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Righting Dissent: Intellectual Critique and Human Rights in Egypt

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Abstract

This dissertation combines intellectual history and political theory to discuss the internal debates among Arab – mostly Egyptian – intellectuals around the fledgling human rights project over the past three decades. I focus on the origins of this project among intellectuals who emerged out of the radical student movement of the seventies, and who therefore had to negotiate a relationship between human rights and their earlier radical activism and with leftist critiques of human rights. I attempt to bring into dialogue contemporary academic critiques of human rights with themes that emerged out of those local debates and intellectual practices. To achieve this, I use a conceptual methodology that treats "critique" as a situated social practice shaped by shifting local and global problem-spaces. The primary problem-space in this case is the post-independence state and its increasing neo-liberal authoritarianism, which those intellectuals saw as a call for re-examining the entire paradigm of national liberation and its pitfalls. Such a perspective permits a fresh look at perennial issues in critical and post-colonial thought, such as tragedy, memory, jurisprudence, secularism, ethics, violence, nationalism and cosmopolitanism.

I have three primary goals in mind: 1) to see how an alternative framing of human rights can be contrued; 2) to critique hegemonic framings of human rights; 3) to produce a "critique of the critique" of human rights from a local perspective. To this end, I propose a "neo-republican" reading of rights that emphasizes rights as primarily about rights to citizenship and an ethic of political participation. This work can be read as contributing to the literature on human rights, intellectual history, as well as social and political thought.

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[1] To protect the safety of my Egyptian friends and interlocutors, I have decided to anonymise their names. They will still recognize themselves.

1. Introduction

The rebellions that rocked the Arab world ten years ago did not materialise out of thin air. In Egypt, for example, a thread of mobilisations could be traced back to several events, among them the 2003 protests against the Iraq war and before that, the protests in solidarity with the Second Intifada. At each of these moments, new political networks emerged and crystallised, and new solidarities and coalitions would be built. A new political subject was in formation.

Whenever these new groupings need spaces to organise or conduct their meetings, they will not resort to political parties. Instead, the Hisham Mubarak Law Centre (previously the Legal Aid Centre) opened up its modestly-furnished space. There, these rebels will rub shoulders with likeminded lawyers and full-time researchers — the "*huquqiyun*" (the rights advocates). They may also run into the workers affiliated with Dar al-Khadamat al-Niqabiyya (Syndicate Services Centre) who meet there bimonthly, to listen to experienced trade unionists discuss the intricacies of socialist practice. They may also receive news of a recent strike or a legal battle to form an independent syndicate. There, a young rebel will learn the phrase "citizen journalism" and get to see it in action, as news of a case of police torture or a mass crackdown of a protest will quickly circulates among dissident journalists, bloggers, and lawyers.

And in January 2011, the young rebel will stay at the Hisham Mubarak Law Centre over night, but not to rest. There is no time for rest. Volunteers in the Protest Defenders Front will be running around frantically to create lists of detainees' names, updating their database, sending lawyers to police stations, collecting and distributing supplies. The space is a hub of collective activity, so vital that during the night of February 2, about a week into the uprising, police forces raided the centre and arrested its leaders. This will not put a stop to the frantic bustling around the Centre.

According to Samuel Moyn's influential critique of human rights, the recent project of human rights came to replace alternative utopian visions of social transformation (2010, 1-4). More specifically, human rights shift attention away from claims for redistribution to claims for a "minimum entitlement" of primary goods (Moyn, 2018). Moyn is not alone among intellectual historians, political theorists, and critical legal theorists in making this argument about the human rights project and its theoretical underpinnings. Human rights are said to depoliticise

social struggles. They focus politics on individualistic discourses of "injury" that reify victimhood (Brown, 1995, 2002, 2004). They ignore demands for redistribution and are overly elitist and professionalised (Kennedy, 2011). They are wedded to imperialism, military intervention, and a global vision of Christian salvation (Douzinas, 2000, 2007; Hopgood, 2013). They have an essential relationship to neoliberalism (Whyte, 2019). They naturalise historical concepts of personhood and "the human" which have become archaic and inadequate (Douzinas, 2019).

The story I started with here provokes a very different understanding of the role of the human rights imaginary in emancipatory struggles, suggesting that some questions remain unanswered. It indicates that in certain situations, political revolutionaries will have recourse to the language and practice of rights. Moreover, they may see no contradiction between a commitment to social transformation on the one hand, and the much "thinner" language of right. It is thus imperative to ask what may account for the attraction of street activists, dissidents, and revolutionaries to the legal and moral language of rights? Secondly, does such an attraction entail a diminution of utopian impulses? Relatedly, does the predominance of the normative language of rights help explain the failure of recent global rebellions and mobilisations, chief among them the Arab uprisings?

These questions must be located in a wider global history of the relationship between leftist theory and human rights. This dissertation aims to do so, weaving together two lines of investigation. It is both a contemporary intellectual history and a text in political theory. As a contemporary intellectual history, it tells the story of how Egyptian leftist students and intellectuals came to adopt the language of human rights in their thinking and practice from the mid-1980s up until the Arab uprisings in 2011. The second level of my analysis places these intellectuals and lawyers in a reconstructed dialogue with post-Marxist "radical" or "critical" theoretical responses to the rise of the "Age of Rights" (a phrase taken from Bobbio, 1995).

In my telling of the story of the emergence of the "human rights project" and its intellectual background, I will be tracing the normative and political debates that took place among dissident intellectuals around the question of "human rights." Unlike common caricatures, these individuals were not blind to the consequences and possible costs of their decisions. By looking into their reasoning and self-justifications, I will be teasing out the implicit

political theory underlying their activities. I believe that such a constellation of ideas and intellectual moves can make a contribution, or challenge, to the academic debate around human rights and to critical theory. A second aim will be to use this constellation of ideas in order to construct a critical theory for contemporary Arab societies — a critical theory that can immanently criticise and engage with the struggles of the present, and that has an internationalist scope and ambition as well.

