

CAN LEGALISM BE EXPORTED? U.S. RULE OF LAW WORK IN ARAB SOCIETIES AND AUTHORITARIAN POLITICS

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I. INTRODUCTION

I am pleased to be part of this panel devoted to the Middle East and of this year’s rich program at International Law Weekend.

I have decided not to speak directly about Arab human rights today, despite the title of my panel. I believe you will agree with this decision, given that most of what I have to say about the recent context of human rights in Arab countries is pessimistic. The post September 11, 2001 context has allowed political systems in the Middle East to use deterring terrorism as an excuse to clamp down on human rights to a worrying extent. I shall talk a little about human rights in Arab countries, but mostly as an example of a broader argument I would like to present to you about law and politics in the Middle East.

I would like to discuss instead a general issue that has been of interest to me since fieldwork I did as a Fulbright Scholar in Morocco in the early 1990s. At that time, I was visiting the uncle of a Moroccan professor friend of mine in a quintessentially rural village in a really remote region of the country. This is the sort of place that took hours to get to by bus from the nearest large town, and had the electricity and running water cut off for hours every day. There I was having tea with a man in an unheated living room with no electricity and far away in space and time from think tanks in Cairo or Washington. Then we started to talk about politics. My host astonished me by stating bluntly that “the real problem in our local and national politics is instilling popular respect for the rule of law.” As the lights occasionally flickered on and our tea was refreshed,

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we proceeded to speak for an hour or so about the rule of law and politics in Morocco.

I decided that I wished to follow up on this conversation. More specifically, my sense that even in isolated parts of Arab countries people appreciated the idea of the rule of law in sophisticated ways led me to conduct research on how this is used more generally in contemporary political discourse by diverse politically-active Arabs. Since my initial interest in this general area, even before the Bush Administration's self-created challenge of trying to shape a viable political and legal order in Iraq, the importance of the rule of law in Arab societies has gained enormous ground as a focus in Washington. Out of a sense that neither Arab democratic political institutions nor integration into the global economy can occur without the rule of law, well-meaning American policy-makers and legal practitioners have built a new industry to teach Middle Easterners their collected wisdom as to how law works. As Tom Carothers at the Carnegie Endowment for International Peace has observed, however, American rule of law specialists often operate with a striking lack of clear knowledge about what and how they are doing.¹

This problem is especially evident with respect to contemporary Arab societies. Arab states of the Middle East and North Africa generally share two features: non-democratic governments; and legal systems that are a patchwork of Islamic, Ottoman, European, and contemporary sources. It certainly does not make sense to presume that thinkers and practitioners trained in an Anglo-American common law tradition can build respect for the rule of law by transporting and transplanting their technocratic techniques to such different legal soil. Indeed, the very idea that people in Arab societies would be receptive to being taught by Americans how to reform their legal systems in the current climate of popular mistrust of the United States reflects some combination of elitism, hubris, and ignorance.

Thus, there is little reason to believe that American lawyers can bring the rule of law directly to Arabs. Nonetheless, there are grounds to appreciate the importance of shoring up law's potential to check the political centralization and corruption of contemporary Arab political systems. This talk embraces the assumption that enhancements in the rule of law may be useful to Arab citizens, who generally have concerns about the accountability and performance of their governments. However, I also argue that it is crucial to map out the terrain and contours of law in the current political context of these societies, rather than simply taking on faith that they are conducive to improvement by American legal practice. Indeed, selective enhancement of the rule of law in Arab

1. Thomas Carothers, *Promoting the Rule of Law Abroad: The Problem of Knowledge 5* (Carnegie Endowment for Int'l Peace, Working Paper No. 34, 2003).

societies may actually have the effect of shoring up political authoritarianism, as one might opine has happened in recent years in Egypt.

While important specific areas of tension exist between how the rule of law is conceptualized in the United States and Arab societies, the rule of law is generally appreciated as useful and in need of amelioration within the Middle East. The impediment for American rule of law advisors does not, therefore, lie in a lack of Arab desire for more predictable, responsive, and fair laws. Instead, the problem is a widespread two-fold Arab concern about the United States as the messenger for the rule of law in the Middle East. First is a common sense that U.S. policymakers do not know or care to know basic aspects of law, politics, and society in Arab countries. Second is an even stronger perception that the United States does not, in fact, practice what it preaches in fealty to the rule of law through its government's policies, particularly those in the Middle East.

