

The Rule of Law and Arab Political Liberalization: Three Models for Change

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ABSTRACT:

The rule of law is an important set of political ideals and institutional arrangements in general and has been particularly salient in the Arab world before and especially since the 2011 popular uprisings that removed the leaders of Tunisia, Egypt, Yemen, and Libya. Despite this, the rule of law is used by analysts and activists in vague ways that are particularly unclear with respect to the law's role in aiding a more accountable and democratic political process. This article sheds light on how legal ideals and legal growth might contribute to political opening in Arab countries in two ways. First, the article discusses the general background in which legal ideals and institutions are viewed in the Arab world, with an emphasis on the general impact of homegrown Islamic law and the legacy of the joining of Western sociolegal ideals to authoritarian colonial political practices. Second, the article describes and analyzes in detail three possible Arab pathways to political opening through the rule of law. These are: (1) the "slow and steady" growth of legal actors in non-oil Arab monarchies, exemplified by Morocco; (2) the "full speed ahead" hyper-globalized development of younger, expanding oil monarchies, illustrated by Qatar and the United Arab Emirates, and (3) the "reboot" pattern of societies that have just overthrown their governments and seek new relationships between law and politics, as shown in Tunisia and Egypt. Taken together, these three possible pathways suggest that there are particular dynamics in Arab societies around the rule of law and more open politics, which should be studied in greater depth by those hoping to understand and contribute to legal and political change in the Middle East and North Africa.

Introduction

The rule of law in Arab countries, as elsewhere, has been both a strong, if vague, ideal and a set of norms and institutions (Mednicoff 2006; Shalakhany 2006). Yet the term's trajectory in the Arab world is particularly interesting in recent political history. For decades of post-independent Arab politics, legal ideals and institutions seemed to be generally subsumed by strong authoritarian practices, making a mockery of political rights or the prospects for independent judicial review (Moustafa 2007). Yet, in 2011, contested Arab politics exploded,

bringing down long-standing regimes in Egypt, Tunisia, and Libya and putting in their place dynamic political spaces with heavy emphasis on the rule of law.

Despite this, and legalism's broad global significance, relatively little work makes sense of the relationship between legal ideas, legal institutional development, and democratization. This is particularly true outside of the Western world. The problem here is that law is an exceptionally active area of policy reform everywhere and particularly in the Arab world where new constitutional arrangements are focal points of active contestation as these words are written. If the relationship of legal ideas, specific institutions, and open, accountable politics is understood only vaguely, how can policy be formulated in this area with so much at stake for Arabs and the rest of the world?

Any hope to address this concern should take into account both global and internal Arab understandings of the political and institutional meanings of law, particularly now that it has become clear that the 2011 uprisings in the Arab world have been framed in legal terms. For instance, the policy debates among activists and officials in the Middle East and West with respect to what role Islamic law should play in guiding legislation in Arab constitutions are heating up after the events of 2011 (e.g., see Reuters 2012). Yet, they are hard to understand without reference to Arab Islamic political history, regional colonial and postcolonial politics, Western norms about the importance of official separation of religion and state, and international human rights concerning religious free expression. How do diverse legal and

political practices meet to facilitate democratizing policy development in the Arab world?

This article responds to the above question in recent comparative historical terms. I suggest three pattern trajectories through which legal change may contribute to more open politics in the Arab countries of the Middle East and North Africa. One possible pattern is a "slow and steady" move toward gradual regime political accountability to legal ideals and popular pressures; Morocco is the exemplar. A second, distinct trajectory is the "full speed ahead" hyper-globalized pressures for legal development and global reliability illustrated by countries like Qatar and the United Arab Emirates (UAE). Both of these possible trajectories differ from the third, the activist eruption and regime system overthrow represented by Tunisia, Egypt, and Libya in 2011. While this third trajectory is inspiring, creating in its wake the prospect for a dynamic and democratizing "restart from scratch," its volatility suggests the utility of analyzing the other two less-dramatic paths alongside it. I do this below after providing some background on the general contours of Arab legalism.

Background

The Rule of Law and Political Change

The rule of law "stands in the peculiar state of being the preeminent legitimizing ideal in the world today" (Tamanaha 2004, 4). Despite this, knowledge is surprisingly limited about what this ideal means or how it works in politics (Chesterman 2008; Jensen and Heller 2003; Maravall and Przeworski 2003). Impreciseness around the rule of law has even led

some theorists to dismiss the utility of analyzing this “bit of ruling class chatter” (Shklar 1987, 1). A frequent core aspect of the rule of law is John Adams’s formulation “a government of laws, and not of men” (1865). Yet the mechanisms through which legal development facilitates the political accountability of leaders to the legal norms that Adams envisioned are not well-theorized centuries later, at least outside of representative democracies in the West (Carothers 2006).

Indeed, much research on the rule of law derives from Western country cases, where the emphasis is on independent judicial review and other legal institutional performance (Ginsburg and Moustafa 2008). Yet the role of judges remains rather constrained in many societies and may depend on broader means for social support or political capacity. For example, in the Arab world, Egypt stood out for decades as the society with the most comprehensive contemporary history of judicial review. Yet, Egypt’s military regime under Gamal Abdel Nasser, Anwar Sadat, and Hosni Mubarak was able to limit the political and other impact of its judges, in part by keeping them isolated from broader social support (Moustafa 2007).

Thus, courts are not necessarily the only key to law’s relevance to political reform, particularly in non-Western or developing countries. In line with this, sociolegal scholars have suggested that comparative analysis of the rule of law and politics should use a broad idea of legal actors. My discussion below adopts the concept of the “legal complex,” including lawyers, law students, activists around legal themes, and officials (Halliday et al. 2007, 7). Indeed, the rule of law goes beyond legal in-

stitutions and actors to encompass the importance of dominant social ideas and behavior with respect to law. All of this is in line with an approach that is consistent with perhaps the most famous work on the rule of law in a particular country, Alexis DeTocqueville’s *Democracy in America* (2009).

Particularly since the decline of the USSR in the 1980s, the West has shown increasing interest in advancing common legal standards for countries, through human rights and other substantive law, and in providing legal developmental aid. Such reform efforts take place in a setting of globalized interconnectedness (Held et al. 1999), where international law and the legal norms of one society are easily accessible and often salient elsewhere (Berman 2007; Slaughter 2004).

Yet, these efforts can raise concerns in non-Western societies around sensitivity to local history and tradition. Knowledge around what works well in rule-of-law aid is limited in general (Carothers 2006). In the Middle East and North Africa, the comparative roles of Islamic and other legal discourses are central to the issue and my project. Though human rights and other international law can be reconciled with local Arab experience (Mayer 2006; Mednicoff 2003), Islamic law retains significance in inspiring and providing some substance to Arab legal orders (An-Na`im 2008; Otto 2010; Papi 2009; Rosen 2000). The latter doesn’t necessarily sit well with Western rule-of-law aid specialists, who tend to espouse secular norms. A major argument that this project aims to test is that Arab political orders that have allowed a public political role for Islam have also done better at rule-of-law reform by fostering coalitions of do-

mestic and external reformers that cut across Islamic and secular discourse. This happened, for example, with family law (*mudawwana*) reform in 2004 in Morocco, a government that has survived recent regional upheavals.

The complex political picture of the rule of law is complicated further because national and global praxis around the issue is grounded in at least two broad aims. First is an economic stake in facilitating stable market transactions for transnational capital. Second are political pressures for citizens' rights and regime accountability. These two goals may not be mutually reinforcing. Indeed, efforts to enhance the rule of law to harmonize transnational market transactions can accompany low civil rights and political accountability, as has been true in some Asian countries. Thus, high levels of legal development may have more to do with repression and "the rule by law" than with accountability or empowerment (Ginsburg and Moustafa 2008). My project tries to sort out legal and political conditions for the latter in Arab states.

It can therefore be difficult to sort out how and when the legal complex may be able to mobilize legal ideals or reforms that can advance more political opening. Contemporary authoritarian governments have muddied these waters by their frequent public symbolic political expressions of their adherence to global legal norms. Such symbolic expression can represent efforts at partial compliance with global human rights or other standards or aspirations for legal reform. But it can also be part of nonelected regimes' adroitness with respect to fending off international legal criticism. In the Arab world, it seemed reasonable to conclude that

unelected regimes had multiple tools to subvert the legal complex's potential to challenge their legitimacy until recent events, often framed in terms of legal ideals, proved this wrong.

Figure 1 illustrates the simple, appealing, logical assumption that the rule of law helps to make a country's politics more open and accountable to the citizenry, which in turn can amplify the rule of law in a virtuous circle. But the mechanisms for this are not very well-theorized. Moreover, as noted earlier, the rule of law itself is used in diverse and confusing ways. The rest of this essay suggests three possible pathways from the recent Arab world that may flesh out this appealing, but amorphous, virtual circle, particularly the lighter causal arrow at the top of the figure.

