Mallat's lecture on the ME nonviolent Revolution at Harvard Middle East Center

*04/03/2011*

**Comparing the Middle East in 2011 and Europe in 1989: Nonviolence and Democratic Strategy**

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"Philosophy's aim, however, is not the reform of politics, but the development of understanding." Let me start with this line from my colleague and friend, Paul Kahn, in his book on ***Sacred Violence***.
I disagree with the statement on philosophy, in so far as understanding politics, which is informed by philosophy at its most abstract, does also have for object the reform of politics. This is not simply a remake of the famous sentence of Karl Marx in his theses on Feuerbach, "that the philosophers have only interpreted the world, in various ways; the point is to change it." Both Kahn and Marx I believe have it wrong, the aim of philosophy as a higher form of understanding, as meta-discipline, is also the reform of politics. Where both are right however, is that you do not reform politics without understanding it, and philosophy is an important tool, as well as history, and sociology, and languages, and involvement with the ME's geography, with its literature, its films, and with its people.

This is where we stand in the Middle East, today, with questions of a philosophical nature to reform politics with a better understanding of the Revolution as it unfolds. Assailed with dramatic information multiplied manifold by the digital transformation of telephone and laptop carriers into direct media agents, we are looking for our bearings to understand where we are, where we are going, and how to get there. Philosophy, like many other tools, offers one key. Contrary to expected cynicism, it is an important one. It is, in fact, the overarching one for my talk this evening.

That philosophy is the philosophy of nonviolence. And let me start with an apology, rather a half apology over the title. I will discuss haltingly 'Comparing the Middle East in 2011 and Europe in 1989', not to the liking or anticipations of those of you looking for a fully fledged comparative exercise, but my theme really is a philosophical one,

Nonviolence, and its application to the Democratic Strategy which is featured in the title.

One learns in comparative law, comparative sociology, comparative literature, that the lens of comparison is the determinant factor: how wide or precise the lens leads to very different results. Of course the ME in 2011 is so very different from Europe, that is Eastern Europe in 1989. To start with, we have no Gorbachev, no Soviet Union, no Western Europe, no EU in the ME. Instead we have the exceptionalism of Israel, of political Islam, of the oil curse, and a motley assortment of political regimes united, with some nuances, by an authoritarian system, which is more or less ruthless depending on country and time.

So it is possible to derive immediately some general traits of the comparison: the absence of communism means a different social and political structure in government and society. There was no ruling party on January 1, 2011, instead there were executive heads of states equally for life, whether they are called presidents, kings or emirs, leaders or supreme leaders: 'monarblics' is the invention of political science in the ME, that ugly hybrid of monarchies and republics. Nothing like this in 1989 Europe, where clones of the gerontocratic communist party were in the most being replicated in the various capitals. That's one small example of an evident and profound difference, and one could go on.

I won't go on with the comparison to the full, it would be tedious, and I am rather interested in what is so peculiar in the ME revolutions of 2011. I call it actually the ME ***nonviolent*** Revolution, and I would like to defend this title tonight, because on it much of the future of the ME and the rest of the world depends. Nonviolence is its overarching philosophy, and to that extent it shares it with Europe in 1989, with inevitable nuances for Libya and Romania, and the Balkan tragic route of course. Nonviolence means that the Revolution is nonviolent, and the regimes aren't, that is actually why it's nonviolent, and must remain so. Nonviolence is the philosophy of the Revolution, its Hegelian spirit, with as condition and revelator state repression as quintessentially violent, albeit to various degrees, and we are just starting.

As in all matters of historic importance, narrative is key, and is always disputed. It will differ considerably depending on speaker and time. The ME nonviolent Revolution on the march is no different, and people already disagree profoundly on its causes, triggers, forces and so forth. The dominant view for instance is that the uprisings were totally unexpected. Evidence is seen in the statements of world leaders in the early days of the Jasmine and Nile Revolutions, who had to eat their words only a few days after being on the record: remember the foreign minister of France, Michelle Alliot-Marie proposing to send French police to bolster Ben Ali's repression, and Vice President Joseph Biden talking about the non-dictator of Egypt. Surely they were surprised, and Ms Alliot Marie has since resigned. Surely she didn't expect Ben Ali to flee his country after 23 years of firm control, when the challenge to him started and removed him from power in a matter of two weeks.

Narrative then: well, my narrative is actually very different. You were blind if you did not see it coming. Worse, it's an unfortunate vision, that which discards the dozens, hundreds, of prisoners of opinion of Arab and Middle Eastern democrats in the various prisons, and alas in the many cemeteries of the long nonviolent revolution. And you can only be blind to the two major events that have taken place in the last five years carrying that nonviolent torch, the Cedar Revolution in 2005-2006 and since in Lebanon, and the Green Revolution in Iran since the summer of 2009.

