

***The Globalisation of Universal Human Rights
and the Middle East***

**Mishana Hosseinioun
University College**

**Thesis submitted in partial fulfilment of the requirements for the DPhil in
International Relations in the Department of Politics and International
Relations at the University of Oxford
Trinity 2013**

(word count: 77,777)

To Professor Avi Shlaim and Dr. Louise Fawcett, for their unwavering support of my vision of a peaceful, progressive, and prosperous Middle East.

With gratitude to my exemplary Examiners, Professor Tariq Ramadan and Professor Fawaz Gerges.

~

In loving memory of Foulath Hadid.

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ABSTRACT

The goal of this study is to generate a more holistic picture of the diffusion and assimilation of universal human rights norms in diverse cultural and political settings such as the Middle East and North Africa (MENA). The overarching question to be investigated in this thesis is the relationship between the evolving international human rights regime and the emerging human rights normative and legal culture in the Middle East. This question will be investigated in detail with reference to regional human rights schemes such as the Arab Charter of Human Rights, as well as local human rights developments in three Middle Eastern states, Egypt, the United Arab Emirates, and the Islamic Republic of Iran. Having gauged the take-up of human rights norms on the ground at the local and regional levels, the thesis examines in full the extent of socialisation and internalisation of human rights norms across the Middle East region at large.

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CHAPTER 1: Introduction

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The introductory chapter sets the scene for the main research puzzle, which is to explore the specific nature of the relationship of the Middle East to the international human rights system as it stands today. This first chapter provides a general overview of the different methodologies currently available for the study of international regimes and human rights systems, gauging the applicability of these methods to the puzzle at hand, and subsequently expounding on the rationale and caveats of the Middle East case study.

CHAPTER 2: Cultural Relativism vs. Universalism – The Middle East-Human Rights Debate

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The second chapter supplements the first by providing a survey of the state of the scholarly debate on human rights and the Middle East—introducing the varying cultural-moral relativistic and universalistic accounts of human rights surrounding this debate. The purpose of this chapter is to situate the research puzzle against the backdrop of the current-day human rights discourse pertaining to the Middle East. It simultaneously seeks to address widely held misconceptions that stand in the way of our proper understanding of the Middle East’s place in the international human rights system.

CHAPTER 3: Myth vs. Reality – Middle Eastern Contributions to the International Human Rights Regime

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The third chapter examines the role played by Middle Eastern countries in the emergence of key international human rights instruments. Specifically, what is assessed is the nature of the participation of Arab and Muslim nations in the genesis of such documents as the International Bill of Human Rights and its Twin Covenants. Conflicting interpretations of the Middle East’s participation in this process are visited, in order to weigh the region’s overarching impact on the development of the contemporary international human rights regime. This chapter tests cultural relativistic claims about the incompatibility of cultural and religious values such as Islam with human rights. It also challenges the assumption of the distinctively ‘Western’ nature of the UN human rights system.

CHAPTER 4: Principle vs. Practice – Elements of a Regional Rights Regime in the Middle East

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Following historical background accounts of the participation of Middle Eastern actors in the formulation of the UN human rights system, the fourth chapter provides a critical analysis of several human rights schemes in the Middle East region, paying specific attention to the way in which these schemes either converge

or diverge in their normative structure with fundamental precepts of international human rights law. Further, this chapter hypothesises whether these human rights schemes constitute elements of a budding Middle Eastern human rights regime. This assessment of the Middle East as a region potentially engendering a human rights regime is based primarily on our growing, albeit rudimentary, understanding of 'international regimes' in general, and evaluated on the basis of its internal normative coherence as well as its external compatibility with international human rights law. Furthermore, if a 'human rights regime' can be identified on one level or another in the Middle East region, where along the regime axis might it fall: is it a 'declaratory regime,' a 'promotion regime' or an 'enforcement regime'?

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Chapters 5, 6, and 7 examine select human rights developments and progressive 'openings' in three Middle Eastern countries at different points in their historical struggles for freedom and liberalisation, namely, Egypt, the United Arab Emirates, and Iran. This section contains a survey of formal and informal rights instruments and institutions in the different countries, including an assessment of the role of civil society movements and other norm-entrepreneurs, where applicable. These studies provide a localised snapshot of the percolation and diffusion of international human rights norms across the Middle East-North Africa hemisphere, and uncover a visible pattern of progress amid regress in the region.

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The closing chapter evaluates the extent of human rights norm socialisation in the MENA region based on patterns that the Middle East case studies and previous chapters may have brought to light. In turn, it seeks to contribute to the larger international human rights debate by suggesting how and why universal human rights are demanding greater enforcement in local and regional settings. More generally, it helps further our understanding of the growing importance of human rights variables in domestic and international relations.

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Chapter 1: Introduction

1. Puzzle

The overarching question to be investigated in this thesis is the relationship between the emerging human rights schemes in the Middle East North Africa (MENA) region and the international human rights regime. This puzzle will be approached, firstly, by studying the Middle East's role in the drafting of the International Bill of Human Rights, and secondly in the development of its own human rights systems at home. This question will be investigated in detail with reference to three Middle Eastern states, namely, Egypt, the United Arab Emirates and Iran.

The task will be to analyse how these global and local normative developments, acting in concert, might point to the beginnings of a human rights regime in the Middle East. Finally, it will be assessed whether such a regional regime is comparable to those of the Americas and Europe, and compatible with the UN-based system of international human rights. All in all, this project seeks to provide greater insight into the question of human rights and freedoms in the Middle East and to the co-constitutive nature of international human rights norms.

The Middle East-North Africa will serve as a regional case study for ascertaining more generally the degree of normative convergence around universal principles of human rights. The area from North Africa to the Persian Gulf, although a geopolitically significant region, is just one among the many other regions of the world that could have been selected for this particular case study. However, such a focused study of the greater Middle East is necessary for the reason that rights and freedoms are seen to be particularly lacking therein. Thus, selecting the Middle East is particularly challenging but nonetheless important as it may help overcome misperceptions and stereotypes in thinking about human rights and the region.

Indeed, there is academic merit in studying regions and countries separately. However, in light of globalising trends, future projects should also attempt to study the evolution of international human rights norms more widely across all regions, from the Americas, Europe, Africa, the Middle East and Asia, to help elucidate, for instance, whether or not there is any movement towards an overlapping cross-regional consensus for the realisation of human rights and freedoms as envisioned within the 1948 Universal Declaration of Human Rights (UDHR).

Probing into this research question is timely for a variety of reasons, not least for the fact that the world order called for under Article 28 of the Universal Declaration of 1948 remains at large. Article 28 of the UDHR expressly states that, 'everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized.' The subtext of Article 28 is largely prescriptive in nature, making an appeal for a particular human rights centred order that 'ought' to be put in place; it is also functional in the sense that it actively seeks a route for its proper enforcement and realisation, presumably through supplementary treaty bodies and institutions.

The instruments of the United Nations, starting with the UN Charter and the International Bill of Human Rights, consisting of the Universal Declaration and its twin Covenants on Civil and Political Rights and on Economic, Social and Cultural rights, form the basic underpinnings of such a *universal* human rights system, also referred to as the international human rights regime.¹ Although the UDHR and its additional protocol on their own lack any legally binding enforcement mechanism, they have stood as a symbolic precedent for the further development of the international human rights regime.²

¹ Henry J. Steiner, Philip Alston, and Ryan Goodman, eds., *International Human Rights In Context*, 3rd ed. (Oxford: Oxford University Press, 2008), pp. 133-139.

² Chris Brown, 'Human Rights,' Chap. 29, p. 513, in John Baylis, Steve Smith, and Patricia Owens, eds., *The Globalization of World Politics: An introduction to international relations* (Oxford: Oxford University Press, 2008).

Thus far, regional legal systems such as the European Convention on Human Rights along with its accompanying European Court of Human Rights have stepped in to heed the UDHR mandate and to fill the perceived human rights enforcement gap. While comparable human rights schemes have also arisen in other regions around the globe—namely the Inter-American System, the African Charter on Human and Peoples' Rights, the Asian Human Rights People's Charter, and the Arab Charter on Human Rights—they have each taken on distinct forms and functions, some less and some more developed than the next.

Nonetheless, these regional mechanisms, collectively rooted as they are in the Universal Declaration tradition, demonstrate a possible move towards a more unified, albeit imperfect, international human rights regime. This supports a view that universal human rights are on the rise following the establishment of the international rights system.³ The actual extent of global human rights harmonisation and globalisation, however, remains to be studied. Thus, *regime analysis* can provide a helpful way forward, by estimating the existing level of normative convergence around human rights precepts within a given region such as the Middle East, as well as among human rights regimes internationally.

2. Regime Analysis: an amalgamated approach

According to Martin and Simmons, the early post-war literature on Institutionalism—the study of social and organisational orders and mechanisms in the international system—lacked a concise framework that could measure the degree of effectiveness of international organisations and other newly formed collective security arrangements such as the United Nations.⁴ Since the 1970s, the academic focus shifted towards the study of *international regimes*—that is 'rules, norms, principles, and procedures that focus expectations regarding international

³ Kirsten Sellars, *The Rise and Rise of Human Rights* (Sparkford: Sutton, 2002).

⁴ Lisa L. Martin, Beth A. Simmons, eds., 'Theories and Empirical Studies of International Institutions', *International Organization*, 52:4, (Autumn 1998), pp. 729-757.

behavior.⁵ This new preoccupation with the potential of global governance to regulate international issue areas from human rights to trade and security⁶ in the absence of a world government, and to ‘restrict and redefine state sovereignty,’ marks a turning point in our understanding of transnational movements.⁷ It is also what makes the study of the functioning of human rights regimes so opportune. Accordingly, this growing trend in IR scholarship provides a chance to ask more penetrating questions, such as *how* international institutions and organisations count in international relations, not just if they do.⁸ Studying the workings of *regional regimes*, and more specifically, human rights regimes, gives us a chance to study more closely such globalised and globalising phenomena.

The hypothesis put forward by Keck and Sikkink, for instance, serves as a helpful guide for understanding the processes by which regional human rights regimes are constituted, and more precisely, how they are redefining notions of sovereignty and changing the face of international relations more broadly. Keck and Sikkink’s central thesis holds that the key motivating force behind current human rights regimes and the widespread diffusion of human rights norms are *transnational advocacy networks*, clusters of powerful non-state actors that have dramatically flourished due in large part to the advent of modern communication channels.⁹ This perspective, which privileges the role of non-state players, complicates Hedley Bull’s conception of International Society, which is when ‘*a group of states, conscious of certain common interests and common values, form a society in the sense that they*

⁵ Ibid. p. 737.

⁶ Mark W. Zacher, ‘Uniting Nations: Global Regimes and the United Nations System,’ Chap. 3, pp. 47-66, in Raimo Väyrynen, ed., *Globalization and Global Governance* (Oxford: Rowman & Littlefield Publishers, 1999).

⁷ David P. Forsythe, *Human Rights in International Relations* (Cambridge: Cambridge University Press, 2008), p. 58.

⁸ Martin and Simmons (1998) referenced in Emilie M Hafner-Burton, Jana von Stein, and Erik Gartzke, ‘International Organizations Count,’ *Journal of Conflict Resolution*, 52:2, (April 2008), p. 176.

⁹ Ibid.

conceive themselves bound by a common set of rules in their relations with one another, and share in the workings of common institutions.’¹⁰

Unlike Bull’s state-centred approach, however, Keck and Sikkink suggest that transnational networks consisting of individuals and their respective organisations, too, play a major role in shaping the international normative order. Such a view yields an equally viable framework for understanding the evolution of regional human rights regimes. Barry Buzan’s concept of a ‘World Society’ also offers a different spin on the classical English School concept of International Society. Such a conception of international relations takes into account ‘either or both of the society (*Gesellschaft*) or community (*Gemeinschaft*) aspects of the non-state and individual levels of world politics.’¹¹ Arguably, any study of regimes, should take these alternative perspectives into consideration, giving equal attention to the roles played by state and non-state actors alike, when applicable.

Additional criteria to consider when dissecting the mechanics of regional human rights regimes are its institutional components—that is the system of rules and norms and their modes of implementation. They consist of the actual conventions or charters and the formal and informal instruments that uphold them. The basic contents or ‘essence’ of regional human rights regimes, embedded within the wording of human rights charters, for instance, provide a window into the general nature, scope and jurisdiction of regional human rights instruments. Within the specific articles of such charters and conventions, a further distinction can be made between positive and negative rights as well as between civil and political or ‘first generation’ rights, and social and economic rights also known as ‘second generation’

¹⁰ Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (Basingstoke: Palgrave Macmillan, 1995), p. 13.

¹¹ Barry Buzan, *From International to World Society?: English School Theory and the Social Structure of Globalization* (Cambridge: Cambridge University Press, 2004), p. 63.

rights, and even a newer category which has been referred to as 'third generation' rights.¹²

While admittedly these blanket categories remain essentially contested concepts within international legal scholarship they nonetheless offer a common set of coordinates for the study of regional human rights systems such as those of the Arab and Islam World. Yet, as it stands, they are not the only tools available to us for the purpose of this research. For instance, other means of measurement might include tracking the *enforceability* of given human rights charters and declarations in question, including their actual implementation by regional and domestic actors.

According to Donnelly, regimes consist of 'enforcement, implementation, and promotional activities,' which entails monitoring as well as policy coordination procedures.¹³ These decision-making mechanisms might take the form of formal government-sanctioned regional arrangements such as those enumerated within the Arab Charter on Human Rights drafted by the League of Arab States. Likewise, as Keck and Sikkink suggest, we can highlight the informal decision-making roles played by transnational advocacy networks, non-governmental organisations and other pressure groups. More recently, the Arab Revolutions of 2011, which will be looked at more closely, as well as the other such groundswell movements in the region's past and present, can be studied for their direct impact on government policies, especially those relating to rights and freedoms.

The question of interests and motives can also be best addressed once there is a more definitive understanding of both the players and the games involved in shaping and shifting the regional human rights regimes. The latter criterion, however, is more difficult to decipher than the others, given the subjective nature of interests and intentions. For that reason, greater priority will be given to examining

¹² Martin Dixon, *Textbook on International Law*, 6th ed. (Oxford: Oxford University Press, 2007), Chap. 12, pp. 345-46. See also, Jack Donnelly, *Universal Human Rights: In Theory and Practice* (Ithaca, NY: Cornell University Press, 2003), pp. 27-31.

¹³ Donnelly (2003), p. 127.

those tangible and factually verifiable regime components, stated above, that do not risk biasing the research. Once again, this includes a study of the most elaborate human rights schemes discoverable within a given region.

There are also numerous tools at our disposal for measuring the soundness of regional human rights regimes. It is helpful to see what methods have already been used in the study of international institutions. The rationalist-functionalist agenda popularised by Keohane and endorsed by Martin and Simmons is particularly suited for the study of such regimes. It stands in contrast to a more historical or sociological approach exemplified by the joint work of Keck and Sikkink. The first standard measure for regional human rights regimes is their level of adequate and legitimate means for protecting the human rights of individuals in their given region. It should be noted that this also corresponds to the standard liberal social-contractarian measure of a state's legitimacy within international society.¹⁴

Thus, gauging the socialisation of the Middle East-North Africa's human rights instruments, such as the Arab Human Rights Charter, would seem to be the most empirically sound method for testing the strength and coherence of the human rights regime. What constitutes coherence, in this case, would first be a level of compatibility with international human rights standards as codified by the International Bill of Human Rights.¹⁵ Secondly, it would be the practical internalisation of these rights through legal or political mechanisms, without undue derogation away from the letter of the law.

When proceeding to evaluate the possible degree of convergence towards a unified Middle Eastern human rights framework, varying levels of analysis must be taken into consideration. To understand the tensions running between domestic and regional systems, for one, is to get at the root causes and effects of regime

¹⁴ Ibid., p. 35.

¹⁵ Consisting of the Universal Declaration of Human Rights and its Twin Covenants and additional protocol.

consolidation. The aforementioned theorists each posit hypothetical explanations for harmonisation within international relations. For instance, Lisa Martin and Beth Simmons submit that the failure of domestic political structures creates an incentive to turn to international institutions.¹⁶ Based on this rationalist-functionalist view, we can potentially expect convergence towards one norm when doing so produces a superior outcome.

In some cases, this form of convergence on the part of states might lead to a boost in national welfare, albeit at the equivalent price of diminished sovereignty. This would signify that domestic concessions are sometimes willingly made in exchange for the goods that come with certain advantageous collective security arrangements. In other words, when states reap benefits that they would not normally receive acting on their own, the allure of regional or international institutions will be much greater.

From this we can speculate that domestic entities might seek to join forces with regional entities as a way of optimising key interests and satisfying unmet needs. For instance, such regional bodies as the League of Arab States and the Gulf Cooperation Council (GCC) appear to represent preliminary attempts at regional security-community building among Middle Eastern entities.¹⁷ By contrast, however, it remains to be seen whether regional coordination for non-security related purposes, such as for the regulation of the human rights question, also exists; and whether there may even be spillover from one security arena to another.¹⁸

¹⁶ Martin and Simmons (2008), pp. 747-49.

¹⁷ See central thesis in Emanuel Adler, and Michael N. Barnett, eds., *Security Communities* (Cambridge: Cambridge University Press, 1998). For detailed account of regional cooperation structures in the Middle East see also, Louise Fawcett, 'Alliances, Cooperation and Regionalism in the Middle East,' Chap. 9, in Louise Fawcett, ed., *International Relations of the Middle East* (Oxford: Oxford University Press, 2009).

¹⁸ See Chap. 4.

To that end, it is necessary to inquire into why we might expect there to be normative convergence on human rights principles, in the first place. Three possible explanations emerge from international relations scholarship: the cosmopolitan, the normative, and the liberal-institutionalist. Those of the Cosmopolitanist school of thought such as Jack Donnelly and others, including Thomas Pogge and Fernando Téson, argue that the sources of human rights are universal, constituting something akin to a 'natural law' that all humans are ultimately bound to realise. According to normative theorists, such as Margaret E. Keck and Kathryn Sikkink, convergence is associated with the universalising processes of global politics that are responsible for the diffusion of norms. The third school consists of neo-liberal institutionalist theorists, like Lisa Martin, Beth Simmons and Robert Keohane. Steeped in a rationalist-functionalist scholarly tradition, they attribute convergence to the role played by international institutions.

Martin and Simmons point to the fact of higher divergence patterns on issues of human rights. They explain that 'although human rights are a matter of concern around the globe, human-rights practices usually do not involve the kinds of externalities and incentives for strategic interaction that exist in issue areas such as the environment or monetary policy.'¹⁹ By 'externalities and incentives' they suggest that material gains are a primary driver in 'strategic interaction' among states. As such, states may not be as driven to coordinate practices where the benefits cannot be so easily quantified, as in the area of human rights.

Nonetheless, more recently, as the situation of Turkey and the European Union (EU) would suggest, it is not entirely the case that human rights cannot form an effective incentive structure for strategic cooperation. The case of Turkey would indicate that demonstrating a level of respect for universal human rights norms could potentially translate into practical gains for a Muslim state with aspirations to accede to the EU. Hence, state rationale for harmonising rights practices may be initially driven by,

¹⁹ Martin and Simmons (1998), p. 756.

but not limited to the desire for socio-economic power and prestige within international society. Even then, the end result of such coordination is greater international harmonisation and human and material gain, though the outcome of the Turkish case remains unclear.²⁰

At the same time, Keck and Sikkink remind us of the importance of taking note of the ideational factors that result in the diffusion of norms across national, regional and even international boundaries and that, too, could help explain convergence towards a unified human rights regime. Donnelly specifically draws our attention to the universal qualities inherent within human rights that could also help account for patterns of convergence, if any, within the human rights lexicon and supporting instruments of a regional regime such as in the Middle East.

Risse, Ropp and Sikkink's 'Spiral Model' describes the combination of prudential and principled factors that accompany the process of socialisation of human rights norms within domestic settings.²¹ Such a model demonstrates how states may be motivated to adopt human rights principles for purely pragmatic purposes, but come to adhere to them out of accepted normative convention over time. Thus, as the discussed IR methods suggest, the study of regional human rights regimes should aim to factor in normative and rationalist dynamics alike. All in all, studying the state of any human rights regime necessitates an amalgamated approach—one that is ideally cognisant of how systemic as well as non-systemic variables come into play to create a more or less unified regional human rights framework.

3. Applying Regime Analysis to the Case of the Middle East: Puzzle Rationale and Caveats

²⁰ See Conclusion.

²¹ Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, eds., *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 2007).

Whether for principled or instrumental reasons, or both, issues of human rights today feature more prominently on political agendas and within public consciousness than ever before. This phenomenon could potentially explain the rise of regional human rights regimes internationally.²² However, rather than launch into an existential inquiry over the universality of human rights per se—a task that would be enormously ambitious—the objective will be to investigate the empirical facts of regional developments on the ground. The Middle East North Africa (MENA) region will be the subject of this inquiry, with a view to understanding how the Middle Eastern case fits within the larger context of the international human rights system.

This research project seeks to investigate developments within the MENA region, in particular, which might reflect progress towards a regional consensus on human rights, internally, and a level of harmony with the international human rights regime, externally. Particularistic applications of universal principles, exemplified by specialised charters, such as the Arab Human Rights Charter or the Universal Islamic Declaration of Human Rights, in the Middle East, warrant being studied for their level of internal coherence and compatibility with the international human rights system as a whole.²³ Until now, only the regional human rights regimes in the Americas, Africa and Europe have been studied in this way. However, there is reason to believe that the Middle East region, too, is a candidate for regime analysis.

Jack Donnelly has defined an ‘international regime’ as ‘norms and decision-making procedures accepted by international actors to regulate an issue area.’²⁴ Building on this we will define a regional human rights regime as ‘norms and decision-making

²² See central thesis in Margaret E. Keck, and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY: Cornell University Press, 1998), p. 79.

²³ Ann Elizabeth Mayer, *Islam and Human Rights: Tradition and Politics* (Boulder, Co.: Westview Press, 2007), p. 4.

²⁴ Jack Donnelly, ‘International Human Rights: A Regime Analysis’, *International Organization*, Vol. 40:3 (Summer 1986), p. 602. See also p. 637: According to Donnelly, that only enforcement regimes (as opposed to declaratory or promotion regimes which are exemplified by most international human rights regimes) are regional, ‘suggests the importance of cultural community.’

procedures accepted by regional actors to regulate the issue of human rights.’ Therefore, what will be evaluated for the purpose of this regional case study is the set of identifiable elements of a regional ‘human rights regime’ in the Middle East. Specific attention will be paid to existing human rights instruments, such as human rights charters and declarations—the most recent and arguably the most elaborate human rights scheme in the region being the Arab Charter on Human Rights—as well as the formal and informal schemes surrounding them.

If we are looking for evidence that would point to the existence of any budding Middle Eastern human rights regime—a task that many would believe would be overambitious and ultimately disappointing—we must investigate whether or not there appears to be a regional consensus building around a unified human rights framework of the kind mandated by the UDHR. This proposed investigation of the state of possible convergence of human rights norms and practices within the Middle East, will supplement an initial examination of the Middle East’s participation in the emergence of the international human rights regime, with an examination of potential elements of a ‘human rights regime’ in the Middle East.

Furthermore, examining the Middle East’s historical role in the development of the emerging international human rights system, will serve as a prelude to studying the elements of the region’s own human rights systems domestically. Understanding the global diffusion pattern of human rights norms after World War II, will in turn, help bring into sharper relief the ‘norms and decision-making procedures’ that underpin an imagined Middle Eastern ‘human rights regime.’

The purpose of this undertaking will be to shed light on a human rights regime that is emerging in the Middle East, searching for evidence of regional normative convergence as well as international convergence. The task will be to see, for instance, whether the human rights schemes arrived at by the Middle East converge in their contents and language with other international human rights instruments

and how this might be an indicator of what Donnelly calls *international normative universality*.²⁵

Beyond the content of legal texts alone, lies their context or 'legislative history,' which places the instruments in question within a meaningful geo-temporal framework for better possibility of analysis. It is also a question of examining whether the nascent Middle Eastern human rights system has emerged through similar globalising processes as those highlighted by Keck and Sikkink's constructivist normative theory.

Lastly, it is a matter of evaluating whether the Middle Eastern human rights system is propped up by any collective institutions, such as conventions, charters, courts and commissions, in line with a more functionalist account of convergence behaviour. Not only will the findings serve to lend more empirical weight to the underdeveloped scholarship on the international human rights system and the Middle East, it will hopefully provide a fresh lens for the study of norm divergence and globalisation phenomena more generally.²⁶ Such an exercise would benefit future research aimed at tracking legal and normative convergence patterns across regimes. It paves the way for greater cross-comparison with other human rights schemes such as the Inter-American and European Conventions on Human Rights and the African (Banjul) Charter on Human and Peoples' Rights, looking to estimate the current extent of harmonisation or dissonance among them.

To supplement a more general analysis of such human rights schemes as the Arab Charter, this study will seek to undertake a more elaborate study of regional developments as they relate to the socialisation and institutionalisation of human rights norms in the Middle East. For example, it will provide an analysis of the role of regional norm entrepreneurs such as civil society movements and transnational

²⁵ Donnelly (2003), p. 1.

²⁶ See Brown in Baylis, Smith and Owens, eds. (2008), p. 508, which explores the link between globalisation and the international human rights movement.

advocacy networks and their impact on the proliferation of human rights norms in the region.²⁷

Dissecting the different pieces of Middle Eastern human rights schemes—from their origins and legislative histories, to the specific language, in the case of charters and conventions, to their institutional makeup—will provide a vital starting point for considering whether or not there is a unified regional framework for human rights, and to the extent that there is – why this might be the case. In short, the methodology will be to identify the distinct components of the existing regional human rights instruments, including the forces that shape and constrain them.

While the Arab Charter provides evidence of a ‘declaratory human rights regime’ in the Middle East, a systematic analysis of domestic human rights legislation, institutions and popular movements in three sample country studies—Egypt, the United Arab Emirates and the Islamic Republic of Iran—will serve to provide a veritable time-lapsed snapshot of the evolution of human rights systems in the region. This will be done by looking specifically at the take-up of human rights norms within domestic settings and local legislatures, in order to determine how successful Middle Eastern states and societies have been in adopting human rights principles and implementing them in practice.

Relying on *standardised, general* markers of a human rights-based order in the Middle East, such as constitutional-makeup, as well as formal and informal human rights institutions and legislation, will then allow for a *controlled comparison* across the different sample country cases from which generalisations can be made.²⁸ The United Nations Arab Human Development Reports are particularly reliable indices of the performance of Arab countries in this regard. In turn, the patterns revealed by

²⁷ For the role of transnational advocacy networks see Keck and Sikkink (1998).

²⁸ Alexander L. George, ‘Case Studies and Theory Development: The Method of Structured, Focused Comparison,’ p. 60 in Paul Gordon Lauren, ed., *Diplomacy: New Approaches in History, Theory, and Policy* (London: Macmillan Publishers, 1979), pp. 60-63.

this study will subsequently be subjected to scholarly interpretation to help account for the normative shift occurring in the Middle East with respect to human rights.

At first glance, the Middle East may appear a curious choice of study as far as human rights regimes are concerned. The region spans roughly from north-eastern Africa to south-western Asia, including all Arab countries with the addition of Turkey, Iran and Israel, and in some cases Afghanistan and Pakistan.²⁹ While the exact parameters of the Middle East are debatable—with certain state borders, such as those of Israel and Palestine still remaining contested—the common cultural or religious threads running through the region arguably make for a more or less coherent regional structure.³⁰ The common geopolitical fate that binds the countries of the Middle East-North Africa and Persian Gulf also makes it such that they must be examined within their regional and international context. Thus, a comprehensive study of the normative fabric, which permeates the diverse Middle East landscape, would seem to be warranted.

Admittedly, the Middle East is not a monolithic structure; neither is Islam—the dominant religion and major point of cultural reference in the Middle East.³¹ Looking for signs of regional normative convergence, therefore, does not in any way seek to detract from the fact of diversity and pluralism across cultural, religious, and national borders. The goal is not to assume a singular, *definitive* Islamic or Middle Eastern stance on human rights. No such fixed positions or interests are to be found in an ever-shifting global atmosphere, as constructivists would insist. In fact, detecting any existing levels of overarching supranational and religious consensus with respect to human rights would merely go to highlight the universal appeal of human rights norms in a region as diverse as the Middle East, and among members of a faith as diverse as Islam.

²⁹ Louise Fawcett, ed. (2009), Introduction, p. 3.

³⁰ See Fawaz A. Gerges, *The Superpowers and the Middle East: Regional and International Politics, 1955-1967* (Boulder, Co.: Westview Press, 1994).

³¹ Mayer (2007), p. xi.

However, the failure to track any significant human rights consensus, would also not give sufficient reason to conclude that the Middle East is inherently inhospitable to human rights norms or that Arab or Islamic values are somehow incompatible with universal human rights principles. What is more, any qualms about the potentially speculative nature of this subject are understandable given the relative newness and strangeness to some of such a concept as a human rights regime in the Middle East. Yet by Stephen Krasner's Regime Theory standards, it might be argued that a *critical mass* has been reached with regard to the development of human rights norms in the Middle East.³² Such is exemplified by the burgeoning of human rights-related schemes and movements in the region, including a changing discourse of rights, most markedly post-2011. These and other significant developments merit the kind of rigorous empirical and theoretical study afforded to the other, predominately Western regions.³³

The fact that the Middle East has long been the locus of political contention arguably complicates the task of viewing the region objectively. Of course, no country or region can be analysed outside its geopolitical circumstances. Yet this should not act as a deterrent to those seeking to conduct scholarly research on the development of human rights norms regionally and internationally. For even the various subjectivities and biases that permeate this debate add up to form a composite image approximating some thing of an observable reality. Navigating this bumpy terrain is indispensable to the task of mapping the trajectory of human rights within the Middle East.

This topic is also of utmost importance in that it seeks to address what it perceives as gaps in the otherwise abundant body of existing scholarly work on the Middle East, as well as to add to the underdeveloped study of emerging international human rights instruments. Clearly, much has been written about the Middle East

³² Stephen D. Krasner, ed., *International Regimes* (Ithaca, NY: Cornell University Press, 1983).

³³ See discussion of human rights movements in Augustus R. Norton, ed., *Civil Society in the Middle East* (Leiden: Brill, 1996).

region in general and about the bottomless debate on the compatibility of Islamic ideologies and human rights as well as issues of constitutionalism and democratisation, generally, of which human rights is deemed to be part.³⁴ Moreover, the existing scholarship on this topic deals primarily with the perceived human rights deficits in the Middle East. Considerably less attention is paid to the study of what one might hypothetically describe as a fledgling human rights culture in a region otherwise known for its widespread instability and freedom deficit.

This realisation alone would seem to provide sufficient grounds for proceeding with a specified research focus that seeks to determine if and how human rights have been socialised and institutionalised by the Middle East. A more detailed literature survey is needed in order to properly situate the puzzle within the current international relations framework. As such, the following chapter will consist of a critical analysis of the scholarly and the public debate on human rights and the Middle East, with an eye to transcending it altogether and arriving at a more nuanced narrative.

Subsequent chapters will look closely at the historical role of Middle Eastern entities in the development of the UN-based international human rights system and in the institutionalisation of human rights norms and practices in their own region. The aim will be to track the region's actual patterns of convergence or divergence on human rights norms in international, regional, and domestic settings. The sample cases of Egypt, the United Arab Emirates and Iran will provide a window into local rights dynamics. In turn they will reveal what, if any, common trends exist across the region. Ultimately, the question to be asked is whether the Middle East is not in fact progressing towards a regional human rights regime, which in some way works to complement the international human rights system, and which could potentially allow the region to overcome the human development and other challenges it continues to face in the 21st century.

³⁴ e.g. Katerina Dalacoura, *Islam, Liberalism and Human Rights* (London: I.B. Tauris, 2007).

Chapter 2: Universalism vs. Cultural Relativism—The Middle East-Human Rights Debate

1. Framing the Debate

Approaching the human rights question from a Middle East framework reveals a picture of the region that appears to be largely at odds with international human rights standards. As it stands, the region's human rights record is far from ideal and socio-economic development has been retarded by the rise of autocratic and unrepresentative regimes in the Middle East following the collapse of the Ottoman Empire. According to the four-part series of United Nations Arab Human Development reports from 2002-2005—a joint venture of the United Nations Development Program and the Arab Fund for Economic and Social Development—the situation in the Arab world would appear to fall below certain benchmarks set by United Nations treaty bodies. Additionally, 'violations of individual and collective human rights resulting from occupation and armed domestic conflicts worsened during the period under review,' with 'public freedoms in the region, especially those of opinion and expression, coming under further pressure.'¹

The first of these reports identifies 'three critical development "deficits"—in the acquisition of knowledge, in political freedoms, and in women's rights—that have held back human development throughout the Arab region despite considerable natural wealth and great potential for economic and social progress. The second and third reports focused on the deficits in knowledge and freedom, respectively.'² The final report in the series hypothesises that the realisation of an 'Arab Renaissance' hinges upon the proper empowerment of women, including greater access to education and healthcare.³

¹ UNDP, United Nations Development Programme, *Arab Human Development Report* (2005), p. 25.

² *Ibid.*, p. 3. Also see 2002 report, p. 43 for list of deficits.

³ *Ibid.*

While only passing mention is made of the region's more positive achievements in human development, such as in the area of women's rights and political participation, the UNDP reports primarily set out to address what they perceive as the shortcomings inherent within the Arab institutional structure. Given the stated aim of the development reports to focus on the deficits of Arab countries with respect to human rights and freedoms, it is no wonder that the shortcomings of the Middle East are made to dominate our overall impression of the region.

Although the UNDP reports have managed to bring important issue areas to the fore, while generating a list of informed suggestions for human-rights-based reform in the Arab world, one could mistakenly be left with the impression that human rights violations are somehow endemic to the Middle East region. In light of these facts, attempts to track the more constructive contributions of the region to the international human rights system, therefore, might seem out of place. Nonetheless, more comprehensive knowledge of the Middle East's past and present role in the development of the international human rights system can potentially challenge cultural relativist myths as to the fundamental incompatibility of universal human rights norms with the cultural and religious principles of the Middle East.

Yet, as the UNDP reports demonstrate, the fixation on documenting the human rights violations of non-Western societies, such as the Middle East, as opposed to those of Western entities, reflects the imbalanced application of the international human rights rubric. For instance, Talal Asad, in his anthropological enquiry on human rights, has asked why, 'in the torrent of reporting on human rights in recent years far more attention is given to human rights violations in the non-Western world than in Euro-America'?⁴ He attributes this imbalance, first and foremost, to the 'hypocrisy of Western powers.' Beyond the existence of a dual standard in evaluating human rights internationally, however, it appears that the securitisation of the Middle East question further complicates the debate on human rights and the

⁴ Talal Asad, 'What Do Human Rights Do? An Anthropological Enquiry,' *Theory & Event*, Vol. 4:4 (2000).

Middle East. Significantly, however, the fact that the authors of the Arab Human Development reports are all of Arab heritage, suggests that they are capable of approaching the study of their region from a more authoritative position than non-Arab entities reporting on the same subject from a foreign perspective.

As Talal Asad alludes, the supremacy battle in the human rights stakes internationally has also reached an all-time high, with human rights and freedom being hailed as the exclusive claim and contribution of the West. 'Human rights' and 'the Middle East' both seem to be dealt with and conceptualised as privatised entities. Indeed, there is a monopoly over their definition and their regulation as concepts and as 'goods'. Certainly, the debate surrounding them has been heavily securitised, if not highly polarised.⁵ For one, the Middle East is traditionally viewed through the prism of great power and superpower influence in the region, most notably because it is among the most penetrated regions in the world.⁶ The term, 'Middle East,' in itself, is indicative of the primacy of the Western-Eurocentric worldview to today's accepted understanding of the geography and politics of the region.

The claim is made by a legion of Orientalists in the West and particularists in the East, that human rights are exclusively Western, and therefore invalid elsewhere. Halliday describes this tendency as deriving from the 'fallacy of origin' or the false assumption that the authenticity or applicability of given principles is somehow bound up with their source of origin.⁷ Such is the common logic, or mislogic, used to question the applicability of human rights values to settings other than those from

⁵ Michael Williams, 'Words, Images, Enemies: Securitization and International Politics,' *International Studies Quarterly*, Vol. 47 (2003).

⁶ Reference to Carl L. Brown, *International Politics and the Middle East: Old Rules, Dangerous Games* (London: I.B. Tauris, 1984), pp. 3-5, 16-19. See also Michael C. Hudson, 'The United States in the Middle East' in Louise Fawcett, ed., *International Relations of the Middle East* (2009).

⁷ Fred Halliday, 'Relativism and Universalism in Human Rights: The Case of the Islamic Middle East,' Chap. 5, p. 152., in *Islam and the Myth of Confrontation: Religion and Politics in the Middle East* (London: I.B. Tauris, 2003).

which they presumably originated, and to discredit non-Western contributions to the development of human rights norms internationally.

However, the ‘securitisation’ of the Middle East-human rights debate, that is to say the removal of the subject from the realm of genuine public deliberation, only highlights the greater need for principled and judicious deliberation on the topic in academic settings and elsewhere.⁸ The fact that the Middle East is the current-day battleground for Western geopolitical interests should not preclude the region from being studied on its own merits. Likewise, the fact that human rights are generally considered to be Western concepts should not preclude Eastern regions from being studied for their legitimate contributions to the evolution of human rights norms, or as a basis to challenge that assumption.

While making generalisations can be useful for the sake of theoretical clarity and simplicity, it occasionally works to obfuscate significant details from the greater picture. Such important details include, for instance, the notable participation of Arab and Muslim countries in the formulation of international and regional human rights schemes, which will be evaluated in subsequent chapters.⁹ Furthermore, Edward Saïd and other revisionists of Orientalism warn against making essentialising differences between ‘East’ and ‘West,’ which could be used to bolster the thesis of Western cultural superiority or that of a ‘clash of civilisations,’ at the expense of the Eastern ‘Other’.

Opting for of a more humanist approach—without directly tackling the question of human rights per se—Saïd, a Palestinian-Christian academic writing from exile, was often the first to point out the shortcomings of the Arab political process, as he did at the time of the Oslo Peace Accords.¹⁰ In his writings, Edward Saïd, sought to demystify generalisations frequently made about the Middle East, all the while

⁸ Williams (2003), p. 515.

⁹ Ann Elizabeth Mayer, *Islam and Human Rights: Tradition and Politics* (2007), p. xiii.

¹⁰ See Edward Saïd, *Peace and its Discontents: Gaza-Jericho, 1993-1995* (London: Vintage Books, 1995).

remaining a sensitive yet unapologetically self-critical voice for the Arabs. In an attempt to preserve the humanity of his subjects, he recorded both the triumphs *and* the failures of his people, highlighting their positive as well as their less shining contributions to the international system, all without resorting to obfuscation or embellishment.

Nonetheless, human rights continue to be viewed from distinctly particularist and Orientalist perspectives. The contemporary Middle East-human rights debate, in many ways serves to perpetuate the widely held image of an exotic, if not barbaric 'East', and the superiority of a civilised 'West,' which Saïd has sought to dereify.¹¹ There are two main reasons for such stark characterisations. The first is that the realities of the Middle East are increasingly filtered through the lens of Western foreign policy in the region; the second is the lack of a reasoned middle ground within the ensuing Middle East human rights debate.

According to the 2005 Arab Human Development Report, 'with their arguments derailed by intervention from abroad, and stifled by reactionary forces at home, Arab moderates are increasingly embattled, frustrated and angry,' which could possibly account for the consequent radicalisation of Middle Eastern discourse.¹² As a result of the difficulties in sustaining a moderate line of discourse within the Middle East, the debate on human rights has taken to being caricaturised in the world media for greater ease of mass consumption, as a Manichean, black and white struggle of East v. West.

The Eastern voice is split among an ultra-conservative Islamic elite, on one hand, which claims that human rights have no place in their religion, and Middle Eastern entities, on the other hand, that shun human rights in the name of fighting Western cultural imperialism. Often no distinction is drawn between the two forms of reasoning, and no critical evaluation is made into their respective validity. Whether

¹¹ See central thesis in Edward W. Saïd, *Orientalism* (New York: Vintage Books, 2003).

¹² UNDP, United Nations Development Programme, *Arab Human Development Report* (2005), p. 5.

this polarisation is, in itself, merely a product of western influence, is debatable, especially when considering the extent of *internal* division among Middle Eastern communities on such issues as human rights and freedoms.

The Islamic community in the Middle East, for instance, is internally divided on rights issues and modes of interpreting the Quran and Sunna (Islamic Traditions). Such points of contention, however, reveal the point at which religion ends and politics begins. Given that the Quran is presumed to be the final word of God, the problem lies with the terms of interpretation of the Holy text. Yet, according to Irshad Manji in her book, *The Trouble With Islam Today: A Muslim's Call for Reform in Her Faith*, Islam contains the requisite inbuilt mechanism for reform called, 'ijtihad' or *new thinking* and independent reasoning. *Ijtihad* confers the collective right of religious interpretation upon all believers and allows 'every Muslim, female or male, straight or gay, old or young, to update his or her religion in view of contemporary circumstances.'¹³ She goes on to explain how this right has been arbitrarily made into the exclusive privilege of a select group of *muftis* or Islamic experts, all of which, according to her, accounts for the lack of genuine pluralism within Islam today.

However, Fred Halliday has specifically identified five different discourses within Islam about human rights, which would suggest that the Islam is not without an opinion about human rights.¹⁴ All the same, the fragmentation of this debate, while indicating that religious pluralism, or 'a 'free market' of religious thought' does indeed exist within Islam, also reintroduces the predicament of moral and cultural relativism into the fold, which holds that the application of rights is relative to cultural and Islamic interpretation.¹⁵ The first of these discourses, that of *assimilation* and *appropriation* do not contest the compatibility and human rights

¹³ Irshad Manji, *The Trouble With Islam Today: A Muslim's Call for Reform in Her Faith* (New York, NY: 2003, St. Martin's Press), p. 50.

¹⁴ Halliday (2003), pp. 134-139.

¹⁵ John L. Esposito and Dalia Mogahed, *Who Speaks for Islam? What a Billion Muslims Really Think*, (New York, NY: Gallup Press, 2008), p. 55.

and Islam; the latter discourse going as far as to suggest that human rights must be derivative of Quranic revelation. Meanwhile, the next three lines of discourse, of *particularism*, *confrontation*, and finally *incompatibility*, are increasingly rejectionist and adamantly opposed to any non-Islamic, secular codes of conduct, and rely exclusively on divine principles of the *shari'a*.

The views of Islamic scholars such as Sultanhussein Tabandeh and Abdu'l A'la Mawdudi on human rights can be cited for their particularist positions.¹⁶ For instance, Tabandeh sees the fundamental incompatibility of providing equal rights for men and women under international human rights law; whereas Mawdudi, who otherwise shares Tabandeh's views on limited gender equality under the Islamic *shari'a*, feels that women should have an equal right to divorce.¹⁷ According to Katerina Dalacoura, 'in contrasting Mawdudi with Tabandeh, a traditionalist Islamic thinker [...] the latter is quite unequivocal about the irreconcilable points between Islamic law and the Universal Declaration of Human Rights.'¹⁸

Meanwhile, the Western voice is split between pundits and academics that view Islam as incompatible with Western liberalism, and those who advocate the exportation of Western-brand democracy to 'that troubled part of the globe.'¹⁹ Some attempts are even being made to legislate on matters of Islam in the West, such as France's controversial efforts to ban the Muslim headscarf from state schools.²⁰ For instance, the main characterisation of the Muslim world in the Western media 'tends to centre around religious extremism and global terrorism.'²¹

¹⁶ See Sultanhussein Tabandeh, *A Muslim Commentary on the Universal Declaration of Human Rights* (1966); and Abdu'l A'la Mawdudi, *Human Rights in Islam* (1977).

¹⁷ For synthesis of Tabandeh and Mawdudi's writings on human rights see Mayer (2007), pp 119-122.

¹⁸ Katerina Dalacoura, *Islam, Liberalism and Human Rights* (2007).

¹⁹ See Fisk's reference to 'Bush-speak' with regard to the Middle East region in Robert Fisk, *The Great War for Civilization: The Conquest of the Middle East* (2006), p. 469.

²⁰ Herman Salton, *Veiled Threats? Islam, headscarves and religious freedom in America and France* (ResearchSpace@Auckland, 2007).

²¹ Esposito and Mogahed (2008), p. 1.

The apocalyptic theses advanced by scholars such as Samuel Huntington, Francis Fukuyama, and Bernard Lewis, warning of an impending ‘clash of civilisations’ or ‘the end of history,’ or expounding on ‘the crisis of Islam’ or ‘the roots of Muslim rage’ as their respective book and article titles suggest, also arguably contribute to the stark characterisation of Middle Eastern and Muslim societies and the irreconcilability of Eastern ideologies with those of the West. By comparison, relatively few scholarly titles, until more recently, bear reference to the Arab and Muslim-majority countries in conjunction with terms such as liberalism, democracy and human rights.²² The advent of the 2011 uprisings dubbed the ‘Arab Spring’ or ‘Arab Awakening’ has, by contrast, spurred a rise in such titles, as questions of democracy and freedom in the region have become even more topical.

There is also a defensive line of discourse, emanating from East and West alike, which insists that Middle East is *not entirely averse* to human rights, or that the principles of Islam are not *incompatible* with those of Western Liberalism. Along similar lines, following the events of 11 September 2001, there is the insistence that *not all Muslims are terrorists*. Such arguments, although well intentioned, seem to do more to reinforce unwanted stereotypes by unwittingly submitting in the first place to the underlying premise of the region’s *aversion* to human rights, or the incompatibility of Islam with Western liberal values. Arguably, a more comprehensive representation of the relationship of the Middle East to human rights is lost somewhere amid the background noise generated by those who claim to be the latest authority on ‘freedom, democracy and human rights’ or purport to speak for Arabs or Islam.²³

Unless one cares to carefully follow more nuanced historical developments in the Middle East—a difficult task at best, considering the fact that only the loudest and most radical elements within the Arab World are usually deemed newsworthy—is

²² i.e Anthony Chase, and Amr Hamzawy, eds., *Human Rights in the Arab World: Independent Voices* (2006); Dalacoura (2007); Mayer (2007).

²³ See central thesis, Esposito and Mogahed (2008).

one capable of deriving a more accurate sense of the current salience of human rights in the region. What can be gleaned, for instance, from a proper study of the Middle East's role in the emergence of the international human rights system and participation in regional human rights schemes, is whether over time and through different avenues, a consensus is being built in the region, which would indicate a level of normative convergence on human rights.

Ideally, such a study would aim to withhold cultural and value judgment, which could bias observations from the outset. It would need to employ a focused historical lens, all the while remaining conscious of the wider geopolitical context in which it is situated. Still, it would have to be careful not to embroil itself in the heat of the heavily polarised debate, which surrounds it.

