

THE POWER OF THE BODY: ANALYZING THE LOGIC OF LAW AND SOCIAL CHANGE IN THE ARAB SPRING

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Under conditions of extreme social and political injustice—when human rights are most threatened—rational arguments rooted in the language of human rights are often unlikely to spur reform or to ensure government adherence to citizens’ rights. When those entrusted with securing human dignity, rights, and freedoms fail to do so, and when other actors—such as human rights activists, international institutions, and social movements—fail to engage the levers of power to eliminate injustice, then oppressed and even quotidian actors may resort to non-traditional tactics of resistance. One example of these radical modes is the use of the corporeal body as a means of protest. The use of the human body to make political argument may catalyze legal, social, and cultural change where rational arguments fail. This Article examines the power of the human body in spurring political and legal action. It analyzes the 2010 self-immolation of Tarek Mohammad Bouazizi in Tunisia, which sparked an unprecedented wave of protests across Arab countries, leading to what came to be known as the “Arab Spring.” It suggests that when human rights-based arguments are exhausted, space is created for alternative strategies of resistance. Mobilized and deployed as tools of resistance, human bodies become the argument.

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I. INTRODUCTION

When life itself is negated in the struggle to challenge sovereignty, the power over life and death that the sovereign exercises becomes useless. The absolute weapons against bodies are neutralized by the voluntary and absolute negation of the body.

—Hardt and Negri

This Article examines the power of the human body in spurring political and legal action when the appeal to human rights reaches its limits. This Article analyzes the 2010 self-immolation of Tarek Mohammad Bouazizi in Tunisia, which sparked an unprecedented wave of protests across Arab countries, leading to what came to be known as the “Arab Spring.” In light of the limitations of—or, perhaps, the complete absence of—other strategies to effectively challenge injustice, this Article uses Bouazizi as a case study to explore why and how otherwise invisible and oppressed “bodies-in-pain” are able to mobilize social, political, and legal change. This Article then proposes that prior to 2011, in contexts such as Tunisia, human rights-based legal norms had little persuasive or transformative power. Instead, the deployment of the human body proved to be more effective in igniting socio-political change than rational arguments based in law. Although Bouazizi’s act occurred outside of any organized social movement, it cannot be understood in isolation from the social context. Bouazizi’s self-immolation constituted an act of defiance that succeeded in sparking social change because it amplified a pre-existing dynamic of broader social frustration and rendered it material, visible, and visceral. What Bouazizi’s self-immolation makes clear is that the corporeal form, rather than law, can constitute an argument powerful enough to topple a tyrannical regime.¹

The first section of this Article focuses on the limits of rational human rights-based legal norms in combating injustice. It argues that human rights law proves no match for certain conditions of authoritarianism. Under such circumstances, the law is an ineffective tool to protect fundamental rights and can even become a means of licensing injustice.

The second section analyzes the self-immolation of Tarek Mohammad Bouazizi in Tunisia, contending that when human rights-based arguments are exhausted, space is created for alternative forms of dissent. Mobilized and deployed as a tool of resistance, the human body itself becomes the argument for overdue political change. Much has been written about the use of self-immolation as a form of political protest; this section offers an original account of the political body as a body-in-pain, where the performance of pain becomes a catalyst of socio-political change.

In the third section, this Article offers an understanding of the body when it is positioned as the argument. The section explores the difficulty of communicating, expressing, and understanding pain. When pain cannot be denied or confined, the body expresses its own desperation and frustration, as well

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¹ See Rashid Khalidi, *Reflections on the revolutions in Tunisia and Egypt*, FOREIGN POL’Y MAG., Feb. 24, 2011, <http://foreignpolicy.com/2011/02/24/reflections-on-the-revolutions-in-tunisia-and-egypt/> (describing the revolution in Tunisia as “a moment of new possibilities in the Arab world, and indeed in the entire Middle East [as two] of the most formidable [regimes] among them—in Tunis and Cairo—[. . .] crumbled”).

as that of others who have been rendered speechless. Through the powerful public spectacle of the body-in-pain, the very act of self-immolation transforms an individual corporeal act into a mass movement.

The final section explores how by returning to the law, the oppressed population challenges the impotence of rational argument, reshapes the geographies of marginalization, establishes a break with the past, and negotiates a new pact with the state. Through an analysis of the preamble of the post-revolution Tunisian constitution, this Article illustrates how the body-in-pain under certain conditions of subjugation and disenfranchisement can successfully convert the perception of bodily self-destruction from an individual act of frustration and defiance to an act of mass mobilization that possesses socially transformative power. This Article suggests that in the case of Tunisia, the very body-in-pain that revealed the limits of rational rights-based arguments succeeded through a dialectical process in transforming the legal corpus.

II. THE FUTILITY OF HUMAN RIGHTS LAW–BASED RATIONAL ARGUMENTS

A. International Human Rights Law

The principles of international human rights law emerged in the aftermath of World War II (WWII). The Universal Declaration of Human Rights (“UDHR”) of 1948² affirmed the inherent rights enjoyed by all people:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.³

By signing the UDHR, world leaders aimed to put an end to atrocities such as those committed in WWII. Along with the addition of the International Covenant on Civil and Political Rights (“ICCPR”)⁴ and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”)⁵ in 1966, the International Bill of Human Rights⁶ detailed a conception of universal and inalienable human rights which have binding legal effects on all states.⁷ The covenants set forth the entitlement of all mankind to interdependent and indivisible civil, political, economic, social, and cultural rights.⁸ Over the course of time, this consensus and commitment to universal rights—in the form of treaties, customary international law, general principles, regional agreements, declarations, and domestic law—has become the body of international human rights

² Universal Declaration of Human Rights, G.A. Res. 217A(III), 3 U.N. GAOR, U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR].

³ *Id.* at 2.

⁴ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

⁵ International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3. (entered into force Jan. 3, 1976).

⁶ The International Bill of Human Rights is composed of the UDHR 1948, the ICCPR 1966 and its two Optional Protocols, and the ICESCR 1966. *See infra* note 7.

⁷ *International Human Rights Law*, OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx> (last visited Nov. 23, 2015).

⁸ G.A. Res. 421(V), subsec. (E), U.N. GAOR, 5th Sess., Supp. No. 20 (Dec. 4, 1950).

law.⁹ States have demonstrated their commitment to this body of law by ratifying international treaties, signaling their subscription and intent to adhere to this conception of international law and all it entails.

In principle, by ratifying the International Bill of Human Rights, governments assume various obligations and duties. They pledge to meet the minimum requirements of the universally agreed to human rights principles and to perform their obligations as part of their tacit social contract with their population to the best of their abilities. State governments commit to proactively engage in or refrain from specific acts, with the ultimate goal of promoting, fulfilling, and protecting universally recognized human rights.¹⁰ Through ratifications, governments pledge to adopt the necessary measures, including implementing legislation, to ensure that their treaty obligations are met. They are entrusted with ensuring the compatibility of their domestic laws and policies with the international treaties, aimed at protecting and advancing the status of human rights in their countries.¹¹ In addition to lawmaking, governments are supposed to take certain measures and deploy mechanisms to cement their obligations, preserve order, and enhance societal cohesion. States have the duty to put in place all measures to exercise their powers “of conferring a name on [their] people and a meaning on their social action.”¹²

Human rights defenders and those entrusted with promoting the language of rights systematically refer to these internationally recognized human rights standards as part of the world’s basic customs.¹³ They generally use human rights-based law arguments as universally recognized tools to uphold fundamental rights and values, to foster human well-being and dignity, and to address the consequences of government violence and abuses of power. Accordingly, they perceive human rights discourse as an effective, universal, and rational form of argument.¹⁴

B. Instrumental Value Of International Treaties

At present, all UN member states have ratified at least one of the nine core international human rights treaties, with eighty percent having ratified four or more instruments.¹⁵ While this number provides a clear indication of widespread formal state support for international human rights law, the question remains as to whether states’ ratification of international treaties contributes to the effective realization of human rights.

Profoundly repressive regimes ratify international treaties and *officially* express their rhetorical commitment to internationally recognized laws and norms protecting human rights.¹⁶ But an official endorsement of human rights norms does not guarantee state compliance with their international obligations.¹⁷ State practices clearly indicate that ratification and public endorsement of human rights norms

⁹ *The Foundation of International Human Rights Law*, UNITED NATIONS, <http://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html> (last visited Nov. 23, 2015).

¹⁰ *Id.*

¹¹ *Id.*

¹² CHIARA GIORGETTI, A PRINCIPLED APPROACH TO STATE FAILURE: INTERNATIONAL COMMUNITY ACTIONS IN EMERGENCY SITUATIONS 48 (2010).

¹³ Jack Donnelly, *Cultural Relativism and Universal Human Rights*, 6 HUMAN RIGHTS Q. 400, 405 (1984).

¹⁴ WILLIAM A. SCHABAS, THE ABOLITION OF THE DEATH PENALTY IN INTERNATIONAL LAW 377 (3d ed. 2002).

¹⁵ UNITED NATIONS, *supra* note 9.

¹⁶ Emilie M. Hafner-Burton & Kiyoteru Tsutsui, *Justice Lost! The Failure of International Human Rights Law To Matter Where Needed Most*, 44 J. PEACE RES. 407, 408 (2007).

¹⁷ Oona A. Hathaway, *Why Do Countries Commit to Human Rights Treaties?*, 51 J. CONFLICT RESOL. 588, 590 (2007).

by political leaders are no guarantee that these norms will be respected domestically. In other words, even states that have ratified international human rights treaties might not respect the human rights of their citizens.¹⁸ A state may subscribe to an international agreement merely as a symbolic gesture, or as a superficial expression of a presumed interest in combating injustice and promoting human rights. In reality, there is no reliable association between treaty ratification and respect for human rights.¹⁹ The effectiveness of treaties is conditional on state compliance, which is in turn dependent on the effective functioning of democracy and civil society.²⁰ In their quantitative research, Hanfer-Burton and Tsutsui provide evidence to show that:

[H]uman rights laws are most effective in stable or consolidated democracies, or in states with strong civil society activism. If so, treaties may be failing to make a difference in those states most in need of reform—the world’s worst abusers—even though they have been the targets of the human rights regime from the very beginning.²¹

According to Hanfer-Burton and Tsutsui, international agreements may be effective in states that have strong civil societies.²² In such contexts, civil society constantly lobbies for reform and monitors government compliance with international treaties.²³ In repressive states, civil society advocates can operate only within the margins of allocated space, utilizing various mechanisms to mobilize for reform and effect change.²⁴ However, most repressive states lack the two principal interdependent conditions for genuine implementation of human rights law: democratic mechanisms through which the promise of human rights norms can be effectuated, and civil society institutions capable of pressing for the implementation of those norms.²⁵ When neither condition is present, international human rights law is stripped of its tools and its potential.²⁶ As a result, not only does ratification of human rights treaties by repressive regimes fail to guarantee better respect for human rights, it also risks providing those regimes with a political fig leaf to conceal violations of human rights.²⁷

While some human rights scholars have been optimistic about the effectiveness of human rights law and its contribution to the promotion of human rights in repressive societies,²⁸ others have offered evidence to the contrary,²⁹ demonstrating the conditional effectiveness of human rights law.³⁰ The latter tend to doubt states’ actual compliance with international human rights law which, “if it takes place at all, may well happen sporadically and in fits and starts.”³¹ In this view, even if international law is actually implemented in repressive states, it will not produce results within a short period of time—certainly not at the time of

¹⁸ Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L.J. 1935, 1941–89 (2002).

¹⁹ Oona A. Hathaway, *The Promise and Limits of the International Law of Torture*, in TORTURE: A COLLECTION 199, 199–215 (Sanford Levinson ed., 2004).

²⁰ Hanfer-Burton & Tsutsui, *supra* note 16, at 407.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ SCHABAS, *supra* note 14.

²⁷ James Raymond Vreeland, *Political Institutions and Human Rights: Why Dictatorships Enter into the United Nations Convention Against Torture*, 62 INT’L ORG. 65 (2008).

²⁸ Hanfer-Burton & Tsutsui, *supra* note 16.

²⁹ SCHABAS, *supra* note 14.

³⁰ Hanfer-Burton & Tsutsui, *supra* note 16.

³¹ *Id.* at 409.

ratification, nor during the first few years after ratification.³² On the contrary, if actual compliance with international law takes place at all, it does so sporadically, it takes a long period of time to take effect, and it must generally converge with the interests of the state.³³

The status of the Convention on the Elimination of All Forms of Discrimination Against Women 1979 (“CEDAW”) in the countries that have ratified it offers a helpful example of the gulf between ratification and implementation.³⁴ To date, 189 of the 194 diverse UN member states have ratified CEDAW, which enshrines the basic political, civil, cultural, economic, and social human rights of women.³⁵ Among the ratifying countries are some of the world’s most liberal democracies—such as Switzerland, Sweden, and France—as well as nations with regimes that are notoriously repressive of women’s rights, such as Afghanistan, Pakistan, and Saudi Arabia.³⁶ Saudi Arabia ratified CEDAW in September 2000, expressing its commitment to protecting and promoting the rights of Saudi women while highlighting its reservations to several of the convention’s articles.³⁷ Fourteen years later, women in Saudi Arabia still suffer from gross structural inequality and gender-based biases.³⁸ Domestic laws regulating citizenship rights, inheritance, and personal status continue to disadvantage Saudi women, who are still unable to enjoy the basic right of driving a vehicle based solely on their gender.³⁹ Like other international legal instruments, CEDAW is not self-executing; it provides a blueprint for states to follow in order to promote women’s human rights. Moreover, the international community cannot hold states accountable for their failure to respect their obligations under the treaty, because CEDAW does not provide the necessary accountability mechanisms to do so.⁴⁰ As a result, ratification of CEDAW alone does not automatically bring about more equal rights for women. As is the case with other international human rights documents, there are often gaps between a state’s ratification, and the actual enjoyment of the rights enshrined in the treaty by its subjects.