As a result, well-intentioned American efforts to export ideas about the rule of law to Arabs are unlikely to succeed unless and until the U.S. is seen as less hypocritical in its own embrace of the rule of law at home and abroad. Even should this happen, I argue below, the rule of law as an export industry seems inherently problematic because it cannot be decoupled from the broader challenge of bolstering political accountability and limits on governments in Arab countries.

With this basic point in mind, after discussing in brief what is meant by the rule of law, I turn to ways in which the understanding and the politics of the rule of law are, as a general matter, similar and different in American and Arab societies.

II. THE RULE OF LAW IN ARAB AND AMERICAN CONTEXTS

Before discussing the rule of law in the Middle East, it is important to be clearer about the meaning of the concept itself. The brevity of this talk and the complex ways in which the concept is used defy a complete answer to this definitional issue. Nonetheless, the rule of law generally refers to the pre-eminence of legal norms over personal political authority, or, as often formulated, a government of laws, not men.

Although the concept is used in diverse and imprecise ways,² it typically is grounded in an assumption of some separation between a society's politics and law.³ Specifically, the rule of law is meant to protect people from anarchy,

2. See Richard H. Fallon, Jr., "The Rule of law" as a Concept in Constitutional Discourse, 97 COLUM. L. REV. 1 (1997); FRANK UPHAM, MYTHMAKING IN THE RULE OF LAW ORTHODOXY (Carnegie Endowment for Int'l Peace, Working Papers No. 30, 2002).

3. Gerhard Robbers, *The Rule of law and its Ethical Foundations*, in THE RULE OF LAW (Josef Thesing ed., 1997).

unpredictability, and arbitrariness. In broad terms, the rule of law suggests a promise that legal supremacy, stability, and accountability will prevail over leaders' caprices.

However, the extent to which politics can or even should be entirely separated from law is unclear; it varies within and across societies. At the same time, the rule of law does not mean or guarantee that ordinary citizens enjoy the same access to legal resources as leaders. Despite the ideal of laws trumping leaders, the reality is that the drafters, executors, or interpreters of law can flout this ideal unless meaningful accountability and transparency exist in a political system.

Indeed, one vein of recent social scientific scholarship on the rule of law insists that it is, to some extent, an unrealizable ideal that is inseparable from specific politics.⁴ Perhaps because of the real questions of whether and how law can truly curb abuses by the leaders of powerful countries, ideas about implementing the rule of law often focus on the relatively limited dimension of improving procedural regularity in courts or lawyers' guilds. More fruitful approaches might look instead at detailed assessments of how political and legal systems do and do not approximate rule of law ideals in such areas as legal restraints on government, legal system neutrality, and human rights.

In the late 1990s, members of the U.S. foreign policy community concerned with the democratization of non-Western political systems increasingly asserted that globalization of economic free markets and representative political institutions could only take root in societies with shared respect for the rule of law. However, there is little empirical research as to how such shared respect is established or how the rule of law is conceptualized and contested in specific non-Western contexts. The research that does exist tends to be focused narrowly on judicial opinions and the function of courts, rather than whether or how popular the understanding of or respect for law may matter to legal and political systems more generally.

The rule of law industry has grown, despite this dearth of research as to how the rule of law is established and legitimized in a society. In Arab societies where Washington is prone to underestimate the importance and variations of popular political attitudes, limiting treatment of the rule of law to the performance of elite judicial institutions would seem to compound a major error of U.S. foreign policy. Some specification of the nature and contested political meanings of the rule of law that moves beyond judges and courtrooms is therefore important. My discussion today is limited to the putative connection between legalism and democratic development. I believe that the contemporary Arab context suggests that the rule of law cannot and should not be readily decoupled from its general political situation. Thus, aiming to improve the rule

4. DEMOCRACY AND THE RULE OF LAW 15 (José María Maravall & Adam Przeworski, eds. 2003).

of law without confronting a broader authoritarian backdrop can do little to foster democratization or better law, for that matter.

