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**The Arab Spring and Women's Rights**

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I am going to begin with some umbrella observations, from 30,000 feet, applicable in a number of instances to questions of women's rights when religion and state are a factor, then I – and we – will narrow the focus to the Middle East and North Africa and to the question of women's rights in that region now.

First, I can't help but begin with the reminder that no religious or spiritual tradition is monolithic – although that fact is denied by some in every tradition, in fact practitioners of the same religion in different parts of the world, or just different parts of town, or different families, march to the beat of very different drummers. This is important to remember when the subject is women's rights in the MENA region, because Shari'a means different things to different people, and is understood in different ways in different communities and different schools of legal thought. If we conform to the assumption that there is one way to understand Shari'a, then we hand power to those people who assert that their particular way of understanding religious law is the only correct way. None of the world's religions is so monolithic, and none of the world's religious communities deserves such blanket global endorsement by the rest of the world.

Second, to my mind, the world's religious and spiritual traditions are the biggest challenge to the idea of human rights, especially for women, because what is fair in the religions is not always what is equal. And the foundation of the human rights idea is the

radical equality of all human beings. Religion is a double challenge to the rights of women, as I'll describe in a few minutes. Religion, more than economic greed, is the greatest challenge to human rights, because in the religions what is fair is not always what is equal.

Third, the power that the religions have – their authority – is exponentially more than the power of arguments based in culture, history, anything, because of appeals to a divine and ultimate source. The religions often agree to a kind of spiritual equality that makes the whole of the human family, or maybe just all members of their own religion, inherently equal, but in practical terms they may also claim religious justification for the understanding that humanity is divided naturally, and divinely, into different sub-groups, and that these groups need to be treated differently in order to honor their divinely mandated differences. Reservations from some MENA countries to the Women's Convention are rooted in just this idea. Women and men are different, people from different castes are different, people from different religious communities are different, people of different races are different, people with different sexual orientations are different, and rights laws must accommodate these differences. Rights laws and rights standards must be ... different.

Fourth, freedom of religion is often used by political and religious communities to self-exempt from particular rights principles, especially those applicable to women. Those who do so are not actors who deny the validity of the whole human rights idea as foreign, ethical imperialism; rather, they understand the human rights idea as their very best

defense against being made to comply with certain rights principles. Freedom of religion, they say, must take precedence over other rights norms. “Insensitivity” was charged by some majority-Muslim nations around the world to those non-Muslim countries that challenged their Shari’a based self-exemptions to major items in the Women’s Convention; Saudi Arabia has claimed “religious persecution” by Amnesty International for that organization’s critique of their rights record. Freedom of religion and religious integrity are indeed central to the idea of what the international community understands as a primary human right, but when ought it be used to trump other rights categories? (If you have a binding solution to this question of the hierarchy of rights claims, please share it later! I don’t think that a solution does – or ought – to exist.)

Sixth, a critical reality in many controversies over competing rights claims is that, in the country in question, there is no separation between religion and state, and this is a major issue in the “Arab Spring” countries of the MENA region. International human rights law understands the natural, ultimate guarantor of human rights in any setting to be the state – so what to do when challenges to human rights are made on religious grounds, and when the government involved is the religious party? There is no separation of religion and state, and there is no higher organization from the reigning religious community to which to appeal rights abuses made by the very same religious community, in the name of their own religious integrity. When it comes to the rights of women in the post-Arab-Spring MENA region, this lack of separation between religion and state is going to be a continuing problem.

Seventh, in so many places around the world, political parties and others retrench, when they finally gain some power, on personal status matters in order to differentiate themselves from the “other,” from the former colonizer or regime, whomever, and to bolster group identity and power. These are claims to independence, cultural and religious integrity, and they often rely on the understanding that to shore up the power they need they must live as closely as possible to a romanticized ancient time, when everything was great, everyone was happy, women were happy and enjoyed everything they needed, including what we now might call human rights. I appreciate the insights of Abdullahi Ahmed An’Naim, the Sudanese legal scholar, who has written that the process of going back and being pre-colonial is a total fabrication and an impossibility. It is. Histories happen to nations and communities, and they change them. They may change them for better or worse, but there is no wiping the slate clean of personal, social, religious, cultural , or historical memory and change. All of our societies are who they are today because of every step in their journey, including colonization, domination, challenge, victory, supremacy, everything. This attempted project of recovering historical authenticity is almost always antithetical to women’s rights, as women are suddenly charged with being the majority bearers of history, culture, and true religion. Post-and mid- revolutionary societies in every corner of the earth are not immune from this phenomenon.

