

# Legitimacy in a Hegemonial System

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# Legitimacy in a Hegemonial System

A Critical Analysis of Arab Human Rights Documents,  
1981–2014



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*Il faut éclairer l'histoire par les lois et les lois par l'histoire.*

- De l'esprit des lois,  
Charles Louis de Secondat, Baron de Montesquieu

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## Abstract

This thesis provides a preliminary definition of the term *Arab human rights document* within the context of international politics. Besides their importance for legal studies and political science, regional human rights instruments are introduced as possible sources for historical research. Proceeding from that, the thesis offers a critical analysis of five different Arab human rights documents: (1) the 1981 Universal Islamic Declaration of Human Rights [UIDHR], (2) the 1988 Libyan Great Green Charter of Human Rights [GGCHR], (3) the 1990 Cairo Declaration of Human Rights in Islam [CDHRI], (4) the 2004 Arab Charter on Human Rights [ACHR] and (5) the 2014 Gulf Cooperation Council's Human Rights Declaration [GCCHRD]. Subsequent to an examination of their contents, structures, elaboration history and institutional background, it concludes that all of the above-mentioned documents contain significant deficiencies for an effective use as regional human rights instruments. Drawing from neorealist and critical international relations theory, the thesis aims to determine what historical principle gave rise to the emergence of the source material. For that purpose, it proposes a perspective that differentiates between unit-level and system-level forces. As such, the documents are understood to pursue specific, non-human rights related, interests by appropriating the legitimacy of international human rights discourse. Furthermore, the hegemonial structure of the international human rights system coerced the originators of the documents to adopt them as expressions of resistance to the system while retaining a legitimate identity in international politics.

## List of Abbreviations

<b>ACHR</b>	Arab Charter on Human Rights
<b>CDHRI</b>	Cairo Declaration of Human Rights in Islam
<b>DEPA</b>	Declaration of the Establishment of the People's Authority (Libya)
<b>GCC</b>	Gulf Cooperation Council
<b>GCCHRD</b>	Human Rights Declaration of the Gulf Cooperation Council
<b>GGCHR</b>	Great Green Charter of Human Rights in the Ğamāhīriyan Era
<b>GPC</b>	General People's Congress (Libya)
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICE</b>	Islamic Council of Europe
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>IR</b>	International Relations
<b>LAS</b>	League of Arab States
<b>NGO</b>	Non-governmental organization
<b>OHCHR</b>	Office of the United Nations High Commissioner for Human Rights
<b>OIC</b>	Organization of Islamic Cooperation
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UIDHR</b>	Universal Islamic Declaration of Human Rights
<b>UN</b>	United Nations





## Contents

I.	Introduction .....	10
II.	What are Arab Human Rights Documents? .....	13
III.	The Universal Islamic Declaration of Human Rights (1981): A Theology of Human Rights .....	20
IV.	The Great Green Charter of Human Rights (1988): Human Rights as <i>Infitāh</i> Policy .....	27
V.	The Cairo Declaration of Human Rights in Islam (1990): Human Rights under <i>Šarī'a</i> Law .....	34
VI.	The Arab Charter on Human Rights (1994/2004): An Effort against all Odds .....	40
VII.	The GCC's Human Rights Declaration (2014): Between <i>Šarī'a</i> and <i>Nizām</i> .....	48
VIII.	A Theory of Arab Human Rights Documents .....	53
IX.	Conclusions and Outlook .....	57
	Bibliography .....	60

## I. Introduction

« A la lecture de la plupart des ouvrages relatifs aux droits de l'homme rédigés par les musulmans, on a l'impression que leurs auteurs font comme le vendeur d'une vache : faire l'éloge de la vache pour parvenir à la vendre au meilleur prix. Et cela se comprend dans un monde où le discours sur les droits de l'homme a souvent un objectif polémique, politique et rarement philanthropique. Les musulmans d'ailleurs ne sont pas les seuls à adopter cette attitude. [...] Le résultat: un état stationnaire des droits de l'homme.

