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The Political Development of Capital Punishment in the Modern Moroccan State

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The Political Development of Capital Punishment in the Modern Moroccan State

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Abstract

The modern Moroccan state seen today is very young. Having only been independent from France since 1956, the country has spent the last sixty-four years crafting its post-colonial statehood. What has emerged is a hybrid political system with powers split, however unequally, between the King and his inner circle, known as the *makhzen*, and the Parliament. Not only is the monarchy constitutional—meaning that its legitimacy is literally written into the primary governing document of Morocco, which had its last referendum in 2011—but it is also self-sustaining and self-legitimizing, for the monarchy uses its constitutional powers to grant itself further powers and enforce its approved social order. One of the primary ways any state enforces its approved social order is through public violence and/or the threat of public violence. This paper will explore how the use of and meaning behind public violence in Morocco has shifted from its independence in 1956 to today, specifically through analyzing the political development of capital punishment, or the death penalty. As of 2011, an organization called the Advocates for Human Rights reports that there are approximately 150 people on death row in Morocco. Ultimately, this paper will contribute to the growing literature discussing the human rights implications of the continued use of the death penalty worldwide and what its abolition could mean for human rights movements.

Keywords

Human rights, political development, capital punishment, death penalty

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Introduction

The modern Moroccan state emerged from French colonial rule in 1956, well beyond the beginning of the French Revolution and the 1789 serving as the marker of the end of the early modern era. As a state that is, as of 2020, only sixty-four years old, capital punishment in Morocco has undergone expedited political development. It has, however, followed the same general shift as other countries whose political development of capital punishment has occurred over centuries, although Morocco's shift has been extremely expedited to keep up with the overwhelming call for the abolition of the death penalty worldwide today. Under King Hassan II, who ruled Morocco from 1961 until his death in 1999, the primary purpose of enforcing the death penalty was to legitimize Morocco's external sovereignty by proving its capability as a sovereign, newly independent nation. As King Hassan II's rule was threatened by multiple attempted coups in the 1970s, however, the purpose of issuing death sentences in Morocco quickly shifted to hold the primary purpose of legitimizing the state's internal sovereignty by proving to Moroccans that the state was capable of enforcing its laws and approved social order and eliminating internal threats to those pillars of society.

Although no one has been executed since Mohamed Mustapha Tabet—a police commissioner in Casablanca who was executed in 1993 for the rapes of approximately 1,600 women over tens or so years—the continued issuance of death sentences in Morocco has led to a long-standing debate between authorities—the King, his inner circle, known as the *Makhzen*, and Parliament—and civil society. Because the de facto moratorium on executions in Morocco has failed to become a de jure moratorium through legislation, many non-governmental organizations (NGOs) in the country have formed since 1993 to advocate the abolition of the death penalty in the country due to its cruel and inhuman nature.

This paper will begin by discussing the human right to life as declared in the UN's Universal Declaration of Human Rights before delving into the political development of capital punishment in the modern Moroccan state (1956-present). The paper will then explore the shift of capital punishment's purpose from the post-colonial period—when the death penalty was used to legitimize Morocco's external *and* internal sovereignty at the same time whilst state-making under King Hassan II (1961-1999)—to the present-day period of debate and advocacy for the abolition of the death penalty while the country undergoes forms of democratization under King Mohammed VI (1999-present). The paper will conclude with an analysis of the Moroccan and international NGO's calling for the abolition of the death penalty in the country and a discussion of the possibilities the country has in fulfilling this call.

Methodology

Research Design

This paper is a historical analysis rooted in broad research of various topics relating to the political development of capital punishment in Morocco, with special attention paid to specific cases in which the death penalty was handed down as a sentence. While this was not originally the plan for this paper, the outbreak of COVID-19 has made this the case. Prior to my return home, I was still planning for this project to be a historical analysis based off of other primary and secondary sources, but I was also planning to conduct in depth interviews with scholars, employees of relevant non-governmental organizations in Rabat and Casablanca such as Amnesty International and the Moroccan Coalition Against the Death Penalty, justice officials, and ultimately, if I could find the right people to talk to, former prisoners and family members of prisoners who have had first-hand experience with the Moroccan criminal justice system and its inner workings. Upon my return home, all research was conducted remotely using databases, email exchanges, news outlet websites, and other scholarly sources. While it is obviously not ideal to be conducting research about Morocco from the United States, the resources made available to me through the SIT staff in Morocco, my advisor, and, of course, the internet have made this project possible.

