M Howard, 'The Springtime of Nations' (1990) 69 (1) *Foreign Affairs* 17, 18.

at the mercy of the (ostensibly) oecumenical New World Order at the close of the twentieth century as at the mercy of the partisan Bolshevik order at its start.

The evolution of Central Asian constitutionalism has been complex and contradictory, as this volume will elaborate. The simultaneous push from the repudiation of the Soviet past and pull of the embrace of the globalised present did not simply catapult Central Asia into the constitutional future—at least into any predictable or prefigured one. Neither the repudiation nor the embrace was as wholehearted as might have seemed at the time. After 20 years, the contemporary Central Asian constitutional systems exhibit something old (Turko-Persian-Islamic culture), something new (original ideas and devices), something borrowed (from world constitutionalism), something blue—or in this case red (derived from Soviet experience, ie path-dependent). The resulting hybrid manages to be dynastic/patrimonial, makeshift, liberal-democratic and neo-Soviet, all at once, and owes something to both Madison and Stalin—among other constitutional architects.

The five post-Soviet Central Asian constitutions are all to a significant degree instrumentalist. They were drafted by and in the interests of the ruling SSR elites. With the exception of Kyrgyzstan and Tajikistan, the serving Soviet Republican party secretaries succeeded to the office of President of the independent republics. The constitution drafters had little use for a ‘veil of ignorance’ (a speculative device in political theory intended to ensure a just political order by preventing parties’ awareness of one another’s interests and advantages from influencing their original choice in designing institutions);<sup>5</sup> they had their eyes on the main chance. The constitutional narrative of Central Asia presented here will no doubt strike some readers as more properly a matter of politics, or even journalism, than jurisprudence—an absorbing and still unfolding story, with plot twists and turns, and ironies and surprises aplenty. The politics of ‘constitutional moments’ should, in the view of some, be high-minded and principled as befits ‘higher lawmaking’<sup>6</sup> but the politics of the Central Asian constitutional moments have fallen far short of such an ideal. Perhaps, though, they serve as a sobering and salutary counter-example, a reminder that constitutional politics are as much political as constitutional.

<sup>5</sup> J Rawls, *A Theory of Justice* (Cambridge MA, Harvard University Press, 1999).

<sup>6</sup> B Ackerman, *We the People: Transformations, Volume 2* (Cambridge MA, Harvard University Press, 2000) 266–94.

Notwithstanding their putative status as transitional or provisional, the five Central Asian constitutions all presented themselves as assured and definitive exercises in constitutional design. Constitutions must inevitably function as comprehensive legal-institutional charters, even when announcing themselves as interim or temporary.<sup>7</sup> Once they had adopted formal constitutions, the Central Asian states were in effect ‘committed to launch’, and followed out a constitutional trajectory. However, that trajectory has been erratic not ballistic or linear, with multiple swerves in the form of constitutional amendments—and for Kazakhstan and Kyrgyzstan, new constitutions. These serial amendments (or constitutions) do not merely reflect a learning or ‘debugging’ process, as might be anticipated for new states negotiating simultaneous economic and political transition (from plan to market, and isolation to integration, and from Soviet rule to something *sui generis*). They are also very much a reaction to interim events—from civil war in Tajikistan to parliamentary defiance in Kazakhstan and successive revolutions in Kyrgyzstan. They present a striking rebuke to the common error of supposing that constitutional systems, like self-determination, are a one-off matter. Constitutionalism has been in ferment in the region for two decades.

Now, though, almost two and a half decades on, a comparative constitutional analyst confronting the Central Asian systems cannot purport to evaluate constitutional design prospectively, in the manner of commentators on draft documents or provisions. Rather, they must inspect functional (or dysfunctional) constitutional machinery in operation. Central Asian constitutionalism has moved out of the realm of R&D and into that of consumer testing. And herewith a caveat: the temptation to harsh and hasty judgement, even derision, must be resisted. Certainly the circumstance that the Central Asian states are widely and not without warrant regarded as the most residually (or resurgently) Soviet of all former SSRs,<sup>8</sup> and indeed as some of the very

<sup>7</sup> cf the South African constitution of 1993, H Klug, *The Constitution of South Africa: A Contextual Analysis* (Oxford, Hart Publishing, 2010).

<sup>8</sup> J Heathershaw, ‘New Great Game or Same Old Ideas? Neo-Sovietism and the International Politics of Imagining “Central Asia”’ in D Dusseault (ed), *The CIS: Form or Substance?* (Cambridge, Cambridge University Press, 2007) 237–68, 237 (regional ideology of neo-Sovietism).

most repressive polities on the planet,<sup>9</sup> sharpens the challenge facing this enquiry. Doing justice to rather than simply dissing or dismissing the constitutions of the Central Asian states is no easy matter, but the intention here over eight chapters is to write on them rather than write them off.

# FIRST PRINCIPLES: CONSTITUTIONAL ORDERS, CONSTITUTIONAL FUNCTIONS, CONSTITUTIONAL PROCESSES

*Constitutional system or order.* Although the five written constitutions will serve as the magnetic North of the analytic navigation here, to which our discussion will be by default orientated, the ‘constitution outside the constitution’<sup>10</sup> (sub-constitutional legal norms effectively doing constitutional work) and the ‘material constitution’<sup>11</sup> (the actual configuration of political and economic power in a society which produces the formal constitution) will be critical coordinates throughout. As evident in the title, this volume looks beyond the constitutional text to the *constitutional systems or orders* of the Central Asian states: all those aspects of the normative order, whether canonically constitutional or not (indeed whether formalised or not) that perform one or more constitutional roles.<sup>12</sup> A constitutional order need not mean ‘constitutional government’ in a praiseworthy sense, since a constitutional order can just as readily constrict political space by foreclosing deliberation and contestation.