The Islamic Republic of Iran provides us with another example.⁴¹ In 1968, on the twentieth anniversary of the Universal Declaration of Human Rights, Tehran hosted the first United Nations International Conference on Human Rights, which declared that the “members of the international community fulfill their solemn obligations to promote and encourage respect for human rights and fundamental freedoms for all without distinctions of any kind such as race, colour, sex, language, religion,

³² *Id.* at 407–25 (The “Burton model” was designed to assess the effectiveness of international treaties. Burton looked at the extent of states’ implementation of the ICCPR and Convention Against Torture to examine the effectiveness of international documents. The findings showed that after one year of ratification of an international treaty, states were no more likely to adopt legal reforms).

³³ Hanfer-Burton & Tsutsui, *supra* note 16, at 407–25.

³⁴ *Saudi Arabia: End Driving Ban for Women*, HUMAN RIGHTS WATCH, Oct. 24, 2013, <http://www.hrw.org/news/2013/10/24/saudi-arabia-end-driving-ban-women>.

³⁵ Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) U.N. Doc. A/34/46, at 193 (entered into force Sept. 3, 1981).

³⁶ *See United Nations Treaty Collection Chapter IV Human Rights*, UNITED NATIONS, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en (last visited Nov. 23, 2015) (listing all parties to CEDAW).

³⁷ *Id.*

³⁸ Christoph Wilcke, *Steps of the Devil: Denial of Women’s and Girls’ Rights to Sport in Saudi Arabia*, HUMAN RIGHTS WATCH, Feb. 15, 2012, <https://www.hrw.org/report/2012/02/15/steps-devil/denial-womens-and-girls-rights-sport-saudi-arabia>.

³⁹ *Saudi Arabia: End Driving Ban for Women*, *supra* note 34.

⁴⁰ Wilcke, *supra* note 38. *See also* UNITED NATIONS, *supra* note 36 (noting, however, that some would characterize the existence of the CEDAW Committee as an “accountability mechanism” because women can bring individual complaints against their state).

⁴¹ The Rule of Law in Armed Conflicts Project, GENEVA ACADEMY OF INT’L HUMANITARIAN LAW AND HUMAN RIGHTS, <http://www.geneva-academy.ch/policy-studies/research-projects-and-policy-studies/the-rulac-war-report> (last visited Nov. 23, 2015) (listing the treaties to which the Islamic Republic of Iran has signed on as a party).

political or other opinions.”⁴² It further emphasized that the primary aim of the United Nations in the sphere of human rights:

[I]s the achievement by each individual of the maximum freedom and dignity. For the realization of this objective, the laws of every country should grant each individual, irrespective of race, language, religion or political belief, freedom of expression, of information, of conscience and of religion, as well as the right to participate in the political, economic, cultural and social life of his country.⁴³

Contrary to the rhetorical value of this proclamation made four decades ago, Iran is one of the ten countries that practice the most state censorship.⁴⁴ The report published by the Committee to Protect Journalists claims that Iran maintains one of the toughest Internet censorship regimes in the world.⁴⁵ A review of the Reporters Without Borders 2015 World Press Freedom Index shows that Iran has continued to fall in the index since 2003.⁴⁶ It is currently ranked 173 out of 180 countries surveyed.⁴⁷ Human Rights Watch describes the status of human rights in Iran as dire.⁴⁸ In 2014, Iran was considered one of the biggest jailers in the world of journalists, bloggers, and social media activists.⁴⁹ Notably, it inflicted the second highest number of executions in the world after China, including the execution of the largest number of juvenile offenders.⁵⁰ The discrepancy between treaty ratification and implementation is not limited to non-Western signatories. For example, out of 178 countries surveyed in 2012 and 2013 on press freedoms, for example, the United States was ranked 132nd.⁵¹

C. When The Language Of Rights Runs Dry

In authoritarian societies characterized by strict censorship and restrictions of civil rights and liberties, international treaties cannot be expected to effectively challenge repression, or to minimize stifling bureaucracy, nepotism, bribery, or corruption. Legal channels for redress can be inadequate; they may prove ineffective in preventing state practices that discriminate against people on the basis of race, color, sex, religion, or national origin.⁵²

In the most repressive regimes, widespread civic frustration is often overlooked, and calls for adherence to human rights tend to be ignored. Disadvantaged citizens continue to live on the margins and

⁴² PROCLAMATION OF TEHERAN, FINAL ACT OF THE INTERNATIONAL CONFERENCE ON HUMAN RIGHTS, TEHERAN, 22 APRIL TO 13 MAY 1968 4, UNITED NATIONS PUBLICATION A/CONF. 32/41 (1968), *available at* http://legal.un.org/avl/pdf/ha/fatchr/Final_Act_of_TehranConf.pdf.

⁴³ *Id.*

⁴⁴ *The 2015 List of 10 Most Censored Countries*, COMMITTEE TO PROTECT JOURNALISTS, <https://cpj.org/2015/04/10-most-censored-countries.php> (last visited Nov. 23, 2015).

⁴⁵ *Id.*

⁴⁶ *2015 World Press Freedom Index*, REPORTERS WITHOUT BORDERS, <https://rsf.org/en/ranking/2015#> (last visited Nov. 23, 2015).

⁴⁷ *Id.*

⁴⁸ *World Report 2015: Iran*, HUMAN RIGHTS WATCH, <https://www.hrw.org/world-report/2015/country-chapters/iran> (last visited Nov. 23, 2015).

⁴⁹ *Id.*

⁵⁰ *Id.* (reporting that between January and October 2014, the Iranian government had executed at least 200 prisoners, and that in 2014, the United States executed 33 people by lethal injections composed of experimental drugs).

⁵¹ In 2015 the United States ranked in 49th place, behind Niger and Malta. *See 2015 World Press Freedom Index*, *supra* note 46.

⁵² UDHR, *supra* note 2.

endure brutal forms of injustice.⁵³ Civil society is generally weak and confined to addressing certain discrete injustices or to tackling the absence of the rule of law.⁵⁴

In Tunisia, for example, prior to the 2010 Jasmine Revolution,⁵⁵ its constitution and accompanying domestic law contained language that projected the notion of a liberal, democratic, and modern legal system—legal language that theoretically enshrined political rights and freedoms of association and expression.⁵⁶

When this aspirational legislation was actually applied by Zine El ‘Abidine Ben Ali’s regime, Tunisia appeared to be among the leading countries in the Middle East when it came to respecting civil and social rights.⁵⁷ It introduced progressive legislation that enshrined the rule of law and respect for human dignity. However, there remained a profound gap between legal rhetoric and practice.⁵⁸

The trajectory of human rights in Tunisia during the twenty-three year-long dictatorship of President Ben Ali illustrates how a government that ratified more international treaties than any Middle Eastern country gradually subverted the language of law as part of a strategy to consolidate absolute power. A long list of treaties was ratified by the Ben Ali regime, including the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1988; the Convention on the Rights of the Child, 1992; the International Convention Against the Taking of Hostages, 1997; the Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, 2000; the Convention on the Reduction of Statelessness, 2000; and the Optional Protocol to the Convention on the Elimination of Discrimination against Women, 2008.⁵⁹ All of these treaties were drafted with the aim of advancing the status and rights of women, children, refugees, and minorities.⁶⁰

⁵³ See 2009 Human Rights Report: Tunisia, U.S. DEP’T OF STATE: BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LAB., Mar. 11, 2010, <http://www.state.gov/j/drl/rls/hrrpt/2009/nea/136081.htm> (stating that nongovernmental institutions and international organizations reported governmental violations of human rights, specifically those inflicted by the security forces, including torture, lengthy pretrial detention, forced interrogation, and sexual assault); see also BRIEG POWEL & LARBI SADIKI, EUROPE AND TUNISIA: DEMOCRATIZATION VIA ASSOCIATION 137 (2010).

⁵⁴ Christopher Alexander, *Back from the Democratic Brink: Authoritarianism and Civil Society in Tunisia*, 27 MIDDLE EAST REP. (1997), <http://www.merip.org/mer/mer205/authoritarianism-civil-society-tunisia>. See also Veronica Baker, Undergraduate Honors Thesis, *The Role of Civil Society in the Tunisian Democratic Transition*, CU SCHOLAR, U. OF COLO. 1, 24–35 (2015), http://scholar.colorado.edu/cgi/viewcontent.cgi?article=2212&context=honr_theses (providing further information about the history of the civil society in Tunisia. For example, the ruling regime greatly limited the freedom of association. While formally, the law guaranteed the freedom of expression and association Article 8 of the Constitution of Tunisia of 1959, in reality civil society was tightly controlled by the government).

⁵⁵ Eva Bellin, *Lessons from the Jasmine and Nile Revolutions: Possibilities of Political Transformation in the Middle East?*, 50 MIDDLE EAST BRIEF 1, 5–7 (2011), <http://www.brandeis.edu/crown/publications/meb/MEB50.pdf>. One of the fundamental calls of the revolution was to halt corruption and restore the dignity of the people of Tunisia. The Jasmine Revolution is also known by Tunisians as *Thawrt Al-Karama* or “The Dignity Revolution.”

⁵⁶ See generally Habib Ayeub, *Social and Political Geography of the Tunisian Revolution: The Alfa Grass Revolution*, 38 REV. OF AFR. POL. ECON. 467 (2011).

⁵⁷ See AMNESTY INT’L MEDIA BRIEFING, TUNISIA: ROUTINE MUZZLING OF DISSENT MARS UPCOMING PRESIDENTIAL ELECTIONS, 23RD OCTOBER 2009, <https://www.amnesty.org/en/documents/MDE30/013/2009/en/>.

⁵⁸ See U.S. DEP’T OF STATE, TUNISIA REPORT (2009), <http://www.state.gov/documents/organization/160078.pdf>.

⁵⁹ See generally *Ratification of International Human Rights Treaties – Tunisia*, U. OF MINN. HUMAN RIGHTS LIBRARY, <http://www1.umn.edu/humanrts/research/ratification-tunisia.html> (last visited Nov. 23, 2014).

⁶⁰ HUMAN RIGHTS WATCH, HUMAN RIGHTS WATCH WORLD REPORT 1997: EVENTS OF 1996, 306–07 (1997).

Even domestically, Ben Ali adopted the language of reform when he came to power in 1987.⁶¹ He introduced a set of laws and policies that enshrined more liberties,⁶² such as releasing most of the public figures who were arrested during Habib Bourguiba's reign, repatriating opposition members in exile, and increasing state funding to political parties and their publications.⁶³ Ben Ali also allowed radio and television stations to broadcast calls for prayers ("ezan"), which were banned during the Bourguiba era, and permitted the religious supreme council to publish a religious magazine, *Al-Hedaya*.⁶⁴

However, after Ben Ali was elected for a second successive term, his interests shifted from what appeared to be promoting social and economic rights to building a centralized state regime.⁶⁵ Ben Ali gradually reshaped the state from a civil democracy to an autocratic dictatorship.⁶⁶ He enhanced the role of the ruling party, suppressed opposition, and directly supervised the function of brutal security apparatuses.⁶⁷ During the second term, citizens realized that the promises of alleviating poverty, combating unemployment, and ensuring the independence of the judiciary and separation of powers were merely re-election campaign slogans.⁶⁸ In return, focused only on one facet of the international community's calls for reform: he used their economic ranking reports to reassure the public that the ruling regime was working to advance social welfare, all the while ignoring all other calls for reform, including ceasing torture and respecting human rights.⁶⁹

Between 2000 and 2010, the gulf between the legal rhetoric of human rights and the reality of a legally authorized reign of terror in Tunisia continued to grow.⁷⁰ The Ben Ali regime continued to ignore repeated condemnations by the international community;⁷¹ it used the language of law and human rights to justify its censorship, abuse, and repression of civic rights.⁷² In the name of security and combating terrorist threats, Ben Ali had found an opportunity to squash domestic dissent and calls for a more democratic system.⁷³

⁶¹ OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR), REPORT OF THE OHCHR ASSESSMENT MISSION TO TUNISIA JANUARY 26 – FEBRUARY 2, 2011, http://www.ohchr.org/Documents/Countries/TN/OHCHR_Assessment_Mission_to_Tunisia.pdf [hereinafter OHCHR Report].

⁶² Alejandro Sanchez, *Tunisia: Trading Freedom for Stability May Not Last—An International Security Perspective*, 9 DEFENCE STUD. 85 (2009), <http://www.tandfonline.com/doi/abs/10.1080/14702430802666660>.

⁶³ MOSHE DAYAN CENTER FOR MIDDLE EASTERN AND AFRICAN STUDIES, MIDDLE EAST CONTEMPORARY SURVEY XXIV 568–71 (Bruce Maddy-Weitzman ed., 2003).

⁶⁴ Nebahat Tanriverdi, *Background of the Tunisian Revolution*, 3 ALTERNATIVE POL. 557 (2011).

⁶⁵ OHCHR, *supra* note 61.

⁶⁶ *Id.*

⁶⁷ ROUTLEDGE HANDBOOK OF THE ARAB SPRING: RETHINKING DEMOCRATIZATION 72 (Larbi Sadiki ed., 2014).

