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**Body Politic and Individual Liberty:
Intimate Injustice**

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Abstract

One of the characteristics of a liberal democracy is one in which individual liberties are protected against violations from agents of both state and private powers. The Moroccan state as a 'cautious democracy' largely provides a set of fundamental principles for this protection of individual liberty and covers almost all human rights contained in the Universal Human Rights Declaration. However, the Constitutional protection of rights (as prescribed in the legislative text) is defined by the legal terms and conditions that govern the limits of the enjoyment of that so-called individual freedom. The restrictions that law imposes upon individuals could only be justifiable in this case within a 'Contractarian' ethical framework that strikes a balance between liberty and security. Now, would that by any means violate the individual rights of those Moroccan citizens who shall enjoy their basic rights and total freedoms to which all humans are considered entitled? The state (as a majority rule) has definitely an obligation towards individuals to ensure that their rights are exercised free from coercion. However, would an individual in this case as a member of the body politic accept to adopt the values of the dominant group (that wields political power) and exchanges his/her freedom for security? In this paper, I draw on Social Contract theory to explain the boundaries of an individual right and what can legitimize the authority of the state over that individual and how would a change in the Social Contract as a conceptual tool between "the ruler" & the "ruled" help configurate or reconfigurate the ideals behind democracy.

Keywords: Body Politic, Individual Liberty, Social Contract, Security, Liberal Democracy.



Introduction:

Liberty is often defined as the basic freedom granted to all humans by nature. Taking to its limit liberty implies enjoying freedom which individuals merit with no restrictions or arbitrary exercises of authority to be imposed upon them by the sovereign, the government or the social rule system.¹ Individuals in general always prefer less repression and thus leaders try to minimize their use of power to maximize citizens' lines of individual freedom. However, this logic might not be accurate when national security is threatened and the state has to step in to protect and secure its citizens from inside and outside threats (Hobbes, 1651). Liberty in this case, becomes more primarily about what individual freedoms a person maintains or surrender with respect to the general peace agreement the ruler and the ruled decide to consider. This critical relationship between the state and individuals simply implies that scales of freedom are optimized based on the conditions that preserve and enhance group security.²

Relating to democracy liberty cannot exist without a democratic will to guarantee citizens' inalienable right to uphold equal freedom. The democratic process adheres to the tenets that come with the so called 'expensive freedom' or 'space' embedded in the prevailing democratic cultures. However, democracy can sometimes be used as a justification for limiting liberties that the majority rule decides not to protect or expand. The values of individual freedom might be undermined under democratic standards that strike a balance between civil rights, civil liberties and political rights. In Other words, democracy does not

¹ Hobbes defines liberty as the mere "absence of external impediments."

² The sovereign's power ought to be unlimited, enabling him to do anything he believes necessary to secure peace and security for the citizens.



protect rights and freedoms when certain restrictions are imposed within the power of the state to frame the destructive actions of citizens.

In this paper, liberty is explained in relation to the restraints the state imposes upon individuals when collective security is threatened or compromised. The paper further discusses how the state's violation of individual rights in the name of preserving national security can destabilize the fundamental values of democracy ideals. The paradigm of 'social contract' will later serve to provide an in-depth understanding of the relationship between democracy, the state and citizens in the Moroccan context. Social contract theory as outlined by many writers from Plato to modern day researchers is what would provide us with the rationale behind the reasons that legitimize state authority to use executive power against citizens. The consent derived from the governed is further discussed to explain the reasons that legitimize the ruler to claim power in order to protect the social order in a nation. Consequently, democracy will stand here as fundamental to this surrender of individual rights so that Moroccan citizens can obtain the benefits articulated by Plato in 'Crito' (360 BC).

I. Liberty, Security & Social Contract: Standards of Understanding in Philosophical Thought

1. Liberty & Security: Towards an Effective Definition of Theoretical Concepts

Now, since the purpose of this paper is to analyze the balance between liberty and security in the Moroccan context, it seems essential to firstly define these two concepts in order to establish a broad consensus on how their relationship is generally understood. Liberty is the ability to live your life the way you want,



to behave freely and to exercise your own freedom of will.³ John Stuart Mill (1859) defined the term as the freedom to act and he also defined it as the absence of coercion. He added that liberty is the freedom to do what one likes, to live as one wishes and not to be tied to laws. In this sense, libertarians like Nozick (1974), argue further that any form of obstruction of liberty either by a coercive authority or any other person is a kind of interference in the individual's personal space. In general, liberty according to classical liberalism means freedom of an individual from state coercion. Liberalism stresses that individuals have got the right to live according to their wishes provided that their rights do not infringe on the overall good of the community. Liberalism also suggests that people need to be left alone to act on free will and to take responsibility for their actions.

