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# The Middle East and Human Rights: Inroads Towards Charting its Own Path

Shadi Mokhtari\*

## I. INTRODUCTION

¶1 The stunning wave of protest and change taking shape in the Middle East has had profound implications for human rights dynamics in the region. For decades, the Middle East saw human rights co-opted, appropriated, and instrumentalized on the one hand, and entangled with anti-imperialist discourses and cultural politics on the other. What is emerging in the region today is unprecedented public and civil society challenges to the former and a more complex treatment of the latter. This is most evident through the rise of an indigenous voice at the fore of current human rights contests—a voice that simultaneously rejects subjugation by the region’s domestic authoritarian structures and by the foreign policies of powerful international actors.

¶2 While this article will focus on the rise of an indigenous Middle Eastern human rights agenda, and a recasting of the relationship between human rights and the West, a number of other key trends can increasingly be identified. First, in the realm of women’s rights, there is space opening to move beyond the cycle of sensationalist and decontextualized narratives of the passive, oppressed Middle Eastern woman emerging from the West, and contrasting constructions of religiously and culturally “authentic” gender codes deployed by local actors in response. Women’s rights are still widely marginalized in the Middle East but there are prospects for important new inroads in the long run, particularly as women in the Middle East continue to assert their presence in the realm of domestic politics and link their struggle with wider rights struggles in their societies. Second, Islamist political leaders and religious figures are increasingly engaging and endorsing rights discourses. Even though this is often done in opaque and contradictory ways and some of the most critical “Islam and human rights” contests are those that lie ahead as Islamists gain political power, the disposition of embracing the idea of rights provides an important point of entry for these nascent contests on specific areas of rights concerns. Third, a fascinating dimension of the way conceptions of human rights are being formulated in the Middle East now is the way civil and political rights and social and economic rights have been entwined and increasingly invoked as equally pressing “human rights.” Due to its limited length, these trends will not be taken up in this article.

¶3 Before beginning this discussion, a few caveats are in order. First, there is great diversity in the human rights dynamics and political contexts of the region’s countries—even when considering only those in which protests or uprisings have materialized. Additionally, while my focus here is largely on several positive human rights trends, this does not mean that troubling trends are not emerging alongside those discussed, or that the trends identified will always follow a linear progression. Finally, it is important to keep in mind that almost all of the trends coming to the fore today have roots far beyond Tunisia’s uprising. They did not appear overnight, but are instead the result of long-term political trajectories, including (but not limited

to) longstanding efforts by human rights advocates and what Asef Bayat calls “social (non)movements.”<sup>1</sup>

## II. RE-POSITIONING HUMAN RIGHTS AND ANTI-IMPERIALIST DISCOURSES

¶4 For years, Middle Eastern governments missed few opportunities to cast human rights as a foreign and un-Islamic tool of Western culture and political agendas. They were aided by the international politics of human rights—specifically, Western countries, most notably the United States, “championing” human rights when it was expedient to do so and retreating when it was not. Western governments, nongovernmental organizations (NGOs), and media similarly often decried women’s rights and minority rights violations in highly sensationalist and decontextualized terms, implying a hierarchy of cultures and peoples, reminiscent of colonialist discourses. This made Middle Eastern populations uneasy about adopting the language of human rights.

¶5 The Arab Spring reflects an important departure from these long-standing dynamics. The populations engaging in protests in the various hot spots of the region frequently chant slogans largely centered around demands for dignity and freedom, the release of political prisoners, and an end to torture and repression. Such demands are increasingly being understood and articulated as human rights. Rights subjectivities and “rights talk” have become ubiquitous. One early example of this was Asma Mahfouz’s widely viewed video appealing to Egyptians to join the January 25th “Police Day” protests that spurred the overthrow of the Mubarak regime; the young activist described the protests as an act of “demand[ing] our rights, our fundamental human rights.”<sup>2</sup> Protests in Egypt, Tunisia, and Bahrain—whether they concerned wage increases, job dismissals for participating in protests, or the use of military tribunals—regularly framed government action as violating rights. Similarly, one of the few areas that secular and religious politicians in Egypt and Tunisia agree on is the need to guarantee a select group of civil and political rights.<sup>3</sup>

