

THE WEST VERSUS ISLAM: THE BATTLE OVER FREEDOM OF SPEECH

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“This sacred Privilege is so essential to free Government, that the Security of Property; and the Freedom of Speech, always go together; and in those wretched Countries where a Man cannot call his Tongue his own, he can scarce call any Thing else his own [1].”

INTRODUCTION

Across the United States and dozens of other “Western” countries, the concept of freedom of expression is considered a human right. More than that, it is deemed a fundamental human right. Numerous treaties and national constitutions protect the right to express oneself freely without criminal, physical, or sociological repercussions. Nevertheless, there exists a disconnect between how Western nations understand and protect freedom of expression and how predominantly-Muslim nations understand and protect freedom of expression. Many, if not all, Muslim countries place restrictions on freedom of speech that are contrary to internationally-

mandated norms. The question is, why? Is it because of Islam itself? Is it because of these countries' histories and governments? Is it because of Middle Eastern or Islamic culture?

The answer is not so simple. A close look at a few Muslim nations offers strong evidence that history, culture, and religion all have an impact on these non-Western, majority-Muslim societies as they try to determine whether and to what extent freedom of speech should be recognized and protected. This paper will analyze the development of freedom of expression in the Western-dominated international law realm as we know it today in comparison to the development (or lack thereof) of that same freedom in the predominantly-Muslim states of Turkey, Saudi Arabia, and Jordan.

The selection of these three particular states was a wholly deliberate one. Not only does Islam's influence on the government differ in every state, but so do the laws granting and regulating freedom of expression. Turkey, Saudi Arabia, and Jordan share the same predominant religion, but their government structures, cultural heritage, languages, and overall view of human rights are across the board. The rationale for using Turkey as a case study is that it is technically a secular state, but it still has a number of constitutionally-mandated exceptions to its protection of expression [2]. Saudi Arabia is on the other end of the spectrum. The Basic Law of Saudi Arabia names the Qur'an as the nation's official constitution [3], but fails to protect expression in any way. Jordan falls in the middle of the other two states: its Constitution contains a provision protecting the right of free expression like Turkey, but it infers a reservation of right to suppress speech that is insulting to Islam or the monarchy [4]. Thus, an in-depth look at these three states, alongside Islam's teachings on speech, will offer a more accurate and thorough analysis when comparing the Muslim world's development of freedom of expression to the Western world's.

INTERNATIONAL LAWS

As previously mentioned, there are several international treaties protecting an individual's right to freedom of expression. For purposes of this article, the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) set forth the basic principles regarding speech that are universally accepted. Scholars have deemed these two documents as evidence of a universal belief that the protection of human dignity is of utmost importance and should be protected ". . . by a body of law that stands above the law of individual states" [5]. The UDHR in particular has gone from a mere United Nations' General Assembly resolution to part of customary international law [6]. Thus, despite the fact that some countries, such as Saudi Arabia, are not UDHR signatories or refuse to acknowledge the principles it sets forth, they are still bound by it.

Both the UDHR and the ICCPR have individual articles protecting freedom of expression. Article 19 of the UDHR stipulates that "[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers" [7]. Article 19 of the ICCPR essentially guarantees the same thing, although it notes that expression is protected whether it is in the form of oral communication, writing in print, art, or any other medium of expression [8]. Interestingly, the ICCPR article also gives a brief list of certain state restrictions of freedom of expression that are acceptable under international law, including respecting others'

reputation and protecting national security, public order, public health, or public morals [9]. Both Jordan and Turkey signed and ratified the ICCPR without any reservations – meaning they agreed to comply with Article 19 [10]. Saudi Arabia, on the other hand, never signed the ICCPR [11].

THE EVOLUTION OF WESTERN THOUGHT ON FREEDOM OF EXPRESSION

From Ancient Greece, to the Reformation in England, to the American Revolution

For several centuries, and particularly over the past 200 years, freedom of expression has gone through a constitutional, philosophical, and political evolution in the West [12]. While there is still dispute over the appropriate extent of freedom of expression, Western societies have come to the agreement that expression is a fundamental right at its core. Since the West prizes individual autonomy, it is easy for the Western population to accept that a person has an inherent right to express themselves freely. This belief stems from the Western understanding that the international system rests on a set of shared universal values that are more important than the interests of the government [13].

Despite the current emphasis on human rights, Western nations were not exactly quick to arrive to the “individuals have fundamental rights” party. It was a process that began with philosophers dating back to Plato and Euripedes [14], and was heralded by ancient Greek politicians. According to Pericles, freedom of speech was what truly set Athens apart from Sparta [15]. However, it was not until the 1600s in England when political dissidents actually began demanding more speech, press, and petition rights [16].

The concept of freedom of speech in 17th century England stemmed from the idea that political speech deserved particular protection [17]. The emergence of freedom of political speech was fueled by two separate movements: first, the push toward parliamentary privilege and second, the commoners’ push toward the rights to print and petition [18]. Members of parliament realized that in order to responsibly create effective laws, they needed to be able to freely engage in discussion – even discussion that was highly critical of the issue at hand [19]. However, Parliament often butted heads with the monarch over parliamentary privilege [20]. While the privilege had become an accepted practice within the chambers of the House of Commons, King James was quick to inform them that he held the key to the “privilege” and could revoke it at any time [21].

The commoners’ demand for freedom of speech only helped strengthen politicians’ call for their own freedom of speech on the floors of Parliament. Printers, publishers and authors were desperate to disseminate information without government interference. At the time, religious and political members of the English hierarchy saw the printing press especially threatening to their power [22]. The British monarchy was left rather vulnerable to public criticism as its members left the Catholic Church in favor of the Church of England [23]. In order to curtail dissidence or uprisings, the government required authors to obtain licenses before publishing anything from a book to a newspaper [24].

A pro-democracy political group known as the Levellers was well aware of the power of the printing press and – rather unsuccessfully – championed the right to petition and for freedom of speech soon after the battle over parliamentary privilege [25]. After the Levellers quickly fell apart in 1650, two men published a series of letters and essays on liberty under the pseudonym of the ancient Roman politician Cato [26]. “Cato’s” works echo the ideas that the Levellers had set in motion several years before: government officials are trustees of the public, and therefore, the public has a right to know and criticize what officials do [27]. The essays gained quite a bit of traction and helped promulgate the significant changes in British government in the latter half of the 17th century [28]. Parliament was finally able to secure parliamentary privilege with the enactment of the English Bill of Rights in 1689, which said “[t]hat the freedom of speech and debates or proceedings in parliament ought not to be impeached or questioned in any court or place out of parliament” [29].

Ordinary citizens of England sought their own right to freedom of speech in the following decades, but continued to face resistance and punishment from the British government and monarchy [30]. It was not until the American Revolution and the ratification of the United States Bill of Rights that a government recognized that every citizen (theoretically) had a right to freedom of speech and petition [31].

The clash between Western human rights and the Muslim newcomers

One of the reasons why Muslim nations, as well as non-majority Muslim nations in Africa, are skeptical of holding out freedom of speech as a fundamental right is because they had little to no influence on the human rights documents that govern international law today [32]. Western nations dominated the San Francisco Conference, where the United Nations was technically created [33]. Plus, at the time the UDHR was created, many Muslim and African nations were still colonies of the same European powers that were leading the charge for universal freedoms in the United Nations [34]. Thus, there was a disconnect between what the West was practicing (i.e., disrespect for human rights such as self-determination) and what it was preaching (i.e., all humans are born with certain inherent rights – including self-determination[35]). For Muslim and African countries, this contradiction serves as proof that universal rights did not – and still do not – exist [36].

Even though most African and Muslim states ratified the Universal Declaration after they gained their independence, they were still at a disadvantage because “those emerging African and Asian states were not only late comers to an already established concept and framework, but also lacked the human and material resources to make a significant original contribution” [37]. Furthermore, these newly independent states have continued to cast a wary eye on the documents and human rights ideals that their former colonizers have championed in the past half-century [38]. To the former colonies, the “universality project” is merely the West’s ploy to establish cultural imperialism, sustain the rest of the world’s dependency on developed nations, and trample their right to self-determination [39].

Scholar Samuel Huntington suggested that the West and the Islamic world’s disagreement over whether universal rights are truly *Western* rights is actually part of a larger cultural conflict

[40]. This leads us to how Islamic culture does not quite fit into the Western puzzle of universal rights.

CULTURAL DIFFERENCES AND ISLAMIC TEACHINGS

So even if Muslim countries did not have a hand in creating freedom of expression human rights documents, but they ratified them anyway, why do they still have such varying views on freedom of speech and implementation of human rights? The answer lies in cultural relativism and the teachings of Islam itself.

Cultural relativism

Opponents of universal rights often promulgate the concept of cultural relativism as the reason for their hesitation to adopt those rights, and the theory may indeed offer insight into why Muslim nations are hesitant to accept freedom of expression as a fundamental right the same way that Western states accept it. At its core, cultural relativism argues that there is no such thing as universal human rights because different cultures have different outlooks on morality, truth, and inherent rights [41]. In other words, each culture prioritizes values differently, which makes it impossible to determine which rights are fundamental to each human being [42]. This makes cultural relativism a counterargument to strict interpretation and implementation of international human rights laws, such as the UDHR and the ICCPR [43]. Those two documents epitomize the idea that no matter how diverse the world is, all mankind believes that human dignity ought to be preserved and the law that protects human dignity should supersede any national laws on the same matter [44].

Under the Western concept of human rights, the rights of the individual – not necessarily the rights of the community – reign supreme [45]. The philosophical rationale behind this viewpoint is the belief that there are certain fundamental values that rise above the values of the nation-state as a whole [46]. The West assumes that the international norms it has created are not only neutral, but can also be reconciled with Islamic Law [47]. The problem with this assumption is that the individual values that the West prioritizes the most are the same ones that the rest of the world prioritizes the least [48]. This does not work because Islamic culture, in contrast to Western culture, places a greater emphasis on community interests than individual interests [49]. Muslim scholars have explained that Islam focuses on “uniting mankind and cultivating love and understanding among people” [50].

When proponents of universal rights ignore the fact that the concept of universal rights was a predominantly-Western creation, they make it easier for non-Western societies to dismiss their argument [51]. Cultural relativists can then draw attention to the fact that the West is ignoring its colonial past, trying to eliminate the sense of community in non-Western states, and still attempting to dominate the rest of the world any way it can. This then makes it easier for cultural relativists to persuade non-Western peoples that the Western origin of these alleged fundamental human rights are not reconcilable with non-Western culture [52]. Cultural relativists can instead argue that the idea of universal rights is a Western attempt to disrupt and weaken some cultures’ emphasis on community and harmony.

Cultural relativism can also make it troublesome to implement rights such as freedom of expression in Muslim countries. History shows that imposing certain rights – even rights that most people have agreed on as fundamental – is easier said than done. While international declarations spell out the right to freedom of expression, there are no documents that explain how to actually successfully implement or enforce that right [53]. Attempts to democratize the media in places such as Kosovo and Bosnia are prime examples of this [54]. Thus, while the UDHR and ICCPR promise to ensure that every person has the freedom to express themselves, they provide no means of actually guaranteeing that the aforementioned freedom is granted: “[w]ithout enforcement, the impressive guarantees made by human rights instruments lose much of their force” [55]. So, as far as countries like Turkey and Jordan are concerned, there is no way for them to be held accountable for failure to uphold the promises of the UDHR and ICCPR – even though they have ratified both documents [56].