2. The Cultural Relativism Trap and Universality Paradox

Universality entails the universal applicability of principles, irrespective of cultural or religious setting; whereas *cultural relativism* suggests that those principles are not fixed and that they vary across different cultural contexts. According to former Under-Secretary General of the United Nations, Shashi Tharoor, the universality paradox of human rights is not easy to get around when universality is often mistaken for uniformity. For, as he explains, 'it is a universal idea of human rights that can in fact help make the world safe for diversity.'²⁴ Yet, the universality of human rights remains under question even over six decades after the signing of the Universal Declaration of Human Rights. This is perhaps because human rights have not yet been universally enforced—not necessarily because they lack universal applicability. By extension it would seem that the 'human rights gap' in places such as the Middle East, is the localised manifestation of the disproportionate distribution of rights across the world and is more a product of global disparity than of cultural disparity.

²⁴ Shashi Tharoor, 'Are Human Rights Universal?' *World Policy Journal*, Vol. XVI: 4 (Winter 1999/2000).

However, the existence of greater human rights guarantees in certain parts of the globe over others might lead us to conclude, for instance, that some cultures or ways of life such as Islam are fundamentally inhospitable to rights, while assuming that others are more naturally disposed to respecting human rights. Bernard Lewis, for instance, finds the Islamic character of states to be the cause of what he perceives as the 'almost unrelieved failure' of democratic institutions in the region, while others such as Alfred Stepan attribute the democracy deficit in the Middle East, to the region's 'Arab' character, contributing to the prevailing assumption of inherent regional resistance to rights-based systems of governance.²⁵ Yet, as will be seen, Western-style democracy and secularism are not necessary prerequisites for the adoption of fundamental human rights principles; just the same, they do not automatically generate respect for human rights.

In the context of evaluating the history of constitutionalism in the Middle East, for instance, Louise Fawcett finds such 'simplifying theses [to be] inadequate,' noting, for example, that 'neither Arabism nor Islam nor indeed colonialism or European influences in or of themselves provide sufficient explanation for the absence or presence of constitutionalism.'²⁶ Fawcett qualifies her remarks by pointing to the varied experiences in the region's constitutional history, which make it difficult to offer blanket explanations for the failure or success of such movements. She continues, 'the claim that constitutionalism is part of a 'modernizing trend' and that its failure reflects the resistance of traditional and unreformed societies and polities is hard to sustain when one considers the complexity and diversity that characterizes the post-Ottoman region.' By analogy, just as the mixed experiences with constitutionalism are not solely attributable the fact of Arabism or Islamism or

²⁵ See Bernard Lewis, *The Crisis of Islam: Holy War and Unholy Terror* (New York, 2003), pp. 117-118 and Alfred Stepan, and G. Robertson, 'An 'Arab' More than a 'Muslim' Electoral Gap,' *Journal of Democracy* Vol. 4 (2003), pp. 30-59 in Louise Fawcett, 'Neither Traditional nor Modern: Constitutionalism in the Ottoman Empire and its Successor States,' *Journal of Modern European History*, Vol. 6, issue 1 (2008), p. 119.

²⁶ Louise Fawcett, 'Neither Traditional nor Modern: Constitutionalism in the Ottoman Empire and its Successor States,' (2008), p. 120.

to the history of foreign influence in the region, the acceptance or rejection of human rights principles in Middle Eastern settings, also cannot be exclusively attributed to such factors alone.

The relationship of the Middle East to the international human rights system must be placed in proper geopolitical context in order to be fully understood and appreciated. A failure to grasp the historical and political forces of international society, which shape and shift the behaviour and interests of Middle Eastern states, potentially leads scholars to draw rash conclusions about the region, or even to impose their own foreign worldview upon the region as a whole. Similarly, in addressing the question of the Middle East and human rights, one risks falling into the cultural relativist trap, which includes assigning fixed values to Arab or Islamic societies, while glossing over the free-flowing socio-political, cultural and religious dynamics, which animate the Middle East.

The universality paradox which surrounds the concept of human rights, also risks giving undue weight to particularist positions which confound universality with homogeneity or cultural imperialism. As such, positions on human rights labelled as 'Eastern,' 'Islamic' or even 'Western' must not always be taken at face value, but be thoroughly unpacked. To that end, critical appraisals offered by Shirin Ebadi and others in response to the claims of cultural relativism will subsequently be visited.

The question of compatibility between human rights and Middle Eastern values—often misguidedly framed within Orientalist discourse as a debate between medieval Eastern ideology and liberal Western philosophy—is easily settled when politics are gently teased out of the equation, if only by force of the imagination. Arguably, the 'clash' we perceive, if any at all, is none other than an optical illusion produced by the refracting lens of present-day geopolitical power play, not age-old

civilisational rivalry.²⁷ According to Fred Halliday, 'What we discover is not so much a clash of cultures or civilizations as the pursuit of power, political and social, in the condition of the late twentieth century.'²⁸ The widespread unrest, poverty and inequality plaguing the Middle East are therefore no longer to be seen as permanent afflictions endemic to the region. Rather, they can be understood as the by-products of historical circumstance and often, political folly and failure. Making this all-important distinction is central to the task of liberating the debate over human rights in the Arab World from its circular and narrow conclusions.

The fact of today's intractable level of conflict in the Middle East and elusiveness of peace and stability region-wide is a reality emblazoned across international headlines and experienced first-hand by those caught in its crossfire. Such is the legacy of longstanding Western colonialism, as well as ongoing foreign intervention and Western support for autocratic regimes in the region.²⁹ More than anything, as the Arab Human Development Reports touch upon, it is the intrusive Western foreign policy conducted under the pretext of spreading democracy and liberty in the Middle East, which has perhaps given 'human rights' a tarnished name within the region.

According to Rashid Khalidi, the Edward Saïd professor of Arab Studies at Columbia University, Western interventionism in the Middle East is prone to backfiring and 'sowing crisis' in the region. Khalidi highlights the case of the most recent US invasion of Iraq in 2003, entitled Operation Iraqi Freedom, for its failings and for its systematic abuse of Iraqi rights.³⁰ While admittedly, foreign occupation is not responsible for all human rights violations in the region at large, it is still, in

²⁷ See central thesis in Samuel Huntington, *The Clash of Civilizations and the Remaking of World Order* (1998).

²⁸ Halliday (2003), p. 147.

²⁹ David Gardner, *Last Chance: The Middle East in the Balance* (London: I.B. Tauris, 2009).

³⁰ Reference to title: Rashid Khalidi, *Sowing Crisis* (New York: Beacon Press, 2009) and Rashid Khalidi, *Resurrecting Empire: Western Footprints and America's Perilous Path in the Middle East* (2005), pp. xv, 38-46.

Khalidi's view, largely responsible for preventing the conditions that are necessary for the realisation of rights and freedoms.³¹

Khalidi's thesis circumvents the conventional Western political discourse on the Middle East that tends to de-contextualise and reify cycles of violence in the region, often confounding legitimate resistance to foreign occupation and struggles for the right to self-determination with arbitrary acts of 'terror'. For example, struggles that have taken the form of Arab Nationalism and more recently, the Palestinian liberation movement, have been fundamentally grounded in a genuine desire for freedom, equality and justice. To suggest, however, that some people or some religions, such as Islam, are somehow historically anathema to human rights principles, is to disregard the all-important role that power politics plays in empowering the status of human rights in select parts of the globe and impeding them in others.

As Hamid Enayat suggests, for instance, the political climate surrounding Islamic societies yields multiple interpretations of the Qur'an and of the Prophetic traditions that are not all averse to liberal principles. By extension, the rejection of principles such as human rights and freedoms are not all 'related to the doctrinal foundations of Islam' but to the political circumstance in which Islamic societies find themselves.³² Arguably, fostering a human rights culture is possible for all universally, and ultimately inevitable, given the proper preconditions.³³ According to Islamic scholar, Abdullah Saeed, respect for human rights within Muslim-majority countries, is a matter of appropriate contextualisation of the rights debate within the religious community. In his lecture, 'Building a Culture of Human Rights from a Muslim Perspective,' Saeed concedes that existing disparities between human rights and the Islamic doctrine are capable of being resolved from within the religious tradition itself, such that even new rights can be created and outdated practices

³¹ i.e. peace and stability.

³² Hamid Enayat, *Modern Islamic Political Thought* (1982), pp. 1-2.

³³ Halliday (2003), p. 154.

discontinued.³⁴ His vision is of a progressive Islamic tradition that evolves to meet the specific demands of the times, while preserving the four foundational cornerstones of human rights in Islam, namely ‘the Supreme Being, a common humanity, a common path to God, and a set of universal ethical-moral values.’³⁵

Islamic scholar Tariq Ramadan is careful to disentangle the patriarchal underpinnings of certain outdated cultural practices misattributed to Islam. On the question of the rights of women, Ramadan suggests ‘the discourse about women has been widely influenced by patriarchal cultures, so that some cultural practices that were not “Islamic” have come to be justified. Female excision, forced marriages, honor crimes, for instance, are not Islamic even though certain scholars may have attempted to provide religious justification for them.’³⁶ What this reveals is the danger of “Islam” being perverted and instrumentalised to justify illiberal and repressive policies, and the corresponding danger of these practices coming to be equated with “Islamic” values. This highlights the need for what Abdullahi Ahmed An-Nai’im calls an *Islamic Hermeneutics for Human Rights* or a credible ‘internal Islamic discourse’ on the legitimate application of universal human rights to Muslim societies.³⁷

Although the claims of cultural relativism have sought to obscure the universality of human rights, it seems the existing plethora of rejectionist human rights stances cannot entirely invalidate competing universalist claims articulated by those such as Jack Donnelly, Tariq Ramadan, An-Na’im, and others from the Middle East such as Shirin Ebadi. It has been widely accepted that at the heart of human rights lies a

³⁴ Abdullah Saeed, ‘Building a Culture of Human Rights from a Muslim Perspective’, p. 123-127, in Proceedings of the International Symposium, *Cultivating Wisdom, Harvesting Peace: Education for a Culture of Peace, through Values, Virtues, and Spirituality of Diverse Cultures, Faiths, and Civilizations* (10-13 August 2005, Multi-Faith Centre, Griffith University, Brisbane, Queensland, Australia).

³⁵ *Ibid.*, p. 123.

³⁶ Tariq Ramadan, *What I Believe* (Oxford: Oxford University Press, 2010), pp. 63-64.

³⁷ Abdullahi Ahmed An-Na’im, ‘Toward an Islamic Hermeneutics for Human Rights,’ in Abdullahi A. Na’im, Jerald D. Gort, Henry V. Vroom, eds., *Human Rights and Religious Values: An Uneasy Relationship?* (Editions Rodopi, Amsterdam, Netherlands: William B. Eerdmans Publishing Company, 1995), p. 241. See also from same author, ‘The Interdependence of Religion, Secularism, and Human Rights: Prospects for Islamic Societies,’ *Common Knowledge*, Vol. 11:1 (Winter 2005), pp. 56-80.

basic level of respect for the inherent dignity of all beings.³⁸ In recognising this universal criterion, one is less likely to fall into the cultural relativism trap.

Strong cultural relativist claims often provide a common loophole to circumvent the human rights question altogether, according to human rights lawyer Dr. Shirin Ebadi, the first Muslim woman and Iranian to win the Nobel Peace Prize. Answering to particularist criticisms regarding the Western provenance of Human Rights and their incompatibility with Islam, Ebadi, responds:

The idea of cultural relativism is nothing but an excuse to violate human rights. Human rights is the fruit of various civilizations...Those who are invoking cultural relativism are really using that as an excuse for violating human rights and to put a cultural mask on the face of what they're doing. They argue that cultural relativism prevents us from implementing human rights. This is nothing but an excuse. Human Rights is a universal standard. It is a component of every religion and every civilization.³⁹

Shirin Ebadi's affirmation of the universality of human rights seeks to put cultural relativist accounts of human rights into global perspective. In analysing Middle Eastern positions on human rights, for instance, we can aim to differentiate between particularist interpretations of rights, which are meant to 'excuse human rights violations', and those which merely seek to defend and protect their cultural particularities. However, applying a universal human rights standard to all countries, as Ebadi advocates, does not presume homogeneity across cultures. In fact, as Shashi Tharoor seeks to assure, it serves to accommodate the extent of plurality that permeates international society.

Donnelly differentiates between weak and radical forms of universalism and cultural relativism as applied to human rights. He defends a tolerant universalism

³⁸ Allen Buchanan, *Justice, Legitimacy, and Self-Determination* (Oxford: Oxford University Press 2004), p. 77.

³⁹ Amitabh Pal, 'Shirin Ebadi,' *The Progressive*, Vol. 68:9, (Sept. 2004).

tempered by a weak cultural relativist approach that 'would recognize a comprehensive set of *prima facie* universal human rights and allow only relatively rare and strictly limited local variations and exceptions' on the basis on culture.⁴⁰ He argues that 'the international consensus represented by the Universal Declaration of Human Rights and the International Human Rights Covenants, in the conditions of the modern world, support a weak cultural relativist approach to human rights.'⁴¹ In this view, universalism can no longer be seen as a form of moral imperialism or repudiation of cultural diversity; and relativism can no longer be used as an argument to contest the universal application of human rights principles.

If we are to subscribe to such an understanding of human rights in the modern international system, it would, therefore, seem appropriate to evaluate the Middle East, using universal standards of human rights, as will be done in the ensuing chapters. This study will thus be premised on the assumption of the *universality* of rights, all the while recognising human rights as a point of universal contention. As Ann Elizabeth Mayer argues, with specific reference to Islam and human rights, 'at a time when all Muslim countries belong to the United Nations system of international law, there should be no barrier to evaluating Islamic human rights schemes and Islamisation measures using international human rights standards.'⁴²

***3. The Curse of Exceptionalism and 'the Fallacy of Origin'*⁴³**

Despite cultural relativist arguments to the contrary, it can be historically shown that human rights also have roots in Eastern traditions and that notions of human rights are not foreign to the Muslim-majority countries of the Middle East; neither are they undesirable concepts to the hundreds of millions living in the region.

Results of a comprehensive survey conducted by John Esposito and Dalia Mogahed

⁴⁰ Jack Donnelly, 'Cultural Relativism and Universal Human Rights,' *Human Rights Quarterly*, Vol. 6 (1984), p. 401.

⁴¹ *Ibid.*, p. 402.

⁴² *Ibid.*

⁴³ See Halliday (2003), p. 152.

on the world's Muslim population demonstrates an overwhelming receptiveness to principles of rights, freedoms and democracy. Specifically, 'data and Muslim politics demonstrate a broad-based desire for greater political participation, government accountability, and the rule of law.'⁴⁴ The 2010 Zogby Poll of 'Arab Voices' further supports these findings and also indicates that the majority of people in the region do not seek the guardianship of the West in matters of their own destiny.⁴⁵ This would point to a general consensus among Arabs on their collective right to self-determination, and perhaps also a tacit recognition of the centrality of their independence to the realisation of other rights and freedoms.

Reflecting on progressive 'Eastern' human rights milestones and traditions provides evidence of the early exercise of self-determination and freedom in the region. The Cyrus Cylinder, which is today known as the first human rights charter in history is just one example of a largely forgotten Eastern prelude to more modern declarations of individual rights and freedoms. Ironically, however, the seal of Cyrus, housed at the British Museum in the United Kingdom, seems to literally symbolise the *de-contextualisation* of Eastern contributions to the evolution of international human rights norms.⁴⁶ The decision to showcase the Cyrus Cylinder at different museums across the United States in 2013, however, also seems to indicate the universal and ageless appeal of an ancient Eastern historical artefact.⁴⁷ Such an initiative invariably works to foster greater cross-cultural sensitivity by highlighting the common values shared between East and West, and is bound to reignite debates about human rights in the Middle East and specifically with respect to Iran.

⁴⁴ Esposito and Mogahed (2008), p. 164.

⁴⁵ James J. Zogby, *Arab Voices: What They Are Saying to Us, and Why it Matters* (New York, N.Y.: St. Martin's Press, 2010).

⁴⁶ It is interesting to note that the Cyrus cylinder had also recently been lent to the Islamic Republic of Iran, marking efforts at a historical re-appropriation, perhaps, of the 'persian' human rights heritage.

⁴⁷ *The British Museum* press release, 'The Cyrus Cylinder Travels to the US':

http://www.britishmuseum.org/about_us/news_and_press/press_releases/2012/cyrus_cylinder_travels_to_us.aspx.

Similarly, the Egyptian principle of *Ma'at* in Chapter 125 of *The Book of the Dead* or *Coming forth by Day*, dating back to over 2500 B.C., provided 'Forty-Two Declarations of Purity' based on truth, justice and order, which the Pharaohs rulers were expected to uphold.⁴⁸ The long-forgotten *Ma'at* doctrine, far from representing a fixed religious dogma, appears to be one of the oldest and most enlightened expressions of legal and moral guidelines emanating from the MENA region. Such concepts as *Ma'at* or those embodied in the *Cyrus Cylinder* can perhaps be looked upon as an ancient antecedents to modern legal and ethical norms and codes, once exclusively accredited to the Western Enlightenment. It is not so much the provenance of such treasures and traditions, which is remarkable, but the extent to which they reflect a harmonious balance between universal and particularist norms.

More recently, the Ottoman Empire, the precursor to the modern-day Middle East, was a self-sufficient zone of relative peace and order where diversity was tolerated if not celebrated. This is a reality that Fawcett's historical analysis of constitutionalism in the Middle East would help to further corroborate, by suggesting a readiness on the part of the Empire to curb arbitrary rule in deference to the rule of law.⁴⁹ For close to four centuries, the Ottoman Empire was, according to Albert Hourani, 'the last great expression of the universality of the world of Islam.'⁵⁰ However, the image commonly painted of the Ottoman Empire as disorderly and backward would appear to be a far cry from the truth of its time. Within the existing historical literature, the Ottoman Empire has been characterised as the 'sick man of Europe,' with scholars such as Elie Kedourie describing the late Empire as an 'oriental despotism.'⁵¹ Such depictions, which portray the Ottoman Empire as seemingly archaic, go to obscure the more progressive developments

⁴⁸ Raymond O. Faulkner, *The Ancient Egyptian Book of the Dead* (London: British Museum Press, 1985). Also, Thomas George Allen, *The Book of the Dead or Going Forward by Day: Ideas of the Ancient Egyptians Concerning the Hereafter as Expressed in their own Terms* (Chicago: University of Chicago Press, 1974).

⁴⁹ See Louise Fawcett, 'Neither Traditional nor Modern: Constitutionalism in the Ottoman Empire and its Successor States,' *Journal of Modern European History*, Vol. 6:1 (2008).

⁵⁰ Albert Hourani, *A History of the Arab Peoples* (London: Faber and Faber, 2005), p 207.

⁵¹ See Elie Kedourie, *Arabic Political Memoirs* (London: Cass, 1974).

under the Ottomans. These include the fact that cultural and religious pluralism was permitted to flourish within the diverse corners of the late Empire. For instance, in a royal decree issued by the Empire in 1839, it was mandated that:

Officials should be free from the fear of arbitrary execution and seizure of property; they should govern in accordance with regulations drafted by high officials meeting in council. The subjects should live under laws derived from principles of justice, and which enabled them to pursue their economic interests freely; the laws should recognize no difference between Muslims, Christian and Jewish Ottomans. New commercial laws would enable foreign merchants to trade and travel freely.⁵²

There are uncanny parallels to be found between the rights being called for, above, under the Tanzimat order, such as freedom from fear and recourse to justice, with those rights enumerated in the Universal Declaration of Human Rights, more than a century later. Louise Fawcett reaffirms Hourani's depiction of the Ottoman order, asserting that 'against this vision of disorder, there is a contrasting and compelling vision of order, one long familiar to regional scholars: of a people cohabiting a relatively seamless space, of tolerance and diversity—cultural, linguistic and religious.'⁵³

The episode following the Ottoman downfall, dubbed by New Historian Avi Shlaim as the 'Post-Ottoman Syndrome,' arguably did more to turn back the clock on human rights in the region than anything else. The alien reshuffling of territorial boundaries and division of peoples that had lived more or less peacefully under Ottoman rule following the imposition of a victors' peace on the new Middle East system effectively stalled the realisation of Arab independence and self-determination. The relative arbitrariness and non-representative nature of the state system of the

⁵² Hourani (2005), p. 272.

⁵³ Albert Hourani, *A History of the Arab Peoples* (1991 ed.) referenced in Fawcett, Louise, ed., *International Relations of the Middle East* (2009), Introduction, p. 5.

Middle East, carved out of the ruins of the old Empire by Great Britain and France, were also clear impediments to the realisation of human rights in the region.

For instance, the establishment of monarchical or authoritarian regimes within artificially delineated state boundaries from Iraq and Syria to Jordan—and most notably, the creation of a Jewish national homeland on Palestinian land, which conflicted directly with the promises of independence made to the Arabs— have stood as enduring sources of conflict and inner turmoil for the region.⁵⁴ What this historical perspective brings to light is the sheer number of externalities as opposed to purely ‘endogenous’ variables, which go into supporting or hindering the socialisation of human rights norms in the region. Once again, these internal and external factors must be jointly taken into account when considering the Middle East’s place in international society, and specifically in relation to the international human rights system.

In placing the Middle East against its corresponding historical backdrop, it becomes more evident that the traditional East-West dichotomy and related generalisations no longer hold. Globalising forces, both constructive and destructive, have increasingly blurred these boundaries. Moreover, as Donnelly, Ebadi, Ramadan and others have demonstrated, by deconstructing cultural relativist accounts, it becomes equally apparent that cultural or ideational variables, alone, cannot tell the full story of the relationship of the region to the international system.

Despite what appears to be a general level of stagnation in human development in the Middle East, the state of the contemporary Middle East-human rights debate reveals the extent to which human rights norms have been diffused across Middle Eastern societies, most notably in Islamic circles. Although the responses to human rights within these circles are seemingly varied, they potentially reflect signs of a

⁵⁴ See the Balfour Declaration of 2 November 1917 (for British pledge for a Jewish national homeland) and the Hussein-McMahon Correspondences of 14 July 1915- 30 January 1916 (for British pledge of Arab independence and self-determination).

growing pluralist culture within Islamic thought, and perhaps the Middle East at large. This is a development, which the following chapters will seek to further explore by looking at Arab and Islamic appropriations of human rights in regional charters and declarations such as the Arab Charter on Human Rights or the Universal Islamic Declaration of Human Rights.

The story of the Middle East's role in the emergence of the UN human rights system, which follows in the next chapter, can potentially serve to illuminate the actual level of regional convergence or divergence on international human rights principles, at the time of the signing of the Universal Declaration of Human Rights and accompanying treaties. Analysing the nature of the participation of Arab and Islamic entities in the genesis of the emerging international human rights regime, including their specific contributions to this process, precludes the necessity of having to rely exclusively on discursive accounts of human rights and the Middle East visited in this chapter. An understanding of the region's precise relationship to the international human rights system, in turn, provides the requisite background knowledge with which to move on to a more complete analysis of the elements of the Middle East's own regional human rights system.

Chapter 3: Myth vs. Reality—Middle Eastern Contributions to the International Human Rights Regime

1. Emergence of the regime

The international human rights system that emerged out of the ashes of the two World Wars marks a normative converging point in history—a merging of different civilisations' ideas around human rights in recognition of their common humanity.¹ Although a mere 50 countries out of the present 191 countries formally existed at the time of the signing of the Universal Declaration of Human Rights in 1948, the authors and signatories of the UDHR came from remote corners of the globe to agree, nearly unanimously, on the terms for a new post-war order based on universal human rights and freedoms.² Little is typically known, however, about the role of non-Western actors in this process; it has even been assumed that Western powers single-handedly authored and approved the new human rights formulations and subsequently sought to impose them upon the rest of the world.³

Moreover, the widely held assumption that the UN human rights system is primarily a product of the West or merely an outgrowth of the United States' Declaration of Independence and the Bill of Rights, and the US Constitution, is indicative of a general lack of awareness of the actual historical proceedings that led to the birth of the international human rights regime.⁴ Pocket-sized copies containing the full text of the International Bill of Human Rights—consisting of the Universal Declaration of Human Rights and its Twin Covenants—for the first time in book form, which claim

¹ The opening line of the preamble of the UDHR reads: 'Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world [...].'

² It should be added that recent findings have traced the idea for a UDHR to the 1920's, which would indicate that the international human rights system was not merely a product of post-war international relations. See Herman J. Burgers, 'The Road to San Francisco: The Revival of the Human Rights Idea in the Twentieth Century,' *Human Rights Quarterly*, Vol. 14:4 (Nov. 1992), p. 447.

³ See Tony Evans, *US Hegemony and the Project of Universal Human Rights* (New York, NY: St. Martin's Press, 1996).

⁴ See forward by Jimmy Carter in Paul Williams, ed., *The International Bill of Human Rights* (Glen Ellen, CA: Entwistle Books, 1999), pp. ix-xi.

to reveal 'the full story of how this bill came into existence and what it means for our future,' only peripherally touch upon the processes that went into the creation of the bill, focusing primarily on the Western contributions to the 'ultimate statement of freedom and human dignity.'⁵

Meanwhile, the role of entities and ideas from the Middle East in the emergence of the international human rights system and specifically in the drafting process of the International Bill of Human Rights, which will be visited, has been relegated to the footnotes of history. Some might argue that the Middle East's role in this process has been negligible, if not a hindrance to human rights progress more broadly, citing the region's problematic human rights record.⁶ Others would differ, noting the seminal contributions of Arab and Islamic agents to the establishment of what we know today as the international human rights regime, consisting of the Universal Declaration and its supplementary treaties.⁷ The discrepancy in historical narratives, alone, should give us reason to pause and to seek to reevaluate this history anew, lest the otherwise bleak picture of the Middle East overshadow the distinctive contributions of Arab and Islamic states to the genesis and evolution of the international human rights system. This highlights once again the unsuitability of the exclusively Western IR lens to the study of the Middle East and the distinct lack of non-Western theories of International Relations, as Acharya and Buzan, as well as Tickner and Waever have observed.⁸

The bulk of contemporary scholarship on human rights and the Middle East has tended to perpetuate an image of the region as one that is fundamentally averse to

⁵ See front and back cover, Williams, ed. (1999).

⁶ See UNDP, United Nations Development Programme, *Arab Human Development Reports (2002-2005)*.

⁷ Ann Elizabeth Mayer, *Islam and Human Rights: Tradition and Politics* (Boulder, Co.: Westview Press, 2007), pp. 12-13.

⁸ See Amitav Acharya and Barry Buzan, eds., *Non-Western International Relations Theory: Perspectives On and Beyond Asia* (Oxon: Routledge, 2010). Ironically, Acharya and Buzan note that they are aware that the Middle East and Africa are excluded from their study, in spite of having 'an equal claim [to Europe] to standing as a distinctive source of IR' (p.2). Also, Arlene B. Tickner and Ole Waever, *International Relations Scholarship Around the World (Worlding Beyond the West)* (Oxon: Routledge, 2009).

notions of human rights, adding to the myth of the West as the sole champion of human rights internationally.⁹ Nonetheless, a critical appraisal of recently surfaced historical findings on this subject, to be discussed below, allows us to test such sweeping assumptions. What is more, looking at the diffusion of human rights norms as they relate to the Middle East, in particular, can offer a unique lateral view of the development of the international human rights system from a regional perspective. It can also help put to test certain widespread misconceptions that surround the region.

In welcome developments, scholars such as Susan Waltz, Ann Elizabeth Mayer and Johannes Morsink, Mary Ann Glendon and others offer a rare glimpse into the evolving relationship between Middle Eastern or small state actors and the international human rights framework. They provide a more fine-tuned interpretation of the situation than typically advanced by Western accounts of the emergence of the international human rights system. For instance, they observe how Arab and Muslim countries of the Middle East North Africa region were instrumental in shaping the current international human rights system as well as their own regional human rights schemes at home. Additionally, they note how Middle Eastern countries were apparently more amenable to the formulations of the new international human rights regime than commonly believed.

In her detailed study on *Islam and Human Rights*, Mayer sets the scene for her analysis by challenging the widely held assumption that the international human rights system, which emerged in the mid 1940's with the signing of the UN Charter and subsequently the drafting of the International Bill of Human Rights, is the sole and unique by-product of the West. Mayer attributes this skewed historical understanding of events to misinformed scholarship on the topic. According to Mayer the 'writing in this area often reveals an unfamiliarity with international human rights law and how it developed and a lack of awareness of how Muslims

⁹ Evans (1996), p. 106.

helped formulate the international human rights system, mistakenly identifying this system with the United States. The result is the simplistic characterisation of international human rights law as a “Western” creation or even as an artefact of US culture.¹⁰ Speaking of human rights as an essentially ‘Western’ concept, or even a purely ‘American’ one, as most accounts of human rights do, appears overly simplistic.¹¹ Dwelling on the primacy of origin is misplaced, irrelevant even, when considering that cultural origin does not bear upon the applicability of rights. As seen in the previous chapter, the origins and discussions of human rights are more universal in nature and can also be traced back to the Ottoman or Persian Empires for instance, among other world civilisations.

This reveals how blanket generalities aimed at emphasising the singularly Western provenance of the UN Human Rights system, have papered over the more nuanced history of the international human rights regime. The failure of existing scholarship to draw attention to details of this sort not only reveals the lacuna in our understanding of the complex processes that led to the formulation of the Universal Declaration and international human rights system more broadly. It also explains how cultural stereotypes are reinforced in the absence of more revelatory information.

In fact, Mayer goes on to note as well that, the Western bloc occasionally raised substantial reservations to the new human rights formulations, including attempts to stall ‘a proposal for prohibiting limitations on marriage based on race, nationality, and religion’ on the part of the United States.¹² According to Mayer, ‘such an objection, which showed that the United States was unwilling to accommodate one of the most basic human rights ideals, has rarely been highlighted in accounts of the

¹⁰ Mayer (2007), p. xiii.

¹¹ Weston Burns, ‘Human Rights’ in Richard P. Claude and Weston Burns, eds., *Human Rights in the World Community* (Philadelphia: University of Pennsylvania Press, 1992), pp. 14-30.

¹² See Susan E. Waltz, ‘Universal Human Rights: The Contribution of Muslim States,’ *Human Rights Quarterly*, Vol. 26:4 (November 2004), pp. 44-72, in Mayer (2007), p. 14.

work leading up to the UDHR.¹³ Additionally, the United States' objection to a hallmark human rights provision would seem to run contrary to the assumption that only non-Western societies resisted human rights formulations. It would suggest perhaps that the acceptance or rejection of certain human rights ideals was not bound up with an intrinsic 'Western' or 'Eastern' cultural predisposition towards human rights.

Making reference to new studies, which have only recently reopened the debate over the specifics of the creation and evolution of the international human rights system, Mayer observes that they 'document the relatively minor role played by Western powers such as the United States and highlight the significant contributions made by representatives of countries outside the North Atlantic region—including several Muslim countries.'¹⁴ One such Muslim country was Egypt, for instance, whose geographical situation between the African and Asian continents made it an important cross-continental actor in the international human rights debate. Neil Hicks' study of human rights in Egypt specifically mentions that Egypt 'participated in the drafting of the Universal Declaration of Human Rights and ratified the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights in 1982,' despite its failure to fully implement these rights domestically in more recent times.¹⁵ The consequences of the inconsistent application of human rights principles in practice will be evaluated in the subsequent case studies section. The consequences of rights miscalculations are particularly dramatic in the case of Egypt, as will be seen.

2. Contributions of Middle Eastern states

¹³ Mayer (2007), p. 14.

¹⁴ Ibid., p. 12.

¹⁵ Neil Hicks, 'Transnational Human Rights Networks and Human Rights in Egypt' in Anthony Chase, and Amr Hamzawy, eds., *Human Rights in the Arab World: independent voices* (Philadelphia: University of Pennsylvania Press, 2006), Chap. 4, p. 68.

In his authoritative documentation of the *Origins, Drafting, and Intent* of the Universal Declaration, as the subtitle of his book reads, Johannes Morsink makes special mention of the lasting contributions of such Middle Eastern entities as Omar Loutfi, of Egypt, to this process. For instance, Loutfi was responsible for adding a key phrase to the wording of the UDHR preamble, which specified that the rights mandated under the Declaration are to be upheld by individuals and states as well as ‘among peoples of territories under their jurisdiction.’¹⁶

In an unexpected twist to the traditional Western narrative, it appears that actors other than those from the West were also actively involved in the conception of the Universal Declaration, from beginning to end. This would seem to indicate that the concept of human rights, which is today primarily associated with Western powers, could have only become enshrined in a formal international document by way of a global consensus, not a one-way imposition of Western values on other states. Therefore, from a rationalist-functionalist perspective advanced by Lisa Martin and Beth Simmons or Robert Keohane, for instance, the human rights system must have presumably derived its impetus from the fact of its universal appeal to states, including those from the Middle East, who previously had no say in international matters, let alone in matters of their own political futures. Many seized this unique historical opportunity to jointly set ‘the rules of the game’ for all members of international society.¹⁷ Moreover, on a more principled level, ideals of freedom and self-determination inherent within the new human rights formulations might have held distinctive appeal for those Arab states. They could finally claim rights that had been historically denied them during the period of intrusive foreign influence in their internal affairs.¹⁸

¹⁶ Universal Declaration of Human Rights (1948), Preamble, ¶ 1.

¹⁷ For rationalist-functionalist thesis see Lisa L. Martin and Beth A. Simmons, eds., ‘Theories and Empirical Studies of International Institutions,’ *International Organization*, Vol. 52:4, (Autumn 1998), pp. 729-757.

¹⁸ For Universalist thesis see Jack Donnelly, *Universal Human Rights: in Theory and Practice* (2003).

Not only were non-Western actors, including Muslim countries, themselves, key contributors to the international human rights regime. Western entities seem to have derived much inspiration from non-Western sources in their own thinking about the new global human rights framework. For instance, Eleanor Roosevelt, the wife of the then US President, Franklin Delano Roosevelt, and Chairwoman of the nascent United Nations Commission on Human Rights, formally charged with the task of drafting an International Bill of Human Rights, drew considerably from Western as well as non-Western traditions in her work on the Bill.

According to French jurist René Cassin who was also a member of the drafting committee, Roosevelt knew ‘with remarkable mastery how to employ the philosophers of India and of Lebanon, the American publicists and diplomats, as well as the delegates of ancient Europe and the world of the East.’¹⁹ Amid Cassin’s praise for Eleanor Roosevelt’s work on the new human rights formulations, one can easily detect couched praise for the contributions made by ‘the world of the East’ to what Roosevelt imagined would become ‘the Magna Carta of all mankind.’²⁰

While traditional accounts of the history of the UDHR credit Roosevelt with having been the main architect of the document, it appears that she was mainly influential in ‘pushing the business along, and in this her achievement was remarkable.’²¹ Other drafters, however, were more active in formulating the actual human rights norms to be included in the Declaration. Although Mayer does not make light of the important initiative taken by Western players such as Eleanor Roosevelt in laying the groundwork for the UDHR, she remarks upon the even greater substantive contributions made to this process by Lebanese statesman Charles Malik, Chinese diplomat Peng Chen Chang, and even René Cassin himself.²² What this collaborative

¹⁹ See René Cassin, ‘Madame Roosevelt que j’ai connue,’ *La Pensée et L’Action* (Paris: Editions F. Lalou, 1968), p. 82. in Williams, ed. (1999), p. xxix.

²⁰ Eleanor Roosevelt cited in A. H. Robertson, *Human Rights in the World* (Manchester: Manchester University Press, 1972), p. 27.

²¹ A. W. Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (New York, NY: Oxford University Press, 2004), p. 263.

²² Mayer (2007), p. 12.

process demonstrates, first and foremost, is the extent of international cooperation, which went into the creation of the Universal Declaration. It also challenges the assumption that the international human rights system was part of a larger Western conspiracy of cultural imperialism or an attempt to export a virtual Western liberal revolution.²³

The argument can be made that Malik or Chang were Western-educated and therefore not truly representative of Eastern views or sensibilities. Nonetheless, their deference to universal principles above principles of 'East' or 'West,' seems to have made them specifically suited to the task of crafting a document aimed at transcending national and cultural boundaries. If anything, they themselves could be considered to be bridges between cultures, each having had one foot in each hemisphere, so to speak. Yet, such men as Chang did not even ascribe to a monolithic view of cultures, claiming that 'culturally, there are many 'Easts' and many 'Wests' and they are by no means necessarily irreconcilable.'²⁴

The Christian-Lebanese identity of a figure such as Malik would also go to challenge the supposedly monolithic construction of 'East' and 'West.' It exemplifies the extent of pluralism and diversity that could be found in its place. Although Malik, Chang, Cassin, and Roosevelt, were a group of *individuals* and thus, could not claim to represent the views of all peoples and nations, they could, at least, advocate for the universal rights which they believed *all individuals* legitimately share, regardless of cultural, religious or national background. Indeed, the fact that the evolution of the international human rights system was made possible by a diverse group of individuals, highlights the role of the individual or 'human', as opposed to the state, as a significant actor shaping the international system. This, one could say, foreshadowed the important role that civil society would come to play in the further

²³ For cultural imperialism argument see David Miller, *On Nationality* (Oxford: Oxford University Press, 1995).

²⁴ See Mary Ann Glendon, 'Foundations of Human Rights: The Unfinished Business,' *American Journal of Jurisprudence*, Vol. 44 (1999), p. 4; in Mayer (2007), p. 12.

development of the international human rights system on the global and local levels. As will be seen in subsequent chapters, fledging grassroots movements hold a particularly significant place in the evolution of the human rights culture across the Middle East.

Describing Malik's contributions to the UDHR drafting process, Waltz notes:

[...] As Rapporteur, Malik compiled the records that permitted Commission members to discuss and debate substantive issues. His records helped frame the issues. As chair of the Third Committee, he was responsible for moving debate forward, much as Eleanor Roosevelt had done in the Commission. Malik chaired every one of the Third Committee's daily sessions from late September to early December 1948. A stickler for procedure, he recognized the importance of allowing all delegates to have their say on the draft Declaration. Though many participants no doubt regretted his decision to scrutinize the draft Declaration article by article, it is largely due to his leadership that we have a record of debates that reflect concerns raised by various countries in both the Commission and the Third Committee.²⁵

It would seem that Charles Malik's contributions to the drafting process of the UDHR was not only to its substantive content. He effectively orchestrated the drafting procedure of the document, in his capacity as administrator. His lasting legacy, it seems, was in providing a viable structure or 'frame' for the deliberation of the rights issues to be included in the Declaration. He also ensured that an annotated version of the Declaration would be kept for posterity in the form of records of the different positions of member states on the different articles under consideration.

Mary Ann Glendon's assessment of Malik's role in the drafting of the Universal Declaration emphasises his political savvy, which was also evident in his diplomatic efforts on the sidelines in seeking to solve the Palestinian-Israeli issue. However, others such as John Humphrey who worked on the Declaration have also remarked

²⁵ Susan Waltz, 'Universalizing Human Rights: the role of small states in the construction of the Universal Declaration of Human Rights,' *Human Rights Quarterly*, Vol. 23 (2001), p. 58.

upon Malik's tendency to rouse divisiveness in his political dealings with others.²⁶ Nevertheless, in his private memoirs, Humphrey recognises Malik's succession to the chairmanship of the Human Rights Commission from Eleanor Roosevelt, as representing a substantial improvement in leadership for the Commission.²⁷

Challenging another misconception about the history of the international human rights system, Johannes Morsink argues that while Cassin is typically credited for having birthed the UDHR, he was largely absent from the drafting process of the document itself, although he was instrumental in 'delivering' the Declaration to the attention of the international community—a feat for which he would be awarded the Nobel Peace Prize.²⁸ Adding even greater definition to the overall picture of the genesis of the UN human rights system, Mayer also makes mention of Cassin's disciple at that time, Fereydoun Hoveyda, an Iranian student and budding diplomat who kept meticulous notes about his personal experiences of working on the human rights project, which he later published.²⁹

Interestingly, Hoveyda noted that resistance on the part of Muslim countries to the Universal Declaration was more often a function of finding the declaration utopian or unrealistic in character rather than being objectionable on religious grounds. He added that the Muslim states argued they could not expect even Western countries, let alone their own, to be able to put the proposed human rights principles into practice.³⁰ By extension, objections voiced as to the unfeasibility of the proposed bill by Muslim entities and others, could potentially be seen as a more general

²⁶ See A. J. Hobbins, ed., *On The Edge of Greatness: The Diaries of John Humphrey, First Director of the United Nations Division of Human Rights*, Vol. I 1948-1949 (1994), pp. 24-25, 55, 72.

²⁷ In his diary Humphrey writes: 'Malik was unanimously elected chairman of the Human Rights Commission this morning. He isn't perfect—no one is—but he will be a good chairman something this commission has been without since its inception'; see A. J. Hobbins, ed., *On The Edge of Greatness: The Diaries of John Humphrey, First Director of the United Nations Division of Human Rights*, Vol. II 1950-1951 (1966) p. 199.

²⁸ Morsink (1999), p. 29. 'Delivering' is a reference to Morsink's claim that Cassin 'did not really enter the room until the baby was born,' and that 'more than any other Drafter, Cassin spent the post-adoption years interpreting the Declaration to the larger world.'

²⁹ See Fereydoun Hoveyda, 'The Universal Declaration and 50 Years of Human Rights,' *Transnational Law and Contemporary Problems* 8 (1998).

³⁰ Mayer (2007), p. 12.

manifestation of resistance to the emergence of a new international system. Such a system called for greater restraint among all members of the nascent global community, essentially challenging the pre-WWII status quo.

Based on this reasoning, it is imaginable that all countries might have also found the new international bill objectionable for much the same reasons. In short, it would require them to do what was previously unthinkable in international relations: to put the rights of individuals before those of the state. By extension, it would appear that power political considerations, and not just particularist, cultural concerns, weighed heavily in the calculus of all states alike. This would, in turn, support the rationalist explanation of disincentives for international cooperation, which Beth and Simmons have identified.³¹

At some level, resistance of this sort to human rights formulations more generally may even be seen as something of a universal predisposition common to all members of an anarchic system of states. Some states may even see it as their right to resist limitations being placed upon their national sovereignty, seeking to preserve their own domestic interests above all. In the case of the UN human rights system, however, the incentives for signing on to the new human rights bill and joining the new post-WWII international order would seemingly outweigh the greater costs of alienating the international community through non-cooperation.

Thus, the fact that the majority of countries would eventually come to endorse such a rights-based system, despite their initial qualms, would similarly attest to a universal predisposition of states to gradually adjust their own interests in response to shifting global normative dynamics.³² Even though states would presumably have to relinquish portions of their sovereignty in the process, all would agree to be held

³¹ Martin and Simmons (1998), p. 756.

³² For thesis on transnational norm diffusion see Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (1998). See also Martha Finnemore, and Kathryn Sikkink, 'International Norm Dynamics and Political Change,' *International Organization*, Vol. 52:4 (Autumn 1998).

by the same set of standards in their internal and external dealings. This feature of the new order was perhaps attractive to the most vulnerable members of international society, including Arab and Muslim states, which had previously been made to surrender their sovereignty to the Great Powers in the aftermath of the First World War.³³

On another level, the fact that members of Eastern and Islamic countries can be shown to have been actively involved in the drafting process of the new international human rights bill, indicates that they may have been working to correct the uneven balance of power at that time which largely favoured the West. What is more, such a concerted global regulation effort on the part of weaker non-Western states to reinstate a more just international order makes sense in light of the West's colonial transgressions in the inter-war years.

As Mohammed Arkoun contends, the notion of 'Western' human rights and 'Western imperialism' have often been confounded with one another due to the historically aggressive tactics with which western values have been imposed upon Arab and Muslim societies, for instance.³⁴ The history of Western imperialism notwithstanding, it is ironic that the human rights system, crafted by Western and non-Western entities alike, should come to be viewed as a Western tool for restraining the less developed countries of the world when it was intended to restrain all uniformly, including the West. In agreeing to hold each other accountable to mutually agreed-upon codes of conduct based upon a fundamental respect for human rights, 'no government [would be] immune to public pressure,' according to Gerhard Elston, Executive Director of Amnesty International, USA.³⁵

Along similar lines, at the time of the drafting of the Universal Declaration, the Lebanese delegate, Charles Malik, emphasised that 'if the proposed Bill did not

³³ See Chapter 2 for notes on Middle Eastern historical background.

³⁴ Mohammed Arkoun, *Rethinking Islam: Common Questions, Uncommon Answers* (Boulder, Co.: Westview Press, 1994).

³⁵ For Elston quote see back cover of Williams, ed. (1999).

stipulate the existence of the individual and his need for protection in his struggle against the State, the Commission would never achieve its intended purpose.³⁶ Placing 'the individual' above 'the state,' as Malik seems to suggest, is emblematic of the dramatic mid-century shift in the conceptualisation of international society, whereby the individual would come to occupy the central position in domestic and international relations. This worldview formed the basis of the *cosmopolitanist* school of thought, which according to Thomas Pogge, maintains 'that every human being has a global stature as the ultimate unit of moral concern.'³⁷ In this view, neither cultural belief nor religious doctrine would be able to override the more basic responsibility of protecting the rights of the individual vis-à-vis his or her country.

What Malik's comment reflects is precisely a culture of restraint, which the human rights bill effectively sought to substitute for the culture of impunity which characterised the age of the World Wars and the holocaust. Yet no one country or region could be deemed uniquely responsible for this new codification of international standards, for the reason that it required unanimity (not uniformity) among states in order to become effectual. What is more, no one country, such as the United States, could presume to impose human rights values on others without themselves, being held to similar measures. It was, by necessity, an inclusive drafting process and the unanimous acceptance of the bill by UN member states, including those from the Middle East, which made possible the Universal Declaration of Human rights and subsequently the International Bill of Human Rights. In the end, such a system of checks and balances capable of regulating against the inappropriate behaviour of individual states could only come into existence by virtue of a global consensus.

In her research into the subject, Susan Waltz also makes note of the meaningful contributions made by representatives of Muslim Countries to the genesis of the

³⁶ Charles Malik quoted in Williams, ed. (1999), p. xxix.

³⁷ Thomas Pogge, 'Cosmopolitanism and Sovereignty,' *Ethics*, Vol. 103:1 (Oct. 1992), p. 49.