This is not to imply either that the rule of law is absent from Arab societies or that these societies are inherently or unalterably undemocratic. On the contrary, a major point below is that the rule of law, as an ideal, is similar in Arab and American societies. However, this ideal should be understood with reference to the reality of its past and present use by external and internal autocrats to serve political centralization. For this reason, I argue below that the best hope for American-based rule of law work in Arab contexts is in areas that have the potential to decrease the gap between ideal and reality in the subordination of government elites to laws.

A. Points in Common

As is true in the United States, the rule of law has been an influential doctrine in Arab political history. Indeed, the Islamic and Ottoman socio-legal traditions that contribute to contemporary Arab law predate the Anglo-American common law by many centuries. Moreover, the Middle Eastern origin should not be forgotten of two of the most ancient legal codes of all: the Code of Hammurabi and the Judeo-Christian Bible. Thus, no serious discussion about the potential for American rule of law specialists to bolster the rule of law in Arab states can proceed without acknowledgment that the concept has firm roots in Middle Eastern soil.

I focus on points in common between Islamic and American law. This is sensible in light of the fact that Islam dominated the development and practice of law from the seventh century until the present. Moreover, the dominant contemporary trope of political discourse and opposition in Arab countries at present remains Islamic, so the idea that Islamic law may have some significant resemblance to law in the United States has implications for contemporary rule of law work. Nonetheless, a comprehensive discussion of how the legal landscape in Arab societies might be recognizable to American law specialists would require consideration of more dimensions of Arab law than can be discussed in this modest presentation.

Among the sociopolitical effects of Islam from its seventh-century inception is three of obvious relevance to the rule of law. The first is the general understanding of Muslims that Islamic political theory specifically stressed political accountability by insisting that rulers' legitimacy was grounded in their status as defenders of the Islamic faith and its principles, whether this status is based on descent from the prophet Muhammed's bloodline or some other distinction. In particular, rulers were to be judged by qualified Islamic scholars and Muslims more generally on their record of executing and enforcing Islamic law.

To be sure, leaders historically used their military power more frequently to subjugate than to empower Muslim jurists in the exercise of their mandate to determine when Islamic law was being upheld. Nonetheless, the connection of political legitimacy and legalism cannot be ignored as a core concept in Islamic history. In short, if the very purpose of an Islamic political order is to execute law, the rule of law is, in theory, integral to Muslim society.

A second point is the manner in which concerns about justice have been centrally and popularly embedded in Islam. Justice as a concept and a discourse is ubiquitous in the Qur'an. Moreover, Islam's emphasis on justice includes significant emphases on social equity and individual rights. Thus, discussions of many of the general and specific issues that frame legal discourse are engrained in the religious identity of the large majority of people in Arab societies.

The importance of justice within Islam also contributed to the fact that Islamic jurisprudence never fully developed a concept of natural law. This has meant that there is no clear theory to ground legitimate, a completely secular legal order, as natural law helped do over time in the West.

A third, if more contentious point, is that Islamic political theory can be read as presupposing two central tenets that have clear relevance to contemporary discussions of the rule of law: despite the ideal that political authority exists for the benefit of Islam, authority in practice will tend towards absolutism, rather than subordinating itself to communal legitimacy or justice; and resources autonomous from the state (civil society) are therefore needed to check leaders' actions. In essence, a significant tendency of classical Islamic legal theory is a distrust of government and an emphasis on finding legal ways to constrain authority that would sound quite familiar to many Americans.

One major scholar of the Middle East argues that Islamic law shares a fourth and crucial feature of Anglo-American law—a common law system. Anthropologist Lawrence Rosen makes a good case for considering as fundamentally similar American and Islamic laws' reliance on local courts and local cultural information as characteristics that distinguish both from the legal centralization of a civil law system.⁵ Thus, American and Arab lawyers may share a similar understanding of the importance of locally-grounded legal process, among other things.