Assumptions

Prior to beginning my research into the political development of capital punishment in Morocco, I assumed that I would have much more access to my subject, not only in terms of my expectation that I would be conducting this research in Morocco, but also in terms of governmental restrictions on the inner workings of the criminal justice system. Furthermore, I

assumed that since the last execution—that of Mohamed Mustapha Tabet in 1993 for the rape of over 1,600 women in Casablanca—most death sentences that have been handed down have been for crimes relating to terrorism due to Morocco having felt the reverberations of the Arab Spring throughout the entire Middle East and North Africa in 2011 and Morocco's own recent terrorist attacks. Finally, because Morocco's former imperial oppressor is France, I assumed that the framework for Morocco's current criminal justice system is based off of the French system and the system the French enforced while occupying Morocco from 1912-1956. It is important to note that for this paper, I am defining the modern Moroccan state as the post-colonial, independent Morocco beginning in 1956 and considering deaths and forced disappearances at the hand of the state as the implementation of the death penalty.

Ethics

By nature of being born in a white body in a world where whiteness has consistently been defined as inherently civilized and the racist colonialism driven by white people has been excused as the mere taming of the “uncivilized,” I have been given immense power in the institutionalized racial hierarchy that defines all countries whose histories include exploitation at the hands of white colonialism. This system of a moral “us” as the civilizers of an immoral “them” is so entrenched in society that no matter the benevolent intentions behind white people's social justice work, the results of this work, and even the work itself, can never be entirely pure. Thus, it is imperative that in conducting this research and producing this final report, I address the impact my being a white, western woman has on the conclusions I come to. For example, Americans especially are trained to believe liberal democracy to be superior to all other forms of government. Children raised in the United States are taught to believe that America is the

center of the world and that democracy is the only right form of government. We are raised to look down on other forms of countries for not having liberal democratic governments, even if those countries are our close historical allies. We are raised to judge monarchs—especially non-Western monarchy—with suspicion and view monarchs' subjects with pity. We have been raised to believe that the final form of human government is liberal democracy, and that striving to achieve liberal democracy is the end goal to which all countries should strive. Such a belief, however, is entirely misguided. Democracy is not inherently better than other systems of government, and while it is what I am used to, it is not up to America or Americans to impose the imperfect system on others.

Aside from my positionality, there are other limitations that factor into the ethical ramifications of this paper. Firstly, the language barrier has proved challenging. Because I do not speak Arabic or French, my range of sources has been limited to fewer articles than I would have had access to in producing this paper. Furthermore, as I mentioned above, I am researching for and writing this paper from the United States, not from the country I am researching and writing about. Finally, I am researching and writing about vulnerable populations—prisoners and those on death row. Not only do I not have first-hand experience interacting with them, but it is also imperative that I note the inherent imbalance of powers at play.

Background

Crimes Punishable by Death in Morocco

In order to have a thorough discussion and analysis of the death penalty in Morocco can take place, it is imperative that a list of crimes punishable by death in Morocco is included to provide context. In “Towards the Complete Abolition of Capital Punishment in Morocco: Possibilities and Constraints” (2013), a chapter of *Death Penalty: A Cruel and Inhuman Punishment*, Salim Hmimnat lists which offenses are punishable by death in Morocco. These offenses are, as Hmimnat explains, are listed in a set of laws. These laws are the criminal law and Penal Code, the Anti-Terrorism Law, the Military Justice Law, and “the Dahir (a King’s decree) related to crimes against the nation’s health” (Hmimnat 2013, pp. 70). All crimes listed below have been summarized for brevity and clarity from Hmimnat’s piece.

In regard to criminal law and the Penal Code, Hmimnat notes that the Moroccan legislature lists six sub-sections of offenses against state security that carry the death penalty.¹

- I. An attack on the life of the King, Crown Prince, or any member of the royal family;
- II. Crimes against external state security, including treason and espionage;
- III. Crimes against internal state security;
- IV. Crimes against internal state security resulting from joint action between civil authorities and the military;
- V. Various crimes related to willful violence with murderous intent and assault and battery (especially relating to the deaths of newborns and children under 15 years of age), torture, castration, and kidnapping and abduction;

¹ These laws are listed in the 1st part of the 3rd Book of the Penal Code.

VI. Various crimes related to arson, vandalism using explosives, and the willful destruction of public works (Hmimnat 2013, pp. 71).

