A Normative Study of Broadcast Regulators in the Arab World

BOUZIANE ZAID[1]
University of Sharjah, UAE

Eleven Arab countries have embarked on the process of creating broadcast regulators. This article investigates the general context for their creation, examines their internal organization to evaluate their independence from state control, and analyzes relevant media legislation to assess the extent of political interference with media contents. The article uses normative theory based on international norms as articulated in the United Nations International Covenant on Civil and Political Rights to determine whether Arab broadcast media regulation is congruent with international norms. The study questions whether the regulatory bodies are genuine media reforms meant to liberalize the broadcast sector or pseudoreforms meant to allow the Arab states indirect but total control over broadcasting. The study found that the broadcast reforms are part of what Heydemann calls "authoritarian upgrading." Arab regimes control media content through repressive laws outside the realm of international norms set up by the United Nations covenant and through regulatory institutions that lack independence. The study adopts a multimethod combining qualitative document analysis and in-depth interviews.

Keywords: media policy, broadcasting regulation, normative theory, United Nations International Covenant on Civil and Political Rights, Arab world

In many parts of the Arab world, television and radio remain the primary media of information and entertainment given the high rates of illiteracy, lack of local digital content creation, and shortage of digital literacy skills. During the 2011 uprisings known as the Arab Spring, digital media created new possibilities for the self-organization and self-mobilization of society, bypassing the barriers of censorship and repression imposed by Arab states (Abdulla, 2013). However, the liberating potential of digital media soon died out. The Arab region is now situated within the more palpably negative aspects of life outside the network society, a sphere characterized by the digital divide, the rise of surveillance society, and the transformation of ICTs from forces of change to instruments of state repression (Zaid, 2016a). In line with Castells' (1996) argument, the rise of the network society changed the dynamics of the interactions among media, culture, and politics in the Arab world for a short period of time, and produced what Jean Baudrillard (2003) called a "dialectical tension or critical movement" that acted as

the basic precursor for the dynamism and change witnessed during the Arab Spring (Baudrillard, 2003, para. 7). Today, authoritarianism has returned to squeeze out these spaces of contestation and creation of other ways of being and seeing, rendering the network society a space where the differences within media, politics, and cultural production are disappearing.

For many decades, Arab broadcasting has been under government control in which state officials dictate media policy and interfere with editorial decisions. However, since the mid-1990s, numerous governments have taken action to establish regulatory bodies to provide the legal framework to liberalize the audiovisual sector and to oversee the public service broadcasting sector.

In this study, I use the nation-state as the unit of analysis. Satellite broadcasting is the dominant form of transmitting TV signals and Arab homes have wide access to satellite channels, but the channels that provide Arab audiences with local content, especially national news, are the national broadcasters. It is the quality of information citizens receive that determines the extent to which they are well informed and can actively participate in the political and cultural spheres of their respective societies.

Broadcasting has historically accorded the state considerable powers over the way it functions. The question is not whether the state wields power over broadcasting but rather how much and of which types. In Europe, states have needed to manage the spectrum, especially problematic in the early days when this was considered a scarce public resource. State interference is meant to strike a proper balance between protecting freedom of broadcasting and other obligations such as universality of appeal, provisions for minorities, and commitment to public education (Christians, Glasser, McQuail, Nordenstreng, & White, 2009).

The question this study examines is whether the broadcast regulatory bodies are genuine media reforms meant to liberalize the broadcast sector and enhance pluralism and diversity or pseudoreforms meant to allow the Arab states indirect but total control over broadcasting. I critically examine broadcast regulators in 11 Arab countries and investigate the general context for their creation, examine their internal organization to evaluate their independence from state control, and analyze relevant media legislation to assess the extent of political interference with media contents. I use the United Nations International Covenant on Civil and Political Rights (ICCPR) as a normative theory to determine whether Arab broadcast media regulation is congruent with international norms. I use Heydemann's (2007) theory of "authoritarian upgrading" as a framework to explain the nature of the broadcast reforms across the Arab region.

At the time of writing, there were 11 broadcasting regulatory bodies in the Arab world. In their respective presentations, these institutions proclaim the purpose behind their creation to be the liberalization of the audiovisual sector, licensing, ensuring public service, promoting and developing national audiovisual productions, promoting national culture and moral values, and monitoring compliance of the TV and radio stations with their licensing obligations. This study investigates the broadcasting regulators in 11 countries: Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Mauritania, Morocco, Saudi Arabia, and Tunisia.

Theoretical Considerations

Because this article examines the media in various countries, some form of normative judgment must be imbedded in its assumptions of how regulatory institutions ought to work. The article does not aim to produce a list of typologies or media system models in the same fashion as the work of Christians et al. (2009), Hallin and Mancini (2004), Curran and Park (2000), Rugh (2004), and Siebert, Peterson, and Schramm (1956). Rather, it investigates the democratizing potential of the broadcasting regulatory institutions in light of a normative judgment.