Islam’s view on freedom of expression

Islam’s legal heritage does not have exact equivalents of modern international human rights [57]. A look into the sources of religious guidance in Islam, as well as the culture that has developed around it, offer some insight into why this is. It is noteworthy that the literal definition of the word “Islam” is “submission” [58]. Muslims across the world have adopted different interpretations of Islam, but one thing that has remained constant across various Muslim populations is a focus on Islamic law, supplied by the Qur’an and the practices and sayings of the Holy Prophet – which emphasize the importance of community [59]. These views replace other cultures’ emphases on “corporate identity,” such as the family, tribe, and nation [60]. “It is especially intended to preclude any sense of a personal, autonomous identity” [61].

This is not to say that there is no place for freedom of speech in Islam. On the contrary, Islam recognizes an individual’s right to freedom of expression [62]. However, as Dalia Mogahed from the Gallup Center of Muslim Studies explained in a recent interview with National Public Radio, there seems to be a disconnect between the actual teachings of Islam regarding freedom of expression and how Muslims actually view the right to freedom of speech [63].

First, the Qur’an is the source of Islamic law, and Muslims consider it to be the word of God. The Qur’an stipulates that people are only supposed to speak truthfully, speak “in a manner that is best,” speak kindly, and avoid using inappropriate speech [64]. Muslim scholars have explained Islam “promotes free speech when our intention is to serve a good purpose, promote peace, bring people closer to God and unite mankind” [65]. The rationale behind these principles is to create a community free of discord where people are guaranteed freedom of speech, but are also ensured fairness, the right to disagree with one another, and justice [66]. Speech is supposed to have a positive impact on people and create peace rather than create conflict. Nevertheless, “Islam does not prescribe any worldly punishment for unseemly speech. So people who insult should not be persecuted,” [67] contrary to the numerous laws that Muslim countries have been prone to enact.

Second, Muslims across Africa and Asia do not always understand freedom of speech in black and white terms. The one similarity that seems to exist across Muslim populations is that, in principle, freedom of speech should exist as a right [68]. However, in practice in the Middle

East, “there is this concept of protecting not only individuals, but ideas like religion” [69]. To Middle Easterners, freedom of expression is the ability to defend Islam’s dignity, as well as the ability to criticize the government [70]. Most Muslims in the Middle East believe that freedom of expression relates to both political speech and blasphemy, but really only protects political speech [71]. But in instances when there is a conflict between a human right, such as free speech, and an Islamic principle, some interpretations of Islam will argue that the latter should be respected, even if it is detrimental to the former [72]. This approach is directly opposite to the Western approach. Current international human rights theory does not allow for derogation from human rights obligations even when human rights law conflicts with religious law [73]. Despite this, Islam’s hold on government seems to have weakened, according to some scholars [74]. This may be due to the fact that Islam can be interpreted in different ways. It may also be because some Islamic states have tried to reduce the influence of Islamic fundamentalists by taking away powers previously belonging to religious leaders and giving them back to the state [75].

TURKEY

In order to better understand the free speech laws and attitude toward human rights in the Republic of Turkey, it is worth looking at some of its history and demographic statistics. Turkey has gone through several political reformations since its modern formation as a state in 1923 [76]. As recently as 1997, the citizens overthrew their Islamic government in favor of a more secular and democratic one [77]. While the nation has attempted to maintain a stable democracy for decades, it has often fallen victim to coups and military takeovers [78]. The purpose of the country’s political transformation in the 1920s was to establish a secular state, and since then, the military has often taken it upon itself to enforce democratic principles [79]. It is currently a republican parliamentary democracy [80]. Approximately three-fourths of its 80 million population fall into the “Turkish” ethnic category, stemming back to the Ottoman Empire [81]. Of the remaining twenty-five percent of the population, nearly twenty percent are Kurdish, and the rest are other minorities [82]. Almost the entire population is Muslim, while a miniscule 0.2 percent of the population identify as Christian or Jewish [83].

Turkey is often described as a state in “Eurasia” – it is neither entirely Asian nor entirely European [84]. In order to understand the gray-continental area that Turkey falls in, one need look no further than the fact that Turkey’s attempts to join the European Union (EU) have been stalled for decades. The nation has been trying to gain full membership to the EU since 1987, but it was not until 2002 that it was even given the go-ahead to begin accession talks [85]. More than ten years later, it has yet to become a full-fledged member. Observers have suggested that the hold up to accession may stem from Turkey’s less than stellar human rights record [86]. It has gone through periods of martial law and consistent ethnic discrimination [87]. Its constitution grants freedoms spelled out in documents such as the European Convention of Human Rights, but then limits those grants through clauses such as “publication[s] shall not be made in any language prohibited by law” [88]. Ethnic tensions between the Turks and Kurds have led to the Turkish government targeting the Kurds’ right to free speech [89]. Tracing back to Islam’s value on community, the Turkish people seem to be more concerned with maintaining Turkish community and identity than the speech rights of Kurds – so much so that they are willing to eliminate traces of the Kurdish culture [90].

However, Turkey's shutout from the EU has led to a vicious cycle: the more obvious it is that the EU is not going to grant it membership, the more freely Turkey violates human rights, particularly freedom of speech [91]. This suggests that respect for human rights in Turkey stems more out of an obligation to adhere to European (which are arguably Western) standards than out of a belief that humans innately have some fundamental rights.

The Turkish Constitution

Out of the three countries discussed in this paper, Turkey's constitution offers the greatest protection of freedom of speech [92]. However, the document splits freedom of thought into a separate article from freedom of speech, and offers more protection to the former. First, under Article 25,

“Everyone has the right to freedom of thought and opinion. No one shall be compelled to reveal his thoughts and opinions for any reason or purpose, nor shall anyone be blamed or accused on account of his thoughts and opinions” [93].

Second, in Article 26, the Constitution guarantees everyone freedom to express and disseminate information orally, in written form, in pictorial form, or any other form of media without governmental interference in most circumstances [94]. However, the article grants the government authority to restrict the freedom of expression for the purposes of

“... national security, public order and public safety, the basic characteristics of the Republic and safeguarding the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation or rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary”[95].

It is important to note that while the Turkish Constitution provides certain exceptions to the guarantee of free speech, it still differs from its Saudi and Jordanian counterparts in that it does not rely on Islamic principles as a basis for the exceptions [96]. In fact, some of the exceptions seem to mirror the acceptable exemptions mentioned in both the UDHR [97] and the ICCPR [98]. The exceptions for protecting against crime and prosecuting offenders lend themselves to the UDHR exception allowing for regulations that maintain public order [99]. The exception for maintaining national security could arguably fall under that category as well. However, since those same Turkish exceptions can apply during peacetime, they do not lend themselves to the ICCPR exception – which only allows for derogation from the ICCPR rights in times of public emergency [100]. When it comes to maintaining national security, a stronger argument could be made that suspension of freedom of speech in order to protect national security is a right protected through the ICCPR's public emergency exemption [101]. While religion does not play a part in the other listed exceptions, those exceptions are still problematic under Westernized international law because they have no basis or authority in the UDHR or the ICCPR. The other listed exceptions, including protecting the rights and reputation of others or protecting professional secrets, do not fit into either the UDHR or ICCPR's permissible exemption categories [102].

This is a good time to also mention that the Turkish constitution actually does not mention Islam at all [103]. The only times it refers to religion is when it states that it is a secular state [104], guarantees equality before the law regardless of religious belief [105], and guarantees the right to freedom of religion [106].

Other important Turkish laws

Since passing its constitution, the Turkish government has enacted a number of laws regulating free speech, including the 2004 Press Law [107], the Turkish Prevention of Terrorism Act, and two additions to the Penal Code [108]. These laws are overly broad, intrusive on the rights of journalists in particular, and have been consistently enforced despite the European Union's open disapproval.

The Turkish Prevention of Terrorism Act (Anti-Terror Act), which was enacted as the government was attempting to squash a Kurdish rebellion in the early 1990s, is a statute that criminalizes terrorist threats [109]. The problem with the law, according to Reporters Without Borders, is that its definition of "terrorist" is incredibly broad and places harsher punishments on those who commit the "crime" through the media [110]. In 2010 alone, the law was used to imprison nearly three dozen people for a total of 365 years [111]. The law drew even more international attention after the European Court of Human Rights (ECHR) hailed the Turkish government into its chambers in the case *Halis v. Turkey* [112]. That case involved the government's imprisonment of a book reviewer following his conviction under the Anti-Terror Act [113]. The government claimed the writer's "positive opinions" of the Kurdish separatist movement in his review constituted the distribution of propaganda of an illegal separatist terrorist organization [114]. Turkey argued before the ECHR that its actions were legal because they were done to protect national security [115]. While the Court conceded that the Turkish government had a legitimate interest in protecting national security when it passed the law, it found that the plaintiff journalist's right to freedom of expression was still unfairly violated because the government's punishment was disproportionate to his rights [116].

An interesting aspect of the *Halis* case is that it was heard by the European Court of Human Rights, which is the enforcement mechanism for the European Convention on Human Rights. The European Convention on Human Rights is similar to documents such as the United Nations Charter, the UDHR, and the ICCPR in that it was drafted and enacted by the major "western" state actors. It aims to protect many of the same rights, such as the right to free expression, freedom of religious beliefs, protection from unjust punishment, and equality [117]. So, in the *Halis* case, a Westernized court used a Westernized international document to assess the validity of a secular – but predominantly-Muslim-populated – state's criminal law and conviction [118].

Next, the government adopted two provisions to the Penal Code that have had implications on freedom of expression. Penal Code Section 125 criminalizes criticism of the Turkish police or Turkish government institutions [119]. Penal Code Section 301 is even broader, making it a crime to denigrate "the Turkish nation" [120]. Persons convicted under the latter provision face up to three years in prison, and the government was initially unafraid to use it to prosecute individuals to the fullest extent [121]. Furthermore, the punishment of Turkish citizens who were guilty of denigrating "Turkishness" while in another country would increase by one-third

[122]. In two high profile cases in 2006 and 2007, a journalist and a Nobel laureate were charged under the law for commenting on the role Turkey played in the Armenian genocide in the early 1900's [123]. As will be discussed below, three years after introducing Article 301, the government has backed off from enforcing the law, but only did so after mounting pressure from Western influences, such as the European Union and NGOs [124].

Outsiders' observations: NGOs, foreign governments, and scholars

The majority of information on the status of freedom of expression in Turkey only covers the status of freedom of the press. This is likely because journalists are facing the brunt of Turkey's speech laws. In fact, the Organization for Security and Cooperation in Europe (OSCE) reported that there were nearly 100 journalists imprisoned in Turkey in 2012 [125]. That being said, non-journalists do not always escape the wrath of the government under these laws. Students, professors, and even some of the most religious Muslims have been prosecuted under the various laws [126]. Although it appears at first glance that the victims of free press come from a cross-section of Turkish society, upon further investigation, the Carnegie Endowment for International Peace found "that the imprisonment of journalists has a distinct Kurdish dimension and is largely based on anti-terrorism legislation" [127]. More than 80 percent of imprisoned journalists had either reported on a "Kurdish issue" or the Ergenekon case [128]. The latter is a nationalist group that has been banned for allegedly trying to destabilize Turkey [129].

