Towards a Better Life:
How to Improve the State of Democracy in the Middle East and North Africa

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PREFACE

The situation in the Middle Eastern and North African (MENA) countries concerning the state of the democracy has been on top of the agendas of not only political entities, but also civil society organizations, academia and the international media, with an intensifying frequency for the past decade. While the citizens of respective MENA countries deserve and demand better political, social, and economic conditions, the current state of affairs in many MENA countries is unfortunately far from ideal in terms of civic rights, freedoms, and other socio-political conditions.

Despite the ongoing interest in the region by scholars from all over the world, interestingly enough, Turkey, being one of the largest countries in the region, has traditionally had a foreign policy that did not engage the Arab states, mostly attributed to the circumstances of the Cold War, as well as, arguably, Turkey's self-perception. This policy was mirrored in other areas such academic or journalistic exchanges. Recent changes in Turkish foreign policy have meant that Turkey is now more actively engaged with what is going on around it, not just towards the West but the East, seeing the process of democratization in the region parallel to that process at home. Turkey's own democratization process, in turn, has been explicitly discussed as an example that could be followed by Arab scholars, journalists and other opinion-makers. While this study covers Arab states exclusively, the topics under inspection are of mutual concern for both Turkey and the Arab states.

Global Political Trends Center (GPoT), together with the Arab Democracy Foundation and the Ibn Khaldun Center, has embarked on a project to critically evaluate the state of democracy in MENA –the Arab world specifically- and to come up with policy proposals on how to improve it. This project identifies six pillars of a working and viable democracy - the judiciary, the constitutional framework, parliamentary elections, political parties, civil society, and the media - and aims to identify and propose solutions to the problems faced in all these six areas in different countries in the region. To this end, we have brought together experts who are able to critically evaluate the situation with respect to each of these institutions and how they interact with the respective societies in the MENA region. This book is the culmination of these efforts.

This study, spanning the entire region as well as several theoretical areas, includes case studies and practical considerations and presumes to exhaust the topic of the state of democracy in MENA. The authors not only summarize the reforms in the region, but talk of the challenges ahead, both from the society's and the state's standpoint. While the articles cover the entire region, an author typically covers a multiple of countries in a comparative manner, rather than focusing on his country of origin.

In "The Constitutional Frameworks in the Arab Countries Dismantling the Authoritarian Structures," Dr. Abdallah Shalaby examines political and social conflicts that prepare the grounds for the transition from authoritarianism to pluralism, reading the signals of an Arab constitutional movement. Moheb Zaki, in "The Status of Political Parties in the Arab World," focuses primarily on the problems of secular political parties, their relative weight in the political arena vis-à-vis government parties, and the extent of their level of effectiveness and relevance to the practice of democracy. Dr. Mostafa El-Nabarawy, in "Parliamentary Elections in the Middle East and North Africa: Present Status and Future Prospects," outlines the objectives set out in accordance with the UNDP for regular, free and transparent elections and questions the extent to which parliamentary elections in MENA succeeded in achieving these.

Salah Al Din Al Jurshi, in "The Arab Civil Society: Hindrances and Prospects" explores the current situation of Arab civil societies, analyzing their weaknesses and recent improvements, working with a practical definition of civil society. In "Media in the Middle-East and North Africa", Dr. Qays Jawad Azzawi assesses the position of the Arab States as it relates to central issues concerning the media, such as the press constitutional and legal freedom space, dangers facing the journalists, and censorship. His paper tackles cases of journalist imprisonment in the Arab countries and also deals with the dependence of the media on the ruling regimes. In "Empowering the Magistracy in the Arab World", Dr. Antoine Nasri Messarra examines the prevailing legal culture in a variety of Arab states.

We hope the resulting book will speak to an audience of scholars and students, as well as policy makers and other experts that specialize in the MENA region. One of the main aims of the project, as well as part of the mission of the Middle East Partnership Initiative that has made this project possible, has been to reinvigorate democrats in the region to encourage action that is more concrete.

We tend to believe every small contribution to the existing policy-oriented research will be an improvement from the current situation. We thus hope this upcoming book will be a step towards sharing best practices and lessons, and will build on existing reform initiatives. On behalf of IKU-GPoT we would like to express our gratitude to our partners Ibn Khaldun Center and Arab Democracy Foundation for their intellectual contribution and to MEPI for their financial support.

Mensur Akgün
Director
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THE CONSTITUTIONAL FRAMEWORKS IN THE ARAB COUNTRIES
Dismantling the Authoritarian Structures

Dr. Abdallah Shalaby

Introduction

The constitutional question and the related intractable issues of democratic transition and human rights in the Arab world have occupied center stage of the Arab political arena for the last three decades. Arab political regimes are currently experiencing what seems like birth pangs: a variety of political and social conflicts which presage and prepare the grounds for the transition from authoritarianism to a kind of pluralism that heralds the beginning of the end of the despotic state. Developments in Morocco, Algeria, Tunisia, Egypt, Sudan, Iraq, Yemen, Jordan, Lebanon, Syria and Kuwait mirror the rise of what may be called the Arab constitutional movement, a sophisticated development that signifies a mature democratic consciousness in the Arab societies. This is manifested in the liberalizing steps taken by several Arab countries to enhance the potential for a democratic transformation via the burgeoning number of human rights organizations, an increased vitality of civil society organizations, the increasing number of cultural centers concerned with free dialogues on all matters of concern to citizens, and finally the increasing freedoms of the judiciary.

A democratic regime assumes the existence of a constitution: a basic law that defines the fundamental rules and guidelines which citizens have agreed to adopt as the basis of their common life. It is the supreme law that defines the identity of society, the form of the state and its institutions from which legislative and legal principles emanate. It includes both principles of government and aspirations of the society, it draws a map of the distribution of power: between the state and society, and between the different institutions of the state. It is the source of all laws and the social contract that delineates the duties and rights of members of society on the basis of equality. It is also the general framework that regulates relations between the state and citizens, decides on

I. Revising Arab Constitutions: approaches, rationales, and probable consequences

Society's cohesiveness, effectiveness, vitality and capability to provide a life its members aspire to as individuals and collectivities regardless of ethnic, cultural, religious, social and economic differences, hinge upon its ability to agree on the contents of the constitution, and its common values and binding rules and regulations. If this unanimity regarding the constitution or some of its components is compromised, or if major transformations in the economic, political, regional and international structures take place, the constitution should be amended or even radically modified in order to respond to the new needs brought about by recent changes. Axioms and rules that have enabled societies in the past to progress, often because of changed conditions, may obstruct their progress into the future.

This means that despite the desirability for the continuity and stability of a Constitution, there must exist the possibility for introducing amendments to it if there is to remain a live document that guides and affects the lives of people and the nation as a whole and remains relevant to their times. These amendments occur in all democratic regimes and are conditioned only that they enjoy a reasonable consensus among citizens

There are two schools of thought regarding the issue of constitutional amendments. The first, in the interest of stability, adopts rules and regulations – which should be incorporated in the constitution – that make it extremely difficult to introduce amendments. Examples of such rules are the necessity of approval by a high majority (such as 66%) in parliament as well as a similarly high endorsement by the people in a general referendum. Due to these high barriers to change, such constitutions rarely witness amendments. The second school sets much more lenient rules, such as endorsement by a simple majority in parliament and in the national plebiscite. Noteworthy is the fact that constitutions of the latter type are often lengthy documents that include detailed statutes that make them akin to normal laws.[1]

Most Arab countries have undergone, since the 1950s and up to the present, considerable fundamental changes in their political and/or economic systems. Some monarchies became republics and some socialist regimes changed into

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1 Gavison, R. (2002). "What Belongs in the Constitution?", in *Constitutional Political Economy.* Netherlands: Klwer, Academic Publisher. pp. 89-105.

market-oriented economic systems, and often single party political regimes introduced multi-party competitive politics. All these systematic changes made it imperative to either introduce constitutional amendments or design entirely new constitutions. The unfortunate problem was that in most Arab countries these constitutional changes were often largely intended merely to create an impression of reforms while their true objective was to consolidate the grip of the ruling authoritarian regimes on power and ensure their continuity. Thus, the step served to create an illusion of progress while in reality it constituted a regression. Typical examples are the last three amendments of the Egyptian constitution (1980, 2005, 2007); the three new Sudanese Constitutions and their amendments during the period of 1973- 2005; the five separate amendments of the Algerian constitution (1970-1996); and changing the consociation status of the Lebanese Constitution (1989). The recent Iraqi and Sudanese Constitutions are laudable exceptions in view of their reasonably progressive nature.

On inspection of the amendments referred to above which were introduced in the constitutions of the Arab states we note several common features. They are amendments intended, in presidential systems, to either extend the tenure of the ruler in office indefinitely or prepare the ground for his son to succeed him; or to further enhance the ruler's grip on society and ensure perpetuation of his unchecked powers; or to introduce cosmetic reforms to burnish the regime's international image or to relieve mounting domestic and international pressures in the face of the regime's escalating violations of human rights.

The amendments were no more than maneuvers to either re-elect the incumbent president or prepare the political landscape for the election of his son. Thus republics get transformed into quasi-dynastic monarchies - what Egyptian sociologist, Saad Eddin Ibrahim, calls *Goumlokia***,** a hybrid Arabic word coined from the two words 'republic' and 'monarchy'. This has occurred in Syria where upon the death of president Hafez al-Asad, the parliament was convened and in 20 minutes the constitution was amended to permit the dead president's son – who was at the time short of the minimum age to assume office – to become president. In Egypt, President Hosni Mubarak introduced constitutional amendments that placed enormous obstacles in the face of any potential contender for the office other than his son Gamal.

In 2005 the Egyptian president surprised everyone by submitting to parliament an amendment to article 76 of the constitution which would introduce for the first time in Egypt's history competitive presidential election by direct popular

vote, instead of the method that was adopted till then where the president was nominated by two-thirds of the parliament – which was overwhelmingly dominated by the president's party – and submitted to a general referendum where the electorate could either approve or disapprove it. The new amendment, therefore, appeared as a significant democratic step, except that the conditions which set for those eligible to run were so difficult to meet that they prevented any meaningful competition by making the race between on one hand either the president or his son and on the other a number of insignificant candidates who do not stand any real chance. Thus the principle of devolvement of power is effectively undermined.

A candidate presuming to run for president must surmount the following high hurdles, which are of course no obstacle to either the president or his son whose party dominates all legislative and municipal councils: No military office is permitted to run; the candidate of any party must be a current member of its executive council for at least 5 years. As for independents the would-be candidates must first obtain the endorsement of 250 elected members of the municipal councils in 10 of Egypt's 24 governorates, plus 250 endorsements from members of parliament and the Shura Council. The extent of the difficulties that these conditions impose can be appreciated when one takes note that the 454-seat parliament is dominated by the ruling party (80%), as well as the Shura Council (95%) and the municipal councils in all of Egypt's governorates (98%). (The municipal council elections in 2008 were massively rigged to prevent the Muslim Brothers from having any representation in them.) When further note is taken that Gamal Mubarak was prior to the introduction of these amendments elevated to be a member of the executive council of the ruling party (NDP) it becomes difficult not to conclude that the scene is being prepared for him to follow his father as Egypt's next president[2].

Then again in 2007 the president came back to parliament with another bill that includes a package of 34 constitutional amendments, their most significant elements were additional restrictions to preclude completely that the Muslim Brothers – who are the most potent political opposition group – play any role in Egypt's political life. One of the more dismaying of these amendments was the elimination of the comprehensive overview of the elections by the

2 Papers of the first workshop (Cairo, 16-18 November 2006) regarding the constitutional amendments in Egypt: *Ibn Khaldun Center for Developmental Studies: Constitutional Amendments: The Campaign of Art*, pp. 76- 77.

judiciary, as was the case in the last elections. Thus it has become clear that the amendments, particularly that of article 76, were intended to create the illusion of legitimacy to the upcoming 2010 presidential elections.

The amendments in the Arab countries referred to above; in Egypt, Algeria, Tunisia and Sudan were intended to boost the eroded legitimacy of the ruling regimes and to strengthen its grip on power further by extending the tenure of the incumbent presidents indefinitely, while expanding presidential power and relieving the current presidents from any future accountability.

In the 1971 Egyptian constitution the presidential tenure in office was limited to a maximum of two six-year terms. But in the last days of Sadat (1981) this limit was eliminated leaving it open for any president to remain in office indefinitely.[3] In 1975, Algerian president Abdel Aziz Bu-Taflika submitted a bill to parliament suggesting an amendment of the article 74 of the 1996 Algerian constitution, which restricted presidential tenure to no more than two terms, which would allow running for an unlimited number of terms. If passed in parliament the amendment would have to be approved in a referendum. The amendment was endorsed in parliament and by the referendum. And so, despite the fact that the process was conducted according to constitutional law, it remains true that this amendment dealt a severe blow to good governance which has far good reason set term limits to prevent the tendencies for corruption that comes with extended periods in power, and encourages cycles of devolvement of power thus institutionalizing a democratic political culture.

In Tunisia, in anticipation of the forthcoming presidential elections in late 2009, the constitution was manipulated in a manner to exclude the candidacy of particular opponents of the current president Zein Elabbedin ben Ali, thus eliminating the possibility of any real competition and making the election more like a referendum on keeping ben Ali in office for a new term.

II. Constitutional grounds of public freedoms and basic human rights

Constitutions were initially created to establish and protect individual freedoms and rights by constraining state power through limited government. The constitution, viewed as a social contract, necessarily includes concessions on the part of individuals wherein they give up some of their freedoms and rights to an authority that will provide order and security, regulate their relations,

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3   Ibrahim, S. E. (1984). "Sources of Legitimacy for Arab Ruling Regimes. The Crisis of Democracy in the Arab World", Beirut: The Center for Arab Unity Studies, pp. 17-36.

and protect their (remaining) rights and freedoms. Each of the two parties – the citizens and the state – attempt to expand the space of their respective freedoms and rights at the expense of the other through negotiations that do not end with the drafting and declaration of the constitution, but continue unabated in conflicting interpretations and actual practice. Thus it may be said that the constitution is in fact an incomplete social contract.[4]

There are three types of constitutions. The first merely embodies the existing situation and formally establishes through constitutional provisions current realities with regard to freedoms, rights and duties as well as the prevailing system of government. The second type describes conditions that do not exist in reality - their articles about rights and freedoms are no more than aspirations and hopes taken from other existing live democratic constitutions; they are sheer text and have little to do with the lived reality. The third type is the genuinely democratic one, which limits the power and guards against the potential transgressions of the state and its organs. Notwithstanding the overlap and commonalities between these three types of constitutions, the constitutions of most of the Arab states are invariably a combination of the first and second types: they simply codify the current autocratic form of government while simultaneously expressing lofty aspirations that are in stark contrast with the lived reality.[5]

Constitutions in most Arab countries claim to be in close affinity with democracy and some countries even consider it the symbol of their regime, and include the word 'democracy' in their country's name, such as, the Democratic Republic of Algeria or the Democratic Republic of Sudan. In many of the constitutions, the first article stipulates that democracy is the system of government. The Syrian constitution stipulates in Article 1 that "the Arab republic of Syria is a democratic, popular and socialist state." The Moroccan constitution stipulates in Article 1 that the "system of government in Morocco is a social constitutional monarchy."[6] However, when we compare and contrast the slogans and principles written in these constitutions with actual practices and realities, we find large discrepancies between the two. This wide gap between constitutional provisions

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4   Gavison, R. (2002). "What Belongs in the Constitution?" in *Constitutional Political Economy*, Netherlands: Klwer, Academic Publisher, *op.cit.* pp. 89-105.

5   Ruth Gavison, "What Belongs in the Constitution?" Ibid. pp. 89-105.

6   Constitution of Morocco. Section 1: Public Rules, Basic Principles, First Chapter. See also the permanent Constitution of Syria.

and realities on the ground is a feature common to all Arab countries. They all share and exhibit the following characteristics:

1. There are striking contradictions between the constitutional provisions that claim to guarantee civil and political rights and freedoms and respect for human rights in their widest sense – as is the case in a truly democratic form of government – while other articles restrict and constrain the practical applications of these expansive rights and freedoms, rendering them non-obligatory by always making them "subject to the stipulations of the law" or "on the condition that they shall not be used to undermine social unity." These vague phrases are appended to all constitutional articles that speak of rights and freedoms thus making their application -in the absence of any guarantees as to how they are to be protected-   contingent upon the law, which in all authoritarian regimes is largely in the hands of the ruler whose powers are unchecked and whose administration invariably dominates all institutions of the state including the legislature. This way the constitution becomes subservient to the law and the whims of rulers in despotic regimes. This explains why Arab states have an arsenal of freedom-limiting laws, particularly those related to the freedoms of association and the press, as is most notoriously the case in Egypt, Syria, and Tunisia.[7]

2. Despite the differences between constitutions of Arab states, when it comes to basic rights and freedoms they nevertheless create a very similar public climate. Because the laws that govern constitutional articles may be changed at will by the authoritarian regime, the regime is virtually immune from any claim that it violated the constitution. All it has to do is simply change the law to conform to what the government would like to do. Though Arab constitutions explicitly guarantee the rights of association and participation; the government legislates laws that severely restrict these rights, or in some cases, confiscate them all together instead of merely organizing the procedures for the use of these rights. Such maneuvers put Arab regimes in a bind. By rendering these constitutional rights void of any real substance they achieve their domestic goal, but at the high price of undermining their image in the international community. Arab regimes have therefore always drafted these constitutions in ambiguous language to suit changing circumstances that require changes in policy that would enable the government to circumvent strict observance of

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7   Constitution of Egypt, Chapter 3, Public Freedoms, Rights and Duties, Articles 41, 44, 45, 47, 48, 50, 54.

any constitutional rights and freedoms in favor of maintaining a tight grip on society.[8]

The mechanism of restriction through laws is prevalent in all Arab countries. Thus, in Egypt for example, there are laws to control political parties via a state-controlled Political Parties Committee and the use of emergency laws; laws that permit arrest and detention of suspects; laws that restrict and control freedom of association; laws for the protection of social peace; and laws for the protection of national unity. New laws are passed to amend existing ones when needed. Consequently, constitutional articles about civic and political rights are inoperable, and become mere declaratory statements that serve only to relieve the conscience of the ruling elites and project an image of the regime that meets with international approval. It is clear that the desire of Arab rulers to maintain a firm control over the opposition and their society as a whole trumps any rights and freedoms stipulated in their constitutions.

3. Articles that address the rights of citizens and their freedoms in Arab constitutions are not clear, categorical or prohibitive. In addition, they are mostly replete with exceptions and provisos, and are coached in evasive and ambiguous terms that permit alternative interpretations. These articles, moreover, are always devoid of any clear definition of the concrete indicators that accurately prescribe what these rights and freedoms actually amount to in practical life. The absence of such a procedural definition in addition to the lack of constitutional guarantees and institutions that expose violations, facilitates the breaching of the constitutional rights of individuals. In cases where constitutional guarantees do exist, they are inactive, futile, pure appurtenance and do not serve to deter existing authorities from gross violations of basic rights and freedoms.

4. A striking feature common to all Arab countries is the huge gap that exists between the written provisions of the constitutions and the situation on the ground. Although all Arab constitutions include comprehensive and excellent provisions concerning the rights and freedoms of individuals, and most Arab governments have accepted and ratified the fundamental international human rights treaties, when we examine the constitutional articles and contrast them to the practices of the regimes, we discover that most of these provisions are no more than aspirations and hopes. There is a good amount of discrepancy

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8   Universal Declaration of Human Rights, Charter of United Nations for Struggling Against Torture.

between these written constitutions and the international principles on one hand, and the practices of Arab regimes, whether republics or monarchies, conservative or progressive. All these regimes violate individual rights and freedoms, and transgress on the people's lives continuously. Reports of national and international human rights organizations attest to the widespread random arrests of political adversaries, long detentions without trials to be followed at long last by hasty trials before special and exceptional courts that do not provide defendants with the constitutional and legal guarantees for a fair trial. These courts usually hand down harsh sentences - often death penalties, which are usually not subject to appeal. Members of the opposition are kidnapped and killed, and detainees are tortured in police departments to force confessions.[9] As once said in 1981 by President Sadat of Egypt "Democracy for Arab rulers has sharp teeth and claws and is capable of cutting opposition to pieces."

Violations of the constitution and the aggression on freedoms and rights are not confined to the executive power, but also extend to the legislative authority. In Egypt for example, the parliament does not comply with court rulings that annul election results in districts in which evidence indicated flagrant fraud. The reason is that the parliament takes the position that it is the "master of its own decision" and hence the sole arbiter as to who should or should not be a member of parliament. The regime's dominant majority in parliament frequently displays its tyranny by threatening to censure or even suspend the membership of representatives of the opposition.

5. A number of Arab constitutions admit the right to form associations on the condition that they "respect public order" or "are in accordance with the law". This is the case in the constitutions of Kuwait, Jordan and Morocco. The constitution of Kuwait, for example, stipulates in Article 43 that "the freedom to form associations and syndicates on national grounds and using peaceful means are guaranteed in accordance to the conditions indicated by the law." Although it does not clearly stipulate the right to form political parties, the explanatory memo points out that the constitution does not prohibit the formation of parties but defers the whole matter to the legislature. A number of other Arab constitutions assert that the freedom to form associations and parties is guaranteed by the constitution, with special recognition given to the

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9   Cairo Center for Human Rights Studies, (2008). "Exporting Terrorism to Exporting Suppression." *Human Rights in the Arab World.* Cairo. This report covers violations and breaches of human rights in the Arab world.

ruling party. For example, the Syrian constitution stipulates in Article 8 that the "Arab Baath socialist party is the commanding party in society and the state". In Tunisia and Egypt one party only controls state apparatuses and controls civil society while opposition parties can move freely only in a very limited space because of legislative restrictions that do not allow them to play any effective role in the political system.[10]

6. Some Arab regimes stipulate in their constitutions that the system of government in their countries is democratic and based on principles of citizenship, which means that citizens are looked upon as the stakeholders who all possess equal shares in the ownership of the state. This was the concept that was adopted in one of the recent amendments of the Egyptian constitution. It was indeed a step in the right direction. However, numerous other articles in the Egyptian constitution that contradict this principle of the equality of citizens remained in place. Thus the state itself is given a specific religion, such as Islam, or an ethnic identity, such as, Arab. Such religious and ethnic definitions imply that the many minorities in the Arab countries who are non-Muslim such as the Copts in Egypt, or non-Arab, such as the Berbers in Algeria and Morocco and the Kurds in Iraq, are in reality guests in their home countries. These provisions also contradict other articles in the constitutions of these countries which assert that "citizens are equal before the law, enjoy equal rights, and that there can be no discrimination between them based on sex, race, or religion". Provisions in the constitution that determine the religion of the state and its Arab affiliation mean in essence that citizens who are equal before the law are only those who share the state religion and Arab national identity. [11]

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10 Constitution of Kuwait, Section 3: The Rights and Duties, Article 43. See also:
    Constitution of Algeria, Section 2, Chapter 1, Political Function, Articles 94-89.
    Permanent Constitution of Syria. Section1, Chapter 1, political principles, article 8.
    Hudson, M. (1986). "State, Society and Sovereignty. In Hisham Sharaby (Ed.)" in *The Next Arab Quarter, Alternative Futures,* Beirut: Center for Arab Unity Studies, pp. 17-36.

11 The Constitutions of all Arab countries refer to Islam as the state religion and the main source of legislation. At the same time they completely ignore the other religion believers in the country, the only exception from this report is the new Iraqi constitution which confesses that Islam is the official religion of state and the source of legislation. However, it guarantees in the same article (2) all religious rights for individuals in belief and religious practices, such as Christians, Yazedieen, Sabiaa el Mendaeen. New Sudanese constitution confesses as well, of popular consensus, traditions and Sudanese values, and beliefs that take in consecration diversity in Sudan, as a source of legislation on the national level and be practices in south of Sudan and its districts.

III. The constitutional and legal status of the head of state

Constitutions serve mainly to place limits on the power and jurisdiction of the executive authority and the head of state, in order to prevent state hegemony by having the legislative, executive and judicial powers concentrated in one hand. However, the constitutions of Arab states, both monarchies and republics, consolidate this state hegemony. They all grant absolute powers and jurisdiction to the heads of state and monarchs who are not accountable to any party or state institution, and are virtually above the entire political system.

The constitution of Morocco provides that "the person of the king is sacred; he is the Emir of the faithful and protector of the faith; assigned by God to perform the noble function of being the Caliph (Successor) of the prophet. As such he commands unquestioning obedience and has the right to address the house of deputies and the nation and the contents of his addresses are beyond discussion." Examples abound of journalists and intellectuals being indicted and sentenced to prison terms and fines, in Egypt, Syria, Tunisia and Morocco for having allegedly defamed the ruler. The constitutions of Syria, Egypt and Algeria also include scores of constitutional provisions that grant the president near-absolute power thus making him the very essence of the entire political order. Arab constitutions therefore often resort to evasive and disingenuous formulations in an attempt to justify this concentration of power in the hands of the ruler, a power that frequently entails the ruler's right to issue decisions that have the seal of legislated law, thus transcending the power of parliament.[12]

While an executive head of state and governments should have leeway to regulate and issue administrative laws clear categorical articles of the constitution should define the powers and the prerogatives of the head of state and the government, which be only to the extent that would allow them to safeguard the safety and security of society and carry out their crucial functions. Explicit constitutional clauses should also limit the terms in office of the president and the number of times in which he could appeal to the people in referendums or plebiscites. Unfortunately such well defined limits to executive power are absent in the constitutions of most Arab countries, and even where present are often ignored.

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12 Barakat, H. (2000). *Arab Society in the 20th Century: A Study Regarding Changes of Circumstances and Relations*, Beirut: Center of Arab Unity Studies, pp. 530-534.
    Al Kawary, A. K. (2005). *Tyranny in Modern Arab Regimes.* Beirut: Center of Arab Unity Studies.

A fundamental problem common to all Arab constitutions is that the heads of state, whether presidents or kings, are given sweeping powers but carry no share of responsibilities. Most Arab constitutions do not delineate the responsibilities of rulers or hold them accountable to a parliament that has the power to censure or put them on trial. Many Arab countries have laws that punish disrespect to the ruler with severe prison sentences. Any criticism, no matter how constructive, is considered a humiliation to the ruler that invites punishment.

One of the most important aspects of a democracy is the peaceful transition of power through regular, free and fair elections, and many Arab constitutions mention this, but in fact Arab heads of state are lifetime rulers of their countries. Thus the only way for change to occur is either by the death of the ruler, by natural means or assassination, or his forcible removal by a *coup d'état*. Election laws, particularly those for heads of state, are usually tailored to perpetuate the status quo and prevent the peaceful exchange of power. They are also often designed to ensure that the ruler is succeeded by his son. Two examples are the constitutional amendment in Article 76 of the Egyptian constitution (in 2005 and 2007) which gave the President's son an absolute advantage over any other candidate in a future presidential race, and the amendments introduced recently in the Algerian constitution which allowed the incumbent president to stay in office for an unlimited number of terms. Thus, presidential elections in Arab countries give the illusion of a contest between competing candidates, but in fact the playing field is so tilted in favor of the incumbent ruler that the whole process is a mere ritual with a foregone conclusion.

IV. Balance and cooperation between the powers of the three branches of government

The articles of the constitution defining the distribution of power between the three branches of government and the extent of their separation are among the most crucial in any constitution. Their importance cannot be overstated because they either consolidate the state of hegemony through the monopoly and concentration of power in the hand of the executive, or distribute power in a balanced manner in order to eschew its concentration and prevent the dominance of one branch over another. Thus the constitution is a mechanism to protect individuals and society against state hegemony. However, fragmenting power does have a negative aspect, for it naturally fosters conflict which can occasionally result in government gridlock. Nevertheless the advantages of dividing power outweigh the risks. Negotiations among the different forces

within parliament even when there is considerable disparity in power among the various groups, still serve to attenuate the tendency to adopt extreme positions, especially on critical issues that have far-reaching consequences.

The problem then is how to achieve political stability – which is largely dependent on a general sense of satisfaction among society's diverse religious and ethnic groups - through a strong government that maintains law and order while controlling and limiting executive power to prevent its domination over the other branches of the state, or its encroachment on the rights and freedoms of individuals or their oppression. The question then becomes how to limit and control the power of the state while allowing it enough to govern effectively. It would appear that only strong constitutional institutions can achieve this goal of maintaining political order and social stability while protecting the freedoms and rights of individuals and groups.

However, the distribution of power in most Arab countries are highly concentrated in the hands of the executive, especially that of the ruler. Moreover, although the constitutions define the boundaries between the executive and the legislature there is a tendency in most Arab countries of a gradual shift in these boundaries in a manner that concentrates and consolidates more power in the hands of the executive. This development, despite its serious consequences on democratic rule, occurs frequently without attracting any public attention or evoking public debate. In contrast any amendments related to human rights or the religious identity of the state have always caused a general stir and engaged the public's emotions. An example is the reaction of Egyptian public opinion towards the amendments introduced by President Sadat in the Egyptian constitution in 1971, in which one article made Islamic *Shari'a* the main source of legislation and another article extending the tenure of the president indefinitely. The result was that Egyptians became deeply occupied with the article on *Shari'a* but paid scant attention to the second amendment that carried a long term negative impact on the prospects for democracy.

One of the main features common to most Arab constitutions – as well as a marked tendency in the behavior of the three branches of government – is the merging of executive and the legislative powers in the interest of the former, and in such a way that the executive can literally legislate at will, making the parliament merely a rubber stamp. Parliamentary elections are rigged to allow ruling parties to achieve a majority of parliamentary seats, often exceeding two thirds. Thus Arab parliaments are governed by the whims and inclinations of the supreme rulers. This relationship between government and parliament

is sometimes cynically described as "the government's parliament and the parliament's government".

The Egyptian constitution blurs the lines between the three powers and makes the president an arbitrator of the conflicts between them. The Jordanian constitution stipulates that the legislative power is entrusted to the National Council and the king. The Kuwaiti constitution gives legislative powers to the emir and the State Council. The King of Morocco addresses parliamentary deputies as follows: "This confirms what I have always told you, whether you are in the legislature or the executive branches: If the separation of powers is necessary, then this should by no means apply to superior responsibilities." By that the King meant himself. Rarely does the executive respect the separation between the three branches. This principle of democratic governance is often flagrantly violated even when it is an article of the constitution. This is facilitated by the fact that Arab constitutions often contain articles coached in ambiguous language that makes it difficult to detect the violations. Moreover, Arab countries lack the constitutional mechanisms and guarantees that would limit the tyranny of the executive and force it to implement the constitution. The main viable mechanism to attain this would be the establishment of a Supreme Constitutional Court which has the power to monitor and uncover the violations of the executive. The mere presence of such a court is an important factor that deters, at least to some extent, the executive from rampant unchecked violations of the constitution under all kinds of pretexts.

It is important to note that the way the constitution is drafted affects the ability to expose violations and constitutional breaches. Prohibitive and categorical constitutional provisions prevent violations. On the other hand, allowing for exceptions and including phrases such as "except in emergency or exceptional situations" and "without prejudice to statutes of the Shari'a" which many of the Arab constitutions contain, open the door for and justify many of the violations committed by the executive and render them difficult to detect, and hold the ruler accountable.[13] Besides the usefulness of clear categorical language to

13 Gavison, R. (2002). "*What Belongs in the Constitution*"? op.cit. pp. 89-105. See also:

Ibrahim, S. E. (1984). "Sources of Sovereignty in Arab Regimes", in: *The Crisis of Democracy in the Arab World,* Beirut: Center of Arab Unity Studies.

Ibrahim, S. E. "The Future of Human Rights in the Arab World," in Hisham Sharaby, (ed.) *The Next Arab Quarter, op.cit.* pp. 51-69.

Hilal, A. E. (1984). "Democracy and Arab Human Rights", in Ali Eddin Hilal (ed), *Democracy and Human Rights in the Arab World,* Series of Arab Future Books, Vol. (4). Cairo: Arab Future Publishing.

safeguard fundamental human rights, the constitution should include also the specific guarantees that ensure that this protection is indeed real and effective.

Not all Arab constitutions include mechanisms for implementation; they merely declare the government's commitment to uphold these rights, hence Arab governments are able to ignore the constitution without risk of being held accountable for any violation or breach. The constitutions of Jordan, Tunisia and Algeria are void of reference to any judicial body that would monitor the adherence of the executive to the constitution or review the constitutionality of laws. The constitution of Kuwait does not call for a constitutional court but simply states in its Article 173 that "the law shall determine the competent judicial party that shall settle disagreements over the constitutionality of laws and regulations."[14] However, other Arab constitutions, such as those of Egypt (art.174-178), Syria (art.139-148) and Morocco do provide for a special constitutional court, although in the latter case the constitution of the court is not defined except by stating that the judges will be competent and upright individuals nominated by the King and endorsed by the parliament.[15]

However, monitoring the adherence of the government to the constitution requires mechanisms besides a supreme constitutional court in order to ensure the periodic review of laws, determine their constitutionality and directly monitor the conduct and performance of the government and the extent to which it respects the constitution. A number of Arab countries have institutions and mechanisms that perform these functions such as national as well as independent human rights organizations that scrutinize laws and monitor government practices and violations. They have proved to be effective agents in helping raise public awareness in numerous Arab societies of the importance of the constitution to the lives of individuals and groups.

Justice and the rule of law are fundamental pillars of democracy, insofar as they provide the basic guarantee of the human rights and freedom of individuals, and define the legitimate authority of government. These guarantees can only be protected by an independent judiciary, thus making the rule of law the foundation of all authority and the bulwark against all encroachment on the rights and freedoms of people. Thus no democracy can be sustained and function effectively in the absence of a strong autonomous judiciary, hence the

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14 Constitutions of Jordan, Algeria, Tunisia, and Kuwait.

15 Constitution of Egypt, Permanent Constitution of Syria, Constitutions of Morocco and Yemen.

separation of the three branches of government is a basic feature of democratic regimes as we have previously noted, since separation is the guarantee for a free and independent judiciary

Despite the declaration in many Arab constitutions on the imperative of a fully independent judiciary yet there exists an abundance of evidence that denies the presumed independence. In many cases the courts were exploited by the state executive to harass and suppress political opponents of the regime. This subjugation of the courts to the will of the government has the deleterious effect of constraining the law from pursuing government corruption. The body of laws that constrain individual freedoms also often restrain judicial autonomy through cooptation or pressures. Thus repressive measures taken by the government against members of the opposition are often supported by the courts.

V. Constitutional reform and dismantling the structures of tyranny

The review of Arab constitutions and Arab political realities demonstrates that the current Arab regimes, no matter the differences in their system of government, have created a pervasive state of despotism and tyranny across the Arab world. Arab rulers have little respect for the rights or the collective will of their societies. The Arab people cannot say no to their rulers, their participation in public life is minimal, and their contribution in the decision-making process is close to nil. Arab rulers rule at will and the Arab peoples obey. At present, the general trend – which is reinforced in current Arab constitutions – is towards greater authoritarianism. Political freedoms are abrogated, basic human rights are breached and in some countries rule by emergency laws has lasted for decades: in Syria since 1963, in Algeria since 1992, in Egypt since 1981, and in some of the Sudanese provinces since 1989. Emergency laws allowed the security systems of the state to permeate and oppress all aspects of citizens' lives. Examples include random arrest of political activists and detaining them for long periods often lasting for many years without charges. Not infrequently detention of the relatives, which may include women and children, of a wanted political dissident are taken as hostages to force the wanted man give himself up. Quick trials by extra-legal security courts that provide little guarantees of a defendant's rights sentence dissidents to severe penalties, including execution, that are not subject to appeal. Torture is often routinely conducted to extract confessions, and sometimes political dissidents are simply killed.

The question now is: How can we – on the constitutional plane – dismantle the structure of despotism in the Arab world? This must begin with genuine constitutional democratic reforms. In this context there are a number of ideas and general considerations that should be taken into account when thinking of such a reform. They mainly concern the institutional and organizational frameworks that are necessary for the long and painful road towards democratic transition which the Arab people have been struggling for in the last three decades.

1. The first priority is the need that Arab countries draft new democratic constitutions that guarantee public freedoms and human rights. It would be better to include, verbatim - as is the case in the new constitutions of Iraq and Sudan[16] - the provisions mentioned in international conventions of human rights in Arab constitutions.

Constitutions must include clear and specific texts that emphasize the civility of the State and the State's neutrality towards all religions practiced on its territory. Most of the Arab constitutions emphasize that Islam is the State religion and the Islamic Shari'a is the principle source for legislation. Such an article conflicts with other constitutional articles which claim that the State guarantees freedom of belief and religious practice. In fact, religious freedom cannot be secured if the state holds to a certain religion. Stipulating a state religion also conflicts with the de facto policies of all Arab régimes which ban the establishment of religion-based political parties. The question is: how could the Islamic Sharia be the principle source for legislation while a religious group such as the Muslim Brothers is denied in some Arab countries the right to establish a legitimate political party?

2. Since pluralism is the cornerstone of any democratic constitutional reform, the new Arab constitutions must include clear and firm provisions that assert that the political system is based on pluralist principles and that no impediments of any nature shall obstruct in any way or under any pretext the creation and free activity of peaceful association in all its forms, including political parties of all shades so long as they abide by the rules of the democratic game.

3. The constitution should clearly stipulate that military and fascist parties or those that distinguish between citizens on the basis of religion, gender or

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16 New Iraqi Constitution; Temporary and Transitional Sudanese Constitution.

ethnicity shall be denied legal recognition. This prohibition should also include parties that wish to set up a theocratic state that does not rest on the will of the people. Such a prohibition does not contravene the principles of democracy. On the other hand, Arab constitutions should stress the concept of citizenship and social harmony rather than solely focus on religious solidarity which can only breed fanaticism and hatred.

4. Existing constitutional and legal frameworks of the Arab countries must be revamped to eliminate all restrictions on fundamental freedoms, including primarily rule by emergency law in the absence of clear and imminent national danger. Moreover, all forms of emergency courts such as the use of military courts and state security courts to try civilians must be prohibited. The laws governing the practice of rights and public freedoms such as the law regulating the practice of political rights, the law of parliamentary elections, and laws organizing professional syndicates and NGOs must also be amended along democratic lines. By virtue of their importance to the nature of the regime, these laws should be spelled out clearly in the constitution.

There must be a clear recognition of the necessity of expanding the constitutional framework in some Arab countries to legalize the parties and groups that are currently excluded from participation in the political process such as the Muslim Brothers and the Communists. Such inclusiveness necessitates creating a general public consensus that recognizes full equality for all ethnic, national and religious groups within a democratic system that respects and preserves the historical, cultural and religious specificities for all groups through the Arab world. This also calls for providing full opportunity to all political groups and currents that are deprived legitimacy to participate in the political process provided they uphold the constitution and the relevant laws. Introducing such amendments will definitely eliminate the state of de-politicization of society which made the ruling political parties in all Arab countries the only player in Arab political spheres.

5. Then, most importantly, come the constitutional and legal status and powers of the head of state in Arab regimes. This subject in the present Arab constitutions requires radical change in order to at least approximate to acceptable constitutional norms adopted in the democratic world. In presidential systems the selection of the president must be by popular vote in genuinely contested elections, and the tenure in office should not exceed two consecutive terms. The powers and jurisdiction of the head of state, as well as

mechanisms for accountability must all be clearly defined in the constitution. Monarchs should be constitutional heads of state as in developed western democracies. Constitutional controls have to be put in place to prevent the head of state from dissolving parliament at will, freezing the constitution, declaring a state of emergency or using force or threatening to use it in breach of constitutional controls. Finally, the constitution must provide that the president must relinquish his position in the party during his term of office.

6. Arab constitutions must clearly stipulate that the government is responsible before parliament. This requires a parliament that is truly representative of the different political forces and the different interests of the various social classes and groups in society. This can only be attained by free and fair elections, which cannot be guaranteed unless the constitution mandates full judicial oversight over the entire electoral process, from the nomination to the counting of ballots and the announcement of results. The judiciary must be ready to play their legislative and oversight functions which should be clearly and categorically stated in the constitution. All this can only occur in an environment of freedom. As the supremacy of law is one of the main pillars of the modern state, it is also one of the main pillars of democracy. Hence a truly independent judiciary is imperative for a functioning democracy. In particular the constitution must totally eschew all vague and ambiguous formulations that effectively void its statutes of meaningful content.

