

Cambridge University Press

978-0-521-76753-8 - After Abu Ghraib: Exploring Human Rights in America and the Middle East

Shadi Mokhtari

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Introduction

If the post-September 11th era is to bear the imprint of a succession of setbacks to the human rights paradigm epitomized by Abu Ghraib's arresting images, the era should also be marked by human rights' reemergence at the fore of local and global contests and consciousness. This study traverses three pivotal human rights struggles of the era: the American human rights campaign to challenge Bush administration "War on Terror" torture and detention policies, Middle Eastern efforts to challenge American human rights practices (in effect, reversing the traditional West-to-East flow of human rights mobilizations and discourses), and Middle Eastern attempts to challenge their own leaders' human rights violations in light of American post-September 11th interventions in the Middle East. The snapshots that emerge are of human rights repeatedly being appropriated, invoked, promoted, claimed, reclaimed, and contested within and between the American and Middle Eastern contexts. By placing these deployments side by side and highlighting the myriad of contradictions they encompass and produce, this book brings to light human rights' role as both an emancipatory and hegemonic force following September 11th. There are thus several facets to the present inquiry. First, it explores the era's key intersections between international human rights norms and power as they unfold in post-September 11th era. Second, it lays out the many interconnections and layers of the era's American and Middle Eastern encounters within the human rights realm. Finally, it draws out the primary lessons of post-September 11th developments for moving the human rights project forward.

THE FIELD

This largely empirical study incorporates field research conducted in Washington, DC, Amman, Jordan, and Sana'a, Yemen. Semistructured interviews of American and Middle Eastern human rights advocates, government

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officials, and journalists are combined with content analysis of select media coverage, governmental records, human rights nongovernmental organization (NGO) reports, and public forums and conferences. The research extends through more than one locale to capture not just a sense of human rights dynamics within one country but the transnational linkages and interrelationships encompassed.

Jordan and Yemen present fascinating case studies. Both countries were (at least officially) engaging with human rights discourses prior to September 11th and both governments were less likely to label human rights norms as Western or foreign impositions than other governments in the region, particularly those in the Persian Gulf. Both countries also maintained close relations with the United States throughout the post-September 11th era, albeit for slightly different reasons. Beyond these similarities, however, the two locales stand largely in contrast to each other.

Jordan's human rights discourses are highly influenced by its geography. The country's location between Israeli-occupied Palestinian lands and American-occupied Iraq colors the worldviews of the population and even human rights forces. In the same manner, its sizable Palestinian population and growing Iraqi refugee population affect human rights discourses and consciousness significantly. Its reputation as a stable and Western-friendly country whose monarch frequently espouses a commitment to human rights (at least in rhetoric) has attracted many international human rights and humanitarian initiatives targeting the Middle East region. The state's control reaches deep and wide in Jordan. Despite leaders' propensity to adopt human rights discourses and assemble various royal human rights initiatives (mostly limited to women's rights and children's rights), civil and political human rights violations such as torture and detentions spurred by criticism of the state are regularly reported, and there is universal consciousness of the existence of red lines around speech and opposition, even as the lines are continuously being redrawn. International human rights groups have also uncovered numerous cases of torture and illegal detentions emerging from Jordanian assistance in American "War on Terror" rendition cases.

I chose to conduct field research in Jordan to gain insight into the Hashemite Kingdom's own intriguing human rights trajectory following September 11th and to get a small window into Iraqi human rights developments from the considerable presence of Iraqi activists, refugees, and official delegations either exiled in or frequently traveling to Jordan following the U.S. invasion of Iraq. I arrived in Amman at the end of May 2006. Just a few days into my trip, news of the wanton killings of twenty-four Iraqi civilians by U.S. Marines in Haditha and its cover-up by high-ranking U.S. marine officials broke.

Before arriving, I had collected a handful of names and phone numbers of Jordanian, Iraqi, and American activists involved in various human rights

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initiatives and I had scheduled an interview with the director of the Amman Center for Human Rights Studies, a Jordanian NGO that from its relatively extensive Internet presence seemed like a major player. I had made a contact at the NGO and hoped it could serve as my primary source for further contacts. After a very frank and elucidating interview with Nizam Assaf (presented extensively in chapter 4) on my first full day in Amman and after obtaining a valuable list of contacts from the Amman Center for Human Rights Studies' staff, I ran into some unexpected obstacles. My contact at the NGO resigned soon after I had arrived, and after a few days of digesting my line of interview questions that had focused extensively on U.S. human rights practices and promotion policies in the Middle East, Assaf had become somewhat suspicious that I might be more than just an innocuous researcher, prompting him to refuse me permission to sit in on the NGO's activities. A few minutes after sitting in on a training session for Iraqi human rights activists who were in the midst of a heated discussion about the impact of the Haditha massacre on their work, Assaf asked me to leave, explaining, "these are sensitive topics." He later refused to extend an invitation to a regional conference on criminal justice the center was hosting.

