ARAB SPRING, LIBYAN LIBERATION AND THE EXTERNALLY IMPOSED DEMOCRATIC REVOLUTION

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> For generations, the United States of America has played a unique role as an anchor of global security and advocate for human freedom. Mindful of the risks and costs of military action, we are naturally reluctant to use force to solve the world's many challenges. But when our interests and values are at stake, we have a responsibility to act.
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> -Barack Obama, March 28, 2011 (justifying the NATO intervention in Libya).[1]

I. INTRODUCTION

Contemporary events in the Arab world should cause us to wonder what happened to our commitment to the democratic revolution. America's understanding of its own role in supporting democratic orders is, as a result of the so-called Arab Spring, as confused as it has ever been. I hope in these few pages to expound upon these ideas of democractic commitments and their consequences, which must command greater consideration.

In particular, I want to explore a central irony in our times concerning the externally imposed democratic revolution.[2] On the one hand, many of us across the entire American political spectrum adhere to the principle of democratic rule as core normative commitment.[3] We *believe* in a moral conception of government wherein authority may *only* derive its powers from the consent of the governed, a principle reflected in two cornerstone and foundational documents that conceptualized human rights in modernity—the Universal Declaration of Human Rights[4] and

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1. Ben Feller, *Obama Libya Speech Strongly Defends Intervention*, THE HUFFINGTON POST (Mar. 28, 2011, 8:28 AM), http://www.huffingtonpost.com/2011/03/28/obama-libya-speech-_n_841311.html#text (for the full text of the speech, follow the hyperlink at the end of the article).

2. I should note at the outset that I borrow the term "externally imposed revolution" from Andrew Arato's commendable work on the Iraq Constitution. ANDREW ARATO, CONSTITUTION MAKING UNDER OCCUPATION: THE POLITICS OF IMPOSED REVOLUTION IN IRAQ 1 (2009).

3. Again, President Obama's speech justifying the Libya intervention is instructive. While offering a litany of reasons as to why humanitarian intervention was justified, in a manner described more fully in Part IV hereof, the President made an implicit reference to something akin to a "domino theory" of tyranny that offered a robust commitment to support the democratic "impulses" that had to that time convulsed the Arab world. *See* Feller, *supra* note 1.

4. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, art. 21, ¶ 3, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) ("The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.").

the International Covenant of Civil and Political Rights.[5] On the other hand, there seems to be a broad consensus that views forcible regime change of tyrannies into regimes of democratic rule as a *per se* illegitimate interference into the affairs of other nations, a position likewise conceptualized as foundational in the United Nations Charter.[6] Where our praise for democracy is nearly universal, and there is no end to the laudations we are willing to heap upon citizens who are willing to sacrifice their lives and their freedom in its name in their own tyrannical states,[7] we grow timid when asked to bear similar burdens abroad. We are worried that somehow to do so would be to engage in "unsupervised meddling in the processes of choice within other states,"[8] and that it would therefore lack popular legitimacy.

The distinction as between our professed faith in democracy and our almost politically correct unwillingness to "impose" it on other states is remarkable, and in some ways conceptually difficult to support. For if a people are the true foundation of the legitimacy of its government, then by what right, and under what conception, could it possibly be that foreign intervention to remove a tyrant and restore to the people their natural right to rule themselves be itself denied legitimacy? How can the legitimacy of the state be judged as against the authority granted to it by its people on the one hand, and by the position of a despot supported by no such authority on the other? How can any reasonable person who takes her normative commitment to democracy seriously claim that in a conflict between a foreign invader committed to restoring democratic rule and an unspeakable tyrant committed to denying it, legitimacy to rule lies necessarily, *ipso facto*, with the tyrant by virtue of nothing other than nationality? The irony is particularly disturbing when the repression is itself foreign, albeit undertaken at the request of the tyrant. That is to say, somehow there is international legitimacy in *Saudi Arabia* providing troops at the Bahraini tyrant's request in order to repress a popular uprising.[9] Illegitimacy would have ensued only if a nation somehow intervened to support the Bahraini *people* against a remorseless tyrannical monarchical family utterly lacking in the most basic understandings of

5. International Covenant for Civil and Political Rights, G.A. Res. 2200 (XXI) A, art. 25, U.N. Doc. A/RES/2200(XXI) (Dec. 16, 1966) ("Every citizen shall have the right and the opportunity, . . . without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors . . . .").

6. U.N. Charter art. 2, para. 4 (prohibiting the threat or use of force against the political independence or territorial sovereignty of member states).

7. For a recent noteworthy example relating to the Arab Spring in particular, *see* Nicholas D. Kristof, *Release My Friend!*, N.Y. TIMES, June 9, 2011, at A27.

8. W. Michael Reisman, *Assessing Claims to Revise the Laws of War*, 97 AM. J. INT'L L. 82, 89 (2003).

9. *See* Ethan Bronner & Michael Slackman, *Saudis, Fearful of Iran, Send Troops to Bahrain to Quell Protests*, N.Y. TIMES, Mar. 15, 2011, at A1 (describing the entry of Saudi troops into Bahrain at the Bahraini monarch's request for the purposes of suppressing a popular uprising).

decency, let alone tolerance.[10] To the committed democrat, something is amiss under such a conception.

We strain hard to find our ways out of this morass of respect for sovereignty on the one hand and commitment to democracy on the other. We search for any plausible reason, no matter how irrelevant or beside the point, to justify intervention to institute democratic rule. In other words, at times we seek to institute democratic rule, but we look for a different reason to justify our action. It is as if the democratic commitment in such matters is something to be embarrassed by rather than to be proud of.

The most popular form of indirect legitimation of democratic intervention involves hinging the regime change to some other, more recognized form of international interference with sovereignty. Most notably, it *is* legitimate, experts maintain, to engage in regime change in particular circumstances where there was a preexisting reason to initiate war in the first place, as in Japan after the Second World War, or Afghanistan following the events of September 11, 2001.[11] While such sorts of inter-

10. The outrages committed by the Bahraini government against its own people are well documented by respected human rights organizations and are described to some extent later in this Article. Such outrages include systematic attacks on those who provided medical care to protestors, as well as the injured protestors themselves, *Bahrain: Systematic Attacks on Medical Providers*, HUM. RTS. WATCH (July 18, 2011), http://www.hrw.org/news/2011/07/18/bahrain-systematic-attacks-medical-providers; dismissals of workers and expulsions of students for participating in pro-democracy rallies, *Bahrain: Revoke Summary Firings Linked to Protests*, HUM. RTS. WATCH (July 14, 2011), http://www.hrw.org/news/2011/07/14/bahrain-revoke-summary-firings-linked-protests; the killing of dozens of protestors engaged in peaceful protests, including a 14-year-old boy, *Teenage Activist Killed in Bahrain Protest*, AMNESTY INT'L (Aug. 31, 2011), http://www.amnesty.org/en/news-and-updates/teenage-activist-killed-bahrain-protest-2011-08-31; and the prosecution of teachers by military tribunal, *Teachers to Be Tried By a Military Court*, AMNESTY INT'L (Aug. 23, 2011), http://www.amnesty.org/en/library/asset/MDE11/043/2011/en/dd5fd1ea-a1de-406c-b69b-f56328aaf5a0/mde110432011en.pdf. Such incidents have continued unabated long after the outbreak of the Arab Spring in 2011, often meeting with denials on the part of the Bahraini authorities that border on the farcical. Hence, for example, at the end of January, 2012, a nineteen year old opposition figure was arrested and died while in police custody, after being allegedly run over by a police car. The Bahraini government claims he was never injured by the police, and in fact died of "natural causes"; specifically, sickle cell anemia. CNN Wire Staff, *4 Killed in Protests in Bahrain, Opposition Group Says*, CNN, (Jan. 27, 2012, 12:22 PM), http://www.cnn.com/2012/01/27/world/meast/bahrain-unrest/index.html?iref=allsearch. In addition, the Bahraini government commissioned a group of experts, led by the well-respected M. Cherif Bassiouni, to investigate complaints about human rights abuses committed during the height of the uprising in February and March of 2011. That report, despite its being commissioned by the Bahraini monarch, contains devastating allegations respecting police misconduct and broad human rights abuses. *See* BAHRAIN INDEPENDENT COMMISSION OF INQUIRY, REPORT OF THE BAHRAIN INDEPENDENT COMMISSION OF INQUIRY (2011), http://files.bici.org.bh/BICIreportEN.pdf. These are but a fraction of the reported incidents of gross human rights violations designed to impede democratic rule. For further details on these and other matters, see the websites of both Amnesty International and Human Rights Watch.

11. Citing the example of Kosovo, the inestimable public international law scholar Michael Reisman indicates that "regime change may be internationally lawful when it is the contextually appropriate *instrument* of an intrinsically lawful action." Reisman, *supra* note 8, at 89 (emphasis in original); *see also* ARATO, *supra* note 2, at 34 (pointing out that one distinction as between Germany and Japan after the Second World War on the one hand and Iraq on the other was that the former two states were the aggressors in their respective conflicts).

vention have a long and storied modern history, from Germany[12] and Japan to Cambodia[13] and Uganda,[14] the potential for their use has grown exponentially as a new (to date, still controversial) basis for intervention into the affairs of sovereign states has arisen. This is the "responsibility to protect," designed to prevent future humanitarian catastrophes that resemble the Rwandan genocide of 1994.[15] Indeed, in contemporary Libya it was precisely this doctrine, and the concomitant endorsement of the principle by the Security Council,[16] that President Obama and NATO made use of to initiate hostilities against Qaddafi's regime.[17]

Yet this approach raises its own concerns, in the first place because of the obvious opportunity for doublespeak it affords. The Security Council Resolution that authorized force against Libya quite evidently did not authorize regime change in favor of democratic rule and against brutal tyranny.[18] Yet it is difficult to maintain that NATO's bombing campaign was designed (at least beyond its earliest stages) to protect civilians from a humanitarian catastrophe rather than to remove a globally despised tyrant who had rendered his nation a caricature and replace his regime with a democratic government.[19] If NATO is permitted to

12. The reference here, of course, is to the well-known occupation of Germany following the Second World War. PETER H. MERKL, THE ORIGIN OF THE WEST GERMAN REPUBLIC 6 (1963).

13. Vietnam invaded Cambodia in 1979 to put an end to the Khmer Rouge regime, which had in four years caused 1.7 million deaths. BEN KIERNAN, THE POL POT REGIME: RACE, POWER, AND GENOCIDE IN CAMBODIA UNDER THE KHMER ROUGE, 1975–79, at 450–52 (3d ed. 2008); Khmer Rouge, *Times Topics*, N.Y. TIMES, http://topics.nytimes.com/top/reference/timestopics/organizations/k/khmer_rouge/index.html (last updated Nov. 21, 2011).

14. After various border clashes, Tanzania invaded Uganda to end the horrific rule of Idi Amin, whose human rights violations, including the murder of hundreds of thousands of civilians, were legendary. TONY AVIRGAN & MARTHA HONEY, WAR IN UGANDA: THE LEGACY OF IDI AMIN 76 (1982).

15. Carlo Focarelli, *The Responsibility to Protect Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine*, 13 J. CONFLICT & SECURITY L. 191, 191–94 (2008).

16. S.C. Res. 1973, ¶ 4, U.N. Doc. S/RES/1973 (Mar. 17, 2011).

17. Obama's principal reliance on a responsibility to protect was unambiguous. Feller, *supra* note 1 ("Gaddafi declared that he would show 'no mercy' to his own people. He compared them to rats, and threatened to go door to door to inflict punishment. In the past, we had seen him hang civilians in the streets, and kill over a thousand people in a single day. Now, we saw regime forces on the outskirts of the city. We knew that if we waited one more day, Benghazi—a city nearly the size of Charlotte—could suffer a massacre that would have reverberated across the region and stained the conscience of the world. It was not in our national interest to let that happen. I refused to let that happen. And so nine days ago, after consulting the bipartisan leadership of Congress, I authorized military action to stop the killing and enforce UN Security Council Resolution 1973.").

18. Security Council Resolution 1973 in fact only authorizes force "to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory." S.C. Res. 1973, *supra* note 16, ¶ 4.

19. This matter, respecting the extent to which NATO was more engaged in regime change than it was in protecting civilians, at least beyond its initial stages, is the subject of Part IV. It suffices to note for now, however, that the seeming disjunction between NATO's stated aims of humanitarian intervention and its apparent, ultimate objective of regime change was not a matter that went without comment in the popular media. *See, e.g.*, Steven Erlanger, *Libya's Dark Lesson for NATO*, N.Y. TIMES, Sept. 4, 2011, at SR4 ("More than six budget-busting months against one of the weakest militaries in the world, with shortages of planes, weapons and ammunition that were patched over by the pretense that NATO was acting simply to 'protect civilians,' when it was clear to everyone that the alliance was intervening on one side of a civil war . . . .").

clothe its regime change efforts under the dubious pretext of responsibility to protect, this merely privileges the next international actor seeking pretext to engage in regime change to do the same. This may be well and good to the extent that such interventions are humanitarian efforts to institute democratic rule, but when undertaken for more nefarious purposes (acquisition of territory, intimidation of weaker neighbor, creation of a pliable client state), the problems with doublespeak and pretext in undertaking intervention become quite apparent.