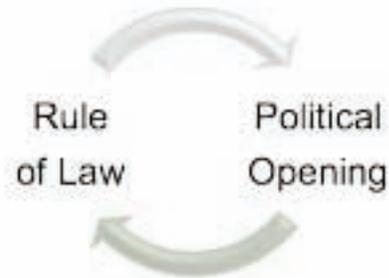


Figure 1 — Simple depiction of the rule of law and political opening¹

Legalism in Arab Politics: How Do History and Sharia Inform Current Issues?²

In one form or another, the rule of law has long been critical as doctrine in the Arab world³. Thus, discussion about the rule of law in Arab states cannot proceed without recognition that the concept has deep Middle Eastern roots. Indeed, Islam's long history of prioritizing law and mechanisms for

its evolution means that one indigenous Arab version of rule-of-law ideals remains very popular today (Feldman 2008, 20-21; Kassab 2010).

More specifically, Islam originated as a social system that combined “*din wadawla*,” or religion and polity. Naturally, law emerged as the central glue to guide the growth and administration of the millions of people throughout the Middle East, North Africa, and Southern Europe who comprised the early Islamic empire from the seventh through the thirteenth centuries. While facets of contemporary Western and global articulation of the rule of law cannot simply be retrofitted or read into Islamic political history, the core term for Islamic law, *sharia*, prioritizes legal order and brings together legal doctrine and judicial decisions. In other words, this traditional Arab Islamic term itself is one way of translating, if not necessarily transplanting, some of what is understood as the rule of law; it is likely to be viewed by many Muslim Arabs as the correct Arabic term for the concept. In general, then, the idea of the rule of law was central and well-developed within Islam; political institutional practice was the problem (Abou El Fadl 2004, 12-14; Hallaq 2009).

The complex political and doctrinal history of *sharia* merits far-more detailed treatment than can be undertaken here. Yet, several significant points, though they might be partial oversimplifications, facilitate an appreciation of the ongoing influence of Islamic ideals in the contemporary Arab politics of the rule of law. First, Islamic law evolved and grew mainly through the role and efforts of scholars and judges but without an ironclad institutional check on the power of

rulers. This led the conflict between the empowering and power-enabling tendencies of law to resolve ultimately toward the latter. Second, the ideals of Islamic politics and the rule of law have remained a useful political language after the end of Islamic government in much of the Middle East and North Africa. Moreover, the scholarly, non-codified history of Islamic law is closer to the Anglo-American common law tradition than subsequent major legal influences in many Middle Eastern countries. I expand on each of these points in turn.

On the first point, Islam emerged rapidly as a system of social governance and also as a creed. Thus, it is hardly surprising that a law-forming class of Muslims also developed quickly. Religious scholars were the natural source for legal interpretation, because Muhammad’s Islamic status as God’s final prophet meant that either his recorded prophecies in the Quran or the sayings (Hadith) attributed to him otherwise, collectively known as the *Sunna*, formed the basis of the most reliable dicta for ordering society. Moreover, the relatively small number of explicitly legal passages in the Quran and the governing challenges that grew with the spectacular expansion of Islam in the several centuries after Muhammad’s death meant that legal needs and sources were too diverse to allow for simple derivation from the founding documents of the religion. Over time, scholars built an elaborate intellectual interpretative edifice to find ways to codify and extend through reason and analogy (*qiyas*) and interpretation (*ijtihad*) these original authoritative sources of Islam (Mallat 2004, 285). The result was a diverse, non-monolithic, and long-

lasting system of jurisprudence and social growth.

One of the central, enduring doctrines of Islamic jurisprudence was the leader's status as custodian of communal law rather than as its progenitor. Thus, rulers were to be judged by qualified Islamic scholars and Muslims generally on their record of executing and enforcing Islamic law. This clear theoretical limit to the leader's legislative powers and discretion was subject to the realities of a depoliticized, diffuse, premodern imperial citizenry, which could either allow centralized political excess or heighten the importance of the scholars' work. Yet Islamic law's dependency on scholars meant that the ruling political elite "was largely, if not totally, absent from the legal scene" (Hallaq 2009; Hallaq 2005, 204). Thus, Islamic scholars exercised a major, practical role in granting or withholding legitimacy to the leader.

The range and power of the Arab Islamic and subsequent Ottoman Islamic empires decreased over time, while Western economic and military power posed a doctrinal and practical challenge to Muslim political order in the Middle East and North Africa. In the broad context of Western imperial expansion, Islamic political order took a back seat to the beginnings of local nationalism and efforts at centralization. For whatever particular cause (Feldman 2008, 59-75), the ideal and reality of Islamic government, including the central place of the rule of law as a check on arbitrary authority, diminished until its death blow after World War I. When the Islamic Ottoman Empire disappeared, the system of scholars that upheld the rule of law disappeared. In the colonial Arab lands, the rule of law itself became a

term for foreign non-Islamic government enforcement and bureaucratic centralization.

The failure of Muslim Arab states to resist modern Western domination doomed Islamic government in most of the Middle East for much of the colonial and early postcolonial periods. Yet, the second important point here is that Islamic political theory remained a significant source of basic ideals, particularly with respect to the rule of law (Dupret 1997). One relevant normative influence is justice as a value that is centrally embedded in Islam. Justice as a concept and a discourse is ubiquitous in the Quran. Moreover, as is true with American legal ideals, Islam's emphasis on justice in the Sunna includes significant attention to social equity and individual rights. Thus, discussions of many of the issues that frame legal discourse are engrained in the religious identity of a large majority of the people in Arab societies. The importance of justice within Islam also contributed to the fact that Islamic jurisprudence never fully developed a concept of natural law. This has led some to argue that there is no clear theory to ground a completely secular legal order, as natural law did over time in the West (Sfeir 1998, 11-12).

By the twentieth century, Islamic legal rule had been largely banished and tarnished in Arab countries, reduced to the sphere of family law by Western colonial rulers and rejected by many natives who saw Islamic government as outmoded or ineffective in the face of European power (Zubaida 2003). At the same time, late-Ottoman centralization and subsequent foreign great power control of law in the Middle East and North Africa fostered three major consequences. First, this

produced a patchwork of legal orders in a given society rather than the relatively long-standing growth of a unitary national legal system such as occurred in the United States. Second, it set up an authoritarian norm that law would in fact be subordinated to imperial political power (Posusney and Angrist 2005). And third, it spurred on a tendency for constitutions to exist without a significant history of judicial interpretation. In some states, such as Morocco, this led to frequent postcolonial redrafts of the constitution to reflect changes in the power or preoccupations of political authority, in contrast with the U.S. norm of a single basic constitutional document that can only be modified with difficulty.

The legal system of every contemporary Arab nation is a unique mixture of Islamic, Ottoman, European, and post-independence laws, even if this is less true in the Gulf (Brown 1997, 3-5). This *mélange* of legal sources in most Arab societies did not in itself preclude legal clarity or checks on authority. However, along with the lapses in territorial and ethnic logic that European colonial powers frequently employed in setting borders for many contemporary nations of the Middle East, the lack of legal systemic unity in Arab states has two consequences for Western efforts to enhance the rule of law (Owen 2000, 11). It means that the jurisprudential reference points of lawyers in the United States are not likely to be of direct use to most Arab societies. And it has contributed to political situations in which postcolonial Arab leaders have had many incentives to centralize their authority and no real legal impediments to doing so.

This latter point is even more obviously related to the primary legacy of

colonialism in the Middle East—an emphasis on control backed by force that was meant to serve the best interests of the colonizer rather than indigenous citizens. The political example that socialized Arab nationalist elites was colonial regimes' deployment of invented political forms like mandates and protectorates to occlude their exercise of raw power. Legal norms and institutions under colonialism made readily apparent the contradictions between stated and true purposes.

At the same time, these norms and institutions were somewhat successful at centralizing political and economic administration. However much Arab nationalists rebelled against colonial rule, they also learned that the lofty promises of colonial political ideas were generally subservient or even in contrast to the reality of police control. Facing economic and other challenges, these nationalists unsurprisingly built on, instead of dismantling, the legacies of authoritarian rule that they inherited.

To be sure, the ideal of the rule of law will often be at odds with the centralizing tendency of governments. Yet Arab states in the Middle East in general have had an especially wide gap between the ideal and the reality because of the combination of the relative lack of autonomous, precolonial, unified legal order in these states and the repressive nature of colonial and, later, postcolonial governments. More subtly, the discontinuity between the rational, legalistic values preached by European administrators and their practice of resource extraction and police rule tainted the global, secular ideal of the rule of law in a way that encourages conflict between local and global law.

In short, it is easy for Arabs to view the rule of law in the West in a manner similar to some American legal scholars on the left, as primarily an ideology of political control not as a possible check on political abuse or a guarantee of individual rights. This is important because it implies that Western-based efforts to reform the rule of law using Western models, and particularly central legal institutions, are not necessarily associated with political opening within Arab societies. A striking example of how well-formulated ideas of the rule of law can exist alongside repressive political tendencies was the publication by an Iraqi law professor of a thoughtful tract on the rule of law as an ideal in Iraq at the very same time that Saddam Hussein was beginning to consolidate his particular style of brutal and often legally arbitrary authoritarian rule (Tawfiq 1978).