<sup>9</sup> Freedom House has assigned Turkmenistan and Uzbekistan a score of 1 or 0 on its 1–40 index of political liberties in seven and ten, respectively, out of the last 13 annual evaluations and single digit scores on its 1–60 index of civil liberty for both in all 13. Only Kyrgyzstan merits the designation ‘partly free’. Freedom House, *Freedom in the World 2014*, Comparative and Historical Data, available at [www.freedomhouse.org/report-types/freedom-world#.VAhl-PmwLMo](http://www.freedomhouse.org/report-types/freedom-world#.VAhl-PmwLMo) (accessed 6 November 2015).

<sup>10</sup> EA Young, ‘The Constitution Outside the Constitution’ (2007–08) 117 *Yale Law Journal* 408, 411.

<sup>11</sup> A Negri, ‘The Material Constitution’ in A Negri, *Books for Burning: Between Civil War and Democracy in 1970s Italy* (London, Verso, 2005) 180–81.

<sup>12</sup> M Tushnet, *The New Constitutional Order* (Princeton NJ, Princeton University Press, 2003) 1.



*Constitutional functions, roles and criteria.* Every scholar has their cherished set of defining constitutional functions, according them variable weight or ranking, for example, structuring, meta-normative (process-policing), rights-protecting, legitimising, aspirational (developmental), transitional (systemic change-regulating), social-redistributive, difference-accommodating (pluralist), identarian, economic, instrumentalist. There are also expansive and restrictive definitions of the term 'constitution' itself. The Anglo-American concept of specified limits to government has been distinguished from the continental concept of 'plan of government': is a given constitution superior to the rest of the normative order or does it simply collapse into it? One classic and illustrative definition posited the following comprehensive criteria for a genuine constitution: constitutive of a legal system, stable, written, superior, justiciable, entrenched and expressive of a common ideology.<sup>13</sup>

A constitution serving as an instrument of, not a constraint on, the governors has been argued to be merely a façade or a sham constitution.<sup>14</sup> While the Central Asian constitutions are not sham in any facile sense, they are instrumentalist. Though many of the enumerated possible constitutional functions and roles will be examined and evaluated here for the Central Asian cases, the reader is warned that instrumentalism will loom large. The use of general constitutional forms to prosecute very particular interests is especially likely to afflict constitutional systems like all those considered here that are: 1) young (not long established, therefore fragile or insecure and temporally close to the interests which design them); 2) transitional (following the sudden collapse and discrediting of a prior societal system); and 3) path-dependent (bearing the very particular legacy of a constitutional tradition notoriously subject to instrumentalisation).

*Constitutional processes.* Constitutions as legal texts could well be imagined to be less significant than the processes they set in motion: of interpretation and elaboration, of institutional evolution, of

<sup>13</sup> J Raz, 'On the Authority and Interpretation of Constitutions: Some Preliminaries' in L Alexander (ed), *Constitutionalism: Philosophical Foundations* (Cambridge, Cambridge University Press, 1998) 152–54.

<sup>14</sup> G Sartori, 'Constitutionalism: A Preliminary Discussion' (1962) 56 *The American Political Science Review* 853 (restricting the term 'constitutionalism' to cases of valid guarantees and enforceable limitations).

democratisation. Compelling drafting language—pregnant and artful textual provisions (eg the South African Constitution of 1996)<sup>15</sup>—can facilitate a ramifying jurisprudence. Thus, US constitutionalism might be said to owe much to the felicitous formulations of the text, which have beseeched continual interpretive labour. The Central Asian constitutions qua texts, readers should be forewarned, are not stellar examples of the modern genre; they present no great novelty or compelling departure. These are not notably imaginative documents. Unsurprisingly, neither has Central Asian constitutional jurisprudence covered itself with glory in its two decades of development. The states have largely foreclosed the kind of judicial autonomy and unrestricted institutional breathing space essential for constitutional imagination and insight to flourish, and correlatively for component institutions to develop and mature. Constitutional jurisprudence has been largely stunted across the states and constitutionalism has not become generally embedded in legal and political culture in a dynamic manner (with the notable exception of Kyrgyzstan and to a lesser degree Kazakhstan). In consequence, constitutional logic and argument have only in a restricted and qualified sense become part of broader processes of democratic deliberation and collective self-understanding. It is hard to detect evidence anywhere in the Central Asian cases of ‘constitutional patriotism’,<sup>16</sup> by which constitutionalism is stitched into the fabric of national life and traditions, defining not just reflecting national culture. Nor is it any easier to discover Central Asian examples of an evolving and dynamic ‘constitutional identity’,<sup>17</sup> which would take root in the particularities of collective history and experience.

#### METHODOLOGY AND SCHOOLS OF THOUGHT

The analysis developed at length below draws on four principal schools of analysis/bodies of literature:

<sup>15</sup> Klug (n 7).

<sup>16</sup> J Habermas, ‘The Postnational Constellation and the Future of Democracy’ in J Habermas, *The Postnational Constellation* (Cambridge MA, MIT Press, 2001) 56–112, 76.

<sup>17</sup> G Jacobsohn, ‘Constitutional Identity’ (2006) 68 *The Review of Politics* 361, 363.

## Critical Constitutionalism

The Central Asian constitutional experience has also unfolded in a period of bold advances in critical constitutional theory and thought. Not only do the five constitutions furnish an intriguing comparative design laboratory, but also a tough empirical terrain to road-test the theoretical instruments of a new generation of constitutional scholars.<sup>18</sup> The Central Asian systems allow one to observe some of the standing tensions of constitutional theory—between limited government (guarantees) and plan of government (as among other identified functions of constitutions), between constitutional order and written instrument (or material and formal constitution), between constitutionalism and democracy, between norm (meta-norm) and exception. Constitutional constraints might sound farcical in the land of sultanistic presidents, when extensions of presidential term by special referendum or one-off waivers of term limits by constitutional amendment are a recurrent feature and ‘First President’ is a special status, distinct from that of President.<sup>19</sup> Constitutional protection of human rights might seem a grim joke where torture, telephone justice, targeted extra-judicial killings and even mass state violence are not simply faint historical echoes.<sup>20</sup> But to a critical constitutional analysis, even such flat-out examples of constitutional self-cancelling or hypocrisy shed light on the nature of modern constitutionalism and merit sustained, serious attention.

