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The Fragility of the Modern Imaginary: A Case Study of Western Sahara

By: Allison McManus

ABSTRACT

While the European Enlightenment marked the dawn of our modern era, marked by a belief in the rule of law to deliver security and prosperity to all people, the geopolitical reality of world order has not delivered on this promise. The case of Western Sahara, a UN declared non-self-governing territory demonstrates the negative implications for human rights where fissures occur between what Charles Taylor deemed the *modern social imaginary* and this global *political reality*. This paper explores the history of the Western Sahara conflict with respect to the UN framework of international law regarding self-determination. It concludes by offering suggestions for moving past a mere acceptance of the feasible, looking towards the ideal.

Keywords: Geopolitics, United Nations, Western Sahara, Morocco, Self-determination, human rights

“Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.”

– Article 5, UN Declaration on the Granting of Independence to Colonial Countries and Peoples

LIBERAL IMAGINARY AND POLITICAL REALITY

During the Enlightenment Era a philosophy that extolled natural human rights (although they were limited to the rights of certain men at that time,) and a discourse that understood modernity as rule of law and order emerged as an enduring paradigm of modernity. This modern liberal order had as its normative foundation a respect of individual rights, the freedom of all to enjoy

them, and the imperative that any authority that repressed them was to be considered illegitimate. This principal worldview provided a backdrop for the French and American Revolutions, justified the spread of democracy and free market capitalism, and provided an emphasis on individual rights and a people's right to self-determination that constituted the narrative of decolonization.

Political philosopher Charles Taylor described this worldview as a *modern imaginary*, using the term "imaginary" to indicate not a particular outlook, but the assumed foundations upon which this outlook is based; how we as humans imagine our very existence (Taylor, 2004). The predominant contemporary imaginary was a result of the liberal project born in the West and, while careful to allow for cultural interpretations, Taylor revealed how the "long march" of history has brought humanity to an *increasing* belief in rule based order (Taylor, 2004). Indeed, his conclusion is evidenced in the legitimacy granted the global institutional bodies of the United Nations, the International Monetary Fund and the World Bank, which, despite serious debate as to their benefit or harm to global society, are still respected as sources of law and order in the world; whether or not they are contested, these institutions are a powerful force, and very few nations deny their legitimacy. The Universal Declaration of Human Rights provided the codified norms for this imaginary; although certain rights may be disputed or interpreted differently, debates on which rights are or are not universal do not deny the fact that inalienable rights do exist. For these reasons, I adopt Taylor's conception of the modern imaginary, inasmuch as it suggested a longstanding belief in the legitimacy of a liberal order to bring *security* and *prosperity* (Taylor, 2004).

I also adopt his terminology because the term "imaginary" adequately conveys the fragility of this order. While the social *imaginary* is based on consent to rules in the pursuit of mutual benefit for all humanity, *reality* often falls wickedly short of this, and illiberal principles have supremacy over liberal ones: the modern imaginary indicates the importance of *universal* human rights, while the modern reality still relies on the Westphalian system of nation-states serving geopolitical interests (Falk, 2006). The modern order presumes a Western conception of modernity (Taylor, 2004; Weber, 1962) that is not recognized by all.

Through a case study of decolonization in Western Sahara, this paper will examine the implications of the gap between the *liberal imaginary* and *political reality*, and the consequences for human rights. The region has experienced decades of conflict with little hope of breaking a current impasse in UN negotiations; it is regarded by the UN as a "non-self-governing territory" with no universally recognized sovereign. The Sahrawi tribes of Western Sahara are in a similar stateless predicament as those in the Palestinian territories, yet there is remarkably less international consideration of their plight. I have chosen Western Sahara as a case study specifically for this reason; because it exists at the outer limits of the modern imaginary, it reveals not only the rupture between imaginary and reality, but also the absolute supremacy of political rule in its influence on world order.

A HISTORY OF DECOLONIZATION IN THE WESTERN SAHARA

Returning to the narrative of decolonization, the legitimacy of the colonized people in resistance to the colonizer has been the general understanding of the “period” of decolonization (Fanon, 1963). That this process is described to take place in a specific “period” suggests that it is terminal, ending in successful achievement of independence. However, the Western Saharan path strays from this popular conception. Attempts to conform its experience to a more palatable accepted narrative of the process have revealed how even the discourse of decolonization has adopted the rhetoric of Western modernity.