¶6 Thus, within the context of the Arab Spring, the long-standing discourse that labeled human rights as Western or un-Islamic has undergone considerable transformation. Instead of steering clear of human rights, throughout the era of protest and change, a distinction between the concept of human rights and the politics behind its practice can be seen in the region. A more nuanced treatment of the human rights paradigm, which rejects both Western appropriations of human rights and attempts by Middle Eastern governments to exploit Western appropriations, is taking shape. Discourse from Iran’s Green Movement, which shared many attributes of the Arab Spring, demonstrates this dynamic. For instance, the Green Movement’s de facto leader Mir-Hossein Mousavi stated:

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<sup>1</sup> ASEF BAYAT, *LIFE AS POLITICS: HOW ORDINARY PEOPLE CHANGE THE MIDDLE EAST* (2010).

<sup>2</sup> *Meet Asmaa Mahfouz and the Vlog That Helped Spark the Revolution*, YOUTUBE (Feb. 1, 2011), <http://www.youtube.com/watch?v=SgjIgMdsEuk>.

<sup>3</sup> Bruce Rutherford, “Egypt After Mubarak: Islam, Constitutionalism and Prospects for the Future” Lecture, American University (Oct. 7, 2011); *see also* Bruce Rutherford, *Egypt’s Constitutional Future: Civilian Consensus and the Challenge from the Military*, Presented at the Northeast Middle East Politics Workshop, Princeton University (2011) [on file with the author].

Don't you claim that expressions such as human rights, women's rights, minority rights and the like are excuses world powers hypocritically co-opt to beautify themselves. Why are they who are supposedly the original and primary proprietors of these values then far from [realizing] them? Is it that they seek to taint their school [of thought]? Why do you curse these concepts and render them the standard for heresy? A religion that has gifted a bushel of flowers for humanity with its mild teachings which are compatible with human nature. God forbid, we turn it in a bushel of thorns so that anyone who has contact with any corner of it is wounded—wounds like those our youth see in the streets.<sup>4</sup>

¶7 In other words, the argument that human rights is to be discredited because of Western “double-standards” or its appropriation by Western actors is now regularly contested.

¶8 Increasingly, it is the case that the idea of inherent and fundamental human rights is one that gives expression to aspirations for social justice and political freedom. Where Western governments' politics present barriers to realizing these aspirations, they are to be challenged. Tahrir Square was as much of a challenge to the United States and its seemingly unshakable political support for the Mubarak regime as it was a direct challenge to the regime itself. In effect, Egyptians impelled the United States to shift from a foreign policy that undermines human rights to one that is more consistent with its human rights rhetoric. There is less and less talk of human rights being Western, but at the same time, anti-imperialist sentiments endure and the West's uneven, inconsistent treatment of human rights is widely indicted.

¶9 While many continue to adhere to a refrain commonly heard during the post-September 11th era—that the best thing the United States can do to promote human rights is to do nothing at all—a more multifaceted view of the West and its role in human rights promotion in the Middle East is also emerging. There is increasingly popular recognition that by virtue of the realities of contemporary international power dynamics, Western (as well as other international) action can be crucial in fighting local repression, a conclusion that many members of Islamist movements had reached years earlier. In this way, widespread public sentiment holds that Western claims of human rights motivations warrant continuing scrutiny. When Western interventions hinder human rights, they are to be challenged. When they move in line with local rights agendas, they can be supported.

¶10 Not surprisingly, leaders who cling to authoritarian structures, such as Egypt's military rulers, have reverted to indirect anti-imperialist discourses in relation to human rights NGOs receiving Western, namely, U.S. funding.<sup>5</sup> While the U.S. NGOs' links to widely-resented American foreign policies and political figures (for example, Dick Cheney and Paul Wolfowitz have served on past boards of Freedom House) and substantial direct funding from the American government offered the Supreme Council of the Armed Forces (SCAF) a tried and true means of discrediting local activists posing increasingly more formidable challenges to them, it is interesting to note that SCAF officials did not venture to discredit the notion of human rights. This speaks to the fact that the Egyptian NGO funding scandal, and its recent replications in the United Arab Emirates (UAE) and Bahrain, are today played out in an altered field from in the

<sup>4</sup> Mir-Hosseini Mousavi, *Statement Number Fifteen*, RAYEMAKOJAST.COM (June 16, 2010) <http://www.rayemakojast.com/IMG/pdf/statements-mousavi-3.pdf>.