Moreover, even if *regime change* could be justified as a means to vindicate some other recognized principle of international law and relations, it is difficult to see how the imposition of democratic rule once regime change was undertaken could be similarly justified. Nothing in the Hague Convention grants the right to an occupier, justified or not in its occupation, to institute democratic reform.[20] Thus, resistance to such reforms by even small numbers of post conflict elites would render such reforms potentially suspect. Indeed by the standard of the Hague Convention, it was the Japanese Matsumoto Commission and not the United States that had the better legal argument respecting the nature of the constitutional change to which Japan should be subjected.[21]

The essential problem therefore remains—we believe in democracy, and we seek to spread it, but are desperate to deny ourselves any right to do so, engaging in any manner of subversion or deception to mask our true intentions, as if we were in such ventures truly out to steal oil rather than help to fulfill what we believe to be legitimate national aspirations of other peoples.

While perhaps longstanding, this confusion respecting the role of external powers in fomenting or supporting a domestic democratic revolution reached something of a crisis point with the eruption of the Arab Spring. In state after Arab state, from Morocco in the west[22] to Bahrain[23]

20. In fact, the Hague Convention IV prohibits an occupier from making any change to the laws in force in the territory occupied "unless absolutely prevented." Convention Between the United States and Other Powers Respecting the Laws and Customs of War on Land, art. 43, Oct. 18, 1907, 36 Stat. 2277 [hereinafter Hague Convention IV].

21. Shortly after the war, a panel of senior Japanese legal scholars proposed a draft constitution that bore a very close resemblance to Japan's historic Meiji Constitution, effectively retaining the general legal and political regime of the state as it had long existed. RAY A. MOORE & DONALD L. ROBINSON, PARTNERS FOR DEMOCRACY: CRAFTING THE NEW JAPANESE STATE UNDER MACARTHUR 74 (2002). It was the United States that objected, drafting an alternative, radically different Constitution in a matter of days and insisting on its enactment in the place of the Meiji Constitution. *Id.* at 106–08. By any reasonable standpoint, the United States had not adhered to the terms of the Hague Convention IV in demanding such a radical change, in favor of liberal democracy, to territory under its occupation.

22. Max Fisher, *Will Morocco Be the Arab Spring's Next Greatest Success—or Great Failure?*, THE ATLANTIC (July 1, 2011, 6:59 AM), http://www.theatlantic.com/international/archive/2011/07/will-morocco-be-the-arab-springs-great-success-or-great-failure/241286/.

and Yemen in the east,[24] millions of protestors crowded the Arab streets, demanding in most cases regime change, and this on the most basic of democratic principles—because, to cite the familiar refrain heard by these brave demonstrators, "the people want the fall of the regime."[25] The demand deserves emphasis. That these convulsions were self-evidently democratic in spirit is demonstrated by that near uniform refrain, originating in Tunisia and widely popularized in Egypt's Tahrir Square, respecting "the people's" demand.[26] The claim was neither that Mubarak had transgressed against God, nor that Asad had failed to uphold the principles of *shari'a*, but rather that the people had chosen to strip their respective regimes of legitimacy, and that was enough. Learned scholars had long told us that in this region law divorced from Islam would have no legitimacy—that the only legal rules that could function would be those believed to be from God.[27] Yet political legitimacy was being lo-

23. Cynthia Johnston, *Bahrain Seeks Calm, Opposition Demands Constitution*, REUTERS (Feb. 16, 2011, 6:48 PM), http://www.reuters.com/article/2011/02/16/us-bahrain-idUSTRE71E7FS20110216.

24. Cynthia Johnston & Frederick Richter, *Old Guard Fights Back Across Region: Protesters in Bahrain to Bury Their Dead Friday After Protests Against Sunni-Minority Monarchy*, EDMONTON J., (Feb. 18, 2011), http://www2.canada.com/edmontonjournal/news/story.html?id=e1f91032-c121-4c23-8a26-c6a6ffab0c90&p=1.

25. Haider Ala Hamoudi, *The PEOPLE Want the Fall of the Regime*, ISLAMIC LAW IN OUR TIMES: OR FOAM FROM A CAMEL'S MOUTH, SPEWING AND SUBSIDING (July 26, 2011, 1:37 PM), http://muslimlawprof.org/2011/07/26/the-people-want-the-fall-of-the-regime-and-norwegian-terrorism.aspx.

26. *See* Marwa Awad & Hugo Dixon, *The Art of Revolution: Egypt's Nonviolent Warriors*, THE DAILY STAR (Apr. 14, 2011, 12:00 AM), http://www.dailystar.com.lb/Apr/14/The-art-of-revolution-Egypts-nonviolent-warriors.ashx#axzz1eTZG0g3O (describing chants in Tahrir Square); J. David Goodman, *Tunisian Protesters Watch Mubarak Trial with Envy*, N.Y. TIMES (Aug. 15, 2011, 2:03 PM), http://thelede.blogs.nytimes.com/2011/08/15/tunisian-protesters-watch-mubarak-trial-with-envy/; *Hundreds Arrested in Syria Sweep: Activists*, ABC NEWS (May 2, 2011, 2:56 PM), http://www.abc.net.au/news/2011-05-02/hundreds-arrested-in-syria-sweep-activists/2697630; Johnston, *supra* note 23; Johnston & Richter, *supra* note 24; *So Far, So Pretty Good: Amid Trepidation, the New Regime Is Making a Remarkably Hopeful Start*, THE ECONOMIST, Sept. 10, 2011, at 63.

27. Perhaps the most well-known and deeply respected proponents of such a theory is the inestimable Wael Hallaq, who indicates in a notable essay as follows:

> [A]n explanation must be provided as to the assumption underlying this question, namely, the posited necessity for today's Muslims to live by a religious law. Since the middle of the nineteenth century, Muslim societies have embarked on a course of identity crisis caused, among other things, by the disappearance from their daily lives of the religious structures that sustained them for over a millennium. One of these structures, and a central one at that, was Islamic law as a religious and pragmatic system. To say that this law was "the core and kernel" of Islamic life is indeed to state the obvious. Thus, for these societies to regain their cultural and religious identities, a form of Islamic law must obtain—and this for two good reasons. First, historically, Islamic societies have lived by a religious law for over twelve centuries, and what made their identities what they have always been was their possession of a particular legal phenomenon. Islam has always been a nomocracy. Indeed, Islamic societies and polities have throughout these centuries exemplified the highest form of what a nomocracy can be. Second, it is at present inconceivable that Muslims can or will want to transform their Weltanschauung into a Western model of rationality and secularism. They view the modernity of the West as incompatible with their vision of morality and ethics, as having miserably failed in maintaining the social fabric and in creating a coherent worldview or a meaningful cosmology. The truth claims of Western reason and modernity seem diametrically oppositional and extremely antithetical to the Islamic ethos. The "return to Islam" that we have been witnessing since

cated by its masses in a different place altogether, one recognizable to any committed democrat—with the *people.* Suddenly earnest and learned efforts to undertake the "challenge" of finding liberal democracy Islamically compatible seemed to have the problem precisely backward.[28] It is the *Islamist* who has the challenge, who must justify recognition of *shari'a* in a polity that as a core normative matter locates political legitimacy not with God, but the people.[29] America's earlier attempts at democratic revolution in the region, in the form of Iraq, had not only led to (qualified) success,[30] but the notion had managed to spread throughout the entire Arab region, to say nothing of Iran.[31]

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the Iranian Revolution is partly caused by this disenchantment with Western culture and its products.

Wael B. Hallaq, *Can the Shari'a Be Restored?*, *in* ISLAMIC LAW AND THE CHALLENGES OF MODERNITY 21, 42–43 (Yvonne Yazbeck Haddad & Barbara Freyer Stowasser eds., 2004). The Arab Spring demonstrations do considerable violence to this essentialist position respecting the importance of *shari'a* in modern Muslim societies. As is demonstrated in the main text, far from rejecting "the truth claims of Western reason," these demonstrators quite self-evidently adopted truth claims set forth in the Declaration of Independence (respecting the right of the people to alter or abolish a government) and the Gettysburg Address (respecting government of, for and by the people) more than anything in Islamic political history. This is not to say that Arab democrats seek to replicate their Western counterparts entirely and without modification, or even that, within a generally secular polity, some role for Islamic law might well be retained. It is to say that the notion that there is some starkly different political worldview at play in the Arab world is an increasingly difficult one to support. To the extent this is so in the Arab world, it is emphatically even truer in those Muslim states that have managed the transition to democratic and largely (though not necessarily entirely) secular political regimes tolerably well, among them Turkey and Indonesia. *See* Landon Thomas Jr., *Turkey Prospers by Turning East*, N.Y. TIMES, July 6, 2010, at A1 (describing Turkey's rise as a regional economic power); Amelia H.C. Ylagan, *Corporate Watch*, BUS. WORLD (July 13, 2009), 2009 WLNR 13279690 (describing the effort by Morgan Stanley to include Indonesia as one of the world's rapidly developing and influential economies, on par with Brazil, China, India and Russia).

28. *See generally* KHALED ABOU EL FADL, ISLAM AND THE CHALLENGE OF DEMOCRACY (Joshua Cohen & Deborah Chasman eds., 2004).

29. To be clear, the challenge to the Islamist, to justify the use of religious law and religious argument in a liberal democratic state, is not an insurmountable one. This is a topic that has been the subject of some debate between two of the greatest political philosophers of our era, Habermas and Rawls. *Compare* Jürgen Habermas, *Religion in the Public Sphere*, 14 EUR. J. PHIL. 1, 8–9 (2006) (arguing in favor of resort to religious argument as being compatible with liberal citizenship), *with* JOHN RAWLS, POLITICAL LIBERALISM 213 (expanded ed. 2005) (suggesting that argument must be grounded in "public reason" accessible to all citizens). In addition, specifically in the Islamic context, Abdullahi An-Na'im has advocated a form of secular citizenship that more closely resembles that of Rawls than Habermas, suggesting that ideal citizens would make resort to "civic reason." ABDULLAHI AHMED AN-NA'IM, ISLAM AND THE SECULAR STATE: NEGOTIATING THE FUTURE OF SHARI'A 7 (2008). In any event, it is not my purpose to contribute to this rich and enlightening debate, but only to point out that the core normative political commitment among those who insist the regime must fall because the "people" demand it is to popular democratic rule. All else, including the use of religious law, must be justified in relation to that, and not the reverse.

30. Respecting the limited, but real, success of the Iraqi democratic experiment after obvious initial difficulties, see Babak Dehghanpisheh et al., *Rebirth of a Nation*, NEWSWEEK, Mar. 8, 2010, at 31.

31. Iran's recent "Green Revolution" likewise arose because of broad suspicions that the results of its 2008 presidential election had been manipulated so as to ensure a victory for the conservative Mahmoud Ahmadinejad. *See* Mark Tran & Julian Borger, *Iran Elections: Ahmadinejad to be Sworn in as President by August*, GUARDIAN (June 23, 2009, 7:25 AM), http://www.guardian.co.uk/world/2009/jun/23/iran-guardian-council-results. The protestors then continued to voice opposition even after the Supreme Leader, Ali Khamane'i, had urged them to cease. Sadegh Zibakalam, *Dismissing Iran's 'Greens' Is Premature*, THE DAILY STAR (May 10, 2010, 12:00 AM), http://www.dailystar.com.lb/Opinion/Commentary/May/10/Dismissing-Irans-

And yet, during the Arab Spring and throughout its continuing aftermath, confusion has reigned respecting America's preferred response to such broad vindications of its core normative values. This confusion is caused, to some extent, by the obfuscation respecting America's supposed "responsibility to protect" civilians against slaughter. To take the simplest example, if one regards the rhetoric respecting humanitarian intervention seriously, it remains difficult to understand precisely what to make of evolving attitudes toward Syria. The use of force by NATO, akin to that used in Libya ostensibly to protect civilians, has never been seriously contemplated, though Syria's regime has killed far more civilians than Qaddafi ever had an opportunity to.[32] Yet in contrast with Libya, American policy is decidedly confused.