In regard to Military Justice Law, military personnel are subject to the death penalty for various crimes, including: desertion and inciting desertion, arson of buildings and equipment relating to national defense forces, participation in a conspiracy to disobey a commanding officer's orders, obstruction of a defensive action, and joining and recruiting for a foreign power at war with Morocco (Hmimnat 2013, pp. 72).²

In regard to Anti-Terrorism Law, the death penalty is listed as punishment for a number of crimes already listed in criminal law, but, as Hmimnat notes, "defines Crimes of Terrorism as having an intentional relationship with an individual or collective plot that endangers public order through intimidation or violence, resulting in the death of one or more persons" (Hmimnat 2013, pp. 72).³ These include crimes related to: kidnapping and abduction; white collar crimes (including forgery, counterfeiting, theft, and embezzlement), especially relating to seals and imprints of the Kingdom; destruction of any means of transportation; "illegal manufacture, possession, transfer, promotion, or use of weapons and explosives;" participation in a terrorist cell and knowingly receiving goods related to terrorism; and introduction of a substance that endangers human health, animal health, or the environment (Hmimnat 2013, pp. 72-73).

Finally, Hmimnat explains that the Dahir on crimes against the nation's health, the first chapter stipulates that "any person who consciously makes materials or products intended for human nutrition that endanger public health is punishable by death" (Hmimnat 2013, pp. 73).⁴

² These laws are listed in Articles 183 to 187 of the 10th section of the Law on Military Justice.

³ These laws are listed in the 03-03 Anti-Terrorism Law.

⁴ Hmimnat emphasizes that in accordance with the four aforementioned laws, over 600 death have been passed. Cases relating to criminal law account for 283 of them. This number may soon be reduced to 11 cases reflecting particularly serious murder crimes, however, due to current plans to amend the criminal laws on the books (Hmimnat 2013, pp. 73-74).

Method of Execution in Morocco

To fully contextualize the death penalty in Morocco, it is also necessary to explain the method of execution used by the state in carrying out the death penalty. After listing the crimes punishable by the death penalty in “Towards the Complete Abolition of Capital Punishment in Morocco: Possibilities and Constraints” (2013), Hmimnat continues to explain the regulations in place by the Moroccan legislature that dictate the implementation of the death penalty. The information below has been summarized for brevity and clarity from Hmimnat’s piece.

The procedure to be followed in implementing the death penalty is listed in Chapter II (Articles 601 to 607) of the Code of Criminal Procedure. It states that the Office of Public Prosecution should report all death sentences to the Minister of Justice through the Directorate of Criminal Affairs and Pardons. It also states that no one can be put to death until all appeals have been exhausted. These appeals for amnesty are issued to the Public Prosecutor, the Amnesty Commission, and the King (Hmimnat 2013, pp. 73).

Executions are carried out by firing squad comprised of military authorities at the orders of the Minister of Justice at a secret location. The following people are required to be present at all executions to serve as witnesses: the President of the Criminal Chamber or the person who issued the sentence, a magistrate or judge from the region where the execution is taking place, the director of the prison, a representative of the armed forces, the prison doctor, a representative of the faith which the person to be executed ascribes to, and two legal witnesses known as *adouls*. After execution, the body is given to families for private burials or buried by the appropriate authorities if the family does not wish to bury the body (Hmimnat 2013, pp. 73).⁵

⁵ Hmimnat notes that the state’s official statistics list 50 executions from 1963-1974, mostly for political reasons. There were 2 executions from 1982-1993 for crimes listed under criminal law. The system has pardoned all but 13 of those sentenced to death. In October of 2009, which was the most recent data available upon the publication of Hmimnat’s piece, there were 129 people sentenced to death, 6 of whom were women (Hmimnat 2013, pp. 74).

Literature Review

States have long used violence as a means of legitimizing their own rule. Charles Tilly, a pre-eminent American sociologist and political scientist in the late twentieth and early twenty-first centuries, argued that such a states' engagement in such violence is the key to a the making of a legitimate state. In his 1982 piece "War Making and State Making as Organized Crime," Tilly argued that states are essentially racketeers of violence: they create the very violence that they protect their citizens from. "A tendency to monopolize the means of violence," Tilly writes, "makes a government's claim to provide protection, in either the comforting or the ominous sense of the word, more credible and harder to resist" (Tilly 1982, pp. 2). According to Tilly, the first activity of violence racketeering is war making, which is when states eliminate or neutralize enemies outside of their territories. The second activity is state making, which is when states eliminate or neutralize enemies within their territories. The third activity is protection, which is when states eliminate or neutralize the "enemies of their clients;" and the fourth and final activity, Tilly argues, is extraction, which is when the state acquires the means of carrying out the first three activities (Tilly 1982, pp. 15). Thus, states have a monopoly on violence, defining for their citizens what violence *is* and deciding for their citizens what they need protection *from*.