In the introduction of their book, Hallin and Mancini (2004) point out some important theoretical considerations that have relevance to the current study. They argue that most existing comparative studies tend to be ethnocentric in the sense that the focus is on the experience of single countries, yet is often written in general terms, "as though the model that prevailed in that country were universal" (p. 2). They also argue that the dominance of normative theory, in particular the liberal model, in the study of journalism is partly rooted "in professional education, where it is more important to reflect on what journalism *should be* than to analyze in detail what and why it *is*" (p. 13, emphasis in original). They cite Merrill and Fisher's (1980) *The World's Great Dailies: Profiles of Fifty Newspapers*, which included only the "great" newspapers that represent ideal models of professional journalism, not the ones that have the highest circulation and are therefore typical of the type of journalism practiced in their respective countries. They also criticized the *Four Theories of the Press* for relying on the American liberal ideal of a neutral watchdog media as the meter stick to judge other media systems around the world: "This style of research has often held media researchers back from even posing the question, 'Why are the media as they are?'" (p. 2). Hallin and Mancini clarified that they are not rejecting the merit of normative theories while adopting an attitude of functionalist relativism "assuming that any media institutions that exist must *ipso facto* be assumed to perform positive functions for the society as a whole" (p. 14).

Two main ideas emerge. First, it is important to avoid relying on country-specific normative theory to avoid ethnocentric biases; second, it is important to focus on why the media function the way they do rather than on how they ought to function. There is a gap between normative theory and journalism practice, a gap between ideal and reality even within Western societies that share common values of free speech, independent judiciary, separation of church and state, and democracy. The gap is far greater in non-Western countries, especially in the Arab region where political systems and cultures are diverse. Therefore, to apply liberal theory or any country-specific normative theory for an assessment of Arab media would be reductive and ethnocentric, and it would limit itself to the question of how broadcasting ought to function rather than why it functions the way it does.

To avoid these pitfalls, I use a normative theory based on international norms as articulated in the ICCPR.[2] This approach broadens the scope and applicability of the normative concepts and allows for a far-reaching understanding of how broadcasting regulators function. The ICCPR[3] in its formulation

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[2] I am borrowing from the work of Duffy (2014) for the ICCPR as the basis for his normative theory.

[3] Saudi Arabia is the only country among the 11 countries under study that has not ratified the ICCPR.

constitutes a framework that guides governments to develop laws around the protection of freedom of expression while also protecting public order and public morals. This framework helps avoid the false generalizations and biases of the ideal neutral watchdog media embedded in the liberal media theory. Article 19 of the ICCPR states,

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
    (a) For respect of the rights or reputations of others;
    (b) For the protection of national security or of public order, or of public health or morals (ICCPR, n.d., paras., 77–81).

Broadcasting is unique among all other media because it is the most regulated. Unlike commercial print media or the Internet, broadcasting has typically accorded the state considerable powers over the way it functions. State interference is therefore not necessarily an indication of political control, as the liberal model would suggest. In mature democracies, the state exercises power over licensing, in crafting policy and regulations, and typically in appointing executive managers (for stations/companies and regulatory institutions), but not over content (Christians et al., 2009). Editorial independence is considered an essential prerogative, with notable exceptions regarding copyright and intellectual property, "indecent" content such as violence and nudity, or illegal content such as racism and hate speech. State interference is meant to strike a proper balance between protecting freedom of broadcasting and other obligations such as public service. I use the ICCPR as a guide to assess whether Arab broadcast media legislation is congruent with international norms.

Overview of Arab Political Systems

The 1990s' prospects for global democratization went by unnoticed in the Arab world (Heydemann, 2007). What emerged instead was the proliferation of hybrid forms of authoritarianism. Lebanon may be considered an exception, but some argue that Lebanon's democracy founded on confessional systems is the only way to guarantee representation, whereas others argue that the system breeds corruption and perpetuates uneven distribution of power (Petallides, 2011).

The dominant view on the post-Cold War regimes was that the hybrid regimes were simply transitional and that it was a matter of time before they turned into true democracies (Diamond, 2002). However, a number of scholars began to challenge this "transition paradigm" and "democracy bias" (Carothers, 2002; Levitsky & Way, 2002; O'Donnell, 1996). They argue that when seen through the lens

of democratization, hybrid regimes were categorized as flawed, incomplete, or "transitional" democracies. They propose, in line with scholars such as O'Donnell (1996) and Carothers (2002), to stop treating these regimes as transitional but to conceptualize and theorize them for what they are, as distinct and nondemocratic regime types such as electoral authoritarianism and competitive authoritarianism.

Other scholars addressed the question of why the Arab world remains undemocratic from several perspectives. Some focused on the obstacles to democracy such as cultural norms (Hammoudi, 1997; Kedourie, 1994), oil and revenue stream (Diamond, 2010), or foreign intervention (Richards & Waterbury, 1996). Arguments over the cultural impediments to democracy have been countered by arguments based on surveys (Jamal & Tessler, 2008; Tessler & Gao, 2005) that found that the majority of Arab populations are highly supportive of democracy.

