"TEXT 'REVOLUTION' TO VOTE": SOCIAL MEDIA'S EFFECT ON POPULAR CONSENT AND LEGITIMACY OF NEW REGIMES

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ABSTRACT

Since the end of World War II there have been over 170 extra-

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constitutional coup d'état-type changes of government, and all have sought de-jure recognition from the international community of states. Although recognition has been granted to brutal regimes exercising only effective control of their country's territory in the past, the Internet and social media have changed the de-jure regime analysis, and have made a population's consent to be governed the foremost important de-jure legitimacy criterion that new revolutionary regimes must achieve in order to attain international legitimacy. The Arab Spring revolutions demonstrated how quickly popular protests can organize and spread in the Internet-age, and how accurately social media can evidence popular discontent with a government. Accordingly, social media and Internet-organized protest can be used to illustrate whether or not a new revolutionary government has achieved popular consent, and thus international legitimacy. If de-jure legitimacy determinations are to retain any practical or moral credence, analyzing countries must adapt to the Internet-age, realize that domestic populations now have significant power in international relations, and recognize that popular consent has become the most important de-jure legitimacy criterion. The Internet has given citizens a voice; international stability depends on the world community's willingness to listen.

I. INTRODUCTION

Since the end of World War II there have been over 170 extra-constitutional coup d'état-type changes of government. Criteria including but not limited to effective control, popular consent, commitment to democracy, and state recognition have historically been used to determine the *de-jure* legitimacy of these new regimes under international law. Although the international community has granted *de-jure* recognition to brutal regimes exercising only effective control in the past, the Internet and social media have changed *de-jure* regime analysis in recent years. No longer can inhumane military coups achieve international legitimacy by brute force alone. No longer can social unrest be "hushed-up" within borders, for social media has breached the government-sponsored and politically allied newspapers' media monopoly.[1]

This paper explores how social media and worldwide-interconnectivity has impacted the effective control framework for regime legitimacy, specifically, the impact on the "popular consent" criterion. Social media has certainly made governments more accessible to their populaces,[2] but the

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[1] JEFFREY GHANNAM, SOCIAL MEDIA IN THE ARAB WORLD: LEADING UP TO THE UPRISINGS OF 2011, A REPORT TO THE CENTER FOR INTERNATIONAL MEDIA ASSISTANCE 6 (2011), *available at* http://www.hirondelle.org/wp-content/uploads/2011/03/SocialMediaintheArabWorldCIMA2011.pdf.

[2] *See* Henry H. Perritt Jr., *The Internet as a Threat to Sovereignty? Thoughts on the*

mere absence of a population's participation in government through social media does not indicate a *lack* of popular consent; after all, populations rarely blog about their satisfaction. But they do blog about their dissatisfaction. They share grievances and frustrations, plan protests online, shine lights into the unseen corners of government, and come together to demand change. Determining popular consent is necessarily a vague practice, but with social media now easily accessible and widely used to assemble mass protests, the absence of popular protest or formidable opposition can indicate tacit popular support for a new revolutionary regime. This paper argues that while social media will rarely ever assertively demonstrate popular acceptance of a new regime, the absence of substantial opposition via social media evidences that a new regime has achieved sufficient domestic popular consent, and thus, *de-jure* legitimacy.

II. LEGAL CRITERION FOR EXTRA-CONSTITUTIONAL REGIME LEGITIMACY

Many courts, scholars, and politicians have bemoaned regime legitimacy determinations as unwarranted academic and political questions that interfere with state sovereignty, rarely accurately deciding *de-jure* legitimacy.[3]   However, *de-jure* government determinations impact international affairs, shape state practice, and have worldwide political ramifications. Recently in Libya, the international community's rejection of the Muammar Muhammad Abu Minyar Gaddafi regime fed the revolutionary movement and emboldened domestic opposition. The simple act of de-recognition helped result in *de-facto* regime change. Conversely United Nations ("UN") trepidation in Syria has allowed President Bashar al-Assad to cling to legitimacy. Legally, new *de-jure* governments become part of the world community and are recognized at the International Court of Justice ("ICJ"). *De-jure* legitimacy determinations have practical and influential effects on international relations, and for this reason, should not be granted lightly. As such, a specific legal criterion exists to help states determine when new revolutionary regimes attain *de-jure* legitimacy under international law.

A.   The Grundnorm

Hans Kelsen's legal positivist theories on efficaciousness are the widely

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[3] Jonathan I. Edelstein, *The Prasad Affidavits: Proof of Facts in Revolutionary Legitimacy Cases*, 24 SYDNEY L. REV. 57, 73 (2002) (stating that overseas judges "do not have a citizen's depth of understanding of a society or a citizen's access to its currents of information"); Tayyab Mahmud, *Jurisprudence of Successful Treason: Coup d'État & Common Law*, 27 CORNELL INT'L L.J. 49, 53 (1994).

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accepted starting point for determining the validity of revolutions.[4] While some domestic courts have moved away from strict application of Kelsen's theories, his theories remain highly influential. Kelsen reasons that every country has a Grundnorm, which forms the "foundation of a legal order of a nation."[5] The "Grundnorm" is the basic norm from which all other norms in a society derive their validity, and can be a written document (like a constitution), or an unwritten principle of government.[6] Although a Grundnorm does not necessarily dictate a society's subsidiary rules,[7] it provides an overarching framework. The test is "efficacy," meaning that any constitution, oral framework, or even "will of a dictator" that is in fact obeyed and accepted by a society is that society's Grundnorm.[8] Grundnorms are country and culture specific, and form the "backbone" of a society.[9] Actions (such as coups d'état) that violate their country's constitution can become legitimate once the revolutionary regime implements a new efficacious Grundnorm.[10] A new revolutionary ideal becomes a country's Grundnorm when a society 1) rejects an old regime and that regime's Grundnorm,[11] and 2) when the new ideal becomes efficacious, having attained a sufficient degree of popular support and acceptance.[12]

Some domestic courts have held that coup d'état governments can never replace certain "indestructible Grundnorms," even after a regime establishes effective control. The Supreme Court of Ghana upheld the indestructible Grundnorm theory in *Sallah v. Attorney General*,[13] stating that Ghana's common law system had not been destroyed by a revolutionary abrogation of the constitution.[14] Similarly, the Supreme Court of Pakistan ruled in 1972 that Islamic rule was an "immutable and unalterable norm" to which

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[4] *See* Edelstein, *supra* note 3, at 60-61.

[5] *Id.* at 61 (quoting Hans Kelsen, General Theory of Law and State 118-19 (1945)).

[6] *Id.*; Farooq Hassan, *A Juridical Critique of Successful Treason: A Jurisprudential Analysis of the Constitutionality of a Coup d'État in the Common Law*, 20 Stan. J. Int'l L. 191, 205 (1984) (citing Hans Kelsen, Pure Theory of Law (1967)).

[7] Hassan, *supra* note 6, at 205.

[8] *Id.*

[9] For example, Pakistan's Grundnorm can be defined as encompassing religion (Islam), democracy, and patronage. *See generally* Anatol Lieven, Pakistan: A Hard Country (2011).

[10] *See* Mahmud, *supra* note 3, at 109-10.

[11] Hassan, *supra* note 6, at 205.

[12] *Id.* at 205-06.

[13] Sallah v. Attorney General [1070] CC (Ghana) 55, *reprinted in* 2 Gyandoh & Griffiths, Sourcebook of Constitutional Law in Ghana 493 (1972).

[14] Edelstein, *supra* note 3, at 63.

all Pakistani governments must conform.[15] Chief Justice S. Awarul Haq further affirmed Pakistan's identity five years later in *Bhutto v. Chief of Army Staff*, ruling that Pakistan was and must remain "grounded in ideology and legality."[16] More recently, courts have stated that certain democratic rights, once established, cannot be removed from a country's Grundnorm,[17] and that fundamental human rights are part of an "international Grundnorm" inseperable from all countries.[18] However, democratic governance and respect for human rights have not yet become customary international law.[19]

Indestructable Grundnorm theories aside, new ideals can and do become Grundnorms when they attain true popular acceptance in a country, and revolutionary regimes can become legitimate once they meet certain legal criteria. To achieve legitimacy, these regimes must exhibit efficaciousness by exercising a certain degree of effective control and popular support.[20]

B.   *Determining the Legitimacy of New Revolutionary Regimes*

1.   Effective Control Theories

Before revolutionary governments achieve *de-jure* legitimacy, they are considered *de-facto* governments, controlling a country as if they were in fact that country's government. While many tests exist for determining revolutionary legitimacy, it is generally accepted that once a new government firmly controls a country and exhibits efficaciousness, it

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[15] *Id.* (quoting Jilani v. Government of the Punjab, (1972) PLD (SC) 139 (Pak.)).