Thus, inflicting public violence upon offenders of the social order has historically served—and still serves in many cases—as a thinly veiled attempt by the state to legitimize itself, its approved social order, and further entrench its power over its citizens. One way a state does this is through state sanctioned murder and capital punishment. The death penalty is one of the oldest forms of punishment inflicted by states and has been practiced by most societies throughout human history, as David Garland writes in "Modes of Capital Punishment: The Death Penalty in Historical Perspective" (Garland 2011, pp. 30). Echoing Tilly's claim that violence is

key to state making, Garland argues that in the early modern period, which is most often defined by historians as ranging from the end of the Middle Ages in 1500 to the beginning of the French Revolution in 1789, “newly emergent state authorities took up the death penalty and accorded it a central role in the task of state building” because it allowed them to create a monopoly on legitimate violence (Garland 2011, pp. 30). Adopting harsh capital punishment not only allowed new states to maintain order, do justice, and reinforce social hierarchies, for “at the core of the death penalty’s meaning was the assertion, preservation, and protection of the authority of the state” (Garland 2011, pp. 37). The death penalty was inherently politically driven, allowing new states to demonstrate sovereignty and to legitimize their authority not only to its subjects, but to other states that remained skeptical of the new state.

By the mid-nineteenth century, however, the role that capital punishment played in society changed, for the state no longer needed the death penalty to prove its power and legitimacy. “In a context of increasingly well-established and rationalized states,” Garland insists, “capital punishment’s primary purpose had altered so that what had once been an instrument of rule, essential to state security, became an instrument of penal policy, focused on the narrower goals of doing justice and controlling crime” (Garland 2011, pp. 30-31). While acting as the hand of justice was a purpose of capital punishment in the early modern era, it was not the primary purpose. As states moved beyond state making and the need to demonstrate *external* sovereignty to other states, however, the purpose of issuing death sentences shifted to demonstrating *internal* sovereignty over its own subjects. Essentially, capital punishment’s purpose became “the enforcement of law rather than the display of power” (Garland 2011, pp. 40-41). While Garland’s argument about the shift of capital punishment’s purpose from power display in the early-modern era to crime control in the modern era holds weight in older western

societies, it does not explain the political development of capital punishment in younger, non-western states. In other words, because Morocco is such a young state, it underwent Garland's shift of capital punishment from proving external sovereignty to enforcing internal sovereignty in approximately thirty years, rather than Garland's argued timeline that spans centuries.

By the last execution and Morocco's adoption of a moratorium on executions in 1993, this shift was complete, and by the time King Mohammed VI ascended to the throne in 1999, debate nationwide was increasing about fully abolishing the death penalty. Why, then, has Morocco not fully adopted de jure abolition through legislation despite not having executed anyone for almost thirty years? This is the question that Salim Hmimnat tackles in "Towards the Complete Abolition of Capital Punishment in Morocco: Possibilities and Constraints" (2013), which is "a political analysis of the Moroccan experience in dealing with the issue of capital punishment," focusing specifically on the "possibilities and constraints" in moving from de facto to de jure abolition (Hmimnat 2013, pp. 69). Hmimnat begins by outlining which crimes are punishable by death in Morocco and the method of execution used in implementing the death penalty.⁶

In discussing why Morocco's move from de facto to de jure abolition of capital punishment has been stalled, Hmimnat then explains that the issue of the death penalty is not a priority for many reformers, many of whom focus instead on the territorial issues of Western Sahara, terrorism, and social and economic crises (Hmimnat 2013, pp. 75). The reformers who do focus on advocating for the abolition of the death penalty, however, are often members of three pre-eminent NGOs: the Moroccan Observatory of Prisons, the Arab Penal Reform Organization, and Together Against the Death Penalty. All three NGOs convened at two events

⁶ The crimes punishable by death and the method of execution used in implementing the death penalty in Morocco are listed in the preceding "Background" section.

held in Mekn s in 2003 and 2004, and the success of the panels “signaled the willingness of both civil society and the state to open up and extend the debate on the issue” (Hmimnat 2013, pp. 75). This does not mean, Hmimnat reiterates, that the abolition of the death penalty is a priority for politicians either, noting that “few political parties have declared a clear position on the issue, because it remains contentious and controversial. This reluctance is compounded by the State’s equivocal position and the insecurity of political parties in general” (Hmimnat 2013, pp. 79). Although Hmimnat notes that the final decision regarding the fate of capital punishment is constitutionally left to the King, he concludes by listing three reasons that the Moroccan state has failed to shift from de facto to de jure abolition. These reasons are “the lack of political and social consensus on the subject,” “the weight of traditional and religious reference,” and “constraints to maintain public security” (Hmimnat 2013, pp. 85-86).