In order to ensure preserving and protecting the constitution, the role of civil society institutions must be enhanced, to assume the task of fostering a strong public awareness of the paramount role played by the constitution in preserving and protecting their rights and freedoms. Civil society institutions can also help in establishing action teams that monitor, record, highlight and propagate the incidents of constitutional violations. NGOs and other civil society institutions can also help in establishing non-governmental observatory bodies to monitor the various laws, by-laws and regulations issued by the legislative and executive authorities, as well as pointing to the incidents of non-constitutionality. In this respect there is much in the experience of other countries from which Arab societies can learn.

VI. The constitutional modes of handling the minorities' conditions in the Arab World

Despite the fact that more than 80% of the population of the Arab world constitutes a homogenous, religious, cultural and linguistic group, there are numerous minority formations in this region that differ from the mainstream group in terms of ethnicity, race, religion, language, and culture. Some of these groups do not exceed one thousand people in total, while others exceed numerous millions. Minorities in general constitute around 20% of Arab world population. Though generally most forms of diversity and multiplicity are sources of power and richness in many societies, the situation is not so in the Arab world. Although most minorities in the Arab world are highly integrated into the social fabric of their home countries yet minority issues have been a consistent source of problems and conflicts that sometimes even escalated into armed confrontations, civil wars, ethnic genocide and systematic discrimination as well as social and political exclusion. Much of the problem stems from the fact that the constitution in most Arab states totally ignores the rights of minorities and overlooked the social role, the legitimate aspirations, and the collective problems of these groups. Few of these countries recognize the rights of these minorities to preserve their cultural heritage from melting into that of the majority. Most of the Arab régimes and Arab intelligentsia hold to the belief that ignoring the issue of minorities will eventually lead in time to the melting of these groups into the larger body of the community and thus dissolve their existence.[17]

Conditions and situations of minorities in the Arab World are highly diverse. Some minorities are concentrated in certain geographical areas while many minority groups are scattered over a larger spatial area. In some countries minorities are large enough to be comparable in size with the majority, while in others a weak majority is confronted with a strong minority, both politically and economically. History is replete with the experiences of the minorities and their painful legacies. This history points to the dire need for genuine constitutional and institutional solutions for the problem of minorities.

Despite the historical, political and social specificity of each Arab country yet there are a number of general constitutional principles that should be taken into

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17 Ibrahim, S. E. (1993). (ed) "Problems of Minorities", in *Annual Report, 1993*. Cairo: Ibn Khaldun Center for Development Studies.

consideration when attempting to introduce a genuine constitutional reforms. In this regard the new Iraqi constitution and new Sudanese (temporary and transitional) constitution contain many features that are worthy of emulation by all the other Arab states.[18] In considering the badly needed reforms in Arab constitutions the following general principles should be observed:

A primary priority is the necessity of democratic administration of the relationship between the majority and the minority. Majority rule should be associated with constitutional guarantees for the individual human rights which in turn preserves the religious, ethnic and cultural rights of minorities. These rights should not be simply left to the kindness or good intention of the majority. These rights should be categorical and not subject to abrogation by a majority vote. Minority rights must be secured through clear and decisive constitutional texts that are not liable to revision and amendment.[19]

The hegemony of the majority is not in itself a sufficient criterion for judging the existence or non-existence of democracy. It is not accepted that any majority rule as it wishes for ever while minorities remain the permanent subjects to the will of the majority. Minority groups have the right to share in the political process and enjoy a measure of self-determination by means of a democratic formula that secures their representation in all major state institutions, such as the parliament, the cabinet, as well as in both the central and local state bureaucracies. The constitution must define clearly the extent of this representation by stating the distribution of seats and the relative weight of minority members in all legislative and executive institutions. The experiences of Lebanon, Iraq (after the American invasion), and the Sudan (South and North), provide clear examples in this regard that can be generalized to other Arab societies while allowing for specific historical and societal differences.

In the societies where minorities are mainly concentrated in certain geographical areas (as is the case of the Kurds in Iraq and the African Sudanese in the South of Sudan), the constitution should provide for some kind of self-rule or federalism that ensures the sharing and dispersal of power rather than its concentration in the hands of the central government. Federalism would ensure dividing the sources of authority among the various sections or regions of the country whether in the

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18 Ghali, B.B. (2000). "Interaction Between Democracy and Development, Mixed and Comprehensive Report," UNESCO, p 17.

19 Lijphart, A. *Thinking About Democracy: Power Sharing and Majority Rules in Theory and Practice*, New York: Routledge, pp. 75-88.

form of provinces, prefectures, governorates or any other appropriate kinds of local entities. Such a diffusion of power would enable the minorities to actively participate in the political process and have a reasonable share in power. In some cases a quota system may be adopted to achieve adequate representation of minorities.[20]

Providing political representation of the ethnic and religious minorities would not automatically ensure their harmonious functioning within society. In some cases, establishing political parties based on religion or ethnicity may increase tensions and divisiveness within society. Therefore, it is essential to provide venues for dialogue and cultural exchange based on tolerance, coexistence and acceptance of the other. These are the key civil values that would ensure gradual elimination of the fears and apprehensions of minorities. Such an endeavor must be undertaken together with that of establishing sound democratic political institutions.

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20   *Ibid.* pp. 75-78.

THE ARAB CIVIL SOCIETY: HINDRANCES AND PROSPECTS

Salah Al Din Al Jurshi

Introduction

Even though charity and social associations are considered an old phenomenon in the Arab world, cultural and political elite began to use the concept of 'civil society' only in the last twenty years. In fact, the term civil society is no longer used in the strict academic sense but has rather become commonly used among various milieus, even in governments and official regional organizations. The Arab League has introduced, for the first time, a structure called 'The Civil Society Commission'. One may even say, to be more precise, that major interest in civil society as a concept is mainly due to the events that shook communist regimes in Eastern Europe. The latter events allowed the lessening of these regimes' grip over local NGOs. The emergence and development of the civil society has not occurred upon the current regimes' own free will. This has actually been the fruit of a struggle carried on by rising internal social forces, youth and the middle-class. It has also been the result of the evolution of international relations which have exerted pressure in order to have the Arab States comply with the requirements of globalization. All of this has resulted in a social and political dynamic, allowing relative and limited progress seen in most Arab countries in the last twenty years. Yet, this progress is still weak concerning institutional development not to mention the huge gap between discourse and practice.

Definition of Civil Society

This study sets off from the definition that most sociologists – Arabs, such as Sa'd al-Din Ibrahim, PhD, and others – have adopted. Civil society is 'a number of free and volunteer organizations that fill the public space between family and State to meet the interest of individuals. These organizations commit to the values and norms of respect, agreement, tolerance, and peaceful settlement of diversity and differences. Civil organizations include associations, leagues, unions, parties, clubs, and coops, as well as all organizations that are not governmental and that are not based on family or heritage.'[1]

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1   See the introduction by Sa'd al-Din Ibrahim to the book by Muhammad Zahi Mughyrabi, *Civil Society and Democratic Transition in Libya*, Ibn Khaldun Center.

This definition is clear and neutral, or rather practical. It combines organization, independence and democracy. It sets a close link between form and content. It maintains a certain degree of neutrality since it sets aside ideology that blurred the concept in the past. The definition does not include secularism – in the sense that it is the separation of religion from the state – as a prerequisite. The term was not linked with a predefined and global definition of modernization or modernism. The definition did not exclude parties, unions, religious groups, or lobbies especially in societies that are still undergoing sharp structural changes, are not culturally or institutionally stable yet, and have not yet distributed roles and tasks in a definite way.

The definition helps narrow down the research. It allows researchers to monitor specific organizations, follow their process, define their problems, and determine their internal mechanism and their relation with their environment. This definition helps move on from the debate that is limited to the theoretical concept – likely to be given an ideological mark – to a more concrete and definable context that can be determined in quantity and may be researched scientifically.

This study also supposes that civil society is in its nature not an entirely new concept. It is a concept that is firmly rooted and that has developed throughout history. In the nineteenth century, it acquired even firmer characteristics and more important, more precise and more global functions. The historical experiences of Islamic societies for instance always referred researchers and historians to a network of social mediums between the state and the people. This network carried out its tasks within a haven of relative independence and in cooperation with the central or local authorities. This network included, for instance, artisans' structures, Sufi groups, and so on. These mediums have various denominations, the most common of which in the Arab East is 'civil society' (*al-mujtama' al-'ahli* - Literally: 'people's society').

Before starting to go through the current situation of Arab civil societies, it may be important to add to this practical definition of 'civil society' which still causes heated debated in the Arab world, not only among academics but also among activists, political and ideological parties that want to use this 'new phenomenon' for their own purposes and interests.

In my opinion, there are three basic observations that I must make in this line of thought:

The first observation is that when one talks about 'The Arab civil society', brackets must be used for there are major variations from one state to another. Inside this geographic and political area, there are civil societies that differ in their historical and cultural development, in their strength, experience, cohesion, and influence. Yet, despite local differences, the last twenty years have revealed common denominators among these civil societies. In fact, Arab civil societies face almost the same problems and the same challenges. The various cooperation and coordination initiatives among Arab NGOs, parties and unions have helped shape this hypothetical civil society that we dream of.

The second observation is that building and development of civil societies in the Western world have historically been linked with the building and the development of the State. In the Arab context, the building of the modern national State is still an aim for the political elite but has not been achieved yet. There are government systems, constitutions, institutions, Chambers of Deputies, armies and parties. When analyzing the foundations of these structures, however, we see that many lack modern fundaments and are merely an extension of the past Sultana form of state, deriving its legitimacy from the force of power and its ability to suppress people. These structures are not based on common consensus or the rule of law. This authoritarian aspect of the state in the Arab world has the worst repercussions on the growth of Arab civil societies. The civil society is bound by shackles and has not yet been able to set a role for itself to establish a natural and participative relation with the State. Based upon this observation, it is seen that every time the circle of public freedoms grows, and the regimes release some power on public matters, Non Governmental Organizations (NGOs) are able to grow and increase their participation. This confirms the problematic relation between the democratic process and the activation of civil societies, because every time there are more freedoms in a country, the civil society becomes stronger and has more influence on decision makers.

This does not mean that there should necessarily be a contradiction between the strength of the State and that of civil society. In democratic states such as Sweden, both strengths – that of the State and of the civil society – meet since in such cases, the vigor and dynamism of civil society strengthen the State. But in the Arab world, due to widespread despotism, ruling regimes still believe the autonomous NGOs that may have leading and independent roles will be detrimental to the State, its rule, and complete authority. This is why every time the State feels over powerful with the unique ruling party, it tightens its

grip on NGOs, forcing them on its side. On the other hand, every time the State enters an economic or political crisis, or when its power over people weakens, civil society becomes more vigorous if only temporarily. This correlation is not always systematic since there are exceptions as is the case in Somalia. The State in this country has been in decline ever since the last twenty-five years yet, civil society is also weak. Still, in Lebanon one notices that the weakness of the State resulted in the rise of civil parties whose strength sometimes surpass that of the State as is the case for Hezbollah, which is a complex phenomenon since it combines political, religious, military, and civil roles.

The third observation is that NGOs in the Arab world face many hurdles. The ruling regimes are still the main obstacle as they prevent these NGOs from developing. Yet, this is not the only factor that explains the difficult situation NGOs are facing. In fact, NGOs suffer from weak structures, for which Arab civil society activists are held accountable but whose possibilities are limited. They also lack experience and do not have the means to act. Some of these NGOs also do not have the necessary democratic culture. Thus, their efforts in creating networks and setting up alliances locally and internationally are hindered by many difficulties. Still, this must not overshadow the vitality of the majority of these NGOs, especially in the last years. I can hence say that Arab civil societies are likely to grow and have a better place in the democratic change that many states in the region are undergoing.

The fourth observation is that most Arab cases are weak as far as networking is concerned. Coordination among Arab NGOs is still limited and sometimes unfruitful. This is due to the lack of historical common ground, to the fact that NGOs mostly like to carry out their tasks on their own, and the fact that democratic practices are still not firmly rooted, not to mention that each case has very specific characteristics. This has not prevented some positive and successful experiences, though rare.[2]

To have a clearer image of what Arab civil societies are today, I will go through seven case studies, all of which have differences in their evolution. Also, we need to take into account the nature of political reforms that have been undertaken in order to measure the impact of NGOs' role whether in calling for reform or safeguarding and supporting reforms.

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2   For instance, Al-*Fada' al-Jam'awi* (Espace Associatif) in Morocco, and the Arab NGO Network for Development based in Beirut.

Morocco

Morocco is a relatively developed case study concerning its politics, especially after the country went through a long period of repression known as the 'Years of Lead'.[3] Following this period, started one in which the ruling government opened up to opposition parties and NGOs, and reduced restrictions on basic freedoms. Upon realizing his imminent death, former King, Hasan II, paved the way for his son to succeed him by making a deal with his opponents. The King actually suggested that the leader of the Socialist Union of Popular Forces (SUPF), Mr. Abdul Rahman Yusifi, form a government known as the 'Rotation government' [rotation of Prime Ministers] in exchange for the recognition of his son, Mohammad VI, as the King with full powers and legitimacy. The new King undertook a number of reforms that launched the democratic process in the country. Some of these reforms were the establishment of the Equity and Reconciliation Committee (ERC) in 2004. This committee was considered the bravest and most symbolic step the young King had taken in order to remove the heavy layers he had inherited from his father.[4] Many victims of the repression were allowed to testify against human rights abuses – torture, killings, and disappearances. They were given compensations, both financial and moral with the recognition of the State of the crimes perpetrated by the military and security officials against thousands of dissidents, and a political and moral commitment never to repeat the same violations. This was somewhat the image of the 'transitional justice' which turns the page of the past and gets a fresh start.

The local civil society which has a long history[5] that dates back to the early years of the twentieth century is the main beneficiary of the political evolution in Morocco in the recent years especially after the amendment of the Code

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3   The 'Years of lead' refers to a period when King Hassan II of Morocco repressed his opponents in the Army, unions, and among students most violently. There were thousands of victims of the death penalty, disappearances, and arbitrary detention. In this period of Moroccan history, there were two failed coups one in 1971 and the other in 1972. There were more than one social resurrection; the Moroccan left wing became stronger. The radicals among the left wing opted for confrontation with the Monarchy. In this context, the government amended the Association Act in 1973 to further repress NGOs.

4   **See:** 'The Transition Period of Justice in Morocco: The Equity and Reconciliation Committee (ERC), Center for Studies of Human Rights and Democracy, 2008

5   The local civil society has a long history that dates back to the early twentieth century thanks to the vigorously active Moroccan elite on the one hand and the liberal aspect of the 1901 French public freedom act, on the other. This elite also had a role in building a national State after independence in 1956.

of public freedoms on July 23, 2002. Despite some administrative restrictions maintained by the government, Chapter 2 stipulates that 'The establishment of associations of people is allowed freely and without prior permission provided that they take into account, the requirements of Chapter five'. The Code allowed associations to have finance from foreign donors and international organizations. The Ministry of Interior still requires a legal file in order to get temporary approval – while awaiting the final decision that usually takes about two months. The temporary approval allows the founders of the association to launch their activities should the awaited decision take too long. But this procedure is seen as an opportunity to broaden civil society activities and set up more associations. This has granted the Moroccan civil society liveliness and vivacity, turning it into a real actor alongside the government and political parties.

The controversial link between the freedoms allowed and the development and efficiency of civil society has spared Morocco against the terrorist attacks of May 16, 2003 and allowed it to bridge the gap between politics and practice. Yet, some consider that what parties and NGOs have achieved is only 'temporary'[6].

Tunisia

The roots of the political reform period in Tunisia dates back to the 1930s. Ever since, political reform has been a priority of the reformist elite led by General Khayr al-Din Basha, who was known for trying to reform the State, trying to save it from the French colonization. He summed up his reform project in his book 'The Best of Paths in Reforming al-Mamalik'. Basha tried to implement his reformist views when he took office for the first time as minister. However, he failed to carry out his agenda for internal and external reasons. Thus, he resigned.

One of the signs of early political reform with the Tunisian elite is the publication of the Tunisian Constitution in its first draft in 1861. Despite the failure of this attempt, the reformists went on to advocate their rights. The strategic goal of the national anti colonization movement was to build a modern Tunisian State.

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6   That suicide was an indicator for the launching of a violent period for the Salafis in Morocco. After this, Salafis made several attempts but they were limited and failed.

This is what President Bourguiba[7] tried to achieve after the independence in 1956. He abolished the monarchy and declared Tunisia a Republic. He published the Code of Personal Status – in form of a magazine– through which he not only improved the status of the Tunisian women but also changed the process of the whole Tunisian society once and for all.

Yet, despite this modern face of the Tunisian State, Bourguiba suppressed plurality and forced Tunisian civil society to defend the State's priorities and official bodies. This is why NGOs lost their independence and were integrated in the early sixties in one body run by the ruling party[8] in the country. However, the regime's economic failures forced it to gradually loosen its grip on civil society especially in the mid seventies and late eighties. After Bourguiba was impeached because of old age and health reasons, the government went on with its rapprochement with the civil society until the fierce political confrontation in the early nineties between the new government and the Islamic Movement led by an-Nahdah began. After the victory of the government over the Islamists, the government retrieved full control of the civil sector including the opposition parties. It controlled the freedom of the press, the setting up of parties and associations. In this new phase, the government clashed with associations – namely political – especially the Tunisian League for the Defense of Human Rights (TLDH) which has become unable to perform its role. These clashes were the reasons why amendments were introduced to the Association Act in 1992, leading to more restraints on NGO activity especially in the legal aspect.

Despite this perpetual confrontation between the government and NGOs, the official discourse recognizes the importance of civil society, calls for its participation, and respects its role and efforts. Yet, the government believes this participation ought to be under its tutelage and should support its own policies. This is why there are only few efficient and independent associations compared

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7   Bourguiba is the founder of modern Tunisia. He managed to lead the main wing in the national anti colonization movement to independence. Bourguiba was known for his modern tendency and was influenced by the Kemal experience in Turkey. He published the Code of Personal Status, which was an unprecedented social revolutionary in the Arab world. This Code forbade polygamy; divorce had to be before the court, which improved the condition of women in Tunisia radically.

8   The ruling party in Tunisia is the Destour Party fouded in 1920. Lawyer Habin Bourguiba and a number of his companions resigned and created the Neo Destour Party in 1934. It led the national movement. After the independence of Tunisia in 1956, the Neo Destour took over the country. In 1962, the Destour party became the only party in the country and all aspects of multi party functions were cancelled. After Bourguiba was impeached, President Zayn al-Din Bin Ali took office on November 7, 1987. the name of the ruling party was changed into 'Constitutional Democratic Rally'

with the nine thousand licensed associations in Tunisia. These associations are within the orbit and control of the ruling party. They are completely integrated in the State bodies. As a result, the budding movement that calls for democracy in Tunisia is closely associated with the call for the development, strengthening and protection of civil society to preserve its independent decisions. In the early nineties, there was a major schism in the ruling party. A group known for being liberal founded the Movement of Socialist Democrats, which called for the abolishment of the one party system and encouraged the founding of independent associations such as the 'Tunisian League for the Defense of Human Rights'. This political upheaval coincided with the call by the General Union of Tunisian Workers for more independence. The Union went in an open conflict with the government, so did the Association of Tunisian Journalists and the Tunisian Association of Young Lawyers as well as other NGOs which turned into an active power throughout the 1980s.What is striking in the Tunisian case is that NGOs that advocate human rights and equality between genders have often found themselves forced to call for the respect of democratic rights with regard to the great weakness of opposition parties, which led the government to accuse these NGOs of being politicized and infiltrated by radical party groupings. This happened especially with the 'Tunisian League for the Defense of Human Rights' and the 'Tunisian Association of Democratic Women'. Also, the Union of the Press, the Tunisian Association of Judges, and bodies of lawyers were accused of being politicized on more than one occasion. Many of these associations and/or bodies were subject to attempts of secluding or bringing them apart by partisans of the ruling party.

Libya

There is no real civil society in Libya if we compare it to the characteristics of civil society as a concept; yet, one can say that for some years, Libya has been going through a recreation phase. This is what caused Tunisian sociology researcher, Munsif Wannas, PhD,[9] to consider that 'the societal field in Libya needs foundations concerning knowledge and methodology, as well as concepts, comparative tools, analysis mechanisms, and field-work'. He attempted in his book 'The Power, the Society, and Associations in Libya' to review the progress that associations have made in Libya between 1835 and 1999. Wannas noticed

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9   Munsif Wannas, "The Power, the Society, and Associations in Libya", Al-Wafa' Printing Press, Tunisia, 2000.

and deepens sources of legitimacy and guarantees political stability, delineates the features of economic reality and expresses orientations and basic choices of society. In addition, the constitution is associated with the main declaration of human rights, and seeks to prevent the tyranny that would result from the monopoly of power and its concentration in one hand whether it is in the hand of a president, a king, or a prince, or in the hands of a minority or a majority. It also determines whether the system of ruling is hereditary or by appointment or election. In short, the constitution is one of the most crucial organizational and institutional pillars for democratic governance.

Given the above, the current study focuses on the following features in Arab constitutions:

1. The approaches, rationales, and probable consequences of reforming Arab constitutions.

2. The statutes on public freedoms and the basic civil and political rights of citizens, including freedom of association and that of forming political parties; majority and minority rights; and equality between citizens.

3. The legal and constitutional position of the head of state: how he is chosen and the length of his tenure in office (in the case of presidents), the limits of his authority and jurisdiction, his accountability and the principle of change of government, which is a central pillar in democratic systems.

4. The extent of balance and cooperation between the three branches of the state – the executive, the legislature and the judiciary – and in particular the separation of their powers, which is a basic feature of advanced democracies, to ensure that the executive does not dominate the legislature, that the legislature, besides its legislative role, is able to effectively scrutinize and monitor government activities and hold it to account, and that the judiciary is independent and its rulings executed, and that citizens are tried in open civilian courts as opposed to military or extra-judicial security courts.

The study adopts a general comprehensive approach that focuses on the common features at the core of all Arab constitutions regardless of whether the states are republics or monarchies. At the same time, the study will also highlight several specific aspects of constitutions in particular Arab countries. In doing so the study will expose the discrepancy between constitutional stipulations and the reality on the ground in Arab societies.

that the concept of state is a new concept in Libya's political history since 'the Libyan society was, outside the main cities, a tribal society essentially made up of tribal coalitions, capable of threatening the central power', which proves that 'the society is capable of being organized outside the sphere of the power', and of 'producing organizational forms that are its own'. This approach means that a weak or nonexistent state may offer a proper environment for a strong and vigorous civil society. Yet, Wannas noticed a rather different situation, as he asserted that 'societal action in Libya is limited, irregular, and unsubstantial.'[10]

After the Revolution led by Colonel Qadhafi on September 1, 1969, societal activity took a severe blow as all existing civil organizations and bodies were suppressed, which caused the society and the elite to resign and give up. 'As a natural result of the cultural revolution and the cancellation of the free press, the denial of others' opinion, the hegemony of one ideology and one culture, the ground in which the seeds of difference and variety might grow were crushed and there was no hope of societal life.'[11]

During the nineties, there was an 'awakening' because of the structural crisis the regime went through due to international isolation of the country for twenty long years. Practically, it meant recognition for more associations[12]. But the relation between the government and associations remained basically the same, regulated as it was by the 1971 and 1972 laws of protection of the revolution, imposing strict regulations on the setting up of associations and organizations. These laws forbade the formation of NGOs that are independent from the general political structure in Libya[13].

Intertwining between the legislative and executive powers has led to a complete structural integration of the few civil society organizations. Among them, there are unions, charity associations, sports and women's associations, all of which were established and relatively independent in Libya during the previous regime, especially unions and charities. All Libyans are supposed to

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10 Op.Cit.

11 Op.Cit., p.74

12 Only in Benghazi, there are twenty-two associations that work on the social issues. Among them, there is the "Al-'Idarah Association for Mine Victims", "Al-'Amal Association for the Deaf and Weak of Hearing", and the "Libyan Association for the Friends of the Environment". On the national level, "Wa'tasimu Charity Association" is considered as the biggest one and is run by Sayf al-Islam Qadhafi, as the case for the Libyan Association for Investors.

13 Op. Cit.

be automatically part of the 'Local and basic people's congresses'.[14] Professional and trade unions are not out of the integration process. They are in fact, an intrinsic part of the pyramidal structure based on a series of congresses. Today in Libya, there are many professional unions and organizations but they are not independent because they are a fundamental component in the structure of popular committees, especially the General People's Congress. Libyan lawyers and activists inside Libya consider that the Association Act (Law no 19) prevents NGOs and independent unions from being formed.

On the other hand, in Libya, there are more than thirty unions, one federation, and professional leagues, all of which are recognized by the political regime in addition to the 35 unions represented in the General Federation of Producers and Trade Unions.[15] In the beginning of December 2004, the General People's Committee allowed the founding of holding companies individually or with others. This is how the first Libyan association of Libyan investors was founded. 'But the opposition questions the independence of these leagues, unions, and federations' saying that 'Revolutionary committees control most of their leaders'.[16]

In Libya, there are associations that have various activities, sometimes major ones, and have wide influence due to the presence of one of Qadhafi's sons or relatives. They include the Qadhafi International Foundation of Charity Associations and the Qadhahi International Human Rights Committee both headed by Sayf al-Islam Muammar Qadhafi; also Wa I'tasimu Association and 'Aishah Bin Niran Association both headed by 'Aishah Muammar Qadhafi. There are some sports clubs headed by Sa'idi Mu'ammar Qadhafi and Muhammad Muammar Qadhafi such as the Al-Ittihad Club and al-Ahli Club in Tripoli, and the General Soccer Libyan Federation. There is also 'The League of the Sons of the Leaders' Comrades', the 'League of People born on Revolution Day, September 1', 'The League of 'Awfiya' al-Sa'idi'. All have a special financial and legal status.[17] In this context, the Qadhafi Foundation of Charity Associations

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14 The Libyan political regime does not recognize parties. It is based on a somewhat 'direct democracy' built upon 'Popular Congresses' set up in every region. From these Congresses the 'General Popular Congress', somewhat of a parliament, is formed. From this body the government and the presidency of the Congress are formed.

15 Namely the General Federation of Women's Associations, which deals with matters related to women's employment and work.

16 Libyan Forum, which is an independent site run by former opponents to the regime.

17 Op.Cit.

set up in 1998 and registered in Geneva, acquires particular importance due to its pivotal role in societal life in Libya. Its name was changed to 'Qadhafi Development Foundation' in 2006. It is currently the strongest in the country and has various roles. Its establishment was a turning point in the various changes in civil and popular activity in Libya. New television stations and newspapers were founded and were somewhat critical or at least they tried to be different from the prevailing channels or newspapers. Among the new media are the Libyan satellite channel, the Audio Libyan channel, Al-'Iman channel, Oea, and Quryna. A human rights association was founded. Sayf al-Islam almost got the regime to accept a constitutional amendment in a country where the constitution was abolished with the mounting of the revolutionary discourse. But lately, after the announcement by Sayf al-Islam of his withdrawal from political life, his father issued a decree nationalizing all the media including Al-Ghadd printing press. All are now submitted to the public sector, which was a blow to the reformists among whom many Libyans were counting.

With the beginning of the third millennium, civil society became the center of attention of Libyan politics. On September 28, 2001, civil associations were reorganized. Association code no 111/1970 was annulled and a new code reorganizing civil associations was ratified, giving the head of the Executive the right to ratify the final agreement given to would-be associations. This raised heated debate especially about article 32 which stipulates that: 'The secretariat of the Popular Committee of the province or the municipality may name – according to circumstances – a temporary commission. This commission will take on the prerogatives decided by the popular committee of the association in its statutes, should the latter association commit any violations requiring this procedure or should the assembly not be able to convene regardless of the reasons. The prerogatives of all the assembly or some of its members can be handed to the temporary committee should public interest necessitate this.' This means giving vast prerogatives to the administrative or political body allowing it to interfere with the affairs of associations. It can change the leaders of these associations. This jeopardizes their independence and makes them constantly threatened.

The regime has also spontaneously allowed some mobility in the last few years in some civil society milieus. This was especially clear in activities not associated with the political field such as volunteer work, offering charity aid, social and teaching services. There was also an increase in the number of activists and concerned individuals inside the country and out, intellectuals, academic

researchers, businessmen, media men, human rights activists and researchers. This mobility has often been linked with a series of reform initiatives launched by the son of Colonel Muammar Qadhafi, Sayf al-Islam with his criticism of the former political experience and his attempt to renew the system from within by giving it some constitutional legitimacy; the 'revolutionary legitimacy' has somewhat been eroded and has placed the regime in an impasse both in and out of the country. Among these initiatives is the call for the writing of a Constitution in a country that has lived more than forty years without one. He has also called for a liberal law that guarantees the freedom of press and of expression; the banning of special courts, the possibility for exiled dissidents to return to Libya. But this mobility launched by Qadhafi's son collided with the regime's old guard, which slowed down the reform and pushed Sayf al-Islam to withdraw from political life.

Egypt

Egypt has a strategic position in the Arab world. It has had a striking central State in history. But Egypt's modern political history indicates the presence of a civil society whose roots dates back to more than a century and half. It also proves that Egypt has gone through a liberal period before the monarchy was toppled by the Free Officers led by Jamal Abdul Nasir, in 1952. The liberal phase helped the local civil society mature as it suffered a severe setback after the uprising and revolution. The new regime controlled most organizations, and existing political parties were dissolved. Civil society grounds were also affected by the bloody confrontations between Nasir's regime on one hand and the Muslim Brothers on the other. In the early seventies, President Sadate chose to turn the page of Nasir's regime and win some sectors of the civil society to his side. Thus, he allowed some basic freedoms, which helped civil society retrieve some of its former vigor and independence from the State. The procedures taken by the government to allow more freedom reached a peak in the late nineties, and even more in 2004 and 2007. This meant more freedom of the press and more electoral competition, which allowed the Muslim Brotherhood to form the biggest opposition block in the Egyptian People's Assembly. The government used the rise of Islamists as a card to create a state of fear both on the foreign and domestic levels. Every time the relation between the State and the opposition went through a crisis, restrictions were imposed on freedoms; which affected the activities of associations. Political associations were the most concerned by these repercussions namely, human rights associations, unions, and other associations that advocate rights.

Restrictions imposed on civil society activists are a mixture of legal and administrative ones. But despite clashes between the government and some civil society organizations, many of the latter have maintained their vigor, their independence and have gone on to advocate fundamental rights. Some have been able to achieve progress in various fields including politics.

The Palestinian case

The Palestinian case is a special one in the Arab context. We are actually speaking about a civil society prior in its creation and development to a State, which is still a goal for a national liberation movement. The first nucleus of the Palestinian civil society started to take shape in the forties. Due to the absence of a state, a number of charity associations tried to help provide some services to the people. These efforts became stronger when Israeli Army controlled most Palestinian regions. Another group of service associations was set up, which included unions, based on the Ottoman charities law. Within national struggle, most organizations were related to Palestinian factions especially Fatah and Hamas, but all associations were under the umbrella of the Palestinian Liberation Organization (PLO) and had a complementary task to the military one. When the Oslo Agreement was signed with the Israelis, and the 'Israeli Authority' was set up in Gaza and the West Bank, there was at first a positive wave that allowed new associations to be formed, which invigorated the local civil society and broadened its role. But because of the overlap between political and civil organizations, the conflict over power between Hamas and Fatah had negative repercussions on the network of civil organizations which were more than ever, under the control of one of the warring parties– since most of these organizations are intrinsically and politically related to one of the political factions. This had a negative impact on these organizations' role and growth, especially when the Palestinian factions were at war.

Law number 1 of Charitable Associations and Community Organizations passed in the year 2000, regulated associations legally and placed the Ministry of Justice[18] at the head of this sector. But the Palestinian Council of Ministers passed Resolution no 9 within the Regulations of the Associations Law as

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18 Sa'id Muqadimah, 'The Relation between NGOs and the Palestinian Authority', 'Advocating Civil Society', Regional Middle East and North Africa Report: Civil Society Visions, World Movement for Democracy, October 2007.

published on November 29, 2003. It made the Ministry of Interior in charge of the sector. The Ministry was in charge of giving licenses to NGOs and controlled the statutes of civil associations. The Regulations were not submitted to the parliament. It also was part of the attempt to have political monopoly over associations; this reached a peak when Hamas controlled Gaza and its one and a half million inhabitants against two and a half million living in the West Bank and are submitted to the Palestinian National Authority led by Fatah. In the aftermath of this sharp division, a Presidential Decree signed by Mahmud Abbas was issued in July 2007,[19] imposing a new registration at the Ministry of Interior in Ramallah on all existing organizations. The Salam Fayyad Government closed 103 organizations related to Hamas.[20] Likewise, Hamas imposed strict control on pro-Fatah organizations in Gaza, some organizations were even closed down.

The freedom of the press and of expression was affected by the conflict in both Gaza and the West Bank. Both warring factions imposed restrictions on local media related to their opponents or simply closed them down. Both parties arrested journalists or imposed restrictions on them for the mere fact that they are in favor of this or that party.[21]

Based on all of the above, it is clear that the role of the Palestinian civil society, which had played an important role in the period prior to the setting up of the Palestinian National Authority, in providing services, monitoring, or preserving the society's cultural and political identity, has regressed since the establishment of this Authority. Civil society is torn between warring political parties, and is a part of the divisions in all the Palestinian factions. So instead of being a binding nucleus of the State and a support to the civil society, the Authority has actually increased the organizations' political affiliation and further reduced their independence. The Authority has actually tried to control their decisions, the source of their finance, and has tried to infiltrate them from within, attempting to create associations affiliated to some powers, which prevented these organizations from carrying out their solidarity role during times of crises among which the time of the war Israel launched against Ghazzah.

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19 Op. Cit.

20 Op. Cit.

21 See reports of Amnesty International and the International Federation of Journalists

Bahrain

Bahrain is a small Gulf country which does not have much oil like most of its neighboring countries. But it is characterized by its active elite, and by a civil society which was set up tens of years ago. What is striking about the Bahraini case is that the political and societal actions overlap strongly. This does not overshadow the presence of a number of active associations in cultural, trade union, legal, and charity fields. All are submitted to the Associations Act 21/1989. It stipulates in its Article 3 that any association 'set up against public order or for illicit purposes or to jeopardize the government or its social system will be void.' Article 11 stipulates that the Administration may refuse to register a given association 'should the society not need its services, should there be another that meets the demand, or should it be against State security or State interest.' This clearly shows the priority given by the State to State security and State stability or State bodies.

This security apprehension from some associations or activities is due to the structure of the society and the State. Bahrain has a Sunni minority who rules a Shiite majority. This is why the ruling power's obsession is to preserve the prevailing balance of power and to prevent any change in the existing equilibrium. To this respect, there are amendments that were brought to the Bahraini Constitution in 2002. A Shura Council whose members are nominated by the King was created with vast prerogatives up to the point of sharing the ability to legislate with the elected Chamber of Deputies. In fact, since Shiites are the majority, the governing power always fears that free elections might result in a Shiite parliamentary majority leading a legislative body which exerts pressure on the power. This is why this hypothetical majority was checked in a consultative body, which may tilt the balance inside the legislative body.

Also in the same context, the sectarian factor has never been as present as it is today, especially when the left wing movements used to lead the opposition previously. It included Shiites and Sunni alike. At that time, secular ideologies prevailed in the political act contrary to today when discourse focuses more on religious and sectarian aspects. But because of the growing weakness of this opposition for various and intricate reasons, the opposition movement shifted to religious leaders, namely Shiite. Since the nineties, the latter Shiite religious leaders have acquired people's trust and have been able to mobilize the masses. This led to a popular revolution, somewhat like the 'revolution of the deprived'. As soon as Sheikh Hamad Bin Isa Bin Salman Al Khalifah took power, he introduced a number of political reforms that allowed him to restore

stability to the country and manage the political situation differently. Since the protest movement that occurred in the country previously included the marginalized part of the civil society, the power went on to deal with the civil society cautiously especially with the bodies that are religious or are close to the Islamic opposition as well as with human rights activists. Despite the various hurdles that civil society activists encounter such as legal or administrative restrictions on the freedom of expression and the freedom of the press – Bahraini associations are quite vigorous and independent.

Lebanon

Lebanon is primarily a sectarian society and even though all political parties and forces call for the abolition of sectarianism, it is practically the spinal cord of the State and of the society. It is enough to point out that the major positions in the State are distributed on the basis of religious communities. The President of the Republic is to be Christian; the Prime Minister is to be Sunni; the Speaker of the Chamber is Shiite. Sectarian distribution applies also to the Army, security bodies and universities as well. Even if religious and cultural diversity is a distinguishing trait of Lebanon, it can, at any time, turn into a cause of strife and destabilize the national unity. It may even lead to the collapse or the fragmentation of the State. This has already occurred in the mid seventies when the war broke out only to last fifteen years almost causing Lebanon to disappear from the map.[22]

This sectarian and fragmented nature has been an important factor in determining the paths of the Lebanese civil society. Even if the civil society has not succeeded yet in overcoming sectarianism and its negative repercussions[23], it is still quite vigorous and efficient. Many organizations have managed to overcome cultural and political hurdles.

The Lebanese civil society has had a far greater role than that of political parties, especially during the fierce Israeli war against Lebanon. Most Lebanese

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22 The Lebanese civil war broke out in 1975. The reason was internal political factors as well as regional factors. All religious communities were involved in the war which started between Christians and Muslims and then spread to all. This had seriously negative repercussions on all. After fifteen years, the war stopped with the Ta'if Document of National Accord in 1990 which redistributed power among the main religious communities. The Presidency of the Republic is for the Maronites, the Presidency of the Chamber of Deputies is for the Shiites, and the Presidency of the Government is for the Sunni.

23 Since many organizations have sectarian allegiances or affiliations

organizations refused to discuss the reasons of this war or to decide which party is responsible for it, giving instead priority to Lebanese citizens and to dealing with the effects of the war on them. The great exemplary movement of solidarity[24] did not only alleviate the suffering of the war casualties, it also created a bond and unity that went beyond sectarian divisions, strengthening the ability to withstand the pain and fight off aggression, fending off the ghosts of war. The Lebanese civil society learnt its lessons from the civil war. Activists developed the culture of peaceful coexistence, which led them to pressure politicians, in recent years, for an agreement that might spare the country the worst.

The civil society matured as shown during the legislative elections of June 7, 2009 during which there was unprecedented political and sectarian competition[25] almost leading to profound divisions. But the work of the Lebanese Association for Democratic Elections (LADE) in monitoring elections was remarkable. For the first time in the Arab region's history, civil society experts and activists were able to form a team to monitor elections[26] with wide and unprecedented prerogatives. This showed that the civil society has become a political party and that it is in every government's interest to have it on its side as a partner. The weakness of the State has probably helped civil society acquire this place.

Arab Civil Societies: Common Denominators

Based on the seven case studies above, one notices that each case has its own characteristics that must be taken into account in order to understand their internal mechanism. This does not mean that there are not common grounds, some of which I will detail hereafter.

First: civil society networks in most Arab countries were not created with the national State that was formed after the political and administrative

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24 The civil society took on several initiatives to strengthen coexistence and the culture of peace. Many associations were formed. Their members belonged to various religious communities.

25 Candidates addressed their religious communities only as did Sa'd al-Hariri who addressed Sunnis. Christian candidates used all their right to have religious dignitaries – namely Maronite Patriarch Sfayr – at their side. Shiites drew around Amal Movement and Hezbollah. The Druze gathered around Jumblatt and Arslane.