Although I was disappointed to miss these events, which no doubt would have enhanced my research, the experience did in some ways underscore the level of apprehension of both domestic and foreign sources with which Middle Eastern human rights activists have come to operate. Fortunately, I did not provoke as much suspicions in further contacts and successfully secured a number of revealing interviews with other Jordanian human rights activists, journalists specializing in human rights coverage in Jordan's major reform-oriented media, associates of the quasi-governmental National Center for Human Rights, UN officials, several Iraqi activists exiled in Jordan, and Americans involved in various human rights promotion projects. I left Amman on July 1, 2008, just a few days after the U.S. Supreme Court had announced what was considered one of its landmark detainee rights decisions in *Hamdan v. Rumsfeld*¹ and a few days before the start of the war between Hezbollah in Lebanon and Israel.

Whereas in Jordan the state is strong, in Yemen it is weak. The country is also by far the poorest in the region and the tenth poorest country in the world. This makes all sectors (governmental and nongovernmental) highly reliant on foreign aid. As a result, the government has been particularly responsive to American interventions, on the one hand revolving around who it should detain and with what semblance of due process within the context of the "War on Terror," and on the other hand revolving around pressure to adopt and institute various human rights and democratization reform measures. For most of the September 11th period, Yemen has had the second

¹ *Hamdan v. Rumsfeld*, 126 S. Ct. 2749 (2006).

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largest number of Guantanamo detainees and by the time I visited, human rights advocates sarcastically joked it had gained the honor of achieving the number one ranking. The confluence of pressure and aid to institute human rights reforms with American treatment of Yemeni detainees in Guantanamo and pressure for corresponding treatment of suspected terrorists at home has bred fascinating discourses and consciousness around human rights amid international power asymmetries.

Assisting with the United States' counterterrorism efforts was not much a matter of choice but one of necessity. Particularly, in the period immediately following the September 11th attacks, the Yemeni government's "cooperation" was propelled by a real fear that if it did not, it could suffer the same fate as Afghanistan. In recent years, with growing popular anger at American policies in the region, the government has occasionally put forth scathing criticism of the United States but has failed to act by changing its relationship with the global power. As one American embassy official put it, "From time to time, the government will organize a demonstration or march from one innocuous location to another innocuous location to protest American policies."²

Interestingly, Yemeni human rights discourses are among the most rooted in the region and certainly predate September 11th. The reunification of the country following a drawn-out civil war provided important openings for the institutionalization of certain human rights norms, for example, a mandate for multiparty elections and the articulation of a number of key rights in the constitution. The initial growth of Yemeni human rights NGOs began in 1999, and most human rights activists consider the past seven years a very productive era for the development of Yemeni civil society. As a result, Yemen is considered one of the region's most progressive in its upholding of civil and political rights and democratic reforms.

I had not considered Yemen as a possible site for field research when I embarked on this project in May 2004. However, several months after beginning the research, my interest in the unique Middle Eastern locale was sparked after hearing the country's then-human rights minister and several researchers speak. As I heard them describe Yemen's complex relationship with the United States within the post-September 11th human rights context and the centrality of the country's 100-plus Guantanamo detainees within its vibrant human rights engagements, I realized how valuable a Yemeni case study might be. I arrived in Sana'a in early January 2007, just after the *eid al-adha* (the Muslim festival of sacrifice at the conclusion of the *haj* pilgrimage to Mecca), which had this year coincided with the execution of Saddam Hussein in Iraq. A few days following my arrival also marked the fifth anniversary of the arrival of the first prisoners at Guantanamo Bay.

² Interview with U.S. embassy official (I), in Sana'a, Yemen (Jan. 23, 2007).

