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**Arab Spring to American Winter:
The Need to Embrace “Structured
Spontaneous Disorder” in 21st
Century Social Rebellion**

**Michael P. O’Connor
Professor of Law
Phoenix School of Law
USA**

Athens Institute for Education and Research
8 Valaoritou Street, Kolonaki, 10671 Athens, Greece
Tel: + 30 210 3634210 Fax: + 30 210 3634209
Email: info@atiner.gr URL: www.atiner.gr
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**Arab Spring to American Winter:
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**Michael P. O’Connor
Professor of Law
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Abstract

The ‘Arab Spring’ revolutions, austerity protests in Europe and the ‘Occupy Wall Street’ movement have often upset the social order and challenged fundamental orthodoxies concerning proper limits on dissent. Aspects of the structure of these protests are peculiar to 21st century social rebellions and are the subject of this article. This paper examines the changing face of social rebellion in the 21st Century, the protections afforded to social protest in democracies, and the restrictions curtailing protests. This article examines new technological challenges to suppression of dissent before concluding that for democracy to thrive in an increasingly pluralistic and connected world, social order must cede some ground to free expression.

Contact Information of Corresponding author:

I Introduction

Whether a curse or a blessing, we live in interesting times. During the past two years, social protests have convulsed societies worldwide.¹ The ‘Arab Spring’ revolutions, begun with the ‘Jasmine Revolution’ in Tunisia,² rapidly spread across North Africa and into the Middle-East.³ Governments have fallen. Some fell with little violence, but others only after great bloodshed. Spain and Greece were the scenes of large-scale protests against austerity measures and fiscal policy.⁴ ‘Occupy Wall Street’ (OWS) protests began in New York City on September 17, 2011,⁵ before spreading around the world.⁶ These protests have often upset the social order and challenged fundamental orthodoxies concerning proper limits on dissent.

While each nation’s protests have been the result of the complex confluence of factors unique to that nation, it is clear that protestors have drawn inspiration from each other,⁷ and at times, have even coordinated activities on an international scale.⁸ On one level this is unsurprising as some common themes can be discerned across these diverse regions and protests. Social, economic and political imbalances have fueled the discontent that has led to protest and in some circumstances to revolution. That injustice fuels protest and revolution is neither new nor surprising. However, some things about the structure of these protests, both internally and internationally, are peculiar to 21st century social rebellions.⁹ These peculiarities are the subject of this article.

This paper will examine the changing face of social rebellion, looking at the protections afforded to social protest in democracies, and the restrictions used to limit such protests. The new technological challenges to control and

¹ ‘Time Person of the Year: The Protestor,’ *Time Magazine*, December 14, 2011, available at <http://www.time.com/time/person-of-the-year/2011/>. [14 June 2012].

² Rutzen, D. & Zenn, J., ‘Association and Assembly in the Digital Age,’ 13 *Int’l J. Not-for-Profit L.* 53 (2011).

³ *Id.*, at 54.

⁴ See, ‘Spain, Greece Protest Against Spending Cuts,’ *News.Com.Au*, available at <http://www.news.com.au/business/spain-greece-protest-against-spending-cuts/story-e6frfm1i-1226275403808>. [14 June 2012].

⁵ See, ‘Protestors Begin Effort to “Occupy Wall Street,”’ *ABCNews.com*, September 17, 2011, available at <http://abcnews.go.com/blogs/headlines/2011/09/protesters-begin-effort-to-occupy-wall-street/>. [14 June 2012].

⁶ For an interactive list of countries where Occupy protests have taken place, see, <http://directory.occupy.net/>. [14 June 2012].

⁷ Haleh Davis, M. (2011) ‘From Cairo to Madison: the New Internationalism and the Remystification of the Middle East,’ *Jadaliyya*, February 19, available at http://www.jadaliyya.com/pages/index/678/from-cairo-to-madison_the-new-internationalism-and. [14 June 2012]. See also Rutzen & Zenn, at 53-4.

⁸ In an International Day of Solidarity, protests were held in more than 80 countries on October 15, 2011. See Taylor, A. (2011), ‘Occupy Wall Street Spreads Worldwide,’ October 17, available at <http://www.theatlantic.com/infocus/2011/10/occupy-wall-street-spreads-worldwide/100171/>. [14 June 2012].