26 The Lebanese Association for Democratic Elections (LADE) managed to form an Arab team to monitor elections that were held on June 7, 2009. It was supported by the Arab Foundation for Democracy. I took part in this team which issued a report and held a press conference after the elections.

independence of these countries. The Pre-independence era witnessed the birth of the main components of civil society especially with periodicals, newspapers, cultural associations, unions, political clubs that later became parties, charities, and social organizations. All these structures helped form national movements that fought off and resisted colonization to preserve national identity and cultural specificities. After independence, and the rise of national States, the ruling political elite decided to weaken NGOs, submitting them to State bodies under the pretext of giving priority to development that is not achieved unless every body backs up the ruling party and the historical leadership. Practically, this led to the weakening of public freedoms, and the fusion of many NGOs in State bodies. Also, many NGOs were integrated in the structures of the ruling party without clear party rules.

Second: It is hard to say that Arab civil society organizations have become an efficient and influential actor able to make real and concrete democratic changes in the region. The conditions of development offered to these organizations vary from one country to another. The size of the civil society and its role in Morocco or in Lebanon or in Saudi Arabia or Oman is not the same. Yet, with structural and historical differences, they all struggle to exist, to be independent, and to grow.

Third: The main components of Arab civil societies whether locally or regionally do not have a clear position as to the democratic process. Most organizations and associations still make a distinction between democracy and development and consider that the questions of freedoms and reform may lead civil society onto a slippery slope that is the 'game' of political confrontation for power between the regime and opposition parties. In this sense, these organizations and associations do not consider that there is an intrinsic relation between advocating women's rights or taking care of the environment on one hand and the separation of powers, the holding of free, fair, and transparent elections, the respect for the freedom of expression or freedom of the press on the other hand. Governments have helped make this belief stronger in order to set the civil society aside from political reform. Some political opposition groups have made some errors and have had some bad experiences when they tried to politicize some NGOs and turned them into the Trojan horse in their fighting against the regime.

Parallel to these NGOs, some others have realized the important link between development as a global concept and democracy. The latter organizations are gradually and constantly increasing. Human rights organizations, women's

organizations, the nucleus of social movements, and sometimes unions, are in the lead when it comes to Arab NGOs that are concerned with democratic and reform issues. By returning to the statements and positions of tens of associations and organizations, one notices that they are increasingly calling for respect of human rights and public freedoms, the State of law and institutions, transparency, and more participation.[27]

Fourth: The rise of Islamic groupings in all Arab States has been an unprecedented challenge to the ruling governments and political parties that run modernization. Because of the sharp political and ideological conflict that is still going on in most Arab countries, a number of the secular civil society leadership have mixed up between Islamist groups on one hand and networks of Islamic charities and associations. They have decided to boycott these associations accusing them of being backward and have ousted them from the sphere of civil associations, despite the major role that these Islamic charity associations have. Yet, these associations have, in addition to the local Christian associations, a major role in providing social services – relief work and so on – to a wide number of people. These associations are a vital part of the civil society in a number of regional States. Opening up dialogue with them and trying to cooperate with them should be within a mobilization plan that ought to be set up by local NGOs advocating social and economic rights. Boycotting these associations or entering in a conflict with them under the pretext that they are not secular is not wise. It causes unjustified strife in this critical period. This does not prevent further talk about common denominators namely as concerns human rights.[28]

Short-term Challenges

Arab NGOs have to face many challenges. I would like to touch on some of these challenges.

The first challenge is that civil society organizations are trying to grow in a historic phase, which witnesses one of the great changes in the balance of power between the State that monopolizes everything and the society that lacks the

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27 For further reading see: a study by the author, 'NGOs and the Issue of Democratic Transition in the Arab World', Salah al-Din al-Jurshi, Arab NGO Network for Development, Beirut 2008.

28 See Salah Al Din Al Jurshi, *Social and Democratic Rights: First Approach to Regional and International Initiatives*, Arab NGO Network for Development, Beirut, 2008.

means of defending itself and its interests. As a result, these organizations have to lift the state of seclusion and blockade imposed upon them. They have to work for a change in the legislations that bind their freedoms. They also need to reassure the regimes, which are afraid that civil society organizations might turn against them, without making concessions as to their independence. What makes the Arab civil society's task harder is that they are trying to encourage a democratic transition at a time when opposition parties in all the States of the region are regressing, growing weaker, and are inefficient. Some[29] have suggested that NGOs will be a substitute for parties in order to lead the democratic transition phase. The task of these NGOs becomes more complicated when we bring up the issue of associations that are set up by the government and are then given the NGO cachet in order to blockade and isolate the real NGOs. Other governments resort to other methods. Some of these methods are establishing alliances with traditional institutions such as tribes, clans, etc; or attempting to infiltrate local NGOs by any means, shifting the conflict onto the civil society as well.

The clash between NGOs and the State is not inevitable – not to mention unhealthy. NGOs need to look for better ways and strategies that are likely to put an end to the situation of renewed clashes. This situation must be replaced by understanding, cooperation, and partnership. The State is not all evil and NGOs are not necessarily angels.

The rise of Islamic movements is another major issue in the Arab region. It is a complicated matter which should not be reduced to one dimension or placed in one basket. It has proved its ability to spread to various spheres and articulations of civil society making it impossible to simply reject or set it aside as a whole. Actually, many Arab civil society activists have come to realize that they are concerned with this phenomenon that has negative repercussions on the political power and the society and that has many ways to threaten the whole balance of power in more than one Arab country. Many regimes in the region use 'Islamist threat' to talk the West out of calling for complete freedoms and democratic rules, under the pretext that the only beneficiaries will be 'religious extremists'.

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29 Activists in Morocco, Tunisia, Egypt, Lebanon, Iraq, Palestine, and Jordan.

Regardless of the conflicting positions to Islamist movements or associations, dialogue and cooperation with them – in order to find out more about their programs, and their visions of the transition phase the Arab societies are undergoing – has become an item on top of the agenda of NGOs in the region.

The third challenge that Arab NGOs in the field of democratic transition have to face is their own structure and practical strategy. Most of these NGOs have weak links with the society and do not have any support or protection from strong public opinion that might believe in their role and their necessity. Even though these NGOs were set up to advocate people's rights and dignity, and to strengthen people's citizenship, they still have a sense of superiority, leading to their seclusion and weakening of their position on the popular level. They have remained elitist, assuming an importance acquired from abroad. This has led governments and the media that are against democracy to launch campaigns against them, questioning their integrity and patriotism. NGOs can repair the relation with the people through various ways namely, through the media as was the case in many instances and had a positive effect in bridging the gap between NGOs and the people.

The fourth challenge is related to globalization and the submission of Arab governments to the dictates of world funding institutions such as the World Bank, the IMF or the WTO. Many aspects of these policies are likely to sap various social achievements and cause major damage to the poor, women, and the middle-class. These rapid social and economic changes undermine the ability of a large section of the people to advocate their social security and protection. This leads to a disintegration of values such as solidarity and causes more victims. As a result, the NGOs task is more intricate and their responsibilities increase although they are not currently apt to assume all of these responsibilities efficiently and successfully. These changes occur as the role of Arab trade unions is regressing. They have been worn out by political regimes and internal conflicts. They have become more anxious about adapting to economic changes after the progress made in privatization and employment policies.

The fifth challenge is related to financing. Arab NGOs are facing a dilemma. They cannot work without money and cannot go on using their own resources. Because of the gap between them and the people who question the very existence of NGOs, they cannot ask for people's support. The private sector avoids supporting NGOs which advocate democracy and human rights –

either because it does not believe in these values or to protect its interests from the ruling regime. This is how these NGOs have two bitter choices. One is to comply with the government's conditions as it offers to finance NGOs and civil associations – which means complying with the political agendas and regulations the government has decided upon unilaterally and in advance. This means signing away and remitting part of their independence and activities. The second choice is – for lack of legislations that liberate public finance from the monopoly of the government – the NGOs acceptance of foreign support, which results in campaigns led by the regime questioning these NGOs' allegiance to their country in order to question their credibility and weaken their position in the eyes of the national public opinion.

The sixth challenge is related to the structural crisis unions have been going through in the Arab world for years. Unions in Arab countries that allowed them were a main lobby as concerns social and economic rights. In such cases as Tunisia, unions played the role of the train that pulled the rest of the civil society components, including political parties sometimes. But accumulated mistakes and the lack of autonomy of many union federations, the mix up between union work and political work, are all factors that have weakened union activity in Arab countries. The main challenge that has marginalized unions even more and made them lose their impact and their claws – through which they defended themselves – is the reduction in the public sector as a result of reforms. The latter sector was the main social basis of Arab unions and the main field where they recruited members. The more there are privatizations the less efficient these unions are and the less they represent vital sectors. Instead of realizing the importance of the turning point, and instead of working on new choices and strategies, as well as new mobilization means, many unions are still seeking new alliances that are useless. Though there are more and more employees and workers in the private sector, unions have failed to appeal to them. New legislations have increased flexible employment and decreased the immunity that workers had at the time of State economy. Unions further lost their claws. The reestablishment of dialogue between unions and the rest of the Arab civil society components is urgent and necessary to reactivate the role of NGOs and broaden the scope of democratic freedoms.

The seventh challenge is in reference to the fact that modern society is based on three main sectors: the State, the private sector, and civil society. Instead of having complementary roles with each sector keeping its autonomy, the State is visibly controlling all sectors and fields, including business. This is why

civil societies have to establish links with the private sector seeking common interests preventing any monopoly of the market or personal interests over social interest. This cooperation between civil society and the local national bourgeoisie is a necessity to build democratic regimes where the rule of law prevails with more freedoms. It is also a necessity to fight corruption and for the peaceful management of conflict between social and political forces. Economic freedom means the reduction of the State's grip on the economy even to some extent and this requires more public freedoms.

Subsidiary Factors

Parallel to these challenges, there are factors that help the Arab civil society and offer a priceless opportunity that ought to be well exploited in order to overcome the stalemate it is facing currently. Among these factors are:

The international, regional, and local interest the Arab NGOs are raising is one of the factors. Regardless of the reasons underlying this interest, and the seriousness of the parties behind it, one must say that for the first time in the region's history, these NGOs have all the attention and the encouragement they deserve. This has made it harder for governments to neutralize or isolate them no matter how weak or limited in influence or representation they may be. All international and regional initiatives that are about promoting democracy and reform in the region agree upon the need to take NGOs into consideration as a partner in the democratic transition process. This is an important factor. If NGOs know how to handle it and integrate it within their agenda, it will give them strength and immunity which they often lack.

The change, though limited, exists in the policies of Arab regimes regarding governance and society. Even if this change varies from one country to another, it has been beneficial to the civil society and forces that call upon change. Relative changes in Morocco, Mauritania, Jordan, Lebanon, Bahrain, Sudan, Yemen, and Egypt have often given new prospects for NGOs. Their number and activities have increased, their influence has spread. Even if major changes are the result of an accumulation of small events, NGOs in these countries and others have to use this political change, wisely and smartly, no matter how limited and conditional it may seem.

Freedoms of expression and of the press in many Arab countries have undergone in recent years an unprecedented boost. Government monopoly on the media has progressively regressed and censorship has taken indirect aspects. This has

allowed more freedom of the press in many Arab countries. Many journalists in these countries are still molested and arrested; yet, this does not reduce the margin of freedom that many media have acquired in the region. What is certain is that the more freedom of expression grows, the more NGOs grow and the more transparent and efficient they become. In addition to the press and satellite channels, the data revolution has given advocates of change and reform a chance to use the internet. Even though Arab countries are those where modern communication means are the least spread – 0.6% [30] – there is an ascending trend as to the spread of computers and the use of the web, which might allow NGOs to better communicate with their members and allies, both local and international, to spread their message and make their activities known on a larger scale. Even if the internet is subject to censorship in many Arab countries, this does not prevent its many benefits, if these organizations acquire the experience necessary to fully exploit modern technology.

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30 **See** the second Report on Human Development issued in 2003 by the UNDP. It was mainly about the knowledge gap in the Arab world. The report indicated that in terms of communication, the number of telephone users in the Arab world reached 69 for every one thousand in 1999. The number of internet receivers was 0.4 for every one thousand persons in 2000 – which is much less than the 20% average in developing countries and represents 1/250 of the average in developed and rich countries.

PARLIAMENTARY ELECTIONS IN THE MIDDLE EAST AND NORTH AFRICA (MENA)
Present Status and Future Prospects

Dr. Mostafa El-Nabarawy

Introduction

Due to the waves of democratic transformation witnessed by the world during the last two decades of the twentieth century, most countries conduct some sort of elections, though only about half of the world nations can be said to run competitive democratic elections. Elections are one of the main mechanisms for practicing democracy. Parliamentary elections are particularly important because they produce the legislative council responsible for expressing the will of the people through the performance of its critical monitoring and legislative role.

The first report on "Human Development in the Arab World" issued in 2002[1] under the auspices of the UN Development Program, specifies three main developmental challenges facing the Arab world: deficits in knowledge, freedom, and the empowerment of women. The report concludes that the way to address this deficiency is fostering and enhancing rational governance, reforming state institutions, and mobilizing the public in this cause. The report highlights the following recommendations:

Having effective legislative bodies selected in regular free and fair elections that provide a true political representation of the various political forces in society; and that such elections be based on legal and administrative procedures that guarantee citizens' civil, political and human rights, including the enhancement of the participation of women in political, economic, and social institutions.

Since elections are used by democratic regimes as well as authoritarian ones to achieve different objectives, the aim of this paper is to define the criteria by which we may differentiate between democratic elections and those others that

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1   Human Development Report, 2002: *Deepening Democracy in a Fragmented World,* Oxford: Oxford University Press, 2002.

cannot be classified as such, and the extent of deviation of elections in the Arab countries from the international democratic standards.[2]

Hence the first question to ask is: What is the goal of having elections? The second is whether that goal was generally achieved by the parliamentary elections in the Arab world.

The objective of elections is: first, confirmation that the people are the source of all power; second, the creation of a political hierarchy that represents the actual effective actors in the nation's political life; third, acquiring political legitimacy, or its renewal or annulment.

To answer the second question we will assess the latest parliamentary elections in several Arab countries based on the following criteria:

1. The laws and the electoral system

2. The authority in charge of the elections

3. Whether the elections were monitored by domestic and international observers

4. The extent to which the result of the elections faithfully represent the competing political groups

5. The effect of the elections on the representation of women in parliament

6. The devolvement of power between the government and the opposition

Electoral Laws and Regulations

The type of electoral system and its associated regulations play a critical role in deciding the results of elections. Different electoral systems do not necessarily lead to the same results in any given country. Despite the common ground shared by MENA countries, the positive and negative aspects of the selected electoral system vary according to the prevailing socio-political-economic context of the country. The factors which determine the feasibility of electoral system depend on the social structure of the country, which includes the culture, religion, ethnicity, and race. Other relevant factors include the democratic transitions and partisan life.

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2   Dr. Abdul Fattah Mahdy, *When Will The Elections Be Democratic?* available online at: http://www.aljazeera.net/NR/exeres/BB5A1DE8-9E37-4AF0-8A5C-5224028338D5.htm

When establishing a new electoral system, the following factors and objectives should be taken into consideration[3]:

Setting up a pluralist parliament which represents different political groups; ensuring citizens" right to voting in the correct way; encouraging agreement between parties on issues relevant to vital national interests; enhancing the legitimacy of the legislative and executive authorities; encouraging the establishment of a stable effective government; enhancing the sense of responsibility of both government and members of parliament; encouraging cohesion within political parties, while helping crystallize a coherent parliamentary opposition. While always paying due consideration to the financial and administrative capacities and capabilities of the country citizens should be encouraged to participate in elections, particularly women and youth, through facilitating voting and candidacy procedures.

There are three main electoral systems:

1. Majority System[4]:

It is the oldest known electoral system. It is still applied in more than 80 countries all over the world, according to a study by the Inter-Parliamentary Union in 1993. Apparently, the advantage of this electoral system is its simplicity; the winner is the candidate who gets the majority of votes. However, the results of this system are not always fair. For instance, it may allow a party or coalition to obtain a higher percentage of parliamentary seats than the actual percentage of votes won. The number of seats given to the winning party might exceed its real representation of votes. Thus, for example, the party which wins 45% of votes can form a government alone, as is the case in Egypt and Kuwait.

The system has three major advantages. The ballots are short and simple and can be easily understood by the general public; citizens can vote for a candidate who may be independent or representing a certain political party; and the existence of an electoral district tends to strengthen the bond between candidate and voters.

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3   Juergen Alclet, Wandu Rolands, *Electoral Systems in Jordanian Context*, Strategic Studies Center, Jordan University – Workshop, Amman, March 19, 1997.

4   Inter-Parliament Union, *Electoral Systems – A Comparative Study on the International Level*, Geneva, 1993.

There are different types of majority electoral systems:

• **Single Seat Electoral District:**

There are three basic types for voting in single-seat districts:

o Majority voting for one electoral round: The winner is the candidate who gets the majority of votes. This could result in electing a particular candidate even if he/she did not get more than 20% of the votes (as in Egypt and Kuwait).

o Majority voting for two electoral rounds (absolute majority): The winner must win at least half of all votes, plus one more vote. If the candidates failed to get this number of votes, a second round should be held. In this case, simple majority is accepted for winning in the second round.

o Preferential or sequential voting: In this type of voting, voters vote for a certain candidate and then list other candidates in order of preference. If none of the candidates get the majority of votes in the first round of voting, the candidate with the least number of votes is removed. The process is repeated until one of the candidates wins the absolute majority.

• **Electoral District with Multiple Seats:**

There are two main methods for majority voting in these electoral districts. A majority or preferential systems may be adopted in either method to be applied in either one or two rounds. In case of voting for a list: candidates are grouped either in a list of independents or in party lists. Voters elect the candidates using voting cards which include the different seats of each district. The winners are the candidates who get the majority of votes.

The main disadvantages of the majority system[5]:

1. Excludes minority parties from parliamentary representation. The number of seats given to any party in this system depends not only on the number of votes but the voting locations.

2. Excludes the representatives from ethnic minorities in parliamentary representation.

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5   Juergen Alclet, Wandu Rolands, *Electoral Systems in Jordanian Context*, Strategic Studies Center, Jordan University – Workshop, Amman, March 19, 1997.

3. Decreases the possibility of electing women in this system, unlike the proportional representation system.

4. The prevalence of wasted votes; which reaches up to 10% in most cases.

5. The winning party which wins 30 – 40% of votes may obtain 50-70% of parliament seats.

6. The ruling parities can change the boundaries of one-seat districts according to parties' interests.

2. The Proportional System[6]:

There are two main models of the proportional representation system:

Absolute proportionality: It views the whole country as one electoral district. Seats are distributed on lists or parties according to their total proportion. This system is applied in the Israeli Knesset and also in Morocco.

Relative proportional representation: Elections run in different electoral cycles. Seats are distributed accordingly. This system, which is applied in Iraq, accepts the disparity that may occur between the number of votes won by a party in the total population and the number of seats that are awarded to the party.

The advantages of the Proportional System are numerous:

Minority parties can easily win a fair parliamentary representation which enhances mechanisms of confidence building; encourages both major and minor parties to create lists which contain male and female candidates from various regional, religious, and ethnic backgrounds thus more appealing to the wider community since the tendency to address a certain ethnic affiliation is restricted. It also provides a fair and realistic representation of different parties and political blocks in parliament. Moreover, it encourages community participation in the electoral process, reduces the potential for forgery and limits the problem of intentionally wasted ballots.

Despite these advantages the proportional system has been criticized on the ground that it fosters coalition governments, which are usually unstable, and

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6   Inter-Parliament Union, *Electoral Systems – Comparative Study on the International Level*, Geneva, 1993.

that it encourages fragmentation of the political arena, and enables small parties to have excessive leverage within a coalition.

Countries in the MENA region have adopted different electoral systems. In Egypt, parliamentary elections are held once every five years. The Egyptian parliament (also known as the People's Assembly) includes 454 members, 444 of which are elected by majority vote in electoral districts that carry two legislative seats each, and one can only be competed for by workers or peasants. The remaining 10 seats are filled by Presidential appointment. In Jordan, voting can be for only one candidate even though electoral districts are assigned several seats, the number depending on the size of the population in the district. In Yemen, all electoral districts are represented by a single seat which is won by the candidate with the largest number of votes. In Algeria, the 389 members of parliament (known as The National Popular Council) are elected for five years, 381 of whom are elected by party slates. Districts according to a system of proportional representation between all parties that succeeded in winning more than 5% of total votes cast. A popular vote is run in 48 electoral districts with multiple seats; and each province in the country elects at least 4 representatives. The remaining eight seats are reserved for Algerians residing abroad. The Nation's Assembly consists of 144 members who serve for 6 years, of which 96 are elected from "corporate councils". The remaining 48 members are appointed by the President. One third of the Nation's Assembly members are subject to re-election once every three years. In Morocco elections are by party slates and proportional representation using the principle of the largest remainder.

In Kuwait there are now five electoral districts instead of the previous 25. Each of the five districts is allocated 10 parliamentary seats; and voters are now allowed to vote for 4 candidates (instead of two previously). The first four candidates with the most number of votes win seats in the parliament although they may not have won a majority of the votes cast in their district. In Mauritania, 28 political parties compete for the 95 seats of the National Assembly. In the cities of Nouakchott and Nouadhibou, a system of proportional representation is applied. In other cities, elections run according to party slates, with 20% of the seats reserved for women. In Tunisia, the 144 members of House of Representatives are elected from 25 electoral districts with multiple seats according to party slates. But in order to preserve some measure of proportional representation of the various parties the remaining 19 members are elected by a poll in which the entire country is treated as

a single district. In Lebanon, the 128 members of Legislative Council are elected by public poll. Candidates are elected according to party slates in six electoral districts each representing one of the country's six governorates. The Parliament's seats are divided equally between the Muslim and Christian communities; the seats of each community are then distributed between its various sects in accordance to the percentage of each within the population of the community. Voters select candidates from the various party slates without violating the aforementioned distribution between the religious sects. Voters may delete any number of candidates they disapprove of from the party slate. In Palestine, President Mahmoud Abbas issued a decree on September 2nd, 2007 which introduced fundamental amendments in the electoral law for the presidential and legislative elections. The modified law adopts party slates and proportional representation in legislative elections and considering the whole Palestinian territories as one electoral district. In addition, all candidates running for parliament were required to recognize the Palestinian Liberation Organization as the only legitimate representative of the Palestinians, as well as acknowledge the Declaration of Independence issued by PLO in 1989, and abide by its basic laws.

In Iraq[7] (a model of consensus democracy): The first legislative elections in Iraq to select members of its national (non-transitional) parliament took place on December 15, 2005 following the confirmation of Iraq's permanent constitution. Iraq's electoral system is based on the following:

(a) The National Assembly (parliament) seats were set at 275, on the basis of one seat for each 100,000 citizens;

(b) Of these seats 230 were to be decided in contested elections on the basis of proportional representation of the party lists in each province;

(c) Each province is assigned a number of seats depending on its population;

(d) 45 seats were contested nationally – that is taking the country as one district – on the basis of proportion representation; these were labeled "compensation seats;"

(e) A 25% quota of seats in the National Assembly – that is 69 seats – are reserved for women.

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7   UN Development Program, *Program of Governance in the Arab Countries*, www.undp-pogar. org/arabic; Ibn Khaldun Center for Development Studies, *Annual Report, 2007: Civil Society and Democratization in the Arab World.*

Iraq's electoral law stipulates that members of the National Assembly are to be selected through direct public election by secret ballot, and that 275 members are to be elected in this manner, and that Iraq will be considered a single electoral district, ad the seats in the Assembly will be allocated according to proportional representation of the competing political entities. The distribution of seats will also adopt a simple quota, as well as use of other subsequent calculations that use the "strongest remainder".

Candidates are listed on closed party or coalition slates in accordance with regulations stipulated in the electoral law which is based on the following:

1- Iraq is one single electoral district

2- Elections are based on proportional representation

3- Closed slates are included in the proportional representation

4- The remainder is distributed according to the method of the "stronger remainder"

3. Mixed System:

Some countries resorted to the mixed electoral system with the purpose of avoiding the disadvantages and enjoying advantages of both majority and proportional systems. Mixed systems work through electing a number of seats (half of seats for example) in a one-seat district majority system. The other half of the seats is elected using the proportional system. The mixed system allows candidates to participate in one-seat district elections and at the same moment be enlisted on one of the lists in proportional representation system.

* The Election Authorities

The authorities responsible for supervising elections differ from one country to the other. However, they can be divided into two main kinds. The first - which is used in Egypt, Jordan, Mauritania, Yemen, and Algeria – charges a committee with the supervision. The committee may or may not include members of the judiciary. Aside from the credibility of the supervision, their scope of authority varies from country to country where this system is adopted. Some oversee the main polling stations only, as in Egypt, while others also cover the subsidiary voting units. The second kind, adopted by Morocco and Tunisia, gives supervisory authority over the elections to the Ministry of the Interior. In Lebanon, local governors assign a president for each electoral district in his

governorate. The heads of districts are responsible for directly supervising the elections in their area. The Constitutional Council, established in 1990 and composed of 10 members, is responsible for supervising the constitutionality of laws and governmental decrees. The Council is also responsible for settling conflicts and complaints that occur in the course of parliamentary and presidential elections.

* Elections Supervision

Arab countries took different stances regarding allowing international supervision of elections alongside domestic supervision by civil society. Yemen, Palestine, Morocco, Algeria, and Mauritania allowed international supervision of parliamentary elections (regardless of the margin given to supervisors and supervision feasibility). Other countries, like Egypt, refused international supervision arguing that international supervision threatens the national dominance. International supervision is necessary to ensure legitimate electoral process and results. However, the monitors should represent the whole international community and monitor in a manner that enhances their credibility.

* Reflections on the political powers of representatives in legislative councils: Parliamentary elections in the Arab region did not result in any significant change in the hierarchy of political power and its structure. The incumbent governing parties continue to dominate Arab parliaments in a way that prevents real political contestation and power exchange. This resulted in hindering the work of parliament itself. This model applies to Egypt, Algeria, Jordan, Yemen, Sudan, and Tunisia.

Why then do authoritarian regimes resort to elections as a legitimizing façade for their rule? Several reasons may be advanced as an explanation: first, in order to burnish their democratic image abroad as well as domestically. Second, elections play a crucial role in elite circulation, by providing the regime with a means of recruiting new political cadres that may be trained to replace old figures that are no longer effective. Third, parliament in authoritarian regimes plays an important role in containing the opposition while simultaneously incorporating it into the governing political system. Moreover, parliaments provide a space for the free expression of the opposition, thereby allowing the venting of pent-up frustrations, thus enhancing regime stability. A typical example is the Egyptian case, where one may expect anything except the possibility that the regime might fail to control two thirds of the parliament.

All who participate in the elections do so fully aware of this fundamental "law". Thus all candidates that do not belong to the ruling regime may complete over only one third of parliamentary seats, while the other two thirds are from the outset reserved for the president's party. The reason for this is simple: the president's selection whether according to the old method (by plebiscite) or according to the new constitutional amendment (by popular vote), requires endorsement by at least two thirds of the parliament. Moreover, the drafting of the constitution (which includes the laws governing all that concerns the president) as well as any amendments to it must be endorsed by two thirds of the parliament. Thus a two-third majority in parliament for the president's party is a red line that the Egyptian regime cannot permit its abrogation by the fortunes of the electoral contest.

Exceptional cases exist in Iraq, Palestine, Mauritania, Morocco, and Kuwait. Elections ran under the premises of national agreement and reconciliation which reflected positively on the participation of different political powers and the credibility of the electoral process. Elections led to a successful exchange of power and re-arranged the political hierarchy inside the parliament. In Iraq[8], the election results were as follows:

- "United Coalition of Iraq" List (Shiite)   128 seats
- "Kurdish Alliance" List   53 seats
- "Iraqi Consensus Front" List (Arab Sunni)   44 seats
- "National Iraqi" List (led by Eyad Alawy)   25 seats
- "Iraqi Front for National Dialogue List
  (led by Saleh Almattak; Sunni)   11 seats
- "Kurdish Islamic Union" List   5 seats
- "Reconciliation and Liberation" List (led by Mesha'an Eljaboury)   3 seats
- "Resalyoun" (of Moktadha Al-Sader) list won two seats
- One seat for each of the:
  - "Iraqi Nation Party" List (Liberal)
  - "Turkmen Front" List
  - "Al-Yazidiyya" List
  - "National Rafidien" (Christian) list

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8   *Op cit.* Annual Report, 2007: *Civil Society and Democratization in the Arab World.*

Legislative elections in Palestine,[9] in 2006, ran according to a mixed system which depended on dividing votes between electoral provinces and quota lists. Eleven lists competed for half the seats (66) of the legislative council while 414 candidates competed for the other half (66). The results were: the Hamas Movement won 74 seats, while the Fatah Movement won 45 seats. The remaining 13 seats were distributed as follows: The Popular Front for the Liberation of Palestine got three seats, Elbadeel List got two seats, Independent Palestine got two seats, The Third Path got two seats, and individual candidates got four seats.

In the latest, 2007, legislative elections in Morocco[10], 295 candidates were elected from electoral provinces and 30 from the separate "national list" which has a quota for women. Elections took place according to a quota list which makes it impossible for any party to win the absolute majority of seats. Thirty three parties and 13 independent lists competed in these elections. The parties were part of three main backgrounds: Islamist parties, government coalition parties, and leftist parties (out of government coalition). The final results showed that parliament seats were distributed between the various political blocks and parties as follows: Independence Party (52 seats), Justice and Development Party (46 seats), 7 seats from the national list were given for women, Popular Movements Party (41 seats), National Assembly of Liberals (39 seats), Communist Union of Popular Movements (38 seats), Constitutional Union Party (27 seats), Progress and Communism party (17 seats), Democratic Forces Front (9 seats), Leftist Coalition (5 seats), Independent candidates (5 seats), and the remaining 46 seats were distributed on minor parties. Nine parties failed to win any seats in parliament. The announced results also showed the failure of three ministers. For the first time, the elections were monitored by 52 international supervisors from 19 countries in addition to a group of observers from the US National Democratic Institute. The assessment of the Supervisors was that despite individual violations, the elections were well organized, transparent, and professional overall.

In Mauritania,[11] the 2006 legislative elections for the lower chamber of parliament were held in Nouakchott and Nouadhibou according to a quota

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9   Ibid.

10 Ibn Khaldun Center for Development Studies, Annual Report, 2008: *Civil Society and Democratization in the Arab World.*

11 *Op.cit.* Annual Report, 2007: *Civil Society and Democratization in the Arab World.*

system unlike the other states which adopted a partisan lists system. Twenty eight parties competed for the parliament's 95 seats. The most prominent partisan blocks were: The Coalition of Democratic Change Forces, which includes eight parties from the opposition; the Moderate Reformers Group (Moderate Islamists); the Independent Candidates Group (members of the previous ruling party); the Republican Party for Democracy and Renovation (the previous ruling party); and the Popular Progressive Coalition (party of freed slaves). Forty three candidates, including 9 women, won seats in the first round, including 26 won by the opposition coalition. Voter turnout reached up to 73% in the first round and 40% in the second round. The final score of the elections was as follows: Coalition of Democratic Change Forces (41 seats), independent candidates (39 seats), previously ruling Republican Party (7 seats), and 8 seats for the supportive parties.

Mauritania's senate elections ran in January 21, 2007 and were followed by a second round on February 4th, 2007. The 53 members of the senate are elected by an electoral committee composed of the 3688 members of the 216 municipal councils. According to the Ministry of Interior's announcement of the final results, independent candidates of the Charity Coalition – which used to represent the majority in the previous era – won a clear majority of 37 seats, while the Coalition of Democratic Change Forces -which used to represent the previous opposition – won 15 seats.

The latest parliamentary elections in Kuwait[12] took place in May 2009. The results were as follows:

- Shiites won 9 seats

- Salafi Islamic Assembly won 2 seats

- Constitutional Islamic Movement (Muslim Brotherhood) won one seat

- Liberals won 8 seats

It is also noteworthy that all the 15 cabinet ministers participate in the work of the parliament. Thus, the total number of Nation Council members is 65 of which fifty are elected and 15 are ministers.

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12 *Op. cit.* Annual Report, 2008: *Civil Society and Democratization in the Arab World.*

Enhancing the political participation of women

The level of participation of women in public life is major element of democratic transformation. Although women represent half the population in Arab countries empirical evidence shows that the opportunities for their political and social participation are very limited, which is evidenced by the near-to-total absence of women in the parliaments of Arab countries. The average of female parliament members in the whole region is only 6%. The participation of women in decision making institutions is also very low.

There are a number of reasons why women are underrepresented. The first is the feeling among many that democracy and women's rights are imported western ideas and that modernization will lead to cultural estrangement. The second is extreme conservative ideologies which consider politics and public life the domain of men only. And finally, the nature of electoral systems and the organization of political parties do not allow women to be represented in full potential.

Many Arab countries adopted a form of 'affirmative action' known as the 'quota' system, whereby in order to ensure a modicum of female political participation, a number of parliamentary seats – varying from country to country – are reserved for women. This important procedure allowed reasonable representation of women in different parliaments (e.g. Morocco 34 seats, Jordan 7 seats, Mauritania 10 seats, Algeria 30 seats, Iraq 70 seats, Tunisia 43 seats, Sudan 77 seats, Palestine 17 seats). Some other Arab countries are also currently considering the adoption of some form of affirmative action in favor of women. In Egypt, there are indications of impending presidential decrees that would add 64 new seats to the already existing 454 seats, to be allocated for women. The Yemeni President promised that 15% of parliament seats will be given to women in the forthcoming 2009 elections.

The dissolved parliament in Kuwait did not include any female representative for until the 2005 decree of the Emir women were deprived from voting or running as candidates for parliament. Since then women candidates ran in the 2006, 2008, and 2009 parliamentary elections. In the 2006 and 2008 elections they failed to win any seats despite the fact that women represent 58% of eligible voters, and constitute 44% of the work force, more than one third of undergraduate students, and 67% of university graduates. The reason for this failure in these two elections despite expectations that at least two women would win seats was said to be the dominance of Islamists (Muslim Brotherhood) over the previous rounds of parliament. In the recent election on

May 2009, the Islamist trend suffered a significant recession which favored the advancement of other political factions such as the Shiites, the Liberals, and most notably women, who won four seats in three provinces out of the total five provinces of Kuwait. The four seats were won by Ma'asoma Elmubarak in the first province, Dr. Salwa Elgassar in the second district, and Dr. Aseel Elawadhy and Rola Dashiti in the third district.

In Egypt's 2005 national elections, 4 women won seats and the President appointed five others. In Yemen's 2003 national elections only one woman won a seat. In the national assemblies of Bahrain and the United Arab Emirates women have no seats.

Exchanging seats between government and opposition (power exchange)

The main objective of elections is to achieve an exchange of political power. Unfortunately, elections in the MENA region, particularly parliamentary elections, do not even come close to achieving this objective. Only Mauritania (2006) and Morocco (2007) may be excluded from this rule. In most other Arab countries, the results of elections are known to every one even before the votes are cast. One reason is that the electoral systems in these countries depend on the sustainability of the current status quo without any change. Moreover, the degree of fairness and freedom of elections are always minimal.

Accordingly, the Mauritanian and Moroccan elections are the best and most successful in the region insofar as commitment to objectives is concerned. They proved that power is indeed in the hands of the people. This has had a positive effect on the constitution of the parliament which reflected a fair representation of political forces characterized by a significant measure of pluralism and competitiveness. Thus, power exchange was achieved through participating parties. Moreover, a mechanism of positive discrimination which assigned a quota for women ensured their representation in parliament, and international supervisors and civil society institutions were invited to monitor the elections. The goals that were achieved reflect the level of freedom, fairness and transparency of these elections compared to other elections in the Arab region.

Conclusion

Parliamentary elections by themselves do not characterize a system as democratic even though it is a very important step towards achieving a democracy in state and society. The democratic system does not only mean

running periodical elections. It means also that citizens enjoy numerous civil and political rights, such as the right to freedom of speech and expression, the formation of associations and political parties, peaceful gatherings, freedom from threats and intimidation, respect for human rights, and the cancellation of rule by emergency law, etc. All these rights, in addition to the right of participation in running public affairs, should be given equally to all citizens without discrimination. Periodical fair parliamentary elections that observe the standards of human rights are an essential factor of democratic system. In the absence of these standards the entire election process will be undermined by the loss of credibility.

In general, elections in Arab countries fall far short of international standards in terms of objectives, freedom, and honesty. The reasons, which we hope to change through accumulative endeavors of peoples and regimes, are as follows:

Party life in Arab societies is weak, and political parties do not constitute genuine political forces that can compete effectively in the political arena. Parties hardly represent real political power able to compete via elections. Therefore, it is necessary to amend the laws governing political parties in most of the MENA countries so as provide a greater margin of freedom for the establishment of political parties and their activities. Such a change will enable parties to represent the true aggregation of interests in society. Additionally, competitiveness should be allowed in a context of pluralism. This will reflect positively on the legitimacy of election procedures and results. Pluralism without competitiveness could not lead to free and fair elections.

On the other hand opposition parties should genuinely evaluate themselves in order to find out the internal reasons for their failure in elections. They should play a leading role in supporting a greater representation of women in parliament through adopting capacity building programs and activities, in addition to applying affirmative action in favour of women when selecting party leaders.

The election laws that are applied in the MENA countries, mentioned in this study, reflect the interests of the existing powers, with no regard as to whether or not it produces a faithful representation of the political and cultural spectrum. Therefore, enacting new and more democratic election laws has become a must. The objective of such laws should be activating and reflecting political and cultural diversity according to the characteristics of each society. This law

should not merely reflect the political reality but it should also call for changing it. Mixed electoral systems and legitimacy criteria should be adopted as well. The quota list is the best electoral system as it allows representation of women while avoiding the negative aspects of the "open quota" system. A condition may be attached to state that one woman at least should be put at the top of each party slate. This system guarantees fair representation of majority and minority groups, avoids wasted votes, highlights the role of leaders, decreases forgery, and ensures political voting for a certain party as candidates are selected from party lists. In addition, open quota (temporary positive discrimination) may be applied for ensuring the representation of marginalized groups, especially women.

The electoral system in Morocco,[13] in which voting is on partly slates, is, I believe, the best in the Arab world. In that system each party lists all its candidates in one slate which is voted on in every polling station in the entire country. The system has several main features. It is based on proportional representation using the method of the largest reminder; every party slate must comprise a number of candidates equal to the number of parliamentary seats for which it is competing; all seats are fully distributed; and it does not use the method of mixed or preferential voting (wherein a candidate may win by a simple majority) but on the distribution of the seats in accordance with the results obtained by each of the competing slates.

That system offers several advantages. By using slates the competition is no longer between individuals but between party programs. Hence, the power of personalities and their individual resources to charm or buy votes is avoided. It also provides a better chance for small parties to gain some representation in legislative bodies.

Let me clarify by an example how parliamentary seats are assigned in that system. Assume that four seats are assigned to a particular district and that the district voting data is as follows: number of registered voters 210,000 and that the turnout on election day was 180,000 (85.71%), and that the number of valid ballots cast was 170,000. Assume also that five party lists (L1, L2, L3, L4, and L5) competed in this district and their shares of valid votes won were L 1 (30,000) , L 2 (55,000), L3 (1,500), L4 (3,500) and L5 (80,000). Since Morocco's electoral law mandates that a list must win at least 3% of valid votes (i.e., 5100

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13 See the constitution of the Kingdom of Morocco; also the web site of the Parliament of Iraq.

votes in our example) to be considered in the allocation of seats, this means that L 3 and L 4 are totally excluded, and the four seats of that district will be divided between the remaining three lists. An "electoral dividend" (ED) for that district is first calculated by subtracting from the 170,000 correct ballots the 5000 votes won by the excluded L3 and L 4 . The net resultant of 165,000 votes is then divided by the number of seats to give an ED of 41250 votes. This number now becomes the minimum threshold that must be attained by the remaining lists. Accordingly, L1 (30,000) is also excluded at this stage of the calculation, leaving a remainder of 30,000 votes. L2 which won 55,000 votes attained the ED plus a remainder of 13750 votes; while L5 which won 80,000 votes attained the ED plus a remainder of 38750 votes. At this point one seat is awarded to L2 and one seat to L5. The remaining two seats of the district are then awarded accordingly to the principle of "the largest remainder." L5 already got one seat and has a remainder of 38750 votes, L1 has no seat but has a remainder of 30,000 votes, and L2 already got one seat and has a remainder of 13570 votes. Accordingly, L5 is given another seat for having the largest remainder, and L1 is given the remaining (fourth) seat for having the next largest remainder. The final result is that L5 received 2 seats (1+1), L1 received one seat (0+1), and L2 received one seat (1+0)

Tribal prejudice still has a significant effect on the results of elections. Therefore, I believe electoral districts should be re-designed to ensure a fair representation in parliament. It is noteworthy that Kuwait and Jordan have already taken steps in that direction.

