

Testing the Red Lines: On the Liberalization of Speech in Morocco

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ABSTRACT

This article reports on the contradictions, ambiguities, and paradoxes associated with the liberalization of speech in Morocco. It includes analyses of interviews with human rights activists, journalists, and government officials; an overview of media and civil society; and an argument against equivocations of speech with conduct. The authors argue that the constitutional sanctification of the Moroccan monarch and his utterances fosters a magical conception of speech that militates against substantive and enduring democratic reforms. Public discourse that brings monarchical sanctity and legitimacy into question is illegal, but such discourse is essential if democratization is to be finally achieved.

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Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference, and to seek, receive and impart information and ideas through any media and regardless of frontiers.

—Article 19, The Universal Declaration of Human Rights¹

(1) The King . . . shall be the Supreme Representative of the Nation and the Symbol of the unity thereof. He shall be the guarantor of the perpetuation and the continuity of the State. As Defender of the Faith, He shall ensure the respect for the Constitution. He shall be the Protector of the rights and liberties of the citizens, social groups, and organisations.

(2) The King shall be guarantor of the independence of the Nation and the territorial integrity of the Kingdom within all its rightful boundaries.

—Article 19, The Constitution of the Kingdom of Morocco²

I. INTRODUCTION

Though homologous in number, the two articles cited above reveal a difference between that which is recognized internationally as an inalienable right of being human and that which the Constitution of the Kingdom of Morocco (CKM) designates as being within the aegis of the monarch. The homology of number marks a similarity of interest (citizens, social groups, and collectivities have rights and liberties to be protected), and belies a difference of status (in Morocco the monarch, through the Islamic State apparatus, determines which rights and liberties are actually enjoyed in practice). Although Article 9 of the CKM resonates with Article 19 of the Universal Declaration of Human Rights (UDHR), affirming freedom of expression, opinion, assembly, movement, and residence and stating that “[n]o limitation, except by law, shall be put to the exercise of such freedoms,”³ most liberties are trumped by the supra-constitutional nature of Article 19 of the CKM. The latter is invoked tacitly or explicitly when local or national authorities interdict meetings, publications, movements, and demonstrations that are perceived to disrupt public or moral order, threaten national security, or insult the person of the king.

Specifically, in a series of proscriptions published in the Moroccan Press Code, the Criminal Code, and other public documents, and through arrests, beatings, dispersals, and detentions, the Moroccan authorities make clear that opinion, assembly, and expression are subject to censure and interdiction, when: (1) the king and members of the royal household (*dar al mulk*)

1. Universal Declaration of Human Rights, *adopted* 10 Dec. 1948, G.A. Res. 217A (III), U.N. GAOR, 3d Sess. (Resolutions, pt. 1), at 71, art. 19, U.N. Doc. A/810 (1948), *reprinted in* 43 AM. J. INT'L L. 127 (Supp. 1949).

2. MOROCCO CONST., *adopted* 13 Sept. 1996, ch. II, art. 19.

3. *Id.* ch. I, art. 9.

are insulted, criticized, caricatured, or accused of malfeasance publicly; (2) the legitimacy of Islam as a State religion with the king as its tutelary head is questioned or undermined; and (3) Morocco's territoriality is challenged, especially regarding sovereignty over Western Sahara. These transgressions define the principal "red lines" (*lignes rouges*) that Moroccan dissidents face (and ordinary citizens fear) in their struggles against State oppression.⁴

Apparently, government authorities in Morocco and other Islamic regimes rationalize control of public opinion and expression out of a fear of individual freedom—too much of it creates the conditions for anarchy politically, aesthetically, and morally.⁵ But neither the fear of individual freedoms nor the fear of public discourse that tests or crosses the red lines is intrinsic to Islam. Abdou Filali-Ansary argues that the authoritarian Islamic state's fears are linked historically to the fear of secularism, which has been equivocated, in a "tenacious misunderstanding," with atheism.⁶ This is paradoxical because, of all the monotheistic religions, Islam is a religion of "rulings" (commands and laws) that "would seem to be the religion closest to modern views and ideals, and thus the one that would most easily accommodate secularization."⁷ Due to historical developments that pitted Islam against Christianity and insulated Islamic societies from the religious reformation in Europe that distinguished secularism from atheism, Filali-Ansary concludes that "Muslim societies [evolved] in the opposite direction—toward the loss of individual autonomy and total submission to the community and the state."⁸

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4. As Nawal El Saadawi argues, the term "dissident" should be demystified to reflect the struggle of all those who are working courageously to eradicate repressive practices: "Dissidence is the antithesis of power divorced from responsibility for the misery of people. Responsibility does not mean aid or charity, it means trying to eradicate the causes of poverty and oppression." NAWAL EL SAADAWI, *THE NAWAL EL SAADAWI READER* 165 (1997). For a précis of this struggle in a Moroccan context, see FEMMES, CULTURE ET SOCIÉTÉ AU MAGREB, VOL. I: CULTURE, FEMMES, ET FAMILLE (Rahma Bourqia et al. eds., 1996); FEMMES, CULTURE ET SOCIÉTÉ AU MAGREB, VOL. II: FEMME, POUVOIR POLITIQUE ET DÉVELOPPEMENT (Rahma Bourqia et al. eds., 1996); ABDELLAH HAMMOUDI, *MASTER AND DISCIPLE: THE CULTURAL FOUNDATIONS OF MOROCCAN AUTHORITARIANISM* (1997); Abdeslam M. Maghraoui, *Monarchy and Political Reform in Morocco*, 12 J. DEM. 1, 73–86 (2001); Iganacio Ramonet, *Whither Morocco?*, LE MONDE DIPLOMATIQUE (Aug. 1999); LAWRENCE ROSEN, *THE ANTHROPOLOGY OF JUSTICE: LAW AS CULTURE IN ISLAMIC SOCIETY* (1989); MOHAMED TOZY, *MONARCHIE ET ISLAM POLITIQUE AU MAROC* (1999).
 5. In subsequent sections we distinguish between authoritarian and semi-authoritarian regimes, with Morocco falling into the latter category, what some would term a "liberal autocracy" rather than a full autocracy (as in Saudi Arabia, Libya, and Iran, among others). For a comprehensive account in Islamic regimes across MENA countries, see generally ISLAM AND DEMOCRACY IN THE MIDDLE EAST (Larry Diamond et al. eds., 2003).
 6. Abdou Filali-Ansary, *Muslims and Democracy*, ISLAM AND DEMOCRACY IN THE MIDDLE EAST, *supra* note 5, at 194–96.
 7. *Id.* at 196.
 8. *Id.* See also MOHAMED CHARI, *ISLAM ET LIBERTÉ: LE MALENTENDU HISTORIQUE* 191 (1998); ERNEST GELLNER, *MUSLIM SOCIETY* (1981).

Following this line of argument, in an Islamic state such as Morocco (and Jordan, for instance) where the king's legitimacy is linked to his being Commander of the Faithful (*Amir al mouminin*), the religious and the political leader, too much individual autonomy encourages subjects to lose faith in Islam. As a result, individual autonomy undermines the state that upholds the religion that the monarch invokes for sanctification and, ultimately, political legitimacy. As Fatima Mernissi argues:

The ban on giving the imagination and the mind free play is rooted in the fear of excessive individuality. The public freedoms (*hurriyat 'amma*) of which the Universal Declaration of Human Rights speaks have a strange sound in a society that fears individuality, seeing it as the source of all disequilibrium.⁹

Mernissi draws on Qur'anic sources to establish a compelling rationale for equality of women and men in Muslim societies and argues persuasively that freedom of opinion and expression, including critical discourse of existing policy, is intrinsic to Islam rather than the opposite.¹⁰

Although the Shari'a (Islamic law based on the Qur'an and the Sunnah, the Sayings of the Prophet or *haddith*) prohibits hurtful, defamatory, and blasphemous speech, it also provides guidance on how to protect individual autonomy and "essential [public] interests."¹¹ Mohammed Hashim Kamali suggests that the Qur'an actually obliges citizens to criticize government

9. FATIMA MERNISSI, *ISLAM AND DEMOCRACY: FEAR OF THE MODERN WORLD* 92 (Mary Jo Lakeland trans., 1992).

10. The king, in early 2004, allowed revision of the *Muduwana* (the civil code that guides family affairs) by wide acclamation. Women now share legal responsibility for children, the legal age for marriage has been changed from fifteen to eighteen, prospective brides must consent to marry (they cannot be forced against their will by their parents), and a man cannot marry a second wife without presenting to a judge evidence of consent from the first. The revision did not abolish men taking a second wife altogether, however, and the distribution of property in inheritance law still favors men considerably. See *La Moudawana Tarde à S'imposer*, LE SOLEIL, 2 Feb. 2005, available at www.bladi.net/modules/news/imprimer-5771-la-moudawana-tarde-imposer.html; Agence France Presse, *Moudawana: Vers la Fin de la Polygamie?* (16 Feb. 2005), available at www.bladi.net/modules/news/imprimer-5798-moudawana-vers-fin-polygamie.html.

11. MOHAMMED HASHIM KAMALI, *FREEDOM OF EXPRESSION IN ISLAM* 18, 22–23, 117–19 (1997). According to Kamali, Islamic theologians have classified public interest (*maslahah*) into three categories: essential interests, complementary interests, and desirable embellishments.

The essential *masalih* (pl. of *maslahah*) are defined as interests which are essential to life and, when disregarded, lead to the collapse of normal order in society. There are five, and according to a minority opinion, six, essential *masalih*, namely life, religion, intellect, property and lineage. To this, some scholars have added a sixth, namely dignity (*'ird*), but according to the majority this is subsumed under "life." These interests must be protected at all costs, as society cannot afford to expose them to danger or collapse. To protect these *masalih*, and to promote and develop them further, is one of the basic duties of an Islamic government.

and heads of state if policies and practices are unjust.¹² The pursuit of justice constitutes a “higher purpose” in the Shari’a, which supersedes proscriptions against the “publicizing of evil,” especially when public officials are corrupt or a leader is tyrannical; it even warrants dissimulation under such conditions.¹³ The freedom to express critical opinion of policies and practices not directly related to the received knowledge of the Shari’a, including interpretation of the precepts, is not only welcomed but demanded in the pursuit of justice.¹⁴

Government authorities in many Islamic societies discard such rationalist interpretations, however, and ensure constitutionally that their discourse is interpreted as sacred. This is certainly true in Morocco, where the monarch claims direct descent from the Prophet, garnering absolute power for the royal household (*dar al-mulk*) in matters of state and in the interpretation of what is best for the community (*ummah*). As “guarantor of the permanence and continuity of the State,” the king must ensure “the observance of Islam and the Constitution” as preconditions for protecting “the rights and liberties of the citizens, social groups, and collectivities.”¹⁵ Note that there is reference in this hierarchy to pluralities only—not to the individual citizen but to citizens, groups, and collectivities, suggesting the preeminence of community whose integrity and health is guaranteed most primordially by the “permanence and continuity” of a State that observes “Islam and the Constitution.”¹⁶ Conversely, the king as guarantor has supra-individual status, absolute sovereignty, but also an obligation to protect rights and liberties. As Kamali puts it, in this ideal form of society, as in any

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12. *Id.* at 49–57, 61–72. It is beyond the scope of this article to offer a full discussion of the prospects for democracy in Muslim societies or of the ways in which heads of Arab-Islamic states interpret Islamic doctrine to legitimize authoritarian rule. For discussion of the universal appeals of Islam in contrast to the neo-absolutist, a historical doctrines of Islamists, see Bassam Tibi, *From Religious Belief to Political Commitment: the Fundamentalist Revolt Against the Secular Order: Between Cultural Modernity and Neo-Absolutism*, in *ISLAM BETWEEN CULTURE AND POLITICS* 131 (2001); RICHARD C. MARTIN ET AL., *DEFENDERS OF REASON IN ISLAM: MU’TAZILISM FROM MEDIEVAL SCHOOL TO MODERN SYMBOL* (1997). For depictions of how leaders of Islamic societies construct themselves as sacred politically, see TREVOR MOSTYN, *CENSORSHIP IN ISLAMIC SOCIETIES* (2002).
 13. KAMALI, *supra* note 11, at 49–57, 119, 158–59. The warrants for dissimulation vary between Sunni and Shiaa sects. The latter grant more latitude under tyrannical conditions in order to infiltrate the system and effect change, while the former grant legitimacy to pretense only under severe threat such as loss of life or imminent danger to family or community.
 14. *Id.* at 156–60. To speak the truth could be interpreted as illegally defamatory in an Islamic context if it is accompanied by malicious intent rather than a “higher pursuit.” As such, justice in the Shari’a is valued expressively more than mere truth.
 15. MOROCCO CONST., *supra* note 2, ch. I, art. 19.
 16. *Id.*

constitutional idealization, "obligation has a stronger foundation than right, and it carries a binding force which is lacking in the concept of right."¹⁷

In short, obligation works both ways, recursively situating the community of the faithful (that is, all Moroccan citizens, groups, and collectivities) to the king and royal household.

Still, according to Islamic doctrine, to be obliged to conduct oneself with a sense of propriety and civility toward others is not to forfeit one's fundamental rights or essential "public" interests of life and dignity, faith in institutions, and intellectual and critical thinking. Nor does the role of guarantor grant the king liberty to repress public opinion and expression, especially that which pursues higher purposes of truth and justice. The essential public interests articulated in the Shari'a guide (or arguably should guide) the conception of individual right across all applications and interpretations. That said, we should acknowledge unequivocally that the application of the Shari'a as law is the strategy of Islamic fundamentalists who want their literal interpretations of religious doctrine enforced legally and institutionally (not just in civil law, as is the case in Morocco, but in all forms) and rights further delimited, especially for women. The institutionalization of human rights would seem to require revoking religious doctrine altogether in matters of state and civil society, embracing unequivocally the modern (secular) sense of the rule of law. Still, we believe that democratic urging in the Shari'a should serve as a moral guide to the conceptualization of free speech in Islamic societies, just as despotic interpretations and applications of the so-called rule of law should be exposed and criticized. In this essay we concentrate on the latter, although we hope to have suggested in this introduction the import of the former for the liberalization of speech in Morocco and other Arab-Islamic states.

The field of the present investigation is rich and complex; it is historically situated in a monarchy that has ruled for centuries through various (especially religious) claims of legitimacy,¹⁸ culturally diverse with well organized groups vying for recognition and influence in civil society, and politically distressed as the state represses Islamists it once empowered, entices and co-opts an opposition it once imprisoned, and operates through a patronage system marked by endemic corruption and impunity. Morocco is animated by an opening of discourse and opportunities unthinkable just a decade ago, but it is also a society still marked by fear, censorship, surveillance, detentions, torture, disinformation, misinformation, and significant control of most, but not all, means of public communication. When

17. KAMALI, *supra* note 11, at 156–60.

18. For a critical discussion of monarchical legitimacy in the context of democratization in Morocco, see MOHAMED BERDOUZI, *DESTINEES DEMOCRATIQUES: ANALYSE ET PROSPECTIVE DU MAROC POLITIQUE* (2000).

we think we may have gotten a fix on the current state of affairs, something happens that suggests the opposite. Liberalizations develop, and then a series of repressive measures are legislated. Journalists are detained and imprisoned, then amnestied. Publications are censored arbitrarily over seemingly small matters, then critical discourse in public forums flourish. As such, we have come to think of rights and liberties of expression and opinion in Morocco less as a state of affairs per se than a dynamic field of diverse and singular relational contestations in which trust of institutions and respect for others are variously engendered or undermined.