Universal Declaration.³⁸ Her findings, according to Mayer, help falsify claims made by Muslims detractors of the international human rights system, to the effect that Muslim entities were somehow intentionally left out of the drafting process of the International Bill of Human Rights 'and that calling for human rights universality means supporting Western civilizational hegemony.'³⁹

Despite such cultural relativist accounts, which aim to pit Islamic and Western values against one another and to highlight their seeming incompatibility, the actual process which led to the creation of the new human rights system would indicate a greater degree of harmonisation than discord around human rights principles, among Muslim member states. For, as Waltz has positively documented, Muslim countries were not only active participants in the human rights system, they raised only minor objections to the proposed human rights formulations on grounds of religious differences. Ultimately, even when objections to certain articles were raised on Islamic grounds, these did not ultimately stand in the way of their acceptance of the universal human rights declaration.⁴⁰

It is not to say, that there was no disagreement at all amongst Muslim entities. For, as seen earlier, all countries, including the United States, seemed to have raised their fair set of objections to the proposed human rights formulations. Such would indicate, once again that the tendency to resist certain human rights precepts was not something particular to some cultures over others. For instance, according to Waltz, within the *Third Committee Records* which documented the final drafting stage of the UDHR, 'in the debate on what would become Article 16, the Pakistani delegation resisted efforts by Saudi Arabia to change the provisions for marriageable age from 'full age' to 'legal marriageable age.' Mrs. Shaista Ikramullah

³⁸ See Waltz (2004), pp. 44-72.

³⁹ Mayer (2007), p. 13.

⁴⁰ For critical Islamic commentary on the UDHR see S. Tabandeh, *A Muslim Commentary on the Universal Declaration of Human Rights* (Iran: 1966, translated by F.J. Goulding).

argued that the original draft language more clearly conveyed the intent to prevent child marriages, and non-consensual marriages.⁴¹

What is striking, in the case of Muslim countries, such as Pakistan, however, is the fact that they often rose above their initial qualms surrounding certain religiously questionable human rights articles. For instance, they stopped raising complaints against human rights provisions, including Article 18 relating to the right to freedom of religion and to change religion, and Article 16 pertaining to family and marital matters. These provisions had initially served as points of internal contention among the Muslim states, but ultimately did not prevent them from voting unanimously in favour of the final draft of the Universal Declaration.⁴² There may not have been sufficient discussion of the gender question at the time of drafting to generate a universal consensus amongst states on the exact scope of women's rights, for instance. However, the successful inclusion of basic gender equality provisions in the UDHR could be seen as opening up a space for the gradual negotiation of those rights domestically.

As the case of the near-unanimous acceptance of the Universal Declaration of Human Rights shows, Muslim countries have often opted to adopt precepts of universal human rights even when doing so required re-interpreting or even bypassing Islamic principles once deemed immutable. In fact, all Muslim countries have freely submitted themselves to the constraints of international law by virtue of their membership in the United Nations, and most have even gone on to ratify key international human rights conventions.⁴³ This would seem to emphasise the fact that although a uniform Islamic consensus on human rights does not exist, Muslim countries have nonetheless demonstrated their recognition of basic human rights and international law. In this way, they have sought to assert themselves as equal

⁴¹ Reference to *Third Committee Records* (1948)* in Waltz (2001), p. 55. *See U.N. GAOR, 3d Sess., 3rd Comm. (1948). (1948).

⁴² *Ibid.*, p. 14.

⁴³ *Ibid.*, p. 12.

members of international society, which functions based on a set of mutually agreed-upon codes of conduct among states.⁴⁴

Mayer writes, 'all in all it is inaccurate to claim that when the foundations of the modern UN human rights system were being laid, Muslim countries were foes of human rights universality.'⁴⁵ She prefaces her remark by noting that not a single Muslim country voted against the Universal Declaration of Human Rights at the time of its submission to the UN General Assembly and that Saudi Arabia was the sole Muslim country to abstain from voting for the UDHR. She goes on to explain how the Syrian and Pakistani UN delegates issued praise for the Universal Declaration at the time of its adoption. The Syrian delegate exclaimed, for instance that "civilization [has] progressed slowly, through centuries of persecution and tyranny, until, finally, the present declaration [has been drawn up...Now at last the peoples of the world [will] hear it proclaimed that their aim [has] been reached by the United Nations."⁴⁶ His words were echoed by the Pakistani delegate who, according to Mayer, 'proclaimed that Pakistan fully supported the adoption of the declaration because it was imperative that the peoples of the world should recognize the existence of a code of civilized behavior that would apply not only in international relations but in domestic affairs.'⁴⁷

The optimistic comments made by the Syrian and Pakistani delegates following the approval of the final UDHR text seem to represent a new level of unanimity presumably reached among Middle Eastern states. For, in the initial drafting stages, Syria and Pakistan were joined by Afghanistan, Egypt, Iraq and Saudi Arabia in voicing their opposition to Article 18 on grounds of the religious inadmissibility of converting to other faiths.⁴⁸ However, in the end, such misgivings—as seemingly inculcated as they were in culture and tradition—did not prevent Muslim countries

⁴⁴ See reference to 'international society' in Introduction.

⁴⁵ *Ibid.*, p. 15.

⁴⁶ Waltz (2004), p. 839 in Mayer (2007), p. 15.

⁴⁷ Morsink (1999), p. 26 in Mayer (2007), p. 15.

⁴⁸ Mayer (2007), p. 13.

from signing on to Article 18. Therefore, it seems that Islam was not a genuine impediment to their acceptance of universal human rights principles, even though religious differences of opinion were regularly voiced during the UDHR drafting and approval process. In other words, even the particularist disposition of states in the Middle East, such as their observance of the Islamic faith, did not preclude them from participating in the drafting and signing of the Universal Declaration. This would go to support the view of Donnelly and others that the normative pull of human rights resides, first and foremost, in its universal quality.⁴⁹ It also confirms Tariq Ramadan's claim that 'universals are never the monopoly of one civilization and can only be the expression of values shared and nurtured by the historical experiences and varied expressions of many societies, religions, and cultures.'⁵⁰ The drafting and adoption of the Universal Declaration of Human Rights by states of diverse cultural and religious backgrounds is one such collective historical experience reflecting the expression of shared universal values.

However, in light of Saudi Arabia's abstention from the UDHR vote, it might be argued that the Saudi non-participation is a reflection of the intrinsic Islamic antagonism towards human rights, if not towards the West altogether. Mayer's alternative explanation of the Saudi position, supported by Johannes Morsink's research into the matter, goes to challenge typical Western renditions of the emergence of the Universal Declaration. Such analyses tend to draw on the Saudi case in order to strengthen their thesis of the Islamic clash with the universality of human rights.⁵¹ While the Saudi opposition would seem to present itself as an ideal casebook example for highlighting Islamic or Arab resistance to principles of

⁴⁹ See Donnelly (2003); also, Jack Donnelly, 'Human Rights: A New Standard of Civilization,' *International Affairs*, Vol. 74:1 (Jan., 1998).

⁵⁰ Tariq Ramadan, *Radical Reform: Islamic Ethics and Liberation* (Oxford: Oxford University Press, 2009), p. 146.

⁵¹ Mayer makes reference to the following texts for 'a good illustration of this position': Adamantia Pollis and Peter Schwab, 'Human Rights: A Western Construct with Limited Applicability,' in Pollis and Schwab, eds., *Human Rights: Cultural and Ideological Perspectives* (New York, NY: Praeger, 1979), pp. 1-18.

universal human rights, the Saudi objection to the human rights text is more nuanced than it has been made to appear.

Most strikingly, Baroody was 'neither a Saudi nor a Muslim but a Syrian Christian,' and according to Morsink's analysis, his objections to human rights provisions were, for the majority, not raised on Islamic grounds. For instance, he found it to be unessential to the spirit of the UDHR to include a provision on the freedom to change one's faith under Article 16 on freedom of religion, when an equivalent provision on the freedom to change one's thoughts did not exist under the article on freedom of thought and conscience.⁵² What is more, complaints raised by the Saudi delegate, Jamil Baroody, were not even unique to Saudi Arabia or to Arab or Muslim countries; other non-Muslim countries raised them as well.⁵³ Weighing these different factors against one another, Mayer concludes that 'leaping from Baroody's stated positions to generalizations about an 'Islamic' hostility to the UDHR is unwarranted.'⁵⁴

Another significant discovery made by Waltz on this subject, which would go to challenge the view of Arab or Islamic states as having been fundamentally hostile to the new international human rights system, is that these countries participated quite actively in the crafting of the Twin Covenants, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which were to supplement the Universal Declaration and complete the International Bill of Human Rights.⁵⁵ Referencing records of the 21st Session of the UNGA Third Committee (1966), she writes:

By 1960, when the covenants were being discussed in the Third Committee, some eighteen UN member states had sizable Muslim populations and were actively participating in the process. From 1949 to 1963 representatives from Lebanon, Egypt, Pakistan, Iran, Iraq, and Afghanistan (at various times)

⁵² Morsink (1999), pp. 25-26 in Mayer (2007), p. 13.

⁵³ *Ibid.*, p. 25.

⁵⁴ Mayer (2007), p. 13.

⁵⁵ See Waltz (2004).

held seats on the Commission. And finally, Halima Embarek Warzazi of Morocco chaired the 1966 session of the Third Committee, in which debate over implementation of articles in the two covenants was concluded, and the overall text of these draft treaties confirmed for formal and final consideration by the UNGA in plenary.⁵⁶

This revelation holds even greater significance in view of the fact that the United States had virtually extricated itself from the drafting process of the remainder of the International Bill. The US even refused, early on, to sign the completed Twin Covenants, while all Muslim countries, Saudi Arabia included, would go on to vote unanimously to approve the covenants when the time came to do so, despite their initial reservations. Furthermore, Muslim countries were amongst the most outspoken opponents of the splitting of social and economic rights from civil and political rights, which was favoured by the United States, preferring, to integrate them into a single covenant instead. Although the Muslim states' stance on this matter did not win out, it had often been perceived as the more progressive position to be taken on the bill.⁵⁷

Valuable contributions were also made by Arab and Muslim women delegates from Iraq, Libya, Morocco, and Pakistan to this process. Iraqi delegate Bedia Afnan provided key input into women's equality provisions in Article 3 of both covenants, while a strong emphasis was placed on equal marriage rights for both spouses by the Libyan delegate in debates pertaining to the Covenant on Civil and Political Rights.⁵⁸ As Mayer aptly remarks about Waltz' novel findings, 'the fact that these delegates' strong support for women's equality has largely been ignored while Baroody's more problematic stances have been emphasized is another indication of how accounts of the development of the International Bill of Human Rights have tended to reinforce presuppositions about the hostility of a hypostatized Islam to

⁵⁶ Ibid., p. 808.

⁵⁷ Ibid. pp. 826-28; also in Mayer (2007), p. 16.

⁵⁸ Waltz (2004), pp. 822-24 in Mayer (2007), p. 16.

the values of human rights.⁵⁹ Mayer, here, points to the inconsistencies that exemplify accounts of the genesis of the international human rights system, namely the failure to take into account the full scope of the participation of certain countries in this process. Merely focusing on the ‘problematic stances’ of Middle Eastern entities, for instance, without also highlighting their positive positions, only goes to conceal the actual state of affairs that governed the international human rights formulation process.

If only the *problematic* stances on human rights were to be highlighted then the *absence* of major Western actors such as the United States from the drafting process, namely from the ratification of the covenants, would seemingly indicate Western hostility towards values of human rights. Yet generalisations of this nature cannot and should not be made in light of the degree of variation, which actually characterised both Eastern and Western stances on human rights. These include the wide-ranging positions taken by Muslim countries during the time of the drafting of the International Bill, as opposed to one central position being taken, which followed some ‘Islamic consensus’ on human rights.⁶⁰ Accordingly, one would presumably need to take into account a list of all the varied stances on human rights held by all countries, before coming up with any definitive verdict on a given national or regional position on human rights. Aiming for blanket generalities defeats the task of providing an actual mapping of proceedings, which led to the emergence of the new international human rights regime.

3. The rights ‘hook’ and ‘Spiral Model’

Showing greater caution, Anthony Chase and Kyle M. Ballard submit that the ‘substantial record of formal ratification of international human rights treaties’ on the part of Arab countries constitutes ‘a cruel joke for anyone who takes human rights seriously, mocking with their hypocrisy those who suffer human rights

⁵⁹ Mayer (2007), p. 16.

⁶⁰ Reference to Waltz (2004) in Mayer (2007), p. 16.

violations in the region.’⁶¹ Such a remark may be warranted in the context of the pervasive human rights violations in the Arab world, including the persecution of minorities and of those advocating democratisation and secularisation in the region. It is, however, qualified by the affirmation that such ratifications are nonetheless ‘a first step toward the integration of human rights into politics.’⁶² By formally ratifying such treaties, Middle Eastern entities also seem to be asserting the normative validity of human rights in their societies, invalidating claims that human rights are a ‘foreign imposition.’ In turn, NGOs and individuals can use this as a ‘hook’ for asserting the legitimate rights claims of Middle Eastern civil society. Therefore, to the extent that Middle East and North African countries have formally recognised the international human rights system, they are capable of being held to account for their behaviour by their peoples as well as by the international community. This fact becomes especially pertinent if states deviate from international standards.

Overall, what can be gleaned from records of the participation of Middle Eastern entities in the genesis of the international human rights system is that they played a more active and productive role in its development than generally assumed. Despite their initial qualms regarding certain human rights provisions, Middle East actors overwhelmingly voted in favour of the proposed formulations of the Universal Declaration and later of the completed International Bill of Human Rights. In so doing, they demonstrated political astuteness and adaptability rather than fundamental intransigence on questions of human rights.

The assumptions that Arab and Islamic entities were fundamentally antagonistic to the emerging human rights system or that they were excluded from its formulation have shown to be largely untrue. The case of the Saudi objection to the Universal Declaration, for instance, would appear to corroborate the claim of Islamic hostility

⁶¹ Anthony Chase, and Kyle M. Ballard, ‘Appendix 2: Status of Human Rights Treaty Ratifications, with Notable Reservations, Understandings, and Declarations,’ in Chase and Hamzawy, eds. (2006), p. 237.

⁶² Ibid.

to the universality of human rights principles. Yet the otherwise unanimous acceptance of the terms of the new international human rights system on the part of Arab and Islamic states would provide substantial evidence to the contrary. Whether the Middle Eastern states' acceptance of the UDHR formulation was designed to improve their bargaining position within the international community or represented a genuine support for human rights per se remains debatable.

Risse, Ropp and Sikkink's 'Spiral Model' of the socialisation of human rights norms, which will be visited in the following chapter, potentially helps to answer this question in relation to the Middle East. It suggests that human rights positions tend to be adopted by states for prudential as well as normative reasons.⁶³ Thus, states initially signing onto human rights treaties 'for all the wrong reasons' and without any real intention to implement those values in practice, could eventually find themselves duty-bound by a normative imperative to uphold those values. The early involvement of the Arab and Islamic states in the establishment of the international human rights system, therefore, can be seen as one part of the socialisation of rights norms and practices in the MENA region, slow and strenuous though this process may be. As will be explored in more detailed case studies to follow, it is the gradual internalisation of those norms by the individual states over time that eventually closes the gap, which may initially exist between principle and practice.

Other possible explanations for their active participation in the system lie in the presumable desirability of being part of a new international order in which non-Western and lesser developed regions of the world were capable of standing on relatively equal footing as their Western counterparts. This view would accord with Robert Keohane and well Martin and Simmons' rationalist-functional explanations for the appeal of international institutions in an anarchic system of states.⁶⁴ However, in this instance, the high level of convergence around

⁶³ Thomas Risse, Stephen C. Ropp and Kathryn Sikkink, eds., *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 2007).

⁶⁴ See Martin and Simmons (1998), pp. 729-57.

international human rights practices, would challenge Martin and Simmons' thesis about the relative absence of 'externalities and incentives for strategic interaction' with respect to issues of human rights.⁶⁵

As historian Mark Mazower contends, in seeking to explain the *strange triumph of human rights*, it is, perhaps, the lack of any real international enforcement mechanism and thus any real threat of punishment of governments for deviating from these human rights standards, which made universal participation in an international human rights scheme possible in the first place.⁶⁶ This may be taken as a sign that the International Bill of Rights was doomed to fail from the start or that it was a sham document behind which oppressive regimes could masquerade as civilised nations. In reality, however, such a compromise marked a first step towards the gradual diffusion and socialisation of human rights norms worldwide. There may not have been an enforcement mechanism to guarantee those rights, but there would come to be a growing expectation for governments to honour the Declaration, especially when straying from those international norms would bring disrepute abroad and instability at home. As will be seen in subsequent chapters, enforcement of the 'declared' human rights principles at the local level would have to come with time and with the build-up of enough momentum calling for their implementation.

The historical accounts studied in this chapter and the last directly confront existing misconceptions regarding the fundamental incompatibility of Arab and Islamic values with universal principles of human rights. They also demystify cultural relativist narratives, which seek to portray human rights as embodying exclusively 'Western' values that had to be imposed upon non-Western countries. For, as the discussed accounts clearly demonstrate, the Western powers were not the sole participants in the drafting of the international human rights bill; neither were they

⁶⁵ Ibid., p. 756; also cited in Introduction of thesis.

⁶⁶ Mark Mazower, 'The Strange Triumph of Human Rights, 1933-1950,' *The Historical Journal*, 47:2 (Cambridge, Cambridge University Press: 2004), pp. 379-98.

always its most remarkable contributors. Thus, to suggest that the international human rights system is the unique product of the West is to overlook the West's own frequent objections to proposed human rights formulations, not to mention the fact of its absence from the final drafting stage of the International Bill of Human Rights.

The next chapter will specifically seek to build upon the knowledge of the Middle East's historical role in the emergence of the international human rights regime, by turning to human-rights developments on a more regional level. By evaluating human rights schemes that have emerged within the Middle East in the wake of the establishment of the international human rights regime, it becomes possible to track the process of diffusion of human rights norms within the regional setting of the Middle East. Understanding, in turn, how these regional human rights developments fare in relation to the mandates of the international rights system, also enables us to gauge the degree to which human rights norms have or have not been institutionalised in the Middle East in accordance with universal standards historically agreed upon by all nations.

Chapter 4: Principle vs. Practice – Elements of a Regional Rights Regime in the Middle East

1. 'Declaratory' vs. 'Enforcement' Regime

This chapter seeks to identify potential elements of a budding human rights regime in the Middle East North Africa region. Such an assessment is based primarily on our growing, albeit rudimentary, understanding of 'international regimes'. This chapter speculates that the Middle East has the makings of a 'declaratory human rights regime,' which has achieved certain basic requirements of a human rights regime. In essence, the regional human rights regime in the Middle East is found to more or less closely mirror the international human rights regime in structure, being that they are both declaratory in nature and not directly enforceable. However, as will be analysed in depth, particularist human rights formulations in the region, such as the Arab Charter of Human Rights and the Universal Islamic Declaration of Human Rights, which seek to balance universal values with local, cultural and religious sensibilities, occasionally may depart from the universal principles they purport to stand for by allowing for excessive derogation to domestic law, by signatory states. For instance, these rights schemes may be constrained to the extent permitted by states with an *Islamic reference* or Islamic legal foundation. It is not to say that rights formulations with an Islamic or Arab grounding automatically spell a curtailment of rights; but rather that the rights therein may be curtailed on the basis of illiberal interpretations misattributed to culture or religion.¹ So long as 'the doors of *ijtihad*' or independent reasoning, are kept open, however, the phenomenon of Islamic reference can serve as an added catalyst for the realisation of rights in the Arab world, and not a hindrance, as it oftentimes has.

¹ See discussion of cultural relativism in chap. 2.

Studying the role of the Middle East in the emergence of the international human rights system has provided us with a regional perspective on an international question. Studying signs of the diffusion of international human rights norms within Middle Eastern societies and systems of governance can potentially provide us with an international perspective on a more regional question. Clearly, the reverberations of the international human rights regime, which was established with the signing of the Universal Declaration and additional protocol, have been felt on a global as well as a regional level.

Various manifestations of the international regime are to be discovered across different regions of the globe. Much is documented about the European Human Rights Regime, or the Regime of the Western Hemisphere as well as other outcroppings of the international human rights regime.² By contrast, relatively little is written about the Middle East's connection to the evolving international human rights system.³ As the previous chapter reveals, what little has been presented on the relationship of the Middle East to the international human rights regime, appears to be sketchy and outdated at best, and must be reevaluated in light of the lesser known contributions of Arab and Islamic countries to the formulation of human rights instruments both internationally and regionally.

When a precursory comparison is made between the Middle East and other regions of the world, such as Europe, which has a comprehensive Convention on Human Rights and an accompanying regional Human Rights Court, it might be assumed that the Middle East has no observable human rights system of its own. This may be given the fact that its own institutions fail to approximate Western, secular-democratic models of governance more generally. According to Paul J. Magnarella's evaluation of The Middle East and North Africa in 1999, 'unlike Africa, the Americas and Europe, the Arab Middle East-North Africa has no functioning human rights

² See Andrew Moravcsik, 'The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe', *International Organization*, Vol. 54, no. 2 (2000).

³ Paul Williams, ed., *The International Bill of Human Rights* (1999), p. xviii.

convention-based system.’⁴ Over one decade later, this verdict still rings true for the Middle East. Yet, it fails to take into consideration other notable developments and evidence in the region that would challenge the view of their being an utter lack of regional consensus on human rights.

David P. Forsythe’s survey of the ‘regional application of human rights norms,’ which devotes considerable attention to the regions of Europe, the Western Hemisphere and Africa, finds the human rights systems of Asian and Arab countries to be unremarkable by contrast, and therefore unworthy of detailed discussion. Forsythe notes the Arab League’s Human Rights Commission’s preoccupation with the Israeli-Palestinian question as opposed to addressing existing human rights problems in Arab countries. He finds the Commission’s impact as ‘having been negligible,’ concluding that ‘it does not merit analysis [here].’⁵ Based on this view, the Arab League’s appropriation of ‘human rights’ would appear to be prudentially motivated, seemingly supporting Martin and Simmons’ rationalist rationale behind convergence patterns in international relations.⁶

Norberto Bobbio also remarks how ‘the constitutional mechanisms which characterize a rights-based state [and] are intended to guard the individual against abuses of power’ remain at large in the modern Middle East system.⁷ Bobbio, however, is not considering rights as such, but a wider liberal framework, which he deems to be lacking in the region. On that basis, he rules out any evidence of a rights-based system in the Middle East. What this and other cursory assessments of the region fail to capture, however, is the otherwise surprising level of regional consent on human rights principles despite the lack of ‘constitutional’ or

⁴ Paul J. Magnarella, *Middle East and North Africa* (Aldershot: Ashgate, 1999), p. 3.

⁵ David P. Forsythe, *Human Rights in International Relations* (Cambridge: Cambridge University Press, 2008), p. 148.

⁶ See Lisa L. Martin and Beth A. Simmons, eds., ‘Theories and Empirical Studies of International Institutions’, *International Organization*, Vol. 52:4, (Autumn 1998); as discussed in the Introduction of the thesis.

⁷ Norberto Bobbio, *Liberalism and Democracy*, (London: Verso, 2006), p. 15 in Louise Fawcett, ‘Neither Traditional nor Modern: Constitutionalism in the Ottoman Empire and its Successor States,’ *Journal of Modern European History*, Vol. 6:1 (2008), p. 133.

convention-based' mechanisms for putting these principles into practice. The shortage of protective human rights measures in the Middle East does not, on its own, signify the region's inherent antagonism towards human rights. From this we also cannot presume there to be a 'general lack of will' on the part of regional entities to promote and enforce human rights standards.

The 2004 UNDP Arab Human Development Report, however, would also seem to buttress a view of the region as inimical to human development. It affirms that 'by 21st century standards, Arab countries have not met the Arab people's aspirations for development, security and liberation.'⁸ Even if, in the view of the international community, the Middle East fails to satisfactorily meet the threshold of liberal-democratic standards, arguably this does not automatically mean that it has *completely* missed the mark with respect to human rights, as will subsequently be explored. To that end, we would need to look for signs of the diffusion or non-diffusion of international human rights norms inside the region to arrive at a more nuanced view of the regional picture.

More recently, there exists a collection of regional human rights charters and declaration as well as formal and informal human rights schemes that, taken together, potentially constitute the beginnings of a regional consensus based on fundamental precepts of human rights. These include the Arab Charter on Human Rights of the Arab League, first adopted on 15 September 1994 and later ratified in 2008—which will serve as the key point of reference in this chapter, for being the most recent regional human rights formulation to be formally ratified in the Middle East. Additionally, there is the Universal Islamic Declaration of Human Rights; the 1990 Cairo Declaration on Human Rights in Islam issued by the Organization of the Islamic Conference; the 1999 Beirut Declaration of Justice; and the 2004 Sana'a Declaration and Alexandria Declaration among other regional rights-based schemes.

⁸ UNDP, United Nations Development Programme, *Arab Human Development Reports* (2004), p. 19.

In turn, this amalgamation of human rights formulations might possibly signal the emergence of a 'human rights regime' in the Middle East region, if we are to accept the standard definition of 'regime' as denoting 'norms and decision-making procedures accepted by international actors to regulate an issue area.'⁹The aforementioned charters and declarations constitute the 'norms, and decision-making procedures' jointly accepted by the different regional entities in the Middle East, from the Arab League of States to the Organization of the Islamic Conference, to regulate the issue area of human rights. They potentially reflect the beginnings of the socialisation and perhaps, early institutionalisation of international human rights norms within the Middle East region.¹⁰ At the very least, it is likely that Middle Eastern governments will find it harder to avoid the constraints of such a regime, as the subsequent case studies will seek to show.

These developments bear equally on Keohane's thesis of the functional role of institutions in an anarchic society, as they do on the thesis of the universal appeal of human rights put forward by Jack Donnelly, Fernando Tésón and others.¹¹ Moving on to gauge the *enforceability* of such human rights formulations can tell us about their application and effectiveness as instruments for addressing the question of human rights in the Middle East region. It can also help to reveal potential constraints to the proper institutionalisation of human rights by international actors.

Furthermore, if a 'human rights regime' can be identified on one level or another in the Middle East region, where along the regime axis might it fall: is it a 'declaratory regime,' a 'promotion regime' or an 'enforcement regime' as Jack Donnelly would seek to distinguish?¹² Attempting to locate the Middle East's tentative placement on

⁹ Jack Donnelly, 'International Human Rights: a Regime Analysis,' *International Organization*, Vol. 40:3 (Summer 1986) p. 602.

¹⁰ Mishana Hosseinioun, 'Prospects for a Regional Human Rights Regime in the Middle East,' Chap. 6, in Simon Bennett, ed., *London Debates 2011: The Future of Human Rights in a Non-Western World*, (London: School of Advanced Study, 2012).

¹¹ As discussed in the introductory chapter.

¹² Ibid.

this continuum will not only assist in determining its practical implications for the region, it will make possible a systematised comparisons with other regimes, including those of the Americas and Europe.

On a rudimentary level, it appears that an imagined Middle Eastern human rights regime would fall into the category of a 'declaratory regime.' This is for the reason that the region's existing human rights schemes have taken the form of either charters or declarations, and not a legally enforceable 'convention-based system,' which Magnarella has already noted. Thus, even whilst the Middle East's human rights system is not convention-based, it still converges in its basic institutional structure with most international human rights instruments, by virtue of being charter-based. More specifically, the region's diverse local legal structures, from the Gulf monarchies to the Islamic Republics, can be seen as diverging from the Western-democratic domestic legal structures found elsewhere in the Americas or Europe. Yet this difference in politico-legal makeup has not precluded these Middle Eastern and Islamic states from adopting human rights schemes that closely resemble those found in Western states.

Indeed, the early international human rights system, too, can be categorised as a 'declaratory regime,' seeing that its basis is the United Nations Charter and the Universal Declaration of Human Rights. Even the addition of the Twin Covenants and additional protocols to the UDHR did not entirely help the UN human rights system make the transition to a fully fledged 'enforcement regime.' This enforcement gap is attributable to the lack of a corresponding international human rights court to properly enforce the provisions in question.¹³ Yet as seen in the previous chapter, this very lack of enforceability *strangely* facilitated greater buy-in by states and allowed the human rights regime to take root and flourish over time,

¹³ See Louis Henkin, 'Human Rights: Ideology and Aspiration, Reality and Prospect' in Power, Samantha and Allison, Graham, eds., *Realizing Human Rights: Moving from Inspiration to Impact* (New York, NY: St. Martin's Press, 2000), chap. 1.

even if imperfectly.¹⁴ Therefore, the lack of an inbuilt enforcement mechanism does not automatically invalidate a human rights system such as the one observed at the regional level in the MENA region.

While the human rights system of the United Nations and that of the Middle East potentially differ in content, as will be investigated, it would seem that they both meet the criteria of a 'declaratory regime.' As with all declaratory regimes, there is still a tacit agreement amongst nations to regulate their behaviour in accordance with common codes of conduct, with or without any outside enforcement mechanism. The European system and the Inter-American system, however, more closely resemble 'enforcement regimes' for the reason that they contain juridical mechanisms in the form of regional courts, to uphold their respective human rights conventions. In this way, these regional frameworks can be seen as somewhat compensating for the existing enforcement gaps of the international human rights system.

Further distinctions can also be drawn between the different 'enforcement regimes,' to highlight the extent of their harmonisation or divergence with respect to human rights, both in principle and in practice. While the Inter-American Convention, for instance, is enforceable like the European Convention, the Inter-American Court has handed down relatively fewer binding judgments than the European Courts of Justice and Human Rights. This is due to an institutional limitation which only allows for the Inter-American Commission and states to bring cases to the regional court (which no state has done), and which results in the Inter-American Commission having to process the bulk of human rights cases, often in place of the court.¹⁵

¹⁴ Reference to Mark Mazower, 'The Strange Triumph of Human Rights, 1933-1950,' *The Historical Journal*, 47:2 (2004), pp. 379-398.

¹⁵ Christina M. Cerna, 'The Inter-American System for the Protection of Human Rights,' *Florida Journal of International Law* 16 (2004), p. 195: over 12,500 cases were handled by the Commission, while only forty-five binding judgments and seventeen advisory opinions were issued by the Court; Cerna also referenced in Forsythe (2008), p. 144.

In addition to the structural limitations of the Inter-American regime, the mixed receptivity of the member states towards the regime, including the United States' challenge to the Inter-American Court's legitimacy, creates obstacles for the regime's proper enforcement of human rights, whereas all members of the Council of Europe have otherwise submitted themselves to the jurisdiction of the European Convention. Nonetheless, as Christina Cerna has noted in her survey of the Inter-American system, despite the remaining resistance to the Inter-American Court, there has been a concerted movement in the direction of greater acceptance of the decisions handed down by the Inter-American Commission. There is also a willingness on the part of more states to submit themselves to the Court's jurisdiction, such as Brazil and Mexico, which ceded to the regime in 1998.¹⁶ This confirms what Par Engstrom and Andrew Hurrell conclude about 'why the human rights regime in the Americas matters;' namely, that it has 'developed into a normatively intrusive regime with a far-reaching mandate to regulate domestic and political norms and practices of regional states [...].'¹⁷

What the case of the Inter-American system suggests is that even *within* and *among* 'enforcement regimes,' the patterns of convergence and divergence with respect to human rights norms are a function of political circumstance and the corresponding calculations of states in this process. It also demonstrates that, despite the shifting attitudes of international actors, the normative culture of given human rights regimes has the potential of being strengthened with time. As the institutions gain further grounding in their regional settings, they also acquire greater enforcement potential.

2. Blocks to rights enforcement

¹⁶ Cerna (2004), p. 203 in Forsythe (2008), pp. 144-45.

¹⁷ Par Engstrom and Andrew Hurrell, 'Why the Human Rights Regime in the Americas Matters,' in Mónica Serrano and Vesselin Popovski, eds., *Human Rights Regimes in the Americas* (Tokyo: United Nations University Press, 2010).

In the case of the Middle East region, whose various human rights documents potentially form the groundwork for a budding 'declaratory regime,' numerous caveats apply. The first drawback is that declaratory regime would appear to support nothing more than 'paper freedoms,' a concern reflected in the UNDP Arab Human Development reports. Granted, mere declarations of support for human rights do not constitute a guarantee for their enforcement, as we have already come to learn from the legal limitations of the UN human rights system alone. They also do not necessarily reflect a genuine commitment on the part of their drafters and signatories to the protection of their peoples' rights and freedoms, as we can deduce from the fact of ongoing human rights violations committed by the international actors. It is in the same way that the trappings of 'liberal democracy,' as seen, do not form sufficient guarantees for the respect of human rights in practice.

Secondly, a 'declaratory human rights regime' would presumably have to be properly incorporated into the domestic legislation of the Middle Eastern states in order to be considered a viable human rights framework, in the same way that international conventions call to be thoroughly assimilated into local laws. Yet, for the most part, it appears that international conventions, while ratified by most countries in the Middle East and elsewhere, have yet to permanently make it into their local governance mechanisms. This suggests that convergence around human rights norms in *rhetoric* or *principle* is not the same as in *practice*.

For instance, the degree to which international law has been appropriated on a substantive level by the Middle East in its own domestic settings has been questioned. The 2003 UNDP Arab Human Development report asserts that Arab support for international human rights formulations has not properly translated into the incorporation of human rights norms within Arab legal structures:

The majority of the Arab states have signed the international human rights conventions—all of them refer to respect for fundamental freedoms—yet those conventions have neither entered the legal culture nor have they been incorporated into the substantive legislations of those states. The

conventions have remained nominal, as is apparent from the fact that they are rarely raised before the judiciary for implementation, even though they are all binding and enjoy priority relative to local laws [...] Furthermore, these conventions have never been used, at the level of legislation, as a lever; they could be used as tools to urge Arab legislative authorities to enact new laws or to amend unfair ones. This has not happened.¹⁸

What the UNDP findings seem to indicate is that despite the Arab states' endorsement of the international human rights conventions, no equivalent legal framework exists within the Middle East region to uphold a similar degree of 'respect for fundamental freedoms.' While the international conventions appear to have exerted only 'nominal' influence on local laws, however, this is to leave out developments that have taken place on the regional level. While the claims of the UNDP report bring up an important discrepancy in the legal system of Arab countries, to claim that the conventions have 'neither entered the legal culture nor have they been incorporated into the substantive legislation of those states,' however, seems to prematurely disregard the phenomenon of region-wide human rights schemes in the Middle East. Such schemes draw heavily upon the language of the International Bill of Human Rights and would appear to signal a human rights culture of sorts emanating from the supra-national level.¹⁹ Such assessments by the UNDP disregard the more subtle and protracted processes involved in the socialisation of human rights norms domestically, to be studied in subsequent chapters. These domestic case studies will attempt to challenge the assumption that international rights norms have not penetrated local legislation and modes of statecraft.

The 2004 UNDP report not only submits, as the 2003 report does, that international conventions have been unsatisfactorily incorporated into most local legislatures in

¹⁸ UNDP, United Nations Development Programme, *Arab Human Development Report* (2003), p. 152.

¹⁹ Mayer (2007), p. 73: 'extensive borrowing from Western models and terminology.'

the Arab world, it even suggests that the existing local laws and constitutions are often in direct violation of international law:

‘A number of Arab constitutions contain provisions that conflict with international human rights principles by assuming an ideological or religious character that removes public rights and freedoms and permits their removal. An example is the amendment introduced by the Yemeni legislation to an article, which originally provided that ‘there shall be no crime and no punishment other than as stipulated by law.’ The amendment states that ‘there shall be no crime and no punishment other than on the basis of a provision of religious law (Shari’a) or law.’²⁰

Such a finding does indeed reveal a dilemma: the level of regional consensus on human rights does not appear to be matched by an equal local commitment on the part of states to harmonise their legal structures with those of the international community. This discrepancy potentially reflects the disincentive for certain regional actors to implement the human rights principles, which they support only in name. It also explains the greater incentive for some countries to step up ‘Islamisation’ efforts as a way of rallying public support and boosting domestic legitimacy.²¹

By extension, efforts to ameliorate ‘human rights’ practices would perhaps indicate that other Middle East countries also had prudential reasons for harmonising their country’s practices with international standards, even if cosmetically at first. This can be seen, for instance, in Colonel Muammar Qaddafi’s belated attempts in 1988 to redeem Libya’s tarnished image following a string of systematic human rights violations, by issuing a Libyan human rights charter and creating a human rights prize in his name.²²

²⁰ UNDP, United Nations Development Programme, *Arab Human Development Report* (2004), p. 14.

²¹ For the disincentives to organize around human rights issue areas see Martin and Simmons (1998); for the incentives to ‘Islamize’ see Mayer (2007), pp. 22-23.

²² Ann Elizabeth Mayer, ‘Qadhafi’s Retreat from Revolutionary Legalism,’ in Vanderwalle, Dirk, ed., *Qadhafi’s Revolution, 1969-1994* (New York, NY: St. Martin’s Press, 1995), pp. 113-37.

As will be seen, however, what at first appears to be a dilemma and sign of regress is also a surprising impetus for progress. For the greater the gulf between rights promises and practices in the Middle East states, the more normative pull those principles exert on local systems to rectify that imbalance through proper enforcement.

3. Building-blocks for rights enforcement

The failure to properly institutionalise human rights norms within the legal culture of Arab states, as the 2003 and 2004 UNDP reports contend, does not altogether rule out the presence of a *normative* human rights culture in the region, which would seem to have been a necessary precondition for the Middle East's acceptance of the UN human rights system to begin with. It is also a prerequisite for the greater internalisation and implementation of those norms.

In the absence of progressive local systems of jurisprudence in the Arab World, however, the presence of regional human rights schemes, albeit imperfect, can also potentially serve as a precursor to a more viable Middle Eastern legal human rights framework in the long term. The advent of human rights schemes in the Middle East and North Africa would at least seem to reflect the shifting normative undercurrents in the region resulting from the riptide of the international human rights regime. These trends will be looked at in more depth when visiting developments on the local level in the Middle East.

Moreover, convergence on human rights norms—even if on paper—is not an insignificant occurrence, as theorists such as Risse, Ropp and Sikkink demonstrate

in their 'Spiral Model' of the socialisation of human rights norms.²³ According to the five-phase model, international human rights norms appear to be initially adopted on largely prudential grounds and eventually go on to be institutionalised for more principled reasons. What accounts for this shift in the effect of human rights norms, it seems, is not necessarily the norms themselves, but rather the shifting interests and identities that surround them. This would suggest that at every step along the road to their socialisation, human rights norms are in a dependent relationship to the discourse that animates them. It is as if to imply that the instrumental adaptation to human rights norms by given entities creates the burden of principled legitimisation. Once these entities become entrapped or 'hooked' by their own rhetoric, they are made to engage in substantive debates with human rights advocates and to answer to their critics over their human rights conditions or risk alienation from the international community.

Following a 'Spiral Model' logic, it becomes possible to view the socialisation of human rights norms within Middle Eastern societies as an evolutionary process that does not end with the issuance of human rights declarations and charters. It is one that imaginably continues to work upon the very social, cultural, and political fabric of those societies, causing them to readjust themselves to sustain the norms in question in a more principled fashion. Further studies will be conducted in subsequent chapters to follow the trajectory of human rights norms at the local level in the Middle East, namely in Egypt, the United Arab Emirates, and the Islamic Republic of Iran.

The fact that an increasing number of civil society movements are cropping up in Middle Eastern societies would also perhaps indicate a move in the direction of greater harmonisation around human rights norms, regionally as well as internationally. These movements have coalesced into such civil society groups as the Arab Organization for Human Rights, which rose in the 1960s to its local

²³ For the 'Spiral Model' thesis see Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, eds., *The Power of Human Rights: International Norms and Domestic Change* (2007).

chapter, the Egyptian Organization for Human Rights, which was founded in April 2005.²⁴ It will be seen how these formal NGO outcroppings, and other informal social networks, mirror the rise of transnational advocacy networks in the global arena, and in many ways mirror their functions on a local level.²⁵ It will also be seen how these networks, acting in tandem, have in recent times brought about a veritable tipping point within the MENA region such as during the Arab uprisings or 'Arab Spring' movements of 2011.

In his analysis of *Civil Society in the Middle East*, a decade and a half prior to the 2011 'Arab Awakening,' Augustus Norton writes, 'from Morocco through Turkey, formal civic institutions have begun to reach a critical mass with associations of migrants, journalists, human rights organizations, doctors, lawyers, women's rights groups, and political parties.'²⁶ These findings corroborate Norton's thesis of the emergence of a human rights movement in the region.²⁷ Keck and Sikkink would likely attribute this phenomenon to the diffusion of international human rights norms globally, in keeping with their thesis on the increasing influence of transnational advocacy networks in international society.²⁸

Evidence of this diffusion can be found in the boom of human rights-centred declarations and related activities across the Middle East, for instance. The Beirut Declaration on the Regional Protection of Human Rights in the Arab World, is the product of a conference in Beirut in 2003 arranged under the auspices of the Cairo Institute for Human Rights Studies and the Association for the Defense of Rights and Freedoms—a collaborative enterprise between Arab civil society and transnational advocacy networks—which included the participation of 'thirty-six Arab NGOs,

²⁴ For details on 'the rise of the human rights movement' see Bahey el-Din Hassan, 'A Question of Human Rights Ethics: Defending the Islamists,' Chap. 2, pp. 37-48, in Anthony Chase and Amr Hamzawy, eds. (2006).

²⁵ See central thesis in Margaret E. Keck, and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (1998).

²⁶ Augustus R. Norton, ed., *Civil Society in the Middle East* (1996), p. xiii.

²⁷ *Ibid.*, p. 6.

²⁸ See central thesis in Keck and Sikkink (1998).

eleven international NGOs and intergovernmental organizations, fifteen legal, academic and media experts, as well as seven government officials and parliamentarians acting as observers.²⁹ Such a development is indicative of the level of momentum that is gathering around human rights principles, not just internationally but within the MENA region; and not just at the governmental level, but also at the level of civil society more broadly.

Furthermore, recent studies by Katerina Dalacoura and others suggest that the Middle East has not been immune to the global diffusion of human rights norms in the wake of the development of the international human rights system. According to Dalacoura, 'during the 1970s and the 1980s human rights became a more prominent subject in the Middle East, among governments, political activists, intellectuals, and ordinary people,' that is to say, it has effectively spread to all sectors of Middle Eastern society.³⁰ Dalacoura goes on to specify that this is not an entirely new phenomenon, neither is it unique the Middle East; it represents a 'renewed interest' in 19th century principles of 'democracy and constitutionalism [...] its reference point now being the Universal Declaration of Human Rights.'³¹

However, as Dalacoura points out, the 'increasing prestige' of human rights notions internationally and regionally has not necessarily registered as a greater respect for such principles in practice. For example, it has not prevented illiberal interpretations of human rights law in Middle Eastern societies, namely 'the use of Islamic criteria to restrict human rights.'³² These include the Islamisation campaigns in Sudan and of the Taliban in Afghanistan where the *shari'a* was used as a pretext for circumventing established human rights law.³³

²⁹ For details of the 2003 Beirut conference see Mayer (2007), pp. 18-19.

³⁰ Katerina Dalacoura, *Islam, Liberalism and Human Rights* (2007), p. 49.

³¹ Ibid.

³² Mayer (2007), pp. 2, 12, 34, 77.

³³ See Ibid., p. 44.

Although Dalacoura acknowledges the increasing diffusion of rights in the region, her argument here further reinforces the fallacious view of “Islam” as the obstacle restricting the flow of human rights in the Muslim world. Her analysis also hits a dead-end by failing to account for the fact that rights norms also gain momentum from the resistance they encounter on the windy path to socialisation, as will later be discussed. The gap noted between principle and practice, as seen, is also an erroneous measure of the region’s norm absorption capacity. In reality, the take-up of norms, and their successful translation into practice, is not instantaneous, and thus not immediately apparent. It follows a non-linear trajectory, often encountering down-cycles and other obstacles along the way, which also make it more difficult to track, and therefore easier to overlook. Only a more sensitive analytical lens capable of holding these seemingly inconsistent images together in the same conceptual frame can produce an accurate picture of the region’s true experience with these competing norms and practices.

As the ‘Spiral Model’ would predict, the more human rights are socialised within given settings, the more ‘normative charge’ they presumably gather. By extension, they are more likely to go on to be implemented for principled reasons than not. Of course, this does not preclude the possibility of increased resistance to human rights norms, which has clearly been felt around the Middle East. Yet, to the extent that the diffusion of human rights norms in the region may encounter internal resistance, it is presumably matched in strength by the equivalent normative pull of the socialisation process.³⁴

As previously discussed, Mayer also provides an account of how human rights norms have been socialised in Muslim settings. She dissects ‘Muslim Responses to and Involvement in the UN Human Rights System,’ in an attempt to fill the gaps in our knowledge about the origins and development of the international human rights regime and to correct misconceptions perpetuated by standard cultural relativist

³⁴ See Risse, Ropp and Sikink (2007).

positions on human rights.³⁵ In so doing, she aims to rise above the rhetoric of cultural relativism, which posits the *a priori* incompatibility of human rights with cultural or religious precepts such as Islam. Instead, she proceeds directly to try to track the measure of normative sway that notions of international human rights actually hold on the Islamic imagination, in spite of or in light of what is otherwise argued.

Mayer suggests that the increasing references made to international legal precepts of human rights within the body of Islamic scholarship in the last decades attests to the stronghold that such concepts have presumably attained in the Muslim consciousness. She finds that the language of international human rights has even entered the vocabulary of those Muslims who are ostensibly opposed to such concepts, all of which ironically reflects the extent to which universal principles of human rights have penetrated Islamic culture. Thus, even signs of internal resistance to human rights principles from within the region that have been identified as 'illiberal impulses,' for instance, must not to be mistaken for fixed cultural or religious positions. If anything, such reactionary attitudes most probably could not have emerged other than in response to an equivalent 'liberal impulse' permeating the Middle East.³⁶

In fact, human rights norms are infiltrating Muslim societies to a degree that occasionally renders them inextricable from each other, in the same way, for instance, that the foreign, Western model of the nation-state is today the norm across the Arab and Muslim world. This is to say that one cannot legitimately challenge the principle of human rights on grounds of incompatibility with Islamic culture, as cultural relativists such as Mawdudi and Tabandeh have occasionally done in their respective Islamic critiques and particularist interpretations of human rights, without throwing out of balance the entire infrastructure upon which the

³⁵ Mayer (2007), p. 11.

³⁶ The term 'liberal impulse' is borrowed from Dalacoura (2007), p. 65.