<sup>5</sup> *Backgrounder: The Campaign Against NGOs in Egypt*, PROJECT ON MIDDLE EAST DEMOCRACY (Feb. 12, 2012), available at <http://pomed.org/wordpress/wp-content/uploads/2012/02/Egypt-NGO-Backgrounder.pdf>.

past. At the same time, the Egyptian episode also speaks to just how difficult a task disentangling local human rights agendas from Western foreign policy and international politics remains.

### III. THE EAST-WEST GEOGRAPHY OF HUMAN RIGHTS

¶11 According to a body of critical scholarship, international human rights politics has long operated with the unspoken assumption of a Western commitment to universalism and the furtherance of the human rights project. Meanwhile, places like the Middle East are imagined as captive to cultural relativism and inherent authoritarianism.<sup>6</sup> As a result, for decades human rights politics followed a set West to East itinerary.<sup>7</sup> International human rights dynamics were marked almost exclusively by Western governments, NGOs, and populations scrutinizing Middle Eastern (and other non-Western) human rights behavior. There are three ways this East-West geography is being unsettled through the wave of protest and change unfolding in the Middle East today.

¶12 First, there has been a change in how we understand who practices and views human rights in relativistic and contingent ways. As with the post-September 11th era, American relativism and Middle Eastern universalism are coming to light. In the U.S., discussions of torture largely center around utilitarian questions of whether it is effective and whether it protects American security, rather than morally-based human rights arguments.<sup>8</sup> The argument that torture is sometimes necessary seems to have increasingly taken hold. This increased American moral ambivalence towards torture stands in contrast to an emerging consensus in the Middle East that the practice is morally corrupt. These contrasting trends leave those adhering to the universalism-relativism binary so rooted in global human rights politics with little choice but to re-assess these core assumptions.

¶13 The second way in which the East-West geography of human rights is being challenged is through the rise of a Middle Eastern voice regarding human rights in the region. Egyptians held protests in Tahrir Square and in front of the Arab League to demand action in Libya,<sup>9</sup> Tunisians mobilized to assist Libyan refugees,<sup>10</sup> Turkish human rights activists gathered to protest and read a letter decrying the Assad government's brutality at the Syrian Embassy and consulates in Turkey, Egyptians demanded that the Syrian Envoy be expelled for human rights violations,<sup>11</sup> and Tunisian activists, in reaction to the "Friends of Syria" conference in Tunis, held a "Friends of Bahrain" conference to show support for the Bahraini revolution.<sup>12</sup> Such initiatives aligned

<sup>6</sup> See, e.g., Makau Mutua, *Savages, Victims, and Saviors: the Metaphor of Human Rights*, 42 HARV. INT'L. L. J. 201 (2001); Obiora Chinedu Okafor & Shedrack C. Agbakwa, *Re-Imagining International Human Rights Education in Our Time: Beyond Three Constitutive Orthodoxies*, 14 LEIDEN J. OF INT'L. L. 563 (2001); Catherine Powell, *Locating Culture, Identity, and Human Rights*, 30 COLUM. HUM. RTS. L. REV. 201, 202-04 (1999); SHADI MOKHTARI, *AFTER ABU GHRAIB: EXPLORING HUMAN RIGHTS IN AMERICA AND THE MIDDLE EAST* (2009).

<sup>7</sup> For a discussion of what I have called "the East-West Geography of Human Rights", see MOKHTARI, *supra* note 6, at 10-13, 113-15.

<sup>8</sup> Shadi Mokhtari, *Human Rights Irony for the US and Arab World*, AL JAZEERA ENGLISH (Aug. 25, 2011), <http://www.aljazeera.com/indepth/opinion/2011/08/201182114309779831.html>.