⁹ The word “rebellion” as used in this paper is meant to incorporate a wide range of social protests that rebel against the established order of society, not merely those designed to overthrow an existing government.

suppression of dissent and protest will be examined before concluding that for democracies to evolve and survive in the 21st century, nations must be willing to accept messier expressions of dissent. For democracy to thrive in an increasingly pluralistic and connected world, social order must cede some ground to free expression.

II The Changing Face of Social Rebellion in the 21st Century

As with past social rebellions, '[t]he underlying cause of all the [Arab Spring] uprisings has been mass dissatisfaction with incompetent, corrupt, and oppressive systems of government and growing gaps between rich and poor.'¹ In western democracies, the widespread fiscal, mortgage and banking crises have alienated large segments of the populace. Without widespread dissatisfaction among the population and a sense of community among those who protest, none of these rebellions would have amounted to more than a minor annoyance to their governments. But most of these movements have also used new tools to help orchestrate their protests, i.e. social media. These tools proved effective in galvanizing popular discontent.² The extent to which these social media have been instrumental in the various uprisings remains a hot topic of debate.³ However, the real debate seems to be the *extent* to which the social media influenced these rebellions, not *whether* they did.

Social media unquestionably played the role of messenger during many of the recent rebellions. The Dubai School of Government mapped out the usage levels of various media during the Arab rebellions and the uses to which they were put.⁴ Facebook, Twitter, YouTube and Instant Messaging all played a significant role in distributing information before, during and after demonstrations.⁵ More than 85% of those surveyed in Tunisia and Egypt stated that their primary use of Facebook during the uprisings was for the following purposes: 1) to raise awareness within the country about the causes of the movements; 2) spread information to the world about the movement and related events; and 3) to organize actions and manage activists.⁶ ASMR-2 also documented every demonstration that was called for in any Arab country

¹ Joseph, S., *Social Media, Political Change, and Human Rights*, 35 B.C. Int'l & Comp. L. Rev. 145, 157 (2012).

² Huang, *Facebook and Twitter key to Arab Uprisings: Report*, located at <http://www.thenational.ae/news/uae-news/facebook-and-twitter-key-to-arab-spring-uprisings-report>. [14 June 2012].

³ *Id.*, and see, Flanagan, 'Facebook revolution a Myth, Critics say,' located at <http://www.thenational.ae/business/media/facebook-revolution-a-myth-critics-say>. [14 June 2012].

⁴ Dubai School of Government (2011), *Arab Social Media Report #2*, (ASMR-2) located at <http://www.dsg.ae/en/ASMR2/ASMRHome2.aspx>. [14 June 2012]

⁵ *Id.*, at fig. #7 & 11.

⁶ *Id.*, at fig. #7.

in 2011. With only one exception, each of these calls for protest first appearing on Facebook resulted in a street protest.¹

The vitality of social media to recent social rebellions has not been limited to the Arab Spring uprisings. Social Media played critical roles in the Occupy protests.² At a time when protestors were leading increasingly popular street demonstrations across the United States (and throughout much of the world), the mainstream media in the U.S. all but ignored this growing rebellion against economic imbalance, fiscal mismanagement and the governmental policies that fostered these injustices.³

Social media stepped into the void left by the mainstream or traditional media, who failed to serve their primary roles of informing the public and providing critical independent analyses of government actions and events.⁴ Repeatedly, iconic video clips or still photographs taken by amateur reporters have gone viral on social media sites before – if ever – being reported in mainstream media.⁵

The role of social media in these rebellions does not mean that the traditional requirements of social movements have been supplanted. There still must be among the dissatisfied a willingness to physically protest, to put their bodies in the street to express dissent or outrage at the *status quo*. However, as the world has become more interconnected electronically, social protest movements have used these interconnections to inform, inspire and coordinate. Governments, in turn, have attempted to use social media to inform the populace, sometimes also seeking to track, undermine and even arrest their dissenters.⁶ At times, governments have attempted to monitor, block and shut down social media and access to the internet to prevent social protests from spreading.⁷

To some extent, a game of technological cat and mouse has played out, with each side seeking to stay at least one step ahead of the opponent. For protest movements, this has at times placed a premium on ‘structured spontaneous disorder.’ This tactic maximizes the deliberate use of social media to provide

¹ *Id.*, at fig. #5.

