

Revolution and Political Transformation in the Middle East



Outcomes and Prospects

Volume III

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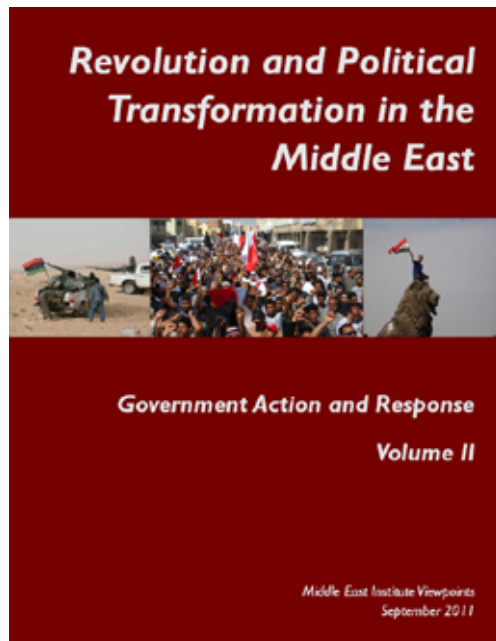
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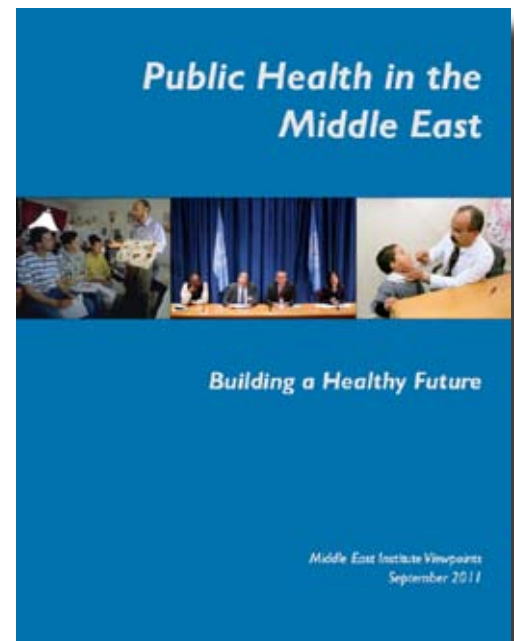
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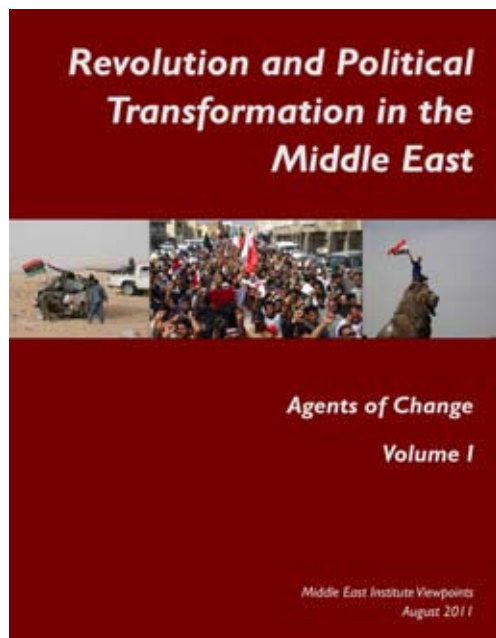
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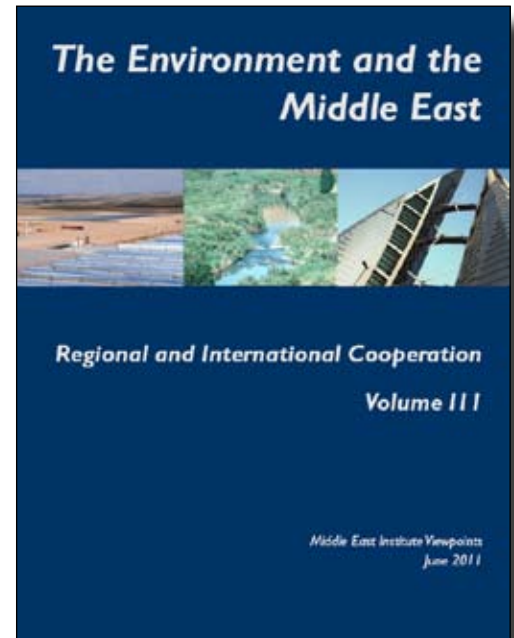
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On October 20, 2011, Libyan leader Mu‘ammar al-Qadhafi was found in Sirte and subsequently killed (under circumstances that remain unclear) after an eight-month battle with rebel forces. Just days later, residents of neighboring Tunisia went to the polls in droves for that country’s first elections since the fall of Bel ‘Ali in January. Under these strikingly different circumstances, the Middle East Institute concludes its series on *Revolution and Political Transformation in the Middle East* by examining the progress that has been made throughout the region in order to understand what lies ahead. As the varied fates of the deposed Qadhafi, Mubarak, and Ben ‘Ali governments indicate (not to mention the fates of the embattled governments of al-Asad in Syria and Salih in Yemen), no two countries have had the same trajectory in the Arab Spring, and events across the region will likely unfold in similarly varied ways.

Every country that has seen a movement for change in the past eleven months has contended with different circumstances: different regime strengths, different demographic compositions, different sets of long-standing rivalries, and different attitudes towards change. The articles in this final volume seek to provide insight into some of these differences, by looking forward to prospects for election and reform in Tunisia and Egypt (and what seems to be stability in Morocco), by looking to the past for the inspiration of literature, and by examining the dynamics of protest and non-violence as a tactical choice of protestors.

When we began this series of publications, we recognized the extreme difficulty faced by any scholar in seeing into the future for the implications of dramatic change — what seemed unthinkable only a year ago is now a reality in many places. What we hoped for was not to generate a perfect foresight into events to come, but rather to prompt a nuanced analysis of the different factors at play and the different possible trajectories that might result. While this volume represents the conclusion of this series, it does not represent the end of the conversation. By presenting these viewpoints, we hope we have begun a debate that will continue.

Civil Resistance in the Middle East and its Aftermath

Maria J. Stephan

Three years ago, when I began the project that culminated in an edited book, *Civilian Jihad: Nonviolent Struggle, Democratization and Governance in the Middle East*,¹ my intent was to shine a klieg on a remarkable, albeit underappreciated, tradition of civil resistance in the Middle East. It seemed like a strange topic for an edited volume, given the prevailing scholarly view that this region is structurally, culturally, and historically disposed towards violence and sociopolitical stagnation. The Middle East has definitely endured its fair share of wars, terrorism, foreign occupation, and dictatorship. But this complex part of the world has also witnessed striking campaigns of popular nonviolent resistance that have successfully ousted authoritarians, pushed back foreign occupiers, and led to important political reforms. The popular uprisings in Tunisia and Egypt and the ongoing nonviolent struggles in Syria and Bahrain should be seen as the latest manifestations of a significant tradition of people power in the Middle East.

NO CULTURAL, RELIGIOUS, OR TRIBAL BARRIERS TO SUCCESSFUL CIVIL RESISTANCE

From the mass, nationwide non-cooperation that undermined the Shah's grip on power in Iran in 1979, to the forceful civil disobedience inside the Palestinian territories and Israel during the first intifada, to the Lebanese independence intifada that forced the withdrawal of Syrian forces in 2005, to the Kuwaiti youth-led "orange movement" that same year that successfully ushered in electoral reforms, the peoples of the Middle East — Arabs, Persians, and Kurds — have powerfully shown that there are no cultural, religious, or tribal barriers to successful nonviolent struggle. Neither is there a single strategy for success. As these and other campaigns chronicled in *Civilian Jihad* colorfully attest, it is up to the oppositionists to adapt nonviolent tactics and strategies to their contexts, in order to take advantage of openings and remain resilient in the face of predictable repression.