Eighth, religious nationalisms are always about many things, including responding to (and resisting) globalization and consolidations of power. My Princeton colleague Prof. Amaney Jamal, has written in her latest book, “Of Empires and Citizens: Pro-American

Democracy or No Democracy at All?” about widespread resentment in the MENA region because the US has for so long propped up autocratic regimes to keep oil gushing in the direction of the US. Therefore, writes Prof. Jamal, some people in the MENA region fear that US-style democratic elections will bring anti-Americans to power, in a way that might provoke an economic backlash from the US. MENA inhabitants know that the Arab world gets more aid than all of Africa, and they don’t want to jeopardize that support. They are in a difficult place, she says -- THEY DON’T WANT TO LOSE AID, they want democratic elections, but they worry that the *results* of those elections will mean that they lose.... Aid. Amany writes, “We might anticipate a conservative social trend in these new democratizing societies, including rules for women. It will be based on trial and error and might get worse before it gets better.” I think we’re seeing that Amany is right.

Ninth, in so many situations, and I would say in the post- or mid- Arab Spring MENA, selective application of religious law is a great challenge – religious law selectively applied to the home and to women, but not to financial systems, for instance. One set of the population (women), or the private sphere, gets to live in the 16<sup>th</sup> century and another (the public sphere) in the 21<sup>st</sup>. The problem, in essence, isn’t that people are living under religious law, but that the law is being selectively retrieved or interpreted in such a way that denies the rights of certain members of the population, in this case women. I have said that there is no global, or even regional or national, agreement on what comprises Shari’a; even more so there is no agreement about what living faithfully requires of whom and what to retrieve from such varied understandings of religious law. In many

instances, and it's true in the MENA region, it serves to funnel social, religious, and political power away from women.

And tenth, there is the question of agency – what to make of the many women in any setting who agree with rights-limiting laws and practices, especially those based on how they want to practice their religion – for example, perpetuating FGM/C, restrictions on women's access to divorce, inheritance, parental rights, participation in public life, financial autonomy, etc. We all want to honor every person's agency, their ability to choose what they want for themselves; no one wants to be guilty of ethical imperialism. How do individual states and also the international community respond to a genuinely discordant set of opinions among women generally, and also women of the same faith, regarding what are their appropriate styles of life and levels of rights enjoyment?

A related challenge in the MENA region now is the codifying of rights norms in new governments, and especially the new constitutions that will govern them. The worry, and I share it, is that by making Shari'a a defining criterion of all law-making, or even simply mentioning it in the Constitution, means those who interpret Shari'a differently from Salafists and other religious conservatives will have their agency denied – they will no longer be able to practice their religion as they themselves see appropriate. One group's agency in religious matters will trump all others. There is also, of course, the question of the members of other religions who are citizens of these countries. It is critical that every government maintain secular courts, ones in which the personal or communal religious opinion of judges has no bearing on any matter. Secular constitutions are critical to

ensuring secular courts, for the benefit of those of every religion, including the religious majority.

Tunisia's National Constituent Assembly (NCA) is holding consultations right now with the Tunisian community in France. The meetings are held in partnership with UNDP, part of an intentional dialogue with civil society in the drafting of the new constitution. This, we all hope, will be quite helpful. In its current iteration, to my knowledge, Tunisia's draft constitution does not reference Shari'a; religious questions are left to the preamble, which hopefully will not be vague, and will be inviting of a variety of interpretations, especially those that enhance women's rights. Of concern to many is language in Article 28 that refers to women as "complementary" to men, an open door (I and others would say) to making the rights of women secondary to men (it is, again, the same language that appears some MENA countries' reservations to the Women's Convention). Already, loud protests in support of women's rights have brought about the rewriting of sections of the Constitution that would impose limitations on sexual equality; I hope this outspokenness and positive rewriting endures.