Liberty could be positive or negative, Isaiah Berlin once said, "Liberty in the negative sense involves an answer to the question: what is the area within which the subject-a person or group of persons-is or should be left to do or be what he is able to do or be, without interference by other persons?" (1969: 121-2). In this sense, negative liberty seems to be a form of rejection of any supreme power or authority. On the extreme, the concept may be identified with a state of lawlessness. Positive liberty, however; places emphasis on social structures and is related to egalitarianism. In the positive sense, social liberalism asserts that an individual needs to be protected from tyranny and the arbitrary exercise of power. In this realm, social liberalism favors the establishment of a social structure in the form of a state that will be able to provide the necessary protection of individuals' rights. According to Aristotle (1920), man is a social

³ People are free when no external obstacle hinders them from doing what they desire to do.



creature therefore; his life should be regulated by certain social bonds. This entails that liberty in its negative view favors the lack of restraints for an individual while in its positive sense; it permits the existence of a social system that exercises reasonable restraints of individual's actions.

Security and liberty are closely intertwined; indeed it is the protection of liberty that forms the basis of security. But neither security, nor liberty, are objectively given and fixed. Liberty and security are not given, but are constituted through interaction. This leads to the assumption that agents and structures are mutually constituted. The significance of this ontological premise is that it is impossible to know which influences which, for each is simultaneously influenced by the other. Thus, security and liberty are both better understood and discerned in the framing of political discourses, in other words; the disturbances of the public order impacts on 'the supposed balance' between liberty and security and the state encompasses a perception of its social conditions and seeks either to protect its interests or to preserve liberties.

2. Social Contract to Defend Liberties or to Secure the Human?

After discussing liberty and security and how they interact with each other, I will now introduce social contract and explain how it governs relations in a society. In an indicative sense, I find the discussions by Thomas Hobbes (1651), John Locke (1772), and Jean-Jacques Rousseau (1762) to be particularly useful in framing my research concerns, especially in the latitude they offer for the understanding of the collective agreement that informs everyone who accepts to be governed by a higher authority on the rule of law in a given society. According to Hobbes, without society people have unlimited natural freedoms; anyone in the state of nature can do anything he likes but this also means that anyone can do anything he likes to anyone else. Hobbes believed that human beings in a state of nature would behave with cruelty towards one another.



Hobbes further argued that people have every right to defend themselves by whatever means necessary in the absence of order. He believed that such a condition would lead to a “war of every man against every man” (Hobbes, 1651). The state of nature according to Hobbes is pre-social and pre-political. To avoid this, individuals jointly agree to a social contract by which they can gain civil rights in return for subjecting themselves to civil law or to political authority. In Hobbes’ formulation, the sovereign creates power and he is not bound by it. The command of the sovereign is what is called ‘law’ and the contract in this case is irrevocable.

Hobbes and Locke considered that man in a primitive state has no political authority or formal restraints on his behavior. Both philosophers believed that such a stateless autonomous condition could not prevail if man was to move beyond a primitive existence. This could only be achieved according to them if man is guided by natural law⁴ that can lead him to a developed social and political life. Hobbes and Locke argued that the state had arisen out of a voluntary agreement, or social contract, made by individuals who recognized that only the establishment of the sovereign’s power could safeguard them from the insecurity of the state of nature. In ‘the Leviathan’ the sovereign would have the responsibility to defend the state. There was no contract between the sovereign and those who appointed him. The only contract was the agreement between the people to appoint somebody they would obey.