To be more accurate, the wave of resistance to oppression is far deeper, and the number of journalists, lawyers, professors, human rights activists, political leaders who have rotted in prison or been assaulted and killed is probably larger in the modern Middle East than any other place in the world in recent years. One small example: people long for, look for a Mandela, rightly, a Walesa, a Havel. Take Mandela's profile, as one of the most poignant because of his near three decades in jail. Who thinks at the same level of Syria's most remarkable dissident, Riyad Turk, imprisoned for twenty years, released, then imprisoned again, and now hounded every day by a secret police which is terrified by this frail, old man walking the streets of Damascus? And I shudder at even mentioning his name tonight, lest they arrest him again.

Imam Musa Sadr, now thirty two years disappeared in Libya's jails, together with his two companions cleric Muhammad Ya'qub and journalist Abbas Badreddin. So Mr Qaddafi bought the silence of the families of the Lockerbie people, of UTA victims and others, at a time when the families of the Imam and his two companions systematically refused the millions of dollars that Qaddafi was offering them against their silence, because they only want Truth and Accountability, that constant message of a long judicial campaign which coincides today, so many years later, with the international arrest warrant issued by Interpol. How many in the US have heard of Imam Sadr's family plea? Not to mention the Libyans' pleas, for instance Mansur Kekhia, who wife was fined by the courts in Egypt for daring to challenge the disappearance of her husband in Cairo in 1993.

Other scenes of nonviolent resistance are better known, and I'd like to take a moment to say a word of thanks to the many colleagues at various levels of the US government who have stood for them. In 2000, our distinguished colleague Saadeddin Ibrahim was imprisoned for two years because he dared questioning Mubarak and his family's cronyism. His colleagues at the Ibn Khaldun Center were harassed, jailed and ruined. In March 2005, Mubarak was forced to amend Art.76 of the Egyptian Constitution by the Cedar Revolution of Lebanon showing people's power against dictatorship and leading to growing demonstrations in Cairo. The amendment was officially designed to allow other contenders to run, and Ayman Nur did. He was jailed for over three years for that act of lèse majesté, and his Ghad party destroyed. And after a courageous effort by Muhammad Barade'i two years ago to offer an alternative to absolutism, Mubarak's pressure increased so much that Mr Barade'i could no longer respond to the growing demand on him for alternative leadership without an open clash with the system. He was forced into taking the road of self-imposed exile.

Now we know that any thanks need to be qualified, for dealing with dictators in any shape or form finds its moral comeuppance sooner or later, and there is little doubt that Western governments colluded strategically with most ME dictators for oil, stability, resistance against

communism in the old days, and the Islamist movement scarecrow. Governments deal with dictators, the structure of international law makes it hard to do otherwise. What I think is a less happy story is with civil society, and not only oil companies, but the dramatic difference in intensity with the interaction with Arab and ME civil societies by their counterparts in Western democracies. My belief is that this should be remedied, as part of redressing structural mistakes, and you will hear my leitmotiv time and again tonight: Join the Middle East nonviolent Revolution.

Now nonviolence comes with immense dilemmas, let me share my own experience with you. Early in our Cedar Revolution, the assassination of colleagues started, first with Samir Kassir in June 2005. That took the joy away from an extraordinarily positive moment in the country's history, and it was followed by a string of assassinations which claimed over one hundred victims, dead or severely wounded. The Cedar Revolution never retaliated in kind: instead we called for justice, in the shape of what became the Special Tribunal for Lebanon. I can tell you attending meetings in the leadership, where blood was called for, which was pointed to Syria. How much effort and money would it cost to put a bomb in a market in Damascus? And yet, we were unanimously against it, because we would become like them, we would lose the nonviolent dimension of our Revolution, its hallmark. The colleagues in Tehran in the summer of 2009 and since have followed religiously in these footsteps.

The dilemma is real, and clear in Libya today. I think we are losing that nonviolence hallmark, and it is grave, because I do not have an easy solution. There are two principles clashing for believers in nonviolence in its purest possible form: the principle of absolute nonviolence itself, and the duty to protect, which has emerged from a string of horrors starting in the Holocaust and getting repeated in Rwanda and elsewhere. As believers in nonviolence, it is very hard to be for a no fly zone, yet I am on record for saying we should establish a nofly zone, and if it does not work, a nodrive zone. Just imagine if Qaddafi is able to reoccupy Benghazi: the bloodbath, and the setback that will follow in

Libya, but also elsewhere. It is hard: once you stand on that slippery slope, there is no end.