Egypt's new parliament is 75% Islamist. Their new Constitution has raised concerns within that country and far abroad. It reads in part, "Citizens are equal before the law and are equal in *general* rights and duties without discrimination *between* them based on gender, origin, language, religion, belief, opinion, social status or disability." One wonders what are "general" rights, and if, in a somewhat Aristotelian manner, the reference to "discrimination between them" does not call for equal rights across all

categories such as gender but rather within them: citizens enjoy equal rights when all women are treated equally, those of the same religion are treated equally, etc. This does not mean that women have the same rights as men, Bahai's have the same rights as Christians and Christians as Muslims and Bahai's, etc. It means that women receive the same treatment as other women, and that is not the same thing as receiving equal rights with men.

(Let me acknowledge here that other rights than those directly regarding women are also of concern to the Egyptian and international community – rights to religious freedom, to association, to freedom of expression, for sexual minorities, and more.)

The Egyptian Constitution also explicitly states in Article 68 that "The State is committed to taking all measures to establish equality between women and men in political, cultural, economic and social life and all other fields without prejudice to the provisions of Islamic Shari'a." This wording apparently means that questions of equality are deferred to whatever are understood by any interpreters to be the criteria of Shari'a. This is very problematic, for the reasons I outlined earlier. It also doesn't explicitly name the family and home as an arena in which equal rights will prevail. The categories referenced are all inherently public settings, not private ones, which might create an opening for religious conservatives to assert that the Constitution does not apply to family life.

Parliamentarians at one point discussed repealing a law that bans FGM/C. They also advocated for the lowering of the age of marriage, and the termination of women's right to divorce.

President Morsi promised in his campaign for President to "ensure women's access to all their rights," yet he added that those rights must remain "consistent with the values of Islamic law, maintaining the balance between their duties and rights." This, again, is troubling. In 2010, before Tahrir Square, 12 percent of successful candidates for parliamentary office in Egypt were women. In elections there since the Arab Spring only two percent of successful candidates have been women. For the sake of comparison, the global average of successful female parliamentary candidates is 21.8 percent.

The rights challenges faced by women are certainly in the public sphere, but for so many women in many societies their real rights challenges happen in private, in the sphere so cherished by us all, who do not wish governments to tell us what to believe or do, or how to relate to one another, or whom to call beloved, when we close the door to our home. Women are doubly unprotected when rights provisions do not apply to the family and home. First, religion is an issue (freedom of religion), and second, gender (as the argument goes, "that's not a rights abuse, it's the way the society expresses its culture"). Both categories, added together, serve to doubly disenfranchise women around the world from the rights ostensibly provided to them by their governments. Their governments need to act, and to protect women via their constitutions, in the MENA region and everywhere.

A specific provision on women's equality was not included in the final draft of Egypt's Constitution in order not to provoke Salafists and others who insisted that, if the

Constitution should reference women's equality, the criteria of what comprises that equality must conform to religious laws. Yet the Egyptian Constitution, as it currently stands, still would seem to subordinate the rights of women to the hands of whomever, in whatever context, is interpreting Shari'a. This is simply dangerous to women's rights.

So, speaking from my personal location, there is a real challenge: as a supporter and enabler of inter-religious support and cooperation (I am a person of faith), I want to endorse the religious road forward as articulated by the citizens of the MENA region for themselves. And yet ... I wonder at how inclusive the public articulation of those values and goals has been. I do not want to sacrifice religious integrity; I also do not want to sacrifice the human rights of the 51% or so of the population of the region that was born, like me, female.

So many questions, including, but not at all limited, to the following: does Islamism have a "moderate", non-fundamentalist, side? Is true dialogue possible? Can political Islam – or political religion period, whatever the religion – actually include the religious center or left?

In parts of the MENA region, and my colleague Maria Butler may speak directly to this I think, women have been caned in public by religious rightists who disagree with women's public participation or appearance; Manouba University in Tunisia was shut down by religious actors in an attempt to enforce veiling; and while the success of the revolutions of the Arab Spring was critically supported in Egypt, Tunisia, Libya, and

Yemen, by the action, the leadership, of women revolutionaries, it remains to be seen whether, across the region, the rights of those same women will be protected.