<sup>18</sup> For an example see N Sultany, ‘The State of Progressive Constitutional Theory: The Paradox of Constitutional Democracy and the Project of Political Justification’ (2012) 47 *Harvard Civil Rights–Civil Liberties* 371 (discursive analysis and critique of the competing major schools of constitutional thought regarding the counter-majoritarian problem) or D Kennedy, *A Critique of Adjudication: Fin De Siècle* (Cambridge MA, Harvard University Press, 1997) (exposition of elaborate ideological underpinnings of adjudicative rationality and their systematic disguise and ‘translation’ in judicial decisions).

<sup>19</sup> See eg Kaz Law 20.07.2000. (References to the five constitutions currently in force are designated in footnotes by three-letter abbreviations—Uzb, Kaz, Kyr, Taj, Tkm—and article number; earlier versions by year; references to subsidiary legislation by abbreviation, type of enactment and date; see Table of Authorities.)

<sup>20</sup> See eg Human Rights Watch, ‘Bullets Were Falling Like Rain: The Andijan Massacre, May 13, 2005’, available at [www.hrw.org/sites/default/files/reports/uzbekistan0605.pdf](http://www.hrw.org/sites/default/files/reports/uzbekistan0605.pdf) (accessed 6 November 2015).

## World Constitutionalism/Transition/ROL/Democratisation

The term 'world constitutionalism' has been proposed to capture the development of plural traditions of constitutional jurisprudence in the post-war world, a trend held to have accelerated dramatically post-Cold War.<sup>21</sup> The states emerging from the collapse of socialism, the Central Asian states among them, were carried on the crest of a constitutionalist wave. The Central Asian states together with the rest of the former socialist Bloc were subsumed under the dominant 'transition' paradigm, which encompassed the embrace of market economies, the practice of good governance, rule-of-law (ROL) reform and democratisation.<sup>22</sup> In this connection, the notion of an ideal constitutional design and an ideal set of political and economic institutions, borrowed from the best available models but suitably simplified and adapted, had begun to gain traction.<sup>23</sup> Democratisation had been grounded in human rights in the form of the 'emerging right to democratic governance', constructed in stages from the rights to self-determination, political expression and participation in free and fair elections.<sup>24</sup>

Bilateral and multilateral development agencies and institutions played a critical role as enforcers of emerging democratisation/ROL standards and promoters of correlative reforms in the region. Beyond undertaking specific programmatic interventions in the Central Asian states, the development agencies both produced and sponsored studies, served as a recurrent object of the scholarly attentions of others, and influenced the conceptual and political terms of debate. It is simply impossible to chart the course of constitutionalism in Central Asia over the last two decades without critically examining both the claims of the

<sup>21</sup> B Ackerman, 'The Rise of World Constitutionalism' (1997) 83 *Virginia Law Review* 771.

<sup>22</sup> See discussion in ch 3 for a definition and analysis of the transition paradigm.

<sup>23</sup> See J De Lisle, 'Lex Americana? United States Legal Assistance, American Legal Models and Legal Change in the Post-communist World and Beyond' (1999) 20 *University of Pennsylvania Journal of International Economic Law* 179; S Marks, 'Guarding the Gates With Two Faces: International Law and Political Reconstruction' (1998) 6 *Indiana Journal of Global Legal Studies* 457, 464–65 (promotion for transition states of formalistic, elections-focused concept of democracy without substantive institutional transformation).

<sup>24</sup> T Franck, 'The Emerging Right to Democratic Governance' (1992) 86 *American Journal of International Law* 46.

democratisation/ROL literature and the uses to which it has been put in donor interventions.

## **Native Constitutional Discourse**

The venerable and rich Russian legal discourse remains conceptually native to many post-Soviet Central Asian jurists, whatever their professional vernacular. Like its sister civilian traditions in France or Germany it is formalist and as a general matter eschews extra- or meta-judicial perspectives such as public policy, law and economics, legal realist or critical legal analysis, socio-legal studies and legal anthropology. The body of constitutional commentary and analysis in Central Asia tends to be expository and doctrinal, as well as politically acceptable and inoffensive, given the very narrow limits of permissible critique of the regimes in place and their legitimising constitutional orders. It is nonetheless important for this study to attend to the constitutional discourse of Central Asian jurists (as well as their Russian colleagues), both for its independent analytic force and for its role in constructing and articulating constitutional ideology.

## **Central Asia Studies**

Central Asia studies, formerly the province of a handful of scattered specialists and a subdivision of either oriental (for an older generation) or Soviet (for a younger generation) studies,<sup>25</sup> has flowered as a self-standing academic discourse and discipline in its own right, shaped and informed by a wide range of contemporary social-scientific and critical methods and approaches. A rich literature (as well as specialised journals and research/scholarly networks)<sup>26</sup> has grown up over the last two decades developing, exploring and analysing a broad array of regionally

<sup>25</sup> Hélène Carrère d'Encausse, René Grousset and Peter Hopkirk, to name three very disparate Central Asianists of a former day.

<sup>26</sup> Among them *Central Asia Survey*, *The Central Asia-Caucasus Analyst*, Cambridge Central Asia Forum, SOAS Centre for Contemporary Central Asia and the Caucasus, Johns Hopkins Central Asia-Caucasus Institute, European Society for Central Asia Studies.

distinctive or inflected themes and paradigms: neo-patrimonialism and the political salience of clientilistic, affective and extra-institutional ties; the High Politics of resource extraction/distribution and counter-terror in the post 9/11 era (irresistibly though imprecisely termed the New Great Game); nation-building and the political construction of identity (language, culture, citizenship and ethnicity in historical and contemporary context); democratisation/good governance; conflict studies and post-conflict transition; and development, market transition and global economic integration (globalisation). Such studies have deployed in the process the full complement of contemporary critiques, including post-coloniality, discourse, gender and national/international political economy. The present work seeks both to bring constitutional law into the Central Asia studies fold, and to employ the rich new literature to illuminate specifically legal and constitutional problems and issues.