Unlike Hobbes, Locke was a believer in the separation of powers. He did not accept absolute monarchy as the best structure for a state. Rather, he believed in the supremacy of the legislature over the monarchy. Locke agreed with Hobbes on the social contract and he said that the proper role of a government was to

⁴ Philosophers and theologians throughout history have differed in their interpretations of natural law, but in theory, natural law is a set of rules inherent in human behavior and human reasoning that governs human conduct.



protect three inalienable natural rights of 'life, liberty and estate' which are given by God. He later identified a fourth right; the right to rebel against unjust laws and their makers. The social contract that Locke proposed is an agreement between the citizens and the ruling government. The government in power must ensure the well-being of the citizen. It must preserve his rights and punish the transgressors of the law. Such a government can be described as a legitimate⁵ government. An illegitimate government would be the one that would fail to protect the natural rights of its citizens and violate the rights of its subjects. Locke's 'social contract' put an end to the state of nature. The social contract was no more than a surrender of certain rights and powers so that men's rights would remain protected and preserved. In some versions of the social contract theory, there are no rights in the state of nature, only freedoms exist, and it is the contract that creates rights and obligations. In other versions the opposite occurs, the contract imposes restrictions upon individuals who give up their natural rights.

Rousseau's legitimate political authority is derived from a covenant; a social contract forged between the members of society. Rousseau believes that people living in a state of nature come together and agree on certain constraints in order that they might all benefit. For Rousseau, people agree to be governed by an absolute monarch in an exchange of their total protection. Rousseau's social contract theory is meant to overturn the theories of his predecessors, suggesting that no legitimate social contract can be forged in an absolute monarchy. His arguments are diverse, but they rest on the fundamental assertion that in surrendering their liberty to the monarch, people surrender their will and the contract essentially binds them into a community that preserves their rights. For Rousseau, the social contract would help citizens to gain civil freedom that

⁵ What justifies a particular system of ruling and what is the status of any specific regime.



makes them fully human. He strongly disagrees with Hobbes; he believes that no one is strong enough to perpetuate obedience without transforming that strength into a right and obedience into a general duty.

II. Liberty from a Human Right Perspective

The individuals entering the social contract in a given society have their identities and interests formed at a political state in which freedom is conceptualized as a universal commitment. Montesquieu, Rousseau and others who have approached liberty consider that it remains valid despite the historical, social and political circumstances. They further emphasized that the right to liberty should be universally protected. However, the modern doctrine of human rights transforms the idea of this universality inherent from the natural law and questions whether human rights are truly universal and applicable to all people in all times, or are they culturally relative, and depend upon specific contexts. Today, the debate has never ended as to whether there can be such a thing as 'the universality of human rights'⁶, or whether human rights are culturally relative.

Developing nations offer different conceptions of human rights as they reject standards rooted in liberal traditions. Instead, they have different understanding of rights due to their cultural, political and social traditions. According to cultural relativist these different moralities are meaningless outside of their particular cultural context; that is, one society cannot determine what is good for another society. In other words, if no objective standard exists for judging the acceptability of human rights, then there will be no legitimate basis for condemning the social practices of certain nations. The religious, political and legal practices are what determine the legitimate scope of human rights in a given society because what may deem certain for some cultures such as political

⁶ The Universality of the Concept of Human Rights (Henkin, 1989).



participation or equal protection of individuals might be inappropriate for others.

In order to understand the universality of human rights we should see them as equivalent to human nature. According to Donnelly rights are not “benefits & duties,” or “privileges,” but are rather “special entitlements of persons” They are “conceived as naturally inhering in the human person, they are “inalienable, and held by individuals in relation to society” (Donnelly, 1982, p.304-306). For Donnelly, however, “the human nature that grounds human beings” requires a moral order to limit what they can or should achieve in order to reach their full potential through a government that creates proper human rights policies. Therefore, human rights are what human beings proclaim they ought to be in a ‘state of law’.

Now, at the basis of human rights we find the right of all persons to freedom. Human rights designate those freedoms that a human being should have and that a community must ensure through the existence of a democratic system that uses legal instruments. In this sense, human rights go beyond the naturalistic and political conceptions as they integrate the principle of democracy in the justification of specific right claims. Hence, the conception of liberty as a human right is internally linked with the whole construction of rights that constitute democracy ideals (Habermas, 1996).

