Reconstructing Arab States: Do Fractured Politics Require the Tools of Transitional Justice?

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We are in a moment of both gloom and possibility in the Arab world. Gloom in that, in the oft-repeated cliché, the "Arab Spring" has turned to winter. Egypt's December 2012 constitutional crisis epitomizes the fear that dreams of a more democratic order are being diverted into new forms of top-down politics that mimic – structurally, albeit not ideologically – what was overthrown during the Arab uprisings of 2010-11. It has been clear from their start that the Arab uprisings would be, at best, incomplete revolutions. The real question has been if, after the downfall of entrenched dictatorships, there would be the possibility of movement toward more pluralistic public spaces in these countries. Or, alternatively, would these state-societies descend into new forms of authoritarianism or, perhaps worse, devolve into fractured conflicts? In that context, it is imperative to consider if the tools of transitional justice – including lustration, tribunals, and truth and reconciliation commissions – can enable pluralism by helping heal the sorts of divisions that keep states from successfully transitioning to democracy.

Reasons For Optimism and Pessimism After the Arab Uprisings

There are reasons for optimism even amid current turmoil in that the revolutionary impulses that led millions of Arabs into the streets remain very much alive. There is every empirical reason to believe that desires for more democratic representation and other political and economic rights continue to be powerful – the Arab Barometer survey, for example, shows steady and decisive support for democracy across the Arab world. Demonstrations against the imposition of the new Egyptian constitution are just the latest example of what underlies both the Arab uprisings and more general support for democracy: the striving by peoples to be the subject rather than the object of politics.

In Egypt, for example, these impulses delegitimized the Mubarak regime and then the military that succeeded Mubarak. Now the ruling Muslim Brotherhood, in turn, is embattled over a perception that it has not been appropriately consultative and inclusive (procedurally and substantively) in drafting and getting approved Egypt's new constitution. This continued popular mobilization – in Egypt and elsewhere — has been remarkable given the lack of an institutional basis for organizing this resistance into cohesive political movements. This demonstrates how much more diverse normative currents are in the Arab world than was long assumed by many observers, both in the academy and in the media. And this gives hope for a more pluralistic future in the Arab world, no matter how inauspicious current circumstances are.

There are, nonetheless, even more powerful reasons for pessimism. Civil war in Syria, militia battles in Libya, continuation of bloody ethnic conflicts in Yemen, economic stagnation in Tunisia, and a constitutional crisis in Egypt are the most obvious markers justifying gloom over the short and medium term. What was predictable after the fall of long-serving Arab leaders is exactly what has been happening: a scramble to fill power vacuums led by those with the most institutional power, even if their institutional priorities are distant from the popular demands voiced during the Arab uprisings.

Global Context: The Instability of States in Transition

It may be useful to place the dynamic behind these reasons for pessimism in global context. That state-societies are

at their most unstable during transitions to democracy is one of political science's few verifiable maxims (Linz and Steppan, 1996). The instability we are seeing, thus, should not be a surprise, even if it is dangerous. But that danger needs to be confronted: what if the bequest of decades of dictatorships is ruptured societies with little basis for political community, hence making pluralistic democracy impossible? The result in the Arab world would be the type of internecine conflict consistent with patterns in much of the rest of the world since the end of the Cold War.

Wars between states have been in steady decline since WWII. What is on the rise are so-called "new wars," in Mary Kaldor's phrase: internal conflicts (often with a transnational dimension) that are less about grand causes or ideologies and more about using particular identities and group solidarities as the basis for staking claims to local turf (Kaldor, 2012). Conflicts among militias in countries like Sierra Leone or Liberia have epitomized such new wars, but for a long time the Arab world appeared to be exempt from this style of warfare. Arab states were long capable of maintaining – at a bloody cost — the traditional Weberian model of the state that monopolizes legitimate authority and violence within a defined territory.

This has fallen apart due to the power of three factors that exploded the old model of the state in the Arab world (just as has happened in many other parts of the globe). The first of these factors are the transnational normative currents and networks that have broken the ability of states to monopolize information and, ultimately, power. The impact of this on the Arab world – as seen both with Islamisms and with the democratic currents that informed the Arab uprisings — may have been inevitable and certainly has positive aspects. But it is also dangerous in that, in undermining the state, it unleashes space for a second factor: the destructive power of identity politics. Given their brutality and their foul legacies, there is no need for false nostalgia for the regimes that fell or are embattled due to the wave of Arab uprisings. It is nonetheless true that they did have the advantage, at least in the short-term, of repressing communal conflict (in the long-term that repression was a failed substitute for coming to terms with ethnic pluralism). The sort of sectarian conflicts that have emerged in Syria and Yemen pitting ethnic groups against each other will likely become more and more common in the Arab world as states lose their ability to dominate the public sphere. If so, beyond those ethnic conflicts we will also have to come to terms with a third factor unleashed by the weakening of the state: the fragmentation and localization of power, leading to the rising impact of militias, tribes and other such decentralized actors. Such actors may invoke familiar ideologies (Islamism, for example) or identities (nationalisms of different sorts), but in fact are fighting over local spoils and power. In short, as with militias in Liberia so with militias in Libya — the new breed of localized and often nihilistic war has come to the Arab world.