Unfortunately, Hmimnat’s chapter, “Towards the Complete Abolition of Capital Punishment in Morocco: Possibilities and Constraints,” was the only piece of literature accessible to me during this research project that focused solely on capital punishment in Morocco, most likely due to remote research and language barriers. Thus, much of my research builds off of his piece. While Hmimnat’s piece answers the question of why Morocco has been unable to shift from de facto to de jure abolition of capital punishment through the analysis of legal codes, NGO actions and essential but broad background information, my paper, on the other hand, will analyze the political development of capital punishment in Morocco through a historical analysis and the discussion of specific cases. Ultimately, my paper will add to Hmimnat’s discussion of capital punishment in Morocco by answering the question of how the use of and meaning behind issuing death sentences in Morocco has shifted from its independence in 1956 to today.

Analysis

The Right to Life: Capital Punishment in the Human Rights Context

In the aftermath of the atrocities of World War II, the UN General Assembly gathered to pass the Universal Declaration of Human Rights. Motivated by the blatant “disregard and contempt for human rights [that] resulted in barbarous acts which... outraged the conscience of mankind” as seen during the war, the UN moved to pass the Declaration in “recognition of the inherent dignity and... equal and inalienable rights of all members of the human family [as] the foundation of freedom, justice and peace in the world” (The United Nations, 1948, art. 21.3). The Universal Declaration of Human Rights was passed nearly unanimously, with forty-eight member states voting in favor, eight member states abstaining, and two member states not voting. Since its adoption on December 10, 1948, the Universal Declaration of Human Rights has been considered the principal document in the worldwide human rights movement aiming to guarantee the rights of all individuals across the globe.

In “Towards the Complete Abolition of Capital Punishment in Morocco: Possibilities and Constraints,” Hmimnat notes that the death penalty “was until the late 1970s considered a legitimate manifestation of the state’s sovereignty to respond to certain serious crimes” (Hmimnat 2013, pp. 69). He reiterates, however, that “the right to life is the most fundamental human right and underpins all other rights,” and that the growing strength of the universal human rights movement has shed light on capital punishment’s implementation as a violation of human rights, especially since the end of the Cold War era and the dissolution of the Soviet bloc in the early 1990s (Hmimnat 2013, pp. 69).

Capital Punishment in the Modern Moroccan State

King Hassan II and the Years of Lead

When Morocco was declared independent from France in 1956, the new country, like any newly independent nation, initially struggled in its new transitional phase. This new post-protectorate phase began when King Mohammed V returned from exile in November 1955 and continued through his five-year reign that ended when his son, King Hassan II, ascended to the throne in 1961. During King Mohammed V's rule, the newly reestablished monarchy benefited, as Jonathan Wyrzten writes in "The Monarchy and Identity in Post-Protectorate Morocco," a chapter in his 2015 book *Making Morocco: Colonial Intervention and the Politics of Identity*, from the maintenance of power ascribed to the Moroccan units as they transferred from French and Spanish rule to the King's rule. "Over the next five years," Wyrzten writes, "the newly christened Royal Armed Forces (RAF) confirmed the post-protectorate state's ability to monopolize the use of force in the space of the nation-state" (Wyrzten 2015, pp. 275). In other words, ensured during the independence talks was the military prowess the new nation would have, thereby setting up the newly independent modern Moroccan state to have external sovereignty in resisting foreign enemies and internal sovereignty in resisting domestic enemies.

When Hassan II became king in 1961, he sought to further establish state sovereignty—both external and internal—and consolidate royal power, often resorting to methods relying heavily on force. As Abdelaziz Nouaydi writes in the chapter "Morocco: The Imperative of Democratic Transition" in the 2003 book *Human Rights Under African Constitutions: Realizing the Promise for Ourselves*, the following decades saw authoritarian practices sweep the country in what became known as the Years of Lead. "Thousands were arrested, tortured, and sentenced to heavy sentences," he notes, and "hundreds were forced to exile and hundreds of others were

victims of enforced disappearances” (Nouaydi 2003, pp. 155). Most often, the targets of the arrests, torture, and forced disappearances were those the monarchy saw as a threat to its internal sovereignty and authority to rule within its borders. Because many forced disappearances result in either immediate or eventual death and the deprivation of the right to life, they are, at their core, state sanctioned murder and therefore should be considered as the implementation of capital punishment. According to the “Summary of the Final Report” released in 2006 by the Truth and Justice Commission, 742 people were subject to capital punishment in the form of forced disappearances during the Years of Lead (Kingdom of Morocco Justice and Reconciliation Commission 2006, pp. 12).