Despite this authoritarianism, Arab regimes have not lacked clear legal structures. For example, most Arab states have basic laws or constitutions. Such Arab constitutions exist and may matter, but they have had little history of institutionalization and independent judicial interpretation, although this is likely to change in the post-2011 Arab world. It is, therefore, worth underscoring the challenge that the juxtaposition of formal legality and political regimes with few genuine legal checks poses for building broad social support, or even judicial competence, for global ideals of the rule of law.

Thus, many Arab citizens have had two broad historical touchstones with respect to the rule of law. One is the twentieth-century experience of codified law from numerous, including Western, sources, most often being used to support centralized, non-

democratic rule. A second is the vague collective knowledge and memory of an earlier era, when jurists and judges managed to develop law that could check and delegitimize authority but within the clear norms and bounds of Islamic faith.

Thus, the theory and practice of the rule of law in contemporary Arab politics has had a fragmented quality. On the one hand, Islamist political ideology grew throughout the Middle East in the 1980s and 1990s to become the dominant current trope of political discourse and opposition. As a result, Islam and sharia remain at the rhetorical and actual center of discussions of law in contemporary Arab states. In particular, many Arab constitutions clearly endorse Islamic law as the primary source for legislation⁴. The most frequent rallying cry or demand of opponents before the recent wave of Arab uprisings, and a strong slogan since, concerns the amplification or restoration of sharia law (Feldman 2008, 105).

The extent to which Islam and sharia should inform the rule of law and what forms this should take is currently a complicated area of great debate and discussion among Arab and non-Arab Muslim scholars. Adding to the complexity of this issue is the theoretical contradiction between the Islamic ideal of *siyasa al-shari'a* (the government of God's law) and *siyadat al-qanun* (the sovereignty of man-made law). The latter term, the general way in which the Western idea of the rule of law is translated into Arabic, conveys with it a patina of illegitimacy to some, although by no means all, Muslims⁵.

Like other broad ideological frames, Islam allows for diverse interpretation about law and politics and is compat-

ible with the actual contemporary Arab practice of mixed legal norms and institutions. For this reason, a broad majority of government and opposition fealty to sharia exists alongside more secular courts, bureaucrats, and lawyers' associations in many countries, the forces combined for analytical purposes as the "the legal complex" in a recent study of law and democratization (Halliday et al 2007).

Yet the standing of members of the Arab legal complex is the second side of the contemporary rule of law's fragmented nature. Lawyers are sometimes part of an active and growing transnational movement of Arabs, linked to global rights' nongovernmental organizations and rule-of-law advocates, and are open to more direct import of Western ideas or experiences with legalist reform. Reflected in international fora and documents such the Arab Human Development Reports, this posture does not reject the importance of Islamic identity or law per se. Rather, it is a preference, or at least a willingness, to articulate theories of legal and political reform in terms translated directly from global usage such as *dimaqatriyya* (democracy), *huquq-el-insan* (human rights), and *siyadat al-qanun*. This tendency can be grounded in skepticism about the possibility of traditional Islamic terms adapting to modern political debates, a desire to avoid overburdening religious concepts with excess contemporary meaning, or both.

However, this indigenous Arab reformist tendency within portions of the legal complex has been less likely to find broad sociopolitical support, unlike Islamist political expression. In diverse Arab countries such as Egypt, Morocco, and Qatar, lawyers, law stu-

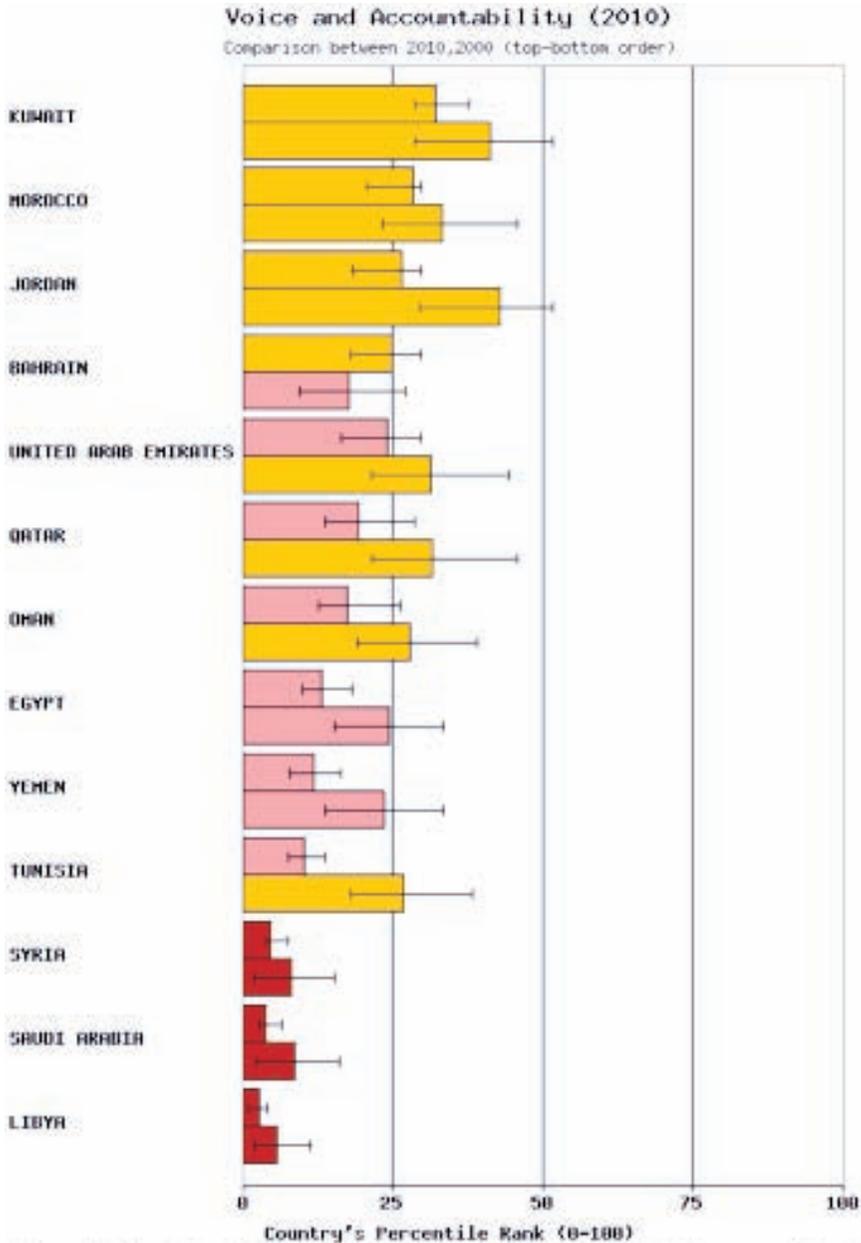
dents, and lay citizens speak articulately about the rule of law and respect its limited success and broader promise to improve rights, fairness, and political transparency⁶. To be sure, in Tunisia, Egypt, and elsewhere, local lawyers' knowledge of global legal standards helped tap into a popular lack of confidence in authoritarian legal and political institutions. But a century of popular historical associations of Western legal and political ideals with colonial and postcolonial Western involvement has also made non-Islamic frames for the rule of law less popular now that freer elections are taking place. In short, however fluid the contemporary balance between Islamic and non-Islamic sources of legal legitimacy may be in the post-2011 Arab world, the negative popular experience with non-Islamic legal ideals in practice remains an aspect of ongoing politics.

Pressures and Prospects for the Rule of Law and Arab Reform Generally

Confronted with the dilemma of balancing popular support for fluid ideals of Islamic law and supporting more secular legalist practices, Arab political systems have had one basic response. This has been to highlight officially, and often constitutionally, the importance of sharia in their governing principles, while actually fostering legal structures that are at least on paper close to the rule of law in Western and global arenas. Thus, most states have well-established mechanisms for legal education, the regulation of lawyers, and legislative development, even though a level of judicial review sufficient for checking possible abuses of power by rulers has been absent.

What has differed across Arab regimes is the extent to which use of this

Figure 2 — World Bank voice and accountability governance indicators for Arab countries, 2010 and 2000.(Source: World Bank n.d.)



Source: Kaufmann D., A. Kraay, and M. Mastruzzi (2010), The Worldwide Governance Indicators Methodology and Analytical Issues.

Note: The governance indicators presented here aggregate the views on the quality of governance provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organizations, and international organizations. The WGI do not reflect the official views of the World Bank, its Executive Directors, or the countries they represent. The WGI are not used by the World Bank Group to allocate resources.

strategy of championing sharia but favoring secular over Islamic legal actors has led to gradual political opening or strong repression. In general, Arab military republics, like those overthrown in Egypt and Tunisia, have decreased the political space for lawyers and other members of the legal complex rather dramatically, while monarchies have let this space stay more stable.