This writing constitutes in itself a reflexive testing of the Moroccan red lines as we critique the institutional sanctification of the monarch and call for probative distinctions between speech and conduct. First we outline our approach to critical analysis. We then discuss the evolution and interdictions of public opinion and expression in Morocco over the last several years with focus on the roles of media and nongovernmental organizations (NGOs) in fostering freedoms of speech. We question their limited effort to promote legislation that would amend Article 9 of the CKM to clarify vague references and mark distinctions between speech and conduct. We argue that clarifications and distinctions should be articulated constitutionally no matter how democratization is conceived, as the equivocation of speech and conduct within the so-called rule of law is a strategy of tyrannical power. Our line of inquiry leads in the end to an assessment of the notion of political communication, whose extensions we argue should include any utterance in civil society that addresses felt injustices, challenges repressive authoritative conventions, expresses genuine opinion, demands recognition and pertinent information, and proposes viable democratic alternatives to the status quo.

II. CRITICAL ANALYSIS

We have documented events and interpretations of events in Morocco over a six year period, beginning with the ascension to the throne of Mohammed VI in July 1999. The documentation continues through a series of liberalizations and interdictions of the press and other media, to the aftermath of the terrorist bombings in Casablanca in May 2003, and the amnesty of journalists and others in 2004 who had been fined and imprisoned for defamation and insult of the king, among other charges. As this essay goes to press in April 2005, the government is sponsoring a series of public testimonies on past atrocities, with the stipulation that witnesses do not name those responsible for torture and other abuses. Because this stipulation has kept many dissidents from coming forward, the Moroccan Association of Human Rights (AMHD) has sponsored another series of testimonies

in which responsible individuals and institutions are being named.¹⁹ The government testimonies have been televised, but television stations have refused to show testimonies sponsored by AMHD. Transcripts, video, and audio streams of both are available on the internet, however.²⁰

The longitudinal approach we have adopted in reporting on the liberalization of speech in Morocco contrasts with a more synchronic approach that attempts to take a snapshot of a phenomenon in a relatively short period of time. In researching some phenomena, such as linguistic structure or language change, six years is a relatively short period of time and therefore, the analysis would be considered synchronic. With regard to the institutionalization of human rights and the liberalization of speech particularly, a six year period provides for at least a tentative assessment of progression and regression and thus, renders greater opportunity for determining realities, trends, and substantial change.

The six years that we have followed the liberalization of speech in Morocco are significant because they mark what many Moroccans hope is a new era for their country with the ascension to the throne of the self-proclaimed "king of the poor." The king has expressed interest in moving the Moroccan people from subjects of a king (as they were under his father, Hassan II, who reigned from 1961 to 1999) to citizens actively engaged and unencumbered in pursuit of prosperity and the public interest. Accordingly, the events described and the resulting discourse mark both the hope and the despair of a country viewed by many scholars as one of the most liberal of Islamic states and one of the most likely to institutionalize democratic practices over the long run (despite recent setbacks).

Our following analyses and interpretations have developed most directly out of extended interviews and conversations with persons in Morocco who lived through the "years of lead" (1970s through the 1980s) and are now working to develop democratic practices through governmental, nongovernmental, independent journalistic, and international organizations. These include several who served up to fifteen years as political prisoners under the reign of Hassan II. Some of these people we know well, as they are colleagues and members of our own family. As such we have a long-term commitment to the locus of this research, namely personal and professional immersion and involvement. Many of the people we inter-

19. For a critical discussion of these competing testimonies, see Susan Slymovics, *Morocco's Justice and Reconciliation Commission*, MIDDLE EAST REPORT ONLINE (Apr. 2005), available at www.merip.org/mero/mero040405.html. See also Susan Slymovics, *No Buying off the Past: Moroccan Indemnities and the Opposition*, MIDDLE EAST REPORT ONLINE (Winter 2003), at 229.

20. See Moroccan Association of Human Rights (AMHD), available at www.amdh.org.ma/; Commission on Equity and Reconciliation, available at www.ier.ma/.

viewed granted permission to use their names; some even insisted on it.²¹ Those who requested that we not use their names were government journalists and other officials, and we are honoring their request.

Suffice it to say that the interviewees provided invaluable insight into, and innumerable materials on, the problem of speech, including its repression and liberalization. We presented each with a similar series of questions, written in French, and provided the option either to discuss the questions with us directly or to write their responses.²² Most of those who spoke with us directly allowed us to tape record their responses. Again, the only interviewees who were uncomfortable with tape recording were government officials and government journalists, whereas all dissidents granted permission.

The irony of permission has not been glossed, as those who promote the status quo would seem to have little to lose in revealing their names and allowing their responses to be recorded, whereas the opposite would seem to be the case for dissidents. But the latter do not have the same embedded fear of the authorities as most Moroccans, because they have already encountered the state's violence in its most cruel and real terms. On the other hand, the former have apparently internalized what Abdellah Hammoudi refers to as "cultural schemata" marked by closeness and obligation to the monarch, fear of repercussion for disloyalty, and an institutional relation marked by gifts and sacrifice.²³ In eliciting and

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21. Direct references to some interviewees are incorporated into the text, while others have requested anonymity; all have contributed to the development of themes presented throughout the essay, and we owe a deep debt of gratitude for the time they took from their busy schedules to interview with us. Those interviewed who wished to be acknowledged include: Mr. El Ghatass, OMDH; Mr. D. Benzekri, former Director of the Forum pour la Vérité et la Justice and now President of the government-established Instance pour L'Équité et la Réconciliation; Mr. H. Belkouch, Centre d'Études des Droits de l'Homme; Mr. L. Oulhaj, a leader in the *Amazigh* movement, Professor of Economics at University Mohammed V, and former political prisoner; Mr. A. Akkar, former editor of *Al Joussour*, literary critic, and Professor of Arabic, University Mohammed V; Mr. A. Loudiy, translator/interpreter and former political prisoner; Mr. A. Herzenni, Researcher, IRNA, and former political prisoner; Mr. K. Moujahid, Secrétaire Général SNP and Responsable E.F.E.; Mr. A. Fakhani, journalist for Agence France Presse and former political prisoner.
 22. There have been variations in questioning as the research developed longitudinally. All interviews addressed the increase of critical discourse in the press since the death of Hassan II, the selective banning of articles and publications and the criminalizing of journalists, government rationalizations for censorship, the revision of the Press Code and the development of counter-terrorist legislation, control of television and radio channels in Morocco and the problems of privatization, Islamic forms of democracy in relation to freedom of speech, and the king's intervention in judicial affairs to grant pardons.
 23. HAMMOUDI, *supra* note 4, at 44–68; see also Abdellah Hammoudi, *The Reinvention of the Dar al-mulk: The Moroccan Political System and Its Legitimation*, in *IN THE SHADOW OF THE SULTAN: CULTURE, POWER AND POLITICS IN MORROCO* (Rahma Bourqia & Susan Gilson Miller eds., 1999).

analyzing responses to questions from all interviewees, we have respected the accounts of experiences and interpretive autonomy, while also culling the “determinative gaps” evident in gestures, allusions, allegorical expressions, metaphorical usages, and other references.²⁴

We offer an account of the following: 1) the operative legal, social, and political codes that structure public discourse and social policy in Morocco and 2) practices of communication that challenge or run counter to these codes regularly. The differences between written or explicit codes and regular practices constitute the space in which speech liberties, in their broadest sense, develop. As Rachid Filali Meknassi suggests, legal codification and everyday discursive realities in Morocco do not readily match up.²⁵ We address the cultural and historical context for the production, censorship, including self-censorship, and interdiction of public discourse. We investigate how and for what ends social meanings are constituted and regulated. We also grapple with the contradictory meanings that Moroccans of various professions, social roles, and interests attach to signs and meanings associated with the regulation of instances of speech.²⁶ We are interested in the expression and perception of public discourse, individually and in group contexts, in the press and on the street, over air waves and in theaters, wherever strategic opinion or spontaneous signification test in the public sphere what has been proscribed in the names of public order, religious morality, territorial integrity, national security, and monarchical sanctity.

We provide a critical analysis that situates interpretation and judgment immanently—that is, within a Moroccan sociopolitical and cultural context replete with liberalizations, restrictions, perceived and real threats, interdictions, and conflicting interpretations of what is right and just. The grounding for this critique resides in concrete hermeneutic contexts defined primarily, though not exclusively, by our interviewees. They have provided guidance

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24. See Klaus Krippendorff, *The Past of Communication's Hoped-For Future*, 43 *J. COMM.* 3, 34–44 (1993). Krippendorff argues interpretive communication research should recognize that “meanings are created and negotiated, neither objectively given nor assignable by a scientific authority. Individual participation in a social network of interaction, not the messages, become the explanatory basis of outcomes and effects.” *Id.* at 36–37. For a discussion of the “determinative gaps” of discourse, see Maurice Merleau-Ponty, *On the Phenomenology of Language*, in *SIGNS* 89–90 (Richard C. McCleary trans. & ed., 1964).
 25. See Rachid Filali Meknassi, *Codification et réalité*, in *MEDIAS ET VERITE: POUR UNE CLARIFICATION DES APPROCHES ET DES ENJEUX* (2002). See PIERRE BOURDIEU, *THE LOGIC OF PRACTICE* (Richard Nice trans., 1990).
 26. We should emphasize that we use the term “speech” to refer to several forms of human communication, including an individual expressing an opinion in public through words or gestures, group demonstrations on issues that are displayed publicly, and the use and ownership of media. Given that Islamists are now being detained in Morocco based on their extremist beliefs rather than actions, belief itself might also fall under the rubric of “speech.”

for thinking about how the exercise of power is entwined with the political control of information and communication, which circumscribes in turn what counts as truth and knowledge, and what inscribes the social body morally, linguistically, and aesthetically. As Preis argues, rights and their repression should be conceived as cultural practices that constitute multiple realities, conflicting social and normative interests, and diverse and discontinuous configurations of knowledge.²⁷ The challenge we face as researchers is to provide an accurate depiction of these realities, interests, and configurations through an investigation into discourse practices that take place at the limit of what is tolerable politically, morally, and legally. Such an investigation instructs on how power is exercised institutionally in a society, which in turn suggests the degree to which a country is actually democratizing.

In a critical discussion of human rights, it is important to recognize that power enables just and virtuous practices as well as restricts them, and in restricting them, provides sites for writing and speaking with authority against the discourse and actions that restrict. As Michel Foucault emphasizes, power should not be conceived reductively (equivocated with mechanisms of repression, for example), but functionally (as operative in and through institutional structures of propagated truth and regular practice) and critically (through analysis of how persons constitute themselves with moral agency in and over time).²⁸ Following Foucault, and in a specifically Moroccan historical context, Hammoudi emphasizes that “[t]he interstices

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27. Ann-Belinda S. Preis, *Human Rights as Cultural Practice: An Anthropological Critique*, 18 *HUM. RTS. Q.* 286, 309–15 (1996). Following Preis and others, we adopt a syncretic view of culture, which means in essence that groups and collectivities influence one another historically and circumstantially. Some scholars who adopt a syncretic view go so far as to argue that there are no pure cultural forms, some habits and systems are simply more sedimented temporally or bounded spatially, but all are subject to hybridization and change through contact with other languages and practices. See also SEYLA BENHABIB, *THE CLAIMS OF CULTURE: EQUALITY AND DIVERSITY IN THE GLOBAL ERA* (2002).
28. MICHEL FOUCAULT, *POWER/KNOWLEDGE: SELECTED INTERVIEWS AND OTHER WRITINGS, 1972–77* (Colin Gordon ed., 1980); Michel Foucault, *Politics and the Study of Discourse*, in *THE FOUCAULT EFFECT: STUDIES IN GOVERNMENTALITY* 53 (Graham Burchell et al. eds., 1991). See Jürgen Habermas, *Some Questions Concerning the Theory of Power: Foucault Again*, in *THE PHILOSOPHICAL DISCOURSE OF MODERNITY* 266–93 (Frederick Lawrence trans., 1987) (arguing that Foucault eschews analysis of particular hermeneutic contexts of domination through an emphasis on institutional constructions and that freedom from domination can only take place argumentatively through a counterfactual sense of the truthfulness, rightness, and relative sincerity of utterances). See also *AUTONOMY AND SOLIDARITY: INTERVIEWS WITH JÜRGEN HABERMAS* (Peter Dews ed., 1986); 1 JÜRGEN HABERMAS, *THE THEORY OF COMMUNICATIVE ACTION: REASON AND THE RATIONALIZATION OF SOCIETY* (Thomas McCarthy trans., 1984). See Lenore Langsdorf, *Refusing Individuality: How Human Beings are Made into Subjects*, 7 *COMM. THEORY* 321 (1997) (arguing that Habermas’ theory is limited by a lack of attention to the gestural or poetic dimensions of messages and practices, while Foucault attends to these corporeal functions and emphasizes a “transformation of self” through an aesthetic of desire, but tends to ignore fruitful aspects of the consensual model of communication).

and invisible lines of such encounters of writings are the spaces within which speech happens. These spaces seem to offer sites for the work of power as well as to impose limits to that work."²⁹ Of particular interest for our purposes is the degree to which the authorized discourse of resistance has served to institutionalize human rights norms, especially those associated with freedom of expression and opinion. Thomas Risse argues that the corner has been turned in Morocco and, therefore, that it is only a matter of time before human rights discourse and practice actually reach prescriptive status.³⁰ John Entelis, among others, argues in contrast that because of ongoing oppression and destitution among the vast majority of Moroccans, violent uprising remains imminent.³¹ Can both of these views be correct? To address this question, we first examine selected liberalizations and restrictions in the Moroccan field of public discourse.

III. LIBERALIZATIONS AND RESTRICTIONS: THE MOROCCAN FIELD OF PUBLIC DISCOURSE

With the ascension of the new Moroccan monarch, Mohammed VI, in July 1999, challenges to the red lines were tolerated initially, suggesting that the State's grip on speech, assembly, and movement had loosened and that democratic reforms initiated in the final years of Hassan II's reign might develop more expeditiously.³² The principal reason for this liberalization, in contrast to Tunisia for example, was that transnational advocacy networks were able to have a "significant impact on national politics in Morocco [due

29. HAMMOUDI, *supra* note 4, at 128.

30. Thomas Risse, *International Norms and Domestic Change: Arguing and Communicative Behavior in the Human Rights Area*, 27 POL. & SOC. 4, 528 (1999).

31. John P. Entelis, *Morocco: Democracy Denied*, LE MONDE DIPLOMATIQUE, Oct. 2002, available at mondediplo.com/2002/10/13morocco. Original publication in French, *Un Courant Populaire Mis à L'écart*, LE MONDE DIPLOMATIQUE, Sept. 2002, at 22–23. Entelis argues that the image of democratization in Morocco is far from reality: "The current generation of young adults has grown up on broken promises, false hopes, unrealistic expectations, cultural uncertainty and political manipulation. Corruption and elite privileges prevail at the highest levels of political authority, setting a standard for those below. Despite evidence of democratization and political alternation (the government refers to itself as a government of "consensual alternation"), the Moroccan ruling class promulgates a culture of cynicism, contempt and corruption."