Prior to colonization, the areas now known as Morocco and the Western Sahara were composed of mostly tribal peoples ruled by a sultan. The sultan ruled from the northern part of Morocco and tribes generally swore allegiance as a part of the *bled makhzen* or *bled siba*, based not on territorial boundaries but on oaths of allegiance (Roussellier, 2007). The *bled makhzen* tribes recognized both the religious and secular authority of sultan, while the *bled siba* tribes rejected the sultan’s secular rule, but still proclaimed allegiance through the *bay’a* (the Islamic oath of allegiance,) by pronouncing his name during sermon, and occasionally by providing warriors to fight in his conflicts (Maghraoui, 2003). In 1906 the region was colonized and divided between France and Spain, during which time the sultan’s sovereignty was technically respected in the protectorate. In 1944 the Istiqlal Party demanded independence from France, and after a period of conflict France recognized Morocco’s independence in 1956. The independence of the Western Sahara region under Spanish rule was not however recognized and King Mohammed V¹ proclaimed Morocco’s decolonization incomplete (Maghraoui, 2003). Upon creation of the United Nations Special Commission on Decolonization in 1963 the Western Sahara was listed as a “non-self-governing territory.”

By the mid seventies conflict over the rights to sovereignty in the region had intensified. Morocco under King Hassan II continued to claim the territory as rightfully part of Morocco based on the pre-colonial tribal allegiances and Spain maintained its position based on the land’s status as *terra nullius*, or uninhabited territory, prior to colonization (Roussellier, 2007). During the time of Spanish colonization, an indigenous identity group emerged, also claiming rights to the land: the Sahrawi peoples represented by the liberation movement Frente popular para la Liberación de Saguiaat El Hamra y de Rio de Oro - the POLISARIO Front. This group resisted claims by *both* Spain and Morocco to sovereignty in Western Sahara and engaged in armed conflicts against both nations. A 1974 UN mission found popular support for this movement, pushing Morocco to the brink of war. To avoid a further intensification of conflict all parties agreed to a consultation with the International Court of Justice to help determine claims to the territory.

¹ During the time of French rule Sultan Mohammed V and his family were exiled to Madagascar for their support of the Istiqlal party. After independence, the sultan returned to Morocco and attempted to institute a constitutional monarchy, assuming the title of “King of Morocco,” retaining his distinction as Amir Al’Muminin, Commander of the Faithful.

The ICJ was asked to offer an advisory opinion on the status of the territory as *terra nullius* prior to the Spanish occupation, and to determine any ties that Morocco had in the region that would establish its sovereignty; the ICJ findings established that the land was inhabited prior to colonization and thus not *terra nullius*, but that Morocco's contiguous sovereignty could not be established, although it did allow that some ties of allegiance could be established (International Court of Justice, 1975). Morocco interpreted these ties as justification for the Green March in November 1975, where 350,000 civilians and 80,000 troops entered the region, declaring it a part of Morocco. Although Spain had not formally transferred sovereignty, Spanish claims to the territory were rescinded and less than a week after the march a treaty was signed between Spain, Morocco and Mauritania that recognized Morocco's right to rule in Western Sahara. This act was in blatant violation of UN resolution 1514 (XV) on decolonization and has not been recognized by the UN as having changed the status of the Western Sahara. Several months after the Madrid Treaty, POLISARIO declared independence from Morocco and established the Sahrawi Arab Democratic Republic.² Armed conflict continued until a UN brokered ceasefire in 1991, and, while Morocco administers some areas of the territory, to date there has been no resolution to the question of internationally recognized governance in the region.