Habermas argues that one cannot impose human rights as external limitations on state sovereignty and also cannot make human rights instrumental to state sovereignty. Instead there is an internal connection between human rights, including the right to individual liberty, and state-sovereignty. The conceptual link that exists between democracy and human rights allows incorporating a principle or a procedure that accounts for right-holders not to be only subjects but also authors of rights. The democratic justification of a human right norm



means that it has the general and reciprocal consent of those who are influenced by the norm. In another sense, the specific meaning and force of human rights is perceived to be the outcome of a political struggle between the ruler and the ruled. Therefore, by upholding the liberty of individuals as the personification of human dignity and the goal of human rights, the democratic organization of the moral life can either fulfill its mission of preserving social welfare or shake the essential foundations of democracy ideals.

III. Security as a Discourse vs. Security as a practice

The meaning of security is discursively constructed (through the identification of who is threatening who) and is produced and reproduced through social practices. Security as a technique of government enters into the realm of everyday governmental practices through which we define what it means to feel safe and through which we identify and manage those things that we believe to threaten our safety. It is thus deeply tied to our sense of how we ought to be in the world. At the most obvious level then, we can say that security is deeply related to particular assumptions about political life. The label 'security' is not simply a reflection of whether an issue is a security issue, but is rather a 'political choice' which has specific consequences in terms of how the issue is addressed (Wæver, 1995, p.65). What really defines a security issue is survival: it is "the survival of the unit as a basic political unit-as a sovereign state" (Wæver, 1995, p.53). This definition of security is narrow and fixed, arguing that because of how security is used in the field of practice, it 'has to be read through the lens of national security' (1995: 49). Moreover, it is "articulated only from a specific place, in an institutional voice" (Wæver, 1995, p.57).

Following Foucault, we may say that security discourse is part of a broader concern with the operation of power at various levels. Any attempt to understand a given security discourse must deal with the inherited forms of



knowledge that might also be said to influence its content. To speak of security in terms of discourse is thus to draw attention to the necessity of examining both its epistemological and ontological foundations. Security therefore, is not simply reducible to the interests of states or their ability to secure their interest (where “interest” is conceived of as some sort of objective calculation based on necessity). Instead, security is tied to the understanding of what it means to be safe and secure, and what particular ideas or things are threatening the secure condition of individuals. Securing human beings can also be considered to be the role of the state, as part of protecting individuals from the state of nature. The existence of states, in general, is justified by the fact that they are supposed to provide security for their citizens. However, states are often a source of insecurity. While the state system is problematic in many ways, the state remains the key ‘factor’ in the security sphere.

In this research the aim is to disrupt common sense understandings of security to explain that security could and perhaps should be constructed differently. Approached in this way, a potential for change involves challenging the naturalized assumptions about security discourse and practice to illustrate the positive considerations in the field of security. Based on this we can say that security means different things to different people in different contexts, and thus in this case security is neither inherently ‘good’ nor ‘bad’. This is to suggest that we can move towards a more positive kind of security practices by understanding how security works to build a more positive construction of security. Consequently, while many critical approaches consider security as a problematic concept, others argue that the concept of security is often positive (e.g. Booth 1991, 2005a, 2007) and that some security constructions are more positive as much as some are negative. This argument works to open up the discussion beyond existing frameworks of fixed conceptions of security and



consider a wider range of security constructions with respect to the situated security practices in a given nation.

IV. The Liberty/Security Conflict in the Moroccan Context

Securitization, as closely linked to state sovereignty, is privileged in all the discussions about national security (Koppel, 2017). The security discourse constructs the state as the necessary focus of protection from all the possible threats that could exist in the inside or in the anarchic realm (Campbell, 1998b). *So, what are the things* “that should be rendered secure? And what are the things that are considered ‘bad’ to be labeled security issues? Security, in fact, is not a reflection of whether an issue is a security issue by the state, rather it is a political choice which has specific consequences in terms of how certain issues are approached by the body politic and perceived by the state’s citizens (Wæver, 1995, p. 65). Securing lives, according to Shepherd’s ‘logic of security’ (2015) is essential for any state. So, removing individuals and their interests from the security agenda would be an impossible task. Security⁷ in the case of this research should be understood through the lens of ‘Human security’ that includes the particularity of individuals’ rights. In practice, it is central to all the understandings of the processes and consequences of the so called democracy.