Nonetheless, experts such as Rosen emphasize that similarities between legal systems exist alongside significant differences. For instance, American and Islamic common law vary in crucial ways, such as American law's doctrine of litigating a particular legal issue once to establish a future precedent, as opposed to Islamic law's predilection towards assuming that no two sets of

5. LAWRENCE ROSEN, *THE JUSTICE OF ISLAM: COMPARATIVE PERSPECTIVES ON ISLAMIC LAW AND SOCIETY* 48 (2000).

litigants are alike even when issues are similar. Thus, an appreciation that legal systems in the United States and the Middle East may share important features should not carry with it an assumption that differences can or should be minimized. I turn now to some of the most basic and important of these differences.

B. Points in Contention

The rule of law exists as a political touchstone in Arab societies, just as it does in the United States. Yet particular differences in the sociopolitical environment of the Middle East and North America shape local understandings and implementation of the rule of law in significant ways. Prime among these is an important, if sometimes over-stated, source of many contemporary Arabs' concerns about Western countries' politics, the multifaceted impact of Ottoman and European colonial domination.

The impact of foreign great power rule on the rule of law in the Middle East and North Africa was threefold. First, it led to a patchwork of legal orders in a given society, rather than the relatively long-standing growth of a unitary national legal system such as occurred in the United States. Second, it set up an authoritarian norm that law would in fact be subordinated to imperial political power. Third, and related to this, it fostered a tendency for constitutions to exist without a significant history of judicial interpretation. In some states, such as Morocco, this led to frequent redrafts of the constitution to reflect changes in the power or preoccupations of political authority, in contrast with the American norm of a single basic constitutional document that can only be modified with difficulty.

The legal system of every contemporary Arab nation is a unique mixture of Islamic, Ottoman, European, and post-independent laws.⁶ To be sure, a number of territories escaped direct foreign domination, most notably in the Persian Gulf. The mixture of sources of law in most Arab societies does not in itself preclude legal clarity or the development of legal checks on authority. However, along with the lapses in territorial and ethnic logic that European colonial powers frequently employed in setting borders for many of the contemporary nations of the Middle East, the lack of legal systemic unity in Arab states has two logical consequences for recent American-fostered efforts to enhance the rule of law: the jurisprudential reference points of lawyers in the United States are not likely to be of direct use to Arab societies; and post-colonial Arab leaders have had many incentives to centralize their authority and no real legal impediments.

6. For a succinct summary of the combination of sources of law in each Arab area, see NATHAN J. BROWN, *THE RULE OF LAW IN THE ARAB WORLD: COURTS IN EGYPT AND THE GULF* 3-5 (1997).

This second source of general Arab sociopolitical divergence is even more obviously related to the primary legacy of colonialism in the Middle East – an emphasis on control backed by force that was not meant primarily to serve the best interests of indigenous citizens. The political example that socialized Arab nationalist elites was the resort by colonial regimes to fictitious and fallacious political forms like mandates and protectorates to conceal their exercise of raw military power. Legal norms and institutions existed under colonialism in which the contradictions between stated and true purposes were readily apparent.

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

To be sure, the ideal of the rule of law will often be at odds with the centralizing tendencies of governments. My argument is that Arab states in the Middle East, in general, had an especially wide gap between ideal and reality because of the combination of the relative lack of autonomous pre-colonial, unified, legal order in these states, and the repressive tendencies of colonial governments. More subtly, I am suggesting that the level of discontinuity between the rational, legalistic values preached by European administrators and their practice of resource extraction and police rule tainted the very ideal of the rule of law in a way that is unlikely to resonate with the socialization of many American lawyers.

In short, many Arabs view the rule of law in a manner similar to American legal scholars on the left, as an ideology of political control, not as a check on political abuse. Of course, this does not mean that post-independent Arab regimes lacked a legal system or avoided legal centralization and growth. Indeed, most Arab states have basic laws or constitutions. Thus, a third major distinction between Arab and American political experiences with the rule of law is not that Arab constitutions do not matter, but that they have been subject to less institutionalization and independent judicial interpretation than has the U.S. Constitution.