One illustration of this can be found in the yearly indicators of voice and accountability (VOA) that the World Bank prepares each year, one of several compilations of diverse sources on governance. As Figure 2⁷ shows, between 2000 and 2010, the amount of voice and accountability citizens generally had in diverse Arab countries decreased across all countries (except Bahrain)⁸. However, the average was higher in the monarchies than in the republics. Generally, the measurements in voice and accountability decreased somewhat more overall in the republics than in the monarchies. Figure 3 shows more detailed time-series data every two years from 2010 back to 1996 for the same VOA governance indicator for six representative Arab monarchies and republics.

Arab republics, led by long-standing rulers with military or security backgrounds, such as the former regimes of Egypt, Tunisia, and Libya, decreased their space for political dissent and civil rights advocacy from an already low starting point in the past decade. In contrast, Arab monarchies have had a better track record of allowing citizens voice and accountability, even if the World Bank's indicator has declined during the past decade of the war on terror and global economic crisis. Each of the Arab monarchies has done something that their military

counterparts have not: they have integrated Islamic political groups and/or Islamic legitimation directly into their governance pattern. Morocco is a clear example of this, and a contrast with Tunisia, in the monarchy's official use of Islamic symbols and tolerance for Islamic political parties since Mohammed VI assumed the throne in 1999. Jordan also allowed the Muslim Brotherhood to become a political party (Schwedler 2006).

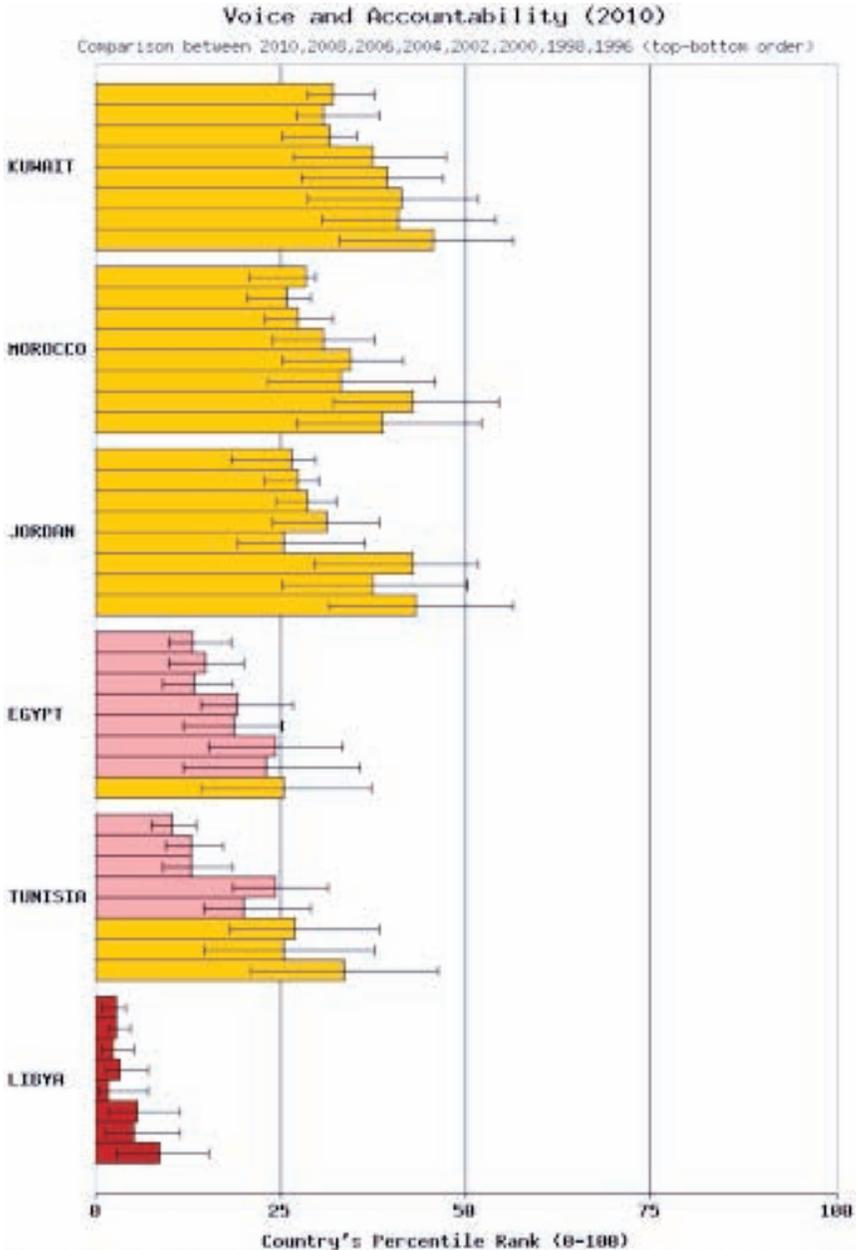
Patterns

Monarchical Reform and the Rule of Law: Slow and Steady Wins the Race?

What pattern of legal development and political implications do Arab monarchies share? As already suggested, this differs among long-standing nations like Morocco and more recent, hyper-globalizing states in the Arab Gulf like Qatar. Countries like Morocco have in common with their non-monarchical peers, such as Tunisia, a relatively well-established legal complex. The difference is in the extent to which lawyers in each country are able to advance work around rights and reform within their systems. Morocco's pattern in this regard diverges from that of Tunisia. In Morocco, the monarchy has opened political space up for contested legislative elections, permitted domestic human rights groups to work openly in the country, and launched in 2004 the Arab world's first national commission devoted to identifying and compensating victims of past domestic human rights abuses, the Equity and Reconciliation Commission (IER).

All of these developments have involved members of the legal complex, allowing them political space to push for greater adherence to rule-of-law

Figure 3 — World Bank voice and accountability governance indicators, time-series data for six Arab societies every two years from 2010 to 1996.png(Source: World Bank n.d.)



Source: Kaufmann D., A. Kraay, and M. Mastruzzi (2010), *The Worldwide Governance Indicators: Methodology and Analytical Issues*

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ideals in a relatively open manner. In addition to the above, the 2011 events led to reform within the Moroccan system, including the establishment of a new constitution rather than the regime overthrow that occurred elsewhere. This is a more recent indication that, even without petrodollars, monarchies like Morocco's were able to accommodate more legal activity than countries with equally developed, but more repressed, legal complexes, like Tunisia. Thus, if lawyers generally prefer stability and slow change either to revolution or repression (Halliday et al. 2007, 5; DeTocqueville 2009), Arab monarchies offer better models than the more overtly secular military republics.

The reason for this divergence goes back to an earlier part of this article. Monarchies like Morocco have claimed historical continuity to give them some legitimacy in terms of Islam. Much of this is, to be sure, constructed, as in the pseudo-Islamic *bey'a* (allegiance) that is an annual televised reimagining of a traditional political contract ceremony that was never meant to apply to a modern, bureaucratic state.

The point in such contemporary simulations of Islamic historical tradition is not that citizens necessarily see them as binding representations of their idea of political or religious legitimacy. Rather, Arab monarchs have mythologized and modernized their historical relevance to Islam to make it harder for Islamic opposition groups to make clear cases undermining the regime. In practice, this strategy has allowed religious and nonreligious ideas around the rule of law to meet in the public space around reform and change. If the tensions around Islamic and secular law can find occasional resolution in

the public sphere, a nondemocratic regime needs to invoke less the level of emergency and repression that shuts out legal activists and chills voice and accountability more generally. This has been the secret to the survival of neo-traditional Arab monarchies like Jordan and Morocco, at least to the end of 2011.

By blurring the boundaries between the traditional and modern, and between the Islamic and secular, a monarchy like Morocco's has managed to allow for a broader space for legal and other public contestation than other Arab regimes. This is particularly notable given its large territorial and population size. It has meant a well-developed, mature system of regulation of lawyers and legal education. More specifically, it has allowed the legal complex and legal measures to broker conflicts around pluralism and expression that are readily associated with civil and political rights generally.

Among the examples of such measures are:

* **Long-standing rights for Jews and other religious minorities.** Morocco's former King Hassan II, who ruled from 1961 until his death in 1999, was known as a skilled manipulator whose paternal expressions of the country's political openness were not always consistent with frequent periods of repressing strong political opposition (Mednicoff 1999; Mednicoff 2002). Yet, the late king was also known for allowing, and policing, free worship and religious community regulation for Jews and Christians. Having a loyal, non-Muslim, long-settled religious minority like the country's Jewish community may have served Hassan's generally factionalized politics. Nonetheless, it

functioned as both a highly trumpeted symbol of Moroccan openness and a genuine contrast with the more explicit contraction of the native Jewish community that took place in more ostensibly secular Arab states like Tunisia and Egypt.

* **The IER.** When Hassan was succeeded by his eldest son Mohammed VI on the throne through a peaceful transition in 1999, it took the new king only a few years to sack his father's strongman and institute the Arab world's first commission to investigate and compensate victims of prior human rights abuses. Since the conclusion of the IER's work through the release of its report in 2005, the public climate for critiquing human rights abuses in the past and for speaking more openly about rights issues in general has improved.