Other nongovernmental organizations have voiced their concerns about Turkey's freedom of expression laws, particularly through special reports. As of 2013, Turkey's press is "partly free," based on Freedom House's freedom scale [130]. The rationale for its score? For one thing, Turkey has imprisoned more journalists than any other country in the world [131]. Freedom House noted that these imprisonments are the direct result of Turkey's failure to uphold its free-expression guarantees in its constitution [132]. Also, despite the fact that Turkey has attempted to loosen its iron fist on the press by punishing violators of its press laws with fines instead of prison time, the legislature has failed to remove some of the harsher laws targeting the press [133]. If anything, the Turkish government has actually increased its power to censure and punish reporters, and the judiciary is doing nothing to stop it. For example, the Constitutional Court approved the removal of a provision to a press law that required prosecutors to file complaints against journalists within a fairly narrow timeframe [134]. Outsiders have criticized the judiciary for equating pure expression of an alternative or critical idea to the actual intention to incite violence [135].

Many other organizations have long echoed Freedom House and Carnegie's sentiments. In 2011, Reporters Without Borders noted that the judiciary is "dominated by an obsession with 'security,'" and the legal system defends the government more readily than ordinary citizens [136]. This is especially problematic since the laws are vague and repressive, leaving prosecutors and judges with heavy leeway [137]. By 2013, Amnesty International came to the conclusion that Turks were most likely to be prosecuted for speaking out in favor of Kurdish rights [138]. It noted that more than 200 journalists suspected of being members of the Kurdish Communities Union found themselves at the center of "large-scale trials" [139]. The Committee to Protect Journalists echoed Amnesty International's findings, noting that the journalists jailed for their "involvement" with Kurdish political groups were merely reporting on those groups' views and

activities [140]. Furthermore, seventy percent of journalists imprisoned under the Anti-Terror Law were Kurds whom the prosecutors claimed “were using news coverage to create the kind of societal chaos conducive to a coup” [141].

While naming and shaming does not always result in countries submitting to international political pressure, the condemnation contained in one particular report likely had a significant impact on Turkey’s somewhat less restrictive press laws [142]. In 2012, the European Commission placed the “limitations of press freedom squarely at the heart of its concerns about the country” in its annual report on Turkey’s progress [143]. In other words, the Turkish government’s refusal to respect freedom of expression is the main thing shutting it out of the European Union [144].

Of all of its laws and restrictions on freedom of expression, Turkey’s Penal Code Article 301 has drawn the most scrutiny from outsiders [145]. Turkey pulled back on its stringent enforcement of Article 301 of the Penal Code only after some public criticism from “Western” groups ranging from the European Council to Freedom House to Amnesty International [146]. Less than two months after Freedom House issued a press release condemning Article 301, the *New York Times* reported that Turkey was easing the restrictions on free speech [147]. The amendment to Article 301 was heralded as “a key measure of the democratic maturity of this Muslim Country as it tries to gain acceptance to the European Union” [148]. However, while the law technically remains on the books, and the rest of the world thinks the Turkish population is becoming increasingly liberal, scholars note that Turkish society is as much to blame for the strict regulations on free expression as is the Turkish government [149]. These scholars assert that Turks have a strong sense of nationality, and the nation as a whole still suffers from “insecurity” and “low self-esteem” after being born out of the chaos of World War I [150].

The observations of a Turkish lawyer and critic of Article 301 offer the most telling insight into the clash between Islamic values and Western notions of free speech. Speaking to the *Times*, Huseyin Durdu “looked stricken” when asked to contemplate what would happen if Article 301 was banned altogether – something he was actually advocating for [151]. “People would be insulting each other. It would be conflict and chaos,” he said [152]. This seems to be a reflection of the Islamic principle that only the truth should be spoken so that conflict can be avoided. Atilla Yayla, a professor who was condemned under Article 301, echoed Durdu’s sentiments, but noted that “I don’t like insulting people. I can usually make my point without it” [153].

The Anti-Terror Law has also drawn its fair share of condemnation from the international community. In April 2013, more than twenty years after the law was first passed, the Turkish Parliament passed a series of amendments to the law that were intended to help bring it into accordance with the standards set forth in the European Convention on Human Rights [154]. Once again, parliament’s change of heart came after outside Western parties, such as the Council of Europe, the U.N. Office of the High Commissioner for Human Rights, and the U.N. Human Rights Committee, called on Turkey to protect journalists’ rights instead of taking them away [155]. The nation faced a major blow when the European Court of Human Rights handed down a ruling in 2010 holding that the Turkish government not only failed to protect a Turkish-Armenian journalist, but that it also “failed to adequately investigate his murder and infringed on

his right of freedom of expression” [156]. Prior to his death, the journalist had been charged and tried under the aforementioned Penal Code Article 301 [157].

SAUDI ARABIA

Even when one considers the number of journalists imprisoned in Turkey and the targeting of Kurdish supporters, its legal and social atmosphere seems like a haven for free expression when compared to Saudi Arabia’s legal and social atmosphere. The difference in acceptance of free speech appears to be directly related to Islam’s role in governmental affairs. Interestingly, 100 percent of the populations of both nations identify themselves as Muslim [158]. A key difference between Saudi Arabia and Turkey is that the former still has a monarchy and lacks a secular government [159]. In fact, it identifies itself as a Muslim nation at the outset of its leading legal document [160]. Islamic principles repeatedly appear in the justice system, legislative system, and the government at large [161].

Before addressing the speech laws and Western perceptions of Saudi Arabia, it is worth touching on some of the basic aspects of Saudi history, government, and culture. The Al Saud family has ruled Saudi Arabia since the nation’s modern-day inception in 1932 [162]. Twenty-four government ministries, whose heads are appointed by the monarch, help govern the 27 million Saudi citizens [163]. Most of the nation’s rulers have focused heavily on economic development, whether it be forming the Gulf Cooperation Council, or establishing state schools and state universities, or developing nationwide infrastructure that supports modern technology and healthcare [164]. But the nation is perhaps most economically famous for its grip on the oil industry. Saudi Arabia controls the largest petroleum reserves in the world – which has led the capital in particular to remain an economic and political force to be reckoned with [165].

Western ideals and their influence on Middle Eastern affairs play a significant role in the tension between Saudi Arabia and the West. For one thing, the Saudi government, while technically an ally of the United States in the War on Terror, has faced a great deal of condemnation from the Western world [166]. The Saudi government has also faced a problem of internal resistance from its own citizens over the past several decades: some seek more secularization like Western nations, while others seek more religious restrictions to combat the ever-increasing presence of Western society in Arab culture and Islam [167]. In terms of people who fall into the latter category, the Saudi government has a vested interest in stifling out extremists – not because it believes that religious extremism is in and of itself a bad thing, but because extremists could threaten the stability of the country, and thereby the stability of the government [168]. The Saudi government’s fear of the power of its own citizens was never more evident than when its neighboring countries began experiencing rebellions in 2011 [169]. Saudi Arabia has been heavily invested in maintaining the status quo in the Middle East, and throughout the Arab Spring, the government used its resources to help the governments of nearby nations in turmoil [170]. Moreover, the king bribed Saudi citizens, promising them more than \$100 billion in “domestic incentives” if they abstained from protesting like their neighbors [171].

Despite the Saudi government’s attempts to control its own constituents and geographic region from Western influences, it has forged a well-known, close, and sometimes strained relationship with the quintessential Western nation: the United States [172]. Although both countries strive

for stability in the Middle East, the approaches they have taken to maintain that stability have oftentimes been at odds [173]. On one hand, the Saudi government represses and bribes its own people, but seems to recognize there is a limit to that repression that it cannot go past [174]. It was in full support of using military force to stop the Assad regime in Syria from using chemical weapons against Syrians [175]. On the other hand, rumors have circulated that the Saudis are less than pleased that the United States is now in “talks” with Shia-dominant Iran – Sunni Saudi Arabia’s rival [176]. In more recent years, Saudi Arabia has been rather vocal about its distrust of international organizations such as the United Nations. Even when Saudi Arabia obtained an otherwise highly-coveted temporary seat on the United Nations’ Security Council in October 2013, the government renounced its seat because it believed that the Security Council had failed to fulfill its duties in bringing about peace in Syria and resolving the Israel-Palestine conflict [177].

What was particularly interesting about the Security Council situation was that the Saudi diplomats initially lauded their election as a “defining moment” in Saudi Arabia’s history [178]. However, the government back home in Riyadh did not share this sentiment [179]. The contradiction between the Ministry’s initial push for acceptance into the Security Council and the Saudi government’s subsequent disdain for the Security Council is arguably a demonstration of the internal conflict within the government over the role of the West and how far the Saudis should venture into Western affairs and concerns [180].

The role of Islam in Saudi Arabia’s political and social realms

Based on the language of Saudi Arabia’s laws and governing documents, its primary concern, particularly when it comes to freedom of expression, is preserving the integrity of Islam [181]. Every speech law not only mentions respect of Islam as a requirement in all forms of expression, but mentions Islam several times across several articles in the same document [182]. Islam and Sharia “suffuse” the text of the Basic Law, making them a major theme of the document [183]. These references range from the declaration that Islam is the national religion, to declaring two Islamic holy days as national holidays, to setting the Islamic lunar calendar as the nation’s official calendar [184]. Since Sharia is the national law, it regulates both Saudi residents and the government. Other national laws are considered subordinate to Sharia [185]. This is a stark contrast to the laws of Turkey, which as explained at length above, never mention religion as a condition on speech – let alone make references to Islam in particular [186].

Because of Islam’s importance in all aspects of Saudi life, the nation has been described as the defender of Islam [187]. Saudi Arabia spends a significant amount of money and other resources to maintain Islamic holy sites and uphold its interpretation of Islamic law [188]. The nation has consequently adopted a reputation around the globe as the face of an international “struggle against Western corruption” [189]. However, the religious environment is not as uniform as the government would like the rest of the world to believe. Some provinces have a majority Shiite population, in contrast to the Sunni royal family and national government, and carry a Western “feel” [190]. Plus, scholars have noticed that the government tries to project an image of religious and tribal discourse in order to maintain stability within the country, but that image

weakens when the country is faced with crises that reveal the clash between the discourse and the actual practices of the monarchy [191].

Saudi Arabia's Basic Law

The major “documents” setting up the government and legal framework of Saudi Arabia are rather unique. One document is the Basic Law of Governance, which explains the role of the government, the values of Saudi society, and rules regarding economic issues, among other things [192]. The other governing “document” is the Holy Qur’an, a book that Muslims believe to be the direct word of God. However, the Basic Law defers to the Qur’an. Article 1 of the Basic Law stipulates that “[t]he Kingdom of Saudi Arabia is a fully sovereign Arab Islamic State. Its religion shall be Islam and its constitution shall be the Book of God and the *Sunnah* (Traditions) of His Messenger” [193]. In other words, the Qur’an is the supreme law of the land, and all laws must fall into accordance with the Qur’an. Furthermore, the state is required to use Sharia law, also known as Islamic law, as the mechanism to protect human rights [194]. These direct references to Islam, particularly the four references in the very first Article of the Basic Law, offer an extreme contrast to the Constitution of Turkey, which does not contain references to Islam despite its predominantly Muslim population [195].

Based on its numerical placement in the Basic Law, it seems that freedom of expression rights are not of significant importance in Saudi Arabia. Article 39 provides that

“Mass and publishing media and all means of expression shall use decent language and adhere to State laws. They shall contribute towards educating the nation and supporting its unity. Whatever leads to sedition and division, or undermines the security of the State or its public relations, or is injurious to the honor and rights of man, shall be prohibited. Laws shall set forth provisions to achieve this” [196].