On the one hand, there have been important expressions of *sympathy* with the Syrian democrats. This is best illustrated by the remarkable and courageous decision of the United States Ambassador Robert Ford, to visit areas where protests were strong and to meet with opposition leaders at great risk to his own personal safety.[33] The United States was also quick to express outrage and even expel diplomats when particularly gruesome reports of a civilian massacre appeared in the media.[34]

Yet at the same time, the United States appears determined to work exclusively within the United Nations, where it is obvious that nothing substantive will be achieved because of continuing, well established Russian opposition.[35] As a result, there is no talk of a no-fly zone, or a safe haven, or any other form of meaningful pressure. There is only, instead, a U.N. endorsed peace plan that is so far from being implemented that it bears scant resemblance to reality on the ground,[36] and the dispatch of

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greens-is-premature.ashx#ixzz1crCJ2ZVq. Given the Supreme Leader's putative role as God's representative "discovered" by humanity, the refusal to heed his wishes speaks volumes respecting the extent to which the Iranian protesters held tightly to core democratic political commitments. *See* Haider Ala Hamoudi, *A State Which Claims Its Supreme Leader Is 'Discovered' Has a Very Difficult Time Running Itself by and Through Law*, THE DAILY STAR (Oct. 1, 2009, 12:00 AM), http://www.dailystar.com.lb/Law/Oct/01/A-state-which-claims-its-supreme-leader-is-discovered-has-a-very-difficult-time-running-itself-by-and.ashx#axzz1crBX3OvO (describing the role of Supreme Leader as being one divinely ordained within the Iranian political system).

32. As of March 27, 2012, the United Nations estimated that 9000 civilians had been killed in the continuing Syrian assault on protestors. Louis Charbonneau & Michelle Nichols, *U.N. Raises Syria Death Toll Estimate to More than 9000*, REUTERS (March 27, 2012), http://www.reuters.com/article/2012/03/27/us-syria-toll-idUSBRE82Q0S820120327. By contrast, on March 10, 2011, approximately two weeks from the imposition of the "no fly zone," CNN had reported that between 1,000 and 2,000 protesters in Libya had been killed. *Rebel Leader Calls for "Immediate Action" on No-Fly Zone*, CNN (Mar. 10, 2011, 5:02 AM), http://edition.cnn.com/2011/WORLD/africa/03/09/libya.civil.war/index.html.

33. David Hartwell, *U.S. Ambassador to Return to Syria*, GLOB. INSIGHT (Dec. 7, 2011).

34. Elizabeth A. Kennedy, *Nations Expel Syrian Envoys: Houla Massacre Could Prove To Be Watershed Moment*; *U.S. Joins Eight Other Countries In Ousting Diplomats*, ASSOC. PRESS, May 30, 2012.

35. Patrick J. McDonnell, *U.S.–Russia Clash on Syria Grows Louder*, L.A. TIMES, June 1, 2012, at 3.

36. Elizabeth A. Kennedy, *Analysts: Diplomacy Failing In Syria U.N. Blames Regime for the Latest Round of Killings, Violence*, ASSOC. PRESS, July 14, 2012.

corresponding toothless U.N. monitoring teams to Syria, which repeatedly demand the Syrian government to take action to limit civilian casualties, to no discernible effect.[37]

Meanwhile, the situation appears to drag on, and democratic reform within Syria seems less likely than civil war. Indeed, the International Committee for the Red Cross has recently declared that the conflict has reached the stage where it must be referred to as civil war.[38] Precisely how Syria has managed to earn such broad deference from the world's democracies, while Libya did not, and under what normative or legal conception all of this might be justified, remains a mystery. Certainly it appears to have nothing whatsoever to do with a responsibility to protect civilians from massacre.

In Bahrain, the rhetoric is even milder notwithstanding the popular protests against it that convulsed the nation in February and March of 2011,[39] and have continued sporadically through the start of 2012, demanding, once again, the fall of the regime. The problem, it seems, is not so much that the *Arab people* have a problem locating legitimacy in rule of the people. They have risked their lives to do so. It is more that *NATO and the United States* seem to have a hard time articulating these ideals, exported though they are from the West, against the tyrannies that repress the same Arab people.

In other words, all of this obfuscation respecting responsibilities to protect and the repeal of legitimacy from one state and not another suggests something deeply disturbing to the democrat—namely, that legitimacy to rule exists for tyrants under certain geopolitical circumstances that have nothing to do with a constitutive conferring of that authority by their people. This is hardly a realization of our democratic ideals. We need a new formulation, one that does not bestow legitimacy upon some repressive tyrants and not others.

This is not to say that the United States will realistically be engaging in regime change across the globe as against undemocratic regimes. It is self-evident that any nation, the United States by no means an exception, will for a variety of reasons treat similarly situated nations differently. Yet let us call it what it is—pragmatic and painful accommodation to geopolitical reality that has nothing to do with any particular tyrant's legitimacy. Qaddafi had no legitimacy to rule when it became apparent that his people conferred no authority upon him, and this (and not some mythical responsibility to protect) is the reason that NATO found it justified to remove him. For strategic reasons, it may not always be expedient

37. *Id.*

38. Neil MacFarquhar, *Syria Denies Attack on Civilians, in Crisis Seen as Civil War*, N.Y. TIMES, July 16, 2012, at A6.

39. Joby Warrick & Michael Birnbaum, *Questions as Bahrain Stifles Revolt*, WASH. POST, Apr. 15, 2011, at A1.

to treat similar despots, those in Bahrain and in Syria for example, similarly. We can if we must negotiate with a tyrant. Yet this is not a reason to deem that tyrant as possessing any sort of legitimacy to rule. When a Bahraini monarch calls in a foreign army to put down protesters chanting "the people want the fall of a regime," let us not suggest, even by implication, that the actions of such a monarch are entitled to any sort of respect on the basis of misguided notions of sovereignty. They cannot be, as it is no more legitimate to a democrat to deny one's people their right to rule than it is legitimate to deny another people a right to rule themselves. Suppression of popular uprising should be no more legitimate than foreign invasion, even if each, from time to time, is tolerated, again out of geopolitical necessity.

Put differently, if deference to Realpolitik limits our abilities, as is probably inevitable, at the very least it should not limit our idealistic and romantic normative commitments in favor of the democratic revolutionaries. Put into concrete terms, Libya, in the end, would have gone the way of Bahrain had NATO chosen not to intervene in its affairs. If there are sound geopolitical reasons that the removal of Qaddafi proves more sanguine than that of Bahrain's tyrant monarch, then so be it, but let us at least be honest respecting what these leaders are—unspeakable tyrants with not an ounce of legitimate authority to undertake the actions they did. The political legitimacy belongs in both cases to one and only one entity—the people.

To be clear, this is not to say that all revolutions are democratic, and that each popular upheaval deserves the support of those committed to democracy. Patently, this is not true. A normative commitment to democracy as an ideal form of government is not the same as a messianic and near-maniacal belief in its universal appeal to everyone, everywhere at every time. It should be self-evident that populations overcome by religious fervor, or obsessed with Marxist utopias, have in the past engaged in uprisings that were not premised on the principle of democratic rule.[40] This is to say nothing of poorer societies where states and effective state institutions are quite weak.[41] In such a state, the nature of national citizenship would be a difficult one to sustain among much of the population, let alone democratic participation in the state. To attempt democracy in such circumstances is a project doomed if not to failure, then to substantial disappointment. I do not therefore quibble with the proposition that one cannot effectively "impose" democracy on a state that does not seek it. I do contest with some force the notion that a state can be understood not to desire democracy merely because its institutions

40. See *infra* Part II.B for one such example, 1979 Iran, in detail.

41. Some commentators have described Yemen in this fashion. *See, e.g.*, Ginny Hill, *Yemen: Security and the Collapsing State*, BBC NEWS (Mar. 28, 2011, 12:18 PM), http://www.bbc.co.uk/news/world-middle-east-11482963.

have been captured by a tyrant who has managed to effectively suppress his people.

External intervention is not precisely what comes to mind when one speaks of a "democratic revolution." Usually, the idea is of democratic revolutions of a different sort, indigenous ones. Foreign intervention, by contrast, is dismissed as some sort of externally provoked coup rather than what it has the potential to be, which is an externally supported democratic revolution..[42] This is unfortunate, and in the balance of the Article, I hope to demonstrate that if our normative commitment to democratic rule is as we say it is, we should not shy away from such democratic interventions (any more than we need be embarrassed by democratic revolution) but embrace them unapologetically and fervently, even if for tactical and strategic reasons we are obviously unable to advance them universally.

Part Two sets forth the manner in which the externally imposed democratic regime change can and should be thought of more as a form of democratic revolution than externally imposed coup. Part Two further suggests that just as not all external impositions are illegitimate efforts to acquire territory or create a neighboring client-state, so all internal revolutions are not necessarily democratic. A premier example of a nondemocratic revolution might be 1979 Iran, which stands in stark contrast with the very democratic revolutions that currently convulse the Arab world (and have shaken Iran in the recent past). Part Three of this Article outlines an alternative vision, one which rescues the democratic revolution more fully, and clarifies the role of external agency in bringing it about. Part Three also lays out how these ideas more fully conform to American ideals in the context of the Arab Spring. Part Four, through the example of Libya, demonstrates that in many ways the vision laid out herein is already largely American policy. As a result, what is currently required is not a fundamental reworking of American commitments and its actions in relation thereto so much as a more honest expression of what those commitments are, and their relationship to the externally imposed democratic revolution.

II. DEMOCRATIC REVOLUTIONS, INTERNAL AND EXTERNAL

A. Coups, Revolutions, Reforms and the Democratic Transformation of the State

Perhaps it is best to begin by attempting to characterize precisely what it is that is happening in the Arab world through the Arab Spring. One possibility that can be immediately dismissed is to describe the recent events as being a series of coups.

42. *See* Reisman, supra note 8, at 89.

A conventional definition of a "coup" tends to involve the following elements: (1) a very quick transformation over a matter of days, (2) necessarily entailing violence, (3) in which the leaders of the state are replaced by other leaders, (4) involving a small number of individuals with some measure of political power, and (5) motivated by greed.[43] Coups are also most often taken in secret and therefore lack any sort of public accountability.[44] So defined and so understood, coups almost surely are not grounded in any sense of popular legitimacy and would be problematic to any committed democrat.

Quite plainly, the events of the Arab Spring do not come close to fitting this model. In fact, there is not a single criterion among those above that would apply to the Arab Spring uprisings. Some of the criteria are absolutely not met—for example, the transformation in Libya took more than six months.[45] The notion that most of the other criteria have been met could only be described as risible in its inaccuracy. These protests that led to the fall of the respective regimes were not just grounded in popular legitimacy; they originated and sustained themselves on the backs of tens of thousands of ordinary men and women who bravely took to the streets seeking the fall of tyrants and the restoration of their human dignity—at much risk to their lives and their fortunes in their respective states.[46] Militaries may have been involved, either as caretakers following the deposing of a president in the case of Egypt, or in a blanket refusal to defend a tyrant in the case of Tunisia, but it was the people that drove the transformation.[47] To describe them as insiders, or motivated by greed, or even relying upon the threat of violence to achieve their ends, is to mischaracterize their motivations and their aspirations considerably.

43. STEVEN R. DAVID, THIRD WORLD COUPS D'ETAT AND INTERNATIONAL SECURITY 8 (1987).

44. PAUL BROOKER, NON-DEMOCRATIC REGIMES: THEORY, GOVERNMENT AND POLITICS 63 (2000).

45. The Libyan uprising began with a series of demonstrations on February 16, 2011, against the rule of Libya's strong man, Col. Muammar Qaddafi. Alan Cowell, *Protests Take Aim at Leader of Libya*, N.Y. TIMES, Feb. 17, 2011, at A14. The outcome was not settled until more than half-a-year later, in August of 2011, when the rebels finally took control of Qaddafi's compound in Tripoli. *Libya: The Fall of Tripoli—Wednesday 24 August 2011*, GUARDIAN MIDDLE E. LIVE BLOG (Aug. 24, 2011, 8:41 AM), http://www.guardian.co.uk/world/middle-east-live/2011/aug/24/libya-rebels-take-gaddafi-compound-live-updates.

46. Thomas Friedman, *'I Am a Man'*, N.Y. TIMES, May 15, 2011, at WK10.

47. *See* Aya Batrawy & Sarah El Deeb, Egyptians Mark First Anniversary of 'Friday of Rage', THE SALT LAKE TRIBUNE (Jan. 27, 2012, 1:15 PM), http://www.sltrib.com/sltrib/world/53390704-68/military-protesters-mubarak-brotherhood.html.csp (describing Egyptian military as having taken power upon Mubarak's ouster); Jonathan Eyal, *Arab Spring May End in Political Winter; Mid-East, North Africa Could Be Chaotic for Years as Revolutions Stall*, THE STRAITS TIMES (July 21, 2011), http://sun7stiqa.straitstimes.com/World/Story/STIStory_250169.html (indicating that Tunisia's army refused to fire on protestors). The role of the military as partial agent of the democratic transformation is described more fully in Section III.B *infra*.