32. Sieglinde Granzer, *Changing Discourse: Transnational Advocacy Networks in Tunisia and Morocco*, in THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE 115 (Thomas Risse et al. eds., 1999); see also Risse, *supra* note 30; see Rémy Leveau, *A Democratic Transition in Morocco?*, LE MONDE DIPLOMATIQUE, Dec. 1998, available at mondediplo.com/1998/12/06maroc. For assessments of Mohammed VI's early months on the throne, see Abdeslam Maghraoui, *Political Authority in Crisis: Mohammed VI's Morocco*, MIDDLE EAST REPORT 218, Spring 2001, at 5, available at www.merip.org/mer/mer218/218_maghraoui.html; see also Ramonet, *supra* note 4.

to] coordinated action inside and outside the country."³³ Hassan II, who first denied any knowledge of abuses or secret prisons with inhumane conditions, later advertised his tolerance of human rights development because he wished Morocco to be perceived as a civilized state. Thus human rights groups formed originally by family and friends of those who had been detained, exiled, disappeared, and murdered in the 1970s and 1980s were tolerated, even encouraged, and became professionalized as Civil Society Organizations (CSOs) by the 1990s.

As has been documented widely, during Hassan II's thirty-eight year rule, thousands of dissidents (leftists, Islamists, *Saharawis*,³⁴ *Amazigh*,³⁵ and others) who tested the limits of speech by exposing corruption, criticizing the monarch and his policies, refusing to recognize the legitimacy of Hassan II's religious claims, challenging the occupation of Western Sahara, and so on were imprisoned, killed, disappeared, placed under house arrest, or forced into exile.³⁶ Most were tortured. Those who died, such as Ben Barka and Saida Menebhi, became martyrs whose names are still invoked in the struggle to achieve redress for decades of oppression, corruption, and disfranchisement.³⁷ Correlative with these excesses, political journals such

33. Granzer, *supra* note 32, at 116.

34. Saharawi refers to those who are members of tribes from Western Sahara, which Morocco annexed during the "Green March" in 1975 subsequent to Spain's withdrawal from the region, who have fought or otherwise resisted the Moroccan monarchy since that time. Discussion of this particular conflict (the longest unresolved post-colonial conflict in the world) is beyond the scope of this paper. See I AKBARALI THOBHANI, *WESTERN SAHARA SINCE 1975 UNDER MOROCCAN ADMINISTRATION: SOCIAL, ECONOMIC AND POLITICAL TRANSFORMATION* (2002); see also Anne-Marie Gardner, *Self-determination in the Western Sahara: Legal Opportunities and Political Roadblocks*, 7 INT'L PEACEKEEPING 2, 115–38 (2001).

35. *Amazigh* is the name for indigenous non-Arab tribes of Morocco and North Africa, also referred in Western literature as *Berbers* (a name bestowed by the Roman Empire). Approximately half of the Moroccan population is *Amazigh*, who at various times in history have ruled Morocco and extended portions of Northwest Africa and who for the last 400 years have negotiated rights and privileges with the Alaoui monarchy—before, during, and after colonization by the French and Spanish. It is noteworthy that the current monarch's mother is of *Amazigh* descent, marking a tradition of arranged marriage common among Arab dynasties to form alliances with *Amazigh* tribes. A full discussion of *Amazigh* culture and impact on Moroccan society is beyond the scope of this paper. An overview is available at www.amazigh-voice.com. A discussion of *Amazigh* human rights issues in Morocco is available at www.amazighworld.org/human_rights/morocco/index.php.

36. See Slyomovics, *supra* note 19. Slyomovics presents perhaps the most cogent and exhaustive history in English of oppression in Morocco during the black years, with focus on how survivors of those years now perform human rights work and open up public space for resisting ongoing repression, challenging impunity, gaining redress, and countering official versions of events through public testimony, eulogies, storytelling and poetry readings, demonstrations and sit-ins, and other discursive and non-discursive means.

37. Investigation by French authorities into the death of Ben Barka is ongoing. A member of the former Moroccan information forces (CAB1) who claims to have reliable informa-

as *Al Joussour* and *Lamalif* and the popular magazine *Kalima*, which wrote on controversial social issues, were banned. Newspaper issues about sensitive topics were censored, and foreign books critical of the monarch were not allowed on royal territory.

Since the new monarch's ascension, a number of journals, magazines,³⁸ and books³⁹ that chronicle the "black years"⁴⁰ have been allowed distribution. Ten years ago these publications would have been banned and their progenitors detained. But now a new type of literature, a literature of testimony, has been allowed to prosper. To the best of our knowledge, all leftist political prisoners have been released and a general amnesty has created conditions for those exiled during the 1970s and 1980s to return home. Individuals are being compensated for lost years of work. Human rights and other groups working internally have been allowed to publish and meet, in most instances, without serious restrictions. Given these openings it would appear that human rights norms have, as Risse suggests, reached prescriptive status in Morocco, on the verge of being institutionalized.⁴¹ Former socialist and communist militants are not only being repatriated and compensated, but appointed to high office in the government, on commissions, as deans and presidents of universities, as representatives to external agencies, and in other positions.

The monarchy insists that these and other actions represent how the rule of law is being established, although skeptics see it more as the palace's attempt to co-opt certain dissidents and undermine their potential to influence substantial democratic reforms. Ahmed Herzenni stated in our discussions with him that there is no shortage of critical discourse from leftists—indeed, many are critical in order to get the attention of the royal

tion about the kidnapping, torture, and murder of Ben Barka has been harassed by the Moroccan police for unrelated incidents, arrested for insufficient funds in his bank account, and prevented from testifying in France. Saida Menebhi died on a hunger strike in prison in 1977 during a protest to obtain political prisoner status. See SAIDA MENEBHI, *POÈMES-ÉCRITS-LETRES DE PRISON* (2000). See also KHADIJA MENEBHI, *MORCEAUX CHOISIS DU LIVRE DE L'OPPRESSION: TÊMOIGNAGE* (2001). For a review of other works published since Mohammed VI's ascension, see Susan Slyomovics, *Book Review of MALIKA OUFKIR & MICHELE FITOUSSI, STOLEN LIVES: TWENTY YEARS IN A DESERT JAIL*, 26 BOSTON REV. 6 (2002), available at bostonreview.net/BR26.6/slyomovics.html.

38. See, e.g., *LE JOURNAL*, MAROC HEBDO, AS-SIYASSI, ANNAHI ADIMUQRATI, AND AS-SAHWA.

39. See, e.g., MALIKA OUFKIR & MICHELE FITOUSSI, *STOLEN LIVES: TWENTY YEARS IN A DESERT JAIL* (2001); ABDELAZIZ MOURIDE, *ON AFFAME BIEN LES RATS* (2000); MARZOUKI, *CELLULE 10* (2001); SAIDA MENEBHI, *supra* note 37; KHADIJA MENEBHI, *supra* note 37.

40. Moroccans who lived through the years of tyranny and oppression under Hassan II—1970s to 1990s—refer to this time as both the "years of lead" (*annees du plomb*) and the "black years" (*annees noire*). Given their respective connotations, and the connotation of darkness and heaviness that their association suggests, we use both references in this paper.

41. Granzer, *supra* note 32, at 115.

household to obtain coveted positions.⁴² The democratic movement is fragmented in Morocco, according to Herzenni, due to the inexorable self-interest that the jockeying for positions suggests, and the complicity of socialists (in the government) with oppressive acts.⁴³ As several of our interviewees noted, it is of great concern that the socialist government of 1998 through 2002 (controlled by the USFP, which once stood in staunch opposition to the monarch), and the government currently in power (populated significantly by USFP members), rather than the Ministry of the Interior, has commandeered repressive measures of which the socialists were once victims themselves.

Indeed, despite the promise of tolerance and judiciousness invoked by the phrase “rule of law,” police and security forces continue to violate individual and group autonomy, physical integrity, and dignity through routine repressive measures and violent actions.⁴⁴ Significant interdictions of the press commenced about six months after Mohammed VI’s ascension (in March 2000), who then punctuated the subsequent debate in 2001 by stating that “[j]ournalists are not angels either” and that Moroccan culture will triumph over imported models of free expression and opinion.⁴⁵ One of the first and most notable interdictions under Mohammed VI was the censorship of *Le Journal* when it attempted to publish a photograph of and interview with Mohammed Abdelaziz, the leader of the Polisario Front, which is seeking independence for Western Sahara. Other foreign publications had been denied entry into royal territory during Mohammed VI’s first few months, including *Le Courier International*, which reproduced a censured letter, and other publications in French or African magazines that were critical of the monarch and his policies or that addressed the Western Sahara policy issue in terms that did not reflect the national consensus. But the series of interdictions beginning with *Le Journal* are most notable. In May 2003 the censorship of two satirical publications—*Demain* in French and *Doumane* in Arabic—and the legal action taken against their editor, Ali Lmrabet, brought to the forefront of public debate the issue of freedom of speech, the despotic application of the rule of law that criminalizes journalists, and the royal household’s supra-constitutional status.

42. Interview with Ahmed Herzenni, *supra* note 21, in Rabat (July 2004).

43. *Id.*

44. See Younes Alami and Ali Amar, *Morocco: To Tell the Truth*, LE MONDE DIPLOMATIQUE, Apr. 2005, available at mondediplo.com/2005/04/06morocco; Maghraoui, *supra* note 4; News Release, Amnesty International, *Morocco: Intimidatory Measures Against the Right to Freedom of Expression* (6 Mar. 2001), MDE 29/002/20001, available at web.amnesty.org/library/index/ENGMDE290022001.

45. See Reporters without Borders, *Morocco Annual Report 2004*, available at www.rsf.org/article.php3?id_article=1450.

The charges brought against Lmrabet were outrage (insult) against the king and threats to the monarchy's regime and the country's territorial integrity. The articles in his journal deemed responsible were a critique of the king's civil list that was voted on in Parliament, a cartoon published on the history of slavery in Morocco, a controversial feature on a political figure in the government, and excerpts from an interview with Abdallah Zaâzaa, a former political prisoner who claims to be republican.⁴⁶

This was not Lmrabet's first encounter with Morocco's system of justice. In November 2002 he was sentenced to four months in jail without bail for the publication of an article that informed of the potential sale of the *Skhirat* royal palace. The assertion, published in the conditional, was deemed a threat to the royal institution. Lmrabet also claims to have been the victim of an aggressive campaign carried out by mainstream media that led to forty lawsuits against him, in different courts but for the same crime of defamation; he satirically characterized a Moroccan newspaper, in its prostrations to the monarch, as being pornographic in nature. For the most recent offenses Lmrabet was issued a sentence of four years in prison. He went on a hunger strike, attempted appeal, and was ultimately pardoned by Mohammed VI in January 2004, along with six journalists and twenty-six others who had been detained for political reasons. The release was to mark the inauguration of the new Commission on Equity and Reconciliation, which is investigating past abuses.⁴⁷

The most recent charges against Lmrabet came about after he was interviewed in January 2005 by editors of the weekly newspaper *Al Mostaqil* about the question of the *Saharawis* from Tindouf. He referred to the *Saharawis* as "refugees" rather than "prisoners," as the official Moroccan

46. For a discussion of Lmrabet as a prisoner of conscience in Morocco, see Amnesty International, *Morocco: Further Information on Prisoner of Conscience/Health Concern: Ali Lmrabet* (24 June 2003), MDE 29/004/2003, available at web.amnesty.org/library/index/ENGMDE290072003.

47. Lmrabet, for his part, published (in Spanish) a collection of essays (translated from articles in *Demain* and *Le Journal*) on the freedom of speech in Morocco. See ALI LMRABET, *MANANA: A FAVOR DE LA LIBERTAD DE EXPRESION EN MARRUECOS* (Laura Feliu & Bernabé Lopez Garcia eds., 2003). See also Ali Lmrabet, *Le coup de patter d'Ali Lmrabet*, *LE JOURNAL*, 12 June 2004, at 26 (satirical essay in which he "makes amends for past errors," stating that he was wrong about Morocco, it has changed; how else could the exile in France of former interior minister Driss Basri, Hassan II's henchman and "prime" minister, be explained?). The ambiguities of change and the ironies of power are on display in this short essay: Basri is in exile without a passport, but Laanigiri (who has been cited in several testimonies as guilty of torture and other crimes during the reign of Hassan II) not only still operates unencumbered in the security apparatus, he has been promoted. Basri is a scapegoat, a way to take attention away from the brutality of a regime that has significant continuity with the past. By not allowing reentry, Mohammed VI distances himself symbolically from his father and the horrors that have come to light about his regime; and in allowing polemics about the past to be published, he also creates the appearance of a break with it.

discourse refers to them. A survivor of the camp, Ahmed Khar, who is now an employee of the Moroccan Ministry of the Interior, filed a lawsuit against Lmrabet based on this reference. In April 2005 a judge found Lmrabet guilty of defamation, fined him 50,000 dirhams (\$5000), and banned him from any journalistic writing or publication for the next ten years.⁴⁸

Opinions vary on Lmrabet and the king's intervention. The centrist view is, predictably, that he got what he deserves because he wantonly crossed a red line rather than working within the rule of law to change limits on expression.⁴⁹ Leftists are split, which reveals a paradox of justice that all dissidents in Morocco face. In the first instance, the king's intervention to commute Lmrabet's sentence was praised as just, providing a check on the corrupt criminal justice system, showing mercy and forgiveness. However, such intervention also legitimizes the king's sacred, supra-constitutional status as one who arbitrates disputes as Commander of the Faithful.

With regard to the most recent charges of defamation, it is less the act of defamation itself that drew the fire of authorities, but the interjection of his opinion in the propaganda war concerning the status of refugees in the Western Sahara conflict. Referring to them as refugees implicitly brought into question territorial integrity, providing an excuse for royal interdiction. It is noteworthy that the lawsuit against Lmrabet was submitted only after he had applied for the reinstatement of his newsweekly *Demain*, as the prohibition against its publication had expired in January 2005. According to *Le Journal*, Lmrabet was tried, sentenced, and then denied appeal by the judge; the only time that the Press Code was invoked was during the sentencing itself.⁵⁰ Lmrabet is now silenced in Morocco, his voice banned from the public sphere, although he now enjoys international acclaim and finds a ready outlet for his views especially in Spain.

The case of Mustapha Alaoui is also illustrative of how authorities wield the so-called stick, to which Lmrabet refers,⁵¹ to affect some control of information and expression within the rule of law. Alaoui was summoned for police interrogation and indicted after publishing in his daily newspaper a Moroccan extremist group's admission of the Casablanca (Casa) terrorist bombings of May 2003, an admission that also implicated the secret

48. See Ali Amar et al., *Ce que revele le cas Lmrabet*, *LE JOURNAL*, 16 Apr. 2005, available at www.lejournal-hebdo.com/article.php3?id_article=3816. See also Abdelkarim Chankou, *Le polsario exprime sa solidarite a Lmrabet*, 23 Apr. 2005, available at www.emarrakech.info.

49. This principle of working within the red lines or rule of law to change the law is a principle that Mr. H. Belkouch emphasized in our interview with him, *supra* note 21, in Rabat (July 2000). We should note that Mr. Belkouch did not refer to Lmrabet specifically during this interview, as the first interdictions of *Demain* had not yet taken place.

50. Amar, *supra* note 48.

51. Lmrabet, *Le coup de patter d'Ali Lmrabet*, *supra* note 47, at 26.

services. Rumors circulated after the bombings that *makhzen*⁵² had infiltrated the terrorist groups responsible for the bombings, but Alaoui, a former mouthpiece of the throne under Hassan II, was the first to publish an exposé that countered the state's claim that the terrorist movement was not Moroccan, but imported. Alaoui was convicted of threatening national security, fined, and briefly imprisoned before being pardoned and released.