This difference is neither surprising nor unknown to American rule of law experts. In fact, given Arab political centralization, the very existence of constitutions is at least as interesting a political phenomenon as the dearth of independent judicial interpretative traditions for these documents.⁷ For my

7. For a very good treatment of the importance of Arab constitutions, see NATHAN J. BROWN, *CONSTITUTIONS IN A NONCONSTITUTIONAL WORLD: ARAB BASIC LAWS AND THE PROSPECTS FOR ACCOUNTABLE GOVERNMENT* (2002).

purposes here, however, it is worth underscoring the challenge that the juxtaposition of constitutions and political regimes with few genuine legal checks poses for building broad social support or even judicial competence for the rule of law.

A fourth difference of approach to the rule of law between U.S. and Arab societies does not connect directly to the Middle East's history of outside great power influence, but it is the relationship of law and religion. Within the United States, religious pluralism has led to the ideal that law should facilitate the separation of church and state. However, with the notable exceptions of Lebanon, Syria, and Egypt, Arab societies have predominantly Muslim populations, and have built political orders that often establish Islam as a state religion. Thus, laws and legal institutions in many Arab states, even those with secularized leaders, privilege Islam and its traditions.

Of course, most scholars of American Constitutional law would assert that the separation of church and state in the United States is far from perfect or unproblematic, and has often favored Christianity and its ideas. Nonetheless, the assumption that Islam *should* inform the political and social order has caused, and is likely to continue to cause, misunderstandings and difficulties for would-be American political reformers in the region.

The extent to which Islam in general, and the *shari'a* in particular, should inform the rule of law and what forms this should take is a complicated, current area of great debate and discussion among Arab and non-Arab Muslim scholars. Adding to the complexity of this issue is the theoretical contradiction between the Islamic ideal of *siyyasa al-shari'a*, or the rule of God's law, and *siyadat al-qanun*, or the rule of man-made law. The latter term, the general way in which the Western idea of the rule of law is translated into Arabic, conveys with it a patina of illegitimacy to many Muslims.

However, there is no obvious reason that the ideal political effects of the rule of law, constraining governmental abuse and providing procedural fairness, are impossible to achieve in a society with an established religion, so long as religious dissenters and minorities receive legal protection. Yet understanding, navigating, and being sensitive to the ways that religion and politics are intertwined in most Arab societies is a daunting task for American rule of law experts and one that their own socialization and training in the First Amendment of the U.S. Constitution is unlikely to facilitate.

It is important to reiterate that the above four major differences between Arab and American experiences with the rule of law do not eliminate the possibility that Arab governments can have more robust legal checks or that many Arabs are predisposed towards the rule of law. My argument is instead that the experiential differences discussed above pose intellectual barriers for American law specialists who seek to strengthen the rule of law in the Middle East. Moreover, these differences raise some Arabs' suspicions that American

lawyers are functioning in the manner of previous agents of Western foreign powers, whose attractive political words concealed their complicity in imperial coercion.

In short, would-be American rule of law experts face a variety of specific and general challenges in trying to bring legal reform to Arab societies:

- 1) The diverse sources and systems of law;
- 2) The authoritarian legacy of colonialism;
- 3) The lack of authority and tradition of judicial review; and
- 4) The connection between the mosque and state.

These are all features of the Middle Eastern legal landscape that hobble easy access for lawyers whose primary grounding is in American common law and politics. Furthermore, a general wariness towards Western incursion, alongside a particular negative reaction to American foreign policy since 9/11, creates a particularly unreceptive current environment for rule of law reformers with even the best of techniques and intentions. What then, is to be done?

III. REFORMING THE RULE OF LAW REFORMERS?

One simple response to the formidable challenges to U.S.-based rule of law work in Arab countries is to give up on it. Indeed, there is something to be said for this. American foreign policy hubris and naïveté in general often have exacerbated the ability of the U.S. to influence political change in the region. Humility and introspection in the face of a genuine crisis in American-Arab foreign relations may prove to be the best strategy in the long run to foster legal reform. After all, Arabs themselves are best-suited to understand and work in the diverse and different sociopolitical environments discussed above. Given the pessimism in Washington for Arab political transformation as a result of the challenge of Iraq, the winding down of U.S. rule of law work in the Middle East may in fact be the most likely scenario.