The kind of political theory I attempt to formulate here, in conversation with this intellectual history, offers an alternative reading of human rights and their political function. It incorporates the insights of the critiques of human rights I referred to above while explicating the potential utopian energies that are muted in them. This is similar to Costas Douzinas' recent proposal of a utopian perspective on rights, inspired by "Ernst Bloch's theory of the future as the not-yet" (2019, 180), which is inscribed as a "cosmopolitanism-to-come" (2019, p. 178) prefigured by the religious, radical tradition of natural law (see Bloch, 1986). Yet, unlike Douzinas, I will not locate this radical utopian impulse in the "natural law" or "natural right" traditions. My investigation uncovers how these Arab or Egyptian intellectuals and lawyers invoke a different kind of language, one that can best be identified with "neo-republicanism" and its elevation of citizenship, the free city, civic virtues, political participation, and resistance to tyranny and domination. More surprisingly, perhaps, they always related these ideals to a longer history of struggles in which they located themselves, thus forming a connection and continuity with the history of "national liberation," the very tradition they severely criticised and wished to transcend. This mix of neo-republicanism and historical self-understanding demands a very different kind of sensibility from that offered by the metropolitan perspective.

Three problems, three goals

Three problems triggered the discussion that will be pursued throughout this dissertation — the imaginative geography of theory, the humanitarian standpoint, and the limits of the critique of rights — and the three corollary goals I will aim to pursue.

The "imaginative geography"[2] of theory refers to and challenges the confinement of "theory" or "philosophy" to Western academia or think tanks while "practice" is left to local activists and professionals. This geography is a common feature in both the contemporary Left and the field of human rights. Despite the differences and conflicts between these two fields, both are characterised by an underlying assumption that the centre of universal theory lies in the metropolis and gets "diffused" to the periphery (see Bardawil, 2020). This explains, for example, the common misconception that the Arab uprisings were leaderless or did not have intellectual influences. I do not mean that my goal is simply to include Arab and non-Western voices in the production of theory, or to "decolonise" the philosophy of emancipation, as noble as these goals may be. It is my contention that efforts to "decolonise" will reproduce the parochialism of academic theory as long as the geography and political economy that underpin the circulation of universals remain unacknowledged.

I also do not mean to include another Other against the dominant, overwhelming voice of the Western Self. I pursue a different strategy, the best metaphor for which is a "mapping of the circulation of universals." This mapping traces the way universals (such as socialism, rights, or feminism) circulate, translate, transform, and reform. Like the circulation of value, the circulation of universals is subject to transformation, transposition, and rearrangement that can and must be narrated with reference to both global (capitalist) and local histories that are expressed in terms of these universals (see Balibar, 2020). Human rights, like all other such abstract universals, are susceptible to such surprising effects.

When viewed from the metropolis, "human rights" evoke the rights of those without rights — the human subtracted from all determination, qualification, locality, polity, and home. This martyred figure of the human is subject to a "humanitarian standpoint" which can only summon pity, horror, and evangelist zeal, a drive to rescue this hapless and helpless human from his or her fate. The issue here is not simply one of "representation" of those who cannot be represented. Rather the issue, again, is the particular imaginative geography that underpins the humanitarian standpoint. In this imaginative geography, human rights are unlike other "civil" or "social" rights, because they do not belong to the citizen by virtue of entering into a social

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[2] I borrow the phrase "imaginative geography" from Edward Said (1979, p. 49).

covenant, but to the human by virtue of her humanity. This humanity confers upon the individual a "property" — a claim to life and respect. Yet it so happens that the only property that could belong to humans as such is their bodies, or in Marxian terms, their labour power.[3] The machinery of the humanitarian standpoint then actively arranges the conditions for the production of labour power of those who have been discarded and ejected from the chains of production, without any investigation into the causes of this ejection in the first place. To paraphrase Arendt — they can't even be exploited, because no one wants to exploit them.

As I explain later, even philosophies of human rights that claim to depart from "natural rights" and adopt a "political approach" (led by John Rawls) repeat and solidify this geography in even starker terms. By claiming to abandon the metaphysics of natural right or Kantian ethics, Rawls promises to provide a political justification for human rights grounded in public reason, informed by an "overlapping consensus" and its respect for reasonable pluralism (see Rawls, 1999, 2005). But it turns out that all this offers us is an even more truncated list of rights, with various rights removed and subtracted from the full list of civil and political rights claimed by individuals in liberal, democratic polities. Even more dangerously and revealingly, these properly "human rights" are non-metaphysical in a deeper sense: They function as triggers of foreign intervention once respective states cannot uphold them. According to this vision, the very essence of human rights — stripped of their metaphysics — is the minimum justification for sending out the humanitarian rescue mission. Rawls has revealed that beyond the metaphysics of Kantian ethics lies a vision of the world according to which "humanity" and "human rights" belong out there, across the colour line, outside the polis. This is one step away from the assertion that human rights are a gift bestowed upon the rest of the world by American power and its political philosopher cheerleaders under conditions of permanent humanitarian siege.

The most important philosophical critiques of human rights — such as varieties of communitarianism or "virtue ethics"— cannot fare better either, and nor can they completely discard the humanitarian standpoint. Here, those behind the colour line are patches of "community." They are unrelentingly Other, and it is their Otherness that calls for rescue. It is as if we have never left the late 18th-century Romanticist debates in response to Kant, particularly

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[3] But see Baxi (2002) for a different interpretation of contemporary rights discourses, which he contends may carry a kind of polyvocal logic beyond the claims of white, propertied males.

around nation and race. It is as if we have forgotten, too, that colonial administration did not simply propagate its destructive civilising mission, but was keen on classifying and producing "community" (rendered as race). The new communitarians collude in this renewed effort at global imperial administration — the debate merely revolves around who shall carry out this administration.

The (neo)liberal and the communitarian cooperate in blocking and evading the political, the space where the tragedy of *fortuna* is played out, where the mask of equality is fabricated out of the to-and-fro of class agonisms, where vice and virtue frequently change place.

In contrast to the metropolitan "humanitarian standpoint," the view from the vantage point of the local intellectuals I am interested in here is very different. Despite their best efforts, they could not evade "the political," which proved itself too significant and too palpable. To begin with, there was no question of reducing and subtracting "the human" from "the citizen." Writing and labouring under the constant threat of persecution, arrest, or potential exile, there was no hope of escaping the question of dominium. The direct torments of tyranny, civil war, and occupation compel the writer to contend directly with the original questions of political philosophy: the sources of tyranny and strife, the constitution of the *res publica* and the *polis*, the notion of the good that could be strived for, the education of the virtuous citizen in her everyday vocation and craft. It is no coincidence that another writer from prison, Gramsci, also turned to Machiavelli and Hegel to ponder these questions from the troubled darkness of his cell. These are the circumstances where "human rights" take on a different shade.