Muslim world was built.³⁷ Therefore, attempting to discredit human rights principles within Muslim societies, outright, while selectively ignoring other non-Islamic developments, which the processes of modernisation and globalisation have brought about in the Muslim world reveals the inconsistency of cultural relativist thought.³⁸

What is more, she adds, 'given this history, contemporary international human rights formulations are not incongruous in the context of the substantially Westernized legal system of Muslim countries.'³⁹ Here, Mayer seeks not only to demonstrate that contemporary human rights schemes are *not* at odds with Muslim societies, but that they are actually in keeping with the largely modernised style of jurisprudence found in modern Muslim societies. She points out, for instance, the paradox of recent attempts on the part of Muslim countries to challenge international human rights on grounds of upholding the Islamic *shari'a*, even while their countries have already, in one way or another, registered their formal support for international law.⁴⁰ However, as Meyer recognizes, it is not enough to simply determine whether international human rights norms are either compatible or incompatible with the ways of Muslim societies. Doing so would be to omit significant details about the shifting stance of Muslim countries with respect to human rights. This shift, as will be seen, is not always a function of Islam; rather it is a function of the liberal or illiberal impulse of states.⁴¹

Mayer, who offers an appraisal of human rights schemes formulated in the name of Islam, such as the Universal Islamic Declaration of Human Rights, explains how such developments have been mostly politically rather than ideologically motivated. Mayer refers to these Islamic human rights schemes as embodying 'highly selective and often less-than-coherent appropriations of Islamic principles, many in

³⁷ See Abdul Ala Mawdudi, *Human Rights in Islam* (Lahore: Islamic Publications, 1977) and Sultanhussein Tabandeh, *A Muslim Commentary on the Universal Declaration of Human Rights* (1966).

³⁸ Mayer (2007), p. 12. Also, see Chap. 2 of this thesis for the debate on cultural relativism.

³⁹ *Ibid.*, p. 11.

⁴⁰ *Ibid.*, p. 12.

⁴¹ Dalacoura (2007), p. 65.

combination with unacknowledged borrowings from international human rights documents.⁴² She ascribes the flaws she perceives in such Islamic human rights formulations ‘to the failing of the human authors, not to Islam per se.’

Mayer’s concerns are mirrored by Dalacoura, who similarly remarks that ‘what is certainly negative is the facile incorporation of rights into an interpretation of Islam which is profoundly inhospitable to any notion of human rights.’⁴³ What Dalacoura suggests, by contrast, is that there is the potential for alternate, more liberal interpretations of Islam, which are indeed compatible with human rights. Such would imply that human rights formulations created in the name of Islam need not always be problematic; they can even potentially be ‘right-enabling’ in Islamic settings. According to Ramadan, “radical reform” can happen—and is arguably already underway—within Islamic circles, especially with women taking a more active role in the interpreting and defining of their own roles and rights in society.⁴⁴ The role of *moderate Muslim networks* in this process is also critical to ensuring tolerant and forward-thinking interpretations and applications of rights.⁴⁵

In his study of the advent of *Modern Islamic Political Thought*, Hamid Enayat also submits that different interpretations of Islam yield different political results, not all of them averse to human rights, ‘and not always in terms conducive to a dictatorial conduct of individual and social affairs.’⁴⁶ By the same token, he contends that the failures of the conditions for the realisation of freedoms and rights are not all a function of *Islam* proper; rather, they are a function of the politicisation of religion more generally. It is just as the ‘Sunni-Shia divide’ in Islam, for instance, has been

⁴² Mayer (2007), p. xii.

⁴³ Dalacoura (2007), p. 58.

⁴⁴ Tariq Ramadan, *Radical Reform: Islamic Ethics and Liberation* (2009), p. 217.

⁴⁵ Angel Rabasa, Cheryl Benard, Lowell H. Schwartz, and Peter Sickle, ‘Building Moderate Muslim Networks’ (RAND Corporation, 2007).

⁴⁶ See Hamid Enayat, *Modern Islamic Political Thought* (Austin: University of Texas Press, 1982).

exacerbated in more recent times as a result of divisive political circumstances, such as in the ongoing, destabilising conflicts from Iraq and Afghanistan to Lebanon.⁴⁷

However, when considering human rights formulations in Arab and Islamic settings, a caveat lies in the fact that the regional human rights schemes in the Middle East, which tend to invoke 'Islam' or other cultural specificities, might be deemed too particularistic in nature, and thus incompatible with international human rights standards. Additionally, derogations based on the invocation of religious law seem to be permitted by these texts, as will be subsequently examined. However, international law expressly prohibits derogations from international human rights norms on grounds of incompatibility with domestic legislatures or cultural mores.⁴⁸

Both the Universal Islamic Declaration of Human Rights and the Arab Charter on Human Rights rely on the Muslim body of religious law as their guiding principles, as evidenced by references to the Islamic *shari'a* in their respective texts. The preamble of the Arab Charter, for instance, sets the human rights parameters to include principles of equality 'as firmly established by the Islamic *shari'a* and other divinely-revealed religions.' Depending on its liberal or illiberal interpretation by Arab states, this provision could at once be potentially enabling *or* disabling with respect to human rights, for the reason that it would appear to highlight the harmony of human rights principles with those of Islam, while simultaneously allowing for a seemingly open-ended interpretation of rights based on divinely-sanctioned law as opposed to secular law. As such, the Charter can be seen as departing from the more secular human rights tradition embodied by the International Bill of Human Rights and the European Convention, for instance. At the same time, it can be perceived as attempting to re-appropriate the secular tradition into an Arabo-Islamic framework of rights. In fact, the final clause of the preamble goes on to reaffirm the Charter's express support for the principles of the UN

⁴⁷ Seyyed Vali Reza Nasr, *The Shia Revival: how conflicts within Islam will shape the future* (New York, NY: Norton, 2006). As a rejoinder to Nasr's subtitle, one might add: *how conflicts within the Middle East will shape the future of Islam*.

⁴⁸ Mayer (2007), p. 18.

Charter as well as the International Bill of Human Rights, suggesting that the Arab Charter does not seek to position itself in opposition to secular philosophy.⁴⁹

Another potential concern with human rights schemes being formulated in exclusively 'Arab' or 'Islamic' terms, is that they might not be inclusive of non-Arab and non-Islamic entities and minority groups that also comprise the Middle East North Africa region.⁵⁰ For instance, while Article 35 of the Arab Charter guarantees the right to 'an intellectual and cultural environment in which Arab nationalism is a source of pride,' it becomes questionable as to whether other forms of nationalism are similarly sanctioned.

Consequently, it would appear that the conditions for a fully *regional* 'declaratory regime' have not entirely been met as yet. However, there is still an element of universality that comprises these Arab and Islamic human rights schemes, which is reflected in their pan-Arab and pan-Islamic quality and in their transcendence of national borders. Concerns with the particularistic orientation of the Middle East's human rights system notwithstanding, the legal thrust of the presumed regional 'human rights regime,' still remains questionable.

It bears repeating that what such instruments as the Arab Charter on Human Rights lack is automatic enforceability. They are also often in seeming disjunction with international law, in that they allow for undue derogation to domestic legal structures of Middle Eastern states, which are oftentimes in conflict with international legal standards. For example, there is the more basic disjunction of secular law with conservative Islamic systems of jurisprudence found in the

⁴⁹ The final clause of the Preamble of Arab Charter reads: 'Reaffirming the principles of the Charter of the United Nations and the Universal Declaration of Human Rights, as well as the provisions of the United Nations International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights and the Cairo Declaration on Human Rights in Islam.'

⁵⁰ For a discussion of how the 'Arab' exclusivity of the Arab League prevented them from coming to the defense of the persecuted Kurds in Iraq see Lucy Brown and David Romano, 'Regional Organizations, regional identities, and minorities: the Arabs and the Kurdish question,' in Cilja Harders and Matteo Legrenzi, eds., *Beyond Regionalism: Regional Cooperation Regionalism and Regionalization in the Middle East* (Aldershot: Ashgate, 2008).

Kingdom of Saudi Arabia, and the Islamic Republic of Iran, to be studied, which rely primarily on divinely-sanctioned principles of *shari'a* based on *fiqh* or Islamic principles of jurisprudence, or the *Velayat-e Faqih* or Guardianship of the Islamic Jurists in the case of Iran.⁵¹

On the other hand, however, there are other Middle Eastern countries such as Turkey, which represent a more modernised Islamic model of governance and which reflect the compatibility of secular norms with religious precepts. This discrepancy in the application of law between different states across the Middle East is, in itself, indicative of the potential of all countries, Islamic or not, to rise to meet international human rights standards, albeit in their own unique way.⁵²

Unlike the Inter-American and European Conventions, the Middle Eastern charters are not similarly upheld by an independent, judiciary body, and are not properly integrated into the domestic legislation of states to prevent undue derogation to domestic law. Plans for an accompanying Arab Court of Human Rights to uphold the Arab Charter were briefly tabled but were subsequently put on hold following internal disagreements among Arab League members.⁵³ In this instance, the incentives for the coordination of rights practices were outweighed by the high premium placed on national sovereignty by the individual Arab nations. Fragile as the Arab League is as a regional institution, to begin with, there may be little reason, as the states see it, for subjecting themselves to any supranational oversight.

However, new debates surrounding the regional organisations in the Middle East, namely the League of Arab States and the Gulf Cooperation Council (GCC), suggest

⁵¹ The concept of *Velayat-e Faqih*, which was expounded upon in a book by the same name, by the leader of the Iranian revolution Ayatollah Khomeini in 1970, would later be incorporated into the Islamic constitution of Iran after the overthrow of the Pahlavi monarchy in 1979.

⁵² Mayer (2007), p. 24: 'Respect for international human rights law does not require that every culture take an identical approach, but it does require that human rights be defined and protected in a manner consonant with international principles.'

⁵³ Personal interview conducted with Secretary-General of the Arab League, Amr Moussa at World Economic Forum: Summit on the Global Agenda in Dubai, United Arab Emirates, 8 November 2008.

that their role in harmonising regional practices with international standards should not be discounted, as they are still 'a work in progress.'⁵⁴ In the view of some, they appear to be 'coming alive,' and shifting both in their internal and external dynamics and scope of regional influence in recent years.⁵⁵ According to Cilja Harders and Matteo Legrenzi's analysis of regionalisation trends in the region which is equally relevant to this discussion of rights globalisation in the region, 'it is obvious that some of the many institutions of Arab cooperation are vivid and developing even though their track record measured by the stated organizational aims often falls short of these. Still, they provide the formal and informal fora for the exchange of information, enable collective problem solving and strengthen the networks of trust and cooperation.'⁵⁶

The Arab League, for instance, which had been largely inactive in the last decades following its establishment on 22 March 1945, shows signs of moving towards closer cooperation, both internally and with other supra-regional organisations as the Gulf Cooperation Council (GCC) on a variety of more universal issue-areas, including most startlingly, the emerging norm of the Responsibility to Protect or "R2P."⁵⁷ The advent of the Gulf Cooperation Council established in 1981, represents a modern collective-security arrangement within the Middle East North Africa region, which not only comprises several Arab League nations, but specifically its wealthiest, oil-producing members. This unique security community formed among six Arab states of the Persian Gulf, namely Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates, although largely motivated by joint geopolitical interests and a drive for greater economic integration, has arguably led to a degree of normative harmonisation across the Gulf region as well, with regard to matters of governance and social progress, as will be seen in the case of the UAE

⁵⁴ Khaled Elgindy, 'A New and Improved Arab League?' *Brookings*, 27 March 2012.

⁵⁵ Bruce Maddy Weitzman, 'The Arab League comes Alive', *Middle East Quarterly*, Vol. 19:3 (2012), pp. 71-8.

⁵⁶ Harders and Legrenzi (2008), p.8.

⁵⁷ For a detailed discussion on the diffusion and socialisation of the R2P norm in the region see H.R.H Prince El-Hassan bin Talal and Rolf Schwarz, 'The Responsibility to Protect and the Arab World. An Emerging Norm?' *Contemporary Security Policy*, Vol. 34:1 (2013), pp. 1-15.

to be studied. It also represents a trend towards post-Arabism—if it can be labelled as such—where the central uniting force is based on pragmatism and shared geostrategic interest rather than the mere appeal of “Arabness,” which binds together other organisations such as the Arab League.⁵⁸ The chapter on the UAE also provides further evidence of normative cross-fertilisation taking place between these regional organisations and among member states, on more ideational issues such as human rights policy.⁵⁹

The Arab Human Rights Committee

The Arab Permanent Human Rights Committee was established in 1968 on the recommendation of the League of Arab States’ Committee on Political Affairs ‘to approve the establishment of a permanent Arab regional committee for human rights within the Arab League as contained in the report of the Secretariat on the subject.’⁶⁰ This development is one telling manifestation of the early socialisation of the norms and practices of the international human rights system at the regional level in the Middle East. The Committee has since gone on to draft the Arab Charter on Human Rights, to be analysed in detail below.

The most recent initiatives of the Human Rights Committee include the launch of the Arab Plan on Human Rights Education (2009-2014) and its accompanying Guidelines Manual, along with the Arab Plan on the Promotion of the Culture of Human Rights.⁶¹ An ‘Arab Team of Experts’ has also been specially appointed and assigned with the follow-up task of implementing and evaluating the plan.⁶² Such

⁵⁸ See Fred H. Lawson, ‘Comparing Regionalist Projects in the Middle East and Elsewhere: One Step Back, Two Steps Forward,’ in Cilja Harders and Matteo Legrenzi, eds., *Beyond Regionalism: Regional Cooperation Regionalism and Regionalization in the Middle East* (Aldershot: Ashgate, 2008).

⁵⁹ i.e. the prospective “GCC human rights bureau” (see Chap. 6).

⁶⁰ League of Arab States portal: <http://www.lasportal.org/>.

⁶¹ Ibid.

⁶² The Team of Arab Experts was selected in accordance with Summit Council Resolution 432 (20th session) and commissioned to carry out the follow-up work, as per Ministerial Council resolution 6898 (29th session on 5 May 2008); Ministerial Council Resolution 7202 of 3 March 2010 stipulates that the Experts should meet annually to discuss their findings (source: LAS portal).

initiatives mark a move from a mere ‘declaratory’ regime to a rights ‘promotion,’ and ultimately, ‘enforcement’ regime in the Arab world. Furthermore, the decision by the Committee to grant “observer status” to certain independent groups and organisations reflects a degree of harmonisation with the international rights regime.⁶³ Specifically, it mirrors the system of the UN Human Rights Council, which also grants select civil society organisations a similar avenue of participation in its proceedings, through observer accreditation by the United Nations Economic and Social Council (ECOSOC).⁶⁴

The Arab Charter on Human Rights

The Arab Charter, which came into force in March of 2008 following ratification by Jordan, Bahrain, Libya, Algeria, the United Arab Emirates, Palestine, and Yemen, is merely upheld through a process of periodic review by an elected ‘Committee of Experts on Human Rights’ to which states are required to submit human rights reports every three years, in accordance with Articles 40 and 41 of the Charter.

Certain provisions of the Charter pose challenges to enforcement by allowing Arab countries the possibility of derogation to domestic law. For instance, safeguards provided by Article 3(a)(b) against ‘derogation from fundamental freedoms’ are seemingly nullified by provisions Article 4(a) and 4(b) which allow states to derogate in instances ‘where such is *provided by law* and *deemed necessary* to protect the national security and economy, public order, health or morals or the rights and freedoms of others,’ [emphases added] or ‘in time of *public emergency* which threatens the life of the nation’ [article abridged; emphasis added].

⁶³ As per Summit Council Resolution no. 6640 (125th regular session on 3 April 2006), granting ‘observer status to non-governmental organizations and national institutions of human rights according to specific regulations and procedures’ (source: LAS portal).

⁶⁴ From personal visits and oral interventions given at the UN Human Rights Council, formerly Commission on Human Rights (2004-ongoing).

The only provisions immune to derogation altogether, according to Article 4(c) are those, which apply to ‘the rights and special guarantees concerning the prohibition of torture and degrading treatment, return to one’s country, political asylum, trial, the inadmissibility of retrial for the same act, and the legal status of crime and punishment.’ In the first instance, the clause, ‘except where provided by law,’ allows for an exceptionally wide margin of appreciation among the different Arab states. With each state having its own domestic legal structures to contend with, the possibility for derogation to domestic law is ostensibly high. Article 4 essentially provides a loophole for domestic entities wishing to circumvent any of the rights mandated by the Arab Charter, if they deem so ‘necessary;’ all of which further impedes the proper enforcement of the Charter. Article 15 of the European Convention on Human Rights, by contrast, allows for a more appropriate margin of appreciation for domestic law by limiting instances of derogation to instances of ‘war or other public emergency threatening the life of the nation,’ and thus providing an adequate measure of restraint on the individual and collective behaviour of European nations.

Beyond the issue of enforceability, however, is a more general concern that the contents of the Arab Charter remain largely incompatible with international law.⁶⁵ Whilst the document was revised in 2004 to ‘bring the Arab Charter on Human Rights in line with the international standards of human rights and remove any inconsistency therewith,’ there still appears to be a general level of international disapproval of the Charter following its final revision and ratification in 2008.⁶⁶ This discontent was expressly articulated by former United Nations High Commissioner for Human Rights, Louise Arbour, in a press release:

‘Throughout the development of the Arab Charter, my office shared concerns with the drafters about the incompatibility of some of its provisions with international norms and standards [...] These concerns included the

⁶⁵ Mervat Rishrawi, ‘The Arab Charter on Human Rights and the League of Arab States: An Update,’ *Human Rights Law Review*, Vol. 10:1 (2010), pp. 169-78.

⁶⁶ See report of the Arab Standing Committee on Human Rights at its special session, Cairo, October 2003, cited in Report of Arab Group of Experts, December 2003, paragraph 3.

approach to death penalty for children and the rights of women and non-citizens [...] Moreover, to the extent that it equates Zionism with racism, we reiterated that the Arab Charter is not in conformity with General Assembly Resolution 46/86, which rejects that Zionism is a form of racism and racial discrimination.⁶⁷

To the degree that the Arab Charter is seen as inadequately addressing issues pertaining to the execution of minors, to women's rights and to the rights of non-citizens, one can understand how the Charter seemingly deviates from international law. On the other hand, it is understandable why references to Zionism as racism made in the preamble of the Charter have been met by controversy, as they broach an issue of great political sensitivity; namely, the occupation of Palestine by Israel, including the discriminatory policies against the Palestinian people, which have led the Arab states to equate Zionism with racism. Arguably, however, the Arab Charter would be better positioned to address the issue of Palestinian rights or Zionism within a human rights framework that is expanded to include Israel and Palestine, alike, within its legal purview.

While the problem of enforceability arguably renders Middle Eastern human rights schemes as the Arab Charter largely ineffectual, they nonetheless lay the groundwork for a more elaborate human rights framework consisting of greater social and economic rights than guaranteed in other regional convention-based systems. Significantly, the Arab Charter incorporates superior protections for social and economic rights than the European Convention on Human Rights. It specifically adopts a progressive stance with respect to education, as well as the right to work and fair wages, while the European Convention contains largely 'negative' guarantees with respect to social and economic rights, in the sense that they are not 'positively' guaranteed.⁶⁸

⁶⁷ Statement by UN High Commissioner for Human Rights on the entry into force of the Arab Charter on Human Rights, Geneva, 30 January 2008.

⁶⁸ See Articles 30, 32, 34, 35, 36, 38, and 39 of Arab Charter for relevant social and economic rights.

For instance, Protocol 1, Article 1 of the European Convention on the 'right to education' merely stipulates that 'no person shall be *denied* the right to education,'[emphasis added]. Article 34 of the Arab Charter, on the other hand, goes to the extent of proclaiming that 'the eradication of illiteracy is a binding obligation and every citizen has a right to education. Primary education, at the very least, shall be compulsory and free and both secondary and university education shall be made easily accessible to all.' The 'binding obligation' to 'eradicate illiteracy' not only represents a novel application of second-generation rights in a regional human rights instrument, it is a right specifically targeted at an issue area which is of particular urgency in the Middle East, given high illiteracy rates in the Arab world.⁶⁹

By addressing the problem of illiteracy, the Charter can also be seen as taking a proactive step in reversing the trends of recidivism and unemployment and stimulating related social and economic growth in the region.⁷⁰ What is more, the emphasis on social and economic rights on the part of Arab and Muslim states reflects an interesting line of continuity in the Middle Eastern approach from the time of the drafting of the International Bill of Human Rights. At that time, they similarly expressed a preference for incorporating civil, political, social and economic rights into a single treaty, as opposed to the bifurcation of rights into two separate covenants.

In conclusion, it appears that the Middle East North Africa region contains the preliminary building blocks of a 'declaratory human rights regime,' which has taken relatively progressive strides in the direction of promoting and enforcing human rights values regionwide. Some scholars have even suggested that a "Helsinki-type" process of liberal regional transformation is imminent in the Middle East just as it

⁶⁹ See UNDP, United Nations Development Programme, *Arab Human Development Reports* (2003-2005) for facts and figures.

⁷⁰ 'Unemployment Rates Are Highest in the Middle East,' *Progressive Policy Institute*, 30 August 2006.

was in the Soviet Union at the end of the Cold War.⁷¹ The particularistic nature of human rights formulations in the MENA region could potentially be seen as deviating from the universalistic and secular tradition of the international human rights regime, however. Yet it also arguably makes for a specialised human rights framework tailored to the cultural sensitivities of Middle Eastern societies as well as to key problem areas, such as illiteracy and unemployment, which regional actors have specifically vowed to tackle.

So long as these cultural particularities do not impinge upon human dignity and freedom, and are not abused by Middle Eastern entities as bases for derogation from key human rights tenets, they would even seem to empower human rights values within Arab and Islamic communities. Reaffirming the compatibility of the universality of human rights and those of Islam, for instance— as most of the human rights schemes in the region are keen to do—is arguably the first step to rising above illiberal interpretations of Islamic doctrine, which seek to discredit the notion of human rights on cultural relativist grounds.

The additional lessons to be learned from the study of human rights formulations in the Middle East is that their loose enforceability, exacerbated by an extra-wide margin of appreciation on the part of domestic entities, potentially limits their degree of effectiveness in addressing the pressing human rights concerns of the region. At the same time, however, the declarations and charters that have emanated from the region reflect a significant degree of regional solidarity around human rights principles and attest to the elevated status that human rights norms have acquired in local and global settings alike following the emergence of the international human rights regime.

⁷¹ See Michael McFaul, 'A Helsinki Process for the Middle East,' *Democracy: A Journal of Ideas*, Issue 8 (Spring 2008), pp. 19-21; also, Daniel C. Thomas, *The Helsinki Effect: International Norms, Human Rights, and the Demise of Communism* (Princeton, N.J.; Oxford: Princeton University Press, 2001).

Chapters 5-7: Progress vs. Regress: Domestic Rights Developments in the Middle East

Three Case Studies: Egypt, the United Arab Emirates and the Islamic Republic of Iran

The 'declaratory rights regime' identified on the regional level in the Middle East provides helpful, albeit insufficient, information about the socialisation of human rights norms and practices at the state level.¹ As such, an analysis and controlled comparison of local human rights developments in Middle East countries complements the broader study of an emerging regional, Middle Eastern human rights regime. To that end, it is necessary to select a diverse sample of MENA countries, both Arab and non-Arab speaking, spanning the Gulf and North Africa. Egypt, the United Arab Emirates (UAE) and Iran are three such countries that exemplify both the diversity and heterogeneity of the region and reflect the rapidly changing face of the contemporary Middle East: Egypt, for its historical legacy as birthplace of the Arab Nationalist movement and historical import to neighbouring political affairs, not to mention its popular 2011 revolution which overthrew the octogenarian autocrat Hosni Mubarak who ruled unchallenged for 30 years; the United Arab Emirates for its fast-paced socio-economic growth and peaceful assimilation of traditional as well as modern elements within its borders; the Islamic Republic of Iran for its longstanding geostrategic placement in international relations and its burgeoning civil society movement, including, most recently, the 'Green Movement.'

They also respectively represent, in the case of Egypt—a regime that could not properly cope with the rights demands of the people and fell as a result; in the case, of UAE—an oil-rich federation that has adopted controlled-reform as part of a 'ruling bargain' meant to balance the legitimate needs of the people, nationals and non-nationals alike, with its own national interests. Christopher Davidson describes

¹ See Jack Donnelly, 'International Human Rights: a Regime Analysis,' *International Organization*, p. 602. Previously referenced in Chapter 4 of thesis.

the unwritten 'ruling bargain' as a tit-for-tat arrangement in which rights and freedoms are posted as virtual collateral securing the stability of the nation and its rulers: 'With distributed oil wealth serving as the cornerstone of this pact, in much the same way as earlier generations of rulers placated their restless merchants with other material benefits, the bargain also includes several other components, including the development of a patrimonial and technocratic network, the provision of a veneer of modern, 'neo-patrimonial' government institutions, and the careful exploitation of a range of ideological, religious, and cultural resources;' ² and finally, in the case of Iran—an Islamic regime that has roused the disgruntlement of millions for its failure to heed their demands for rights, freedom and democracy, and that despite its strong military apparatus, appears on the brink of implosion unless it heeds those demands.

This selection of Middle East states, although not statistically representative, allows nonetheless for a standardised analysis from which a *controlled comparison* may be made.³ While each case represents a distinctly different set of variables, and each country is clearly at different stages in its level of freedom and human rights development, the unifying factor which makes such a comparative study compelling is the sheer impact that human rights norms have on the fate of these states in their domestic, regional and international relations. Thus the rationale for choosing these cases in particular is to highlight common normative patterns even among countries at distinctly different historical and political junctures.

International, regional, state and sub-state levels of analysis are required to understand the co-constitutive nature of global and local normative trends, which animate the Middle East nations. Having visited the international and regional levels

² Christopher M. Davidson, *Dubai: The Vulnerability of Success* (London: Hurst, 2008), pp. 137-38.

³ Alexander L. George, 'Case Studies and Theory Development: The Method of Structured, Focused Comparison,' p. 60 in Paul Gordon Lauren, ed., *Diplomacy: New Approaches in History, Theory, and Policy* (London: Macmillan Publishers, 1979). George posits that the small n in a controlled comparison 'need not be representative in the statistical sampling sense in order to contribute to theory development.' *Variety* ('case belonging to the same class that differ from each other') is more important than numbers in the selection of case studies in controlled comparisons.

in previous chapters, the following section, which focuses on the state and sub-state levels, uses such indices as civil society, constitutional composition and other legislative and institutional human rights developments as *standardised, general markers* of a human rights-based order in the Middle East.⁴ Just as the selected cases are not statistically representative, the developments to be studied are selectively chosen and do not purport to cover the complete human rights stories of these respective countries. They aim merely to illustrate the ubiquity of human rights norms in diverse parts of the MENA region long considered inhospitable to liberalising trends and progress. They serve, as well, to track the cumulative impact of the globalisation and socialisation of Universal human rights norms on the socio-political trajectory of individual Middle East states.

In the case of the Middle East states to be studied, which do not typically follow a traditional Western Democratic political model, the method for evaluating the status of human rights and freedoms must be more nuanced than a one-size-fits-all Western liberal approach. The West-centric discipline of International Relations rests on the reductionist thinking that liberal democratic systems are essential prerequisites for states to respect human rights. However, as established in earlier chapters, such false equations only breed myths of Arab 'exceptionalism' and encourage scholarship which only looks to the region for evidence to bolsters those myths and to excuse the West's selective backing of authoritarian Arab regimes. Such narrow measures of analysis tend to discount any developments that do not fit the Western democratic mould.

Taking into consideration developments that are quasi or semi-Democratic, even if not entirely so, is key. Likewise, tracking any deviations from the norm of political absolutism is enough to demonstrate that the socio-political system in the given country is not immutable, or immune to progress in the direction of greater human rights protections and freedoms. Where there is a window of openness, however

⁴ See *ibid.*, p. 63 in which George calls for a set of 'standardized, general questions [...] to acquire comparable data' across controlled case studies.

small, there is something to be said for the seeming willingness of the state to reign in its sovereignty in favour of a greater, perceived social good. As will be seen in the cases to follow, the zero-sum game of power politics does not always hold in circumstances in which the diminished sovereignty of the state actually translates into the increased wellbeing, rights and freedom of the populace, and the overall stability of the state.

Additionally, understanding the human rights situation of a given state is much more than just a matter of chronicling its human rights and freedom deficiencies alone, which might lead to a reading of rights violations as endemic to its local culture. They are, as shall be seen, largely a perversion of its culture and religious tradition. Granted, if there is to be any truth and reconciliation it is integral that every case of human rights abuse be accurately documented and brought to light. Yet, documentation without proper contextualisation has the effect of essentialising human rights problems within a given society. This, in turn, causes previous and existing human rights deficiencies to be seen as inherent within the culture or religion of the country, and hence, a permanent condition which cannot be overcome. To borrow from the field of psychology, this perception may also foster a state of 'learned-helplessness,' which may stem from the internalisation of these limiting beliefs, inadvertently causing the repetition of problematic 'self-sabotaging' patterns by states, in the form 'self-fulfilling prophecy.'⁵

The task of these case studies, therefore, is not to simply document the countries' varying human rights track records, as many existing reports compiled by international rights organisations such as Amnesty International and the others have already done. It is necessary to look at these reports in the context of changing dynamics within these countries. Viewed alongside the shifting realities and occasional openings in the political fabric of each state, they reveal a telling portrait

⁵ The tools of psychoanalysis could potentially be applied to the realm of domestic and international politics, in order to study the link between limiting beliefs, for instance, and the rights-sabotaging and violent behaviours of states.

of their evolution along a human rights spectrum.

The cases of Egypt, the United Arab Emirates, and the Islamic Republic of Iran to be studied, represent three countries at different points in their human rights and freedom trajectories. At the same time they reflect evidence of diffuse normative and legal undercurrents in the MENA region at large. The differences between these three cases are less striking than the similarities in the dynamics governing their respective fates. One feature they share in common is their permeability to the diffusion and percolation of universal human rights norms, which explains their inevitable climb towards, either controlled or coerced human rights-related reform.

This 'progressive' change is in some cases mediated though controlled reform by the state as a means of quelling social unrest and pre-empting political turmoil. It can also be generated from the grassroots level if state-sanctioned reform fails to satisfy the basic needs of individuals. However, the transformative trends underway in the greater Middle East region must not be seen exclusively either by structural, top-down factors, or as isolated to bottom-up change from below. It is the combination of these different factors, which explain the changes that are taking place. The ideational and normative dimensions which infuse these processes, and which result from an interplay of local, regional and international forces, are equally important in explaining the tipping-point reached in countries such as Egypt. Examining how these Middle East nations, from Egypt and the United Arab Emirates, to the Islamic Republic of Iran, are jostled and jolted by these different normative forces—and specifically how this affects their human rights pledges and practices, and in turn, their standing in international relations—is the subject of the focused case studies to follow.

Chapter 5: Rights Progress vs. Regress in Egypt

This chapter seeks to highlight evidence of the diffusion of human rights norms and practices in Egypt, including historical openings, which defy the pattern of ongoing human rights-related issues in the country. The case of Egypt reveals a robust, budding human rights culture, which has paradoxically flourished over time even in a climate of authoritarian rule in the country. What this reveals is a counter-narrative to Egypt's outwardly regressive human rights and freedom story. The latest revolutionary developments in the country, and events leading up to, and following, them will serve as a focal point for this study. These developments attest to the extent of socialisation of rights norms and expectations in Egypt's history, and their drastic implications for the fate of the country.

Reports prior to 2011 reveal the deteriorating human rights conditions in Egypt, which in retrospect can be seen as indirectly contributing to the Mubarak regime's collapse. According to the 2009 Report Summary on the 'General state of human rights in the Arab world' compiled by the Cairo Institute for Human Rights Studies (CIHRS), 'the state of human rights in the countries reviewed in the present report has worsened compared to 2008.' The summary goes on to discuss legislative and institutional developments, citing the 'broad array of repressive laws that undermine basic liberties.' According to the report, in Egypt 'authorities took no measures to amend the constitutional restraints on the right to compete for the presidency, particularly severe for independent candidates, or to reform the electoral system, which provides only limited opportunities for partisan representation and for voting on the basis of political and partisan platforms.'

The report also finds that while 'Egyptian authorities did introduce modest reforms to the People's Assembly law that added 64 seats to the lower house of parliament reserved specifically for women' in response to calls made by local and international feminist and rights groups to enhance electoral opportunities for women, 'the amendment does not address the real obstacles to true electoral participation by

both women and men as voters and candidates.'

A second category, which the report identifies, is the role of human rights defenders and reformists as 'targets of increasing attacks.' This includes 'arbitrary arrest, torture, trials, and smear campaigns' against human rights defenders. In Egypt, non-governmental organizations, in particular, have been coming under increasing government scrutiny and threat. Attempts to 'curtail NGO activity' include 'placing it under the guardianship of at least three agencies: the Ministry of Interior, the Ministry of Social Solidarity, and the General Federation of Associations, a semi-governmental body whose president and one-third of its board members are appointed by presidential decree.' Most rights organisations, have either faced ongoing threats of closure as in the case of the "Egyptian Organization for Human Rights," which have only managed to survive 'thanks to court orders and international pressure', or are deprived by the Ministry of Social Solidarity of their license for operation as with the "Egyptians Against Religious Discrimination."

A third category, which the report highlights, is that of 'grave assaults on Freedom of Expression.' In Egypt, while 'the threat of prison still hangs over some journalists' it was noted that 'fewer prison terms were issues for crimes of publication or expression, and large fines were levies in their stead.' According to the report findings, 'bloggers and internet activists' suffered the greatest threats to their freedom of expression by the Egyptian security apparatus. This included unlawful detentions 'without charge or trial.'

The flipside to Egypt's bleak human rights record is the equally forceful story of its quest for freedom, democracy, and accountability through the rule of law. The Egyptian experience is most poignant in that Egypt boasts a rich legal and political tradition, with evidence of great progress in the direction of human rights based reform and judicial activism. In spite of its numerous democratic setbacks, Egypt lays claim to a rich constitutional history and a relatively sophisticated judiciary. In fact it may sound paradoxical to those aware of the rampant suppression of rights in

the country that these human rights achievements, just like Egypt's human rights violations, are too many to list in this one case study.

Organisations such as the Arab Human Rights Index project of the United Nations Development Programme on Governance in the Arab Region (UNDP-POGAR) have already begun to take note of these 'achievements on the road to good governance.'¹ These include the establishment of a 'Permanent Committee for Human Rights' inside the Parliament in 2005, in addition the three national human rights institutions, namely, 'The National Council for Human Rights' established in 2003 under the 'Paris Principles', as well as the more specialised 'National Council For Motherhood and Childhood' and 'The National Council for Women'. These institutions were set up to ensure greater implementation and awareness of rights, and especially to provide a platform for women in this process. They potentially reflect elements of a local 'declaratory' and 'promotion' regime.

The remarkable fact that Egypt has over 40 independent NGOs dedicated to the protection and enhancement of human rights is another progressive triumph one must be careful not to trivialise. Some of these milestones will be visited, with an emphasis placed on Egypt's judicio-activist legacy, which is, arguably, its most unique and lasting achievement and the nation's most vital resource moving forward.

A 'cascade' phenomenon

It should be noted that Egypt's freedom and human rights story does not start with Tahrir Square and the overthrow of its 'pharaonic' thirty-year rule of Hosni Mubarak. Tahrir Square merely provides a snapshot of past, present, and possibly, future trends in the country. Democracy, the rule of law, accountability, the end of corruption—these are just some of the historical demands of the Egyptian people.

¹ See website for *Arab Human Rights Index*:
<http://www.arabhumanrights.org/en/countries/country.aspx?cid=5>.

The so-called Tahrir 'phenomenon' which emerged out of preexisting popular movements, to be subsequently seen, was part of process that has been building over decades. It was also one of the first times when labourers would join their civil society counterparts to demonstrate together in the streets beyond the confines of factory walls, in a literal convergence of historical normative currents. The events of 2011 reveal the overlap that exists between the demands of the workers and other disgruntled segments of the population. It also highlights the continuity between Egypt's past and present social movements, correcting the misperception of worker strikes and other popular upheavals as isolated, unconnected incidents in the country's history.

These progressive movements, which emerged in direct opposition to the injustices and arbitrary rule of the state, may have been unsuccessful at the time in attaining their stated goals. However, it can now be seen how the stored momentum from these sporadic movements, combined with the right amount of international exposure to render them visible, eventually snowballed into the full-fledged uprisings which led to Mubarak's ouster. This would suggest that the direct outcomes of these 'interrupted' social protests, which were not perceptible at the time, have only just materialised, as though through slow photographic development. At the same time, these movements can be seen as having left permanent imprints on the institutional and legal foundations of the state, as the track-record of judicial activism in the country reveals.² Once again, it may be easy to forget that such a progressive current long existed in Egypt, considering the bleak outlook of the country leading up to the 2011 revolution.

Egypt's liberal 'moments'

Egypt's history is marked with selective openings and liberal 'moments,' none of which, on their own, led to any momentous progressive change in the country.

² Asef Bayat, *Life as Politics: How Ordinary People Change the Middle East* (Stanford, California: Stanford University Press, 2010).

These moments, taken together, however, form a norm cascade resulting in the gradual strengthening of Egypt's human rights culture. One such moment occurred in January of 2011 when mass protests brought down the antiquated Mubarak regime. Another window briefly opened with the renewed set of protests later in the year demanding the end of military rule in the country, and again on the first anniversary of the revolution on the 25th of January 2012. Saad Eddin Ibrahim notes such liberalising trends, stemming back in the case of Egypt to the turn of the 18th century with the arrival of Napoleon on the shores of Alexandria.³ The next opening occurred on the 28th of February 1922, when Egypt formally declared its independence from Great Britain, ushering in what some considered as Egypt's next "liberal age," despite informally remaining under British guardianship as 'a de facto part of the empire.'⁴

Such a liberal opening in the country, short-lived and stunted as it was by the reality of ongoing foreign control over Egypt's affairs, sparked a general sense of national unity and cohesion and enabled 'a considerable amount of freedom to form political parties and other associations, to speak and write freely, and to contest elections'.⁵ While the newly drafted constitution of 1923 also allowed for an 'element of democracy' to flourish it was 'eclipsed by a combination of factors that included a narrow franchise, continuing foreign rule, and power still wielded by kings and oligarchical cliques.'⁶

The era following Egyptian Independence, which saw the rise of a genuine pluralist movement in the country, was remarkable but fleeting. Not because of an inherent aversion to democracy, but because of factors impeding the development of the pluralist system in Egypt.

Eager for independence from British control and for social and economic reform, the population considered competing ideologies for Egypt's political

³ Saad Eddin Ibrahim, 'An Open Door,' *Wilson Quarterly*, Vol. 28:2 (Spring 2004).

⁴ Barry (2004), p. 75.

⁵ Ibid.

⁶ Ibid., pp.75-76.

and economic development including western-style liberalism, monarchy, Islamic fundamentalism, Marxism, feminism, and secular nationalism. Nonetheless, the excessive powers of the monarchy, the lack of an indigenous bourgeoisie with political strength, and the absence of a developed proletariat able to defend the liberal experiment combined to impede pluralistic democratic development.⁷

Thus, it can be seen that the roots of democracy in Egypt were, from the start, intertwined with the vines of authoritarianism. In sum, there was a will, but not a way, to arrive at a proper democracy in the country, what with the limitations of Egypt's formal 'independence.' While the impetus for progressive change clearly existed and even gave rise to a women's rights movement led by firebrand Huda Sha'rawi, a combination of factors, namely the looming military presence of Britain and overbearing authority of King Fu'ad and later his son, King Faruq, provided a stranglehold on the fledgling Egyptian democracy.⁸ Subsequent women's movements would face the similar challenge of 'work[ing] with or through state structures, which at times are conducive to and at other times impede women's activism.'⁹

Nonetheless, the concept of respect for the rule of law and the constitutional letter, as will be seen, would come to inform the new set of expectations of the Egyptian people and would create a fresh benchmark for governance in the country. Even while those monarchs such as King Faruq paid no attention to the Constitution, favouring absolute rule, the evolving normative expectations of the day would eventually catch up with him. Any force, such as the Wafd party, which sought to challenge the established system of rule, would invariably have its hands tied, but would at least ensure that the liberal window would not be shut entirely. The

⁷ Selma Botman, 'The Liberal Age, 1923-1956', chap 12 in *The Cambridge History of Egypt, Volume 2: Modern Egypt, from 1512 to the End of the Twentieth Century* (Cambridge University Press, 1998; Cambridge Histories Online © 2008), p. 285.

⁸ *Ibid.*, p 76.

⁹ Nadjie S. Al-Ali (2002), p. 31.

Egyptian intellectual elite circles, however, had the distinct disadvantage of being both internally fragmented and disconnected from the masses who were more concerned with their basic subsistence needs and daily bread, than with challenging the political system.¹⁰ What is more, the heavy stigma associated with human rights activism made it difficult but not entirely impossible for a unified grassroots movement to take root, as some have suggested.¹¹

The roots of the popular 'explosion' in 2011 can also be traced back to the 1952 coup by the Free Officers in Egypt, which attempted to make a clean break with Egypt's colonial past, to return dignity and a sense of ownership to the country's dispossessed rural class, and to assert Egypt's independence once and for all.¹² It was a revolutionary event which intended to set up a new system that came from Egyptians themselves and which was committed to serving the public interest. It included, as part of its programme, the national redistribution of wealth and derived its legitimacy from its ideological commitment to pan-Arabism and to the Palestinian Question.¹³

President Sadat, who came after Nasser was perceived as having betrayed the spirit of the Free Officers' revolution by signing the 1979 Israeli Egypt peace treaty for which he was assassinated. Mubarak's reliance on the legitimacy of the 1952 coup led to his undoing because he failed to uphold the promises of the country's much-loved forefather, Nasser. The corruption which began under Britain's monarchical rule, continued under Mubarak on an unprecedented scale, on which neither Nasser nor Sadat had ever been accused. Mubarak and his family were seen as squandering

¹⁰ Joshua A. Stacher, 'A Democracy with Fangs and Claws and its Effects on Egyptian Political Culture,' *Arab Studies Quarterly* Vol. 23:3 (Summer 2001), pp. 83-99.

¹¹ Ibid., p. 91. See also Mustapha Kamel Al-Sayyid, 'The Third Wave of Democratization in the Arab World' in Dan Tschirgi, ed., *The Arab World Today* (Boulder, Co.: Lynne Rienner Publishers, 1994), pp. 179-190.

¹² See Nasser's manifesto as outlined in Gamal Abdel Nasser, *The Philosophy of the Revolution (Falsafat Al-Thowra)* (Cairo: S.O.P Press, 1955).

¹³ Robert Stephens, *Nasser: A Political Biography* (London: The Penguin Press, 1971).

Egypt's wealth and acting against the national interests of Egyptians.¹⁴ The export of natural gas to Israel at below-market price, under Mubarak, was also seen as a grave betrayal of the principles and ideals, which the 1952 revolution stood for.¹⁵ It only served to further intensify the perception of Mubarak's regime as unrepresentative and unpatriotic.

The Free Officers, on the contrary, presented themselves as genuine Egyptians, living in the same conditions as the people. Nasser and Sadat maintained this balance. Mubarak was relatively successful in doing as much during the first two terms of his presidency, but not thereafter. During the last ten years before his fall he was prone to cancelling his meetings with intellectuals, as for example during the Egyptian book fair.¹⁶ The increasing time spent at his vacation home in Sharm el Sheikh, outside of Cairo, further symbolised Mubarak's actual distance from the people. It was not corruption per se that led to erosion of his legitimacy but his disdain for public opinion and perceived arrogance in refusing to acknowledge or respond to the needs and demands of the Egyptians. This continued denial of legitimate popular grievances further widened the existing gap between him and the people and fed the perception of his rule as illegitimate.

The writings of different Egyptian pundits, in the years and months prior to the regime's overthrow may have even set the moral ground for the public perception of betrayal by Mubarak.¹⁷ However, it could be argued that Mubarak's introduction of dynastic rule to Egypt, reminiscent of the country's colonial experience, was the single most important factor to erode his legitimacy entirely. The issue of dynastic 'succession' or *tawrith*, served as a rallying point for Egyptians opposed to the idea of Mubarak ceding power to his favourite son, Gamal, widely seen as a symbol of crony capitalism and corruption.

¹⁴ Amr Osman (Gulf University of Science and Technology), 'What did Mubarak Actually Do?: The Causes of the 2011 Egyptian Revolution according to Egyptian Intellectuals,' Conference on *The Egyptian Revolution: One Year On*, Oxford University, 18 May 2012.

¹⁵ 'Egypt—Israel Gas Deal Exposed,' *Al Jazeera English*, 22 June 2011.

¹⁶ Osman (2012).

¹⁷ Ibid.

The *Kefaya!* or Enough Movement which emerged in 2004 and fizzled out in 2007, is seen as having been inspired by the opposition to Mubarak's impending, unconstitutional succession scheme and to Gamal Mubarak's *fikr jadeed* or 'new thinking' programme of privatization which had damaged the livelihoods of ordinary working and agrarian Egyptians.¹⁸ This movement was the first of its kind in Egypt to transcend ideological divides in the service of social justice; it also helped overcome a general state of political apathy and break the cultural taboo associated with political protest.¹⁹ Having according to Shorbagy, 'opened up the realm of the possible in Egypt', the Kefaya set a precedent for new forms of social protest to spring up in the country, eventually culminating in the uprisings of Tahrir Square in 2011.²⁰

Marie Duboc documents a series of worker strikes, which took place in factories such as the El-Mahalla El-Kubra textile firm in December 2006, the Ramadan sit-in of September 2007, and on the 6 April 2008.²¹ In 2008, half of Mahalla's 20,000 factory workers took part in the first protest against Hosni Mubarak since his ascension to power in 1981, chanting 'down with the Mubarak regime'.²² A second factory, Shibin Al-Kom, as analysed by Duboc, experienced similar strikes in response to the privatization of the company. The period of 2008 to 2010 alone saw nearly two million workers openly voicing their grievances about the ban on unions, the erosion of wages and their compromised standard of living. These protests were supported by the *Shabab 6 April* or April 6th Youth Movement of 2008, an online social network of Egyptians, including bloggers and citizen journalists, demonstrating their solidarity with the workers.

¹⁸ John Chalcraft, 'Unruly Collective Action in the Egyptian Uprising of 2011' (2012, draft paper, unpublished), p. 15.

¹⁹ Manar Shorbagy, 'The Egyptian Movement for Change—Kefaya: Redefining Politics in Egypt,' *Public Culture*, Vol. 19:1 (Winter 2007), pp. 175-96.

²⁰ *Ibid.*, p. 196.

²¹ Marie Duboc (AUC), 'The Egyptian Labour Movement and the Politics of Visibility,' Conference on *The Egyptian Revolution: One Year On*, Oxford University, 18 May 2012.

²² Al Jazeera English, 'The Factory- Revolution Through Arab Eyes', (last modified 22 February 2012).

The build-up of popular grievances—exacerbated by the increasing disparity between the heightened normative rights expectations of the people, and the empty rights promises of the regime—created a figurative leak in the societal dam, from which these movements could escape. These organic movements, relatively small and isolated as they were, could be easily ‘plugged.’ In their place, incremental rights reforms were introduced as an outlet for releasing this excess proverbial ‘run-off’ and steam amongst the population.