⁶⁸ *Tunisia Country Summary*, COUNTRIES AT THE CROSSROADS (Freedom House), 2007, <https://freedomhouse.org/report/countries-crossroads/2007/tunisia>.

⁶⁹ See CORINNA MULLIN, *Tunisia's Revolution and the Domestic-International Nexus*, in ROUTLEDGE HANDBOOK OF THE ARAB SPRING: RETHINKING DEMOCRATIZATION 94–95 (2014) (assessing the Tunisian uprising from the international perspective).

⁷⁰ POLITICAL LIBERALIZATION AND DEMOCRATIZATION IN THE ARAB WORLD 242 (Rex Brynen, Bahgat Korany & Paul Noble, 1995).

⁷¹ Public Statement, Amnesty Int'l, Tunisia: Abuses Continue Despite Official Denial, (July 2, 2008), <https://www.amnesty.org/en/documents/mde30/010/2008/en/>.

⁷² See AMNESTY INT'L, AMNESTY INTERNATIONAL REPORT 2008: THE STATE OF THE WORLD'S HUMAN RIGHTS 299 (2008), <https://www.amnesty.org/en/documents/document/?indexNumber=pol10%2F001%2F2008&language=en>.

⁷³ TUNISIA: UNDERSTANDING CONFLICT 2012 23 (P. Terrence Hopmann & I. William Zartman eds., 2012).

The Ben Ali government was among the most repressive countries in the world in terms of freedom of speech.⁷⁴ In 2008, Tunisia was ranked 175th out of 195 countries for protecting or permitting free speech in a survey conducted by Freedom House.⁷⁵ Clearly, the numerous international treaties adopted by the Tunisian government proved to be ineffective as tools to ensure freedom of expression for the Tunisian people. And even though the principle of freedom of expression had been enshrined in the Tunisian Constitution,⁷⁶ the country's Press Code of 1975 emptied those free speech provisions of their liberal meaning:⁷⁷ the Code required all publications to be vetted by the Ministry of Interior before distribution.⁷⁸ The Ministry had to approve each publication and issue a receipt permitting publishers to release and disseminate the publication under consideration.⁷⁹ Generally, such receipts were not issued in accordance with specific criteria in a timely manner, but rather, were bureaucratically delayed and subjected to changing and nontransparent criteria.⁸⁰ Furthermore, the Press Code classified defamation against state institutions and "offending" the President of the Republic as criminal offences.⁸¹ The law employed the deliberately broad term with no definition or interpretive guidance as to the kind of acts that could be deemed offensive.⁸² Under such politically and socially repressive conditions, state control impeded the efforts of citizens and human rights advocates to express dissent. Constitutional law and human rights guarantees were ineffective tools for protecting citizens' civil liberties.⁸³

Authoritarian regimes not only rule with an explicitly iron fist, but also preserve wealth and power through complex, less conspicuous tools of social discipline and control. Modern state power tends to be manifested and enacted through the creation of a culture of dependency whereby citizens are managed through fear, hunger, consumerism, and intimidation;⁸⁴ the exploitation of available natural and human resources; and—importantly—control of the language of the law. By strategic deployment and manipulation

⁷⁴ *Tunisia Country Summary*, FREEDOM IN THE WORLD (Freedom House), 2008, <https://freedomhouse.org/report/freedom-world/2008/tunisia>.

⁷⁵ *Id.*

⁷⁶ Tunisia Const., art. 8 (1959).

⁷⁷ See The Press Code of 1975 (Code de la presse de 1975) and its amendments of 1988, 1993, 2001 and 2006, <https://translate.google.com/translate?hl=en&sl=fr&u=http://www.droit-afrique.com/images/textes/Tunisie/Tunisie%2520-%2520Code%2520de%2520la%2520presse%25202010.pdf&prev=search>.

⁷⁸ See The Press Code of 1975. The Tunisian government tightly controlled all means of disseminating news and information. For example, in 2007, the government blocked citizens' access to public video-sharing spaces such as YouTube and DailyMotion, simply because both sites contained materials regarding Tunisian political prisoners. As an alternative, activists succeeded in linking information and videos about fundamental rights and civil liberties to the image of the Tunisian presidential palace through Google Earth. See Ayeb, *supra* note 56.

⁷⁹ The Ben Ali regime was committed to silencing voices of opposition. In 2004, soon after its establishment, the government blocked *Nawaat*, a collective blog, which strived to cast out collective frustration in Tunisia, and contributed to channeling the opposition to Ben Ali's regime. The blog remained blocked until 2011. See STATE POWER 2.0: AUTHORITARIAN ENTRENCHMENT AND POLITICAL ENGAGEMENT WORLD 50–52 (Muzammil M. Hussain & Philip N. Howard eds., 2013); see also LYOMBE S. EKO, NEW MEDIA, OLD REGIMES: CASE STUDIES IN COMPARATIVE COMMUNICATION LAW AND POLICY 149 (2012).

⁸⁰ See Alexander, *supra* note 54.

⁸¹ *Tunisia Country Summary*, COUNTRIES AT THE CROSSROADS (Freedom House), 2012, http://www.hrw.org/sites/default/files/related_material/tunisia_2012.pdf.

⁸² *Id.*

⁸³ See AMNESTY INT'L, AMNESTY INTERNATIONAL REPORT 2013: THE STATE OF THE WORLD'S HUMAN RIGHTS 271–272 (2013), http://files.amnesty.org/air13/AmnestyInternational_AnnualReport2013_complete_en.pdf (documenting human rights violations under the Ben Ali regime and demanding legal reform and adherence to international human rights standards for nearly a decade).

⁸⁴ Marwan M. Kraidy, *The Body As Medium in the Digital Age: Challenges and Opportunities*, 10 COMM. & CRITICAL/CULTURAL STUD. 285 (2013).

of power, states portray a “façade democracy”⁸⁵ and utilize the law to justify government action,⁸⁶ thereby devaluing the power of law to effect transformative change. The language of human rights law—embodied in international agreements and even in domestic law—offers repressive states a powerful tool to legitimize repressive practices.⁸⁷

The Ben Ali regime used the introduction of progressive laws and the ratification of international treaties as political propaganda, aimed at depicting the regime as a progressive, rights-respecting democracy.⁸⁸ This tactic was designed not only to placate the international community, but also to pacify the discontented Tunisian people.⁸⁹ However, it ensured the centralization of power in the hands of the presidency and his security apparatus.⁹⁰ It was subsequently used to repress Tunisian citizens.⁹¹ The Ben Ali regime rejected in practice the legal principle of political diversity and the right of citizens to assemble or form political parties.⁹² In 2003, for example, the Tunisian government passed counterterrorism legislation with the purported aim of enhancing security and combating terrorism, named *The Law of 2003 Concerning Supporting International Efforts to Combat Terrorism and Forbid Money Laundering*.⁹³ Between 2003 and 2010,⁹⁴ under the guise of combating terrorism, the Tunisian government arrested and tortured hundreds of citizens,⁹⁵ charging them with affiliation with terrorist organizations and incitement to terrorism.⁹⁶ Under the rubric of complementing the international community’s efforts to combat terrorism, the law was used as a means to justify torture, illegal and/or secret detention, and to suppress any form of political dissent.⁹⁷

The 2003 counterterrorism law opened the door for the judiciary and apparatus to accuse,⁹⁸ detain, interrogate, and try “terrorism” suspects,⁹⁹ and it did so through deliberately and ambiguously worded text to

⁸⁵ Larbi Sadiki, *Political Liberalization in Bin Ali’s Tunisia: Facade Democracy*, 9.4 DEMOCRATIZATION 122, 123–25 (2002).

⁸⁶ In 2002, a referendum revised the Tunisian Constitution, aiming to empower the President and ensure his permanence in power. The referendum removed the Constitution’s three-term limit, allowing the President to run for an unlimited number of successive five-year terms. Additionally, it modified the upper age limit for the presidency, raising it from seventy to seventy-five. See POWEL & SADIKI, *supra* note 53.

⁸⁷ Laura Bazzicalupo, *Imagination, Imaginary and the Bioeconomic Turn of Cognitive Capitalism*, in THE POLITICS OF IMAGINATION 86, 86–91 (Chiara Bottici & Benoît Challand eds., 2011).

⁸⁸ THE STRUGGLE OVER DEMOCRACY IN THE MIDDLE EAST: REGIONAL POLITICS AND EXTERNAL POLICIES 32–33 (Nathan J. Brown & Emad El-din Shahin eds., 2010).

⁸⁹ Eric Goldstein, *Dismantling the Machinery of Oppression*, HUMAN RIGHTS WATCH, Feb. 16, 2011, <https://www.hrw.org/news/2011/02/16/dismantling-machinery-oppression>.

⁹⁰ STEPHEN J. KING, THE NEW AUTHORITARIANISM IN THE MIDDLE EAST AND NORTH AFRICA 171–74 (2009).

⁹¹ *Id.*

⁹² *Id.*

⁹³ *The Law of 2003 Concerning Supporting International Efforts to Combat Terrorism and Forbid Money Laundering* (Arabic), Law No. 75 of 2003, Official Gazette Issue No. 99, 3808 (2003), <http://www.cnudst.rnrt.tn/jortsrc/2003/2003a/ja0992003.pdf>.

⁹⁴ Human Rights Watch World Report 2009: Events of 2008, HUMAN RIGHTS WATCH 517, https://www.hrw.org/sites/default/files/reports/wr2009_web.pdf [hereinafter Human Rights Watch World Report].

⁹⁵ Alexis Arieff, *Tunisia: Recent Developments and Policy Issues*, 5.2 CONGRESSIONAL RESEARCH SERVICE 274 (2011), <http://fpc.state.gov/documents/organization/155560.pdf>.

⁹⁶ Public Statement, Amnesty Int’l, Tunisia: Abuses Continue Despite Official Denial (July 22, 2008).

⁹⁷ UN Human Rights Council, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism*, ¶ 10, U.N. Doc. A/HRC/20/14/Add.1; GAOR, 20th Sess. (Mar. 14, 2012), http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-14-Add1_en.pdf.

⁹⁸ Human Rights Watch World Report, *supra* note 94, at 518.

⁹⁹ Tunisia: Counterterror Law Endangers Rights, HUMAN RIGHTS WATCH, Jul. 31, 2015, <https://www.hrw.org/news/2015/07/31/tunisia-counterterror-law-endangers-rights>.

make the scope of potential “terrorist” offenses as broad as possible.¹⁰⁰ Tunisians were sentenced under the law classifying a myriad of individual acts as “offences of terror,” such as growing a beard, dressing in a specific manner, or accessing prohibited websites.¹⁰¹ The UN Human Rights Council documented 3,000 cases in which citizens were sentenced under the 2003 law for such “offences of terror.”¹⁰² The UN repeatedly expressed serious concerns regarding the 2003 law’s incompatibility with international law, particularly the due process and freedoms of expression and belief provisions enshrined in the International Covenant on Civil and Political Rights (ICCPR),¹⁰³ which Tunisia ratified without reservation in 1969. The UN stressed that the counterterrorism law—primarily Article 4¹⁰⁴—did not contain precise or explicit definitions of terrorism, terrorist groups, incitement to terrorism, and financing of terrorism. In effect, the 2003 law was used by the regime as a tool of oppression against Tunisian citizens.¹⁰⁵

Civil society under Ben Ali’s regime was strictly confined. Although more than 9,800 voluntary and national organizations were officially registered as of 2009, few of them were able to operate independently.¹⁰⁶ The Ministry of the Interior had *de jure* and *de facto* control over civil society organizations.¹⁰⁷ According to Freedom House: “Most associations were service-oriented and coopted by the regime, and did not foster the kind of horizontal membership that contributes to a civic culture.”¹⁰⁸ The state “maintain[ed] a dominant and intrusive role in civil society, [and created] exceptionally restrictive conditions [. . .].”¹⁰⁹ As a strategy to navigate the needs of the international community, the regime allocated a constrained, artificial space for the functioning of civil society.¹¹⁰ By metaphorically attempting to cover the sun with a sieve, Ben Ali enabled the authoritarian regime to appear more democratic, thereby making it more resilient and resistant to calls for change.

International advocacy organizations such as Amnesty International repeatedly addressed the human rights violations perpetrated by the Tunisian government.¹¹¹ Many statements, reports, and studies were released detailing the litany of human rights abuses and calling for urgent state action to halt the abuses and

¹⁰⁰ Jonathan G. Farley, *Tunisia: Forty Years on from Independence*, 270 CONTEMP. REV. 125–27 (1997).

¹⁰¹ *Id.*

¹⁰² Human Rights Watch World Report, *supra* note 94.

¹⁰³ Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, *Mission to Tunisia*, Human Rights Council, U.N. Doc A/HRC/20/14/Add.1 (Mar. 12, 2012).

¹⁰⁴ *Id.* at 5–6. Article 4 of the Law of 2003 Concerning Supporting International Efforts to Combat Terrorism and Forbid Money Laundering (Arabic) defines *terrorism* as “Every crime, regardless of its motives, connected to an individual or collective initiative (enterprise) aiming at terrorizing one person or a group of people and spreading fear among the population, for the purpose of, among other things, influencing State policies and compelling it to act in a particular way or preventing it from so acting; or disturbing public order or international peace and security, or attacking people or facilities, damaging buildings housing diplomatic missions, prejudicing the environment, so as to endangering the life of its inhabitants, their health or jeopardizing vital resources, infrastructures, means of transport and communications, computer systems or public services.”

¹⁰⁵ *Tunisia: Amend Draft Counterterrorism Law*, HUMAN RIGHTS WATCH, July 7, 2014, <https://www.hrw.org/news/2014/07/07/tunisia-amend-draft-counterterrorism-law>.