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Again, I entered the country with a list of contacts gleaned from various sources and the hopes that HOOD (The National Organization for Defense of Rights and Freedoms), the Yemeni NGO active in both local human rights issues and Guantanamo detainee cases, would serve as a primary contact. I also met a U.S.-based physician on my flight to Sana'a who took an interest in my research and offered to assist me in making government contacts. As a result, I had an interview with the foreign minister on my first full day and a meeting two days later with the Supreme Court justice who had received considerable Western media attention for his faith-based dialogs with Islamic extremists imprisoned in Yemen.

The interviews (particularly the former) offered little that added substantively to my research. By contrast, an extensive interview with the two primary lawyers at HOOD, Mohammad Najji Allaw, the experienced head of the organization, and Khaled Alanesi, its amicable director, proved extremely valuable and is presented in pieces throughout much of the book. At one point during the interview, Allaw, who posed an extremely cogent third-world critique of global human rights dynamics but occasionally slipped into conspiracy theories, mentioned that he never knows when a foreign visitor posing as a human rights activist or researcher like me is actually there for intelligence purposes. But judging from the duo's fairly warm reception, they did not plan to hold the possibility against me. After the interview Alanesi supplied me with a lengthy list of names to contact. Another highly revealing interview was one conducted with Amal Basha, the spirited and reflective director of the Sisters' Forum for Human Rights who was referred to me by an American women's rights contact working in Jordan. Like Basha, virtually every other Yemeni activist and journalist I encountered was extraordinarily open about the challenges, opportunities, and enigmas of Yemen's post-September 11th human rights predicament. The director of the American Institute for Yemeni Studies also assisted me in making a contact at the U.S. embassy in Sana'a and, after a number of e-mail exchanges, I was able to arrange interviews and discussions with several officials with varying ranks at the embassy. I left Sana'a's enveloping mountains, stunning ancient architecture, traditional attire, and immense poverty at the end of January 2007.

Both case studies provide a wealth of insight into the flux of American and Middle Eastern human rights dynamics in the post-September 11th era; however, the post-September 11th paths of other Middle Eastern countries have also contained abundant material relevant to the present inquiry. Egypt has always been a pivotal player in the region, has a civil society with broad and deep, yet still limited, roots, and has been flagged and funded as a key American ally in the region. It experienced smatterings of progress in the realm of political reforms but whatever inroads were made were quickly pushed back. The Persian Gulf states such as Saudi Arabia also present a

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fascinating wrinkle; despite their close political and economic ties to the United States, their financial independence allows them to answer American calls for reforms differently than an impoverished country like Yemen. Within the Gulf, Kuwait and Bahrain are notable both for their dynamic struggles for political reform and their elaborate state and civil society efforts to free Guantanamo detainees. Morocco, which is a bit further removed (at least geographically) from post-September 11th events (notwithstanding its involvement with American renditions and its extremist pockets), is another fascinating study in light of its institution of at least some notable human rights and women's rights reforms in recent years. Thus, to the extent possible, post-September 11th developments emerging from other Middle Eastern locales are also woven into the study via secondary sources.

The American case study serves as the fulcrum of this book, as most of its analysis is set against some aspect of American governmental or non-governmental action. Because the complex American disposition toward the human rights paradigm and the international framework institutionalizing it serve as the backdrop for the larger study in this way, chapter 1 is devoted entirely to the subject. The choice of the United States as a central site of field research was the most obvious given both the United States' overwhelming power and central role in post-September 11th human rights discourses and contests. I spent most of my time between January 2006 and January 2009 in Washington, DC. Most of my interviews of American human rights activists, congressional staffers, and journalists took place in the winter of 2006. I was rather surprised to find some of the American human rights activists I sought to interview highly inaccessible – standing in contrast to most Middle Eastern activists' eagerness to discuss their experiences with post-September 11th human rights developments, but perhaps also reflecting the seeping of Washington's "most powerful city of the most powerful country in the world" culture into the human rights sector. Still, because of my extended stay in the locale, I was able to eventually secure interviews with a majority of the American actors I hoped to reach. I also relied heavily on observation at forums and secondary sources in the American case study. However, tying down the case study proved a formidable task. There was simply so much activity – so many congressional debates, so many interviews with key actors in publications, ranging from *The New York Times* to *Esquire*, and so many conferences and forums – that from the onset it was clear that I could incorporate only a small sampling in the study. The same can be said of the Middle Eastern side of the research as well. As a result, the book lays no claim to being exhaustive in its ethnographic inquiry. Instead, it simply lays out different layers and dimensions of the post-September 11th human rights problematic in order to inaugurate the line of inquiry. This is done with the hope that this project can offer new analytical tools and

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insights for others to take up and further develop, expand, and complicate in the future.