The broader argument here is that what we're seeing emerge in the Arab world is a pattern of politics that has been increasingly prevalent in many parts of the world. What was unique about the Arab world was the illusion of it being an insular redoubt where political options took the form of stark binaries. Before the Arab uprisings the choice was, supposedly, between autocracy and Islamism. After the Arab uprisings the debate has been about whether the emerging new order would be more liberal or more Islamist. These binaries are far too simplistic. The former underplayed the Arab world's ideological diversity. The latter avoids the real issue: the debate should not be about what order will emerge but rather it should be about whether or not a new order will emerge at all. In short, will *anyone* be able to consolidate power in these countries? Will power only be consolidated through new forms of authoritarianism rather than through participatory and inclusive structures? Or will we just see continued splintering both between Islamists and non-Islamists and also within Islamist and non-Islamist groupings?

Global Tools for Domestic Problems: Lustration, Tribunals, and Truth and Reconciliation Commissions

Seen in global context, then, current instabilities in the Arab world are none too surprising. Fragmented post-modern politics are a reality in all parts of the globe. But this global context raises the relevance of tools of transitional justice as they have developed in post-Cold War transitions from the former Soviet bloc to Latin America and Africa. Can these tools be part of effective responses to the difficulties of transitions in the Arab world?

The basic question in transitional justice is how a state-society can be rebuilt on stable foundations that allow it to move past the structural and psychological legacy of the previous order. Processes that have emerged as a means to this end include lustration (i.e, purges of those associated with the old regime in order to make possible the emergence of an untainted new regime), tribunals (i.e., trials for those responsible for human rights violations such

that a new order can be based on having done justice for past wrongs), and truth and reconciliation commissions (i.e., an attempt to replace retribution with truth-telling as a path to healing bitter wounds). These processes have an obvious relevance to countries in the Arab world that have either seen brutal dictators overthrown or are in the midst of bitter civil war.

But such processes are also problematic. In fact, each of the processes I mentioned implicitly contains a critique of the other. Lustration, for example, denies former officials a full sense of due process and citizenship, and, hence, lacks the sort of inclusive justice that can bring a society together. Tribunals, for their part, in their drive for justice may exacerbate divisions and make reconciliation more difficult to achieve. Truth and reconciliation commissions, on the other hand, not only ignore justice for those who have suffered human rights violations, but they also allow a place in the new order to those most responsible for past atrocities, potentially crippling the birth of a new order.

Context is everything, of course, and no single transitional justice process is uniformly appropriate or inappropriate – much depends both on timing and on differing histories in particular states. But what is clear is that, in the chaotic aftermath of the Arab uprisings, there has been a general failure to come to terms with responsibility for past authoritarianisms. If transitions to democracy are inherently unstable, the result of such instability is the possibility of divided societies backsliding into either despotism or internecine conflicts (or both). Experiences around the globe have demonstrated that simply having elections or referenda is not a long-term solution to deeply seated political, social and economic divisions. Those divisions will explode unless an at least skeletal consensus emerges around the basis of political community. Transitional justice is no panacea; there are states (including, in the Arab world, Morocco) in which such processes have been superficial or even counterproductive. Experiences around the globe have also shown, however, that processes of transitional justice – when seriously engaged and flowing out of a societal consensus that they are appropriate – have helped many states in their transition out of authoritarianism.

There is no one model that emerges from these experiences, but rather an increasing number of variations on transitional justice processes as they are adapted to diverse contexts. There is, however, one unifying principle: the need to recognize and grapple with authoritarian pasts if more democratic, pluralistic futures are to emerge. This is precisely what has been lacking since the fall of leaders like Saleh, Qaddafi, Ben Ali, and Mubarak. The anarchic spontaneity of the Arab uprisings gave them their irrepressible power. Ironically, however, the same anarchic impulse that was a strength in gathering together disparate trends in opposition to the status quo was an Achilles' heel when it came to moving beyond that status quo. There was little thought put into envisioning how to deal with responsibility for past wrongs or the shape of future governing structures. Nor, to the point of this article, was there any substantive planning for how to bring these state-societies together to grapple with how their pasts and their futures are intimately connected.

The future is constituted by the past. The level of human rights violations suffered across the Arab world has often been downplayed. Beyond a generic recognition that torture and repression were widespread, there is little sense of the scope of the structural violence that existed – and still exists – at the economic, social, and political levels. That scope makes clear the difficult path to true revolutions that reconstitute public spheres in the Arab world in more open, pluralistic ways. That path begins with coming to terms with the past.

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