¹⁰⁶ FOUND FOR THE FUTURE, STUDY ON CIVIL SOCIETY IN TUNISIA 8–11 (2013) (showing that by 2009, the exact number of civil society organizations was 9,843. 1.4% of the overall percentage of civil society organizations in Tunisia worked in the field of law and human rights).

¹⁰⁷ *Id.* at 16.

¹⁰⁸ *Tunisia Country Summary*, *supra* note 81, at 5.

¹⁰⁹ POWEL & SADIKI, *supra* note 53, at 6.

¹¹⁰ AMNESTY INT’L, *supra* note 83.

¹¹¹ *See, e.g.*, AMNESTY INT’L, TUNISIA CONTINUING ABUSES IN THE NAME OF SECURITY (2009).

promote respect for the rule of law.¹¹² The Ben Ali regime portrayed Tunisia as a country where the rule of law prevailed,¹¹³ but Amnesty International described a very different picture:

The Tunisian authorities continue to carry out arbitrary arrests and detentions, allow torture and use unfair trials, all in the name of the fight against terrorism. This is the harsh reality behind the official rhetoric.¹¹⁴

An Amnesty International report released in June 2008 documented a pattern of human rights violations in Tunisia that included:

Arbitrary arrests, incommunicado detention and enforced disappearances; torture and other ill-treatment; unfair trials, including before military courts; and abuses in prisons as well as abuses against Tunisian nationals forcibly returned from abroad.¹¹⁵

The Tunisian government rejected Amnesty International's report, arguing that the allegations had not been properly investigated and denying that "security officials are allowed to abuse the law with impunity."¹¹⁶ Amnesty International issued several statements and reports in 2008, including *Tunisia: Abuses Continue Despite Official Denial*¹¹⁷ and *In the Name of Security: Routine Abuses in Tunisia*,¹¹⁸ and held a press conference in Paris calling on the Ben Ali regime to halt human rights abuses and to uphold the law.¹¹⁹

¹¹² AMNESTY INT'L, IN THE NAME OF SECURITY: ROUTINE ABUSES IN TUNISIA (2008) (documenting a number of cases where fundamental human rights abuses were carried out in the name of the fight against terrorism and restoring security, such as allowing torture, unlawful arrests, unfair trials, incommunicado detention, officials falsification of arrest documentation, enforced disappearance, as well as other practices). For a description of the human rights situation on the eve of the revolution, see THE MAKING OF THE TUNISIAN REVOLUTION: CONTEXTS, ARCHITECTS, PROSPECTS 5–8 (Nouri Gana ed., 2013).

¹¹³ Press Release, General Assembly, Demanding Reforms, Speakers Say Outdated United Nations Structure Leaves Organization Ill-Equipped to Address Twenty-first Century Realities, U.N. Meetings Coverage GA/10865 (Sept. 28, 2009), <http://www.un.org/press/en/2009/ga10865.doc.htm>.

¹¹⁴ *Tunisia continues human rights abuses in the name of security*, REFWORLD, <http://www.refworld.org/docid/4a8d54af20.html> (last visited Dec. 8, 2015) (quoting Malcolm Smart, Director of the Middle East and North Africa Programme, Amnesty International).

¹¹⁵ AMNESTY INT'L, *supra* note 112, at 2.

¹¹⁶ *Id.* (providing that: "The Tunisian government rejected Amnesty International's report, stating that it considered it "totally subjective and devoid of any credibility," and denied that allegations of torture are not investigated and that security officials are allowed to abuse the law with impunity. One year on, however, the Tunisian authorities have yet to provide any information indicating that detainees' torture allegations are adequately investigated or about any prosecutions of officials responsible for torture and other ill-treatment of detainees and prisoners, and such abuses continue to be alleged. Indeed, the pattern of human rights violations remains unchanged and none of the measures recommended by Amnesty International to address this grave situation have been implemented by the Tunisian government").

¹¹⁷ Public Statement, AMNESTY INT'L, Tunisia: Abuses Continue Despite Official Denial (July 22, 2008).

¹¹⁸ AMNESTY INT'L, *supra* note 112.

¹¹⁹ Prior to January 2011, a number of statements addressing human rights violations and calls for reform were issued to highlight serious concerns about the status of human rights in Tunisia. In 2010, Amnesty International alone released at least 20 statements in the English language addressing violations and calling on the government to halt its abuses. See, e.g., AMNESTY INT'L, TUNISIA: ONGOING HUNGER STRIKES SPOTLIGHTS RIGHTS ABUSES IN TUNISIA (2010), <https://www.amnesty.org/en/documents/mde30/020/2010/en/>; AMNESTY INT'L, TUNISIA: JAILED TUNISIAN JOURNALIST'S HEALTH AT RISK (2010), <https://www.amnesty.org/en/documents/mde30/019/2010/en/>; Press Release, Amnesty Int'l, Tunisia: Government Must End Harassment of Former Political Prisoners (Mar. 15, 2010), <https://www.amnesty.org/en/press-releases/2010/03/tunisia-government-must-end-harassment-former-political->

In this context, we see how the language of law can run dry.¹²⁰ Autocratic regimes have the power to deconstruct the language of legal reform. By assaulting and restricting the language of law, repressive regimes unmake, destroy, and empty legal arguments of their transformative potential.

III. WHEN THE BODY YIELDS: SELF-IMMOLATION AS AN ALTERNATIVE FORM OF DISSENT

Self-immolation is an example of bodily self-destruction, a radical tool of last resort used to materialize and communicate pain whereby the distressed body reclaims power to reject its subjugation. The struggling body not only rejects its subordination by the state, but also becomes an agent that reclaims rights and liberties through its own death. Through the logic of corporeal emancipation, oppressed and even quotidian actors may contest the failure of the rational arguments rooted in the language of human rights, catalyze legal, social, and cultural change where rational arguments fail and render the voice of the voiceless legible.

The second part of this Article examines the power of the human body to spur political and legal action. It analyzes the 2010 self-immolation of Tarek Mohammad Bouazizi in Tunisia, which sparked an unprecedented wave of protests across Arab countries, leading to what came to be known as the “Arab Spring.” It contends that when human rights-based arguments are exhausted, space is created for alternative strategies of resistance. Mobilized and deployed as a tool of resistance, human bodies become the “argument.” It offers an understanding of the body—and its annihilation—as a form of argument. It explores the difficulty of communicating, expressing, and understanding pain. This part addresses the question: What distinguishes the failure of law’s rationality from the body’s surrender as a moral force to challenge state power? At what point does the collective inability to challenge state power through legal means make the use of the body-in-pain inevitable?

A. Tarek Mohammad Bouazizi

Tarek Mohammad Bouazizi was a twenty-six-year-old street vendor who sold fruit in Sidi Bouzaid, an impoverished city in Tunisia that lies 190 miles south of the capital Tunis. On December 17, 2010, he used paint thinner to set himself ablaze outside the Sidi Bouzaid municipal office¹²¹ in protest of the crushing poverty and the unrelenting political harassment and oppression he had endured.¹²²

prisoners-2010-03-1/.

¹²⁰ Virginia Woolf, *On Being Ill*, in *THE ESSAYS OF VIRGINIA WOOLF* 194 (Andrew McNellie ed., 1994) (“Finally, to hinder the description of illness in literature, there is the poverty of the language. English, which can express the thoughts of Hamlet and the tragedy of Lear, has no words for the shiver and the headache. It has all grown one way. The merest schoolgirl, when she falls in love, has Shakespeare or Keats to speak her mind for her; but let a sufferer try to describe a pain in his head to a doctor and language at once runs dry. There is nothing ready made for him. He is forced to coin words himself, and, taking his pain in one hand, and a lump of pure sound in the other (as perhaps the people of Babel did in the beginning), so to crush them together that a brand new word in the end drops out. Probably it will be something laughable.”).

¹²¹ Bouazizi was not the only Tunisian who used his body to express his disenfranchisement. On December 22, 2010, in the town of Sidi Bouzid, 24-year-old Lahseen Naji was electrocuted after climbing a high-voltage electricity pole to cry out his “hunger and joblessness.” Ramzi Al-Abboudi committed suicide because of his deteriorating financial situation and his inability to repay a business loan he took from the country’s micro-credit solidarity program. See Sadiki Larbi, *Tunisia: The Battle of Sidi Bouzid*, AL JAZEERA ENGLISH, Dec. 27, 2010, <http://www.aljazeera.com/indepth/opinion/2010/12/20101227142811755739.html>.

¹²² Rania Abouzeid, *Bouazizi: The Man Who Set Himself and Tunisia on Fire*, TIME MAGAZINE, Jan. 21, 2011, <http://content.time.com/time/magazine/article/0,9171,2044723,00.html>.

Bouazizi's plight reflected that of a much larger population that exists on the margins of Tunisian society, enduring the injustices of the ruling regime. After leaving school to work as a street vendor at the age of ten, Bouazizi had been the primary breadwinner for his family.¹²³ Following the death of his father, Bouazizi worked several jobs to support his mother and siblings.¹²⁴ He was targeted over the course of many years by municipal police officers who constantly harassed him for bribes. When he refused, he was subjected to arbitrary fines, confiscation of his wares, and beating by officials.¹²⁵

On the day of his self-immolation, a policewoman in the public market allegedly slapped Bouazizi in the face,¹²⁶ and her two assistants had thrown away his cart and all of his belongings. His goods were confiscated and he was fined for selling vegetables in the street without a permit. The fine was the equivalent of a full day's income.¹²⁷ Bouazizi, according to witness, cried and asked the policewoman, "[w]hy are you doing this to me? . . . I'm a simple person, and I just want to work."¹²⁸ In agony, he went to city hall and requested to speak to an official, but no clerk paid attention to his demand; they minimized the incident and asked him to "[g]o home [and] forget about it."¹²⁹ Bouazizi returned to the market and expressed his frustration to his fellow vendors; he told them that he would not remain mute and that he would "let the world know how unfairly they were being treated, how corrupt the system was."¹³⁰

This humiliating public incident pushed him over the edge. It undoubtedly served to remind Bouazizi that as a cart vendor and as a citizen, he was unrecognized, subjugated, and marginalized. Even worse, he was not afforded sufficient autonomy to earn a living. Bouazizi succumbed to desperation by contemplating suicide;¹³¹ he set himself on fire outside the city hall while crying out, "How do you expect me to make a living?"¹³² His act generated an enormous wave of solidarity.¹³³ The spectacle of a body in flames prompted thousands of people already disenchanted with the regime to shout in a united voice, *Ash-sha'b yurīd isqāt an-nizām*.¹³⁴ "The people demand the overthrow of the regime!" Tens of thousands of marginalized, discontent, and enraged citizens—mostly young people, women, children, the elderly, and the

¹²³ Peter Beaumont, *Mohammed Bouazizi: The Dutiful Son Whose Death Changed Tunisia's Fate*, THE GUARDIAN, Jan. 20, 2011, <http://www.theguardian.com/world/2011/jan/20/tunisia-fruit-seller-mohammed-bouazizi>.

¹²⁴ Kareem Fahim, *Slap to a Man's Pride Set Off Tumult in Tunisia*, N.Y. TIMES, Jan. 21, 2011, <http://www.nytimes.com/2011/01/22/world/africa/22sidi.html>.

¹²⁵ Hernando De Soto, *The Real Mohamed Bouazizi*, FOREIGN POLICY MAGAZINE, Dec. 11, 2011, <http://foreignpolicy.com/2011/12/16/the-real-mohamed-bouazizi/>.

¹²⁶ Fedia Hamdi, the Tunisian market inspector, was accused of slapping Mohammad Bouazizi. Hamdi denied the charges, and in April 2011—after 111 days of incarceration—she was released from jail on grounds of lack of evidence. See Elizabeth Day, *Fedia Hamdi's Slap Which Sparked a Revolution 'Didn't Happen'*, THE GUARDIAN, Apr. 23, 2011, <http://www.theguardian.com/world/2011/apr/23/fedia-hamdi-slap-revolution-tunisia>.

¹²⁷ PRAETER, BUSINESS AND COMMUNALISM: A NEW PARADIGM? 60 (2013).

¹²⁸ Marc Fisher, *In Tunisia, Act of One Fruit Vendor Sparks Wave of Revolution Through Arab World*, THE WASH. POST, Mar. 26, 2011, https://www.washingtonpost.com/world/in-tunisia-act-of-one-fruit-vendor-sparks-wave-of-revolution-through-arab-world/2011/03/16/AFjfsueB_story.html.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ AMIN MAALOUF, DISORDERED WORLD XI (2012).

¹³² Bob Simon, *How a Slap Sparked Tunisia's revolution*, CBS NEWS, Feb. 22, 2011, <http://www.cbsnews.com/news/how-a-slap-sparked-tunisias-revolution-22-02-2011/>.

¹³³ After Bouazizi was transferred to the hospital in Sfax, his fellow vendors and family members protested outside city hall; they threw stones at the building while shouting, "Mohammad was oppressed, he was upset and downtrodden, and you are people who did not help him." "Where is the woman who hit him?" "You just want to humiliate us. Why didn't you open your door to him?" Rania Abouzeid, *The Martyr's Mother: An Interview with Mannoubia Bouazizi*, TIME MAGAZINE, Dec. 14, 2011, http://content.time.com/time/specials/packages/article/0,28804,2101745_2102138_2102239,00.html.