This section presents a clear account of how the Moroccan state frames the language of security and explains further how individual liberty remains a subject of the political debate which suggests that liberty, as a basic constituent of democracy ideals, might be incompatible with the politics of security of a nation (Aradau 2004: 399). In this paper, many issues fall in the grey area between regular political concerns for security and individuals’ exercise of liberty. Following the logic of national security, securitization has no fixed meaning or essence. A state can change its political stance on security matters

⁷ For a contrasting view, see Feuer 1987, e.g. 193.



and neglect individual rights where and when rights do not fit within the framework of traumatic events. States can even use different languages of security that rely on nondemocratic procedures. World governments in general adopt threat-defense thinking and state-centered solutions that privilege the sovereign and his position of power. In other words, the dominant voices, according to Matt McDonald, contribute “to the silencing of marginal voices and ignore the way citizens attempt to contest the security practices” (2008: 574). Security in practice is more complex; its usage is undesirable as it involves essentially a negative value. However, it is necessary to engage with security rather than dismiss it and make it more suitable to the aims of citizens’ interests. The systematization of human rights follows the way in which different categories of rights are bearing some specific human needs. There are the rights of a man that belong to the human being and they rise from his specific needs, and there are certain rights which can belong to the states and other institutions. The Human rights of a man can be economic, social (civic), legal and cultural or individual and collective. According to the Moroccan Constitution, no one shall be the object of any arbitrary interference in his or her private life. However, the rights established are not usually affirmed. And the degree of the protection of freedoms varies as a consequence of the continuous practice of violating human rights.

In the Moroccan case, the door to liberty is slowly being closed. This is ironic as the process has been going on for years with the government just trying not to shut that door completely to gain the privilege of being called a democratic society. Now, this challenge between civil liberties and the governing regime comes to the surface when liberties were/are still violated using arbitrary arrest



and detention⁸. So, a number of rights that are aspects of individuals' autonomy including freedom of expression were/are violated under the excuse of preserving the social order. What we know for sure is that freedoms are curtailed in Moroccan as nearly one thousand people have been arrested since last year for political reasons. Among the prisoners, there are demonstrators from the 'Hirak' movement, others from the 'Jerrada' movement; in fact various people who have taken part in the social movement have been arrested including journalists. Sometimes no proof of imminent risk exist and yet citizens are detained and arrested for simply voicing up their concerns on issues that affect their personal and individual interests.

The Moroccan government keeps the individuals under scrutiny to any bad practice of freedom that could affect its interest even in the virtual space. The exercise of freedom of expression is not allowed in its fullest meaning on Facebook as people were jailed last year over their posts for promoting terrorism over the assassination of Russia's ambassador to Turkey. They were sentenced over comments on Facebook which is already a private space. It seems that Constitutional rights privileges the interest of society over the interest of the individual, however; personal privacy is worth a legal protection as well as there is not such a thing as rights that should be more protected or less protected. Freedom of expression is required in the process of democracy to shape the government's actions. And in order to keep democracy functional, freedom of expression must be protected not only as an acknowledgement but also as an exercise of that right in practice. I personally argue that freedom of expression should be exercised in its widest possible latitude (be it true or false) as it helps in the pursuit of truth.

⁸ The objection however does not turn on an opposition between liberty and security, but on the thought that any regime powerful enough to retrench on private liberties will be, by the same token, a bad bet as regards citizens' security.



Among the principles of liberty is the free exercise of religious practices, which could be considered as perhaps the ultimate reach of individual emancipation. It is religion which provides a mechanism through which individuals can seek to escape the intrusions of the state on matters of personal beliefs, morals, lifestyles, etc. but yet, in Morocco, religion is an issue of a political community. Since, Moroccan Muslims are projected to remain a majority in the country; religious minorities are not allowed to openly practice their faith as they generally receive varying degrees of official restrictions. According to the American International Religious Freedom Report for 2017, the Spanish media reported that the Moroccan Minister of endowments and Islamic affairs used the term “virus” when referring to Christians and Shia Muslims in the country; he also considered them as a threat to the public order.