#### PLAN OF THE WORK

This enquiry, in keeping with the spirit of the series, is a selective comparative analysis: an examination of the most salient themes and issues which a comparison of the five constitutional orders is likely to suggest, in light of the first principles and the methodology set out above.

Chapter one offers an overview of the main constitutional features of each of the jurisdictions at present, a contemporary snapshot, together with a brief sketch of relevant extra-constitutional context and an identification of the main constitutional events and trends of the two decades elapsed since independence. All the principal issues and themes to be examined in later chapters are outlined here.

Chapter two undertakes a comprehensive characterisation and analysis of the main aspects of the constitutional order of the USSR, the matrix in which those of the five states examined here all originated. As the reader will rapidly grasp, the view put forward here is that of all former SSRs, the particular constitutional predicament of the 'stans is least possible to fathom without a thorough grounding in the system that produced them in the first place. The depth of treatment here is warranted moreover to counter the prevalent view that the significance of the Soviet colossus has receded with its shadow.

Chapter three looks at the moment of emergence of the five independent states and canvasses the range of factors, influences and

contingent developments which congenitally marked and shaped their constitutional orders. Among these are the circumstances of the dissolution of the Union, the centrality of sovereignty, the impatience and insistence of global market forces, and the tutelage, expectations and pressures of a public international community with an ideologically blinkered concept of 'transition.'

Chapters four and five look sequentially at the balance of power and governing responsibilities as between executive and legislative organs, both as conceived by the designers and stewards of the constitutional orders, and as they proceeded to play out once the institutions were functioning. In particular, chapter four seeks to explain how presidentialism acquired constitutionally grounded extraordinary powers across the region—sooner or later, gradually or precipitously, progressively or transiently—but came to lose them in Kyrgyzstan, uniquely. Chapter five explores the correlative question of how and why parliamentarianism (along with any remote hope for limited government) was strangled in the cradle in Turkmenistan and Uzbekistan by the consolidation of super-presidentialism,<sup>27</sup> why it was developmentally stunted in Kazakhstan and Tajikistan, and how it managed to overcome significant interim adversity and enjoy the reasonable prospect of reaching maturity in Kyrgyzstan.

Chapter six tracks the chequered fortunes of the court systems, their organisation, development and struggles for constitutional majority. It addresses the plight of rights and the general failure everywhere of Central Asian judiciaries to assert their constitutional role and keep their end up: they have not effectively policed constitutional boundaries either between states and citizens (the protection of individual rights) or between the structures of authority themselves. Here too, the challenge is to account for divergence across the five jurisdictions.

Chapter seven takes up the constitutional regulation of economic life for the five states but in an unusually broad perspective. It probes the 'constitution of economic transition' as well as the constitutional force of civil codification. Picking up on themes from chapter three, it considers as well the constraints on constitutional architecture imposed

<sup>27</sup> A constitutional system in which the president wields grossly disproportionate albeit less-than-total power over all other branches. JT Ishiyama and R Kennedy, 'Superpresidentialism and Political Party Development in Russia, Ukraine, Armenia and Kyrgyzstan' (2001) 53 *Europe-Asia Studies* 1177.

by the demands of global integration and international economic law, in the context of the diverse development strategies and the underlying political economy rationales among the states. At the end, it analyses privatisation and the constitutional configuration of market and state (private and public power), assessing the pivotal significance of cronyism, corruption and patronage networks for the constitutional orders.

Finally, chapter eight treats perhaps the knottiest of constitutional questions facing the young republics, the place of culture and identity, for it was the peculiar juridification of culture under the Soviet policy of developmental ethnonationalism that created the five polities and societies, as well as their constituent identities, in the first place. It examines the constitutional dimensions of cultural, social and religious pluralism: citizenship, equality, identity, autonomy and participation in public life.

## FURTHER READING

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## *Constitutional Overview*

### Lie of the 'Stans



**Uzbekistan (Constitutional Background, Constitutional Essentials, Constitutional Vicissitudes) – Turkmenistan (Constitutional Background, Constitutional Essentials, Constitutional Vicissitudes) – Tajikistan (Constitutional Background, Constitutional Essentials, Constitutional Vicissitudes) – Kazakhstan (Constitutional Background, Constitutional Essentials, Constitutional Vicissitudes) – Kyrgyzstan (Constitutional Background, Constitutional Essentials, Constitutional Vicissitudes)**

THE READER WHO is confronted with not one but five distinct constitutions in as many jurisdictions, all likely still unfamiliar enough to challenge his or her knowledge of geography, might find useful here at the outset a brief potted biography of each state and its constitution. The Republic of Kazakhstan, the Republic of Tajikistan, the Kyrgyz Republic, the Republic of Uzbekistan and the Republic of Turkmenistan all declared themselves independent states and claimed the status of subjects of international law in December 1991.<sup>1</sup> But while they may have only at that moment

<sup>1</sup> All five republics simultaneously became members of the UN in early 1992, thus belatedly joining two former fellow SSRs, Ukraine and Belarus, which oddly enough had been founding UN members, having joined on 24 October 1945, the same day as the USSR itself. Stalin had contrived this form of limited international recognition for the two European (Slavic) SSRs to increase the representation of socialist states in the new world organisation.

impinged on the world's consciousness as new sovereignties, they were all in fact national successor states to pre-existing subnational republics, as evident in their very names. Before December 1991, they were known officially as the Kazakh Soviet Socialist Republic (SSR), the Tajik SSR, the Kyrgyz SSR, the Uzbek SSR and the Turkmen SSR, and informally as (Soviet) Kazakhstan, Tajikistan, Kyrgyzstan (or Kyrgyzia), Uzbekistan and Turkmenistan. The constitutional history and legacy of the Central Asian SSRs are treated for the most part in chapter two, apart from a detailed analysis of the constitutional significance of ethno-territoriality and nationality, which is deferred until chapter eight.