I would continue, as I would certainly regard such a description as appalling, but I need not, because I think it sufficiently obvious as not to require further discussion.

Yet if the Arab Spring transformations are self-evidently not coups, are they "revolutions"? Do they, that is, involve the type of massive legal and constitutional structural changes that normally arise in a revolution, achieved through extraconstitutional means? Here, the picture is more mixed, mainly because it is difficult to know precisely how much formal constitutional change there will in these states once the transformations are complete. In Egypt, an elected legislature created a constitutional assembly to draft a new permanent constitution, but that assembly was promptly suspended by the judiciary.[48] Later the military council disbanded the lower house of the legislature pursuant to a decision by the Supreme Constitutional Court of Egypt ruling that its entire composition was illegal.[49] The recently elected president, Mohammad Morsi, ordered the lower house reinstated, this was challenged by the ruling military council, which in turn has led to even more confusion and delay concerning the efforts to draft a new constitution.[50]

Given this, it is hard to know precisely what kind of state will emerge in Egypt pending further developments. It is possible, however, that the constitution will not look very different from that of the Mubarak era. This may well be because the purpose of the protests was not so much the creation of an entire new and transformational legal and political *structure* but rather the removal of a tyrant and the consequent realization of the democratic principles that already existed within the constitutional fabric that had been grievously abused by Mubarak. .

In Tunisia, the outcome is similarly uncertain, as elections for a constitutional assembly were not held until the October of 2011.[51] It is not clear whether or not the changes to the constitution that the constitutional assembly since formed will undertake will likewise be conservative and limited in their scope, or more pervasive and transformational.

48. Yasmine Saleh & Dina Zayed, *Egyptian Court Blocks Creation of Constitutional Assembly*, THE DAILY STAR (LEB.), Apr. 11, 2012.

49. Nate Wright, *Chaos and Fear in Cairo as Judges Shut Down First Free Parliament*, THE TIMES (LONDON), June 15, 2012, at 31.

50. *Egypt Court Delays Ruling On Constitutional Addendum, Parliament Decree Until Thursday*, AHRAM ONLINE (July 17, 2012), http://english.ahram.org.eg/NewsContent/1/64/47990/Egypt/ Politics-/Egypt-court-delays-ruling-on-constitutional-addend.aspx.

51. *See* David D. Kirkpatrick, *Tunisia Postpones Election, Possibly Aiding New Parties*, N.Y. TIMES, June 9, 2011, at A10; Paul Schemm, *Tunisian Islamist Party Claims Election Victory, Set to Dominate Writing of New Constitution*, NEWSER (Oct. 24, 2011, 4:17 PM), http://www.newser.com/article/d9qitbug0/tunisian-islamist-party-claims-election-victory-set-to-dominate-writing-of-new-constitution.html.

Libya's elections were only held in the summer of 2012 and thus the outcome in that state is in some ways even harder to predict.[52] Nevertheless, while the precise structure of the future state certainly remains uncertain, it is hard to believe that whatever emerges will be anything but entirely transformed in a fundamental fashion, given that Col. Qaddafi has over the past several decades created a state structure that can only be described as bizarre and therefore unlikely to survive.[53] The three states thus might offer three very different outcomes as concerns the substantive extent of formal legal and constitutional change undertaken.

What about process? Are these changes more reforms than revolutions? That is, is some sort of principle of legality being followed? In Libya, surely extralegal means were necessary to effect the change, as Qaddafi was deposed in war and no constitution existed to guide a subsequent electoral process. Legality is perhaps most closely adhered to in Tunisia, where some respect for legal principles has applied. In December of 2010, President Ben Ali, the authoritarian ruler of Tunisia for decades, fled the country, and the prime minister indicated at first he would assume control.[54] The Constitutional Council indicated in January of 2011 that the post of president was vacant, but that in fact it would have to be the vice president who assumed control pursuant to Article 57 of the Tunisian Constitution, and not the prime minister.[55] The vice president assumed that position on January 14, 2011.[56] The Court ruled that elections would have to be organized within sixty days.[57] On March 3, 2011, within the sixty day deadline, the election was scheduled for July of that same year.[58] It was then delayed until October, and successfully held then.[59] The process of transformation thus appeared to at least arguably hold to principles of legality.

52. David D. Kirkpatrick, *Libya: Monitors Praise Election*, N.Y. TIMES, July 10, 2012, at A8.

53. Libya, in theory, is not governed by any constitution save the Qur'an, though this does not seem to mean anything, in that Qaddafi himself is hardly committed to any sort of recognizable Islamic rule. NATHAN J. BROWN, CONSTITUTIONS IN A NONCONSTITUTIONAL WORLD: ARAB BASIC LAWS AND THE PROSPECTS FOR ACCOUNTABLE GOVERNMENT 86 (2002). The balance of governance is supposed to be undertaken by popular, local committees and congresses through some form of direct democracy. *Id.*; *see also The World Factbook: Libya*, CENT. INTELLIGENCE AGENCY, https://www.cia.gov/library/publications/the-world-factbook/geos/ly.html (last updated Nov. 7, 2011). In theory, Qaddafi has not held an official position within the state since 1977; the state has no national leader. Mohamad Bazzi, *What Did Qaddafi's Green Book Really Say?*, N.Y. TIMES, May 25, 2011, at BR27. It is hard to believe that any subsequent regime would seek to continue this inanity.

54. *Tunisia Swears in Interim Leader*, AL JAZEERA (Jan. 16, 2011, 2:35 PM), http://www.aljazeera.com/news/africa/2011/01/201111513513854222.html.

55. *Id.*

56. *Id.*

57. *Id.*

58. Tarek Amara, *Tunisia Interim President Calls July 24 Election*, REUTERS (March 3, 2011, 6:16 PM), http://www.reuters.com/article/2011/03/03/us-tunisia-elections-idUSTRE7227IP20110303. .

59. *Islamists to the Fore: Tunisia's General Election*, THE ECONOMIST, Oct. 29, 2011, at 57.

Egypt straddles these two examples, in that the transformation process purports to be legal, with the active participation of courts, yet there is cause for skepticism. The "constitution" under which Egypt is operating is no more than a series of provisional constitutional declarations issued by the ruling military council. The major declaration issued was effectively blessed by referendum in March of 2011 and in fact is little more than a series of amendments to the Mubarak era constitution.[60] But the military has unilaterally amended it at times, including an amendment in June of 2012, just before a presidential election, that appropriates to the military council powers previously belonging to the president.[61]

Perhaps from the perspective of process it would be best to describe these changes then, at least in Tunisia and perhaps in Egypt, as "refolutions" in motion, borrowing from the phrase made famous by Timothy Garton Ash, among others, to describe the transformations in Eastern Europe following the collapse of communism. [62] The line between reform and revolution is not always clear, as numerous scholars have pointed out. János Kis, for example, points to the traditional distinction in his work on the transformations that took place in Eastern Europe and the difficulty of placing those transformations into one camp or the other.[63] Andrew Arato has focused on the same region and pointed to some of the same confounding dilemmas.[64]

In the end, however, perhaps none of this really matters. Perhaps there is no purpose in getting lost in the thickets of taxonomy. If we are to examine these events from the standpoint of their legitimacy as committed democrats, it may be well enough to describe them as "democratic transformations." The touchstone for their legitimacy, that is, must be neither the extent of the changes sought, nor the processes by which they were obtained, but rather by the extent of *popular support* for them. That is, even if Egypt, or Tunisia, end up with a constitution quite similar to the one that previously existed, yet, importantly, not put to the same grievous abuses, surely a fundamental transformation will have occurred—one worthy of the support of a committed democrat. Surely the demand for a change of leadership is enough under these circumstances.

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60. In March of 2011, a referendum was held whereby modest amendments to the existing Egyptian constitution were approved so that the document could serve as a provisional constitution. Jason Petrucci, *Egypt's Referendum, Reason for Guarded Optimism*, DAILY NEWS EGYPT (Mar. 31, 2011, 5:35 PM), http://thedailynewsegypt.com/global-views/egypts-referendum-reason-for-guarded-optimism.html. These became the basis of the second "constitutional declaration." .

61. Abdul Rahman Hussein, *Egyptians Protest Against New Powers for Military Council*, GUARDIAN, June 20, 2012, at 20.

62. Timothy Garton Ash, *Revolution: The Springtime of Two Nations*, THE NEW YORK REVIEW OF BOOKS (Jun. 15, 1989), http://www.nybooks.com/articles/archives/1989/jun/15/revolution-the-springtime-of-two-nations/?pagination=false.

63. János Kis, *Between Reform and Revolution*, 12 E. EUR. POL. & SOCIETIES 300, 300–01 (1998).

64. *See, e.g.*, Andrew Arato, *Constitutions and Continuity in the East European Transitions*, 1 CONSTELLATIONS 92, 92–93 (1994).

The important point is that these uprisings did not in any way resemble illegitimate military juntas seeking to impose their authority in place of that of a deposed president or dictator; they were popular demands for massive and fundamental transformation. The mere fact that the people of the Arab states were not necessarily seeking broad constitutional change so much as the political realization of democracy long promised and never delivered hardly seems to be any sort of reason to deprive their movements of the same normative power afforded to any democratic revolution.

To illustrate why this is, one might well contrast the recent Arab Spring uprisings with the transformative changes of an earlier era, and specifically, Gamal Abdul Nasser's takeover of Egypt. That was, let us be clear, engineered by a cadre of junior military officers (insiders), operating in secret, using the threat of military force, completing their operation within a period of days and motivated certainly by a desire for power.[65] This group of army officers created a Revolutionary Command Council (RCC) which banned all political parties, vested all governmental authority in the RCC and then created a constitution which the dean of Arab constitutionalism, Nathan Brown, has described as perfection in "the art of writing anticonstitutionalist constitutions."[66] In that case, there was change of a radical nature that occurred. It heralded the end of a monarchy and its replacement with a nondemocratic "republic" engineered and administered by a group of army officers who assumed all governmental authority. It almost certainly led to more change than a mass protest movement that paralyzed a nation and brought down a tyrant in order to institute the free and fair elections promised in the legal system that already existed. Yet it was also a coup, hardly the inspiration for democratic transformation. What the Nasser example demonstrates, more than anything, is that in assessing the legitimacy of these transformations from a democratic standpoint, we need not look to the extent of the legal and political change undertaken as a formal matter (meaning the level of amendment to the existing legal and constitutional structure), nor to its legality, but only to the extent to which the changes were truly the product of popular demand.

B. Nondemocratic Political Transformation

We might well look past process, or the extent of formal legal change, but it is not enough for the committed democrat to look solely to the level of the popular demand to assess the legitimacy of the transformation. The uncomfortable fact remains that not every transformation demanded by a people is democratic in impulse and outlook. Some, in fact, are very much the opposite. In such cases, it hardly behooves the

65. *See* M.E. YAPP, THE NEAR EAST SINCE THE FIRST WORLD WAR 67 (1991).
66. BROWN, *supra* note 53, at 78–79.

democrat to support the change or deem it somehow legitimate, though of course it would be foolish and counterproductive to impose democracy under such circumstances, in the face of such broad popular opposition. To illustrate by way of example, I turn to a decidedly nondemocratic political transformation, indeed a revolution under almost any definition, with which I am familiar as a scholar of modern Shi'ism—the Iranian Revolution of 1979.

That the Ayatollah Khomeini, the figure leading the Islamic Revolution, was not a liberal democrat was a fact perfectly obvious to anyone paying attention. Long before the Iranian Revolution in the late 1970s, the Ayatollah Khomeini had established an entire juristic career premised on the principle of Islamic government under the aegis of a Supreme Jurisprudent, the most knowledgeable of the clerics, who would administer that state, *carrying the same political authority as that of the Prophet Muhammad himself*.[67] These ideas largely crystallized while Khomeini was in exile in the 1960s in the seminaries of Najaf, in particular in the publication of a well-known pamphlet entitled "Islamic Government" that was based on a series of lectures offered in Najaf in 1970.[68] Highly influential, and often translated as "Guardianship of the Jurist,"[69] Khomeini lays out in the pamphlet in ample detail precisely the manner in which the government is to be managed, administered, and run by the leader of the clerical classes.[70] On the matter of the people drafting their own legislation to determine their future, he had this to say:

> [I]f laws are needed, Islam has established them all. There is no need for you, after establishing a government, to sit down and draw up laws. . . . Everything is ready and waiting. All that remains is to draw up ministerial programs, and that can be accomplished with the help and cooperation of consultants and advisers who are experts in different fields, gathered together in a consultative assembly.[71]

The true source of authority, however, does not lie with such technocrats. Thus, Khomeini indicated:

> But as for the supervision and supreme administration of the country, the dispensing of justice and the establishment of equitable relations among the people—these are precisely the subjects the *faqih* has studied. Whatever is needed to preserve national independence and

67. Hamid Mavani, *Analysis of Khomeini's Proofs for al-Wilaya al-Mutalqa* (*Comprehensive Authority*) *of the Jurist*, *in* THE MOST LEARNED OF THE SHI'A: THE INSTITUTION OF MARJA' TAQLID 183, 183–84 (Linda S. Walbridge ed., 2001); *see also* Haider Ala Hamoudi, *Between Realism and Resistance: Shi'i Islam and the Contemporary Liberal State*, 11 J. ISLAMIC L. & CULTURE 107, 112 (2009).