Against "the humanitarian standpoint," I map out the way universal rights-talk circulates, translates, and transforms itself. Instead of pitting "local intellectuals" against (or with) "Western theory," I will place both within the same field of interrogation, locating convergences and divergences, different emphases and priorities, various shades of meaning, multiple pragmatics of concepts as determined by local contexts. In short, I wish to imagine and reconstruct the "imaginative geography" of theory, to demonstrate that universals are shaped and reshaped by their capacity to circulate.

Secondly, doing so will enable an attempt to transcend the philosophical deadlock between the liberal apology for human rights and the critiques of them. This critique of the

critique of human rights leads to a neo-republican conception that keeps open (but cannot guarantee) the possible restoration of a utopian, emancipatory perspective.

This project can thus be read from two angles. It can be read as a contemporary intellectual history of Arab — mostly Egyptian — intellectuals and activists who were drawn to and developed the idea of a "human rights movement." I will particularly focus on those intellectuals who had taken part in the radical student movement of the 1970s, and who had identified with Marxism, exploring how they understood, justified, and debated the shift towards "human rights" as an alternative *modus operandi*. I ask: What motivated this shift? How did they understand it? What were the intellectual and political influences that fed into this move? What sorts of problems, challenges, and debates did they get caught up in? The second angle can be located in the broad field of the political theory of human rights. The local debates I follow, placed into dialogue with their "Western" counterparts, issues in an urgent need to reconsider the ontology of human rights and their normative justification.

My goals correspond to the three "problems" I started with earlier and their relevant audiences. To the local "human rights community" of the Arab world, and Egypt in particular, I wish to provide a critical theory that may codify and clarify their work . I know it is very difficult — if not impossible — to achieve an ambitious global view of philosophical questions in the midst of everyday struggle and repression. This is my contribution to these friends in the spirit of solidarity and support. I also wish to wear the mask of mediator, advocate, and interpreter located between local activists and their critics from the metropolis.

To the global human rights movement and its philosophical spokespeople, I urge a reconsideration of the philosophical foundations of dominant understandings and their fatal apolitical tendencies. I try to provide an alternative that is more open to other radical traditions that could become partners in the struggle for a better world. I clarify the terms that could enable such partnerships.

And to critical theory, I suggest one way of making use of normative concepts is to analyse the struggles and troubles of postcolonial modernity. In this vein, I will be charting out the mode of analysis pursued by these intellectuals, and concurrently, explore the political, ethical and strategic implications that this mode of analysis gives rise to. Such a reconstruction

then paves the way not only for a "dialogue" or a "translation" between local and global discourses, but a clarification of the terms, references and interests that could inform such a translation.

Human Rights in Social and Political Thought

The contemporary rise of "human rights" corresponds to two divergent intellectual tendencies in social and political thought. The first tendency can be described as a turn towards normativism (of a very particular kind) in political theory, while the second tendency is an ethical critique of the "subject of rights," a critique that can be found in communitarianism, virtue ethics and post-structuralist legal theory. In political theory, there was a renewed interest in developing post-positivist political reasoning. The critique of positivism and utilitarianism paved the way for a return to the language of rights in the figures of John Rawls (1999, 2005), Ronald Dworkin (1977), and Jürgen Habermas (1996), as well their students and interpreters. These authors share the desire to break out of the normative deficit of legal positivism by devising a post-foundational, procedural account of rights that may supplant classic natural right theory.[4] They therefore devise a political procedure either for justifying or determining the list of rights — whether "human" rights or specifically "constitutional" rights. Rawls (1999, 2005) produces a list of "urgent rights" that develops out of an overlapping consensus between "decent peoples," the violation of which triggers foreign intervention. For Dworkin (1977), humans have the rights to "equal respect and concern" from their states, and therefore rights act as "trumps" against state policy and are both a limit and justification for state legitimacy. For James Griffin, rights are moral rights founded on a universal normative agency, which greatly resembles Kant's definition of autonomy as a capacity for self-legislation. Charles Beitz (2009) develops a "practical approach" out of Rawls' preliminary ideas in *The Law of Peoples* that looks at human rights as discursive norms of public reason. He also pursues an ontology of rights based on "public reason" as a "standard of international legitimacy." The key difference between Beitz and Rawls is that the former understands public reason not as a fixed overlapping consensus between

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[4] For more on the history of this "political" conception of human rights, see Baynes (2009a, 2009b) and Valentini (2012).

"decent peoples" but as a progressive convergence towards agreement. Beitz and Rawls agree, however, that human rights are not moral universals, but rather political, practical, and functional prerequisites and results of compromise and consensus.

The trouble with such a procedural impulse is that it creates more confusion than it solves. Are rights the responsibility of an "international community" or the "state"? Are they moral rights or specifically legal rights? Are they the constitutional foundation of state legitimacy or are they a "check" upon state sovereignty? Are human rights a different subset from constitutional rights or are they coextensive with them? And most controversially: Do human rights refer to a moral foundation (say: dignity, agency, respect, capability, or need) (Griffin 2008, Waldron 2013, Sen 2009), a moral sensibility (Tasioulas 2010), or are they simply a political and functional prerequisite for international co-existence (Rawls and Beitz)? The very idea of an a priori proceduralist framework is ambiguous with regards to its status.[5] Rawls and Beitz deny the need for any reference to an essential human universality, and assert that the requirements of consensus and public reason are sufficient to ground and justify rights. But Rawls' original position suffers from a circularity in that built into it are certain assumptions about moral rationality that are taken as axiomatic and which lead directly to a rights-based understanding of justice, when it is this very rationality that requires justification. Most importantly, there is a historical-sociological deficit in these accounts in that they ignore the social context in which rights are claimed, codified, institutionalised, and enforced, therefore they cannot give an account of how rights actually come into being. Because they remain on the abstract plane of procedural reasoning, they fail to consider the materiality of rights in actual social relations, and hence cannot give an account of the failures of right either. And without an account of how and why rights fail, the theory is unable to provide political insight and falls into political apologetics, as in the case of the uses of Rawls to justify imperial interventionism.

Habermas deserves special treatment in this respect because while he ultimately arrives at a proceduralist theory of law, his thinking has the advantage of corresponding to a social theory of rights too because it considers both the ideal and institutional or material sides of law.

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[5] The only exception to this tendency may be Joshua Cohen, who has come closest to the alternative I attempt to build in highlighting the way rights are linked to membership in social and political institutions, and by proposing a "right to democracy" (for example, see Cohen, 2004).