As constituent Soviet republics, they each possessed a comprehensive armature of governing institutions: a Republican Soviet or Parliament, a Republican Council of Ministers or Executive and a Republican Judiciary—Supreme Court and lesser courts. They also were equipped with a battery of other Republican cultural, social and administrative institutions, not to mention a formal Republican party organisation and a scheme of local government and administrative territorial subdivisions. Two of the five—Tajikistan and Uzbekistan—further boasted an internal federal organisation of autonomous, sub-republican units, one for each, Gorno-Badakhshan and Karakalpakstan respectively. Every Central Asian SSR also possessed a formal written constitution, which, as suitably and separately amended, served them all for the initial period of independence until they adopted new constitutions—Turkmenistan and Uzbekistan over the course of 1992, Kyrgyzstan and Kazakhstan in 1993, and Tajikistan in 1994.

The five Central Asian states were thus emphatically not conjured into being at this juncture or created *ex nihilo*. Much like former colonial states, at the moment of independence they had long since been established as political-territorial entities. Unlike colonial jurisdictions however, the SSRs all enjoyed formal sovereignty and a formal constitution as well. So the first thing to understand when one surveys the constitutional histories of the Central Asian states is that well before independence they had been *comprehensively constituted in the formal sense of the term*—at independence they were already structured, regulated and fully kitted out institutionally as specified by a foundational written document, pursuant to which public authority was ostensibly exercised.

## UZBEKISTAN

**Constitutional Background: History, Context, Characteristics**

From ancient times the most urbanised and central patch of Central Asia, Transoxiana or the Land beyond the Oxus, Uzbekistan (the name, as that of the other states, is a Soviet contrivance) was the site of its grandest architectural monuments and centre of both its Persian and Turkic cultural traditions. On its territory was the seat of the last native imperial (Timurid) dynasty in the fourteenth century, as well as of the last two pre-modern khanates (Kokand and Khiva) and emirate (Bokhara). The Russian conquest of that territory, by General MG Chernaiev, the 'Lion of Tashkent', was completed by 1875. It was annexed to the Romanov Empire as the central provinces (Syr-Darya, Samarkand and Fergana) of the General Governorate of Turkestan; the remaining provinces encompassed what are now Tajikistan, Turkmenistan, Kyrgyzstan and southern Kazakhstan. The khanates were dissolved, but the emirate was left as self-governing until after the 1917 Revolution. Tsarist Turkestan consisted of garrison provinces, with a thin Russian settlement and a thin penetration of Russian customs and norms. Things only got 'thick' once the Bolsheviks had consolidated their authority, reorganised the jurisdictions and launched their comprehensive emancipation project in the early 1920s.

Uzbekistan along with Kazakhstan is one of the two significant regional powers. Nearly twice as populous, it falls short of Kazakhstan's resource abundance and ethnic diversity. It lacks as well any democratic opening, having remained stonily and austere authoritarian from the outset. Like Turkmenistan, although in a less extreme manner, Uzbekistan under the leadership of its autocratic president has embraced a nationalist ideology that stresses enduring unity and integrity; both those claims are difficult to square with the historical and demographic facts. It has consolidated the region's second most controlled political system and a correspondingly pliant constitutional order. Uzbekistan has figured prominently in the politics and strategic policy of counter-terror, extending its welcome to the US military after 9/11 only to rescind it four years later after international condemnation of the 2005 slaughter by government forces of 800 protestors kettled

in a public square in Andijon.<sup>2</sup> It has proved a difficult, at times truculent and defiant, prospect for international engagement.

Uzbekistan was the site of the USSR's plantation economy, the vast agricultural extension project to support cotton mono-cropping, which generated prodigious yields accompanied by equally prodigious environmental destruction and corruption.<sup>3</sup> This project, from the mid-1950s to the end of the USSR, involved vast hydraulic engineering works to divert the waters of the Syr Darya and Amu Darya rivers (the Jaxartes and Oxus of ancient geography) to irrigate the cotton crops, and vast quantities of pesticides to protect them. The effects were to desiccate the Aral Sea, once the world's fourth largest inland body of water, and to trigger runaway ecological degradation across its watershed for millions of hectares. This disaster has impacted all the Central Asian states, but Uzbekistan most extensively.

Uzbekistan, unlike its neighbours, has carried over from Soviet days significant aspects of the statist organisation and direction of its cotton-based economy. It has also retained the preponderance of its inherited public assets in state ownership or ultimate control while enabling a private sector, umbilically joined to state officials, to thrive in other respects. Uzbekistan also inherited a large contingent of Soviet forces and the headquarters of the Turkestan military district, covering Central Asia, and boasts the region's largest standing military. The Uzbek security and police services are also exceptionally well-organised, powerful and omnipresent. Uzbekistan has gained notoriety for its draconian repression of any dissent or independent political activity, most infamously for the Andijon massacre. While the pattern of Uzbek human rights violations has been readily sensationalised in the media,<sup>4</sup> many other concerning developments in post-Soviet Uzbekistan have

<sup>2</sup> Human Rights Watch, 'Bullets Were Falling Like Rain: The Andijan Massacre, May 13, 2005', available at [www.hrw.org/sites/default/files/reports/uzbekistan0605.pdf](http://www.hrw.org/sites/default/files/reports/uzbekistan0605.pdf), accessed 6 November 2015.

<sup>3</sup> D Kandiyoti, *Agrarian Reform, Gender and Land Rights in Uzbekistan*, UNRISD 2002, available at [www.unrisd.org/80256B3C005BCCF9/\(httpAuxPages\)/C2919AC1CD7B5379C1256CCA00369D07/\\$file/kandiyoti\(sml\).pdf](http://www.unrisd.org/80256B3C005BCCF9/(httpAuxPages)/C2919AC1CD7B5379C1256CCA00369D07/$file/kandiyoti(sml).pdf), accessed 5 February 2016, 3.

<sup>4</sup> See generally C Murray, *Murder in Samarkand: A British Ambassador's Controversial Defiance of Tyranny in the War on Terror* (Edinburgh and London, Mainstream Publishing, 2007) (lurid but veracious account of Uzbek human rights violations).

remained in the background, such as the impact of state-set crop prices on rural livelihoods<sup>5</sup> or controlled exchange rate on traders and the discriminatory impact of language and schooling policies on the large Tajik minority.

