

Mr. Abderrahim Foukara
Bureau Chief
Al Jazeera Satellite Channel
United Kingdom

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Why Does the Rule of Law Matter to MENA ?

Mr. Chairman, ladies and gentlemen :

I come to this forum as someone who was born and raised in this beautiful part of the MENA region and as a Moroccan journalist and expatriate.

The search for stability, prosperity, and justice has always been a powerful engine behind the march of human history. That in essence will be the basic premise I will try to develop later in this address.

But before I get to that, I would like to thank the World Justice Project for inviting me to speak here today. I am both honoured and humbled. Even more importantly however, I must congratulate the Project on its choice of Morocco as a venue for this forum. Not only is there a lively debate about rule of law going on in this country, but its history and its geography also provide a very unique prism through which to look at the legal uniqueness of the Mena region at large.

Fact: Morocco sits at the crossroads of the Middle East, sub-Saharan Africa and Europe. To the extent that man is the product of his history and geography, this country's identity, like that of the rest of Mena, is much richer and more multi-faceted than meets the casual eye. Such diversity extends even to the region's legal foundations, which has implications for how rule of law is often understood and can be potentially applied.

Although Islamic culture, including law, is the deepest point in the collective consciousness of most communities in the Mena region, a variety of other legal systems are also part of the region's daily life fabric. Tribal law is also here, so are Christian law, Jewish law, Roman law French law, British law and so forth. Without a doubt, there's richness and strength in diversity. It is the spice of life. I know that from direct experience, having lived in the United States these last ten years. And if American society is one of the more recent illustrations of this axiom, the Mena region is one of the most ancient.

In fact, the Mena region is unique in the world. It includes the Arabian Peninsula, the cradle of Islam, Iraq, the cradle of human civilization and of Hammurabi's first written codes of law, Egypt where thousands of years ago man built pyramid-shaped aspirations to eternity and sought order on earth through laws based on a common sense view of right and wrong.

The region also includes places like Morocco, once the Muslim world's main gate to a golden age in Spain, a golden age pillared by giants of Islamic and Judaic philosophy and jurisprudence such as Averoes, known to us as Ibn Rushd, or Maimonides, known to us as Ibn Maimoun, to name but two.

But while diversity and historical weight are a huge blessing, they are no surrogate for what the region has to achieve in the present and the future in terms of stability, prosperity and justice. Diversity and historical weight come with a significant price tag. How do you reform thousands of years of legal accumulation and make it compatible with the modern requirements of rule of law? And how do you reform that accumulation without excluding or alienating this or that component of your own diversity? The basis of real rule of law, I contend, is inclusiveness.

The fact that Mena societies are so closely interconnected, culturally and politically, does not necessarily mean they would or should have identical debates about how to interpret rule of law or how to apply it. The scope of Islamic law application in Egypt, for example, is not identical to what it is in a country like Saudi Arabia.

Similarly, while tribal law is still part of the fabric of daily life in many parts Morocco, for example, its scope and role are much greater and more pronounced in a country like Yemen where, incidentally, the central government is still struggling to extend its authority and structures to all parts of its national jurisdiction.

The way a nation understands the concepts of rule of law and aspires to apply justice obviously depends on how that nation has constructed its cultural references over time. In Protestant culture for example, a major underpinning of justice is the individual, whereas in Catholicism and much more so Islam the community is the bigger lynchpin.

All this is to convey two main points:

1. As is the case anywhere else in the world, for rule of law to take hold in the Mena region, careful consideration has to be given to the cultural and legal differences among its national cultures but also within each one of those individual cultures. People tend to commit more to projects they can identify with.
2. In the same way that a national economy benefits from a favourable regional environment, rule of law in one part of Mena would greatly benefit from rule of law in another part.

For all its past glories, the Mena region today lives in the eye of the storm. While many of its political and intellectual elites seem to genuinely aspire to rule of law, they also have a serious eye on the stability of their respective countries which, in many cases, face dizzying domestic and external challenges.

In the eye of the storm does the region have to find the right balance between rule of law and stability. Failure here is not an option. Without such a dual track, the region will not regain the rightful place it aspires to in the context of human history.

Although I stated earlier that rule of law's most fundamental requisite is justice, I am not advocating a zero sum game; we do not have to have either a state of perfection or nothing.

Rule of law is a work in progress. Even countries that have a long tradition of democratic practice which includes a tried and tested system of checks and balances face challenges in this regard.

Take United States of America. A well established democracy buttressed in an impressive legal system and culture notwithstanding, many civil liberties groups there cried foul at some of the domestic policies adopted by the Bush Administration in the wake of the 9/11 attacks. Then there was and continues to be acrimony over issues like Guantanamo Bay detentions which many Americans see as a stain on one of their country's most important assets: its standing in the world. In other words, despite such problems, Americans continue their search for something better.

Take also the issue of immigration in general but more particularly from the Mena region in the United States as well as in Europe. As far as rule of law is concerned, such a communities pose unique challenges for the host country and for the immigrants and their progeny alike.

Hardly a day goes by when those communities do not complain about some aspect of what they describe as violation of their civil or human rights rights in both Europe or the United States. Before the 9\11 attacks, Muslims and their supporters from other ethnic or religious persuasions already complained about Islamophobia.