The Moroccan law allows for the registration of religious groups as associations, however; some minority religious groups reported that the government rejected their registration requests claiming that they were later prohibited to embrace the religion they wanted. Shia known as ‘the silent community’ in the country is reluctant to disclose its religious belief in public. The baha’i community besides to other minority religions are forbidden to practice their faith as they face issues of religious coexistence in the kingdom. This controversy of religious freedom has returned to the front page during the Arab Spring of 2011 when Abdl ilah BenKiran stated “that freedom of religion would be the end of the Emirate of the Believers”. In fact, The Moroccan Constitution does not openly state that freedom of religion is actually prohibited, neither does the law prevent anyone to change his faith but yet, the 220 criminal code punishes whoever shakes a Muslim’s belief. Religion, as a result, when implicated in security issues can become dangerous even destructive to the Moroccan social order as Abdl ilah Benkiran argued.



Plenty of things suggest that conflicts with a religious dimension tend to cause costly damages. In fact, religion or belief should not be seen as providing a legitimate reason for conflict, but the public space as conceptualized ought to be 'neutralised' from the influence of a wide range of religions as a means of lessening conflict within the social community. Sometimes, the reaction of the believing majority could be a huge problem. Therefore, religious faith must be in accordance with national standards which societies decide to adopt. Granting religious rights to some can fuel the social tensions and securing the stable religious majority that commands general acceptance of faith would secure the whole state. In other words, a state is required to find the right balance between individual freedom and garneting a peaceful space for the social community.

The manifestation of one's belief in clothing is a fundamental element of the right to religious freedom. Dress code in certain religions like Islam is not a choice but rather an obligation for people to wear. Muslim women for example should wear the clothes that cover almost every part of their bodies except for the face and hands. And similarly many other existing believers in this world have some sort of traditions and faiths about what they have to wear. Others, on the contrary, prefer to dress without any kind of religious pressure. The concept of Hijab is an example of the general rule applicable to Muslim women who are asked to cover their bodies from all men except for their husbands who are required, like other Muslim men, to cover their bodies from navel till the knee.

Speaking of the burqa, if a woman prefers to wear it, she should not be discouraged as this might be considered a sign of Taqwa. The rules on dress are later slightly relaxed when a woman reaches old age and her sexual attractions have faded. Now, even though Islam requires its female adherents to wear the veil in public, this does not oblige them to cover up nor threatens their physical security if they do not comply. God orders Prophet Muhammad to tell women to



cover themselves up, but it's unclear whether the Qur'anic text refers to hair only, to certain body parts or to the entire body. So, whether women are supposed to wear the hijab or not is still debatable. Therefore, it is important to stand up for those who *are* forced to cover up against their will.

On the other hand, women who choose to wear a hijab can be seen as a big security threat. Wearing a full face veil is no doubt a significant security risk as Morocco seems close to joining the trend towards restricting the burqa. At this level, the ban has been limited to the import, manufacture and marketing of the garment; no official announcement has been issued to outlaw the use of a full body veil. However, Moroccan local authorities claim that the ban is evidently motivated by security reasons. So, if the ban extends to the wearing of the burqa anywhere in public it could definitely violate, in this case, the individual rights of those Moroccan women who dress as they choose as an expression of their religious beliefs.

At an international level, Men disguise themselves as a woman in a burqa to commit their crimes, and women who wear the burqa are sometimes seen as terrorism-related offenders. Thus, facial recognition remains essential to the identification of terror suspects. Political leaders (e.g. Donald Trump) who fear terrorist attacks, especially ones motivated by radical jihadist beliefs argue that people must surrender freedoms to security-state authoritarians. However, liberty lovers around the world claim that the restriction imposed upon individual liberties, as a precondition for public security, would influence the basis of a democratic society and amount to the increase of the sense of the fakery associated with 'faux-democracy'. With the vanishing of citizens' will under the excuse of 'the common body', individuals are entitled to obey under a state of silence. This ultimately leads into their total exclusion in a lawless



society which creates a condition in which people are divided into those who obey and those who command.