En insistant sur les violations des droits de l'homme dans le monde arabe, cet ouvrage voudrait sortir de cette logique. Son but n'est pas de vendre la vache, mais de la soigner. »<sup>1</sup>

In his seminal work *Les Musulmans face aux droits de l'homme*, Sami Abu-Sahlieh characterizes the state of human rights within the Muslim world as an “état stationnaire” contingent on the predominant discourse concerning the state of human rights standards itself. He concludes that previous discussions on this issue often carry a conception of human rights as a means to pursue a specific political agenda, i.e. using its polemical potential to frame the Muslim world solely as a violator of human rights. However, Abu-Sahlieh, with his detailed analysis of the Islamic discourse, genuinely seeks to change this paradigm and to contribute to the improvement of human rights standards within the Muslim world. This ambitious objective raises two fundamental questions: (1) how can research, an academic examination or scientific<sup>2</sup> analysis such as his *Les Musulmans face aux droits de l'homme* assist with the complex issue of improving human rights standards across the globe? And (2) *should* it do so, or, more specifically, should research carry further objectives than the mere pursuit of knowledge?

<sup>1</sup> Abu-Sahlieh 1994: 453.

<sup>2</sup> With the term *science* or *scientific* I allude less to the common English conception of the word that poses a juxtaposition of *science* on the one hand and the so-called *humanities* on the other. I understand it rather in the German sense of *Wissenschaft* or the French *science* that includes the *sciences humaines*, *sciences sociales* and *sciences naturelles* as three different manifestations of one broader intellectual endeavor.

The answer to these questions lies within the complexity of the problem. Only through a scientifically coherent approach based on exact and careful analysis are we able to first comprehend and subsequently to formulate the problem. A complex solution to a complex problem can only be based on its full comprehension and clear formulation, both of which necessitate an analysis that meets the requirements to successfully depict the situation we find ourselves in. Such an endeavor is especially difficult within a discourse that is often defined by competitive or even adversarial actors. Nonetheless, it is exactly this type of discourse which is in dire need of a sympathetic, though impartial and methodologically transparent, perspective. Only through this scientific perspective can actors break free from the dizzying perplexity of public discourse, and comprehend successfully the complexity of a problem that is contingent on the discourse surrounding it. In this case, science has to be both a detached observer, bound by intellectual standards, scientific principles and scholarly provisions, and a determined actor pursuing to shape discourse in accordance with his/her conclusions on a given matter.

Turning back to *Les Musulmans face aux droits de l'homme*, we can now understand what Abu-Sahlieh envisioned with his allegorical phrasing of “[le] but n'est pas de vendre la vache, mais de la soigner”. Improving human rights standards within the Muslim world is contingent on the very discourse it is surrounded by. Within this discourse, different actors, i.e. states, organizations, politicians or intellectuals, tend to abuse human rights as a pretense for critique, white-washing or deflection. Rarely do members of the discourse use human rights as a legitimate tool to improve the conditions of human life by universal entitlement to a specific set of unalienable rights and the protection of individuals from states – the initially envisioned and still primary function of human rights.

An attentive follower of international politics is inclined to ascribe the term *human rights* inflationary tendencies emerging from over-excessive usage. In international discourse, it seems that human rights have turned from a powerful concept for the advancement of living conditions across the world to a mere phrase. Although Abu-Sahlieh shares this perception, he fails to offer a theoretically sound explanation of this phenomenon. How is it possible

that the discourse which was initially intended for effective usage of human rights as a tool for improving human living conditions rendered that concept inoperative by over-usage? What are the conditions which led human rights to become nothing more than a hollow shell, instead of a purposeful term in international politics?

An attentive reader will immediately recognize the centrality of this issue. Consequently, an exhaustive account such as *Les Musulmans face aux droits de l'homme* should address this issue and explore possible explanation models. I believe that Abu-Sahlieh failed to do so, not because of neglect, but rather because of lack of methodological tools to assess the situation. As he conducts his research along the lines of religious and cultural studies, carefully dissecting elements of Islam in accordance to central human rights claims, he touches only upon one aspect of human rights. Though this approach is justifiable and capable to deliver new insights, it falls short of living up to the complexity of the overall issue. A convincing study of human rights has to consider facets such as religion and culture, but should also include a contemplation on other aspects like politics, international relations, political philosophy, law, legal theory and history, among others.