Some regimes continue to impose restrictions or total exclusion on political groups that enjoy legitimacy in the Arab street by denying them legal recognition despite the fact that they enjoy the confidence of large swaths of the population, and play a significant role in shaping the public vision toward numerous issues and are key players in professional syndicates and other civil non-political institutions. One could of course justifiably brand the regimes that prevent the participation of the Islamists - either in a grossly overt manner or covertly- as tyrannies in which democracy is totally absent. The most negative aspect of this position by these ruling regimes is that it prevents the people from putting to the test the declared principles of the Islamists and their political programs How can the Muslim Brothers in Egypt have such a prominent influence within academia, student unions, and professional syndicates in addition to winning 20% of parliamentary seats and yet be denied the right to form a legally recognized political party or be allowed to convene

conferences and public meetings to present their views and programs to the Egyptian people?

Noteworthy, is that in all the cases where the Islamists were accepted as legitimate participants they neither won enough votes to sweep them into power, nor did they attempt to subvert the ruling regime. Moreover, when the Islamists gained enough votes that would permit them to join a coalition government they did not seek to undermine pluralist electoral politics as was once imagined they would do, in the 1980s and 90s.

Although the Arab people are cognizant of the fact that the Islamists have contributed significantly to the vitality of political and cultural life, and indeed gave party politics much of its meaning, yet they are not unaware of their faults and shortcomings and have always expressed their readiness to be held to account as is done with other political groups, in fact they expect to be held to more stringent standards. Consequently, it is essential that Arab governments open space for Islamist groups to participate in the political arena so long as they abide by the rules of the electoral game established by the governing regimes. Historically, all exclusionary policies have met with failure and had a negative impact on political life, while in contrast inclusionary polities have invariably proved the wiser course. On the other hand the Islamists must reorganize that their Islamic identity does not grant them immunity from being brought to account by the people, and that their presence in significant weight in the political arena has already been long enough for them to submit to the normal standards of political competence, achievement and credibility. It is their shortcomings on these levels that explains the diminished representation of the Islamists in the recent parliaments of Jordan, Kuwait, and Morocco.

There is no doubt that religious trends have always been the strongest political forces in terms of internal regulation and direct influence on Arab and Islamic communities. The major part of MENA communities sympathizes with and supports this politico-religious trend only because it dares to confront the ruling parties. As a result, it began to be feared that the religious blocks (Islamized politics) would rule if fair elections were to run. This fear pushed the middle class intellectuals, who fear that their religious freedom and individual liberties will be limited under the Islamic ruling, to support the current regimes, based on the wise saying: "If removing damage would lead to a bigger catastrophe, it is wise to keep the damage." Ruling parties take advantage of these fears by magnifying them (the bogeyman) and using them

as a justification for abandoning political reform. Hence there is a fear -part of it justified- from the Islamists coming to power. Those most concerned are the major international strategic actors, the ruling regimes, citizens that embrace other than the Muslim faith, secular groups, and atheists.

The question then is whether these fears are realistic and there is indeed a real bogeyman who threatens the democratic transformation in these countries. In my opinion, there is no bogeyman. The perceived size of the Islamic block in Egypt for example is completely different than its actual size. The perceived size is the actual size plus the amount of sympathy and support they enjoy within the sectors of the middle class which have suffered marginalization and persecution. Surely, the attitude of these sectors will change with changes in their political freedoms and democracy. The Islamists in Egypt may not necessarily win the majority of votes when running in fair elections. Violence adopted by some Islamist factions is a result of poverty, tyranny, and suppression. And certainly there is no inevitability that if the Islamists come to power they will necessarily turn against democracy and overturn the prevailing rules of the political game. Anyway, there must always be a neutral political power, responsible for guaranteeing legitimacy for all political powers in society.

Highlighting the disadvantages of rivals is a strategy widely adopted by liberal and leftist political groups against the Islamic block. However, it is a strategy that is no longer adopted by a clever political player. It is true that most of the practices of the Islamic trend led to negative amplifications. Yet, there are many positive models of Islamist participation like in the case of Turkey and Jordan. The democratic developments in Turkey and Jordan are much higher than in Egypt where the regime deprives the Muslim Brotherhood from political legitimacy. On one hand, the Muslim Brotherhood in Egypt and other similar Islamic groups all over the MENA region should be given equal opportunity to winning legitimacy without prior judgment of failure or success. On the other hand, the Islamic trend should adopt a modern, national, and civil rhetoric in coincidence with factual changes. I believe that the Turkish Justice and Development Party is the best role model.

The management of elections in the MENA continues to lack fairness and transparency, although they were entrusted in most countries to ostensibly independent committees. The way these committees were established and their operating mechanisms have raised grave doubts about their credibility.

Participation in elections in general, and parliamentary elections in particular, remain low (e.g. Egypt 23.5%, Morocco 37%, Yemen 68%, Mauritania 73%, Palestine 77%). This low voter turnout affects the legitimacy of selected candidates. Non- participation is a negative technique that people use when they are not convinced of the legitimacy of elections. Those who are not willing to participate could be encouraged to still go to the polls by including a section of "negative voting" on the electoral card. The percentage of negative voting fits the goals of the countries calling for forming new political forces for the future.

The monitoring of elections is still very weak in the Arab countries. Election monitoring is a basic element to ensure the fairness of elections. In order to give parliamentary elections greater credibility, they should be subject to either domestic or international monitoring. Penalties should be imposed on those who commit violations, and judicial decisions regarding electoral conflict resolution should be respected.

There is a strong relationship between the independence of the judiciary and the fairness of elections. It is widely known that the judicial systems in the Arab world suffer considerably from lack of autonomy and independent. Therefore, supporting the independence of the judiciary on the professional, administrative, and financial levels would lead to positive democratic elections.

In all of the Arab countries, excluding Morocco and Algeria, citizens living abroad are denied the right to vote. This is a negative indicator that decreases the legitimacy of election results.

The official media lacks neutrality in their covering of the election campaigns of the competing candidates and parties. In some cases, state-owned media acts as a propaganda organ for the candidates of the ruling party. This, of course, negatively affects the results of elections.

The criteria of fairness in elections are still largely absent in the Arab countries - albeit in different degrees - with respect to people's right to vote without discrimination, the guaranteeing of the secrecy of the ballot, and the transparency of the sources and amounts of the funds expended in electoral campaigns. Moreover, the incumbent regimes frequently abuse their powers, adopt dubious mechanisms of ballot-counting and refuse independent monitoring of the elections.

In conclusion, it should be stressed that democratic development is the result of cumulative real increments of change. Society can only achieve progress

through learning from both the negative and positive outcomes of its endeavors, by emphasizing and enhancing the positive aspects and eliminating the negative ones. The electoral process, in general, and encouraging communities to practice their rights by electing their representatives in particular, are hard tasks that take time and effort.

THE STATUS OF POLITICAL PARTIES IN THE ARAB WORLD

Moheb Zaki

Democracy in a complex society may be defined as a political system which supplies regular constitutional opportunities for changing the governing officials, and a social mechanism which permits the largest possible part of the population to influence major decisions by choosing among contenders for political office through political parties. *Seymour Martin Lipset*

Introduction

Democratic theory does not mandate the existence of political parties[1], yet historically no political system has been known to function democratically in the absence of competitive political parties that allow for the aggregation and articulation of competing interests, the presentation of alternative policies, and the legal means for a change of leadership. Thus there is a general consensus in the political science literature that political parties play a central role in the practice of democratic governance. Indeed the noted scholar E.E. Schattschneider claimed that without political parties democracy would be unthinkable.[2]

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1   According to democracy theorists Robert Dahl, Juan Linz, Alfred Stepan, Martin Lipset and Larry Diamond, political democracy is distinguished, among other features, by meaningful competition, inclusive participation, and civil and political rights. The format of the competition and how this participation is achieved is an operational matter, which as Samuel Huntington pointed out, may be located in different group bases such as class, communal groups, parties, or factions. However, in mass societies the most viable base for aggregation and articulation of interests is the political party. In very small societies like that of Kuwait and most other Gulf States parties are prohibited nevertheless political associations act reasonably well.

See Dahl, R. A. (1971). *Polyarchy: Participation and Opposition.* New Haven: Yale University Press, p. 1-3.

Linz, J. J., & Stepan, A. (1996). *Problems of Democratic Transition and Consolidation: Southern Europe, South America and Post-Communist Europe.* Baltimore and London: The John Hopkins University Press, chapter 1.

Huntington, S., & Nelson, J. M. (1976). *No Easy Choice: Political Participation in Developing Countries.* Harvard University Press: Cambridge Mass, p. 15.

2   Schattschneider, E. E. (1960). *The Semi-Sovereign People.* New York: Holt, Rinehart and Winston.

However, in recent years political parties have been the target of sharp criticism and their influence has declined all over the world including in developed democracies as citizens disengaged from party politics. This tended to lead political scientists to move away from the study of formal governmental structures to the analysis of civil society. In doing so they have touched only lightly on the role played by political parties, which were seen – at least in the Arab context – as exceptionally weak organizations without any deep or broad bases in society. In view of the weakness of political parties in Arab countries, it appeared that a much greater political role was played by corporatist organizations such as interest groups, particularly professional syndicates, trade unions, and associations of influential businessmen, as well as on politically concerned organizations of civil society. These, it was contended – as opposed to political parties or the numerous NGOs that are mainly engaged in religious, welfare, or charity work – were the elements of civil society that were in fact capable of pushing their demands through the system. But the role of political parties for a well-functioning democracy is crucial, for despite their failings they remain potentially the most potent mediating vehicle between the individual and the government, and are the "mechanism for turning disparate special interests into some version of 'the public interest'".[3]

The essence of political liberal democracy is sovereignty of the people; thus an examination of the level of democracy in a country must concern itself with voters, political parties and the role of parliaments. Hence, fairly contested elections between political parties are a principal indicator of political democracy. But if elections are to function as an expression of the "freely expressed will of the people" they must not only be open – that is with several options available and none guaranteed to win –but also those elected must be able to function effectively as a legislative body, participating in decisions concerning the formulation of public policy and monitoring the performance of the government. It is therefore important not to obstruct the easy formation of political parties, whilst noting that the common presupposition that a multiplicity of political parties encourages democracy by increasing participation and the accountability of governments has proved to be groundless. Whilst multiple parties are necessary, in practice, for the working of a democratic system, this does not mean that the existence of a large number of parties can be used as a measure of democracy, or of its efficient functioning.

3   Pharr, S. J. et al., "A Quarter Century of Declining Confidence", *Journal of Democracy* 11(2), 2000.

Despite their obvious present weakness, political parties in the Arab world are not totally insignificant institutions of political (civil) society, and hence warrant detailed attention. This chapter's aim is to present a general survey of the current status of political parties in eight Arab countries, namely, Egypt, Syria, Lebanon, Jordan, Algeria, Tunisia, Morocco and Kuwait. These are quite representative of the different regimes in the Arab world. Although no two Arab regimes are identical, and indeed significant variations exist between them in terms of the level and features of their authoritarianism, by and large the status of political parties within them is very similar and subject to similar restrictions and challenges.

This paper will focus primarily on the problems of *secular*[4] – as opposed to Islamist – political parties, their relative weight in the political arena vis-à-vis government parties, and especially the extent of their actual level of effectiveness and relevance to the practice of democracy. The reason for the focus on secular political parties is because they are crucial if there is to be a fair chance of a transition to democracy. This is not because these are the parties of true democrats but because in their absence the political arena will exhibit only – as it does today – a strong bi-polarity between the Islamists and the regime, which is hardly the kind of political framework that is propitious for the development of a democratic system.

In this review I treat the fraternity of the Muslim Brotherhood and its offshoots in various countries as political parties, despite the fact that the governments may have denied them formal status. This is justified by the Brotherhood's well known organization, its distinct ideology and political orientation, and its substantial following. Above all, even when not legally recognized, the Brotherhood does in fact operate as a party, typically running candidates in national elections under their own colors.

State-Party Relations

The relationship between opposition parties and the state in the Arab world varies from country to country, ranging between the overtly hostile, as in Syria where the legal opposition is made completely subservient to the regime and no alternative sources of opposition are tolerated, and the benign

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4   That is parties that do not claim an ideology grounded in Islam but are not necessarily anti-Islamic or hostile to religion in general.

as in Morocco where the creation of parties and their activities are largely unimpeded. All states, however, proclaim their support for democracy and a multiparty system as one of their pillars, and bemoan the feebleness of the opposition parties, even as most of them continue to take measures that impede the development of a robust party system.

There is no doubt that freedom of expression and protest has increased in the majority of Arab countries, but very little space has opened for effective, institutionalized political participation. Since all Arab regimes, save Lebanon and Iraq, are semi-authoritarian – sometimes called electoral or competitive authoritarian regimes – which practice fundamentally authoritarian style politics whilst exhibiting certain democratic features[5], with some permitting a greater degree of openness than others, the environment is highly restrictive for opposition political parties. Their formal constitutional freedoms are empty rights contradicted by constraining laws and practices. Various laws and regulations - such as those requiring licensing and prior permission to hold public rallies and demonstrations or any other form of mass contact with the people – constrain both the formation and free activities of political parties. Hence the main vehicles of public mobilization have become those of the various configurations of civil society organizations although these organizations also face serious constraints upon permissible activities.

While the regimes in Egypt, Syria, and Tunisia are virtually single party systems of a highly restrictive nature, those in Jordan, Morocco, Algeria and Yemen exhibit more pluralistic features. However, even under these latter regimes, where some space exists for oppositional party politics, the secular parties are politically weak (as will be explained later), and being incapable of mounting any serious challenges to the ruling party they simply compete amongst themselves for some representation within the parliament. Though many Arab countries display a large number of secular and Islamist political parties most (not all) of the former are in fact defunct. Thus in Egypt, where 24 political parties are legally recognized, only four secular opposition parties

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5   Such regimes are not a stage along the authoritarian-democratic continuum; they are a category unto themselves. They are a hybrid system exhibiting elements of pluralism and a measure of liberalism, often including an outspoken press as well as an active, albeit constrained, civil society, allow political parties and conduct regular elections. These regimes are not democracies nor are they in the process of democratizing as was once believed. They are entrenched stable authoritarian regimes which combine rhetorical acceptance of liberal democracy with existing formal democratic institutions, but allow no room for competition for power.

are represented in parliament and they collectively account for only 2.5% of the seats.[6] Where the space for party politics is more severely restricted, as in Syria and Tunisia, secular parties are merely adjuncts to the ruling government party. However, to maintain the façade of a pluralist democratic polity the ruling regimes in both countries have reserved, by law, a quota of seats for opposition parties in parliament.

Two exceptional categories stand out: the first is that of Lebanon and Iraq, in which different forms of consociational democratic regimes are adopted which allow a broad sharing of power in multi-party coalitions that represent different ethnic or religious groups;[7] and the second is Kuwait which, although a traditional Gulf monarchy, its politics is characterized by a dynamism that enables the opposition to be an effective counterforce to the incumbent government, albeit only in terms of calling the government to account but not in replacing it.

The position of the opposition towards the regime in most Arab states may be said to fall into two broad categories. The first, which seems to be the largest in most countries, includes the parties that believe the ruling regime, despite its restrictive behavior, is nevertheless sincere in its proclaimed intention to democratize the system gradually – up to at least some reasonable degree – even though the concrete steps so far have been scant. The second category, which represents a significant minority in most countries – but a majority in Egypt, Syria, and Tunisia – believes the entire current political system is a charade, and that the ruling regime might make insignificant liberalizing concessions but will never allow meaningful sharing of power or implement any genuine political reforms that could raise the specter of any real challenge by the opposition. This, as we shall see, has had important consequences in

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6   "Civil Society and Democratization in the Arab World", Annual Report, Ibn Khaldun Center for Development Studies (henceforth ICDS), 2007.

7   In contrast to the more common type of majority regimes in which executive power is concentrated in a single-party majority and disproportionate electoral system the consociational system is characterized by proportional representation that includes a "coordinated and corporatist interest group system aimed at compromise and concertation". In short it is "a government by elite cartel designed to turn a democracy with a fragmented political culture into a stable democracy". It is a system found to be most appropriate in societies that are markedly characterized by deep ethnic, linguistic and religious divisions that are prone to trigger violent civil conflict under majority rule. Notable other examples that adopt some version of the consociational system are Switzerland, Belgium, the Netherlands, Northern Ireland and Malaysia. Quotes are from Lijphart, A. (2008). *Thinking about Democracy.* New York: Routledge, pp. 7, 31.

influencing the behavior of the secular opposition political parties towards the state, and fostering apathy among the population towards party politics.

A review of the political scene in most Arab countries over the last decade seems to support the viewpoint of the second category. There is no indication of any political opening in Egypt, Syria, Tunisia, Jordan or Algeria that has the potential to fundamentally alter the structure of political authority, while in Morocco and Kuwait the only recent improvements have been mainly in the area of more equitable rights for women.

Numerous restrictions continue to be imposed by the ruling regimes on the free activity of opposition parties, coupled with a marked bias in favor of the government's party (where one exists). The main demands of the opposition with respect to party politics comprise:

- Revocation of the current restrictive party laws and executive decrees;
- Removal of the restrictions placed on party campaign activities, particularly those prohibiting outdoor rallies (on the grounds that they increase the possibility of violence);
- Equal treatment of the governing party by the state as any other political party, instead of as an integral part of state institutions, as is presently the case;
- Guarantees for clean elections through comprehensive judicial control over the entire process;
- Opening the state-owned broadcasting media to all political parties on an equitable time sharing basis;
- Removal of the restrictive press laws that constrain free speech in the opposition papers.

All the above restrictions apply most severely in a particular group of five Arab republics, vis. Egypt, Syria, Tunisia, Sudan and Yemen, all of which have a *hegemonic state party*, and are the most authoritarian of the Arab states. Where no such state party exists – though there can be strongly pro-regime parties – as in Algeria, Iraq, Lebanon, and Mauritania as well as in all the monarchies, political parties are treated more or less equitably and elections are free of the massive vote-rigging that characterize the former presidential systems.

The ruling five hegemonic presidential regimes, however, have so far largely ignored the opposition's demands. Denying any wrongdoing, the governments

consistently maintain that the poor electoral results of the opposition parties are simply a true reflection of their incompetence and shallow social bases. But the truth is that the resources of the state go to support the ruling party. Moreover, the state-owned broadcasting media is usually blatantly utilized as a propaganda organ in the service of the regime and its party and, more specifically, for the constant enhancement of the leader's image. Opposition parties on the other hand, are either denied altogether or given scant access to the broadcasting media. Consequently, during election campaigns the opposition parties have only their own newspapers, with limited circulation, to present their position on various issues. This is glaringly obvious in Egypt, Syria and Tunisia – the most restrictive of the Arab regimes – but less so in Algeria and Morocco where reasonable broadcasting time is allotted to the various opposition parties.

Furthermore, opposition parties complain that even when their members do have electoral successes and win seats in the legislature, governments frequently disregard entirely the presence of the opposition in parliament and ram through at will (by virtue of their overwhelming majority in the assembly) whatever bills they choose to pass. In this way the role of the opposition in the political system is totally marginalized, rendering it virtually redundant. This behavior is particularly marked in Egypt, Syria and Tunisia, where it seems "as if the government has locked them up by setting rules of the game that reduces them to formal players in a confined and strongly constrained political space [from which] only the Islamist parties have escaped… benefiting from an alternative space (the mosque) and a dense network of support among the middle and working classes".[8]

The incumbent regimes in numerous countries have also blatantly manipulated the system in their favor. Constitutions have been changed to extend the tenure of presidents indefinitely, such as in Syria, Tunisia, and Algeria, or to ensure that the president's son succeeds his father (Egypt, Syria and Yemen); and electoral laws in several Arab countries have witnessed more than one change in recent years aimed at consolidating the ruling regimes' grip on power. Some of the electoral changes, as in Jordan, were of a gerrymandering nature, intended to strengthen the voting power of tribal chiefs loyal to the monarchy (by having

8   Kodmani, B. (2008). The Political Awakening As Engine of Change., *The State of Reform in the Arab World, Report of Arab Reform Initiative.*

one representative for two to three thousand in pro-government districts) while diminishing that of opposition supporters to ensure that the opposition gain no more than 20% of seats in parliament (by having one representative for 90,000 in Islamist-dominated districts). In Morocco the 2002 electoral reform created a two-tiered proportional representation system that ensured no party could gain a majority in parliament, thereby ensuring a weak and divided legislature that cannot challenge the government.

Apart from being morally reprehensible, these manipulations and rapid fluctuations in the electoral laws can hardly be considered conducive to the establishment of a stable multiparty system, nor do they reflect well on the credibility of the regimes. In every case laws have been changed virtually unilaterally by the president or monarchy due to the overwhelming dominance of the executive over parliament, which hardly permits any serious public debate or consultation with the opposition. Although the secular opposition parties welcomed the changes prohibiting the creation of political parties with religious referents (Egypt, Syria and Tunisia), they were enraged by the modifications that greatly expanded the powers of the executive (ostensibly to fight terrorism) in vague terms that open the door to abuse and threaten to further reduce the already small margin of individual freedoms and freedom of party activities.

Although at times opposition parties have expressed their anger by boycotting elections, the boycotts have never succeeded in either forcing the government to accede to any of the opposition's demands or in deterring it from going ahead with the elections as scheduled.[9]

From the regime's perspective the participation of other political parties in national elections serves to legitimate the political system, both domestically and abroad. From the opposition parties' perspective, participation in national elections, despite expectations of an overwhelming victory for the regime's party, still carries significant advantages. Besides keeping them in the public eye, the presence of the opposition in parliament, notwithstanding its small representation, has served to curb extremist tendencies by the state party. More

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9   Examples of major parties that boycotted parliamentary elections without it gaining them any benefit by doing so were the *Wafd* and the *Tagammu'* in Egypt in 1981, and 1984 respectively; all the Islamist parties in Jordan except the Islamic work party (in 2002); The (Islamic) National Reform Movement, and The (Berber) Socialist Front in Algeria (in 2007).

importantly, it has forced serious debate on issues to which the opposition has attached importance.[10]

Thus while the channels for political participation have markedly increased in the last two decades in almost all Arab countries, the current political regimes remain exemplars of the dominant party system. Samuel Huntington has described this as involving competition for power but not alternation in power, and participation in elections for all, but participation in office only for those in the mainstream party.[11]

The Electoral Performance of Political Parties

All Arab countries host numerous secular parties that cover the political spectrum from liberal and vaguely socialist to Marxist and pan-Arabist (Nasserist), besides a variety of Islamist parties and movements. However, due to the dominance of the state and its markedly authoritarian features, the current party system in all Arab countries – barring Lebanon – is not particularly adversarial.

Despite the availability of avenues for participation in party politics, the level of political apathy is high, and there is a pervasive cynical view towards politicians and party politics. The depth of the disillusionment with the performance of political parties, however, varies from country to country. In the consociational democracies of Iraq and Lebanon the disenchantment is far less than in the presidential and monarchical autocracies of Egypt, Syria, Tunisia, Algeria, Morocco, Jordan and Yemen. Thus when we step back from looking at different regimes to look at the overall picture what we see is that political participation through voting in national elections seems to be of negligible concern to most citizens of the Arab world. This is attested by the fact that (according to numerous unofficial estimates) the average voter turnout in the latest parliamentary elections of the three most populous Arab countries –

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10 The opposition invariably wishes to appear supporting the broad masses, consequently it usually objects and appeals any new taxes that might affect other than the rich. Thus in Egypt, for example, the opposition in parliament succeeded in reducing the increase in court fees which the government had decreed in 2006 on all litigation.

11 Of course the long duration of a party in power is not by itself an indication of the absence of democracy, but in the case of the Arab countries it is undoubtedly a manifestation of the autocratic nature of the regimes that prevail. The Japanese Liberal Democratic Party, for example, held power for approximately 40 years (and was replaced after losing the 1994 elections). Yet few would wish to deny that Japan was a democratic country during that period.

Egypt, Algeria and Morocco – taken together is 33% of the electorate.[12] Indeed, besides voting, only an infinitesimal proportion of the adult population takes part in any form of overt political activity that is legally recognized.

Generally speaking, the Arab voter hears of the parties around election time. In between elections parties are rarely heard from in terms of being guided by and promoting specific programs. It is as though they are having difficulty in finding a meaningful message. It is here that the Islamists have a distinct advantage over secular parties, being clearly bearers and advocates of a holistic belief system (Islam) that strongly resonates with the Arab Muslim peoples

Consequently, votes, whether in national or local elections, are usually not cast on the basis of political issues or party platforms but as a choice between competing personalities[13] within a context of patron-client relations, i.e. largely on the basis of the extent of patronage that candidates are seen to be able to extract from the state. From the regime's perspective this situation is eminently satisfactory. For while it avoids the high tensions associated with campaigns fought over contested issues that necessarily engage strong emotions, the ruling elite may use the elections to incorporate politically acceptable elements of the local power structure into the regime base, and thus ensure that local leaders and notables constitute the links to the masses.

The result of recent elections in several Arab countries have exposed the crisis of opposition secular parties that are neither associated with the regime nor representative of ethnic minorities (such as the Berbers in Algeria and Morocco). The *combined* representation in parliament of these autonomous secular parties ranged from marginal, as in Algeria (19%) and Morocco (14%), to purely symbolic, as in Yemen (5%) and Egypt (2.5%), to total nonexistence in Jordan as a result of boycotting the elections.

Opposition political parties invariably attribute their consistently poor election results to either the restrictive policies of the state, and/or to massive

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12 Egypt (in 2005) 23%; Algeria (in 2007) 36%; and Morocco (in 2007) 37%. See *Election Guide by International Foundation for Electoral Systems*: http://www.electionguide.org; and http://www.sis.gov.eg.

13 The personification of politics is actually prevalent in all elections everywhere, but its salience varies between countries depending on both the domestic political culture as well as the features of the electoral laws. For instance, voter attitudes towards parties – as opposed to the personalities of the competing candidates – is far more important in Europe than in the United States where political power has become greatly personalized. In the Arab world voters generally choose on the basis of the candidate's charisma – except those who vote for ethnic or faith-based parties where the ideological factor predominates.

electoral fraud, insisting that election results do not even remotely reflect the true electoral weight of the contending parties. In support of their contention, they point to the consistently overwhelming majority won by the state parties and argue that no party can maintain such a record in repeated elections unless something is seriously amiss – either the electoral system is biased in its favor, through weakening the opposition by means of non-democratic impediments and/or the entire elections are heavily rigged. They maintain that under the present system both distortions exist – election laws and government practices are designed so as to deny the opposition a genuine and fair opportunity of ever winning a majority. These unsavory realities, say the opposition, are attested to by the very low voter turnout (estimated by them at less than 30%) reflecting the lack of credibility of elections amongst the general public.

No doubt their poor showing is partly attributable to the constraints imposed upon them by the ruling semi-authoritarian regimes, but this does not explain why the Islamist parties, who are subjected to the same constraints in addition to being targeted for special repressive measures, have nevertheless succeeded in gaining popular legitimacy and an expanding constituency.[14] The explanation lies partly in the rising religiosity within the Arab world, but more importantly because the Islamist parties have over the years developed well organized political machinery supported by a wide network of civil society associations and institutions that provide basic resources to the underprivileged social classes – thus tapping into the broad grassroots segment of their societies. The secular parties, in contrast, have largely remained weak in structure, and continued to propagate an incoherent message and engage in rhetorical debates amongst intellectuals about general issues of freedoms without any significant contact with the broad masses.

In contrast to the other Arab countries, elections in Kuwait and Lebanon – where there is no government party – are relatively free and fair. However, in both countries liberal secular parties have not done well, albeit for different reasons. In Kuwait the liberal candidates running for parliament are independent

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14 Despite the opposition's aforementioned (at least partially valid) argument to explain their poor showing it behooves us to note that sweeping electoral victories by government parties, though they may raise some doubts as to the extent of their authenticity, do not necessarily indicate a significant degree of irregularity. Voter turnout is an unsatisfactory criterion for assessing the degree of fairness of elections. In various countries elections have sometimes been won with some slim margin though involving high levels of fraud, while in some essentially fair elections the incumbent ruling party gained massive victories in consecutive elections, as in Japan and India during the 1960s, 70s and 80s.

individuals, mainly from the professional and business classes, unaffiliated to any organized group. They did relatively well when the electoral districts were many (25) and a particular candidate's personal influence carried weight within a small community of voters, but they could no longer rely on such influence once the new reforms of 2006 created only five large electoral districts – a change that worked to the distinct advantage of the well-organized Islamic groups as they now confronted unorganized independent liberal candidates whose influence can no longer extend to cover the new much larger electoral districts.

In Lebanon, where quotas in every major institution are assigned to the various religious communities, election contests are not so much on a national scale as between different factions within each of these communities. Moreover, electoral contestation between political parties – which is a crucial element in the process of democratization – can have relevance only after completion of the very first stage of state-building wherein a central government gains monopoly of force over the country's entire territory. This has not yet been achieved in Lebanon, where Hizbollah, the most powerful party, is also the most powerful military force, and has near total command of South Lebanon.

And thus in the majority of Arab countries semi-authoritarianism still remains firmly entrenched and resilient. The heads of state, whether monarchs or presidents, continue to dominate the entire political arena, wielding near-absolute power. Although multiparty competitive parliamentary elections have taken place their effectiveness in terms of leading to regime change is practically nil. Nevertheless, these elections have opened a space for expression for opposition forces and democracy activists. However the basic structures of the Arab regimes remain unchanged.

The Fragility of Secular Parties

Almost all Arab countries, save a few in the Gulf, hold regular elections but few may be said to be contested by real parties. Many small parties in Egypt, Morocco, Algeria and Yemen are no more than cliques founded by some leader aspiring to a political career.

Several basic causes underlie the current problems of secular opposition political parties in all Arab countries. Some causes are attributable to the ruling regimes, while others, though partially linked to them, are largely deficiencies

for which the parties themselves are responsible. Among the primary factors in the first category are (1) the calculated efforts of the regimes to put in place legal as well as extra-legal obstacles to constrain party activities and (2) the regimes blurring the boundaries between the ruling party and the state, to the extent that this boundary has often virtually ceased to exist (Egypt, Syria and Tunisia being the prime examples). Under this second condition the proper democratic order of things is inverted in that instead of having a government based on a party, what actually exists is a party based on the government, able to utilize the full resources of the state. In contrast, all other political parties suffer from chronic financial difficulties – barring the Islamist parties, which always seem able to acquire funding from both domestic and foreign sources – that severely restrict their effective functioning.

Secular opposition parties, however, hold much of the blame for their own weakness, lacking as they are in (i) vision; (ii) political skills; and (iii) an institutionalized, robust organizational structure.[15]

Lack of vision

Having no concrete feasible alternative programs to offer, all parties in their election campaigns focus on more or less consensual issues and shared goals that carry symbolic appeal, such as (on foreign policy) strengthening Arab solidarity and pan-Islamic bonds and (on domestic issues) economic growth, social equity, greater opportunities for employment, alleviation of poverty, etc. All the policy positions they endorse are usually cast in general terms and couched in ambiguous language which avoids the details of how these laudable aims are to be achieved in practice. Complex policy options are finessed in party declarations and the difficult trade-offs which they involve (the implications of which are often uncertain, even to experts) are simply ignored.

Regime candidates, though usually no more popular than their adversaries in the secular parties, win elections largely because of the strong support they receive from the state and also because they are perceived by the voters as more effective agents for patronage and for the provision of the services required by various communities.

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15 In this section I have drawn considerably on the study by Ottaway, M., & Hamzawy, A. (2007). *Fighting on Two Fronts: Secular Parties in the Arab World.* Carnegie Endowment for International Peace: Carnegie Paper No. 85.

Although the *raison d'être* of party competition is policy distinctiveness based on particular programs offered to voters, the leading opposition parties, while managing to maintain vague distinctive auras about themselves, lack a clear identity that can be readily apparent to the public. They have generally failed to provide concrete, well-formulated plans offering realistic alternative solutions to the developmental problems of their respective countries. What they submit as programs are little more than sketchy ideas that find little public response. As a result – and partly on account of a long-standing political cultural – ideological orientation and party platforms and affiliations count for very little in the choice of candidates. Moreover, the decline of Arab nationalism since the Arab defeat of 1967 by Israel – further increased by the deep intra-Arab political rifts during the last decade – and the general decrease in the appeal of socialism since the demise of the Soviet Union, has left the secular Arabist and left-leaning parties with messages that do not resonate with any broad sectors of Arab societies.[16] Moreover, while the Islamists mainly focus on concrete concerns of the broad masses secular parties tend to coach their discourse in the abstract language of liberal ideas that finds little appeal with the general public.

The revival of a strong Islamic fervor sweeping the Arab world has also confused the message of the liberal parties. With secularization having acquired moral dubiousness within Islamic countries, all secular parties, even while maintaining hostility towards the Islamists, have been driven to also stress their commitment to Islam and its values as a foundation for moral government, thereby injecting Islam into debates over public policy. This has tended to blur further the distinctiveness of the secular-liberal parties and dilute their concern with issues of fundamental freedoms and liberal values.

This incoherence, coupled with recognition that their weakness precludes the possibility of their sharing any significant measure of power through competitive elections, has driven many secular parties to explore new available political spaces as they appear, maneuvering as best they can within the parameters of the rules of the game set by the regime. Thus many secular parties, such as those in Egypt, Algeria, Tunisia and Morocco, have moved to associate themselves, in varying degrees, with the ruling regimes. This has been driven by two

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16 This is reflected in the very small number of seats that they have in parliament (barring those associated with the regime): In Egypt they won only 2 seats; in Algeria 6; in Morocco 27; and in Yemen 12 seats.

motives, the first being their willingness to settle for expectations that the state would allow them some small measure of representation in legislative bodies and the second being their natural inclination to side with the regime against the Islamists. Fragile and struggling for survival they face a difficult dilemma. While pushing the state, albeit with little effect, to democratize they fear that an opening of the system will clear the way for the Islamist parties to gain much greater power.

A striking case of the shift of opposition parties to support the regime is the case of the *Istiqlal* (Independence) and the USFP (the National Union of Popular Socialist Forces), the two strongest of the secularist parties in Morocco. Fearing the Islamist PJD (Party for Justice and Development) and unable to compete with it, they both moved so close to the government that they now no longer consider themselves in the opposition.[17] Simultaneously, the monarchy is trying to draw even the PJD into close conformity with state policies. The same trend can be seen in Algeria, where the Peaceful Society Movement, HAMS, (Muslim Brothers) has moved so close to the ruling regime that it prompted a significant faction within the party to break away (in February 2009) claiming that this policy has undermined the party's mission and its very identity.

This move of secular parties toward closer alliance with the ruling regimes has had a most deleterious effect on them by even further obliterating their distinctiveness and thereby weakening their attractiveness to new constituencies even further. For potential constituents there exists no reason for joining parties which are ideologically no different from the state's party but are far weaker and cannot dispense the patronage of the latter. This in turn has made it extremely difficult for secular parties to form any viable kind of front with the Islamists in opposition to the incumbent regimes, although a striking example of such a coalition was forged in Yemen. In contrast to all other Arab states, secular parties in Yemen, rather than drawing closer to the regime in the quest for symbolic representation in parliament and protection against the Islamists, managed to form a coalition with the Islamic parties – known as the Joint Meeting Parties – through which to confront the ruling party. This alliance, although owing most of its strength to the Islamist faction, has nevertheless also boosted, albeit very modestly, the appeal of the secular parties as well. Thus in the 2007 elections the Islamists gained 15% of parliamentary seats while other secular parties

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17 McFaul, M., & Wittes, T. C. (2008, January). The Limits of Limited Reforms. *Journal of Democracy* 19(1), pp. 22-23.

combined barely managed to win 5% (up from 4% in the previous elections), and more than 60% of the secular opposition parties (including some in the coalition) failed to gain any seats. The coalition still holds and its members have declared their intention to coordinate their efforts in the forthcoming 2009 elections. It is not clear, however, if the great disparity in power between the (strong) Islamic and the (weak) secular wings of the coalition will permit them to function as equal partners. Despite this encouraging experiment opposition parties in Yemen suffer from the same ailments that afflict party politics in the rest of the Arab countries. Moreover, past experience has shown that the rare instances of Islamic-secular alliances are short-lived.[18]

Nevertheless, there is some ground for optimism in regard to the prospects for a more effective opposition front. Despite the apparent cleavage within the opposition, particularly between the secularist and Islamist parties, there is in fact a significant convergence of attitudes among them on a variety of important issues as a result of common interests and values. They all share, in varying intensities, a commitment to Islamic values, and advocate a mixed economy (with varying degrees), a welfare state, Arab solidarity and, at least in theory, a commitment to political democracy. Also the absence of the intense ideological conflicts that once prevailed in the 1970s, 80s and 90s has tended to attenuate polarization of the political arena, and to that extent encourages and facilitates democratic transition.

Political Ineptitude

The failure of the opposition parties is also a consequence of their own political incompetence and lack of realism. They have failed to exploit the opportunities that have arisen to successfully push some measure of political reforms. Instead of conceding the realism of the ruling regimes that democracy should be implemented in controlled steps, and confining their demands to specific incremental reforms and their timing (such as limiting the tenure of presidents to a maximum of two terms in office) they have often demanded immediate comprehensive political reforms. Their demands included, for example, either an entirely new constitution (as in Egypt and Algeria), or broad curtailment of the monarch's powers (as in Jordan and Morocco), whilst propagating a

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18 A notable case was the alliance between the liberal Wafd party and the Muslim Brothers in the 1984 Egyptian parliamentary elections. Together they won 35 of the 444 contested seats (divided 70-30% in favor of the M.B.) Although only about 8% of total parliamentary seats it was the highest ever number of seats won by an opposition block. The alliance disintegrated a few months later.

victimization narrative accompanied by a barrage of shrill protests proclaiming that the opposition is under siege and bemoaning the dearth of democracy.

The political ineptitude of the parties is reflected also in their failure to reach a modicum of agreement even on broad lines of action that would enable them to form viable coalitions with which to confront the regime despite the fact that both those on the Right and the Left as well as the Islamists actually share many short-range objectives, such as democratic reforms, and are in broad agreement on economic policies based on free markets hedged by a strong welfare system. Notwithstanding these compatibilities debates between political parties invariably end with futile declarations of broad general demands which highlight their inability to adopt a common strategy to achieve any specific goal. Even when, as rarely happens, a coalition of secular and Islamist opposition parties does materialize (as in the previously mentioned example of Yemen), it remains highly tenuous and subject to the stress of their mutual loathing and suspicions due to their greatly diverging ideologies and ultimate aims. The Islamists being far stronger in most countries than secular parties are not keen to take the latter as partners, while the secular parties suspect that the Islamists' call for reforms is but a way-station towards their final objective of taking over the state.

The general political ineptitude of the opposition parties and their overall lack of political strategy are also partly to blame for their failure to tap into the large grassroots sectors of societies to build new constituencies as well as their seeming contentedness with merely highlighting the deficiencies of the government without offering any feasible alternative programs to correct these shortcomings.