However, I do not believe that abandoning the possibility of a useful role for Americans in Arab legal reform is the only conclusion that follows from my analysis. Facilitating changes in Arab societies that increase the legal system's prospects for moderating governmental excess continues to be one possible way of improving Arabs' lives. The key to rule of law work in the Middle East is the realization that it cannot get very far if it is decoupled from broader strategies, which address the repressive tendencies of authoritarian regimes in the region, along with the popular perceptions of many Arabs that the U.S. government is complicit in this repression.

Arab governments consistently rank among the worst cases in the world in their refusal to uphold their citizens' political freedoms, human rights, and civil

liberties. Explanations abound for the resilience of Arab authoritarianism.⁸ Yet, a core part of this issue is Washington's understandable, if short-sighted, general preference for governments in the Middle East that it might characterize as stable, whether or not such stability comes at the point of a gun. The second-largest recipient of American foreign aid in almost every year since the late 1970's, Egypt, has used its funds to buy weapons and police to enforce the government of the very unpopular and anti-democratic military leader Hosni Mubarak. Long-term studies of U.S. foreign policy in the Middle East are clear that Washington's predilection for maintaining extant regimes usually outweighs its commitment to popular accountability and democratization.

The aftermath of the 9/11 attacks has intensified this trend. The unpopular governments of Egypt, Tunisia, and Saudi Arabia, among others, have deliberately emphasized the message to American policymakers that their repressive politics are necessary to combat Islamic extremism. Whether or not Washington insiders are persuaded by this message, the need to line up Arab support to help with the war and reconstruction in Iraq has made it an especially unlikely time for the United States to press its allies in the region. For all the Bush Administration's rhetoric about democracy and change in the Middle East, regional human rights and democratic reform outside of Afghanistan and Iraq have received little sustained attention.

In other words, democratic activists in Arab societies are right to express frustration with the U.S. government's actions, for they correctly perceive a discontinuity between American democratic ideals and American governments' general practice of supporting repressive rulers. Ironically, one of the ways that authoritarian governments in the Middle East, including those closely linked to Washington, have tried to deflect their citizens' dissatisfaction has been to fan the flames of anti-Israel feeling, which, in turn, fuels Arab anger towards the Jewish state's major ally. It may not seem reasonable to Americans that many Arabs harbor such hostility for Washington's stalwart support of Israel. Nonetheless, this issue is undoubtedly one of the things that poison potential dialogue between Arabs and Americans.

Short of an unlikely major foreign policy overhaul, what can American policy-makers and rule of law specialists do to help Arab legal systems function more credibly? The obvious first step is for rule of law reform efforts to take into account the greater cultural and political similarities with respect to the rule of law between Arabs and Westerners, while also making efforts to understand and tailor programs geared towards the specific differences discussed above. This is undoubtedly an easy suggestion for well-intended rule of law activists

8. See, e.g., 36/2 COMPARATIVE POLITICS (Jan. 2004) (a special issue devoted entirely to explaining Arab authoritarianism); DANIEL BRUMBERG, LIBERALIZATION VERSUS DEMOCRACY: UNDERSTANDING ARAB POLITICAL REFORM (Carnegie Endowment for Int'l Peace, Working Paper No. 37, 2003).

to embrace, and one which people engaged in rule of law work undoubtedly strive to achieve. Nonetheless, it will require much more research and on-the-ground knowledge to realize.

A second, more challenging step that would-be rule of law reformers should take, is to appreciate the importance of viewing rule of law work as inextricably connected to the broader context of authoritarian politics in most Arab states. Specifically, specialists must craft their programs and arguments to project a clear understanding that entrenched authoritarian institutions, often supported by the United States rather than anti-democratic cultural norms, are the major impediment to expanding the role that legal norms and institutions can play in expanding political freedom and participation. Indeed, some appreciation that even societies like the United States that view themselves as shining examples of the rule of law can show tarnish in some of their practices. Doing these things, in turn, can contribute to the credibility problem of American advisors preaching legalism at the same time that the American government is perceived to stand for supporting repressive regimes and projecting force in a neo-imperialistic manner.