[16] Edelstein, *supra* note 3, at 63 (quoting Bhutto v. Chief of Army Staff, (1977) PLD (SC) 657, 671 (Pak.)).

[17] *See* Edelstein, *supra* note 3, at 64-65; *see also* Republic of Fiji Islands v. Prasad, [2001] FJCA 2 (Fiji), *available at* http://www.paclii.org/fj/cases/FJCA/2001/2.html(citing Mitchell v. Director of Public Prosecutions, [1986] L.R.C. (Const.) 35, 71-72 (Gren.)).

[18] Prasad, [2001] FJCA 2 (citing Mitchell, [1986] L.R.C. (Const.) 71-72); Edelstein, *supra* note 3, at 64-65.

[19] International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), art. 1, ¶ 1, Supp. No. 16, U.N. Doc. A/6316 (Dec. 16, 1966) [hereinafter ICCPR]; Edward Collins Jr. & Timothy M. Cole, *Regime Legitimation in Instances of Coup-Caused Government-In-Exile: The Cases of Presidents Makarios and Aristide*, 5 J. Int'l L. & Prac. 199, 210 (1996) (quoting Gerhard Von Glahn, Law Among Nations: an Introduction to Public International Law 75 (7th ed. 1996)) ("[N]o rule of international law . . . can be held to deprive a people of its right to change its form of government, whether by ballot or by bullet . . . "). For a rejection of the view that legitimate governments must respect fundamental human rights, see Mitchell, (1986) L.R.C. (Const.) at 71-72 ("We do not think it necessary to include a requirement that a usurping regime has to show adherence to international human rights treaties.").

[20] Edelstein, *supra* note 3, at 61.

becomes that country's *de-jure,* lawful, and legitimate government.[21]   The "Traditional Doctrine" of legitimacy confers recognition to new governments that 1) are in de-facto control of the territory and mechanisms of government; 2) have the consent or acquiescence of the governed; and 3) have expressed a willingness to comply with prior treaty obligations.[22] More recently, domestic courts have ruled that a new revolutionary *de-facto* government exhibits efficaciousness if 1) it attained a successful revolution; 2) it controls the administrative state mechanisms; 3) the population conforms to the government; 4) such conformity is due to popular acceptance and not mere coercion or fear of force; and 5) it does not appear that the regime is oppressive or undemocratic.[23]   No matter the test, all mandate at a minimum that new governments control their territory and have popular support.

Recognition by other states, though not dispositive, does confer some legitimacy on new regimes[24] both inside the recognized country and abroad. When deciding to grant recognition, courts and states have considered whether there exists internal opposition capable of overthrowing the new regime,[25] whether the new government came to power in violation of the UN Charter, and whether recognition is in the best interest of the recognizing country.[26]

2.   The Democratic Entitlement Theory

Over the last few decades, the international community has often required that new revolutionary governments exhibit democratic characteristics before granting *de-jure* recognition.   Known as the "Democratic Entitlement Theory" ("DET"), new governments are granted legitimacy when they demonstrate a commitment to democratic principles, backed by popular support.[27]   State practice has allowed new governments

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[21] Prasad, [2001] FJCA 2 (citing Vallabhaji v. Controller of Taxes, (Aug. 11, 1981) (CA) (Sey.) (unreported)).

[22] L. THOMAS GALLOWAY, RECOGNIZING FOREIGN GOVERNMENTS 6 (1978).

[23] Prasad, [2001] FJCA 2; Mitchell, [1986] L.R.C. (Const.) at 71-72. This criteria has been used, with slight alteration, in multiple domestic judicial decisions adjudicating the legal legitimacy of new coup d'état governments. *See* Hassan, *supra* note 6, at 209-33; *see also* Mahmud, *supra* note 3, at 54-100.

[24] *See* Hassan, *supra* note 6, at 206; *see also* Great Britain v. Costa Rica, 1 R.I.A.A. 369 (1923), *reported in* 18 AM. J. INT'L L. 147, 152 (1924) [hereinafter *Tinoco*].

[25] *See Tinoco*, 18 AM. J. INT'L L. at 152.

[26] *See* RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 203 (1987) (stating that states have an obligation not to recognize regimes which attain power through armed force in violation of the UN Charter); *see also* GALLOWAY, *supra* note 22, at 8.

[27] *See* Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT'L L. 46, 47 (1992); *see also* Prasad, [2001] FJCA 2 (citing Mitchell, [1986] L.R.C. (Const.) at 71-72 (stating that "it must not appear the regime was oppressive or

upwards of one year to implement actual democratic mechanisms,[28] granting *de-jure* recognition in the short-term to governments that illustrate a commitment to democratic principles. For a variety of reasons, this "commitment" has proven fairly easy to meet, requiring only verbal commitments to democracy and implementations of marginally effective democratic institutions.[29] Short-term recognition of new regimes is a political act, and many new regimes have unfortunately failed to live up to their stated aspirations once firmly in control of their country. These governments have, for the most part, retained international legitimacy, highlighting a significant flaw in the DET. The DET has not become customary international law, but its widespread application illustrates a growing preference for democratic regimes in the international community.

3.   United Nations Practice

The UN and regional organizations have historically determined legitimacy based on the "constitutionality" of the new revolutionary government.[30] In recent years, the UN has more hesitantly recognized coup d'état regimes that abrogate their country's prior democratic constitutions, a product of a broader democratic trend in international law.

The international community's actions in Haiti from 1991 to 1994 are a case-in-point. The UN refused to recognize Haiti's *de-facto* military coup government, opting instead to recognize the exiled democratically elected Jean-Bertrand Aristide government.[31] In its Charter, the Organization of American States ("OAS") requires that "the political representatives of [member] states be based on effective exercise of representative democracy."[32] OAS demanded member states take action to return Aristide to power,[33] and within a few days, the United Nations General Assembly ("UNGA") demanded "the immediate restoration of the legitimate government."[34] Over the next three years, Aristide retained the capacity to

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undemocratic")); *see also* Collins & Cole, *supra* note 19, at 200 ("[T]he legal norm of democratic entitlement . . . had, by the early 1990s, emerged as a principal basis for regime legitimization.").

[28] *See generally* GALLOWAY, *supra* note 22.

[29] *See id.* at 59.

[30] Jean D'Aspremont, *Legitimacy of Government in the Age of Democracy*, 38 N.Y.U. J. INT'L. L. & POL. 877, 905 (2006).

[31] *See generally* Collins & Cole, *supra* note 19.

[32] *Id.* at 232 (quoting Charter of the Organization of American States, art III, Apr. 30, 1948, 2 U.S.T. 2394, 119 U.N.T.S. 3, *available at* http://www.unhcr.org/refworld/docid /3ae6b3624.html).

[33] *Id.* at 233 (quoting Support to the Democratic Government of Haiti, OEA/Ser.F/V.1/MRE/Res.1/91 corr. 1 (Oct. 3, 1991)).

[34] *Id.* (quoting G.A. Res. A/46/L.8/Rev. ¶¶ 1, 2, 4 (Oct. 11, 1991)).

represent Haiti internationally and at the United Nations[35] while Haiti's military exercised effective control over Haiti.[36] Despite the military junta's unquestioned effective control over Haiti's territory and populace, the international community imposed trade embargos, asset freezes, and diplomatic pressures in an attempt to force out the junta, continuously reasserting that "no government that may result from this illegal situation will be accepted and, consequently . . . that no representative of such government will be accepted."[37] Eventually, the UN Security Council invoked its Chapter VII powers, authorizing "all necessary means to facilitate the departure of Haiti's military leadership,"[38] and the junta fled ahead of the approaching U.S. Navy.[39]

4. Popular Consent

Each test used to determine *de-jure* legitimacy requires that the domestic population conform to the new revolutionary government, which necessarily means that the population must assent to the Grundnorm of the new government. For legal-legitimacy purposes, this conformity must be due to popular acceptance, and not result from mere coercion or fear of force.[40] In a practical sense, governments know that legitimacy comes from meeting the normative expectations of the international community, and in the twenty-first century, such expectations include attaining and sustaining the consent of the governed.[41] Without at least tacit domestic conformity, international law does not grant a revolutionary government *de-jure* legitimacy. While some *de-jure* governments clearly rule without the popular support of their people, these regimes do not meet the international legal criteria applicable to *new* extra-constitutional governments, and when states are forced to make legal legitimacy judgments on new revolutionary regimes, popular consent becomes a necessary criterion.