Habermas' sociological theory of law is grounded in his earlier work on communicative action and the system-lifeworld dualism (Habermas 1987b, 2004), while his moral theory develops out of his procedural "discourse ethics" (Habermas 1990). On the one hand, Habermas' early social theory demonstrates that there remains a normative possibility in modernity that is not exhausted by instrumental or strategic means-end rationality, and which lies in communicative action (action oriented towards understanding) and its institutionalisation in the bourgeois public sphere. But the sociological potentiality of communicative action requires that moral and legal structures of reasoning become "rationalised" through the separation of different forms of validity that were previously integrated through religion and myth: scientific validity (truth), moral validity (rightness), and aesthetic validity (beauty). His "discourse ethics" elaborates the procedural, universal, and pragmatic principles of communicative action as already carrying within them the normative implications important for modernity and as able to serve the function of delineating the separate forms of validity and justifying them. These principles allow him to replace Kant's individualist, subjectivist account with an intersubjective one based on a model of rational argumentation. Finally, his theory of rights, elaborated in *Between Facts and Norms* (1996) weaves together the "sociological" and "ideal" sides of his work by demonstrating that modern constitutionalism can successfully mediate the modern tension between liberalism (Kant) and republicanism (Rousseau), or freedom and democracy, which he argues are in fact "co-original" and presuppose one another in modern polities. In this way, Habermas shows that human rights cannot be separated from democratic will-formation and action, since they are normatively grounded in the uniquely modern principle of collective self-legislation — that is, the principle that those affected by political decisions must legislate them themselves — and that civil and political rights (rights to political participation) institutionalise the formal mechanisms through which democratic decision-making can occur. As such, the ideal principle of discourse ethics is already institutionalised in modern constitutions, while its sociological requirements exist in the institutions of civil society, the parliamentary system, and the public sphere. Habermas finally transposes such a theory onto the international system to argue for a further elaboration of a cosmopolitan system of right modelled on a similar constitutional structure. Such a model should surpass the Westphalian system of states, which he asserts has been exhausted by globalisation, and replace it with more fluid federal principles (Habermas 2001, 1998). This is the "Habermasian" version of Kant's *Cosmopolitan Right*.

Habermas' work is already far ahead other liberal theories since it has the unique advantage of connecting the "ideal" and "sociological" sides of rights in one theory, and can thus sidestep many of the philosophical dualisms of human rights in its conception of rights as deliberative-democratic. This can be seen clearly in the work of Seyla Benhabib (2004, 2011), particularly her concepts of "democratic iterations" and "jurisgenerational politics," where the demands for universal rights and citizenship are appropriately mediated within the national (and global) public sphere. This is how Benhabib wishes to negotiate Kant's universalism and Arendt's "right to have rights." The key contribution of Habermas and deliberative-democratic theorists is the understanding that no concept of human rights will be intelligible without a corresponding theory and practice of democracy. Moreover, this account can be extended to justify claims for social and economic rights within liberal theory, since they can be conceived to stem from the prerequisites of effective political and civic participation.

Nevertheless, Habermas' work faces problems of its own. Firstly, the historical meta-narrative grounding his social theory is exclusively Eurocentric and therefore cannot account for the relationship of colonialism to the emergence of the bourgeois public sphere and civil society, modern constitutionalism, the welfare state, or the international legal order (see Allen 2016). This is not an incidental or marginal aspect of his work. On the contrary, Habermas cannot think of a modernity that lies on the outside, or underside, of the legal-rational order he imagines as constitutive of modernity. This leads to a severely functionalist notion of law under modernity and places many forms of violence and oppression outside the purview of his story. Related to this functionalism, is the proceduralism that underpins it. The resort to universal procedural principles, while powerful in describing the logic of modern rationality, reproduces an account that leaves out many conditions necessary for universal mutual recognition: a concern with the body, need, emotion, desire, and particularity (Bernstein 1995). A social theory of right that focuses strictly on transcendental principles while ignoring the materiality of bodies and needs will provide a truncated understanding of law and democratic action too.

Opposite tendencies also emerged in social theory and critical legal theory, once the faith in the autonomous legal subject was shaken in the wake of the exhaustion of Marxism. Communitarianism — in the figures of Alasdair MacIntyre (2007), Michael Sandel (1998), Charles Taylor (1989), and Michael Walzer (1983) — shares a suspicion of the dis-embedded,

culturally neutral model of the human, and is heavily informed and imbued with an ethical philosophy that is inspired by Hegel, Aristotle, and virtue ethics. Meanwhile, post-structuralist social theory took its ethical initiative from other sources, most prominently: Emmanuel Levinas' "ethics of the Other" (1969); Michel Foucault's "ethics of the self" which refers to an aesthetic, rather than simply moral, ideal of self-making (1997); and Friedrich Nietzsche's (1989) genealogical method of anti-metaphysical thinking as itself carrying normative weight. Briefly, what these post-structuralist critiques share is either an a priori scepticism of Kantian moral reasoning in general, or they base their critical method on a specific suspicion of the Kantian autonomous subject, who, it is argued, dominates at the expense of the Other, community, habit, identity, the body, language, or aesthetic experience. The critiques proceed by exposing how modern liberal rationality is constituted by the suppression of all particularities that stand obscured and denied behind legal consciousness. It is not only the individual at the heart of liberal theory targeted by these critiques, but also the collective revolutionary subject of Marxist theory.

This social theory of right faces the opposite problem of Habermas. This can best be seen in Foucault whose entire oeuvre is animated by the desire to sidestep the classical problems of legality and right, which he summarises as the necessity of "cutting off the king's head" (1978, pp. 88-89, 2003). Foucault argues that modern law — in its Hobbesian image — is solely repressive, and therefore he represents an alternative "productivist" notion of pre-legal positive power as prior to the realm of legality and sovereignty. In this way, Foucault risked smuggling in what Habermas called a "cryptonormativism." (1987b, p. 285)[6]. In his later work, Foucault clarified what the normativity that underpins his genealogical method may look like, with his renewed attention to technologies of the self and self-conduct, inspired by ancient Stoicism, which he attempted to re-insert into a post-Kantian ethic of enlightenment.[7] As such, Foucault's later work may be read along the lines of virtue ethics, something that Talal Asad carries out.

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[6] For more on the Habermas-Foucault debate, see Fraser (1989) and Ashenden and Owen (1999).