Alaoui's first confrontation with the authorities, subsequent to Hassan II's death, took place in the summer 2000 when an issue of his newspaper was censored. Alaoui was repeatedly threatened and harassed after republishing a caricature of the new king taken from a Lebanese newspaper. In the cases of Alaoui, Lmrabet, and dozens of other journalists over the last four years, Moroccan government officials have argued publicly that each interdiction represented a constitutional exercise protecting national security, sanctity of the monarch, and public and moral order—thus following the rule of law. The royal household continues, as of this writing, to reinforce the sacrosanct nature of the red lines, illustrated not only by the Lmrabet silencing, but also by other actions—such as the letter the Director of Royal Protocol, Mrini, sent in April 2005 to the newsweekly *Al Jarida Aloukhra*, chastising its editorial board for publishing a series of articles on the King's spouse and warning that any further public discussion of the royal family would result in interdiction, suspension of publication, and arrests.⁵³ These warnings must be taken seriously, as journalists and publishers face charges of defamation and transgression in criminal, rather than civil, court; whether indicted or not, they are harassed and threatened while driving or walking in the street.

Although our focus in the paper thus far has been on interdictions of independent journalists and publishers, the mass arrests, detentions, indictments, torture, and deaths of Islamists since the Casablanca bombings of 16 May 2003 constitute the greatest collective repression in Morocco currently.

Prior to the Casa bombings, many political NGOs, including women's groups and members of the *Amazigh* movement, as well as journalists and human rights activists, either applauded restrictions of speech on Islamists or were silent based on a concern that a viable Islamic revolution could take place if constraints were removed further.⁵⁴ As in other Middle East and North African (MENA) countries, Islamists are feared primarily due to

52. The term *makhzen* refers to the Moroccan government administration and security apparatus that has historically been responsible for enforcement of the red lines, collecting taxes, ensuring loyalty to the monarch, and so on.

53. See Khalid Jamai, *Chronique*, LE JOURNAL, 19 Apr. 2005, available at www.lejournal-hebdo.com/article.php3?id_article=3876.

54. This point was emphasized in Interview with Mr. L. Oulhaj, *supra* note 21, in Rabat (July 2000).

widespread popularity with the poor in the shanty towns and countryside, rather than due to their potential for fostering terrorism. Moroccan authorities face the prospect of an authentic grassroots Islamic revolution on one side⁵⁵ and, on the other, extremists who apparently have formed alliances with organized crime.⁵⁶

The monarchy claims to have arrested only Islamic extremists, but the Casa bombings provided an opportunity to harass, monitor, and detain large numbers of moderate Islamists who advocate nonviolence.⁵⁷ The bombings served as the perfect pretext to solidify otherwise tentative alliances with leftists, *Amazigh*, and women's groups as well. The regime does not really need the support of the masses of people; a tacit alliance formed against the threat of the Islamists with the elite is sufficient. The Islamists are the monarchy's worst enemy but also serve as a dependable ally, because they provide the regime with the warrant pretext to limit political liberalization, bolster security, and exercise moral authority.

Nevertheless, transparency in government, argumentation about formerly taboo topics (however indirect and coded), and integrity of elections, are taking hold. However, "again it is the interpretation" and application of results, not the results themselves, that matter most. It is the government's interpretation of election results rather than the results themselves that are most significant. In Morocco's legislative elections of 2002, the Islamist Justice and Development party (*Adl wa Tanmiya*) won a significant number of seats, while the Justice and Charity party (*Adl wal Ihsan*), led by Cheikh

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55. However, this revolution is unlikely, especially with the recent crackdowns on those who advocate nonviolent change.
 56. Islamic extremists involved in the training and the export of terrorists through capitalization on the Moroccan black market are still operating. The extent to which Islamic extremists are actually tied to organized crime in Morocco is now the most pressing problem, as the latter groups employ entire villages (especially in the north) in the production and export of hashish, manufacturing cocaine and heroin, as well as fencing cars and running people and drugs to Europe. In the past, interdictions against organized crime have led to local rebellions, as thousands of people lost their jobs in the fields and on the docks. The monarchy (during the Hassan II era) had struck deals with local leaders, arrested some, and released others, but continued to allow shipments to come and go from the docks of villas and other compounds on the Atlantic Ocean and the Mediterranean Sea (near Tangier and the Strait of Gibraltar). But the public knows little of this activity officially, and there is no investigative reporting of note on the matter. *Cf. Is Change Just Around the Corner?*, 346 *MIDDLE EAST* 22 (June 2004) (quoting Lmrabet that the system of justice and national security are corrupt and involved in criminal acts, and that, "we would have been able to know more and perhaps have avoided further tragedies if the brain behind the Casablanca massacre . . . had not died while being tortured").
 57. See Keith B. Richburg, *Morocco Arrests Scores in Aftermath of Bombings*, *WASH. POST*, 20 May 2003, at A13. See also Elaine Sciolino, *Aftereffects: Morocco; In Casablanca Neighborhood, Ruptured Calm*, *N.Y. TIMES*, 19 May 2003, at A1, available at www.nytimes.com/2003/05/19/international/middleeast/19CASA.html.

Yassine, boycotted the election. The state's interpretation of the results took some time, as Moroccans waited for days to learn how the royal household would deal with this consequence of transparency. The Islamists were granted thirty-eight seats in Parliament, less than they were due, but no ministries in the new government. Subsequent to the Casa bombings many of the elected representatives were encouraged not to participate in the assembly for a period of time, although they publicly deplored the bombings and although there is no evidence that they had anything to do with the bombings.

If representative democracy were to really transpire in Morocco, just as in many other MENA countries, Islamist parties would dominate and a situation similar to that endured by Algeria could develop. Moroccan authorities will avoid this at all costs, even if it means loss of individual freedoms recently gained. For their part, moderate Islamists clearly want to do their charity and political work and represent their constituencies in an unrestrained manner, but they also equivocate when asked how they would maintain speech and other liberties if they were to gain more power.⁵⁸ Islam, as moderate Islamists tend to see it, is incompatible with the exercise of liberties which human rights advocates and other pro-democracy Muslim dissidents consider universal; the latter argues for a rational or modern reading of the Shari'a. Islamists typically associate the concept and practice of democracy with the West, especially the United States, which attempts to export values and lifestyle to Muslims. Nevertheless, the 2004 revision of the *Mudawana* received wide acclaim among Islamist legislators of the Justice and Development party, while Nadia Yassine, daughter of Cheikh Yassine, argued, in effect, that the monarchy and legislators were capitulating to feminist groups and international forces.⁵⁹

In 2002 Cheikh Yassine implored the king, in a letter posted publicly on the Justice and Charity website, to take this opportunity of recent openings to relinquish some of his wealth to the betterment of society, to truly become the "king of the poor," to clamp down on corruption, and to valorize his human rather than divine status. At the end of the letter Yassine reaffirms a belief in the integrity of State only insofar as it becomes increasingly Islamic, with a hardening of strictures against moral corruption.⁶⁰ Subsequent to the publication of this letter, the website was censored; it could not be accessed in Morocco.⁶¹ Islamists since denounced these

58. For a related discussion, see Neil Hicks, *Does Islamist Human Rights Activism Offer a Remedy to the Crisis of Human Rights Implementation in the Middle East?*, 24 HUM. RTS. Q. 361 (2002).

59. For a synopsis of Nadia Yassine's positions on women's rights, see www.bladi.net/modules/qui/bio-12.html.

60. See Yassine Online, Memorandum, available at www.yassine.net/letters/english.htm.

61. See Justice and Charity, available at www.aljamaa.com.

developments, arguing for the right of opinion and expression, and for a traditional (literal, non-rationalist) reading of the Qu'ran as law.

Islamists across the spectrum are suffering the most from counter-terrorist legislation as the government now harasses, detains, and arrests based on belief and image as well as action.⁶² Many Islamists have disappeared from the public scene, underground, as shanty town markets once rife with Islamist propaganda are scoured by authorities, taxi cabs no longer display Islamic images or even the Qu'ran on their dashboards, and the very image of a typical Islamist man (long beard and traditional clothing) is seen only occasionally these days. The intensive government campaign of detention, fragmentation, and elimination of the Islamists in the street is working, with considerable violations of human rights, as the Amnesty International (AI) Report of June 2004 specifies.⁶³ The King's recently inaugurated project of building hundreds of mosques across the country (instead of schools, for example) is also an attempt to counter the rise of the Islamists, albeit in a less violent fashion.

The AI Report on detentions and tortures of Islamists and *Saharawis* was a featured article in several weekly journals. The authorities allowed distribution in all instances, and the extensive public discussion that followed would have been unthinkable under Hassan II. In response to the AI report, Mohamed Bouzoubaâ, Minister of Justice, stated at a press conference on 2 July 2004 that there are "no secret detention and torture centers in Morocco, not since Tazmamart was destroyed."⁶⁴ This aside, which conflated "secret detentions and torture" in the AI report with "secret detention and torture centers," made headlines in all of the major newspapers the following day. Bouzoubaâ's assertion that "Tazmamart was destroyed" was, in turn, contested by opposition groups in various publications in subsequent weeks, suggesting again that utterances of ministers are no longer above critical scrutiny. However, we found no discussion of the conflation of "centers" with the event of torture itself; the focus on Tazmamart overshadowed public outcries of ongoing detentions and torture.

Islamists are not the only social and political group that continues to feel "the stick." Despite concessions, authorities use the red lines as warrants to interdict and harass human rights activists, members of *Amazigh* groups, the group of unemployed professionals (doctors and engineers) who

62. See AMNESTY INTERNATIONAL, REPORT ON MOROCCO/WESTERN SAHARA 2003, MDE 29/001/2003, available at www.amnesty.org.

63. Amnesty International, *Torture in the "Anti-Terrorism" Campaign—the Case of Temara Detention Centre* (24 June 2004), MDE 29/004/2004, available at web.amnesty.org/library/Index/ENGMDE290042004?open&of=ENG-MAR.

64. Mohamed Bouzoubaâ Press Conference, Ministry of Justice, Rabat, 2 July 2004. Because the press conference was convened for other reasons, the Minister's comment was during an aside.

conduct sit-ins in front of Parliament, groups of people with disabilities, and other social movements. Individuals other than journalists are also singled out.

A member of the United Left movement in Oujda (in the northeast, near the Algerian border), who publicly called for a constitutional monarchy with the king serving as a symbolic head of government (a king who reigns but does not rule), was arrested and sentenced to two years in prison. In Rabat, leaders of *Amazigh* and women's groups call for the same thing, the first explicitly and the second implicitly, and they are spared "the stick." In February 2003 a group of fourteen young men, wearing black t-shirts with satanic emblems and performing hard rock music in a coffee shop in Casablanca, were arrested and convicted of violating moral order, then sentenced to one year in prison for the offence. Due to public outrage and ridicule of the incident, the group referred to as "Satan lovers" have since been released, although they remain criminalized. A film was interdicted in December 2002 because it depicted nudity and sexual scenes, notwithstanding the fact that Morocco is the home of a film industry that produces or is associated with the production of many such films. In early 2003, Abdelhamid Amine, the president of the Moroccan Association for Human Rights (AMDH), and another member of the same organization were detained for several hours during a sit-in supporting the Iraqi people. Soon after the sit-in, the king created a new Commission on Human Rights. In a rural town Boujemâa Ouardi, a villager, was arrested and sentenced to one year in jail for "outrage against the king" after tearing up a calendar that the Mouqadem (local representative of the Ministry of Interior) had forced him to buy. Unbeknownst to him, he had ripped a picture of the king inside the calendar.

If there is a central theme among these apparent contradictions, it is that all acts of interdiction or toleration, detention or clemency, consolidation or co-opting, remind citizens that they continue to remain constituted primarily as subjects to the *dar al mulk* (and the associated state and security apparatus, the *makhzen*). But the contradictions also suggest, predictably, that change is taking place, however jolting, and so there is hope. To be sure, Morocco offers a vibrant political milieu, and dissidents are glad that they have not been embroiled like contemporaries in neighboring Algeria, willing and qualified to work with the monarchical system and existing law to generate accountability and institute reform. Because no one knows for certain how rigid the red lines are, there is considerable experimentation.

An event we witnessed that crystallizes both the contradiction and experimentation was one in which street protesters demanded jobs and changes in government policy and simultaneously displayed slogans that praised the king. Their shouts pierced as swords while the slogans attempted to shield them from the imminent beatings. Table 1 presents a sample of

interdictions, forms of transgression, and modes of punishment from 2000 through 2004.

This is not an exhaustive list, but a sample of what Moroccans have endured and, perhaps more importantly, have heard about during the time of this research.

Despite paradoxes, there is, as Abdelhamid Akkar put it in discussions with us,

an obvious improvement of the spirit of citizenship among Moroccans, their right to choose, participate in the decision-making process and ask for accountability. Of course, there is a price to pay, especially in periods of transition. However, the cost is less than that of repression, even when the latter wears the hat of the law.⁶⁵

While civic engagement and involvement in the decision-making process is taking hold, paradoxes prevail. Arrests, detentions, disappearances, torture, unrestricted surveillance, and distortion endure. Journalists, human rights activists, women's groups, *Amazigh* groups, and many others are dissatisfied with the slow pace of change, but as full-fledged members of the establishment, they too share the burden of responsibility for the status quo. There is still a generalized fear of the authorities among most Moroccans, but it is the authorities who have the greatest fear of individual freedom and criticism of sovereignty and territoriality, a fear inscribed in the sanctification of the monarchical discourse. It is the latter, argued in the sections that follow, that largely serves as a rationalization for oppression and political stagnation.

This we can say with some confidence: liberalization of speech is thus neither unidirectional nor pervasive in Morocco. There appears to be no central strategy of enforcement, as repressive acts are contingent on timing, genre, language, person, association, and region as well as topic. Charges vary as stipulated in Table 1. Not only do certain individuals and groups succeed in testing or crossing the red lines without serious repercussions, but spurious charges and detentions are common, and rights and liberties of individuals charged with transgressions are routinely abridged within the rule of law. Co-opting and coercion, manipulation of subjects and an engaged citizenry, freer expression and ongoing repression, a set of laws that benefit the sanctity of the ruling elite and a genuine interest in establishing a more secular rule of law: these contradictions serve the monarchy as tools for rule but can also continue to benefit those who seek further liberalization.⁶⁶ Morocco's openings, coupled with traditional forms

65. Interview with Abdelhamid Akkar, *supra* note 21, in Rabat (2 July 2000).

66. Interview with Mr. El Chatas, *supra* note 21, in Rabat (July 2000) (emphasizing this point).

TABLE 1
Testing the Red Lines: Selected Acts, Forms, and Punishments

<i>Year</i>	<i>Agent</i>	<i>Expression</i>	<i>Offense</i>	<i>Red Line</i>	<i>Punishment</i>
2000	<i>Le Journal & Assahifa</i>	Publication in newspaper	Legitimacy of Polisario Front in Western Sahara	Territorial integrity	Censorship, fine
2000	Alaoui	Publication in newspaper	Public caricature (ridicule) of the monarch	Sanctity of monarch	Fine, harassment
2001	Cheikh Yassine	Open letter published on website	Questioning monarchical integrity	Sanctity of monarch	Censorship of website
2001	Group of <i>Amazigh</i> militants	Attempt at assembly	Meeting without a permit	Public order	Interdiction, arrest
2002	Human rights activists	Attempt at assembly	Demonstrating without permit	Public order	Dispersion, arrest, fines
2002	Leader of United Left Movement	Public speech	Advocating constitutional monarchy	Sanctity of monarch	Arrest, fine, imprisonment
2002	Film producer & director	Theatrical performance	Sexual and critical film content	Moral & public order	Interdiction, fine
2002	Lmrabet, publisher of <i>Demain</i>	Magazine article on sale of a palace	Insult to the king (royal household)	Sanctity of monarch	Litigation, fine, imprisonment
2003	Group of teenagers	Musical presentation	Listening to and playing hard rock music	Moral order	Arrest, imprisonment
2003	Lmrabet, publisher of <i>Demain</i> and <i>Doumane</i>	Magazine article	Insult to the king, threats to the regime, defamation	Sanctity of monarch, territorial integrity	Arrest, fine, imprisonment, publications banned
2004	Group of intellectuals	Sit-in protest of trade negotiations with US	Demonstrating without permit	Public order	Beaten, dispersed
2004	Group of unemployed doctors and engineers	Gathering to protest lack of jobs	Demonstrating without permit	Public order	Beaten severely, dispersed
2005	Lmrabet	Reference to <i>Saharawi</i> refugees rather than prisoners	Defamation; countering official discourse on Western Sahara	Territorial integrity	Fine, prohibited from journalism for ten years

of coercion and charismatic control, would seem to be typical of “semi-authoritarian” regimes, which Ottaway argues are

ambiguous systems that combine rhetorical acceptance of liberal democracy, the existence of some formal democratic institutions, and respect for a limited sphere of civil and political liberties with essentially illiberal or even authoritarian traits.⁶⁷