¹³⁴ ARAB SPRING: A RESEARCH & STUDY GUIDE, THE 'SPARK' THAT STARTED IT ALL, CORNELL UNIVERSITY, <http://guides.library.cornell.edu/c.php?g=31688&p=200750>.

unemployed—marched nonviolently through the streets of Tunisia chanting, “Dégage, dégage, dégage!” (“Get lost!”), expressing their outrage and calling on the government to step down.¹³⁵ Bouazizi’s act ultimately sparked a movement for change, leading to revolutions that toppled dictatorships across the Arab world—a phenomenon that came to be known as the Arab Spring.¹³⁶ It sparked massive waves of bodies marching against injustice in Tunisia, Egypt, Bahrain, Yemen, and Syria.¹³⁷

Why was Bouazizi’s spontaneous act of desperation—the self-induced spectacle of a burning body—a more effective catalyst in challenging the power of repressive Arab governments than the language of human rights law that the international community had worked so committedly to ratify and implement globally?

B. Analyzing The Corporeal Logic Of The Oppressed Body

Human beings need to be recognized. By being recognized, they exist. Life is theatrical performance.

—Jeon Tae-il

The use of the corporeal body as a means of political protest represents an ancient form of resistance.¹³⁸ Throughout history, various groups and individuals have used their bodies as a mechanism of rebellion. Inflicting pain and suffering on one’s own body, as in the hunger strike, has been a familiar mode of resistance against state power. In many countries and throughout history, revolutionaries have used their bodies to communicate rejection of injustice; self-immolation and hunger strikes are two modes of political resistance.¹³⁹ The Cuban poet Pedro Luis Boitel died on day fifty-three of his hunger strike in 1972; he was demanding humane treatment in prison. Perhaps the most impassioned hunger striker is Mahatma Gandhi, also known as the father of the Indian nation, who fasted seventeen times to protest British rule as he led India’s freedom movement.¹⁴⁰ The mass suicide of Indian farmers who were facing crop failure in the midst

¹³⁵ Andrea Khalil, *The Language of the Political Crowd in Tunisia*, AFR. FUTURES, Dec. 19, 2012, <http://forums.ssrc.org/african-futures/2012/12/19/the-language-of-the-political-crowd-in-tunisia-2/>.

¹³⁶ Following Bouazizi’s death, a number of other self-immolation incidents took place in the Arab World, namely in Algeria when Mohsen Bouterfif set himself ablaze outside the mayor’s office in January 2011. According to the BBC News, six months after Bouazizi’s death, at least 107 Tunisians tried to commit suicide by setting themselves alight. See, *Tunisia One Year On: New Trend of Self-Immolations*, BBC NEWS, Jan. 12, 2012, <http://www.bbc.com/news/world-africa-16526462>.

¹³⁷ This Article does not in any way claim that the “Arab Spring” is a resounding success, however it recognizes that it has changed the dynamics between citizens and state and helped break the chains of fear that people had, which isn’t a small thing. It is undeniable that the unprecedented act of self-immolation created a dynamic that helped people overcome their fear and demand human rights changes—it created a situation that didn’t exist before.

¹³⁸ Jonathan Rugman, *Sidi Bouzid: Roots of the Tunisia Revolution*, CHANNEL 4, Jan. 20, 2011, <http://www.channel4.com/news/sidi-bouzid-roots-of-the-tunisia-revolution>.

¹³⁹ An example of such resistance was seen in 1981, when the Irish Republican Army prisoners, Robert Gerard “Bobby Sands” (also a member of the British parliament) and Francis Hughes launched a hunger strike to demand that they be recognized as political prisoners rather than “mere” criminals; the Thatcher government refused to negotiate, and the two men starved to death, which sparked riots in many areas in Northern Ireland. See *The Search for Peace, Hunger Strike 1980-82*, BBC NEWS LONDON, http://news.bbc.co.uk/hi/english/static/northern_ireland/understanding/events/hunger_strike.stm.

¹⁴⁰ Pramod Kumar Srivastava, *Resistance And Repression in India: The Hunger Strike at the Andaman Cellular Jail in 1933*, 7.2 CRIME, HIST. & SOCIETIES 81 (2003).

of the highest levels of inflation and government crackdown illustrates how collective bodies mobilize to express their desperation and rejection of injustice.¹⁴¹

The use of self-immolation as a political act by Tibetan Buddhist monks has been well documented.¹⁴² Thich Quang Duc of Vietnam burned himself to death in 1963 to protest against the prosecution of Buddhists by the South Vietnamese government; Polish accountant Ryszard Siwiec set a precedent in Polish history when he self-immolated in 1968 to protest the Warsaw Pact military alliances' invasion of Czechoslovakia;¹⁴³ Jeon Tae-il, the first self-immolator in the modern history of South Korea,¹⁴⁴ set himself alight in front of the market in Seoul to protest the dire working conditions in the garment industry in 1970.¹⁴⁵

In the Arab world, self-immolation as a radical political strategy appears to have been unheard of until December 2010.¹⁴⁶ Criminal laws in Tunisia,¹⁴⁷ Syria,¹⁴⁸ Jordan,¹⁴⁹ and Palestine¹⁵⁰ punish anyone who

¹⁴¹ *1,500 Farmers Commit Mass Suicide In India*, THE INDEPENDENT, April 15, 2009, <http://www.independent.co.uk/news/world/asia/1500-farmers-commit-mass-suicide-in-india-1669018.html> (In 2009, over 1,500 farmers in India collectively committed a suicide as a result of their failure in paying off their debts).

¹⁴² Michael Biggs, *Dying Without Killing: Self-Immolations 1963-2002*, in MAKING SENSE OF SUICIDE MISSIONS 173 (Diego Gambetta ed., 2005).

¹⁴³ M. MARK STOLARIK, THE PRAGUE SPRING AND THE WARSAW PACT INVASION OF CZECHOSLOVAKIA, 1968: FORTY YEARS LATER 25 (2010).

¹⁴⁴ Not every political self-immolation brings about change or spark a revolution. Recently in the United States of America, a number of incidents occurred without igniting a wave of uprisings. For example, in October 2013, John Constantino set himself ablaze on the Washington National Mall. *See John Constantino Identified as Man Who Set Himself on Fire at National Mall*, THE HUFFINGTON POST, Oct. 13, 2013, http://www.huffingtonpost.com/2013/10/04/john-constantino_n_4046947.html. On the day after, another man committed suicide outside the Capitol building in Washington, D.C., while holding a sign stating "Tax The 1%." Neither incident ignited a revolution in the United States. *See, Man Who Shot Himself Dead on Steps of Capitol Was Carrying 'Tax The 1%' Sign*, THE DAILY MAIL, April 12, 2015, <http://www.dailymail.co.uk/news/article-3035712/Man-shot-dead-steps-Capitol-carrying-Tax-1-sign.html>.

An older example, is the case of Bruce Mayrock, a twenty-year old student at the School of General Studies at Columbia University of set himself on fire outside the United Nations Head Quarters to protest against the war in Biafra. *See G.S Student, 20, Immolates Himself in Front of U.N.*, COLUMBIA DAILY SPECTATOR, VOLUME CXIII, Number 118 (June 3, 1969), <http://spectatorarchive.library.columbia.edu/cgi-bin/columbia?a=d&d=cs19690603-01.2.8&e=-----en-20--1--txt-txIN-----#>.

¹⁴⁵ *Jeon Tae-il's Burning Himself to Death*, KOREA DEMOCRACY FOUND. NO. 1, http://www.kdemocracy.or.kr/mail/newsletter/mail_article_200508_01.html (last visited on 18 July 2015).

¹⁴⁶ Mattias Gardell, *So Costly Sacrifice Upon The Alter Of Freedom: Human Bombs, Suicide Attacks, And Patriot Heroes*, 2 J. OF RELIGION AND VIOLENCE 168, 168–202 (2014). In the Arab world, the body has been used as a medium to bring about political change in other ways. Palestinian political prisoners in Israeli prisons for decades have been resorting to collective hunger strikes ("the Battle of Empty Intestines") to call attention to imprisonment conditions that violate international norms and to demand recognition as political detainees and face charges or be released, while realizing that the strategy they use carries with it the risk of death. According to Michael Biggs, there is no documentation to show that self-immolation was practiced in the Middle East and North Africa. Biggs' study mapped self-immolation between the years 1963 and 2002. *See Biggs, supra* note 141.

¹⁴⁷ The Penal Gazette of Tunisia No. 79 of 1913, Article 206 (stipulates five years' punishment for anyone who intentionally assists another to commit suicide).

¹⁴⁸ Syrian Criminal Law No. 148 of 1949, Article 539 (punishes anyone who assists in a suicide in any way—whether by giving instructions, providing emotional and psychological support, or facilitating the act itself. The law imposes a maximum of ten years' imprisonment if the suicide is successful. If the attempt is unsuccessful, the law stipulates a sentence of imprisonment between three months and two years).

¹⁴⁹ Criminal Law of Jordan No. 16 of 1960, Article 339 (punishes anyone who assists in a suicide by imprisonment for a term ranging from three to fifteen years).

¹⁵⁰ In Palestine, the relevant criminal law is the Jordanian Criminal Law No. 16 of 1960. The law applies the same stipulations as the Jordanian legislation.

assists others to commit suicide.¹⁵¹ Islam—the majority religion in the Arab world—classifies killing the self or innocent others as a grave sin.¹⁵²

Islam honors the human body, reaffirming its sacredness and the religious duty to maintain its moral and physical well-being.¹⁵³ Various verses of the Qur'an¹⁵⁴ enshrine the sacredness of life¹⁵⁵ and the body.¹⁵⁶ Islam perceives the body as a gift from God; it is His offering and He alone can give it and take it.¹⁵⁷ In this view, human beings do not possess any authority to damage their bodies or terminate their lives.¹⁵⁸

The sacredness of the body as envisioned in both Islamic¹⁵⁹ and Arab cultures renders Tarek Mohammad Bouazizi's self-immolation all the more powerful and underscores the radical desperation that it expressed.¹⁶⁰ Under tremendous pain, humiliation, and desperation, he resorted to disregarding powerful cultural and religious taboos.¹⁶¹

¹⁵¹ Penal laws in Tunisia, Jordan, Syria, and Palestine punish any act that assists, encourages, or inspires others to commit suicide. Article 206, Law No. 79 of 1913 (promulgating the Penal Code of Tunisia), stipulates five years' punishment for anyone who intentionally assists another to commit suicide. Article 339 of Law No. 16 of 1960 (promulgating the Criminal Code of Jordan) punishes anyone who assists a suicide by imprisonment for a term ranging from three to fifteen years. In Palestine, the relevant criminal law is the Jordanian Criminal Law No. 16 of 1960. The law applies the same stipulations as the Jordanian legislation. Article 539 of the Syrian Law No. 148 of 1949 (promulgating the Criminal Code of Syria) punishes anyone who assists a suicide in any way—whether by giving instructions, providing emotional and psychological support, or facilitating the act itself. The law imposes a maximum of ten years' imprisonment if the suicide was successful. If the attempt was unsuccessful, the law stipulates a sentence of imprisonment between three months and two years.

¹⁵² SAHIH BUKHARI VOL. 2, BK. 23, NO. 445: A saying attributed to the Prophet Mohammad (*Hadith*), narrated by Junab, "A man was inflicted with wounds and he committed suicide, and so God said: My slave has caused death on himself hurriedly, so I forbid Paradise for him."

¹⁵³ Narration of the Prophet Muhammad (PBUH) states "Breaking the bone of a dead person is similar (in sin) to breaking the bone of a living person." ,SUNAN ABU DAWUD, BK. 21, HADITH 119

¹⁵⁴ QUR'AN *Surah* 6:151 ("Whether open or secret; take not life, which God hath made sacred, except by way of justice and law: thus doth He command you, that yet may learn wisdom." Alongside Quranic verses, Hadiths from Prophet Mohammad clearly forbid suicide or the killing of others.).

¹⁵⁵ QUR'AN *Surah* 17:70 ("And verily we have honoured the children of Adam.").

¹⁵⁶ QUR'AN *Surah* 2:195 ("And do not throw yourselves in destruction.").

¹⁵⁷ QUR'AN *Surah* 2:28 ("How can you disbelieve? Seeing that you were dead and He gave you life. Then He will give you death, then again will bring you to life (on the Day of Resurrection) and then unto Him you will return.").

¹⁵⁸ QUR'AN *Surah* 6:151 ("Come, I will rehearse what God hath (really) prohibited you from": Join not anything as equal with Him; be good to your parents; kill not your children on a plea of want: We provide sustenance for you and for them: come not nigh to shameful deeds. Whether open or secret: take not life, which God hath made sacred, except by way of justice and law: thus doth He command you, that ye may learn wisdom. Qur'an).