68. AYATOLLAH RUHOLLAH KHOMEINI, ISLAM AND REVOLUTION: WRITINGS AND DECLARATIONS OF IMAM KHOMEINI 25 (Hamid Algar ed. & trans., 1981).

69. Christopher de Bellaigue, *Who Rules Iran?*, THE NEW YORK REVIEW OF BOOKS (2002), *available at* http://www.mafhoum.com/press3/100P54.htm.

70. KHOMEINI, *supra* note 68, at 98.

71. *Id.* at 137–38.

> liberty is, again, precisely what the *faqih* has to offer. For it is the *faqih* who refuses to submit to others or fall under the influence of foreigners, and who defends the rights of the nation and the freedom, independence and territorial integrity of the Islamic homeland . . . .[72]

Elsewhere, in the event this was insufficiently clear, Khomeini indicated:

> The judicial and governmental functions assigned . . . to the *fuqaha* [plural of *faqih*] are retained permanently.[73]

The point is repeated for its emphasis later:

> The *'ulama* [scholars] of Islam have been appointed . . . to the position of ruler and judge, and these positions belong to them in perpetuity.[74]

Khomeini not only failed to dissemble respecting these matters, he considered it a higher calling to disseminate his ideas. Concerning the Islamic government, led by the jurist as described above, he had this to say in his highly influential 1970 pamphlet: "It is our duty to work toward the establishment of Islamic government. The first activity we must undertake in this respect is the propagation of our cause; that is how we must begin."[75]

Taking up his own challenge, Khomeini continued to advance these ideas from exile throughout the 1970s with such ferocity and vigor that he managed to alienate much of the Najaf senior establishment, among them the Quietist Abol Qasim al-Khu'i, and even the Grand Ayatollah of his day, the formidable Sayyid Muhsin Al-Hakim.[76] Because of his ideas, he was passed over for the position of Supreme Jurisprudent in Najaf after Hakim's death in favor of Khu'i, who did not advocate clerical engagement in politics, rendering Khomeini something of an outlier within Najaf itself.[77]

In response, Khomeini turned against Najaf for its political apathy concerning Iran, going so far as to dismiss its clerics as "sound asleep" in one remarkable declaration, issued in 1971,[78] and "dead and buried"[79] in another. Yet despite senior jurist apathy within Iraq, Khomeini's ideas respecting Islamic government had been percolating among rising schol-

72. *Id.* at 137.
73. *Id.* at 98.
74. *Id.*
75. *Id.* at 126.
76. Devin J. Stewart, *The Portrayal of an Academic Rivalry: Najaf and Qum in the Writings and Speeches of Khomeini, 1964–78*, *in* THE MOST LEARNED OF THE SHI'A: THE INSTITUTION OF MARJA' TAQLID, *supra* note 67, at 216, 223.
77. *See id.*
78. KHOMEINI, *supra* note 68, at 203.
79. *Id.* at 218.

ars such as Muhammad Baqir al-Sadr.[80] In particular, they inspired Sadr to develop more precise guidelines, and add more intellectual heft, respecting the future Islamic state and the means by which the Supreme Jurist would be determined.[81]

Underlying all of these ideas from Khomeini was a hatred and contempt for the West that was given frequent voice. In 1964, upon the Shah's granting of immunity from Iranian prosecution to soldiers of the United States, Khomeini accused the government of "reduc[ing] the Iranian people to a level lower than that of an American dog."[82] Later in the same speech he described the United States, the United Kingdom, and the Soviet Union each as more "unclean" than the other.[83] In his 1970 pamphlet, he described the United States and the United Kingdom as imperialists and indicated that *faqih* rule is necessary because it is the "*faqih* who refuse[d] to submit to others or fall under the influence of foreigners" and "who does not deviate either to the left or to the right," thinly veiled references to the Soviet Union and the United States, respectively.[84] In 1972, in a message to Muslim students in North America, he indicated that "[i]mperialism of the left and of the right have joined hands in their efforts to annihilate the Muslim peoples."[85] In February of 1978, nearly a year before the Shah's departure, he described the British, the Soviet Union, and the United States as bringing misfortune upon Iran in its modern history and described the Carter Administration in particular as employing the "logic of bandits."[86] The consistency and stridency of the rhetoric over two decades of speeches and writings is remarkable.

All of this, both the program for Islamic government and its stridently anti-imperialist, regional liberation emphasis, was a matter of so much debate, and so much intellectual ferment, that it is very difficult to take seriously any claim that Khomeini had somehow claimed any interest in a democratic transformation in his society, as opposed to an Islamizing one. Until his return to Iran, Khomeini never suggested any deviation from his long established view that the state had to be Islamic and the people would not be consulted on the point in any real way.[87] Several

80. *See* Haider Ala Hamoudi, *You Say You Want a Revolution: Interpretive Communities and the Origins of Islamic Finance*, 48 VA. J. INT'L L. 249, 272–73 (2008).

81. CHIBLI MALLAT, THE RENEWAL OF ISLAMIC LAW: MUHAMMAD BAQER AS-SADR, NAJAF AND THE SHI'I INTERNATIONAL 70 (1993). It would thus be fair to say that the *structural details* of the state that Khomeini envisioned was not laid out until Sadr's work. *Id.* Of the essential principle, however, that the jurists would act as rulers and judges, there could be no doubt, Khomeini had, as the main text shows, spent his entire life advancing, and indeed proselytizing, the notion of juristic rule wherein the Supreme Jurisprudent would occupy a political leadership role akin to that of the Prophet Muhammad.

82. KHOMEINI, *supra* note 68, at 182.

83. *Id.* at 185.

84. *Id.* at 137.

85. *Id.* at 210.

86. *Id.* at 221, 224.

87. *See* SHAUL BAKHASH, THE REIGN OF THE AYATOLLAHS: IRAN AND THE ISLAMIC REVOLUTION 72 (1984). At most, Khomeini was prepared to concede a referendum, but solely for

months before his arrival in Iran, and completely consistent with his extensive work over the previous several decades, he described the revolution as "one hundred percent Islamic" and its leadership as "belong[ing] to the clerical community."[88]

Were Khomeini a minor figure in the 1979 Revolution who had managed to take control by some fortuitous circumstance, it might be maintained that somehow the revolution was democratic if Khomeini himself was not. Yet this was not the case, Khomeini was the undisputed face and voice of the revolution. Thus, he was given authority within days of his return to appoint an executive government.[89] Given all of this, if anyone in Iran in the late 1970s agitating in favor of Khomeini's return to lead the state was duped into believing Khomeini was a liberal democrat or could possibly find liberal democracy acceptable, they had managed to dupe themselves. Assuming the bulk of the Iranian people leading the revolution to be reasonably aware of Khomeini's consistent positions over the course of decades, the only conclusion is that this transformation designed to hand him executive control was indeed a revolution, but it was by no means democratic, in spirit or intent, even if some, even some within Iran, may well have wished it so.

As Khomeini's designs and his positions, were well known to anyone who bothered to pay the slightest attention to his writings, his speeches, and his juristic career, it is no surprise that he began to implement them immediately. The creation of the Islamic state that had been long discussed among activists began to take shape, precisely in the form he, along with Sadr and others, had originally presented as a "blueprint" in their extensive work on the subject.[90]

The temptation to accept the theory of duplicity on the part of the Khomeini—that he promised a people's choice and a democracy in the sense we understand it and then failed to deliver on it—would be strong among those committed to democratic governance. But the lesson might be that we must come more fully to terms with a core, uncomfortable truth. Not every people is particularly interested at any given time in liberation through self-rule and that various ideological mirages, from Marxism to these rather extreme manifestations of political Islam involving juristic supervision of government and judiciary have their influence and their sway at times.[91] Any attempt to make some sense of the democratic revolution, and indeed to restore it to the exalted normative place

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the purpose of confirming that the people had chosen an Islamic state, not as a means of offering a free choice. *Id.* Khomeini's position was that the "referendum" had already taken place in the form of the popular uprising against the Shah. *Id.*

88. *Id.* at 48.

89. BAKHASH, *supra* note 87, at 51.

90. MALLAT, *supra* note 81, at 6.

91. As the earlier references to the Green Revolution make clear, I would certainly not characterize Iran's more recent convulsions as being anything but fundamentally democratic in impulse.

to which it belongs, requires us to acknowledge this, and to admit that where our normative values are not shared, they will not be realized.

III. REMOVING THE FORMALIST BARRIERS

A. The Typology of the Transformation

Let us then take the strands outlined above and attempt to combine them into a more cohesive set of ideas concerning the democratic revolution cum coup cum radical reform, all of which I shall bundle into the single word "transformation," denoting as it does substantive political change of the more fundamental sort, to be distinguished from incremental and ordinary lawmaking. The first strand, again, is to free ourselves from the shackles of taxonomy. That is, the precise typology of the transformation is of little moment for our purposes, whether it be premised on legal continuity (as in East Europe's various velvet revolutions), focused primarily on the removal of a corrupt and tyrannical political leadership with little formal legal change (as may yet occur in some states of the Arab Spring), or involving an entire break with legality and the existing political and legal regime (as in the American, French, and Romanian Revolutions, and as is sure to occur in Libya).

To be absolutely clear, I mean this not as generalized criticism of the valuable and important work that has been done in categorization in this area, but rather only that, to the extent that the project involves the restoration of the democratic revolution as normative commitment, something too much can be made of typology. Once such typologies are abandoned, the second, related strand is to look to the *substance* of the transformation and the extent to which it might be characterized as one that is committed to the establishment of continued popular rule as its core normative commitment, rather than the use of the people and evident popular demands as instrument to the creation of another form of government, be it Marxist, nondemocratic Islamist, or anything else.

Viewed through such a lens, there was little that was democratic about the 1979 Iranian Revolution, in both conception and execution, even as the more recent Green Revolution in Iran was fundamentally democratic.[92] There was absolutely nothing democratic about Nasser's Free Officer Coup in Egypt in 1952, involving as it did the repeal of a democratic constitution and the subsequent banning of all political parties in Egypt, signaling what one prominent Egyptian commentator has

92. I do not mean by this that there were no liberal democratic *groups* that might have participated in the 1979 Revolution, hoping that despite Khomeini's well established position respecting Islamic rule, some space might exist for them to project their own vision onto the state more successfully than Khomeini might project his. It would be silly to reduce all revolutionaries to any single rigid archetype in any revolutionary transformation. The point is that the *general thrust* of the Iranian Revolution, and most importantly the figure who led it, was the establishment of juristic, not popular, rule.

described as the end of democracy in Egypt.[93] The same could not be said respecting the massive, popular uprisings that led to the transformations in Eastern Europe, the "refolutions" that generally, with the exception of Romania, adhered to strict processes of legality.

Similarly, and most relevant for the purposes of this Article, the transformations of the Arab Spring are unambiguously grounded in assumptions of popular sovereignty. Some of these states, as with Libya, will, assuming they can manage their transformations despite significant obstacles,[94] lead to fundamental transformations of state structure in a manner that surely will involve a break with legality. It is hard to understand how Qaddafi's bewildering *Jamahariyya* structure[95] is supposed to function, let alone precisely how one would amend it to adhere to principles of legality. With others, such as Tunisia, the matter is far less certain. Constitutional amendment, perhaps far reaching, perhaps profound, but nonetheless legal (meaning in conformity with existing rules of amendment as laid out in the current constitution) might be a potential promising means to achieve necessary change.

Naturally all such changes would need to be evaluated on a continuing basis to ensure that they were democratic. The road to democratic rule in Tunisia, Egypt, and Libya alike is fraught with peril. By privileging substance over form, a sensible temporal reexamination of this sort is more possible than when attempting to formally describe a particular change as a "revolution," "reform," or a "coup."