Constitutional guarantees and incremental rights reform

When the Free Officers completed their coup against the monarchy and Nasser assumed the presidency in 1956, he put into place two foundational legal documents, which, in retrospect, represent a major milestone for human rights in Egypt. The first, the Nation Charter adopted in 1962 ‘called for universal health care, provision of housing, building of vocational schools, widening the Suez Canal, an increase in women's rights, and developing a program for family planning’.²³ The second, the 1963 Provisional Constitution, which came into force in 1964 and provided a wide range of rights provisions, from equality before the law, to due process, and property and labour rights, laid the groundwork for Egypt’s ever-widening scope of rights guarantees.²⁴ The 1971 Constitution drafted under President Sadat and which was amended in subsequent decades by Mubarak, introduced even greater political rights and freedoms into the fold, most notably the freedom of the press.²⁵

The reform of the Personal Status Law, named *Jehan’s Law* after the wife of President Sadat who proposed it, ‘granted women legal rights in marriage,

²³ Said K. Aburih, *Nasser: The Last Arab* (New York, N.Y.: St. Martin’s Press, 2004) p. 237.

²⁴ Anthony Chase and Amr Hamzawy, *Human Rights in the Arab World: Independent Voices* (2006), p. 144.

²⁵ Dr. Hussein Amin, ‘Strengthening the Rule of Law and Integrity in the Arab World: Report on the Media in Egypt,’ (Cairo: The Arab Center for the Development of the Rule of Law and Integrity, 2006), p. 12.

polygamy, divorce and child custody; it was implemented in 1979 by presidential decree along with another law that introduced changes to women's representation in parliament.²⁶ It was understood that such reforms aimed to curb Islamist influence domestically and encourage secularism in its place. Mainly, however, they were aimed at improving Egypt's image abroad and garnering the political and economic backing of superpowers such as the US.²⁷ Such reforms, even if partial, contributed to the advancement of the legal culture and the empowerment of women in the country.

In his analysis of human rights, the rule of law and the construction of tradition in Egypt, Kilian Bälz maintains that the country has over the decades, established mechanisms to safeguard the rule of law.²⁸ Article 40 of the Egyptian Constitution holds that 'citizens are equal before the law; they are equal in general rights and duties; they may not be discriminated against due to race, origin, language, religion or creed.' Article 64 of the 1971 Constitution stipulates that, 'the rule of law is the basis of rule in the state' and has been so for quite some time. Further, Bälz writes:

The "supremacy of law" embodied in article 64 of the Egyptian constitution is based on a longstanding tradition (Brown, 1996; Ziadeh, 1968). The origins of modern administrative justice in Egypt can be traced back to 19th century. Moreover, the Egyptian Supreme Administrative Court (*al-mahkama al-idariyya al-'ulya*), established in 1946, successfully claimed right to constitutional review as early as 1948 (Hill, 1993; 'Aziza Al-Sharif, 1990). The Egyptian Supreme Constitutional Court (*al-mahkama al-dusturiyya al-'ulya*) established in 1979, represents a powerful judicial body,

²⁶ Nadjé S. Al-Ali, 'The Women's Movement in Egypt, with Selected References to Turkey,' *Civil Society and Social Movements Paper No. 5* (United Nations Research Institute for Social Development, April 2002), p. 8.

²⁷ Ibid. See also Mervat Hatem, 'Economic and political liberation in Egypt and the demise of state feminism,' *International Journal of Middle East Studies* Vol. 24 (1992) pp. 231-251.

²⁸ Kilian Bälz, University of Frankfurt on the Main 'Human Rights, the Rule of Law, and the Construction of Tradition: The Egyptian Supreme Administrative Court and female Circumcision (appeal no. 5257/43, 28 Dec. 1997), in *Egypte/Monde Arabe, Droits D'Egypte. Droit Economie Société*, Vol. 2 :34 (Centre d'études et de documentation économique, juridique et sociale (CEDJ), 1998), p. 141.

widely respected for protecting the rule of law within a rather unfavorable political environment (Brown, 1997; 102-107). Both the Egyptian Administrative Court and the Supreme Constitutional Court have produced remarkable case laws covering a wide range of human rights issues (al-Sharif 1990; el-Morr, 1993; Boyle and Sherif, 1996).²⁹

The fact that legal scholars widely recognise Egypt as having a time-honoured and advanced judicial system—from its independent Supreme Constitutional Court, to its Administrative Court—presents a curious puzzle for political or International Relations theorists. The notion of the rule of law operating within an authoritarian system is itself a seeming contradiction in terms. Yet, as the Egyptian case demonstrates, this ‘paradox’ deserves further examination, for the lessons it yields about the democratic seeds which reside even in authoritarian frameworks and which have the power to sprout from within.

According to Tamir Moustafa’s study on ‘Law and Resistance in Authoritarian States’, ‘in Egypt, a country with one of the most durable authoritarian regimes in the world, courts enjoy a surprising degree of independence and they provide a vital arena of political contention.’³⁰ ‘The Egyptian case presents a surprising anomaly’ which Moustafa attempts to explain. He suggests that it was politically and economically prudent for the Egyptian government of President Anwar Sadat to establish a trustworthy legal system and property rights framework to create a climate favourable to foreign investors. This was at a time following the late

²⁹ Ibid., Includes following references: Nathan J. Brown, *The Rule of Law in the Arab World: Courts in Egypt and the Gulf* (Cambridge: Cambridge University Press, 1997); Farhat Ziadeh, *Lawyers, the Rule of Law and Liberalism in modern Egypt* (Stanford: Stanford U.P., 1969); Enid Hill, “Majlis al-Dawia: The Administrative Courts of Egypt and Administrative Law,” in Chibli Mallat, ed., *Islam and Public Law* (London: Graham & Trotman, 1993, 207#); ‘Aziza Al-Sharif, *Al-Qada’ al-dusturi al-misri* (Cairo: Dar al-nahda al-‘arabiyya, 1990); ‘Awad el-Morr, “The Supreme Constitutional Court of Egypt and the Protection of Human and Political Rights,” in Chibli Mallat, ed., *Islam and Public Law*, (London/Dordrecht/Boston: Graham & Trotman, 1993), pp. 229-261; Kevin Boyle and Omar Sherif Adel, eds., *Human Rights and Democracy: The Role of the Supreme Constitutional Court of Egypt* (London: Kluwer Law International, 1996).

³⁰ Tamir Moustafa, ‘Law and Resistance in Authoritarian States: The Judicialization of Politics in Egypt,’ Chap 5., p. 132 in Tom Ginsburg and Tamir Moustafa, eds., *Rule by Law: The Politics of Courts in Authoritarian Regimes* (New York: Cambridge University Press, 2008).

president Gamal Abdel Nasser's supposedly 'failed' socialist experiment in the country, where the majority of the country's wealth had been reinvested abroad by its wealthiest citizens, and foreign direct investment in the country was at an all-time low due to the lack of institutional safeguards to shield investors against undue financial risk.³¹ Therefore, in order to restore Egypt's ailing economy, brought on after of period of nationalisation of the country's private sector under Nasser, his successor, Sadat established such institutions as the Supreme Constitutional Court (SCC), which offered the kind of judicial independence and oversight to attract the much-needed foreign direct investment in the country once again. These developments reflect a degree of internalisation of rights norms at the highest echelons of the Egyptian government.

The unintended effect of Sadat's executive decision to create such an autonomous court with powers of judicial review, in an effort to court investors, was that it simultaneously created a real check on the state's authoritarian power. 'While judicial institutions helped ameliorate some state functions', Moustafa writes, 'they simultaneously opened avenues through which activists could challenge state policy'.³² The unforeseen consequence of establishing a world-class judicial system was to give civil society a new outlet for airing its grievances and also demanding accountability from the state. This would confirm the Spiral Model thesis, seen in previous chapters that norms, even those loosely adopted, continue to exert a normative pull, seeking greater enforcement.

Judicial activism

Creative avenues of rights enforcement emerged to act as a makeshift system of checks and balances in Egypt. A 'judicial support network' consisting of legal experts, activists, opposition parties and human rights organisations, would come to

³¹ Tamir Moustafa, *The Struggle for Constitutional Power: Law, Politics, and Economic Development in Egypt* (New York: Cambridge University Press, 2007), pp. 3-4.

³² Moustafa (2008). p. 132.

work hand in hand with the newly-established SCC, by providing logistical support to the Court in exchange for the Court's '*bounded activism*' and progressive readings of the Constitution.³³ In August 2001, the UN Committee on the Elimination of Racial Discrimination even recognised the "significant role" of the SCC in "upholding human rights and constitutional guarantees...as well as the prevention and elimination of discrimination."³⁴

Historically, Cairo's Administrative Court has also been known to go against official government decisions in the interest of upholding civil liberties. For instance, according to a Human Rights Watch report, the Administrative Court, on 1 July 2001, 'overturned the government's decision to refuse, for unspecified security reasons, to register the Egyptian Organization for Human Rights (EOHR) as a recognized NGO.'³⁵ Such a move on the part of the Administrative Court would indicate that Egypt's civil society can, to a certain extent, rely on the formal mechanisms provided by the state's own judiciary, and the informal support networks cultivated over time between the courts and activists, to overturn unjust state policies.

In June Ray's analysis of human rights protections and the rule of law in Egypt, she notes that 'Egypt has been at the forefront in the region of drafting and acceding to a number of international human rights instruments.'³⁶ 'Egypt's Constitution guarantees the rule of law (Article 64) and states that the independence and immunity of the judiciary are fundamental safeguards for the protection of rights and freedoms (Article 65). Failure to implement court judgment or delay in its implementation by a public official is a criminally punishable offence (Article 72).'³⁷

³³ Moustafa (2007), p. 8.

³⁴ Human Rights Watch, *World Report 2002 (Events of 2001)*, (New York: Human Rights Watch, 2002), pp. 420-21.

³⁵ *Ibid.*, 419.

³⁶ June Ray, 'Human Rights Protection and the Rule of Law: Case Studies in Israel and Egypt,' Chap. 3, p. 47, in Eugene Cotran and Mai Yamani, eds., *The Rule of Law in the Middle East and the Islamic World: Human Rights and the Judicial Process* (London: I.B. Tauris in assoc. with the Centre of Islamic Studies and Middle Eastern Law, SOAS, University of London, 2000).

³⁷ *Ibid.*

This would suggest that, at least on paper, Egypt has come a long way in developing its 'declaratory' human rights regime, and in providing ample safeguards against state impunity. The relatively progressive constitutional rights guarantees to which Ray points, including Egypt's active participation in and support for the international human rights regime, illustrates that Egypt is in principle committed to a universal conception of human rights. This level of participation is undoubtedly important in explaining future developments and expectations.

However, as Ray also notes, 'these principles have been steadily eroded and undermined over the years, with frequent amendments to laws relating to the state of emergency, and through recourse to the use of military courts and the gap between law and practice, on the one hand, and international human rights guarantees, on the other, has grown even wider.'³⁸ The increasing instances of derogation to emergency law, and the use of military rather than civilian courts, are therefore an *exception* to established rules in Egypt—a perversion of justice—rather than a norm or accepted code of conduct. The gap between principle and practice, to which Ray refers is more an indication of rogue state behaviour than an accepted normative framework within the country. That is to say, that the violation of laws by the state are in contravention to an otherwise human rights-centric legal and normative culture to which Egypt belongs. Greater evidence of this fact lies in Egyptian society's extensive institutional, legal and professional rights-based network, which acts to guard against state impunity and derogation from justice.

The greatest irony of all, however, lies in the fact that this robust historical, cultural and institutional legacy has been the Achilles tendon or pressure point of each successive Egyptian regime since Nasser. It has, over the decades, allowed Egyptian civil society, in tandem with the independent judges of the Supreme Constitutional Council, to apply a counterweight to the state's unchecked authoritarian rule. The resulting normative and legal framework and institutional memory gained through

³⁸ Ibid., pp. 47-8.

a long history of judicial activism has also led to traditionally high expectations on the part of the Egyptian people and thus disappointments of equally epic proportions when the ruling regime has invariably fallen short of these expectations. Yet those very disappointments have led to the kind of principled activism, which has demanded greater enforcement of the people's constitutionally mandated rights.

The "revolution of the judges" in Egypt which saw an 'increase in the role of judges' following general elections in recent years represents an instance of 'slow but marked improvement' in the realm of judicial independence in the Arab world.³⁹ The Egyptian Judges Club, a group of reformer judges, for instance has gone beyond simply demanding judicial autonomy from the executive branch of government, to confronting the problematic instruments of the authoritarian system more directly. This included challenging the electoral system known to be rife with vote rigging with a threat of boycott unless certain key judicial and electoral reforms were enacted; and denouncing Emergency Law and its system of exceptional courts which function extra-judicially.⁴⁰ While the goal of the Judges Club, according to Nathan J. Brown and Hesham Nasr was merely to extract concessions and reforms on the part of the government and not to demand a complete transformation of regime, their efforts only made the collapse of the regime more imminent. This would reinforce the point that even when revolution is not the intended outcome, it may be the by-product of such reforms and changes.

³⁹ Dr. Antoine Msarra and Paul Morkos, 'Promoting the Rule of Law and Integrity in the Arab World Project: A Background Paper about the State of the Judiciary in Lebanon,' *The Arab Center for the Development of the Rule of Law and Integrity* (2006), p. 4. Reference to 'revolution of the judges' in: Mohammed Al-Rumaihi, 'Experiment of the Egyptian Courts,' *Annahar*, 28 December 2005, p.9. See also Jihad Azzein, 'Egyptian Model of Change: From the Officers' Club to the Judges' Club,' *Annahar*, 19 May 2005, p.19, and the comment of Tarek Ziad, the former president of the Judicial Inspection Board, *Annahar*, 25 May 2005, p.19. For more details: Report by the Arab Center for the Development of the Rule of Law and Integrity and the International Institute for Electoral Systems on the status of the judiciary in Egypt (2004).

⁴⁰ Nathan J. Brown, 'Unlikely Reformers: Egyptian Judges Challenge the Regime,' Op-Ed *Jurist*, 8 June 2006. See also, Nathan J. Brown and Hesham Nasr, 'Egypt's Judges Step Forward: The Judicial Election Boycott and Egyptian Reform,' *Policy Outlook* (Washington, D.C.: Carnegie Endowment for International Peace, May 2005).

Even following the 2011 revolution, the Supreme Constitutional Council remains one of the most effective and democratic forces within Egyptian society, upholding the rule of law in the country. The Egyptian judiciary has seemingly remained intact during the transition of power, even in spite of attempts at reconstituting the court system to further certain political agendas. As issues of transitional justice float to the forefront of the national agenda following the overthrow of the Mubarak regime, Egypt is seemingly well situated to deal with these questions. By turning to its existing resources and institutions rather than having to reinvent the wheel of justice, this may allow the country to overcome what some have characterised as a lack of 'political will' on the part of the Egyptian military council which is tasked with overseeing this transition.⁴¹

Since Mubarak's overthrow, the Egyptian judiciary has already asserted itself on many occasions as a 'voice of reason' and advocate of civil society, amid a contentious state of affairs in the country. In an interview with American University of Cairo Professor and Chair of the History Department, Dr. Mustapha Kamel Al-Sayyid, the sheer extent of the judiciary's power, even at the uncertain dawn of a post-Mubarak-era, becomes palpable.⁴² Dr. Al-Sayyid explains how the petitioning on the part of an Egyptian lawyer, supported by different civil society organisations such as the Association for Change, of which the Professor notes he is a board member, successfully compelled the Administrative Court of the Egyptian State Council to reject the nominations of three presidential candidates—one, for not meeting the criteria of eligibility for the position, and the two others for having prior criminal convictions to their name, including Omer Suleiman, Mubarak's former spy chief.

It also led to the Election Commission's final decision to reject these presidential hopefuls' appeals for nomination, a bold decision which none in the country

⁴¹ Reem Abou-El Fadl, 'Beyond Conventional Transitional Justice: Egypt's 2011 Revolution and the Absence of Political Will,' *The International Journal of Transitional Justice*, Vol. 6 (2012), pp 1-13.

⁴² Personal interview conducted in Oxford with Dr. Mustapha Kamel Al-Sayyid (AUC), 19 May 2012.

expected. Such an instance of judicial activism not only demonstrates a quasi-democratic system of checks and balances at work, but it reflects the resilience of Egypt's judicial culture even in the absence of a proper Constitution. Preexisting judicial support networks have arguably been strengthened by the prospects of transitioning to civilian rule in the country, after decades of military preponderance in the state.

Likewise, when certain entities attempted to sabotage the independence of Egypt's independent judiciary, Dr. Al-Sayyid proudly explains how the People's Assembly defended the integrity of Egypt's judges. For instance, when a Member of the Salafi, Al-Nour party lobbied to change the makeup of the Supreme Constitutional Court, in a bid to undermine its power over the executive and legislative branches of government, the proposal only made it to level of Committee of Proposals at the People's Assembly and was rejected unanimously before it could move to the Legislative Committee for approval. The judiciary also rejected the Constituent Assembly tasked with drafting the country's new Constitution, deeming it unrepresentative. This would suggest that Egypt's intimate experience with the discontents of unrepresentative government has in fact imbued it with the wisdom to protect the country's longstanding human rights culture and nascent democracy from potential sabotage.

A regional norm cascade

There is overwhelming evidence to suggest that a paradigm shift in the popular consciousness occurring simultaneously at the local and global level, precipitated by gradual openings, institutional and otherwise, in Egyptian society over time, caused the revolutionary state of affairs in 2011. These factors and others led to the steady erosion of legitimacy of an unrepresentative government incapable of keeping up with the 'revolution of rising expectations' as it has now come to be recognised. As seen, the tension resulting from the regime's outward promises of rights-related reform and adherence to the rule of law, on the one hand, and increasingly

undemocratic and authoritarian nature, on the other, was responsible for generating the disgruntlement, which led to its downfall.

Egypt's rights and freedom trajectory must also be viewed within the context of this revolutionary, democratic change, taking place in the region at large. 2011 proved to be a pivotal year in determining the destiny of all Middle Eastern and North African regimes and their people. The regimes that had been in power for the last decades were being collectively pressured from below, by their own people, and from above, by the international community to amend their human rights situations or face sanctions, including the very real possibility of being overthrown as some leaders indeed have. The reason for this sudden shift, one may ask, cannot be explained by a single factor but by a medley of factors which all share in common the fact of being motivated by increasing human rights demands and expectations in the region and globally.

These demands and expectations have in turn been shaped by the failures of governments to uphold the rule of law and constitutional rights guarantees once promised to them. Imbued as the people were with a heightened set of expectations and ideals, sparked by feelings of injustice and redemption following similar events in neighbouring Arab states, starting with Tunisia, the Egyptians finally took their fate in their own hands when they descended upon Tahrir or Liberation Square.

The 2011 Tahrir uprisings at once reflect Egypt's lengthy and distinctly *Egyptian* struggle for liberation from French and then British occupation and subsequently from authoritarianism and its many discontents. At the same time, they echo the collective demands of the young disenfranchised populations across the entire Middle East, North Africa region suffering the highest rate of youth unemployment in the world at 25% due to 'high labour force growth, skill mismatches, labour and

product market rigidities, large public sectors, and high reservation wages.⁴³ The chants of “bread, dignity, liberty” in the Egyptian streets, were borrowed almost word for word from those proclaimed in the streets of Tunis, following the self-immolation by a young Tunisian street-vendor, Mohamed Bouazizi protesting the confiscation of his fruit-cart, his only source of livelihood.

The demands that the Egyptian people have articulated and etched onto raised placards in Tahrir Square, while telling of Egypt’s unique historical struggle, are also overwhelmingly human-rights-based and universal in nature. They represent internationally recognisable rights, enshrined in the world’s various human rights instruments, from the Universal Declaration of Human Rights to the Twin Covenants on Civil and Political Rights as well as Economic, Social and Cultural Rights. Consistent with signs of a strong progressive undercurrent, these demands read: *insaniya* (humanity), *karama* (dignity), and *hurriya* (liberty), as on one veiled female protestor’s poster.⁴⁴ Another reads: *Why are you staying at home? Aren’t you Egyptians like us? Haven’t you lost your rights? The time of fear has passed.*⁴⁵ The appropriation of this universal rights rhetoric is a clear sign of the extent of the globalisation of those norms across the region, down to the state and individual level. They also reflect the universal struggle contained within the diverse historical struggles of nations.

The Egyptian case, which displays an instance of mass alarm followed by an *awakening*, challenges all preconceived notions about the apathy of the Arab people and their supposed lack of civic and political awareness. Summed up poetically by writer Alaa Al Aswany,

The people I saw in Tahrir Square were new Egyptians, with nothing in

⁴³ According to ILO and IMF data. See Masood Ahmed, Dominique Guillaume, and David Furceri, ‘Youth Unemployment in the MENA Region: Determinants and Challenges,’ *Addressing the 100 Million Youth Challenge—Perspectives on Youth Employment in the Arab World* (World Economic Forum, June 2012).

⁴⁴ Forward by Ayman Mohyeldin, Photographs by Mia Gröndahl, *Tahrir Square: The Heart of the Egyptian Revolution* (Cairo: The American University in Cairo Press, 2011), p. 31

⁴⁵ *Ibid.*, p. 18.

common with the Egyptians I was used to dealing with every day. It was as if the revolution had recreated Egyptians in a higher form. In Tahrir Square I saw Egypt fully represented: Egyptians of all ages and backgrounds, Copts and Muslims, youngsters, women, the old, children, women in hijab and women without, rich and poor. Millions of people took a stand in Tahrir Square, living together like members of the same family.⁴⁶

Al Asmany here seems to describe a veritable paradigm shift occurring within Egyptian society whereby Egyptians of all creeds stand united through the sheer force of their common humanity and shared quest for dignity and freedom. Conceivably, they could not have arrived at this advanced level of solidarity by relying merely on cultural or religious affiliations alone. For tribal ties are by nature, exclusive rather than universal. Only when their basic humanity was collectively threatened did the Egyptians unite as they did, placing principles of *humanity, dignity and liberty* above all else. This seems to demonstrate that, when placed under extreme duress, the most basic threads connecting the Egyptian nation, were first and foremost, universal principles of justice and freedom. The desire for improved socio-economic prospects formed sufficient grounds for mass political mobilisation among an otherwise politically apathetic society.⁴⁷ What this reveals is a convergence of rights expectations amongst the diverse peoples of the MENA region, which is indicative of the diffusion and gradual socialisation of rights norms over time, as well as their universal appeal.

Post-revolutionary rights challenges and opportunities

More recently, in the post-Mubarak era, roadblocks to rights progress remain. The Egyptian people's return to Tahrir Square by the tens of thousands, in mid-November 2011, only to be shot at by the military government, is another indication

⁴⁶ Gröndahl, p. 77.

⁴⁷ Roger Owen 'Socio-Economic Change and Political Mobilization. The Case of Egypt' in Ghassan Salame, ed., *Democracy without Democrats? The Renewal of Politics in the Muslim World* (London: I.B. Tauris, 1994), pp. 183-199.

of the precariousness of the post-revolutionary situation and the remaining barriers to peace, stability and democracy in the country.⁴⁸ However, with secularists and centrists covering a broad political spectrum taking part in demonstrations, political alliances have formed that would have been unheard of before. This marks an interesting rights development in the midst of ongoing challenges.

Additionally, before January 2011, groups of 12 or more could not assemble but the large crowds gathering thereafter signal that the Egyptians have claimed the right to express themselves, even if painstakingly.⁴⁹ Although the Muslim Brotherhood did not officially take part in protests a large number of young Muslim Brotherhood members and its Freedom and Justice party members did take part without the tacit approval of the Brotherhood. This expression of political unity against the perceived injustices of the government, first perpetuated under Mubarak's regime, and subsequently under the interim leadership of the Supreme Council of the Armed Forces (SCAF), demonstrates a prevailing belief in the country that the people must be free to direct their own destiny. It is again consistent with the view of a naturally progressive rather than inherently regressive normative trend in the country.

The more concessions given, the more people came out to join protests, leaving one Egyptian commentator to boast, 'how many countries can claim to have this level of conscience and of vibrant democratic participation.'⁵⁰ Many of those who did join the protests reported experienced dizziness, eye-burning, difficulty breathing and convulsions from tear gas exposure. The effects were said to have been nastier than any tear gas used before in January or February. One protester was shown pointing to the label on a MK 560 CS tear gas canister, indicating that it was manufactured in the USA—an ironic development, seeing that the United States outwardly sided with the people of the Egyptian revolutionary struggle for rights and freedom, yet has been clearly providing indirect tactical support to counter-revolutionary forces as

⁴⁸ Jack Shenker, 'Egyptian Security Forces Evict Protesters from Tahrir Square,' *The Guardian*, 20 November 2011.

⁴⁹ *Al Jazeera News*, 25 November 2011, live streaming of Cairo protests.

⁵⁰ *Al Jazeera News*, 4pm, 22 November 2011, live streaming from Egypt.

part of its unconditional annual aid package to the Egyptian military government, which includes military goods and services.⁵¹

In the words of Egyptian activist, Ahmed Saleh who laments that the US gives \$ 1.3 billion a year to the Egyptian military, ‘there is no way freedom can flourish under military rule.’ The ability of the Egyptian military to function unhampered, following the 2011 revolution, is thus in large part due to its continued strategic significance to the United States and others such as Israel which relies on Egypt to guard its shared borders.⁵² The consequence of the unconditional support for a strong foreign backer such as the US is that it is only accountable to them and not to the Egyptian people, as it should be. This explains the continued impunity exhibited by the military government to date. It also suggests, however, that it is not a problem endemic to Egyptian culture or religion, but a problem perpetuated by another globalised phenomenon—the *military industrial complex*. As such, it is not permanent and immutable. It too will likely be weakened with time.

There is already evidence to suggest that the Egyptian army is restrained to an extent by bottom-up normative forces. For instance, the use of live ammunition against protestors, which marked a permanent rift in the short-lived alliance between the people and the military, only served to unify the people. It was commonly believed that the people gave the army a golden opportunity to earn the people’s trust, but that it spoiled that opportunity when it fired on the protestors when once, it stood on their side against Mubarak.

This unprecedented level of popular unity can be seen in the Egyptian peoples’ articulation of a series of clear, sophisticated and unified rights demands, for

⁵¹ United States Government Accountability Office, Report to the Committee on International Relations, House of Representatives (April 2006), ‘Security Assistance: State and DOD Need to Assess how the Foreign Military Financing Program for Egypt Achieves U.S. Foreign Policy and Security Goals.’

⁵² Anthony H. Cordesman, Arleigh A. Burke Chair in Strategy, and Aram Nerguizian, ‘The Egyptian Military and the Arab-Israeli Military Balance: Conventional Realities and Asymmetric Challenges,’ Center for Strategic and International Studies, working draft, revised 10 February 2011.

instance. The specific demands of the people made in the second phase of the revolution included a call for the formation of a National Salvation Council to facilitate the transition from military to civilian rule; for the Supreme Council of the Armed Forces (SCAF) to leave immediately and return to the barracks, protecting the country's borders rather than assaulting its own people; last but not least, for the immediate departure of the head of SCAF, Field Marshall Mohamed Hussein Tantawy, the country's de facto leader following the departure of Mubarak. These demands came after the initial revolution failed to put an end to the Emergency Law inherited from the former regime, and which failed to make any fundamental changes to the prevailing social and economic system. Egypt's Emergency Law introduced after the assassination of President Anwar al-Sadat in 1981 'gives broad powers to arrest and detain suspects without charges, refer civilians to military courts, close dissident publications and ban public demonstrations.'⁵³

An announcement made by Field Marshall Tantawy on the one-year anniversary of the revolution, announcing his "decision to end the Emergency Law starting on the morning of 25 January 2012" can be seen as an indirect admission of SCAF's failure to break with the Mubarak dynastic legacy of oppression, and as a concession which the army has clearly been pushed to make following escalating public agitation and mistrust of the military government.⁵⁴ It can also be looked upon as a rhetorical tactic to buy more time for the interim regime and distract from SCAF's own violation of the peoples' human rights. Either way, it indicates a more sensitive reactivity to human rights normative pressures as a direct consequence of the popular rights demands emanating from Tahrir. Despite the 77% who voted for a referendum, there was a general feeling that the referendum did not go far enough in addressing the underlying issues of the Mubarak regime. Nonetheless, it should be kept in mind that this dissatisfaction is a function of an atmosphere of heightened normative expectations, and can therefore be looked upon as a progressive development.

⁵³ Gröndahl, p. 106.

⁵⁴ Ramadan Al Sherbini, 'Military to Lift Egypt's Emergency Law Today,' *Gulf News*, 25 January 2012.

Since the revolution toppled Mubarak, 12,000 civilians have been tried by military courts, according to an Amnesty International Report, which assesses the shortcomings of SCAF in the months following its ascendancy to power in Egypt.⁵⁵ The report concludes that the military ruthlessly suppresses the people's freedom of expression and the democratic movement, which brought it into power. The punitive election law introduced after the revolution, which was supposed to guarantee transparency, can be used against the people by fining and imprisoning anyone who can be shown to distribute "false" information. Such a law leaves undue interpretive power to the government in determining what constitutes "false" information and in punishing groups and individuals found to deviate from government-sanctioned "truths". Travel bans have also been introduced to block certain US and other foreign NGOs and monitors working in Egypt from leaving the country.⁵⁶ Additionally, there have been reports of Egyptian security forces ransacking 17 NGO offices on 29 December 2011, which could provide enough cause for the US to potentially reconsider its annual aid package to Egypt.⁵⁷

Such oppressive measures, however, are presumably executed in direct proportion to the perceived threat posed by advocates of freedom and human rights to the country's new leadership. This would mean that the NGOs must be sufficiently efficient and influential to warrant the kind of suppression they are currently experiencing at the hands of the military government. Therefore, evidence of Egypt's robust and emboldened civil society is ironically to be found in the vigorous amount of resistance it meets.

Further evidence of the internalisation of human rights norms can be seen in attempts by the ruling Muslim Brotherhood Freedom and Justice Party to rebrand

⁵⁵ Amnesty International report, *Broken Promises: Egypt's Military Rulers Erode Human Rights* (Amnesty International Publications: November 2011).

⁵⁶ Ed Pilkington, 'American NGO Workers Prevented from Leaving Egypt,' *The Guardian*, 26 January 2012.

⁵⁷ *Ibid.*

itself in the wake of the 2011 popular uprisings. Aligning itself with twin social ideals of freedom and justice serves as a legitimating device for the Muslim Brotherhood, which otherwise lacks any real political credentials or experience. By such a measure, the comparative ‘godlessness’ or ‘evil’ of Hosni Mubarak’s regime, as it were, is being blamed for the Egyptian society’s many ills, namely the lack of freedom and justice, in spite of the fact that *shari’a* has officially served as a cornerstone of the law of the land since 1923. According to leading Islamic scholar and former Egyptian State Council member Tariq al-Bishri, 90% of Egyptian Law is based on the *shari’a*.⁵⁸

What is more, the attempt to create a new democratic order under the auspices of the Muslim Brotherhood could either be read as a step towards the successful assimilation of secular and Islamic values, as exemplified by a country such as modern-day Turkey, or a step back from genuine, pluralistic governance. With a membership of 9000—1000 of which are women, 100 of which are Coptic Christians—with a party Vice-President, Dr. Rafik Habib, that is Christian, the Freedom and Justice Party seeks, at the very least, to demonstrate that it is an inclusive political entity, capable of representing and benefiting all of Egyptian society, not simply its Muslim majority.⁵⁹

According to the party Chairman, Dr. Mohamed Morsy—speaking at the University of Oxford on the day of the party’s formation and one year before he would go on to become Egypt’s first democratically elected President—the Freedom and Justice party cannot and shall not affect constitutional articles, which is a reflection of the people’s will; it can only propose programmes, which do not violate the sacrosanct principles of the Constitution. He stresses that the Egyptian Constitution will continue to act as the ‘supreme basic principle’ guiding any political agenda of the

⁵⁸ See Bishri quote in Sa-‘id al-‘Ashmawi, *al-Shari’a al-Islamiyya wa-l-qanun al-misri* (Cairo: 1996), p. 22, as referenced in Review Essay: ‘Three Recent Views on the Implementation of Islamic Law’ in *Droits D’Egypte*, no. 34 - 2e semestre 1998, Notes de Lecture, p. 275.

⁵⁹ Dr. Mohamed Morsy, FRANCE 24 interview with Kathryn Stapley, 16 June 2011.

party.⁶⁰

The new Egyptian Constitution which many claim was written in haste and significantly erodes certain rights by its emphasis on the *shari'a* and heavy reliance on the pre-revolutionary Constitution, has at the least, reignited the human rights debate in the country. Actual improvements in the text of the Constitution are not the sole determiners of progress. What is significant is the awareness among Egyptian society that the Constitution even matters. The new level of critical appraisal of the Constitution, on its own, indicates a concern for the rule of law and for greater accountability in the country. The widespread *discontent*, which the Constitution generates, is more indicative of a progressive normative shift, than the actual *content* of the Constitution itself. For, even disagreement and debate surrounding the new laws of the land, is a healthy sign of pluralism, and a departure from a culture of political fear and apathy. It also reflects the more sophisticated set of rights expectations and demands of civil society of the new Egyptian regime. Ironically, any dissatisfaction that is registered exerts force upon the state, to satisfy its constitutional responsibilities.

An emboldened rights culture

As this case study has demonstrated, the shutter-like opening and closing of the windows for change in Egypt, appear to be occurring more rapidly, frequently and with more openness than ever before in the country's recent history—a trend which conforms to Ibrahim's account of cyclical liberalisation in the region over the last century.⁶¹ Many are beginning to appreciate the visible pattern of progress, which has emerged during this time. For instance, speaking to the wellspring of open artistic expression and free assembly in public squares after 2011, Egyptian Artist

⁶⁰ Dr. Mohamed Morsy, Oxford African Society lecture on 'Islamist Movements and the Future of Democracy in Egypt: The View of the Muslim Brotherhood,' Queen Elizabeth House, University of Oxford, 18 May 2011.

⁶¹ Ibrahim (2004).

Hassan Khan proclaimed, "these things happened before [...] I see a continuum. I don't see it as a break, or a rupture."⁶² The recognition of such a 'continuum' marks a level of maturation in popular thinking about human rights-related developments and reforms. Setbacks are reconceptualised as a natural part of this continuum and some defiant members of Egyptian society stand poised to challenge these obstacles head-on. Referring to the threat of cultural repression in Egypt's future, Ahmed el-Attar, artistic director of Cairo's Downtown contemporary arts festival (D-Caf), defiantly claims, "we know it will come. We're waiting."

With such an unprecedented degree of opening, Egypt is in principle *as* likely to move in a progressive direction, as it is to regress with regard to rights, freedoms and democracy. Yet, this also means that the potentiality for progressive change is also considerably high and that democracy, properly administered, could help steer the country in a favourable direction. Already, with the openings provided by the advent of the Arab Spring in 2011, Egypt has clearly sought to carve a new future for itself, among its Middle Eastern neighbours and within the international community.

The idea of democracy may be relatively new to the country, which had only short-lived experiences with pluralism in its history, but this has clearly not dissuaded young, ambitious Egyptians from taking part in the burgeoning democratic process. The execution of a successful round of preliminary elections for the Egyptian parliament, the first democratically elected parliamentary body in Egypt in 60 years, represented a first step towards a functional democracy in the country.⁶³ The first free Presidential elections which took place on 23 and 24 May 2012, with run-offs held in June was 'the first time, ever, that the Arab world's most populous country has chosen its leader without knowing in advance who the winner would be.'⁶⁴

According to international observers monitoring the elections, they are confirmed

⁶² Patrick Kingsley, 'Artistic Revolution Follows 2011 Uprising in Egypt,' *The Guardian*, 22 April 2013. See also 'Voices of the People: Culture, Conflict and Change in North Africa,' *British Council* (2012).

⁶³ Jack Shenker, 'Egyptian Parliament Sworn in Under Heavy Weight of Expectation', *The Guardian*, 23 January 2012.

⁶⁴ Ian Black, in Cairo, 'Egyptians choose a leader – and for once their votes will count', *The Guardian*, 22 May 2012.

as having been conducted fairly, and free of vote rigging.⁶⁵ The Carter Centre's assessment of the elections was 'generally positive.'⁶⁶ Even though their *limited* election-witnessing mission detected minor violations, such as compromised voter privacy and restricted transparency, these irregularities were believed not to ultimately impact on the election results.⁶⁷

Wael Ghoneim, the Egyptian Google executive, and one of the so-called *horizontal* 'leaders' of the Tahrir protests who famously wept on national television during an emotional interview back in 2011 was quoted as saying that it did not matter who won the presidency in Egypt because no matter what they would now be held accountable by the people.⁶⁸ The military will undoubtedly have to learn to operate within the constraints of Egypt's up-and-coming democratic system. In this way, the role of the military will be subject to popular oversight, and not to unrestricted foreign control. Likewise, the role of Islamists and others in this process will no longer be determined solely through unorganised strife, or unruly collective action as before, but through regulated democratic processes.⁶⁹

Calling the Presidential elections a "great step forward," Jimmy Carter, himself said, 'the oppressive military regimes are over forever, I hope. The people have an unimpeded right to choose their own leaders in a democratic process. I think human rights in the future will be honored much more closely than ever before. So I think democracy has come to Egypt even though they are some difficulties in the transition process. I think they will be overcome.'⁷⁰ Carter's words of hope for Egypt's democratic future echo those of Mohamed ElBaradei—a senior Egyptian figure who enjoyed a popular, yet short-run, campaign before pulling out of the

⁶⁵ Tom Pfeiffer, in Cairo, 'Egyptian election looks fairer than last: expert', *Reuters*, 24 May 2012.

⁶⁶ The Carter Center, 'Carter Center Preliminary Statement on Egypt's Presidential Election,' 26 May 2012.

⁶⁷ 'Jimmy Carter says despite violations in Egypt's presidential election, vote acceptable', *Washington Post*, 26 May 2012.

⁶⁸ Wael Ghoneim, CBS interview, 24 May 2012.

⁶⁹ Reference to Chalcraft's notion of 'unruly collective action'.

⁷⁰ *Ibid.*

race—when he proclaimed that the elections signalled ‘the end of a culture of fear’ in the country.⁷¹

In conclusion, while Egypt’s human rights record reveals significant deficiencies in rights and liberties, at closer glance, there appears to be simultaneous movement in the general direction of rights progress over time. That is to say, the uphill struggle of human rights defenders in the country has in fact resulted in long-term rights gains despite interim losses. This is owed to the fact that any degree of regression in the domain of rights and freedoms appears to generate an almost equal and opposite force from below, calling for rights concessions. These pressures, sustained over time, create the sort of openings that Egypt is experiencing today. Such openings are neither inherently positive nor negative, but merely represent windows of opportunity, where progress could technically take place.

In spite of post-revolutionary setbacks, there is also reason to believe Egypt’s long-term human rights prospects are better than ever before given the extent of socialisation of rights norms in Egyptian society. For, as seen in previous chapters, an ever-widening gap between rights promises and practices is fundamentally unstable and cannot be indefinitely maintained. It inevitably causes a collapse in the system’s legitimacy, and in the case of Egypt, the collapse of the system itself. This cycle of intermittent openings followed by contractions, tends to repeat itself until the rights norms seek greater enforcement in actual practice and the regressions become less systematic. Thus, even if human rights repression continues, the countervailing demands for progress and reform are bound to be equally forceful, as the case of the Islamic Republic of Iran definitively shows. The case of the United Arab Emirates, to be analysed next, demonstrates how top-down rights reforms are being increasingly instituted as a means of pre-empting these potentially destabilising normative forces.

⁷¹ Associated Press, ‘Egypt presidential elections: Mohamed ElBaradei hails end of ‘culture of fear,’ *The Telegraph*, 24 May 2012.

Chapter 6: Rights Progress vs. Regress in the United Arab Emirates

This chapter seeks to highlight evidence of the diffusion of human rights norms and practices in the United Arab Emirates (UAE). It is not intended as a survey of the human rights record of the country, or a restatement of existing human rights abuses—a task best left to International Human Rights monitors charged with such a mandate. While human rights challenges in the Emirates will be briefly visited, they are not the sole focus of this study. Rather, the emphasis is on emerging developments, including instances of controlled reform, and other rights concessions, which defy the pattern of ongoing human rights-related issues in the country and which reflect the globalisation of universal human rights in the country and in the Gulf region.

Given that elements to be studied in the case of the United Arab Emirates involve relatively recent developments, they are often limited to official governmental announcements and declarations. Not all rhetorical pronouncements should be taken at face value. Neither should they be entirely overlooked, as they point to an undercurrent of pressures—endogenous and exogenous—that work to directly or indirectly shape official governmental stances in the direction of greater support for human rights and freedoms. However grand and unverifiable they may be, they serve as useful, initial markers of a human-rights based order, which necessarily begins as a ‘declaratory regime’ before it can evolve to the level of ‘promotion’ and finally, ‘enforcement regime.’ Understandably, this complicates the task of objectively evaluating the implementation of human rights schemes in practice. The relative absence of any organised and vocal opposition groups in the country also makes it difficult to form a critical opinion of official state policy.

Nonetheless, the UAE’s increased transparency and willingness for international cooperation on human rights questions in recent years, as will be visited, provides a pointer to key changes in the normative human rights fabric of the country. So too does the string of significant human rights legislation relating to anti-human

trafficking and other reforms of labour and electoral laws. It provides a critical lens for understanding the nature of the diffusion of human rights norms in local and regional settings. It also illustrates the modes through which rights promises are gradually being translated into practice.

The United Arab Emirates, consisting of a federation of seven emirates or *Sheikhdoms*—Abu Dhabi, Dubai, Sharjah, Ajman, Umm al-Quwain, Ras al-Khaimah, and Fujairah—has been ranked by international NGOs ‘as being among the least free political systems of the world.’¹ Dubai is considered the most progressive of the Emirates. Nonetheless, it has been described as ‘an autocracy where real evidence of an opening for true democracy proves hard to find, and where far less political reform has occurred than in neighbouring Gulf states, including even Saudi Arabia.’ The Geneva-based organization, *Alkarama for Human Rights* issued its own independent assessment of the UAE in the run-up to the Emirates’ Universal Period Review before the UN Human Rights Council in December 2008.² It highlighted issues of arbitrary arrest and incommunicado detention, torture and collective punishment. It also held that freedom of expression, assembly and association are restricted in the country. The judiciary system of the UAE is depicted in the report as non-independent and ‘subject to political and security interference,’ even while the UAE Constitution provides for an independent judiciary whose decisions are subject to review by the country’s leadership.³

As of 28 February 2005, the US State Department’s Bureau of Democracy, Human Rights and Labour maintains that the following problems remain in the UAE government’s respect for human rights:

Citizens do not have the right to change their government. The Government restricted freedom of speech and of the press. The press practiced self-censorship. The Government restricted free assembly and association, and it

¹ Christopher M. Davidson, *Dubai: The Vulnerability of Success* (2008), p. 137.

² Alkarama for Human Rights, ‘United Arab Emirates: Universal Periodic Review (UPR) Third session from 1-15 December 2008,’ 14 July 2008.

³ *Ibid.*, p.2.

restricted religious freedom by banning proselytizing of Muslims. The Government restricted the rights of workers, many of whom were not protected by labour laws. There are no labour unions. There were poor working conditions for some labourers, failure to pay wages, and abuse of foreign domestic servants in an economy in which 98 percent of the private sector workforce is foreign. There were no independent human rights organizations. Trafficking in women as prostitutes and very young foreign boys as camel jockeys continue to be serious problems, despite government pledges to end these practices.⁴

While these depictions of the UAE are not entirely inaccurate, they fail to take into account a margin of appreciation in their examination of the evolving socio-political climate in which the Emirates finds itself. In the years since the US State Department issued its report on human rights in the UAE, significant changes have taken place in the realm of parliamentary politics, labour laws, anti-human trafficking and more. Additionally, the UAE is bound to fall short, when judged by Western Democratic Standards, which follow a selective *all-or-nothing* logic.⁵ However, the fact that the UAE has been categorised as among the *least free* political systems does not, on its own, mean that human rights and freedoms within the Emirates are non-existent.

Several historical factors in particular have pushed the United Arab Emirates towards greater openness—social, economic and political—sometimes voluntarily, other times involuntarily. The conditions, which have spurred this incremental liberalisation of the Emirates, have as much to do with international affairs as they do with the regional and domestic circumstances. Above all, it is the interplay of these different top-down, bottom-up factors, both internally and externally, that has resulted in the current power/rights balance in the UAE. While counterfactuals are unreliable in terms of answering the question of *what could have been* under a

⁴ US State Department's Bureau of Democracy, Human Rights and Labour report on the United Arab Emirates, dated 28 February 2005: <http://www.state.gov/g/drl/rls/hrrpt/2004/41734.htm>.

⁵ This tendency can also be found in a "with us or against us" Western rhetoric, which was most pronounced at the height of the 'war on terror' following events of 9/11.

different set of circumstances, it is likely that the absence of any one of the elements which hold today in the UAE, might have resulted in a dramatically different socio-political and economic configuration than the one the Emirates currently enjoys.

The United Arab Emirates must initially be evaluated in terms of its place in the surrounding region, as part of the Gulf Cooperation Council or GCC as well as the Arab League of States. Seen from these different lenses, the UAE is an actor in both local and more far-reaching settings, with a degree of notable leverage over neighbouring states. The extent to which the policies of the UAE, especially pertaining to human rights, have an impact on and are impacted by the other Gulf and Arab states, with which it shares mutual bonds, remains to be seen.

During an official visit to the Gulf region in late April 2010, United Nations' High Commissioner for Human Rights, Navi Pillay lauded the Gulf Cooperation Council's progress on human rights.⁶ However, she urged the GCC countries to 'set up national human rights institutions to promote and protect rights at the country level.'⁷ 'These institutions must work independently from governments and should be capable of satisfying international human rights standards,' Pillay remarked. According to a Gulf News article, the High Commissioner 'lauded Qatar's national institution that acquired top-grade "A status" – which is conferred only if a rigorous set of international standards laid down by the UN general assembly is satisfied.' Pillay urged all GCC nations to similarly establish A-status institutions, and went on to call for the 'emergence of more civil society organizations that are stronger.'

Less than eight months after the High Commissioner's visit to the GCC region, it was announced at the conclusion of the 2010 GCC Summit held in Abu Dhabi, capital of the United Arab Emirates, that the Gulf Cooperation Council would soon inaugurate its first operational human rights bureau. The news was announced in a joint press

⁶ Rayeesa Absal, 'UN lauds GCC's progress on human rights,' *Gulf News*, 25 April 2010.