The international community has shown its willingness to withdraw recognition from established governments when new popular movements challenge *de-jure* dictatorial regimes lacking popular support. The North Atlantic Treaty Organization's ("NATO") recent actions in Libya show that

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[35] *See generally id.*

[36] *See generally id.*

[37] *Id.* at 233 (quoting Support for the Democracy in Haiti, OEA/Ser. F/V.1 MRE/Res.2/91 ¶¶ 2-4 (Oct. 8, 1991)).

[38] *See id.* at 236 (quoting S.C. Res. 940, pmbl., ¶ 4, U.N. Doc. S/RES/940 (July 31, 1994)); *see also* Richard D. Lyons, *U.N. Authorizes Invasion of Haiti to Be Led By U.S.*, N.Y. TIMES, Aug. 1, 1994, *available at* http://www.nytimes.com/1994/08/01/world/un-authorizes-invasion-of-haiti-to-be-led-by-us.html.

[39] Collins & Cole, *supra* note 19, at 237.

[40] Prasad, [2001] FJCA 2; Mitchell, [1986] L.R.C. (Const.) 71-72.

[41] *See* Franck, *supra* note 27, at 46.

despite decades of international recognition, the international community will delegitimize governments who lack popular support once popular discontent manifests sufficiently.   The Internet and social media have amplified and publicized "popular discontent," and have given the international community additional tools to determine whether new revolutionary regimes have the support of their people.

III. DETERMINING POPULAR CONSENT THROUGH SOCIAL MEDIA

A.   *Popular Consent and Democracy*

On May 5, 2010, tens of thousands of people gathered near Central Square before Parliament to protest new government measures.[42]   The protestors hurled rocks and gasoline bombs, and threw a firebomb into a bank, trapping 20 people inside.[43] By the end of the day, three people had been killed, and the country was in a state of shock.[44] Has the government lost the consent of its people? The country described is Greece, but few would say that Greece's government is ruling contrary to Greece's Grundnorm, or that its democratic government (irrespective of the party in power) has lost the consent of the people. Demonstrations play a pivotal role in Greece,[45] so how can international law differentiate between simple protest within a country's Grundnorm and a truly popular revolutionary movement? There is no clear line. A fleeing dictator has certainly lost popular support, but determining when a new regime has gained popular support is more complex. A regime that purports to rule by an established, accepted Grundnorm[46] has a head start to attaining legitimacy, for regimes ruling by an accepted Grundnorm necessarily enjoy popular consent.[47] However, when a popular movement threatens the foundational Grundnorm of a country, popular consent must be established for that new regime to attain legal legitimacy.

Popular consent does not mean that every citizen "has a say," or that every group must consent to the new rule. Popular consent simply means that the type of government implemented and the new societal rules established are accepted (at least tacitly) by a society. Social media and the Internet are particularly adept at illustrating a population's dissatisfaction with their government, and thus, the absence of recognizable discontent can

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[42] Dan Bilefsky, *Three Reported Killed in Greek Protests*, N.Y. TIMES, May 5, 2010, *available at* http://www.nytimes.com/2010/05/06/world/europe/06greece.html.

[43] *Id.*

[44] *Id.*

[45] *See id.*

[46] For example, a new coup d'état government promising to *and in fact* ruling by a country's previously accepted democratic constitution.

[47] *See* KELSEN, *supra* note 6, at 254.

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evidence a population's tacit consent.

1. The Growing Importance of Popular Consent

Whether a new regime harbors a commitment to democratic governance has become increasingly relevant to *de-jure* regime recognition. Accordingly, the importance of the popular consent criterion for new regime legitimacy has increased in relation to the effective control of territory criterion.[48] Since the end of the Cold War, the international community has generally refused to recognize coup governments that overthrow constitutional, democratically elected ones.[49] While there are many explanations for this state practice, one is likely the international community's preference for stability, and thus reluctance to legitimize the abrogation of an established democratic Grundnorm.[50] Grundnorms are easily manifested through written constitutions, and when revolutionary governments come to power outside of a country's constitutionally mandated process, the constitution itself is undermined. Furthermore, populations do not lightly relinquish their constitutionally protected "voice," making it difficult for new regimes to replace written democratic constitutions with undemocratic constitutions. For these reasons, popular consent and new regime legitimacy are easier to measure in countries with democratic constitutions; the international community need only determine that a new regime is ruling within its country's democratic Grundnorm, and that the population still desires to abide by its prior democratic constitution.

Popular consent is vital no matter the system a new regime imposes. New governments imposing democracy on previously undemocratic societies must necessarily have popular consent to be considered democracies, but the legal legitimacy of new regimes attempting to supplant constitutional democracies depends vitally on continuous popular support. As seen in Haiti, even continuous military control may not achieve international legal legitimacy. Only through continuous popular support can a new, democracy-supplanting government assuredly overcome the international community's demonstrated preference for democratically elected governments.

2. Short-Term Exception: The Doctrine of Necessity

The Doctrine of Necessity, which has been applied by some domestic

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[48] *See* D'Aspremont, *supra* note 30, at 903 ("[I]n the age of democracy . . . the legitimacy of a democratically elected government generally offsets its lack of effectiveness.").

[49] *See id.* at 901-02. Examples include the international community's responses to coups in Sierra Leone, Haiti, Burundi, Niger, Ivory Coast, Guinea Bissau, and Togo. *See id.*

[50] Another related explanation is the international community's preference for democratic governments. *Supra*, notes 27-29and accompanying text.

courts,[51] may allow new extra-constitutional governments to remain legitimate through short-term suspensions of prior-held democratic rights, provided that the extra-constitutional actions 1) are necessary due to exceptional circumstances not provided for in the constitution; 2) the only reasonably available option; 3) reasonably necessary in the interest of peace, order, and good government; 4) narrowly tailored to achieve these goals; 5) implemented so as not impair the just rights of citizens under the constitution; and 6) do not simply consolidate power for the new government.[52] Validation under the Doctrine of Necessity is temporary, exercised only to establish stability,[53] and has never been granted outside of certain domestic courts.

Nothing remains a long-term exception to popular consent for legal legitimacy purposes. Recent upheavals in Asia, the Middle East, and North Africa show that practically, even well-established military dictatorships are vulnerable to popular revolutions. Might no longer necessarily makes right in the Internet-age; opposition groups and governments alike recognize that their ultimate success might depend on international legal legitimacy, and thus, on popular consent.

B. Social Media and the Manifestation of Popular Consent

Everyone knew that the elections were tainted. This time however, the citizens had had enough. Following the 2004 Ukrainian elections, hundreds of thousands of people gathered in Independence Square in Kyiv, facing freezing conditions for eleven days in what later became known as the "Orange Revolution."[54] The massive protest was organized through online groups, cell phone text messaging, and website discussion boards, where activists shared detailed election fraud information and protest strategies.[55] The Orange Revolution resulted in new elections, and is widely believed to have defined social media as a formidable political tool in the twenty-first century.[56]

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[51] The Doctrine of Necessity has been used by the Fiji Supreme Court in Republic of Fiji Islands v. Prasad, [2001] FJCA 2 (Fiji), the Grenada Supreme Court in Mitchell v. Director of Public Prosecutions, [1986] L.R.C. (Const.) 35, 71-72 (Gren.), and by the Nigerian Supreme Court in Lakanmi v. Attorney General, [1971] U.I.L.R., 201, 206 (Nigeria).

[52] Prasad, [2001] FJCA 2.

[53] *Id*.

[54] Robert Faris & Bruce Etling, *Madison and the Smart Mob: The Promise and Limitations of the Internet for Democracy*, 32 FLETCHER F. WORLD AFF. 65 (2008).

[55] *Id*.