Although *Civilian Jihad* was published before Tunisian fruit seller Muhammad Bouazizi set himself, and the 2011 Arab intifadas, ablaze, the book highlights a number of factors whose prominence intensified as the freedom contagion spread throughout the region. Key among these was the prominent role played by youth, whose demographic power, anger at the humiliating status quo, and increasing savvy with the technologies and techniques of civil resistance thrust them onto the front lines of change. The Kuwaiti youth, as part of their anti-corruption campaign, understood the importance of building broad-based, non-ideological alliances, diversifying their nonviolent tactics, and even allying with members of parliament when their support was needed to pass legislation. Lebanese young people used SMS messaging, unifying symbols and slogans (including a "one flag policy"), rock concerts, and a stubborn nonviolent occupation of Martyrs' Square concerts to appeal to Christians, Muslims, and Druze across the country and demand the withdrawal

The views reflected in this article reflect those of the author and not necessarily those of the US Government.

1. Maria J. Stephan, ed., *Civilian Jihad: Nonviolent Struggle, Democratization and Governance in the Middle East* (New York: Palgrave MacMillan, 2010).

of Syrian forces. Collaboration involving Sahrawi and Moroccan youth has been a prominent feature of the former's anti-occupation struggle and the latter's pro-democracy struggle.

Youth, technology, tactical adaptation, the rhetoric of liberation, and the backfire effects of regime repression targeting nonviolent protestors are a few of *Civilian Jihad*'s key themes. The single most important lesson of the past and current popular uprisings in the Middle East, however, is that ordinary people can wield extraordinary power when they withhold their consent and cooperation, en masse, from their oppressor. Mass non-cooperation and civic defiance involving large numbers of people can undermine an oppressor's legitimacy and cut off his/her sources of political, social, and economic power. External sanctions can help, but only when they reinforce domestic sanctions, including boycotts, strikes, sit-ins, tax revolts, and work refusals applied by large numbers of citizens on the inside. Even a regime's military superiority can be neutralized when large numbers of soldiers and police refuse orders to fire on unarmed protestors. That does not happen automatically. The Iranians, Kuwaitis, Lebanese, and Egyptians made fraternizing with security forces and appealing to their nationalism part and parcel of their nonviolent strategies. The larger and more diverse the protests, the more likely it was that friends or relatives of the security forces could be among the crowds — making it personally difficult for soldiers and police officers to obey regime orders to fire indiscriminately.

WHY CIVIL RESISTANCE WORKS

At least part of the reason why there has been so much attention focused recently on the nonviolent struggles in the Middle East is that, historically speaking, civil resistance has been quite effective. In a study of 323 violent and nonviolent campaigns between 1900 and 2006, Erica Chenoweth and I found that nonviolent campaigns had succeeded 52% of the time, compared to 28% for violent campaigns. From this data, we find support for the argument that nonviolent resistance has been strategically superior to violent resistance during the 20th and 21st centuries.

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In our book, *Why Civil Resistance Works: The Strategic Logic of Nonviolent Conflict*,² Erica and I examine why civil resistance has been overwhelmingly more effective than armed struggle in toppling regimes and ousting foreign occupiers. Our central argument hinges on the primacy of participation. Nonviolent campaigns tend to attract the active participation of far greater numbers of people than armed struggles, bringing greater pressure to bear on the opponent. The moral, physical, informational, and commitment barriers to participation in nonviolent struggles are generally lower than for armed resistance. Most people enduring the indignities and humiliation of dictatorship or foreign occupation are willing to fight, and even die, to end their oppression. But most are unwilling to kill. They are more apt to participate,

2. Erica Chenoweth and Maria J. Stephan, *Why Civil Resistance Works: The Strategic Logic of Nonviolent Conflict* (New York: Columbia University Press, 2011).

at least initially, in low-risk nonviolent actions than in planting bombs or firing AK-47s. It is safer to boycott regime-owned businesses, or stay at home instead of going to work, or bang pots and pans to show defiance of the regime, than participate in hit-and-run attacks or terrorist acts. The wide and diverse menu of nonviolent tactics available to oppositionists, a list that has grown since Gene Sharp developed his “198 Methods of Nonviolent Action” in 1973,³ opens up even greater avenues for participating in civil resistance.⁴

Members of security forces, furthermore, are more likely to defect to the opposition, or at least refuse to obey regime orders to use force against protestors, when the protestors demonstrate nonviolent discipline and reach a critical mass.

Fighting security forces with violence, on the other hand, is more likely to push the army and police staunchly into the regime’s corner, as they are fearful for their lives and convinced that regime defeat would signal their own demise. Regime violence targeting unarmed protestors is far more likely to backfire, resulting in decreased domestic and international support for the regime, compared to regime violence against armed fighters.

... violent campaigns facing government repression are less than 20% likely to succeed; nonviolent campaigns facing regime repression are over 46% likely to succeed.

We found that violent campaigns facing government repression are less than 20% likely to succeed; nonviolent campaigns facing regime repression are more than 46% likely to succeed.⁵ It is much easier for a regime or occupier to justify violent crackdowns against violent resisters than it is to justify the killing and torture of unarmed women and children involved in nonviolent demonstrations.

When large numbers of people withhold their skills and resources from the opponent over the course of a civil resistance campaign, this translates into pressure — and power. Pressure intensifies when multiple pillars of support, including bureaucracies, businesses, unions, and religious communities, are engaged in the fight. While armed struggles sometimes enjoin the active participation of large numbers of people (in fact, the successful ones do exactly that), generally speaking, the masses are relegated to the sidelines once guns and bombs become the weapons of choice.

THE AFTERMATH OF VIOLENT VS. NONVIOLENT STRUGGLES

The longer-term sociopolitical consequences of relying on one type of resistance over another are striking. In our study, Erica and I found that political transitions driven by principally nonviolent means are far more likely to result in civil peace and democracy in the post-transition period than transitions driven by armed struggles. An earlier empirical study by Freedom House, *How Freedom is Won*,⁶ arrived at similar conclusions. This finding is significant for scholars,

3. Gene Sharp researched and catalogued these 198 methods and provided a rich selection of historical examples in his seminal work. Gene Sharp, *The Politics of Nonviolent Action* (3 vols) (Boston: Porter Sargent, 1973).

4. A brand new database of nonviolent tactics and campaigns, completed on September 11, 2011 by scholars at Swarthmore College, features the diverse tactics and campaigns of the Arab Spring. See Global Nonviolent Action Database, <http://NVDatabase.swarthmore.edu>.

5. Chenoweth and Stephan, *Why Civil Resistance Works*.

6. Adrian Karatnycky and Peter Ackerman, *How Freedom is Won: From Civic Resistance to Durable Democracy* (New York: Freedom House, 2005).

activists, and policy-makers interested in what comes after the regime is toppled or the foreign occupier is ousted — namely, in the processes and institutions of democracy.

The strong positive correlation between civil resistance and civil peace can be explained, in part, by the dynamics involved in successful nonviolent struggles. Those who arrive at power through violence, particularly in domestic struggles, are more likely to resort to force to maintain power. When you kill your way to power it is normal to see power in zero-sum terms. This makes meaningful power-sharing and codifying minority rights especially difficult.

Nonviolent resistance, on the other hand, relies on large-scale participation, coalition-building, co-optation (rather than killing), and a much higher degree of openness; these are skill-sets that are conducive to democratic consolidation. Although it is mistaken to assume that there will be no domestic conflicts or clashes following successful nonviolent regime changes, popular nonviolent struggles establish expectations about the kinds of regime behaviors that are acceptable — and completely unacceptable — in the post-transition period. Nonviolent rules of political contestation are sharpened by the practice of civil resistance; they are dulled when killing becomes the norm for acquiring political power.

CONCLUSION

The relative strategic effectiveness of civil resistance compared to armed struggle, and the strong relationship between nonviolent resistance and longer-term civil peace, demonstrate important lessons for the Middle East and beyond. Although the road to achieving meaningful self-determination in Middle Eastern societies that have endured decades of autocracy, dictatorship, and foreign occupation will be bumpy, and some degree of backsliding may occur, those societies that continue to fight for human rights and democratic reforms using active nonviolent means are both more likely to win, and to achieve longer-term stability, than those who resort to arms. Syrians and Bahrainis seem to have internalized this as both peoples continue to maintain remarkable nonviolent discipline against formidable opponents in their struggles for democracy.

Just as dictatorship may one day be recognized as an international crime against humanity, there may come a time when civil resistance emerges as the predominant method of waging struggle. Given the increased frequency and geographic scope of this form of resistance over the past century, and its demonstrated effectiveness, scholars, rational insurgents, journalists, and policy makers should take note.