Heydemann (2007) proposes authoritarian upgrading as a framework to explain current patterns in authoritarian governance across the region. Heydemann argues that Arab regimes have explored ways to respond to demands for economic liberalization, integration into global markets, and demands for economic opportunities without conceding political control. Arab regimes also upgrade to respond to pressures to democratize (from domestic prodemocracy groups, the United States, and the European Union) through the adoption of new strategies of governance. Therefore, they upgrade to create and maintain trade and investment relations with states or entities that are sympathetic to democracy and human rights issues. The strategy is to initiate "piecemeal reforms" to persuade democracy proponents to be patient and that political change is under way. Five features define the character of authoritarian upgrading:

1. Appropriating and containing civil societies;
2. Managing political contestation;
3. Capturing the benefits of selective economic reforms;
4. Controlling new communications technologies;
5. Diversifying international linkages. (Heydemann, 2007, p. 5)

Although Heydemann focused on control of new communication technologies, his assessment applies to broadcasting regulation in that Arab states understood authoritarian governance to be consistent with the need for strengthening state capacity, public services, and public access to information (p. 1). Reforming broadcasting represents one of the measures to increase access to information.

After a description of the method, I begin with a brief review of the literature on Arab broadcast history. I then provide a description of the general context for the creation of the broadcast regulators. The analytical section consists of critical examination of the internal organizational structures of the regulatory institutions and broadcast media regulation in the Arab world in light of the ICCPR as a normative framework. The article concludes with an application of Heydemann's (2007) theory of authoritarian upgrading to explain the political context of Arab media reforms and to further address the question of why Arab broadcast regulation functions the way it does.

Method

This study relies on qualitative document analysis and in-depth qualitative interviews. Qualitative document analysis is a research method that aims to rigorously and systematically analyze the contents of written documents. The study implemented the following steps adapted from Altheide's (1996) "process of document analysis," which includes (a) deciding on inclusion criteria, (b) articulating key areas of analysis, and (c) analysis. Inclusion criteria were derived primarily from the research question and the normative model. The documents selected were constitutions, media laws, criminal/penal codes, and decree laws because they contain provisions that regulate state–media relations regarding issues of freedom of expression, autonomy of regulatory bodies, media independence, media ownership, and public service. Analysis of these documents focused on the specific articles of the laws that address the legal environments in which broadcast media function. Because the judicial systems in the Arab countries are not based on precedent (Doley & Mullis, 2010), I examined these legal documents and did not include court decisions. Judges do not use interpretation of previous court cases as a basis of their ruling and legal rulings are not documented or made accessible to the public (Doley & Mullis, 2010). I also relied on interviews with experts in media regulation in the Arab world. Interviews included five members (anonymous) of Morocco's Haute Autorité de la Communication Audiovisuelle (HACA: High Authority of Audiovisual Communication); three academics from Algeria, Egypt, and Jordan; and two journalists from Algeria and Mauritania. All interviewees were knowledgeable of their respective countries' media systems. The interviews were semistructured and the sample was purposive (Patton, 2002). Interviewees were selected on the basis of personal expertise. In total, 10 interviews were conducted, and each lasted about 30 minutes to one hour.

A Synopsis of Arab Broadcast History

The history of broadcasting systems in the Arab world shares many similarities. Broadcasting was introduced by colonial forces that used radio and television stations as instruments of colonial rule. The colonial forces (mainly French and British) handed them over to the newly independent government instead of private owners, because of their experiences at home with government-owned broadcast media (Rugh, 2004). Amartya Sen (2011), among others, documented the tendency of the British to exercise rigorous censorship in its colonies as a means of controlling and subduing the local populations. In some cases, the British made sure to help draft constitutions and other restrictive media laws for the new independent states as they left the region, and the newly unelected rulers found these laws appealing.

In the Arab world, state-controlled broadcasting systems were the norm and were mandated with a role of modernizing the economy and serving as an instrument for education and social change. It was argued that privately owned broadcast media would be motivated to seek profits, and this would deprive the populations of content that fulfills educational and informational values (Masmoudi, 1979). For instance, since Jamal Abdel Nasser nationalized the media in the 1950s, Egypt's governments have for decades considered the media an extension of the state to be used as instruments of propaganda both internally and regionally (Abdulla, 2016). In the 1960s, Morocco's King Hassan II (1961–1999) mobilized radio and television for political awareness and education, including preparations for the country's first general elections and a constitutional referendum in 1962 (Zaid, 2010). Political news on Arab channels consisted primarily of reporting on the political leadership, their speeches, and their activities. TV content was also

dull and monolithic and did not comply with the basic codes of television as a visual medium of communication (Ayish, 2003). TV programs were heavy on rhetoric and speech and light on visuals and graphics (Khatib, 2009). The locally produced programs consisted mostly of continuous propaganda campaigns in support of the political regimes. In particular, news bulletins consisted of countless stories about royal, emir, or presidential engagements and ministers' activities (Ayish, 2003).