The multiplex nature of human rights is especially challenging when dealing with human rights outside the so called "western political sphere". For instance, research devoting itself to human rights within the Middle East has to provide the necessary requirements to understand the manifestations of human rights in culture, history, law as well as domestic and international politics of its respective region of interest, whilst being able to draw from all the different disciplines relevant to these aspects. However, within Middle Eastern studies, scholars are usually devoted to one or two of these disciplines. They mainly perceive themselves as either historians, cultural and religious scholars, linguists or political scientists. At the same time, human rights scholars, who might be able to address the complexity of the issue, often lack the necessary tools to transfer their expertise to other non-western cultural contexts missing the historical, cultural,

religious and linguistic knowledge that is required for such an undertaking.<sup>3</sup>

In consequence, the subject of human rights within the Middle East stays a mostly uncharted realm that is only explored by academic works which tend to focus on one or two of the mentioned aspects. Unfortunately, like Abu-Sahlieh's approach, those works achieve at best an exhaustive account of one side-aspect, but neglect the overall complexity of the issue. In the case of *Les Musulmans face aux droits de l'homme* we are able to understand how certain core aspects of Islam, as faith and religion, relate to central human rights aspects. However, we then fail, for instance, to place those very insights into a theoretically based perception of the human rights discourse in international politics. The necessary methodological tools, in this case derived from international relations theory, still have to be successfully introduced to the discipline of Middle Eastern studies with regard to human rights studies.<sup>4</sup>

An elaborate exploration of human rights within the Muslim world necessitates the interplay of four disciplines: History, legal studies, political science and cultural studies including mostly Islamic studies and Arabic studies if not even other relevant linguistic disciplines. A comprehensive, transparent and interdisciplinary approach has yet to be provided.

The present thesis is a first step in that direction. It attempts to provide the basis for an interdisciplinary study drawing from Islamic studies, Arabic studies, political science and international law studies to analyze a certain set of human rights texts originating from a non-western context. Drawing from these fields of expertise, I will be able to analyze a subcategory of non-western human rights sources, namely human rights documents<sup>5</sup> originating from an Arab context. Organizing the material along these and not religious lines allows for a broadening of perspective concomitant to shrinking linguistic

<sup>3</sup> I am aware of the issues arising from the differentiation between *western* and *non-western* states or societies, especially during highly globalized times, that are characterized by both cultural hegemony and multicultural phenomena. However, I still believe that a scientific examination of culture, religion or politics demands different theoretical and methodological approaches according to their structural contexts.

<sup>4</sup> For general introductions on international relations in Middle Eastern studies, see Gerges 1991 and Halliday 2005.

<sup>5</sup> A classification of human rights documents and their importance for the study of human rights will follow in the next section.

requirements to a workable amount. Thereby, I will be able to analyze a highly divergent set of documents, while having to rely only on Arabic, English and French source material.

I will then try to determine the possibility, whether the analyzed material shares certain characteristics which would render all documents as manifestations of a general historical principle rather than unrelated, individual instances of human rights propositions. Consequently, a summary of my research can be formulated according to the following questions:

- What are Arab human rights documents?
- How can they be analyzed?
- Do they share essential similarities and/or differences with regard to origin, structure, content and (intended) effect?
- Is it possible to establish a general theory of Arab human rights documents based on these considerations?

To answer those questions, the thesis is structured into four sections: the first (Chapter 2) aims to provide the necessary conceptual basis for the research endeavor. It will give a general definition of the term *Arab human rights document* and will discuss fundamental terminology as well as modes of operation for a comprehensive analysis of such documents. Formulating this theoretical basis will take up a considerable part of the thesis. This is due to the fact that previous research on this subject is scarce and no comprehensive approach, including an investigation into the necessary conceptual preconditions, has not been provided yet.

The second section (Chapters 3-7) will discuss the source material in greater detail. Here, I will examine each document with regard to its origins, structures as well as contents and provide a survey of previous academic efforts on the matter.

The third section (Chapters 8 and 9) will embed the source material into a broader theoretical context. As such, it will determine essential commonalities shared among the texts and demonstrate how these could be explained by a general theory of Arab human rights documents. Proceeding from that, the thesis will provide a conceptualization of the modern system of human rights that serves as a possible explanation for the emergence of the discussed docu-

ments. Finally, I will propose the main conclusions to draw from this thesis. As such, I will offer some critical remarks on methodology and theory as well as a general outlook on the issue of human rights in international politics and the Arab world.