¹⁵⁹ In Bouazizi's case, there is no significant evidence that he was triggered by religious motives to search for martyrdom or *shahada*. Bouazizi was not particularly religious, he was not a member of an organized movement, and he did not have any political affiliation. He immolated himself as a last refuge of frustration and desperation, without anticipating the greater impact of his action. Therefore, the religious factor does not provide a sufficiently descriptive framework nor does it provide us with the answer of why use of the corporal body as a political act motivated a wave for change. (maybe a source needed/removal needed)

¹⁶⁰ The usage of the sacred human body in protest of injustice raised controversies among Islamic jurists (Faqaha). Al-Azhar, the most respected religious institution in Sunni Islam, issued a statement stressing that Islam strictly forbids suicide for any given reason, further arguing that Shari'a Law outlaws suicide as an expression of anger or protest. However, the Egyptian Islamic theologian Yusuf al-Qaradawi expressed sympathy with those who use their bodies as means to revolt against injustices and classified Bouazizi's act as one of desperation and frustration. He blamed the authoritarian regimes for oppressing their citizens and triggering them to commit suicide. Qaradawi considered the spectacular act of Bouazizi setting his body alight as a means of gaining freedom and a call for God to emancipate him and other marginalized Tunisians from the state's oppression. See Ahmad Muath Alkhateeb Al

Bouazizi's self-immolation can be regarded not merely as an individual or private act, but rather as a physical expression of a broader social struggle; the ramifications of his act extended well beyond the boundaries of his own body. Bouazizi was one of many citizens who faced limited opportunities and constant harassment by the state. These vulnerable, powerless, and disadvantaged citizens enjoyed few, if any, political, economic, and civil rights and liberties. In order to resist the injustices he experienced, Bouazizi was acutely aware that no alternative means were available to him, certainly no legal means. Bouazizi was a victim "whose judgment and reason had been compromised by [his] experience."¹⁶² Fully aware of the significance of the destruction of his body in Islamic theology, Bouazizi nonetheless utilized his corporeal body as a tool to give voice to his frustration.¹⁶³

The fact that he set himself on fire in a public space and in front of a public building that stood for the state suggests that he wished to convey the message that his action was not an individualized, private act of suicide or self-emancipation. His act was resistance at the limit of the very idea of the human, thereby revealing the limits of the human as a rights-bearing subject in general. While Bouazizi probably did not anticipate that his act would ignite a wave of change across the Arab world, his self-immolation can be interpreted as a political act of "last resort," a rejection of state control and withdrawal from the broken social contract. His profound pain overcame idealized spiritual notions of the sacredness of the body and the sinfulness of the act.¹⁶⁴ Since the state breached its commitment to the social contract, Bouazizi in return manifested his suffering by breaking his "sacred" religious contract.

IV. UNDERSTANDING WHEN BODIES-IN-PAIN BECOME THE ARGUMENT

A. The Difficulty Of Communicating And Understanding Injustice

This section analyzes the corporeal logic and the role of bodies-in-pain as a medium of political expression. Bouazizi's actions may offer a window into how the body can act as a tool of defiance when the law "runs dry." Although one should not assert a causal relationship between an individual act of corporeal protest and the launch of a mass movement, it is useful to examine the vital role of the human body as a medium for enacting resistance when the law proves ineffective.

The injustice of a dictatorship is borne by the citizenry, both collectively and individually.¹⁶⁵ The daily struggle that results from marginalization, disempowerment, and powerlessness, combined with the constraints on expressing and challenging these same injustices, generate a sense of frustration. The

Husseini, *Between the Flaps of Bouazizi and the Flights of Qaradawi*, NEWS SOURCE NEEDED Aug. 24, 2011, <http://www.qaradawi.net/articles/86-2009-12-12-10-35-10/5125-2011-08-24-09-07-14.html>.

¹⁶¹ Yusuf al-Qaradawi considered Bouazizi's act as a form of *Jihad Al Mathloom*, what could be considered as the weapon of the oppressed. This doctrine chiefly provides two circumstances within which Muslims are permitted to engage in this explicit form of *Jihad*: when Muslims know that injustice is being inflicted and that it is in conflict with Islamic *Sbari'a* principles, and when there is a volitional intent to make a change, whether by proactively engaging in making (doing) change, or by verbally casting a rejection, or lastly by resisting discreetly (in their hearts). See Ahmad Muath Alkhateeb Al Hussein, *supra* note 160.

¹⁶² Liisa H. Malkki, *Refugees and Exile: From "Refugee Studies" to the National Order of Things*, 24 ANN. REV. OF ANTHROPOLOGY 495 (1995).

¹⁶³ In an interview with Bouazizi's mother, Mannoubia Bouazizi, she explained how they are a simple religious family whose devotion is expressed through prayer and praising God. She described her son as a martyr and said that "I always ask mercy for his soul and the souls of all the martyrs." See Abouzeid, *supra* note 122.

¹⁶⁴ Susan Raine, *Body, Emotion and Violence: Palestinian Suicide Bombing/Martyrdom (1993-2005)*, 17.2 MARBURG J. RELIGION 1, 1, 3 (2013).

¹⁶⁵ DEBORAH LUPTON, THE EMOTIONAL SELF: A SOCIOCULTURAL EXPLORATION 37 (1998).

society—as one body—metaphorically suffers from the pain of injustice. This pain begins as an internal phenomenon that is then manifested in various ways by the oppressed populace.¹⁶⁶

This pain is imminent in the various trajectories of citizens' lives, particularly in their struggle to enjoy fundamental social, civil, political, or economic rights.¹⁶⁷ Under a dictatorial regime, citizens are prevented from engaging in political life or from expressing their opinions freely. Their access to employment, justice, health, and education is limited. State oppression—including the curtailing of rights and liberties, the control of resources, censorship, corruption, and nepotism—presents additional obstacles for citizens living under a tyrannical government. The lived reality of oppression, subjugation, and marginalization in various aspects of daily life produces a sense of profound frustration and desperation. As previously mentioned, Bouazizi's precarious existence on the margins of society without adequate legal or political representation, made him especially vulnerable to state interference and control.¹⁶⁸ Yet popular response to his act revealed that his suffering was endemic to the lives of most Tunisians.¹⁶⁹

Democratic dialogue is eroded through repressive policies—the state's "language of communication" with its citizens.¹⁷⁰ Every practice that limits citizens' liberties and freedoms can be considered an assault on democratic dialogue.¹⁷¹ The restrictive policies of repressive regimes limit communication among citizens and, as a result, silence dialogue between citizens and the ruling regime.¹⁷² This process of limiting channels of communications leaves citizens frustrated and desperate.

As a collective body, a society under dictatorship experiences collective pain caused by governmental oppression.¹⁷³ Communicating the experience of injustice to fellow citizens and to those entrusted to restore justice is often difficult under such political conditions. Oppressive regimes operate from a site external to the social "body"—a site of power from which the regime dictates the rules and controls the language of civic communication.¹⁷⁴ At the same time, repressive regimes construct an illusory image of an idealized, well-functioning society.¹⁷⁵ In such a context, it is difficult for citizens and civil society to resist and cast out or challenge their experience of injustice.

The chasm between the state's portrayal of the government as a just and rights-respecting body and the violent and repressive reality of everyday life under a dictatorial regime can induce a sense of social dysphoria. Accordingly, the individual citizen's pain and the state's awareness of inflicting injustice become two distinct experiences, even two separate worlds.¹⁷⁶ The ruling elites exist in a place of control remote from the general population, and in that privileged space it is difficult for them to understand and relate to society's pain and struggle.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ Giorgio Agamben introduced the notion of "bare life" to refer to those who are politically damaged and denied both their political and legal representation. In his reference to the stateless refugees he argues: "Insofar as its inhabitants were stripped of every political status and wholly reduced to bare life, the camp was also the most absolute biopolitical space ever to have been realized, in which power confronts nothing but pure life, without any mediation." See GIORGIO AGAMBEN, *HOMO SACER: SOVEREIGN POWER AND BARE LIFE* 171 (1998).

¹⁶⁹ See POWEL & SADIKI, *supra* note 53.

¹⁷⁰ JÜRGEN HABERMAS, *THE STRUCTURAL TRANSFORMATION OF THE PUBLIC SPHERE* 7 (1989).

¹⁷¹ ELAINE SCARRY, *THE BODY IN PAIN* 4 (1985).

¹⁷² *Id.*

¹⁷³ Mabel Berezin, *Secure States: Towards a Political Sociology of Emotion*, in *EMOTIONS AND SOCIOLOGY* 33 (Jack Barbalet ed., 2002).

¹⁷⁴ TALAL ASAD, *ON SUICIDE BOMBING* 32–36 (2007).

¹⁷⁵ See SCARRY, *supra* note 171, at 72.

¹⁷⁶ *Id.*

Experiencing one's own pain and understanding the pain of others are two wholly different sets of events.¹⁷⁷ Bodies-in-pain—those ruled by repressive regimes—perceive the experience of pain as an absolute, totalizing reality.¹⁷⁸ It is a non-negotiable, uncontested feeling of injustice “having certainty.”¹⁷⁹ However, this reality remains incomprehensible to the regime that exists external to the sufferer's body. The ruling authorities understand their exercise of authoritarian powers as a manifestation of democratic legitimacy and are far removed from the concerns and struggles of ordinary citizens. As such, calls for reform stemming from domestic civil society or from the international community are unlikely to gain traction.

Even democratic regimes can have difficulty grasping the true sense of struggle experienced by certain members of society. Regardless of the amount of effort that states invest in comprehending social struggles, even with “the most heroic effort [pain] can't be grasped,”¹⁸⁰ since the experience of hearing about pain amounts to an “uncertain, shadowy kind of existence unless and until they are transformed, deprivatized and deindividualized, as it were, into a shape to fit them for public appearance.”¹⁸¹ According to Elaine Scarry, “hearing about pain” might constitute a model of what it is “to have doubts.”¹⁸² Even if pain is expressed, only a faint and blurry picture of the lived experience can actually be ascertained by the listener. As such, state reforms, as serious as they may be, can only address a fraction of the struggle being communicated.

The Tunisian government—like other authoritarian regimes—repeatedly claimed to be mystified by protestors' demands. The regime constantly denied its human rights abuses and offered assurances that it was taking active steps to bring its laws into alignment with its international human rights obligations.¹⁸³ On several occasions, the government acknowledged the international community's criticism by introducing progressive-sounding legal reforms, which in theory guaranteed better domestic protections for human rights.¹⁸⁴ In practice, however, these legal reforms proved to be merely another example of hollow rhetoric.¹⁸⁵

In a letter dated September 7, 2010, Human Rights Watch (“HRW”) asked Mr. Lazhar Bououni, the Minister of Justice and Human Rights, and Mr. Rafik Belhaj Kacem, the Minister of Interior and Local Development, to explain a number of human rights violations, mainly with respect to freedom of expression and the right to unionize.¹⁸⁶ HRW expressed concern about the denials of labor union activities, government prosecution of unionists, restrictions on the right to strike, the suppression of attempts by journalists to unionize, the targeting of the general union of Tunisia, and the torture by police of union members, among other issues.¹⁸⁷ On October 6, 2010, the Tunisian Government replied: it emphasized the government's respect of human rights and citizens' dignity and reiterated the assurance of the Tunisians laws for the right to unionize.¹⁸⁸ The government expressed its lack of comprehension of HRW queries and further denied allegations of possible police brutality and harassment of Tunisian students, including the case of Mohamed

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ SCARRY, *supra* note 171, at 4.

¹⁸¹ *Id.*

¹⁸² SCARRY, *supra* note 171, at 13.

¹⁸³ Public Statement, AMNESTY INT'L, Tunisia: Abuses Continue Despite Official Denial (July 2, 2008), <https://www.amnesty.org/download/Documents/56000/mde300102008eng.pdf>.

¹⁸⁴ AMNESTY INT'L, *supra* note 112, at 3.

¹⁸⁵ *Id.*

¹⁸⁶ HUMAN RIGHTS WATCH, THE PRICE OF INDEPENDENCE: SILENCING LABOR AND STUDENT UNIONS IN TUNISIA 6 (2010), <https://www.hrw.org/sites/default/files/reports/tunisia1010w.pdf>.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* at 51–53.

Soudani, who was arrested on October 22, 2009.¹⁸⁹ The government repeatedly stated that such allegations were “false and completely baseless.”¹⁹⁰

When society as a collective body endures pain, this experience is internal; the feelings are private and contained within the body, it is an invisible process. While broader characteristics are collectively shared, individuals go through the process independently.¹⁹¹ Only when this experience of pain and struggle finds a vent for its expression does it generate a collective sense of frustration.¹⁹² However, the pain cannot be addressed without being repositioned from the inner sphere to the public and political domains. This process of shifting pain from the private sphere to the public domain is the first stage of rendering visible the sense of frustration and desperation.¹⁹³ This process explains why social struggles cannot be effectively comprehended and “taken up” by the rational narrative provided by human rights law.

Human rights law fails to provide a remedy for the collective pain; it becomes an ineffective tool to provide answers to the widespread collective feelings of frustration. Rather, more visible, direct, and robust means of manifestation that can communicate the feelings of pain and suffering are required; physical embodiment of the metaphorical is necessary to articulate that pain—the individual body.¹⁹⁴

B. The Linkage Between Expressing And Diminishing Injustice

Expressing pain can be an important prerequisite for diminishing it.¹⁹⁵ The body that endures pain must find a way to express it, a cathartic medium whereby it can transfer its feelings of struggle from the inner, private space to the shared, external sphere. Once pain is manifested and communicated to the public domain, the public can collectively work on eliminating the struggle, diminishing the pain and easing the suffering;¹⁹⁶ “the act of verbally expressing pain is a necessary prelude to the collective task of diminishing it.”¹⁹⁷ Under conditions of oppression and subjugation, how can individuals collectively—in other words, society—communicate pain?

As previously discussed, authoritarian sovereign powers subordinate and disempower their own citizens. Under such conditions, tyrannical regimes control the language of civic communication—the democratic dialogue that occurs between citizens and their government—and exercise their power to give language meaning in order to marginalize and subjugate their citizens. In a November 2011 report, HRW identified ten areas of repressive legal provisions that are “incompatible with a democratic and pluralistic society that respects its citizens’ basic human rights.”¹⁹⁸ The report detailed how these laws were utilized by Ben Ali’s regime to “stifle civil society, diminish judicial independence, limit political participation, and shield the president from accountability for any legal trespass, no matter how grave.”¹⁹⁹ It emphasized how during

¹⁸⁹ *Id.* at 57.