² Preston, J. (2011), ‘Protestors Look for Ways to Feed the Web,’ *New York Times online*, Nov. 24, available at <http://www.nytimes.com/2011/11/25/business/media/occupy-movement-focuses-on-staying-current-on-social-networks.html>. [14 June 2012]

³ Morrill, B. (2011), ‘Media Blackout on Mayor Bloomberg’s Raid on Zuccotti Park,’ Nov. 15, available at <http://www.dailykos.com/story/2011/11/15/1036622/-A-media-blackout-on-Michael-Bloomberg-s-raid-on-Zuccotti-Park>. [14 June 2012].

⁴ *Id.*, and see generally ASMR-2, *supra*.

⁵ Some of the most notable images involved violence against protestors. See, e.g., Berkeley protestors being pepper sprayed, available at <http://www.youtube.com/watch?v=6AdDLhPwpp4&feature=related>; [14 June 2012]; an octogenarian being pepper sprayed at an Occupy Seattle event, available at <http://imgur.com/gallery/2yizP>; [14 June 2012]; and, most disturbing of all, the video of Neda Agha Soltan shot in Tehran, available at http://www.youtube.com/watch?v=d90bwM4No_M&feature=related. [14 June 2012].

⁶ Rutzen and Zenn, at p. 53.

⁷ See, Cabanatuan, M. (2011), ‘Bart Admits Halting Cell Service to Stop Protests,’ SFGate, August 13, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2011/08/12/BAEU1KMS8U.DTL>. [14 June 2012].

widespread, short warning announcements of demonstrations aimed at disrupting the social order. No permits or permissions are obtained in advance, and the aim is to disrupt the status quo, the normal order of society. In this way, social media can be said to have truly transformed the nature of social protest and that transformation presents serious challenges to societies committed to free speech, free association and participatory democracy.

The following sections will examine the protections for rights of association, both physical and virtual, in western democratic systems, and the mechanisms used to restrict these associations to limit social protest and rebellion. The preceding discussion of social media in 21st century social rebellion was not limited to democratic systems because the role of media has been relatively consistent in rebellions regardless of governmental form. The focus of this paper will now shift somewhat to look at protections afforded in western democracies because autocratic regimes generally do not afford such protections to citizens. In addition, the thesis of this paper relates to adjustments that democratic systems must make in the 21st century if they are to retain any semblance of democratic rule.

III Protection of Social Protest in Democracies

International covenants and domestic laws both provide a level of protection for social protest in western democracies. These protections vary in their level of specificity. Some are general protections for speech and expression.¹ Some protect the right to freely associate with others,² while others more specifically protect the right to peaceful protest.³

The Universal Declaration of Human Rights is the most broadly applicable right of association: ‘Everyone has the right to freedom of peaceful assembly and association.’⁴ The International Covenant on Civil and Political Rights (ICCPR) also explicitly guarantees the right to association, stating: ‘[e]veryone shall have the right to freedom of association with others.’⁵ The right to association is also protected by Art. 11 of the European Convention.⁶ While the right of association seems implicit in the ‘right of the people peaceably to assemble, and to petition the Government for a redress of grievances,’ the right of association was not specifically identified by the U.S. Supreme Court until 1958, and then, it was not equated with the right to assemble.⁷ While not

¹ European Convention on Human Rights, Art. 10, Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222 [hereafter European Convention].

² The International Covenant on Civil and Political Rights (ICCPR), Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

³ U.S. Const. Amend. I.

⁴ Article 20(1) of the Universal Declaration of Human Rights (1948).

⁵ 999 U.N.T.S. 171; *see also* Rutzen and Zenn, at 56-57.

⁶ European Convention, Art. 11.

⁷ *NAACP v. Alabama ex rel Patterson*, 357 U.S. 449 (1958); *see also* Inazu, J., ‘The Strange Origins of the Constitutional Right of Association,’ 77 *Tenn. L. Rev.* 485, 512 (2010).

specifically linking it to the right of peaceful assembly articulated in the First Amendment, the Court made clear that the ‘freedom to engage in association for the advancement of beliefs and ideas’ is a fundamental component of liberty guaranteed to all persons.¹

The scope of protection afforded to association under these provisions has been questioned in Europe and the U.S. Most early questions concerned what ‘association’ meant, whether some types of associations might be excluded from this protection, and how much protection was afforded to the manifestation of these associations in the form of political protests.² Variations on these questions remain essential to today’s analysis, including the extent to which these conventions and laws protect online associations. Related questions of importance are the following: 1) what protections are afforded to these associations whose aim is to galvanize dissent and organize protests rebelling against the *status quo* in society?; and, 2) do the rights of association protect structured spontaneous disorder?