The language of this particular article echoes much of the Islamic sentiment on speech rights; i.e., one must only speak the truth and speak in a way that fosters community rather than discord [197]. Islamic principles have only continued to heavily influence subsequent national laws, at least according to Western NGOs [198]. As will be discussed more at length below, at least two other Saudi Arabian national laws and their amendments concentrate on banning speech that contradicts Sharia Law or insults religious leaders [199].

Article 39 also seems to suggest that the media has a privilege to exist, rather than a right to exist [200]. The use of the phrase “the media shall function in a way” insinuates that rather than protecting the rights of the media, it is merely allowing the press to exist if certain conditions are met [201]. From a constructionist standpoint, if the media is not “educating the masses and boosting unity” it will be shut down [202]. Plus, anything that is offensive to dignity is open to both regulation and punishment [203].

Other Saudi expression laws

Information on the many Saudi laws that regulate freedom of expression is scarce. Various NGOs have reported that the Saudi government has issued a number of laws and decrees in

recent years, particularly after the Arab Spring in 2011. That being said, tracking down the full language of these laws and regulations is tricky. Among the laws that the nation has passed include Royal Decree 1700/Mim Ba, which took jurisdiction over the media away from the judiciary and handed it to the Ministry of Culture and Information [204]. In April 2011, as the Arab Spring was in full swing, another royal decree banned “the reporting of news that contradicts Sharia (Islamic law), undermines national security, promotes foreign interests, or slanders religious leaders” [205]. The decree also granted the government the power to place lifetime bans and fines of up to \$133,000 on journalists who violated the decree [206].

Another important law regulating freedom of expression is the Law of Printing and Publication, which governs everything from radio and television to advertising to bookshops to drawing and writing [207]. It requires all specified “publishers” to obtain a license prior to publishing or printing, and it sets strict restrictions on who can obtain a license in the first place [208]. The applicant must be male [209], must be at least 25 years old, must have a good reputation, and must “have a suitable qualification in accordance with the provisions of the Implementing Regulations” [210]. The Implementing Regulations mentioned in the fourth criterion are not included in the final act itself, but are apparently a separate document. Individuals who meet the criteria must then pay the government a fee [211].

This law does not just curb freedom of speech through its license application process; it also limits freedom of expression through its requirement that publishers follow the tenants of Islam [212]. References to Islam run rampant through the law, constantly reminding the reader that anyone who fails to follow Islamic tenants is in direct violation of the law [213]. First, Article Three declares that the purpose of all printed material should be, among other things, promoting the “call to Islam” [214]. Second, the law guarantees freedom of expression in Article Nine, but only on the condition that the publication of such expression abides by Sharia [215]. Third, Article Eighteen notes that materials published outside of the kingdom will only be approved for distribution and/or printing within the kingdom if the materials are “freedom from anything insulting to Islam,” among other things [216].

Finally, Saudi Arabia’s Anti-Cyber-Crime Law is a somewhat older provision used to prosecute individuals for expressing sentiments that the government deems as harmful to public morals and Islam. Passed in 2007, this royal decree states in Article 2 that one of its purposes is to combat cybercrime in order to protect “public Interest [sic], morals, and common values” [217]. Article 6 goes on to declare that a person who produces, prepares, transmits, or stores “material impinging on public order, religious values, public morals, and privacy through the information network or computers” is subject to five years in prison and a hefty monetary fine [218].

It is important to note that these laws are not merely sitting on the books unused. Individuals have been consistently prosecuted under one law or another, and in some cases, individuals are forced to flee the country [219]. Repeat offenders receive even harsher punishments [220].

Outsiders’ observations: NGOs and scholars

Based on the stark contrast between the laws protecting freedom of expression in Western countries and even places like Turkey, one would be correct in assuming that outsiders

disapprove of the way that Saudi Arabia approaches expression, speech, and the press. Freedom House placed the country in the “not free” category, citing the government’s stronghold on speech that is generated domestically and internationally; its Big-Brother-like monitoring, censoring, and blocking of websites; its strict and religiously-backed licensing requirements; its cronyism (every daily newspaper in Saudi Arabia is privately owned, but each owner has some affiliation with the Saudi royal family); and its creation of a social environment where journalists self-censor out of fear of the government [221].

Reporters Without Borders (RWB) has consistently condemned the government for imprisoning journalists and “cyber-activists.” It appears from RWB’s press releases that these criminal prosecutions are usually the result of someone violating a law that forbids expression that the government considers insulting to Islam [222]. RWB ranked Saudi Arabia 163 out of 179 countries studied in its annual press freedom report, placing it ahead of Cuba, China, Iran, and Syria, but behind Egypt, Russia, and Malaysia [223]. Apart from its annual report, RWB also denounced the Saudi government for sentencing a cyber-activist, Raef Badawi, to seven years in prison after he supposedly offended Islam under the country’s Anti-Cyber-Crime Law [224]. The government claimed that Badawi had created and moderated a website that openly insulted religious officials and Islam [225]. Apparently Badawi had failed to remove a third-party’s comment that was allegedly blasphemous [226]. The judge also tacked on an additional three months to the young man’s sentence for alleged “parental disobedience” [227].

The Carnegie Endowment for International Peace is one of the few organizations that has directly addressed the possibility that Islam has a profound impact on Saudi Arabia’s inability to protect speech in a way that is consistent with international standards. It noted that the government believes that its own interpretation of Islamic law is “the only necessary guide to protect human rights” [228]. While the Human Rights Watch (HRW) has also noted that Islamic principles have a stronghold on speech in Saudi Arabia, it only did so when discussing the government’s discriminatory practices toward Shia Muslims’ religious practices and beliefs [229]. HRW was only concerned with how the Saudi government’s interpretation of Islam has restricted the religious speech of citizens who do not agree with its interpretation of Islam. HRW did not discuss how the government’s interpretation of Islam has influenced other speech. Also, it is interesting to note that neither Carnegie nor HRW explained Islam’s view on freedom of expression. In fact, neither NGO compared the general understanding of freedom of speech principles in Islamic law to the freedom of speech principles in Saudi law.

Legal scholars are none too impressed with Saudi Arabia’s freedom of expression record either. One argued that even the few laws and committees that the government alleges it has created in hopes of improving freedom of expression are mere drops in the bucket when compared to the power of the king [230].

Watchdog organizations and scholars have pointed out that Saudi Arabia has failed to protect an individual’s right to express himself, but the criticism that Saudi Arabia has faced is less than that of Turkey [231]. One could argue that this inconsistency is due to Saudi Arabia’s economic influence through its stronghold on the oil industry; its important role in fighting the War on Terror; or its blatant disregard for joining traditionally Western human rights initiatives and appeasing Western international and non-government organizations [232]. Perhaps because of

the country's economic strength and its advantage as an ally, the West has been a little more willing to allow Saudi Arabia's free speech (and human rights) transgressions slip by without as much condemnation as it would otherwise. Or perhaps the West has resigned itself to the belief that Saudi Arabia simply cannot change.

There are a few examples in academia where scholars have been rather lenient on Saudi Arabia's free speech record. For example, some have gone so far as to praise the Basic Law for being brutally honest when blatantly refusing to grant certain freedoms to its citizens [233]. One lawyer, a graduate of Yale Law and a practicing attorney in Saudi Arabia's capital, argues that unlike the governing documents in other North African and Middle Eastern countries, which fail to uphold their promise to respect democratic governance and human rights, the Basic Law of Governance is "unabashedly honest" [234]. It makes no guarantee of democratic elections, of protecting human rights, or holding government officials accountable for its action [235]. Instead, it rejects the more traditional expressions of constitutionalism in favor of "a powerful executive circumscribed only by historical practices and Islamic ideas of governance" [236]. It seems rather perplexing to applaud a sovereign for openly declaring that it will deprive its citizens of their rights, particularly when the international community as a whole has decided that the sovereign has no authority to deprive those rights except in very limited circumstances [237]. It is also a perplexing argument when one considers that Islam requires that people respect human rights.

Another American scholar, Dawn Nunziato, echoes the sentiment that Saudi laws are honest [238]. She notes that while the Saudi government's restrictions on online speech are particularly hostile, they are at least transparent [239]. Not only do they give citizens clear notice of what type of speech is and is not permissible, but they explain why the speech is being censored in the first place [240]. It is true that this type of notice may be more open and readily available to the average citizen when compared to states that fail to offer notice at all. However, Saudi Arabia's notice on internet censorship is not as clear as Nunziato seems to suggest. The notice fails to explain what factors must be satisfied in order for speech to be offensive or harmful [241]. It also fails to explain what Saudi societal norms should be [242]. It also allows the government to engage in viewpoint discrimination. The government gets to decide what is offensive or harmful, what is a tenet of Islam, and what are societal norms [243].

While these various third-party observers mention that Islam and Sharia have an influence on Saudi laws and society, they do not place all the blame for the restrictive expression laws on religion. At the same time, these observers fail to at least address the possibility that cultural relativism and the tenants of Islam make it harder for Saudi society to come into accord with the UDHR and ICCPR. The latter point is understandable, considering that it would be viewed an attack on Islam to proclaim that Islam makes it difficult for societies to adhere to human rights ideals. However, based on Islam's influence on Saudi Arabia's speech laws (and its influence on Jordan's speech laws, as discussed below), the international community has to come up with a way to reconcile the speech principles promulgated in Islam with the free speech guarantees promulgated in documents like the UDHR and ICCPR. If the international community truly wants to make some sort of progress in the realm of freedom of expression in a predominantly-Muslim nation, this issue must be addressed.

JORDAN

The Kingdom of Jordan is a Middle Eastern constitutional monarchy primarily comprised of people of Arab descent [244]. Like Turkey and Saudi Arabia, Jordan has a large Muslim population, but with only 92 percent of the 7.9 million people in the nation identifying as Sunni Muslim, Jordan has the smallest Sunni population per capita of the three nations surveyed in this note [245]. Generally speaking, Jordanian society and government is a mix between those of Turkey and Saudi Arabia. Its legal system has elements of Sharia, similar to Saudi Arabia, but also follows the tenants of civil law, similar to Turkey [246]. Its constitution protects citizens' rights, similar to Turkey's constitution, but also grants the government the power to limit those rights in certain circumstances, similar to Saudi Arabia [247].

The Jordanian press is a mix of independent organizations and government-owned entities. The government has its own television station, radio station, and newspaper, but has allowed for independent news sources to exist so long as they meet certain criteria [248]. Namely, it requires that all publishers obtain licenses before beginning operation [249]. So, even though there are a number of independent print news sources in the kingdom, they are still subject to government scrutiny [250]. Until recently, the Ministry of Information kept tabs on publications and issued licenses for media outlets, but King Abdullah II dissolved the ministry and handed off its responsibilities to other government bodies [251].

While religion is an important aspect of everyday Jordanian society, the more urban areas are rather Westernized. Movie theaters play foreign films, theater companies put on plays and ballet performances, and internet cafes are readily accessible in Amman [252]. Even though the government has control over the media, Western movies, television shows, and music are often featured on radio and television stations [253].

The Constitution of Jordan

Jordan's Constitution guarantees citizens freedom of opinion, unlike its Saudi counterpart, but stops short of guaranteeing freedom of expression to everyone at all times. Article 15 declares that "[e]very Jordanian shall be free to express his opinion by speech, in writing, or by means of photographic representation and other forms of expression, provided that such does not violate the law" [254]. However, the Constitution seems to grant the government a loophole in regard to regulating the press. In Sections (ii) and (iii), the Constitution hints that it will allow for certain limits to be placed on the freedom of press and freedom of publication "except in accordance with provisions of the law" [255]. It is not entirely clear which "provisions of the law" that the Constitution is referring to. Critics have noted that the "law" mentioned in the Constitution is actually a set of unclear laws that often gives rise to arbitrary prosecutions [256].