From a human right standpoint religious liberty includes individual liberty of fasting. The project of human development addressed by the King, includes, most notably, an emphasis on the respect for human rights “as a constant behavior at all levels... and a shared culture” (Royal Address, 10th December 1999). Therefore, the Moroccan authorities should not interfere in individuals’ freedom to fast or not fast. But yet, the imposition of religious practices, during daytime in Ramadan seems to go against the wording of King Mohammed VI in 1999 and against the Article 18 of the 2011’s Constitution which provides that: “Everyone shall have the right to freedom of thought, conscience and religion” (which includes freedom to believe and to practice or not to practice any religion or even adopt atheistic views). Article 222 of the Moroccan Criminal code states that: “Whoever, while notoriously known for their membership in the Muslim religion, ostensibly breaks the fast in a public place during the time of Ramadan, without grounds permitted by this religion, is punishable by imprisonment of one to six months and a fine from 200 to 500 dirham.” The use of the expression “notoriously known for their membership in the Muslim religion” is vague enough and confusing as this cannot by any means impose religious obligations on individuals.

In Ramadan 2016, two men were sentenced for publicly breaking the religious fast in the city of Zagora. This authoritarianism was senseless since fasting during Ramadan is an act of worship intended for God. So, it would be a meaningful worship once it is driven by a genuine will to obey God’s commandments. Breaking fast during Ramadan is sometimes compelled by social pressure, so people who choose not to fast must appear as if they are fasting, even if they are not. Individuals again as a member of the body politic



are supposed to submit to the dictating of the norms of a majority rule for security reasons. Fasting for some people is not considered an act of personal freedom but an assault on Islam; therefore, they can attack those who break their fast in Ramadan. Even though state's coercion in article 222 is seen as a violation of the principle of religious freedom, its manipulation is still regarded as the ultimate act of preserving common security.

Now, the right to sexual liberty of a person is one of the most fundamental rights as it affects the vital elements of an individual's physical freedom. The deprivation of this kind of liberty by the state's control over individuals is illegitimate. Same sex relations are criminalized in Morocco according to Article 489 of the Penal Code which states that: "Any person who commits an unnatural act with a person of the same sex shall be punished by a term of imprisonment of six months to three years and a fine of 200 to 1000 dirham". Adding to that, women, contrary to men, are supposed to abide by the conservative social norms that do not allow intimate partnership. Women rights are in fact pushed off the agenda by local authorities as they have to deal with other political struggles. Sexual equality like gender equality and homosexuality are claimed by Moroccan fundamentalists to be illegal and against Islamic teachings.

In 2010, the coordinator general of 'Kifkif' claimed in an article published by Jeune Afrique that the arrests of Homosexuals are "particularly frequent in the areas where Islamists have a lot of power". One year later, when the Arab spring reached the country, another article was published by the Associated Press quoted the Ministry of Justice revealing shocking statistics of 81 trials that involved charges of homosexuality. In Morocco, homosexuality is still seen as a taboo and sexual minorities in general are not tolerated by public opinion. Some people even believe that homosexuals are socially unstable and claim that they should undergo psychiatric treatment. In fact, no one has the right to disdain



anyone else on the grounds of her or his sexual orientation. Homosexuals, as a vulnerable group, prefer therefore to be silent in this conflict-related environment because of the violence and insecurity they face if they reveal their preference; they can risk social violence including physical and verbal assault. Therefore, protecting this intimate right, which is the most private choice a person can make, would be an embodiment of a principled pluralism which would allow for a more diverse civil public sphere. As a result, democracy is essential to promoting co-existence in the midst of this social/sexual disagreement.

Individual freedom is definitely important but it is not as much important as the security of the common body. The power of the majority rule to generate peace could only make sense when absolute freedom threatens individuals' lives. In this case, democracy is not seen here as a producer/protector of liberty; instead it is regarded as a mean to secure the individual who has to subject his general will to the ruling majority. The exercise of power can sometimes be democratic or non-democratic depending on whether or not democracy matches certain requirements. The majority rule reigns in every nation and the framework of individual freedom faces a world-wide reduction in an attempt to provide a more widely secure state system. The governments that individuals themselves have chosen to protect their proper social welfare are yet abused by the same governments that violate their pre-existing natural rights recognized under common law. In other words, the government that should reflect the will of the individual is the one that poses a threat to his rights. Adding to that, when the majority rule is displeased by individuals' belief in absolute liberty, it redefines his freedom and invokes democracy to destroy his rights.