There is much support for the proposition that the right to association protects online associations. Rutzen and Zenn lay out the strong argument based upon the 1998 UN General Assembly resolution stating that the right to association applies with equal strength to national and international groups, and the recent statement of the UN Special Rapporteur in which he identified access to the internet as a method of exercising freedom of association and as a catalyst for other human rights.³

The remaining questions (concerning whether existing laws granting the right to association also protect the rights of groups formed to galvanize dissenters and organize protests rebelling against the status quo of society and whether these protections extend to structured spontaneous disorder) are more challenging to answer definitively.

Clearly, both the U.S. and Europe protect the right to association for the purpose of invigorating participatory democracy.⁴ This purpose should ensure that groups formed to motivate dissent and petition for change would be welcome in democracies on both sides of the Atlantic. The reality, in both Europe and the U.S., is far more complicated than this ideal might lead one to believe. Communists have not been afforded the same protections by the U.S. Supreme Court as have other dissenting groups in the U.S.⁵ In Europe, Nazis and other fascist groups have also been denied the same protections afforded others.⁶ In both cases, the justification for banning the group has been a belief that the group posed an existential threat to the nation.

¹ *NAACP v. Alabama ex rel Patterson*, 357 U.S. at 460.

² Defeis, E., *Freedom of Speech and International Norms: A Response to Hate Speech*, 29 *Stan. J. Int'l L.* 57, 104-05 (1992); see also note 34, *infra*.

³ Rutzen and Zenn, at pp. 56-7, *supra* n.2.

⁴ *Socialist Party v. Turkey*, 1998-III Eur. Ct. H.R. 1233, 1255, as cited in Flaus, J., ‘The European Court of Human Rights and the Freedom of Expression,’ 84 *Ind. L.J.* 809, 814, n.26 (2009); see also *Bates v. City of Little Rock*, 361 U.S. 516 (1959).

⁵ See, e.g., *Scales v. United States*, 367 U.S. 203 (1961); see also Inazu, at 524.

⁶ See, e.g. *X. Austria*, App. No. 1747/62, 6 *Y.B. Eur. Conv. on H.R.* 424 (1963).

Each nation has a unique history and this accounts for why some groups are afforded less associational rights than others. But, more importantly for understanding the future application of free association rights is an examination of those limitations proscribed under law for the activities of all groups. Despite some differences in both history and application,¹ the limitations imposed on assembly and protests have similar roots in democracies in Europe and in the U.S. It is these constraints upon association, assembly and protests that have been targeted by structured spontaneous disorder.

IV Restrictions on Association, Assembly and Social Protest

The general restrictions on freedom of association, assembly and protest are based in a balancing of individual freedoms with the social good. In the U.S., the rights to free speech and assembly can be limited by ‘time, place and manner’ restrictions if the restrictions ‘are justified without reference to the content of the regulated speech, that they serve a significant governmental interest, and that in doing so they leave open ample alternative channels for communication of the information.’² The governmental interest can range from orderly traffic control to preserving the attractiveness of parks.³ While content-based restrictions on speech in the U.S. are carefully scrutinized, time, place and manner restrictions are much more easily defended by the government.⁴ However, not all speech is protected in the U.S. Advocacy of illegal conduct is punishable if there is a likelihood of imminent illegality and the speech is designed to cause imminent illegality.⁵

These governmental limitations on association, speech and assembly in the U.S. are consistent with the limitations of ‘morality, public order and the general welfare’ found in international covenants.⁶ The public order justification for limits on speech in Europe is capable of an even broader range of interpretation. This, in large measure is due to the “margin of appreciation,” a doctrine granting member states leeway in the adjudication of certain European Convention rights.⁷ The European Court of Human Rights

¹ See, Zoller, E., ‘Foreword: Freedom of Expression: "Precious Right" in Europe, "Sacred Right" in the United States?’, 84 Ind. L.J. 803, 806 (2009).

² See, *Heffron v. International Society for Krishna Consciousness, Inc.*, 452 U.S. 640, 648 (1981).

³ See *Heffron*, 452 U.S. at 654; see also *Clark v. Community for Creative Non-Violence*, 468 U.S. 288 (1984).