INTERNATIONAL HUMAN RIGHTS AND POWER

It is important to note from the onset that in this project power is conceived in particularly broad terms as the capacity to shape outcomes impacting individuals' or groups' predicaments. The definition encompasses a range of both material and constitutive manifestations of power, including economic pressure, military force, imprisonment, and subjection to violence within detention, as well as the production, constitution, and deployment of norms and knowledge. Although what is known within the social science literature on power as "power over," namely, through the imposition of one's will over others, is central to the book's analysis, gradients of "power to" are implicit in discussions of resistance to power over and the role of social forces. Finally, power is presented as generally relative rather than absolute, multidimensional, fluid, dynamic, and capable of being possessed by individuals, movements, institutions, or states.

The view of human rights adopted is equally expansive and multifaceted. It is one that weaves back and forth between, and integrates, the paradigms' interconnected normative, political, and legal dimensions. At its core, human rights are a set of norms laying out a particular emancipatory vision. Legalization within the international legal framework is considered an important means for realizing that vision, ostensibly by infusing human rights norms with greater authority and capacity to bind states. Yet, since its inception, the international human rights framework has been confronted with questions regarding the regime's ability to fulfill its emancipatory promise in the face of both state power and powerful states. Legal positivists discount human rights law because of the lack of any sovereign power charged with its enforcement and rationalists associate human rights norms with material pursuits of "power" or "interests," viewing them as no more than instruments strategically deployed by actors to further or justify interests.

The post-September 11th era appeared only to solidify critics' skepticism and human rights advocates' anxieties about international human rights' captivity to power. The era has been, to a large extent, defined by "extraordinary renditions" that often sent suspects to be interrogated in countries known to have few qualms or real restrictions on torture, the graphic depictions of humiliation, abuse, and torture at Abu Ghraib, the real prospects of indefinite detention without the most basic of due process guarantees faced by detainees at Guantanamo Bay, Bagram, and other detention facilities, the "disappearing" of suspects the United States deemed of high value into

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the abyss of secret CIA black sites, Bush administration efforts to reshape domestic and international law prohibition on torture, and few prospects of high-ranking officials being directly held accountable for any of these policies.

At the same time, during this period the United States also consistently enlisted and co-opted human rights norms by linking justifications of its various military and political interventions in the Middle East to pervasive oppression and authoritarianism in the region. The human rights lexicon presented the United States with the opportunity to veil pursuits of interests and power with the veneer of nobility, sacrifice, morality, and justice. It proceeded to deploy human rights norms in such instrumental ways by tapping into and reproducing categories that designated the United States as a human rights promoter and Middle Eastern governments, cultures, and religions as human rights violators. Middle Eastern governments in turn often followed (or continued) suit, both through their use of counterterrorism as renewed license for curtailing rights and through calculated forays into the reform, democracy, and human rights lexicon.

As these dynamics unfolded, decades-old questions surrounding international law and particularly the human rights regimes' capacity to constrain states' (and especially militarily and economically powerful states') behavior in accordance with the normative framework, resurfaced. Observers revisited questions of whether the framework should be considered autonomous or subservient to international power asymmetries and whether it was disingenuous to continue designating international human rights law as "international" or as "law."³ In short, the era was gripped by an overwhelming sense that human rights norms and the international legal regime that codified it were in the midst of an existential crisis in the face of American power and its post-September 11th global policies. With no apparent force to compel compliance and damage from the delegitimizing effects of human rights norms' instrumentalization on such a grand scale, the human rights project was increasingly considered "weak" and its future uncertain.

As revealing as they were, however, post-September 11th developments could provide only a partial account of the operation of power vis-à-vis the international human rights regime. There were invariably other layers to the Abu Ghraib story as there were to the Guantanamo epic and efforts to co-opt human rights by American and Middle Eastern governments alike. Viewed through different lenses, each of these post-September 11th human rights phenomena also revealed the elusiveness, clumsiness, and vulnerability of power, the way it is apt to trap itself through its reliance on the morality

³ Doris E. Buss, *Keeping Its Promise: Use of Force and the New Man of International Law*, in *EMPIRE'S LAW: THE AMERICAN IMPERIAL PROJECT AND THE WAR TO REMAKE THE WORLD* 87 (Amy Bartholomew ed., 2006).