Tunisia Tests the Waters of Democracy

Yasmine Ryan

Ten months after a young fruit seller set himself alight in a small, marginalized town in central Tunisia, his compatriots will be voting in what many are hoping will be the country's first free and fair elections. In the poll set for October 23, Tunisians will be electing a national constituent assembly that will be charged with writing the rules of the new political era. That assembly will spend up to a year writing a new constitution and deciding which form of government the country will have.

Many activists are calling for a parliamentary democracy — to prevent an all-powerful president from dominating the political sphere — and for mixed-member proportional representation. Some of the bigger parties, meanwhile, support a presidential regime.

In many respects, Tunisia is the ideal country to give democracy a “test run” in the region. The North African country has neither the geostrategic importance of Egypt, nor the enormous petroleum riches of Libya, and a population of just ten million people. The startling ease with which Tunisians forced Zine El-‘Abidine Ben ‘Ali from power is all the more stunning in light of the blood that has been spilled by their fellow protesters and rebels in much of the rest of North Africa and the Middle East in the months that followed.

The Tunisian uprising had been simmering in the center-west of the country since December 17, when a young fruit seller named Muhammad Bouazizi set himself on fire. The middle classes were following the protests on Facebook and satellite television, including *Al-Jazeera*, but it was only when Ben ‘Ali's security forces began using live bullets in mid-January that Tunisia's “silent majority” poured into the streets in a show of solidarity. The first massive protest on Avenue Habib Bourguiba took place on January 13 and the very next day Ben ‘Ali fled the country. At least 219 Tunisian protesters were killed by security forces in the interim, according to a United Nations task force.¹ In hindsight, Tunisians were lucky. Most other governments in the region faced with uprisings of their own appear to have learned from the example of Tunisia that they must be more brutal and repressive, rather than less. Tunisia and Egypt remain the exceptions of the Arab Spring, given the relative lack of lives lost, as well as the simple fact that they were successful in forcing their leaders to step down without armed intervention from the outside world.

GRASSROOTS REVOLUTION?

Whether the Tunisian uprising will result in a genuine revolution, ushering in an era of sustained and profound democracy, depends on the success of the vote in October and the effectiveness of the political change that many are hoping will follow.

1. “U.N.: Death Toll of Tunisian Protesters at least 219,” *The Washington Times*, February 1, 2011, <http://www.washingtontimes.com/news/2011/feb/1/death-toll-of-tunisian-protesters-up-to-219>.

The uprising was a leaderless, grassroots one, so none of the opposition parties can claim a monopoly on its fruits. The freshly-tilled democratic terrain is ready to be sown. What grows there depends not only on the new leadership, but also on ordinary Tunisians' ability and desire to remain engaged and vigilant in the new political era. Civil society and media freedom had not been part of the equation under decades of rule by both Ben 'Ali and Habib Bourguiba, his predecessor.

Safeguarding the blossoming democracy will be no small challenge in a country where there is no recent history of democracy, all the more so given the speed at which the transition is taking place and the power vacuum surrounding it. Since January, a series of rolling protests, many in the Kasbah of Tunis, has continued to call for a thorough purge of the former regime, warning that allowing remnants of the political elite to linger could lead to a counterrevolution. Others have criticized the protesters for undermining the country's stability.

There are 111 political parties participating in the election, the overwhelming majority of which were created since March.

The protesters have played a major part in the transitional process. It was their demonstrations against Mohamed Ghannouchi, who held onto his role of prime minister even after most other members of Ben 'Ali's government were long gone, that finally forced him out in late February.

In the build-up to the vote, activists are scouring election lists to ensure that none of the candidates were senior members of Ben 'Ali's Constitutional Democratic Rally, or RCD, to enforce a rule banning them from running for election. Security forces and the judiciary have not yet been reformed, and human rights activists assert that torture and incommunicado detention are still being practiced. Amnesty International, the UK-based rights organization, issued a call for these issues to be tackled as a vital part of the transition process. "Nine months after former President Ben 'Ali fled, many Tunisians still have little confidence in the authorities to deliver them justice, dignity and institutions they can trust," Hassiba Hadj Sahraoui, Amnesty International's Deputy Director for MENA, said in late September.

STEEP LEARNING CURVE

There are 111 political parties participating in the election; the overwhelming majority of them were created since March. As the elections draw closer, half of the smaller parties have formed coalitions. Opinion poll after opinion poll has shown that Tunisians have never heard of most of the parties and politicians. More than half of voters remain undecided. This is hardly surprising in a country where the president was the only politician to have a public profile. Tunisians have had just a few short months to learn what democracy means.

Al-Nahda, the pro-democracy Islamist party led by Rachid Ghannouchi, is expected to win around 20% of the vote, ahead of any other major party. Other frontrunners include the Progressive Democratic Party (PDP) and the center-left

Ettakatol. The Tunisian Communist Workers' Party (POCT), a Marxist Communist party whose leader Hamma Hammami was imprisoned several times under Ben 'Ali, enjoys support amongst activists and students. Stepping up to fill the void left on the center-right by the banning of the RCD is the AFEK TOUNES party, which courts educated professionals. The Free Patriotic Union (UPL), a new party founded by oil tycoon Slim Riahi, has quickly become a lightning rod for controversy.

WOMEN FIND THEIR VOICE

Tunisian women currently enjoy more political, social, and economic rights than in any other country in North Africa or the Middle East. This has been the case ever since the country's first year of independence in 1956, when Bourguiba introduced the incredibly progressive "Personal Status Code" (CSP by its French acronym). Women were given the right to vote and to be elected to parliament, to earn equal wages to men and to divorce. Polygamy was outlawed and a woman's consent became a requirement for marriage. Then came the legalization of abortion in 1961, at a time when it was still a taboo topic in many European countries, including France.

With political Islamist movements, notably al-Nahda, part of the democratic terrain, there are fears that rising religious conservatism could threaten many of these rights. The former regime used its selective support for women's rights to garner credibility in the West, even as it routinely abused human rights. Tunisian feminists say they fear this hypocrisy could lead to a serious backlash in the new era. Tunisia's former first lady, Layla Ben 'Ali, was Acting President of the Arab Women Organization, advocating women's rights at an international level even as her husband's government silenced community activists such as the Tunisian Association of Democratic Women. Now women's rights activists are ironically struggling to distance the values they uphold from the former regime's political rhetoric and the association with moral and economic corruption.

The National Council for the Protection of the Revolution ... made gender parity an obligation for electoral lists in April. This step, aimed at addressing the perceived risks that women could be sidelined in the fledgling democracy, ensures that 50% of candidates fielded by every party must be female.

The National Council for the Protection of the Revolution, a body created to help oversee the transition process, made gender parity an obligation for electoral lists in April. This step, aimed at addressing the perceived risks that women could be sidelined in the fledgling democracy, dictates that 50% of candidates fielded by every party must be female. The lists must alternate between genders (man-woman-man or woman-man-woman), putting Tunisia ahead of not only the Arab world, but also most other countries with respect to women's representation in politics. Some parties have gone even further to emphasize their support for women's rights. The Democratic Modernist Coalition (PDM by its French acronym), a coalition of center-left, secular parties, has put women at the head of 16 out of its 33 lists, and is pushing for the country's inheritance law to be changed to allow women the same inheritance rights as men.

The majority of Tunisians have no problem voting for a list with a woman in first place, according to a study carried out by the Tunisian Observatory for Democratic Transition in late September 2011. Some 71% would be willing to vote for a list topped by a woman, while 21% would not do so. Tunisians under the age of 35 are less willing to vote for a list topped by a woman than their older compatriots. Judging by the rate of voter registration, Tunisian women are not engaging with the political process. Only 20% of women have registered to vote in the voluntary registration that took place in July and August. Registration numbers have been particularly low amongst older women. The Ministry of Women's Affairs is trying to address the apparent apathy among women voters in the weeks ahead of the vote, launching a media campaign, scheduled to run October 1–20, that urges women to get involved and have their voices heard in political life.

DISENFRANCHISED

Unlike many of the other countries in the MENA region, there are few ethnic or tribal divisions in Tunisia. But the fault line between those who advocate for a secular state and those who want an Islamic form of governance is fast becoming one of the deepest divisions in post-uprising Tunisia.