Section (iv) of Article 15 goes even further by openly allowing the government to derogate from its responsibility to protect the right to freedom of speech during times of crises: "[i]n the event of the declaration of martial law or a state of emergency, a limited censorship on newspapers, publications, books and broadcasts in matters affecting public safety and national defence [sic] may be imposed by law" [257].

Other important speech laws in Jordan

In the past two decades, Jordan has enacted or amended a handful of laws related to expression [258]. Some of these laws benefited the public at large, such as the Right of Access to Information Law, but overall, they have decreased Jordanians' ability to exercise their speech rights [259]. These laws echo Saudi Arabia's belief that information disseminated over the internet, particularly information that is viewed as a threat to national security, must be monitored and filtered. It seems that in practice, the laws are more likely to be used to punish individuals for questioning the king or the government than for making statements related to Islam.

Jordan's first press law, the Press and Publications Law, was one of the few expression laws that empowered citizens as opposed to the government [260]. Passed in 1993, the law protected a person's right to establish a newspaper and required the government to use judicial review before suspending or closing a newspaper [261]. However, that particular press law did not remain intact for long. In the five years after the law's enactment, the media fell under attack for allegedly ruining Jordan's image and threatening national security after it published information contradicting and criticizing the government [262]. The government responded by passing the Press and Publication Law of 1998 to curtail the media [263]. That new law, along with its amendments, had significant implications on freedom of expression. It restored the government's licensing power, substantially raised the fines for breaking the law, added more content-based restrictions on free speech, gave some government bodies the authority to censor foreign publications even before they made it into Jordan, and created a prior restraint by requiring authors to submit two copies of "any book to be published to the Kingdom to be deposited with the PPL prior to publication" [264].

In recent years, the government has taken steps towards regulating internet expression as much as print expression. For example, the government passed the Information Systems Law just before the Arab Spring ignited [265]. Among other things, the law grants police the authority to search website offices and gain access to their computers without a warrant [266]. The law tightened restrictions on online news outlets under the guise of regulating cybercrime, and observers considered it to be a step in the direction of oppressive regimes like in Iran, Syria, and Saudi Arabia [267]. In another instance, members of the Jordanian Ministry passed a regulation that cut government employees off from access to almost fifty news websites [268]. In yet another case, the Court of Cassation, which is the highest judicial authority in Jordan, recommended that the Press and Publications Law be extended to online and other electronic media [269].

Finally, Jordan's Penal Code also hinders freedom of expression through its provisions on defamation and libel. A person found guilty of either defamation or libel is not just subject to civil penalties like in many Western societies, but rather, imprisonment for up to three years [270].

Outsiders' observations: NGOs, foreign governments, and scholars

Despite Jordan's best efforts to curtail criticism of its policies in its own press, it has been unable to escape the criticism of Western NGOs, foreign governments, scholars, and news outlets outside its borders. Like Saudi Arabia, Jordan fell into Freedom House's "not free" category in 2012 [271], was ranked in the bottom 25 percent of countries in the Reporters Without Borders rankings [272], and was consistently called out in the international media for its internet censorship activities. In October 2013, a group of NGOs wrote an open letter to King Abdullah expressing their "deep concern" about the legal restrictions on websites and the application of the Press and Publications Law [273].

Freedom House based Jordan's designation as a "not free" press state on criminal laws, prosecution of journalists, and lack of access to information [274]. During its investigation for its annual report, Freedom House found that the government allows for some criticism of it and its policies, but still tries to influence the media when it can [275]. Even international news agencies found themselves the victim of the Jordanian government's wrath [276]. It stopped providing Agence France-Press official transcripts and government notices after the agency reported that some Bedouin tribes were accusing Queen Rania of corruption [277]. The NGO also found the national legislature's amendment to the Press and Publications Law that created specialized criminal courts for the prosecution of violators of the law particularly alarming [278]. Another troubling feature of the press environment was the fact that the government still used the numerous expression laws to "stifle" dissenters, even though it usually released the journalists arrested under those laws without trying them [279]. But Jordan's former Minister of Information and Communication offered up one of the most damning comments on the state of press freedom in Jordan when he resigned from his position, noting that the then-proposed amendments that aimed to strengthen the government's grip on the media were a "blow to press freedom" [280].

Reporters Without Borders ranked Jordan 134 out of 179 countries surveyed in its Press Freedom Index [281]. Jordan actually dropped six spots from the previous year's list because of a new royal decree that restricted freedom of information, particularly online [282].

Human Rights Watch has consistently published articles condemning the Jordanian government's prosecution and harassment of journalists. In April 2012, it reported that a journalist was imprisoned after writing an article suggesting the king had intervened in a corruption investigation [283]. The journalist and his publisher were charged with "subverting the system of government" [284]. In September 2013, HRW reported that the publisher and the chief editor of a news website were arrested and charged with "disturbing relations with a foreign state" after posting a YouTube video that showed one of the princes of Qatar dancing and showering with women [285]. In every instance, HRW called on the Jordanian government to drop the charges and stop hindering the journalists' right to free speech [286].

The United States Government has been none too impressed with Jordan's expression laws either. The State Department (State) listed Jordan's restrictions on freedom of expression as one its "most significant human rights problems" [287]. In its annual human rights report, the State cited to instances in Jordan where a newspaper reporter was fired after he criticized the government, where the government tracked university students' speech, and where the government prosecuted political activists for their speech [288]. It noted that self-censorship runs

rampant because journalists fear government prosecution and heavy fines if they publish materials on sensitive subject matters, such as political reform [289].

The United Nations Educational, Scientific and Cultural Organization (UNESCO) office in Amman released a detailed analysis of the Jordanian media environment in 2012 [290]. It found that while Jordan has ratified human rights treaties guaranteeing freedom of expression, its national laws and practices violate those treaties [291]. One particular violation included the passage of an amendment to the Press and Publication Law that allowed for the law to cover online media [292]. This amendment came after the King and his government vowed to reform legislation in a way that favored freedom of expression [293]. UNESCO found it troubling that Jordanian reporters do not adhere to professional journalism standards, lack accountability, and are constantly self-censoring out of a fear of legal and physical threats [294].

However, unlike some of the NGOs and the State, UNESCO offered suggestions to the Jordanian government on how it can improve its media environment. In its media analysis, it stated that it had submitted a document to the government in 2011 that detailed its policy advice regarding freedom of expression [295]. More specifically, it explained how the country could encourage the existence of a free press [296].

The international media challenged the Jordanian government's practices from a slightly different angle. They latched onto Jordan's wide-scale ban on news websites in the summer of 2013 [297]. The *Christian Science Monitor*, for example, reported that the government of Jordan had blocked access to 263 news sites that had failed to comply with a 2012 national law requiring online media to register with the government [298]. The 2012 law was yet another one of Jordan's responses to the Arab Spring [299]. The reason why so many online news sources had failed to comply with the law was two-fold. For one, they saw the statute as a form of excessive governmental interference with the media [300]. They didn't agree with the law in principle. But second, many of the owners of online media were simply unable to meet the strict requirements of the law [301]. In order to register, they not only had to submit a registration fee, but the editor-in-chief of the operation was required to be a member of the Jordanian Journalists' Syndicate (a government entity) for at least four years [302].

The government fired back at the media's complaint that the law was too strict and repressive. It released a statement saying that "[t]he blocking is not intended to restrict freedoms . . . but the goal of this action is to organize the work of these websites, protect them, and keep from allowing those from outside the profession to inhabit the label of journalists" [303].

The academic literature published by scholars on Jordan's expression laws is scarce. It seems that they have focused more on Jordan's neighbors – particularly Saudi Arabia [304]. Nonetheless, the few who have analyzed Jordan's speech environment have concentrated on its constraints on the media [305]. The Penal Code is seriously problematic because it remains incredibly vague, even after numerous amendments [306]. One Jordanian journalist explained how difficult it is to comply with the Penal Code, when he explained that something as simple as "writing about the Jordanian currency could be explained as harming the national interest and writing about the influx of Iraqis in the advent of the war could be explained as sparking sectarian strife" [307]. Overall, although Jordan does restrict speech on many

occasions, scholars have noted that its laws are still more tolerant toward press freedom compared to Saudi Arabia [308].

CONCLUSION

The case studies of Turkey, Saudi Arabia, and Jordan presented in this paper demonstrate the different ways countries with majority Muslim populations address freedom of speech. Despite their shared religion, the fact of the matter is that these countries' differing cultures, histories, and statuses in the international political realm seem to have the biggest influence on the level of protection that they give to speech. The case studies show that it is erroneous to say that Islam is the definitive reason for these countries' restrictions on free speech. For example, in the case of Turkey, the restrictions on the press stem from ethnic tensions, not from Islam itself. On the other hand, in Jordan, the restrictions on the press stem from the government's attempts to control its image. Both countries are almost entirely made up of Muslims, and while the latter incorporates elements of Islam into government and law, the former does not.

The brief analyses of Turkey, Jordan, and Saudi Arabia's treatment of free speech demonstrate how societal differences – i.e. cultural relativism – influence how effectively societies can incorporate free speech into their countries. These societal differences cross over into religious matters; different societies have different interpretations of Islam and have differing views on what role it should play in government. The Saudi monarchy, for example, decides how to implement Islamic law in the kingdom. The Turkish government, on the other hand, is shut off from religion altogether. It does not attempt to apply religious law or interpret religious tenants or documents for its citizens. Cultural relativism gives a rationale for why freedom of speech is more readily recognized in a predominantly Muslim country like Turkey, but not a country like Jordan: Turkish culture is different than Jordanian culture. Religion plays less of a role in the public realm in the former than it does in the latter.

Islam's influence on the laws and societal beliefs in countries like Turkey, Saudi Arabia, and Jordan is not something to be ignored. It is a piece in the cultural relativism puzzle that helps explain why speech is not as readily protected in some Muslim countries as it is in secular or Western countries. Islam places more of an emphasis on fostering community and avoiding discord. Its teachings lend some support to free, but truthful, speech and go so far as to frown upon punishment for inappropriate or antagonistic speech. Islamic teachings on speech mirror the Western views on speech in that they refuse to punish individuals who do convey controversial, false, or antagonistic speech - at least in this world.

Despite Islam's influence on Turkish and Jordanian society and culture, it is not a driving force behind their reluctance to protect speech rights – at least not explicitly in their laws. National security is often offered as a rationale for restricting speech rights. All of this is strong evidence that Islam is not the sole reason why nations with large Muslim populations place less emphasis on the right to express yourself freely.

History demonstrates that the evolution of speech rights in Western countries was a slow process, and the people within those countries adopted free speech values as it became necessary to enhance their political dominance and their need for open political discussion. Western society

has steadily been working toward the belief that freedom of speech is an inherent right for at least four centuries. What began as grassroots efforts to let printers publish without governmental repercussions slowly evolved into a belief that the ability to express oneself is a fundamental human right. Predominantly Muslim countries are just beginning the journey toward recognizing certain fundamental individual rights. Just as Western societies were unable to declare free speech a fundamental right overnight, these majority-Muslim societies also cannot be expected to declare free speech a fundamental human right. This is not to say that these nations are off the hook for censoring, fining, and imprisoning individuals who speak in a manner that the governments or society deems unnecessary or unsavory. These outspoken individuals have a right to express themselves, and they deserve protection, regardless the extent to which their society believes that freedom of speech ought to be protected. Nevertheless, Turkey, Saudi Arabia, and Jordan's history, along with their cultural and religious features, must be taken into consideration when trying to understand their views on free speech and when trying to help those countries move toward greater expression protections for all their citizens.