[56] *Id*. (citing Joshua Goldstein, *The Role of Digital Networked Technologies in the Ukrainian Orange Revolution* (Berkman Ctr. Working Paper, Research Pub. No. 2007-14, 2007), *available at* http://ssrn.com/abstract=1077686).

In 1983, Professor Tom Stonier hypothesized that once a state has twenty telephone lines per 1000 residents, a dictatorship can no longer be sustained.[57] Stonier's broader theory remains applicable today, but the medium has changed to Internet access.[58] The social media explosion of the last few years has forced oppressive regimes to change their tactics, for new information technologies threaten sovereigns that depend on maximum internal political, economic, and cultural control over their peoples.[59] In war-torn Syria, thousands of activists are currently covertly filming government-sponsored atrocities, smuggling film out of Syria and uploading the videos to YouTube in order to expose the Assad regime's brutality.[60] In response, the regime criminalized iPhones (since retracted), and instigated meticulous border searches, targeting film evidence.[61] No regime however, can entirely prevent a determined citizenry from broadcasting their grievances through social media and the Internet, and eventually, such protest can illustrate a loss of popular consent.

1. Social Media Today

Online social networks permit a variety of interactions, ranging from aimless chatter and exchange of offensive materials to meaningful exchanges that facilitate effective distribution of data and content.[62] Social networks allow people to exchange messages and information, and enable mass collaborations.[63] While an estimated two billion people worldwide

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[57] Jaap van Till, *Regime Change in the 'Arab Spring' is a System Change*, NETKWESTIES.NL (Feb. 6, 2011), http://www.netkwesties.nl/346/sociale-media-brengen-nieuw-systeem.htm, *English translation available at* http://www.budde.com.au/Presentations/Content/Social-Networks-and-Revolutions.pdf(citing Tom Stonier, *The Microelectronic Revolution, Soviet Political Structure, and the Future of East / West Relations*, POL. Q., Apr.-June 1983, at 137).

[58] *See* Jianhi Bi, *The Internet Revolution in China: The Significance for Traditional Forms of Communist Control*, 56 INT'L J. 421, 422 (2001) (citing Charles Snyder, *Internet Crackdown Leaves Beijing with Egg on its Face*, THE STANDARD, Dec. 8, 2000, *available at* http://www.thestandard.com.hk/archive_news_detail.asp?pp_cat=&art_id=14972&sid=&con_type=1&archive_d_str=20001208 (quoting President Bill Clinton stating that "[w]hen over 100 million people in China can get on the Net, it will be impossible to maintain a closed political and economic society")).

[59] Perrit, *supra* note 2, at 431.

[60] Joe Sterling, *For Syrian Activists, YouTube is a Sword and Shield*, CNN.COM (Mar. 15, 2012, 12:00 PM), http://www.cnn.com/2012/03/14/world/meast/syria-youtube-uprising/index.html?hpt=wo_t3.

[61] *Id.*

[62] Tal Z. Zarsky, *Law and Online Social Networks: Mapping the Challenges and Promises of User-Generated Information Flows*, 18 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 741, 742 (2008).

[63] *Id*. at 746.

have Internet access,[64] no consensus exists on the impact social media truly has on politics, or of how accurately it reflects popular consent. Some argue that social media is most effective in societies with a pre-existing public sphere,[65] but for better or for worse, social media has an impact on citizens' opinions. It allows citizens to privately and publically express their views while considering the views of others, creating a two-step opinion-forming process.[66] In the first step, social media transmits opinions.[67] In the second step, friends, family members, and colleagues echo those opinions.[68] Political opinions form in this second "conversation step," and social media has demonstrably amplified the process.[69]

Similar to the "CNN effect,"[70] social media interactions may, if on a large enough scale, bounce back to society, influence public opinion, and translate into policy change. Social media reduces the costs of coordination and facilitates the spread of information,[71] making anyone "a pundit, a reporter, or a political organizer using tools such as text messages, e-mails,

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[64] GHANNAM, *supra* note 1, at 4.

[65] *See* Clay Shirky, *The Political Power of Social Media*, FOREIGN AFF., Jan.-Feb. 2011, at 28, 30.

[66] *Id.* at 34 (citing the famous study on political opinion following the 1948 U.S. Presidential election by Elihu Katz and Paul Lazarsfeld (Elihu Katz & Paul Felix Lazarsfeld, PERSONAL INFLUENCE: THE PART PLAYED BY PEOPLE IN THE FLOW OF MASS COMMUNICATIONS (1955)).

[67] Shirky, *supra* note 65, at 34.

[68] *Id.*

[69] *Id.* at 37. South Korea offers an interesting example:

> "Many of the teenage girls who turned out in Seoul's Cheonggyecheon Park in 2008 to protest U.S. beef imports were radicalized in the discussion section of a Web site dedicated to Dong Bang Shin Ki, a South Korean boy band. DBSK is not a political group, and the protesters were not typical political actors. But that online community, with around 80,000 active members, amplified the second step of Katz and Lazarsfeld's two-step process by allowing members to form political opinions through conversation."

Id.

[70] Elad Peled, *Should States Have a Legal Right to Reputation? Applying the Rationales of Defamation Law to the International Arena*, 35 BROOK. J. INT'L L. 107, 122-23, 134 (2010). The CNN effect refers to the effect that 24-hour news channels have on shaping public opinion and foreign affairs. STEVEN LIVINGSTON, THE JOAN SHORENSTEIN CTR. ON THE PRESS, POL. AND PUB. POLICY JOHN F. KENNEDY SCHOOL OF GOV'T HARV. UNIV, CLARIFYING THE CNN EFFECT: AN EXAMINATION OF MEDIA EFFECTS ACCORDING TO THE TYPE OF MILITARY INTERVENTION, RESEARCH PAPER R-18 (1997), *available at* http://tamilnation.co/media/CNNeffect.pdf.

[71] Shirky, *supra* note 65, at 35.

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blogs, video, and websites."[72] Social media and the Internet have created a huge mob of politically cognizant "on the spot watchers"[73] who exchange ideas and can quickly organize. Scholars who believe that the old group organizational costs were an impediment to democratic action believe that social media will further democracy,[74] and result in social change.

2.   Social Media, Politics, and Group Participation

Politically, social media impacts the vertical structure of government, making leaders more accountable to their constituents.[75]   The Internet allows constituents to organize, assemble, and participate in their government, affecting elections and the political process generally.[76] In the United States, March 2012 alone saw the Internet releases of two videos – Kony2012 and President Barack Obama's "The Road We've Traveled"[77] – both specifically designed to motivate the electorate into political action and amass constituent support. In the realm of foreign policy, President Obama recently instructed the Treasury Department to issue new guidelines allowing Internet messaging services such as Skype and Yahoo Messenger to conduct business in Iran in an attempt to directly target the Iranian populace, whom Obama described as living behind an "electronic curtain."[78] Obama's stated objective to "advanc[e] a basic freedom for the Iranian people: the freedom to connect with one another, and with their fellow human beings"[79] could have been extended to include the words "in opposition to their government." In China, *Weibo* (the Chinese equivalent of Twitter), though technically blocked by the Chinese government, has more than 250 million Chinese users and "has changed the dynamic between rulers and ruled over the past two years."[80] Local party bosses have resigned due to the spread of incriminating rumors over *Weibo*, and the government has recognized *Weibo's* political potential.[81]   While these

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[72] Faris & Etling, *supra* note 54, at 67.

[73] Till, *supra* note 57, at 4.

[74] Faris & Etling, *supra* note 54, at 69; Shirky, *supra* note 65, at 32.

[75] Faris & Etling, *supra* note 54, at 74, 80.

[76] *Id.* at 74.

[77] *Kony2012*,   YOUTUBE   (Mar.   7,   2012), http://www.youtube.com/watch?v=KArCWQUJerw; *The Road We've Traveled*, YOUTUBE (Mar. 15, 2012), http://www.youtube.com/watch?v=2POembdArVo.

[78] Brian Murphy, *Iran Leader: Any Attacks Bring 'Same Level' Reply*, ASSOCIATED PRESS, Mar. 20, 2012, *available at* http://finance.yahoo.com/news/iran-leader-attacks-bring-same-183842656.html.

[79] *Id.*

[80] *The Power of Microblogs: Zombie Followers and Fake Re-tweets*, THE ECONOMIST (Mar. 17, 2012), http://www.economist.com/node/21550333.