Another serious issue that is arguably one of the fundamental causes for the uprising is regional inequalities. Ever since Tunisians won independence from France, the country's politics have been dominated by elites from the coastal region. Seaside cities and towns like Tunis, Sfax, and Monastir have received the bulk of government and private investment. In the center of the country, towns like Kasserine, Sidi Bouzid, and, to the south, Gafsa, lack basic infrastructure. Educational and employment opportunities are far fewer than those on the coast.

It is no coincidence that these communities, suffering years of neglect and despotic rule by local bureaucrats, led the revolt in December. When *Al-Jazeera* visited these towns in the weeks after Ben 'Ali's departure, people interviewed were already suspicious that their uprising was being hijacked by political elites and that changes in Tunis would not necessarily lead to any greater political voice in the new era. In the months that have followed, strikes and sporadic outbreaks of violence have continued in this forgotten Tunisia. Government services have slowed to a halt in many cases. The country's overall unemployment rate has jumped to 19% this year, compared to 14% in 2010. The lack of economic opportunity affects Tunisians across the country, but it is much more significant in the central region. As long as this underclass exists, the social injustices that triggered the first wave of protests risk festering and remaining a source of unrest. It will be a major challenge for any new government to address the economic and political reforms needed for a more inclusive regime.

Morocco's "Arab" Spring

James N. Sater

As elsewhere in North Africa and the Middle East, the youth-driven revolts in Tunisia and Egypt produced a tsunami in Morocco's political landscape. On February 20, a movement took shape that publicly demanded a constitutional monarchy in which an elected and accountable government would have control over the country's social, economic, and security policies. All across the country, it organized rallies in which tens of thousands of Moroccans participated. Morocco's largely co-opted and aging political parties, from the Islamist Justice and Development Party to the Socialist Union of Popular Forces, remained quiet, and distanced themselves from the young movement. At the heart of this movement's demands has been the role of the King, who, since independence, has been in control of all senior governmental and military appointments. Especially under King Hassan II (1961–1999), the monarchy's system of rule, called *makhzen* in Moroccan parlance, has often had recourse to force during the so-called Years of Lead.

Unlike its counterparts in the east, however, the February 20 movement has not openly asked for the removal of Mohamed VI from office or for the abolition of the monarchy. In addition, while Morocco's security apparatus has been involved in violence against protesters around the country, its reputation has never been nearly as bad as that of its counterpart in Tunisia, or even Egypt. As a result, the movement asked for critical constitutional reforms rather than a revolution *per se*. Even the movement's core constitutional demands, such as the election of the prime minister by the parliament, not by the King, had already been openly addressed and debated in the press and political party offices over the last two decades.

Consequently, the Arab uprisings met a particular political field that determined the outcome and future prospects of reforms in Morocco.

First, Morocco can be considered one of the most liberal of all of the authoritarian systems in North Africa and the Middle East. The Moroccan monarchy did not react to counter the February 20 movement with even a fraction of the violence that its neighbors used. Even the most violent crackdown on March 13 in Casablanca did not result in any deaths, and so far only one protester has died from police brutality in June. This relative restraint reflected the reformist nature of the protests. While keywords such as *hogra* and "rage" were used by the movement, it did not resonate among a larger Moroccan public as much as it did in neighboring countries. Slogans such as "*degage!*" as they were used in Tunisia remained unthinkable. In turn, the relatively liberal reactions of the state, which included a new constitution and referendum on July 1, did not galvanize the population like they did in other MENA countries, as evidenced by lower turnout rates to calls for protests in September. Effectively, in the summer the state was able to avoid a confrontation, as Moroccans have been swept with information about the misfortunes of their Libyan and Syrian neighbors, the uncertainty of Tunisian and Egyptian experiments, and the benefits of their new constitution.

Second, especially under Mohamed VI, the monarchy engaged in a series of political, economic, and social reform projects that made the King arguably one of the most popular contemporary Arab rulers. One of his landmark reform projects has been a Truth and Reconciliation Commission. Unprecedented and unrivalled in the Arab world, the Truth and Reconciliation Commission has allowed victims of past human rights abuses to talk about torture and other crimes that the state committed under Mohamed VI's father, Hassan II. An independent (and banned) survey of 2009 credited the King with an approval rate of more than 90%.¹ While public support may partially have waned due to notoriously high unemployment levels and poverty, the monarchy devised a shrewd political system in which elected politicians of co-opted political parties are charged with the day-to-day running of government and therefore take the blame for any wrong-doings or failed policies. For example, unemployed graduates in Rabat routinely demonstrate in front of the elected parliament, not the palace, even though they are only 200 meters apart.

Third, partially reflecting his willingness to reform and commit to a "Moroccan-style" democracy, the King could quickly absorb the spirit of reform. On March 9, he announced the formation of a committee that would revise Morocco's constitution and appointed trusted reformers and experts to draft Morocco's fifth constitution since it achieved independence in 1956. He thereby sent a message to the protesters that he understood, even championed, their demands. He also illustrated his willingness to adapt to the new political reality that the Arab Spring created. As the reformist weekly magazine *TelQuel* succinctly headlined on April 22, "The Revolution is the King." He also combined this pro-reform spirit with nationalist sentiments concerning Moroccan claims to the Western Sahara. After all, a new constitution was needed to ensure the partial decentralization necessary for Morocco's autonomy plan in the Sahara. That he was not willing to hand over power to elected officials was also clear. It was not an elected assembly of politicians who were to publicly draft the new constitution, but rather an expert committee of royal appointees who would work behind closed doors. Clearly, they were accountable to the King alone.

ONE STEP FORWARD, TWO STEPS BACK

Without any doubt, the new constitution is the most liberal constitution that Morocco has known since independence. It enshrines liberal principles and gives more independence to elected officials and the judiciary. It promotes gender equality and even creates an institution that is meant

... in terms of substance, the King's position as Commander of the Faithful, Amir Al Muminin, remains intact.

to oversee the actual implementation of gender equality. It also upgrades the importance of *Tamazight*, the language of the Amazigh (Berber) people, to become Morocco's second "official" language next to Arabic. The King thereby created a strong incentive for two core constituencies, women and the Amazigh people, to support not only the new constitution but also his position as a guarantor of these liberal principles. This is because in terms of substance, the King's position as Commander of the Faithful, *Amir al-Mu'minin*, remains intact. While Article 19 previously described his position as "sacred," the new Article 46 makes his position "inviolable," a difference that constitutional lawyers may find difficult

1. *TelQuel* 2009, "Le Peuple Juge son Roi" ["The People Judges its King"], *Le Monde*, August 3, 2009.

to ascertain. Consequently, his speeches remain, as in the past, undebatable in public. In addition, he has to approve all legislation and governmental appointments, which gives him effective veto power. While he no longer chairs the Council of Government, which seems to imply more independence for the government, he still chairs a parallel organization called the Council of Ministers.

In terms of procedure, the organization of a referendum on July 1, only two weeks after the presentation of the new constitution in mid-June, can be considered a complete farce. Not only was a public debate avoided on the altar of a quick fix, but the entire state apparatus also was mobilized to ensure a high approval rate within two weeks. State TV disproportionately aired opinions in favor of the “yes vote,” and the King’s personal, televised message of support that included Qur’anic verses not only made public disagreement a crime according to the old (and new) constitution but also a sacrilege. In addition, simple vote rigging, the absence of “no-votes,” lax identification and registration requirements, and the bussing of voters in cars organized by local ministry of interior officials all cast serious doubt on the fairness of the election. Not surprisingly, the approval rate of 98.5%, and an official participation rate of 72%, reminds observers of Hassanian practices during the Years of Lead. Simultaneously, demonstrations of sometimes violent pro-monarchy loyalists and thugs further reminded February 20 activists of Egypt’s notorious *baltagiyya*.²

ALLAH, WATAN, HURRIYA

Although mass mobilization and repressive tactics continue, it seems that the monarchy has scored important points in its dealing with the Arab Spring. The monarch compounded his image as a reform-minded ruler, and political stability was reconfirmed before serious doubts could arise. The Arab Spring’s revolutionary spirit was translated into reforms as understood and guided by the monarchical state. Not surprisingly, Standard & Poor’s credit outlook for Morocco remained “stable” and international support for its reforms and stability came from both the East (the Gulf Cooperation Council, or GCC) and the West.