* **The *mudawwana*.** Morocco's family law reform is a frequently commented example of feminist reform of traditional Islamic marriage and divorce provisions that both improved women's rights and attracted the support of activists focused on both secular and religious discourses (Malat 2007, 400-401). Both in this regard and more substantively, it has been regarded as a success. Indeed, championed by the government, the major changes in Moroccan family law build on and demonstrate the country's comparatively large space for activism and discourse around legal rights that transcends simple secular/Islamic cleavages.

* **The 2011 constitution.** A few months after the Tunisian and Egyptian governments were overthrown, the monarchy promulgated and called

for a vote on a new constitution. The obvious interpretation of this document and the vote that followed, which kept most of the king's strong powers intact, was of a relatively insignificant effort to stave off demands for broader change. Yet this ignores real concerns about political instability that have fostered general loyalty to the ruling monarchy (Ottaway and Muasher 2011, 3-8). Moreover, the new document explicitly represents the political expression rights of the minority, indigenous Berbers, that have been a contentious issue for decades. This again marks Morocco as comparatively progressive in taking new, if slow, steps forward on a path that links legal change and possible political reform.

Morocco is the main Arab example of gradual legal and political reform. Jordan also illustrates this trend, with a significant presence for Western rule-of-law and rights activists and some progress in women's rights and judiciary⁹. At the same time, Jordan's trajectory is more fitful, most notably in the stalling of a process of political opening begun rapidly at the end of the late King Husain's regime that included bringing Islamic groups into the legal political process (Schwedler 2006, 205).

Yet, even where fitful, monarchies like Jordan and Morocco embody a pattern of gradual change that, in a sense, is nothing new. The gradual economic expansion of new groups and the steady growth of a legal complex that could help channel these groups into political structures built around accountability and equity, rather than hereditary right, is one way of describing the evolution of Western European and American politics and law. In Europe, at least, this pattern led to

the end of monarchies that rule and inspired elected republican systems in former colonies like the United States. Yet this took place over a long span of centuries, under very different technological and historical conditions than those of today's Arab world.

Thus, if the pattern of "slow and steady" legal development and political opening that occurred in the West is assumed to apply to contemporary Arab monarchies with similarly highly attenuated processes of political liberalization, several issues present themselves. First, for kings in power, the end result of a gradual process of growth in the legal complex would seem to be an end to royal rule sooner or later, which the kings themselves may not wish. Second, as was true in Western history, the long nature of the transition from political absolutism to the rule of law is hard to gauge in terms of managing peaceful transitions. When is an extended period of very slow and steady legal expansion and modest more open politics enough to appear real to would-be citizen activists? When instead might it seem so glacial as to provoke regime overthrow, especially in the context of post-2011 Arab citizen dissatisfaction with political repression? From the perspective of citizens who want greater rights along with basic stability, historical analogues of slow and steady liberalization from the West to the Arab world, even if they have relevance, are opaque as models for extending the rule of law.

Another group of Arab monarchies shares political structural features in common with countries like Morocco and Jordan. At the same time, this group's much shorter period of political independence, lack of long-

standing legal establishment, and possibly unprecedented speed in rapid, globalized growth suggest a different dynamic of legal growth and possible political change than the slow and steady path just described. I now turn to this possible newer model.

Gulf Hyper-Globalization and the Rule of Law: Full Speed Ahead?

Indeed, the Arab Gulf has been exceptional in its political youth and unusual economic resources. This may suggest a pathway for legal reform and political liberalization that is based neither on the very gradual opening of the non-Gulf monarchies nor on the systemic overthrow that has occurred in non-monarchies. The recent historical exceptionalism lies in Arab Gulf states' general lack of intensive colonization, which means that the triple combination of the growth of strong coercive institutions, the radical diminution of sharia's scope, and the mosaic hybridity of the legal system was much less potent here than elsewhere in the Arab world. This created a political background in which, on the one hand, state institutions were less centralized and defined, and on the other hand, associations of Western legal ideals and practices with coercion and hypocrisy were less sharply etched.

Be this as it may, what marks the Arab Gulf as most distinct with respect to legal and political reform is its recent pattern of petrodollar-driven hyper-globalization¹⁰ and the particular combination of possibilities for change within the system that it may entail. The extraordinary, perhaps unprecedented, trajectory of rapid development of Gulf cities like Doha and Dubai from unimportant towns to cities of global influence has required

an enormous influx of professional experts in many fields including law. Unlike elsewhere in the Arab world, these Gulf societies lack centuries, or even decades, of indigenous tradition around the teaching, practice, and regulation of law and have had to build legal infrastructure in a very short time. This has entailed a very fluid environment for both conflict and consensus around global and local legal ideas and practices.

I am not suggesting, therefore, that young Arab Gulf countries fit into a simple pattern of legal growth based on Western-propelled solutions to their relative legal underdevelopment. Rather, the wealth and global ambitions of Gulf countries, together with their prior insulation from widespread global legal penetration, create diverse and intense opportunities and encounters around different notions of locally appropriate best legal practices.

Globalization throughout the world means an intensification of local and global legal actors' access, and ongoing connections, to each other. Yet Gulf hyper-globalization adds to this intensity both because of the relative shallowness to the indigenous legal establishment in relation to the extent of recent global integration and the overall extent of diversity of residents within these new societies. Countries like Qatar and the UAE are unprecedented in the contemporary world in terms of the sheer proportion of noncitizen workers who have come on worker contracts to these magnets of global growth. Native citizen population rates of just 5 percent to 15 percent of the total residents of these Gulf societies merely scratch the surface of the diverse demographic issues that are raised by hyper-globalized growth

and the daily extent of sociocultural variation that it has brought.

In terms of law, this means an intensification of points of contact between diverse perspectives and actors relevant to the rule of law. The multiplicity of these actors because of the influx of workers and institutions from all over the world, and the heightened international scrutiny this entails, create variation and hybridity around the rule of law that is unusual, particularly given Arab Gulf societies' relative dearth of legal and other sociopolitical infrastructure prior to the oil boom. The most significant of these hyper-globalized legal points of contact are:

* **Legal education.** For growing hubs like Dubai and Doha, having resources and incentives to develop legal education that is appropriate for their expanding global roles has meant hiring Arab and Western legal consultants from other countries to provide guidance on best practices in legal education. Law faculties in these ballooning economies have brought on resident faculty from all over the world. All of this means that law schools are a place of fluid interaction around legal pedagogy and practice in a way that is untrue for states with either less money or better-established indigenous law schools.

* **Increasing presence of professional workers with strong awareness of global legal norms (native and nonnative).** While anyone can make a claim around legal fairness, workers in white-collar careers generally have training and experience in asserting legal rights. Moreover, natives and foreigners who have lived in other societies with long-standing legal norms and institutions have high expectations

around legal fairness and predictability. This frequently asserts itself in driving standards and rules of the road, where residents who are used to stricter and more uniformly enforced traffic regulations press for the same in Gulf societies, given the very high accident rate in their expanding cities. Equity concerns about the *kefala* system, the dependence of guest workers on their official corporate or individual sponsor, have also led to diverse legal influences with respect to workers' rights and cases of abuse.

* **Activism around human rights.** Because most Gulf societies are so highly globalized, dependent on nonnative workers, and open with tourist visas for residents of other prosperous societies, they are an easy destination for international human rights observers. Indeed, the bizarre demographics of these societies brought on by the speed of globalization raise obvious global legal concerns around noncitizen worker rights and illegal trafficking. At the same time, the very success of Gulf hyper-globalization raises concerns on the part of some local residents that their societies receive too much scrutiny in terms of international law, inspiring diverse responses, including the Qatar Law Forum. In short, international legal rights as a general issue opens broad debates around the rule of law in Gulf societies.

* **Media expansion and openness.** The government of Qatar triggered an Arab media revolution, and perhaps helped the recent overall Arab revolution, in establishing the first open pan-Arab satellite network, Al Jazeera. The station itself, the English language spin-off it spawned, and the regional competitors it inspired, all

have transformed the Gulf area into a hub of sophisticated journalistic diversity. Even if the official domestic media of some Gulf countries is less politically open than more regional ones, the climate of media growth and journalistic sophistication allows for a great deal of public discussion around important legal issues, such as, for example, through the BBC program, "The Doha Debates."

* **Law enforcement.** As noted above with respect to driving regulations, concerns about the nature, extent, and fairness of law enforcement are raised inevitably in the hyper-globalized crucible of the contemporary Gulf. The efficiency and equity of both the police force and judges are highly visible challenges in cities like Dubai and Doha, given their global prominence and the strong presence of diverse foreigners in the ranks of cops, courts, and criminal suspects. For example, two criminal prosecutions in the UAE of a British couple for public fornication and a member of the Emirati royal family for beating an Afghan contract merchant brought global attention and extended debate around the nature and fairness of law enforcement in hyper-globalized Gulf societies¹¹.

The above areas each entail diverse ideas about the meaning of the rule of law and justice that allow for varied outcomes and do not generally reduce to simple conflicts between the religious and the secular or the Western and the Arab. Indeed, contemporary Gulf societies are also marked by their strong non-Arab populations and highly diffuse South Asian and Southeast Asian cultural influences. Thus, both conflictive and consensual elements of rule-of-law ideals and

institutions are highly visible in the Arab Gulf. Western governments, and even international law, can be viewed by many residents with suspicion¹² but without the deep legacy of colonial control and foreign legal hybridization that permeated other Arab societies.