### **Constitutional Essentials: Formal Structure of Government and System of Rights**

The Uzbek Constitution<sup>6</sup> consists of 128 articles, organised under 26 chapters in six sections: General Principle; Basic Rights, Freedoms, and Duties; Society and Personality; Administrative Territorial and State Structure; Organisation of State Authority; and Amendment Procedures. The fifth section on state authority contains chapters each for Parliament, President, Cabinet, Local Government, Judiciary, Elections, Procuracy, Finance and Defence/Security. Of the five constitutions, it is the most elaborately structured and subdivided, though of modest length, just exceeding 7,000 words. It provides for a presidential system with an independent mandate and sweeping powers. The president nominates for consideration and confirmation by the parliament or Oliy Majlis, and removes from office, the prime minister, and confirms the Cabinet of Ministers. The president also nominates judges of the three apex courts and appoints and discharges all other judges and the provincial *bokims* (governors)<sup>7</sup> as well as the General Procurator, the head of the National Bank and other senior officials. The president is empowered to arrest or rescind the acts of government officials at central and local levels, and to issue decrees with mandatory force across the entire territory of the Republic.<sup>8</sup> The president is elected by direct universal suffrage for a term of seven years.<sup>9</sup> The Oliy Majlis is bicameral, consisting of a lower house, the Legislative Chamber and an upper house, the Senate. The 150 deputies of the Legislative Chamber are elected on the basis of territorial constituencies in accord

<sup>5</sup> See Kandiyoti (n 3).

<sup>6</sup> 08.12.1992 Constitution (hereinafter 'Uzb').

<sup>7</sup> Uzb 93.

<sup>8</sup> Uzb 94.

<sup>9</sup> Uzb 90.

with subsidiary legislation.<sup>10</sup> Six senators are elected from each territorial subdivision (provinces, the city of Tashkent and the Republic of Karakalpakstan) by the deputies of the respective local representative bodies (not directly elected), and an additional 16 are appointed by the president from among eminent persons.<sup>11</sup> The term of office for deputies of both chambers is five years.

Local government is in the form of councils elected directly but headed by a *bokim* (governor). The *bokim* at the provincial (oblast) level is appointed by and answerable to the president; the *bokim* at sub-provincial levels is appointed by and answerable to the provincial *bokim*. At the most local levels, neighbourhood or *mahalla* committees have been institutionalised as ‘organs of self-government’. These traditional structures of authority were tolerated and used but not recognised by the Uzbek SSR but they have become formal tools of the Republic of Uzbekistan.<sup>12</sup> Uzbekistan has carried over its Soviet-era federalism: the Constitution has established Karakalpakstan as an Autonomous Republic (the term for a federal subdivision subordinate to a Union SSR and inherited in this case from the Uzbek SSR), with its own constitution and organs of government.<sup>13</sup>

Judicial authority is tripartite with three apex courts: Supreme Court, Supreme Arbitration Court and Constitutional Court. The Constitutional Court determines the constitutionality of laws, resolutions of the Oliy Majlis, presidential decrees, resolutions of central and local government and international treaties, and also gives authoritative interpretations of norms of the Constitution and statutes.<sup>14</sup> The General Procuracy has supervisory responsibility for the ‘strict and uniform execution of all laws’.<sup>15</sup> A comprehensive catalogue of rights

<sup>10</sup> Uzb Law 12.12.2002.

<sup>11</sup> Uzb 77.

<sup>12</sup> Uzb 105, Uzb Law 02.09.1993. See T Dadabaev, ‘Changing Nature of the Mahalla: Outcomes of the Project’ (2006) 15 *RICAS Newsletter* 5, 8, available at [www.ricas.ioc.u-tokyo.ac.jp/pub/pdf/nl015.pdf](http://www.ricas.ioc.u-tokyo.ac.jp/pub/pdf/nl015.pdf), accessed 4 February 2016; Human Rights Watch, ‘Uzbekistan, From House to House: Abuses by Mahalla Committees’ (2003), available at [www.hrw.org/sites/default/files/reports/uzbekistan0903full.pdf](http://www.hrw.org/sites/default/files/reports/uzbekistan0903full.pdf), accessed 4 February 2016. See also discussion in ch 8.

<sup>13</sup> Uzb 70–75.

<sup>14</sup> Uzb 109.

<sup>15</sup> Uzb 118.

is enumerated in three chapters, Personal Rights,<sup>16</sup> Political Rights<sup>17</sup> and Social and Economic Rights;<sup>18</sup> these are balanced by Citizens' Duties.<sup>19</sup>

As in the other four states, the 'constitution outside the constitution', even in the strictly formal sense (setting aside issues of application, practice and informal or customary norms) is extensive. The principal designated Constitutional Laws include those on the Legislative Chamber, on the Senate, on Increasing the Role of Political Parties, on Results of the Referendum and Fundamental Principles of the Organisation of State Authority.<sup>20</sup> Other legislation carrying clear constitutional charge and part of the formal constitutional order would include the civil and criminal codes (substantive and procedural codes), the Laws on the Constitutional Court, Media, and Religious Organisations and the Constitution of Karakalpakstan.<sup>21</sup>

### **Constitutional Vicissitudes: Amendments, Elections/Referenda 1991–2014**

Uzbekistan's first constitution was adopted on 8 December 1992 and took effect immediately, but pursuant to it, the sitting Supreme Soviet exercised parliamentary authority until the first elections to the Oliy Majilis two years later. The new body assumed authority only in 1995. Subsequent parliamentary elections were held at the expiry of the first mandated five-year term in 1999. Following a national referendum in January 2002, two constitutional amendments were approved, 1) introducing a second, upper chamber (the Senate) and 2) extending the presidential term-in-office from five to seven years. The number

<sup>16</sup> Uzb 23–31.

<sup>17</sup> Uzb 32–35.

<sup>18</sup> Uzb 36–42.

<sup>19</sup> Uzb 47–52.