SUPREMACY OF SELF-DETERMINATION

The ICJ opinion exposed the insufficiency of the UN resolution on decolonization to adequately reconcile the principles of sovereignty and self-determination. Ultimately, while determining that "some" legal ties existed between Morocco and "some" of the tribes of Western Sahara, these were not substantive enough to conclude that Morocco had a legal claim to sovereignty in the territory based on the requirements of the UN resolution (International Court of Justice, 1975). This calls into question the interpretation of sovereignty. While the ICJ adopted a Western view of sovereignty as that which could be represented by economic ties (such as the levying of taxes) marginalizing Morocco's claim that its sovereignty was established through the religious proclamation of bay'a (Maghraoui, 2003). Here is the first evidence of a fissure in the modern order. Because sovereignty in much of the *internationally recognized* state of Morocco had been established in the same traditional manner (and perhaps as tribes in the *Bled Siba*, some of the tribes in the Moroccan state actually had a lesser claim to allegiance) it is not surprising that this understanding by the court would suggest to Morocco a claim to sovereignty over all the territory. Even if the Moroccan government at the time had a clear understanding of the notion of contiguous sovereignty, the ambiguity in the ICJ decision at least allowed a plausible reinterpretation of the decision based on Morocco's traditional modes of determining sovereignty.

² The SADR currently operates out of the Tindouf refugee camp in Algeria. Although its legitimacy is not recognized by the UN, it is recognized as a full member of the African Union, a recognition that resulted in Morocco's withdrawal. Morocco is currently the only African nation without a presence in the organization.

Also, this decision revealed the rigid position of the right to self-determination in the UN resolution. The principle of self-determination was promoted by John Locke as the right of a people to determine who governs them, and has become an integral part of the modern social imaginary (Taylor, 2004). Of course, this logic is out of context in Morocco, where traditional authority is established by lineage traced to the Prophet Mohammed. This discrepancy highlights another fissure where traditional and modern rule cannot be aligned. Because the UN assumes the supremacy of the principle of self-determination, the legal code the court used was not adequate to address the situation where rule is determined not by vote but by bloodline.

Furthermore, an extension of the principle of self-determination, the UN resolution privileges a declaration of independence over a decision to integrate with an existing state; while to establish independence requires only the expression of the will of the people, to establish integration with another state requires universal adult suffrage and democratic election (Maghraoui, 2003). In the spirit of decolonization this seems to serve as a safeguard to ensure that the colonized population could not be manipulated, however in the instance of Western Sahara it has compounded the complicated process of establishing legitimate authority. Various factors - population displacement during the period of Spanish colonial rule and the subsequent conflicts, the fluid nature of tribal migration, and resistance from Morocco and POLISARIO in facilitating a UN referendum, particularly in whether or not to count those who settled after the Green March – have thus far made determining the free will of the people through referendum an impossible task.

SUPREMACY OF TERRITORIAL BOUNDARIES

Generally it is understood that the northern tribal areas are favorable to the king's rule and recognize his authority as legitimate, while the southern tribes and the populations in the Tindouf refugee camps recognize the legitimacy of the SADR and the POLISARIO as a governing body (Roussellier, 2007). In order for a territory to either gain independence or to be integrated into another independent state, the territory must be considered in entirety as there is no provision in the UN resolution for fractional independence or integration (1960). The most recent attempt to further negotiations was a plan proposed by James Baker that would allow for autonomy under the sovereignty of Morocco, and was rejected by POLISARIO and Algeria.³ During a period of negotiations over the Baker plan in 2001, the suggestion of a division of the territory was suggested by Algeria and POLISARIO, and was utterly rejected by Morocco.

The issue of territorial boundaries thus reveals the domination of a Westphalian sense of state-sovereignty, rather than on, for instance, identity-sovereignty. Initially, the ICJ opinion referenced absence of sovereign ties within the *territorial* boundaries of the Western Sahara, without allowance for the nomadic nature of the tribal population. In the attempts to establish

³ Because of POLISARIO's current base in Algeria, Algeria has been a recognized party in negotiations on the status of the territory.

tribes that would be eligible for a referendum on self determination, the northern boundary of Western Sahara provided a difficult line of demarcation because it did not reflect the migration patterns of the tribes that were located in this area (Roussellier, 2007). In both cases it is obvious that a modern understanding of state-hood is inextricably linked to territorial region, evident in the very definition of Western Sahara as a non-self-governing *territory* and not the Sahrawis as a non-self-governing *people*, despite the UN's recognition of the POLISARIO as their representative.