Weak Organizational Structure

In contrast to the Islamist parties, all secular opposition parties are characterized by weak organizational structures headed by ossified leaderships that have been in place for decades. Many also suffer from strong personal and ideological conflicts within the party hierarchy. The lack of democratic mechanisms[19] to

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19 Indeed one may well wonder how can secular parties contribute to democratic transition if they have no normative commitment to democracy themselves?! Discussions of intra-party democracy must take account of Robert Michel's "iron law of oligarchy" in party organizations. While views have varied regarding the extent of validity of that law, in practice the prevalent concept is that the democratic element is introduced not by a grassroots participation of party members in the decision-making process, but by their regular legitimization of the party elite in a process conducted in a manner that allows for the expression of views as well as the change of leadership. It is precisely this process of clean and transparent legitimization which is lacking in most Arab parties. Generally the incumbent leader and his cohorts manipulate the entire process to retain his post indefinitely.

decide on policies and resolve internal conflicts among the party elites has tended to diminish their cohesion, leading to fragmentation and the formation of splinter parties. Furthermore, inconsistent political positions have rendered these already fragile and shallow-based parties even weaker.[20]

Opposition parties suffer from additional difficulties. The constraints stemming from the restrictive laws under which they operate have increased their basic fragility through the building up of internal frustrations within the top party echelons which tend to undermine the leadership's cohesion, and in several cases have led to serious fractionalization of the party. The Ghad, the liberal Wafd and the Nasserist parties in Egypt are striking examples of this internal splintering. Intensifying this problem is the legal ban on the creation of either a communist or an Islamist party in countries such as Egypt, Syria, and Tunisia. Denied party status, these groups have been forced to either join existing parties or form alliances with them as a means of attaining a legal umbrella for their participation. In either case the arrangement has tended to foster conflicts within the parties to which they are attached or allied. A third alternative, of course, would have been to go underground and form an illegal secret organization, but this was hardly necessary so long as the regime refrained from the use of force against these groups.

Structural and External Impediments

Compounding the difficulties faced by opposition parties in countries such as Jordan, Morocco, Yemen and Kuwait, is the tribal nature of their societies. The governing regimes in these states have forged strong bonds with the leading tribal families. Major policy decisions in these countries are first negotiated between the rulers and the chief tribes and influential families and then formalized through the institutionalized processes of the state. Notable examples are the Makhazen in Morocco, the Wahhabi religious institution in Saudi Arabia, and the tribal leaders in Jordan and Yemen. In Lebanon the same holds except that the stakeholders are the major religious communities and their foreign allies. This long-established pattern of governance, which characterizes the initial stages of state and nation building, is a great hindrance to the development and the outreach of all parties, but more so for secular ones

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20 The left-oriented Tagammu' party in Egypt, for example, while vehemently calling for political freedoms requires the government to impose curbs on the free activity of the Muslim Brothers.

who are less inclined to share, like the Islamists, the traditional conservatism of tribal and sectarian communities.

Two further exogenous factors – one genuine and the other contrived by the autocratic ruling regimes – have greatly added to the marginalization of the secular opposition political parties. The first (genuine) factor is the declining standard of living. The steep rise in prices in most Arab countries has made the struggle for survival the primary concern of the people, relegating demands for democratic reforms and political freedoms to a very low priority. This has tended to force political parties to join the masses demonstrating against the severe economic conditions and the rising levels of poverty and unemployment, rather than push for political rights as a major pre-requisite for effectively addressing most developmental problems. Thus the general economic crisis and its threat of social unrest has overridden the political agendas of the parties and well nigh obliterated its very relevance. One could of course argue that the political parties joining the masses to demonstrate give them an opportunity to link political demands with economic ones, and indeed they do. But the acuteness and urgency of the economic difficulties tend to drown the demand for political reforms. In fact, these difficulties have driven a demand for greater government intervention and control in all domains in order to alleviate the suffering of the more vulnerable groups. The second (contrived) factor is the ostensible fight on terror, which the Arab autocratic governments use as a pretext to constrain political parties and delay democratic reforms.

However, a third serious impediment to democratic reforms is the persistent internal strife which plagues the societies of several countries (Lebanon and Yemen, and to a lesser degree Algeria and Jordan)[21] and the state ofdeep-seated tensions between many Arab countries.[22] Strongly conflicting foreign policies between the Arabs over the roles and interests of external powers in the region, particularly those of the United States, Israel and Iran, have created a state of political congestion within many Arab countries that sharply raised concerns over foreign relations, relegating issues of democratic reforms to the background

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21 Sectarian strife in Lebanon, and severe tensions in Jordan, whose citizens are largely Palestinians, was fueled by the Palestinian-Israeli conflict.

22 Between Algeria and Morocco over the Western Sahara; between Syria and Jordan over the Palestinian problem; and between the so-called moderate and rejectionist countries over policy towards Israel and the United States.

All these impeding factors to the development of a healthy opposition have enabled the existing semi-authoritarian governments to remain firmly in place and maintain their dominance over the political arena. This strong entrenchment of the incumbent regimes has even led some Islamist parties – as in Morocco and Algeria – to seek accommodation with the government, arguing that outright confrontation is futile, and that by cooperating with the regime they can better promote their agenda.

As things stand now, in most countries political parties are unable to function effectively in aggregating the interests of social classes. Suffering from an ossified leadership remaining long in office they are unable to reform themselves and formulate a vision and offer viable programs that address the key concerns of their societies.

The Islamist Parties

Because of their preeminence in the opposition in all Arab countries, Islamist parties[23] warrant special attention. The Islamists are not a monolithic block but no matter their diverse shades, they all consider themselves the bearers of a moral message which they claim would form, if accepted, a solid foundation for a just government.

A nuanced analysis of the Islamist movement in the Arab world will readily show that there is a plethora of Islamist parties and groups with diverse political agendas. Barring a fringe militant faction all repudiate violence, and wherever allowed to participate have done so peacefully and abided by the rules of the democratic game. Moreover, while some, (like the Muslim Brothers in Egypt, the Party of Justice and Development in Morocco, al-Wasat al-Islami in Jordan, and the Tagammu Al-Watani lil-Islah party in Yemen) advocate a traditional conservative ideology that would not be quite compatible with secular Western-style liberal freedoms, they are not too different in basic orientation from the ideas propagated by the conservative Bible-quoting evangelical movement that appeals to millions of the American people, and which no doubt played a significant role in electing President Bush, in 2000 and re-electing him in 2004. Other Islamist groups, however, like the (would-be) Wasat party in

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23 Islamist parties and movements are defined in this paper as those that hold an ideology which maintains that Islam is not only a religion but also the basis for a comprehensive political system. Islamists come in different shades, some more fundamentalist than others but most advocate pan-Islamic political unity, and the fostering of an Islamic culture based on *Sharia*, though some prefer not to call for its immediate implementation, or explicitly declare it as their ultimate goal.

Egypt, stand on a political and social platform that goes a long way in satisfying most of the demands of the mainstream Arab liberals. Their aspirations with regard to political freedom are no less than their secular Western counterparts although their social orientation remains much more conservative.

While the secular parties claim adherents mainly from the bourgeoisie and intelligentsia, the Islamists have a constituency that is perhaps the most varied of all opposition parties, cutting across all social classes, and deriving their power mainly from the highly potent symbols of Islam within Arab societies, augmented by the good will generated by their widespread welfare network that provides basic services to the needy.

The Islamist parties have thus emerged as the most potent opposition groups in all Arab countries. The Islamic Action Group became the largest and strongest opposition in Jordan, Hizbollah became the most powerful party in Lebanon, and the Muslim Brothers are incontestably the only effective opposition in Egypt. However, although clearly constituting the core of the opposition, the electoral performance of the Islamists in most countries has not been too impressive despite occasional surges. Under the best of conditions in the semi-authoritarian regimes that prevail in all Arab countries the representation of Islamist parties has never exceeded 20% in any legislative body, except in Kuwait where the Islamist parties collectively won 33% of the seats in the 2008 elections. Undoubtedly in Egypt, and possibly in Jordan and Yemen, they would have most probably exceeded this ceiling of representation in parliament, were it not for state repression (in Egypt) and manipulation of electoral laws (in Jordan and Yemen) targeting the Islamists. However, in Morocco and Algeria, where the Islamists are not specifically targeted, their expected sweeping victories have not materialized. In Morocco when the PJD won 42 seats in the 2002 parliamentary elections by running in only 50% of the districts it was widely believed that in the 2007 elections, in which it contested 95% of the seats, its gains would be much higher, indeed some predicted as high as 47% of the seats in parliament. The results however fell far short of expectations. Although the elections were free and fair the PJD managed to increase its previous representation by only four seats. Thus it may be said that the Islamists generally do well but not well enough to gain major weight in parliaments.

While secular/liberal ideologies and their parties are suffering from a general decline throughout the Arab world and the Islamist ideological *trend* is on the

rise, the *electoral record* of Islamist parties is mixed. Their strong showing in some countries can be largely attributed to weak governance and civil strife as in Lebanon, or perceived rampant corruption as in Egypt. Hence in Lebanon and Egypt the Islamist parties are clearly in the ascendancy. (They are also on the rise in Kuwait largely because there are no organized secular groups as explained above).[24] Thus in Egypt the Muslim Brothers, although competing for only one third of the electoral districts, and despite brutal suppression by the police during the election process, won 20% of the parliamentary seats in the 2005 elections. In contrast, the secular parties collectively won only 2.5%. On the other hand, in Jordan, Algeria and Morocco, the major Islamic parties have lost in the latest national elections some of the ground they had gained in previous elections. The elections of course were not entirely free and fair, but nevertheless this downward trend puts in some doubt the general assumption that if these regimes truly guaranteed fair elections the Islamists would easily be swept into power.

However, regardless of the divergent views about the true power of the Islamists there can be no doubt that they are the central core of the opposition in virtually all Arab countries (barring those of course where they are already in power, as in Sudan and Saudi Arabia). Even in Syria, where membership in the Muslim Brotherhood is punishable by long prison terms, the Islamists, although unable to operate openly, remain the most serious challengers to the ruling regime.

In short, whichever view we take regarding the relative electoral strength of the various parties, there is no doubt that the most serious challenge to the regimes comes from the Islamist parties, even when they are deprived of legal party status as in Egypt, Syria and Tunisia. The importance of this challenge lies not merely in the broad-based constituency of the Islamists and their opposition to the policies of the government, but in the fact that they question (albeit usually implicitly and despite their participation in the political regime defined by the state) the very legitimacy of the regimes, as well as the current social systems, by virtue of the fundamental Islamic tenet that any government of an Islamic nation not based on an Islamic order is *ipso facto* illegitimate. What makes this challenge particularly dangerous to the regimes is not only the fact of

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24 In Kuwait there are numerous Islamist political associations of various shades; in Lebanon the two major Islamist Shi'a parties are Hisbollah and Amal, and representing the Sunna is Future Movement party; in Egypt there is only the Muslim Brothers and the small Wasat party, which though much more liberal than the M.B. is still denied legal recognition by the Egyptian regime.

the regimes' vulnerability arising from their low level of legitimacy but rather because the Islamists are perceived – and it is the perception rather than the veracity of the matter that counts – by very large sectors of the population to be offering a genuine viable alternative. What enhances this perception is that, unlike all other parties, the Islamists appear to be standing on a consistent set of salient (religious) principles – even though still not translated into concrete policies – which motivates and guides their actions. Despite the absence of any comprehensive program that can be said to distinguish them in any significant way from their secular competitors, the Islamists nonetheless project an image of bearers of radical change. They also bring with them a sense of ideological legitimacy and mission that seems to free them from the need to provide substantive policies. Thus running solely on vague Islamic slogans, such as "Islam is the Solution" they have nevertheless succeeded to a significant degree in winning over broad sectors of the population from all social classes. This lack of concreteness is premised on the belief which is shared by many devout Muslims that establishing *Shari'a* would herald a moral transformation of society in a deeply positive way, which they maintain is the most fundamental prerequisite for effectively addressing the country's developmental tasks.

There can be no doubt that the extensive social welfare networks that provide basic services to the under-classes, for which the Islamists are noted, are a major reason for their popularity, not merely for the material help they offer, but more importantly because by such altruistic actions they project an image of moral rectitude, sadly lacking in all other political parties. What further enhances their power is the fact that liberal democracy is hardly an urgent priority of the masses and hence the dangers posed to individual freedoms in a religious state established by the Islamists if they were to come to power are greatly outweighed by the attraction of what many see as a government that truly represents the country's authentic Arab-Islamic identity.

The Islamists have demonstrated considerable pragmatism and ideological flexibility. They accepted the rules of the democratic game and participated within the framework set by the governments; and proclaimed their devotion to democracy, demanding no more than a civil (not a theocratic) regime based on Islamic referents. Moreover, at the risk of alienating their core constituents they also attenuated their previous ideological stances that prioritized the *umma* (the community of Muslims) over national loyalty and God as the only law-giver, to accommodate the concepts of the modern nation-state and its institutions, and the principle of the people's sovereignty. But despite all this

moderation, they continue to be viewed with suspicion by both the ruling regimes and the secular parties.

The perennial question as to whether these participating Islamist parties are indeed committed to democracy cannot be answered in any meaningful way since it all depends on how *Shari'a* is interpreted by the different Islamic factions.[25] But the answer could also depend on the prevailing balance of power: Islamists advocating democracy now, while they are still struggling to gain some share of power under the incumbent autocratic regimes, could very well have a change of heart and revert to an orthodox stringent version of Islam once the balance of power changes in their favor. Moreover, since Islamic parties are not all the same, the true intentions of any one of them will never really be known unless it shares genuine power. However, despite the inherent risks, the Islamist parties should no longer be ignored or repressed if the goal is to make a transition to a more democratic regime. Since they enjoy real popular legitimacy and support they must be drawn into the system in those countries where they are still denied legal recognition, such as in Egypt, Syria and Tunisia. In countries such as Algeria, Morocco, Jordan and Yemen, where the state had already since long recognized their legitimacy but consistently denied them any share of power, they should now be allowed a measure of participation in the decision-making process. This, however, should be done cautiously, while simultaneously making a vigorous effort to establish strong and stable democratic institutions including a democratic constitution that provides strong categorical guarantees of civil rights and freedoms, and is based on a broad general consensus among the major societal stakeholders. Only a strong democratic regime can enforce the rules of the "democratic game" and punish, through the ballot box, radical anti-system activities.[26]

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25 This question of course should be raised with respect to all parties, but as noted by Marina Ottaway and Amr Hamzawy, the question is particularly important "to ask of the Islamists, for whom acceptance of democracy entails ideological conundrums, not just strategic decisions." (Islamists in Politics: The Dynamics of Participation. (2008). Carnegie Paper No. 98.)

26 Lessons from Europe show how the radicalism of communist parties persisted when European democratic regimes were weak in the period prior to World War II but underwent a deep change and reoriented their ideology in line with a democratic system once robust democratic regimes came to power following the defeat of fascism. Therefore, as Sheri Berman concluded in an interesting study, "[It is] not the presence of a democratic state that matters [in taming extremist parties] but rather its strength." (Berman, S. (2008, January). Taming Extremist Parties: Lessons from Europe. Journal of Democracy 19(1). Strong authoritarian states may also successfully force radical movements into moderation to avoid crushing repression. See El-Ghobashy, M. (2005). The Metamorphosis of the Egyptian Muslim Brothers. *International Journal of Middle East Studies* 37. Wickham, C. R. (2004, January). The Path to Moderation: Strategy and learning in the Formation of Egypt's *Wasat* Party. *Comparative Politics 36.*

Arab regimes continue to face a dilemma as far as the Islamists are concerned. By suppressing such an obviously popular movement, the regimes are seen to be violating their own declared democratic principles. On the other hand they fear that if recognized as a party and/or given unconstrained freedom of action, the Islamists may acquire, through the electoral process, a considerably higher level of legitimacy and power than they presently have. In that case the regimes would have undermined the whole democratic process by recognizing a party of dubious commitment to liberal democracy. So far the government's solution to the dilemma, in most Arab countries, has been to accept the political participation of the Islamists in national and local elections either as recognized parties or, where religious-based parties are prohibited, as independent individual candidates running under the banner of some other recognized party even though making no secret of their own true color. Thus the Muslim brothers in Egypt (despite their lack of legal status) are functioning as a true party in all important respects.

While all Arab governments continue to suppress the Islamists by various means many have nevertheless sought to attenuate the level of confrontation and conflict with them by conceding to some of their social demands if deemed to constitute no threat to the regime, such as the allocation of large funds to the support of Islamic institutions and the increase of religious programs on radio and TV.

Indeed all parties, and particularly the ruling regimes, voice respect for Islam, advocate adherence to its values, and acknowledge Islamic principles as *the* main or at least a main source of legislation. There is in fact a creeping Islamization of most Arab regimes, as they increasingly saturate their discourse with Islamic referents and symbols in an effort to boost their legitimacy and preempt the Islamists by projecting an image of religious rectitude. This has caused a seepage of Islam into everything: the social, the political, and the economic domains, and even into the most mundane activities of everyday life. Notwithstanding this fact all the current incumbent dictatorial regimes disingenuously portray their ongoing struggle for power with the Islamists as a campaign between the "liberal secularists" and the "illiberal Islamists" when in truth the ruling autocrats are obviously far from liberal and are equally far from being secular. Indeed how can they be secular when they all use Islam to legitimize their rule by saturating public discourse with Islamic symbols, mandate that *Shari'a* be the primary source of legislation, apply *Shari'a* in all family codes, discriminate in one form or another (in varying degrees) against their non-Muslim citizens,

and enshrine in their constitutions that they are an Islamic state?[27] No. It is all too obvious – despite the prevalent misconception that the state-Islamist controversy is between two dichotomous ideologies – that the entire conflict is over political power and nothing more. Consequently, it can truthfully be claimed that societies in most Arab countries are currently being gradually Islamized even while under their current so-called "secular" regimes. Thus, labeling existing governments in Egypt, Jordan, Algeria, Morocco, and Kuwait as secularist regimes simply because they have not declared themselves Islamic (like Sudan and Saudi Arabia) is largely a misnomer.[28]

Despite the recent broad constituencies of the Islamists, their modest showing in recent elections in Algeria and Morocco where they are not the target of special restrictions indicates that while people may be attracted to the vision of a future Islamic state, in the short run they are not willing to forego the advantages deriving from the patronage of the state and its candidates, who are able to promise the provision of benefits to their constituents with much greater credibility than their opponents. Of course there are those who believe that these election results have been seriously rigged by the regime and thus do not reflect the true power of the various political parties, in particular that of the Muslim Brothers, whose sweeping victories in the elections of several major professional associations are taken as an indication of their true power base among the broad masses. Indeed many analysts believe that if unrigged national elections were held today the Islamists would be swept to power. This might indeed be so in some countries, such as Egypt and Jordan (and possibly Algeria), if all parties were treated on an equal footing and elections were free and fair. But so long as the state parties continue to have unlimited access to the state's resources there is no reason to believe that even in completely fair elections the bulk of the electorate would choose to sacrifice the chance of improving their material lot for whatever psychological satisfaction may attach

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27 This pervasive Islamic discourse in many Arab states together with the recent surge of Islamic sentiments in the region has so permeated Arab societies that for many just about every human act is supposed to reflect a religious consciousness. For large sectors of society virtually nothing stands apart from Islam.

28 The persistence of religion as a strong component in legitimizing regimes has led P.J. Vatikiotis to conclude that the philosophic foundation for rational secular rule in Arab countries never really existed, and that consequently the so-called secularism of Arab regimes is in fact nothing more than "a veneer… superimposed on the state in an emulative way". Religion and State. (1983). In Warburg, G., & Kupferchnudt, U. M. (Eds.), *Islam, Nationalism and Radicalism in Egypt and the Sudan* (p. 70). New York: Praeger.

to voting for a candidate running under the banner of Islam. This is so, since voting for the regime's candidate does not close any door to also benefiting from the services provided by the Islamists' welfare network. Thus the voter by choosing the regime's candidate to represent him/her can have the best of both worlds. On the other hand it is also quite possible that a significant proportion of the votes garnered by the Islamic parties have been largely protest votes cast against the regime. The Islamists are usually the main beneficiaries of these protest votes simply because they appear more viable and distinct than the secular parties.

Perhaps the most important point to note about the performance of the Islamic parties is that despite their activism and their demonstrated moderation and acceptance to contest power by democratic rules, their actual political influence has been marginal in that they have never succeeded in causing any Arab regime to change any of its substantive policies. This fact could eventually tend to radicalize factions within the Islamist movement. Already many of the Islamist constituencies believe that their participation has only served to legitimize the ruling regimes without anything to show for it. This might explain why the Islamists in the recent elections in Morocco, Algeria, and Jordan performed far less than the expectations based on the previous elections.

Political Parties, Civil Society and Democratization

A very close association, indeed an intrinsic one, exists between political parties and the organizations of civil society. It is inconceivable to expect a vibrant party life in the absence of a robust civil society, they go together hand in hand; and the latter of course cannot be expected to exist in the absence of a reasonable measure of civic and political freedoms that should prevail even in a fledgling democracy. Hence effective party life is pre-conditioned on a transition to at least the first tier of a democratic polity.[29].

That said, two problems closely related to the issues of political parties and the transition to a democratic polity remain and should be addressed: the first is that it is not clear, and hence hard to evaluate, whether the modest steps taken by some Arab regimes by way of democratic reform are indeed part of a genuine commitment to a long-range plan that aims at eventually establishing

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29 Which must of course be characterized by "rule-of-law" and stable democratic institutions that function reasonably well.

a full-fledged democracy, or merely token gestures intended to placate the international community, in particular the United States, and the rest of the industrialized Western democracies.[30]

The second problem resides in the risk that truly free and fair contested elections might bring to power popular non-democratic parties. The risk of a recurrence of the "Algerian Syndrome" cannot be entirely guarded against; but there are other encouraging, albeit limited, experiences in Lebanon, Mauritania, Morocco and Iraq. The wisest course to adopt to limit the risk appears to be a two-pronged strategy that combines support for reform processes "from above" – which can only come via whatever leverage the Western democracies have with the incumbent regimes – with backing "from below" by pro-democracy activists within civil society so that a liberalizing semi-authoritarian regime is not suddenly overwhelmed by the challenge of an Islamist take-over that would precipitate a violent state response. While this two-pronged strategy is no doubt very sound theoretically, yet in practice it is most difficult to implement in the Arab context which is characterized by a weak, largely unincorporated, civil society constrained by state laws that severely restrict the freedoms of political parties and non-governmental organizations, buttressed by a battery of laws that criminalize all attempts by the former to seek any form of external support.

Many pro-democracy activists believe that external pressure is indispensible to the success of their endeavors, but empirical evidence suggests that outside support to empower civil society with the aim of enabling it to force an opening of the system and check the arbitrariness of the authoritarian state can be *significantly* effective only if the existing civil society is *already* sufficiently robust to make use of that support. This indeed was also the gist of the testimony given by U.S. State Department officials and other experts at the Congressional hearings held in May 2006 on the subject of U.S. aid to promote democracy. The evidence presented in the hearings showed that successes

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30 As noted insightfully by Rebecca Miller: When one looks at democratic transitions, particularly transformations within the context of a strong regime and a weak opposition, the majority of them commence as 'token gestures' on the part of the regime. These gestures became meaningful by being responded to vigorously by the opposition, which both filled up the spaces created (even in the face of terribly biased rules of political competition) and continued to push the regime to liberalize further. There is a fundamental dynamic in play between regime and opposition which often makes liberalization the prelude to democratization. This stresses the importance of participation of the opposition in *semi-authoritarian* regimes, despite the fact that the regime seems to hold all the cards.

like those of Georgia and the Ukraine were possible only because civil society associations in these countries had reached a level of political maturity and organizational competence that made external assistance an effective element in their confrontation with the autocratic state. Where civil society (including political parties) was extremely weak, as is the case in most Arab countries, external assistance proved of little avail, and only succeeded in antagonizing the ruling regimes. Thus the conclusion was that though discreet assistance could be provided by the West to the fledgling forces of civil society in the Arab world, these latter must first predominantly rely on themselves to develop. That process, of course, will be long and painful, but there are already hopeful signs that in the not too distant future a critical mass of pro-democracy organizations and activists will be reached in several Arab countries. At that point concerted massive external help could very well tip the balance of forces leading to a democratic breakthrough. It should be noted, however, that such an outcome cannot be achieved by civil society on its own absent an effective party system. In fact, the civil society thesis that claims that vigorous civic activism can force authoritarian Arab governments to introduce significant democratic reforms has failed to demonstrate its validity. The evidence is clear that "nearly two decades after scholars heralded its rejuvenation civil society has not yielded any results in pushing Arab states towards democratic transitions."[31]

My argument has so far avoided the dichotomous model of framing the issue in terms of whether a robust civil society, including political parties, is a precursor for democracy, or, vice versa, that democracy is the prerequisite for the development of civil society. An acceptance of the latter view necessarily implies that democracy can only come about by a top-down process in which the people play no role or at most an insignificant one. It is difficult to accept this view since it flies in the face of abundant evidence to the contrary. The Cedar revolution in Lebanon, and the Orange revolution in Georgia are but the latest examples; and even more striking examples from the 1980s are the cases of Solidarity in Poland and the Charter 77 in Czechoslovakia, all of which attest to the possibility of an indigenous development of civil society under authoritarian rule, and even, as in the last two cases, under crushing totalitarian regimes.

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31 Yom, S. L. (2005, December). Civil Society and Democratization in the Arab World. *Middle East Review of International Affairs* 9(4). See also footnote no. 34.

On the other hand if one preconditions the forward progress of democracy only on the forces of civil society we would be hard put to explain the not insignificant liberalizing steps taken recently in several Arab countries – notably Morocco, Algeria, Kuwait and Bahrain – despite their weak civil society. Moreover, if a robust civil society must precede democracy, how could we ever hope to develop civil society in the face of an authoritarian regime that leaves no opening for civil organizations and ruthlessly crushes any possible autonomous civil growth at its inception? Fortunately, however, all authoritarian regimes in the Arab world, largely due to their geopolitical and military weakness and their interlocking economic and political relations with the United States and the West in general, cannot maintain the stark totalitarianism that would render the forces of civil society non-existent, as is the case, for example, in North Korea and Myanmar (previously Burma).

Recapitulation and Conclusion

Although political parties abound in most Arab countries their viability is poor and party life as a whole is stagnant, lacking in dynamism and evoking little interest among citizens. Addressing this stagnation is one of the most pressing problems facing political parties. With the notable exception of the Islamists, political parties are weak, fragile, and fragmented, and the broad masses of voters are generally politically apathetic in most Arab countries, except where the state is weak, and the polity unstable, as in Iraq, Lebanon and Palestine.

In all Arab countries, save Lebanon, semi-authoritarian regimes with dominant executives, and a great capacity and experience in political manipulation, have domesticated their weak and fragmented secular opposition, thus contributing further to their chronic ailments. Often close to financial bankruptcy and with their ability to function effectively severely constrained, secular parties have become increasingly acquiescent to the ruling regimes.

High barriers obstruct the formation and activities of political parties, and winner-takes-all electoral systems and campaign restrictions strongly favor the incumbent regimes, thus preventing opposition parties from developing significant strength to constitute a challenge to the ruling elites.

But the fundamental reason for the poor performance of political parties is their general political weakness, which makes them ineffective vehicles for mass political participation. Having shallow bases within society, their ability

to mobilize popular support is extremely limited. No party seems to have an established broad constituency or to be expressing any strong collective political will emerging from a social base. Although the government parties of the various regimes win all elections by landslide margins, one cannot say that they enjoy any genuine popularity.

There can be no doubt that the weakness and fragility of political parties – except the Islamist – in all Arab countries is a major obstacle to any democratic transition no matter the laudable liberalizing steps taken by several Arab regimes. Therefore, to build up a democratizing momentum the constraints on the formation and activities of political parties must be diminished in order to allow secular liberal parties to develop in strength and create real constituencies.

But so long as the authoritarian Arab regimes maintain their present firm grip on civil society as a whole, there is little hope for the development of a robust partisan life. Political parties cannot begin to develop and assume their putative role effectively as a major agent for free participation of citizens unless the ruling regimes undertake some reforms that provide – at least to some reasonable degree – a genuine opening of the political system.

Moreover, the pervasive cynical political apathy in most Arab countries needs also to be overcome if a functioning democracy is to be achieved. The most recent elections have shown (as already noted) that more than 60% of voters in the three most populous Arab countries: Egypt, Algeria and Morocco – which together account for more than two thirds of the Arabs living in countries that have an elected parliament – do not bother to vote, indicating that there exists a vast reservoir of potential constituents which secular opposition parties have so far failed to tap.[32] Thus even when relatively free and fair open competition has been achieved (as in Morocco, and Algeria) citizen representation in legislatures is very weak, and a great disconnection persists between citizens and the political system.

The Islamist parties with their superior organizational capacities have been exerting vigorous efforts among all classes for decades. The fact that despite

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32 In societies with strong sectarian divisions as in Lebanon (Muslim/Christian) or in Kuwait and Iraq (Sunni/Shi'a), sectarian emotions generate relatively high levels of participation. A similar high level of voter turnout is found where foreign policy issues are intensely contested as in Lebanon, Jordan and Palestine – due to relations and interactions involving Israel, Syria and the United States with the various domestic factions.

these efforts such a huge percentage of potential voters remain uninvolved indicates that with effective outreach to this mass of non-participants secular parties may well succeed in drawing many to their ranks.

Numerous surveys clearly indicate that the large majority of the populations in all Arab countries strongly support a democratic system. This support does not necessarily imply a desire for a western-style secular democracy. Rather, there is strong indication that the vast majority of Arabs would prefer a democratic political system that assigns to Islam an important role. A 2007 Gallup poll of more than 90% of the global Muslim community spanning more than 35 nations revealed that about 86% want either Shari'a to be the sole source of legislation or at least one of the sources. The desire for democracy is no less among the secularists.[33] Thus to the extent that popular support facilitates a transition to democracy, most Arab states are ripe for change. But this popular support has not found expression in any effective popular movement. Among the vast masses, it remains a preference to the existing regimes but does not attain the urgency of a priority demand that can energize the broad masses to force the incumbent regimes to democratize.

The autocratic regimes, on the other hand, are quite content with this political apathy. Authoritarian systems after all survive best by discouraging mobilization, except in their own support. Thus Arab regimes, while giving lip service to the virtues of political participation, tend to view it as limited only to activities directed at promoting economic development and strengthening national unity. Consequently, the issue of political reforms pressed by opposition parties – which would have the effect of energizing the system and hence also fostering increased participation – is painted by the ruling elite as largely irrelevant to the country's present problems. Holding regular elections seems to be the extent to which the incumbent regimes are prepared to go toward demonstrating their democratic credentials. Thus in several Arab countries although more or less free competitive elections were held, the political reforms which the regimes claim to have carried out were largely cosmetic in nature, and did not indicate a genuine commitment to democratization. Such moves often came as a response to domestic and/or international pressures, and hence should be seen as a strategy to deflect criticism and contain pressures for change.

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33 Tesler, M., & Gao, E. (2007, July). Gauging Arab Support For Democracy. *Journal of Democracy 16* (3). Esposito, J. L., & Mogahed, D. (2007). *Who Speaks for Islam?* A Gallup Research. New York: Gallup Press.

So far civil society associations, because of their access to funds from external donors – which the law denies to political parties – have been the agents that are most active in pressuring governments. But NGOs by themselves can only achieve very limited goals[34]; to succeed in attaining more significant objectives a close interaction must exist between the associations of civil society and strong political parties that have a wide outreach. Samuel Huntington has called political parties "the characteristic institution of the modern political system… the means and agents of political power [in a democracy.] They play the vital role of 'the hinge between state and society'".[35] Empirical evidence shows that this role of intermediary structures between state and society played by political parties cannot be undertaken by either social movements or the associations of civil society.

What's to be done by Arab political parties in the face of authoritarian regimes?

First to note is that the resilience of authoritarianism in the Arab world derives not from essentialist cultural factors but in the character of the Arab state, most particularly in the "exceptional strength and will of its coercive institutions to repress all democratic initiatives" that seriously challenge the sweeping powers of the incumbent regime. That exceptional coercive capacity is largely due to four factors: the state's access to significant sources of rent; the support of international patrons (mainly the West and particularly the United States); the patrimonial character of state institutions; and a low level of popular mobilization pushing for democratic reforms.[36] This last important factor should cause no surprise since, after all, there was never in any of the Arab countries much of a tradition for democracy to draw upon.

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34 Since the turn of the century the concept of civil society has come under strong critical review. Although the usefulness of voluntary associations is not denied the one-time exaggerated notions of their political importance has been rejected as unfounded "conceits" by numerous scholars. Indeed as noted by one scholar "a strong civil society does not necessarily make a society strong and civil." The example of Lebanon is a case in point. See Edwards, M. (2004). Civil Society. Cambridge: Polity Press, p.36. See also Rieff, D. (1999, February 22). The False Dawn of Civil Society. *The Nation.* See also Woolf, A. (1998). Is Civil Society Obsolete? In Dionne, E. J. (Ed.), *Community Works: The Revival of Civil Society in America.* Washington DC: Brookings Institution Press. See also footnote no. 30.

35 Quoted in Hofmeister, W. (1995). The Promotion of Political Parties. In Thesing, J. & Hofmeister, W. (Eds.), *Political Parties in Democracy* (p. 467). A Konrad-Adenauer-Stiftung publication.

36 Bellin, E. (2005). Coercive Institutions and Coercive Leaders. In Posusney, M. P., & Angerist, M. P. (Eds.), *Authoritarianism in the Middle East Regimes and Resistance.* Bouder Colorado: Lynne Rienner Publishers Inc.

A second general noteworthy point relates to the political system in which parties operate. Democracies are based on the principle of representation, and in a populous modern society this principle can be given effect only through the existence of political parties. Extensive empirical evidence has shown that political parties flourish and wane in conjunction with the parliamentary system; the levels of their respective robustness are intrinsically linked. Thus modern parties develop best in parliamentary political systems, as opposed to presidential systems. This fact goes some considerable way in explaining the weakness of political parties in the Arab countries, almost all of which – both republics and monarchies – adopt a "presidential" system in which power is concentrated in the head of state rather than the parliament and the government that emanates from it as in parliamentary systems.[37] Thus despite multi-party politics legislatures remain weak. With a legacy of decades of executive dominance under autocratic presidential regimes the exercise of real autonomy is foreign to most Arab parliaments, which are unaccustomed to effectively monitor and discipline the executive. Some, as in Egypt, Syria, and Tunisia, have often even abdicated their authority in certain important matters, authorizing the president to decide on them at his discretion.

How to strengthen these parties under the current presidential systems is a problem for which there is no blueprint. The secular parties themselves must work their way towards a solution within the context of their particular environment. But, as in all failures, correct prognosis is the first step to progress if coupled with the will to overcome the underlying deficiencies. The primary sign indicating the existence of such a will would be the restructuring of the party and its institutionalization of political practice in accordance with democratic norms. This step will help rejuvenate the parties and enable them to attract and build up new youthful cadres, reversing the current hemorrhage of young dynamic elements that leave the parties dismayed by their entrenched autocratic leadership.

A second step to strengthen party politics would be a concerted effort by the parties to push for two major electoral-institutional reforms. The first is to make voting mainly by party slates, with a limited margin for candidates running independently. This would shift the focus of voters from the personalities of candidates to party platforms. Additionally, the slate system will enable parties

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37 Thesing, J. (2005). Transformation, Democracy and Political Parties – The Role and Significance of Parties.

to include in their lists women and other minorities who stand little chance of winning if they run as individuals, and thus encourage the participation of these groups in party politics. The second major reform is devising an electoral system that would protect at least against massive fraud (see Mostafa El Nabarawy in this volume). Such a system would greatly boost the general credibility of the elections and consequently help overcome much of the political apathy that leads to low voter turnout which largely derives from a widely prevalent belief in many Arab countries that the elections are heavily rigged by the government...

A third important step would be for the secularists to realize that democracy is now advocated, at least in theory, by all, including the autocratic regimes; hence secular parties can no longer claim it as their own. In fact the liberal discourse and platforms of secular opposition parties are hardly distinct from that of the governing party. Indeed, in some countries such as Morocco, Algeria and Kuwait, liberalizing steps concerning the rights of women were initiated and pushed through parliaments by the government in the face of resistance from Islamist and other conservative groups. Therefore, besides the necessity of maintaining an unwavering commitment to democracy, secular parties must project some other distinctive vision of their own. In contrast to the Islamists, secular parties have no holistic ideology or powerful slogans that appeal directly to the emotions of Arab societies, which are mainly religious and conservative. Thus to compete effectively with the Islamists secular political parties must at least project a vision of the society they would hope to establish if voted into power, by defining a platform that spells out how they will deal with the country's economic and social problems and, most importantly, explicitly stating the steps they will take to advance respect for individual freedoms and human rights in both the political and social spheres. They would have to present also a convincing argument that may be readily grasped by the broad masses showing the link between freedoms and rights and economic and social development. The link must be explicitly made between the current structure of (unlimited) political authority and the actual problems faced by citizens within these countries. Rights and freedoms naturally flow from an awareness of the pathologies of unlimited authority. Hence the parties must mobilize people in support of concrete incremental but significant reforms, such as for example setting presidential term limits.

It would seem therefore, that one of the important challenges of democratization in the Arab world is the creation of strong and stable secular – that is non-Islamist

– political parties capable of penetrating deeply into society, particularly the provinces, to mobilize broad sectors of the population and to give expression to popular interests. This of course is an uphill struggle requiring time and political organization and skill, particularly where a ruling party exists – as in Egypt, Syria, and Tunisia – that is allowed full access to the coffers of the state and is strongly supported by its executive bureaucracy. These obstacles are large but not insurmountable. Opposition parties facing similar unfavorable circumstances in other authoritarian countries have managed to succeed, albeit after a long persistent struggle. A striking example is the MDB party in Brazil which had to fight in rigged systems and gradually, very gradually, attain power this way.[38] (More on the usefulness of such persistent engagement later). Second, and more importantly, secular parties, as Marin Lipset correctly insisted, must succeed in establishing "a permanent base of support among a significant segment of the population if they are to survive electorally". But this stable base Lipset maintained cannot be achieved unless secular parties represent true socio-economic cleavages within society. Only then would there be a chance for the development of political parties, and the enhancement of the credibility of party politics, that could overcome the present widespread political apathy in most Arab countries. These are the first crucial steps towards establishing the kind of truly functioning partisan life which undergirds a democratic polity. It should be admitted, however, that this is easier said than done, for the central question remains unanswered: How to develop secular parties based on deep cleavages of socio-economic interests? Lipset's answer to this difficult question was that the development of strong secular parties grounded in these socio-economic divisions "appear to result not only from the existence of these divisions; it may also be an outcome of a mix of elite behavior and fortuitous history."[39] This of course does not provide us with any guidance as to what recipe should be followed at this time in the region of the Middle East and North Africa, where neither history nor the ruling elites provide grounds to hope for such an outcome.

As things stand now, wherever elections were relatively free Islamist parties and movements – despite gerrymandering by the state and electoral laws designed to limit their elective power – have frequently registered significant

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38 I owe this example to Rebecca Miller.

39 Lipset, M. (2000, January). The Indispensability of Political Parties. *Journal of Democracy 11*(1), p. 54.

results and sometimes even made striking gains (as in Egypt) despite numerous governmental constraints. Clearly, the Islamic movement is organically rooted in the political and cultural life of the Arab people, strongly shaping social norms, and Islamic parties are now generally acknowledged, even by their adversaries, as the most potent opposition force in almost all Arab countries. Thus, ironically, despite their intensely negative image in the West – mainly because of their heavy anti-Israeli stance on the Palestinian issue, and their anti-American position on Iraq – they are effectively the major force calling for political reform, and pressuring the region's authoritarian regimes to democratize.

Given the current worldwide upsurge of Islamic religious sentiment,[40] coupled with the state of general tension between the Islamic world and the West, particularly the United States, secular parties will not be able to compete with the Islamists effectively and gain broad constituencies if they insist that religion be kept apart from politics. Such a position besides being unrealistic in the Muslim world happens also to run counter to the democratic principles they claim to uphold, among which is the fundamental right of all groups to compete freely (and peacefully) over the goals and values they wish to advance in society.