<sup>20</sup> Uzb 12.02.2002 Constitutional Law (Legislative chamber), 12.02.2002 Constitutional Law (Senate), 11.04.2007 Constitutional Law, 04.04.2002 Constitutional Law.

<sup>21</sup> Uzb Criminal Code 22.09.1994, Criminal Procedure Code 22.09.1994, Criminal Enforcement Code 25.04.1997, Civil Code I 21.12.1995, Civil Code II 29.08.1996, Civil Procedure Code 30.08.1997, Law 30.08.1995 (Constitutional court), 26.12.1997 (mass media), 14.06.1991 (religious organisations), Constitution 09.04.1993 (Karakalpakstan).



of deputies to the Legislative Chamber was reduced to 120. Elections to the bicameral legislature have been held at due five-year intervals in December 2004, 2009, and most recently in December 2014. Presidential elections have been held in 2000 (on the basis of the five-year term deemed to have commenced when the Constitution came into effect in 1995), in 2007 (on the basis of the extension of term to seven years pursuant to the 2002 amendments and referendum), and most recently in January 2015 upon the expiry of the previous term.<sup>22</sup>

The adoption of the Constitutional Law of 4 April 2007 on political parties was intended to mark something of a democratic demarche and led to a further set of constitutional amendments (adopted by statute, not referendum) in 2011. These augment formal governmental and parliamentary authority at the expense of presidential, by (inter alia) transferring to the prime minister the power to appoint and direct the Cabinet of Ministers, by granting the prevailing parliamentary party the power to nominate the prime minister, and by providing a procedure for the Legislative Chamber to conduct a no-confidence vote.<sup>23</sup> But these formal changes have not affected the real distribution of power. Uzbekistan has not relentlessly ratcheted up the constitutional mechanism in the noisy, blatant manner of Turkmenistan, but has instead discreetly but inexorably consolidated its own brand of presidential absolutism. The Andijon events of 2005, in the wake of which the state barred any media access and successfully frustrated demands for an international inquiry, were in fact a glaring exception (in publicity and scale) to the shadowy, background operation of the 'repressive state apparatus'. Although Uzbekistan's police state is not elaborated in the constitutional black-letter provisions, it is grounded in the constitutional system, as discussed in chapter four.

The Uzbek state regarded Andijon as a dangerous and intolerable armed challenge to state authority. It readily categorised as terrorism the actions of the elements of the crowd who had earlier stormed a prison to free a group of local businessmen arrested for alleged Islamic extremism. But in so doing it exploited the general international

<sup>22</sup> [www.osce.org/odihr/elections/uzbekistan/165876?download=true](http://www.osce.org/odihr/elections/uzbekistan/165876?download=true), accessed 6 November 2015.

<sup>23</sup> Uzb 98.

discourse and policy of counter-terrorism and the particular 'discourse of danger' respecting Central Asia<sup>24</sup> (not to mention its strategic alliance with Western governments). These international trends have greatly strengthened the hand of Uzbek hardliners and emboldened the forces of repression—the security state-within-a-state (see discussion of its Soviet roots in the next chapter). The threat from regional jihadists is certainly not imagined<sup>25</sup> but the reflexively brutal response has been to some extent fortuitously legitimised by the War on Terror.

## TURKMENISTAN

### Constitutional Background: History, Context, Characteristics

Turkmenistan, a largely desert expanse endowed with extraordinary hydrocarbon reserves like its sister-republics on the Caspian littoral (Kazakhstan, Azerbaijan), was the latest subdued and least politically unified territory in the Tsarist conquest and annexation of the region. It was home to the several nomadic and only loosely organised Turkmen tribes, whose self-appointed Bolshevik tutors organised their economic, social and political life along socialist lines and sought to forge among them a common sense of nationhood, notwithstanding a history of strong tribal identity and intertribal hostility. Tsarist rule had left social structures intact but Soviet authorities forcibly sedentarised the Turkmen and brought to an abrupt end their nomadic pastoral traditions over the course of mass collectivisation in the 1930s.<sup>26</sup> Turkmenistan was next after Uzbekistan in Moscow's Central Asian imperial plantation economy; its cotton production was similarly an artefact of massive centrally organised and implemented hydraulic intervention.

After independence Turkmenistan achieved a singular notoriety for its bizarre developmental trajectory, a Central Asian twist on a

<sup>24</sup> J Heathershaw and N Megoran, 'Contesting Danger: A New Agenda for Policy and Scholarship on Central Asia' (2011) 87 *International Affairs* 589, 589–91.

<sup>25</sup> See generally A Rashid, *Jihad: The Rise of Militant Islam in Central Asia* (London, Penguin, 2002) and A Rashid, *Taliban: Militant Islam, Oil and Fundamentalism in Central Asia* (New Haven CT, Yale University Press, 2010).

<sup>26</sup> A Edgar, *Tribal Nation: The Making of Soviet Turkmenistan* (Princeton NJ, Princeton University Press, 2006) 167–220.

dystopic fantasy—a cross between Orwell's *1984* and Terry Gilliam's film *Brazil*. The SSR Party Secretary, Saparamurat Niyazov, emerged upon independence as an over-the-top self-orientalising despot, ruling with near-absolute power until his death in 2006 as Turkmenbashi, 'Father of all Turkmen', and enforcing a cult of personality to make Stalin blush. Emblematic of Niyazov's unbridled megalomania was the Pharaonic-scale, revolving and round-the-clock verse-declaming sculpture of the *Ruhnama* in the centre of Ashgabat. The *Ruhnama*<sup>27</sup> is the autobiographical 'book of wisdom' and ersatz national scripture he penned (with its five sections, Turkmen, Turkmen's Path, Turkmen Nation, Turkmen State and Spiritual World of the Turkmen) and made compulsory study for all schoolchildren and adults. From among the *embarras de richesses* of other incidents of Niyazov's self-glorification, such as his portrait on all banknotes, or the official renaming of January as 'Turkmenbashi' and April as 'Gurbansoltan' (his mother), every commentator had their cherished favourites.<sup>28</sup>

Apart from its signature ostentatious sultanism, independent Turkmenistan has distinguished itself by providing virtually free utilities and housing, while simultaneously frustrating/disabling individual initiative and entrepreneurialism as well as social protection (drastically curtailing social support and downsizing the health and education provision by mass sackings and curtailment of services). The local reception of Turkmenbashi's system has been complex, involving appropriation and subversion by those on whom it was imposed, in a manner analogous to the local/peripheral reception of the preceding Soviet system.<sup>29</sup> On the international plane, Turkmenistan has pursued a managed isolationism, having adopted 'positive neutrality', ostensibly on the Swiss

<sup>27</sup> S Turkmenbashi (Niyazov), *Ruhnama: Reflections on the Spiritual Values of the Turkmen* (Turkmenistan, Ashgabat, 2005).