SUPREMACY OF GEOPOLITICS

Morocco's rejection of any plan that allows for even a possibility of independence, even for a portion of the territory, and the broader impasse in negotiations reveal the geopolitical currents that underlie the process of decolonization. International law stipulates the necessity for immediate steps to be taken on a referendum to determine the will of the people of Western Sahara – that much has been established since the original UN declaration on Granting of Independence to Colonial Countries and Peoples, adopted by resolution 1514 (XV) (United Nations, 1960). At the present date, over fifty years later, and after multiple resolutions formally stating the need for a solution, it is clear that the legitimacy of these conventions is tenuous at best and that they have been most certainly open to geopolitical interpretation.

Moroccan politics can best be understood by a logic of dynastic preservation; this has been characteristic of both the current monarch, Mohammed VI and the previous, Hassan II, who both organized their regimes to centralize power in the seat of the monarchy (Sater, 2010). During the period of colonization, a strong sense of nationalism and allegiance to the king developed in the face of a foreign occupation and the king's stance on Western Sahara adopts a nationalist rhetoric of reunification of the Moroccan state and strong resistance to Algeria's support for the POLISARIO. The language of the constitution actually refers to the king as "the Supreme Representative of the State, Symbol of the unity of the nation, Guarantor of state continuity and sustainability." Additionally, as the Commander of the Faithful, the king's authority as religious leader is enshrined in the Moroccan constitution, and so any recognition of Muslim Moroccans as independent from him provides a space to challenge this authority. Finally, the presence of significant phosphate reserves in the Western Sahara make this area especially economically valuable. Morocco is one of the world's largest exporters of phosphates, and most phosphate mines are owned by Groupe Omnium Nord-Africain; the royal family is one of the largest shareholders (Black, 2010).

Since the signing of the Madrid Treaty, the European nations have wavered between silence on the status of Western Sahara and outright support for Morocco's claim. France has historically been the most supportive, providing Morocco with arms used in the conflict, and in 2001 President Jacques Chirac referenced Western Sahara as "Morocco's southern territory." This outright support is undoubtedly linked to the political interests of the European nations as Morocco has supplied reserves of cheap immigrant labor and mineral resources – primarily the

aforementioned phosphates (Colombo & Darbouche, 2010). In a rare stance on foreign policy in the Middle East/North Africa, President George W. Bush had declared that the United States did not seek to impose a solution but sympathized with the Moroccan's sensitivity on the issue (Arieff, 2011). Morocco has been continuously counted as a US ally in the war on terror.

The political ties between the Western powers and Morocco have resulted in a stalemate in a referendum on self-determination, and subsequently a halt in negotiations on a resolution to the conflict. Because the UN resolution on decolonization privileges a desire for independence over integration Morocco has refused to agree to a referendum that would allow for even the option to choose full independence (Theofiloupoulou, 2006), and because the United States and the EU are hesitant to disrupt ties with Morocco, the stalemate seems to be the solution that is most acceptable to all parties. Despite the continued requests of the United Nations to find a solution that includes the will of the Sahrawi people, the last significant step towards progress came in 1991, when the United Nations brokered a ceasefire and created the Mission for a Referendum in Western Sahara, or MINURSO.

HORIZONS OF NECESSITY AND DESIRE

The stalemate reveals the tension between the liberal imaginary and political reality, but perhaps worse, exposes a rupture. Geopolitical forces have been so successful in pushing the conflict to the boundary of the imaginary that it has become a forgotten conflict, resigned to unending decolonization while the rest of the world marches on in a post-colonial era. This impasse signifies what Richard Falk has termed the *horizon of feasibility*, consisting of "policy goals attainable without substantial modification of structures of power, privilege, authority, and societal belief patterns" (2009, p. 14). The most recent round of negotiations concluded in April 2013 and yet again no agreement could be reached.