Hence the best strategy for secular parties would be to boldly confront the Islamists and show that democratic and liberal values have deep roots in Islam's holy text, with particular stress on highlighting the areas of individual freedoms and minority and women's rights – which are precisely the areas where the Islamists' discourse is most vague. They should show that while the moral teachings of Islam are eternal, the social norms of Muslim communities have undergone and continue to undergo change.[41] Thus the secular parties

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40 Such an upsurge is not prevalent in other religions except for a Christian denomination in the United States where the evangelical movement has gained momentum in recent years. In Europe religion has witnessed a sharp decline in the last few decades. The remaining two largest religious/cultural groupings in the world, Hinduism – the third largest "religion" after Christianity and Islam (in India) and Confucianism (in China), are markedly different than Christianity and Islam. Hinduism is not a "unified system of belief encoded in a declaration of faith… and its comprehensive tolerance to differences in belief and its openness makes it difficult to define it as a religion." (Wikipedia Encyclopedia) while Confucianism is not a faith but a set of philosophic teachings. Moreover, unlike Islam and Christianity, neither aspires to attract converts, and unlike Islam neither seeks to interject its values in the politics of their respective countries.

41 Thus, for instance, slavery was not prohibited in the Qur'an yet it was banned since long in all Muslim countries.

will have picked up the gauntlet and confronted the Islamists on their own ground, forcing them to clarify their current murky position on these issues. This would give the electorate a clear choice – which is at present largely unavailable because the broad masses are not exactly aware what the Islamists' ideology entails in practice.

There is an inherent contradiction between authoritarian rule and a robust party life that involves a genuine competition for political power. Meaningful party competition can only exist in a democracy; the more developed the democracy the more effective the role played by political parties. Hence there can be no way to deepen the development of political parties in the Arab world save by first loosening, to some reasonable degree, the current suffocating grip of the semi-authoritarian governing regimes on the political arena in order to create a more level political field that would encourage meaningful party competition. While domestic pro-democracy actors must of course play the major role in forcing such an opening, yet the Western powers, particularly the United States, can extend a helping hand given the considerable leverage – political, economic and military – which it enjoys in the Arab world.

Two major strategies, when judiciously adopted by political parties, have shown to be significantly effective in loosening the grip of authoritarian regimes. The first, and most important, is the focus on limiting presidential terms, and the second is vigorous participation, alternating with broad-based boycotts (though rarely possible) of elections, depending on opportunities created by domestic and external conditions and events.

A determined focused effort should be mounted by all opposition parties - to set a presidential term limit not exceeding two terms, and push to have that condition deeply entrenched in the constitution to prevent its easy reversal by the incumbent autocrat through plebiscites or other simple constitutional tactics. Besides its manifold advantages in preventing the ills of long tenure which leads to a concentration of power in the president's hands and hence an increased risk of abusing it, a term limit is the most potent single reform that would increase (not guarantee) the likelihood of an alternation in power of political parties. In electoral authoritarian regimes the president and the ruling party have extremely high incumbency advantages. A term limit on the presidency forces the successor candidate to face the opposition. As noted by Gideon Maltz in a study of more than 44 electoral authoritarian countries during the period 1992-2006, "These often-handpicked successor candidates tend to

fare worse in elections than their predecessors – in other words, the political opposition fares better against successor candidates than against incumbents. Presidential term limits thus reduce incumbency advantages and substantially improve the chances of political-party alternation in power."[42] The incumbent's advantages are numerous: being a more familiar figure; having symbolic credentials; the capacity to claim credit for some important achievements; the ability to appeal to the popular desire for continuity and stability; and most importantly, the incumbent's ability in authoritarian regimes to use the levers of the state to his advantage. But when an incumbent steps down "the regime becomes more apt to fracture, leaving it substantially less able and less willing to resort to… [vote rigging and intimidation tactics] and therefore vulnerable to the political opposition."[43] The reason for this fracturing is that "the patronage networks of authoritarian presidents are personal" and they begin to unravel once it is known that the ruler is about to relinquish power.[44] In other words, the exit of the incumbent autocrat tends to incapacitate the regime's coercive powers against the opposition, thereby increasing the chances for political-party alternation. Alternation of course does not mean that a genuine democracy has been established but it is a process which if routinized will over time tend to "erode the informal networks of electoral authoritarianism" and hence facilitate democratization. Furthermore, the approaching date for the incumbent president to relinquish power is expected to trigger within the ruling party dynamics that would tend to loosen its cohesion and hence weaken its hegemony, as suppressed differences between factions within the party erupt to the surface, and leaders within the party hierarchy jockey for positions and power. In short, the formidable staying power of ruling parties under semi-authoritarian regimes will be strongly shaken by the ascension of a new president even if he hails from within the party itself. All this would open windows of opportunity for opposition parties to contribute effectively toward a democratic transition. Lessons from Africa show that since 1990 and up to mid 2008 term limits have ended the tenure of 14 presidents. True that this did not end the institution of the "imperial presidency", but empirical evidence indicates that the cycle of revolving presidents has tended to expand freedoms

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42 Maltz, G. (2007, January). The Case for Presidential Term Limits. *Journal of Democracy 18*(1).

43 Ibid.

44 Hale, H. (2005, October). Regime Cycles: Democracy, Autocracy, and Revolution in Post-Soviet Eurasia. *World Politics* 58.

and opened the system to more robust political activities.[45] This notable liberalizing effect of term limits led a noted scholar of the African scene to claim that the combination of regular elections with term limits now acts in lieu of the conventional coup d'etat as the primary means of producing regime change.[46]

Moreover, the push for presidential term limits does not challenge the dominance of the regime in the short term and is thus a far more realist and viable a reform to pursue than a radical transformation of the entire political system. Furthermore, it is the kind of issue which all opposition parties, including the Islamists, would whole-heartedly support.

It is therefore on this crucial issue of presidential term limits that the democratic West and donor nations should focus their efforts, should they still desire to actively promote democracy in the Arab world.[47] The advantage of this focus is that a term limit is something that is concrete and identifiable, in contrast to the other elements of democratic government, such as free elections, an independent judiciary and a free press, all of which are difficult to determine exactly and hence allow autocrats to either brazenly claim their existence, or, alternatively, advance excuses for their inadequacy based on institutional incapacity or cultural considerations.

But what about the monarchies for which there are no term limits? To pressure the Arab monarchies to open their system is more problematic. All of them exercise almost totally unchecked powers. Moreover, in the case of Morocco and Jordan their kings are venerated for their Islamic lineage that is believed to go all the way back to the Prophet's family---which fact makes them legitimate leaders of their faithful citizens and hence justified to wield exceptional powers.

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45 Prempeh, H. K. (2008, April). Presidents Untamed. *Journal of Democracy 19*(2).

46 Posner, D. N., & Young, D. J. (2007, July). The Institutionalization of Political Power in Africa. *Journal of Democracy 18*(3).

47 The effectiveness of the role of the West, particularly the United States, in promoting democracy in the Arab World has been greatly exaggerated. The democratic rhetoric of the US was particularly loud during the first half of the second term of the Bush administration, but it is a myth to claim that US pressures drove the implementation of elections in the Arab World, and was rewarded by the rise of the Islamists. Most authoritarian Arab regimes – in Egypt, Tunisia, Morocco, Algeria, Yemen – had conducted regular elections long before the American clamor for democracy because these highly manipulated or rigged elections burnished their international credentials and gave an aura of legitimacy on their regimes without constituting any real challenge to the ruler's monopoly of power. Even in Palestine, the elections that brought Hamas to power were not run in compliance to US pressures, but because after the death of Yasser Arafat, the Palestinians chose to have an election that would determine who should lead after the passing of their iconic leader.

Fortunately, however, both monarchs are inclined towards reform and have in fact implemented lately significant liberalizing changes. Further, the prospects for development of political parties in their kingdoms are more promising than in many other Arab countries because of the absence of any state party that dominates the political scene as in the cases of Egypt, Syria, Tunisia, Yemen and Sudan. The other Gulf monarchies should be of little concern to democracy promoters. The indigenous populations in the largest of the mini-states of Bahrain, Oman, Qatar, and the UAE does not exceed 1.5 million, while the average annual per capita income in these four countries is about $24,000, one of the highest in the world. The combination in these countries of a small affluent population and a traditional tribal culture has generated very little demand for vigorous party politics. Hence the urgent need for viable political parties in the presidential countries – whose citizens are much more numerous and far poorer (their combined average IPC about $ 5000) – is absent in these small Gulf monarchies, and indeed political parties are not permitted there.[48] The remaining Gulf monarchy, Saudi Arabia, is a country that is an anachronism in the twenty-first century. It lacks even the most basic institutions of a modern state, let alone political parties, and hence is irrelevant to this paper.[49]

The second strategy to weaken the grip of the incumbent authoritarian regime is to undermine its legitimacy through boycotts of elections and alternatively through vigorous participation depending on changing circumstances.

Authoritarian rulers are now forced to cloak their regimes in an aura of democracy, thus opposition political parties are permitted and regular elections are held. While outright rigging of the elections is often resorted to, the incumbent regimes found it more expedient to ensure the emergence of loyal parliaments by manipulating the election rules and the electoral process, in addition of course to a whole slew of constraints on the formation and activities of political parties, as previously noted.

But despite all these obstacles political parties may yet succeed in gradually extending the democratic margin. This is due to the fact that the elections no

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48 There is, however, need in these countries for greater respect of human rights in general and women and minority rights in particular.

49 If we are to concern ourselves with Saudi Arabia it should be only with regard to combating the radical Wahhabi Islamic ideology that is so inimical to liberal democracy and which that country, using its vast oil wealth, is zealously propagating within the other Arab countries, and indeed among Muslims in the four corners of the globe.

matter how short they fall from international standards nevertheless constitute an arena of political struggle and thus provide a forum where different social classes and groups can debate public policy and express their vital interests as well as critique the regime and the electoral rules. A well conducted campaign of this nature could well expand the opposition in parliament. Thus in Tunisia the regime was forced to increase the number of seats reserved for the opposition from 12% to 20% in the last 2007 parliamentary elections; and in Egypt the Muslim Brothers whose representation never exceeded 5% in any parliament were able in the latest 2005 elections to win 20% of the seats. Moreover, even pliable parliaments subservient to the executive can nevertheless help focus attention in the press to the shortcomings of the government. These factors have led a number of scholars to conclude, based on comparative evidence elsewhere that "democratic transition can emerge from prolonged periods of controlled electoral contestation".[50] Even Islamist parties with dubious democratic credentials may also contribute to the democratic transition if only by helping to erode the legitimacy of the incumbent regimes. Of course all of this doesn't imply the inevitability of an eventual transition to democracy if political parties simply persist in participating in these highly controlled elections. The importance of modifying the institutional framework of the current electoral systems is crucial and should be a focal goal of all opposition parties. But even short of this important goal there still remains one other useful strategy – the boycott – which may be useful if adopted by a majority of the leading opposition parties under the present stringent electoral conditions. But a broad coordinated boycott is unlikely to be achieved given the conflicting interests and policies of the various opposition parties. Alternatively, opposition parties have resorted to disqualifying their votes to register their disapproval of the entire electoral process, and perhaps by this means also prevent the government from stuffing the boxes by unclaimed votes. The most striking example of this tactic was exemplified in the latest Moroccan elections of 2007, when the total turnout was only 37%, of which 19% of the votes cast were disqualified These strategies

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50 Posusney, M. P. (2005). Multiparty Elections in the Arab World. In Posusney, M. P., & Angerist, M. P. (Eds.), *Authoritarianism in the Middle East Regimes and Resistance.* Bouder Colorado: Lynne Rienner Publishers Inc. Other scholars have provided examples of such protracted electoral struggles against entrenched authoritarian regimes which eventually led to the forcing of democratic openings. See for example Huntington, S. (1991). *The Third Wave: Democratization in the Late Twentieth Century.* Norman: University of Oklahoma Press. See also Vengroff, R., & Cheevey, L. (1997). Senegal: The Evolution of a Quasi Democracy. In Clark, J., & Gardinier, D. (Eds.), *Political Reform in Francophone Africa.* Boulder: Westview. See also footnote no. 37 on the case of Brazil.

of participation and boycotts, however, present a dilemma that this paper cannot answer. Nevertheless I indicate it on the premise that highlighting it will help determine when it is appropriate to use either course The dilemma is that boycotting the election denies legitimating the regime by participating in its corrupted electoral system. By boycotting elections and exposing the distorted electoral rules opposition parties can undermine the government's credibility especially if coupled with a strong demand for specific institutional reforms. An expanded boycott can thus give greater voice to the need for an alternative electoral system that guarantees a a more level playing field. But on the other hand, participating in election campaigns opens venues for opposition parties to promote their programs and present critiques of the regime. The drawback however, is that participating opposition parties might be seen as opportunistic for taking part in a choreographed exercise that is intended to legitimate the regime.

As already noted, the democratic West has a role to play in helping the indigenous forces pushing for democracy, no matter whether they are secular or Islamic parties or movements. It is not expected, nor should the West seek, that the Arab Muslim countries establish democracies that exactly mimic those of the western world. Democracy in the Muslim countries should take into account local traditions and, in order to take hold and develop, must draw heavily upon the values in the Qur'an that extol plurality and tolerance. Hence the urgent need for an Islamic reformation that would debunk the ossified, narrow doctrines of medieval scholars and show that Islam's holy text easily lends itself to liberal interpretations that are not incompatible with democratic values. This would also preempt the standard argument of the Arab autocratic regimes for resisting democratization by disingenuously propagating the myth that should the Islamists come to power the door to democracy will be permanently closed for the foreseeable future.

The Western democracies need not subscribe to any of the ideologies of the various Islamic parties, but this should not lead to maintaining a hostile attitude towards them. After all, it is hardly possible for them to push for democracy and expect results while maintaining either a hostile attitude or at best ignoring the most politically popular movement in the region. Moreover, Islamist regimes need not necessarily be illiberal and hostile to democracy. And if indeed the majority of the Arab people wish to elect regimes with an Islamic bent, would it not be patently a subversion of democracy for the United States to endeavor to thwart that wish?

If we assume that a democratic and stable Arab world is in the interest of both the United States and the peoples of the region then to attain this objective domestic forces that call for genuine democratic reform, no matter whether they are secularist or moderate Islamist, should be supported by the Western democracies. After all, empirical evidence from the Arab countries that permitted the political participation of Islamist parties – as in Morocco, Jordan, Algeria, Yemen, and Kuwait (political movements in lieu of parties) – shows that the Islamists played by the rules of the democratic game, and were moreover generally the most potent player pushing for democratic reform. It is precisely for this reason that they are perceived by the incumbent autocrats as their only dangerous challenger, and hence are targeted by all the Arab authoritarian regimes.

However, there are hopeful signs that some Arab leaders are prepared to expand the margin of freedoms in their country. Most notable in this regard are Qatar, Bahrain, Morocco, Jordan, and Yemen. It is not yet clear what the ceiling of liberalization in these countries will be but there are some grounds for cautious optimism that the next few years will witness an increased opening in the political system of some Arab countries in such measure as would open opportunities for political parties to function effectively, thus reviving a meaningful partisan life that would lead to serious competition not only between the Islamists and the regime but between secular and Islamist parties.

A more dynamic party life will no doubt be an important element along the path of democratization, but if the history of Europe's transition to democracy is any guide we should expect that establishing a stable democracy in the Arab world is likely to develop over the long term, and its course will probably be marked with fits and starts and possibly also a measure of social and political turmoil and even violence. But, as noted by Sheri Berman when surveying the history of Europe's democratic transition, "the sad truth is that in politics, as in economics, there is no free lunch".[51] And indeed there is not – in every field of human endeavor.

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51 Berman, S. (2007, January). How Democracies Emerge: Lessons From Europe. *Journal of Democracy 18*(1).

MEDIA IN THE MIDDLE EAST AND NORTH AFRICA

Dr. Qays Jawad Azzawi

Introduction

This paper deals with the situation of the media in the Middle-East and North Africa but it is limited to the Arab States in general. It delves into the cases of some Arab countries from the Mashriq, namely Iraq, Syria, and Bahrain, and from the Maghrib, namely Tunisia, Libya and Morocco.

The paper points to the fact that Arab media is no longer what it was in the early eighties, restricted to a number of newspapers, radio and television stations. In fact, there has been a great boom in the number of written and audio-visual media. In 1997, there were 482 satellite channels. The written media is no longer comprised of just papers, especially after the widespread usage of the Internet and electronic press through blogs, Wikipedia and YouTube, as well as social sites namely Bebo, Facebook, Myspace or even internet 'tools' such as Digg.

After presenting the situation of the Arab media, this paper assesses the position of the Arab States as it relates to central issues concerning the media, such as the press constitutional and legal freedom space, the fact that journalists are incriminated and imprisoned, the forbidding of any criticism against the leaders, and the difficulties of accessing information and data.

The paper reaches the following critical results. It is apparent that security and political bodies control the freedom of the press. The paper tackles cases of journalist imprisonment in the Arab countries. It also deals with the dependence of the media on the ruling regimes. It mentions the three taboo subjects in the Arab media: religious influence on the Arab media, the lack of public trust in the Arab media, technological advancement and legal regression in the protection of journalists, and the lack of power pressure on the media to rectify their ways.

The paper then studies the cases of some Middle Eastern countries and others from North Africa, namely Iraq, Syria, Bahrain, Tunisia, Libya, and Morocco, dealing with the situation of the media in these countries in an analytical and critical approach as to assess the space for press freedom in these countries.

General Information about the Arab Media in Terms of Quantity

The Arab media are no longer what they were in the early eighties, i.e. restricted to a limited number of papers, radios, and TV stations. There has actually been a great expansion in the written and audio-visual Arab media. The written media no longer mean papers. Especially with the wide use of the Internet and the rise of interactive media, the emergence of blogs, Wikipedia and YouTube networks, or social sites such as Bebo, Facebook, and Myspace or even Digg the scope of the written media coverage has broadened.

Arab countries have witnessed a qualitative leap as concerns social media; Arab blogs are estimated to 490 thousand 162 thousand of which are in Egypt alone, i.e. 31% of the total number of Arab blogs. The number of Arab sites recorded on the internet is 41745 according to a 2007 survey. The highest rate of internet users is in the UAE with 33% and Qatar with 26% whereas the percentage is 7% in Egypt, 11% in Saudi Arabia and 7% in Syria.[1]

Facebook users in five Arab states (Egypt, Saudi Arabia, Jordan, the UAE, and Lebanon) reached 1698960 in 2008[2]. The fact that Iranian censorship forbade access to Facebook a few days prior to the presidential elections that took place on June 12, 2009 – since Mir Hasan Musawi proponents have succeeded in using Facebook to promote Musawi's candidacy and agenda – shows, if anything, that the internet is important in mobilizing Iranian public opinion.

Audiovisual media outlets have also increased considerably. As concerns figures one notices a discrepancy. The First Arab Report on Cultural Development for the year 2007 surveyed 482 Arab satellite channels: 19% religious channels, 18% entertainment channels, and 4.8% for literature and culture.[3] *Arabian Business* surveyed 474 Arabic satellite channels and among which more than 72% are owned by the private sector, and 18.5% are based in Saudi Arabia.[4] In 2008 only, 103 satellite channels – 20% of which are religious – were launched in the Arab world [5]

Ben Smalley, publisher of the Middle East Publishing Guide at the Middle East Publishing Congress held in Dubai in 2006, stated that the publishing market

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1   See: *First Arab Report on Cultural Development for the year 2007.*

2   See Facebook Up Close. *Guide to Arab Blogs: Alphabet of Technology.*

3   First Arab Report, op. cit.

4   See survey by *Arabian Business* (2009, June 13).

5   Field survey by *Good News TV,* (2009, January 10). Cairo.

in the Middle East has recorded record growth rates. The 2006 edition of the guide included more than 700 magazines, 170 newspapers, 140 TV channels, 145 radio stations, in 14 states in the region.[6]

A report set up by the committee on freedoms at the Federation of Arab Journalists whose headquarters are in Cairo showed that the number of newspapers of all sorts in all Arab States is about 5016 newspapers, among which 276 dailies, 507 weeklies, 3758 specialized newspapers. There is one daily newspaper for every 1,108,000 Arab citizens. The number of working journalists in the Arab world amount to more than 34, 500 journalists among whom 25,743 registered in journalist unions and journalist associations in their countries.[7]

The Arab States' Position as to Central Matters Related to the Media

It is quite difficult to cover all Arab media activities for they are diverse and numerous and their number is increasingly growing. This is why I will use an analytical survey carried out by Ala' Laftah Musa: 'Factors that Influence Freedom of the Press in the Arab World' (MA thesis at the Faculty of Information – Cairo University, 2009) and the report of the committee on freedoms at the Federation of Arab Journalists as well as some other chosen articles to present the position of Arab states as the crucial Arab issues that concern the media in general.

Freedom of the press in Arab constitutions and press acts

The Federation of Arab Journalists ensures that 'all Arab states have a law that organizes journalists' activities except Iraq'.[8] Ala' Laftah sees that the Constitutions of ten Arab states have clearly indicated that the freedom of the press is guaranteed. These states are: Jordan, the Comoro Islands, Kuwait, Egypt, Sudan, Syria, Oman, Iraq, Qatar, and Tunisia. Six of these states – Egypt, Jordan, Oman, Qatar, Sudan, and Tunisia – have insisted that this freedom

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6   Samlley, B. (2006). *Middle East Publishing Guide.* Research paper presented at the Middle East Publishing Congress held in Dubai.

7   See *Report of the Committee on Freedoms at the Federation of Arab Journalists to Straighten the Situation of the Press in Arab States for the Year 2006.* Published on the Naba' network under the title *Arab Press: Severe Regression, Illiteracy, and Government Repression.*

8   *Report of the Committee on Freedoms at the Federation of Arab Journalists,* op.cit.

be based on law, whereas Saudi Arabian Constitution for instance does not mention the freedom of the press at all. The Saudi Arabian Constitution simply mentions the commitments that the media ought to keep. The Constitutions of eight other Arab states – Jordan, the UAE, Bahrain, Yemen, Kuwait, Egypt, Mauritania, and Oman[9]– have stipulated the possibility to declare a state of emergency and martial law in which case the freedom of the press is suspended. Egypt, a pioneer in the media field, is one of the Arab states where the emergency law is applied freely. In short, the press and publication Acts in eighteen Arab states baffle the freedom of the press.

Incriminating and imprisoning journalists

Eleven Arab states – the UAE, Bahrain, Yemen, Kuwait, Lebanon, Mauritania, Morocco, Libya, Oman, Qatar, and Tunisia – have considered that criticism of the Head of State, the King, the Emir, or the ruling family is a crime sanctioned by the law. In the press Acts of nine Sates – the UAE, Bahrain, Algeria, Kuwait, Lebanon, Mauritania, Morocco, Qatar, and Tunisia – it is considered a crime to slander the Arab or foreign Heads of State, the ministers of Foreign Affairs, or diplomatic representatives. Fifteen states – the UAE, Bahrain, Algeria, Yemen, Lebanon, Libya, Mauritania, Morocco, Sudan, Syria, Saudi Arabia, Oman, Palestine, Qatar, and Tunisia – have incriminated in their press Acts the publication of anything that is related to national security, public safety or public security. Fourteen states – UAE, Bahrain, Algeria, Kuwait, Lebanon, Libya, Egypt, Mauritania, Morocco, Syria, Oman, Palestine, Qatar, and Tunisia[10] – have imposed detention and prison sanctions with or without fines for journalists.

The sanctity of the governor and men of religion

The Constitutions of five states – Jordan, the UAE, Kuwait, Morocco, and Oman – have stipulated the sanctity of the governor. The Iraqi Constitution has conferred sanctity on religious dignitaries and religious places on Iraqi land. Bahrain and UAE have forbidden the publication of the proceedings of the Council of Ministers. Bahrain has also added the interdiction of any news

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9   See Musa, A. L. (2009). *Factors that Influence the Freedom of the Press in the Arab World.* Master thesis, Cairo University – Faculty of Information.

10 See footnote no. 9 and also Salih, F. The Freedom of the Press in the Arab World. *Al-Qantarah site.*

about the Armed Forces. Eight states – Bahrain, Algeria, Kuwait, Lebanon, Libya, Mauritania, Palestine, and Tunisia – have enacted sanctions upon any journalist who publishes an article that may prejudice Islam, other religions or religious communities.[11]

Press censorship

The Federation of Arab Journalists considers that there is 'government censorship on newspapers in thirteen Arab states. The number of states where the chief editor uses censorship amounts to fourteen states'[12] While Ala' Laftah sees that five states – Kuwait, Lebanon, Libya, Egypt, and Saudi Arabia – have enacted laws that forbid censorship of local newspapers; whereas Qatar has enacted a law stipulating censorship of the local newspapers.[13] In Egypt, the Regulation of the press Law stipulates: 'Censorship of the press is prohibited; yet, in case of declaration of emergency or in times of war specific censorship may be imposed on the press in matters related to public safety or for national security purposes.'[14] Since the state of emergency has been imposed in Egypt since October 6, 1981, censorship is still enforced. Seven states – Bahrain, Algeria, Yemen, Kuwait, Libya, Sudan, and Saudi Arabia – have imposed an examination of the imported newspapers before their distribution. Seven states – the UAE, Algeria, Lebanon, Libya, Mauritania, Syria, and Palestine[15] – have forbidden the distribution of newspapers without a license. A report by the Federation of Arab Journalists sees that Qatari newspapers 'have not witnessed any temporary or permanent closing episodes or any prior or subsequent censorship, any confiscation of documents or any information tools, or any pressure of any kind to have sources revealed. Qatar has not been included among the states where the editor-in-chief practices censorship as is the case in Morocco, Mauritania, Algeria, and Iraq.'[16]

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11 Musa, A. L. *Factors that Influence the Freedom of the Press in the Arab World,* op. cit.

12 *Report of the committee on freedoms at the Federation of Arab Journalists,* op.cit.

13 Musa, A. L., op. cit.

14 The Press Law in Egypt, no 96/1996, Article 4.

15 Musa, A. L., op. cit.

16 Report of the Federation of Arab Journalists. (2007, May 19). *Qatari Al-Sharq newspaper.*

The right to access information

The report of the committee on freedoms at the Federation of Arab Journalists points out to the fact that 'twelve states have laws that bind official parties to provide journalists with information whereas these laws are not available in five other states.'[17] Six states – Jordan, Bahrain, Algeria, Yemen, Egypt, and Sudan – have included in their Press Acts the journalist's right to have information. Five states – Jordan, Algeria, Mauritania, Morocco, and Syria – have included in their acts the right of the journalist and the newspaper to professional secrecy.[18]

Arab Media: An Assessment

The positions of Arab states are very different in all fields, political, economic, social, and cultural. Yet, they all generally agree in security matters. They define security as State and government security not the security of the country and of the society. In order to achieve State security and ensure the monopoly of the government one notices incomparable success of the meetings of Arab Interior Ministers and Arab Information Ministers in particular. As a result of this success, the media have to pay with their long-sought freedom, which is repressed through various means.

Should one proceed to an assessment of the Arab media in general, one would notice the following:

The Freedom of the Press Controlled by Security and Political Authorities

The freedom of the press and of freedom information – though guaranteed by the Constitution or mentioned in the press Acts, and even if the latter forbid the imprisoning of journalists – May, in my opinion, be suppressed by political and security authorities. Journalists may be sued based on other charges and may be prosecuted – as is often the case – based on criminal law, commercial or administrative law, national security law, labor law, personal status law, or the law of naturalization. I can mention cases of journalist and media worker imprisonment in a number of Arab states some of which are known as the most liberal in their policies and they are:

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17 *Report of the committee on freedoms at the Federation of Arab Journalists,* op.cit.
18 Op.cit.

- Jordan for instance was not among the countries whose laws stipulate the imprisonment of journalists. The 2004 press and publication Act stipulated the prohibition of journalist imprisonment or journalist arrest in publication-related crimes. Yet, Amman's Court of First Instance sentenced the editor-in-chief of 'Al-Arab al-Yawm' newspaper, a journalist from the same newspaper, the former editor-in-chief of 'Al-Dustur' newspaper and a journalist from the same newspaper to three months imprisonment on March 19, 2008. The sentence was based on the Jordanian criminal law. Their crime as announced was slandering of the judiciary and commenting upon its criticism-immune rules.[19] On May 2009, the Jordanian Court of Appeal in Amman decided to reject the appeals of three journalists and a lawyer who challenged Amman's Court of First Instance rule. The Court condemned them for 'subjecting the course of justice to doubt and contempt' and the decision to imprison them three months was based on the provisions of art.15 from the Law on contempt of court.[20]

- In Iraq, tens of journalists are held in the prisons of the American forces and in Iraqi prisons as they are accused of terrorism or of helping terrorists. Some prisoners have been held in prison for investigation for years without being tried. The Media Monitor about Press Freedom states that 'journalists working in Iraq have faced many difficulties and have had to face 256 cases from May 3, 2008 to May 3, 2009: 58 cases of aggression by security forces, 98 detention and interdiction cases, 14 cases of journalists who were detained by the American and the Iraqi military forces for various lapses of time.'[21]

- The Algerian government arrested three journalists in September 2008 after they had done some field research about security forces' corruption and work.[22]

- In Egypt, the Ajuzah Court of First Instance ruled on September 13, 2007 that the editor-in-chief of 'Al-Dustur' daily, the editor-in-chief of 'Sawt al-Ummah' weekly, the editor-in-chief of 'Al-Fajr' weekly, and the former editor-in-chief of 'Al-Karamah' weekly, all be given maximum penalty stipulated by the Egyptian criminal law for those who 'publish news, declarations, or heinous rumors likely to disrupt public order.'[23]

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19 See *Jazeerrah Net.* (2008, March 19).

20 See *Manassat site.* (2009, May 22).

21 *Report of the Media Monitor about Freedom of the Press in Iraq for the year 2009.*

22 The National Union of Algerian Journalists. (2008, November 5).

23 Statement of Amnesty International. (2008, March 27). See also *Al-Sahrq al-'Awsat newspaper.* (2008, March 27). See also *Reuters.* (2007, September 13).

- In Morocco, Moroccan judiciary ruled in April 2006, that the editor-in-chief of 'Le Journal Hebdo' magazine be fined 270,000 dirham as sanction. This incident set a record as to a fine imposed on a journalist in Morocco.[24]

- In Saudi Arabia, the Saudi authorities accused Saudi activist, Ra'if Badawi of 'creating a website that violates [the principles of] Islam' on May 5, 2008. They called for five years imprisonment of Badawi and a fine of three million Saudi Riyals (around US$800,000).[25]

- In Kuwait, a journalist in 'Al-Siyassah' was imprisoned on January 12, 07 as he had called upon compensations for Iraq 'for the harm it has suffered as a result of the American invasion of Iraq'.[26]

- In Yemen, the website 'Naba' News' editor-in-chief was called on October 28, 2008 for investigation which lasted ten hours. The Prosecutor then decided to imprison him for a week for publishing news about a disagreement between Ta'z Governor and political security General Director.[27]

The Media's Dependence on the Regimes

Arab governments take on the task of 'supervising the media in fifteen Arab states, while other parties take part in the supervision in three states. The audio-visual media are privately owned in ten states, are owned by the government in nineteen states and have mixed ownership in three states.[28]

Most major newspapers and audio-visual media in the Arab world do not have financial or political independence from the ruling regimes. In Libya, Tunisia and Syria, all media outlets are at the service of the Heads of state. In the Gulf States, most newspapers and media are owned by the ruling family, backed by one of them or supported by businessmen related to the ruling family. In Iraq, the government and the coalition parties in power, the United States, Great Britain, and some neighboring countries own all major newspapers and media. There remains a margin for opposition newspapers. Media outlets often go bankrupt

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24 Seibert, D. (2007, November 5). Journalists and the Press in Morocco, In Constant Decline. *Al-Qantarah site.*

25 *Afaq newspaper.* (2009, June 13).

26 'Ali al-'Ali. Imprisonment of a Kuwaiti Journalist in al-Siyassah Newspaper for Praising Saddam. Cairo: Iraq News Agency.

27 See Statement by the International Federation of Journalists. (2008, November 1).

28 See *Severe Regression, Illiteracy, and Government Repression.* Arab Press: Naba' site - from the Report of the committee on freedoms at the Federation of Arab Journalists, op.cit.

or are forced to close down. In Egypt, all four major newspapers are controlled by the government who appoints the editors-in-chief of these newspapers. The government may also dismiss any journalist who does not comply with its orders as it happened in October 2008 when 'Al-Jumhuriyyah' newspaper dismissed journalist Hisham Basyuni from his job as the editor, upon a demand from the Minister of Labor Force and Immigration, Aishah Abdul-Hadi.[29] Lebanon is the only country that enjoys some independence and relative freedom within the thin balance of religious communities as well as regional and foreign pressure.

The Three Taboos in the Arab Media

All Arab media are bound to respect three taboo subjects when it comes to criticism. These taboos are: religions, (with some relative exceptions in Lebanon, Algeria Iraq, Egypt, and Sudan), rulers, and traditions. The accusation of violation of Islamic values has become, with the rise of religious extremism, the most dangerous on the official and popular levels. It is followed by the accusation of disrespect to the rulers. It comes either as direct accusation or a forged one such as: endangering civil peace, transgressing national unity, harming public interest, threatening the system, etc.

Religious Influence on the Arab Media

It is noteworthy that most Arab regimes fear extremist religious groups that greatly influence Arab public opinion. In fact, these groups exert pressure on the Arab media and use them for their own purposes to spread their ideology. Almost no Arab newspaper, radio, or television today – even 'Al Jazeerah' that has a greater margin of independence – is free from religious guidance programs such as 'Al-Sharia wal-Hayat' program in which SheikhYusuf Qardawi issues fatwas on Haram and Halal for viewers[30]. There are more and more veiled journalists, which is a new phenomenon that did not exist before the eighties. I have already pointed out that 20% of the Arab TV stations are religious.

The Lack of Public Opinion Trust in the Arab Media

The Arab public opinion looks at the official Arab media – except the opposition media – with a lot of suspicion. This is what is indicated in surveys carried out in the Arab region. In this sense, the head of the Polling Unit in the Center for Strategic Studies, Mr. Faris Brizat says that opinion polls in Arab states

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29 See condemnation statement by *the International Federation of Journalists.* (2008, October 28).

30 For instance Khadijah Bint Qannah on Al Jazeerah television.

show many elements namely that the national media do not have a lot of trust among the people. This conclusion was also that of a survey carried out by the BBC and by Reuters, and a survey carried out by Zoghbi International, among others.[31]

Yet, Satellite channels have helped mobilize Arab public opinion, especially 'Al Jazeerah' channels that have helped strengthen the freedom of expression and advocate democratic values, which led Arab Information ministers to ratify the 'Charter of Satellite Broadcasting in the Arab region' on February 12, 2007 in order to restrict the freedom of the media, regulate it and impose sanctions on whoever does not abide by these regulations.[32] This Charter was condemned by The Arab Network for Human Rights Information, The Arab Committee for Human Rights, and Reporters sans Frontieres. Agnes Callamard, Executive Director of Article 19 human rights organization deemed the Charter 'A great hindrance to the freedom of the press and the freedom of expression in the Arab world'. Callamard added that the Charter is an attempt to suppress the main source of independent news and information for millions of people in the region. She also said that the provisions of the Charter are in contradiction with Article 32 of the Arab Charter on Human Rights which includes the right to access data, freedom of expression, and was ratified by the Council of Ministers of the Arab League in 2004. It also contradicts Article 19 of the International Covenant on Civil and Political Rights ratified by many governments in the region.[33] Qatar and Lebanon have refused this Charter and were later joined by Iraq, Algeria, and Syria. It is note mentioning that there is a 'Media ethical treaty' in thirteen Arab states whereas there is no such treat in six other Arab states.[34]

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31 See Program about the survey and the credibility of the media. (2006, May 3). *Al Jazeerah Channel.* See also Foreign Media Compete to Attract Arab Spectators. (2006, July 11). Reuters. See also a survey by the BBC and Reuters in April 2007.

The BBC survey showed that Al Jazeerah channel is one of the most trusted channels in the Arab world and that 80% of the Egyptians consider Al Jazeerah as the most worthy of their trust. This is also what is shown in a survey by Zoghbi International, Maryland University, and covered Jordan, Lebanon, Morocco, Saudi Arabia, Egypt and the UAE. It showed that opposition satellite channels such as Al-Manar – which belongs to the Lebanese Hizbollah – and Al Jazeerah in Qatar are those that the Arab public watches most, much more than al-'Arabiyyah that is broadcast by Saudi Arabia, or Al-Hurrah which is broadcast by thre U.S. Al Jazeerah got the highest viewing percentage, i.e. 65%.

32 Qays Jawad Azzawi, Q. (2008, June 25). What's Behind the Media Ethical Treaty? *Akhbar al-Khalij.*

33 See *Misrawi Com site.* (2007, February 21).

34 *Report of the Committee on Freedoms at the Federation of Arab Journalists,* op.cit.

Technical progress and Legislative Backwardness in the Protection of Media Workers

There has been huge technological information advancement in Qatar, Saudi Arabia, and the UAE: Qatar has become the leader in political news. Saudi Arabia is the leader in satellite channels. The information sector in Abu Dhabi has witnessed radical changes in form and content to go with the times and meet the needs of the twenty-first century. Yet, the status of the non national media workers – Arabs and foreigners – has not improved. There are no press unions or rights for hundreds of them. The system of work sponsor allows the dismissal of any Arab or foreign media worker from the country within hours[35]. Throughout 2008 Reporters Sans Frontiers and the Doha Center for Media Freedom, which I used to run, endeavored to improve the situation of foreign journalists in the Gulf States. But the system of work sponsor, which is used in the Gulf States, imposes unfair terms on foreign journalists. Among these terms, the interdiction to come in or come out of the country other than by virtue of a written authorization from the party that employs him, also his agent. These terms also include the interdiction for any foreign journalist to interfere with the country's internal business be it political, economic, or even health related. Whoever violates these interdictions is imprisoned or banned from the country. For instance, Egyptian blogger Yusuf Ashmawi Yusuf was imprisoned in Hayir Prison, Riyad, for more than twenty-two months.[36] Also, a Jordanian journalist in the Qatari Al-Sharq newspaper was sentenced to three years imprisonment for she criticized the administration of Hamad hospital in Doha.[37]A Dubai court sentenced former editor-in-chief of Khalij Times English newspaper, Shimba Casiril Janjadharan and journalist Muhsin Rashid who were accused of 'blaspheme'. This sentence comes less than two weeks after the Ra's al-Khaymah Appeal Court rendered a five month prison sentence of two bloggers.[38]

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35 Arab journalists working in the press in the Gulf are threatened with being ousted from the country should they make any error considered as political. For instance, we can mention a Jordanian journalist who was working for Al-Sharq Qatari newspaper. She was condemned to three years of imprisonment in absentia because she criticized the way a hospital worked.

36 Statement of *Arab Network for Human Rights Information.* (2008, October 14).

37 See statement by *Reporters Sans Frontieres.* (2008, May 22).

38 Statement by *Reporters Sans Frontieres.* (2007, September 25).

Lack of Public Power

Arab media is submissive, just as is the case for media in any part of the world, to three powers: the political power that uses the media as a tool to influence public opinion; the capitalist power that uses the media for its economic interests; and the power of the public. The Arab people cannot choose their parliamentary representatives or their rulers except in very few cases such as Lebanon, Iraq. The people are unable to choose their political regime and have no power over the media[39].

Case Studies from the Middle East and North Africa

1. Iraq:

Iraq was ahead of all other Arab states with the publication of the first newspaper, 'Journal Iraq' which was published by the Ottoman Wali, Dawud Basha in both Arabic and Turkish in the early years of his rule of Baghdad, in 1816. Ever since, the press in Iraq has played various important roles in informing the public opinion and raising awareness, in accordance with the leeway allowed by the successive Iraqi governments.

The second republican era that started in 1968 and ended in 2003 is probably the most oppressive in the history of Iraqi information since there is no media but those of the government and of the ruling party. But, in 2003, the first year of the American occupation, Iraq witnessed an upsurge in the number of daily and weekly newspapers with more than 201 newspapers.[40]

Iraqi TV channels that were launched between 2003 and 2008 are to this day 43 various channels: 54% are general, based on their programs; 20% are fully political; 15% are religious; the remaining percentage varies from channels dedicated to entertainment to education, sports, and economy. 56% of these channels speak for the Shiites; 16% speak for the Sunnis; 14% for the Kurds; 12% have no affiliation (See survey by Good News TV Magazine, January 10, 2009). There are also more than 28 known radios.[41]

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39 The fact that the Arab public is weak is seen in the choice of political representatives in Arab despotic regimes where the president is elected by 99% of the votes. In some Arab countries, there is a widespread and massive fraud. Rulers stay for ever in power and pass on the heritage to their offspring as is the case for kings. This is what happened in Syria and this is what will happen in Egypt, Libya, and perhaps other countries.