In the wake of the 9\11 attacks, however, we began to hear about something more insidious, something often described, accurately or hyperbolically, as "living in a state of siege": physical and intellectual harassment, collective suspicion and rejection, verbal and even physical aggression.

Conversely, many critics of Muslim communities in those societies complain that their laws and values are being undermined by the laws and values of traditional Muslim societies. They sometimes complain that Muslim communities form the vanguard of what they describe as new wave of Muslim imperialism, accuse Muslims of bringing to Western societies polygamy, forced marriages and other practices which they say undermine the tenets of Christian society and the laws and values of secular republicanism.

The trees of such grievances on both sides must not hide the forest. The forest on both sides is not devoid of tolerance, reason and real commitment to rule of law. Nor is the point here is say who is right or wrong or what political ulterior motives stand behind this or that claim.

The point here is that when it comes to understanding and applying rule of law, real challenges face the host country and the immigrant communities alike. To add one more ingredient to a hot dish, it is made in the age of real-time satellite TV coverage which has made the global village even smaller than it sounds. In other words, there is nowhere left to hide from the heat of those challenges and only reason can provide cooling respite (how we, Arabs, love metaphors!!).

One aspect highlighted in North African Frenchlanguage literature dating back to the middle of the 20th century is that native North African immigrants in France for example suspend "reality" there until their final return to their native lands. That is mostly no longer the case because in this day and age satellite TV brings that reality to them in Europe or the United States with unprecedented speed and intensity.

On Al-Jazeera, Al-Arabiya and a whole host of other TV networks, Mena immigrants in Europe or the United States are today much more closely plugged into the narratives of the country of origin than ever before. That narrative often provides cultural comfort from the estrangement of immigration but also conveys to those immigrants the painful flavour of living in war-torn Iraq or in Israeli occupied Palestinian territories.

In 2007, law and order broke down in parts of Paris, France. The Arab world watched in real time as disaffected Muslim youths of North and West African descent set the banlieues of the French capital ablaze. Although the rioters' immediate grievances had to do with unemployment, racism and other social ills in French society, their narrative encompassed other areas of existential discontent.

The breakdown of law and order also carried the sound of ills befalling other Arabs and Muslims in Iraq, Palestine and elsewhere. This often happened at a time when many of those youths did not identify with the mainstream narrative on those same issues carried by many Western media.

What does all this mean? It simply means that the global village speaks through contrasting media narratives which shape how we all see the world and its trials and tribulations. It is almost impossible to immunize any real debate about rule of law, its construction or erosion, against the impact of those contrasting narratives.

We, Arab as well as western journalists, are caught in the grinding pressures of news deadlines and twentyfour hour coverage. As a result, even when we have adequate reporting skills and enough intellectual wherewithal and integrity, it is often hard for us to adopt a macrocosmic view of what we cover rather than a microcosmic prism imposed on us by the nature of the beast.

Kafka used to say that the world is so full of distractions we often don't know what we are distracted from. Applied in this context, this means that journalists perform the crucial task of shedding light on the complexities of the world but do not always have the luxury of a wide lens that takes in how that world may be impacted by what we report.

The nature of the beast also dictates that we tend to sympathise (even though unconsciously sometimes) with our target audience. That, again, has implications for rule of law and how differently people see it whether in the context of the Mena region or of its diasporas in Europe and the United States.

Many Arabs were pained by the images of « French Mississippi burning », so to speak, but very few sympathized with President Nicolas Sarkozy when he described the rioters as “la racaille” or “scum”. The epithet took on a life of its own and sounded as though Sarkozy was speaking on behalf of all French mainstream and that he was describing all Arabs and all Muslims as scum. Words have consequences in the world of politics and the media.

Because I believe that media narratives go to the heart of rule of law, I would like to reiterate my call from last year's Forum in Vienna that annual UN platform be held where journalists from all Northern and Southern hemispheres can formulate common prisms on issues of war and peace and alleviate the impositions of the media beast in both hemispheres.

Let me end with another reiteration. It is not enough to understand rule of law as strict adherence to laws. For laws, as Bismarck is reported to have said, are sometimes like sausages, it's better not to see them being made.

The cement most likely to make rule of law stick is justice. Regardless of where and when human beings live, they yearn for justice. Many laws flow from outside, from man's desire to regulate his interaction with the world around him. By contract, the need for justice flows from somewhere deep within our soul.

Fortunately for all of us, whether we are Muslim, Christian, Jewish or of any other creed or persuasion, all religions stress the importance of justice. Echoing the Bible, the 17th century English essayist, poet and statesman Joseph Addison wrote that "justice discards party, friendship, kindred and is therefore always represented as blind". In Surat "al-Nisa", the Quran says:

أَوْ أَنْفُسِكُمْ عَلَىٰ وَلَوْ لَاحِدًا شُهَدَاءَ بِالْقِسْطِ قَوْمِينَ كُونُوا آمِنُوا الدِّينَ أَيُّهَا يَا
"الوالدين"

"O ye who believe! Stand out firmly for justice, as witnesses to Allah, even if it be against yourselves, your parents".

For those of us who want to believe that the "East is East, the West is West and never shall the twain meet", that is their prerogative. But even if we disagree on the nature and scope of rule of law, justice is a fundamental instinct that unites all mankind in sickness and in health.

I wish you all good health, stability, prosperity and justice.

Thank you.