⁷ Rayeesa Absal, 'GCC must set up national human rights institutions satisfying international standards,' *Gulf News*, 24 April 2010.

conference with Sheikh Abdullah Bin Zayed Al Nahyan, UAE Minister of Foreign Affairs and Abdul Rahman Hamad Al Attiyah, outgoing secretary of the Gulf Cooperation Council. Speaking to *Gulf News*, Al Attiyah said that ‘human rights in the region are ‘better than 88 countries in the world.’ He went on to say that ‘the GCC Bureau of Human Rights will correct the image [of the Gulf] and highlights the level of respect to the rights of local and expatriate citizens in the region [...] we need to reflect the realities. The people in the Gulf are enjoying a high level of security. The role of law is decisive and people are equal before the law.’⁸ He claimed that all GCC countries contain establishments to monitor human rights, adding that ‘the GCC Human Rights Bureau will cooperate with workers in the field and present a comprehensive picture.’ He qualified his remarks by noting that this move is not a ‘propaganda campaign’ but a decision aimed at addressing the misrepresentation of the Gulf in the world.

The fact that the announcement of the prospective human rights bureau emerges from the GCC Summit held in the Emirates, is quite significant, in that it fits the recent trend of progressive initiatives springing from the UAE. This development further supports the thesis that a ‘norm cascade’ is occurring at the domestic and regional level in the Gulf, with the United Arab Emirates acting as a kind of facilitator or *midwife* in this normative process.⁹ Having served as a regional and international model for emulation in the economic realm, this and other human rights-related developments coming out of the UAE, to be studied below, positively demonstrate that the Emirates is an epicentre of change in all respects, social, political and economic. This would seem to suggest that norm diffusion is actively taking place between the regional and state levels, just as it has been shown to occur between the international and regional levels.

⁸ Duraïd Al Baik, ‘Human rights bureau to be established soon,’ *Gulf News*, 8 December 2010.

⁹ Martha Finnemore and Kathryn Sikkink, ‘International Norm Dynamics and Political Change,’ *International Organization* Vol. 52:4 (Autumn 1998), pp. 887-917.

The establishment of a Human Rights Bureau at the GCC could be seen as mirroring the existing Permanent Arab Human Rights Committee of the Arab League, as well as harmonising the rights regime regionwide. Such trends would thus indicate a level of institutional learning and internalisation of norms and practices not only within, but also *between* regional organisations such as the GCC and League of Arab States. It is in the same way that the Arab Charter on Human Rights mirrored the International Bill of Human Rights, reflecting the exchange and harmonisation of norms between the regional and the international human rights systems.

While the timetable for such a Gulf-based human rights bureau is not yet known, it is just one of many pledges made in recent years and months which reflects a shift from hard to soft power rhetoric in the Middle East power centres. This paradigm shift appears to be contingent on pressures being felt by some authoritarian regimes to adopt more human rights-friendly policies in exchange for membership in international elite circles from the United Nations to the World Trade Organization (WTO) and other coveted global platforms, for instance. This reflects, once again, the transfer of normative expectations between the global and local levels, and the consequent expectation of greater harmonisation of practices universally.

With the ubiquity of information disseminated on the world-wide-web and other global exchange networks, even so-called 'closed' nations are no longer closed-off from the possibility of international scrutiny, especially with respect to their human rights records. More countries, such as the UAE, it seems, today choose to pre-empt such forms of prying into their domestic affairs, by electing to adopt an open-door human rights policy rather than risk the humiliation of further international *naming and shaming*. For instance, international non-governmental organizations (INGOs) such as *Human Rights Watch and Amnesty International* are known to single-out governments over their poor human rights records in the international press in an attempt to shame them into compliance with human rights laws. This tactic, however effective in the short term, is not always as effective in the long run, as it tends to encourage rash, cosmetic amends by governments seeking to save face in

the international community. Instead, human rights problems risk *going underground* as government energies are placed on keeping issues hidden from view rather than on actually solving them.

Given the level of international scrutiny that the UAE has received as a result of its elevated stature as a global hub for business, trade and tourism in the short four decades following its independence and unification as a federation on 2 December 1971, the UAE has seemingly recognised the importance of adopting international best practices and bringing its national laws into greater alignment with international codes of conduct. Various formal institutions and mechanism, from the UAE free zones and Dubai International Financial Centre (DIFC) to the Dubai Executive Council, have been set up with the very aim of harmonising the UAE's system with that of the international community. The United Arab Emirates, although faced with various human rights problems ranging from human trafficking to reports of maltreatment of labourers as a result of its open-border and tax-free policy and accelerated pace of development, has in the last half-decade, taken a variety of proactive steps to address these systemic issues.¹⁰

Constitutional Guarantees

It is helpful to visit the constitutional makeup on the United Arab Emirates, to establish the fact that human rights already have a place in the UAE's existing legal framework. They are not foreign to or incompatible with the Emirates' founding principles. The UAE Constitution contains a series of direct and indirect human rights clauses, guaranteed by law. According to Article 25 of the Constitution, which sets the parameters for legal protections in the country, 'all persons are equal before the law, without distinction between citizens of the Union in regard to race, nationality, religious belief or social status.' Article 14 of the Constitution states that 'equality, social justice, ensuring safety and security and equality of opportunity for

¹⁰ Mishana Hosseinioun and Abdul Ghaffar Hussain, 'Rise of the 'Universal Arab Emirates,'" *Gulf News*, 10 December 2010.

all citizens shall be the pillars of the Society.’ Article 16, claims that ‘Society shall be responsible for protecting childhood and motherhood and shall protect minors and others unable to look after themselves for any reason, such as illness or incapacity or old age or forced unemployment. It shall be responsible for assisting them and enabling them to help themselves for their own benefit and that of the community.’

Overall, the UAE’s constitutional guarantees include, among other things, the principle of equality; personal liberty; freedom of opinion and guarantee of the means to express it; freedom of movement and residence; freedom of religion; right to privacy; family rights; right to social care and social security; right to education; right to healthcare; right to work; freedom of assembly and establishing associations; right to property; and right to complain and address authorities.¹¹

The above articles and rights provisions in the UAE Constitution and encoded in federal laws set benchmarks in human rights, which the country pledges to honour. These tenets draw direct inspiration from the Charter of the United Nations and the Universal Declaration of Human Rights.¹² Yet, as numerous independent assessments of the UAE have noted, the country has in many cases failed to respect certain rights, which are written into its own Constitution. For the first time in its young history, the United Arab Emirates is seeking to redress these legitimate critiques. First, it is openly acknowledging existing human rights problems in the country. Second, it is working to develop strategies to overcome its domestic rights challenges in partnership with United Nations organs such as the World Health Organization (WHO); the International Labour Organization (ILO); the Food and Agriculture Organization (FAO); the United Nations Educational, Scientific and Cultural Organization (UNESCO); and the United Nations Children’s Fund (UNICEF).¹³

¹¹ Constitutional Guarantees enumerated in ‘The UAE National Report,’ pp. 6-9.

¹² Ibid., p. 12.

¹³ See ‘International cooperation with international and regional organizations’ in UAE National Report, p. 12.

Additionally, the UAE has signed on to a variety of binding international agreements such as the International Convention on the Elimination of All Forms of Discrimination in 1974, the Convention on the Rights of the Child in 1997, the Convention on the Elimination of all Forms of Discrimination against Women in 2004, and the Convention against corruption in 2006, including the Geneva Conventions dealing with international humanitarian law. The UAE is also a signatory to the Arab League Charter and Arab Human Rights Charter, and several Arab Labour Organization agreements; and the Rome statute of the International Criminal Court as well as nine International Labour Organization codes of conduct.¹⁴ According to official government reports, the UAE is making the necessary constitutional amendments to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. The UAE is giving serious consideration to signing on to the Optional Protocols to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography and on the Involvement of Children in Armed Conflict.¹⁵

In July 2012, the UAE finally acceded to the UN Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, delivering on its earlier pledge. However, the Emirates expressed disappointment at the failure of the US State Department's 2012 Report on Human Rights Practices to mention this and other progressive steps taken by the country to ameliorate its rights practices. It claims that the 'Report provides an unbalanced picture of the human rights situation in the UAE and fails to give adequate recognition to the significant progress.'¹⁶ Other developments which the report did not take into account when evaluating the question of discrimination against women in the Emirates, include the UAE Cabinet's decree in December 2012 making it 'compulsory for corporations and

¹⁴ As listed in UAE National Report, p. 11.

¹⁵ Ibid.

¹⁶ WAM, 'UAE Disappointed by US Human Rights Report,' *Gulf News*, 28 April 2013.

governments agencies to include women on their board of directors’ and ‘the prominent role of women in UAE, including four female Ministers in the Federal Cabinet.’¹⁷

The UAE’s Universal Periodic Review (UPR) by the UN Human Rights Council

Nowhere is the UAE’s newly proactive stance on human rights more apparent than in its open and transparent handling of the Universal Periodic Review (UPR) process at the UN Human Rights Council. It represented an unprecedented effort to reflect openly upon its own human rights record and officially commit itself to greater human rights protections before the international community. The United Arab Emirates formed a Working Group charged with drafting a national Human Rights Report in 2008. The ‘UAE National Human Rights Report’ was compiled by a committee comprised of members of different government ministries and agencies across the UAE, in consultation with members of civil society and non-governmental organizations.¹⁸ The Working Group Report on the UAE’s Universal Periodic Review first submitted on 4 December 2008 was unanimously adopted at the 10th session of the UN Human Rights Council in March 2009.¹⁹ The report highlighted the following efforts of the United Arab Emirates in the field of human rights observance:

- Providing more mechanisms to protect human rights, keeping up with national and international developments and updating laws and systems;*
- Meeting the state’s expectations with regards to building national capabilities and deepening efforts for education on human rights and basic freedoms through a national plan.*

¹⁷ Ibid.

¹⁸ In an effort to ensure ‘accuracy and transparency’ in the preparation of the report, a link was provided on the website of the Ministry of State for Federal National Council Affairs (www.mfnca.ae) to allow for the public to actively participate in the process by providing their comments and suggestions.

¹⁹ Personal attendance at 10th session of UN Human Rights Council to witness UAE’s Universal Periodic Review, March 2009.

-Striving to regulate the relationship between employers and workers in framework that preserves dignity and rights and is in harmony with international standards, especially with regards to domestic help.

-Despite what has been accomplished for women, the larger challenge is increasing the empowerment of women's role in society, increasing opportunities for involvement in a number of fields based on their skills and abilities, supporting their participation in economic activity, and dedicating policies that will increase and support their abilities and encourage them to fulfil their responsibilities as essential partners in development.

-Working to confront human trafficking crimes by reviewing the best international practices in the field, working to update and improve the state's legislature in accordance with international standards, working to establish institutions and agencies to confront human trafficking crimes, and working to support the foundations of international cooperation with international organisations and institutions.²⁰

The UAE's similarly open and obliging participation in the subsequent Universal Period Review process of January 2013 can also be looked to as evidence of its claimed 'preference for conducting dialogue on important human rights issues through this kind of legitimate, transparent, multilateral forum [...]'.²¹ As seen in earlier chapters, the process of socialisation of norms and practices, which eventually bridges theory and practice, begins at the level of rhetoric and dialogue. Thus, the mere participation of the UAE in the UPR regime and its stated willingness to engage in a rights dialogue—even on a purely ceremonial level—is part and parcel of a more protracted socialisation process. It is how the 'declaratory' regional rights regime identified further wedges itself at the domestic level, eventually demanding greater promotion and enforcement on the part of states.

²⁰ 'United Arab Emirates Yearbook 2009,' pp. 217-18:

http://www.uaeinteract.com/uaeint_misc/pdf_2009/. See also www.uaeinteract.com/humanrights.

²¹ 'UAE Disappointed by US Human Rights Report,' *Gulf News*, 28 April 2013.

Human Rights Education

One of the noteworthy initiatives announced during the UAE representative's speech before the 10th session of the Human Rights Council is the country's commitment to developing and implementing a nationwide, K-12 human rights educational curriculum, the first of its kind in the Middle East.²² These projects and others have become a notable source of pride for the UAE, which sees itself as a pioneering force in the region and the world. This was evident by the extent of congratulatory praise that the UAE received by other participating UN Human Rights Council members following these announcements by the country representative.

Federal Human Rights Council

The most significant development, perhaps, to emerge from the UAE's Universal Period Review includes the announcement of a new Federal Human Rights Council to be established in the country.²³ Such a body would have legislative as well as judicial powers in addressing and prosecuting human rights violations. It would also seemingly answer the UN High Commissioner for Human Rights, Navi Pillay's calls for more comprehensive local human rights instruments and implementation mechanisms in the region. On 30th of April 2013, the Federal National Council (FNC) announced the election of its seven-member, permanent human rights body, demonstrating another move from human rights rhetoric to practice and from mere 'declaratory' regime to 'promotion' to 'enforcement' regime.²⁴

²² Result of successful lobbying in 2008 of the UAE Minister of Education at the time, Dr. Hanif Hassan, by myself and Chairman of the Emirates Human Rights Association, Mr. Abdul Ghaffar Hussain. We remain in regular consultation with the Ministry on the development of the national human rights curriculum.

²³ Based on announcement made before the 10th session of the UN Human Rights Council in March 2009 by UAE Minister of Federal National Council Affairs, Dr. Anwar Gargash, as well as personal exchange with Minister on the matter.

²⁴ Announced on official website of the Federal National Council (FNC): <http://www.almajles.gov.ae>.

Labour rights reform

Most international headlines and magazine stories about the UAE or Dubai highlight the plight of the foreign domestic workers in the country. Many simply seek to expose the dark underbelly of an otherwise exemplary nation-state.²⁵ The select books that have been written on the subject—largely by rehashing those headlines and offering very little critical analysis—have reduced Dubai to a *gilded cage*.²⁶ Few to none address the recent changes that have been made in labour legislation—changes which, true to the UAE’s fast-paced nature, have also perhaps occurred too rapidly for international commentators to follow. After all, the UAE contains one of the highest numbers of temporary contractual labourers working for meagre wages to build the country’s infrastructure and ever-rising cityscape—with 3,113,000 foreign workers of over 200 nationalities being employed by 250,000 employers across the Emirates.²⁷

The Emirates’ success has mainly been based on the advantageous combination of a rich, diversified economy and cheap labour. Advantageous to whom, and at what price, one must question. It has been agreed that the elite of the country, including big businesses, have reaped the benefits of this profit-driven economic model. Meanwhile, the foreign workers have largely paid the toll with their blood and sweat. There is also the argument that in the UAE, labourers are still being offered better job opportunities and wages than those available to them in their own home countries.²⁸ The sheer number of workers emigrating to the Emirates on a daily basis of their own free will, is indicative of that fact; as is the number of workers waiting in line to replace those who wish to abandon their given live/work arrangements.

²⁵ Reference to 7 April 2009 article in *The Independent* by Johann Hari, sensationally-labelled, ‘The Dark Side of Dubai.’ The subtitle of the piece is as follows: *Dubai was meant to be a Middle-Eastern Shangri-La, a glittering monument to Arab enterprise and western capitalism. But as hard times arrive in the city-state that rose from the desert sands, an uglier story is emerging.*

²⁶ Syed Ali, *Dubai: Gilded Cage* (New Haven: Yale University Press, 2010).

²⁷ ‘The UAE National Report,’ p. 19.

²⁸ Based on general observations from conversations with locals (Emirati) and expatriates.

In the end, international criticism over labour conditions in the UAE has had its desired effect of encouraging the country to come-clean about its human rights record and to adopt remedies to redress rights violations. Rather than adopting a defensive stance and further guarding its practices from international view, the UAE has opted instead for a cooperative and transparent policy, which is in its best interest. It was not until 2009 that the Emirates officially opened its doors to international human rights monitors, namely, to UN Special Rapporteurs charged with assessing human rights conditions in the country first-hand. Pursuant to the findings of the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai, following the October 2009 mission to the UAE, it was noted that the United Arab Emirates has made significant strides in the direction of greater protection of minority and worker rights.²⁹ While this is not to deny the ongoing plight of migrant workers or trafficked individuals, there still appears to be a concerted effort on the part of the United Arab Emirates to address these ongoing issues.

First and foremost, one must recognise that nationals comprise a minority in the country and non-nationals make up a majority, which naturally places issues of national identity front and centre of the UAE policy agenda. As seen, the distinction between nationals or 'citizens' and non-nationals is expressly written into the UAE Constitution to safeguard national identity. This distinction, however well-intentioned, has its adverse consequences for the non-national population, which constitutes a large section of UAE society. Overall, however, the relatively harmonious coexistence of a diverse array of races and religions is a testament to the country's open-door policy and non-discriminatory practices.³⁰

²⁹ Findings based on personal observations from having accompanied and assisted UN Special Rapporteur on Discrimination, Prof. Githu Muigai, during his weeklong UAE mission in October 2009.

³⁰ Hosseinioun and Hussain, *Gulf News*, 10 December 2010.

While a plurality of nationalities ensures that there is no predominant racial or cultural group, which dominates over others, labour market conditions have led to the stark stratification of society into disparate socio-economic classes. As a result, low to semi-skilled migrant workers, predominately of Asian, Eastern European and African origin, occupying the bottom rung. Such an arrangement has occasionally exacerbated the divide between nationals and non-nationals in the country, and more specifically between the elite and the working classes.

Remarkably, however, there is no overt racial, religious or gender discrimination and xenophobia to be noted in the country. Cases of discrimination seem to take place primarily along socio-economic fault lines, as in the rest of the world, with race and religion acting as largely coincidental variables. One could say that the racial and religious makeup of the most vulnerable groups in UAE society, namely, the lower-skilled migrant workers, is purely incidental to the fact of their exploitation or mistreatment at the hand of certain errant employers. Therefore, any discrimination waged at the level of the working class—construction and domestic workers alike—should be understood more as a by-product of free-market capitalism, with its colour-blind preoccupation with the bottom-line. It is also likely linked to an ingrained culture of classism, which pervades international society at large.

Furthermore, most sectors of the UAE government have adopted a laudable policy of transparency by openly acknowledging the existence of problems such as human trafficking and signing the relevant UN conventions to combat them. The inclusion of separate 'Human Rights' departments within governmental authorities in the country is also a remarkable phenomenon which represents a positive model for emulation elsewhere, it was noted.³¹

³¹ Personal visit to several national human rights departments, including the Human Rights Department of the UAE Ministry of Interior in Abu Dhabi and the Dubai Community Development Authority (DCDA) which was recently established for the purpose of fielding all human rights violation cases previously directed to the Dubai Police Human Rights Department.

The UAE is also adopting proactive strategies and developing advanced technological means for addressing specific issue areas—including secure labourer wage-distribution schemes with banks, humane labourer housing accommodations, accessible socio-legal and health services for workers, in addition to raising workers’ and employers’ awareness of their rights and duties etc.³² Impressive shelters, such as the EWAA Shelter for Women and Children in Abu Dhabi, which functions under the umbrella of the UAE Red Crescent Authority, and other rehabilitative services are available for vulnerable groups such as trafficked women and children.³³ The safe, welcoming and protective environment that such shelters provide work to counteract the social stigma attached to the experience of domestic and sexual abuse. They allow victims to seek support without fear of reprisal or admonishment. They safeguard fundamental human rights, from food and shelter to healthcare and rehabilitation, including facilitating access to job opportunities. Similar socially supportive services include the Social Support Center of the Abu Dhabi Police and the Human Rights Care Department of Dubai Police.³⁴

Dubai Industrial City is home to a series of ‘labour cities’ consisting of a variety of state-of-the-art residences for workers, ranging from single-unit housing to a maximum of nine-unit rooms.³⁵ These residential complexes are within close proximity to a variety of leisure and recreational areas, as well as health centres, fire stations, mosques, public transportation and training and vocational facilities aimed at raising the standard of living for all workers living therein. The emergence of comfortable, modern living spaces for the labourers working in the UAE, such as those within the Saih Shuaib Residential Complex in Dubai Industrial City, presents

³² Personal visit to Dubai Industrial City in 2008 to inspect completion of new housing units for labourers.

³³ Personal visit to the Dubai Foundation for Women and Children (DFWAC) in October 2009. <http://www.dfwac.ae/>.

³⁴ Personal visit to Human Rights Care Department of Dubai Police and meeting with Dubai Police Chief, Lieutenant General Dahi Khalfan Tamim, in which he emphasised the high priority placed by the Dubai Police Department on respecting the rights of both victims and perpetrators of crimes. This fact is corroborated by US State Department findings that there were no reports of human rights abuses committed by security forces: <http://www.state.gov/g/drl/rls/hrrpt/2004/41734.htm>.

³⁵ Floor plans for these rooms are readily available on the Dubai Industrial City website: <http://www.dubaiindustrialcity.ae/Pages/facilities/facilities-labor-residences.htm>.

a unique convergence of socially responsible business practices with a sound and competitive business model that is still attractive to UAE-based companies. This points to a new trend in the region which views economic progress as inextricably linked with social progress, rather than as being inimical to the latter. While the mere act of ensuring the wellbeing of workers in the country may not, in-and-of-itself, be the main driving force behind such developments, it is the fortunate by-product of a new strategic model that countries such as the UAE seem to be following since the dawn of the 21st century.

Another instance in which this new rights paradigm appears to be at work is in the proactive laws being enacted by the UAE Ministry of Labour. In 2008, the Ministry created a set of rules regulating working conditions for labourers in the country. These regulations not only specify the permissible hours of work, they offer non-negligible terms that all employers are legally obliged to follow. Should employers fail to comply with these standards, they face certain penal action:

-As per the Ministerial resolution 335, for the year 2008, Labourers should not stay in the sun between the hours of 12:30pm to 3:00pm during the months of July and August.

-Working hours for labourers should not exceed 8 working hours daily.

-All organizations and companies that break the 335 resolution shall be penalized. Penalty will be determined as per the resolution categories.

-Working Sites should provide the following: Cold Drinking Water, thirst gratifiers including minerals and juices, cooling devices, shades protecting from the sun and first aid kits.

-During working hours under the sun, body must be kept wet with the importance of covering the head and avoiding drinking tea, coffee and heavy meals.³⁶

³⁶ Taken from official leaflet (in English and Arabic) issued by the UAE Ministry of Labour.

To complement the efforts of the Labour Ministry on the issue of labourer welfare, a pamphlet dedicated to worker health, printed by the Health Authority of Abu Dhabi (HAAD), as part of the SAFE Programme for the Management of Work in Hot Environments, seeks to educate Health Service Executives (HSE), Supervisors and Workers about the perils of heat related problems and ways of mitigating. The programme advises employers to 'Keep your workers SAFE from the Heat' and to register online at www.haad.ae with the programme to receive educational materials, including training manuals, leaflets and DVDs. Even though implementation of these principles is not guaranteed by such campaigns alone, the propagation of these resources by the government is an implicit expression of official state policy. Furthermore, it represents a move from mere *declaratory* support of worker rights to the *promotion* thereof—paving the way to their gradual *enforcement*, as Donnelly's rights regime theory would dictate.³⁷

Wages Protection System

Following complaints about problematic wage-payment schemes, proactive measures have been taken by the UAE to ensure the fair and timely payment procedure of workers in the country. This would illustrate an instance where bottom-up pressures to reform unfair practices have resulted in tangible changes in rights-related policy with benefits for a large segment of the UAE population. The new Wages Protection System (WPS) formally adopted by the Ministry of Labour (MOL) is described as follows in the Ministry's official literature:

-It is an electronic system/service initiated by the Ministry of Labour, in conjunction with the UAE's Central Bank.

-It is intended to assert the UAE government's willingness and urge to protect the basic rights of all those who contribute to the production process (worker – employer), and also to ensure the importance of safeguarding the principle of wage protection.

³⁷ See Chapter 4 on elements of a regional human rights regime.

-It guarantees provision of necessary data and information needed by the MOL concerning private sector's wage payment processes, and the extent of businesses' adherence to wage payment on timely basis and that each worker receives the exact amount of money specified in his/her contract.

The Ministry goes on to list the objectives of WPS as follows:

-To contribute to prevalence of stable and constructive labour relations all over the UAE by protecting the rights of all concerned parties.

-To provide necessary information on businesses delaying wage payment of their workforce. The system will create an immediate notification of delayed payments on the day the payment should have been made.

-To accelerate implementation of preventative measures which are expected to reduce labour disputes pertaining to wages.

-To support and help all parties (worker – employers) to reduce the practice of keeping large amounts of cash money at work sites, and to provide new solutions and alternatives.

In addition to providing automated services for the rapid and fair distribution of wages, workers are now actively encouraged to register their complaints with the Ministry of Labour. This feedback system—with a guaranteed maximum Ministry response-window of two weeks— is just one way in which the UAE government is seeking to streamline and improve its labour services.³⁸ Comment boxes are also available in the newly built labourer housing units in Dubai Industrial City, allowing for workers to directly issue complaints or make suggestions on how to improve their living and working conditions.³⁹

More recently, new labour rules have been introduced as part of ongoing reforms by the UAE Ministry of Labour to ensure 'greater productivity' as well as greater

³⁸ Figures based on live presentation given by members of the UAE Labour Ministry, October 2009.

³⁹ Personal inspection of labourer comment boxes during 2008 Dubai Industrial City Visit.

worker rights and freedoms.⁴⁰ The new regulations will grant workers the flexibility of switching employers after a period of two years. This move has been recognized as stemming from the 'knowledge-based economy strategy' being employed by the United Arab Emirates.⁴¹ It also follows a trend in the UAE of adopting global best practices.

There appears to be a recognition on the part of members of the business community and civil society that the new labour laws which come into force on 1 January 2011 are as good for business as they are for the workforce. According to Abdul Ghaffar Hussain, Chairman of the Emirates Human Rights Association, 'the sponsorship system is not welcome in a developing country such as the UAE that needs to meet the international standards of the labour market and also human rights.' He added that 'the UAE has a civilised and open society and this step is a good sign that the country is intending to cancel the sponsorship system one day. It is a very optimistic start.' Stressing, however, that greater rights entail greater responsibilities, Hussain maintained that 'a majority of UAE businesses rely on the foreign workforce. So they have to get their full rights and also be responsible and avoid misusing the freedom they are granted.'

The most common complaint by international observers and UAE workers themselves about the sponsorship system in the UAE is the case of the confiscation of workers' passports by their employers.⁴² Additionally, many workers coming to the country fall victim to the trap of jobs that do not materialize as promised to them by their 'employers'. For instance, most incidences of human trafficking can be traced to employers luring foreign workers to the UAE under false pretences, confiscating their travel documents and subjecting them to inhumane work practices such as prostitution, without the possibility of escape to their home country. Many of the shelters and supportive services set up in the country have

⁴⁰ Zaher Bitar, 'New labour rules ensure greater productivity: Business leaders hail regulation and its positive effects,' *Gulf News*, 20 December 2010.

⁴¹ According to Hani Al Hameli, Secretary-General of the Dubai Economic Council (DEC).

⁴² Based on personal insight from exchanges with foreign workers in the UAE.

catered primarily to victims of these deceptive schemes, mostly women and children. In the first year since its operation between September 2007 and December 2008 the Dubai Foundation for Women and Children handled 43 victims of human trafficking referred to the foundation primarily by the Dubai Police, with only five of the 43 remaining under the foundation's care by the end of 2008.

Anti-Human Trafficking Legislation

Official efforts have been made to publicly acknowledge and address the widespread problem of human trafficking in the United Arab Emirates. In addition to ratifying the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, the UAE has enacted legislation of its own to stem the tide of trafficking within its borders. *Anti-Trafficking Law—Federal Law No. 51*—effective as of November 2006, is the first of its kind in the region in providing a legal framework to address, prosecute and mitigate against crimes in trafficking of persons, especially women and children. The formal definition provided for human trafficking under Fed Law No. 51 is closely aligned with the Palermo Protocol and other related international legislation:

Recruiting, transporting, moving or receiving persons by means of threat or use of force or by any other means of coercion, kidnap, fraud, deceit, abuse of power, exploiting a condition of weakness, offering or receiving money or advantages to secure consent of a person who is in control of another person, for the purpose of exploitation.

**Exploitation includes all forms of sexual abuse, involuntary servitude, mistreatment, coercion and abuse of work force, as well as illegal trading in human organs.*

As part of a nationwide strategy led by the UAE National Committee to Combat Human Trafficking, a Four Pillar Action-Plan outlined in its third Annual Report (2009-2010), has been developed, to address this issue on the level of *legislation*;

enforcement; victim support; as well as bilateral agreements and international cooperation. According to Dr. Anwar Mohammed Gargash, Chairman of the National Committee to Combat Human Trafficking, 'The UAE will continue to take a lead on this issue in the region and internationally, acknowledging the existence of human trafficking as a critical problem that afflicts our society and many others around the world.'

Further steps taken by the UAE in the year 2010 include coming out in full support of the UN Global Plan of Action to Combat Human Trafficking (UN.GIFT) launched on 31 August 2010, which calls for setting up a voluntary UN trust fund for human trafficking victims, especially women and children.⁴³ The UAE is also an active member of the Group of Friends United Against Human Trafficking, an informal, voluntary international network of 20 countries founded in February 2010 to support the UN in its goal to end the scourge of human trafficking. Furthermore, the UAE Committee to Combat Human Trafficking has considered the recommendations of a regional workshop hosted in Abu Dhabi in October 2009 on 'Enhancing Law Enforcement and Judicial Co-operation among Source, Transit and Destination Countries in Central Asia to Fight Human Trafficking.' The Committee also accepts the findings of international human trafficking reports, including the report findings of the UN Special Rapporteur on the sale of children, child prostitution and child pornography, who visited the UAE for the first time in October 2009. In fact, the 2008-2009 Annual Report on Combating Human Trafficking in the UAE, a pledge was made to invite Special Rapporteurs on Trafficking in persons, especially women and children, to visit the country in the future. Thus far, the UAE has honoured its pledge by adopting a more transparent policy on even the most sensitive issues plaguing the country such as human trafficking.⁴⁴ The UAE has also signed bilateral agreements with several labour-exporting countries such as India, Pakistan, Nepal,

⁴³ See

http://www.uaeinteract.com/docs/UAE_backs_UN_action_plan_against_human_trafficking/43333.htm and <http://www.ungift.org/knowledgehub/>.

⁴⁴ 'Combating Human Trafficking in the UAE' (Annual Report 2008-2009), p. 27.

Sri Lanka, Bangladesh, China, Thailand, and the Philippines, and sought greater international cooperation in order to regulate the flow of workers into the UAE.⁴⁵

Most significantly, as of 2006, the problem of trafficking in children for use as camel jockeys noted in the US State Department report on the UAE one year earlier, has been officially resolved. Beginning in March 2005, the UAE government enlisted the partnership of UNICEF to eradicate the illegal and inhumane practice of child camel jockeying in the country. A multinational progress review in 2006 confirms that all 1077 child camel jockeys were safely returned to their Asian and African home countries.⁴⁶ Miniature robots have since been introduced as surrogate jockeys and rehabilitation centres have been created to help young former camel jockeys. The rehabilitation programme first launched in Abu Dhabi with a government purse of 10 million Dirhams (\$2.75 million) was also the first of its kind in the world. An additional 29 million Dirhams (\$8 million) has been invested by the UAE in this joint effort with UNICEF on monitoring and preventative measures to prevent such forms of illegal trafficking and exploitation in the future.⁴⁷ It has provided a model for emulation elsewhere and has resulted in the successful implementation of similar rehabilitative programmes in the homelands of former camel jockeys, from Pakistan to Bangladesh, Sudan and Mauritania.

While the exploitation of women and children remains a real concern in the United Arab Emirates, preliminary efforts are clearly being made on the part of the government to firstly acknowledge the presence of problematic practices and secondly enact policies to redress them. This is also true in the domain of political participation and the status of women in general. The government has thus far appeared to apply a measured and consistent approach to rights-related issues facing the country.

⁴⁵ Ibid., p. 23.

⁴⁶ Ibid., p. 21.

⁴⁷ Ibid., p. 22.

Parliamentary Politics and Women's Empowerment

Article 35 of the UAE Constitutions stipulates the 'public office shall be open to all citizens on a basis of equality of opportunity in accordance with the provisions of law. Public office shall be a national service entrusted to those who hold it. The public servant shall aim, in the execution of his duties, at the public interest alone.' Based on this article alone, it appears a mandate already exists to provide for a representative political system in the country. The empowerment of women in this process is seen as an issue of high priority given the limited opportunities historically available to women to run for public office.

The exercise of parliamentary politics in the Federal National Council (FNC) or *Majlis al-Watani al-Ittihad* in the United Arab Emirates presents an ideal case for the study of *controlled political reform* in the country.⁴⁸ While the FNC is seen as 'little more than a civilised talking shop' by some, it has nonetheless undergone some gradual changes in the last years.⁴⁹ For instance, the Council is today accessible to members of the public, suggesting preliminary efforts at confidence building between the Council and ordinary citizens.⁵⁰ Similarly, reforms were made to the UAE's electoral system in the last decade, which enable greater public participation by women and others in the political process.

A 2009 study was conducted by the Dubai School of Government (DSG) in conjunction with the Ministry of State for Federal National Council Affairs, on 'Women in Parliament and Politics in the UAE: A Study of the First Federal National Council Elections.'⁵¹ 'The empowerment of women and the establishment of gender equality' are recognised early on in the DSG's report as well as in UNDP Arab Human

⁴⁸ See Davidson (2008), p. 163.

⁴⁹ Ibid.

⁵⁰ This statement is corroborated by personal attendance of FNC session in 2007, even as a non-citizen of the UAE.

⁵¹ Dr. May Al Dabbagh, Lana Nusseibeh (researchers: Huda Sajwani, Shaima Gargash), 'Women in Parliament and Politics in the UAE: A Study of the First Federal National Council Elections,' *Dubai School of Government and Ministry of State for Federal National Council Affairs* (February 2009).

Development Reports as cornerstones of 'democratisation' or liberalisation in the political systems across the Middle East.⁵² Arguably, they are key indices to gauge the degree of openness and progress of the human rights system in the region.

The report concedes that while many Arab countries have ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and have made some preliminary efforts to incorporate the tenets of the Convention into their domestic legislation, 'legal discrimination remains a major impediment to women's political participation.'⁵³ Likewise, constitutional equality of status for women, although guaranteed in principle in some Arab countries, often does not translate into equality in practice. For instance, 'women are not treated equally before the legal system in matters such as social security, inheritance, legal status and the criminal courts, as well as in terms of benefits from the state.' The report perceives these instances of gender bias as the greatest challenge to the participation of women in the political arena. Despite the marked underrepresentation of women in the political process, the Arab world has still seen an increase from 3.5% in 2000 to 9.6% in 2008, in the number of women parliamentarians. All of which indicates a slow but promising trend in the direction of gender equality and more meaningful political participation.

Nonetheless, in gauging the prevalent attitudes towards political participation in the UAE and on how men and women in the country experience the political process, the report reveals 'the positive attitude about women's participation' across the board (with only minor variations in male and female respondents' answers pursuant to more detailed questions).⁵⁴ Findings on the status of women in the Federal National Council were also generally positive with regard to the distribution of women in FNC committees, although the relatively low number of female

⁵² Ibid., p. 14.

⁵³ Ibid., p. 16.

⁵⁴ Ibid., p. 10.

representatives was seen as presenting a clear disadvantage to their participation in the committees.

The 2006 elections of the FNC, the first in its history, which allowed for the participation of women candidates—also for the first time in the country’s political history—resulted in the UAE’s FNC containing ‘the highest proportion of women representatives across the GCC.’⁵⁵ While only one woman won a Council seat through election, eight more were appointed to the Council, paving the way for greater female parliamentary representation in the country. Overall, there appears to be a general consensus on the importance of women’s participation in parliamentary politics in the country, with the exception of minor disagreements over the need for a specific committee of Women’s Affairs.⁵⁶ Even then, the participation of women in the Federal National Council was not seen as changing the culture of the Council, which is to say that it was not seen as a threat to the traditionally male-dominated atmosphere of the Council.

Recognising greater room for progress in the UAE’s electoral process, the report goes on to make recommendations for a gender-neutral quota, including quality training for candidates and other methods for increasing women’s electoral participation while closing the ‘gender gap’ and lengthening campaign periods.⁵⁷ Specific recommendation to the FNC include establishing a family affairs committee, which many respondents felt would serve as a platform to address the needs of women in UAE society, in addition to improving FNC services for female members, support research-driven policy making, and benchmark the performance of women FNC members.⁵⁸ More general recommendations touch on the need for nurturing women’s role in politics and decision-making bodies, empowering the FNC and stimulating greater public awareness of FNC activities and policies, and widening avenues for engagement with civil society and generating meaningful partnerships

⁵⁵ Ibid., p 21.

⁵⁶ Ibid., p. 11.

⁵⁷ Ibid., pp. 44-5.

⁵⁸ Ibid., p. 45.

with the media.⁵⁹ In sum, challenges as well as new progressive milestones are addressed in the context of parliamentary politics in the UAE and the empowerment of women. Such would indicate that the political culture in the country is still a work in progress and not a final product that can no longer be improved.

Novel forms of alternate democratic participation are also on the rise in the United Arab Emirates. A pioneering, new system of e-Governance, which has been recently launched in the UAE is widely recognised as the most advanced of its kind in the world. Through an interactive online platform, members of civil society can make their voices heard by the country's leadership. Similar in structure to the tradition of the *Majlis* or *Diwan*, or process of direct democratic consultation with the leaders of the country, the e-Government system is a sort of e-*Majlis*. In an otherwise limited democratic political system, it is significant that the people should be given a direct line of communication with the country's decision-makers, and often be guaranteed a rapid response and remedy.

Over time, the international community, as well, has come to recognize the positive contributions of the Emirates to the Middle East region and the world at large. On the Emirates' most recent National Day, 2010, US Secretary of State Hilary Clinton hailed the UAE as a 'steady voice for peace and progress regionally and internationally.'⁶⁰ Such a glowing endorsement from a leading world power is seldom bestowed upon non-Western nations, without good reason. The reasons for this sort of praise likely include the UAE's meteoric rise onto the international scene paired with its pledge to rise to internationally agreed-upon standards, as a relative newcomer in the global community. While such a statement cannot be held as an entirely impartial assessment of the country—coming, as it is, from a politician rather than an independent judge—it still represents a radical departure from the US State Department's typically bleak assessments of the UAE.

⁵⁹ Ibid., pp. 45-6.

⁶⁰ WAM, 'UAE Steady Voice of Peace: Clinton on National Day,' *Emirates* 24/7, 2 December 2010.

As Risse, Ropp and Sikkink's 'Spiral Model' account of the socialisation of human rights norms suggests, even superficial changes in human rights policies made initially for purely instrumental reasons, have a good chance of leading to substantive changes with a lasting impact on governmental behaviour.⁶¹ The UAE's governance system and reform patterns studied in this chapter serves as a prime example of such self-reinforcing norm socialisation in the realm of rights and freedoms. The more the Emirati government pledges to support human rights, the more likely it is, in effect, to enact policies that match its words with action. As recent legislative developments confirm, the United Arab Emirates has come to equate its adoption of progressive international standards with the strengthening of its relations with its own citizens and the rest of the world. 'Best practices' are, themselves, a likely outgrowth of the international human rights regime, with its emphasis on standard-setting and the streamlining of international relations through formalised institutions. The process of institutional learning among regional organisations of the Arab world and the Gulf, whereby members are conditioned to adopt prescribed codes of conduct, only reinforces the attractiveness of these best practices. The linkage of best practices with the added benefits of being in a collective-security arrangement provides a rationalist incentive strong enough to offset any non-rational or costly decisions, such as agreeing to raise the minimum wage in one's country.

Thus, the possible factors to increase the chances of such a shift towards greater human rights protections include constructive independent criticism *paired* with convivial relations with the international community. Conversely, merciless criticism of a country's human rights behaviour, paired with complete alienation from the international community, as in the case of Iran—to be studied next—tends to have the opposite effect of discouraging states to aim for higher standards. For, once a country has seemingly lost face internationally, it may be more likely to

⁶¹ Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, eds., *The Power of Human Rights: International Norms and Domestic Change* (2007).

aggressively defend its existing policies than to accept culpability for its faults and make necessary amends.⁶² At the same time however, the failure of governments to keep up with popular normative expectations and demands for human rights reform also results in the further strengthening of those norms and serves as a paradoxical catalyst for progress.

⁶² The case of Syria's suspension from the League of Arab States in November of 2011* would also make for an interesting side study into the effects of regional and international shaming and alienation based on human rights practices. (*Source: Liz Sly, 'Syria Suspended from Arab League,' *Washington Post*, 12 November 2011.)

Chapter 7: Rights Progress vs. Regress in the Islamic Republic of Iran

The following chapter provides an analysis of some formal and informal human rights schemes and undercurrents in the Islamic Republic of Iran. The aim of this case study is not to merely rehash existing reports of the gross human rights violations in the country, which have already been compiled at length by leading rights monitoring bodies. Rather, the goal is to put these reports into greater perspective and provide a snapshot of human rights normative developments on the ground, including a window into shifting rights discourses and practices, as well as an examination of the rights guarantees embedded in the Iranian Constitution and their selective implementation. The legalistic rights framework will serve as a backdrop for examining intermittent openings within Iranian civil society, culminating in the latest 'Green Movement' following contested presidential elections in 2009.

The emphasis, just as in the last case study on the United Arab Emirates, and also on Egypt, is on identifying trends in Iran at the state and sub-state levels, which point to the presence of a budding human rights normative order in the country in spite of its ongoing rights human rights-related problems. Understanding how human rights have been appropriated at the local level in a third Middle Eastern country such as Iran, not only allows for a controlled comparison with other domestic cases studied in this thesis, namely, the UAE and Egypt, it potentially allows for generalisable conclusions to be made about the human rights climate in the region at large.

The UAE case study, which relies heavily on official government statements and policy, for lack of an independent rights discourse, nonetheless points to an evolving human rights order that is very much influenced by international normative forces. In the case of Iran, while there is a richer human rights discourse that clearly articulates the regime's rights duties and deficiencies, there is not much by way of identifiable policies that would indicate a movement in the direction of a more established human rights-based system in the country. Still, the government

apparatus in Iran does not hold an exclusive monopoly over the rights discourse as in the UAE. This, alone, represents a crucial advancement in the realm of human rights, which must not be underestimated, even in spite of a general lack of progress towards greater human rights protections by the state.

Unlike the United Arab Emirates, which has gained relative prestige for its degree of openness and respect for international codes of conduct, present-day Iran remains a relatively closed society and which in the eyes of many has been known to display problematic tendencies and rogue behaviour.¹ As a result, the Islamic Republic has become the source of international condemnation and economic sanctions and is today considered a virtual pariah state.

According to Zogby polls released in 2013, Arab public opinion on Iran has significantly dwindled in recent years.² Back in 2006, Iran had been favourably received for its strong stand against Western and Israeli policies. Yet, a dip in Arab attitudes towards Iran ever since, reflects a growing concern about its domestic practices and 'regional ambitions.' The fact that Iran is being judged today more by its practices than its pronouncements is yet again an indication of the heightened regional expectations of good governance and a general respect for the rule of law.

Iran's human rights abuses, in particular, have featured prominently in the international debate surrounding the country and have served to further alienate the regime from the international community and from its own people. To these claims, the Islamic Republic responds that it is a victim of the West's double standards and that the unilateral measures imposed on it by the UN Security Council hinders its citizens' right to development and also endangers their lives.

¹ A claim which Iranian President, Mahmoud Ahmadinejad, vehemently denies (source: Farhad Pouladi, *AFP*, 24 June 2011).

² James J. Zogby, *Looking at Iran: The Rise and Fall of Iran in Public Opinion (How 20 Arab and Muslim Nations View Iran and its Policies)* (Zogby Research Services, 2013).

In its 2009 report submitted to the UN Human Rights Council Working Group on the Universal Periodic Review, the Iranian government writes the following:

Imposing unilateral and coercive sanctions by certain Western countries purely for political reasons as well as international sanctions resulting from political actions of the same countries at the UN Security Council have had a negative impact on realization of all human rights of Iranian citizens, specifically right to development, over the recent years. To give an example, the sale of passenger aircrafts and civilian navigation and aviation spare parts has caused the deaths of hundreds of people in Iran.³

The Islamic Republic may feel itself justified in pointing to prevailing double standards within the UN Security Council and its selective application of crippling sanctions without regard for the detrimental impact on innocent citizens. Economic sanctions do contribute to the oppressive climate and stunted economic development in Iran but also ostensibly give Iran a crutch for justifying the variety of other non-related human rights abuses that have long taken place in the country, from arbitrary detentions and torture to the execution of minors, homosexuals, and stoning of adulterers.

Similar points, which the Iranian government identifies as its principal human rights challenges are put forward in a 2006 report by the Islamic Republic. These include the belief that ‘politicization, selective approach and application of double standards impede the genuine promotion of human rights as stipulated in Vienna Declaration and program of action (VDPA 1993) [...]’.⁴ It is interesting to note the Islamic Republic’s own appropriation of the language of human rights in defending itself

³ National Report Submitted in Accordance with Paragraph 15(A) of the Annex to Human Rights Council Resolution 5/1* by the Islamic Republic of Iran, 18 November 2009, p. 25. Reviewed by the UN Human Rights Council Working Group on the Universal Periodic Review, Seventh session, Geneva, 8-19 February 2010.

⁴ The Islamic Republic’s Pledges and Commitments on Human Rights in accordance with General Assembly resolution 60/251 of 15 March 2005 on “Human Rights Council” and under agenda item 112(e), p. 7.

from critics. This, alone, would represent a degree of socialisation of rights norms by the government, as the Spiral Model would also hold.

A variety of steps initiated by the Islamic Republic of Iran to purportedly foster a spirit of camaraderie and cooperation on human rights at the international level include the adoption of a UN General Assembly resolution on 'Enhancement of International Cooperation in the field of Human Rights' in 1996, as well as a resolution on 'Human Rights and Unilateral Coercive Measures.' The Islamic Republic of Iran is also responsible for introducing the resolution on 'Human Rights and Cultural Diversity' in 2000, 'in order to help provide a conceptual framework within the United Nations system to serve as a basis for convergence of different perceptions in the field of human rights at the international level.'⁵ In seeking to create a platform for the exchange of different opinions on human rights, however, Iran may have also been attempting to hijack the human rights debate and turning it in its favour, by citing certain irreconcilable cultural differences.⁶

Some would argue that Iran reached a progressive turning point when former, reform-minded Iranian President Mohammad Khatami, championed the notion of a 'Dialogue among Civilisations' at the United Nations in a successful, albeit short-lived, effort to generate cross-cultural cooperation and dialogue and greater prestige and respect for Iran on the global scale and to discredit Samuel Huntington's thesis of a 'Clash of Civilisations.'⁷ Ironically the 'Year of Dialogue among Civilisations,' which was proclaimed by the UN General Assembly in 2001 after being proposed by the Iranians in 1998, coincided with the year of the 11th of September attacks. However, it was not precipitated by the terrorist attacks, as may be assumed in retrospect. In fact, it came at a time when the international community could have benefitted most from such dialogue, before the thesis of the

⁵ Ibid.

⁶ For a lengthier discussion of the 'cultural relativity trap,' refer to Chap. 2.

⁷ Ibid.

'Clash of Civilisations' was once-again the favoured lens for viewing East-West relations since the end of the Cold War.