Turks, Saudis, and Jordanians have not spent the past several centuries fighting for free speech, unlike their Western counterparts. Free speech protections were not really on the former's radar. Beyond "speaking the truth," free speech did not play a substantial role in society at all. But as these countries have faced forms of protest, revolutions, and changes in political regimes in recent years, they have begun realizing the necessity of freedom of speech. From that standpoint, the Muslim world's realization that political speech deserves particular protection mirrors one of the Western world's earliest movements towards recognizing free speech as a fundamental right. Like the Levellers and the members of British Parliament in the 1600s, citizens of these Muslim countries are recognizing how protecting speech allows for better governance. Muslim societies are just beginning the journey toward free speech, whereas Western societies like England, France, and the United States have recognized free speech as an inherent right for at least 300 years.

An analysis of freedom of speech perceptions in the West as opposed to these Muslim countries shows that the critics of free speech protections are usually Western. So the outsiders who try to explain to these Muslim states how to protect speech are approaching the problem with a uniquely Western viewpoint. They already have a prolonged history of fighting for speech rights, and that history does not necessarily include incorporating religious tenants into justifications for human rights. This is like comparing apples to oranges, and it results in a culture clash.

Cultural and religious ideals are not the only factors in the differing views on freedom of speech. The legislative history and language of the actual legal instruments declaring speech as a fundamental human right are another reason why Muslim nations are reluctant to fully embrace the Western notions of free speech. Turkey, Jordan, and Saudi Arabia had little to no influence on the creation of human rights documents like the UDHR. Plus, UDHR and ICCPR offer no game plan on how to implement these rights into societies. This is problematic for non-Westernized countries, particularly since their free speech history is more limited.

A firm conviction that speech is worthy of a great deal of protection will not happen overnight in countries like Turkey, Saudi Arabia, and Jordan. The process of changing public and government sentiment regarding free expression will likely happen slowly. When assisting these nations in

their free speech endeavors, the West will have to include considerations of these nations' histories, cultures, and religious beliefs. Condemnations from Western government and NGOs is not enough. Until both the West and Muslim countries can figure out how to reconcile these aspects of Muslim societies with Western ideals of free speech, it is likely that the condemnations from Western governments and NGOs will go unheeded.

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[4]. Const. of the Hashemite Kingdom of Jordan, Jan. 1, 1952, Ch. 2, Art. 15, available at http://www.kinghussein.gov.jo/constitution_jo.html.

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[8]. International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. Doc. A/6316, art. 19 (Dec. 16, 1966).

[9]. *Id.*

[10]. International Covenant on Civil and Political Rights, *supra* note 8. See signatories to the ICCPR, available at <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-4.en.pdf>.

[11]. *Id.*

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- [17]. David S. Bogen, *The Origins of Freedom of Speech and Press*, 42 Md. L. Rev. 429, 431 (1983).
- [18]. *Id.* at 430-31.
- [19]. *Id.* at 432.
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- [21]. *Id.* at 433.
- [22]. Curtis, *supra* note 16, at 92.
- [23]. Democracy Web, *supra* note 15.
- [24]. Curtis, *supra* note 16, at 92.
- [25]. *Id.* at 93.
- [26]. *Id.* at 94.
- [27]. *Id.*
- [28]. Bogen, *supra* note 17, at 433.
- [29]. *Id.* (internal quotations omitted).
- [30]. *Id.* at 433.
- [31]. *Id.* at 433-34.

- [32]. An-Na'im, *supra* note 12, at 34.
- [33]. Adamantia Pollis & Peter Schwab, *Human Rights: Cultural and Ideological Perspectives* 1, 4 (Adamantia Pollis & Peter Schwab eds. 1979).
- [34]. An-Na'im, *supra* note 12, at 39.
- [35]. *See e.g.*, Universal Declaration of Human Rights, *supra* note 7, art. 21.
- [36]. Pollis & Schwab, *supra* note 33.
- [37]. An-Na'im, *supra* note 12, at 39.
- [38]. *Id.* at 34.
- [39]. *Id.*
- [40]. Ann Elizabeth Mayer, *Universal Versus Islamic Human Rights: A Clash of Cultures or a Clash with a Construct?*, 15 Mich. J. Int'l L. 307, 309-10 (1994).
- [41]. Robert D. Sloane, *Outrelativizing Relativism: a Liberal Defense of the Universality of International Human Rights*, 34 Vand. J. Transnat'l L. 527, 531 (2001).
- [42]. *See id.*
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- [51]. See An-Na'im, *supra* note 12, at 40.
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- [53]. Magnuson, *supra* note 14, at 287.
- [54]. Emily Berman, *Democratizing the Media*, 35 Fla. St. U. L. Rev. 817, 819 (2008).
- [55]. Magnuson, *supra* note 14, at 287.
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- [58]. Franck, *supra* note 48, at 602.
- [59]. *Id.*
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- [62]. Magnuson, *supra* note 14, at 276.
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- [64]. Zafar, *supra* note 50.
- [65]. *Id.*
- [66]. *Id.*
- [67]. *Id.*
- [68]. NPR, *supra* note 63.
- [69]. *Id.*
- [70]. *Id.*
- [71]. *Id.*
- [72]. Mayer *supra* note 40, at 325.
- [73]. *Id.*

[74]. Franck, *supra* note 48, at 606-607.

[75]. *Id.*

[76]. Central Intelligence Agency, *The World Factbook 2013-14: Turkey* (Central Intelligence Agency, ed., Washington D.C. 2013) *available at* https://www.cia.gov/library/publications/the-world-factbook/geos/print/country/countrypdf_tu.pdf (June 20, 2014).

[77]. *Id.*

[78]. *Id.*

[79]. *Turkey*, OpenNet Initiative, 341-42 (Dec. 18 2010) https://opennet.net/sites/opennet.net/files/ONI_Turkey_2010.pdf (“The Turkish military powers consider themselves to be the guardians of secular democracy and in the past have actively pursued this role, resulting in the forced removal of elected governments on a number of occasions. The Turkish military has developed a long history of involvement in politics, and as a result the government remains dependent upon it to maintain a balance between religious and secular institutions.”).

[80]. *The World Factbook: Turkey*, *supra* note 76.

[81]. *Id.*

[82]. *Id.*

[83]. *Id.*

[84]. *Id.*

[85]. Lauren Fulton, *A Muted Controversy: Freedom of Speech in Turkey*, 30 *Harv. Int’l Rev.* 26, 27 (2008).

[86]. *Id.* at 29.

[87]. *Id.* at 27-28 (noting that in the 1990s, Turkey banned the use of the Kurdish language – effectively hampering the speech of one-fifth of its citizens. It also went so far as to eliminate Kurdish nationalism by imprisoning individuals who referred to the Kurdish population as Kurdish rather than “mountain Turks.” The Turkish Parliament’s first Kurdish member was sentenced to fifteen years in prison after she said “I shall struggle so that the Kurdish and Turkish peoples may live together in a democratic framework.”).

[88]. *Id.* at 27 (citing Constitution of the Republic of Turkey); *compare* European Convention of Human Rights, art. 10, C.E.T.S. No. 194 (June 10, 2010).

[89]. Fulton, *supra* note 85, at 27.

[90]. *Id.*

[91]. *Id.* at 27-28 (“In truth, the government has demonstrated that it is willing to cooperate on free speech given a realistic prospect of EU membership, but has regressed when the prospect did not seem as realistic.”).

[92]. *See* discussion *infra* Parts VI and VII.

[93]. Const. of the Republic of Turk., *supra* note 2, at art. 25.

[94]. *Id.* at art. 26 (“Everyone has the right to express and disseminate his/her thoughts and opinion by speech, in writing or in pictures or through other media, individually or collectively. This freedom includes the liberty of receiving or imparting information or ideas without interference from official authorities. This provision shall not preclude subjecting transmission by radio, television, cinema, or similar means to a system of licensing.”).

[95]. *Id.*

[96]. *See* discussion *infra*, Parts VI and VII.

[97]. UDHR Res. 217, *supra* note 7 (it is arguable that Articles 28 and 29 provides a loophole for upholding Article 19’s guarantee of freedom of expression. Article 28 notes that “everyone is entitled to a social and international order.” However, that right is qualified by the notion that the “order” should allow for the complete realization of the rights guaranteed in the Declaration. Article 29 allows for limitations on the UDHR’s named rights if it is determined that such limitations are needed to meet “the just requirements of morality, public order, and the general welfare in a democratic society.”).

[98]. ICCPR Res. 2200, *supra* note 8, at art. 4 (in Article 4, the signatories agree that parties “may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation” in a time of public emergency. However, the derogating measures cannot violate other international laws and cannot discriminate solely on the ground of “race, colour, sex, language, religion or social origin.”).

[99]. UDHR Res. 217, *supra* note 7, at art. 29.

[100]. ICCPR Res. 2200, *supra* note 8, at art. 4.

[101]. *Id.* (this should not be read to say that there is a blanket exception for national security emergency situations under the ICCPR. Such an exception only applies in certain circumstances. If the threat is imminent or ongoing, then it seems more likely that a provision suspending freedom of speech on those grounds would be permissible under the ICCPR. However, there is still a question of whether Article 26 of the Turkish Constitution is even in accordance with the ICCPR since it does not explicitly state whether the exceptions apply solely in times of public emergency).

- [102]. See Const. of the Republic of Turk., *supra* note 2, at art. 26.
- [103]. See generally *id.*
- [104]. *Id.* at art. 2.
- [105]. *Id.* at art. 10 (“Everyone is equal before the law without distinction as to language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such grounds.”).
- [106]. *Id.* at art. 24.
- [107]. Tracking down information on the content or actual text of the 2004 Press Law was unsuccessful. The law was only mentioned in passing in NGO reports.
- [108]. Johann Bihl & Jean-Francois Julliard, *A Book is Not a Bomb!, Media and Justice in Turkey, Mistrust and Repression*, Reporters Without Borders 14 (June 2011), available at http://en.rsf.org/IMG/pdf/rsf_report_turkey_2011_en.pdf; see also Freedom House, *Freedom of the Press 2012: Turkey*, 341-43 (2012), available at <https://freedomhouse.org/sites/default/files/FOTP%202012%20Final%20Full%20Report.pdf>
- [109]. Bihl & Julliard, *supra* note 108, at 11.
- [110]. *Id.* at 12.
- [111]. *Id.* at 11.
- [112]. Jo M. Pasqualucci, *Criminal Defamation and the Evolution of the Doctrine of Freedom of Expression in International Law: Comparative Jurisprudence of the Inter-American Court of Human Rights*, 39 Vand. J. Transnat’l L. 379, 412 (2006).
- [113]. *Halis v. Turkey*, 2005-IV Eur. Co. H.R. 3, ¶¶ 10, 13, 15 (30007/96) <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-67917>.
- [114]. Pasqualucci, *supra* note 112 at 412 (citing *Halis v. Turkey*, 2005 Eur. Ct. H.R. 3, ¶ 13).
- [115]. *Halis v. Turkey*, 2005-IV Eur. Ct. H.R. 3, ¶ 27.
- [116]. *Id.* at ¶¶ 36-39.
- [117]. See generally, European Convention of Human Rights, C.E.T.S. No. 194 (June 10, 2010) available at http://www.echr.coe.int/Documents/Convention_ENG.pdf.
- [118]. It is also worth noting here that unlike Saudi Arabia and Jordan, Turkey is actively trying to obtain membership to the European Union— which is an organization that is dominated by some of the biggest “Western” states.