⁴ There is no protection of speech on private property in the U.S. *Hudgens v. National Labor Relations Board*, 424 U.S. 507 (1976). The amount of protection on government property varies. See Chemerinsky, E., *Constitutional Law: Principles and Policies*, 3d ed., pp. 1123-44, Aspen Publishing (NY 2006).

⁵ See *Hess v. Indiana*, 414 U.S. 105 (1974).

⁶ See Universal Declaration of Human Rights, G.A. Res. 217A, arts. 19, 29, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948); see also Art 22, ICCPR; and see European Convention, Art. 10 & 11.

⁷ See, e.g., Vance, S., ‘The Permissibility of Incitement to Religious Hatred Offenses Under European Convention Principles,’ 14 Transnat'l L. & Contemp. Probs. 201, 205-06 (2004).

case law does not differentiate between content-based restrictions and those limited to time, place or manner, as does the U.S. Supreme Court.¹ Instead, the public order and general welfare provisions serve as catchall limitations on speech.² Under this public order exception, the ECHR has permitted significant variations in enforcement against speech deemed troubling by authorities.³ This variation has contributed to an even murkier understanding of the limits of public order constraints on speech in Europe than currently exists in the U.S.

The public order limitations in both the U.S. and Europe represent legal constraints that governments use to define the margins of acceptable political discourse. Speech that is deemed to represent too great a threat to the political structure is inhibited or banned. Under both systems, danger exists that the ambiguities present in the traditional restrictions on speech and association might allow criminalization of politically unpopular points of view.

The U.S. Supreme Court recently upheld a challenge to a statute that criminalized providing ‘material support’ to a foreign terrorist organization, where that support involved advice on how to use humanitarian and international law to peacefully resolve disputes.⁴ The Court rejected arguments that this infringed upon free speech and the right to free association.⁵ Application of these restrictions to Al-Qaeda or similar organizations will arouse scant protest. However, the breadth of the definitions of terrorism under U.S. law could allow a dangerous expansion of this holding.⁶

The lack of a clear definition of ‘public order’ restrictions suggests that European democracies could see similar attacks on the speech and association rights of unpopular groups, whether Muslims or austerity protestors. Criminalization of protesting has already begun in a number of countries. Russia recently passed a law dramatically increasing penalties for unauthorized protests.⁷ In North America, Quebec also passed a new law banning all protests without prior notice of the route, time and duration of the protest, subjecting violators to huge fines.⁸ All protests within 50 meters of university

¹ *Id.*, at 214.

² Restrictions under public order must still meet requirements of legality, necessity and proportionality. *See* Boyne, S., ‘Free Speech, Terrorism, and European Security: Defining and Defending the Political Community,’ 30 *Pace L. Rev.* 417, 467 (2010).

³ The variety has included banned political cartoons, racist speech, condemnations of religion, and the wearing of head scarves. *Id.*

⁴ *Holder v. Humanitarian Law Project*, 130 S. Ct. 2705, 2716, 177 L. Ed. 2d 355 (2010).

⁵ *Id.*

⁶ Perlstein, R. (2012), ‘How FBI Entrapment is Inventing “Terrorists” and Letting Bad Guys Off the Hook,’ *Rolling Stone online*, May 15, located at, <http://www.rollingstone.com/politics/blogs/national-affairs/how-fbi-entrapment-is-inventing-terrorists-and-letting-bad-guys-off-the-hook-20120515>. [14 June 2012].

⁷ *See*, ‘Russian Protestors Risk Huge Fines Under New Bill,’ *BBC Online*, May 22, 2012, available at <http://www.bbc.co.uk/news/world-europe-18165051>. [14 June 2012].

⁸ ‘Student Groups Challenge Quebec Protest Law,’ *BBC Online*, May 25, 2012, available at <http://www.bbc.co.uk/news/world-us-canada-18210503>. [14 June 2012].

buildings were also banned under this law. At least 2500 arrests under this law have already been made in Quebec.¹

Laws restricting protests have not been the only tools used by governments to disrupt and suppress this recent wave of social rebellion. Monitoring of social media sites and infiltration of online groups have been tools used from North Africa to the United States.² Egypt, China, Syria and the U.S. have all had disruptions of communications service and monitoring of activities online in response to various protests.³ Violent suppression of demonstrations has also been widespread. In the U.S. alone, police used violent tactics to break up Occupy protests in many cities across the country.⁴ In other countries, of course, protestors have been met with much more serious levels of violence. Violence in both Libya and Syria devolved into civil war.⁵

The violent responses and digital suppression by governments produced mixed results insofar as the immediate protests were concerned. Far more important than the immediate impact upon individual protests, however, are the consistent responses that violence and repression have generated.