[81] *See id.*

Internet-based actions have yet to turn into permanent and persistent government institutions, they have affected domestic politics throughout the world.

Social media has not, however, significantly influenced the horizontal structure of government, notably, the accountability and interaction *between* government branches.[82] Social media increases and facilitates the interactions between the government and the governed, making leaders more accessible and responsive to the masses. However, no similar process is taking place between government branches. Thus, the Internet has allowed the power of the masses to grow asymmetrically, heightening the role of citizens and thus the role of popular consent in government. Presently, many commentators applaud the growth of popular consent, believing that the Internet and social media are "pillar[s] of our free and democratic society."[83] Revolutionaries echo these feelings. "The worst thing you can do to a dictator" says Wael Ghonim,[84] "is expose them to their people."[85] According to Ghonim, the dictator's formula used to be "fear and intimidate the smart people, and mass propagandize everyone else," but the Internet has changed the equation.[86] Other commentators lament this trend as a regression into populism.[87] Regardless, the Internet and social media have made popular consent increasingly vital to governments.

Social media has also led to socio-economic change. In China, scholars have linked the emerging middle class and civil society directly to an increase in Internet access.[88] China's educated middle class gathers and disseminates ideas and information over the Internet, forming civic

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[82] Faris & Etling, *supra* note 54, at 74.

[83] Duncan Cornell Card, *Internet and Democratic Stability: The Legal Challenge to Face the Threat*, 56 U.N.B.L.J. 23, 23 (2007).

[84] Wael Ghonim is an Internet activist, computer engineer, and former head of marketing of Google Middle East & North Africa, and was the administrator behind the very influential Facebook website "We are all Khaled Said," which many accredit with beginning the Egyptian revolution. *See infra* notes 133-39 and accompanying text.

[85] Wael Ghonim, Internet Activist, Computer Engineer & Head of Marketing of Google Middle East & North Africa, A Conversation with Wael Ghonim at the Harv. Univ. Inst. of Politics Kennedy School of Gov't John F. Kennedy Jr. Forum (Feb. 3, 2012), *available at* http://www.c-spanvideo.org/program/304212-1.

[86] *Id*. For academic support, *see* Bi, *supra* note 58, at 425 ("China's one party dictatorship has always been scared of the free flow of information."). It should be noted that today, Internet-dispersed criticism of party officials and the C.C.P. has increased dramatically. *Id.* at 427-28.

[87] *See* Andrea Slane, *Democracy, Social Space, and the Internet*, 57 U. TORONTO L.J. 81, 86 (2007) (citing DIANA SACO, CYBERING DEMOCRACY: PUB. SPACE AND THE INTERNET (2002)).

[88] Bi, *supra* note 58, at 431.

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associations that may one day transform into a formative political force.[89] Although the Chinese government appears committed to making the Internet a source for solely economic (and not political) growth,[90] history has shown that a vibrant middle class correlates with social change. The Internet accelerates this role by acting simultaneously as a force for both economic and political advancement; as the middle class grows, so grows their power to influence the vertical political structure. At its root, the Internet and social media enhance group participation in government, allowing groups to lower participation, organization, recruitment, and training costs.[91]

3. Social Media, State, and Non-State Actors

Social media is perhaps most influential when narrowly targeted. NGOs, sometimes based in home countries but more often based abroad, now have relatively easy access to billions of viewers with little personal risk. "Name and shame" has always been a powerful NGO tool for political change, and the Internet has simplified and magnified the technique. Within and outside of China, hundreds of internet-based NGOs have developed to challenge specific government policies. One group, the Falun-Gong, used the Internet to remotely organize a mass rally inside China.[92] In Cuba, detained members of the all female group the "Ladies in White" were released merely four hours after a video documenting their abusive arrests went viral in March 2010.[93] The video spread throughout the world despite Cuba's limited Internet access, directly affecting conditions in Cuba in a matter of hours. Myanmar offers a more general, and striking, example:

> In 2007, digital media provided viewers around the world with a poignant depiction of the violent repression of popular demonstrations in Burma and the ongoing suppression of democracy there. Sadly, the gains of the courageous pro-reform movement are yet to be seen. Yet, in comparison to the 1988 democracy protests in Burma in which no fewer than 3,000 were killed, the most generous estimate of deaths in 2007 is approximately 100. While still tragic, one has to wonder if the junta were conscious of the

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[89] *Id*.

[90] *Id.* at 437.

[91] Marko Papic & Sean Noonan, *Social Media as a Tool for Protest*, STRATFOR (Feb. 3, 2011, 9:54 AM), *available at* http://www.stratfor.com/weekly/20110202-social-media-tool-protest.

[92] Bi, *supra* note 58, at 431.

[93] Alissa Del Riego & Adrianna C. Rodriguez, *Ladies in White: The Peaceful March Against Repression in Cuba and Online*, 24 HARV. HUM. RTS. J. 221, 222, 239 (2011).

fact that the world was watching digital images disseminated around the globe.[94]

Social media has been used to do more than simply expose government practices. An Israeli Facebook Page entitled "Israelis and Iranians for Peace" successfully connected hundreds of regular Israelis and Iranians who pledged to never "bomb [one another's] country."[95] While these practices may not always lead to organized opposition and broader societal changes, they nevertheless affect national policy. Even in countries with restricted social media access, citizens can engage with the world, which can often reverberate back home in meaningful ways.[96]

4. Social Media's Negative Effects on Popular Consent

Despite the positive effects, the Internet and social media have also negatively impacted popular consent determinations and revolutions generally. While social media surely spreads the flow of information, nothing attests to the accuracy of that information. The Internet has little filter, and unsubstantiated theories can spread just as easily as accurate reporting. Furthermore, social media does not necessarily accurately reflect the will of society. For the most part, young people are more computer savvy, blogging and tweeting at higher rates than other demographics.[97] Even amongst the Internet-savvy, research suggests that 90% of all users interact passively or seek merely consumer information, while 10% contribute occasionally and incidentally (by making slight corrections, tagging, and commenting on existing content), and that only 1% actually create social network discourse.[98] Known as "slaktivism,"[99] marginally apathetic citizens may simply join a Facebook group to assuage a nagging conscious. Similarly, otherwise active citizens may simply blog, believing

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[94] Faris & Etling, *supra* note 54, at 76.

[95] Samira Said, *Peace-Minded Israeli Reaches Out to Everyday Iranians via Facebook*, CNN.COM, (Mar. 19, 2012), http://articles.cnn.com/2012-03-19/middleeast/world_meast_israel-iran-social-media_1_iranians-nuclear-weapon-bombing-iran-nuclear-sites?_s=PM:MIDDLEEAST; Oded Yaron, *'Israel Loves Iran' Initiative Takes off on Facebook*, HAARETZ.COM, (Mar. 22, 2012, 7:08 PM), http://www.haaretz.com/news/national/israel-loves-iran-initiative-takes-off-on-facebook-1.419384; ISRAELIS AND IRANIANS FOR PEACE, FACEBOOK.COM, https://www.facebook.com/PeaceBetweenPeoples(last visited Oct. 13, 2012, 3:34 PM).

[96] *See* Riego & Rodriguez, *supra* note 93, at 237, 239.

[97] AMANDA LENHART, LEE RAINIE, & AARON SMITH, PEW RESEARCH CTR.'S INTERNET & AM. LIFE PROJECT, THE TONE OF LIFE ON SOCIAL NETWORKING SITES (2012), *available at* http://www.pewinternet.org/~/media//Files/Reports/2012/Pew_Social%20networking%20climate%202.9.12.pdf.

[98] Zarsky, *supra* note 62, at 755-56.

[99] Shirky, *supra* note 65, at 38.

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they have done all that their civic duty requires. Social media does not make "people move," and for a social media-driven protest to be successful, it must translate into action on the ground.[100]

Commentators also warn of the "bottlenecking" of information. As fewer and fewer individuals control the physical infrastructure of communication, fears of bias and selective reporting increase.[101] Cass Sunstein argues that the ability to personalize the news one sees through social media allows readers to filter out the news that they do not care about, creating an "echo chamber" that results in group polarization.[102] When people receive information at random their interests and views change, but when they visit sites tailored to their particular interests and prejudices, they balkanize into groups.[103] Group balkanization leads to further balkanization as members move one another toward more extreme points in line with their initial views and tendencies.[104] Paradoxically, the Internet, which has led to an explosion of different news varieties and options, has at the same time allowed individuals and groups to narrow their information inputs, and reinforce their pre-conceived opinions.