Rule of law activists need not despair of the impossibility of achieving these two general policy prescriptions. There are specific strategies that they can follow that have yielded positive results both in terms of increasing the pressures of law on centralized politics in Arab states and boosting the credibility of American reformers. Let me mention four such strategies:

- 1) Link up with Arab activists and initiatives;
- 2) Localize the scope of reform to particular issues or sectors that increase legal pressures for political accountability;
- 3) Look for openings that move reform work beyond a narrow elite of judges and politicians;
- 4) Let issues like education, Internet access and freedom of the press get onto the reform agenda that may be prerequisites, rather than obvious components of respect for the rule of law.

This is, of course, where human rights reform in Arab societies is very instructive. As I have argued at length elsewhere,⁹ a variety of politicized groups in several Arab countries in the 1980s and early 1990s found human rights activism particularly useful, because it manifested the potential to chip away at state authoritarianism. More specifically, international human rights activism in two countries I know well, Morocco, and Tunisia, was able to make use of all four of the above strategies and link up particularly well with local

9. See David M. Mednicoff, *Think Locally, Act Globally? Cultural Framing and Human Rights Movements in Tunisia and Morocco*, 7 INT'L J. HUMAN RIGHTS 72-102 (2003).

initiatives to the extent that it seemed to connect with pressuring governments to liberalize politically. In Morocco, the ongoing synergy between rights activism and gradual political opening has meant a continuation and diversification of human rights politics, such as the recent effort that bridged international and indigenous feminists to reform the country's *mudawana*, or family code in early 2004.

The release of prominent Egyptian sociologist, Saad Eddin Ibrahim, from an Egyptian prison in 2003 for his criticism of Hosni Mubarak's government is also notable for its involvement of a coalition of Arab and Western lawyers, intellectuals, and other activists. This coalition managed to get the Bush Administration to put high-level pressure on the Egyptian government, which in turn, publicized the extent to which Mubarak's trial and sentencing flouted the ideals of the rule of law. Even though Ibrahim's release appears to be a more modest accomplishment than might the training of an entire cadre of judges in Anglo-American jurisprudence, it serves the growth of the rule of law precisely because it highlights the general manner in which a well-developed Arab legal system can nonetheless be subordinated to authoritarian politics. The above suggested strategic orientations all build on four major points that follow from my comments:

- 1) The rule of law as an ideal is relevant to and understandable within Arab societies;
- 2) The legacy and endurance of authoritarianism in Arab countries engenders understandable cynicism about governments' and outsiders' use of the term;
- 3) Rule of law work cannot therefore be decoupled from addressing the resilience of political elites who see law as serving, rather than constraining them;
- 4) The particular differences between the Arab and American contexts for the rule of law and the particular distrust which many Arabs have for the U.S. government require circumspection, caution, and coalition with Arab activists if rule of law work is to have even a modest hope of success.

My sketch here of the broad problems and prospects for rule of law work in contemporary Arab societies and the conclusions that follow, should not be read as an attack on American specialists who believe in the importance of strengthening the promise of equality, rights, and political accountability for the betterment of Arabs in general. I am instead proceeding from a posture which is likely to be shared by the most experienced and proficient of these activists—that a scaling-down of expectations and a scaling-up of patience represent the

best prospect for any hope of improvement in the sustained subjugation of law by Arab leaders.

Echoing Alexis deTocqueville's well-known sense that lawyers are less inclined than many others to political rashness, I would like to think that American practitioners of rule of law projects in Arab societies would push for this policy area to be characterized by diligence, deliberation, and diplomacy, rather than a legal missionary posture that has little to do with current regional realities. In any case, as much as we lawyers might like to think otherwise, the social scientist side of my academic background suggests to me that working to dismantle authoritarian governments in Arab countries is more likely to foster the rule of law than the other way around.