The situation started to change after the introduction of satellite television in the mid-1990s, especially with the Qatari channel Al Jazeera. The dullness of state TV "was overshadowed by the comparative sleekness of presentation and content on Al-Jazeera" (Khatib, 2009, p. 209). Al-Jazeera talk shows, critical analysis, and news broadcasts, although visually more attractive, regularly aired contentious views, broke social taboos, and gave a voice to regional political opposition groups (except on issues related to Qatar). As a result, Arab state television started to adopt these tactics, introducing more images and graphics in news broadcasts and more variety of programming but failed to produce content that opened up spaces for dissenting voices and democratic debates (Khatib, 2009).

The onslaught from satellite TV on the Arab broadcasting landscape did not go unanswered. In 2008, Arab governments attempted to extend their control over broadcasting to satellite TV. Arab ministers of information under the auspices of the Arab League adopted a charter calling for the regulation of satellite broadcasting. The charter called on Arab broadcasters to adhere to "commonly accepted standards of decency, religious and cultural values, and the rule of law" (Amin, 2008, p. 2). The charter attempted to control the flow of information in the Arab world and to silence potential sources of independent news and diverse information (Price, 2008). The charter called for leaders not to be insulted, for religions and religious officials not to be offended, and for Arab identity to be nourished. Price (2008) argues that the charter "is utopian in terms of its desire for harmony but dystopian in its potential for noxious interference in day-to-day programming decisions" (p. 2). The charter received strong criticism from international media watchdog organizations. Article 19 (2008) condemned the adoption of the charter, arguing that it constitutes a major threat to freedom of the press and freedom of expression in the region. All Arab countries adopted the charter except Qatar and Lebanon (Article 19, 2008).

General Context for the Creation of the Regulatory Bodies

In Europe, the process of liberalizing the audiovisual sector started in the 1980s under the auspices of the General Agreement on Trade in Services as a result of both trade liberalization regimes and the advancements in new communication technologies (Thussu, 2007). In the Arab world, the initiatives to regulate seem to be responses to internal political crises rather than external factors. Lebanon created its audiovisual regulator in 1996, Morocco and Jordan in 2002, Iraq in 2004,[4] Mauritania in 2006, Saudi Arabia in 2012, Tunisia[5] and Bahrain in 2013, Kuwait in 2015, and Algeria and Egypt in 2016. In Lebanon, the

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[4] The law was promulgated in 2004 by the Coalition Provisional Authority and signed by Paul Bremer as administrator of the Coalition Provisional Authority of Iraq.

[5] In Tunisia, the first attempt to reform occurred when Benali announced in November 2003 the opening of audiovisual space, which led to the creation of the Conseil Supérieur de la Communication. These media

Audiovisual Law of 1994 aimed at reorganizing the sector after the proliferation of a number of TV and radio stations after the civil war (Melki, Dabbous, Nasser, & Mallat, 2012). The broadcast regulator was needed to help organize access to the airwaves so that no single ethnic or religious entity controlled the broadcasting landscape. For Morocco and Jordan, media reforms were part of the promises of political reforms brought about by the ascension to the throne of two young monarchs in 1999. In Mauritania, the broadcast reforms were part of the political reforms of the transition period between the coup d'état of August 2005 and the presidential elections of March 2007. It was Mauritanian journalists, not political parties, who pushed for the media reforms (Mohamed Fall Oumeir, personal interview, May 21, 2017).[6]

For the rest of the Arab countries, there were at least two important factors leading to the liberalization of the audiovisual sector. First, the proliferation of Arabic-language satellite television news channels in the mid-1990s transformed the broadcasting landscape of the region characterized at the time by the domination of state-owned and state-censored national television stations (Khatib, 2009; Sakr, 2012). These satellite stations, particularly Al Jazeera, were available in Arab homes, and they introduced a level of freedom and independence in news reporting that was previously unheard of in the region. The Arab world government-run media were forced to compete, hence the need for broadcasting regulators to establish the framework for the liberalization of the sector allowing new commercial TV and radio stations to emerge. To illustrate, Moataz al-Shazly, a member of the Culture and Media Committee in the Egyptian Parliament, stated in a newspaper interview the reasons behind the media reforms:

> The world is up against Egypt, and small states are launching attacks on us through their media platforms [in reference to Qatar's Al Jazeera]. . . . We seek to strengthen state-owned media and benefit from all human resources in media outlets. (Mohie, 2016, para. 30)

Second, the Arab Spring brought renewed attention to media regulations in the region (Sakr, 2012). Most of the Arab regulatory bodies were created after the Arab Spring, probably as a reaction to the street calls for more democracy and more freedom. During the Arab Spring demonstrations, posters and slogans were raised to condemn the disgraceful state of government-controlled national broadcasters. In Tunisia, the presidential decree of November 2, 2011, a few months after the revolution, announced the creation of the Haute Autorité Indépendante de la Communication Audiovisuelle (HAICA: High and Independent Authority of Audiovisual Communication) to reform the audiovisual sector and to promote diversity and pluralism during the democratic transition.