<sup>28</sup> D Hiro, *Inside Central Asia: A Political and Cultural History of Uzbekistan, Turkmenistan, Kazakhstan, Kyrgyzstan, Tajikistan, Turkey, and Iran* (London, Duckworth Overlook, 2013) 20–25; S Peyrouse, *Turkmenistan: Strategies of Power, Dilemmas of Development* (Armonk NY, ME Sharpe, 2012) 82–84; SN Cummings, *Understanding Central Asia: Politics and Contested Transformations* (Abingdon and New York, Routledge, 2012) 57.

<sup>29</sup> A Bohr, *Turkmenistan: Power, Politics, and Petro-Authoritarianism* (London, Chatham House, 2016); Peyrouse (n 28) 108–31.

model, as a central constitutional principle. Having navigated over its first two decades the turbulent waters of pipeline diplomacy (successfully negotiating with, and playing off against one another, China, Russia, the US and Iran), greenfield exploitation, the fluctuating prices of commodities and non-paying customers (recalcitrant Russia notably accumulated staggering gas arrears), Turkmenistan has earned vast revenues and accumulated commensurate wealth—little of which has trickled down to its tiny population (five million), who have been deliberately ‘underdeveloped’. Improbably, the passing of Turkmenbashi has left his monuments and his system alike intact.<sup>30</sup>

It is certainly sobering that such an egregious recapitulation of interwar European dictatorship could be constitutionally clothed at the century’s end. Nonetheless, the perverse fascination exercised on everyone by the spectacle of post-Soviet Turkmenistan should be resisted: it obscures the functionality of the system in a globalised context. ‘Positive neutrality’ (which did not prevent Niyazov from assisting in the 9/11 aftermath by permitting coalition overflights and in other ways) and one-man decision-making have facilitated Turkmenistan’s interrelated economic and strategic global integration. Much as Roosevelt is reported to have remarked of the comparative ease of negotiating with Stalin,<sup>31</sup> who was unencumbered by Parliament or Congress, Niyazov was the ‘whole works’, for diplomats (whether Russian, US, Iranian or Chinese) and multinationals alike (he was referred to as ‘Mr 33 per cent’).<sup>32</sup> Turkmenistan’s constitutional order, however repugnant in its internal manifestations, was welcome in its external. ‘World constitutionalism’, it would appear, rather fails to appreciate the political economy of tyranny in this strategic frontier of a new world order that is both resource-hungry and terror-obsessed.

<sup>30</sup> ‘A horse, a horse ... Turkmenistan president honours himself with statue’, the *Guardian* 25 May 2015, available at [www.theguardian.com/world/2015/may/25/horse-turkmenistan-president-statue-berdymukhamedov](http://www.theguardian.com/world/2015/may/25/horse-turkmenistan-president-statue-berdymukhamedov), accessed 16 June 2016.

<sup>31</sup> R McIntyre, *Twelve Years With Roosevelt* (London, Putnam, 1948) 171.

<sup>32</sup> MB Olcott, *Central Asia’s Second Chance* (Washington, Carnegie Endowment for Peace, 2005) 101.

## Constitutional Essentials: Formal Structure of Government and System of Rights 2014

The compact and compendious Turkmen Constitution,<sup>33</sup> consisting of 117 articles in eight sections (Fundamentals of Constitutional Structure; Citizen and Human Rights, Freedoms, and Duties; System of Governance; Local Self-Government; Electoral System; Judiciary; Procuracy; Concluding Provisions), is by a significant margin the briefest (less than 5,000 words) of the five constitutions and is characterised by terse formulations without elaboration. It was last amended in 2008 after the death of Niyazov. It provides<sup>34</sup> for a democratic, law-based and secular state embracing a presidential form of government and enjoying ‘permanent neutrality’, as recognised in a cited UN General Assembly Resolution.<sup>35</sup> The state language is Turkmen, and no official provision is made for any other language, save that all citizens have the right to use their native tongue.<sup>36</sup> Turkmenistan has a pure presidential system, without a prime minister, the president serving as head of government and acting through a directly subordinate Cabinet of Ministers. The president, elected on a separate mandate for a five-year term is ‘head of state and the executive, the guarantee of state independence and the status of neutrality.’<sup>37</sup> Presidential powers include appointment and dismissal with agreement of the parliament, the unicameral Mejlis, of the Chair of the Supreme Court, the General Procurator and the Ministers of Internal Affairs and Justice (*Adalat*);<sup>38</sup> otherwise the Cabinet is subject to direct formation and appointment by the president.<sup>39</sup> The president forms the State Security Council<sup>40</sup> and the Elections Commission<sup>41</sup> and exercises legislative authority as

<sup>33</sup> 18.05.1992 Constitution (hereinafter “Tkm”).

<sup>34</sup> Tkm 1.

<sup>35</sup> UN General Assembly Resolution 50/80. See generally L. Anceschi, *Turkmenistan’s Foreign Policy: Positive Neutrality and the Consolidation of the Turkmen Regime* (Central Asia Research Forum 13) (London, Routledge, 2008).

<sup>36</sup> Tkm 14.

<sup>37</sup> Tkm 50.

<sup>38</sup> Tkm 54(12).

<sup>39</sup> Tkm 73.

<sup>40</sup> Tkm 54(4).

<sup>41</sup> Tkm 54(8).