¹⁹⁰ *Id.*

¹⁹¹ SCARRY, *supra* note 171, at 52–53.

¹⁹² *Id.* at 56.

¹⁹³ *Id.*

¹⁹⁴ Judith Butler, *Performative Acts and Gender Constitution: An Essay in Phenomenology and Feminist Theory*, 40 THEATRE JOURNAL 519, 521 (1988).

¹⁹⁵ SIGMUND FREUD, *PSYCHOANALYSIS: FREUDIAN SCHOOL*, SE, XX 261 (1984).

¹⁹⁶ SCARRY, *supra* note 171, at 9.

¹⁹⁷ *Id.*

¹⁹⁸ Repressive laws concerning freedom of expression, privacy and freedom of expression online, freedom of association, freedom to form political parties, freedom of assembly, freedom of movement, the right of citizens to run for public office and choose candidates, judicial independence, state abuses under the guise of fighting terrorism, presidential immunity of International Crimes. See HUMAN RIGHTS WATCH, *TUNISIA’S REPRESSIVE LAWS* 4, 4–8 (2011).

¹⁹⁹ *Id.*

Ben Ali's era legal provisions were used to punish citizens for "expressing views critical of the government and for addressing other subjects deemed improper for public debate." While using the language of freedom and rights, and in the name of security and restoring public order, the language of the law limited the ability of Tunisians to "express and access dissenting viewpoints, form independent associations or political parties, compete meaningfully for political office, and assemble in order to protest against the government and its policies." As a result, the government constantly targeted human rights activists, lawyers, writers, journalists, and political opposition members. They were harassed and imprisoned for violating these repressive laws.²⁰⁰

State restriction of freedoms and civil liberties leads to a pain and frustration in the body politic. Some citizens are more vulnerable than others, and most submit to the ruling regime, surrendering their freedoms and liberties in exchange for being left alone, or at least to minimize threats of state violence. Calls for reform and resistance are sublimated and displaced in the name of survival.

While scholars such as Costas Douzinas have conceptualized human rights as arising from a universal recognition of one's suffering by others, the Tunisian example shows us that this is not necessarily the case; state repression was well-known, and global condemnation did not translate into respect for the human rights of Tunisian citizens.²⁰¹ In circumstances of extreme political repression, human rights are not capable of fulfilling this kind of recognition.²⁰² Rather, the imaginary justice of human rights must yield to the irrational, the material, and the literally embodied justice of the body-in-pain.²⁰³ The Tunisian example demonstrates how the public manifestation of this pain may succeed in breaking collective acquiescence to tyranny when well-documented legal rights violations have little to no impact.

Under the pressure of eliminating pain and suffering, there are limited ways in which sufferers—or those who wish to speak on their behalf, such as lawyers and human rights activists—can verbalize and materialize pain. When suffering is persistent, verbal strategies are limited, inaccessible, and uncertain for those in the margins, such as Bouazizi. For example, "naming and shaming" strategies²⁰⁴ may actually contribute to worsening the pain experienced by society.²⁰⁵ Instead of bringing the pain to light, expressing and articulating pain may make it increasingly invisible.²⁰⁶ Paradoxically, the result can be the creation of more restrictions on freedoms and liberties.

In this context, bodies-in-pain can operate as a last resort means of resistance.²⁰⁷ The public spectacle of corporeal pain can take up where language, including the language of law, fails.²⁰⁸ Public performances of bodily pain and negation, including self-immolation, can mobilize resistance to state-imposed suffering where language and law have run out of their productive capacities. As Warner argues, when "minoritized subjects had few strategies open to them,"²⁰⁹ the destruction of the body can become one of the very few available tools to gain access to the public sphere to outwardly articulate inner pain to the external, political sphere. It can be the sole remaining avenue of rejecting political, social, and economic

²⁰⁰ *Id.* at 8–24.

²⁰¹ Costas Douzinas, *The End(s) of Human Rights*, 26 MELB. U. L. REV. 445 (2002). See also John L. Morss, *Saving Human Rights From Its Friends: A Critique of the Imaginary Justice Of Costas Douzinas*, 27 MELB. U. L. REV. 889 (2003).

²⁰² SCARRY, *supra* note 171, at 8–24.

²⁰³ *Id.*

²⁰⁴ Emilie M. Hafner-Burton, *Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem*, 62 INT'L. ORG. 689, 690 (2008).

²⁰⁵ James H. Lebovic & E. Voeten, *The Politics of Shame: The Condemnation of Country Human Rights Practices in the UNCHR*, 50 INT'L. STUD. Q. 861, 872 (2006).

²⁰⁶ International Human Rights Law, *supra* note 7, at 13.

²⁰⁷ TALAL ASAD, *supra* note 174, at 19.

²⁰⁸ HABERMAS, *supra* note 170, at 9.

²⁰⁹ Michael Warner, *Publics and Counterpublics*, 14 PUBLIC CULTURE 49 (2002).

suppression.²¹⁰ It becomes the tool, with all its trappings of sin and *haram*, despite religious prohibitions against inflicting bodily harm, to recognize the suffering of victims of tyranny and to intervene in order to challenge injustice.

C. The Linkage Between Pain And Power

Through the politics of death, the corporeal body becomes a powerful political tool to challenge authoritarian sovereign powers.²¹¹ It becomes an agent that exceeds human rights–based arguments and radically challenges the authority of the ruling powers. As Hardt and Negri expressed, “when life itself is negated in the struggle to challenge sovereignty, the power over life and death that the sovereign exercises becomes useless. The absolute weapons against bodies are neutralized by the voluntary and absolute negation of the body.”²¹²

Applying this analysis to Tunisia, Bouazizi’s act of self-immolation became a vehicle for expressing collective pain. He communicated his pain to other bodies that, to a certain extent, shared that pain. By manifesting his pain physically, Bouazizi projected the limit of internal feelings of subjugation to the external sphere, thereby materializing previously inexpressible feelings in a tangible and highly visible way. When he set himself on fire outside city hall, the public “took up” his act of defiance. To borrow a notion from speech act theory, Bouazizi’s immolation amounted to an utterance that had a perlocutionary, or persuasive, effect on its audience.²¹³ His shocking expression of pain, discontent, and powerlessness resonated with the ordinary Tunisian, whose own life experiences caused them to empathize with Bouazizi. By expressing his pain through this external manifestation, Bouazizi transferred his inner political struggle to the outer sphere, becoming an agent of communication for society’s pain, thereby persuading them to act. The Tunisian public empathized with his act, probably seeing a reflection of their own pain in his burning body and accordingly feeling a collective duty to make efforts to diminish it.²¹⁴ By reaching out to the pain of others, Bouazizi’s extreme act forged a deep political connection that human rights law was unable to accomplish. It challenged the limits of the language of human rights with its “emancipatory language.”²¹⁵ It compensated for the failure of human rights and the moral resonance, the uplifting character and the universality that they promise but, at least in the case of Tunisia, did not deliver. While the enabling conditions for human rights law to do its work were absent in the Tunisian context, the conventions necessary to render Bouazizi’s action as speech were in fact present, thus felicitously persuading the Tunisian people to rise up against the Ben Ali government.

This experience is limitless; it amounts to metaphorically entering the forbidden garden, where the use of corporeal bodies has the power to shatter boundaries and barriers of terror, fear, dependency, poverty, hunger, and injustice. When pain cannot be denied nor confined, the body, as an agent, expresses its own desperation and frustration, as well as that of speechless others.²¹⁶ Elaine Scarry articulates this idea in *The Body In Pain*: “Though there is no ordinary language for pain, under pressure of the desire to eliminate pain,

²¹⁰ Jacob Uzzell, *Biopolitics of the Self-Immolation of Mohamed Bouazizi*, E-INTERNATIONAL RELATIONS, Nov. 7, 2012, <http://www.e-ir.info/2012/11/07/biopolitics-of-the-self-immolation-of-mohamed-bouazizi/>.

²¹¹ *Id.*

²¹² MICHAEL HARDT & ANTONIO NEGRI, *MULTITUDE: WAR AND DEMOCRACY IN THE AGE OF EMPIRE* 332 (2005).

²¹³ See generally, JOHN L. AUSTEN, *HOW TO DO THINGS WITH WORDS* (1975).

²¹⁴ Nathan Stormer, *Embodied Humanism: Performative Argument for Natural Rights in “the Solitude of Self”*, 36 ARGUMENTATION AND ADVOCACY 51 (1999).

²¹⁵ David Kennedy, *The International Human Rights Movement: Part of the Problem?*, 15 HARV. HUM. RTS. J. 101, 111 (2002).

²¹⁶ JUDITH BUTLER, *BODIES THAT MATTER: ON THE DISCURSIVE LIMITS OF “SEX”* 63 (1993).

an at least fragmentary means of verbalization is available both to those who are themselves in pain and to those who wish to speak on behalf of others.”²¹⁷

As such, the body can be perceived as an agent of change, and self-immolation as an act that rejects submission to an authoritarian regime. The body becomes the narrator of the long history of injustice.²¹⁸ As Judith Butler suggests, the body comes “in a manner of doing, dramatizing, and reproducing a historical situation.”²¹⁹ Although generally an individual voice narrating a broad state of oppression may have little impact,²²⁰ when amplified and communicated, a sole voice may feed into a broader movement.

The image of Bouazizi’s flaming body was writhing in pain, yearning for freedom, and longing to be understood, possessing a kind of power that the rational arguments of law could not conjure in the Tunisian setting. This burning body materialized what Lacan might term *Das Ding*, the thing that represents or signifies the collectively sublimated sense of powerlessness and abjection.²²¹ Bouazizi’s body became an icon for both the emptiness and pain that the regime had produced in the individual, and for resistance to that very state power; “[a] generic symbol of the resistance to injustice.”²²² This spectacle of one body acting as an agent of change fueled mass mobilization set on transforming this individual act into a collective movement. Bouazizi’s means of expressing resistance to oppression was violent, painful, and no doubt shocking to the public. It demanded a response. Observers could not stand immobile while witnessing the excruciating destruction of the spiritually and culturally sacred body. Bouazizi’s action enabled a kind of collective catharsis. The struggle of the burning body, its manifestation of physical pain, and the shared sense of frustration all fueled the sense of solidarity and collective struggle; this enabled Bouazizi’s body to have political ramifications in the wider social sphere.²²³

It can be argued that Bouazizi’s act was a form of political protest in that its genesis and implications went beyond the individual act of suicide. His frustration was an individual case among millions of others; as such, a broader sense of frustration and desperation was projected onto, and out from, his actions. After Bouazizi’s pained, oppressed body cried out the story of pain and struggle, millions of other unheard, frustrated bodies merged with his. Through his unprecedented action in the Arab World, others acquired the impetus to relinquish their fear and to articulate their shared desperation. By using his corporeal body, Bouazizi succeeded in rendering injustice visible. He managed to give a clear, loud voice to the unheard, if only for a brief, yet staggering moment. At the moment the body is destroyed, it becomes the center of attention. Feeding into the frustration of unspoken voices, it transforms one individual’s act into a provocative phenomenon, spurring broader social movements for change.²²⁴

His wounds communicated collective injury. As a result of the failed communication of the rational argument, which was systemically discredited by the ruling regime, Bouazizi’s self-destruction was an act of last resort. When rational arguments exhaust their limits, wounds become “accepted as objective evidence, as

²¹⁷ See SCARRY, *supra* note 171, at 13.

²¹⁸ *Id.*

²¹⁹ See BUTLER, *supra* note 216, at 68.

²²⁰ OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS, *supra* note 7 at 12.

²²¹ THE ETHICS OF PSYCHOANALYSIS 1959-1960: THE SEMINAR OF JACQUES LACAN BOOK VII 134, 150 (Jacques-Alain Miller ed., Dennis Porter trans., 1997).

²²² See De Soto, *supra* note 125.

²²³ Judith Butler, *Bodies in Alliance and the Politics of the Street*, EUROPEAN INST. FOR PROGRESSIVE CULTURAL POLICIES, Sept. 2011, <http://www.eipcp.net/transversal/1011/butler/en>.

²²⁴ B. C. Ben Park, *Sociopolitical Contexts of Self-Immolations in Vietnam and South Korea*, 8 ARCHIVES OF SUICIDE RES. 1, 81–97 (2004). See also JAMES A. BENN, BURNING FOR THE BUDDHA: SELF-IMMOLATION IN CHINESE BUDDHISM 79–81 (2007).

more reliable sources of knowledge than the words of the people on whose bodies those wounds are found.”²²⁵

V. THE RETURN TO THE LAW

When repressive regimes deny and eliminate the emancipatory potential of legal claims and rights arguments, citizens may turn to alternative modes of resistance including using the body as catalysts for change.²²⁶ In this regard, we can see how under conditions of repression and injustice, the human body is transformed into an irrefutable argument for change when other avenues of legal argument have run out. This final section examines how corporeal acts of resistance can spur collective actions that disrupt existing legal regimes and yield legal change and transformation. That is, acts of bodily resistance emanating from outside the formal domains of law and legal argument can catalyze social movements key to achieving political and legal reform in repressive contexts. The individual body can work to reclaim law for the social body.