40 See the Bibliography of Iraqi newspapers published after April 2003, by journalist Sa'd al-Din Khudr in the Iraqi newspaper, 'Al-Jaridah' from 2003 to 2004.

41 See *Good News TV survey.* (2009, January 1).

The Iraqi information network includes a number of TV channels, radio stations, newspapers, weekly and daily magazines. It is an official network whose directors are nominated by the Prime Minister and whose programs are supervised by the government. Iraqi newspapers, magazines, satellite and ground radio and TV stations are owned by religious parties and groups whose policy they represent. For instance, Iran uses its influence and sometimes finances Shiite religious newspapers. Saudi Arabia also uses its influence and finances Sunni religious newspapers. At a lesser degree, so do Syria, Libya, and even Turkey which finances the media of Turcoman forces. The United Sates finances the strongest TV and radio stations in Iraq. They are: 'Al-Hurrah, Iraq', and 'Sawa' radio. GB uses its traditional media power through the BBC, the most popular radio station in Iraq. GB also uses its historical influence as a former colonizer of the country and monopolizes currently some Iraqi media. This is what the Iraqi call 'The lion's share' of the occupation forces in the media.

In addition, the 'new media' networks are also active such as blogs and network news providers. Yet, the use of the internet in Iraq is still limited for many reasons, mainly due to the continuous power failures. These means have an important role in spreading the culture of freedom of expression.

The main problems of Iraqi media may be determined as follows:

- After the occupation, Iraq has become the most dangerous country in the world for journalists. In the past six years, more than three hundred media workers died in Iraq. Despite the decline in violence, around 256 violations occurred in 2008 thus threatening the freedom of the press in Iraq. [42]

- There is a lack of professionalism which needs to be addressed. Since most directors, workers, and policy-makers in the media field are politicians and not professionals, they and the journalists who work with them need training sessions.

- There is an urgent need for a press and publication act; the Chamber of Deputies has, to this day, not ratified a draft media and communication law.

- Political, religious, community, and national affiliations in all Iraqi media have negative repercussions and kindle violence in the country thus threatening civil peace.

- Religious groupings have an enormous impact on the media which continuously transmit the communities' rituals to the readers and viewers,

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42 See *Report of the Monitor of Press Freedom in Iraq for the year 2009.*

thus contributing to baffling public freedoms and spreading fear among the media workers themselves as well as the public.

2. Syria:

The first Syrian newspaper was published in Aleppo. It was 'Jaridat Furat' in 1865. Another newspaper was published in Damascus in 1867, 'Jaridat Suriyyah'. The Levant was at the time a pioneer in the information field. Many newspapers were published in and out of it, such as in Egypt where pioneers of the Egyptian press were from the Levant, e.g. 'Al-Manar' that belonged to Muhammad Rashid Rida, 'Al-Ahram' that belonged to Bisharah and Salim Taqla, 'Al-Muqattam' that belonged to Yaqub Sarruf, 'Al-Muqtabas' that belonged to Muhammad Kurd Ali, 'Al-Muqtataf' which belonged to Shahin Makuryus, and 'Al-Hilal' magazine which was founded by Jirji Zaydan.[43]

The newspapers that were published at the time played an important role in supporting the Arab Revolution against the Ottoman State and the independence of Syria in 1919. As soon as the French occupied Syria in 1920, there appeared newspapers opposing occupation or favoring it. Again, the press helped ignite the Syrian Revolution that went on for two years. The press continued to play a resistance role until it was censored at the time of World War II. Censorship existed during the Ottoman and French rule, but neither the Ottomans nor the French monopolized the publishing of newspapers the way national governments do in times of independence.[44]

Since 1945, the press flourished like never before. There were 45 newspapers in 1948 for a country of four million inhabitants. However, the situation of the Syrian press deteriorated with time and with totalitarian regimes to have only three central newspapers in 2005, i.e. "Tishrin', 'AL-Thawrah', and 'Al-Ba'th'. Yet, there were 150 licensed newspapers in Syria in 2009.[45]

Firstly, the Syrian media have no independence whatsoever from the political power. The State does not only control the media but also distribution,

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43 See Jawad, K. (1995). *Du caliphat aux coups d'état.* Paris: Alphabeta, pp. 22-30.

44 See Elias, J. (1983). The Development of the Syrian Press in One Hundred Years, 1865-1965. Beirut: *Dar al-Nidal,* 2. See Also al-Baba, H. (2005). *Fear.* Dar Kan'aan.

45 Baba, H., op. cit. Baba points out that all three mentioned newspapers less than fifty thousand copies per day. The weekly 'Tishrin' does not sell more than 600 copies; 'Funun' magazine sells at most 500 copies in a country of 18 million inhabitants, ten million readers according to an official survey by the Syrian Association for the Distribution of Publications. It is noteworthy that Al-Watan' is the only private owned daily newspaper but its license is not from Damascus. It enters everyday as it is imported, but is strictly censored like other newspapers.

advertisement, and data monopoly. The state of emergency imposed since 1963 is a pretext to keep a firm grip on all the media.

Secondly, Article 29 of the Syrian Publications Law published in 2001 stipulates restrictions on publications and includes in article 42 [46] 'The crimes in the prints and due process'. Opposition journalists are often arrested without trial or imprisoned by virtue of excessively severe sentences as was the case of Michel Kilu, Akram Bunni, and Fayizah Sarah. All three were given tough sentences as was the case of writer Yaseen Hajj Salih who 'was arrested in 1980 and detained without any trial until 1994 when the State Security Court sentenced him to fifteen year imprisonment with hard labor, quarantine, and removal of civil rights, as well as a fine. He was accused of being a member of an association whose aim was to topple the regime and oppose the aims of the Revolution'.[47]

Thirdly, the Syrian 'General Organization of Radio and TV' is the only producer of what is broadcast on both radio and TV. Nothing is published to contradict or criticize the general policy in the country or its security forces or political officials.

Fourthly, the government implements a policy that consists in blocking opposition internet sites. The number of blocked sites that is known of are a total of 225, 65 more than in 2008.[48]

Finally, the official media do not reflect any religious ideology; TV news and broadcast encourage secularism.

3. Bahrain:

The first local national newspaper, 'Al-Bahrayn' was published in1939 by Abdallah al-Za'id; it went on until 1944. There are in Bahrain today, seven daily newspapers in both English and Arabic; they are: 'Akhbar al-Khalij' (1976), 'Al-Ayyam' (1989), 'Al-Wasat' (2002), 'Al-Mithaq' (2004), 'Al-Watan' (2005), 'Al-Waqt' (2006), and 'Al-Balad' (2008). There are four weekly newspapers as well as numerous specialized periodical magazines, and publications by official and civil parties, among which

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46 Article 42 sentences the proprietor of any regular publication to twenty thousand Syrian Lira should he publish it prior to the acquisition of a license or approval as indicated in article 12 of the Law and the publication is immediately confiscated administratively.

47 See Shami, F. (2008, May 15). Death of the Press in Syria. *Al-Ra'I Kuwaiti newspaper.* See also Statement of the Syrian Committee for Human Rights. (2005, August 1). *Syrian Authorities Deny Author Yaseen Hajj Salih a passport.*

48 The Syrian Center for Media and Freedom of Expression. (2009). *Efrin.net.*

are 65 weekly and monthly magazines. In addition, electronic press is widespread; there are many new sites, personal blogs and forums.

Bahrain has witnessed repression and oppression ever since 1975, the year the Chamber of Deputies was dissolved, until the beginning of political unrest in the end of the nineties. The media were somewhat an official government propaganda tool. Pressure was exerted on writers and journalists and on the media in general as they were strictly censored by the Ministry of Interior and the Ministry of Information. This situation changed when Shaykh Hamad Bin Isa Al Khalifah took over after his father in 1999 as the head of the country; he released thousands of political detainees, allowed the return of exiles, he also abolished security laws and had a national charter prepared. The latter was ratified by popular referendum held on 14-15 February 2001. New publications included newspapers quite independent from the authority of the state; the margin of the freedom of the press was broadened. [49] Still, the state has monopolized the audio-visual media and the communication sector globally using it for its own purposes.

He showed great understanding to the journalists' situation, establishing dialogue with them, encouraging their union, introducing many amendments suggested through 'Reporters Sans Frontières' and the Doha Center for Media Freedom. Amendments to the publications Law in 2002 cancelled journalist imprisonment and the closing of newspapers, or of internet sites, other than by a judicial decision not an administrative one and reduced the number of forbidden matters in publication; work is underway to release the audio-visual information sector from the power of the state contrary to his successor, Minister May Al-Khalifah, a member of the ruling family. She sapped the democratic transition process[50].

More than 600 internet sites have been blocked in the country. Since April 21, 2009 censorship has been generalized; laws still impose at least six month imprisonment to anyone who criticizes the King, brings harm to the values

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49 Salaman, U. (2006, November). Editor-in-chief of Afaq in a research paper at the conference on 'Criticism and Reform in the Arab World' held by Enterprise Institute, Washington.

50 Bahraini authorities seemed to have been fed up with political openness it had agreed upon at the starting of the reform process. The television interview with Bahraini Information Minister in which Bahraini authorities were severely criticized caused the Minister to lose his portfolio since it was said that he did not answer the criticism. The new minister of Information who was appointed was from the ruling Al-Khalifah family. She reduced freedoms and closed down 600 sites according to Bahraini human rights organizations.

of Islam, or incites to actions that jeopardize national security; data access is still the sole prerogative of state media men. The **State** Department's **Bureau of Democracy Human Rights** and Labor **(DRL),** indicated in its March 2009 report that the Constitution of Bahrain stipulates the need not to bind freedom of expression or the freedom of the press; yet, the government limits these rights in everyday life. It is true that the government does not own any of the written media but the Ministry of Information controls a great deal of the written media owned by the private sector. It also owns and runs all the local radio and TV stations.[51]

4. Tunisia:

The first newspaper, 'Al-Ra'id al-Tunisi', was published in Tunisia the year 1860. In 1910, there were twenty newspapers, and the number reached 28 in 1921.[52] Journalist Jamal Zarn considers that the Tunisian press went through various stages: during the colonization period and despite limitations, the press thrived and was a tribune for the national independence movement especially when Bourguiba founded his newspaper, 'Al-'Amal' in 1932. Newspapers grew in importance and in numbers at the time of the Popular Front; there were 51 newspapers in 1937, but only 25 in 1950 and 17 after independence. After that, and due to constraints from Bourguiba on the press, from seven Arabic dailies prior to independence, there remained only two dailies after independence. Weeklies and periodicals that were about twenty were reduced to only five after 1965.[53]

References agree that the freedom of the press was not what it should be under Bourguiba (1956-1987. Yet this period witnessed the rise of a semi free press and some newspapers such as 'Al-Ra'i' and 'Al-Mustaqbal' newspapers, and 'Haqa'iq' magazine, all of which were given some leeway the Tunisian press was not to dream of, or of what is much below this under the rule of the current President, Ben Ali.[54]

Compensation came to Tunisian journalists through the formation of organizations by civil society and opposition parties in the mid seventies. They

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51 See report by the *Bureau of Democracy and Human Rights.* (2009, March).

52 See related pages on Wikipedia. See also: Shawqi al-Tayyib. (1994, June 2). Press Crimes. *Sahwqi al-Tayyib internet site.*

53 Razn, J. (2007, January 17). *Bourguiba and the Media, 1924-1934: From the Press to Direct Communication to Charisma.*

54 See 'Uwaydidi, N. (2008, March). Tunisia under Ben Ali. *Aqlam online.*

aimed at safeguarding the freedom of the press acquired back then since the rebellion of 'Al-Sha'b' newspaper that spoke for the Tunisian General Union of Labor, and since the historic role of 'Al-Ra'i', 'Al-Mustaqbal', 'Al-Maghrib al-'Arabi', 'Al-Mawqif', 'Al-Tariq al-Jadid', and 'Le Phare' newspapers among others, all independent party newspapers.[55]

Eight daily and fifteen weekly newspapers are published in Tunisia today. The most popular is 'Al-Sabah', which is pro-government. The opposition publishes 'Al-Mawqif' and 'Al-Tariq al-Jadid' newspapers. The media are going through their worst crisis as concerns the lack of freedom since any opposition media institution was closed down. The main example of repression is what the editor-in-chief of 'Al-Fajr' Islamic newspaper, Mr. Muhammad Jabali has gone through since he was sentenced to fifteen years in prison until his release in 2006. Another example is his colleague, journalist Abdallah Zawari who was released from prison in 2002 after having spent eleven years in jail. More recent examples are those of Rashid Khashannah, editor-in-chief of 'Al-Mawqif' opposition newspaper, and his colleague, 'Al-Mawqif' editor, Muhammad Hamruni who were both forbidden to travel and forbidden from getting a passport.[56]

The Tunisian Radio and TV Establishment (ERTT), run by the State, broadcasts in two TV channels and numerous radio stations. Until November 2003, the State had monopoly over radio emission and private stations were not allowed other than through satellite broadcasting. The first private station was launched in November 2003 and was followed in February 2005 by the first private TV channel. Yet, the government still has full control over all the media that acquire their information from the two official government run agencies, the official Tunisian News Agency and the Tunis Afrique Presse News Agency (TAP).[57] The only haven Tunisians resort to is the two opposition TV channels based in London: 'Al-Mustaqillah' and 'Al-Zaytunah' broadcast by the Islamic Renaissance Movement.

Tunisia was among the first Arab states to spread digital culture. In it was launched the 'family computer' presidential program in April 2001 allowing

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55 See the book by journalist Haddad, K. (2008). *Bourguiba and the Press, Power and Propaganda Dialectic.*

56 See the letter addressed by the Committee to Protect Journalists to Tunisian President, Zayn al-'Abidin Bin Ali about the situation of journalists in Tunisia. (20009, July 15).

57 See Tunisia: The Situation of the Media, in *European Neighborhood, Journalism Network.*

1.700.000 Tunisians to benefit from electronic services.[58] This is how there appeared in Tunisia a generation of the best bloggers giving the media new impetus. Yet Tunisia remained one of the Arab countries where the biggest number of sites is blocked, according to the 'Arab Free Internet Initiative' report by 'The Human Rights Arab Information Network'. It is the only Arab country to have created, in 2002, the internet police to control emails and block web sites namely political sites and those which advocate human rights. By virtue of the Law to Combat Terrorism [and Prevent Money Laundering] enacted in Tunisia in 2003, Tunisian authorities arrested tens of journalists and bloggers whom ere given tough sentences.[59]

Based on my experience in the media field and my dealing with Tunisian journalists, I have deduced that the Tunisian public opinion questions the credibility of the media.

5. Libya

The first newspaper to be published in Libya was 'Tarabuls al-Gharb' back in 1866; it was followed by 'Al-Taraqqi' newspaper in 1897. Newspapers remained strictly controlled until 1908, which was hailed in Libya the year of freedoms and the declaration of the Ottoman Constitution; in it ten Libyan papers were published, among which: 'Al-'Asr al-Jadid', 'Al-Kashaf', 'Abu Qashah', 'Al-Mirsad', 'Ta'mim', 'Hurriyyat'. They covered subjects that ranged from political to literary to social. Authors included Arabs and Turks alongside Libyan authors.[60]

With the Italian occupation of Libya in 1911, all newspapers were stopped and replaced by the occupation press. In the 1919 Truce treaty, national press reappeared under new names: 'Al-Liwa', 'Al-Raqib', 'Al-Watan', 'Al-Balagh', 'Al-Sultah'. With the rise of Fascists in Italy, newspapers were suspended again. In the aftermath of WW II and the division of Libya into French and British controlled parts, some national newspapers were published again, namely 'Al-Watan', 'Tarabuls al-Gharb', 'Shi'lat al-Hurriyyah'.[61]

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58 Iman Abdul Min'im, Arab Security Attacks on Free Space, Islam on line, *Zawari blog.*

59 See Human Rights Arab Information Network. (2008). Report on Arab Free Internet Initiative. See also Tunisian Bloggers in the World Press. *Fikrah site.* See also:Muhammad Sharif in *Swiss Info.*

60 Zubayr, I. (2008, September 21). Libya: In Memory of the Publishing of the Newspaper Tarabuls al-Gharb. *Arab on Line.* See also 'Asta, A. *History of the Libyan Press.* Study presented at the ceremony held by the League of Tunisian Journalists and Media Workers for the 142nd anniversary of the publication of the first Libyan newspaper.

61 See Qayyum, I. A. (2008, May). Snapshots From the Libyan Media Scenery. *Al-Marsad magazine.* Washington: Center for the Study of Islam and Democracy. See also Kan'aan Naku', M. (2005, July 3). Literary Press in Libya. *Libya al-Mustaqbal site.*

Then came the period of armed resistance for independence from 1943 to 1951, a time when newspapers flourished with 25 newspapers and magazines; during this time, more than ten political parties were formed. This period ended with the independence of Libya in1951 and the crowning of Prince Idriss Sanusi, first king of the Libyan state.

In the sixties, the scope of press activity widened with the increase in oil production. There were more than twenty newspapers and magazines and they had much leeway. With the end of the monarchy and advent of the Libyan Revolution at the end of the sixties, there was a great evolution in the press.[62]

However, the freedom that the media and the press acquired in the beginning of the Revolution was soon baffled to have only four local newspapers owned by the state. They are: 'Al-Jamahiriyyah', 'Al-Shams', 'Al-Fajr al-Jadid', and 'Al-Zahf al-Akhdar'; the existing audio-visual media are only official. Strict regulations were imposed upon private ownership of any medium, which drove some to get licenses for their publications from abroad where they print them and distribute them in Libya.[63]

In the hands of the Libyan regime, and more specifically with Sayful Islam Kadhafi, there came, in the mid 2005, the first attempts to develop the media system. The first cultural forum of the Libyan League of Journalists was held under the patronage of Sayful Islam. It highlighted the need for new laws to regulate press and media activity, since current laws – such as the publication law no 67/1972 – no longer meet people's expectations. It also denounced attempts aimed at baffling the role of journalists by blocking information from them; it called for efforts aimed at freeing local media from all tutelage or control that may hamper their work.[64]

At the second forum, sponsored by Sayf al-Islam Qadhafi and held in Benghazi on September 21, 2005, the first call for pluralism in the press was made; there was also a call for the development of media discourse vocabulary in order to avoid strife and mobilization, a discourse which failed to reach out to the audience. There was a call for an independent satellite channel, and for larger ownership basis as concerns the information sector. (Yusuf Marzuq Yusuf, *Towards Modern Libyan Media*, November 6, 2005).[65]

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62 Mahmud Muhammad Naku', *Libya al-Mustaqbal site,* op. cit.

63 See Badawi, A. (2007). *States at a Turning Point, Libya.* See also Indicator of Sustainable Media. *Akhbar Libya site* under the supervision of Ashur Shamis.

64 Yusuf, Y. M. (2005, November 6). *Towards Modern Libyan Press.*

65 Yusuf, Y. M. op.cit

Subsequently, Sayful Islam published two independent newspapers, 'Oea' in Tripoli and 'Quryna' in Benghazi; he also launched a radio and a TV station. A fully privately owned media association was launched, 'Al-Ghad Company for Media Services', a joint company including the Youth leagues, the League of authors, writers, and journalists; it owns a TV satellite channel and a radio channel, 'Al-Libiyyah'.

The Libyans' first haven remains the blogs of Libyan opposition mostly based abroad; their blogs and sites are the most numerous on the internet and the most spread among Libyans according to a study of the Human Rights Arab Information Network which indicates that the Libyan government blocks opposition sites and forces internet cafes in Libya to put up signs warning against the use of opposition sites.[66]

In the last three years, there have been some changes in the completely shut media; there appeared a trend called the reformist trend from the very heart of the regime. It has not been able to cross the red lines, i.e. to criticize Qadhafi for instance, or to get the lifting of censorship, or the freeing of the media from the hands of the state or the reforming of legislation.

The initiative of freeing the media from the hegemony of the state has not allowed people other than statesmen to publish newspapers. The request of journalist Ahmad Fayturi to publish a newspaper similarly to Sayful Islam Qadhafi was rejected; his article entitled 'Asking for the Right to Publish a Private and Independent Newspaper' was not even published by Libyan newspapers so he had to publish it in a blog, Maktub, October 22, 2007.[67]

Even the new publication law enacted on May 25, 2008 did not meet the Libyan journalists' needs; it was heavily criticized since it imposed more restrictions on private ownership of media through 43 articles and increased the number of don'ts in the media.

Journalists are still subject to arbitrary imprisonment and jail; even Muhammad Busifi, editor-in-chief of Oea Newspaper, published by Sayful Islam Qadhafi, was not spared for he was submitted to North Tripoli Court on May 3, 2008 upon accusations related to publication affairs by virtue of art. 439 of the Criminal Law.[68]

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66 See report by *Arab Network for Human Rights Information*. (2009, April 22).

67 Fayturi, A. (2007, October 22). I Ask to Publish a Private and Independent Newspaper. *Maktub blog.*

68 On the World Freedom of the Press Day Al-Busfi Appears Before Court, Libya Today, May 3rd, 2009

6. Morocco:

The first newspaper to be published in Morocco, 'Sahifat al-Maghrib', was published in 1889 A.D. The Moroccan press played an important role in freeing the country from French and Spanish colonization. Since the crowning of Mohammad V in Morocco in 1927 and until independence was gained in 1956, national forces have had some leeway in Tangiers and have established several newspapers such as 'Sawt al-Sha'b', 'Al-Sha'b', 'Minbar al-Sha'b' in order to advocate national sovereignty and independence. From Tangiers, the national Moroccan movement spread its position throughout the world; its press was an efficient tribune against the press of the French and Spanish colonization (1912-1956).[69] King Mohammad V was known to respect the work of the national press and to give it more leeway; in fact, he declared at a meeting with the press in 1956: 'News is sacred and commentary is free'.[70]

A period of unease in the history of Moroccan media started with King Hasan II in 1961. Despite the establishment in 1963 of the **National Union** of the **Moroccan Press (**SNPM**)** in order to advocate freedom of opinion and free expression, repression and oppression and the closing of media started after the Sakhriyyat uprising in 1971. It went on to be so until the King asked Abdul Rahman Yusifi to head the Council of Ministers on February 4, 1998[71], which is when the country witnessed some changes as concerns public freedoms. Hasan II was replaced by his son, Mohammad VI, who started political reforms in the country.

The country has flourished in the number of newspapers and audio-visual media; according to official state figures, and from the State's internet gate, there were in Morocco, in 2007, 618 registered publications among which 26 dailies, 254 monthlies, 136 weeklies, 68 semimonthlies, 51 periodicals, and 73 irregular publications. Radio and TV stations in Morocco have had great support with the creation of the High Audio-Visual Communication Authority on September 15, 2002. The Authority started counseling the King and the Chamber of Deputies in all matters related to the audio-visual field or licenses.

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69 Zayn al-'Abidin Kattani, 'The Moroccan Press, Its Creation and its Development', Volume 1, Fadil Printing Press, Mahammadiyyah, Morocco, pages 8 and 91-100

70 See the letter sent by the Secretary of Reporters Sans Frontieres, Robert Minar to the King of Morocco, September 9, 2007, entitled 'The Press in Danger in Morocco'

71 The King asked for the help of opponent Abdul Rahman Yusufi who was exiled. He was appointed Prime Minister and this was the starting of political reform.

A year later, the monopoly of the state over the audio-visual sector was annulled; a commercial TV station was launched as well as ten radio stations by Moroccan and foreign investors.[72]

In reports of international organizations such as 'Reporters Sans Frontières' and 'Freedom House', Morocco was deemed, from 1999 to 2003, one of the states where there is partial freedom of the press; it ranked 138 among 195 countries. Its rank dropped in the last ten years (2009 Freedom House report) to 140 and became one of the countries where the freedom of the press is regressing. It came in fifth place compared to other Arab countries after Kuwait (115th place), Lebanon (118th place), Egypt (128th place), and Algeria (136th place).[73]

In mid 2005 the Moroccan government announced that it had reviewed 20 articles from all the 24 press laws. The amendments were submitted to journalists and media workers for the sake of modernization of the Moroccan press, the setting up of a national press council, and spreading the freedom of the press in Morocco. Yet, the Committee to Protect Journalists (CPJ) claimed that Morocco is the most arbitrary country as concerns the rights of journalists. The law which was enacted in 2002 stipulates the imprisonment of a journalist up to five years for the mere criticism of the king or the monarchy or the right of the Moroccan Monarchy to own the Western Sahara.

In Morocco, there are **four taboo subjects in the Press and Publication Act:** Islamic values, the King, the national system and national security. Any journalist who should cross these red lines is subject to severe prison sentences or fined high amounts.[74] Instances of this are:

- The judicial sentence rendered in January 2007 against Moroccan journalist Abu Bakr Al-Jami'i, editor-in-chief of 'Le Journal' newspaper who was fined an enormous amount he was unable to pay, which forced him to announce his resignation from the administration of the newspaper at a press conference in which he said he had to close the newspaper and leave the country for fear that his funds and belongings might be confiscated. The reason for this

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72 See The Media in Morocco, History and Facts in Numbers. (2009, January 30). Site of the *Young Moroccan Journalists Association.*

73 See report of *Freedom House.* (2009).

74 See Press and Publication Act in Morocco. (2002, October 3). It stipulates: "Three to five year prison sentences and 10,000 to 100,000 dirham fines are imposed upon anyone who disrespects the King or the princes or princesses in one of the ways stipulated in Chapter 38. The same sanction is decided upon any newspaper or publication that may violate [the values] of Islam or the Royalty or national unity." (Chapter 41, About Crimes Against Public Concerns).

sentence was a law suit filed against him by a Belgian in relation with the government and who heads a research center. He pretended that 'le Journal' newspaper questioned a report he wrote about the Sahara issue.[75]

- The closing of 'Nishan' newspaper whose owner was sentenced to prison after accusations were made against the manager, Idriss Kusaykis, and the against the journalist who works in it, Sana' al-'Aji for publishing an article deemed by the authorities as against Islam.[76]

Yet, despite these violations and taboos in the media, the growing number of newspapers, parties, and humanitarian activities in coordination with international organizations, the growing margin of criticism and the scope of freedom of expression allowed in Morocco are all better than in two Arab neighboring countries: Tunisia and Libya. It can be undoubtedly said that Morocco has gone a long way in the development of civil society activities and institutions and has a media space which is much better than a number of Arab countries namely as concerns internet users.

Based on the Arab Free Internet Initiative, people are free to surf any site they may choose. Reports about the blocking of web sites by the government are few even when these sites are actually critical as to Western Sahara.[77]

Conclusion: a final assessment

From the analysis made in this Paper, it is possible to derive the following conclusions:

- The backwardness of the press and publication acts and their inefficiency to go with the times; a blatant contradiction between what the Constitutions allow as concerns hypothetical freedoms on one hand and the practices of security services on the other as Criminal law is often resorted to, in order to imprison journalists;

- The lack of independence of the judiciary and the submission of the latter to the Executive power, which hinders justice in the country and reduces

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75 Hayran, M. Writing on the Razor's Edge: The Resignation and Departure of a Moroccan Journalist. (2007, January 29). London: *'Al-Sharq al-'Awsat' newspaper.*

76 Fu'ad, W. Crooked Ways to Silence Journalists in Ten Arab Countries: Interview with Kamal 'Ubaydi, representative of the international Committee to Protect Journalists in the Middle-East. *Islam Online: Akhbar wa-Tahalil.*

77 See Internet site of the Press Network, Morocco: The Situation of the Media, in: European Journalism Centre (EJC) © 2008-2009, Maastricht.

the scope of public freedoms. It prevents judges from protecting people and reduces them to executing the orders of the political authorities.

- Difficulties in accessing data, whereas it is a right guaranteed for all as stated in article 19 of the Universal Declaration of Human Rights.

- The lack of independence among the media that are relatively controlled by the state or parties in Iraq, Bahrain, Morocco, and completely controlled in Syria, Libya, and Tunisia;

- Absolute freedom in using the internet in Iraq, relative freedom in Morocco, and restricted freedom in the rest of the countries;

- The use of the media by authorities as a means to tame the society rather than to raise awareness among people;

- The sanctity of Islamic values used as an excuse to impose sanctions upon journalists;

- Absolute sanctity of governors in Syria, Bahrain, Tunisia, Libya, and Morocco.

- From the entire above, one may deduce that working in the media in the Arab world is a dangerous job. Any attempt to develop the work of the media and of journalists is bounded to strike against the hurdles I have mentioned earlier.

- We have tried through Reporters Sans Frontières, then through the Doha Center for Media Freedom, to address Arab authorities and hold meetings with officials. We have tried to tell them that we do not publish statements or condemnations as other organizations that advocate the freedom of the press. We do not seek trouble but rather solutions. This can occur should press and publication acts are developed and modernized to fit the requirements of the current times. We have given officials some samples of typical laws. However, the progress we have achieved remains insignificant. The path remains arduous and long.

- Based upon this, it is hard to reiterate a number of recommendations as many traditional experts do as a doctor's recipe. The core matter is not about improving the performance of a work group or improving the production of a given substance. The core matter is about prerogatives and power and who holds these in our countries. The oppressive regime that controls everything and manipulates things to fit its own interests and those of the ruling family, party, or tribe, is a regime that has always controlled all the media to its own interest. How can we free the media from the grip of such regimes?

Finally, it is important to indicate that any freedoms that the media have will certainly be at the expense of absolute power. This leads us to an obvious fact, which is that the freedom of the press cannot be achieved other than with the support of the civil society and its organizations. The freedom of the press is closely linked with the ongoing progress in the democratic process for over a year.

EMPOWERING MAGISTRACY IN THE ARAB WORLD

Dr. Antoine Nasri Messarra

Introduction

Rulings are the prerogative of the judiciary whereas justice is primarily a social concern since rulings are made 'in the name of the people'. Justice is related to: the culture of legality prevailing in a given country, the support civil society gives to the independence of justice, and the communication between judicial institutions and civil society.

In non-democratic societies or those where democratic transition is underway or yet again in non-consolidated democracies, the study of the judiciary requires several approaches which are not limited to legislative matters.

The major dialectic in the Arab culture of legality is in the transition from the traditional Arab judge to the one, who is the guardian of justice and the rule of law, while safeguarding the positive aspects in Arab legislative heritage namely the Ottoman heritage concerning the protection of the social contract, which may be jeopardized because of individual deviations or the use of the law as a tool[1].

According to debates about Islam. democracy and about the democratic change in the Arab regimes as well as in Arab non-consolidated democracies such as Lebanon, the role of the judge as of someone who protects and guarantees basic freedoms may not be ignored or marginalized. When the judiciary is actually independent and fair, when it has the trust of the people, then other matters become more regular. In this sense, some countries organize 'open justice' programs in order to bring justice and the courts of law closer to the people, make rights and duties as concerns courts known and replace mistrust and fear with confidence and a feeling of safety.

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1   Messarra, A. *Tradition et mondialisation dans la fonction du juge. Le juge arabe gardien du principe de légalité et du lien social?* Ap. Scholler, H., & Tellenbach, S. (Ed.). *Position und Aufgaben des Richters nach westslichem und nach islamischem Recht.* Siebeck, M. (2007), pp. 26-45, and Akyilnaz, G. *The Kadi in the Ottoman Empire,* pp. 87-118. Young, G. (1905). Corps de droit ottoman. Oxford: *Clarendon Press 7.*

In the current evolution of the judge's function in the Arab countries, and facing the globalization of justice, there are two trends which ought to have priority: the development of the principle of legality with respect to the monopoly of jurisprudence, and the protection of social contract from individual deviations or the misuse of justice as a tool.

With respect to the principle of legality, one notices that in the Arab societies and also in university studies, people confuse the law with legislation because in the Arab States, there has not been any deep-rooted culture in terms of legal matters. This culture is the result of historic experience and protects individuals from political hegemony and from religions should they turn into power in the political sense, i.e. using coercion.

A social contract is the result of the spread of the culture of human rights. Yet there is an 'inflation' in the use of law suits for the most trivial of matters that may be settled by compromise and understanding. An individualistic ideology of human rights may weaken the social contract, which is intrinsically about human rights.

A Multi Dimensional Approach to the Judiciary

The dialectic raised by the judiciary in Arabic countries has six dimensions: the judicial administration, the judge's personal character, the relation with the Executive, the situation of religious community courts of law, and communication between the judiciary and civil society.

Research carried out by Emile Tyyan is a basic reference to study the organization of the judiciary as well as the legal and religious situation of the judge[2]. Other studies show the function of the judge in Arab countries (Egypt, Tunisia, Lebanon, Algeria, etc.)[3]. There is also specialized literature on the history of judges, among which is also a series of four volumes on biographies of judges in the Arab and Islamic societies namely Palestine, al-Andalus, and Iraq. In these biographies, one does not find details about legal reasoning or law enforcement[4]. Other works are more expressive and are references for

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2   Tyan, E. (1938, and 1943). *Histoire de l'organisation judiciaire en pays d'Islam.* Paris: Sirey, 2, 528, re-edition: Leiden: Brill.

3. *Le juge dans le monde arabe.* (1995). Paris: Centre de droit international, Université Paris X. Nanterre, l'Harmattan, p. 268.

4   Waqi', Akhbar al-Qudat. (1947-1950). Cairo: *Abdul-Aziz Mustapha Maraghi Editions,* three volumes.

the jurists. From the various writings about judges in the Arab countries, one may deduce more practical approaches to the judge's function as concerns the enforcement of the rule of law[5]. It is essential to find and analyze documents about existing judicial literature in order to deduce the practical dialectic in the position of the Arab judiciary. In general, it is clear that political interferences in the judiciary are numerous and that the judges find it difficult to perform their tasks. It is also clear that social traditions support modern judicial action, and that judges are actually immune beyond their formal legal immunity. Lawyer Badawi Abu Dib says about a criminal case ruling in Lebanon: 'Infringement by Judge Albert Farhat is the real ruling'[6].

In a practical approach to the reform of the judiciary, one notices internal contradiction in some studies, drafts and proposals. In order to monitor change in the Arab judiciary – in a situation where the institutional and socio-political and cultural environment is not favorable – there is a need to foster a judicial and empowerment culture among the society.

There is a need to avoid *juridism*, a concept that has not been introduced in legal dictionaries yet. Its meaning is: the usage of the law as a tool to justify the abuse of power and the transgression of the normative rule of law.

When justice is in a bottleneck, it needs to get out from the judges' seclusion in Law Courts so that it becomes a social matter.

Legislation in the Arab judiciary has evolved approximately in the last ten years. Judges make their ruling but in order to really do justice, there needs to be a socio-cultural environment that supports judges who are independent and honest so that they are not secluded, threatened or set aside.

In many cases, the Arab judiciary does not need studies which are based on a hypothesis that states the problem as **knowledge** accumulated in this area, the spreading of knowledge, or the efficiency and enforcement of legislations. It is related to factors other than law. These factors are the balance of power in society, the state of the administration, and the situation of parallel forces, i.e. parties, unions, professional bodies, and media. Legal efficiency is also related

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5   Shihab al-Din Ibn Abi Adam (Died in 1244). Kitab Adab al-Qada', in: Mallat, Ch. (2003). From Islamic to Middle Eastern Law: A Restatement of the Field. *The American Journal of Comparative Law,* 51(4), 699-750, and (2004). 52(1), pp. 209-286.

6   Abu Dib, B. (2009). *Pleadings in Cases that Kept People Busy.* Beirut: Sadir, 3 volumes. This was a case concerning the assassination of Kamal Mruwwi in 1966.

to the political culture that prevails in society. The principle of legal efficiency is often lacking in legal culture and in legal practices in the Arab countries.

The reform of Arab judiciary in a situation where the relation between politics and the judiciary is ambiguous requires targeted and intensified programs. The latter programs have to define **priorities** that may have concrete effect on the **beneficiaries** of judicial services, provide **trust** and impetus to active members, and spread **typical** and normative works in order to serve as paragons. The independence of the **judiciary** is related to legislation; whereas the independence of the **judges** requires personal independence.

In many general policy proposals about the Arab judiciary, researchers hope for general reform whereas they link reform with political will and say that the political will is unavailable. If the important thing is to apply judicial reforms then who is responsible for application and follow-up?

The reform of the Arab judiciary must set off from a global perspective. It must also be based on **sector oriented** and progressive work often on a small scale through active judicial members who have made concrete, visible achievements. These changes must be spread in the media in order to bring about trust and emulation, and increase empowerment.

The judiciary in Lebanon: A Guarantee System of Impunity and Fading Heritage

Lebanon benefits from deep-rooted heritage that survived throughout the war from 1975-1990. Yet, this heritage has regressed since then because of occupation, political interference in judicial nominations, and a series of assassinations since that of former Premier, Rafiq Hariri on February 14, 2005. This situation led to a feeling of guaranteed impunity so much that justice and its powers were questioned. The Special Tribunal for Lebanon attempts to put an end to the system of guaranteed impunity even if symbolically. The Special Tribunal for Lebanon was set up after the assassination of former Lebanese Prime Minister, Rafiq Hariri and his companions. Its members were appointed early in 2009. It has already published preliminary reports about the investigation, including information that concerns foreign and local parties.

In addition, there are studies about the reform of the judiciary in Lebanon, often without an approach to the feasibility of change. The President of the Public Works and Transportation Parliamentary Committee, MP Muhammad

Qabbani talks about the recommendations: "In 2004, once again I reread the recommendations that we issued in October 2003. I noticed that we were actually able to reproduce the same recommendations just by changing the date. However, things have remained unchanged."[7]

I deduce from documentation[8] about the judiciary in Lebanon the following data:

1. **Priority given to the judiciary in the Ta'if national agreement:** the Ta'if Document of National Accord ratified on November 5, 1989 stipulates the foundation of three complementary bodies. These complementary bodies are the Higher Council which was established to try Presidents and Ministers, the Constitutional Council, and the Higher Judicial Council. A number of the members of the Higher Judicial Council is to be elected by the judicial body. According to the Doha Agreement on May 21, 2008, it is more of a political settlement to unblock institutions which have been paralyzed. It highlights the Constitution and the Ta'if Accord as references.[9]

2. Wide legislation movement about the judiciary in the years 1990-2008: this period was actually characterized by a vast legislation movement about the following matters:

- Establishment of the **Higher Council** to Try Presidents and Ministers.
- Establishment of the **Constitutional Council** (Law no. 250, July 14, 1993) which is made of ten members. Five of these members are elected by the Chamber of Deputies, and five are nominated by the Government. The Government did so only six months later (Decree no. 5036, April 7, 1994). The approved amendments were namely: the calling for candidacies and the right for any member to include his disagreement in the minutes of the decisions. These amendments were published in the Official Gazette.[10]

The Constitutional Council made some pioneer rulings concerning the independence of the judiciary and the electoral law in its infringement of the principle of equality in voting, and the holding of municipal elections on time.

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7 *An-Nahar newspaper.* (2008, December 2), p. 6.

8 Messarra, A., & Murqus, P. (2005-2006). Lebanese Magistracy Monitor. Beirut: Lebanese Foundation for Permanent Civil Peace. *Librairie Orientale,* two Volumes.

9 Messarra, A., & Morcos, P. (2009). The Doha Agreement. Beirut: Lebanese Foundation for Permanent Civil Peace, in cooperation with the Arab Foundation for Democracy. *Librairie Orientale.*

10 Bejjani, E. (2009). *Dissident Opinions.* Beirut. Ed. Juridiques Sader.

The State Minister for Administrative Reform, Ibrahim Sahms al-Din said: "The Constitutional Council is one of the basic reforms so that it works for the people beyond sectarian distribution, and without anybody trying to control it. It goes beyond the divisions among political parties."[11]

The Higher Judicial Council: Law no. 389, December 21, 2001 introduced an amendment to the formation of the Higher Council, according to which some members are elected by the judicial body.