The Neo-Conservative camp in Washington was largely responsible for reviving this so-called clash when it waged a 'War on Terror,' that persists to this day and has resulted in the senseless killing and maiming of hundreds upon thousands of innocent Iraqi and Afghani civilians and scores of Western soldiers. Nonetheless, on the whole, Iran's involvement in these schemes at the UN General Assembly can be seen as serving largely prudential and self-serving ends, even if particular individuals taking part in these developments, such as Khatami were well-meaning in their attempts to launch a peaceful East-West dialogue. Aside from giving the Islamic Republic and its then-President a degree of added legitimacy, and suggesting the possibility of improved relations with the West, Iran's initiatives can be seen as reopening the cultural relativity debate, and in a sense, questioning the universality of human rights anew.

While Khatami's plan worked to discredit a 'Clash of Civilisations' by suggesting the need for greater understanding among cultures, it could simultaneously be seen as giving credence to cultural relativist claims that could be used to justify human rights violations. Thus, one could interpret these measures in several distinct ways. They are at once purportedly working to promote the notion of universal human rights, and in the process, providing a culturally sensitive or, *relative*, model for interpreting and implementing rights in practice. The Universal Declaration of Human Rights calls for such respect for diversity. Yet, in reality, the argument of diversity, as seen in earlier on, has served as the overwhelming rationalisation for practices, which cannot otherwise be justified under international law.

What is more, some countries such as the United States or Israel do not have to answer for their egregious human rights violations, while others have to find clever ways to dodge accusation. These tensions reveal that the United Nations, which was initially established with the goal of treating all member states as equals, has since

gone on to serve as a political fighting ground for Eastern and Western states alike. In turn, this mistrustful environment gives certain states such as the Islamic Republic of Iran a loophole to disregard certain human rights on grounds that they represent Western double standards, and are not adequately sensitive to Eastern cultural ways.⁸ Feeling themselves to be unjustly persecuted, or discriminately singled-out by the international community, they are therefore more likely to respond with impunity than with integrity in their handling of human rights at home.

The Islamic Republic's insistence on guarding its human rights reputation even in the face of damning evidence, means that it is willing to take extra measures in order to preserve and promote itself internally and internationally. Most recently, in the controversial case of the Islamic Republic of Iran dropping its bid for membership on the UN Human Rights Council in favour of a seat on the "International Commission on the Protection of Women's Rights," we note Iran's desire to be perceived by the international community as a member in good standing by proclaiming its support for women's rights.⁹ At the same time, there is a tacit understanding on the part of the international community that the membership of Iran in such official human rights circles is largely problematic given Iran's recent track record in human rights violations and oppressive measures targeted at women, especially following the regime's 'violent crackdown' on protesters following the contested 2009 presidential election results.¹⁰

⁸ Zachary Karabell, 'Iran and Human Rights' in David Forsythe, ed., *Human Rights and Comparative Foreign Policy* (New York, NY: United Nations Press, 2000).

⁹ The announcement, made by Ramin Mehmanparast, a spokesman for the Iranian Foreign Ministry, can be taken as official policy: Radio Zamaneh, 'Iran announces its candidacy for Women's Rights Commission,' *Payvand Iran News*, 25 April 2010. However, an unofficial source claims that the "International Commission on the Protection of Women's Rights" is a fabrication by the Iranian regime and that no such commission is found to exist in the international arena, or is listed on the website of the United Nations or any other official international ruling bodies. See "Mehrtash" (blogger), 'IRI jesters reveal latest act,' *Truth and Justice*, 28 April 2010.

¹⁰ Ibid. (Payvand Iran News).

The effect that these opposing forces have, however, is to inadvertently strengthen the Islamic Republic's official stance on rights as a legitimating discourse vis-à-vis the international community. Similarly, this serves to apply more pressure, both domestically and internationally, on Iran to bring its actions into closer alignment with its rhetoric, as the 'Spiral Model' of human rights socialisation seen in earlier chapters, would predict.¹¹ Thus, the Iranian government's participation in international human rights fora can be seen as serving a largely prudential purpose in Iran's soft power calculations.

The perceived soft-power deficiency of the Iranian government, after all, has the effect of severely undermining its place in the international arena. It has, for instance, stripped the regime of any legitimacy in pursuing even a purportedly "peaceful" nuclear energy programme, for fear that it harbours more belligerent nuclear ambitions, in contravention to International Atomic Energy Agency (IAEA) standards.¹² Although IAEA reports on Iran suggests that the regime is attempting to bring its programme in line with international standards, the fact remains that Iran does not enjoy the full trust and respect of the international community.¹³ The strategic release of two American hikers held captive in Iran's Evin prison, which was made to coincide with the Iranian President Ahmadinejad's trip to the UN General Assembly in New York in September 2011, reflects Iran's attempt to boost its soft-power as a quid pro quo for pursuing a peaceful nuclear energy programme and eventually having sanctions lifted.¹⁴

Aware of its precarious position in international relations, Iran has attempted to assert its membership in the international community, namely by submitting itself to the international scrutiny of the Universal Period Review (UPR) mechanism of the

¹¹ Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, eds., *The Power of Human Rights: International Norms and Domestic Change* (2007).

¹² Trita Parsi, *A Single Roll of the Dice: Obama's Diplomacy with Iran* (New Haven, Conn.: Yale University Press: 2012), p. 25.

¹³ Max Fisher, 'Why did Iran Announce it Will Release US Hikers?' *The Atlantic*, 13 September 2011.

¹⁴ Matt Bradley and Nour Malas, 'Iran Releases Two American Hikers,' *Wall Street Journal*, 22 September 2011.

United Nations Human Rights Council.¹⁵ Having submitted a national report, which was adopted by the UPR Working Group on 15 February 2011, the final outcome of which was adopted by the Council on 10 June 2011, and having sent a high-level delegation to the Council in February of the same year, Iran tacitly demonstrated two things. Firstly, that it recognises the universality of human rights, or at least, the universal import of rights in the 21st century, regardless of whether it actually upholds rights in practice. Secondly, that the Islamic Republic is not immune to the top-down force of the International Rights Regime on one hand, and to the bottom-up pressures of rights claims from within its own society. In the absence of these dual normative forces, the Islamic Republic would presumably have no reason to justify its human rights practices to the international community.

However, as these dual pressures are especially pronounced in the case of Iran, and the government may feel itself under attack, some strong resistance, denial and paranoia is to be expected. This can take the form of ‘restoring order’ by cracking down on silent, peaceful street demonstrators who are seeking to air their grievances with the regime and with the international media. It can also involve quizzing the West on its own patchy human rights record and hypocrisy, even to the point of suggesting Iran is ‘manifestly more democratic than the United States’ and ‘more free than some other countries’.¹⁶

Whether the Islamic Republic is indeed as “free” and “democratic” as its president claims is first and foremost an issue of semantics. Ironically, Iran is engaged in the same the kind of dissimulation and wordplay that Western powers engage in when calling themselves members of the “free world.” Iran attempts to validate itself before the international community by resorting to the same reductive verbal

¹⁵ UN Secretary-General, Report A/65/370 on The situation of human rights in the Islamic Republic of Iran, *65th session of the UN General Assembly*, 15 September 2010.

¹⁶ In the words of the journalist granted the sole print-interview with the Iranian President during 2011 UN General Assembly meeting. Nicholas D. Kristof, ‘A few words with Iran’s President,’ *New York Times Opinion Pages*, 21 September 2011. See ‘An interview with Mahmoud Ahmadinejad,’ *New York Times Blogs*, 21 September 2011; see also, Associated Press, ‘America must recognise Iran is a big power, Ahmadinejad says during US visit,’ *Gulf News*, 20 September 2010.

devices as the West, all the while obfuscating its more complex internal contradictions. The qualifiers “freedom” and “democracy” are thus further removed from their true meaning and come to more closely signify the respective prestige or favourability quotient of a given state on the international stage.

Iran has carefully manipulated this unspoken international rule to its own advantage, having recognised its legitimating power among elite Western nations. In fact, the Islamic Republic has long fought, and in the end failed, to maintain its legitimacy as a religious state bound by Shiite tenets. From its inception in 1979 following the revolution, which ousted the increasingly unpopular and both physically and politically feeble monarch of Iran, Reza Shah Pahlavi, The Islamic Republic of Iran has had to walk a fine line between preserving its revolutionary Islamic ideals and adhering to purportedly secular, republican values.¹⁷ The Islamic Republic has not entirely succeeded, however, in honouring the separation of mosque and state, so to speak, and constitutional checks and balances inherent in a republic, as will be seen. The ‘Republic’ part of the newly reinvented state of Iran has largely been sacrificed at the expense of its dominant ‘Islamic’ political ideology—an ideology which was initially supported by a near absolute majority of the people who voted by popular referendum for an ‘Islamic Republic’ under the auspices of the charismatic revolutionary leader, and leading cleric, Ayatollah Khomeini.¹⁸

The consensus, which existed around the time of the revolution, and which has since faded, was likely due to the fact that the new doctrine put forward by Khomeini seemed to genuinely accommodate notions of popular sovereignty and human rights and freedoms within an Islamic framework. The constitutional limits placed on the government’s authority, however, have subsequently been eroded, resulting in the shift of power away from the populace, almost entirely towards the Supreme

¹⁷ Ali M. Ansari, ‘Iran: Domestic Discontent and Regional Ambition,’ *Conservative Middle East Council, The Arab Spring: Implication for British Policy* (Oct. 2011), Chap. 10, pp. 40-43.

¹⁸ D. Nohlen, F. Grotz and C. Hartmann, *Elections in Asia: A data handbook, Volume I* (Oxford: Oxford University Press, 2001), p. 72.

Leader and his military apparatus, not unlike under the 'neo-patrimonial regime' of the former Shah.¹⁹ The ever-tightening circle of clerical control over the main organs and institutions of the state, which jeopardises the secular nature of the Islamic Republic of Iran, is also that which compromises the rights and freedoms of the Iranian people. To the extent that Iran has alienated its own people by restricting their sovereign rights, it has also alienated the international community and called its own sovereignty into question through its seeming repudiation of international codes of conduct. As a result, this has set into motion both an internal and external movement to call out the Islamic Republic on its failed revolutionary agenda and to call for greater accountability on the part of its self-styled leaders.²⁰

The Islamic Republic's Universal Periodic Review (UPR) by the UN Human Rights Council

Official UN documents which track the Iranian government's human rights situation, can provide a starting point for assessing Iran's conformity or nonconformity with the established International Human Rights Regime, as they best lend themselves to a reading of the existing state of affairs. More specifically, outcomes of Iran's Universal Period Review before the United Nations' Human Rights Council provide a window into the Islamic Republic' official stance on rights internationally, and its performance on human rights domestically, which are often diametrically opposed. The Secretary-General's report from the 65th session of the UN General Assembly details the current human rights situation in Iran. The report covers the main themes of torture, inhumane, and degrading treatment or punishment including flogging and amputation; death penalty and public execution; executions of juvenile offenders; stoning as a method of execution; women's and minority rights; freedom of peaceful assembly, association, opinion, and expression; and due process and the right to impunity. However, the report does not solely resort to criticism of Iran's

¹⁹ Saïd Amir Arjomand, *After Khomeini: Iran Under His Successor*, (Oxford: Oxford University Press, 2009).

²⁰ Shadi Mokhtari, *After Abu Ghraib: Exploring Human Rights in America and the Middle East* (Cambridge: Cambridge University Press, 2009).

handling of human rights, but goes on to propose constructive recommendations for solving these problems.

Similarly, it recognises areas in which Iran has made some headway such as in accepting the UPR Working Group's recommendations to promote economic, social and cultural rights and establishing national human rights institutions in accordance with the Paris Principles as well as agreeing to consider abolishing juvenile executions and guaranteeing the freedom of the Internet.²¹ The report also notes that the Islamic Republic is party to five UN human rights conventions and commends Iran for acceding to the Convention on the Rights of Persons with Disabilities on 23 October 2009. According to the report, 'authorities have taken some positive steps, for instance to prevent stoning as a method of execution or limit the application of the death penalty to juveniles', but the Secretary-General also expresses concern 'that these measures have not been systematically enforced.'²²

Constitutional Guarantees

While the Islamic Republic has often failed to heed the international human rights mandate set out by the United Nations, this does not preclude the existence of a rights-based order in the country altogether. There is, in fact, a deep-seated, peaceful human rights heritage that underpins Iranian society, including a set of rights guarantees embedded in the Iranian constitution and in the national psyche, which stands in stark contrast to the otherwise grim human rights story in Iran.²³ The very demand for rights and freedoms by the people of Iran over the last century, and most recently in the form of the popular 'Green Movement'—to be visited later—in itself, demonstrates a significant step forward in the evolution of human rights in the country.

²¹ UN Secretary-General, report A/65/370, p. 16.

²² Ibid. p. 18.

²³ Akbar Ganji, *The Road to Democracy in Iran* (Cambridge, MA.: Boston Review, 2008).

Similar to the case of Egypt, modern Iran has witnessed several key turning points in the last century, which tell of the Iranian people's longstanding yearning for democratic representation, equality, justice and greater protection of social, economic, cultural and political rights.²⁴ One of the first such pivotal moments is the Constitutional Revolution of Iran dating back to the early 1900s, which led to the establishment of an elected parliament or *Majlis* in 1906 under the monarch Mozzafar-al Din Shah of the *Qajar* Dynasty, who was compelled to relinquish absolute rule in favour of a constitutional monarchy—the only Iranian head of state to do so thus far.²⁵ This revolution was, in turn, sparked by the early popular revolts of 1890-92 against the 'Tobacco Régie' or concessions, in which Nasir al-Din Shah was *divinely guided* to give the British an exclusive monopoly over Iran's tobacco industry.²⁶ The Tobacco Revolt was, according Homa Katouzian, the 'dress rehearsal for the Constitutional Revolution' that followed, highlighting the continuity between liberal openings in the country.²⁷

The Constitutional period is an example of a peaceful, democratic era in the country's history, which sought to replace arbitrary despotic rule with the rule of law, and to call for basic guarantees of human rights and dignity for the Iranian people, including the country's minorities. According to Janet Afary, the role of secular and leftist groups during the Constitutional Revolution has been marginalised in the historical literature and debate that surrounds it.²⁸ Revisionist histories, particularly those of the post-1979 revolutionary period, mask the actual extent of pluralism, and free debate, which existed, and the extent of the clashes with obscurantist clerical views.²⁹ Likewise, the more moderate views of some

²⁴ Hamid Dabashi, *Iran: A People Interrupted* (New York, NY: New Press, 2007).

²⁵ Ervand Abrahamian, *Iran Between Two Revolutions* (New Jersey: Princeton University Press, 1982).

²⁶ Leonardo Davoudi, 'Divine Spark: The Prelude to the Tobacco Régie of 1890,' Middle Eastern Studies Research Colloquium, University of Oxford, 12 June 2013.

²⁷ Homa Katouzian, 'The Revolution for Law: A Chronographic Analysis of the Constitutional Revolution of Iran,' *Middle Eastern Studies*, Vol. 47:5 (Sept. 2011), pp. 755-777.

²⁸ Janet Afary, *The Iranian Constitutional Revolution, 1906-1911: Grassroots Democracy, Social Democracy, and the Origins of Feminism* (New York, N.Y.: Columbia University Press, 1996).

²⁹ *Ibid.*

ulama or religious scholars at the time, such as Na'ini, who advocated for constitutional governance to guard against despotism and 'the deviation from the original path of Islam,' have since been obfuscated.³⁰

Notably, however, the Iranian women's rights movement was born out of the Constitutional Revolution, attesting to the pluralist climate, which allowed progressive movements to flourish.³¹ The first women's rights groups were also established during that period, by female rights activists such as Sediqeh Dowlatabadi, who were the bold norm entrepreneurs of their time.³² It can be said that these early movements helped pave the way for the others that would follow in subsequent decades, setting into motion a more institutionalised pattern of resistance in the country.

While the Iranian political landscape in the last century has been characterised more by instability, instigated both by internal and external forces, the one consistent element in this equation has been a call for democratic governance respectful of human rights and the rule of law. This popular ethos is enshrined within the Iranian Constitution, which includes, among its many tenets, basic rights guarantees for the people of Iran. According to the newly created constitution, Art. 35. *The sovereignty is a trust confided (as a Divine gift) by the people to the person of the King.* As such, the ruler would not be above the law, and would instead be expected to serve the people who were designated as the true sovereigns. The notion of Iran's sovereignty emanating from 'the people' harks back to principle of Rousseau's social contract theory and reflects a progressive normative shift in an otherwise conservative, authoritarian climate.

³⁰ See Ayatullah Aqa Sheikh Muhammad Hussein Na'ini and Ayatullah Sayyid Mahmud Taleqani, *Enlightenment of the Community and Purification of the Nation (Tanbih al-Umma wa Tanzih al-Milla) or Government from the Standpoint of Islam (Hokumat as Nazar-e Islam)*, (Najaf, 1908), draft translation from Persian by Lotfali Khonji and Mohammad Nafissi (2009).

³¹ Mansoureh Etehadieh, 'The Origins and Development of the Women's Movement in Iran, 1906-41,' in Lois Beck and Guity Nashat, eds., *Women in Iran: from 1800 to the Islamic Republic* (Chicago, Illinois: University of Illinois Press, 2004).

³² Parvin Paidar, *Women and the Political Process in Twentieth-Century Iran* (Cambridge: Cambridge University Press, 1995).

In his *History of Modern Iran*, Ervand Abrahamian notes that the new constitutional laws 'gave citizens a bill of rights including protection of life, property, and honor; freedom of speech, assembly, and organization; equality before the law; habeas corpus; and safeguards from arbitrary arrest.'³³ The Islamic constitution, which came in its place following the 1978-79 revolution preserves some of those rights, while appropriating them in an Islamic framework of the *velayat-e faqih* under the guardianship of Islamic Jurists and their Supreme Leader, the *vali-e faqih*.

The Constitution of the Islamic Republic of Iran, if studied closely, reveals a surprisingly progressive set of rights guarantees, which would go against the perception of Iran's backward legal system. How this squares with the reality of rights abuses in the country is a question of the selective and arbitrary interpretation and implementation of the law by the Iranian regime. It does not necessarily reflect an incompatibility of Islamic tenets with respect for citizens' rights and freedoms as previous chapters have established. Rather it points to a more politically motivated and power-driven attempt for the Islamic Republic to preserve its national security at the expense of civil liberties, using the loophole embedded in the Iranian Constitution which allows for the state to interpret the law in its own favour. That is to say, the Iranian Constitution, is not itself the impediment to the preservation of civil rights and liberties in the country. The main obstacle to the realisation of these constitutional rights guarantees lies in the failure to uphold the rule of law, especially where the state may feel its absolute authority to be compromised. As will be seen, without any real force to check the unlimited power of the Islamic Jurists, the Constitution can be interpreted at whim, forgoing due process.

Human Rights in International Instruments and the Position of the Islamic Republic of Iran, a well-documented legal and political chronicle written in Persian by Dr.

³³ Ervand Abrahamian, *A History of Modern Iran* (New York, NY: Cambridge University Press, 2008), p. 47.

Hossein Mehrpour, Advisor to the President on Issues of Upholding of Constitutional Rights, provides a thorough examination of the status of human rights under Iran's Constitution.³⁴ While the Iranian Constitution draws its main inspiration from Islamic edicts, the language of the Universal Declaration has evidently made its way into the document as well. Mehrpour notes that 'the basic human rights contained in the Universal Declaration' are prominently featured and emphasised 'in the very best way' within the Constitution of the Islamic Republic of Iran. What is more, the freedom provisions in the Iranian Constitution can be found to correspond directly to articles 1, 2, 3, 4, 13, 17, 19, 20 and 23 of the Universal Declaration of Human Rights.

These rights are subsequently evaluated along the six categories of freedom, equality before the law, prohibition of torture, political representation, education, family welfare and women's rights. Freedom, according to the Iranian Constitution, includes being born free, not being a slave, freedom of opinion and expression, freedom to choose one's occupation, freedom to choose one's place of residence, freedom of association etc. These freedoms are guaranteed as long as they do not clash with the tenets of Islam or other domestic laws, which in a sense gives the state free reign in determining what does or does not constitute lawful or 'Islamic' behaviour. In the absence of a fair, impartial arbiter to uphold the aforementioned constitutional freedoms there is no limit to the state's obfuscation of the law and usurpation of power. Therefore there is no guarantee that the rights provided for in the Constitution will have any real-life application if they are subject to the whimsical interpretation of the state apparatus which places its own self-preservation and unlimited rule above any other individual rights considerations.

The following freedom provisions, namely, Article 9, 56, 23, 24, 25, 27, 28, 43 and 33 of the Iranian Constitution, however, indicate that the Iranian people are indeed

³⁴ Dr. Hossein Mehrpour, *Human Rights in International Instruments and the Position of the Islamic Republic of Iran* (translation from Persian title, *Huquq-e Bashari dar Asnaad-e Beyn-almellali va Mowze-ye Jomhuri Eslami-ye Iran*) (Tehran: Etila'at, 1374), pp. 40-44.

owed certain basic liberties, and that any deviation from these rights guarantees constitute unlawful acts. Article 9 of the Iranian Constitution specifies that individual freedoms may not be compromised under the pretext of preserving the national and territorial integrity of the country. Article 56 lays out the inviolability of the right of sovereignty gifted to man by God, or the subjugation of this divine right to any personal or group interests. Article 23 provides a safeguard for freedom of opinion and difference of opinion, stating that no one can be forced to hold an opinion that is not their own. Article 24 allows for freedom of publication and distribution as long as there is no conflict with Islam or the laws of the land. Article 26 and 27 make allowances for freedom of association and forming organisations, political, religious or otherwise. Article 28 ensures the freedom to choose one's occupation as long as it does not clash with Islam or other domestic laws. Article 43, section 4 relates specifically to the freedom to choose one's occupation and freedom from forced labour. Article 33 guarantees that no one can be evicted or forced to move to any other place other than the place of residence of one's own choosing- unless called for by law. Equality before the law, which corresponds with Articles 2 and 7 of the Universal Declaration of Human Rights, finds itself embedded in Articles 19, 20, 14, and 107 of the Iranian Constitution. Article 19 stipulates that all are equal regardless of colour, race, tribal-affiliation, language spoken, or creed, while Article 20 specifies the equality of men and women before the law, including access to equal human, political, economic, social and cultural rights as provided by Islam.

Clearly, the above constitutional freedoms cannot be properly upheld unless bolstered by a fair judiciary system, the details of which are included in Chapter XI of the Constitution. Article 156 specifically outlines the status and function of the judiciary, which is expected to be fair and impartial body charged with the supervision of the proper enforcement of laws, restoration of civic rights and promotion of justice and freedom. As seen, Iran's Constitution, while providing for certain human rights protections, does not come without challenges.

The constitutional obstacles to the realisation of human rights and democracy in Iran are detailed in a report by the same title, written in 2006 by prominent Iranian attorney and renegade human rights activist, Mehrangiz Kar, and re-printed by the US-based Iran Human Rights Documentation Center in March 2010.³⁵ She is considered as one of the most influential leaders of the longstanding women's rights women in Iran and has been an outspoken critic of the regime's unlawful practices.

Some of the challenges highlighted by Kar include, the arbitrary interpretation of the Constitution and the ambiguity of its language, which leaves room for further derogations away from the spirit of the law. 'The essential ambiguity of the Islamic constitution,' according to Kar, 'gives the supporters of absolutism the power, through various institutions such as the office of the Supreme Leader, the Guardian Council or even the judiciary, to dictate their own interpretations of the law and prevent people from fully taking part in the political process.'³⁶

Furthermore, the fact of ambiguous articles in the Constitution means that social and political freedoms, which are supposedly guaranteed by law, are vulnerable to illiberal readings. By extension, it becomes impossible for individuals to know whether they are acting within the law or whether they may be arbitrarily penalised for actions they thought were lawful:

The legislative organ of the Islamic Republic of Iran, which according to section 7 of Article 3 of the constitution is empowered to safeguard political and social freedoms within the law, has thus far failed to move in the direction of providing a clear definition of such ambiguous and vague phrases as tenets and precepts of Islam, public rights, legitimate freedoms, religious criteria and the national interest. As a result, those who are active in political and cultural arenas are left without any guidelines about what constitutes legitimate limits to public acts—invariably leading to punitive

³⁵ Mehrangiz Kar, 'Constitutional Obstacles: Human Rights and Democracy in Iran' (New Haven, Conn.: Iran Human Rights Documentation Center, March 2010).

³⁶ *Ibid.*, p. 9.

legal actions against people who in fact thought they were acting within the bounds of the law, as well as much self-censorship on the part of artists and writers who do not know when their actions will elicit a state response.³⁷

These ambiguities in the law, and lack of checks and balances to guard against abuses of power and perversions of justice, have led Mehrangiz Kar to conclude that the Iranian Constitution, including the Guardian Council, is in need of revision—a process, which is allowed for in Article 177.³⁸

Shadi Mokhtari mentions the following instances of legal reform, which are already taking place within the regime:

In 2002, a number of legislative initiatives seeking to bring Iranian laws into greater conformity with human rights standards were either proposed or passed. First, parliament passed legislation that raised the age of marriage for girls from 9 to 15 years of age. The Conservative Council of Guardians rejected the resolution on the grounds that it contravened Islamic law; however, the Expediency Council, a body that mediates between the reformist Parliament and the Council of Guardians, decided on raising the age of marriage for girls to 13. While this was not an ideal outcome, it was indisputably a human rights victory.³⁹

Such reforms, although limited in scope, positively demonstrate a shifting normative human rights framework in Iran in the years since reformist President Khatami assumed office. In fact, they fall within a region-wide pattern of re-examinations and reforms of antiquated Personal Status Laws in the Middle East and North Africa.⁴⁰ They also underscore the potential for rights-related progress—however limited and inconsistent—within the existing political constraints of the regime. The fact

³⁷ Ibid., pp. 15-6.

³⁸ Ibid., pp. 57-8.

³⁹ Shadi Mokhtari, 'The Search for Human Rights Within an Islamic Framework in Iran,' *The Muslim World*, Vol. 94 (October 2004), p. 477.

⁴⁰ Rania Maktabi, 'Legal reform and political change affecting women in the MENA region,' Conference, St Anthony's College (Middle East Centre), University of Oxford, 12 June 2012.

that such questions of rights are even being revisited, reopened and reevaluated attests to the greater socialisation and acceptance of certain rights norms in the country over time. Thus, while obstacles remain to the successful assimilation of rights practices in Iran, the normative current makes such progressive developments inevitable.

More recently, in May 2013 the controversial debate over stoning was also reopened. While stoning still remains the prescribed punishment for adultery in the Iranian penal code, new provisions allow for alternate forms of punishment where stoning is 'not possible.'⁴¹ Such a development indeed highlights remaining rights challenges in the country. Yet it also demonstrates that practices such as stoning are not fixed in stone, so to speak, and are increasingly subject to reinterpretation.

Rights activism beyond borders

Where barriers remain to comprehensive human rights progress in Iran, some have jumped over these barriers by taking their activism abroad. Speaking openly and unveiled at the Oxford Union in February of 2013, Shirin Ebadi, another important Iranian woman figure and exiled human rights activist lawyer fearlessly critiqued the regime's human rights violations, from the persecution of the 300,000 Iranian Bahais in Iran to the heavy censorship and incarceration of journalists.⁴² She notes the discriminatory laws against women which continue to allow for the outdated practice of polygamy (where a man can have four wives and an unlimited number of temporary wives); which consider the value of a woman's life as half that of a man; where there is twice the compensation for men in the case of accidents; where the weight of a man's testimony is worth twice as much as that of a woman; and where a married woman cannot leave the country without her husband's permission. She bemoans how such unequal gender policies persist "in a country where more than

⁴¹ For amended draft penal code see Iranian Parliament (Majlis) e-portal: <http://rc.majlis.ir/fa/news/show/845002>.

⁴² Personal attendance at Shirin Ebadi lecture on Iran, Oxford Union, 13 February 2013.

65% of university students are women and where women have had the right to vote and stand for parliament for over 50 years (longer than in Switzerland), and where women hold positions as lawyers, professors [...].”

Ebadi herself had to flee Iran in 2009 after the regime shut the doors of her thriving Tehran-based legal practice and confiscated and auctioned-off her personal property.⁴³ This, however, has not deterred her from seeking to bring awareness to the human rights situation in the Islamic Republic and to challenge the regime on its problematic practices even from abroad. Figures such as Ebadi and other educated professionals—artists, musicians, filmmakers, academics and intellectuals—who were either forced to flee the country or left voluntarily in the wake of increased governmental crackdowns against outspoken critiques of the regime have contributed to the rampant ‘brain drain’ phenomenon which has gripped Iran since the time of the 1979 revolution.⁴⁴ Ironically, the departure of educated and talented individuals from Iran has long-term destabilising consequences for the Iranian regime itself, which relies on these classes for its social and economic development. Thus, by alienating its own people, the Islamic Republic assures its own gradual failure as a state, meaning that it cannot survive indefinitely and must eventually give way to change.

Furthermore, while this exodus has robbed Iranian society of its best and brightest, it has also translated into bold and defiant overseas activism dedicated to shining an international spotlight on Iran in order to pressure the regime to reform its internal practices. The boycott of the 2010 Iranian *Fajr* Film Festival by directors, actors and opposition groups inside and outside Iran, to protest the imprisonment of respected Iranian filmmakers, is one such manifestation of transnational solidarity against the

⁴³ I first met with Shirin Ebadi in her Tehran law offices several years prior to its ransack and closure by the Iranian Revolutionary Guards.

⁴⁴ Akbar E. Torbat, ‘The Brain Drain from Iran to the United States,’ *Middle East Journal* Vol. 56:2 (Spring 2002), pp. 272-295. (Observations also based on personal consultation with exiled writers and artists, such as Shahrnush Parsipur in Berkeley, CA, and Shirin Neshat in New York.)

regime's rights violations.⁴⁵ Members of the underground Iranian music scene have also resurfaced abroad, where they continue producing their music of resistance and dissent, in defiance of the regime's ban on free musical expression and open performance at home.⁴⁶

The Iran Tribunal and Truth Commission

Iranian rights activism *beyond borders* has taken more sweeping and sophisticated form than ever before.⁴⁷ It has mobilised the tools of international law and ad-hoc justice with great effect and has even devised innovative ways of addressing past human rights violations in the Islamic Republic, short of fully redressing them. It also represents the interesting manifestation of a virtual human rights regime within the Iranian diaspora, which has seemingly sought to compensate for rights deficits in the homeland.

The 2012 Iran Tribunal, for instance—an independently organised International People's Tribunal in London and in The Hague modelled after the 1966 Russell Tribunal of the post-Vietnam War era—is one such experiment in creative justice.⁴⁸ The fact that it took place outside of Iran, while posing certain clear disadvantages, also means that it could function relatively unhampered. Additionally, the informal nature of the tribunal, which means that it does not hold legal enforceability, can also be seen as posing a challenge to justice. However, as historical precedents demonstrate, the normative weight of such Tribunals are not to be underestimated.

⁴⁵ Cindy Hing-Yuk Wong, *Film Festivals: Culture, People, and Power on the Global Screen* (Piscataway, N.J.: Rutgers University Press, 2011), pp. 170-72.

⁴⁶ See Bahman Ghobadi, *No One Knows About Persian Cats*, Documentary film (Iran 2009) 106 min. Personal consultation with director (in Abu Dhabi, UAE) and documentary subjects, musicians Negar Shaghghi, Ashkan Koosha, and Soroush Lashkary, AKA "Hichkas" (in London); also, consultation with musical group, *Kiosk*, band leader, Arash Sobhani (San Francisco, CA).

⁴⁷ Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders* (1998).

⁴⁸ Personal attendance at Iran Tribunal, Truth Commission sessions at Amnesty International's Human Rights Action Centre in London, 18-22 June 2012. See also www.IranTribunal.com.

The findings of the quasi-tribunal at The Hague were based on evidence gathered by a London-based Truth Commission made up of independent legal experts. Testimony was taken from 200 witnesses, including family members of political prisoners, many of whom were speaking up for the very first time about the trauma they suffered. The Truth Commission provided both an outlet for safe expression and a source of validation for the victims of atrocities; it also served as a means of documenting events previously unrecorded and for which their perpetrators have not, to date, been apprehended or brought to justice.⁴⁹ Despite receiving a formal invitation to attend the Tribunal proceedings and even to submit arguments in its defense, the Islamic Republic failed to respond to such invitations or to even acknowledge the Tribunal.⁵⁰

Following two-part proceedings in London and in The Hague in 2012, the Iran Tribunal found the Islamic Republic of Iran guilty of gross violations of human rights and crimes against humanity for the execution of 20,000 prisoners in the 1980s. These executions allegedly lasted from the time of the revolution in 1979 culminating in the summer of 1988 during the end of the Iran-Iraq.⁵¹ The Tribunal's unanimous verdict reads as follows:⁵²

(I) The Islamic Republic of Iran has committed crimes against humanity in the 1980-1989 periods against its own citizens in violation of applicable international laws;

⁴⁹ 'Iran Tribunal—An International People's Tribunal Judgment: Prosecutor v. Islamic Republic of Iran (A Case Concerning the Gross Violations of Human Rights and Commission of Crimes Against Humanity by the Islamic Government of Iran),' 5 February 2013, ¶ 109, p. 31: '[...]The Tribunal notes that although the perpetrators of these crimes have violated the rules of Iranian law and constitutional guarantees (with all its limitation) as well as the standards set under the International Convention on Civil and Political Rights, none of the perpetrators has been prosecuted by the Islamic Republic; to the contrary, they have been generally rewarded with high positions in successive governments.'

⁵⁰ 'Iran Tribunal Judgment,' ¶ 17-19, p. 6. The letter of invitation read: 'We wish to offer an opportunity for the Islamic Republic of Iran to appear before the Tribunal in order to present its arguments and defend itself. The aim of this Tribunal is to establish the truth without rancour. Your participation would enormously contribute to achieving this aim.'

⁵¹ 'Iran Tribunal Judgment.'

⁵² 'Iran Tribunal Judgement,' p. 51.

- (II) *The Islamic Republic of Iran bears absolute responsibility for the gross violations of human rights against its citizens under the International Covenant of Civil and Political Rights; and,*
- (III) *Customary International law holds the Islamic Republic of Iran fully accountable for its systematic and widespread commission of crimes against humanity in Iran in the 1980-1989 period.*

The proceedings were widely disseminated through live streaming on the Internet and broadcast on independent Iranian satellite television stations to the world and to the millions of Iranians in Iran who may have been learning about these historical events for the first time. Such efforts aimed to combat—in the words of the Iran Tribunal’s Chief Prosecutor, Professor Payam Akhavan—the “imposed amnesia” of Iranians about this chapter in their history and the atrocities being perpetrated by the regime.⁵³ The larger goal is to heal a “national wound—the wound of a nation that suffers from not having been able to address injustice; and to deal with the pain and trauma which Iranian society has repressed.” The process also allowed victims to “reclaim their humanity through the medium of language and through telling their story [...]. It is about redeeming the humanity of torturers as well. Because the torturer denies his own humanity.”

Akhavan points to the “assumption that the Islamic Middle East is not capable of the same historical processes as Europe to achieve a democratic culture and to hold their leaders accountable.” To that end, Akhavan adds that “creating a culture of human rights is about holding leaders accountable,” which is ostensibly the goal of initiatives such as the Iran Tribunal, which aim to deal with the “culture of impunity” plaguing Iran’s history. On a more optimistic note, Akhavan stresses that “human rights is the glue that is keeping the Iranian community together, providing

⁵³ Payam Akhavan, (Chief Prosecutor of Iran Tribunal), presentation at the Department of Politics and International Relations, University of Oxford, 21 February 2013.

a shared platform between Iranians of diverse persuasions and a culture of dialogue.” Developments such as the Iran Tribunal reflect how a culture of impunity can slowly be undermined by the resilient culture of human rights, which binds the Iranian community in Iran and in exile. It also shows the power of transnational activist networks to bridge human rights gaps and to administer their own form of justice where the regime has failed to do so. The initiatives of global norm entrepreneurs represent the varied forms that the globalisation of rights norms has taken in recent years, in the service of greater rights enforcement. They seem to rise in direct proportion to the lack of practical rights guarantees, in order to foster a balance between principle and practice.

Cleavages and Openings in the Islamic Republic

There is evidence of Iran’s indigenous progressive human rights culture to be found in past and present domestic developments. There is nothing *green*—or new, shall we say—about the ‘Green Movement,’ also referred to as the ‘Green Wave’ or *Jonbesh-e Sabz/Mowj-e Sabz* that recently swept across Iran. The uprising, which was spawned by contentious election results in the country in the summer of 2009, is in fact the culmination of a century-long struggle in the country for democratic representation and respect for constitutional rights and the rule of law. The intense 20-day campaign-period, which led up to the presidential elections saw three major candidates vying for power against the incumbent, Mahmoud Ahmadinejad.⁵⁴ Despite the initial vetting of the candidates from the Guardian Council—not unlike the filtering of candidates in any election—this process was largely democratic and representative in nature, and seemingly presented the first real challenge to the current Islamic regime, which had captured the state in the 1979 Revolution.

⁵⁴ Ali Razi, *Twenty Days that Shook Tehran [Bist Roozi ke Tehran ra Tekan Dad]*, Documentary film (Iran 2010), 98 min.

Even the country's Supreme Leader Khamenei declared the elections a victory for the high voter turnout "regardless of who voted for whom."⁵⁵ However, the election results, themselves, which prematurely declared Ahmadinejad as the victor, were regarded by the majority of the Iranian population, and the two so-called 'reform' candidates Mir Hossein Moussavi and Mehdi Karroubi behind the united 'Green Wave,' as illegitimate. While the democratic process was hampered in the end, the resulting peaceful protests in the streets witnessed by the world on international media and social networking channels, undoubtedly demonstrated the resilience of the democratic ethos in the face of obscurantism. Having unified and mobilised the country's young and hopeful population, even if for an all-too-brief moment in history, echoes ring of Iran's 1905 Constitutional revolution and the short-lived democracy under Prime Minister Mossadegh prior to his Anglo-American-backed overthrow in 1953;⁵⁶ not to mention the period in which the Iranian people, disgruntled with the monarchical status quo under The Shah, Mohammad Reza Pahlavi, laboured together to collectively give birth to the 1979 revolution.

The Green Movement, which took to the streets after 12 June 2009, may have been crushed by the Revolutionary Guard and its *Basij* paramilitary unit for the time being. Yet, the general will of the Iranian people, indestructible as it has proven to be in the last century, will likely rear its head again in the new millennium, as indeed it already has with the election of a reformist President in June 2013. The presidential victory of reformist-cleric Hassan Rouhani, can be seen as the belated 'splash' effect of the 2009 'Green Wave.'⁵⁷ A 72 percent voter-turnout among the country's 50 Million eligible voters, is also an indication of a strong democratic will for progressive change.⁵⁸

⁵⁵ Wikileaks, 'Iran: Khamenei says system will "act decisively" against opponents,' *Wikileaks Cable* 09RPODUBAI379, 14 September 2009: <http://wikileaks.org/cable/2009/09/09RPODUBAI379.html>.

⁵⁶ Christopher de Bellaigue, *Patriot of Persia: Muhammad Mossadegh and a Very British Coup*, (London: The Bodley Head, 2012).

⁵⁷ Jon Snow, in Tehran, 'Iranians vote for change, however gradual,' *The Guardian*, 16 June 2013.

⁵⁸ Saeed Kamali Dehghan, 'Iran: Hassan Rouhani wins presidential election,' *The Observer*, 15 June 2013.

There is reason to believe that the demands of the Iranian people for freedom and respect for their constitutional-mandated rights—short of being met in part or in full—have at least found clearer articulation in recent years. These demands are paradoxically made more manifest by their stark contrast against the dark backdrop of the regime, which tries to suppress them.

Dr. Ardeshir Amir Arjomand, spokesperson for *The Coordinating Council of the Green Path of Hope of Iran* and UNESCO chair holder of Human Rights, Democracy and Peace, affirms that the human-rights discourse in Iran has, over the course of the country's fraught history, evolved into explicit human rights demands, rather than mere platitudes and abstract pronouncements on rights and freedom. "For the first time over the past 150 years," Arjomand avows, "when Iranians are talking about freedom, they use language that includes the important element of human rights, not in a passing, superficial way, but as a deep rooted concept and expectation."⁵⁹ Arjomand goes on to lay out the specific rights-centred agenda of the movement as follows:

As a 'rights-based' movement, the Green Movement believes in the individuals' right to determine their own fate. In this dialogue, the right to choose becomes the prominent sign of human dignity, and provides the basis of true power, power that has its source in people who are allowed to democratically choose through elections [...] Women's rights is a very important component of this dialogue, and as in Mir-Hosseini Mousavi's human rights manifest for the Green Movement, removing gender discrimination is a priority.⁶⁰

The centrality of rights-claims to the Green Movement, and their clear articulation, is indicative of the repetitive failure of present and past Iranian regimes to heed those very claims. Demands for dignified civic participation for men and women

⁵⁹ Dr. Ardeshir Amir Arjomand, transcript from lecture delivered on 24 June 2011 at University of California, Berkeley on "Human Rights and the Green Movement," moderated by Parviz Shokat, co-sponsored by Berkeley Lecture Series and UC Berkeley's Iranian Student Alliance in America (ISAA).

⁶⁰ Ibid.

alike, and for unhampered, universal suffrage evidently stem from the perceived breakdown in the democratic process following the 2009 presidential elections. The emphasis on women's rights and the call for an end to all forms of discrimination against females in the country reflects a more persistent problem of gender bias afflicting the nation. Therefore, the 'Green Movement' can be seen as the natural result of accumulated historical demands for rights-based reform in Iran, rather than as an isolated, one-time episode fomented by foreign elements, as the hardline Kayhan newspaper suggests.⁶¹ The 'Green Wave's' loss of momentum and subsequent *crash*, which is inherent to its nature as a 'wave', is also that which may allow it to again rise with renewed vigour even once it has receded.

Historically, suppressed elements of Iran's past have had a way of floating to the surface to seek full expression. It is unsurprising, therefore, that the former Iranian President Khatami, who once tried his hand at reform inside the country and at improved diplomacy outside Iran using sweeping human rights rhetoric—only to have his hands tied by members within his own regime—is today one of the main proponents of the 'Green Movement.' The cleavages appearing more prominently within the Iranian elite in the months, and now four years and counting, following the mass green protests is a sure sign that the Islamic Republic is not unshaken by such events. The house arrest of Moussavi and Karroubi—both of whom emerged from the inner-sanctum of the regime—tells of growing paranoia. Even the once sacrosanct bond between the President and the *Vali-e-Faqih*, or Supreme Leader, are being severely tested, with the Supreme Leader threatening the President with impeachment for unilaterally sacking a minister without his approval.⁶² Clearly, it is affected both by internal demands from civil society for democracy, freedom and human rights, and by external pressures which bring these violations to light to the international community.

⁶¹ Shaul Bakhash, 'Iran's Conservatives: The Headstrong New Bloc,' *The Iran Primer*, United States Institute of Peace, 12 September 2011.

⁶² M. Mahtab Alam Rizvi, 'Mounting Pressure on President Ahmadinejad,' *Institute for Defence Studies & Analyses (IDSA) Comment*, 25 June 2011.

The few concessions made by the Iranian regime in response to the escalating public outcry over rights abuses, although not substantial, indicate an opening of sorts in the regime's otherwise closed system. They include, among other things, the shutting down of the notorious Kahrizak prison in July 2010 on orders from Iran's Supreme Leader Ali Khamenei. This prison was known to have been the location of many cases of rape, torture, and killings, and in the words of one Iranian official, "it lacked the necessary conditions to preserve the rights of detainees."⁶³ As Khamenei came under increasing fire to redress the injustices and inhumane acts occurring under the regime, the decision to close the prison and prosecute a few officials was accompanied by the creation of several commissions charged with investigating human rights abuses and wrongful deaths in the Iranian prisons.⁶⁴ A BBC report also confirms that just two months after two prison guards were tried by a military court and sentenced to death for wrongdoing, three judicial officers were also suspended and face trial over the alleged killing of at least three protesters held in prison detention following the 2009 presidential elections.⁶⁵

These concessions and tacit *confessions* of human rights crimes taking place within the Iranian Regime following the 2009 election protests, although insufficient, reveal that the 'Green Movement' was indeed able to influence government action in the interest of justice. Likewise, this shows that the Islamic Republic of Iran is able to discern between right and wrongful, moral and immoral behaviour and fully capable of rising to meet the rightful demands of its citizens, even if to belatedly salvage its waning legitimacy. Admittedly, the driving motive for these official governmental steps was the need to reassert a semblance of morality and legality before the people. Nonetheless, these half-measures did create some temporary openings for the people's legitimate human rights claims to be met, while in the process setting a precedent for possible future rights concessions. Granted, it does

⁶³ Shadi Mokhtari, 'One year on green movement shows progress on human rights,' *InsideIran.org*, 10 June 2010.

⁶⁴ Ibid.

⁶⁵ BBC, 'Iran Suspends Officers over Kahrizak Jail Deaths,' *bbc.co.uk*, 23 August 2010.

not represent any real change in the system, but it is a definite sign of the regime's potential for change, all the same.

While presently, there appears to be general level of stagnation, even regression, in the country and no indication that the Islamic Republic is prepared to loosen its grips on power, these inconsistencies in the Islamic Republic's attitude towards human rights, on their own, show that the human rights dynamics in Iran are indeed more malleable, and potentially more upwardly mobile, than previously thought. If anything, they indicate that the seeds of a human rights-based order are capable of being sown even in the most treacherous climates of repression. The case of Iran demonstrates that the ever-widening gap between rights principles and practices, only serves to weaken the legitimacy and ability of the state to function in the regional and international community. It also gives rise to elements inside and outside the country, which seek to hold the government accountable for its practices—attesting to the inescapable *spiral effect* of norm socialisation.

Chapter 8: Conclusion

Coming to an agreement on universal codes of conduct based on fundamental human rights following the Second World War, the international community inaugurated a new paradigm for more civil and humane international relations and diplomacy. This would also provide a promising model for the future European Union to live by in the aftermath of two devastating continental wars. The question remains as to whether this model is also taking root in other regions such as the Middle East, and whether or not it is the tendency of states to gravitate towards such human rights reform in order to best regulate their internal and external affairs. Have the Muslim-majority countries of the Middle East also come to a consensus on the need for common human rights standards to govern their peaceful domestic, regional and international affairs?

As seen, elements of a 'declaratory regime'—mirroring the international declaratory human rights regime—are already to be found at the regional level in the Middle East and North Africa. Just as signs of a 'promotion' and even the beginnings of an 'enforcement regime' are sometimes evident at the local level. Comparing the elements of a budding human rights regime in the Middle East and North Africa with those in other regimes from Europe to the Inter-American system, to ascertain the degree of convergence or divergence of human rights trends internationally, would be a valuable extension of the scholarly project begun here. Such an exercise would not be to compare the Middle East against an 'ideal' Western liberal standard of rights and justice but to track the globalisation of universal rights principles and practices in culturally and politically diverse settings.