Whether as a response to internal political conditions, the proliferation of satellite TV stations, or the Arab Spring, the liberalization of the broadcasting sector took place for internal political reasons. The creation of Autorité de Régulation de l'Audiovisuel (ARAV) in 2016 in Algeria occurred as a necessity to put some order into an otherwise chaotic audiovisual landscape. The proliferation of many private satellite TV

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reforms were seen "as part of a broader strategy of the liberalizing authoritarian regime" (Haugbølle & Cavatorta, 2012, p. 103).

[6] Mohamed Fall Oumeir is a prominent journalist in Mauritania who participated with a group of journalists and activists to push for media reforms in 2005.

stations following the 2012 organic law on media reforms announced by President Bouteflika gave birth to new TV stations that started broadcasting via satellites without state authorization. In the absence of a regulator, the state lost control over the airwaves and stations such as Al Magharibia and KBC became a threat to the dominant political elite through their critical and satirical programs (Dris Cherif, personal interview, May 21, 2017).[7] The creation of ARAV was primarily meant to give the state the legitimacy it needed to gain control over the airwaves (Amar Ingrachen, personal interview, November 16, 2016).[8]

Independence of Broadcast Regulators

State control over the appointment process of the regulatory bodies is not an uncommon practice in most democracies. For example, the five members of the Federal Communication Commission in the United States are appointed by the U.S. president and confirmed by the U.S. Senate. But in mature democracies, systems of checks and balances exist whereby political power is not concentrated in the hands of the few and no one governance entity can control too much power. This is not the case for the majority of the Arab countries.

Tunisia's HAICA seems to be the entity with the most credibility in terms of the composition of its high council and the nomination process of its members (HAICA, 2011). Its high council consists of nine members. Only one member is appointed by the president of the republic after consultation with the members of the council. The presidential nominee serves as chair of the board. For the rest of the members, two council members are judges and one of them serves as vice president. Two are appointed by the president of the parliament, two from journalists' professional organizations, one from audiovisual (nonjournalist) professional organizations, and one from media owners' professional organizations. The members must not have held positions with the government, political parties, or parliament for the previous two years, and they also must not have direct or indirect financial interest in media institutions. With the exception of the chair, all of the other members belong to media professional organizations or judiciary and legislative powers. The government as the executive power does not have a significant presence in the council and, therefore, decision-making power. However, in a press conference, president of HAICA Nouri Lajmi announced "serious state violations that threaten the autonomy of the regulatory body" (HAICA, 2017, para. 6). Lajmi cites the annexation of HAICA's budget to that of the Ministry of Relations with the Constitutional Bodies, Civil Society and Human Rights and 25% reduction of the 2018 HAICA's budget. He also denounced the ministry's dismissal of some public broadcasting stations managers without consultation with HAICA, a HAICA prerogative stated in Decree Law 2011–116. Lajmi admits the democratic transition is a complex process, but he warns that these steps are signs of regression in the democratization process and a return of the old authoritarian mode of governance.

For the rest of the Arab world, the composition of the councils varies from partial to total government control. In Egypt, the Supreme Council for Media Regulation consists of 13 members, with the chair and two other members appointed by the president. The remaining members are appointed by cabinet ministries and the parliament. Only four are appointed by journalists' associations. However, Rasha Abdulla, a leading expert

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[7] Dris Cherif is a former journalist, an academic, and an expert in media regulation in Algeria.

[8] Amar Ingrachen is an Algerian writer and journalist.

in Egypt's media, said the members of the Supreme Council are "closely aligned with the regime, and they are the people who have been in the media scene for decades, since the time of Mubarak." Besides, given Al Sisi's de facto control over the parliament, the executive branch effectively undercuts the council's independence (Rasha Abdulla, personal interview, March 27, 2018).[9]

In Algeria, the high council of ARAV consists of nine members. The president of the republic appoints five members, including the chair; two are appointed by the president of the national assembly; and two are appointed by the president of the People's National Assembly (ARAV, 2016a). The membership does not include anybody from the profession and is therefore unrepresentative (Dris Cherif, personal interview, May 21, 2017). In Mauritania, the high council consists of six members (Haute Autorité de la Presse et de l'Audiovisuel, 2008). Three, including the chair, are appointed by the president of the republic; two are appointed by the president of the National Assembly; and one is appointed by the president of the Senate. In Morocco, HACA's higher council consists of nine members; five are appointed by the king, including the president. The prime minister appoints two members, and the last two are named by the presidents of the two chambers of the Parliament. The executive branch of the government, represented by the king (who has executive powers and serves as the head of the state) and the prime minister, appoints seven of nine members.

Examples of total government control include Kuwait, where five of the nine council members are appointed by the Ministers' Council with four-year terms, and the remaining four members are selected by the Minister of Communication from media professional unions with two-year terms. In Saudi Arabia, the Minister of Culture and Information serves as the chair of the board of directors of the General Commission for Audiovisual Media, which consists of seven members representing five government agencies and two members with expertise from the media field (General Commission for Audiovisual Media, n.d.).