<sup>9</sup> Jack Shenker, *Arab League Urged to Condemn Gaddafi by Angry Protestors*, THE GUARDIAN (Feb. 23, 2011), <http://www.guardian.co.uk/world/2011/feb/23/protesters-demand-arab-league-condemn-gaddafi>.

<sup>10</sup> Firas Kayal, *Tunisians Reach Out to Uprooted Neighbors*, INST. ON WAR AND PEACE REPORTING (May 23, 2011), <http://iwpr.net/report-news/tunisians-reach-out-uprooted-neighbours>.

<sup>11</sup> Safaa Abdoun, *Egyptians Demand Expulsion of Egyptian Ambassador*, THE DAILY NEWS EGYPT (Feb. 17, 2012), <http://www.thedailynewsegypt.com/egyptians-demand-expulsion-of-syrian-ambassador.html>.

<sup>12</sup> Farah Samti, *Tunisian Civil Society Rallies Support for Bahraini Revolution*, TUNISIALIVE (Mar. 3, 2012), <http://www.tunisia-live.net/2012/03/03/tunisian-civil-society-rallies-support-for-bahraini-revolution/>.

with the very palpable public outrage over the violent crackdowns on peaceful protests throughout the region by Assad, Gaddafi, and Mubarak. It was not the familiar dynamic of the West impelling a Middle Eastern government to uphold human rights in the region; rather, it was Middle Eastern popular forces and civil society making the demand.

¶14 The third way the East-West geography of human rights has been altered has been through some of the challenges to Western foreign policy. Embedded in the Middle Eastern embrace of human rights remains a pointed critique of the West, particularly the United States. Many people in the Middle East see their current struggle as one to realize rights in the face of barriers presented by American foreign policy, namely alliances with some of the region's most repressive rulers for economic or perceived security gains. Thus, current sentiment encompasses an unequivocal rejection of accommodating repression and the denial of rights in the name of a country's foreign policy ends. A tweet from Maryam Al Khawaja, a young Bahraini activist and the daughter of prominent jailed activist Abdulhadi Al Khawaja, captures a widely-held and long-standing sentiment: "May we live to see days when human lives r worth more than interests."<sup>13</sup> Even as Egyptian, Yemeni, and Bahraini activists find that they have little choice but to call on the United States to intervene on the side of human rights as a "benevolent hegemon," they harbor a deeper aspiration to challenge the underlying power structures that allow the United States to play such a significant role in their destinies.

#### IV. MIDDLE EASTERN GOVERNMENTS' RELUCTANT FORAY INTO HUMAN RIGHTS POLITICS

¶15 By increasingly contending with the Middle East's human rights crisis, civil society and popular forces have forced Arab governments and the previously defunct Arab League to do the same. Almost immediately after the ousting of Mubarak in Egypt, the Arab League became the focus of attention from human rights activists. Captured in a *Guardian* article, the sentiment of a Libyan protester in front of the Arab League sheds considerable light on the public pressure felt by Arab governments, particularly in the early stages of the Arab Spring:

"25 January marked the beginning of the age of democracy and transparency, the age of Arabs withdrawing their consent to be humiliated and patronised, the age when we decided to create a future for ourselves," said Hakim Abdel Ali, a 32-year-old Libyan living in Egypt, and one of those demonstrating outside the building.

... "The men in there have to decide whose side they are on, this is their final chance," added Ali. "Either they speak out now and order Gaddafi to fall, or they make themselves an irrelevancy forever."<sup>14</sup>

¶16 The Arab League and its member governments clearly felt the pressure to demonstrate their "relevance." The Arab League moved to support a "No Fly Zone" over Libya in April 2011; its Secretary General pledged to pursue an investigation into Libyan human rights abuses; Qatar provided extensive support for Libya's opposition on humanitarian grounds; a flawed but unprecedented Arab League Human Rights Observer mission to Syria was created; and the Arab League took a leading role in promoting the cause of U.N. action on Syria. These moves

<sup>13</sup> Maryam Al Khawaja, TWITTER (Mar. 1, 2012, 3:08pm), <https://twitter.com/#!/maryamalkhawaja>.