Governments are equally adept at using the Internet and social media. Many countries have begun paying citizens to spread favorable Internet messages in the forms of blog and forum commenting.[105] Dubbed "web brigades," these individuals search the web for blogs and articles criticizing their home government, and then anonymously make nationalistic comments.[106] In China, government agencies, party organs, and individual officials have set up more than 50,000 *Weibo* accounts, while individual micro-blogs employ hundreds of monitors to remove content unacceptable to authorities.[107] Chinese officials have begun requiring *Weibo* members to register with their real name and identity card numbers in order to discourage antagonistic postings.[108] Governments can also propagandize foreign social media support for revolutionaries, creating counter-

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[100] Papic & Noonan, *supra* note 91, at 2.

[101] Zarsky, *supra* note 62, at 771.

[102] Faris & Etling, *supra* note 54, at 70 (quoting Cass Sunstein, *The Daily We: Is the Internet Really a Blessing for Democracy?*, Bos. Rev. Summer 2001, *available at* http://bostonreview.net/BR26.3/sunstein.html; Cass Sunstein, Republic.com (2001)).

[103] Sunstein, *The Daily We*, *supra* note 102.

[104] *Id*.

[105] Jillian C. York, *Dangerous Social Media Games*, ALJAZEERA.com (Jan. 13, 2012, 4:16 PM), http://www.aljazeera.com/indepth/opinion/2012/01/201211111642310699.html. Countries using such methods include Russia, the United States, Israel, Bahrain, Syria, and China. *Id.*

[106] *Id.*

[107] *The Power of Microblogs*, *supra* note 80.

[108] *Id.*

revolutionary nationalistic movements.[109]

The most tragic consequence of the Internet and social media may simply be that of giving false hope. Reports from revolutions, demonstrations, and uprisings quickly spread over the Internet, stimulating similarly-situated peoples into revolution. But not all revolutions are successful. Many are bloody and cruel, and even "successful" revolutions such as Egypt's must eventually face the long, slow, and difficult process of state rebuilding.[110] Syria, clearly inspired by the revolutions of its neighbors, finds itself in the midst of civil war. While social media-savvy Syrian revolutionaries are attempting to prevent history from repeating itself, their fate may be the same:

> There was no Internet in 1982, when the government of Hafez Assad, the current ruler's late father, conducted a bloody offensive in the city of Hama . . . That city essentially died violently and nobody could verify it. That is very much in the national consciousness because another Assad had done it before. We weren't going to let this   Assad   do   it   to   us   .   .   .   .[111]

Nonetheless, the power of the Internet and social media cannot be denied. When used as an impetus for revolution, social media can indicate when old governments lose popular consent and when new governments gain it. The following section illustrates the extent to which social media has impacted regime change in Tunisia and Egypt, and provides a framework for analyzing the efficaciousness of whichever new governments eventually secure power.

C.   Revolution

> "It could have easily been overlooked. It was not the first time a young, frustrated Arab had taken desperate action to draw attention to the plight of the marginalized millions. But on this occasion the news of a suicide went viral."[112]

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[109] Shirky, *supra* note 65, at 32.

[110] *See* Mohamed Fadel Fahmy, *Egyptians Pack Tahrir Square for Revelry, Protests a Year After Historic Revolt*, CNN.COM (Jan. 26, 2012, 10:45 AM), http://www.cnn.com/2012/01/25/world/africa/egypt-revolution/index.html?hpt=hp_c3("'There were too many expectations,' said Hisham Qasim, an Egyptian newspaper publisher and human rights activist. 'Raising the expectations was probably the biggest mistake, and media probably have a great part to do with that.'").

[111] Sterling, *supra* note 60(quoting Rafif Jouejati, spokeswoman for the opposition Local Coordination Committees of Syria).

[112] Shiv Malik, Jack Shenker, & Adam Gabbatt, *Arab Spring Anniversary: How a Lost Generation Found Its Voice*, THE GUARDIAN, Dec. 16, 2011, *available at*

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While the Arab Spring's pieces have not all fallen into place, one thing is certain: social media has become an integral tool for aspiring revolutionaries. As of late 2010, the Arab region had 40,000 active blogs.[113] Egypt's interior ministry maintains a department of forty-five people to monitor Facebook, but nearly five million Egyptians use the social networking site, among seventeen million users in the region.[114] Since December 2010, Facebook, blogs, and text messages have organized and sustained revolutions throughout the Middle East and North Africa, with varying degrees of success. At the time of this writing, none of the newly implemented governments have held power long enough to accurately measure sustained popular support. However, the Arab Spring revolutions offer interesting case studies in popular support, social media, and revolution, and present a glimpse of what revolutions looks like in the twenty-first century.

1. Tunisia[115]

Mohamed Bouazizi's self-immolation in Tunisia led to protests in Sidi Bouzid the very same day.[116] Captured by cell phone cameras, the protests were quickly shared on the Internet, and, lacking any significant centralized leadership, forced President Zine El Abidine Ben Ali and his nearly twenty-three-year-old regime out of power in less than a month. The sheer speed at which Tunisia was swept away in popular protest indicates that President Ben Ali had lacked the popular consent of his people for quite some time, and that the population was ready for a new Grundnorm. For this reason, Tunisians rightfully resent their revolution being dubbed the "Facebook" or "Twitter Revolution."[117] In fact, Internet access is not very widespread in Tunisia - Tunisia's revolution was cell-phone and camera phone-induced.[118] Importantly, Tunisians view their revolution as one born out of widespread discontent with the existing system, in which technology was *utilized*. As described by participant Salem Zitouni, Tunisians "made this revolution against the dictatorship to impose [their] right to a dignified life and not to help certain opportunists realize their political ambitions."[119]

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http://www.guardian.co.uk/world/2011/dec/16/arab-spring-year-of-protest.

[113] Ghannam, *supra* note 1, at 5.

[114] *Id.*

[115] This analysis of Tunisia was completed in March 2012.

[116] *The Arab Spring: A Year of Revolution*, NPR.com (Dec. 17, 2011), http://www.npr.org/2011/12/17/143897126/the-arab-spring-a-year-of-revolution.

[117] *See generally* Till, *supra* note 57.

[118] *See generally id*.

[119] *Tunisians Mark One Year Since Ben Ali Fled,* ALJAZEERA.com (Jan. 15, 2012, 3:54 PM), http://www.aljazeera.com/news/africa/2012/01/201211414346137290.html.

Manifested by frustration in the streets, the Tunisian revolution was about regime, and likely systemic, change - a change still in transition.[120]

However, social media did play a significant role, and Facebook was the open platform where Tunisians shared camera-phone videos.[121] Rim Nour, a tech-savvy Tunisian who personally took part in Tunisia's revolution believes that social media helped organize the revolution in four important ways: 1) grassroots protest were mobilization via Facebook; 2) individuals used text and other social media to identify the positions of snipers, police, and looters, and to alert one another to violence; 3) citizens countered fear-mongering rumors and propaganda via Facebook and blogs; and 4) the Internet helped people analyze government statements.[122] While social media was not the base for the revolution, its organizational power and ability to manifest popular discontent was incredibly significant, even in Internet-limited Tunisia.

Turnout for the October 2011 constitutional assembly election reached ninety percent in some areas, and was widely considered fair.[123] While some citizens had to wait in the hot sun for hours to cast votes, many considered it a "beautiful kind of suffering."[124] The moderate Islamist Ennahda party, having won forty-one percent of the vote, will form the constitutional assembly, and while several comparatively smaller protests erupted when the results were announced, [125] the new government seems, at least for now, to have the tacit support of Tunisians. Though "Islamist," many voters did not chose Ennahda for religious reasons, but simply for change, desiring "honesty in public life . . . for a government that would not steal from the people."[126] Shortly after the election result announcement, Ennahda leader Rachid Ghannouchi pledged that the government would "continue this revolution to realize its aims of a Tunisia that is free, independent, developing and prosperous, in which the rights of God, the

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[120] *Id.* ("'We see a different Tunisia,' Amine Ghali of the Al Kawakibi Democracy Transition Centre told Al Jazeera. 'We are not in a democratic country. We are in a country that is trying to transform into a democracy and it's not an easy process.'").