Conclusion

Democracy is relative as it is the government which increases or limits its scope of common standards to preserve public peace (Bruno Leoni, 1961). So, Securitization should go beyond the normative narrow agenda, and keeps an open mind as to how security works to provide a meaningful understanding of security construction that fits the criteria of the social commitment/contract agreed upon between the individual and the state. This thinking of security implies that people can be safer rather than governmental institutions becoming more powerful. In other words, securitization allows for the existence of a space where individuals can live with no fear and threat that might interfere over the principles of their social contract with the sovereign; this position taken pushes the balance⁹ in favor of security (Hobbes, 1651). Based on what has been already mentioned, we can say that liberty and security are trade-offs, the more security we get, the less liberty we are going to have (Philip Bobbit, 2008).

In the Moroccan context, the rights of citizens designate all the freedoms that a political system must ensure. They stand at the basis of the social contract established by the government with the consent of the governed ones. The relation between the philosophy of human rights and their practical legal coding seems difficult and in some cases the state incorporate principles which are contrary to justice. Each particular individual can sometimes come to feel the forces of the state when his rights are limited for some reasons. Therefore, we can affirm that fundamental rights are at the basis of democracy and the democratic system promotes, in turn, fundamental rights because the real efficiency of human rights manifests itself in the practice of justice.

⁹ For more sceptical views on the notion of balance, see Ashworth 1998; Waldron 2003; Neocleous 2007.



References:

- Aradau, C. (2004). *Security and the Democratic Scene: Desecuritization and Emancipation*, *Journal of International Relations and Development*, 7(4): 388-413.
- Aristotle, Jowett, B., & Davis, H. W. C. (1920). *Aristotle's Politics*. Oxford: At the Clarendon Press: 279-300.
- Berlin, I. (1969). Two Concepts of Liberty. In: I. Berlin, ed., *Four Essays on Liberty*, 1st ed. Oxford: Oxford University Press. Available at: https://www.wiso.uni-hamburg.de/fileadmin/wiso_vwl/johannes/Ankuendigungen/Berlin_twoconceptsliberty.pdf: 118-172.
- Bobbitt, P. (2008). *Terror and Consent: The Wars for the Twenty-First Century*, Allen Lane, London: (1-180, 350-397, 521-547) 11.
- Booth, K. (1999). Three tyrannies, in vol. Tim Dunne, Nicholas J. Wheeler (edit.), *Human Rights in Global Politics*, Cambridge Univ. Press, Cambridge: 29-160.
- Bruno, L. (1961). *Freedom and the Law*. New Jersey: D. Van Nostrand: 43-112.
- Campbell, D. (1998a) *Writing Security: United States Foreign Policy and the Politics of Identity*, Revised Edition, Minneapolis: University of Minnesota Press: 349-354.
- Gibson, J. L., Ivancevich, J. M., & Donnelly, J. H. (1982). *Organizations: Behavior, structure, processes*. Plano, Tex: Business Publications: 290-296.
- Habermas, J. (1996). *Between facts and norms: Contributions to a discourse theory of law and democracy*. Cambridge, Mass: MIT Press: 9-168.
- Hobbes, T. (1969). *Leviathan*, 1651. Menston: Scolar P.
- Locke, J., & Whiston, J. (1772). *Two treatises of government*. London printed: Reprinted the seventh time by J. Whiston.



- Mcdonald, M. (2008). *Securitization and the Construction of Security*. Available at <http://dx.doi.org/10.1177/1354066108097553>: 4-32
- Mill, J. S., John W. Parker and Son, & Savill and Edwards,. (1859). *On liberty*. London: John W. Parker and Son, West Strand.
- Nozick, R. (1974). *Anarchy, State, and Utopia*. New York: Basic Books: 86-103.
- Plato. (360 BC) *Crito*. New York: P.F. Collier translated by Benjamin Jowett in 2001.
- Rousseau, J.-J. (1968). *The social contract*. Harmondsworth: Penguin.
- Shepherd, L. (2015). *Constructing Civil Society: Gender, Power and Legitimacy in United Nations Peacebuilding Discourse*. *European Journal of International Relations* 21(4): 887-910.
- Wæver, O. (1995). *Securitization and Desecuritization*. In R. D. Lipschutz (Ed.), *On Security*. Columbia University Press: 46-87.