- [119]. Bihr & Julliard, *supra* note 108, at 13.
- [120]. *Id.*
- [121]. Press Release, Freedom House, Turkey Strongly Urged to Liberalize Article 301 (Dec. 7, 2007), *available at* <http://www.freedomhouse.org/article/turkey-strongly-urged-liberalize-article-301>.
- [122]. Amnesty International, Turkey: Article 301: How the law on ‘denigrating Turkishness’ is an insult to free expression, 1 (Mar. 1, 2006), <http://www.amnesty.org/en/library/asset/EUR44/003/2006/en/1a24fcc9-d44b-11dd-8743-d305bea2b2c7/eur440032006en.pdf>.
- [123]. Press Release, Freedom House, *supra* note 121.
- [124]. *Id.*
- [125]. Organization for Security and Co-Operation in Europe, Main Findings and Table on Imprisoned Journalists in Turkey (April 2, 2012), <http://www.osce.org/fom/89371?download=true>.
- [126]. Mehdi Hasan, *In Turkey the right to free speech is being lost*, The Guardian, June 10, 2012, <http://www.theguardian.com/commentisfree/2012/jun/10/turkey-free-speech-erdogan-crackdown>.
- [127]. Marc Pierini & Markus Mayr, Press Freedom in Turkey, Carnegie Endowment for International Peace, 5-6 (2013), *available at* http://carnegieendowment.org/files/press_freedom_turkey.pdf (noting that more specifically, most of the individuals who are prosecuted are – according to the government – leaders or members of a terrorist organization or are creating propaganda for such an organization.)
- [128]. *Id.* (these statistics were based on reports from the OSCE. An updated list of imprisoned journalists in Turkey including recent releases, is available at <http://www.osce.org/fom/119921?download=true>.)
- [129]. *Id.*
- [130]. Freedom House, Freedom of the Press 2013: Turkey, 379 (2013) *available at* <https://freedomhouse.org/sites/default/files/FOTP%202013%20Full%20Report.pdf>; *see also* Pierini & Mayer, *supra* note 126, at 4 (“Although ranking is not necessarily the most significant parameter, it appears that between 2005 and 2011-2012, Turkey dropped by 50 places in the Reporters Without Borders annual Press Freedom Index to 148, two places below the Democratic Republic of the Congo and two places ahead of Afghanistan.”). In contrast, almost every “Western” state received a “free” press status designation. These states include Canada, France, Germany, Spain, the United Kingdom, and the United States. However, Norway and Sweden tied for the designation of “most free” nation in terms of freedom of the press.

- [131]. Fulton, *supra* note 85, at 26.
- [132]. Freedom House: Turkey, *supra* note 130, at 380 (“Constitutional guarantees of press freedom and freedom of expression are only partially upheld in practice. They are generally undermined by provisions in the penal code and the criminal procedure code, and by the country’s strict, broadly worded antiterrorism law, which effectively makes many types of investigative or critical journalism tantamount to terrorist activity.”).
- [133]. *See, e.g., supra* notes 121-25.
- [134]. Freedom House: Turkey, *supra* note 130, at 380.
- [135]. Pierini & Mayr, *supra* note 127, at 8.
- [136]. Bihl & Julliard, *supra* note 108, at 4.
- [137]. *Id.*
- [138]. *Amnesty International Report 2013: The State of the World’s Human Rights*, Amnesty International (Dec. 7, 2014, 12:15 AM), <http://www.amnesty.org/en/region/turkey/report-2013#section-151-3>.
- [139]. *Id.*
- [140]. *Turkey’s Press Freedom Crisis*, Committee to Protect Journalists (Dec. 7, 2014, 12:17 AM), <http://cpj.org/reports/2012/10/turkeys-press-freedom-crisis-summary.php>.
- [141]. *Id.*
- [142]. European Commission, Turkey 2012 Progress Report, 21-22 (Oct. 10, 2012) *available at* http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/.tr_rapport_2012_en.pdf.
- [143]. Pierini & Mayr, *supra* note 127, at 4 (analyzing the European Commission report on Turkey). The European Commission, alongside the Council of Europe, initially decides whether a state can join the European Union. The Commission delivers a legal opinion to the Council detailing whether the applicant state has abided by the accession criteria set forth in the Treaty on the European Union. *See The Accession Process for a New Member State*, EUROPA, at http://europa.eu/legislation_summaries/enlargement/ongoing_enlargement/114536_en.htm (Dec. 7, 2014, 12:30 AM).
- [144]. *See* European Commission, Turkey 2012 Progress Report, *supra* note 142.
- [145]. *See supra* notes 121-22
- [146]. *See, e.g.,* Amnesty International, *supra* note 122.

- [147]. Sabrina Tavernise, *Turkey to Alter Speech Law*, N. Y. Times, Jan. 28, 2008, http://www.nytimes.com/2008/01/25/world/europe/25turkey.html?pagewanted=all&_r=0.
- [148]. *Id.*
- [149]. *Id.*
- [150]. *Id.*
- [151]. *Id.*
- [152]. Tavernise, *supra* note 147.
- [153]. *Id.*
- [154]. Sarah Paulsworth, *Turkish Parliament Approves Amendments to Anti-terrorism Legislation*, Jurist (Apr. 12, 2013), <http://jurist.org/paperchase/2013/04/turkish-parliament-approves-amendments-to-anti-terrorism-legislation.php>.
- [155]. *Id.* (Paulsworth notes that the OHCHR had urged Turkey to stop undermining the right to freedom of expression more than two years before the amendments were passed).
- [156]. *Id.*; *see also Dink v. Turkey*, 2010-II Eur. Ct. H.R. 7124/09.
- [157]. Paulsworth, *supra* note 154.
- [158]. Central Intelligence Agency, *The World Factbook 2013-14: Saudi Arabia* (Central Intelligence Agency, ed., Washington D.C. 2013) *available at* https://www.cia.gov/library/publications/the-world-factbook/geos/print/country/countrypdf_sa.pdf (June 20, 2014).
- [159]. *Id.* (the monarch is also the Prime Minister, making him both the head of state and the head of government).
- [160]. The Basic Law of Governance, Mar. 1, 1992, Art. 1 (Saudi Arabia).
- [161]. *Id.*
- [162]. Christopher M. Blanchard, Cong. Research Serv., RL 33533, *Saudi Arabia: Background and U.S. Relations, summary* (Congressional Research Service, ed. June 14, 2010), *available at* <http://fpc.state.gov/documents/organization/145596.pdf>.
- [163]. *About Saudi Arabia: Facts and Figures*, Royal Embassy of Saudi Arabia (2013), http://www.saudiembassy.net/about/country-information/facts_and_figures/.
- [164]. *The History of Saudi Arabia*, Royal Embassy of Saudi Arabia (2013), <http://www.saudiembassy.net/about/country-information/history.aspx>.

- [165]. Toby C. Jones, *Saudi Arabia Versus the Arab Spring*, 31 *Raritan* 43, 45 (2011).
- [166]. Blanchard, *supra* note 162, at 26.
- [167]. *Saudi Arabia Profile*, BBC News, Dec. 2, 2014, <http://www.bbc.com/news/world-middle-east-14702705>
- [168]. *Id.*
- [169]. Jones, *supra* note 165, at 43.
- [170]. *Id.* at 43-44.
- [171]. *Id.* at 44.
- [172]. Blanchard, *supra* note 162, at 5-9.
- [173]. *Id.*
- [174]. Jones, *supra* note 165, at 43-44.
- [175]. M.R., *Saudi Arabia and the UN: Why the snub?* *The Economist* (Oct. 21, 2013, 5:27 PM), <http://www.economist.com/blogs/pomegranate/2013/10/saudi-arabia-and-un>.
- [176]. *Id.*
- [177]. *Id.* (No country elected as a temporary member to the UN Security Council had ever renounced its seat. According to an official statement by the Saudi foreign ministry, “Accordingly, the Kingdom of Saudi Arabia, based on its historical responsibilities towards its people, Arab and Islamic nations as well as towards the peoples aspiring for peace and stability all over the world, announces its apology for not accepting membership of the Security Council until the Council is reformed and enabled, effectively and practically, to carry out its duties and responsibilities in maintaining international peace and security.”)
- [178]. *Id.*
- [179]. *Id.*
- [180]. *See, e.g.*, *The Economist*, *supra* note 175.
- [181]. *See, e.g.*, Basic Law, *supra* note 160, arts. 1, 8-10, 13, 17, 23, 26, 29, 34, 46, 48, 55, 57, and 67.
- [182]. *See* discussion *infra* part VI(b) and (c).

- [183]. Abdulaziz H. Al-Fahad, *Constitutionalism: The Saudi Basic Law of Governance*, 30 *Yale J. Int'l L.* 375, 385 (2005).
- [184]. *Id.*
- [185]. *Id.* at 386.
- [186]. *See* discussion *supra*, Part V.
- [187]. Mamoun Fandy, *CyberResistance: Saudi Opposition Between Globalization and Localization*, 41 *Comp. Studies in Soc'y and Hist.*, 124, 126 (1999).
- [188]. *Id.*
- [189]. *Id.*
- [190]. *Id.*
- [191]. *Id.* at 128. (Fandy seems to be insinuating that the monarchy does not actually practice what it preaches. In other words, the monarchy is not following the religious tenants or laws that it is enforcing on the rest of Saudi society.)
- [192]. Basic Law, *supra* note 160.
- [193]. *Id.* at art. 1.
- [194]. *Id.* at art. 26.
- [195]. *Compare*, Basic Law, *supra* note 160 *with* Const. of the Republic of Turk., *supra* note 2.
- [196]. Basic Law, *supra* note 160, art. 39.
- [197]. *See* discussion *supra* part IV(b).
- [198]. Human Rights Watch, *Annual World Report: Saudi Arabia*, 4-5 (Jan. 2012), *available at* http://www.hrw.org/sites/default/files/related_material/saudiarabia_2012.pdf (this publication was part of Human Rights Watch's annual World Report. HRW noted that King Abdullah amended the 2000 Press and Publications Act in 2011 to include a prohibition on speech that harms various religious leaders' reputations, including members of the Council of Senior Religious Scholars, the chief mufti, any government official, or any government institution.).
- [199]. *Id.*
- [200]. Arab Political Systems: Baseline Information and Reforms – Saudi Arabia, Carnegie Endowment for International Peace, 10-11 (2008), *available at* <http://>

www.carnegieendowment.org/files/Saudi_Arabia_APS.doc. (noting that the Basic Law fails to provide specific guarantees of the freedom of expression, assembly, political participation, or belief).

[201]. *Id.*

[202]. *Id.*

[203]. *Id.*

[204]. Freedom House, Freedom of the Press 2013: Saudi Arabia, 323 (2013) *available at* <https://freedomhouse.org/sites/default/files/FOTP%202013%20Full%20Report.pdf>.