Thus, Gulf countries like Qatar and the UAE have found themselves having to expand unusually rapidly the density and sophistication of their legal apparatuses while having exposure to an equally unusual collection of legal examples, legal norms, and legal reformers-for-hire. Amidst this cauldron of unfolding explosive expansion in the rule of law, there are signs that legal reforms have emerged that might be associated with enhanced ideas of citizenship (Faour and Muasher 2011) and more democratic politics.

In Qatar, in recent years, these include:

- * The split of the College of Law from sharia within Qatar University, with global legal influence and curricula reform through American and other rule-of-law experts

- * The formation of and efforts to establish standards for a Qatar Bar Association

- * The Qatar Law Forum, as discussed earlier

- * The dedicated tribunal for international commercial and civil disputes that was highlighted at the Qatar Law Forum

- * The opening of the new national Rule of Law and Anti Corruption Centre in December 2011

In the UAE, examples might be:

- * More pervasive law enforcement in non-rights arenas like traffic laws, through the elaborate Salik toll system and other measures

- * Increasing use of courts, including against prominent citizens, like the Sheikh Issa trial, mentioned earlier

- * Increased rights for noncitizen workers, based on substantial labor law overhaul (Mednicoff n.d.)

The above sorts of reform only indirectly relate to the oil wealth of Arab Gulf countries. The rapid developmental imperatives that hydrocarbon revenues made possible have facilitated, but not required, dynamic patterns of global and native interactions around law both within the resident populations and across borders. These latter interactions, based on Gulf government strategies to sow the seeds for post-oil economies, create possibilities for legal change that is politically opening.

At the same time, as is evident in comparative discussion of Qatar and the UAE, distinctions in development strategy also suggest possible differences in legal reforms and their political consequences. For instance, Qatar has prioritized educational reform, through Education City and other developments, and regional media openness through Al Jazeera; its emphasis has been on building legal educational and associational infrastructure. More open discourse among lawyers and the public, which highlights the politically liberalizing potential of law, such as the Qatar Law Forum exemplified, would seem to be the result.

While legal education and process

are also growing rapidly in the UAE, the latter's developmental strategy priorities toward rapid economic and tourist growth have favored legal regulation that maximizes financial transactional stability and order. Thus, increased Emirati use of courts, and even clarified rights for workers, may serve the interests of procedural smoothness more than political opening. Indeed, the use of the judicial system to threaten politically outspoken Emiratis in the spring of 2011 is a sign of the potential for increased legalism to be used as a tool of repression, rather than reform (Human Rights Watch 2011). Ultramodern systems like the Salik toll system that attempt to regulate traffic problems also exemplify sophisticated tracking technology that can buttress law as a mechanism of coercive central control.

In short, both Qatar and the UAE illustrate a hyper-globalized confluence of forces of legal change and growth. Yet their divergent emphases in development between the globalization of discourse and learning versus the globalization of commerce and tourism may also point to some contrast in legal reform as democratizing versus coercive. Qatar has shown a strong ability to moderate conflicts between and among domestic and global rule-of-law issues; it may therefore exemplify this newer possible pathway for political liberalization without system overthrow that is led by hyper-globalization. The UAE has been less successful at mitigating these conflicts, or perhaps has more dimensions of conflict because of its larger overall population and relatively recent federalism, which has allowed several models of what hyper-globalized development means for politics and society to emerge, most

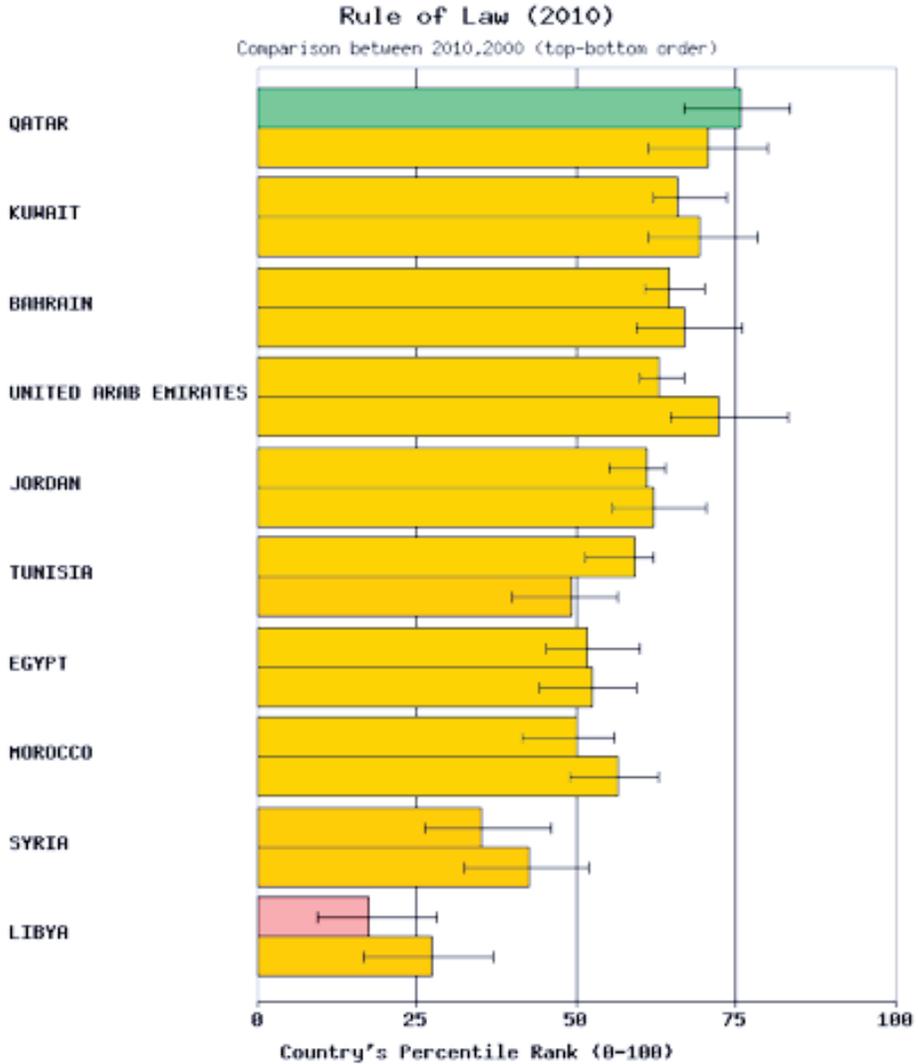
notably in the contrast between Abu Dhabi's relative conservatism and Dubai's breakneck expansion. This presents a more problematic picture with respect to political liberalization.

At the same time, differences among societies like the UAE and Qatar, though important, need not obscure the presence of a more generalized possible template for hyper-globalized legal development. This can be illustrated by looking at additional comparative data from the World Bank governance indicators, shown in Figures 4-6.

In terms of political voice and internal governmental contestation, Arab Gulf hyper-globalizers are hardly trailblazers. However, comparative legal indicators present a different picture. Whether in terms of the World Bank's annual rankings of the rule of law¹³, political stability, or control of corruption, Arab Gulf countries perform consistently better than other Arab cases discussed in this article. Qatar and the UAE share much better performance in nearly all of these areas than their peers, as well as compared with most non-Arab states. In a leading index of public perceptions of government corruption, Qatar and the UAE not only stand in the top fifth of all countries, Qatar is ranked higher than the United States¹⁴.

Thus, the unusual influx of income and developmental ambition that petrodollars brought to the Arab Gulf have led to something else, something possibly new. Namely, states like the UAE and Qatar have a rapidly growing rule of law that is effective in at least some significant ways but without a long-established indigenous legal complex. This leads to many important