Still, the Arab Spring opened Pandora’s Box in Morocco. While protesters may be divided between Islamists, leftists, middle-class intellectuals, students, unemployed graduates, and the country’s poor, the question of the King’s powers has exited intellectual circles, academia, and political party offices, and has occupied the street. This is unprecedented, even if a unified vision for Morocco’s future is still lacking. Consequently, as in other countries, the “wall of fear” has been broken and will inform street action, public discussions, newspaper editorials, and electoral politics in the coming years. This will include a critical questioning of the King’s personality and role in the political and economic marginalization

... the Arab Spring opened Pandora’s Box in Morocco. While protesters may be divided ... the question of the King’s powers has exited intellectual circles, academia, and political party offices, and has occupied the street.

2. Paul Silverstein, “Weighing Morocco’s New Constitution,” *Middle East Report Online*, July 5, 2011, <http://www.merip.org/mero/mero070511>.

that many Moroccans experience. For example, in one of his songs, the Moroccan rapper Mouad Belghouat changed the country's slogan from "God, Country, King" to "God, Country, Freedom" (*Allah, Watan, Hurriya*).³ While Belghouat was arrested in September for having allegedly assaulted a regime loyalist, the public nature and distribution of such a song is a significant symbol for changes that have occurred. Although the monarchy may still feel powerful after this last constitutional coup which resembles yet another public relations campaign, the nature of politics has fundamentally changed and will give rise to many more challenges. The fact that the political parties took on a bystander role will be critical in any future assessments of their effectiveness in responding to the demands of Moroccan citizens. In orchestrated events such as the upcoming November 25 parliamentary election, the contradictions between a young, mobilized, and politicized population and an old, co-opted party system that increasingly forms part of the monarchical state, *makhzen*, will soon create challenges that the King may no longer be able to thwart. Effectively, by proposing a new, controlled constitution, the monarchy has played its last card in a plural and semi-liberalized authoritarian system.

3. Mouad Belghouat Alias, "Haqed, the Fanatical One" ARTE video, 4:19, http://monde-arabe.arte.tv/en/#/video_3269_mouad-belghouat-alias-haqed-the-fanatical-one.

“The Beginning of Arabia’s Spring:” The Khalid Revolution

Todd Fine

“Knowledge and freedom carry no national identity.... There is no nation that has known light and preferred receding back.”

Ameen Rihani (*The Rihani Essays*, 421)

Through bizarre coincidence with a tinge of prophetic destiny, the Arab Spring of 2011 corresponds with the centenary of the publication of a quite peculiar literary work about revolutionary change in the Middle East, Ameen Rihani’s *The Book of Khalid* (1911), considered the first Arab-American novel and the first novel by an Arab in English. In the Arab world, this intimidating link was not lost on intellectual circles, and nearly every major media source — television and print — from *Al-Jazeera* to *al-Hayat*, reported on this parallel in some capacity. In one example, Libyan writer and novelist Mohammed al-Asfar, whose reputation has grown in the West along with the revolution, published in a series of journals and newspapers in May a long rumination about the universality of literature in the revolutionary environment. Entitled “Ameen Rihani Visited Me in Libya,”¹ it imagined the presence of Rihani in Benghazi during the early days of the revolt, along with his idealistic young Khalid, who announces “the beginning of Arabia’s Spring.”²

Americans, with a genetic admiration for revolution undiminished by contemporary feelings of political impotence, see echoes of themselves — their own national history, their youthful idealism, and even their own growing disgust at domestic cronyism and corruption — in the Arab revolt. Yet, at a time when the United States government is grasping for connections with the Middle East and North Africa that do not build from the military or pure commerce, official Washington has mostly failed to locate and emphasize authentic American linkages with the Arab Spring based in ideas. Speeches by the highest-ranking officials use only rudimentary clichés about democracy despite the availability of an extensive Arab-American evaluation of the prospects and philosophy of political change in the region. As *The Wall Street Journal* remarked on May 24,³ it is strange that an early 20th-century Arab-American writer like Rihani, who from an America-influenced intellectual position developed sophisticated thinking on revolution and freedom in the Middle East, has not played a greater role in American discourse, and US President Barack Obama’s rhetoric in particular, about the potential for democracy and political change in the region. And while Rihani’s thinking does not always offer a rosy prospect, his masterpiece novel and his many essays on democracy and revolution provide a great deal of intellectual sustenance for those contemplating the Arab Spring.

Despite his enormous influence on the State Department, the concrete development of US-Arab relations, and American thinking about the Middle East in the 1920s and 1930s, many Middle East experts today are unfamiliar with Rihani’s biography. Born in the town of Freike in Mount Lebanon in 1876, he immigrated to the United States at the age of 11.

1. Mohamad al-Asfar, “Ameen Rihani Visited Me In Libya,” *The Word [al-Kalimah]*, May 2011, p. 49.

2. Ameen Rihani, *The Book of Khalid* (New York: Dodd, Mead, and Co., 1911), p. 316.

3. William McGurn, “An Arab for Ground Zero,” *The Wall Street Journal*, May 24, 2011, p. A17.

Rihani grew up on Washington Street in the “Little Syria” neighborhood of Lower Manhattan (where the World Trade Center was later built) as his father established a merchant business. He educated himself by voraciously reading American and Western literature as an auto-didact. Rejecting formal education after withdrawing from law school, he returned to Lebanon as a young adult, learning written Arabic and initiating a career as a writer in both the United States and the Middle East. Considered the founder of Arab-American literature by acting as a mentor to Khalil Gibran and other writers of the so-called “Mahjar” school, Rihani earned a living in New York City writing magazine articles in English about the Arab world and its culture for American audiences. Simultaneously, in addition to publishing poetry, he wrote essays for many different Arabic journals about political philosophy, revolution, and reform. In an analogy to Tolstoy, he earned a reputation as the “Philosopher of Freike,” an independent and untouchable moral force in the Middle East (protected uniquely by the American citizenship he gained in 1901). He left a permanent impact on international affairs through his travels in the Arabian peninsula in the 1920s, where he emerged as what Georgetown University historian Irfan Shahid calls “the apostle of the Arab-American relationship,”⁴ laying the moral foundations for the US-Saudi relationship through his extensive contact and friendship with King ‘Abd al-‘Aziz and impacting the thinking of nearly all of the major Arab leaders and kings on Arab nationalism and the prospect for ties with the United States.

Rihani lived and worked during an extremely dynamic era in the history of the Middle East and North Africa, repeatedly facing questions about the merits and viability of revolution and extreme political change. As a young man in the United States, he participated in extensive political debates among the Lebanese-Syria émigrés about the prospects for Syrian autonomy, for Arab unity within the Ottoman Empire, about whether revolution was an appropriate response, or whether further “reform,” in the highest cultural sense, was needed first. As an accomplished intellectual and political figure by this time, he acted as an overt activist and agent of change during World War I, directly lobbying leading American politicians for US involvement with the French in Syria and actively organizing the enlistment of fellow immigrants in the United States. He even went to Mexico to agitate against German influence and was arrested. Rihani analyzed the Bolshevik revolution and wrote several essays and books, with markedly American principles, about its relevance to the Middle East. Finally, he lived in Lebanon for many years during the French Mandate, and evaluated, as they evolved, the prospects for defeating European imperialism through revolt and resistance and for establishing unified political independence and authentic freedom in Lebanon, Greater Syria, and the Arab world writ large.

The orienting idea of almost all of Rihani’s writings on revolution was that successful political revolution ultimately requires a transformation of the individual — both spiritually and materially.