[205]. *Id.*

[206]. *Id.*

[207]. Law of Printing and Publication of 2003, Royal Decree No. M/23, 3/9/1424 A.H. (Oct. 28, 2003) (Saudi Arabia), http://www.saudiembassy.net/about/country-information/laws/Law_of_Printing_and_Publication.aspx. (Article Two stipulates that “[t]he following activities shall be governed by the provisions of this Law: printed matters; pre-printed preparatory services; printeries; bookshops; drawing and writing; photography; importation of films and videotapes, sale or rent thereof; tape and recording discs; radio, television, cinematographic or theatrical artistic works; televisions and broadcasting studios; the Offices of Foreign Information Media and their reporters; publicity and advertisement; public relations; publication; distribution; journalistic services; production, sale or renting of computer programs; information studies and consultations; copying and reprography; any activity suggested to be added by the Ministry and approved by the Prime Minister.”).

[208]. *Id.*

[209]. *Id.* (while the requirement that the individual be male is not spelled out directly, it is insinuated through the language of the article. For example, it declares “He shall be a Saudi national” and “He shall not be less than 25 years of age. . .” Also, one can assume that there is a gender requirement based on the fact that Saudi Arabia is notorious for its restrictions on women’s legal rights (or lack thereof)).

[210]. *Id.*

[211]. *Id.*

[212]. Law of Printing and Publication of 2003, *supra* note 207.

[213]. *Id.*

[214]. *Id.*

[215]. *Id.*

[216]. *Id.*

[217]. Anti-Cyber Crime Law, Royal Decree No. M/17, 8/3/1428 H. (Mar. 26, 2007) (Saudi Arabia) <http://www.saudiembassy.net/announcement/announcement03260701.aspx>.

[218]. *Id.*

[219]. *See, e.g., RWB Appeals to King Abdullah to Pardon Jailed Citizen-Journalist*, Reporters Without Borders (Dec. 9, 2014), <http://en.rsf.org/saudi-arabia-rwb-appeals-to-king-abdallah-to-09-12-2014,47356.html> (after Raef Badawi, a blogger and cyber-activist, was arrested for writing blog posts criticizing the lack of fundamental freedoms within Saudi society, his wife and three children fled the country. Badawi had fled Saudi Arabia at least once before his latest arrest).

[220]. *See e.g., Seven Years in Jail and 600 Lashes for Cyber-Activist*, Reporters Without Borders (Aug. 6, 2013) <http://en.rsf.org/saudi-arabia-seven-years-in-jail-and-600-lashes-06-08-2013,45021.html> (the aforementioned Badawi was forced to leave Saudi Arabia in 2008 after the government accused him of insulting Islam online. When he later returned to the country and set up a new website, he was once again prosecuted under the Anti-Cyber-Crime Law and faced a more severe punishment).

[221]. Freedom House: Saudi Arabia, *supra* note 204, at 323-25 (for example, the government prevents citizens from criticizing it online by routing all internet traffic through a state-run proxy. It also censors any information it deems blasphemous).

[222]. *See, generally*, Reporters Without Borders, <http://en.rsf.org/saudi-arabia.html>.

[223]. Reporters Without Borders, World Press Freedom Index 2013 (2013), *available at* http://fr.rsf.org/IMG/pdf/classement_2013_gb-bd.pdf. (Turkey was ranked 154, while Jordan was ranked 134. The United States came in at 32. RWB uses surveys to calculate its rankings, and looks at six different indicators in order to determine a country's final score. These indicators include media independence, environment and self-censorship, pluralism, transparency, infrastructure, and legislative framework).

[224]. *Seven Years in Jail and 600 Lashes for Cyber-Activist*, *supra* note 220.

[225]. *Id.*

[226]. *Id.* (the article did not report on whether the third-party was a citizen of Saudi Arabia or was punished under the Anti-Cyber-Crime Law).

[227]. *Id.*

[228]. Carnegie Endowment for International Peace, *supra* note 200, at 15.

- [229]. Human Rights Watch, *supra* note 198, at 5.
- [230]. A. Michael Tarazi, “Recent Developments: Saudi Arabia’s New Basic Laws: The Struggle for Participatory Islamic Government,” 34 Harv. Int’l L.J. 258, 259 (1993).
- [231]. *See supra* notes 198 and 200.
- [232]. *See* discussion *supra* part VI.
- [233]. *See* Al-Fahad, *supra* note 183, at 376.
- [234]. *Id.*
- [235]. *Id.*
- [236]. *Id.*
- [237]. *See* discussion *supra* part II.
- [238]. Dawn C. Nunziato, *How (Not) to Censor: Procedural First Amendment Values and Internet Censorship Worldwide*, 42 Geo. J. Int’l L. 1123, 1151 (2011).
- [239]. *Id.*
- [240]. *Id.* (for example, the King Abdulaziz City for Science and Technology, which is the governmental body responsible for monitoring and filtering internet content, explains in detail on its website what speech it filters, why it filters it, and how it filters it. Filtered materials are those that are considered “of an offensive or harmful nature to society” and “which violate the tenets of the Islamic religion or societal norms.” Nunziato argues that this is evidence that the government is “clear about the mechanism by which it effectuates this filtering.”).
- [241]. *Introduction to Content Filtering, Internet Services Unit*, King Abdulaziz City for Science and Technology, <http://www.isu.net.sa/saudi-internet/content-filtrng/filtrng.htm> (last visited Dec. 7, 2014, 1:29 PM).
- [242]. *Id.*
- [243]. *Id.*
- [244]. Central Intelligence Agency, *The World Factbook 2013-14: Jordan* (Central Intelligence Agency, ed., Washington D.C. 2013) *available* at <https://www.cia.gov/library/publications/the-world-factbook/geos/jo.html> (June 20, 2014).
- [245]. *Id.*
- [246]. *Id.*

- [247]. See discussion *infra*, part VII(a).
- [248]. Enrique Armijo, *Building Open Societies: Freedom of the Press in Jordan and Rwanda*, 2 J. Int'l Media & Ent. L. 105, 110 (2008).
- [249]. *Id.*
- [250]. U.S. Department of State, Jordan 2012 Human Rights Report, 10 (2012), available at <http://www.state.gov/documents/organization/204579.pdf>.
- [251]. Armijo, *supra* note 248, at 107.
- [252]. Jordan: Health and Welfare, Encyclopedia Britannica (2013), available at <http://www.britannica.com/EBchecked/topic/306128/Jordan/23357/Health-and-welfare#toc23359>.
- [253]. *Id.*
- [254]. The Const. of the Hashemite Kingdom of Jordan, Jan. 1, 1952, Art. 15(i), available at http://www.kinghussein.gov.jo/const_ch1-3.html.
- [255]. *Id.* at art. 15(ii-iii).
- [256]. Armijo, *supra* note 248, at 107.
- [257]. Const. of Jordan, *supra* note 254, at art. 15(iv).
- [258]. Armijo, *supra* note 248, at 108-114.
- [259]. Freedom House, Freedom on the Net 2012: Jordan, 301 (2012), available at <https://freedomhouse.org/sites/default/files/FOTN%202012%20FINAL.pdf>.
- [260]. Armijo, *supra* note 248, at 109.
- [261]. *Id.*
- [262]. *Id.* at 109-10.
- [263]. *Id.*
- [264]. *Id.* at 110.
- [265]. Kamel Labidi, *Is Jordan the latest enemy of press freedom online?*, The Guardian, Aug. 21, 2010, <http://www.theguardian.com/commentisfree/2010/aug/21/jordon-cyber-law-press-freedom-online>.
- [266]. *Id.*

- [267]. *Id.*
- [268]. *Id.*
- [269]. *Id.*
- [270]. *Jordan: NGO Law Monitoring*, The International Center for Not-for-Profit Law, July 9, 2014, <http://www.icnl.org/research/monitor/jordan.html>.
- [271]. Freedom House, *Freedom of the Press: Jordan (2012)*, available at <https://freedomhouse.org/report/freedom-press/2012/jordan#.VITQhmTF-Ac>.
- [272]. Reporters Without Borders, *World Press Freedom Index 2014*, 23 (2013) available at http://fr.rsff.org/IMG/pdf/classement_2013_gb-bd.pdf.
- [273]. *International Free Expression Groups Call for an End to Internet Censorship in Jordan*, Reporters Without Borders, Oct. 8, 2013, <http://en.rsff.org/jordan-international-free-expression-08-10-2013,45296.html> (the signatories included Reporters Without Borders, Freedom House, Committee to Protect Journalists, Electronic Frontier Foundation, the Bahrain Center for Human Rights, the Arabic Network for Human Rights Information, and the I'lam Media Center for Arab Palestinians in Israel, among others. A total of 22 organizations signed the letter).
- [274]. Freedom House: *Jordan*, *supra* note 271.
- [275]. *Id.*
- [276]. *Id.*
- [277]. *Id.*
- [278]. *Id.*
- [279]. Freedom House: *Jordan*, *supra* note 271.
- [280]. *Id.*
- [281]. Reporters Without Borders, *World Press Freedom Index 2013*, *supra* note 272, at 17.
- [282]. *Id.* (RWB did not specify which royal decree it was referring to in its report. The only other comment it made regarding the decree was that it was repressive).
- [283]. *Jordan: Publisher, Journalist Charged in State Security Court*, Human Rights Watch, Apr. 25, 2012, <http://www.hrw.org/news/2012/04/25/jordan-publisher-journalist-charged-state-security-court>.

- [284]. *Id.*
- [285]. *Jordan: Journalists Jailed for Website Reporting*, Human Rights Watch, Sept. 21, 2013, <http://www.hrw.org/news/2013/09/21/jordan-journalists-jailed-website-posting>.
- [286]. *Jordan: Publisher, Journalist Charged in State Security Court*, *supra* note 283.
- [287]. U.S. Department of State, *supra* note 250, at 1.
- [288]. *Id.* at 9-10.
- [289]. *Id.* at 11.
- [290]. *Media Environment Analysis for Jordan*, United Nations Educational, Scientific, and Cultural Office, Amman (last visited Dec. 7, 2014, 2:40 PM), <http://www.unesco.org/new/en/amman/communication-information/capacity-development/media-environment-analysis-for-jordan/>.
- [291]. *Id.*
- [292]. *Id.*
- [293]. *Id.*
- [294]. *Id.*
- [295]. UNESCO, *supra* note 290.
- [296]. *Id.* (the media analysis failed to elaborate on the actual explanation it had given to the Jordanian government. It did, however, say that UNESCO was working with the European Union on two projects in Jordan. One involves enhancing professional and accurate media reporting on the electoral process, and the other involves support of democracy, civil society, and media in Jordan).
- [297]. Elizabeth Barber, *Why Jordan Orders Ban on 263 News Sites*, Christian Science Monitor, Jun. 6, 2013, <http://www.csmonitor.com/World/Global-News/2013/0606/Why-Jordan-orders-ban-on-263-news-sites>.
- [298]. *Id.*
- [299]. *Id.*
- [300]. *Id.*
- [301]. *Id.*

[302]. Barber, *supra* note 297.

[303]. *Id.*

[304]. See discussion *supra* part VI(d).

[305]. See e.g., Armijo, *supra* note 248, at 107-114; Naomi Sakr, *Freedom of Expression, Accountability and Development in the Arab Region*, 4 J. Hum. Dev. 29, 38 (2003).

[306]. Armijo, *supra* note 248, at 113.

[307]. *Id.* (internal quotations omitted).

[308]. Armijo, *supra* note 248, at 107.