IV New Technological challenges to Control and Suppression

Disruption and violent suppression of dissent has frequently been met with increased ingenuity and activism,⁶ often making better use of technology than the governments were capable of using in opposition.⁷ The Jasmine Revolution in Tunisia happened very quickly, but discontent had been simmering for some time.⁸ The population was well aware of government corruption, and the economic strife that was endemic to their daily lives. As dissent began to grow and to be expressed online, the government attempted to shut down Facebook.⁹ The result was an increase in Facebook use as more

¹ *Id.*

² *See*, OpenNet Initiative for country-specific information on government's attempts to block internet access to information, and steps taken to thwart that censorship. Available at <http://opennet.net/>. [14 June 2012].

³ *See, e.g.*, ASMR-2, Fig. #1, #2 & #3; *see also* Cabanatuan, n. 22, *supra*.

⁴ *See, e.g.*, Wolf, N., (2011) 'The Shocking Truth About the Crackdown on Occupy,' November 25, available at <http://www.guardian.co.uk/commentisfree/cifamerica/2011/nov/25/shocking-truth-about-crackdown-occupy>; [14 June 2012]; *see also* Sherter, A. (2011), 'In Day of Protests, "Occupy Wall Street" Faces Police Violence,' November 17, *CBS News Online*, available at http://www.cbsnews.com/8301-505123_162-57326876/in-day-of-protests-occupy-wall-street-faces-police-violence/. [14 June 2012].

⁵ *See* Krause-Jackson, F. & Lerman, D. (2012), 'Syria Called Civil War as Russia Said to Ship Attack Helicopters,' *SFGate*, June 12, 2012, available at http://www.sfgate.com/cgi-bin/article.cgi?f=/g/a/2012/06/12/bloomberg_articlesM5IR2M07SXX01-M5IXS.DTL. [14 June 2012].

⁶ Joseph, S., 'Social Media, Political Change, and Human Rights,' 35 *B.C. Int'l & Comp. L. Rev.* 145, 157-59 (2012).

⁷ *See, e.g.*, ASMR-2, Fig.#8.

⁸ The discontent was due to a long history of political corruption and economic inequality. Joseph, at 157-59.

⁹ *Id.*

Tunisians joined via ‘proxy sites.’¹ Some activists in Tunisia credit their reactions to censorship with teaching them how to use alternative means to disseminate information through alternative social media and primed them for the advocacy they would use during the rebellion.²

In the protest movements that have effectively used social media, protest organizers have employed what I have termed structured spontaneous disorder. All effective protests movements must be well-organized.³ Despite the critics contentions, however, the manner in which these protests are organized and the structure of the organizations is morphing with the use of social media.⁴ Due to the immediacy of Twitter and Facebook posts, organizers of demonstrations can communicate in real time with much larger groups than was even conceivable a decade ago. Consequently, those planning demonstrations have been able to react to government monitoring and infiltration by widely distributing information about demonstrations with short lead times between the announcements and the demonstrations.⁵ This structures a level of spontaneity into the demonstration that minimizes the ability of governmental forces to disrupt the protest before it happens.

In addition to the element of surprise, this tactic of structured spontaneous disorder disregards time, place and manner restrictions such as permits. This tactic aims to disrupt the social order precisely because that order perpetuates the social and political inequities being challenged. For OWS protestors, receiving a permit to protest at a time and in a place and manner that would not disrupt activities on Wall Street would undermine the specific intent of the protest. OWS is asserting the rights of the people against what is perceived as a corporate take-over of the country (and beyond) and government.⁶ It would be an anathema to seek permission from that government to protest in a way that did not disrupt corporate business and profits.

These tactics place OWS and similar groups in direct conflict with those charged with maintaining public order. When the authorities choose to react with violence or other repressive measures, instead of dialogue and accommodation, discontent increases among the populace. Discontent is

¹ *Id.*, at 158-59.

² See, Zuckerman, E. (2011), *My Heart's in Accra*, ‘Civic Disobedience and the Arab Spring,’ May 6, available at <http://www.ethanzuckerman.com/blog/2011/05/06/civic-disobedience-and-the-arab-spring/>. [14 June 2012].

³ See, Joseph, at 150-52.