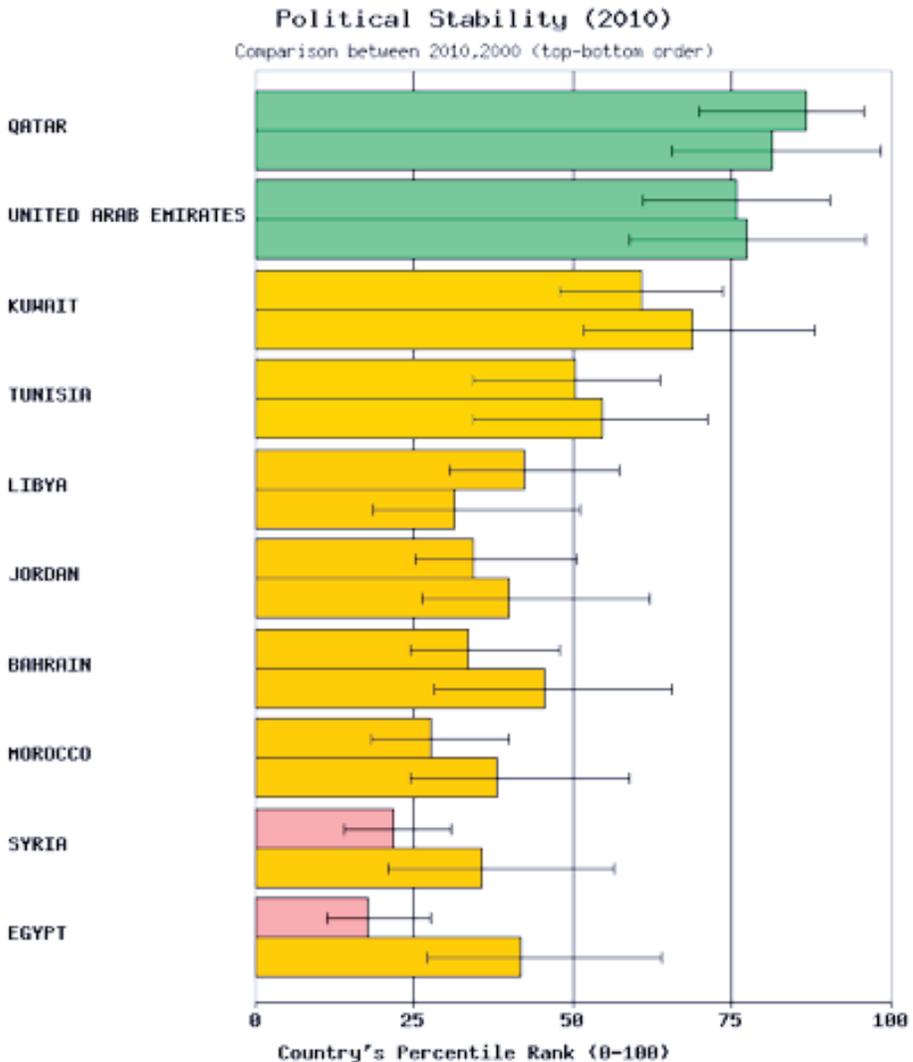
Figure 4 — World Bank rule-of-law governance indicators, 2010 and 2000, for four Gulf and six non-Gulf Arab country cases.(Source: World Bank n.d.)



Source: Kaufmann D., A. Kraay, and M. Mastruzzi (2010), The Worldwide Governance Indicators: Methodology and Analytical Issues

Note: The governance indicators presented here aggregate the views on the quality of governance provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organizations, and international organizations. The WGI do not reflect the official views of the World Bank, its Executive Directors, or the countries they represent. The WGI are not used by the World Bank Group to allocate resources.

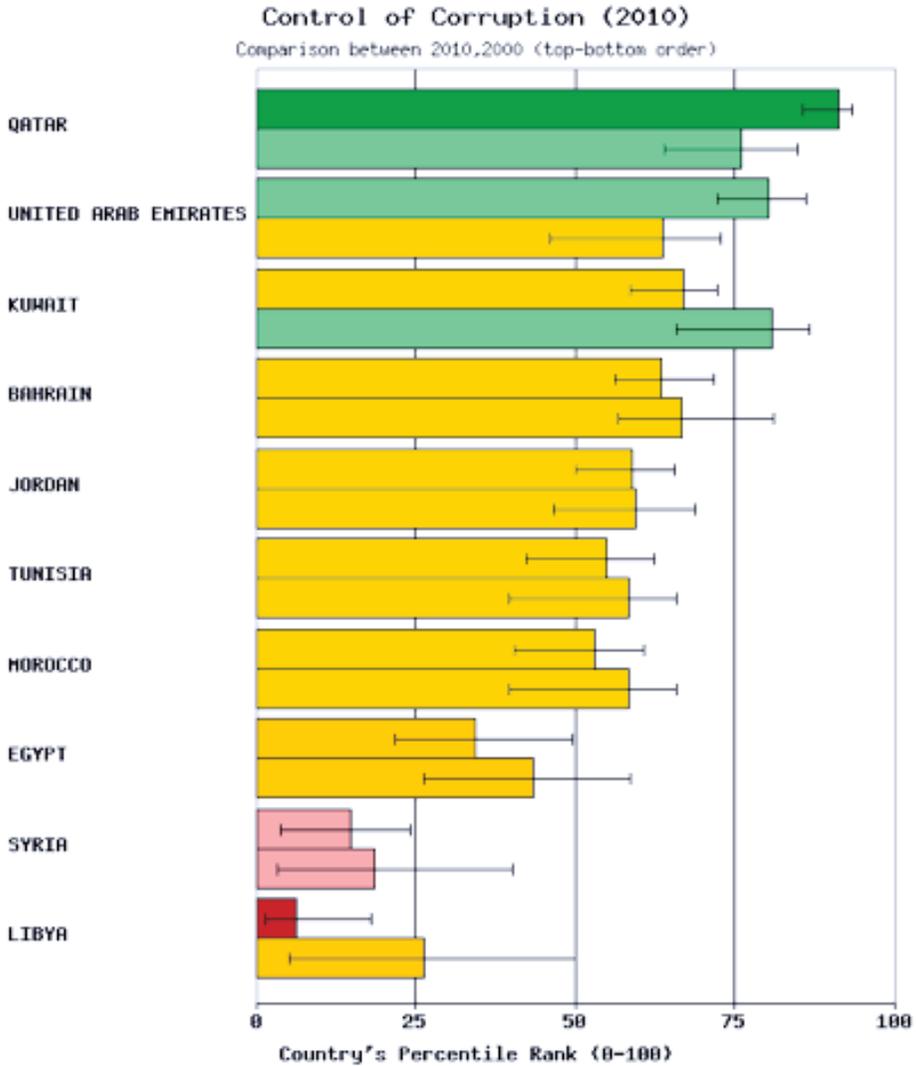
Figure 5 — World Bank political stability governance indicators, 2010 and 2000, for four Gulf and six non-Gulf Arab country cases.(Source: World Bank n.d.)



Source: Kaufmann D., A. Kraay, and M. Mastruzzi (2010), *The Worldwide Governance Indicators: Methodology and Analytical Issues*

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Figure 6 — World Bank control of corruption indicators, 2010 and 2000, for four Gulf and six non-Gulf Arab country cases.(Source: World Bank n.d.)



Source: Kaufmann D., A. Kraay, and M. Mastruzzi (2010), The Worldwide Governance Indicators: Methodology and Analytical Issues

Note: The governance indicators presented here aggregate the views on the quality of governance provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organizations, and international organizations. The WGI do not reflect the official view of the World Bank, its Executive Directors, or the countries they represent. The WGI are not used by the World Bank Group to allocate resources.

issues and dynamics with respect to the rule of law in these societies. For instance, one senior legal policy maker in the Emirati government noted that the commitment to legal reform is high within the UAE policy community, but norms around putting law above interpersonal politics are still not well-understood, especially among older leaders¹⁵.

This reflects the broader opportunity, and challenge, for hyper-globalized states in the Arab Gulf with respect to law and gradual political opening. Will the various pressures to marry socio-political continuity and rapid global integration in these countries encourage the expansion of legal rights and political transparency or will it lead to greater legal surveillance and law enforcement repression instead?

System Collapse and the Promise of Restarting from Scratch

Surveillance and legal repression were certainly steadily growing features of republics like Egypt and Tunisia despite (or perhaps because of) their very well-established, secularized legal complexes (Posusney and Angrist 2005). Indeed, unlike the monarchies, these systems currently in major transition had military rulers who were unable or unwilling to accommodate Islamic political groups in the public space. Aging ex-leaders like Egypt's Hosni Mubarak or Tunisia's Zine al-Abidine Ben Ali consistently raised the specter of radical Islamic political takeover as a justification for cutting back on civil liberties and continuing a state of emergency to their citizens and to Western government allies.

By using repressive tactics against political activism and perpetuating

a system of constant suppression of rights, these regimes put themselves at odds with many lawyers and norms around the rule of law. It is too soon to know exactly how important lawyers and other members of the legal complex were to the mobilization and overthrow of the Tunisian and Egyptian governments in 2011. It is clear, however, that protests of widespread groups of lawyers in Egypt in 2010 and in Tunisia in 2011 played into the broad activism that caused regime change. Moreover, the outrage that Tunisians experienced as a result of the self-immolation in late 2010 of a pushcart vendor who could not obtain a permit for his business fairly, and much subsequent framing of the Arab protests generally, clearly suggest the importance of basic rule-of-law ideals of fairness and government accountability as central to 2011 events.

It is important to emphasize that Tunisia and Egypt have had long traditions around the importance and influence of the legal complex. In Tunisia, the movements that led to a fairly peaceful independence struggle from the French were called "Constitution" (*destour*) and "New Constitution" (*neo-destour*), reflecting a sense of the need for a country grounded in legality. The country's first president, Habib Bourguiba, was a French-trained lawyer who championed the rule of law with perhaps the Arab world's strongest initial emphasis on gender and civil rights. Tunisia's number of lawyers, based on my interviews with several law professors,¹⁶ is slightly higher than one lawyer for every 1,400 citizens, or 71 lawyers per 100,000 people, a number that compares favorably with many non-Western, and some Western, countries (Galanter 2011, 74).