[7] Other similar remedies exist, and several concepts are inserted into the conceptual edifice to fulfill this desideratum: Agamben's "coming community" which is modelled after the early Church (1993), Benjamin's divine violence (1986 [1921]), the aesthetics of bodily self-fashioning (Foucault 1997), Levinas' ethics of the Other which overcomes the violence of the modern self (Levinas 1969), Asad's notions of embodiment and discursive tradition (2009), the play of language-games and narrative (Rorty 1989), or virtue ethics (MacIntyre 2007). This list is far from exhaustive.

The lacuna or gap that remains under-clarified, however, is how these two sides of Foucault come together. In other words, from where can such an ethics emerge? Do modern technologies of power unwittingly enable them? If so, how? And if there exists a heterotopia that remains untouched by the spell of modern power, what conditions and structures such a zone?

Many alternative New Ethics can be consulted to address these questions.[8] This thinking looks to resist the formal, abstract, cognitivist, and subjectivist prejudices of modern legality and reason, and hence aims at filling an ethical "void" or "gap" that makes modern law and the state particularly violent and coercive. New Ethics thus seeks to propose a notion of inter-subjectivity, or a social ontology, that is imagined to exist beyond the rigid and rationalistic tyranny of contractual right. Nevertheless, this New Ethics of the body, virtue, community, etc. also poses another risk if these notions are naturalised and ontologised as prior to, outside of, or "other to" the modern rights regime. By fixing "the Other" in this way, as natural and "other" to the law, the relationship between the law and its Other remains unclear, just as in the case of liberalism. In absolutising any notion of an Other, the ways the law may shape "heterotopias" become even less open to specific analysis, and further, such absolutes become mystified and beyond critique, politics, or judgement. Politics always exists between law and morality — what is and what ought to be, but New Ethics avoids that "in-between" of law and morality, by being outside both, and hence it risks unwittingly contributing to the increasing de-politicisation of positive law. The dichotomy of control and freedom in the social theory of right continues to oscillate between these two extremes that ultimately become impossible to differentiate in theory or in practice. The political as such, the structured space where power is contested, recedes even further into the background.

Foucault-inspired analyses of law share this ambiguity. Wendy Brown (1995, 2004) argues that rights are connected to "disciplinary power" through which identities and material inequalities in civil society are concealed, and are replaced by the generation of a desire for

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[8] I borrow the phrase "New Ethics" from Gillian Rose's *Judaism and Modernity* (2017). In the introduction to the book, Rose designates post-modern ethics as a "New Ethics" and a "New Jerusalem" because it presents itself as a substitutive communitarian love opposed to the tyranny to rational law. The problem with such a strategy, she suggests, is that it reproduces the typical modern positivist dualism between law and ethics, and therefore unwittingly justifies that separation, rather than challenge it. Rose's alternative strategy, which I am immensely inspired by, is to critique that separation between law and ethics from within their shared inner tension: their "broken middle" (Rose 1992).

rights, grounded in an apolitical conception of the self as injurable. Giorgio Agamben (2005, 1998) assimilates human rights into the "state of exception" and "biopolitics" that define contemporary global security apparatuses, in which the reduction of citizenship into human rights entails total control over processes of life and death. For Talal Asad (2003), human rights are marks of "the secular," the governmental apparatuses that produce subjects governed by market calculability. Partha Chatterjee (2006) critiques the Eurocentric historiography that underpins most narratives of human rights. He argues that our attention needs to shift from the ideals of civil society (of which human rights is chief) to "governmentality," or the administrative and coercive logic that predominated in the history of colonialism, in which power operates through the classification and regulation of populations. This means that the discourse of human rights as applied to the post-colonial world is elitist and modernist, because it conceals or ignores this form of governmental power.

Generally speaking, postcolonial theory also questions the dominance of a coherent epistemological, legal, and moral subject of Enlightenment since Kant, with the contention that such a subject is a construct of a Western, imperial, exclusionary rationality. In its stead, postcolonial discourse centres a fluid, diffuse, mobile, or "hybrid" subject which exists in excess, and as a disruption of, Western representation of the universal subject. This allows not only a critique of the "civilising mission" inherent in modern political discourse, but also the nationalism of the post-colonial state, with its claims to represent a coherent national subject (Chatterjee 1993, Guha 1997). Insofar as postcolonial reason disrupts any assumptions of a coherent, re-presentable, legal "subject," it thus questions the possibility of a subject of human rights in its many guises, but especially, the subaltern victim of colonial violence, who paradoxically, is always excluded in the very act of being enlisted into the human rights regime.

Nevertheless, there have been postcolonial attempts to construct a theory of human rights and law following the deconstruction of such a human subject. Third-World perspectives on international law, such as José-Manuel Barreto (2013), as well as legal theorists, such as Upendra Baxi (2002) and Boaventura de Sousa Santos (1995, 2015), have argued for news way of posing the question of human rights and humanism by proposing radically pluralistic, decentred anti-dualistic and anti-hierarchical readings of epistemology and law. Paul Gilroy (2000, 2010) follows the lead of the earlier generation of post-colonial thinkers, such as Frantz

Fanon and W.E.B. Du Bois, in asking whether an alternative "planetary humanism," animated by an internationalist or cosmopolitan spirit, can be constructed out of the experience of suffering and dehumanisation woven into the raciological thinking of colonial humanism.

On the other hand, the school of Subaltern Studies calls into question the possibility of a peripheral humanism, because such a humanism is invariably the product of bourgeois (both metropolitan and "native") forms of hegemony, and is intimately connected to progressivist narratives of modernisation, humanisation, and civilisation (Chatterjee 2011, 2006). In this respect, both "the human" and "the citizen" of modern political language are suspect and bound to exclusionary practices. This includes the collective revolutionary subject inherited by Marxism and post-colonial reason itself. The only "normative" possibility that remains, then, is the diffuse, subversive, localistic, anti-legal, and anti-statist practices of subaltern communities, especially when they defy the domination of modern, homogenous empty time, and so become a resource for post-enlightenment, post-authoritarian experiments.