[121] Alex Howard, *A Tunisian on the Role of Social Media in the Revolution in Tunisia*, GOV20.GOVFRESH.COM (Jan. 30, 2011, 2:48 PM), http://gov20.govfresh.com/a-tunisian-on-the-role-of-social-media-in-the-revolution-in-tunisia/.

[122] *Id.* Nour made these comments in January 2011 to NPR staff at NPR headquarters in Washington, D.C.

[123] Soraya Sarhaddi Nelson, *Egypt, Tunisia Try to Turn Elections into Democracy*, NPR.COM (Jan. 2, 2012), http://www.npr.org/2012/01/02/144490042/egypt-tunisia-try-to-turn-elections-into-democracy.

[124] Allan Little, *Tunisians Embrace Democratic Life*, BBCNEWS.COM (Oct. 27, 2011, 8:24 PM), http://www.bbc.co.uk/news/world-africa-15462198.

[125] *Tunisia's Islamist Ennahda Party Wins Historic Poll*, BBCNEWS.COM (Oct. 27, 2011, 6:57 PM), http://www.bbc.co.uk/news/world-africa-15487647.

[126] Little, *supra* note 124.

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Prophet, women, men, the religious and the non-religious are assured because Tunisia is for everyone."[127] Tasked with creating a new constitution, Ennahda appears to be balancing the interests of foreign investors, secularists, and Islamists,[128] and the coming months will show whether the population allows Ennahda's postulated system to fill Tunisia's governmental void. Most Tunisians appear committed to a democratic Grundnorm. As described by one pollster, Tunisia is currently in "a battle *within a democracy* between two competing visions for our future - one conservative, rooted in religious observance, the other is progressive, modern and forward-looking."[129]

Tunisians have elected a constitutional assembly tasked with creating a new constitution, and seem well on their way to establishing a basis for their new society. No matter which party eventually takes power in Tunisia, it will likely have sufficient support to meet the popular consent prong of legitimacy, for Tunisians have shown the world what it means for a government to lack popular support, and know how to demonstrate their discontent.

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[127] *Tunisia's Islamist Ennahda Party Wins Historic Poll*, *supra* note 125.

[128] *See id*.

[129] Little, *supra* note 124[emphasis added].

2. Egypt[130]

> "I think there was a loss of faith in working within the
> system, and that's when people began to think more and
> more about civil disobedience, mass protests [and] going
> out in to the streets. When your political process fails you,
> there's really only one option left."[131]

Egyptians were certainly fed up with President Muhammad Hosni El
Sayed Mubarak's system; Mubarak's 1971 Constitution was one of the first
victims of the revolution,[132] and contrary to Tunisians, Egyptians were
relatively well prepared to engage in serious conversations about the
composition of their future government.[133] In its first day up and running,

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[130] Much has occurred in Egypt since this paper's completion in March 2012, but the
analysis below remains highly relevant. Mohamed Morsi Isa El-Ayyat of the Muslim
Brotherhood was elected by a majority (albeit, slim) of Egyptian voters on June 18, 2012.
Since coming to office, Morsi has moved against the military establishment, ordering the
retirement of numerous high-ranking military officials, and has suspended some of the more
executive-restricting military-sponsored constitutional amendments. *Crowds in Cairo
Praise Morsi's Army Overhaul*, ALJAZEERA.COM (Aug. 13, 2012, 1:48 PM),
http://www.aljazeera.com/news/middleeast/2012/08/201281215511142445.html. Morsi's
determination to play a large role in the formation of Egypt's constitution indicates that he
understands the importance of creating a new system in Egypt. *See* Kareem Fahim, *In
Upheaval for Egypt, Morsi Forces Out Military Chiefs*, N.Y. TIMES, Aug. 12, 2012, *available
at* http://www.nytimes.com/2012/08/13/world/middleeast/egyptian-leader-ousts-military-
chiefs.html. In his political battle with the military, Morsi has predominantly received
favorable coverage from Egypt's traditional and social media outlets. *See Egypt: Morsi*, *The
Military and the Media*, ALJAZEERA.COM (July 21, 2012, 10:13 AM),
http://www.aljazeera.com/programmes/listeningpost/2012/07/201272184850648565.html.
Furthermore, Morsi has gone out of his way to include the media and engage with the
Egyptian people, regularly hosting question and answer radio programs. *See* Merrit
Kennedy, *On Call-In Radio, Egypt's Leader Offers Reassurance*, NPR.COM (Aug. 13, 2012),
http://www.npr.org/2012/08/13/158533289/on-call-in-radio-egypts-leader-offers-
reassurance. Although his November decrees (since partially retracted) were met with
widespread and highly publicized protest, Egyptians voted in favor of the Morsi-supported
Constituent Assembly's draft constitution by an almost two-to-one margin in December's
referendums. Michael J. Totten, *Egypt Gets a New Constitution*, WORLD AFFAIRS, Dec. 27,
2012, *available at* http://www.worldaffairsjournal.org/blog/michael-j-totten/egypt-gets-new-
constitution. The road has been bumpy, but Egypt may have the basis for a new Grundnorm.
(As analyzed by the author, October-December 2012).

[131] *The Arab Spring: A Year in Revolution*, *supra* note 116(quoting Shadi Hamid,
director of research for the Brookings Institute in Doha, Qatar).

[132] *See Egypt Chooses Panel to Draft Constitution*, ALJAZEERA.COM (Mar. 24, 2012,
2:45 PM), http://www.aljazeera.com/news/middleeast/2012/03/201232411736959254.html.

[133] Lisa Anderson, *Demystifying the Arab Spring*, FOREIGN AFF., May-June 2011, at 2,
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Wael Ghonim's Facebook site, "We are all Khaled Said," had 36,000 members. By day three, it had 100,000.[134] An integral tool of the revolution, Ghonim's site organized protests, articulated demands, and kept the motor of the revolution running. Regarding Facebook however, even Ghonim does not "trust the 'tool', [he] trust[s] the people behind the 'tool'."[135] To be sure, the Egyptian people, and not social media bloggers, created the revolution. Mubarak's government had been rejected long ago: in the year leading up to the January 2011 revolution, Egypt experienced over 1000 popular protests.[136] Nevertheless, social media's power to coalesce these grievances cannot be overlooked, and the relative ease with which Egyptians finally expressed their discontent once the correct "tools" were implemented shows just how well social media can reflect popular opinion and indicate the loss of popular consent.

Initially, it appeared that the military Supreme Council of Armed Forces ("SCAF") Grundnorm of "patronage and patriotism"[137] on top of which Mubarak ruled, remained.[138] Analysts place SCAF's control over Egypt's economy at between fifteen and forty percent, controlling vast amounts of land and over thirty-five factories and companies.[139] Egypt's military is composed of over 500,000 active men despite not having fought a war since 1973, and since the time of Gamal Abdel Nasser, military personal have commonly been inserted into public ministerial and providential positions.[140] Thus, the interconnectivity of the military within Egyptian society makes determining SCAF's support amongst average Egyptians difficult. Prior to the revolution, the military was certainly widely respected by the Egyptian populace.[141] However, the numerous anti-SCAF protests that manifested after Mubarak's fall, some with tens of thousands of protestors,[142] have at minimum demonstrated a "conflict over the soul of

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[134] Ghonim, *supra* note 85.

[135] *Id.*

[136] *Id*.

[137] Anderson, *supra* note 133, at 4.

[138] *See Tantawi: Egypt to Lift State of Emergency*, ALJAZEERA.COM (Jan. 24, 2012, 6:33 PM)**,** http://www.aljazeera.com/news/middleeast/2012/01/20121241511934232.html. While the 1981 "state of emergency" was officially lifted by the SCAF government, "[w]hat Tantawi [SCAF Chairman] has done is very similar to what the former President Hosni Mubarak did, which is not abolish the emergency law altogether but in fact just narrow its remit." *Id.*

[139] Sherine Tadros, *Egypt Military's Economic Empire*, ALJAZEERA.COM (Feb. 15, 2012,   9:01   PM), http://www.aljazeera.com/indepth/features/2012/02/2012215195912519142.html.

[140] *Id.*

[141] *See* Anderson, *supra* note 133, at 4.