Given the systematic and explicit manner in which Rihani introduced American discourse on freedom, democracy, and revolution (inspired in the literary arena by Whitman, Paine, and Thoreau in particular) into Arab political debate, it is natural for American observers of the Arab Spring, seeking familiar ideals, to be curious about how Rihani’s thinking

4. Irfan Shahid, *Amin Rihani, 1876–1940: The Apostle of the Arab-American Relationship* (Washington, DC: Center for Contemporary Arab Studies, 2010).

relates at this moment in time. The orienting idea of almost all of Rihani's writings on revolution was that successful political revolution ultimately requires a transformation of the individual — both spiritually and materially. In the Arabic-language essay collection that was released one year before *The Book of Khalid*, *Ar-Rihaniyyaat* or “The Rihani Essays,” he wrote, “People ought to attain their freedom on their own. They ought to work on their inner selves first, making freedom more spiritual than materialistic, deceit-free, and a true base for honest existence.”⁵

The Book of Khalid, written during a multi-year sojourn in Lebanon but published in the United States in 1911, is the story of two youths, Khalid and Shakib, who emigrate from Baalbek, Lebanon to peddle on the streets of New York. Khalid, however, refuses to focus on his ostensible purpose and spends his time

Khalid ... sees a spirituality generated by individual religious discovery as a prerequisite for independent “voting” and for challenging the West in the grand civilizational comparison.

trying to explore New York fully, engaging its intellectual and literary scenes; learning English and working in a law firm; and participating in Tammany Hall politics, which leads to his arrest and imprisonment due to his moral standards against corruption. After several years, the two return to Baalbek, yet Khalid is soon expelled from town due to blasphemous rhetoric against the Maronite Church and a failed attempt to marry his cousin. He then retreats to the forests of Mount Lebanon where he contemplates his experiences in America and the political circumstances in the Arab world, fashioning a combined spiritual and political program that he feels compelled to preach to the Ottoman Arabs during the tumultuous period of the Young Turk Revolution. Khalid insists strictly that “[a] political revolution must always be preceded by a spiritual one, that it might have some enduring effect.”⁶ He rails against the ignorance and superstition generated by both Christian dogma and sclerotic Islamic institutions, and he sees a spirituality generated by individual religious discovery as a prerequisite for independent “voting” and for challenging the West in the grand civilizational comparison.⁷

Traveling to different cities, giving speeches and writing manifestos, Khalid advocates, in pursuit of an ideal superman, a synthesis of Western science and education with Eastern religion and culture. Eventually, after a speech in the Great Mosque in Damascus where he speaks about these ideas and the reform of Islam and is labeled a Wahhabist, he triggers a riot, which Rihani does not describe in full because the narrator is “not writing now the History of the Ottoman Revolution.”⁸ The Ottomans pursue his arrest, and Khalid, along with several of his companions, is chased into the Egyptian desert, where he disappears with the illusion that he, whose name means “immortal” or “eternal,” shall return some day as a sort of Mahdi, the redeemer of Islam.

Written a few years before the outbreak of World War I, *The Book of Khalid* is filled with the sense that Rihani believes that a great opportunity in Arab history is about to emerge, but that since a leader like Khalid cannot force “progress,” he must inspire each individual, through his example, to reform themselves. Yet, if a religious transformation from igno-

5. Ameen Rihani, *The Rihani Essays* [*Ar-Rihaniyyaat*], trans. By Rula Zuheir Baalbaki (New York: Platform International, 2010), p. 119.

6. Rihani, *The Book of Khalid*, p. 290.

7. Rihani, *The Book of Khalid*, pp. 290–291.

8. Rihani, *The Book of Khalid*, p. 322.

rance and superstition does occur and the Arabs do taste true freedom (perhaps with American assistance), his faith in the greatness of their culture means that their destiny is infinite. He asks: “Now think what can be done in Arabia, think what the Arabs can accomplish, if American arms and an up-to-date Korân are spread broadcast among them.”⁹

While Rihani did view the Arab revolutionary potential through a traditional liberal framework of freedom and democracy, he was skeptical of whether society had evolved to the point where it could fashion an ideal and sustainable democratic political order. According to University of Sydney professor Nijmeh Hajjar, he certainly did view the Arab revolt during World War I as a battle for freedom, explicitly importing this rhetoric in his American and Arabic writings.¹⁰

Yet revolutionary violence, he advanced, had a root cause in built-up inequalities of some sort. In his 1920 booklet *The Descent of Bolshevism*, he analyzed the Bolshevik revolution as an Eastern phenomenon, arguing, “As a rule, however, the tyranny of inequality has been at the bottom of all revolts and revolutions. In the past it was embodied in religions and autocracies; today it is embodied in industrialism . . . Under either condition, however, a long-suffering and downtrodden people will be driven ultimately to extremes of materialism expressed in universal negation.”¹¹ Rihani suggested that the Eastern people were “the extremists of the world” and that their history was filled with revolution, indeed often with radical ideals not too distant from Communism.¹² With an American skepticism of purely materialist revolution not founded in a liberal order, he condemned these revolutions, stating that “[r]evolution is glorified by intellectuals, apotheosized by poets, sanctified by visionaries, and bled white by politicians.”¹³ Later on, however, in writings in 1928 perhaps sharpened with the maintenance of European imperialism, it is important to note that Rihani opened the door to a reactive model of revolt based on the perspective of autonomy and rational behavior, stating that “revolution becomes inevitable when the voice of wisdom and reason is no longer heard and people become accustomed to enslavement.”¹⁴

Rihani acknowledges that material inequality would lead to revolt, but he did not believe that purely materialistic ideology and class-based politics could offer an alternative. Instead, progress (*al-irtiqâʾ*, *al-ruqî*, *al-taraqqî*, *al-taqaddum*) and reform (*al-islah*) necessitated practical things, including non-sectarianism in politics and secular, quality education alongside spiritual growth, that would require gradual change and would have to precede successful revolution.¹⁵ Education, this “slow but constant method of reform in the lives of nations,” anchors all of Rihani’s political philosophy.¹⁶

Rihani very much supported the nonviolent principles of the Tunisian and Egyptian revolutionaries we have seen in the present day.

9. Rihani, *The Book of Khalid*, p. 303.

10. Nijmeh Hajjar, *The Politics and Poetics of Ameen Rihani* (London: I.B. Tauris, 2010), p. 138.

11. Ameen Rihani, *The Descent of Bolshevism* (Boston: The Stratford Co., 1920), xii.

12. Ameen Rihani, *The Descent of Bolshevism*, vii.

13. Rihani, *The Descent of Bolshevism*, vii.

14. Ameen Rihani, *al-Tatarruf w-al-Islah [Extremism and Reform]*, quoted in Nijmeh Hajjar, *The Politics and Poetics of Ameen Rihani*, p. 114.

15. Hajjar, *The Politics and Poetics of Ameen Rihani*, p. 69.

16. Ameen Rihani, “*al-Hurriyya Wahdaha al Tuhwahhiduna*” [“Freedom Alone Unites Us”] (c. 1909) in *al-Qawmiyyat [Essays on National-*

As European imperialism replaced Ottoman autocracy, Rihani very much supported the nonviolent principles of the Tunisian and Egyptian revolutionaries we have seen in the present day. He saw Gandhi as a model for resistance to the French Mandate, stating that “there was no better weapon than that drawn by the voices coming from the depth of prisons, and from the heights of right and peace.”¹⁷ He explicitly supported nonviolent resistance against the French Mandate, including strikes, demonstrations, and society-wide organized boycotts of the French Electricity Company.

Rihani’s revolutionary change ideally was pan-Arab and anti-sectarian, although he conceded that Islam certainly offered a potent force that could be marshaled to achieve revolutionary aims. This dilemma certainly preoccupied Khalid in the novel (he looks carefully at circumstances in Nejd with Wahhabism), and, through Rihani’s own contact with King ‘Abd al-‘Aziz, it reasserted itself as a central concern for his ambitious political strategies for achieving Arab unity, which he acted on in a practical, albeit fantastically crafted, way unlike any other. Political Islam might produce some retrograde ideas, but Rihani admired its vigor and its willingness to challenge foreign powers. He hoped that Islamic political activity could eventually reform traditional Ottoman-endorsed institutions, opening the door for even some liberal ideas.

Many still hope that Rihani’s brand of Arab nationalism can inspire the Arab Spring. Ambassador Clovis Maksoud, former Arab League Ambassador to the United Nations, stated in April 2011: “The seeds of what [Rihani] has planted are now beginning to bear some fruit ... Whether it is a direct relationship or not, this is a moment when *The Book of Khalid* has become more relevant. Young people need to recover the line of thought of Arab nationalism as the authentic expression of political progress, rather than sectarianism or Islamic fundamentalism.”¹⁸ When we consider how Rihani fought against European imperialism, championed Palestine, defended Wahhabism as a progressive force, and tried to warn the United States about its mistakes in the region, we might even dream that perhaps he could someday be seen as a bridge between liberals and educated political Islamists.

“The time has indeed come for Khalid. You can spot him on the streets in Tunis, or in Tahrir Square in Cairo. Have you not seen him join the crowds?”