In Lebanon, the National Council for Audiovisual Media (NCAVM) was established by the 1994 Broadcast Law (Sciacchitano, 2015). Articles 17 and 18 of the 1994 Broadcast Law stipulates that the NCAVM consists of 10 members, five of whom are appointed by the Ministers' Council and the other half by the parliament, following the appointment procedure used when selecting the members of the Lebanese Constitutional Council (i.e., selected along confessional lines). However, the NCAVM has an advisory role, and all licensing decisions are made by a decree of the Council of Ministers (Sciacchitano, 2015).

Another example of total government control of the regulatory body is Jordan. The prime minister and the Minister's Council nominate and appoint the general director of the Media Commission. The director has a wide range of prerogatives (Articles 6-d and 8-b of the Provisional Law No. 71 of 2002), which include granting licenses, shutting down broadcast stations, making decisions on sanctions, censoring content, and so on. The director works under the authority of the prime minister (Del Alisal, 2014). There is a clear conflict of interest between the decision-making powers of the prime minster and the role of media, a clear indication of the lack of independence of the commission. However, according to Al Najjar, the audiovisual media scene in Jordan is not a site of political contestation. There is a limited number of Jordanian broadcast outlets, and given the ownership patterns dominated by state control, most do not represent significant challenges to the state.

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[9] Rasha Abdulla is a professor of mass communication at the American University of Cairo and an expert in Egyptian and Arab media.

Dissenting voices have migrated online and that is where tensions exist over freedom of expression (Abeer Al Najjar, personal interview, April 23, 2018).[10] Besides, the choice of the current general director, Mohammad Qteishat, seems to have received wide approval from media professionals. Qteishat is a lawyer and an expert in media regulation; he is also known for his independence and neutrality. The appointment of Qteishat is a positive step, but the appointment process of the commission needs to be aligned with international standards in terms of transparency and representativeness (Abeer Al Najjar, personal interview, April 23, 2018).

The legal authority of the regulatory institutions lies in their presumed independence from government political control. The councils are the highest authorities within these institutions and the organs that make final decisions on licensing and other legal actions. It is clear that the executive branches of the Arab states, with the exception of Tunisia, hold all of the power within these institutions' highest decision-making apparatuses. The government appoints the majority of the members and in some cases all members of the council.

Political Control Extends to Content

International norms related to media content regulation put some restrictions on content. They relate to issues of national security and public order, child pornography, protection of public morals, defamation, copyright, and intellectual property. International norms suggest that careful and specific proscriptions for protecting national security or public order need to be in place to protect free speech from government abuse (Duffy, 2014). Unless there is clear and imminent threat to such order, journalists are free to do their job without threats of fines or imprisonment. An examination of Arab countries' media laws shows that the laws governing issues of national security and defamation are broad and far-reaching, and the language they use to write the laws is vague and allows for broad interpretations.

All Arab countries (with the exception of Saudi Arabia) have provisions in their constitutions that guarantee freedom of expression as well as caveats limiting this freedom (Duffy, 2014). Article 39 of the 1992 Basic Law of Saudi Arabia does not guarantee freedom of the press and prohibits the publication of content that may lead to sedition. A 2005 royal decree removed jurisdiction over the media from the judicial system and transferred it to the Ministry of Culture and Information, which has the power to shut down any outlet that is deemed in violation of the Basic Law (Freedom House, 2015). The 2014 Constitution of the Arab Republic of Egypt devoted Chapter 3 to "Public Rights, Freedoms and Duties" in which guarantees of free media and access to information are clearly stated. Rasha Abdulla (personal interview, March 27, 2018) said that although the regime praised the chapter and considered it progress in matters of human rights, Article 71 authorizes censorship using "vague terms such as incitement of violence" and maintains jail terms for crimes related to defamation.

Arab states rely on an arsenal of legal instruments such as press laws, audiovisual communication laws, and penal laws that restrict freedom of expression. These laws have not been brought into compliance with constitutional free speech guarantees. For example, Article 25 of the Moroccan 2011 Constitution

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[10] Abeer Al Najjar is an expert in Arab and Jordanian media and an associate professor of journalism at the American University of Sharjah, UAE.

guarantees all citizens "freedom of opinion and expression in all its forms" (Constitution of the Kingdom of Morocco, 2011). However, prior to the 2011 Constitution, the Moroccan legislature adopted an array of laws that limited freedom of expression, such as the Penal Code, the Press Code, the Anti-Terrorism Law, and the Audiovisual Communication Law. These provided legal sanctions against any criticism of "sacred" issues such as the monarchy, Islam, and territorial integrity. Article 9 of the 2005 Audiovisual Communication Law states that TV and radio programs must not question Morocco's dogma, Islam, the monarchy, and Western Sahara (HACA, 2005). The law does not stipulate prison sentences for such infractions, but the Penal Code contains those provisions. Article 179 of the amended 2018 code stipulates jail sentences of six months to two years and steep fines for anyone who "offends" the king or the crown prince (Ministry of Justice, 2018).