Yet, the more important result of liberating the democratic transformation from the shackles of form is that this permits the conception of the democratic transformation to be restored to the exalted and romantic place to which a committed democrat would like to place it. Adherence to the form of the change simply will not serve to achieve this. It is impossible to imagine that one finds a group of people who bravely take to the streets, as in Syria, under a hail of live ammunition to demand the people's right to rule themselves, dying in significant numbers on a daily basis as a result, any *less* inspiring if they manage to achieve their aims with the belated acquiescence of the existing regime through a series of far reaching legislative and constitutional changes negotiated in an East European style "round table."[96] The brave men and women of Tahrir

93. Ahmed Othman, *The Revolution of July 23 and the End of Democracy in Egypt*, ASHARQ ALAWSAT, July 23, 2011, at 20.

94. Rami Al-Shaheibi, *Libyan Defense Minister Seeks Deal in Seized Town*, ARAB NEWS (Jan. 25, 2012), http://arabnews.com/middleeast/article568011.ece (quoting U.N. Envoy for Libya Ian Martin that "weak, at times absent, state institutions, coupled with the long absence of political parties and civil society organizations . . . render the country's transition more difficult").

95. BROWN, *supra* note 53, at 86 (describing a confounding organization involving myriad committees and congresses acting in theory through some form of direct democracy at local levels).

96. *See* Jon Elster, *Introduction*, *in* THE ROUNDTABLE TALKS AND THE BREAKDOWN OF COMMUNISM 1, 3 (Jon Elster ed., 1996) (describing the round table process in the states of the former Soviet bloc).

Square are no less entitled to the sacred space of the democratic revolution than those of Libya even if the change they manage to achieve adheres to processes of legality or involves in the end less formal change to the legal structure.

This is largely because legality has nothing to do with the nobility of the protesters, but rather is decided more by the tyrant, or at least the institutions of authority. An Eastern European communist regime wise enough to see that its time has come to an end which seeks maximum near term influence through round table negotiations will be able to avoid the messiness of "nonconstitutional" change through earnest bargaining, while an unrepentant and bloody tyrant such as Romania's Ceauşescu leaves his people no choice but the means of non-legality.[97] The process mechanisms effectively dictated by the autocrats who control the means of violence should hardly impinge upon our core romantic and normative commitment to the democratic protesters themselves. The romantic conception in the end is of a people who seek change of the *fundamental*, *transformational* sort, whose *end* is the creation or restoration of a state that is ruled by its people and whose people constitute the legitimacy for its existence. The means by which this is achieved are largely irrelevant.

B. Transformation and Agency

The typology of the revolution is related to, if distinct from, another formal distinction from which we need to free ourselves: the *agency* of the democratic transformation. Let us begin with a rather salutary example where democratic transformation was not initiated by the people—that of post-Franco Spain.[98] Commentators frequently discuss the rather remarkable manner in which democratic change was brought about in Spain through the enactment of a Fundamental Law, thereby adopting Franco's authoritarian lawmaking model to ensure careful adherence to principles of legality in the democratization process.[99]

But there is another fascinating aspect of Spain's democratic transformation that is worth exploring. It was administered by a monarch whom Franco had trusted would ensure authoritarian continuity.[100] A king vested with absolute authority, that is to say, seems as capable as the people for bringing about democratic transformations under the proper conditions. Naturally, and as discussed earlier in this Article, neither a

97. *See* Ruth Jackson Lee, *The Stepchildren of the EU: Bulgaria and Romania*, 16 J. TRANSNAT'L L. & POL'Y 361, 370 (2007).

98. ANDREA BONIME-BLANC, SPAIN'S TRANSITION TO DEMOCRACY: THE POLITICS OF CONSTITUTION-MAKING 9 (1987).

99. *Id.* at 24.

100. *Id.* at 18 (describing earlier attempts at democratic reform undertaken by Franco and the first post-Franco prime minister as "feeble" and indicating that democratization did not begin in earnest until the King chose to embark upon that course).

democratically minded monarch nor a foreign power can bring democratization to (or impose democratization upon) a people uninterested in it. There is no doubt that pressures for democratic reform had been building in Spain when the king embarked upon the course he did.[101] Yet *without* the king, the success of the democratic transformation was by no means assured. The king was, without serious question, the *agent* for the transformation even if the transformation required conditions other than the king's good intentions to sustain itself.

In stark contrast, despite repeated calls for political reform over the course of years, and despite repeated promises to undertake such reforms, the rulers threatened by the Arab Spring generally took precisely the reverse course, stalling any changes in favor of democratization until the promises of such reforms could no longer be taken seriously by any reasonable person.[102] Those transformations were initiated instead by

101. *Id.* at 22–23.

102. To take the simplest example, in the middle of the last decade, President Hosni Mubarak of Egypt promised a series of wide-ranging and much touted democratic reforms that were supposed to permit, among other things, true competition in presidential elections. Megan K. Stack & Sonni Efron, *President of Egypt Calls for Open Election*, L.A. TIMES, Feb. 27, 2005, at A1. The subsequent elections turned out to be anything but fair and free—there were widespread voting irregularities reported, and a leading opposition candidate, liberal activist Ayman Nour, was in jail during the election. Editorial, *Not Fair, Not Free*, BALT. SUN, Dec. 13, 2005, at 18A. Moreover, at the same time that these supposedly democratic reforms were set to take place, President Mubarak was grooming his son to take his place. Daniel Williams, *Egyptians Wonder if Dynasty Is Near; Mubarak's Son Gaining Prominence*, WASH. POST, Sept. 24, 2004, at A14. This sort of warped dynastic succession masquerading as republicanism took place in Syria as well, where Bashar al-Asad had replaced his father in 2000. As with Mubarak, Bashar has long promised reforms that have yet to be delivered. Fouad Ajami, *Your Silence Is Killing Us; As a People Rise in Revolt, a Son Emulates the Cruelty of His Father*, NEWSWEEK, Aug. 15, 2011, at 0. Libya had taken a similar course with Seif al-Islam el-Qaddafi, the son of Colonel Muammar el-Qaddafi, setting himself up to replace his father and promising, as did Bashar al-Asad, to undertake political and economic reform. Landon Thomas Jr., *Unknotting Father's Reins in Hope of 'Reinventing' Libya*, N.Y. TIMES, Mar. 1, 2010, at A11. Given the rather disconcerting Arab pattern, the surprise lies not so much in the promise but in the credulous Western media and government attention Seif seemed to garner for his reform charade. *Id.* (describing Seif as trying to "dismantle" the authoritarian and socialist structure his father had created, indicating he had a "bold independent streak" and suggesting there was "evidence of popular support" for Seif domestically); *see also* Anton La Guardia, *Gaddafi's Son Wanted as Torture Watchdog*, THE DAILY TELEGRAPH, Jan. 26, 2006, at 19 (describing Seif as "the most prominent voice for political reform in Libya"). Incredibly, the United Kingdom even apparently wanted him to act as some sort of independent "watchdog" to ensure that anyone deported from the U.K. to Libya was not tortured. *Id.* Leaving aside the preposterous notion that a son could under any circumstances be considered an independent "watchdog" over the activities of his father's regime, left hardly discussed by reputable sources was the possibility that Seif was grandstanding to receive international attention and hardly interested in anything other than the accumulation of power, precisely as Bashar and Gamal were in similarly situated regimes. In any event, the good intentions of this supposed political reformer with the bold independent streak have been forced to light by popular demands to end the political system that he was supposedly working so hard to "dismantle." Rather than joining their cause, he hitched his wagon to his father's and described the regime opponents as "rats." InomineX, *Libya: 31 August 2011, Saif al-Islam Gadhafi Speech, English Summary*, YOUTUBE (Aug. 31, 2011), http://www.youtube.com/watch?v=gRPsrYxt_XA&feature=related. He has been indicted by the International Criminal Court for crimes against humanity in connection with the repression of protesters, which included the use of live fire ammunition to disperse crowds and the deployment of snipers to fire on those leaving mosques after the Friday prayers. Zach Zagger, *ICC Issues Arrest Warrants for Libya Leader Gaddafi, His Son, Head of Intelligence*, JURIST (June 27, 2011, 8:43 AM), http://jurist.org/paperchase/2011/06/icc-issues-arrest-warrants-for-libya-leader-

inspiring masses of ordinary people courageously demanding the creation of regimes of popular sovereignty as described earlier.[103] Yet, the role of other institutions cannot be gainsaid. In particular, the army proved to be a decisive agent of the democratic transformations throughout the Arab Spring. Where the army hitched itself to the fate of the regime, as in Syria, Yemen, and Bahrain, the outcome has been far less certain, or dramatically unsuccessful.[104] Where the army has declined the invitation to kill its own people, as in Egypt and Tunisia, the ouster of the sitting ruler was swift.[105] In Egypt, in fact, the military's role is significant enough, particularly in transition, that it might well be considered in something of a (tense, perilous but nonetheless real) partnership with the Egyptian people in managing the transformation.[106] Both the people and the army are thus equal agents in engineering the fate of the transformation in these states.[107]

Thus, just as distinctions between "coup," "reform," and "revolution" are less than helpful in describing and resurrecting the romantic appeal and normative power of democratic transformations, so is a relentless focus on the people as being the exclusive agent of such transformation. Naturally, the existence of *popular support* and *legitimacy* for any transformation is fundamentally important, whether it be registered at the moment of change or years later, at first election. A democratic transformation in which the people are not invested and where the people seek something else entirely is hardly self-sustaining. Yet the precise role of the popular will in *achieving* the change, relative to other institutions or influences, might well be overstated. The revolution, that is to say, should *require* the people's support to earn the sacred space. When that support is precisely manifested, however, is of less importance.

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gaddafi,-his-son-head-of-intelligence.php. A less fitting candidate for human rights "watchdog" can scarcely be imagined.

103. *See* discussion *supra* Part I.

104. Borzou Daragahi, *Other Regimes Emboldened by Gadhafi's Brutal Tactics; Arab Leaders in Yemen and Elsewhere Follow His Lead in Using Extreme Force to Stay in Power*, CHI. TRIB., Mar. 20, 2011, at C20.

105. Eyal, *supra* note 47 ("Former Tunisian president Zine El Abidine Ben Ali fled only when his soldiers were no longer prepared to fire on demonstrators; Egypt's Mr[.] Mubarak left under similar circumstances.").

106. The words of Egypt's notorious star novelist Alaa Al Aswany, author of the best-selling *The Yacoubian Building*, perhaps best described this uneasy but real relationship as between people and military. In an interview with Thomas Friedman, Al Aswany indicated "[w]e have had a revolution here that succeeded—but is not in power. So the goals of the revolution are being applied by an agent, the army, which I think is sincere in wanting to do the right things, but it is not by nature revolutionary." Thomas Friedman, *Pay Attention*, N.Y. TIMES, May 29, 2011, at WK8.

107. . It is commonly reported that very serious questions have arisen recently respecting the democratic commitments of the military rulers of Egypt, as they begin to repress protestors and protect their own economic and political interests. *See, e.g.*, Chibli Mallat, *Saving the Egyptian Revolution from the Military*, JURIST (Dec. 27, 2011), http://jurist.org/forum/2011/12/chibli-mallat-egypt-military.php. This is indeed troubling, yet it only demonstrates the central role that the military has played and is playing in managing the democratic revolution. If the military turns enemy of the revolution, that is, the democratic future of Egypt is far more precarious.

C. The Externally Imposed Democratic Transformation

Seen in this light, the externally imposed democratic transformation is little more than locating the agency for democratic transformation at least in part in a force that is neither a domestic monarch (as in Spain) nor a domestic military (as in Tunisia and Egypt) but something external to the nation-state altogether. In some cases, such agency might even precede popular convulsions in favor of democratic rule because of the effective machinery of repression organized by the state. I was in Iraq during its first truly democratic elections, at the start of 2005.[108] I remember the manner in which men, women, and children took to the streets before sunrise, the cities silent because of the security ban on driving vehicles, each with a grim sense of determination and purpose on their way to voting booths in many cases miles away, braving suicide bombers, terrorist threats to observe a boycott, and extremist promises of future retaliation against any who dared to show up to vote.[109] I was there as late morning turned to afternoon, and the streets began to erupt in joyous celebration, with hordes of young people waving their purple fingers (stained by ink after voting, to prevent voter fraud) at any camera they could find, determined to show their lack of fear at those who sought to intimidate them against voting. Each was dressed in his finest wear, as if no more important occasion than this could be imagined. If this did not meet whatever standard we seek to establish in order to restore democratic transformation as romantic commitment, then quite frankly nothing does.

It would be wrong to say that these people *brought about* the democratic transformation in their state. It would be equally wrong to say that they did not *want* it. There was nothing devoid of popular legitimacy in this set of events, irrespective of the fact that they were brought about initially by the United States. In fact, even to describe the democratization process as being solely externally imposed prior to that election

108. At that time, I served as a Project Manager for a legal education reform project that was managed by the International Human Rights Law Institute of DePaul University. I was specifically charged with introducing experiential forms of education into the Iraqi law school curriculum. Other aspects of the project included library enhancement and other forms of curricular reform. The entire project was managed by Sermid Al-Sarraf in Baghdad and led from Chicago by David Guinn and Cherif Bassiouni.