Rihani, the quintessential cosmopolitan, could be a symbol for an Arab Spring movement that overtly embraced Western technology, inclusive slogans of tolerance, and international media strategies. We have seen the youthful worldliness of these protests, and it is clear now, in a globalized world, that one does not have to physically live in New York and the West to experience it. Every Arab youth — many now extremely well-educated yet economically insecure — has become a Khalid, and the scholars of his novel see the character’s presence today. University of Kuwait Professor Layla al-Maleh recently stated: “The time has indeed come for Khalid. You can spot him on the streets in Tunis, or in Tahrir

ism], 60, quoted in Nijmeh Hajjar, *The Politics and Poetics of Ameen Rihani*, p. 73.

17. Hajjar, *The Politics and Poetics of Ameen Rihani*, p. 181.

18. Jane O’Brien, “Century-old Book of Khalid Sheds Light on Arab unrest,” *BBC News*, April 9, 2011, <http://www.bbc.co.uk/news/world-middle-east-13017564>.

Square in Cairo. Have you not seen him join the crowds?”¹⁹

We have to be careful about putting too many words in Khalid’s mouth or in Rihani’s, but we can dream about how “gloriously” their presence would be felt if they were with us. We imagine that they would pleading for religious tolerance, anti-sectarianism, and economic reform. When Khalid goes missing and is thought to have killed himself, Shakib states: “And so, the days passed, and the months, and Khalid was still dead. In the summer of this year, when the Constitution was proclaimed, and the country was rioting in the saturnalia of Freedom and Equality, my sorrow was keener, deeper than ever. Not I alone, but the cities and the deserts of Syria and Arabia, missed my loving friend. How gloriously he would have filled the tribune of the day, I sadly mused....”²⁰ We should be impressed that in this year’s saturnalia of freedom, exactly 100 years later, Khalid and Rihani are still filling tribunes. Before Americans offer too many predictions and lectures to the region, it behooves them to give more quiet reading and attention to the thoughts on revolution of their own authentically Arab-American intellectual children.

19. Todd Fine, “An Arab Revolutionary, a Century Before his Time,” *Washington Post*, April 17, 2011, p. B3.

20. Rihani, *The Book of Khalid*, p. 276.

Women, Shari‘a, and Personal Status Law Reform in Egypt after the Revolution

Camilo Gómez-Rivas

Like almost everything else during the uncertain period of the transitional government, the future of personal status law reform is at a crossroads in Egypt. The new constitution (assuming one will exist)¹ may technically have little direct impact on how the country’s laws affect women’s lives, but the legislative process that emerges thereafter most certainly will. Likewise, while the ongoing electoral and constitutional process may have no immediate bearing on the laws of family and personal status (such laws are often implemented more gradually), much of the population does not see it so. For many, the role religion plays in the future political life of the country is an issue of utmost urgency and significance. And the application of *shari‘a* often symbolizes this role, a role that in Egyptian society is most visible in the laws of personal status, which cover matters such as marriage, divorce, child custody, and inheritance.

Women’s legal status, as affected by these laws, constitutes, therefore, a key symbolic battleground over which conservative and progressive forces are struggling to realize their visions of the future. The debates raging over whether elections or a constitution should come first, followed by the debate over what constitutional or supra-constitutional principles the process should follow, illustrates this struggle in broad scope.² Efforts to affect the social and legal status of women more directly are also afoot, however, as myriad social and political groups attempt to organize across the country. The eventual process of legislation and enactment will necessarily be complicated, but the political narratives that seek to affect it are not — the power of the political message depends on its simplicity. Some argue that Islam and family are the foundations of a healthy society and paint past reforms as part and parcel of the corruption of the former regime. Others, including both foreign and domestic parties, see any talk of Islam or *shari‘a* as a symptom of a truncated democratic process. There are many shades in between.

In Egypt, the debate over personal status law reform for Muslims (Christians have their own family law) has centered on the Islamic legal term *khula‘*, a divorce process initiated by the female spouse in which she forfeits financial rights and reimburses her husband the dowry paid when contracting the marriage. A period of reconciliation must ensue before the divorce is enacted, and she must state in court that she “hates living with her husband” and is “afraid to cross the limits of God.”³ The key issue about *khula‘* is that it does not require spousal consent. It is a reform to divorce laws that is based on the Islamic legal tradition, while also representing a break from the classical definition of *khula‘*, which required consent and could thus be easily thwarted by the husband.

This current form of *khula‘* was incorporated into Egypt’s personal status law in 2000 and was accompanied by other

1. To be written sometime after March 2012.

2. See, for example, “Democratic Coalition for Egypt rejects supra-constitutional guiding principles,” *Al-Ahram Online*, August 15, 2011, <http://english.ahram.org.eg/NewsContent/1/64/18905/Egypt/Politics-/Democratic-Coalition-for-Egypt-rejects-supraconsti.aspx>

3. Maurits Berger and Nadia Sonneveld, “Sharia and National Law in Egypt,” in Jan Michiel Otto, ed., *Sharia and National Law: Comparing the Legal Systems of Twelve Islamic Countries* (Cairo: American University in Cairo Press, 2010), p. 76.

reforms, including the formulation of a new standard marriage contract that gave women the right to stipulate conditions, such as the right to divorce in the event of a husband's contracting a second marriage. Further reforms in 2005 also included the establishment of family courts, the creation of a Family Fund for court-ordered alimony and maintenance for female disputants, and new child custody laws (child custody laws have increasingly become central in the national debate). Support for the reforms by means of mobilizing and drafting came from various quarters of Egyptian society, but the final legislation counted on the support of the now-defunct National Democratic Party and the National Council for Women, headed by the former First Lady, Suzanne Mubarak.

Post-January 25 detractors of these reforms refer to them as “Suzanne’s Law” — echoing criticism of a set of reforms enacted under Anwar Sadat, then labeled “Jehan’s Law,” after First Lady Jehan Sadat — and are seeking to repeal them on the basis that they “contradict *shari’a*” and are a legacy of the corruption and tyranny of the fallen regime. Criticism of such reforms, especially by invoking *shari’a*, is nothing new in Egypt. What is new in the current backlash “is their

Criticism of such reforms ... is nothing new in Egypt. What is new in the current backlash “is their being presented to the public as part of a revolutionary struggle against corruption and the political repression of the old regime”

being presented to the public as part of a revolutionary struggle against corruption and the political repression of the old regime,” according to Mulki al-Sharmani, former research faculty at the Social Research Center at the American University in Cairo.⁴ As the transitional government lumbers toward national elections and the drafting of a new constitution, social and political actors are positioning themselves to affect the ultimate outcome, some calling for a complete repeal of existing reforms, others calling for broader and more thorough legislation in favor of gender equality.

HISTORICAL BACKGROUND

The polarizing tendency of personal status law reform makes it a politically sensitive subject, able to sway broad portions of public opinion. The polarized positions, however, hardly represent what is a more nuanced reality. Egyptian society includes a diversity of positions regarding women's personal legal status. The history of this debate is likewise long and complex. Egypt's legal regime reflects its past: Ottoman, French, and British colonial, republican, socialist, and, in the last 30 years, a balancing-act between trends espoused by popular political Islamic movements and domestic and international secular-liberal ones. While the legal history of Egypt cannot be described in any kind of detail here, it should not be described as a development from “religious” to “secular,” even if popularly conceived as such.

Feminist activism in Egypt is, by several accounts, the oldest in the Arab world, dating to the first quarter of the 20th century. The personal status laws of Egypt, however, lag behind those of other countries, such as Tunisia and Morocco, at least in terms of gender equality according to the letter of the law. The history of reforming these laws has not been without its set-backs and has been passionately contested.

4. Email correspondence by the author with Mulki al-Sharmani, August 4, 2011.

The first codification of personal status law appeared in 1920 and incorporated some Islamic reformist ideas that gained currency in the late 19th century and called for looking outside the predominant Islamic legal school of the country, the Hanafi school, and incorporating elements from the other three schools recognized by Sunni Muslim jurists. As was the trend in other countries of North Africa, the constitution, and civil, administrative, and criminal law codes were largely inspired by European traditions (French, Italian, Belgian), while the laws regulating marriage, divorce, inheritance, and guardianship (i.e., family or personal status laws) fell under the purview of the Islamic legal tradition. This trend, dominant in the colonial period, goes back to Ottoman-period legal reforms and the establishment of new courts.