Judicial Inspection: Some amendments were instated in this body (Legislative Decree no. 22, March 23, 1985, and Law no. 389, December 21, 2001)[12]; but some of these amendments were unnecessary and may be summed up in jurisprudence without new legislations. The issue lies in the persona of the judicial inspectors: are they mere supervisors who have failed in their judicial job? An amendment was added by virtue of Legislative decree no. 22, May 23, 1985. It stipulated that the judicial inspector had to be from a higher rank than the judge who is to be inspected.

The judges' financial situation: It was improved in order to reduce the number of resignations by judges – who want to adhere to the Bar – and to strengthen the judges' independence.[13]

The Institute of Judicial Studies: It educates new judges but has both financial and administrative problems.

Judges' Charter: In 2005 it set up the 'basic rules of the judges' ethics'.

With the legislative evolution, the judiciary in Lebanon is entering a paradoxical situation. There are highly professional judges, a deep-rooted special judicial heritage – compared with the existing systems in the Arab world – as well as Lebanese legislations that correspond to world norms. However, rulings are slow, justice is arbitrary, expensive for the plaintiffs, and affiliated to some political parties.

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11 *An-Nahar newspaper.* (2008, December 28).

12 The Judiciary in Arab Countries. (2007). Beirut: Arab Center for the Development of the Rule of Law and Honesty, & The UNDP, pp. 520-522.

13 The Basic Ethics of the Judiciary. (2009, January 25). Beirut.

Justice in Jordan: Social Influences

Among the factors that influence the judicial system in Jordan are social factors. Some of these social factors are: Tribalism's effects on the judiciary and on the judicial nominations; plus the way it influences the solving of judicial disputes. When studying the situation of the judiciary in Jordan, one deduces the following elements based on the four fair justice fundamentals: independence, honesty and neutrality, competence, and efficiency of the judicial system.

1. The Constitution was aimed at **the establishment of a judiciary** but the Constitution did not include texts that would limit the legislator's prerogatives. This in return led to the amendment of some laws regulating the judiciary which were in contradiction with the Constitution. The legislator fragmented this power into a great number of courts that do not have an institutional framework – some are regular courts, some are Sharia courts, some are Councils for non-Muslim religious communities, and some are special courts such as the State Security Court.

2. The Constitution stipulated that the trying of **ministers** in office was to be in a special court. This in fact is an encroachment of the principle of separation of powers. These courts are not clearly regulated or supervised and no appeal can be lodged against their ruling.

   In Jordan, there are two judicial councils: a regular judicial council and a Sharia judicial council. Sharia courts have specific characteristics but ought to be part of the judiciary and be submitted to the fundaments of fair justice.

3. Regarding the **judges' autonomy,** integrity and neutrality, one may say that judges in Jordan are like civil servants. The law on the independence of the judiciary and the code of judicial conduct are based on an international document. Article 41 of the latter code stipulates that judges ought to abide by the general jurisprudence of supreme courts.

4. One cannot lodge an appeal against **military courts** rulings. However, military courts may go as far as the death penalty.

5. Among the main priorities of **the judicial reform in Jordan are:**

   - Setting up a judges' club
   - Annulment of the law on the state security Court. This is because the judge should not have a military chief, especially when the rulings of this Court often apply to non-militaries.

- Taking complaints about the **efficiency** of the judicial system, especially when considering the time taken to rule, there is a high number of cases that are appealed because the Supreme Court has no clear legal opinion regarding the slowness of the department of civil or penal judicial enforcement, and the difficult judicial reporting procedures.[14]

The Judiciary in Egypt: Liberal Roots and the Judges' Club

When trying to assess the Egyptian judiciary, a distinction needs to be made between the judiciary as an institution and judges as individuals. Judges in Egypt have professional traditions with liberal roots ever since the setting up of the modern Egyptian judiciary around the end of the nineteenth century. Social, economic, and cultural changes in Egypt have had a great impact on these traditions. Yet, values such as neutrality, independence and integrity have remained firmly rooted. They are strengthened by a feeling of social uniqueness.

1. The legislative system of the judiciary strengthens the monopoly of the Executive on the judiciary. **Special courts** are stipulated in various parts of the Constitution, which prevents ordinary courts from full disposition of all disputes and prevents ordinary citizens from resorting to ordinary courts.[15] The Constitution includes ruling procedures and some judicial jobs under the Supreme Judicial Council, which is headed by the President of the Republic. The Supreme Constitutional Council is not included in the system of ordinary courts.

Ordinary legislation in Egypt gives the Executive a tighter grip on the judiciary. Nominations to high judicial posts (President of the Court of Cassation, Public Prosecutor, and President of the Council of State) are the prerogative of the President of the Republic. The Minister of Justice has broad power with respect to justice, courts, prosecutors and public attorneys, be it in administrative supervision, inspection or disciplinary matters. Even though stipulated in the Constitution and in the judicial act, the principle that a judge cannot be dismissed is hypothetical and may be disregarded at any time based on the same laws especially when there is a fierce disagreement between the executive and the judiciary about the independence of the latter. The budget of the judiciary is part of that of the Ministry of Justice.

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14 Frayhat, A. G. (2007). The Judiciary in Jordan. In *The Judiciary in all Arab States* (pp. 120-280). Beirut: Arab Center for the Development of the Rule of Law and Law Integrity.

15 The Initiative of Arab Reform: The State of Reform in the Arab World in 2008. (2008, April). p. 76.

The monopoly of the executive over the legislative in Egypt allows the former to use financial means to pressure judges through assignments, transfers, and generous bonuses. Vast powers bestowed upon the presidents of courts of first instance and courts of appeal hamper the independence of the judiciary. The fact that these presidents, who are critically in relation with the executive, assign some cases to particular judges is overshadowed.

The Egyptian legal system includes some punitive texts incriminating any interference with the work of judges or pressure exerted on them, and thus jeopardizes their personal safety. The law also foresaw judicial immunity for judges and a special system of criminal accountability.

2. Despite what is legally foreseen in conformity with judicial tradition, and despite the fact that judges are not to deal with politics, this does not take away their freedom to express their opinion. The right for judges to have a union is publicly debated in Egypt because of growing disagreement between the judges' club, the government, and the Supreme Judicial Council as to the judges' role in the supervision of elections and the draft law on the judiciary, which is slowed down by government and administrative bureaucracy since the government is apprehensive about giving more autonomy to judges.

3. Egyptian law includes guarantees for the judges' neutrality and integrity both institutionally and individually. The procedural system includes many principles that guarantee integrity and neutrality.[16] Yet, structural economic and social changes in the last three decades may have had negative repercussions on some judges.

4. There are clear and strict norms to assess the judges' competence, based on their advancement, or to take disciplinary measures against them even if the fingerprints of the Executive are obviously in the advancement or in the disciplinary measures, especially with the powers of the minister of Justice. Nominations in the first level of the judiciary are quite deficient since good university results are no longer a criterion to have priority in nominations. It is rather the social milieu and personal considerations that are taken into consideration and it is even taken for granted that the sons of judges with a degree in law would be automatically nominated in the judiciary – even though this is a flagrant violation of the principle of equal opportunities. The number of policemen and police faculty graduates has

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16 The Initiative of Arab Reform, *op.cit.*

increased. Texts concerning the nomination of lawyers and university professors in the judiciary are wasted on purpose.

5. Although the state has nominated a woman judge in the Supreme Constitutional Court (a court that is not in the regular court system),[17] this is where things stopped and women are still not nominated in the judiciary. There is no justification for this discrimination between men and women.

6. The greater challenge that the Egyptian judiciary faces is the efficiency of the judicial system. As there are so many cases in various court levels and types, legal disputes take a long time to be settled. As cases pile up, some procedural rights are violated, such as the right of defense and the presumption of innocence in criminal matters. Many cases, especially in the courts of first instance, are not properly studied or examined, and this increases annulments and amendments of rulings when appeals are lodged. Litigants often misuse their procedural rights. They often resort to a procedural license to prevent their opponents from getting their rights. The execution of sentences faces major obstacles. The incompetence and dishonesty of the administrative body in courts further hampers justice.

7. Reformation of the judiciary in Egypt requires legislative and administrative logistic procedures. Amending legislations that hamper the judiciary's institutional independence has become a *sine qua non*: starting with the amendment of the Constitution by annulling all forms of special courts, and the amendment of the Law on the judiciary in a way to guarantee its independence from the Executive, in conformity with international norms.

Recommendations: The power of the ministry of Justice must not cover matters related to the judiciary. Nominations in major positions in the judiciary as attorney general and president of the court of cassation or the State council must be made on objective norms and not left to the discretion of the President of the Republic. Judges' nominations, transfers, advancement and disciplinary measures must be in the hands of their council, which includes major judicial posts as well as two representatives of the judges' community.

There is a disagreement between the Judges' Club on one hand and the Supreme Judicial Council and the Executive on the other hand[18] as to irregularities

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17 *Op. cit.*, p.76.

18   The Judiciary in all Arab States, *op.cit.* pp. 590-592.

denounced by the Judges' Club concerning legislative elections and the obstacles met by the draft law on the judiciary. In its struggle for the independence of the judiciary, the Judges' Club has simply called for independence only, without going further to call for a complete modernization of the Judiciary which would have solved all problems concerning the efficiency of the judiciary once and for all. It would especially have solved the piled up cases and brought a solution to the insufficient judges, and the lack of execution of sentences. The Judges' Club has not said its final word concerning objective norms in nominations for the job of public prosecutor's aides, the first of the judicial ladder.

The fact that the Judges' Club merely calls for independence without tackling other issues may give the impression that it is professionally closed since its calls for reform do not cover the judicial system as a whole.

Analysis included in the report on the bill of the judiciary prepared with the help of the Judges' Club[19] showed that the Club's ambition as to the independence of the judiciary was below internationally recognized norms. The bill maintains a lot of the Executive's monopoly on the judiciary even if it marks some progress in terms of the judiciary's independence.

The Judiciary in Morocco: Improving Efficiency

Moroccan constitutional judiciary evolved with the 1992-1996 constitutional revisions, as an independent body was set up to make sure laws were constitutional. This judicial body reflects in its prerogatives, relative progress in the control of law constitutionality. The right of referral was enlarged to a quarter of the two chambers' members. Regular laws are also to be considered constitutionally should the majority of the two chambers demand so.

1. Constitutional jurisprudence has restructured the statutes of the Assembly of Representatives, the Assembly of Councilors and as a result, new parliamentary work mechanisms were established. The civil society has greatly contributed to the constitutional debate.

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19 Farhat, M. N., & Sadiq, A. *The Judiciary in Egypt, in The Judiciary in all Arab States,* op. cit. pp. 586-682.
   Rushdi, R. F. (1997). *The Framework of Egyptian Judiciary Prior to the Setting up of Civil Courts. Doctoral dissertation,* Zaqaziq University – Faculty of Law.
   Nathan, B. (1998). *The Rule of Law, Courts in Egypt and The Gulf States.* Cambridge University Press.

2. The 1995 World Bank report highlighted the negative role played by the judiciary and its large scale corruption, which made – the late – King Hasan II give a speech calling for the reform of the judiciary namely by increasing the judges' salaries. A five-year work program was carried out (1997-2002).

3. The Constitution guarantees the principle of the independence of the judiciary in articles 82 to 87:

   - "The Judiciary shall be independent of the legislative and executive branches" (article 82)

   - "Upon recommendations made by the Supreme Council of Magistracy, Magistrates shall be appointed by Royal Decrees" (articles 33 and 84)

   - "The Supreme Council of Magistracy shall ensure the implementation of the guarantees granted to magistrates regarding their advancement and discipline" (article 87)

   - "Magistrates in the bench shall be irremovable other than by law" (article 85)

Considering the composition of the Supreme Council of Magistracy as stipulated in article 86 of the Constitution, it consists of nominated members by virtue of the Constitution (the King in his authority of Head of the Supreme Council, the "Minister of Justice as Vice-President", the "first President" of the Supreme Council, the highest court in the judicial pyramid, the Prosecutor General, the President of the First Chamber in the Supreme Court, six judges elected among magistrates of the Court of Appeal and the first degree courts). It is clear that the Minister of Justice is the real president of the Council thus having a pivotal role, allowing him as a representative of the Executive to interfere with judges' advancement or disciplinary measures. This limits the principle of separation of powers as stipulated in article 82 of the Constitution.

4. The Statute of the magistracy dates back to November 1974, a period during which Morocco witnessed troubled times; amendments that were brought to the Statute were not substantial.[20]

   The magistracy as a body suffers from the interference of the executive. This can be seen through the various amendments that have been made to the Statute of the magistracy making the principle of irremovable judges flexible.

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20 Rabbat: Center of Studies and Research in Social Sciences, & Marocco: The Arab Initiative of Reform. (2008, April). *1996-2007: A Decise Decade of Reform?*

The promotion is first of all related to the financial post in the yearly budget and not to length of service, competence or efficiency. It is related to the list suggested by the Supreme Council of Magistracy set up by the Minister of Justice (article 23 of the Statute). The latter Minister does not have to take into account the Supreme Council's suggestions. This makes out of the advancement a weapon in the hands of the representative of the Executive who can threaten whoever, who does not comply with its directives or who does not submit to its pressure. This representative also sets the agenda of the session and decides when it is to start.

5. The public prosecutor's office and its members are under the direct supervision of the Minister of Justice (article 56 of the Statute) and are excluded from the principle of being irremovable other than by law – contrary to judges.

6. In order to regulate the work in the Supreme Council of Magistracy, a statute was set up to regulate the rules and fundaments of the work and to establish objective norms so as to avoid conflicting opinions or cause rupture within pressure groups that influence the work of the Council.

Since 2000, the work of the Supreme Council of Magistracy has increased. It started its yearly sessions on a regular basis and thus overcoming the stagnation it had undergone. This opened up the way for the judges' promotion. Its work has somewhat become transparent. The statistics of the Ministry show a notable increase in both disciplinary follow-up and the number of advancements compared with previous years (see Graph 1).

Graph 1 – The Increase in Follow-up of Disciplinary Procedures and in Advancements in Morocco [21]

Year	1998	1999	2000	2001	2002	2004
Number of Disciplinary	60	47	-	29	27	19
Procedures Followed-Up	165	309	-	-	605	613

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21 Ministry of Justice. (2002, October 4). Reforming the Judiciary: *An Assessment of Achievements (1997-2002), Change in Motion, Addendum.*
Report on the Activities of the Ministry in 2004, and its Action Plan for 2005, p. 30.

7. A judge has relative immunity which empowers him to achieve his duty with moral and intellectual honesty, integrity, without pressure and threats since a judge cannot be prosecuted or convicted other than by the Attorney General office or by a judge of the same rank. The State protects judges by using criminal and applicable laws or other laws, when threatened, assaulted, insulted or slandered. The State also guarantees compensation for any damage that may happen to judges while performing their tasks, other than what is foreseen in the legislation about their salaries and the capital received upon death. The State then represents the injured party as concerns his rights and hearings against the one who has caused the harm (article 20 of the Statute). In parallel, the criminal law sanctions any judge (or employee) who has committed the crime of accepting a bribe or who has abused its power (articles 284 and 249). The sanctions are tougher if the wrongdoer is a judge.

8. Judges have duties that restrict their freedom such as the interdiction from practicing "any political activity or [taking] any stand that may be political" (article 13 of the Statute of the Magistracy). They are also forbidden to "set up professional unions or be a member in one" (article 14 of the Statute). Interdiction reached its peak with the 2003 events, when the Moroccan Association for the Defense of the Independence of the Judiciary[22] submitted a petition to the King in the position of Head of the Supreme Council of Magistracy, in parallel with the publication by one of the judges who is an activist in the Association of an article about the reform of the judiciary. The outcome was that the judge was arrested and submitted to the Supreme Council of Magistracy according to disciplinary procedures. He was then transferred to another post hundreds of kilometers away from his original post.

The case raised a lot of controversy among judges and in the society as to the freedom to belong to an association, especially with the Milan 1985 Declaration and article 12 of the "Universal Charter of the Judge"[23] set up by the International Association of Judges (IAJ.UIM) which was voted on among others also by Moroccan magistrates in 1999. This Charter stipulates: "The

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22 The advocates of this Association include some judges; it was set up with the help of lawyers and civil society members on June 27, 2001.

23 Banis, M. A. (2006). Papers of Political Follow-up, No. 12. Arab Initiative of Reform. Retrieved December 1, 2009, www.arab_reform.net.

right of a judge to belong to a professional association must be recognized in order to permit the judges to be consulted, especially concerning the application of their statutes, ethical and otherwise, and the means of justice, and in order to permit them to defend their legitimate interests."

9. In the context of reforming the judiciary and its environment, many steps were taken to restructure the central administration of the Ministry of Justice based on modern regulation theories. In order to make it more efficient, the Ministry of Justice was divided into three poles. The judiciary pole (which is about judicial professions) includes the Civil Affairs Directorate, the Criminal Affairs and Pardons Directorate, the Prisons and Reintegration Directorate, the Commune and District Courts. The second pole is the organization and practicalities, which includes the Human Resources Directorate, the Budget and Equipment Directorate. Finally, the third part is the Guidance Pole which includes the Studies, Cooperation and Modernization Directorate. The organizational structure of the Ministry was reviewed in 2004. The Budget and Equipment Directorate was divided into two,[24] one for the budget and the other for the Ministry possessions and equipment projects.

10. In order to make the judiciary more efficient and to meet the foreign economic demand,[25] six commercial courts and three commercial appeal courts were set up in 1998. Two other commercial courts were established in 2002 in major Moroccan cities, with the support of the World Bank.[26] One cannot help but notice that international donor organizations mainly focus on the commercial judiciary because it is related to international investment and the interests of foreign investors. Some courts have been established in order to deal with all cases quickly and transparently. Because these courts are crowded, the cases that are submitted to them have to involve 20,000 Dirham instead of 5,000 Dirham in the past; if the case involves less than this amount, then it is submitted to the courts of first instance. This made it easier for small merchants to have access to legal procedures in 66 courts of first instance throughout the country, instead of eight commercial courts that may be thousands of kilometers away from the merchant who wishes to file a lawsuit. The aim of this change is to reduce the number of cases submitted to commercial courts and to restrict them to major economic stakes.

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24 Morocco 1996-2007, *op.cit.* pp. 28-29.

25 *Op. cit.* p. 34-36.

26 *Op..cit.* p. 68.

11. The judicial map is constantly reviewed by the Ministry of Justice in order to meet people's needs and bring justice closer to them.

12. The special court of justice was abolished in 2005. It used to look into crimes committed by employees, i.e. corruption and abuse of power. It was considered a special court since its rules did not include the right of defense. It turned out to be limited in terms of efficiency and was more used for political purposes than for punishing or checking financial crimes. These crimes were included under regular courts.

In the last few years, the Ministry of Justice has been giving great importance to the socio-professional structure of the judiciary. In order to access any judicial profession, a legal degree is required. After passing an entrance exam prepared by the Ministry of Justice, the judges attend the Higher Magistracy Institute. The Minister of Justice is present in the policies of the Institute since she/he appoints some of the members of the board and is the head of the latter.

An objective indicator as to the status of the magistracy is the lack of trust the litigants have in their judiciary. Some do not even resort to the judiciary with regard to the complications, intricate and slow regulations, not to mention slow execution, all of which harm the judiciary's credibility and the social as well as the economic situation. The reform policy of the judiciary is still wavering between the actual reform and discourse about the reform[27].

Ways to Empower the Arab Magistracy

The Arab magistracy may be empowered in two ways that may be considered as priority:

1. Judges taking part in the spreading of legal culture in the society: rendering sentences is the judges' prerogative. However, justice is a social and public matter; it requires the contribution of judges in as much as they can spread legal culture among people. In 2005, Egypt was a greatly positive political example as there were signs of an Egyptian "pattern" of change, which

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27 Sa'if, A., & Salimi, A. R. M. (2008, March). *Morocco 1996-2007: A Decade of Reforms?* Rabbat: Center for Studies and Research about Social Sciences, The Arab Reform Initiative.

Amin, N. (2001). *The Judiciary in Countries of the Arab region.* Proceedings of the First Arab Justice Congress. Cairo: Arab Center for Judges' and Lawyers' Independence.

Arab Center for the Development of the Rule of Law and Integrity. (2007). The Judiciary on Arab States, (Jordan, Lebanon, Morocco, and Egypt). Beirut. Retrieved December 1, 2009: www.arabruleoflaw.org.

was coming to life via a peaceful, democratic, and modern way. Yet it was a pattern that could be hardly seen in other Arab countries.

What happened in Egypt and is hard to see in another Arab country is related to the Judges' Club. Hundreds of Egyptian judges from Alexandria started a movement that spread to Cairo later on. After many – often tumultuous – meetings, General Assembly of the Judges' Club of Egypt decided to abstain from supervising presidential and legislative elections unless a code of the judiciary was enacted. They called for an independent budget for the judiciary and for guarantees that presidential and legislative elections would be fair and honest.

The British mandate in Egypt at the end of the nineteenth century – as in Iraq after the fall of the Ottoman Empire – helped to establish early roots of the Egyptian judiciary. It should also be pointed out that the French mandate in Lebanon and Syria helped establish the roots of the Lebanese and Syrian judiciary, its culture and institutions.

In Iraq like in Syria, the crisis of the judiciary has gone beyond mere independence of the judiciary through structural changes made by the one party regime in both countries. On the other hand, the judiciary in Lebanon has been becoming more and more submitted to the growing influence of the political power since the end of the French mandate. Although there are judges with a modern legal culture, they have no political history, i.e. there are no Lebanese judges with a history of political courage. Judges earn their credit through many achievements - namely jurisprudence in the civil and penal codes. Yet, there is no record of the judiciary standing up against the political power, not even of a single judge standing up against it. Courage, just like competence, is still not political in the Lebanese judiciary. This is why the movement led by the Egyptian judges is so important and cannot be imagined neither in Syria nor in Iraq at the time of Saddam Hussein and nor in today's Lebanon.

The movement of Egyptian judges is a distinctive feature of the State, when compared with other Arab countries. It may cause Egypt to be considered as a State with efficient institutions even in a regime where there is no alternation in power. Egypt then is a pattern of totalitarianism that is open to the likelihood of peaceful and democratic change from within. It is different than totalitarianism in other Arab countries where there is no real tradition of an efficient State but of the rule of a party, religious community or tribe that seemingly has the State.

This description still means that Egypt is a weak State when considering the criteria of development and modernization with respect to the American vision of the Developing World. Still, this description makes Egypt different from its neighboring countries since in the latter countries, there are controlling powers not firmly established States as is the case of Egypt. The fact that there are more powers in the Arab world instead of States is in accordance with the phenomenon of strong central power. This was the case of Syria, previously also of Iraq, Libya, and others.

The Officers' Club opposed the monarchy in 1951-1952, prior to the military coup. The Judges' Club opposes the system through which the main source of power rules the Egyptian military institution. This is not in a strict sense, rather in a larger sense of the word since the military is the main environment of the power derived from the traditions of the July Revolution and even of civil jobs where one finds former officers high in the pyramid.

On the political level, and despite continuous growing implication of opposition parties – Wafd, Nassiriyin, leftists, Kifayah, etc. – in Egypt, it is believed that the real confrontation is between the military and the Muslim Brothers as a main force in the Egyptian society. Their public presence since the rule of Anwar al-Sadate was not legitimate because the authorities, and the President Husni Mubarak particularly, refused to give a license to a "religious party". Yet, contrary to the Syrian case, they are visibly present and are closely linked with the Egyptian daily political life in the light of the policy of loosening and tightening of the power.[28]

The Club is in the heart of Cairo. It is at a crossing point of Abdul Khaliq Tharwat Street and Champollion Street. To the east is the Supreme Court, the Court of Cassation, the Cairo Court of Appeal and the Attorney General. From the north is the Press Union and the Bar Association. The land on which the Club is built was a gift from the government in 1943 with a donation which amounted to ten thousand Egyptian pounds as a contribution to the building completed in 1949 and whose architecture is quite special.

This place proved to be important when judges held their protest marches from the headquarters of the Club to the Supreme Court when Judges Hisham Bastawisi and Mahmud Makki were tried. The Club has branches where it

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28 Zayn, J. (2005, May 19). *From the Officers' Club to the Judges' Club.* An-Nahar.

provides social services, activities, and entertainment to judges and their families:

1. Al-Nahri Club which is at a great site beside the western banks in Ghizah.

2. Al-Bahri Club on the Alexandria Riviera.

3. Al-Qanatir al-Khayriyyah Club.

4. Ra's al-Birr Club.

5. Al-Ghardaqah Club.

The Club also has twenty-five branches in the provinces, the oldest and biggest being the Alexandria Club.

Membership in the Club is voluntary but all judges and members of Office of the Attorney General are its members. There were 9 557 members in July 2006. Members also include retired judges upon the condition that they do not have any other job or profession and they pay the contribution fees. On the above mentioned date, there were 260 members. The Statutes allow any judge, who has left his job to teach in a faculty of law, in the State Council, in the Administrative Office of the Attorney General, or in the Public Litigation Service to maintain his membership should he wish to do so and pay the contribution fees. They are 80 in number. The General Assembly of the Club includes all working and retired members.

The Administrative Council includes fifteen members: five chosen among judges of appeal and cassation – among who is the President – and among retired judges; five members among the Presidents and judges of the courts of first instance; and five from the Office of the Attorney General. All are elected by the General Assembly for a three-year mandate, and every year, the mandate of a third of the members is renewed. The Administrative Council is composed of committees whose members are chosen among the members and others to organize the various activities. Committee and Administrative Council members are unpaid volunteers.

Like any club in the world, the Judges' Club offers its members and their families food, drinks and entertainment, payment facilities for real estate and cars, and organizes *hajj* and *'umrah* trips in and out of the country.

The Club manages a major project to provide references to judges at low prices. It has signed a contract with a specialized legal computer company

to provide every judge with an electronic library, which includes laws and legal jurisprudence. It publishes a quarterly report that includes all new legal provisions or those with a historical value as well as legal research carried out by jurists and university professors. It also publishes a monthly magazine, which includes news about the Club, judges, articles that express the judges' and other people's opinions, in legal and public matters. This magazine is a good tool that allows members to communicate among them and between them and the Club. It is their free tribune.

In the Club, is a fund to help the sick in critical cases since the central power fails to provide any help. It is based on the members' monthly contributions and donations. It is run by a board of trustees. The main aim of the Club and the reason for its existence since its creation is the fact that it is a space where all that concerns judges can be tackled; it unifies their voice in these matters of concern, announces this unified decision, and carries it to those who can make their requirements come true.

The revenues of the Club include the members' contributions that are deduced from their salaries and are transferred to the Club's bank account. The members' contributions are two Egyptian pounds per month! It is an amount that is not enough to buy a simple meal of beans! Therefore, the monthly revenues of the Club from these contributions amount to ten thousand Egyptian pounds, which is not enough to merely cover the salaries of the headquarters' workers alone. Then, the Club receives from the Ministry of Justice financial aid for its many activities.

However, the donor cuts off its donations from whoever disobeys him and the Ministry cutoff its aid to the Club during a given crisis.

In February 1939, in Egypt's Court of Appeal building, 59 jurists and members of the Prosecutor's Office met and decided to set up the Judges' Club. They defined its aims as a way 'to strengthen brotherhood and solidarity, to facilitate the jurists', i.e. means to become acquainted and to convene. Their real aim was to set up this league in order to achieve the judges' independence and to annul mixed courts in a first step. Four years later, the work started to bear fruit when in 1943, the first code was issued for the judiciary's independence.

In 1950, the Club moved to its current building. In 1963, after a crisis between the Club and the Minister of Justice, a law was published by virtue of a Republican decree dissolving the Judges' Club. Its management was handed

to an appointed council whose every member was named according to his job. Judges then boycotted the headquarters of the Club so much that the appointed council felt ashamed to convene in the building of the Club. Then a decision was issued by the State Council, considering the aforementioned Republican Decree void in the view of the publication of the Law of association, no. 32/1964. The dissolved administrative council was reelected. The traditional competitors refrained from presenting their candidacy to assure the annulment of the decision to dissolve the previous administrative council.

On March 28, 1968 the Club issued a statement expressing the judges' opinion on the reasons of the 1967 defeat and ways to eliminate the sequels of this defeat. They called for more independence to the judiciary that ought to be kept away from politics, the lifting of the state of emergency and the end to special courts.

In September 1969, the "judges' slaughter" occurred as the laws of the "slaughter" were published. By virtue of these laws, the Club's administrative council members, the Supreme Judicial Council members, and their supporters were removed from office. The instances of the Club were dissolved and its management was handed to appointed members, each according to his functions. The Supreme Judicial Council was cancelled. However, three years later, the judges that had been removed from office returned to work, some by virtue of the decision of the Court of Cassation, and the rest by decisions of President Anwar al-Sadate. A new administrative council was elected. The club called for the return of the Supreme Judicial Council; it was supported in this by the General Assemblies of courts. The return occurred by virtue of Law No: 35/1984.

In 1986, a congress was held about justice; its recommendations included the reform of the judiciary and judiciary laws in order for justice to defend rights and freedoms more efficiently. The congress called for the annulment of special laws and courts, the lifting of the state of emergency. But the government ignored the recommendations of the congress and even omitted to point out to it when laws were amended in conformity with its recommendations.

The Club went on to call for amendment of the law on the judiciary in order for it to be more independent from the executive power. In 1990, a committee was formed with representatives of the Judges' Club, the Supreme Judicial Council, and the Ministry of Justice. It set up a draft amendment which included the transfer of the minister of Justice powers to the Supreme Judicial Council, and to

include in its membership, elected judges from the Court of Cassation and the Cairo Court of Appeal. The draft also included the reorganization of the Judges' Club in a way to liberate it from the supervision of the executive power. The draft also included the following points: the transfer of the Judicial Inspection to the Supreme Judicial Council; the independence of the judiciary budget; the organization of the judges' affairs in a way that keeps them away from the interference and control of the Ministry of Justice. In 1991, the draft amendment was submitted to the judges at the Club's general assembly. They approved it and called for its quick publication. They repeated this at the next general assembly but the government ignored the request; the administration council changed and the Club ceased to call for this amendment for about ten years.

Judges dropped the entire administration council to bring in an entirely new one which endeavored to reactivate the judges' delayed requirements. The new council formed a committee to review the 1990/1991 draft and bring improvements to it, develop it as the changing circumstances require. The Committee prepared the draft and it was submitted to the judges for further study. The Committee then re-drafted it in the light of the debates and the final draft was submitted to the general assembly of the club. The latter assembly approved it and called for its publication every time it convened.

The Ministry of Justice formed one committee which included the minister's assistants, the general secretary and the President of the Judges' Club. It reexamined the draft and after many difficult rounds of talks, the committee reached a consensual draft that the Ministry submitted to the Supreme Judicial Council to have its opinion. The draft remained at the Supreme Judicial Council for eight months then it was returned to the Ministry with a report asking that it should not be presented to the judges, which led to tension between the Supreme Judicial Council and the Judges' Club.

Tension grew between the government and the Supreme Judicial Council on one hand and the Judges' Club on the other after some judges were aggressed by the police and partisans of the ruling party while supervising the legislative elections. Officials failed to follow suit with repressive measures. As a result, for the first time in Egypt, judges held in their Club a sit-in, as well as several extraordinary assemblies. Tension reached a peak when the vice presidents of the Court of Cassation, Bastawisi and Makki were submitted to disciplinary courts for publicly denouncing electoral fraud in the legislative elections.

Opposition parties, political movements, professional unions, the non governmental press, and a growing number of people, all rose to support the judges and their Club in their requirements namely, the submission of the Club's draft to amend the law on the judiciary to the Parliament, the amendment of the law on political rights, the annulment of special courts, and the lifting of the state of emergency.[29]

2. Developing the judicial media: the judicial media are part of the general legal media, a part of the problem of making people know their rights and duties, advocating them, bringing legislation from the shelves of specialized libraries to common people. The separation of the judicial media from the general legal media may reduce their role. In fact, legal culture in the media today is very deficient in most Arab societies. Every subject – no exception whatsoever – has a legal aspect. To which extent do journalists spread the culture of the rule of law in the news, commentaries, reports, and so on?

For instance, a television debate is held about the privatization of a sector and those taking place in the debate have conflicting stands. Yet, they do not mention the rule of law that govern privatization or any tender. Should there be a report on television about a hole in the public street or the lack of water in a neighborhood, people are interviewed and they "nag" and "complain"; the reporter says: "Who is responsible?" He goes on to accuse the "State" in a very general way. The report ends and there is no mention of the rule of law whereas it determines responsibility. Some curricula in Arab societies about education in terms of democracy and human rights automatically lead to the development of a "nagging" mentality since these curricula do not focus in-depth on the popular legal culture which ought to be accessible to every individual in his every day life.

The main aims of the judicial media are:

1. To make people know about justice in their every day life: Should there be a robbery or fraud, what should one do? What legal steps should one take? This definition leads to a justice of proximity since justice is initially about protection and guarantees and not punishment.

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29 Gharyani, H. (2006, July 4). *The Judges' Club Experience in Egypt.* An-Nahar.

2. To spread judicial culture and support judges: rendering sentences is the judges' prerogative but justice is not limited to judges. They are supported by the police, the public administration and the balance of power in the society and the prevailing culture in this society.

3. To make special judicial sentences known especially when these sentences are pioneer and **typical** in advocating freedoms and human rights, since these sentences are rendered "in the name of the people". We often forget this particular item and judges themselves may forget this should they refuse that the media tackle judicial matters.

The main characteristics of the judicial media are:

1. **The secrecy** of investigations to ensure their continuity, the individuals' and the society's security.
2. People's dignity: an accused, an innocent…
3. The respect and immunity of judges, and therefore legal and ethical rules.
4. The expression of a society's values, **behaviors,** and changes.
5. **The style** and the specificities of the language (See table 1 – Pattern of Popular Judicial Media).[30]

Conclusion

What the magistracy needs in Arab countries is not just legislation in compliance with international norms but also empowerment of the magistracy through the spreading of legal culture. The magistracy also needs the civil society's support. Pioneer and normative rulings that advocate justice, equality and human rights need to be monitored.[31]

Hurdles that may occur as a result of political power, cultural traditions or the very nature of judicial work – namely in criminal cases – need to be overcome through specialized judicial media. On the popular level, people will know about the course of justice and this establishes trust between the magistracy and the people. The course of justice is a public matter that requires

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30 Messarra, A. (2008, December 5). Unpublished paper in the congress: Project to strengthen the Independence of the Judiciary and Citizen Access to Justice in Lebanon, A USAID Project Implemented by the National Center for State Courts. Beirut.

31 Messarra, A., & Murqus, P., *op.cit.*

transparency in order to establish public trust in the judiciary and ensure social legitimacy to rulings that cannot be only legal since they are made "in the name of the people".

As an example of judiciary media, we would like to mention the Program "Open Door Justice" in France. For a number of days, people ask questions on TV. Specialized media that target the general public contribute to restoring trust in the magistracy not just by right but also by duty, thus reducing the number of special interventions and making sentences applicable. The position of the magistracy becomes stronger and their demands are more righteous, hence restoring trust in the judicial system.

As an example of judicial media, the program: "Justice Today" aired on TV5-Europe on December 15, 2001[32], in relation with the polemic in France as to stricter rules to preserve the presumption of innocence.[33]

There is an increasing need in Arab countries today – for the sake of more efficient justice and social legitimacy – in the programs of legal and judicial programs, for special formation sessions in paralegal sciences, namely in their practical and field aspects, especially **judicial psychology, judicial sociology, and judicial media.**

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32 L'Allemand, P. (2001, December 15). Complément d'enquête: La justice au quotidien. *TV5 Europe.* Presented by Duquesne, B.

33 Pelletier, E., Pontaut, J. M., & the Investigation Service. (2001). Loi Guigou: Les juges aux bans des accuses. *L'Express.*

(2001, December 5). La justice en accusation. *Le Monde.*

(2001, December 6). Jacques Chirac s'empare de la polémique sur la loi Guigou. *Le Monde.*

Table 1
Pattern of Popular Judicial Media
The Judicial Process in a Penal Incident[34]

First: The Incident

1. **Aggression:** aggression incident in the street.

Second: Investigation

2. Intervention of the **Security forces** who make an arrest.

3. Sending to the **police station** and start of an **investigation**.

4. Calling the **Attorney General** who is told to. His opinion is asked for.

    Decision of the Attorney General to make a detention and send the detainee to him.

5. Transfer to the **Law Courts** where the detainee is interrogated by the Attorney General in the presence of a **lawyer** should the detainee ask for one.

6. Prosecution by the Attorney General for the crime of aggression and submission to the **examining magistrate.**

    Interrogation by the examining magistrate in the presence of the lawyer of the detainee should he wish for one. **Witnesses** are being heart.

7. Submission of the investigation by the examining magistrate to the **Attorney General** to give his reading of the merits.

    The Attorney General gives his reading of the merits and he prosecutes the detainee again.

8. The examining magistrate renders his interlocutory decision and submits it to the penal magistrate for execution.

Third: Putting the Accused in Jail

9. In the meantime, the legal representative of the defendant (or himself) **asks for his release;** the examining magistrate considers this.

    The examining magistrate has taken the opinion of the Attorney General who has opposed the release.

    The examining magistrate refuses the request of release.

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34 This table was set up in a primary form through the consultation of the former president of the Bar Association, Mr. Raymond Shdid and Judge Joyce Tabit.

10. Appeal by the legal representative of the defendant at the **Court of Criminal Appeal**.

The prosecuting authority decides to reject the appeal and confirms the decision of the examining magistrate.

Fourth: The Trial

11. The defendant is submitted to **trial** after his papers are referred to their reference, i.e. the Attorney General.

A **hearing** is fixed by the penal magistrate.

12. The defendant is brought in state of arrest with his legal representative. He is interrogated and asked questions. The **hearing** is put off to hear the witnesses.

13. The legal representative of the defendant asks for his **release**. The request is granted since the arrest has lasted for more than two or three months.

14. Appeal by the plaintiff of the penal magistrate's decision in the **Court of Appeal**.

The Court appoints a hearing and after presentation of the case, the Court decides to confirm the penal magistrate's decision.

The case is brought back to schedule to set a hearing. The witnesses of the prosecution and of defense are heard.

15. The hearing is postponed to the plea, which occurs and the hearing is postponed to hear the **sentence**.

Fifth: The Sentence and its Appeal

16. The magistrate decides to **imprison** the defendant for six months with a stay of execution and the time spent being enough since the defendant has no precedents. The sentence includes the payment of a three million L.L. sum of compensation to the plaintiff.

17. **Appeal** of the defendant at the penal Court of Appeal.

After more than a year, a hearing of the court is fixed. It appears that the plaintiff (the respondent) had not been notified so the hearing is postponed to notify him.

At the hearing (we suppose that the court followed emergency interim proceedings) both parties reiterate their positions and their defense. The

Attorney General pleaded that the sentence be certified since the Attorney General and the plaintiff (the respondent) did not appeal and the appellant (the defendant) has asked to be granted innocence and the hearing of the sentence.

The court renders its decision to overrule the earlier decision and proclaims the **innocence** of the defendant. The respondent (originally the plaintiff) brings an appeal for cassation of the decision.

The Court of Cassation decides to overrule the decision of the court of appeal **and looks into the case again** (everybody being present… witnesses… hearings…).

The court meets and the Court of Cassation renders its decision in the merits to overrule the Court of Appeal's decision and to confirm the decision of the Court of First Instance.

Sixth: The Execution

The final decision is announced - and should the defendant not comply willingly, the sentence is enforced upon him and he is imprisoned further, should he not pay the compensation.

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Global Political Trends Center (GPoT) was established as a research unit under the auspices of Istanbul Kultur University in 2008. GPoT Center aims to produce innovative and distinctive policy recommendations by analyzing the contemporary trends in regional and international politics. It aims to interpret the current global patterns by determining the trends in normative structures, risk perceptions, and political system applications around the world. In other words, GPoT Center will aim to provide a platform to examine the reflections of certain global formations in international politics. GPoT Center's output will be a portrayal of the current paradigm on a given subject.