Similarly, in Jordan, Article 5 of the Press and Publications Law of 1998 forbids the publication of material inconsistent with the principles of freedom, national obligation, human rights, and Arab and Islamic values (Jordanian Media Monitor, 2012). Article 38 of the Press and Publications Law prohibits content that offends religious sensibilities, abuses prophets, incites sectarian and racial strife, or defames individuals. Provisional Law No. 71 of 2002 for Audiovisual Media, which officially ended the state monopoly on broadcasting, contains articles that impose similar content restrictions and heavier penalties. It requires that radio broadcasting licensees refrain from broadcasting material that incites sectarian or ethnic bias; undermines national unity; instigates terrorism, racial, or sectarian discrimination; or undermines the kingdom's relations with other states. Both the Press and Publications Law and the Provisional Law No. 71 of 2002 for Audiovisual Media do not include imprisonment as a sanction, but the Penal Code maintains it.

Kuwait's legal environment carries similar characteristics. Articles 36 and 37 of the Constitution protect freedoms of speech and of the press (Government of Kuwait, n.d.), but the 2006 Press and Publications Law prohibits content that is prejudicial to Islam or criticizes the emir.

The Lebanese Constitution guarantees that the "freedom of opinion, expression through speech and writing, the freedom of the press, the freedom of assembly, and the freedom of association, are all guaranteed within the scope of the law" (Lebanon Constitution, 2004, art. 13). The limits are found in the various laws enacted by Parliament, namely the Press Law of 1962 and the Penal Code. Articles 383 to 389 in the Penal Code and 17 to 23 in the Press Law provide protection to the head of state, security officers, employees in the public sector, judges, and the army (Dabbous-Sensenig, 2007). Defaming heads of state, local or foreign, results in the highest penalty of a maximum two-year jail sentence, and defaming judges, public officials, administrators, and the army can result in a maximum jail sentence of one year.

Besides the oppressive nature of the media laws, the language is vague and allows a wide margin of interpretation. Words such as "prejudice," "offense," or "threat to national security" can be interpreted in many ways. Provisions for media freedom in Arab countries' media laws are situated outside the realm of international norms set up by the ICCPR.

The Authoritarian Trap in Broadcast Regulation

Arab states' broadcast reforms illustrate a deeply conflicted orientation. The creation of media regulators should in principle remove state control and monopoly, open audiovisual space for private

investment, and create contesting grounds for various political interests to compete over the public sphere. The conflicted orientation in the media reforms seems to fall under what Heydemann (2007) calls authoritarian upgrading. Arab states assimilated the broadcast regulators into authoritarian strategies of governance, using them to upgrade their own capacity to control broadcasting by entrenching them in a multilayered architecture of control, namely the unrepresentative appointment process of its decision-making bodies and the repressive media laws. Reforming broadcast regulation, like adoption of new communication technologies, is "emblematic of what it means to be modern" (p. 24). The regulators allow Arab states control over broadcasting within modern institutional structures, away from what Heydemann calls "repressive insularity" (p. 18).

In Egypt, President Al Sisi integrated the newly created broadcast regulator into his authoritarian mode of governance. Having ousted the Muslim Brotherhood, Al Sisi needed to affirm the state's moral authority and its ability to safeguard the country's identity and moral values (Rasha Abdulla, personal interview, March 27, 2018). In his first televised interview, he explicitly stated his role as president to be a moral reformer (CBC TV, 2014). He listed the media, schools, family, and religious institutions to be key state institutions with the obligation to monitor and reform morality in society. In June 2017, roughly six months after its creation, the Supreme Council issued a decree law that fines any broadcast station 200,000 EGP (USD$11,000) for "abusive" content (Ghali, 2017). The council cites TV series such as *Afarit Adly Allam* and *Khalsana Bi-Shyaka* that depict suggestive scenes or drug use. In February 2018, the council ended the broadcast of *Saturday Night Live* in Arabic aired on TV over what it considered offensive content. Egyptian film director Hala Khalil said in a BBC interview that in the past the film and TV industries were generally more liberal and that filmmakers had more artistic freedom. Today, due to prior restraint, she does not include love scenes in her movies to avoid impending censorship (Alanna, 2018).

Heydemann (2007) argues that democratic media reforms engender significant risks in that they can weaken state control over information flows and allow competing political voices access to the public sphere. The circumstances surrounding the creation of Algeria's regulator, ARAV, provides an illustration. The April 2011 presidential speech announcing political reforms in response to and the promulgation of the 2012 organic law allowing for the opening of the audiovisual sector were meant to pacify domestic calls for more democratic reforms. The political opening was soon used by newly created TV stations to widen public debate. For instance, in the 2014 elections, private TV stations such as Echorouk and KBC aired debates that included guests who were opposed to a fourth term for President Bouteflika. The state could not tolerate this situation and, staying true to its authoritarian roots, had to strike back. The state launched a legal case against KBC's director Mehdi Benaïssa and its production manager Riad Hartouf on June 19, 2016, over its satirical TV shows *Ki Hna Ki Nass* [We Are Like Anyone Else] and *Nas Stah* [People of the Roof]. On June 15, an administrative court also ordered the freezing of the purchase, after a request by the Minister of Communication, of the Al Khabar group (owner of the critical newspaper *Al Khabar*, the second largest in the country, and KBC TV) by wealthy businessman Issad Rebrab, who is a staunch opponent of President Bouteflika (Bozonnet, 2016). Both court decisions came a few days before the creation of ARAV's high council (June 20, 2016) so that the state could use the prerogatives of the 2014 Audiovisual Communication Law that allowed the Minister of Communication to carry out sanctions against the media (Dris Cherif, personal interview, May 21, 2017).