These “waves of repression,” as the Middle East Research and Information Project (MERIP) called the events of the Years of Lead at the time, continued throughout the 1970s and early 1980s, but by the 1990 it seemed as though the country might be turning a corner as a result of external and internal pressures for human rights reforms (*MERIP Reports* 1977, pp 18). In May of 1990, the King authorized the creation of the human rights advisory board *Advisory Council on Human Rights* (ACHR), and in 1991, many of those who had been forcibly disappeared or held as political prisoners since the early 1970s were freed (Nouaydi 2003, pp. 158). This opening up, however, did not mean that the death penalty stop being used, as death sentences continued to be handed down by courts in cases that threatened the external and internal sovereignty of the country. What it meant, however, was that the implementation of and proceedings behind cases concluding with the capital punishment became more accessible to the general public, largely due to public demands for less corruption and more accountability. The most poignant case that demonstrates this shift is that of Mohamed Mustapha Tabet—whose case became widely known as the Tabet Affair.

Tabet was a well-known and well-respected police commissioner in Casablanca until it was discovered that he had been kidnapping and videotaping women—some of whom were minors—while he raped them for years. Cocky, overly confident, and sure nothing would come of the allegations, Tabet watched as the Gendarmerie searched through his apartment, ultimately finding 118 videotapes, notebooks, and computer files containing personal information about each victim (Smolin 2013, pp. 14). While the state eventually charged him with the abductions and rapes of 518 women over a period of 3 years, it is estimated based off of the videotapes and Tabet's own recordkeeping that the true number of victims is closer to 1,600 (Smolin 2013, pp. 14). In his 2013 book *Moroccan Noir: Police, Crime, and Politics in Popular Culture*, Jonathon Smolin notes that the Tabet affair “was a moment of deep rupture in the country's history and culture. As one newspaper headline explained at the time, it was ‘the crime that profoundly shook Moroccan society in all its foundations,’” as it was the first time any high ranking police official was arrested and brought to justice for his crimes (Smolin 2013, pp. 15). Prior to this moment, the police were a terrifying and brutal force that seemed to operate above the law as they maintained Morocco's internal sovereignty through repression, coercion, and blatant abuse of power.

The public nature of the Tabet Affair, however, began changing the perception of the police as an untouchable institution that got away with gross human rights violations. It was, after all, the first time Moroccan journalists were free to cover stories about the police, and Tabet's case was the first subject of a new form of Moroccan journalism: mass media sensationalism. The wide reach of the press during the case—which was dubbed the “trial of the century”—brought all Moroccans into the conversation about fundamental change after the waves of repression that had ruled the country for decades.

After a quick trial, Tabet was sentenced to death and executed by firing squad in Kenitra Central Prison on August 9, 1993, only four days after his final appeal was denied by the Supreme Court. In a statement released the next day, Amnesty International wrote that although more than 150 people remained on death row, it was the first known execution to take place in Morocco since 1982, eleven years prior (Amnesty International 1993). His execution would, however, be the last before a de facto moratorium on executions was established and Morocco shifted away from using capital punishment as a way to reiterate external and internal sovereignty and began debating its use under Hassan II's son, King Mohammed VI.

King Mohammed VI and Democratization in the 21st Century

Upon his father's death in 1999, King Mohammed VI ascended to the throne amid a period of great change in the nation. At the turn of the twenty-first century, Morocco was facing increasing demands, both internally and externally, to engage in human rights reforms and political liberalization, including the call to engage in debate with civil society about abolishing capital punishment. In attempting to answer this call, the Mohammed VI established the Equity and Reconciliation Commission (ERC) on January 7, 2004, modeling it after the Truth and Reconciliation Commission (TRC) established in South Africa following the end of apartheid. Within a little over a month, Susan Slyomovics writes in "The Moroccan Equity and Reconciliation Commission: The Promises of a Human Rights Archive" (2016), "victims of torture, disappearance, and arbitrary detention through the reigns of three monarchs from 1956-1999 of grandfather, father and son produced over 22,000 claims of human rights violation sent to the Rabat commission headquarters" (Slyomovics 2016, pp. 15). In its "Summary of the Final Report," the Commission described its mission:

The Commission was mandated to assess, research, investigate, arbitrate and make recommendations about the gross human rights violations that occurred between 1956 and the end of 1999. These violations include forced disappearances, arbitrary detention, torture, sexual abuse and deprivation from the right to life, as a result of unrestrained and inadequate use of state force and coerced exile. This mission's goal is to foster development and dialogue, and to create the grounds for national reconciliation that is crucial for a democratic transition in our country towards a state of justice and law, and for advancing the values and culture of citizenship and human rights (Kingdom of Morocco Justice and Reconciliation Commission 2006, pp. 12).