<sup>14</sup> Shenker, *supra* note 9.

effectively broke an unspoken pact between autocratic leaders in the Arab world that they would not pose overt human rights challenges to each other since giving the human rights framework increased credence could be detrimental to them all. In the early months of the Syrian crackdown, even Turkey, which adhered to a democratic identity, avoided human rights conversations in order not to threaten the strong relations it was steadily developing with its neighbors.

¶17 Yet, as the violent Syrian Crackdown intensified, a flood of rebukes and condemnations of the Syrian regime's repression were voiced by the Arab League, the Gulf Cooperation Council (GCC), Turkey, Kuwait, Jordan, the Palestine Liberation Organization (PLO), and even Saudi Arabia and Bahrain. King Abdullah even recalled the Saudi Ambassador from Damascus, declaring that what is happening in Syria is "against values and ethics."<sup>15</sup> Clearly, this was not a dramatic change of heart since he had sent troops to crush Bahrain's protest movement. More likely, it was a highly calculated political step intended to: bolster domestic legitimacy by tapping into popular outrage, exploit the sectarian element of the conflict, and counter Iranian influence in an increasingly imaginable post-Assad Syria. Nonetheless, the Saudi King's intervention was significant. Ultimately, he was forced to respond to and validate a discourse that could sooner or later be used by his opponents against him.

¶18 Popular forces and civil society have used this recent leap into human rights politics to demand that governments practice what they preach and explain differential treatment of human rights violations in various contexts. Ever since the Arab League took its bold stance on Libya, Arab civil society has demanded that it take equally bold action on Bahrain and Syria. In April, a group of twelve human rights NGOs wrote a scathing letter accusing the Arab League of "double standards and selectivity" in its support for Syria's bid to join the U.N. Human Rights Council after having voted for Libya's expulsion from the same body.<sup>16</sup> Arab governments, who over the years have reaped the benefits of Western double-standards on human rights, now had to respond to the hypocrisy charge themselves. Not only did the Arab League drop its support for Syria taking a seat on the Human Rights Council, but the four Arab states with seats on the U.N. Human Rights Council condemned Syrian human rights violations and urged the Syrian government to cooperate with a U.N. Human Rights Council investigation of its abuses. Saudi Arabia called on Syria to "cease all forms of violations of human rights."<sup>17</sup> Kuwait, in textbook U.N. human rights language, affirmed Kuwait's commitment to the Universal Declaration of human rights, reminded Syria of its obligations under international human right treaties to uphold human rights norms, and concluded by quoting from part of the U.N. Charter affirming human rights.<sup>18</sup> This was a considerable departure from Arab delegates' sitting before the same body and making statements congratulating one another on their human rights "progress" in the face of "challenges," in the past.

¶19 The Arab Spring seems to have pushed many of the region's governments to engage with and affirm human rights norms. Governments can no longer simply proceed as if repression does

<sup>15</sup> *Saudi Arabia King Abdullah demands an end to violence in Saudi Arabia-Video*, THE GUARDIAN, Aug. 8 2011, available at <http://www.guardian.co.uk/world/video/2011/aug/08/saudi-arabia-king-abdullah-syria-video>.

<sup>16</sup> *The League of Arab States Should Not Be a Platform to Support the Crimes of the Syrian Regime Against its People*, CAIRO INSTITUTE FOR HUMAN RIGHTS STUDIES (Apr. 21, 2011), available at <http://www.cihrs.org/?p=1419&lang=en>.

<sup>17</sup> Ahmed Fahad Al Marek, *Saudi Arabia, 17th Special Session of the Human Rights Council on the "Situation of Human Rights in the Syrian Arab Republic,"* NEWS & MEDIA: UNITED NATIONS WEBCAST (Aug. 22, 2011), <https://www.unmultimedia.org/tv/webcast/2011/08/saudi-arabia-17th-special-session-human-rights-council.html>.