To contain the risk, the first action of ARAV was to establish, on August 11, 2016, licensing obligations documents (*cahier des charges*) that they use as a basis for their monitoring activity (ARAV, 2016b). ARAV

also granted one-year licenses to five private TV stations: Ennahar, Echorouk, Hogar TV, El Djazairia, and Dzaïr TV. The rest of the stations remain illegal, and they are simply tolerated until they cross vague "red lines," in which case the state can shut them down at any time (Dris Cherif, personal interview, May 21, 2017). The licensing documents include language that, unlike the 2016 constitutional revisions, limits free speech such as respect for the permanent characteristics of the nation, criticism of the president of the republic, and defamation.

Media reforms in Morocco were also part of the authoritarian upgrading the country witnessed after the ascension to the throne of a new monarch in 1999. The new legal and regulatory framework was created to encourage investment in the private sector and thereby encourage independent broadcasters to emerge (Zaid, 2016b). Progress in the area of radio licensing is undeniable. The 16 newly licensed private stations reinvigorated the broadcast landscape through their live debate shows on a variety of social, educational, and health issues. Ownership of private radio reflects closeness to the regime power structure (Le Desk & Reporters Without Borders, 2017). The list includes owners of progovernment print media organizations, members of the conservative (promonarchy) political party, and former employees of the state-owned TV and radio stations. Besides, given the state's control over HACA, the state managed to contain the possibility of losing control of the broadcast sector (Zaid, 2016b). In the first and second wave of licensing in 2006 and 2009, HACA granted licenses only to state-administered TV stations and to a mix of public and private radio stations. In the second wave of licensing in 2009, HACA declined eight private TV license applications on the grounds of the "deteriorating situation in the advertising market," and the need to "maintain the stability and viability of existing public and private operators" (HACA, 2009, p. 4). HACA justified these decisions on a financial basis. Three interviewees, all midlevel employees in HACA's Monitoring Department, believe the "deteriorating" advertising market actually had nothing to do with these decisions. Ensuring the financial success of a TV or radio station is no prerogative of HACA. Granting TV licenses could be risky for the state, one interviewee argued, by setting a precedent that would open the door for others to receive licenses (HACA Employee 1, personal interview, November 30, 2013). For another interviewee, if the new TV stations were to be successful, they would compete for audiences and advertising revenue, undermining the two state-administered TV stations, Al Oula and 2M (HACA Employee 2, personal interview, November 30, 2013). Although HACA lays the groundwork for liberalizing the broadcast sector, the state retains its power to influence HACA's decisions and regulatory practices to discourage pluralism in television ownership.

These occurrences in the Egyptian, Algerian, and Moroccan media scenes illustrate how states can implement media reforms to give the impression of liberalization while maintaining the status quo.

Conclusion

Arab states failed to liberalize their broadcasting sector and continue the history of state-controlled broadcasting as instruments of political control. Analysis of organizational structures of the broadcast regulators indicates lack of independence from state control. Analysis of broadcast media regulation demonstrates how the locus of power over broadcasting includes licensing and policy formulation, but also reaches into editorial decisions. I conclude that the many restrictions imposed on broadcasting go beyond internationally accepted practices as defined by the ICCPR.

Defamation is a criminal offence in Arab media laws. The laws provide more protection to political leaders and public officials who actually need more media scrutiny to be held accountable to the public. Even in countries such as Algeria where journalism was decriminalized following the 2016 constitutional reforms, defamation remains criminalized in the penal law. Journalists must possess legal protections to allow them to report on all issues that affect the public interest (Post, 1986). Without these protections, Arab broadcast media will continue to put limits on public discussions and debate and thereby fail to serve citizens and their right to access information.

Broadcasting regulators are tools of authoritarian upgrading rather than genuine attempts to liberalize the broadcast sector and enhance pluralism and diversity. Heydemann's (2007) framework helps explain why broadcast media function the way they do. The regulators function as modern institutional support systems for authoritarian rule. Arab states understood authoritarian governance to be consistent with the need for strengthening state capacity and public services. The 11 Arab states reformed their broadcast sectors to better manage public access to information and provide better public services, but they did not relinquish their power to media regulators to do their job of democratizing and liberalizing the broadcast media landscape. Arab states entrenched the broadcast regulators in a multilayered architecture of control, namely the unrepresentative appointment process of its decision-making bodies and the repressive media laws. Arab broadcast reforms are inherent in the process of authoritarian upgrading, which allows authoritarian states to give the impression of democratizing while strengthening their hold over power and their resilience to change.

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