This anti-normative element in subaltern studies ends up in the same normative and ethical conundrum as the Foucault-inspired reasoning it intimately follows. The temptation to mystify the figure of the subaltern is barely resisted in this work. It is problematic and paradoxical to assume, however, that whatever is anti-hegemonic and illegible within modern humanist categories is "subaltern," because if the "subaltern" is necessarily constituted by what excludes it, it cannot be absolutely outside either. A more precise analysis is required to decipher the logic of inclusion-exclusion in post-colonial societies. If the subaltern is fixed and reified, then her emancipation is cut short in advance, because she must remain outside the reach of recognition and status, or else she loses the subversive power of being subaltern. This explains why post-colonial reasoning cannot truly engage with the specificity of the Arab uprisings, where themes that are humanist — and allow me to say, bourgeois — abound: rights, dignity, mutual recognition, freedom, and social justice (see Dabashi 2012).

How, then, can we produce a "social theory of human rights" without falling into the traps of proceduralism, functionalism, and extreme normative scepticism? And how can such a social theory help in both illuminating the multiple meanings of rights and their limitations, recognition of which may help in critiquing the theory and practice of human rights? I argue that only by looking at human rights as a form of critique whose effects are indeterminate can we

escape the traps that I described above. Considering human rights as a form of "critique" corrects the assumption common in legal theory that rights can be defined with recourse to proceduralist criteria. Rather, by treating human rights as a form of situated critical practice and practical activity, with varied goals, desires, modes of intervention, tools, and targets of criticism, we can better understand the meaning of human rights in actual material settings, rather than in the abstract plane of legal speculation and its necessarily contradictory conclusions. By "practical activity," I mean that human rights should be thought of as practiced by real actors, in real-life situations, making particular claims pertaining to their demands for recognition. Rights are necessarily relational in that they involve conflicts over recognition (Honneth 1996). Once this insight is lost, legal theory falls into contradictions of its own making. Such an attention to the themes of "critique" and "recognition" can also correct the normative deficit of post-structuralist and critical-legal scepticism. There is no need to impose abstract and politically ambivalent idealisations such as "community," "virtue," or "tradition" which pretend to be immune from the reach of modern power but, as with any other normative discourse, are not any less, or more, implicated in its operations. Rather, what is required is the reconstruction of the normative sensibilities at play in concrete conflicts over recognition and misrecognition, without assuming that any one set of normative standards is more or less "collusive" with power. The assumption, rather, must be that the practice of critique is, by its very nature, equivocal and indeterminate, and yet inevitable, under (post-)modern conditions.

The Philosophical Outlook: Ethical Life and Neo-Republicanism

A different kind of philosophical outlook from those outlined is needed to form both the backdrop of my investigation and a point of departure for it, resembling a set of preliminary presuppositions that I will strengthen, modify, and develop as I progress. This philosophical outlook needs to fulfil certain requirements to be functional for my analysis. Firstly, I needed a framework that can serve as an alternative to the kind of theoretical options explicated in the previous section — proceduralism, communitarianism (or virtue ethics), and anti-normativism — while retaining their key insights. Secondly, it must serve the "critical" and emancipatory desires entailed by the intellectual discourses I will be reading and interrogating, without prescribing too much. Thirdly, it must be able to provide some methodological guidelines for pursuing the analysis further and be able to connect the different registers of my analysis: the empirical and

the normative. Finally, it must be able to also connect "the political" side of human rights (the interest in some notion of freedom) with the more "ethical" side (the interest in flourishing).

In *On the Jewish Question*, Marx (1994 [1843]) famously reads the *Declaration of the Rights of Man and Citizen* as the definitive statement of the aporetic philosophy of rights that undergirds political modernity. Marx comments on the distinction in the very formulation of the Declaration between the "rights of man" and "rights of citizens."

> Who is *homme* distinct from *citoyen*? None other than the member of civil society. Why is the member of civil society called "man," simply man: why are his rights called the rights of man? How is this fact to be explained? From the relationship between the political state and civil society, from the nature of political emancipation. (p. 44)

Marx thus draws attention to the way that rights have two sides that sit together uneasily. One side is "*homme*," who Marx derides as "egotistic-homme" and "man as bourgeois who is taken to be the real and true human being" (p. 46). This is the man of civil society, fending for private interests in preservation of property. The other side, the rights of the *citoyen*, points to participation in political association: "Participation in the community and specifically in the political community, in the state, constitutes their content. They fall under the category of political freedom, under the category of the rights of citizenship" (p. 43). The paradox of the bourgeois revolution — political modernity at large — is that this division turns out to be unstable. On one side lies the "naturalised" sphere of private interests, and on the other, the fantasised, alienated realm of political association which lacks substance and reality. This generates constant troubled dualisms: nature-society, particular-universal, individual-society, and so on. Even more, it generates the constant fetish of any side separated from or subordinated to the other, reproducing ever renewed religious illusions, fantasies, and exclusions.

> This fact becomes even more curious if we consider that citizenship in the state, that the political community, is even reduced by the political emancipators to the status of a mere means for the preservation of these so-called human rights, in other words that the citizen is declared to be the servant of the egoistic man and the sphere in which man functions as a partial being; finally, that it is not man as

citizen but man as bourgeois who is taken to be the real and true human being.
(Marx, 1994[1843], p. 46)

Marx is not dismissing the achievements of the bourgeois revolution and its political emancipation. His contention, rather, is that such an emancipation remains incomplete, and another revolutionary course must be travelled towards full human emancipation. Human emancipation will transcend the division at the heart of "*homme-citoyen*" and realise an idea of humanity that is associational, mutual, and solidaristic — in a word, communist. This early statement on alienation, however, maintains an ambiguity that will haunt the history of Marxism. Marx remains unclear whether human emancipation implies an absorption of political life into the sphere of needs and social relations already being developed in modern civil society (hence requiring a political economy) or whether the fantastical "associational" life of the political community will become more fully realised by its further expansion and radicalisation in a "socialist republic" (as the Paris Commune, for example, would later suggest).

Arendt (1973) implicitly relies on a very similar formula, and instead of "human emancipation," we get "the right to have rights." Arendt, too, is critical of the separation between the "*homme*" and "*citoyen*" and the subordination of the latter to the former. The situation of the stateless refugees during the world wars confirmed that a rotten duplicity exists in the very structure of the nation-state, a duplicity that mirrors the "nakedness" of human rights. The nation-state remains equivocated between popular sovereignty and national sovereignty, and further, it equivocates on a naturalist conception of the nation as "*ethnos*" versus a civic conception as "*demos*." Arendt shows how the separation of state and civil society is stamped into the very conceptual structure of the nation-state and its paradoxes and exclusions. The dogma of "human rights" obfuscates and intensifies these paradoxes, because it further naturalises what should remain political and historical.