Three years after the revolution of 1952, the government of Gamal 'Abd al-Nasser abolished separate family courts for Jews, Christians, and Muslims. National courts henceforth adjudicated issues of family and personal status law, but the laws themselves were not significantly altered. Under the regimes of Sadat and Mubarak, two broad trends developed: on one hand, the government signed several international agreements, including the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979 (adopted with the reservation that some articles not be applicable if they violated *shari'a*).

On the other hand, there has also been a broad movement embracing principles of political Islam, perhaps best exemplified by the constitutional amendment of 1980 that declared *shari'a* as “the” major source of legislation in the country (Art. 2).

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These trends came to a head in the early 1980s when amendments made to the 1920 and 1929 personal status laws met widespread resistance. The decree, known as “Jehan’s Law,” was eventually declared unconstitutional by the Supreme Constitutional Court in 1985 on the basis of the illegality of the procedure by which it was enacted — it was decreed under a state of emergency that the court deemed unjustified.⁵ The Mubarak government passed new legislation on Islamic personal status law later in 1985, removing some of the most controversial issues of “Jehan’s Law.”

The year 2000 saw the promulgation of the *khula'* law, which gave women access to non-consensual divorce, a new standard marriage contract allowing for stipulations,⁶ and a law allowing women to apply for a passport, and thus to travel, without spousal consent. In 2003, the first female judge was appointed to the Supreme Constitutional Court and in 2007, the Supreme Judicial Council swore in 30 female judges to courts of first instance in Cairo, Giza, and Alexandria. All the while, and as became all too clear after January 25, 2011, the regime was losing legitimacy with its people. The question

5. Berger and Sonneveld, “Sharia and National Law in Egypt,” p. 63.

6. This practice is not widespread, however, according to Mulki al-Sharmani.

arises, then, of how the laws it passed will be dealt with in the future.

FOR AND AGAINST

In the “wide-open” environment of Egypt under the transitional government, personal status law reform is not the top priority, nor is the broader issue of women’s rights. The separation of powers, holding of free and transparent elections, and curbing of the armed forces’ power — military tribunals are reported to have summarily tried up to 12,000 civilians since March — stand as paramount.⁷ Since February, however, several public efforts and initiatives to influence the direction of existing and future reforms have taken place, many touching on the issue of the role of Islam in post-revolutionary Egypt.

Montasser El Zayat, a candidate for the presidency of the Lawyers’ Syndicate, has called for the repeal of personal status reforms enacted since 2000, claiming that they had led to the breakdown of the Egyptian family. Discussing the negative impact of the Mubarak regime on Egyptian society in an April article in *al-Masry al-Youm*, El Zayat said that Egyptians needed to

shed light on important social changes, which struck at the core of the foundations of the Egyptian family. The most important dimension that concerns us [here] is to address the effects of the laws of family and custody that were sponsored and prioritized by Mrs. Suzanne Thabit, the wife of the former president, Hosni Mubarak, in what was known as *Qawānīn al-Hānum* (The Laws of the Lady). These began with Egypt hosting the population conference of 1990 and led to decisions that clash with the essence of sharia and contradict the attributes of the Muslim character specifically and the Egyptian character generally. Many speak of the disruption of social relations which have led to the breakdown of the Egyptian family ...⁸

In April, Counselor Abdullah El Baga, President of the Family Appeal Court, presented in April a draft proposal to the Prime Minister of the transitional government, Essam Sharaf, with changes to personal status laws, which include repealing the *khula’* law, shortening mothers’ custody (until age 7 for male children, age 10 for female children), and enforcing a wife’s obedience by requiring return to the marital home (if she has not presented a formal objection to court within a limited time-frame) and ceasing alimony payments when her disobedience persists.⁹ And two groups reportedly formed by divorced husbands, The Revolution of Egyptian Men and The Association for Saving the Egyptian Family, have held high-profile demonstrations, a hunger strike, and a meeting with the

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7. “Egypt: Retry or Free 12,000 after Unfair Military Trials,” Human Rights Watch, September 10, 2011, <http://www.hrw.org/news/2011/09/10/egypt-retry-or-free-12000-after-unfair-military-trials>.

8. Montasser El Zayat, “Qawānīn al-Hānum” [“The Laws of the Lady”], *al-Masry al-Youm*, April 19, 2011, http://www.elzayat.org/print_artcl_505.htm.

9. See press release at the Association for Women’s Rights in Development, July 25, 2011, <http://www.awid.org/News-Analysis/Women-s-Rights-in-the-News2/Statement-Egypt-NGOs-condemn-personal-status-law-decree-project-by-counselor-Abdallah-El-Baga>.

Grand Shaykh of al-Azhar, in an effort to repeal *khula'* and Law No. 4 of 2005, "which grants custodial rights to mothers of children up to the age of 15."¹⁰

Conversely, voices calling for protecting and deepening the reforms have been present in numerous op-ed pieces in newspapers, petitions by NGOs, and initiatives, such as the open call by the Center for Egyptian Women's Legal Assistance (CEWLA) for a new personal status law for Christians (there have been numerous calls for Pope Shenouda to relax divorce laws)¹¹ and specific constitutional proposals by the Women and Memory Forum's Constitutional Working Group, with the stated aim of enhancing and protecting women's political, legal, and social rights.

CONCLUSION

The debate over personal status law reform is fraught with the many anxieties Egyptians feel about their future. Conservatives fear the undermining of Egyptian society by outside values and the decline of the family as the foundation of social morality and stability. Progressives fear the "Islamization" of society and limitations on individual freedoms. And, to be sure, there are many who inhabit spaces in between, including progressive Muslims, who may conceive of liberal reforms in Islamic terms.

Much about the debate is skewed and oversimplified. *Shari'a* is a powerful concept in this debate, because it represents an ideal far from the great body of substantive law that is traditional Islamic law (which is perhaps more closely equivalent to the term *fiqh*). *Shari'a* represents the ideal of following the will of God, but, as most classically-trained Muslim jurists would agree, human knowledge of the will of God is subject to interpretation. No one simply "knows" what that will is. The attraction of the concept of *shari'a* among many Muslims is, furthermore, de-

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derived from its association with what in English would be termed "the rule of law" or "truth" and "justice," which are compelling notions for a population submitted for so long to dictatorship and single party rule. It connotes transparency and accountability and, among other things, forms part of the region's centuries-old ethical discourse, enjoying a legitimacy that Western legal and political discourse lacks because of its association with colonialism and the perpetuation of military police states. This is perhaps why arguments for reform grounded in Islamic discourse appear to be better positioned to bring about change.

10. My thanks to Mulki al-Sharmani for her generous help with this article and for pointing some of these out to me. See the Association's website at <http://save-thefamily.blogspot.com/>.

11. For example, Ekram Ibrahim, "Civil Personal Status Law: the fight for an equal right to a happy life for Copts," *Ahram Online*, July 5, 2011, <http://english.ahram.org.eg/NewsContent/1/64/15625/Egypt/Politics-/Civil-Personal-Status-Law-the-fight-for-an-equal-r.aspx>.

The issue of the reforms enacted since 2000 being tainted by what is now seen as a hopelessly corrupt regime is a complicated one, with echoes at many levels of the country's administration and public institutions, which are now subject to ongoing calls for a complete purge. The principal issue is the question of where such a purge should stop, and, if selective, what it should include. In what cases is administrative expertise more important than innocence of involvement with the Mubarak regime — one of the only avenues for having *any* administrative experience in the country before January 25? How much of that involvement will eventually be deemed acceptable to partake in building the future is up for debate. The entirety of the country's institutions, public and private, are affected. Perhaps most importantly, however, is the fact that laws and courts and their procedures are often not the product of Tahrir-like mobilization, but rather of a slower and more fastidious process. To quote Mulki al-Sharmani again, the practice and experience of “the messy and complex realities of court room interactions or even of the lived experiences of marriage and gender relations” transcend political agendas.¹² A satisfactory compromise in the way forward will have to heed the varied opinions of those individuals most closely engaged in the day-to-day negotiation of the laws.

12. Email correspondence by the author with Mulki al-Sharmani, August 4, 2011.



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