Semi-authoritarian regimes are not failed democracies or democracies in transition; rather, they are carefully constructed and maintained alternative systems. If semi-authoritarian governments had their way, the system would never change.⁶⁸

It is in this kind of milieu that self-censorship and more egregious forms of symbolic violence take hold, as such governments are good at “pressuring the independent press into self-censorship and delegitimizing democratic institutions by accusing them of being insufficiently democratic.”⁶⁹ But there also is popular support, evidenced in Morocco by the masses of people who come out to get a glimpse of the king and an opportunity to kiss his hand when his entourage passes through the countryside. Again, as Ottaway argues, semi-authoritarian governments

often also enjoy a degree of popular support because many citizens believe that they offer some public goods that democratic governments are incapable of delivering. In countries where formal democracy is accompanied by high levels of poverty, or where ethnic or religious conflict divides and mobilizes the population, for example, semi-authoritarian governments play on the public’s grievances and fears and get support by promising solutions.⁷⁰

But the public show of support of the monarch in Morocco constitutes a thin veneer, orchestrated by the authorities for public presentation. One indicator of the thinness of support for the royal household can be found in mainstream mosques during Friday night prayer services. The lineage from the Prophet Mohammed is recited up to and including the Alaoui family that has ruled Morocco for four centuries. After each name the congregation responds with a resounding “amen.” When the Alaoui family and Mohammed VI are intoned, however, there is largely silence—just a few scattered “amens,” which, in all likelihood come from those in the monarchy’s employ.⁷¹

To bring this section to a close, we address one more pressing issue in

67. MARINA OTTAWAY, *DEMOCRACY CHALLENGED: THE RISE OF SEMI-AUTHORITARIANISM* 3 (2003).

68. *Id.* at 7.

69. *Id.* at 17.

70. *Id.*

71. The sample was taken in Rabat, July 2003, although similar reactions have been reported elsewhere in major cities, anecdotally to the authors.

the field of public discourse in Morocco. Abdelaziz Loudiy stated, and all subsequent interviewees agreed, that Moroccan society shifted in the late 1990s from one that was “90% physical violence and 10% symbolic violence, to one that is now 90% symbolic violence and 10% physical violence.”⁷² The question is how to mitigate the perceived need among the majority of citizen-subjects to be solicitous with authority figures (even the gatekeeper, or *shaoush*), thus legitimizing corruption, compromising personal and physical integrity, and perpetuating an unjust patronage system. Indeed, the most insidious and widespread forms of repression are institutionalized acts that take place covertly, as Maghraoui puts it:

Less publicized and more alarming are the daily violations of human rights that plague average citizens in their everyday encounters with administrative, security and judicial authorities. A youth with no powerful connections to protect him may be forced to sign a police report and spend months in jail for a crime he didn't commit. A victim of a traffic accident may never receive compensation because of a twisted police report in favor of the party at fault. A divorced woman may have to share her children's allowances with a court clerk whose cooperation is necessary to enforce verdicts. These violations go largely unreported and poignantly reflect the continuity of the *makhzen's* authority in Morocco.⁷³

These covert means of oppression, regularized through centuries of institution building between leaders of indigenous tribes and the monarchy, extended and enhanced through bureaucratization during decades of colonial rule, constitute forms of symbolic violence that make the nascent institutionalization of human rights seem shallow by comparison.

Will the *makhzen's* tolerance of human rights discourse remain merely a way to pacify domestic and international critics, and co-opt activists, in order to sustain the perception of a democratic order, or will the democratic trend evident in recent political liberalization and symbolic concessions erode deeply ingrained *makhzen* practices?⁷⁴ The passage of the counter-terrorism legislation and the ongoing treatment of Islamists and journalists who transgress, suggests that tolerance is actually diminishing, which coheres with Ottaway's claim that the semi-authoritarian regime should be recognized as a distinct political genre in itself, and not as a transition state

72. Interview with Abdelaziz Loudiy, *supra* note 21, in Rabat (July 2000).

73. Abdeslam Maghraoui, *Political Authority in Crisis: Mohammed VI's Morocco*, MIDDLE EAST REPORT 218, at 5 (Spring 2001), available at www.merip.org/mer/mer218/218_maghraoui.html.

74. For an assessment of *makhzen* practices associated with patronage and a review of literature on the subject, see Andrew R. Smith, *Sedq in Morocco: On Communicability, Patronage and Partial Truth*, 51 CULTURAL CRITIQUE 101, 101–42 (2002); see also 1 FEMMES, CULTURE ET SOCIÉTÉ AU MAGREB: CULTURE, FEMMES, ET FAMILLE, *supra* note 4; Granzer, *supra* note 32.

to democracy.⁷⁵ The royal fear of discourse and control of discourse (its exclusions, inclusions, and rarefactions) is evident in civil society, where secular organizations and NGOs are gaining influence and in the structure and function of mass media where a battle rages for ownership. We address in the following section broader constitutional issues surrounding the press, radio, television, and the Internet before taking up problems related to the equivocation of speech and conduct.

IV. MEDIA AND CIVIL SOCIETY

Morocco's progress in human rights in the 1990s was spurred, as Waltz notes, by several factors: 1) the moral crises that resulted from human rights abuses from the 1960s through the 1980s, which left an ideological vacuum; 2) the state's impulse to submit to international pressure and accommodate human rights interests as a way to counter the threat of Islamic fundamentalism; and 3) human rights advocates—especially academics and members of NGOs—learning the discourse of power and accessing resources to mount campaigns.⁷⁶ In effect, the 1990s have seen a blossoming of civil society and a mushrooming of NGOs in Morocco as part of a regional trend encouraged by donor governments and international funding agencies. This trend has been enhanced by additional factors, including: 1) the educated elite's recognition that communities were rapidly becoming impoverished and something needed to be done quickly to avert endemic pauperization; 2) the growth of the educated population in Arab countries; 3) growing financial resources; and 4) wider margins of freedom.⁷⁷

Although the concept of citizen has heretofore been alien in Morocco (given the monarchy's constitution of persons as subjects), and rights are still abridged, civil society continues to develop and prosper. Organizations that offer traditional forms of support within the community, usually religious in nature, have existed for a long time. What is novel in Morocco and other MENA countries are secular NGOs with an agenda for social and political change. Indeed, it is important to note that activists in nontraditional NGOs in MENA countries are often those persons who have been active in opposition political parties. Bibi argues that "NGOs give them the possibility to be active in their communities, something they miss with the demise of political parties. NGOs allow people to look deeper into the problems of

75. OTTAWAY, *supra* note 67, at 7.

76. SUSAN E. WALTZ, *HUMAN RIGHTS AND REFORM: CHANGING THE FACE OF NORTH AFRICAN POLITICS* (1995).

77. See Saad Eddin Ibrahim, *Civil Society and Prospects for Democratization in the Arab World*, in *CIVIL SOCIETY AND DEMOCRATIZATION IN MOROCCO* (Azzedine Layachi ed., 1995).

society, something most political parties failed to do in their focus on state power."⁷⁸ Nontraditional NGOs in the MENA region represent, then, alternative modes of protest and militancy where traditional forms of advocacy have failed to achieve social or political change. Indeed, in countries where popular participation in governance is restrained, NGOs are emerging as optimum channels of popular participation in governance.⁷⁹

In Morocco the monarchy has tolerated secular NGOs and even progressive political parties, because they project an image of modernity to the international community and due to their overall inability to compete with the Islamists in their attempt to develop grassroots bases. Many NGOs with a liberal agenda were created and are dominated by political parties; thus the government considers them to be mere representatives of those parties and not to be nonpartisan voices that express the needs or problems of the grassroots population. Most Moroccans seemingly view them this way as well.⁸⁰ In fact, civil society associations are usually led by the privileged elite, with whom the majority of the population has difficulty relating, due to educational and socioeconomic gaps. Elite groups have a limited impact on the masses and, as such, do not really threaten the legitimacy of the State. Moreover, they can be patronized—formed into clients through symbolic concessions and forms of co-opting—in ways that the Islamists cannot. As Ottaway states, “[t]he so-called civil society in semi-authoritarian states . . . is often shallower and makes a lesser contribution to democracy than it would first appear from looking at the number of organizations and the government’s willingness to let them operate.”⁸¹ It is not that these organizations do not contribute to the betterment of society; rather, civil society groups in such regimes like Morocco do not maximize their potential due to the muddy terrains in which they work. The shifting meanings and applications of the red lines generate ambiguities, ironies, and paradoxes that militate against clarity of position or purpose and that make it difficult to measure real progress.⁸² The

78. See Ghanem Bibi et al., *The NGO Phenomenon in the Arab World*, in MIDDLE EAST REPORT 193, 26–27 (Mar.–Apr. 1995).

79. See LAURIE A. BRAND, *WOMEN, THE STATE, AND POLITICAL LIBERALIZATION: MIDDLE EASTERN AND NORTH AFRICAN EXPERIENCES* (1998). See also Ibrahim, *supra* note 77.

80. See DEMOCRATIC INSTITUTIONS SUPPORT INITIATIVE, USAID, *REINFORCEMENT DES ONG PUR LA DEMOCRATISATION ET LE DEVELOPPEMENT DURABLE AU MAROC*, IDS REPORT (1996).

81. OTTAWAY, *supra* note 67, at 19.

82. One notable irony with regard to Morocco, according to an interviewee who served in both the current and former royal households, the counselors of Mohammed VI fear to counter or criticize him and his policies, while the unambiguously tyrannical father encouraged, listened to, and acted on the criticism of his counselors. Insecurity such as this, embodied by the one who controls security for the nation, does not bode well for Morocco. We address this issue further in the final section.

very notion of “semi-authoritarian” or “liberal autocracy” suggests an paradoxical political existence.

Ambiguities cut both ways—in fact, one could go so far as to postulate that if it were not for the ambiguities and contradictions that arise from liberalization, then no further liberalization could take place. On the other hand, the authorities take advantage of ambiguities in the law and public opinion to exercise power without formal check or balance, exploiting, corrupting, and co-opting those who serve them. The battleground for democratization in Arab and Islamic societies, which presupposes this coupling of the liberal and the autocratic, is a battle over which genre will dominate. And that is why the issue of free speech is most primordial, anterior to other rights and liberties, which in practice all presuppose it. The sanctity of monarchical speech in Morocco provides counterfactual evidence for this claim, but so also does the lack of any movement devoted specifically or exclusively to freedom of expression. To have such a focus would require contesting and criticizing the king unambiguously, which few are willing to risk.

There has been no organized effort in civil society (except perhaps during Ali Lmrabet’s incarceration) or through established political parties to submit an amendment to Article 9 of the CKM, which speaks to the perceived need for NGOs to accept some measure of repression in exchange for operational legitimacy. In his analysis of the state’s control and monopoly of radio and television in Morocco, for example, Ahmed Hidass points out that “the 1972 Moroccan Constitution has been revised many times, in an attempt to modernize the State’s apparatus . . . and to be in sync with the demands of the democratization process. Article 9 remains exactly the same and has never been subject to revision.”⁸³ Despite the 1994 Amendment to the preamble of the Constitution, which states that “Morocco respects human rights as they are conceived by international law,” and despite the importance international human rights documents allocate to civic and political rights, including freedom of speech, Article 9 of the CKM has still not been revised to harmonize with the monarchy’s stated adoption of international norms, nor is there any plan to revise it in the foreseeable future.⁸⁴

Most problematic in Article 9 is its vagueness, which provides for multiple interpretations. Hidass argues that the text is

general, explicit and devoid of any ideological reference or legal exception that it pierces by its simplicity. It leads one to believe that freedom of opinion and

83. See Ahmed Hidass, *La radio et la television au Maroc: tutelle de l’Etat et contrôle du gouvernement*, BIBLID 46–47 (1999).

84. *Id.* at 46.

expression, currently referred to as freedom of communication, prevails, both in content and form. Content refers to ideas, with all its implications, such as the abolition of the crime of opinion, and form refers to the outlet for expressing ideas, i.e. press, radio, television and electronic media.⁸⁵

In short, although Article 9 provides for freedom of expression, the lack of any supporting legal statute or constitutional article that details or defines the rights, duties, or limits associated with such freedom creates wide latitude for its exercise.

With the advent of electronic media, one could argue that television and radio have become relatively obsolete and that a state monopoly of these means of communication has become rather silly, but such an argument is valid only for countries where most citizens can afford electronic media, financially and technologically. In Morocco, given the poor socioeconomic status and high level of illiteracy of most people, radio and television remain the primary sources of information. Nevertheless, the Internet is increasingly utilized by political groups, associations, and NGOs to obtain and share information. Indeed, given its efficacy, militancy via the Internet is becoming increasingly popular in Morocco. As noted by a report published by Human Rights Watch (HRW) on the use of the Internet in MENA countries,

Internet speech may seem . . . to be an elitist concern in countries where illiteracy is rampant and the cost of a personal computer and perhaps even a telephone is beyond the reach of most households. But it is arguably in less-developed and in more repressive countries that the Internet can have the greatest impact . . . [which] has been hailed by many as a force for eroding authoritarian political control and aiding participatory democracy.⁸⁶

HRW's report suggests that, unlike other countries in the region, in Morocco there are no "government-imposed blocking or filtering of web pages, newsgroups, or e-mail."⁸⁷ However, the HRW document points out one instance of censorship of a cyber café owner who

received a written order from the regional police headquarters warning him that a particular compact disc software program entitled "3D Atlas" was banned in Morocco. Although the order did not explain the reason for the prohibition, the owner said he had been given to understand that it was due to the way this software presented the issue of sovereignty over the Western Sahara.⁸⁸

85. *Id.*

86. See Human Rights Watch, *The Internet in the Mideast and North Africa: Free Expression and Censorship: Morocco*, at Introduction, available at www.hrw.org/advocacy/internet/mena/morocco.htm.

87. See *id.* at Morocco.

88. *Id.*

As noted previously, Cheikh Yassine's website is another publicized instance of Internet censorship that was not reported by HRW in 2000. Accordingly, Moroccans (in Morocco) were unable to access the extensive memorandum that Yassine sent to Mohammed VI, urging him to break away from his father's repressive and anti-Islamic methods of rule.