We became aware of the existence of a right to have rights (and that means to live in a framework where one is judged by one's actions and opinions) and a right to belong to some kind of organised community, only when millions of people emerged who had lost and could not regain these rights because of the new global political situation. (Arendt, 1973, p. 297)

In place of this ruined political world, Arendt looks to the future, where a "right to have rights," or the "right to belong to some kind of organised community" can be imagined beyond the fatal abstractions of "human rights" and "nation-states." This community will do away with the idea of national sovereignty and will instead be modelled and imagined on the basis of federation, where multiple nations exist interdependently and overlap. The more crucial point is that rights require a collective framework for their realisation, a distribution of power in a "framework" where persons enter into interdependent relations of mutual recognition.

Recent post-Marxist political philosophy has picked up the challenges laid out by Marx and Arendt in order to delineate a theory of citizenship marked by attention to the reality of protest, struggle, and dissent against social exclusion (Mcloughin, 2016). Three thinkers in particular — Balibar, and Rancière, and Lefort — have investigated the role of political concepts in social protest, and have thus renewed the philosophy of emancipation in a different time.

Étienne Balibar's (2014) philosophy is concerned with tracing the genealogies of the "universals" that found our political imagination, chief among them "equality" and "liberty." Balibar conjoins the two into the portmanteau "equaliberty" to refer to their aporetic status: no liberty without equality, no equality without liberty. It is an aporia because political modernity continues to set up liberty and equality against each other. A similar aporia exists within the institutional life of citizenship itself, between "citizen" and "subject," where conceptions of passivity and activity, spontaneity and subjection, continue to run into tension with each other (Balibar, 2016). Balibar attempts to reconstruct the philosophy of citizenship so as to insert an "insurrectionary moment" into it, a moment where revolutionary claims can be enacted in the name of "co-citizenship" or equaliberty. This keeps alive the insurrectionary power of universals, including human rights, and so the emancipatory struggles waged in terms of these universals sustain the possibilities of a revolutionary future, even if such a future remains indeterminate, open, and unstable:

> It has long been argued that the universality of human rights derives not only
> from their proclamation but also from the fact that every resistance and objection
> to the dominant order (let us call it capitalism or liberalism) gain legitimacy only
> insofar as they are themselves formulated in terms of a demand for an extension
> of abstract "human rights." But one can just as reasonably argue that the

> dominant ideology essentially invokes "human rights" (or humanism, generally
> agreed to be the typical form of secular universalism in the moral, legal, and
> political spheres) because that is the general language in which insurrections and
> emancipatory struggles seek freedom and equality and challenge the order to
> established privileges. (Balibar, 2020, p. 75)

This is the "dialectic of insurrection and constitution" (Balibar, 2014, p. 6) that both problematises citizenship and transforms it, perhaps with unintended exclusionary effects (Balibar, 2014, p. 12) — and hence the fragility and crisis-ridden nature of citizenship (Balibar, 2014, p. 8). Balibar's goal, or hope, is to reinvent democracy, rescuing it from its assault under neoliberal governmentality by reconnecting citizenship to local struggles and solidarities, struggles that produce new subjects and actors (or citizens) who would share in such an insurrectionary moment (2014, p. 31). The aporia, which is rendered invisible when the divide between discourses of human rights and "citizenship" is made too strict, is the "idea that the emancipation of the oppressed can be no one's work but their own" (Balibar, 2014, p. 38).

> The revolutionary innovation is precisely in subverting the traditional concept by
> posing the highly paradoxical thesis of an egalitarian sovereignty — practically a
> contradiction in terms, but the only way to radically get rid of all transcendence
> and inscribe the political and social order in the element of immanence and the
> self-constitution of the people. (Balibar, 2014, p. 42)

Jacques Rancière (2004) argues that the phrase "the right to have rights" is tautological, for to whom does the "the right to have rights" belong other than humans? Instead, and in a similar move to Balibar, Rancière develops a theory of a subjectivisation process whereby acts of dissensus bridge the gap between formal and concrete right. In this sense, rights are not abstracted or removed from a concrete situation of inequality, but they are inscribed as a "form of visibility of equality" (Rancière, 2004, p. 303), and subjects are those who use rights and affirm them. "Political predicates are open predicates: they open up a dispute about what they exactly entail and whom they concern in which cases" (Rancière, 2004, p. 303). Where does this take place? In the sphere of citizenship: politics is not only the activity that takes place there, but also the border that separates citizenship from the abstract rights of humans.

This "dispute" is what Rancière means by dissensus: it is not a conflict of value or opinion, but a "division put in the 'common sense': a dispute about what is given, about the frame within which we see something as given" (2004, p. 304). The subject of human rights is therefore not fixed, but is precisely the point of dissensus, what Rancière calls a "surplus" or "a part of no part." Rancière warns against two theoretical errors: We cannot equate this subject with the rightless subject (as Rancière interprets Agamben as doing) nor pre-suppose that rights have been achieved. Both these options close off the space of dissensus, "the political," or the in-between in which the politics of human rights are shaped.

Claude Lefort was described by Andrew Arato as "the philosopher of 1989" (Arato, 2012), and it could be argued that he is the most significant philosopher of anti-totalitarianism in the legacy of Arendt. He can also be credited with being the first theorist of "the political" in French philosophy. In "Politics and Human Rights" (1986, originally published in 1980), Lefort offers the most original response to Marx's critique of human rights. The question driving the essay is: "Do human rights belong to the sphere of the political?" and "arises in the specific historical conditions in which we find ourselves" — referring to Eastern European human rights dissidents (Lefort, 1986, p. 241). Lefort's motivation is to develop a theory of human rights that is much more radically-democratic than liberalism conceives of them, arguing that Marx was unable to see this radical-democratic potential since he was still bound to a liberal-individualist understanding of rights. "These rights turn out, in practice, to be bound up with a general conception of society — of what was once called the polis or city — which totalitarianism directly negates" (Lefort, 1986, p. 241). Lefort describes such a conception of society as "the symbolic," the instituting principle of any democratic polis and which is inscribed in rights. He faults Marx repeatedly for failing to consider this symbolic dimension. He sees the power of "right" thus:

> Power does not become alien to right; on the contrary, its legitimacy is more
> than ever affirmed, it becomes more than ever the object of juridical discourse
> and, similarly, its rationality is more than ever examined. But the notion of
> human rights now points towards a sphere that cannot be controlled; right comes
> to represent something which is ineffaceably external to power . . . Hence a quite

different mode of externality to power is established as soon as right is deprived

of a fixed point. (Lefort, 1986, p. 256)