⁴ See, e.g., Radsch, C. (2012), ‘Unveiling the Revolutionaries: Cyberactivism and the Role of Women in the Arab Uprisings,’ *James A. Baker III Institute for Public Policy*, May 17, available at <http://bakerinstitute.org/publications/ITP-pub-CyberactivismAndWomen-051712.pdf>. [14 June 2012].

⁵ Egypt’s “Day of Rage,” January 28, 2011 was promoted on Twitter and Facebook following the large turnout on January 25. See Joseph, at 161. The Occupy Oakland general strike was also announced on Facebook two days before it was to begin. See <http://www.facebook.com/pages/Occupy-Oakland/143158405783305>. [14 June 2012].

⁶ See, ‘First “Official” Statement From the Occupy Wall Street Movement,’ September 30, 2011, available at http://www.dangerousminds.net/comments/first_official_statement_from_the_occupy_wall_street_movement/. [14 June 2012].

fostered by violent and repressive crackdowns on dissent and protest.¹ Even where violence has initially succeeded in undermining a protest, the discontent continues to fester and grow. What the Arab Spring reminds us is the lesson taught to repressive regimes in Eastern Europe in 1989: discontent is combustible and a spark is all that is necessary to ignite a conflagration. With the increased connectivity and capacity for structured spontaneous disorder, repressive regimes lay the groundwork for their own destruction.

Today's social rebellions have the ability to record and self-report on the violence and other repressive means used against them. Videos on YouTube, Facebook or linked to tweets can reach a global community instantaneously. These tactics have an undeniable power to galvanize public opinion against repression. The more nations use these tactics to suppress dissent and protest, the more they isolate themselves from the world community.

V The Need to Tolerate Messier forms of Democratic Participation

In the coming century, democracies must learn to incorporate 'messier' forms of democratic participation, i.e. the social order must at times yield some ground to free speech and association rights. Democratic participation will be more free-form as means of communication expand our capacity and speed to communicate and coordinate activity. For democratic systems to survive, they must be able to incorporate this mechanism of participation. We should embrace this not only out of necessity – for necessary it is -- but also because doing so will ultimately provide more freedom, stability and security.

Democracies that have resorted to violence and other means of repression to counter political protests must relearn the lessons that initially gave rise to the protection of speech. Freedom of speech and association not only increase liberty, but also help maintain social control.² 'Just as a pressure cooker that provides no safety valve can explode, suppression of the expression of radical sentiment only serves to turn up the heat. The dissident forces, if not allowed to vent, will go underground, fester, and eventually emerge with dangerous revolutionary force.'³

¹ American history is replete with examples of this truth. Britain's crackdown on speech and protests in the colonies fueled the American Revolution. *See, e.g.,* Andre, S., 'The Transformation of Freedom of Speech: Unsnarling the Twisted Roots of Citizens United v. FEC,' 44 J. Marshall L. Rev. 69, 97-98 (2010). The history of the American labor movement is also one that showed growth following crackdown. *Id., and see* Bobertz, B., 'The Brandeis Gambit: The Making of America's "First Freedom," 1909-1931,' 40 Wm. & Mary L. Rev. 557, 609-10 (1999).

² *See, e.g.,* O'Connor, M & C. Rumann, 'Into the Fire: How to Avoid Getting Burned by the Same Mistakes Made Fighting Terrorism in Northern Ireland,' 24 Cardozo L. Rev. 1657, 1750-51 (2003) (dialogue and civil liberties reduced levels of violence in Northern Ireland); *and see* Bobertz, at 651, *citing* Commission on Indus. Relations, Final Report 150-55 (1915).

³ *See, Andre, at 97-98.*

We live in a uniquely interesting time. Even the wealthiest and most democratic nations on earth are characterized by gross inequality and grave economic instability. These unsettling features are combined with an unprecedented access to information and ability to communicate. Governments undoubtedly must be able to punish speech that is intended to cause and risks causing imminent harm. But, societies must reevaluate how that harm is measured. Democratic participation is more valuable than preventing disorderly conduct that merely inconveniences others. Societies cannot long survive if they suppress ideas whose expression decreases the majority's sense of well-being. We must be willing to tolerate more frequent expressions of dissent, and adapt them into our democratic dialogue. The voices speaking in protest of the status quo must be acknowledged and their arguments judged on their merits. To hear them, we must be willing to embrace structured spontaneous disorder.