Egypt has a similarly impressive legal complex¹⁷. Indeed, Egypt's Supreme Constitutional Court stands alone in the Arab world for its post-independent history of judicial review. The rule of law has been central to Egyptian political discourse for more than a century (Shalakhany 2006). Egypt has supplied many of the leading law professors and legal pedagogical texts in Arabic for the Arab world for decades.

Yet having a well-established and numerous legal complex has not necessarily meant more open politics or civil rights. Indeed, Egypt's legal complex, and even its comparatively robust high court, could serve the authoritarian interests of the former Mubarak regime and were repressed when they could challenge these interests (Brown 1997; Moustafa 2007). The trajectory of political influence and rights for the legal complex in countries like Tunisia and Egypt declined as the regimes of these countries tried to tighten their control. For instance, one Tunisian legal academic related to me in 2009 that not only was it difficult for scholars to gain permission to present freely at global conferences, but Tunisian officials would attend these conferences in order to rebut and heckle any potentially critical perspective on Ben Ali's regime. For several decades, it seemed that Arab military regimes could maintain a well-developed legal complex while largely keeping a lid on its potential to work for any sort of liberalizing reform.

Yet, the legalist pot boiled over in 2011, bringing to the fore exactly the sort of discourse around political rights and accountability and the particular activism of lawyers that are most

characteristic of a legal complex that attempts to expand the rule of law. The rule of law as a slogan, the role of lawyers and other members of the legal complex as central members of the new Arab governments, and the realm of constitution writing as critical to establishing a more just order are all at the heart of post-2010 Tunisian and Egyptian politics. The long-frustrated simmer and eventual explosion of the legal complex in these societies raises hope for a model of legal liberalization that is rapid and dramatic.

Yet it is also risky. Tunisia, as of early 2012, seems on track for a new constitution and political system that are much more democratic and pluralist than before and than in most other Arab countries. On the other hand, Egyptian politics have been marked since mid-2011 by efforts of some military elites to entrench their power, by renewed violence and protests, and by efforts to isolate Western-based legal complex activists as possible leverage against native civil rights workers. It is therefore too early to judge whether Arab political opening through rule-of-law enhancement in the aftermath of rapid regime overthrow will yield a stable pattern of legalist change, much as Arabs and forces sympathetic to democratization and rights throughout the world hope for such an outcome.

Conclusion

As the above account suggests, the growth of, and possible links between, the legal complex and political opening in the Arab world predate the political upheavals of 2011 and their central emphasis on legal reforms and rights. An even more important conclusion, however, is that the rule of law exhibits real variation in its potential to foster

more open politics. This variation in legalist patterns and political reform among Arab cases and between Arab cases and the historical trajectory of Western world are worth keeping in mind for global law reform workers and the policy community more generally for at least several reasons.

First, looking at this variation clarifies that Western rule-of-law efforts to contribute to legalism in individual Arab cases cannot assume the relevance of general Western historical understanding of judicial growth and political liberalization to particular Arab countries. Second, breaking the idea of the Arab world down into more specific sets of countries that may still be conducive to some generalizations maximizes the possibility for nuanced policy analysis that pays attention to meaningful regional variation at a critical time for many countries' legal and political futures. Third, and more specifically, a model of legal reform that prioritizes a complete separation of church (or mosque) and state, if it actually exists anywhere, is unlikely to hold much appeal in contemporary Arab states, at least for now. Indeed, the current Arab moment of more open political contestation amid renewed external concerns around Islamist politics is precisely one during which law's variation and opening potential may be most useful, at least if these can be analyzed in clearheaded, comparative ways.

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INTERNATIONAL AFFAIRS AT THE JOHN F. KENNEDY SCHOOL OF GOVERNMENT AT HARVARD UNIVERSITY.

ENDNOTES

¹ By “political opening,” I mean changes in government structures and citizens’ rights that provide either more avenues for regime accountability to the population or overall citizen and media civil liberties and freedom of political expression, or both. A term like this allows the use of cross-national governance indicators, such as those of the World Bank, Freedom House, and other organizations, to heighten comparisons across regime types. But I mean to describe processes that can be measured around regime accountability and citizen liberties that are often understood by more ambiguous terms like “liberalization” or “democratization.”

² Note that this article does not include in its relevant cases either Lebanon or Palestine for somewhat similar reasons of their quasi-democratic internal nature and frequent periods of questionable internal sovereignty.

³ The Middle Eastern origin of two of the most renowned, ancient legal codes—the Code of Hammurabi and the Judeo-Christian Bible—should not be forgotten. More to the point, Islamic and Ottoman sociolegal traditions that contribute to contemporary Arab law predate the Anglo-American common law by centuries.

⁴ Even a country with as developed secular legal and social traditions as Egypt makes Islam its basic source for legislation in article 2 of its constitution. For a discussion of this, see Dupret 1997.

⁵ One of the signs of both legal pluralism and the relative novelty of the Western notion of the rule of law in Arab countries is that there is no single phrase that is used in every country to translate the term. For example, in Morocco, the concept is often referred to as *dawla el-haq w’al-qanun* (the rule of right and law) instead of *siyadat al-qanun*. This term gained currency through the Moroccan monarchy’s efforts to employ it as a slogan for its own purported fealty to the ideal of the rule of law.

⁶ This is on the basis of preliminary qualitative surveys that I have administered to lawyers and law students in Morocco and Qatar, as well as several longer interviews. However, I am still collecting this data and am careful at this stage to limit general and specific conclusions until data collection is further along.

⁷ In Figures 2-6, colors are based on the percentile range for each governance indicator, with red = less than 10th percentile; pink = 10-24 percentile; orange = 25-49; yellow =50-74; and green = 75-100.

⁸ Note that World Bank data is graphically displayed from more to less recent years. Detailed explanations of the different governance indicators and their methodology can be found at World Bank n.d.

⁹ See, for example, an assessment of Jordanian reform plans by Christoph Wilcke (2011). As part of recent efforts to bolster the judicial review capacity of Jordan’s Judicial Council, which have involved extensive consultations with American rule-of-law entities, as well as even broader attempts to boost women’s rights, the significance of women judges in Jordan has also been highlighted recently (Hazaimah 2012).

¹⁰ By “hyper-globalization,” I refer to the accelerated process of globalization that has taken place in societies like Qatar and the UAE. The process is distinguished by both the speed of change and the scope of change, the latter evident from the comparatively limited size and global connectedness of these societies prior to the past several decades of petroleum revenue-funded dynamism. I am not using the term in the more specialized academic sense of the “hyper-globalization thesis,” which suggests that recent increased globalization generally has reduced the scope of action for national leaders (Huber and Stephens 2005).

¹¹ The prosecution of the British couple was lurid enough to be a feature of global news reports in the summer of 2008 (see, for example, the L.A. Times article by Jeffrey Fleishman, “British Couple in Dubai Get Prison Terms in Sex Scandal,” 17 October 2008. Sheikh Issa, a brother of the ruler of the UAE, was prosecuted in the wake of global outrage after a video of him beating the Afghan merchant in 2005 became widely viewed (see, for example, The National’s 13 January 2010 article by Marten Youssef, “Sheikh Issa Acquitted: Government ‘Does Not Interfere’ in Court Matters.”

¹² I myself experienced this suspicion toward international law in guest teaching a class in April 2011 at the Dubai School of Government, where sophisticated, diverse Arab and other non-Western graduate students voiced deep confidence about their societies' abilities to manage globalization and growth alongside mistrust of significant aspects of international law and institutions.

¹³ As suggested earlier, I use the World Bank's rule-of-law indicator cautiously, because it includes measures of both law as coercive enforcement and law as rights and political accountability, which this article treats as not necessarily consistent.

¹⁴ See Transparency International's annual Corruption Perceptions Index. In the 2011 edition, the UAE is ranked twenty-eight and Qatar tied for twenty-two globally, with the United States ranked immediately below Qatar at number twenty-four. The report is available at: <http://cpi.transparency.org/cpi2011/results/#CountryResults>.

¹⁵ From a confidential interview conducted by the author, Dubai, 25 April 2011.

¹⁶ For confirmation of this, see the following estimate by a Tunisian lawyer, who listed the membership of the Tunisian Bar as 7,500 members in 2010: www.abderrazak-kilani.net/activites/deleg_canada.html. I computed lawyers per population and for every 100,000 citizens using 2010 overall population figures of 10,549,100 from Tunisia's National Institute of Statistics (<http://www.ins.nat.tn/indexen.php>).

¹⁷ Indeed, one estimate of Egypt's Bar Association membership from 2009 yields a figure of one lawyer for every 384 Egyptians, which is as high as many countries in the West. See this estimate of 207,700 lawyers, out of an overall population of 79,716,200, at: <http://news.egypt.com/en/200905246147/news/-egypt-news/poor-turnout-in-egypt-bar-association-elections.html>. This article also suggests low morale among Egypt's legal complex prior to the mobilization against Mubarak.

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