I take here moral refuge in two ways. First, solace is found in some form of proportionality combined with creativity. The manuals for nonviolence Gene Sharp-style advocate self-preservation, and a hundred and more methods to be proactive. The principle behind it is the sanctity of self-preservation, also known as self-defense in domestic criminal law. The stories in Cairo are wonderful of people's creativity, some of you have seen that extraordinary battle on the Nile bridge between the demonstrators and the police. It was brutal, but of course limited by the nature of the violence meted out by the government that day, which fell short of live ammunition. When you get bombarded by air, it's more difficult to be creative, hence my readiness to countenance the nofly zone, and should Qaddafi use tanks, even a no drive zone. This would mean violence of course, complicated in that case by foreign intervention. But I can't see, really, a Libyan plane dare to fly if the disproportionate power it will encounter should be borne to be exercised. We saw this in Iraq, not a Saddam plane flew after the nofly zones were established, in the North then in the South.

Second, and following on a continued search for the efficacy, the efficiency of nonviolence, I have searched for it in the domestic domain, where it is in principle banned from society. Democracy is another word for nonviolence, but we know with Robert Cover that 'judges mete violence and death', every day, in democratic societies. Even Gandhi the lawyer, Martin Luther King the reverend, never questioned this type of real, pervasive, judicial violence as illegitimate. Foucault helps think the incarceration beyond the usual bounds of accepting, indeed requesting the use of violence, by the police under judicial oversight, against murderers. But he was disappointed to see little effect to the enthusiasm triggered by his writings on prison in American academia. Without going into too fine a detail, Foucault was on to something, but he was perhaps too extreme, or too advanced for us. The bottom line is that for Amnesty International and human rights lawyers, the end of impunity is as strong a human request as nonviolence may be, and that they are not thought separately. What is not thought through enough, however, is

the necessary resort to violence to arrest Qaddafi, like any fleeing common criminal, once the arrest warrant has been issued by judges and expressed internationally by Interpol.

So join the Middle East nonviolent Revolution: in the case of Libya, it can only be an array of measures, some bordering on violence: against the risk of Qaddafi's killers reoccupying Benghazi, in the need to protect the demonstrators of Tripoli against use of disproportionate means of repression: planes, tanks, chemical weapons, triggers new dilemmas, and urgent ones. By holding on to power in this vicious manner, Qaddafi is removing the joy of nonviolence, and we must be careful for what we wish, and what we say, and what we advocate. Ideas are needed, promptly. For my part, I issued a triple call a few days ago: Develop the judicial warrant, which is now done, together with the assets freeze that comes with it, support those who stand against him, which is happening, but not in a clear and conclusive way, and level the killing field by preventing Qaddafi from use of disproportionate weaponry against non-armed demonstrators, and armed rebels, which has not yet been done.

What is plain is that Qaddafi's removal is a *sine qua non* of any new departure in Libya. It is a necessary condition, as was the case in Egypt and Tunisia. It is not sufficient, so let me now turn to the second part of my reflection on the Middle East nonviolent Revolution on the march: its constitutional moment.

**The constitutional moment**

Once the head of the dictatorship is put away, the constitutional moment starts. The Constitution is a short cut for democratic strategy, but it captures the imagination of the so-called legitimate expectations of the people more precisely, because we are talking of an agreement over a text, refurbished or totally rewritten, that encapsulates the new regime on the ruins of the old. Ruins are never neat, so it's a complex process, which is unfolding in Egypt and in Tunisia, as well as in Bahrain.

This is an occasion for a little bit of clarity on the way ahead: in Egypt and Tunisia, the argument over the head of state was never in doubt. He must go. Our Egyptian and Tunisian colleagues have internalised our mistakes, that is the mistake of the Cedar Revolution for not removing

the president, and of the Green Movement for not declaring that Sayyed 'Ali Khamene'i could not remain in power as Supreme Leader under the Iranian Constitution. Now it has changed in Iran, but it was remarkable that the demands in Egypt and in Tunisia for the removal of Mubarak and Ben Ali did not waver a second from day one. In the Gulf, the set-up of the revolutions is different, they countenance a vision of the future where their heads of state are not removed altogether.