Due to the inability of most Moroccans to afford Internet at home, cyber cafés have flourished, which makes the use of Internet in Morocco mostly a public exercise. Every Internet user in a cyber café is aware of the lack of privacy. The culture of fear inculcated in the masses has contributed to a culture of mistrust (almost paranoia) among people; anyone dressed in civil clothing may be a member of the secret police. In addition, the picture of the king, usually hanging above the front desk of the cyber café, is a powerful reminder symbolically that even walls have eyes. All businesses are under the obligation to hang the picture of the monarch, and the crown-prince if they wish, in their offices. The *M'qadem* is responsible for enforcing the policy in every neighborhood. Although Moroccan authorities largely accede overtly to the international mandate that "the new technologies and, in particular, the Internet, are inherently democratic, provide the public and individuals with access to information and sources and enable all to participate actively in the communication process,"⁸⁹ covert forms of censorship flourish. The Special Rapporteur

believes that action by States to impose excessive regulations on the use of these technologies and, again, particularly the Internet, on the grounds that control, regulation and denial of access are necessary to preserve the moral fabric and cultural identity of societies is paternalistic. These regulations presume to protect people from themselves and, as such are inherently incompatible with the principles of the worth and dignity of each individual.⁹⁰

In Morocco, given the widespread public use of electronic media and the internalization of restrictive cultural schemata, regulative control is exercised both through self-censorship and the manipulation of information.

Indeed, access to uncensored, timely, and true information is the exception rather than the rule. Fakhani characterizes this "absence of information" as the greatest single concern for journalists and the general population, surpassing overt censorship and corruption.⁹¹ Journalists, he stated in our interview, often rely on foreign reports to obtain accurate information about domestic events.⁹² Ironically, government efforts to withhold timely and true information often create more sensation than the

89. *Id.* at Introduction.

90. *Id.*

91. Interview with Mr. A. Fakhani, *supra* note 21, in Rabat (July 2003).

92. *Id.*

information itself, just as acts of censorship produce more press reports and, thus, increased interest in that which is censored. Because audiovisual media is under the grip of the state and efforts to censor the internet are daunting to the authorities, the press is the medium that suffers the most from evasive and repressive measures, as discussed in the previous section. In all instances the government has relied on the so-called Press Code to justify its interdictions.⁹³

Before discussing the Press Code in more detail, we should emphasize that most of the press in Morocco is political in the sense that it is the propaganda tool for (tolerated) political parties. As in other MENA countries, some papers and journals serve the monarchy explicitly, having access to information that other publications do not, thus providing the only interpretation available on an issue or event. The press usually practices self-restraint, except in the case of newspapers linked to Islamic political parties, such as *Assahwa*, and investigative publications (*presse à sensation*), such as *Le Journal Hebdomadaire*, *TelQuel*, and the now defunct *Demain*, all of which claim independence from political affiliations and which, in the case of *Le Journal* at least, is sometimes difficult to believe. Whereas *Demain* and its Arabic counterpart have now been banned due to unabashed irreverence and general lack of self-restraint, *Le Journal* has metamorphosed during the time of this research in a few short years from a newspaper print weekly with few advertisements to a glossy publication similar to *Time* or *Newsweek*. In fact, its editor-in-chief, Aboubakr Jamai, is an international celebrity who has been selected by the US government to participate in a special program as one of the ten people in the world most likely to influence their countries. *Le Journal* is apparently no longer perceived as significantly disturbing to the authorities, partially because it is an elitist publication given its price and French linguistic medium.

Although the November 2000 censoring of *Le Journal* and its Arabic counterpart, *Assahifa*, were the first publicly debated episodes of censorship in post-Hassan II Morocco, there have been no such incidents during the past four years. We would go so far as to suggest that such tolerance is due in large part to the image of democracy that the journal presents to the world, as well as the celebrity of its publisher, linguistic medium, and price. Given this status, *Jamai* is in position to experiment with the red lines in ways that others are not, and he is doing so. He is reported to have said to one of our interviewees that he is no longer certain where, exactly, the red lines are and that every publication tests them.⁹⁴ That said, we argue that he knows well what is and is not tolerated by the Press Code.

93. See CODE DE LA PRESSE, available at www.mincom.gov.ma/french/journaux/codepress.html.

94. Interview with Anonymous, in Rabat (July 2004).

The Press Code was at the center of highly publicized parliamentary revisions during 2002, which were initiated two years earlier during the summer of 2000. However, this was not the first time the 1958 Press Code was modified. In 1973, following the attempted coups d'état against Hassan II, a royal decree amended the text, making it even more repressive. The context for recent revisions, however, was less threatening for the monarchy; but still, the outcome did not match up with the expectations of journalists and free speech advocates. The new code, which was adopted unanimously by the Commission on Foreign Affairs and National Defense in the Chamber of Representatives, did not depart from prison sentences and exorbitant fines for the transgressors. Only minor changes were introduced, reducing prison sentences and decreasing fines. The Moroccan Press Union (SPNM) denounced the fact that media professionals were isolated from the entire revision process and their demands were not taken into consideration. In addition, the environment in which the amendments were developed and implemented was characterized by tensions between the government and the press body. The legislative review and revision processes were not immune to these tensions, press professionals we spoke with contend.⁹⁵ Further, international organizations with a focus on freedom of speech protested the revised Press Code, calling it a farce—a text that ensures the protection of the state and public figures rather than one governing the rights and duties of media professionals. For instance, the Article 19 group stated:

[T]he law continues to apply an excessively harsh regime of penalties, including suspension of newspapers and imprisonment of directors and others, for breach of a wide range of provisions. Second, the law contains excessive restrictions on the content of what may be published, particularly in the area of defamation law. Third, the law allows for excessive interference in, and/or control over, the press by public authorities.⁹⁶

A sort of *manuel d'utilisation*, it not only proscribes and prescribes what the press should do and can say, it also reestablishes the institutional (legal) parameters for criminalizing journalists.⁹⁷

95. Interview with A. Fakihani, *supra* note 21, in Rabat (July 2003); Interview with Anonymous, in Rabat (July 2003); and Interview with Anonymous, in Rabat (July 2003).

96. See Memorandum on the Moroccan Code de la Press of 1958, as well as the Proposed Amendments of 2001, at 2, available at www.article19.org.

97. See *id.* The banning of *Demain* and imprisonment of Lmrabet serves as a paradigm case of the excessive interference warranted by the Press Code, and the censorship of *Le Journal* and other publications illustrates the degree to which repressive acts do not simply come from ministries controlled by the royal household. The socialist government, not the Ministry of Interior, exercised suspensions of the November 2000 issue of *Le Journal*, when it published a 1974 letter by the activist Fkih Basri of the USFP written

The major issue raised by these and other similar events relates to the overreaching of the government with regard to seizure and suspension of publications, which the Article 19 group equates with imprisonment of individuals. Suspension of a publication is tantamount to being sentenced in that the publication's viability and credibility are undermined, making it difficult if not impossible to raise funds from advertising, "allowing the minister to suspend newspapers is open to abuse for political reasons Similarly, seizure by the police without court oversight is extremely problematical. These concerns are compounded by the fact that many of the grounds for seizure are extremely unclear."⁹⁸ In retort, the authorities invoke the Moroccan Press Code even though it is clearly at odds with the state's agenda for democracy and the ordinary connotations associated with the phrase "rule of law." It is also at odds, as suggested in our introduction, with fundamental principles of the Shari'a, which obligate the faithful to speak out against injustices, even at the risk of defaming authorities who commit them.

Despite the existence of numerous human rights advocacy NGOs and the obvious malaise that the Press Code creates among journalists and dissidents, there is no organized or sustained form of protest against the current state of public liberties, nor is there sustained advocacy for a constitutional amendment in this area. Although the *Organisation Marocaine des Droits de l'Homme* (OMDH) has published reports on the matter and it certainly is a focus of many NGOs, there is still (as of this writing) no single local association or NGO that deals specifically with freedom of speech or expression. Hidass points out:

to his militant friends Abderrahmane Youssefi and Abderrahim Bouabid that exposes the collusion between the USFP and the military (led by General Oufkir) during the 1972 coup attempt against Hassan II. The troubling aspect of Basri's letter is this ostensible collusion between the USFP and General Oufkir, known to have been the executor of Ben Barka, the historic leader of USFP. At the time of the publication of the letter, Youssefi was Morocco's prime minister as part of the "*gouvernement d'alternance*." It is worth noting that during its long years of struggle for a more democratic state in Morocco, the USFP has been on the frontline criticizing Article 77 of the Press Code and asking for its abolition. As the head of the government, Youssefi relied on this same article to justify the suspension of *Le Journal*, *Assahifa*, and *Demain*. These publications, according to the socialist-led government, "undermine the political institutions of the State" and therefore should all be banned. It is also interesting that the minister of communication at the time, Larbi Messari, former secretary general of the Moroccan Press Union (SNMP), insisted that Articles 29 and 77 of the Press Code are the articles that are normally cited to suspend or ban a publication, and hence the appropriate precedent was in place. In fact, Messari went so far as to claim that these incidents were not acts of censorship but "mere" interdictions.

98. Memorandum on the Moroccan Code de la Press of 1958, as well as the Proposed Amendments of 2001, *supra* note 96, at 7.

There are no NGOs dedicated to the audiovisual media. Deceitful advertising, protection of minors, unethical competition, channels' viewers, ethics of information, decency of programs, the right to respond, correct, talk back and reply are all causes without advocates. Despite the 1958 Dahir on public liberties and the few 'official' associations publicized by the RTM, 2M and Médi 1 and the official documents on the subject, civil society, at the level of the public and consumers, remains voiceless in this area.⁹⁹

This lack of voice suggests how little power the press and civil society organizations actually have in Morocco, in contrast to democratic states where historically the press and watchdog groups play a significant role in checking all branches of government and even bringing a government down on occasion. As Hidass points out, in Morocco there are four major levels of decision-making: the King, the government (constituted by the King himself), the parliament, and the judiciary. If the press has any power at all, it would then come in a fifth position.¹⁰⁰

In sum, the distribution of power within semi-authoritarian or liberally autocratic regimes makes institutionalization of opinion and talking back difficult, though not impossible. Most individuals and groups are simply not positioned socially, economically, politically, educationally, or institutionally to give voice to and advocate explicitly for unencumbered freedom of speech and opinion in the areas of concern specified here without fear of significant reprisal. Many Moroccans, even those who engage in critical discourse on other issues, still adhere to arbitrary and self-serving rituals, pronouncements, or demands that, in effect, deify the monarch.

Authoritarian control of the means of communication that reach the masses of Moroccans is essential for dominant (hegemonic) ideas, images, and arguments to prevail, and for the legitimacy of the monarchy and its policies and practices to endure without question. Moreover, as we have discussed, public encounters with institutional authorities are characterized by episodically uncivil face-to-face interactions that usually cannot be remedied meta-communicatively.¹⁰¹ This bodes ill for the institutionalization of human rights, and for democratization, even as those committed to the process take risks to confront authorities with contradictions and ambiguities. As Akkar stated:

What guarantees freedom of speech is, above all, the existence of strong, independent and fair institutions, just laws that are free from the security approach, and the time that actors in the field of information and communication

99. Hidass, *supra* note 83, at 59.

100. See *id.* at 43.

101. See Orville Lee, *Legal Weapons for the Weak? Democratizing the Force of Words in an Uncivil Society*, 26 LAW & SOC. INQUIRY 847, 871–74 (2001).

[need] to develop a code of ethics that defines the practices of the professions and the conditions of its exercise. The culture of responsibility and institutional accountability is more in sync with democracy and modernity than the culture of gift-granting and interventionism.¹⁰²

Those who are subject to strict hierarchical arrangements do not and presumably cannot promote reciprocal, equitable, and free exchanges of ideas, opinions, and information in radio, television, and other media. Neither are they likely to promote a culture of responsibility and institutional accountability if their careers or lives are on the line. They are much more prone to remain subjects to gift granting and interventionism. This is the case even when information flows from external sources through the internet and satellite television, and even when civil society organizations put pressure on the monarchy and government to open more channels of information and become more accountable. There may be more voices vying in the public sphere for recognition and respect, reflecting political liberalization, but policies and practices (with attendant ambiguities, ironies, and paradoxical injunctions) that serve to mute voices institutionally are still pervasive. We argue that such a condition relates most primordially to the sanctification of the monarch, producing equivocations between speech and conduct and perpetuating forms of symbolic violence.

V. SPEECH, CONDUCT, AND SYMBOLIC VIOLENCE

Hassan II signed the UDHR and the United Nations International Covenant on Economic, Social and Cultural rights in 1977,¹⁰³ suggesting a linkage of interest, if not intent, between the universal and the cultural. The language of Article 9 of the CKM most readily reflects this interest, but the difference¹⁰⁴ between Article 19 of the UDHR and Article 19 of the CKM marks more poignantly the problem of intent. As Waltz and others suggest, there are at least four contested areas evident in this difference: 1) the international agreement that states should adhere to fundamental principles of human rights versus national constraints imposed on the practice of those principles; 2) the related problem of translating coherently the language of

102. Interview with Mr. A. Akkar, *supra* note 21, in Rabat (July 2003).

103. International Covenant on Economic, Social and Cultural Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (*entered into force* 3 Jan. 1976).

104. The maning of *difference* used here is akin to the notion of *differend* specified in JEAN-FRANÇOIS LYOTARD, *THE DIFFEREND: PHRASES IN DISPUTE* (Georges Van Den Abbeele trans., 1988). See also Andrew R. Smith, *The Limits of Communication: Lyotard and Levinas on Otherness*, in *TRANSGRESSING DISCOURSES* (Michael Huspek & Gary Radford eds., 1997).

international covenants into a nation specific legal framework;¹⁰⁵ 3) the distinctions between the Western sense of individual rights as paramount, the Moroccan Islamic sense of obligation to and valorization of community, and the Muslim sense of duty to Allah as taking precedence over any sense of rights; and 4) the critical and complex relation between civil and political liberties, on one hand, and social and economic growth, on the other.¹⁰⁶ In this section we take up these differences, with the hope of shedding some light on the instrumental vagueness of Article 9 as it relates to the magical conception of speech fostered by the conflation of religion and state.

Recall that Article 9 of the revised CKM affirms freedom of expression, opinion, assembly, movement, and residence and states that “no restriction can be imposed on such freedoms other than by law.”¹⁰⁷ In principle, Moroccan citizens enjoy all that is mandated in the UDHR and affirmed in Article 9 of the CKM, to the extent that the monarch serves as “protector of the rights and liberties of the citizens, social groups, and collectivities.”¹⁰⁸ However, vagueness is built into Article 9 by the phrase “other than by law,” with no revisions stipulated or suggested by court outcomes or proposed amendments, resulting in a broad interpretation by authorities in a range of cases. Moroccan authorities operate on the assumption that making probative distinctions between speech and conduct would threaten the legitimacy of the monarch and likely drive a wedge between religion and state. All of our interviewees, regardless of their loyalties, stated explicitly or suggested implicitly that interpreting harmless expression as conduct with deleterious effects, or nonmalicious conduct as transgressive symbolic expression, certainly benefits the royal household but harms society at large.

We argue in this section that the legitimacy of the monarchy need not be tied to the idea of sacred speech, and in fact should not be if one follows the Sunnah (Sayings of the Prophet), which emphasizes the Prophet’s human rather than divine status. Investigating the ways in which the Moroccan constitution produces equivocations of speech and conduct could suggest ways that civil society associations, legislators, human rights activists, and others can advocate for legal clarifications that would promote tolerance and judiciousness without disrupting public and moral order or threatening sovereignty and territoriality.

As stated initially in the Introduction and as Driss Benzekri, the former head of the Moroccan Forum on Truth and Justice and the recently

105. Of course these problematical issues are not unique to Morocco. See Rosalind P. Petchesky, *Introduction*, in *NEGOTIATING REPRODUCTIVE RIGHTS: WOMEN’S PERSPECTIVES ACROSS COUNTRIES AND CULTURES* (Rosalind P. Petchesky & Karen Judd eds., 1998).