Like the South African TRC, the Moroccan ERC's relied primarily upon records, testimonies, and oral histories in compiling its final report. In embarking on this truth-seeking mission, the King signaled, although indirectly through the ERC, that he was willing to begin discussions with civil society about the human rights violations of Morocco's past and what Morocco's future could look like. This did not, however, mean that he was ready to engage in full discussion about the abolition of the death penalty.

Under King Hassan II, the death penalty had been used to reinforce Morocco's external and internal sovereignty as a young nation in the midst of state-making, and the issue and implementation of death sentences was the state's way of further entrenching absolute authority. Under King Mohammed VI, however, the purpose of the death penalty shifted away from protecting state sovereignty to reinforcing the state's approved social order by imposing death sentences on crimes considered to be "immoral." Despite not having executed anyone since Tabet in 1993, Morocco has continued to issue death sentences to offenders of certain crimes. The most notable crimes that have received the death penalty since Tabet's execution fit squarely under the "immoral" label that threaten the state's approved social order.

The first of these cases is that of Mohamed Belharash—or the "Killer of el Jadida"—whose name gained notoriety in June 2001 upon his arrest. The general Moroccan society believed serial killers only existed in the West, but Belharash quickly dispelled this myth and

became widely known in the media as a serial killer. His crimes—including the rape, murder, and robbery of his victims—which began in 1993 and continued to his arrest, were highly sexual in nature and therefore, easily condemned as immoral. He was sentenced to death on October 16, 2001 (Smolin 2013, pp.162). Next, Mohamed Omari, Rachid Jalil, and Hassan Taoussi were sentenced to death on August 19, 2003 for their roles in the Casablanca bombings. Despite serious improvements in human rights leading up to the terrorist attacks in Casablanca, Smolin notes that the situation regressed after the attacks and that a 2004 Human Rights Watch Report suggested that “the Moroccan authorities were repeating the tactics of the Years of lead, but this time were targeting religious extremists instead of the radical left” (Smolin 2013, pp. 205). Two more serial killers—Mohammed Zouita and Abdelali Hadi—were arrested in the following years, and their crimes were, like Tabet’s, also described as “sexually disturbed” (Smolin 2013, pp. 176). While Zouita committed suicide before his trial, Hadi was found guilty and sentenced to death on December 2, 2004 (Smolin 2013, pp. 185). The most recent crime that saw its perpetrators put to death, however, is the murders of Scandinavian hikers Louisa Vesterager Jespersen and Maren Ueland, who were found beheaded in the High Atlas Mountains in December 2018. Investigators soon arrested Abdessamad Ejjoud, Younes Ouazyiad, and Rachid Afatti—all of whom had pledged allegiance to the Islamic State—for carrying out, videotaping, and sharing the attack. Approximately twenty others were arrested in connection with the killings (BBC May 2, 2019). After an eleven-week trial in Salé, all three were sentenced to death (BBC July 18, 2019). Their appeals were denied, and their sentences were upheld in October 2019.

The death penalty in all of the aforementioned cases was issued for different reasons than the death penalty was issued during the Years of Lead. Under King Hassan II, the death penalty had been issued in cases that threatened the external and internal sovereignty of the nation,

thereby threatening the authority of the monarchy. Under King Mohammed VI, however, the use of capital punishment ceased to be used in such a way due to internal and external demands for human rights reform and the growing call to abolish capital punishment worldwide. Thus, as Morocco began to speed up democratization efforts in the early twenty-first century and started engaging in debates with civil society about adopting abolition legislation, the death penalty was no longer issued arbitrarily as a means reinforcing state authority.

Conclusion: NGOs and The Abolition of the Death Penalty?