Now let me take a moment to warn, ***pace*** 1989, against one other possibility which is so real that it has happened, and which risks getting repeated as the Middle East Revolution expands. This is the secession solution, which was also formalised in Sudan in early 2011. The Bashir regime was so intolerable that the South seceded. I know the arguments for secession, and I respect them. They are not unique to the Sudan, and they continue simmering in Iraq and elsewhere. Persecuted minorities have a legitimate communal grievance that takes the shape of the need to a state to protect them against the structural brutality of the majority. The problem however is the following: is secession to be preferred to a change of regime at the center?

I don't like secessions for a number of reasons, even if I perfectly understand the wish to cut all chords to a horrific central rule. I will mention three main ones, which we have seen in the Balkans in 1992, and which we must avoid in the Middle East in 2011: secession is a recipe for ethnic cleansing, it allows the central ruler to remain in power, and it starts the logic of further secessions. Sudan, alas, fulfils already all three logics. 200 people were killed last week, unnoticed in a massacre in the South, Bashir continues to rule with a fist of lead, and Darfur is next on the road to secession.

This is not confined to Sudan, and we know that the spectre of secession looms over Yemen, with a similar set of scenarios. I do not think this is the right way forward, there or elsewhere, including in Palestine. I have now moved to the belief that a change of regime in Israel is better, more just, and more realistic than the secession of historic Palestine into two or three states.

Back to the constitutional moment, which is the antidote to both authoritarianism and secession. A working constitution is the embodiment, over time, of nonviolence. So the philosophy is the same, except that the dictator is gone.

Naturally, as in the revolutionary pace itself, the constitutional figure varies considerably depending on each country. Like 1989 Europe, this is an integrated revolution, that's why I have resisted calling it Arab, because I truly believe that the Revolution is no less Persian, and that it will soon enough be also Israeli. I share Senator McCain's larger vision, and delight at the resignation of the former French foreign and of the LSE director. In that European revolutionary ripple of our ME revolutions – who said we Arabs are not contributing to world history? – I hope and trust Mr Berlusconi will not survive his intimate friendship with Mr Qaddafi. And I share John McCain's vision that the Middle East nonviolent Revolution, as it slowly unfolds in success, will take the revenge of our slain colleagues in Tien an Men Square. But first it must succeed in Libya, and in Iran, and in Syria. And if it fails in Libya, there will be a setback in Tunisia and Egypt.

So people are looking over their shoulders, over the borders, which explains this amazing cascade: as if out of respect, Tahrir square fell silent to wait for Pearl square to be liberated from tanks.. as if the Jasmine Revolution waited in collective awe for big brotherly brother to fall before it forced its ersatz Prime Minister to go home. And of course, we do not want nor wish to deflect the immense efforts of our Libyan colleagues. Just a passing note on the esthetics of the Middle East nonviolent Revolution.

Now we are looking over our shoulders also through the constitutional moment. Here technique, details, are key. One mistake in the constitutional rearrangement and the old regime remains, worse, one architectonic mistake in an amendment, and the nonviolent dimension of the revolution, betrayed by constitutional ineptitude, collapses. Bahrain stands today haltingly at a paroxysm, waiting for its constitutional moment.

So join the ME nonviolent Revolution, now its constitutional moment in Egypt, Tunisia, Bahrain. Here knowledge is key, legal philosophy, in the shape of constitutional drafting, is key.

Let me say to conclude a few brief words on the Egyptian and Bahraini constitutional moments:

Why Egypt and Bahrain? Well because they encapsulate the two modes of authoritarianism we are familiar with under 'monarblics': either an absolute monarchy, or an Orwellian dynastic republic, formally introduced to the Middle East by Syria in 2000.

In Egypt, we, that is myself and a group of dedicated students at Harvard law school, together with our contacts in Egypt, including Dr Adel Sherif, a long-time friend who is the Vice-President of the Supreme Constitutional Court, worked on revising Egypt's Constitution with a result that was published in the Harvard Journal of International Law on 22 February, and shared a few days earlier, as the reflection developed, with key colleagues in Egypt. That study and theamendments which were formally announced on 26 February, converge in several ways, differ in some minor points, but uphold two key needs: a limited term for the president, and the widest possible judicial oversight of parliamentary and presidential elections.

In Bahrain, the question is different, with two sets of peculiar difficulties: since a constitutional monarchy remains the dominant voice of reformists, how does one transform the 2002 Constitution in a real democracy without overhauling the King? And there is the spectre of sectarianism, with the particular socio-political set-up in the country between Bahraini Shi'is and Sunnis. The Bahraini constitutional moment, indeed, is special. Responding to it successfully will be key to Bahrain and the rest of the Arab Gulf, and to the nonviolent Revolution on the march across the region. It is worth another careful constitutional study, which we have started with Bahraini and American colleagues.

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