109. HAIDER ALA HAMOUDI, HOWLING IN MESOPOTAMIA: AN IRAQI-AMERICAN MEMOIR 248–49 (2008) [hereinafter HAMOUDI, HOWLING IN MESOPOTAMIA]. To be sure, there were limitations respecting the overall success of the democratic experiment in Iraq in 2005 owing largely to the fact that the Sunni population had largely respected the electoral boycott, either out of fear or conviction, thereby exacerbating existing sectarian divisions. *Id.* at 249. This boycott was never repeated, however, and Iraqis currently vote in large numbers irrespective of sect or ethnicity. Haider Ala Hamoudi, *Identitarian Violence and Identitarian Politics: Elections and Governance in Iraq*, 51 HARV. INT'L L.J. ONLINE 78, 94 (2010) [hereinafter Hamoudi, *Identitarian Violence*], http://www.harvardilj.org/online. In any event, the point here is not that the initial election was an untrammeled success but that it was democratic and successful enough (particularly when viewed in conjunction with subsequent elections in Iraq which are deeply democratic) to act as inspiration for democratic transformation.

would be a mistake. The greatest proponent for near-term elections after the American invasion was not the United States, which counseled delay repeatedly, but rather the high Shi'i cleric Ali Sistani, who demanded elections as early as June of 2003, less than two months after Saddam's statue had been brought down in Firdous Square in central Baghdad.[110] Agency for democratic transformation, that is to say, in Iraq was divided among three different entities. The first was the United States, whose removal of an unspeakable tyrant made it possible for domestic elites to voice their demands without being summarily executed.[111] The second were domestic elites themselves, who demanded early elections and similarly sought that they be held on schedule and without delay.[112] And the third, of course, were the Iraqi people, who have in repeated electoral events voted in overwhelming numbers irrespective of ethnicity, religion, or sectarian group.

In other words, a focus on both the typology and agency of democratic transformation might be distracting us from what should be the core undertaking, which is to evaluate the transformation through its commitment to and realization of *popular democratic rule.* It may in the end be no more important that the transformation be characterized as "reform" or "revolution" than it is that it be led in the first instance by the people, the army, a monarch, a foreign power, or (more likely) some rather complex combination of the foregoing. The point is not that a democratic transformation can be possible without public support—clearly it cannot be. The point, rather, is that an additional agent is often required, at times to instigate the reform, at other times to support it, and the nationality of that agent hardly need concern the committed democrat.

Thus, internal transformations that do *not* lead to the creation of popular democratic rule, even those that might enjoy popular legitimacy in their time (such as Khomeini's Iran) are hardly inspirations for those of us passionately, normatively, and romantically committed to a conception of democratic transformation. Those that do lead to democratic transformation, even if brought about in the first instance by a well-intentioned king rather than the people, as in Spain, may be extolled. Similarly, *external* regime transformations often, indeed almost always,

110. Hamoudi, *Identitarian Violence*, *supra* note 109, at 85.

111. For more details respecting the manner in which the Saddam regime managed to silence the clerical elite wherever and whenever they sought political change of any sort, see *id.*

112. This included not only Sistani and the clerical elite, but the existing interim Iraqi government as well as the Kurdish political leadership. *See* ALI A. ALLAWI, THE OCCUPATION OF IRAQ: WINNING THE WAR, LOSING THE PEACE 344–46 (2007). Again, there was initial Sunni disaffection from the state and a resulting opposition to elections, a matter that in other contexts I have emphasized as having been particularly problematic. Hamoudi, *Identitarian Violence*, *supra* note 109, at 93–94; *see also* HAMOUDI, HOWLING IN MESOPOTAMIA, *supra* note 109, at 248–49. Yet for our purposes it suffices to say that the Iraqi people currently embrace democratic governance with fervor, and they have been instrumental in ensuring its qualified success to date. Of this there can be little doubt.

do not lead to the establishment of popular democratic rule, and are as such justifiably enough castigated. These would include the attempted destruction of a state and its incorporation into the invading state, as in Iraq's invasion of Kuwait in 1990[113] and the establishment of client states largely dependent on host state support to survive, as in former Soviet controlled Eastern Europe[114] or Lebanon during the period of Syrian occupation.[115]

Yet, at times the external intervention *does* lead to the creation of popular democratic regimes, in a manner that we later almost uniformly regard as salutary and that as a result ought to require us to reevaluate whether or not our commitment to the sovereignty of tyrants is as deep as we actually say it is. Perhaps the example par excellence of unabashed democratic imposition over elite domestic objection lies in the example of Japan. Following the conquest of Japan at the end of World War II, the United States undertook a military occupation of the country and sought a rather thorough transformation of its regime from that which was authoritarian to something far more democratic.[116] The extent and necessity of constitutional changes to bring this about proved to be among the most contentious disputes between the United States and Japanese legal elites.[117]

The Japanese, for their part, had created a committee known as the Matsumoto Committee.[118] Its initial purpose was to engage in a constitutional study; however, it quickly proposed a constitution that attempted to adhere as closely as possible to the principles of the existing Meiji Constitution.[119] One would assume that international law would then impose upon the United States duties as occupier to accept such a revision, as the Hague Convention requires a state to uphold laws in force "unless absolutely prevented,"[120] and the Matsumoto Committee, Japanese in origin and inception, was making a concerted effort to uphold existing Japanese law.

113. ALLAWI, *supra* note 112, at 43.

114. JUAN J. LINZ & ALFRED STEPAN, PROBLEMS OF DEMOCRATIC TRANSITION AND CONSOLIDATION: SOUTHERN EUROPE, SOUTH AMERICA, AND POST-COMMUNIST EUROPE 236–38 (1996).

115. Upon the conclusion of the Ta'if accords in 1990 and the conclusion of the Lebanese Civil War, Syria became the dominant power within Lebanese politics, given the equivalent of a mandate to control its affairs. FAWWAZ TRABOULSI, A HISTORY OF MODERN LEBANON 245–46 (2007). That only ended with the assassination of Lebanese Prime Minister Rafik Hariri and the subsequent Cedar Revolution. MICHAEL YOUNG, THE GHOSTS OF MARTYRS SQUARE: AN EYEWITNESS ACCOUNT OF LEBANON'S LIFE STRUGGLE 54, 57 (2010) (referring to the Cedar Revolution as the "Independence Intifada").

116. *See* MOORE & ROBINSON, *supra* note 21, at v–vi.

117. *See id.* at 23.

118. *Id.* at 73–74.

119. *See id.* at 74–75.

120. Hague Convention IV, *supra* note 20, at art. 43.

Yet this was not to be. MacArthur had earlier told Prime Minister Konoe that the Meiji Constitution required significant revision to be sufficiently democratic.[121] Faced with an existing constitution in a separate sovereign nation-state, MacArthur elected to impose his vision. The Matsumoto proposal was summarily rejected, described in a meeting with the Japanese representatives as "wholly unacceptable" to MacArthur.[122] An alternative was completed on MacArthur's orders *in six days*, by a group of twenty-one Americans which, as a cover memorandum to MacArthur proudly explained, included "nearly every form of *American* political thought."[123] It was offered with an ultimatum—either the document itself would be presented as the proposal of the Japanese government, or the government would not survive politically, as it would lose the support of MacArthur himself.[124] This document became the template of the ultimate constitution enacted in Japan about a year later, a constitution that remains in force and is the foundational document of its liberal democracy.[125]

Those of us committed to democratic transformation, however achieved, find little difficultly with all that transpired. The imposition, after all, was upon the Matsumoto Committee, which was entitled to no presumption of popular legitimacy, and MacArthur's express purpose was to ensure greater democratic transformation.[126] The revised constitution has achieved that purpose to admirable effect over the past several decades, ruling over a nation that, notwithstanding its current economic problems, rose from near total destruction to becoming the second largest economy in the world with dizzying speed.[127] There is very little to regret in this story.

By contrast, those who castigate the externally imposed democratic transformation as *per se* illegitimate and a violation of the sovereignty of another state will no doubt have a harder time explaining why it is that the United States was entitled to act as it did. The rather happy story of the evolution of Japan and Germany from fascist nightmares to democratic, stable nations stands in stark contrast, after all, to the principle that interference in the internal affairs of other states constitutes an infringement on their sovereignty, a core violation of the United Nations Charter[128] if nothing else. Yet, would anyone actually think it was the

121. *See* MOORE & ROBINSON, *supra* note 21, at 51.
122. *Id.* at 108.
123. *Id.* at 106 (emphasis added).
124. *See id.* at 111.
125. *See id.* at 110, 329.
126. *See id.* at 51.
127. *See* Michael A. Panton, *Politics, Practice and Pacifism: Revising Article 9 of the Japanese Constitution*, 11 ASIAN-PAC. L. & POL'Y J. 163, 197–98 (2008).
128. U.N. Charter art. 2, para. 4 ("All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.").

duty of the Allied powers to permit the continued existence of Nazi Germany rather than impose democratic rule? If not, then precisely how does one less apologetic than I am about the promise of imposed democracy expansion over the desires of repressive domestic forces go about defending the World War II examples while demanding greater respect be given to sovereignty for Iraq under Saddam Hussein in light of his attempted genocide of two separate indigenous populations?[129]

The explanation most often begins with Reisman's wise insight that while making regime change "generally lawful" would render international law into a nullity, regime change as a "contextually appropriate *instrument* of an intrinsically lawful action" is another matter.[130] Thus, to extend Reisman's analysis, Japan and Germany had engaged in such broad, unconscionable violations of international law, from expansionism to genocide, that to leave the regimes in place, even after the community of nations had forced their abatement, would only invite further international instability, and the replacement of the regimes was the only alternative, the "contextually appropriate instrument" to address the violations that had transpired.

While it is perfectly obvious that no system of international law could sustain itself if it became generally acceptable for one state to obliterate another for any reason it saw fit, this justification for regime change seems rather unconvincing and incomplete, at least when viewed through a contemporary lens. Could it really be said that preventing the Japanese government from enacting its own constitution was the "contextually appropriate" course in light of Japan's earlier, nearly unconditional surrender at Potsdam,[131] its seemingly sincere belief that the Meiji constitution was sufficiently democratic,[132] and the requirement of the Hague Convention to apply laws in force in a territory under occupation?[133] If the action was still justified because of the danger that Japan had only a few years earlier posed to its neighbors, then under what principle could it not have been "contextually appropriate" to force a democratic constitution upon Iraq, a totalitarian state that had invaded its neighbors twice and had to be forcibly removed each time?[134] It is true that a sanctions regime imposed in Iraq since 1991 had effectively crip-

129. Saddam's brutality as against his own people is well documented, but involves among other things the organized killing of hundreds of thousands of Kurds in the latter part of the 1980s and similar number of Shi'a in 1991, the latter undertaken by tanks adorned with the painted slogan "[n]o Shi'is [will survive] after today." MARION FAROUK-SLUGLETT & PETER SLUGLETT, IRAQ SINCE 1958: FROM REVOLUTION TO DICTATORSHIP 269–70, 289 (2001).

130. Reisman, *supra* note 8, at 89 (emphasis in original).

131. *See* MOORE & ROBINSON, *supra* note 21, at 30.

132. *See id.* at 51.

133. Hague Convention IV, *supra* note 20, at art. 43.

134. Iraq was largely responsible for starting hostilities with Iran in 1980 through a series of air raids, the impetus being a desire by Saddam Hussein to be the undisputed power broker within the Persian Gulf region. *See* FAROUK-SLUGLETT & SLUGLETT, *supra* note 129, at 256–57. It moreover invaded Kuwait in August of 1990 and claimed it as its own province. *Id.* at 279.

pled its army and prevented it from being a significant threat, but does the catastrophic effect that sanctions have upon a civilian population[135] truly make it the more "contextually appropriate" instrument to deal with Iraq? If so, why would the same not be true for 1945 Japan? The difficulty is thus apparent. *Context* can slip all too easily into *pretext* given the lack of any sort of guiding standards to understand when regime change might be acceptable as part of an "intrinsically lawful action" (whether it be war against Iraq or Japan) and when it might not.