106. WALTZ, *supra* note 76.

107. MOROCCO CONST., *supra* note 2, ch. I, art. 9.

108. *Id.* ch. II, art. 19.

appointed head of the new Commission on Human Rights, emphasized in our interview with him, Article 19 of the CKM functions “supra constitutionally” as a kind of metarule, or rule that governs other rules.¹⁰⁹ Authorities invoke the metarule tacitly and explicitly to repress speech that they perceive as threatening or significantly challenging their authority, and citizens invoke the metarule by using connections to sources of power to obtain entry, access, favors, services, and information. Hence, the metarule serves as a systemic constraint against fairness, equity, transparency, and the struggle to end corruption. As Maghraoui puts it,

an unaccountable monarch continues to govern and this unaccountability gets transferred from one authority to the next through the patronage system: Article 19 . . . established the sanctity of the king as both the ‘Supreme Representative of the Nation’ and the ‘Commander of the Faithful,’ thereby formally lodging national sovereignty with a monarchy that claims divine legitimacy. A series of other articles forbade critical debates over royal messages to parliament or the people at large, and removed parliamentary immunity from legislators deemed to be questioning the monarchy, Islam or the laws of the nation.¹¹⁰

Even though critical discourse prospers in Morocco, constitutional constraints that radically limit critical discourse, leveled against the king’s prerogatives, supercede social and political constraints that might enable such discourse.

The conflation (or lack of formal differentiation) of religious and political spheres is legitimized by the way in which the person of the monarch is constructed constitutionally. Ironically, no single political party can claim a legitimate religious basis, even the moderate Islamist parties, because the king claims that position most primordially and cannot be superceded. To attempt it is to be transgressive religiously and politically. As long as the rule for governing freedoms and principalities originates within a religious genre, then monarchical authenticity will be reproduced throughout the body politic as more absolute (and hence irrevocable culturally) than the universal (secular) rule protecting the right to speech, assembly, and movement. This distinction between the cultural absolute and relative universal is a necessary condition for the maintenance of, or movement

109. Interview with Driss Benzekri, *supra* note 21, in Rabat (July 2000). The notion of metarule is taken up by Hjelmlev, Jakobson, Bateson and others in the tradition of semiotics as a way of understanding how language functions constitutively; language “cuts up” the field of experience and codifies through a system of differences. The language of these differences, so codified, is a metalanguage, and talking about it in any singular instance constitutes meta-communication, which may or may not be possible depending on particular refractions of experience and asymmetries of power. See SEMIOTICS: AN INTRODUCTORY ANTHOLOGY (Robert Innis ed., 1985). See also RICHARD L. LANIGAN, PHENOMENOLOGY OF COMMUNICATION (1988).

110. Abdeslem M. Maghraoui, *Depoliticization in Morocco*, 13 J. DEMOC. 27 (2002).

toward, liberal autocracy, marked by the roles the king assumes in his relations with groups and collectivities vying for recognition and respect.

As Daniel Brumberg puts it, the king remains effective as both chief arbiter of disputes and the major patron of religious institutions only to the extent that rival political and religious groups realize that they need the king (so conceived) in order to survive themselves.¹¹¹ That is, most social, ethnic, and religious groups need the king to act as arbiter in order to obtain rulings in their favor and to increase their institutional influence and legitimacy; these same groups also need the king to act as religious guide in order to thwart Islamic extremists who threaten them and portend anarchy. With too much freedom, they feel threatened and with too much autocracy, their group might be banished altogether; therefore, they opt out of contesting the metarule. Article 9 vagueness is vague for a reason: it allows for Article 19 of the CKM to direct its applicability and for the sanctity of the monarchical speech to delimit its significance.

The semi-authoritarian system thus produces and reproduces paradoxical injunctions of every conceivable type for its citizen subjects, legitimized and promulgated through patronage rituals, legal shackles, spiritual rarefactions, political constraints, symbolic invocations, and, of course, the tacit threat of force. The monarch and most of those who serve him enjoy safe haven from critical public scrutiny and impunity from prosecution and use this position as a way to both ensure security and create the semblance or invoke the symbol of democracy. In May 2003, for example, the bombings in Casablanca led Moroccan authorities to proclaim that Morocco has become a democracy that will not be shattered by the attacks: "[T]his is an appropriate moment for Morocco to complete its democracy with a really strong security system," Higher Education Minister Khalid Alioua said.¹¹² "That does not mean that Morocco will go back to any kind of dictatorship or political system. It's too late. Morocco is already a democracy."¹¹³ Alioua blames the bombings on Morocco's increasing openness: "For the last two or three years, Morocco was aware that our open political system would allow the extremist groups to act more freely."¹¹⁴ With too much openness and too much freedom of speech, extremists will take advantage of it. The bombings provided the authorities with the perfect pretext to reinforce this fear and to warn of the familiar "security approach."

As suggested above, the royal household allows liberties of speech and belief with groups that serve its own ends, even if those groups have

111. Daniel Brumberg, *The Trap of Liberalized Autocracy*, in *ISLAM AND DEMOCRACY IN THE MIDDLE EAST*, *supra* note 5, at 35.

112. Keith B. Richburg, *supra* note 57.

113. *Id.*

114. *Id.*

historically stood in staunch opposition. It is taboo (a crossing of a red line) to advocate publicly for the separation of state and religion, yet the most vocal advocates of secularization are *Amazigh* dissidents and women's groups, to whom the monarch has granted symbolic concessions and with whom a tacit coalition has been formed against the Islamists. In addition to the revision of the *Mudawana*, women's groups were granted thirty seats in Parliament in the September 2002 elections (a quota filled from parties across the political spectrum). *Amazigh* groups, through royal decree, have been granted the Royal Institute for Amazigh Culture, whose stated mission is the promotion and development of the *Amazigh* language and culture. It may be the case that in every society, as Foucault postulates, disciplinary mechanisms control, select, and organize the production of discourse "according to a certain number of procedures, whose role is to avert its powers and its dangers, to cope with chance events, to evade its ponderous, awesome materiality."¹¹⁵ The question becomes how such procedures function in practice, not only codified as the law, to enable and restrict legitimate, albeit axiological, discourses of persons, groups, and collectivities in particular sociohistorical contexts and what can be done about it. We have already addressed how the Press Code functions in this regard, but we should be clear on how it is buoyed by the CKM beyond Article 19.

As Maghraoui notes above, the CKM is infused with cultural imperatives related to the sovereignty of the monarch and his discourse that are used institutionally as warrants for repressive measures. As suggested, the rationale behind this concentration of power is intimately tied to the relation between religion and state. Because the sovereign is sovereign by virtue of his royal *sherifian* lineage (from the Prophet Mohammed), his speech and symbolic acts are necessarily virtuous, just, and right; this principle is articulated in Article 23 of the CKM, which states that "[t]he person of the King shall be sacred and inviolable,"¹¹⁶ a proscription against discursive as well as physical acts. In fact, not only is the King's person sacred, but so is anything that is linked to his person, even physical structures, as demonstrated by the November 2002 incident in which Ali Lmrabet was sentenced to four months in prison for suggesting in his weekly magazine that one of the thirteen lavish royal palaces might be for sale.

Further, Article 28 states that "[t]he King shall have the right to deliver addresses to the Nation and to the Parliament. The messages shall be read out before both Houses and shall not be subject to any debate."¹¹⁷ The person of the king, his speech, his family, and all that he owns is sacrosanct.

115. MICHEL FOUCAULT, *THE ARCHEOLOGY OF KNOWLEDGE AND THE DISCOURSE ON LANGUAGE* 216 (A.M. Sheridan Smith trans., 1972).

116. MOROCCO CONST., *supra* note 2, ch. II, art. 23.

117. *Id.* ch. I, art. 28.

Prescriptions and proscriptions associated with this sanctity, coupled with traditional forms of ritual and charismatic control on one side, and a deeply entrenched patronage system on the other, reveal how sovereign speech takes hold and becomes transferred institutionally. The speech of all those who stand in place of and speak for the royal household carries, in turn, a powerful illocutionary force¹¹⁸ that buoys the king's pronouncements: saying so makes it so imperviously, and this reality has been embedded deeply into the collective psyche of the Moroccan population, evidenced perhaps most concretely by attitudes toward the *makhzen*.

To appreciate how deeply *makhzen* omnipotence is embedded, consider Bourqia's examples of phrases in everyday language that convey "images of power that are part of the collective representations shared by the Moroccan people."¹¹⁹ The degree to which fear of *makhzen* has been inculcated is illustrated in the following:

Three things cannot be overcome: fire, flood, and the *makhzen*;
Only God and the *makhzen* can defeat you;
The *makhzen* takes care of itself;
We cannot match up to the *makhzen*.¹²⁰

Such consciousness of domination, Bourqia argues, "endows the state with absolute authority."¹²¹ Sovereign speech is sanctified not so much by inherent divine status, however, but by captive subjects who stand as sentries to royal discourse. Moreover, as mentioned previously, citizen speech and symbolic conduct that cross the red lines cross the threshold of intentionality as well. It is not only that speech or conduct (or beliefs, gestures, and images) have unpredictable or unintentional effects, which John Austin stipulates as a perlocutionary force, but they ostensibly threaten to bring into existence a reality that did not exist a moment earlier, which reflects illocutionary force.¹²² Authorities interpret the agency of those who test the red lines as a presumptuous sovereignty, as if the king could be damaged physically and even usurped if one tears up a calendar with his image on it.

Indeed, the Moroccan man who was arrested and later charged with outrage against the king for mistakenly tearing up an image of the king in a

118. For a discussion of illocutionary force in "performative" acts, see JOHN AUSTIN, *HOW TO DO THINGS WITH WORDS* (1975); Jürgen Habermas, *Some Distinctions in Universal Pragmatics: A Working Paper*, 3 *THEORY & SOC'Y* 155 (1976); JUDITH BUTLER, *EXCITABLE SPEECH: A POLITICS OF THE PERFORMATIVE* (1997).

119. Rahma Bourqia, *The Cultural Legacy of Power in Morocco, in THE SHADOW OF THE SULTAN* 244 (Rahma Bourqia & Susan Gilson Miller eds., 1999).

120. *Id.*

121. *Id.*

122. AUSTIN, *supra* note 118, at 119.

calendar that local authorities forced him to purchase illustrates both the intensity of perceived symbolic force and the operative mythology associated with the person of the monarch. Such construal of sanctity, and its apparent vulnerability, reflects a magical conception of speech and conduct that is unwarranted universally and culturally. Public acts of resistance to this magical conception not only ostensibly threaten the sovereignty of the master and those disciples who serve him but also constitute treachery and blasphemy, punishable in extreme cases by death, whether the speaker or actor is treacherous or blasphemous intentionally.

That said, we should note that such divergence of opinions is not uncommon in any national cultural context. Still, the divergence does not justify disregard for making probative distinctions between speech and conduct. Nationally and internationally, circumstances vary under which speech (or any meaningful utterance or verbal gesture) is thought to produce debilitating and wrongful effects or conduct (or any nonlinguistic meaningful action or act sequences) is thought to carry invasive symbolic force that threatens a person or persons. Speech does indeed act, and actions do indeed speak, but various interpretations of force and effect can be found constitutionally in collectivist and individualist societies,¹²³ among Western democracies that share similar constitutional systems and institutional forms (Great Britain and the United States, for example),¹²⁴ within American society (as contradictory rulings by the United States Supreme Court illustrate),¹²⁵ as well as in Morocco.¹²⁶ Citing these differences is not to advance an argument for cultural relativism, which authoritarian governments use regularly to justify the wide latitude they take in interpreting and enforcing constitutional and religious law and rationalizing national disparities within international norms.¹²⁷

We wish to emphasize, rather, that malicious intent and deleterious effects of conflating speech or conduct should be a matter of empirical demonstration in singular instances, not presumed *ipso facto* on a teleology that favors those who hold and wield political and religious power arbitrarily.

When a state regulates speech (or any belief or gesture) as conduct with

123. See Cindy L. Holder & Jeff J. Cornassel, *Indigenous Peoples and Multicultural Citizenship: Bridging Collective and Individual Rights*, 24 *HUM. RTS. Q.* 126 (2002); see also *NEGOTIATING CULTURE AND HUMAN RIGHTS* (Lynda S. Bell et al. eds., 2001).

124. ERIC BARENDT, *FREEDOM OF SPEECH* (1985); see also Brett V. Kenney, *The British Media Ban: The Difference between Terrorist-Related Speech and Terrorist Acts*, 6 *NOTRE DAME J. L., ETHICS & PUB. POL.* 245, 245–81 (1992).

125. BUTLER, *supra* note 118.

126. WALTZ, *supra* note 76.

127. Robert Mayer, *Strategies of Justification in Authoritarian Ideology*, 2 *J. POL. IDEA.* 147, 147–68 (2001); see also Nawal El Saadawi, *supra* note 4.

unmitigated physical and moral effects or construes conduct as symbolic speech that deifies or tarnishes the sanctity of a monarch, it sets up a recursive mechanism of control that functions within the locally defined rule of law. The citizen is not only obliged to perceive the utterances or demands of officials (however corrupt) as sacrosanct but is also socialized to not question the metarule for fear of detention, indictment, sentencing, and imprisonment. Along these lines, the international organization Article 19, which leads a global campaign for freedom of speech, criticized Morocco in a communiqué on the revised Press Code, stating:

[F]reedom of expression is both fundamentally important in its own right and also key to the fulfillment of all other rights. It is only in societies where the free flow of information and ideas is permitted that democracy can flourish. In addition, freedom of expression is essential if violations of human rights are to be exposed and challenged.¹²⁸

The repression of meta-communicative means for delineating the actual effects of speech is clearly a strategy of tyrannical power, a sufficient condition in Morocco for quelling serious consideration of any constitutional amendment that would clarify the vagueness of Article 9 of the CKM and loosen the strictures of the Press Code.

Although an applicable line between speech and conduct cannot easily be drawn universally or culturally, the agonizing effort to do so is integral to establishing a democratic milieu. As Eric Barendt argues,

[m]ost conduct is equivocal in that it can be construed as asserting some proposition and yet at the same moment it constitutes an act with physical effects. It will only rarely be appropriate to characterize it as solely, or even primarily, communicative. Relevant criteria for this characterization are in summary the intention of the actor and . . . generally understood conventions concerning the significance of the behavior and its role as a means of non-linguistic communication. In some circumstances the actor's behavior . . . should be treated as 'symbolic speech.'¹²⁹

In other instances it should not. Ideally, the courts would decide when action has sufficient symbolic import to warrant interdiction or when speech demonstrably and unjustly damages or wrongs another person, group, or institution. Courts should attend to the communicative potential of action and the effects or forces of utterances with the intentionality of the actor and speaker and the specific context of situation utmost in mind. What actions carry sufficient symbolic force to demonstrably threaten in a treasonous way

128. See Memorandum on the Moroccan Code de la Press of 1958, as well as the Proposed Amendments of 2001, *supra* note 96.

129. BARENDT, *supra* note 124, at 47 (emphasis added).

(not simply criticize) the person, decrees, utterances, and prerogatives of the monarch or those who serve the royal household? What speech has sufficient physical or moral effect to do demonstrable harm to individuals or the community? Addressing these and related questions in an effort to establish judicious delimitations of the effects of speech and action is essential for a historically autocratic Islamic society to genuinely democratize.