<sup>18</sup> *Kuwait, 17th Session, Human Rights Council*, UNITED NATIONS (Aug. 22, 2011), available at <http://www.unmultimedia.org/tv/webcast/2011/08/kuwait-17th-special-session-human-rights-council.html>.

not exist or treat charges of human rights violations as irrelevant or imperialist interventions. The Arab Spring has also resulted in unprecedented episodes of shaming. When Turkey finally put diplomatic pressure on the Assad government, it issued Damascus a “ten to fifteen day deadline” to institute reforms. Soon after, Assad initiated a brutal attack on Latakia using tanks and gunboats.<sup>19</sup> Syrian protestors held signs reading “Thank you, Erdogan. Two weeks is enough time to slaughter all the Syrian people.”<sup>20</sup> Turkey subsequently issued a “Final warning,” this time demanding an immediate end to the violence.<sup>21</sup>

¶20 In March 2012, the Bahrain delegation announced a proposal by the King to create a regional human rights tribunal and house it in Bahrain.<sup>22</sup> Clearly, the intent behind such an initiative is to continue co-opting human rights, as the hardliners in the ruling family attempted with its Bahrain Independent Commission of Inquiry. Yet, the move to create a regional human rights court, even one whose creators fully intend to co-opt, could have significant long-term consequences. Not only would the creation of the court aid in the development of an increasingly independent institutional culture, but the court could also be pushed to take increasingly meaningful stances by the demands of the Arab Spring.

¶21 The Middle East has entered a human rights field that has both new openings for activists and trappings for governments; the more they condemn repression, the more they shift the range of acceptable norms. When the violent crackdowns in Libya, Yemen, Bahrain, and Syria began, many feared that they would provide a dangerous alternative to the Tunisian and Egyptian models. But the severity of the Assad regime’s violence in the face of the Arab Spring’s aspirations seemed to have been too much for people to accept. Confronted with this shaming and with pressure to weigh in, Middle Eastern governments have now twice rebuked an authoritarian neighbor.

## V. CONCLUSION

¶22 Popular protests and civil society have moved human rights to the fore of contemporary Middle Eastern politics. Many of the region’s governments, despite their efforts to undermine human rights progress, have found that they have little choice but to follow along. There is now good reason to be optimistic about the long-term future of human rights in the Middle East. Foremost among them is a trend towards popular and civil society attempts to challenge both the appropriation of the human rights paradigm and the conflation of the human rights idea with Western treatment of human rights. The rise of Middle Eastern agency in the region’s human rights struggles against entrenched domestic and international power structures is a truly significant development. Scholars have repeatedly noted the sundry ways in which human rights have come to occupy a space “between power and principle.”<sup>23</sup> For decades, domestic and

<sup>19</sup> See Liz Sly, *Syrian Gunboats Join Fresh Attack Against Protestors*, WASHINGTON POST, Aug. 14, 2011, available at [http://www.washingtonpost.com/world/middle-east/syria-gunboats-join-fresh-attack-against-protesters/2011/08/14/gIQAX18cFJ\\_story.html](http://www.washingtonpost.com/world/middle-east/syria-gunboats-join-fresh-attack-against-protesters/2011/08/14/gIQAX18cFJ_story.html).

<sup>20</sup> *Id.*

<sup>21</sup> *Turkey Issues Final Warning to Syria*, THE SYDNEY MORNING HERALD, May 19, 2012, available at <http://media.smh.com.au/news/world-news/turkey-issues-final-warning-to-syria-2560397.html>.

<sup>22</sup> See Mahmood Rafique, *HM King’s Proposal to Setup Arab Human Rights Tribunal Wins Praise*, 24X7 NEWS BAHRAIN, Mar. 16, 2012, available at <http://www.twentyfoursevennews.com/bahrain-news/hm-kings-proposal-to-setup-arab-human-rights-tribunal-wins-praise/>.

<sup>23</sup> See, e.g., MOKHTARI, *supra* note 6; Nico Krisch, *International Law in Times of Hegemony: Unequal Power and the Shaping of the International Legal Order*, 16 EURO. J. INT’L L. 369 (2005); Oona A. Hathaway, *Between Power and Principle: An Integrated Theory of International Law*, 72 U. CHI. L. REV. 469 (2005).

international power dynamics cast a dark shadow over Middle Eastern interactions with the human rights paradigm. Now, for the first time in many years, there is considerable promise that the Middle East's lived experience of the human rights project is moving closer to its emancipatory promise.