Following the reform talks in Meknès in 2003 and 2004 put together by various NGOs, the state attempted to “alter the perception that the debate was only for the elites, the administration became more engaged, perhaps in response to national and international pressure and shaped the debate in both political and legal terms” (Hmimnat 2013, pp. 76). Also in 2003, seven NGOs (including the Moroccan Observatory of Prisons) joined together to form The Moroccan Coalition Against the Death Penalty. The other NGOs involved are the Moroccan Human Rights Association, the Moroccan Forum for Truth and Justice, the Moroccan Organization for Human Rights, the Association of Lawyers’ Bars in Morocco, Amnesty International—Moroccan Section, and the Centre for People’s Rights. The group has 3 main demands: the abolition of the punishment from the law, a cease on issuance of the punishment, and a moratorium on executions (Hmimnat 2013, pp. 76). While the new Moroccan constitution of 2011 “enshrines the right to life without leaving exception for the death penalty,” further momentum on achieving de jure abolition of capital punishment has stalled due to the political and religious constraints and limitations on the subject (Shetty 2014, pp. 48).

In 2011, a Minnesota-based organization called the Advocates for Human Rights (The Advocates) released a report on capital punishment in Morocco, concluding that “certain conditions on death row in Morocco constitute cruel, inhumane and/or degrading treatment, due primarily but not solely to mismanagement” (The Advocates for Human Rights 2011, pp. 1). In their report, the Advocates argue that the 2011 referendum on the Constitution that enshrined the “right to life” rendered the death penalty unconstitutional. Despite the apparent illegality of capital punishment, the group estimates that prior to 2011, about 10 death sentences were handed down each year, and numbers reported since, although not “official figures” released by the

government, seem to corroborate the fact that about 10 death sentences have continued to be handed down each year since (The Advocates for Human Rights 2011, pp. 3). Ultimately, the Advocates recommend in their report that Morocco replace the death penalty with a fairer sentence that respects international human rights standards; continue to build new prisons to alleviate overcrowding issues that violate international standards as is; and improve the medical treatment and food available within prisons (The Advocates for Human Rights 2011, pp. 7).

On October 7, 2015, advocates for the abolition of the death penalty—including members of the Moroccan Coalition Against the Death Penalty—held a press conference that detailed their work over the previous year and submitted a memorandum to the government. “Their main demands,” Tiziana Trotta wrote on the World Coalition Against the Death Penalty’s website, “include the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, the ratification of the Rome Statute on the International Criminal Court and a support to the UN resolution on the moratorium, in addition to improving conditions on death row” (Trotta 2015). Three years later in 2018, the Moroccan Observatory of Prisons organized a conference to reintegrate the abolition of capital punishment into the greater dialogue about human rights and criminal justice reform in Morocco. As Clémentine Etienne noted on the World Coalition Against the Death Penalty’s website, “although Article 23 of the Constitution guarantees the right of detainees and article 20 recognizes the right to life, no compliance has been initiated to abolish the death penalty, which is still imposed by the courts. Morocco has been under a de facto moratorium since 1993, and in 2017, more than 15 people were sentenced to death and 112 are currently detained on death row” (Etienne 2018).

During the same 2015 press conference mentioned above, Mustapha Znaidi, the deputy coordinator of the Moroccan Coalition Against the Death Penalty, noted that he believes “the

biggest obstacle is political, not religious, contrary to the claims of proponents of maintaining this sentence, because the source of the Criminal Code is positive law and is inherited from the colonial Penal Code. And again, Islam is tolerant and open with respect to this issue” (Trotta 2015). Thus, it is not Islam preventing the abolishing the death penalty: it is the political development of capital punishment in Morocco—which was initially issued by the modern Moroccan state as a means of reinforcing state authority and external and internal sovereignty—which has prevented de jure abolition from being realized on top of the de facto moratorium in place since 1993. While promising steps have indeed been made by Morocco as it moves towards abolition of capital punishment and Mohammed VI has shown he is willing to allow civil society to engage in debate about the topic, it is clear, Hmimnat notes, that “the Kingdom remains hesitant in this regard, preferring to compare itself to countries such as Algeria, Tunisia, Mauritania and Lebanon that also have a de facto moratorium on executions” (Hmimnat 2013, pp.70). It seems as though Mohammed VI is letting the dialogue occur without intervening, mostly because he doesn’t have to. His government can continue issuing death sentences in crimes deemed “immoral,” and while there may be domestic and foreign pushback from human rights leaders, the fact that Morocco’s government exists as a hybrid political regime means that at the end of the day, the Mohammed VI has the authority to ignore the calls for abolition.

Further research into the subject of capital punishment in Morocco could situate the death penalty in the Islamic context by analyzing *Hudud*, *Qisas*, and *Tazir*, and the Quran’s sayings on crime and punishment. Also, further research could be done on crime and punishment under French colonial rule in Morocco, thereby situating capital punishment in the modern Moroccan state in the framework of its colonial system of crime and punishment.

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