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of the human rights regime, the way it is trapped by human rights forces it seeks to co-opt, and the way it is resisted from within and abroad. Such dynamics stand as testament to the proposition that although governments could go to great lengths to veil their intentions to abide by human rights standards, there is no guarantee that they will succeed, laying the foundation for challenging power through a framework that it had already designated as legitimate.

Thus, a central thesis of this study is that in the post-September 11 era, human rights have simultaneously manifested and transcended power and international hierarchies. The era is not necessarily exceptional in its positioning of human rights between hegemony and emancipation. Several recent studies considering earlier periods have recognized that international law or human rights are neither entirely paralyzed by power nor entirely divorced from it but occupy a complex space in between.⁴ The era does, however, provide a wealth of material for a rich empirical study, because of the concentration and sheer volume of discourse, funding, and contestation centered around human rights it has engendered. In this sense, it presents a unique opportunity to add depth and nuance to understandings of human rights as simultaneously manifesting and transcending power relations or, as Amy Bartholomew has observed, conceptualizing human rights as a “site of struggle.”⁵

The empirical research undertaken draws from and brings together two emerging literatures within the international law and human rights scholarship. The first is the Third World Approaches to International Law (TWAIL) literature and corresponding critical scholarship that highlight the ways in which power relations among states, cultures, races, or “civilizations” can be assembled around and built into international human rights dynamics. The second is the international law and compliance, particularly constructivist-inspired scholarship, which tends to focus on the potential of norms and identities to foster compliance with human rights standards, notwithstanding power. Each framework illuminates important aspects of the human rights dynamics at play but takes the analysis only so far before it displays its limitations. The two optics are of greatest value when applied in concert as one’s strengths often serve to remedy the other’s limitations.

Adopting a research agenda in which power or hegemony figures so prominently can be fraught with its own trappings as it leaves an impression

⁴ See, for example, Nico Krisch, *International Law in Times of Hegemony*, 16:3 EUR. J. INT’L L. 369 (2005), or Oona Hathaway, *Between Power and Principle: A Political Theory of International Law*, 71 U. CHI. L. REV. (2005). The argument is also generally basic to constructivism, although constructivists tend to place greater emphasis on emancipatory openings.

⁵ Amy Bartholomew aptly uses the term in her work on human rights following September 11th. *Empire’s Law and the Contradictory Politics of Human Rights* *supra* note 3, at 180.

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of a totalizing conception of power. However, the focus on human rights' emancipatory potential is intended to signal a willingness to look beyond power to its unsettling through internal contradictions and to the various other social and political phenomena with which it intersects. In other words, this book is equally concerned about the relevance of power in the human rights context as it is with the irrelevance of power to the same. If the analysis takes as its starting point the many ways in which power is manifested through human rights, it concludes with a discussion of recommendations for further enhancing the emancipatory potential of the human rights framework.

The New Era's Inherited East/West Human Rights Geography

To understand the operation of power through human rights in the post-September 11th era, it is critical to identify one of the key ways in which power had been infused into global human rights dynamics long before September 11th. Since the regime's inception, the human rights project has been imbued with an entrenched hierarchy. Because of its unmistakable geographic demarcations, the hierarchy is referred to as the "East/West geography of human rights" in this project. At its core, the geography assumes Western liberal contexts' commitment to universalism and the furtherance of the human rights project while it conceives of non-Western countries, cultures, and races as inherently incapable of fully understanding or achieving rights on their own.

In recent years, a body of critical scholarship, much of it articulated within TWAIL literature, has mapped out the key elements of the East/West geography of human rights. This scholarship has interrogated the bifurcation of countries or cultures into human rights champions/guardians/leaders and human rights nightmares/burdens/projects and brought to light the designations' linkages to power, particularly in its constitutive or knowledge-based forms. Makau Mutua has written of the "savage-victim-savior" metaphor of human rights, in which non-Western states and/or cultures are cast in the role of savages, their population or segments of their populations (often women) are cast as victims, and Western liberal states and institutions take on the role of saviors.⁶ Similarly, Obiora Okafor and Shedrack Agbakwa have written of three problematic constitutive orthodoxies of mainstream human rights education promoted by international organizations and international non-governmental organizations (INGOs): (1) a "heaven-hell" binary in which the West is presumed a model of human rights compliance while the developing world is presumed to be a human rights nightmare," (2) "a consequent

⁶ Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, 42 HARV. INT'L L. J. 201 (2001).