[142] *See* David D. Kirkpatrick, *Deal to Hasten Transition in Egypt is Jeered at Protests*, N.Y.   TIMES,   Nov.   22,   2011,   *available   at*

Egypt."[143]

One of the largest political battles has revolved around the creation of a new constitution, with the military insisting on carving out permanent institutional autonomy and political powers.[144] This is a battle over Egypt's future Grundnorm (manifested in written constitution), with revolutionaries from all ideologies calling for a government more beholden to the masses.[145] Out of the one hundred Parliamentarians chosen to craft the new constitution, fifty will be sitting parliamentarians, while the other fifty will be trade unionists and members of civil society.[146] Islamists are expected

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http://www.nytimes.com/2011/11/23/world/middleeast/egypts-cabinet-offers-to-quit-as-activists-urge-wider-protests.html?_r=2&hp; Jack Shenker& Martin Chulov, *Egypt's Generals Defy Tahrir Protests Over Elections*, THE GUARDIAN, Nov. 24, 2011, *available at* http://www.guardian.co.uk/world/2011/nov/24/egypts-generals-defy-tahrir-protests-elections; *Tens of Thousands Protest in Egypt*, ALJAZEERA.COM (Nov. 18, 2011, 10:25 PM), http://www.aljazeera.com/news/middleeast/2011/11/2011111881959573228.html(describing the "Friday of One Demand" protest in Cairo square).

[143] Jack Shenker, *Egyptian Parliament Sworn in Under Heavy Weight of Expectation*, THE GUARDIAN, Jan. 23, 2012, *available at* http://www.guardian.co.uk/world/2012/jan/23/egyptian-parliament-sworn-in-expectation("[After Parliament was sworn in] the cracks began to appear. The first ultra-conservative Salafist MP to go off script was Mamdouh Ismail, who added ' . . . if not in contradiction with God's doctrine' to his oath of office, and others quickly followed suit. Liberals hit back by tacking on their own spontaneous postscripts, promising to serve the nation 'in accordance with the demands of the revolution.'"); *Islamists Sweep Early Results in Egypt Vote*, ALJAZEERA.COM (Dec. 5, 2011, 8:57 AM), http://www.aljazeera.com/news/middleeast/2011/12/201112320622436522.html.

[144] David D. Kirkpatrick, *Amid New Clashes in Cairo, Civilian Advisory Council Suspends Its Work,* N.Y. TIMES, Dec. 16, 2011, *available at* http://www.nytimes.com/2011/12/17/world/middleeast/new-clashes-in-cairo.html?_r=1&hp. For concerns, see Sarah Mousa, *Egypt: The Continued Need For Popular Protest*, ALJAZEERA.COM (Jan. 26, 2012, 11:20 AM), http://www.aljazeera.com/indepth/opinion/2012/01/20121268544652210.html("A mix of disappointment and fear hovers among revolutionaries that SCAF and the MB [Muslim Brotherhood], both of which hold power as a function of circumstance, will have undue influence on a document intended to be timeless.").

[145] *See* Nelson, *supra* note 123(noting that Islamist movements touch "very resonant chords with millions of Egyptians who feel disenfranchised, who feel oppressed, who feel that the country has been usurped by a Western, liberal, intellectual, artistic elite, and it's time to go back to the basics"); *see also* David D. Kirpatrick& Mayy el Sheihk, *Economic Crisis Adds Dangers on Egypt's New Political Path*, N.Y. TIMES, Jan. 24, 2012, *available at* http://www.nytimes.com/2012/01/25/world/middleeast/egypts-new-path-complicated-by-economic-problems.html?_r=2&ref=world(quoting Ahmed Galal, managing director of the Economic Research Forum based in Cairo, stating "[t]hese guys [Muslim Brotherhood] want to succeed . . . they are really singing songs that are quite moderate, quite civic, quite inclusive, and they are looking at countries like Turkey rather than Iran or Afghanistan.").

[146] *Egypt Begins Constituent Assembly Selection*, ALJAZEERA.COM (Mar. 24, 2012,

to dominate both groups, leading some liberals to fear "a very tilted constitution that reflects the interests of only one segment of the population," which will "very much" affect the identity of the state.[147] Then again, Egyptian liberals only hold one-third of Parliament's seats and the majority of Egypt's population supports Islamist parties,[148] indicating that the will of the people is being expressed.

Despite facing widespread protest[149] SCAF may still have sufficient popular support, and the coming months will likely show whether the Mubarak-era military Grundnorm remains.   SCAF has greater popular support (which necessarily includes the support of Egyptian soldiers)[150] than did President Mubarak himself, for they remain highly involved in Egypt's new government.[151]   The military-backed interim government certainly recognized the importance of popular support; its threat to prosecute nineteen United States citizen NGO workers in February 2012 was viewed domestically as a blatantly political move designed to shore up nationalism in order to gain concessions during the creation of the new constitution.[152]   SCAF also used its Facebook Page to apologize for "the fallen martyrs of the children of Egypt in the latest incidents in Tahrir Square," offering "condolences to the families of martyrs throughout Egypt."[153] Regardless of their sincerity, the fact that the military even has a Facebook Page indicates how the relationship between the government and

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2:45 PM), http://www.aljazeera.com/news/middleeast/2012/03/201232411736959254.html. Although Morsi dissolved this Constituent Assembly, the makeup of the second Assembly was proportionally similar. *See Egypt Parties End Deadlock Over Constitutional Panel*, BBCNEWS.COM (June 8, 2012, 2:49 PM), http://www.bbc.co.uk/news/world-middle-east-18360403.

    [147] *Id.* (quoting Khaled Fahmy of the American University in Cairo).

    [148] *Id.*

    [149] Mousa, *supra* note 144.

    [150] Contrast with what appears to be a case for popular consent lost in Syria, where large parts of the military have defected, and upwards of 5000 civilians are believed to have been killed. *See 'Scores killed' in Syria Violence*, ALJAZEERA.COM (Dec. 21, 2011, 7:53 AM), http://www.aljazeera.com/news/middleeast/2011/12/20111220174335281715.html.

    [151] Compare with Yemen, where President Ali Abdullah Saleh has abdicated power, but protests have continued against the interim-government. The protests however, do not have the same force, frequency, or organization as did those that ended Saleh's rule. *Fighting Erupts in Yemen Amid Protests*, ALJAZEERA.COM (Nov. 25, 2011, 9:26 PM), http://www.aljazeera.com/news/middleeast/2011/11/20111125124426529361.html("'Right now, there is a bit of a confusion on who is and who is not supporting the deal,' says one correspondent. 'These demonstrators are putting the parties that signed the deal in an awkward position.'").

    [152] Abdullah Al-Arian, *Spectacle and Political Power in Egypt*, ALJAZEERA.COM (Feb.   26,   2012,   10:18   PM), http://www.aljazeera.com/indepth/opinion/2012/02/2012223104530599118.html.

    [153] Shenker, *supra* note 143.

the governed has evolved, and shows that the battleground for international legitimacy in the twenty-first century will be fought in the realm of popular support. For now, the military says it is committed to "going back to its barracks,"[154] and thus determining popular consent and legitimacy in Egypt must wait. Wael Ghonim believes that "we will win because we don't understand politics,"[155] and he is probably correct. Ghonim defines "winning" as a government corresponding to the people's will[156] – in other words, one with popular support. Egypt's recent revolutionary experience, combined with the growing importance of popular support to international legitimacy, gives Ghonim and his co-revolutionaries a real chance at satisfaction.

IV. GOING FORWARD

The primary objective of international law for the last eighty years has been to promote stability. As such, it is only natural that international jurists would have difficulty creating a workable legal framework for determining the legal legitimacy of new revolutionary regimes. But the *de-jure* analysis is evolving and simplifying. The global preference for democratic governance, combined with world interconnectivity, has made popular support the central factor for determining regime legitimacy in the twenty-first century. While popular support for new regimes is difficult to measure under current international law, the relative ease with which groups can amass popular protest through social media indicates that, in the absence of such movements, new regimes have the consent of their people. Social media has been utilized to destroy decades-old regimes; it will now most certainly be used to build new governments. The burden of proving legal legitimacy under international law has always been and remains with new regimes,[157] but the burden may be more difficult to meet in the future. After all, emerging governments would do well to remember that consent can be withdrawn with the sending of a text.

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[154] *Tantawi: Egypt to lift state of emergency*, *supra* note 138.

[155] Ghonim, *supra* note 85.

[156] *Id*.

[157] Mahmud, *supra* note 3, at 92.