This horizon of feasibility is not a mere metaphor, but actually represents a very real and deeply troubling situation with high economic costs, and incredibly high costs for human rights. A recent report from the International Crisis Group reveals that nearly all Sahrawi families have lost a member or been separated because of the conflict. Untold tens, or perhaps hundreds of thousands have been living in refugee camps for decades in one of the least inhabitable areas on earth; because the UN cannot conduct its own census, aid programs must estimate the number of refugees and there is literally no way to know if enough food and supplies are provided. The nomadic peoples that live outside of the camps are exposed to the presence of landmines used during the conflict. Activists that advocate for the independence of Western Sahara, or even have vague relation to POLISARIO, and even journalists attempting to raise awareness are met with disproportionate use of force or enter the ranks of the hundreds of "disappeared" peoples held and often tortured in detention centers (International Crisis Group, 2007). After a wave of activist protests in the vein of the Arab Spring, Moroccan security forces attacked a Sahrawi protest camp, killing 36 people.

Clearly, a new framework is needed to reconcile an imaginary based on common goals of prosperity and security with a political reality that allows for such heinous injustice. This framework might be envisioned in two ways: that of *necessity*, the bare minimum that would need to be accomplished to ensure respect for human rights, or *desire*, the best-case-scenario for a humane global reality (Falk, 2009). Either would need to take into account the stumbling blocks of the privileged positions of Western approaches to self-determination, territoriality and geopolitics.

What is necessary in achieving a humanitarian global reality is not a reversion to the supremacy of the sovereign state, but developing a normative framework that accounts for cultural differences and does not privilege a strictly Western definition of self-determination. Self-determination has been respected as a legitimate right because it allows a people a voice in their future, with an understanding that this would lead to the mutual benefit of all (Taylor, 2004). In the case of Western Sahara the promise of this benefit has not been delivered; the focus on the principle of self-determination has led to a protracted conflict and high costs for human rights. A creative solution to the issue of sovereignty must ensure security for those currently living without the protection of a state.

Since Mohammed VI has made it clear that his position on claiming sovereignty is non-negotiable the UN must pressure him to reconsider a proposal on sovereignty for only a portion of the nation, with provisions to ensure easy migration for the nomadic peoples. Although this may require a creative reimagining of the definition of sovereignty, it would allow the king to retain his position as the Commander of the Faithful, saving the form of a united Morocco, while also satisfying the territorial requirements necessary for the statist priorities of the UN. Powerful states in the UN would need to use economic leverage to pressure Morocco into accepting this deal, which has already been previously suggested by POLISARIO and Algeria. Accepting this proposal would allow for the dismantling of refugee camps, reduced economic pressure on the UN, reduced pressure to suppress dissidence in Morocco and greater rights for those living in Western Sahara.

To travel towards the horizon of desire requires a solution that encompasses much greater structural changes. This would involve greater democratic processes at the transnational level and greater investment in the UN at the national level. If the initial resolution on decolonization had been written to account for possible different cultural understandings of sovereignty, there would have been less room for various interpretations. This underscores the need for constant revision of the UN conventions through democratic measures and recognition that these legal norms are constructed realities, and may be viewed as living documents where they are inadequate to account for cultural differentiation.

In correlation with greater democratic processes, the implementation of a new set of human rights conventions throughout all strata of governance would lend greater legitimacy to universal human rights. This would require ratification at both the transnational and national levels, especially in states with the greatest political authority. It would not only reinforce measures of accountability in a human rights framework, but would also empower local

populations to achieve culturally sensitive forms of humane governance. In the case of Western Sahara, this new vision for global governance would allow for greater pressure on King Mohammed VI to decentralize his control over all forms of state power, allowing for those living in Moroccan administered Western Sahara to have greater say over their own governance, effectively removing the political interest in dynastic preservation. The absence of this political force would shift the discourse to a more inclusive negotiation, allowing for the UN referendum on self-determination, or perhaps bypassing the need for it.

While not without many faults, the spirit of the Enlightenment was to inspire a respect for all humanity, the equality of all before the law and respect for a normative system that ensures mutual benefit. Without ignoring that the problematic realities addressed here were also not a product of this era during which visions of Western liberalism were cemented, I recall however not these positions, but the spirit of forward thinking and the courage to strive for utopian visions that, outside of a few intellectuals and political rights activists, seems to have been discarded in our political era. The situation in Western Sahara demonstrates a need for the return to this spirit and a revitalization of a normative framework that recognizes and diminishes political dominance, working towards the creation of a truly humanitarian reality.

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