These norms, as we have learned, are not exclusively Western; neither are they incompatible with non-Western cultures and ways of life. The very principles of liberalism and human rights which we today associate with the West, have deep roots in the Persian culture, for instance, which has given birth to the likes of the Cyrus Cylinder—officially recognised by the United Nations as one of the first

human rights declarations in human history; whilst the Iranian regime has today come to be associated with obscurantism and a lack of respect for human rights.¹ Yet, as seen in previous chapters, the reasons for these dramatic reversals in the degree of *permissiveness* or liberalism of given countries, Middle Eastern or otherwise, is attributable not so much to some inherent and static disposition of these nations, but to the geo-political, economic, and civil society determinants which continuously shape and shift them over the course of history.

This revelation alone is enough to render obsolete the variety of often damning diagnoses made about the Middle East region, politically, religiously, socially and economically, especially pertaining to its historically lamentable human rights track record. What was true about the region in the past is not necessarily true about its present or future. While the task of this study is not to make any speculations about its future, it has sought to highlight currents in the region, which follow and occasionally depart from past trajectories. They potentially reveal the beginnings of new trends taking shape in the region, as well as the cumulative impacts of more longstanding trends. They also offer fresh ways of framing our understanding of the Middle East community of states in the playing field of international relations and in the discipline of International Relations alike.

All in all, the portrait painted of the region's human rights status, by independent observers is a grim one. It is no wonder, therefore, that such analyses of Middle East states fail to account for the 'democratic turn,' which is seemingly under way in the region.² The failure to appreciate the unconventional and often chaotic nature of regional transformation leads instead to false hypotheses about Middle Eastern nations' liberal and democratic potential. The belief in Middle Eastern 'exceptionalism,' or the region's aversion to progress or human rights, is the product

¹ Abbas Milani, *Lost Wisdom: Rethinking Modernity in Iran* (Washington, D.C.: Mage Publishing, 2004).

² Giovanni Capoccia and Daniel Ziblatt, 'The Historical Turn in Democratization Studies: A New Research Agenda for Europe and Beyond,' *Comparative Political Studies*, Vol. 43:8-9 (August/September 2010).

of limited understanding of how democratic change and other openings comes about.

These realities, taken hand in hand with other more promising, albeit understudied, developments in certain parts of the Middle East and North Africa give a more complete picture of human rights trends in the region. They suggest that the human rights situation in the region is not entirely beyond repair. There are occasional openings in the domestic, socio-economic and political systems, as seen in previous chapters, which defy the otherwise backwards trends noted in the majority of human rights reports about the region. While they may not yet represent a sufficient force to significantly alter or elevate the existing state of affairs in the countries of the region, they still have a great enough impact to warrant scholarly attention.

While a plethora of International Relations theories exist to explain state behaviour with regard to hard power issues such as war, for instance, the dynamics affecting soft power calculations such as these are less well understood. Therefore, the field of International Relations greatly benefits from studies as the ones conducted here, which seek to explain the rational as well as seemingly non-rational behaviour of states, as in the voluntary accession to human rights regimes; explaining, for example, how human rights-centred reform is entering the realm of expected, rational state behaviour as a result of the increasing globalisation of universal human rights norms. The case of the United Arab Emirates endeavouring to adopt a more proactive human rights stance in recent years, following admission of its historically problematic rights portfolio, is just one case in point.

1. The universal human rights imperative

As the last chapters seek to bring to light, it would appear that elements of a human rights discourse and culture are currently on the rise in the countries of the Middle East, which are recognising the value of such norms and practices both internally in their own domestic affairs and internationally. Notably, there is an increased

emphasis among Middle East nations on ingratiating themselves with international fora such as the United Nations, which place a high value on human rights as a marker of state legitimacy within international society.

Of the different indices available to gauge the level of diffusion and *embeddedness* of human rights norms in local settings, the most common appears to be the willingness of governments to participate in official international and regional fora pertaining to the respect of rights, from the United Nations Human Rights Council to the Arab League, and to ratify relevant international treaties and conventions that validate these rights. Granted, the mere participation in such international and regional schemes, such as the Arab Charter, is no guarantee of genuine respect for human rights principles in practice. It is, nonetheless, an indicator of a given state's recognition of the normative *human rights imperative*, as we shall call it, and the much-sought-after soft power that comes with being a law-abiding member of the international community.

The significance of the participation of Middle East states in the drafting of the International Bill of Human Rights and of the Arab Charter of Human Rights, as visited in previous chapters, was to fling open of a virtual floodgate of universal rights norms and practices in the region. This has had the effect of inviting greater international and local scrutiny of human rights practices in Middle Eastern societies and generating greater demands for human rights reform by 'norm-entrepreneurs' and the like. It has also, in equal degree, resulted in much governmental backlash against the perceived infringement of state sovereignty or imposition of "western ideals." Yet, as seen, there is enough evidence pointing to an organic human rights current across the region to invalidate any arguments, which seek to reject human rights principles on grounds of cultural relativism or imperial conspiracy. Such a pattern corresponds with Finnemore and Sikkink's explanation

of the 'life-cycle' of norms, involving a 'norm cascade,' which eventually reaches a 'tipping-point' and results in 'norm internalisation.'³

What the norm cascade model fails to account for, however, is the co-constitutive nature of the 'cascade.' This includes, namely, the fact that it does not necessarily flow in a linear pattern or originate from outside influences; neither do norm-entrepreneurs arise "randomly". As the study of the diffusion of rights norms in the Middle East demonstrates, indigenous human rights cultures seem to sprout up in direct, natural opposition to regressive and repressive forces, and are often paradoxically strengthened by this diametric resistance.

Domestic and regional human rights schemes, which appear to be the self-generated initiatives of governments, are most often shaped, directly or indirectly, by the normative and political climate in which they find themselves. Similarly, while government participation in human rights schemes, domestically and internationally, is on the surface, 'voluntary,' given the lack of any real global enforcement mechanism, the impetus for participation necessarily entails a combination of endogenous and exogenous factors. Sometimes civil society actors or other domestic or international actors nudge states along the path to progressive human-rights based reform, often by first demanding more transparency, followed by greater accountability, and eventually, legal guarantees and mechanisms for the systematic protection of human rights.

The bottom up efforts of civil society, from labour movements to women's rights activists, and the unprecedented convergence of these different entities confirm the change from below thesis proposed by Asef Bayat and others.⁴ As evidence of the increasing socialisation of rights norms across the region, states will also independently recognise the prudential value of adopting a more 'human-rights-

³ Martha Finnemore and Kathryn Sikkink, 'International Norm Dynamics and Political Change,' *International Organization*, Vol. 52:4 (Autumn 1998), p. 898.

⁴ Asef Bayat, *Life as Politics: How Ordinary People Change the Middle East* (2010).

friendly' set of policies, or acceding to international human rights protocols in an effort to attain the goals of enhanced legitimacy abroad, which translates into better political and foreign direct investment opportunities, for instance, and legitimacy at home.

The many unspoken rewards that come with such a status, ironically enough, include more legitimate access to hard-power, such as in the trade of weaponry and military-know-how with other key international players. It should be noted that a state's adequate projection of soft-power tends to bolster its legitimacy as a state with a 'monopoly over the legitimate use of violence' (as Max Weber's definition of a state goes)—hence its hard-power potential. Soft-power, as successfully projected by the West, for instance, seems to give certain Western powers greater licence to "legitimately" unleash violent military force. This holds true even in a case such as Israel, which does not have officially demarcated state boundaries, yet holds the exclusive, yet questionably "legitimate" monopoly over violence within the territories it occupies given its perceived soft-power in the international community.

The successful assimilation by states of such international rights standards into local laws and practices—or at least the projection of a degree of soft-power—would seem to be the moral precondition for the acquisition of hard-power. By the same token, the lack of soft-power may result in diminished hard-power capacity. As the Iranian case makes patent, not all countries in the region have yet managed to balance their national ambitions with the demands of the international community, and particularly with those of the West. Not all have to, if they have the fortune of sharing overlapping geopolitical and strategic interests with Western powers, such as oil and gas and military bases; as in the case of Saudi Arabia or Bahrain, for instance, which, unlike some other neighbouring states, are not called-out by the West to a similar extent for their human rights violations and brutal crackdowns on peaceful protestors. In the case of Bahrain, however, only belatedly has the US administration employed the language of universal human rights in its

bilateral dialogues with the Kingdom.⁵ This supports a view that the West, too, feels compelled to use the rights rhetoric to maintain its legitimacy amid criticism of its perceived double standards in its dealings with authoritarian regimes.

Israel, which considers itself 'the only democracy in the middle east' also has the assurance of the United States' unconditional financial, political and military backing, as well as the promise of a US veto of any UN Security-Council resolution that even mildly criticise its ongoing, illegal occupation and human rights abuses.⁶ Yet, even such countries have still found it prudent to use human rights rhetoric and allow for certain human-rights institutions and organisations to flourish, such as the Saudi Commission on Human Rights, the Human Rights First Society, the National Society for Human Rights, Association for the Protection and Defense of Women's Rights in Saudi Arabia, and Saudi Civil and Political Rights Association.

2. The 'Spiral Staircase Model': the paradox of rights progress amid regress

The raft of violations tarnishing the rights records of Middle Eastern countries would on the surface seem to indicate an overall regression in the area of human rights and freedoms. However, based on the findings in this thesis, it becomes possible to view the situation from a different perspective than the one to which we might be accustomed. Such a view envisages a zigzagged staircase-like progression, with intermittent jagged landings, and roadblocks, but otherwise following an upwardly mobile path in the general direction of greater rights allowances.

This view is consistent with Capoccia and Ziblatt's conception of the 'democratic turn' and by extension the process of liberalisation, as consisting of an amalgam of

⁵ Gulf News Bureau, with inputs from AFP and Habib Toumi, Bahrain Bureau Chief, 'US President Barack Obama urges 'meaningful reform' in Bahrain,' *Gulf News*, 6 June 2013.

⁶ In keeping with the United States' longstanding 'Israel-first' policy, as reaffirmed by US President Barack Obama during his speech on the Middle East following the Arab uprisings, on 19 May 2011: 'As for Israel, our friendship is rooted deeply in a shared history and shared values. Our commitment to Israel's security is unshakeable. And we will stand against attempts to single it out for criticism in international forums [...]' (excerpt from transcript of speech, *The Guardian*, 19 May 2011).

different steps, some jagged and recessed, as opposed to following a straightforward, linear path.⁷ When examined from this holistic point of view, the countries' rights landscape over the span of their modern history follows an overall progressive, even if non-linear, trajectory, speckled with intermittent pitfalls and drastic periods of regression. A similar 'human rights turn' or 'turning point' could be said to be underway.

This understanding of events is further supported by Nazih Ayubi's hypothesis about liberalisation and democratisation as ongoing and open-ended processes as opposed to fixed end goals.⁸ That is to say that even existing democracies are never complete, and require constant maintenance and preservation through democratic participation. So too are the human rights regimes in the Middle East and beyond subject to constant transformation and redefinition as they too are maintained on a day to day basis.

Such a proposed Staircase Model further complements the Spiral Model of human rights norm socialisation put forward by Risse, Ropp and Sikkink.⁹ By contrast, this *Spiral or Winding Staircase Model*, as it were, goes a step further than the ordinary Spiral Model to explain the paradox of rights progress over time even in repressive political settings such as the greater Middle East. It provides a composite sketch of the trajectory of countries in relation to their ability to balance the rights demands of the people with the security needs of the state. It makes visible the cumulative impact of social and political movements in a country's history and the self-destructive cycle of authoritarianism, which makes progressive change inevitable. It also positively demonstrates that the rights norms, which are being increasingly socialised and internalised are demanding greater enforcement through the rule of law and through democratic institutions. Thus, the spiralling effect, paired with the

⁷ Capoccia and Ziblatt (2010), p. 934.

⁸ Nazih Ayubi, *Overstating the Arab State: Politics and Society in the Middle East*, (London: IB Tauris, 1995), p. 397.

⁹ Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, eds., *The Power of Human Rights: International Norms and Domestic Change* (2007).

expectation of upward mobility, can only result in a slow, laboured, if not vertiginous, ascent towards greater freedom.

This cumulative process, as seen, is set into motion when rights norms come to be supported in principle, such as in the form of rights declarations. The normative pull which even these basic declarations generate, is considerable, especially when the perceived gap between rights promises and practices become more pronounced and states have to increasingly answer to critics, both internal and external.

Almost counter-intuitively, the rights dynamics in each country are shown to be more fluid than commonly imagined. During seemingly static or regressive periods, any sign of progress with respect to human rights is taken to be an exception to the general state of regression. By contrast, occasional openings in the domain of human rights, freedom and democracy momentarily challenge the prevailing logic which is to view stasis or backwardness as the constant. Fleeting and unsustainable as these openings tend to be they are quick to be overshadowed by the lingering rights deficiencies in the country.

The fact remains that human rights violations, which accumulate over time, are by the sheer force of trauma they inflict, stored and kept alive in the national psyche long after they have been committed, acquiring an almost permanent status. Meanwhile, occasional advances have the paradoxical effect of bringing greater attention to rights disparities. This, in turn sparks greater rights demands, highlighting once again the deficit of freedoms and rights. This phenomenon almost always trumps human rights victories, which are quickly taken for granted and assimilated into the glaring background of ongoing problematic rights practices.

Just as human rights violations tend to dwarf human rights victories and make them appear insignificant by comparison, state oppression has a way of tricking the mind into perceiving the state as strong, when in truth it reflects the strength of the masses which the state fears and wishes to repress. We would not know this were it

not for the snapshot the Egyptian revolution provided of a fearful regime facing the fearless masses in Tahrir Square. Another such moment occurred in 1979 on the streets of Tehran when the balance of fear was tipped in the favour of the Iranian people against the pusillanimous Shah and his equally diffident royal military.¹⁰

Yet stopping to observe a freeze-frame view of a country, lends considerable insight into its nuanced and vacillating inner workings, which are imperceptible to the naked eye. The UAE and Iranian case reveal just how vulnerable the political fabric is in the face of mounting pressures from below and above to heed domestic and international rights mandates. In some cases, as in Egypt, the fabric itself is liable to tear when it fails to carry the weight of responsibilities placed upon it. These different events in the region, pieced together, if somewhat imperfectly, form the elements of an emergent rights system. Nancy Bermeo's analogy of the process of democratisation to a 'collage' could also apply to the process of rights progress studied here.¹¹

While in the Iranian case, the popular protests in 2009 have on the surface been suppressed by the unyielding might of the Iranian revolutionary guards and paramilitary units, the Egyptian case indicates that brutal force cannot be employed indefinitely without causing fissures within a regime. Unless properly regulated, the pressures on Iranian society will likely continue to grow to the point of rupture, as occurred in Egypt. That is to suggest that the natural tendency of a society, unhindered by state violence and repression, is actually towards peace and freedom, not anarchy, as a realist worldview would have it. Instability and anarchy are the result of and not the cause for extreme state oppression and suppression of human rights and freedoms.

The relative success of region-wide calls for dignity and rights, at least in instigating

¹⁰ Ryszard Kapuscinski, *Shah of Shahs* (London: Penguin Books, 2006), p. 109.

¹¹ Nancy Bermeo, 'Interest, Inequality and Illusion in the Choice for Fair Elections,' *Comparative Political Studies*, Vol. 43:8-9 (2010), p. 1120.

an overturn in certain Arab regimes in 2011, reveals the fallibility of authoritarian structures which rule through fear and perpetual emergency law. It also represents how “successful” state suppression and the prolonged denial of rights or entitlements results in compromised state stability and legitimacy. Thus, in a paradoxical twist, restraint, not impunity, would seem to be the best guarantor of state power and national security. Within this new paradigm, in order for a regime to achieve its ends, namely a dual hold on hard and soft power, it suddenly becomes necessary to act within a socially acceptable framework. Extreme cases of state impunity can work to actually highlight once-invisible perimeters of acceptable and unacceptable state behaviour. As soon as these boundaries are perceived by a core constituency as being violated it is as though it triggers a normative alarm, which dramatically raises the state of alertness among an otherwise seemingly dormant population.

Ironically, such trends in the region indicate that the highest potential for unity exists at the height of the state’s oppression, and that the very oppression of the people serves as the main impetus for their mobilisation. Interestingly, it also suggests that authoritarian structures are inherently built to fail, seeing as they are weighed down by their very own oppressive apparatus. Their projected strength, which is not to be confused with their actual strength and stability, therefore, truly reflects their internal weakness and attempts to compensate for the latter.

The oppression and annihilation of the people is ultimately the self-annihilation of the state. Figuratively, in the sense that without the support of the people, the state loses its only source of legitimacy; literally, in that the suppression and silencing of the people, which make up the state, can only ever spell the slow death of the state itself. While on the surface, the regime in power may appear to possess ultimate authority only the people can confer such authority upon those in power. We know this because of the instances in which the people have taken away a regime’s authority, such as that of Hosni Mubarak, or of the late Iranian Shah.

Elsewhere, as in the United Arab Emirates, the state-manufactured sense of security and freedom in itself is enough to deter people from challenging the status quo, but is not in itself a long-term recipe for a peaceful social order. Where there is no social contract and insufficient avenues of legal recourse available to the people, there is arguably less of an impetus for change as a general level of apathy and acceptance of the status quo eventually sets in. With no alternate schemas of governance to draw from, the people are bound to remain complacent in their subjugation to the all-consuming, almighty, state-cum-military apparatus. Even then, benevolent rulers can create conditions that are comfortable and tolerable enough to engender a degree of loyalty and dependence in their populations, without having to offer them their full scope of political and other rights.

What is more, controlled reform and incremental progress may ensure that the pressures from below or above are never greater than the combined soft and hard power of the state. They cannot, however, take the place of the full enjoyment of human rights and freedoms, seeing as rights are, by definition, indivisible. In the case of Egypt, the explosive combination of state oppression with inconsistent rights reform, busted through the hallow shell of the state to reveal a peaceful underlying current gravitating towards freedom, democracy and progress. This current had only been obscured until now and prevented from spilling forth.

As the three cases studied show, civil society only gains momentum and muscle from the very resistance it encounters along its path of human progress.¹² Those societies, which have suffered the most in human rights violations are also those which paradoxically have given rise to equally forceful counter-currents determined to turn over the socio-economic and political tide. Unless the governments can catch up with these movements or waves, as in Iran's green wave, the balance almost always lands in favour of progressive change. Even if the governments do manage to stamp out such movements, the national atmosphere is still irrevocably affected and

¹² See concept of "antifragility" in Nassim Nicholas Taleb, *Antifragile: Things That Gain from Disorder* (Random House: New York, 2012).

does not as readily snap back to its old form. Additionally, the appearance of drastic regression or 'going backward' might in some cases, such as Iran or Egypt, be the necessary ebbing before the coming wave.

3. Regional Human Rights Norm Cascade: paradigm shifts in the Middle East

As one Moroccan dignitary observed on the repercussions and implications of the current Arab social movement,

However much we might agree or disagree in our evaluation of the Arab social movement, it is in essence a positive socio-political phenomenon, a civilizational transition if you will, and in stirring the waters and alerting us to the inevitability of change and reform it fulfilled its task. The movement has restored politics, in the best sense of the word, to the forefront of events, shaming traditional politicians and forcing parties of all stripes to question themselves. The movement is evidence of the awakening, the organized debate that takes place in all societies from time to time.¹³

Referring to the different Arab movements as a unitary Arab *movement* indicates a new conceptualisation of isolated national struggles as inextricably linked and universal in nature. The mass grassroots uprising of 2011 positively demonstrate the intersection of diverse progressive currents across the region. At the same time, what appears to be an isolated national struggle contains within it the struggle against regional hierarchy and an implicit challenge to the transnational capitalist order, which has spread across the region.¹⁴ Underpinning the varied movements and uprisings across the Middle East and North Africa is a rejection of the larger neoliberal economic project which has stripped the masses of their basic rights and personal agency, and threatened the region with policies, which in the view of

¹³ H.E. Mohamed Beneissa (Former Minister of Foreign Affairs and Cooperation (Morocco), Secretary General, The Assilah Forum Foundation, OCIS Chevening Visiting Fellow), lecture on 'The Arab Social Movement: Its Repercussions and Implications,' Oxford Centre for Islamic Studies, 26 October 2011.

¹⁴ Adam Hanieh (SOAS), conference paper, 'Rescaling Egypt's Political Economy: Neoliberalism and the Transformation of the Regional Space,' Conference on The Egyptian Revolution: One Year On, Department of Politics and International Relations, University of Oxford 18-19 May 2012.

economist Ali Kadri, amount to an ‘indirect restitution of colonialism’.¹⁵

The ripple effect in Egypt from neighbouring Tunisia, for instance, reflects the importance of shared identities, agendas, and expectations across national borders. What is more, one could look to ‘the emerging field of memory politics’, which according to Haugbolle and Hastrup, deals with experiences and memories stored in the collective unconscious across national borders, for insight into the recent overlapping events across the region, including the emerging trend towards transitional justice.¹⁶

Viewed in this way, one can begin to see the hidden connection between the struggles taking place in the Gulf region such as in Iran or Bahrain and other places such as Egypt, rather than seeing them as isolated within the nation-state. As the peaceful slogans of protesters reveal, it is not necessarily the resurgence of pan-Arabism or Islamism we are witnessing but of a more universal call for freedom, rights, dignity and justice in the Middle East and beyond.¹⁷ Similar protests and calls for the restoration of socio-economic rights were to be seen in various capitals across the globe from Madrid to New York, as part of the Occupy Wall Street or 99% movement.¹⁸

What is more, the new popular uprisings in Turkey of June 2013, initially spurred by protests to the government’s plans to redevelop Gezi Park and parts of Taksim Square, have turned into a full-blown, countrywide demonstration for rights and

¹⁵ Ali Kadri (LSE), ‘A Depressive Pre-Arab Spring Economic Cycle,’ (2012, unpublished draft), p. 9. Notably, ‘Ali Kadri is former head of the Economic Analysis Section at the United Nations Arab Regional office. He was principal author of the economic and social report about the Arab world to the Economic and Social Council of the United Nations (ECOSOC). He introduced the concept of development as human right to the Arab world in 2005[...].’ (Research summary from LSE website: <http://www2.lse.ac.uk/researchAndExpertise/Experts/profile.aspx?KeyValue=a.kadri@lse.ac.uk>).

¹⁶ Sune Haugbolle and Anders Hastrup, eds., ‘Introduction: Outlines of a New Politics of Memory in the Middle East,’ *The Politics of Violence, Truth and Reconciliation the Arab Middle East* (Oxon: Routledge, 2009).

¹⁷ Tariq Ramadan, *The Arab Awakening: Islam and the New Middle East* (London: Allen Lane, 2012).

¹⁸ “We are the 99%” website: <http://wearethe99percent.tumblr.com/>.

freedoms.¹⁹ Commentators have called this movement, Turkey's 'secular awakening' or the 'Ataturk renaissance.' It is 'the first time that people from all walks of life have joined forces to constrain the power of their country's leaders.'²⁰ Prime Minister Erdogan's agreement to halt development plans, in a tactical effort to quell protests, suggests that protesters were in part successful in exacting concessions from the government.²¹ Protesters in Turkey's Taksim Square, like those in Tahrir and other civic squares around the MENA region, are not only appropriating the language of universal human rights into their national struggles, they are exerting a palpable *collective* pressure on the international system.

These transnational movements, bridged with the help of technological advances and the combined influences of old and new social media, mark the beginning of a social and political order transcending national borders. Or perhaps it reflects existing orders within nations, and local communities, which are suddenly more ubiquitous and interconnected than before in the age of information and digital revolution. Even while the role of new social media in the actual spreading of protests across the MENA region is questioned, it has certainly made such progressive trends more visible.²² For within online social networks, for instance, it is possible to see more clearly the exercise of basic freedoms, namely, of conscience, expression and association. Likewise, it is possible to appreciate the degree of collective yearning for cross-cultural exchange, learning and action. Transnational activist networks, which have the almost supra-human ability to affect change across borders, through a 'boomerang effect,' as Keck and Sikkink have pointed out, are just one manifestation of this globalising trend around universal human rights norms and practices.²³

¹⁹ Luke Harding, in Istanbul, 'Turkey protestors proclaimed as true heirs of nation's founding father,' *The Guardian*, 8 June 2013.

²⁰ Whit Mason, 'Turkey's Secular Awakening,' *Foreign Policy*, 5 June 2013.

²¹ AFP, 'Turkey protestors vow to stay in Gezi Park,' *Al-Arabiya*, 15 June 2013.

²² Sean Aday, Henry Farrell, Marc Lynch, John Sides, and Deen Freelon, 'Blogs and Bullets II: New Media and Conflict After the Arab Spring,' *Peaceworks*, No. 80 (Washington, D.C.: United States Institute of Peace, 2012). See also March Lynch, *Voices of the New Arab Public: Iraq, Al-Jazeera and Middle East Politics Today* (New York: Columbia University Press, 2006).

²³ Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders* (1998).

It is evident that the demands of the Iranian and Egyptian people, for instance, are almost identical to those echoed throughout the region and even across the globe by past and present popular movements. Often this entails the recognition of a loss of rights, paired with a loss of any fear of demanding those rights. The loss of fear, by extension, corresponds with a loss of state legitimacy, often stemming from a spike in the use of excessive force against civilians paired with a protracted history of trampling on fundamental human rights and freedoms. The popular backlash resulting from a sudden spurt in state violence against its own people, however, can sometimes be lessened through the regime's acknowledgment of wrongdoing and attempts to provide justice and reconciliation.

One such attempt at retribution is the Kingdom of Bahrain's strategic move to set up an 'Independent Commission of Inquiry' to investigate the 2011 crackdown on Bahraini protesters and to present its findings and recommendations to the King in the form of a 500-page report.²⁴ Firstly, the independence of the Commission can be questioned, as has been done by organisations such as the Islamic Human Rights Commission and the United States Commission on International Religious Freedom, seeing that it was created by royal decree and essentially sponsored by the Bahraini government.²⁵ Secondly, the continued injuring and killing of protestors even on the day of the report's release and thereafter would seem to nullify the Kingdom's conciliatory overtures.²⁶

Elsewhere in the region, the Arab uprisings caused many regimes and monarchies to

²⁴ 'Bahrain Independent Commission of Inquiry report' released on 23 November 2011: <http://www.bici.org.bh/>.

²⁵ 'Bahrain: Concerns Regarding the Bahrain Independent Commission of Inquiry (BICI)' report published by the *Islamic Human Rights Commission*, 17 November 2011: <http://ihrc.org.uk/attachments/article/9943/Bahrain%20Report%20A4-v02%20IHRC.pdf>; also see United States Commission on International Religious Freedom (USCIRF) Comments on Bahrain Independent Human Rights Report: <http://www.uscirf.gov/news-room/press-releases/3682-uscirf-comments-on-bahrain-independent-human-rights-report.html>.

²⁶ Ian Black, 'King Hamad of Bahrain Welcomes Report Accusing Kingdom of Torture', *The Guardian*, 23 November 2011: <http://www.guardian.co.uk/world/2011/nov/23/bahrain-king-welcomes-report-torture>.

jump to action, providing hasty reforms and spouting promises, which the UN Secretary-General, Ban Ki Moon and others have branded as “too little, too late”.²⁷ The Moroccan King's proposal in 2011 for a Constitutional Monarchy, which significantly limits his direct rule, creates a separation of powers, an independent judiciary and a new Prime Minister position, is an indication of the sheer extent to which the human rights normative paradigm has shifted in the region. It either impels governments to reform in order to stay in power as in the case of Morocco, or to increasingly crackdown on the masses as in the case of Bashar Al Assad's Syria.

Some argue that the reforms merely represent the King of Morocco's belated, desperate attempts to safeguard his monarchy and are largely cosmetic in nature. While it is clear that such proposed reforms will create an opening in the country and possibly improve the lot of the people, most of whom live in dire poverty, many question whether this will only work to further entrench the status quo in Moroccan society, delaying any genuine progress towards democracy. Just the fact that these questions are today being asked, on its own represents a vital step being taken on the staircase-like human rights continuum.

Still, there is a sense that revolutions and reforms remain unfinished and authoritarian systems are still deeply entrenched despite the removal of old regimes and a change of figureheads.²⁸ For instance, continued Egyptian unrest and the rise of the Muslim Brotherhood and the Salafists following the revolution to unseat Mubarak, highlights the challenges that stand in the way of achieving a genuine democracy. The 1979 Iranian Revolution represented a similar moment in history in which a call for representative government and the rule of law nearly succeeded, before being co-opted by reactionary elements, led by Ayatollah Khomeini. Promising democracy and respect for fundamental human rights, the new Islamic Republic failed to keep its faith with the people. As a result, today it is in a similarly

²⁷ Pierre-Antoine Donnet, ‘Arab Leaders Doing Too Little Too Late: UN Chief tells AFP,’ *Agence France-Presse*, 18 May 2011.

²⁸ Marc Lynch, *The Arab Uprising: The Unfinished Revolutions of the Middle East* (New York: Public Affairs, 2012).

vulnerable position to the Pahlavi dynasty, which preceded it. The 2009 wave of protests thirty years later arguably represents an attempt to finish the revolution which the people did not fully complete before the Islamic Republic came into power, thwarting the secular, democratic aspirations of the people.

The victory of the Muslim Brotherhood's newly-formed Freedom and Justice Party and the Salafi, Al-Nour party may similarly be perceived as a blow to the secular nature of the January revolution. Never having had a real chance at governing in the country for having previously been banned from forming a political party, the Muslim Brotherhood is seen by many as the lesser of two evils and best alternative to the deposed Mubarak regime. Fawaz Gerges credits this 'Islamist moment' in the Middle East's history to the fact that 'in the last four decades, Islamists brilliantly positioned themselves as the alternative to the failed secular "authoritarian bargain".'²⁹ Riding on a rights-based platform, the Brotherhood has cleverly banked on the demands of the Egyptian revolution for freedom, social justice and dignity.³⁰ Naming itself the 'Freedom and Justice' Party, as opposed to the 'Muslim' or 'Islamic' party, for instance, in itself reflects the evolution of the Muslim Brotherhood from a purely ideologically-driven group to a more secular force with a socio-political agenda.

Interestingly, this "Islamist moment" is also largely a product and *producer* of the "Secular Age" dawning in the region. The Islamist trend opposes itself to the perceived injustices of unrepresentative regimes, which espouse corrupt neo-liberal economic values that disenfranchise the people while benefiting the ruling elite. Ironically, however, it also owes its success to the very instruments of democracy and to the free exercise of universal rights of assembly, expression, and religion, for

²⁹ Fawaz A. Gerges, 'The Islamist Moment: Domestic and Geostrategic Implications' (unpublished, 2012).

³⁰ Dr. Mohamed Morsy, President of Egyptian 'Freedom and Justice' Party, former member of the Muslim Brotherhood's Guidance Bureau, lecture on 'Islamist Movements and the Future of Democracy in Egypt: The View of the Muslim Brotherhood,' hosted by the Oxford African Society, Queen Elizabeth House, University of Oxford, 18 May 2001 (one year prior to becoming first democratically elected President of Egypt).

instance, which characterise liberal systems.

Not coincidentally, the Muslim Brotherhood is not the only group in the region to wave the proverbial freedom flag in an effort to win over popular support. The new interim rulers of Libya, namely, the Libyan National Transitional Council (NTC)—which with NATO assistance overthrew Muammar Gaddafi, the longest-serving leader in the region—also has as its motto freedom, justice and democracy.³¹ Similarly to the NTC, by defining its new cause as the pursuit of freedom and justice—the very elements seen to be missing within Egyptian society—the Muslim Brotherhood positions itself as the saviour of the people and the antidote to the ancien regime. In so doing, it insinuates that only a political and legal system founded on the *shari'a*, or Islamic codes of conduct, is legitimate and conducive to freedom and justice in the country. While the resurgence of Islamist movements and political parties might be viewed as a regressive trend away from secularism in the MENA region, it could just as well be indicative of the *secularisation* of Islam resulting from the gradual internalisation of rights norms within Muslim societies. The victory of Islamic moderate and reformist candidate, Rouhani, in the 2013 Iranian presidential elections, similarly represents the convergence of secular and Islamic trends. In principle, this would support the view of Islamic jurisprudence being compatible with universal principles of human rights.

There are also regional and international factors favouring the status quo ante which can be seen as blocking the natural flow of the region's human rights current; these include, for instance, the impetus to maintain Egypt's cold peace with the United States' strategic partner in the region, Israel, among other jealously guarded foreign interests in the Middle East North Africa region.³² Israeli Prime Minister, Benjamin Netanyahu, for one, is resolutely opposed to the peaceful democratic wave in Egypt and across the Arab world, which he perceives as a threat to Israel's

³¹ As featured on the official Libyan National Transitional Council (NTC) Website homepage: <http://www.ntc.gov.ly>.

³² Avi Shlaim, *The Iron Wall: Israel and the Arab World* (New York: Norton paperback, 2001).

expansionist project. This, according to Avi Shlaim, ‘exposes the internal contradiction, not to say hypocrisy, of Israel’s stand on democracy.’³³

Additional challenges to the progressive tide include counter-revolutionary forces, supported by local ruling elites, in turn backed by foreign powers, intent on maintaining the existing balance of power in the region from North Africa to the Persian Gulf, if not tipping the balance further in their favour.³⁴ This phenomenon has given rise to a new brand of international pseudo-organisation, evidenced by the newly-formed “Security Cooperation Forum”, a strategic partnership between the United States and the Gulf Cooperation Council.³⁵ Such an arrangement suggests that the advent of the Arab Spring or Arab Awakening has caused authoritarian governments to spring into action en masse, with the collective intention of restoring the prevailing political order or controlling the political outcome in transitional neighbouring states. Banding together with international powers such as the US, with a vested interest in the region, offers a superior and mutually beneficial alternative to the burden of acting alone to ensure their individual stability. It also suggests that regional organisations are having to collectively respond to the very real normative pressures of the evolving rights regime to which they belong. As seen, however, the effort that goes into attempting to stop these natural currents is ill-spent, as it only emboldens these movements through their suppression.

In spite of such attempts to stem the progressive tide in the region, powers in the region are slowly having to come to terms with the new socio-political landscape. They are learning that they cannot indefinitely manipulate or adapt conditions to suit their own agendas. Instead, they are starting to adapt their modes of governance to the burgeoning human rights culture, which has already begun to uproot authoritarian systems across the region. We note in cases such as Egypt that

³³ Avi Shlaim, ‘The Arab Uprisings and the Palestine-Israel Conflict’ (unpublished, 2012), p. 5.

³⁴ Robert Fisk, ‘Counter-revolution—the Next Deadly Chapter’, *The Independent*, 21 April 2012.

³⁵ *Ibid.*, Rami Khouri referenced by Fisk.

the failure to adapt can result in regime change; and in cases such as the Islamic Republic of Iran that resistance to the natural human rights current results in an internally compromised and insecure state. Countries such as the United Arab Emirates have taken note of these realities and have sought to adjust their rights practices accordingly. This would indicate that the new paradigm of governance operating in the 21st century is one that is continuously and irrevocably shaped by the ongoing global diffusion and local assimilation of human rights norms.

A comparison of the three case studies reveals just how central human rights calculations and miscalculations are to the given fate of a nation. From the UAE case we note the importance of ‘cushions’, such as new labour laws and improved housing conditions, to absorb the likely blowbacks from accumulated human rights abuses. From the Iranian case we learn that popular rights demands, no matter how severely repressed, will always catch up with the regime, causing internal splintering and fallout among its ruling elite. From the case of revolutionary Egypt, we observe that the regime itself is the first to suffer the repercussions of widespread disgruntlement when there are not adequate cushioning or rights concessions made to absorb those pent up frustrations.

Unlike the UAE case, which contains clear attempts at reform, albeit limited in scope, the Egyptian case reveals a series of contractions and openings over the last three decades, culminating in its implosion in early 2011. It began with President Mubarak offering a degree of liberalisation and controlled democratisation early on, such as by allowing opposition parties banned under Sadat to rejoin the political arena.³⁶ It followed shortly with him declaring by 1987 that ‘democracy had to come “in doses” and within “limits”.’³⁷ Finally, it ended with him ruling the country under a perpetual state of emergency law. His official dominion over Egypt would subsequently be ‘ended’ as a result of remaining unaccountable to the people for so

³⁶ Glenn E. Perry, *The History of Egypt* (Westport, Conn.: Greenwood Press, 2004), ‘The Mubarak Era,’ p. 132.

³⁷ Ibid.

long. The breaching of the Constitution on various fronts and denial of a social contract between the Egyptian ruler and his subjects meant that Mubarak would not be beholden to the people; paradoxically it also guaranteed that the people would not indefinitely be beholden to the ruler. Stripped of their social and political agency, the people of Egypt were mere subjects, not citizens, as stipulated within their constitution. The Egyptian case reflects just what happens when a regime overstays its welcome and refuses to subject itself to pluralistic, democratic oversight and to the rule of law.

With no real stake in the political system and the running of their affairs, the Egyptian people would have little incentive for upholding a regime that did little to uphold their rights and to regard them as upstanding citizens of the Egyptian Republic. The failure to ameliorate the human rights situation in time led to the Mubarak regime having no other choice but to use increasingly oppressive measures in a desperate last-minute attempt to suppress the public uprising against him, inadvertently causing the situation to reach a boil.

At the same time, the pressures and demands on the state from below, which took the form of longstanding social and labour movements in the country and ‘judicial support networks’ acting in tandem with the Egyptian judiciary, gradually pulled the proverbial rug out from under the state’s feet. By losing touch with the people and failing to heed their socio-economic and political rights, as basic as *food sovereignty*, and turning to increasingly oppressive measures to subdue the unruly masses, the Egyptian government, surer than not, guaranteed its own collapse.³⁸ In the end, it was, what some scholars have called the ‘explosion of the poor’—the combustive, shared misery, hunger, literal and metaphorical, of common Egyptians at the end of their rope—that created a counterforce great enough to compel the regime to

³⁸ See Raj Patel, *Stuffed and Starved: Markets, Power and the Hidden Battle for the World’s Food System* (New York: Melville House, 2008); also Patel, ‘What does food sovereignty look like?’ *Journal of Peasant Studies*, Vol. 36:3 (July 2009), pp. 663-73.

release its mass stranglehold on the nation.³⁹ The longstanding Mubarak regime, once thought to be unshakeable, could no longer withstand the rights and freedom demands of the populace and in the end, buckled under pressure.

This is similar but not identical to the case of the Islamic Republic of Iran, which is under threat of a similar implosive fate due to the increasing stresses from within and without, pushing and resisting human rights-centred reform.⁴⁰ The principal contributing factor to this type of implosion is the breakdown in the implementation of constitutional rights guarantees and checks on arbitrary rule. In reality, however, it is never clear exactly what brings regimes to their knees. And it is rarely possible to foresee such shifts before they occur. Some would even argue that retrospective analyses are useless in such instances, advocating instead for what Kurzman has dubbed 'anti-explanations' of such revolutionary phenomena or 'anomalies'.⁴¹

One academic examining the Egyptian 'dilemma' from next door in Tel Aviv, less than one month before the overthrow, boldly claimed that, 'to be sure, Egypt is not in a pre-revolutionary situation.'⁴² This would demonstrate just how out of touch everyone, from the scholarly community, to Egypt's own neighbours, was with the actual state of affairs brewing below the country's deceptively calm surface. This 'blind spot' in our understanding of the changes in the Middle East is why it is, in fact, imperative to look back in time, and even across space, to understand the recent transformations in the country's history as belonging to a meta-narrative of human rights struggles occurring domestically, regionally and internationally. Seen

³⁹ 'Explosion of the poor' referenced by John Chalcraft (London School of Economics) in 'Horizontalism on the Nile: what does it mean to say that the Egyptian uprising of 2011 was leaderless/ or leader full? and does it matter?' Conference on *The Egyptian Revolution: One Year On*, Department of Politics and International Relations, University of Oxford, 18-19 May 2012.

⁴⁰ See Chap. 8, 'The Inevitable Implosion,' in Reza Pahlavi, *Winds of Change: The Future of Democracy in Iran* (Washington, D.C.: Regnery Publishing, Inc., 2002), pp. 103-45.

⁴¹ See central thesis in Charles Kurzman, *The Unthinkable Revolution in Iran* (Cambridge, MA: Harvard University Press, 2004).

⁴² Bruce Maddy-Weitzman, 'The Egyptian Dilemma,' *The Jerusalem Report (Mideast Monitor)*, 17 January 2011.

in this way, they can no longer be written off as a mere anomaly or pure chance, as the prevailing doctrine of Arab exceptionalism would dictate.

In the United Arab Emirates, where representation exists without taxation, and where there is no private stake in public affairs, the mere reliance of the people on the benevolence of the rulers guarantees the continued existence of the 'sheikhdoms'. These governmental rights guarantees which underpin the 'moral contract' between rulers and subjects acts to pre-emptively absorb any potential blows to the regime's stability or legitimacy. Balancing the state's requirement for national security with a modicum of human security is what allows a regime such as the UAE or, with less success, Iran, to prevail against all odds.

Sometimes balance is achieved through governmental handouts, as in the case of Gulf monarchy, Saudi Arabia. In the wake of the Arab revolutions in 2011, the Kingdom unveiled a \$130 billion 'benevolence' scheme including spending \$11 billion towards job-creation for the youth and the unemployed.⁴³ Such governmental policies, which are driven by both ideational and instrumental factors, offer a more reliable guarantee of state security than those based on pure pragmatism. If, however, the state has no even-handed way of maintaining internal balance, it frequently resorts to brutal, repressive force to enforce an artificial balance.

The crackdown on popular protests in Pearl Square in Bahrain or on protesters of the 2009 Green Movement in Iran, are just two cases in point. The lesson, which the Egyptian experience has to impart, is that such forced, artificial balances are ultimately unsustainable and unreliable. Despite exuding a semblance of invincibility, as Mubarak's Egypt did for over thirty years, authoritarian states, which derive their legitimacy not from the people but from brute force and

⁴³ Salman Shaikh (Brookings Institute, Doha), Chap. 7, 'Gulf States: The Challenge of Reform', p. 29; and Eugene Rogan (University of Oxford), Chap. 1, Regional Overview, p. 6 in 'The Arab Spring: Implications for British Policy,' *Conservative Middle East Council* (October 2011).

oppression, are merely buying time. Looking back, it is possible to see beyond the veneer of respectability and stability, which the now-deposed Egyptian government projected, through to the insecurities and daily struggles to prolong its hold on power. The same may one day be said of the Islamic Republic of Iran, which itself was the product of several arguably unfinished revolutions.

In retrospect, it is clear that governments that were incapable of keeping up with popular demands and that governed through fear rather than popular legitimacy would inevitably face their end. Other regimes such as oil-rich gulf nations have adopted a combination of controlled reform and governmental handout policies meant to placate the people and restore the prevailing social 'pecking' order, mimicking but not guaranteeing any long term progressive change. King Abdullah of Saudi Arabia, for instance, announced that women would have the right to vote and run in future municipal elections for the first time in the Kingdom's history.⁴⁴ Additionally, there would be women appointed to the *Majlis Al-Shura* or Shura Council in order to ensure female participation in public policy matters. The impetus for such concessions was seen as coming from the pressures of the movements in neighbouring countries and from within the Kingdom, which called for fundamental reforms, equal rights, and representative government.

While undoubtedly representing a momentous historical step for women's rights, the fact that Saudi women will be allowed to vote but still be subject to a driving ban reveals the existing inconsistencies within governmental policies. This has already had the effect of raising the expectations of the Saudi people; especially its women who stand to gain the most from the shifting currents in the region. Maha Al-Qahtani who took part in the 2011 women's campaign to defy the driving-ban hailed such concessions as "a good sign" but maintained that women "still need more rights."⁴⁵ Likewise, this has provided the regime with a reality check about the hazards of

⁴⁴ Neil MacFarquhar, 'Saudi Monarch Grants Women the Right to Vote,' *New York Times*, 25 September 2011.

⁴⁵ Ibid.

maintaining an outdated, absolute monarchy in the face of the rising expectations and increasing restlessness of the people for change. Unless underlying grievances are addressed they are likely to re-emerge as a source of further instability, as in the case of Egypt, where the initial revolution to oust the Mubarak regime did not entirely succeed in providing the much-sought after change demanded by the people.

There is also evidence of rights progress happening organically even in the most traditional, non-democratic societies across the region. While recognising the ongoing challenges to reform in the Kingdom, former Saudi Ambassador to the United Kingdom, Prince Turki Al Faisal notes that, “on the whole, the government and the people are going forward.”⁴⁶ He cites the example of “women practicing in Saudi courts as lawyers and arguing cases before the judges” as a development that is “totally unprecedented in the Kingdom” but as “something that is happening;” he credits such reforms in Saudi Arabia “as coming about not because of religious *fatwa* or government decree, but more because of the change of society itself.” Indeed, such progressive trends *are* happening even in conservative societies, and with more frequency than ever before. In the process, they appear to be paving the way for greater long-term change to take place in the region as a whole. This is in keeping with a *winding staircase* model of rights socialisation and Saad Eddin Ibrahim’s *open door* model of liberalisation, which even prior to the Arab Spring, envisaged liberal democracies ‘taking hold in the Arab world—and surviving.’⁴⁷

The study of rights-related developments on the ground in the Middle East and North Africa—has attempted to shed outdated preconceptions about the status of rights and freedoms in the region, and shine a new light on emerging developments. While these countries each have their own distinct histories and distinct trajectories, the common bond which they share, as we can now begin to see, is the

⁴⁶ Prince Turki Al-Faisal and SUSRIS, ‘What Can Be done: A Conversation with Prince Turki Al-Faisal?’ Saudi-US Relation Information Service, 31 October 2012.

⁴⁷ Saad Eddin Ibrahim, ‘An Open Door,’ *Wilson Quarterly*, Vol. 28:2 (Spring 2004).

desire of their peoples for much of the same rights and freedoms—rights which their governments are increasingly finding prudent to grant them.⁴⁸ The determinant of the fate of regimes in the new millennium appears to hinge on the respect for or lack of respect for the fundamental human rights and dignity of their people. In the cases where the regimes fail in their constitutional responsibility towards the people, they are finding it increasingly difficult to function with any authority or legitimacy in the international system. The age-old rule still holds—*adapt or perish*.

⁴⁸ Mishana Hosseinioun and Foulath Hadid, 'The Arab Spring: protest, power, prospect' *openDemocracy*, 4 April 2011; 'The Middle East: The Question of Freedom,' 18 October 2010; and 'The Middle-East Path: Towards Awakening,' 28 January 2011.

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