A. The Dialectic Of The Body-In-Pain

In the case of revolutionary Tunisia, the individual body-in-pain reached out to vast, throbbing, and frantic waves of muffled and pulverized bodies.²²⁷ It mobilized a massive wave of anonymous bodies—“anonymous corporeality”²²⁸—to march the streets of Tunisia. In an unprecedented theatrical scene, all the bodies-in-pain merged and became one anonymous body speaking for the collective.²²⁹ They chanted the mantra of the Jasmine Revolution, *Ash-sha‘b yurīd isqāṭ an-nizām*,²³⁰ expressing their repudiation of the authoritarian Ben Ali regime and their collective will to bring it down.

The Jasmine Revolution’s collective action mobilized a new kind of politics, one that circumvented the failure of law’s rationality and its empty promise of safeguarding citizens’ rights. As such, the body-in-pain (the means that brought the collective together) was repositioned from a helpless disenfranchised body to a proxy of change. Remarkably, as an empowered body, it negotiated a new social contract and laid the basis for a new body of the law.

The act of self-destruction becomes a voice that demands justice. It communicates, not only an individual pain, but also a collective injury, a collective state of frustration. Through the ultimate mode of protest, the body-in-pain creates a moment of emancipation and opens a space for new possibilities. How should we understand the emancipatory and productive power of this extraordinary act of bodily destruction? How does the negation of oneself become a validation of the existence of the whole?

The Tunisian Revolution and reform process provides an example of how solitary acts of bodily resistance can fuel the social mobilization needed to achieve regime change, constitutional reform, and legal transformation.²³¹ The emergence of this synthesis suggests a dialectical relationship between rational

²²⁵ See Malkki, *supra* note 162, at 387.

²²⁶ See Malkki, *supra* note 162, at 387.

²²⁷ See Malkki, *supra* note 162.

²²⁸ *Id.*

²²⁹ *Id.* at 388.

²³⁰ See *supra* Law No. 75 of 2003 note 93.

²³¹ In the recent report of the Freedom House, Tunisia’s level of freedom has improved since 2011; positive signs include a greater margin of academic freedom, the establishment of labor unions and the lifting restrictions on travel. Currently Tunisia is ranked as a partly free country; with a score of 48 out of 90, it is ranked the second in the Middle East. The report noted that among all the Arab Spring countries in the Middle East that strived to topple dictatorships, Tunisia stands solely in the corner as a rare case of hope. *Freedom in the World 2014: Middle East and North*

arguments of law and the irrational spectacle of the body-in-pain. The new Tunisian Constitution honors the body-in-pain as a witness,²³² and also serves as a reminder of the limits of law in dealing with certain forms of injustice. Accordingly, it is important to understand how the body-in-pain was reconfigured in the body of post-revolutionary law and was translated from the language of disenfranchisement and suffering back into a language of effective rights.

B. The Dialectic Of The Body-In-Pain And A Virtuous Body In Law

In October 2011, following months of protest and the overthrow of Ben Ali's regime, the elected National Constituent Assembly ("NCA") was commissioned to draft a new constitution for post-revolutionary Tunisia.²³³ Several blueprints were advanced²³⁴ and drafts were prepared; the text was vigorously debated.²³⁵ On January 26, 2014, a new constitution²³⁶ was ratified to reflect and confirm the "victory over dictatorship."²³⁷

The post-revolution Constitution—in its opening lines—states that the people of Tunisia will rule their country and utilize the law to speak on their behalf.

We, the representatives of the Tunisian people, members of the National Constituent Assembly, Taking pride in the struggle of our people to gain independence and to build the State, to eliminate autocracy and achieve its free will, as a realization of the objectives of the revolution of freedom and dignity, the revolution of 17 December 2010–14 January 2011, out of loyalty to the blood of our virtuous martyrs and the sacrifices of Tunisian men and women over the course of generations, and to break with injustice, inequity and corruption.²³⁸

The Preamble anchors the Constitution in the country's history. It looks backward to narrate the past and the struggle of the nation during the prior regime. It gives significance to the struggle and sacrifices of the Tunisians to liberate themselves from tyranny and inequality.

Africa, FREEDOM HOUSE (2014), <https://freedomhouse.org/sites/default/files/Middle%20East%20and%20North%20Africa%20Fact%20Sheet.pdf>.

²³² تونس دستور [CONSTITUTION] of 2014 (Tunis.), translated in https://www.constituteproject.org/constitution/Tunisia_2014.pdf.

²³³ *The Best and Worst of Tunisia's New Constitution*, AL-MONITOR, Jan. 29, 2014, <http://www.al-monitor.com/pulse/politics/2014/01/tunisia-constitution-drafting-best-worst.html##ixzz3OkJKvBuE>. In its legislative process, the National Constituent Committee faced different challenges to reach to consensus on an agreeable language for the constitution. It had also to overcome the tragic assassination of the general coordinator of the Popular Movement and member of the National Constituent Assembly, Mohammed Brahmi, on July 25, 2013. Not to mention the general political climate of all "Arab Spring" countries which seems to be stumbling toward an uncertain future.

²³⁴ تونس دستور [DRAFT CONSTITUTION] of Aug. 14 2012 (Tunis.), translated in <http://www.constitutionnet.org/vl/item/tunisia-draft-constitution-14-august-2012>. دستور تونس [DRAFT CONSTITUTION] of Dec. 14 2012 (Tunis.), translated in <http://www.constitutionnet.org/vl/item/tunisia-draft-constitution-14-dec-2012>. Draft Constitution of 22 April 2013, <http://constitutionaltransitions.org/wp-content/uploads/2013/05/Tunisia-third-draft-Constitution-22-April-2013.pdf>.

²³⁵ The author has compared the preamble of the aforementioned drafts with the promulgated constitution of 2014 and found very minor variations; on the discussion here draws on the promulgated constitution of 2014.

²³⁶ *Tunisia signs new constitution into law*, AL-JAZEERA, Jan. 27, 2014, <http://www.aljazeera.com/news/africa/2014/01/tunisia-assembly-approves-new-constitution-201412622480531861.html> (last visited on Jan. 27, 2014).

²³⁷ *Id.*

²³⁸ 2014 Tunisia Const. pmb. translated in https://www.constituteproject.org/constitution/Tunisia_2014.pdf.

The Preamble explicitly emphasizes the role of the people in achieving change. Accordingly, it acknowledges the successful mobilization of the revolution, which the Tunisians launched in order “to achieve the objectives of the revolution for freedom and dignity, the revolution of December 17, 2010 through January 14, 2011.”²³⁹ It reaffirms the nation’s commitment to the teachings of Islam even as it emphasizes the role of the people by enshrining the sacrifices made by the “*virtuous martyrs*” and constitutionalizes the tale of collective injury and corporeal suffering as the predicate for emancipation. It is a reminder of the power of the body when it performs pain to catalyze socio-political change. It offers a timeless commemoration of all pained bodies and privileges their sacrifice and their drive to free themselves from tyranny regardless of their gender, age, background, or personal conditions. The Preamble invokes the specter of a body-in-pain and grants it a divine significance; it references “*virtuous martyrs*” who sacrificed their lives and resorted to radical strategies to break “with injustice, inequity, and corruption.”²⁴⁰

Similar to the Constitution of 1959, the country’s first since it gained independence from France in 1956, the new constitution announces the beginning of a new era where the free will of the people is the main guiding principle of the state (“bequeathing a secure life to future generations, realizing the will of the people to be the makers of their own history”), implying that Tunisia was never independent and the tyrant Ben Ali’s regime was a continuity of the past “foreign domination.”²⁴¹ Remarkably, both the 1959 and the 2014 constitutions used the same language to describe colonial domination; both referred to the past regimes as tyrannical.²⁴² The Constitution of 1959 defined Tunisia as a democracy founded on the sovereignty of the people and repeatedly invoked the importance of remaining faithful to universal human values—human dignity, justice, and liberty. It paid tribute to the will of the Tunisian people, who freed themselves from exploitation, regression and foreign domination thanks to their strong cohesion and their fight against tyranny.²⁴³

The 2014 Preamble also casts the radical acts of self-destruction as acts of martyrdom, despite the religious and cultural consequences of bodily desecration. The Constitution portrays the individual body-in-pain as pure, honorable, and immaculate, sacrificed to denounce injustice, in search of independence, freedom, and dignity.²⁴⁴ This recognition is reflective of the great impact of the body-in-pain in its positive, emancipatory connotation to the post-revolutionary system. By evoking the communality and speaking in the name of the martyrs, the constitutional drafters aimed to legitimize both the new Constitution and those who sacrificed their lives to make it possible. The Preamble not only anchors the legitimacy of the new Constitution in a repudiated past littered with bodies in pain, but also articulates a moral obligation for the people of Tunisia to liberate others who are suffering from oppression.²⁴⁵ The first paragraph of the

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ See 1959 Tunisia Const. pmb. (“We, the representatives of the Tunisian people, meeting as members of the Constituent National Assembly, proclaim the will of this people, who freed themselves from foreign domination thanks to their strong cohesion and their fight against tyranny, exploitation and regression”) *translated in* <http://confinder.richmond.edu/admin/docs/Tunisiaconstitution.pdf>.)

²⁴² دستور تونس [CONSTITUTION] of 2014 (Tunis.), *translated in* https://www.constituteproject.org/constitution/Tunisia_2014.pdf; دستور تونس [CONSTITUTION] of 1959 (Tunis.), *translated in* <http://confinder.richmond.edu/admin/docs/Tunisiaconstitution.pdf>.

²⁴³ *Id.*

²⁴⁴ See 1959 Tunisia Const. art. IV. (establishing the motto of the Tunisian Republic as “freedom, order and justice.”). See also 2014 Tunisia Const. art. IV (modifying the phrase to “freedom, dignity justice, order.”).

²⁴⁵ See 2014 Tunisia Const. pmb. (“[I]n cooperation with the peoples of the world; supporting the oppressed everywhere and the people’s right to self-determination, and just liberation movements at the forefront of which is the Palestinian liberation movement; and standing against all forms of occupation and racism”).

Constitution gives agency to the anonymous corporality, all those who advanced their most precious possession, their lives, “*over the course of generations*” to achieve change and succeed in breaking with the past.²⁴⁶

The Constitution establishes a new relationship between the state and the people. It declares the “independence” of the state where the people of Tunisia draw their own roadmap for their country.

The Preamble articulates the aspirations of the Tunisians to have “a participatory, democratic, republican system, in the framework of a civil state founded on the law and on the sovereignty of the people, exercised through the peaceful alternation of power through free elections.”²⁴⁷ It outlines the main features of the post-revolutionary political system, which is “*founded on the principle of the separation and balance of powers, which guarantees the freedom of association in conformity with the principles of pluralism,*” as well as an administrative system that is based on notions of impartiality, good governance, and a judicial system “that guarantees respect for human rights and freedoms, independence of the judiciary, equality of rights and duties between all citizens, male and female, and equality between all regions.”

The new Constitution weaves the legacy of the body-in-pain into the body of law. To be sure, the promises of the new Constitution remain to be realized. Yet what took place in Tunisia before, during, and after the revolution was a truly remarkable form of a change that was dialectic in nature. The failures of law under the Ben Ali regime gave way to a revolutionary burning body that mobilized collective resistance to the state’s tyranny in ways that supplanted the failures of law.

In synthetic fashion, the corporeal political body finally resolved itself in a constitution that reinstalled law as the primary vehicle through which politics would be channeled and articulated. Thus we witness a dialectic: from law’s failure emerged its opposite, a corporal form of political action, which in turn resolved synthetically into the rebirth of law.²⁴⁸

VI. CONCLUSION

Under certain conditions of state injustice, authoritarian powers become impervious to legal critiques of their abuse of power. When governments are unresponsive to calls for change and when citizens’ rights and demands are persistently neglected or ignored altogether, the potential of human rights based legal norms to challenge governmental power is limited. Domestic, national, and international legal claims are rendered ineffective tools for reform, and an overall state of stasis, collective frustration and desperation prevails.

The failure of human rights based arguments creates an opportunity for “political” action by unrecognized “bodies-in-pain.” In such a context, extralegal acts prove more powerful than law in effecting change. The destruction of the body as a political act is one example of a radical, violent method of expressing oppression and struggle. The phenomenon of individual self-destruction narrates the story of thousands of pained bodies. It offers a platform for bodies-in-pain to communicate their struggle; it is a method by which they can transfer collective pain from internal, sublimated spaces to the public sphere and through which they shatter boundaries and reconstruct their worlds.

Bouazizi’s act of self-immolation was unprecedented in the Arab world, and it was a shocking act of political resistance. Although the dramatic act of self-destruction was in theory both religiously and culturally unacceptable, it resonated with the experience of others and their yearning to express themselves, thereby

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ CHAMUNDEESWARI KUPPUSWAMY, *THE INTERNATIONAL LEGAL GOVERNANCE OF THE HUMAN GENOME* 111–15 (2009).

stimulating thousands of other bodies to act as catalysts for change. Bouazizi's act was able to spur others to demand political change where other movements had been unable to do so for generations. Such corporeal actions can be characterized as individual acts of defiance that may not necessarily intend to spark social change, but may do so if they feed into, or manifest, an existing dynamic of widespread social frustration.

In the particular case of Tunisia, the corporeal logic of the body-in-pain manifested the limits of the normative human rights discourse—rooted in the language of human rights. By stepping outside the body of the law, the human body succeeded in challenging state power, created a momentum of emancipation, renegotiated its social contract, and engaged in the making of law. By returning to the language of the law, the body-in-pain was repositioned as an empowered body, which spoke the language of change on behalf of the collective. Through a dialectic process the body evolved from the geography of pain to the geography of law, through which the body of the law embodied the body-in-pain as a means to eliminate human suffering and fulfill the collective's aspirations.