Because the equivocation of speech and conduct is a strategy of those who hold and wield political and religious power, probative distinctions can be actualized only if those in power see such distinctions as serving their own ends. Thus, the long-term agenda for human rights activists in Morocco and other such regimes appears to be embedded in a counter-intuitive or counterfactual mode of thinking that frames individual rights of expression and opinion as necessary, if not sufficient, for increasing the integrity of the regime rather than undermining it. Following this line of thinking, to call for an amendment to the CKM that clarifies the specifically Moroccan and Islamic distinctions between speech and conduct, then, should not be construed as calling into question the viability of the monarchy, undermining the legitimacy of the government, disturbing public or moral order, questioning territorial integrity, or outraging the king. Rather, such a call should advance the argument that any amendment concerning Article 9 should dissociate the human from the divine and establish in no uncertain terms that criticism and expression of opinion in the pursuit of truth and justice is legal. To establish a truly democratic milieu, citizens should feel safe from acrimonious lawsuits that criminalize them for speaking critically about issues associated with the red lines and the persons whose discourse legitimized those lines. Would-be critics should be free to fulfill the obligations of community that ensure integrity, dignity, justice, life, and liberty for all citizens in an Islamic state.

Symbolic conduct and forceful speech that test, cross, or reinforce the red lines occur regularly in Morocco, inside and outside of public view. We have already summarized some of the highly publicized cases. Other more discrete instances of resistance also take place. One of our interviewees related a story about his participation in an entourage that met the king (Mohammed VI) on the occasion of a colleague being presented with a royal literary award.¹³⁰ Ordinarily, all those who greet the king in such a context bow their heads and kiss his hand. In this instance, the first person of the entourage, who had served as a political prisoner under the king's father, did not do so; instead he kept his head up to face the monarch and simply shook the monarch's hand. All those in the entourage, many with grievances against Mohammed VI's father, Hassan II, followed suit. A critical message had been sent, but there was no interdiction or outrage

130. Interview with Mr. A. Akkar, *supra* note 21, in Rabat (Aug. 2000).

against the king. A red line was tested and tolerated in this instance. One might wonder, if the group had not followed suit and only the individual had refused to prostrate himself, if the group had been Islamists, or if the event had been broadcast on television, would the symbolic significance and royal response been different?

Resistance takes place both directly and legitimately through public forums, as Slyomovics documents, through overt challenges to restrictions on speech and the authorized consensus on events, and indirectly through discrete gestures, allegorical expression, dissimulation, ruses, theoretical discussions, and other genre. The long term efficacy of protests and criticisms in the media, on the street, and in other forums and gatherings are difficult to measure, as they are manifested in contradictory ways, "swinging between praises to the King [and] dissatisfaction and distrust of the government, its apparatus and institutions," as Akkar put it in our discussions with him.¹³¹

This movement is often tinted with paradoxes, ambiguity and absence of a vision that justifies critique and goes beyond a manifest duplicity. . . . Despite this paradox, there is an obvious improvement of the spirit of citizenship among Moroccans, their right to choose, participate in the decision-making process and asking for accountability. Of course, there is a price to pay, especially in periods of transition. However, the cost is less than that of repression, even when the latter wears the hat of the law.¹³²

The effectiveness of peaceful resistance can be gauged only from a long-term perspective, in which survival values for some individuals and groups overrides short-term achievements or setbacks.

Suffice it to say that Moroccan authorities seem to be concerned that if speech that tests and crosses the red lines is *de-ontologized* as intrinsically treacherous or blasphemous and becomes interpreted instead as contingent, focused on singular issues and influences, subject to debate, and linked to demonstrable effects, then it loses its invocative power and becomes merely evocative. That is, speech is no longer magical, no longer capable of producing subservient subjects, and no longer feared.

Will shifts and openings be squelched by the security approach associated with counterterrorist legislation in the wake of the Casablanca bombings, or have rights and liberties grown sufficient institutional roots to weather the ongoing backlash? We certainly hope for the latter, but in the short-term we anticipate the former, especially given the binding influence of the Press Code and lack of an amendment to the constitution that clarifies the vagueness of Article 9.

131. Interview with Mr. A. Akkar, *supra* note 21, in Rabat (July 2002).

132. *Id.*

VI. DISCUSSION

Even though the UDHR and related covenants have influenced the language of the revised Moroccan constitution and encouraged the development of a human rights culture, we concur here with Maghraoui, Entelis, Brumberg, and most of our interviewees that the political structure is still very much in the realm of the authoritarian (with a qualifier) rather than the democratic (with a qualifier) and will probably remain so indefinitely, or at least until a delineation between the human and divine is established. Numerous examples across the developing world and in Eastern Europe indicate that democratic transitions may stagnate, or sometimes even be reversed as in Tunisia and Egypt, and will inevitably result in state excesses.¹³³ With the counterterrorist legislation and reinforced strictures of the Press Code, it would seem that Morocco is not only stagnating but also on the verge of a de-liberalization. In June of 2004, the king closed down the Ministry of Human Rights under the pretext that there are no more issues of human rights to be addressed and, therefore, no need for such an institution. Amnesty International's 2004 report on Morocco paints an overall picture of autocratic regression.¹³⁴ Meanwhile the images of democracy and prosperity flourish in magazines and journals; on billboards in the street; and in royal proclamations, trade agreements, television, and other public outlets.

Because of the long years of censorship and repression in Morocco, the openings that the Moroccan public has witnessed since the late 1990s have been viewed "as a miracle," as Fakhani has put it, rather than as "a well-deserved right, [or] the outcome of long years of struggle and sacrifice."¹³⁵ In keeping with the logic of patronage, free speech in this context is conceived as a gift rather than a right. Correlatively, there is a tendency to conceive freedom of expression and other human rights as luxuries, rather than as priorities, in societies where the majority of the people are both poor and illiterate. Priorities in these societies tend to be focused on pressing economic issues such as securing food and shelter for all. Indeed, authorities in Morocco often fall back on the traditional notion that economic development and full-scale democratization cannot go hand in hand and, therefore, couch the enforcement of nondemocratic laws and policies in economic and, more recently, security terms. One of our government journalist interviewees stated that "free speech is the crowning achievement of economic development, not the other way around."¹³⁶ There is increasing

133. See BRAND, *supra* note 79, at 7.

134. AMNESTY INTERNATIONAL, *supra* note 62.

135. Interview with Mr. Fakhani, *supra* note 21, in Rabat (July 2003).

136. Interview with Anonymous, in Rabat (July 2000).

evidence that socioeconomic development and political liberalization are not mutually exclusive, however. On the contrary, they are “mutually reinforcing processes” as advocates of third-generation rights argue.¹³⁷ Despite the mounting evidence of this linkage, authoritarian and semi-authoritarian regimes are concerned foremost with their own perpetuity. They hoard power (real, symbolic, and imaginary) and exercise it wantonly while configuring as treasonous any critical opinion perceived to seriously undermine their status or agendas.

Increasing educational opportunities for all Moroccans is a precursor to any sustained economic or democratic development, crucial not only for increased work opportunities and prosperity but also for obtaining information and ensuring accountability. Literacy and other educational programs are a necessary condition for the widespread development of an uninhibited and informed public discourse, the sufficient condition being a population hungry for such advancement. Gauging what is and is not possible within the realm of information, communication, and critical thinking is limited, however, to those Moroccans who can read. The greater the literacy, the greater the number of voices, opinions, and public debate; and therefore, a greater number will be vested, engaged, and heard. There is also a greater possibility that corruption and other injustices will be exposed and redressed; violations of autonomy, integrity and dignity will be less routine; and citizens will develop more trust in their political and economic institutions. The political sphere would be enhanced in such development, with political parties and other groups representing vested constituencies with concrete programs, debating questions of legitimacy and sovereignty rather than the current trend of depoliticization, which valorizes economic concerns in strictly technical terms.¹³⁸ And so education, too, must be thought of and developed hand-in-glove with undistorted information and expressive culture characteristic of a democratic milieu.

As long as the government controls the programming and editorial content of the airwaves, and as long as corruption remains routine and the threat of violence for utterances and actions remains internalized, it is unlikely that the masses of illiterate Moroccans—over 50 percent of the population—will be adequately informed about economic and educational opportunities, especially for women. Recognizing and overcoming institutional (structural and symbolic) violence requires an understanding of the forces of effective power, how social and cultural capital can be built from below with a nuanced sense of what free speech is up against. But as long

137. A full discussion of this issue is beyond the scope of this paper. See Abbas Pourgerami, *Authoritarian Versus Nonauthoritarian Approaches to Economic Development: Update and Additional Evidence*, 74 *PUB. CHOICE* 365, 365–77 (1992).

138. Maghraoui, *supra* note 110.

as the monarch, his discourse, and the royal family is sanctified above critical scrutiny, and as long as speech and conduct of would-be critics is distorted teleologically, strict hierarchical arrangements and attendant corruption will continue to dominate. The stakes of these concerns are high, particularly because they are linked less to the value of free speech in itself (as an abstract universal ideal) than to the question of how access to and use of media (radio bands, television channels, newspapers and journals, and the Internet) will enhance the work of those most determined to challenge sanctimonious practices of the ruling state and bring about a form of democracy suitable to the Moroccan context. Although the ruling interpretation of that context constitutes a battleground for the democratic movement in Morocco, with considerable dissonance across the board, the fact that the discourse has been enjoined is the most compelling sign of hope that human rights practices will truly become institutionalized and a democratic milieu will prevail.

As indicated in the previous pages, the invocation of cultural relativism is, from the perspective of most of our interviewees, merely an attempt by the authoritarian regime and its defenders to legitimize abuses and provide self-serving justifications for political misdeeds and legal errors. But to argue against relativism in this context is not necessarily to advance an absolutist conception of the universal right to freedoms of expression and opinion. Because the right to free speech is a right that is bound by other rights, it is not realistic to conceive of such a right in purely absolutist terms. Indeed, "[t]he right to freedom of expression is not absolute. Both international law and most national constitutions recognize that freedom of expression may be restricted. However, any limitations must remain within strictly defined parameters."¹³⁹ Parameters usually refer to respect for rights and the dignity and integrity of others, the protection of national security and public order, and what constitutes social health and morality.¹⁴⁰ But what order, security, health, and morality mean is open to question; advancing inquiry about such meanings, which is an inherently meta-communicative activity, should be a vibrant part of public discourse. Security measures now being instituted in Morocco against Islamists and *Saharawis* are embedded imperviously in a conception of law that advances communicative distortions, however. Despite the Casa and Madrid bombings, most Moroccans still fear the actual terror of the state more than the potential terror of Islamist groups, the majority of which, as we have said, advocate nonviolent change, or *Saharawis*, who have demonstrated their commitment to a nonviolent

139. See Memorandum on the Moroccan Code de la Press of 1958, as well as the Proposed Amendments of 2001, *supra* note 96.

140. *Id.*

resolution to the Western Sahara conflict. Distortions, which should be conceived as forms of symbolic violence that feed on and perpetuate other such acts, serve only to further reify the unrestricted power of the state apparatus.

It is unlikely that any real reform of the Press Code or amendment to the constitution clarifying Article 9 and allowing greater freedoms of speech and the press will take place soon. Meanwhile greed, corruption, illiteracy, prostitution, exploitation of children, repression of women, and self-serving sanctimony continue to undermine Moroccan social capital and economic development. For democratization to develop, trust in Moroccan institutions must first take hold, as the judiciary is now linked inextricably to the needs and interests of the royal household. Accountability can only begin at the top, the royal household serving as the penultimate example for all. Such accountability requires an unprecedented liberalization of speech that the current monarch seems incapable of actualizing, but would, ironically, establish its self-proclaimed identity "king of the poor."

Repression of innocent Islamists (among others), interdictions of publications and meetings across the political spectrum, the wanton criminalization of journalists, and corruption in the justice system and elsewhere make the Moroccan monarchy weaker, not stronger. The authorities apparently fear that by further loosening restrictions or by allowing amendment to the constitution to mark probative and just distinctions between speech and conduct, their own legitimacy will be thrown into the breach. Moroccan journalists, human rights activists, *Amazigh*, women's groups, and moderate Islamists struggling for democratic and judicious institutions are thus faced with a beguiling dilemma. By criticizing the monarch's right to bestow the gift and by raising question of legitimacy, sovereignty, and judicial integrity, they risk losing the liberties they have so dearly won. But by not doing so, the best they can hope for is political stagnation.

The greatest urgency, then, is to find ways to resist and reform legal and other institutional codes that are used as rationalizations for coercive and corrupt practices. To resist effectively requires coming to terms with authoritative conceptions and traditional forms of political communication and developing the means (legally, politically, and institutionally) to transform the rules of law. Resistance also means not to self-censure or "sub-serve" for fear of reprisal and not to ignore how symbolic as well as physical violations are used as means to maintain the status quo. To avert potential violence in the form of large scale demonstrations that the Islamists can produce through local rebellions, potential coups, or other means, it seems incumbent on the Moroccan government to demonstrate its strength by expanding liberalization rather than succumbing to its weakness through acts of repression, even if the latter "wear the hat of the law." Fearing the power of certain kinds of discourse to create realities and effects that they

cannot control (thus selecting, restraining, and organizing what will and will not be seen and heard), the authorities get caught up in their own self-sealing premises. Any perceived public crossing of a red line becomes proof that the red lines are real and necessary, endowed with a natural, rather than cultural, force. So reified, the red lines become a means not only to quell dissent but also to rationalize the priority of managing royal household (*dar al mulk*) principalities and maintaining sovereignty over the kingdom's subjects. Developing bold policies that ensure social welfare, civil liberties, education, and justice for all Moroccans becomes ancillary.¹⁴¹

By confronting these and other paradoxes of democratic transition, the dissidents we spoke with and many others whose actions we have followed during the last six years, exemplify struggle based on an ethic of communicability—that is, an embodied ethic that questions the legitimacy of the patrimonial gift, criticizes despotic applications of the law, and works diligently to develop practices that force a recoding and just application of the rule of law in the long term. Such work requires agonistic engagement in a social and political field full of minefields. One does not necessarily hope to constitute closure juridically in such a field, nor does the effort in any way aspire to the realization of a universal ideal. Instead, the task is to make minor incursions in the order of things, win small battles, seek new associates and alliances, open new channels of information, and never let up. This, then, is the definition of political communication for dissidents struggling for truth, equality, and justice in Morocco and elsewhere in the MENA region.

To not let up is an existential challenge, albeit one that is part of a larger social movement focused on individual freedom, institutional accountability, the struggle against impunity, and social and economic rights in the Islamic pursuit of justice. It would seem that there are two complementary genres of nonviolent social movement in Morocco (and likely in other semi-authoritarian regimes): 1) those involving individuals and groups in civil society that have a specific identity and sociopolitical agenda and that demonstrate, organize, publish, speak, and sacrifice in the interest of developing just policies, practices, and procedures; and 2) those anonymous citizens who refuse to be corrupted or co-opted; who resist patriarchal

141. See Michel Foucault, *Governmentality*, in *THE FOUCAULT EFFECT: STUDIES IN GOVERNMENTALITY*, *supra* note 28, at 90.

[T]he objective of the [prince's] exercise of power is to reinforce, strengthen and protect the principality, but with this last understood to mean not the objective ensemble of its subjects and the territory, but rather the prince's relation with what he owns, with the territory he has inherited or acquired, and with his subjects. . . . it is this *savoir-faire* that the anti-Machiavellian literature wants to replace by something else and new, namely the art of government. Having the ability to retain one's principality is not at all the same thing as possessing the art of governing [in the anti-Machiavelli treatises].

authority on the street, in the tribunal, and in the home; who fight repression with gestures, argumentatively and allegorically; and who take risks and communicate in efficacious ways to level the playing field in the singular instance, however provisionally. Both types of movement are important. As El Saadawi emphasizes,¹⁴² real democracy begins at the level of everyday practice, which means the personal and social cannot be dissociated from the political or the economic.

142. El Saadawi, *supra* note 4, at 157.