Moreover, an approach that permits regime change as part of lawful action says little about the *nature* of the resulting regime. In other words, regime change as concerns Nazi Germany, the theory might run, was warranted in light of the unprecedented atrocities it had committed and the foreign invasions in which it had engaged. Yet, on what basis, other than an impassioned and unapologetic commitment to democratic rule, could the resulting, emerging, democratic state of West Germany, imposed by France, the United Kingdom, and the United States, be considered normatively superior to the Soviet satellite state of East Germany, imposed by the Soviet Union?[136]

Again, the passionate democrat has no such qualms. Those transformations that are democratic and undertaken with broad public support (either immediately or subsequently manifested) belong within the category of democratic transformation and occupy the sacred space. Those transformations that do not do so, regardless of how the transformation was achieved or by whom, cannot be similarly regarded. The distinction seems altogether more natural to those of us committed to the realization of the principle of democratic rule than the fruitless search for "intrinsically lawful action[s]" and "contextually appropriate instrument[s]" for them.[137]

IV. LIBYA AND THE REALITIES OF THE EXTERNAL INTERVENTION

While the ideas outlined herein may appear to some to be extreme respecting the causes and nature of external intervention, they are, I would submit, in some respects reflective of existing American policy in deed if not quite in word. As such, what is required is not so much some sort of grand change in policy, but rather an *attitudinal shift* in favor of the externally imposed democratic revolution. The problem, to state the matter forthrightly, is not so much that we are doing the wrong things, but that we obfuscate respecting our actions. In addition to having the benefit of meaning what we say, a more honest approach respecting external intervention and external imposition will also permit us to advance

135. *See* ALLAWI, *supra* note 112, at 65 (describing the catastrophic effect of the sanctions).

136. Derek J. Vanderwood, *The Korean Reconciliation Treaty and the German Basic Treaty: Comparable Foundations for Unification?*, 2 PAC. RIM L. & POL'Y J. 411, 414 (1993).

137. Reisman, *supra* note 8, at 89.

our political values as periodic eruptions such as the Arab Spring arise from time to time and to assess the extent to which such values should be compromised by the hard realities of geopolitics.

The recent upheavals in Libya demonstrate the extent to which the notion that "regime change" need be linked to some "intrinsically lawful action" has devolved into farce, and a new approach and new understanding is warranted. Libyans had for over forty years suffered under the cruel and brutal dictatorship of Moammar Al-Qaddafi, whose human rights record was a string of outrages, from disappearances to extrajudicial executions to the routine use of torture.[138] There was nothing resembling public participation in government; in fact, political parties were banned.[139] It was in this environment that the citizens of Benghazi, taking advantage of the popular uprisings throughout the region against Arab autocrats, poured out onto the streets in February of 2011 demanding their right to alter or abolish the tyranny in which they had lived since 1969.[140]

Certainly President Obama articulated a defensible position that there was a desperate need to intervene to prevent a humanitarian disaster that was alarming, if not close to Rwanda in its scale, when Qaddafi's forces began to consolidate control over all of Libya following that initial popular uprising.[141] That the Security Council repeated the same humanitarian intervention mantra in its authorization of force was certainly helpful in reinforcing that NATO had undertaken an "intrinsically lawful" action.[142] When the Arab League repeated the call on similar grounds, this may have added even greater legitimacy.[143] The case for humanitarian intervention at that point was thus plausible enough.

Yet, it is plain that NATO and its member states exceeded such a mandate many times over. The humanitarian catastrophe in the form of an assault on Benghazi had passed within only a few weeks of the start of the intervention, and the conflict swiftly settled into a civil war that became something of a stalemate, a term that even U.S. military officials

138. *See generally* BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP'T OF STATE, 2009 HUMAN RIGHTS REPORT: LIBYA (2010), *available at* http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136074.htm (describing the various human rights violations committed in Libya in 2009).

139. *Id.* at sec. 3.

140. *See* Anthony Shadid, *Cycle of Suppression Rises in Libya and Elsewhere*, N.Y. TIMES, Feb. 19, 2011, at A14.

141. Feller, *supra* note 1 ("[W]e saw regime forces on the outskirts of the city. We knew that if we waited one more day, Benghazi—a city nearly the size of Charlotte—could suffer a massacre that would have reverberated across the region and stained the conscience of the world. It was not in our national interest to let that happen. I refused to let that happen.").

142. S.C. Res. 1973, *supra* note 16.

143. Ethan Bronner & David E. Sanger, *Arab League Endorses No-Flight Zone Over Libya*, N.Y. TIMES, Mar. 13, 2011, at A1.

did not hesitate to use.[144] One could readily have imagined at that point not so much an effort to remove Qaddafi but instead a narrowly circumscribed attempt to create a "safe haven" in Benghazi and to ensure that Qaddafi was not in a position to threaten a second assault. This is precisely what the United States had done vis-a-vis Iraq's Kurdish region following its uprising in 1991.[145]

However, this was hardly what was done in Libya. Admittedly, for some number of days, the rhetoric remained fixed on the principle of protecting civilian life, with NATO commanders insisting that they were not the air wing of the rebel force.[146] But this ruse became increasingly difficult to sustain as NATO began to train and organize rebel forces,[147] as over $1 billion in aid was collected to assist the rebels,[148] and subsequently, in the middle of the stalemate, the United States recognized the rebel leadership as the governing authority of Libya and gave it access to Libyan frozen assets worth $33 billion.[149] Even after the rebels cemented control of Libya's capital, airstrikes continued as the rebels pursued pockets of resistance in parts of the country loyal to Qaddafi.[150] That this could have anything to do with civilian protection was preposterous.

Wisely, given these developments, the rhetoric respecting humanitarian intervention began to recede within weeks of the intervention and abated nearly entirely by its end. The matter was by then described more forthrightly. Two sides to a conflict had been drawn into stalemate, and NATO had plainly thrown its weight behind the side that appeared to represent the democratic aspirations of the Libyan people. Or, to quote Germany's Foreign Minister upon the decision by that nation to recognize Libya's rebels (the Transitional National Council) as its legitimate government, "[t]he Transitional Council is the legitimate representation

144. Adrian Blomfield, *Libya: John McCain Calls on U.S. to Recognise Rebel Leadership*, THE TELEGRAPH (Apr. 22, 2011, 7:37 PM), http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8469027/Libya-John-McCain-calls-on-US-to-recognise-rebel-leadership.html (quoting Adm. Mike Mullen, Chairman of the Joint Chiefs of Staff, that Libya was moving towards a "stalemate").

145. *See* FAROUK-SLUGLETT & SLUGLETT, *supra* note 129, at 294–95 (describing the Kurdish autonomous region after the First Gulf War).

146. Edward Cody & Leila Fadel, *NATO Grudgingly Expresses Regret for Strike That Killed Libyan Rebels*, WASH. POST, Apr. 9, 2011, at A10 (quoting Deputy Commander of NATO operations in Libya, Rear Adm. Russell Harding, as indicating that "I have to be frank and say it is not for us, trying to protect civilians, to improve communications with rebel forces").

147. C.J. Chivers, *Inferior Arms Hobble Rebels in Libya War*, N.Y. TIMES, Apr. 21, 2011, at A1.

148. Paul Richter, *Panetta Sees Extremism Risk in Libya Rebel Panel*, L.A. TIMES, June 10, 2011, at A7.

149. *See* William Wan & William Booth, *Libyan Rebels Given Full U.S. Recognition*, WASH. POST, July 16, 2011, at A9.

150. Rod Nordland, *Waiting Game as Talks Proceed Near a Holdout Town in Libya*, N.Y. TIMES, Sept. 7, 2011, at A14.

of the Libyan people. . . . With this council, we want to support the building of a democratic and law-abiding Libya."[151]

Thus, ultimately, NATO support for the rebels' cause was a crucial element in their victory,[152] one that would have been unimaginable *not only* if NATO had elected to refrain from its initial airstrikes, *but also* if NATO had truly attempted to circumscribe its mission in any reasonable fashion to avoiding humanitarian disaster. If, by contrast, we assume that the Libyan rebels were *not* democratic in impulse and action but instead unabashed religious fanatics along the lines of the Taliban in Afghanistan in the manner that Colonel Qaddafi suggested on repeated occasions,[153] it is hard to imagine NATO or any member state within it would have reacted similarly, nor would any committed democrat have urged them to do so. In such a case, "responsibility to protect" would almost certainly have led to a very limited set of strikes to avoid civilian massacre but certainly not to replace Qaddafi's regime, which had tempered its earlier extremist tendencies, with one broadly sympathetic to Al Qaeda.

What NATO sought, in other words, was a democratic transformation. What it did was act as agent, or co-agent in any event, to that transformation. It is true that in Libya (as opposed to Iraq or Japan) it was the people who rose up first and NATO who came to their aid thereafter. Yet this does absolutely nothing to derogate from the fact that there was an external intervention in the affairs of a sovereign state, and that intervention, beyond its earliest phases, was directed not at "protecting civilians," but at democratic transformation.

To deflect this discussion through references to responsibilities to protect and humanitarian intervention is quite deleterious for a number of reasons. First of all, it requires nations to obfuscate respecting the nature of their intervention, which of course can lead to confusion respecting its ultimate aims. Qaddafi insists preposterously that NATO's ambitions were colonial.[154] It is helpful when confronting such nonsense to respond

151. Judy Dempsey, *Germany Officially Recognizes Libyan Rebel Government*, N.Y. TIMES, June 14, 2011, at A10; *see also* Oliver Wright, *Three Days to Get Out of the UK—Hague Expels Libyan Embassy Staff*, THE INDEPENDENT (July 28, 2011), http://www.independent.co.uk/news/uk/politics/three-days-to-get-out-of-the-uk-ndash-hague-expels-libyan-embassy-staff-2327278.html (quoting the U.K. Foreign Secretary, upon British recognition of the Transitional National Council, as suggesting that "[t]hrough its actions, the National Transitional Council has shown its commitment to a more open and democratic Libya").

152. By March 11 of 2011, only weeks into the Libya uprising, it was clear that in the absence of external military intervention, the rebels in Benghazi would be extinguished by the better armed and trained Qaddafi forces. *See* Anthony Shadid, *Momentum Shift as Libyan Rebels Flee an Oil Town*, N.Y. TIMES, Mar. 11, 2011, at A1.

153. Respecting Col. Qaddafi's descriptions, *see* Richard Spencer, *I Am Like the Queen, Says Gaddafi in Plea to People*, THE DAILY TELEGRAPH, Feb. 25, 2011, at 16–17 (quoting Qaddafi as saying, "It is obvious now that this issue is run by al-Qaeda. . . . Those armed youngsters, our children, are incited by people who are wanted by America and the Western world.").

154. Dan Murphy, *Qaddafi Issues Threats: 'Let Libya Burn'*, THE CHRISTIAN SCI. MONITOR (Sept. 1, 2011), http://www.csmonitor.com/World/Backchannels/2011/0901/Qaddafi-issues-threats-Let-Libya-burn.

with what one's true aims are as they concern regime change (namely, democratic transformation), and why they are legitimate, rather than to obfuscate in turn by claiming the aim of protecting civilians even when the actions are clearly not directed in such a fashion.

But more importantly, the honest approach permits the recapture of the sacred ground for democratic transformation. It permits the United States to establish and proclaim clearly its values, and explain when it might be derogating from them and why. This is to say, Bahrain's democratic protestors were no less deserving of support from any committed proponent of democracy than those of Libya. Once we concede, as we must, that NATO's actions subsequent to its lifting the siege of Benghazi had nothing to do with humanitarian protection and everything to do with democracy promotion, then we must concede that Bahrain's restive democrats were normatively entitled to the same support, against a heartless tyrant whose security forces think nothing of shooting children, detaining human rights activists, and imprisoning doctors who tend to the wounded.[155] It may be that geopolitical considerations counsel against intervention, and that the United States and its NATO allies may not be in any sort of position to intervene to impose democracy wherever the ground seems suitably fertile. But let us at least admit to ourselves that this is a compromise to principle rather than its realization and that our commitments, our sympathies, our ideals, and our vision lie with the democratic revolutionaries and not with their opponents. Let us, if we can do nothing else, at least grant to the world's aspiring and repressed democrats their sacred space, let us honor them properly with our own romantic sympathies with their noble endeavor even if we must, distastefully and in light of the harsh realities of the world, deal with the tyrants who repress them *as if* they were legitimate.

CONCLUSION

There is no doubt that attempts to categorize revolutions, indeed radical political transformations generally, along neutral process-based lines obscure our romantic commitment to them and deny them the sacred space to which they are entitled. My own effort is only to expand on this concept. I want to suggest that our commitment to the transformation must be precisely the same if the transformation sought is radical reform or revolution, achieved through deep structural legal change or through adherence to principles of legality, as these are all but formal procedural niceties that have little to do with the result that is sought by those demanding change. Indeed, our commitment to the transformation should also be unaltered if achieved with the support, or even the instigation, of an external power with subsequent popular endorsement or by a domestic

155. For a more detailed account of the human rights atrocities to which the people of Bahrain have been subjected, *see* sources cited *supra* note 10.

force, friendly monarch or professional military, acting with popular support. In the end, what is at stake is government of, for, and by the people. How it is achieved, and by whom in the first instance, is of little consequence.