The trouble with totalitarianism is that it tries to occupy this empty symbolic space of power, and effacing the distinctions between law, power, and knowledge, subordinates all to the total representation of society as Many-in-One (this One may be either the leader or the bureaucracy). Hence totalitarianism is the unsuccessful attempt at the final representation of a social body that cannot be represented. Lefort argues that Marx is unable to appreciate the symbolic significance of the event of modernity as such due to his fixation on the "individualising" and "alienating" effects of the separation between state and civil society. Marx fails to see that such a separation is in fact equivocal: All the subjective rights that Marx denounces have their essence in acts of public association and declaration. Marx thus proceeds "without taking into consideration the fact that any human action in the public sphere, however society may be constituted, necessarily links the subject to other subjects" (Lefort, 1986, p. 249). It is this capacity for public action, which is both the condition and realisation of right that totalitarianism suppresses by fixing the confrontation between the individual and the social body.

The common feature of these three French thinkers is their attempt to construct an imaginative space where insurrection and emancipatory struggles are waged at the heart of the universals themselves: human rights and citizenship. The key in their thinking is a focus on the symbolic or aesthetic order that these universals allow, and understanding these constitutive tensions as occasions of struggle, protest, and dissensus over the space of the political itself.

We could say, then, that current radical political philosophy has already provided a clue on how to transcend the division between Marx and Arendt, insofar as their disagreement becomes a place for aporetic resistance and dissensus. The ideas of "human emancipation" and "right to have rights" are alive and well. Now I need to re-arrange and re-organise (better: sublate) these insights into a theoretical framework that would further clarify the inner dynamics and logics of these struggles.

To do this, I will explicate two further crucial influences: Hegel's *Sittlichkeit* and contemporary neo-republicanism. Hegel will clarify further the crucial importance of "mutual recognition" as the motor for the struggles waged on the terrain of citizenship, the motor which

structures the entirety of social life. Meanwhile, neo-republicanism will further clarify the political resonance of such struggles. These two influences will prove to be the most decisive in the rest of my investigation.[9]

Hegel's[10] notion of *Sittlichkeit* (often translated as ethical life) is an attempt to achieve several things at once. Firstly, it is an attempt to mediate "the liberty of the ancients" (grounded in habit and virtue) and "the liberty of the moderns" (grounded in moral reflection). Hegel hopes to do so by showing that moral reflection requires a certain kind of socialisation and habituation, a certain kind of background norms that will enable and condition it, and which must be preserved and allowed to develop. Secondly, *Sittlichkeit* constitutes a subtle critique of the abstraction and formalism of Kantian autonomy and the "reflective" attitude. Hegel is not abandoning the moral subject and autonomy, but rather arguing that reflection cannot remain simply internal to a will, but is enabled by sets of relations and conduct that include modes of dependence on others. In this reformulation, "reflection" becomes a moment in a much fuller and richer give-and-take between subjects. Thirdly, *Sittlichkeit* has a constitutive "struggle" within it: the struggle for recognition. The combative model Hegel develops is based on the idea that independence is a social achievement*,* a social status that individuals assume after a struggle for honour driven by the subjective desire for self-certainty, interlocked with the desire for another person's recognition of one's standing. Such a model is preferable to other models of struggle (Hobbes and Nietzsche, for example) in that it is not simply about a desire for self-preservation, but goes much further in its centrality of a desire for another person's desire, and remains inter-subjective all the way down. Finally, Hegel's presentation of *Sittlichkeit* conjoins both normative

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[9] Hegel and republicanism may be uneasy fellows. Hegel was not always an advocate for the restoration of classical democracy and political virtue, at least by the time he wrote *The Phenomenology of Spirit* and *The Philosophy of Right.* His strict realism led him to conclude that it is impossible to restore classical virtue under the modern, complex system of the division of labour, but there are two important caveats to this. Firstly, Hegel remained committed to a philosophy of dependence-independence that has much in common with republican thinking. His philosophy of freedom is also relational, social, and institutional in ways that indicate republican influences. Secondly, contemporary neo-republicanism (Skinner and Pettit) would agree with Hegel that the modern division of labour cannot allow for a full restoration of civic virtue in the classical sense, and they too provide a conception of civic participation that is more feasible and adapted to modern conditions. In short, both Hegel and the (neo-)republicans share a desire to reconcile the "liberty of the moderns" with a feasible "liberty of the ancients."

[10] This very brief summary of Hegel also draws from contemporary work on his practical philosophy. The key theme (which is far from uncontested) is that Hegel's metaphysics was not a relapse into pre-Kantian rationalism, but rather a development and completion of Kant's ambitions. In any case, I rely here on the interpretations of Wood (1990), Smith (1991), Pinkard (1996), Hutchings (1999), Neuhouser (2000), Fine (2001), Pippin (1996, 2008), Bernstein (1991), Honneth (1996, 2014), and Brandom (2019).

and sociological (empirical) components. Ethical life is not conceived as some ideal that can be imposed on the social and political world, but as an ideal of human self-actualisation that is immanent to and prefigured in the struggles of the present. This is why "tragedy" and "unintended consequences" are central to Hegel's historical narrative — a point I will come back to in the next chapter when I discuss David Scott. Let me also add that such a notion of "prefiguration" and "tragedy" permits us to let go of a progressivist, providential model of history. The present is not an ineluctable arrival from the past; rather it is one consequence from the past that can be put into narrative form and made intelligible. The narrative form allows the past to become meaningful, relevant, and active in the present. This form is morally meaningful, insofar as it provides sufficient reason to accept why and how certain moral facts came to be. Put much more modestly: I can tell how slavery *became* a wrong, because I can tell a story of how slaves revolted. This is the only available sufficient reason for human right.

I see that Arendt's "right to have rights" and Marx's "human emancipation" share a conceptual structure with Hegel's "ethical life." This means that all three thinkers saw that modernity is maintained by a very delicate and dangerous imbalance between "humans" and "citizens," which in Hegel's formulation is "civil society" and the "state." The very structure of the state reproduces this disunion in its formulation, caught as it is between active and passive sovereignty, national and popular sovereignty, or ethnic and civic nationalism. The struggle for emancipation implies tracing a way whereby these disunions can be better mediated, and their full political consequences recognised again and again. This would suggest — as I tend to believe — that Hegel's "ethical life" is not yet fully realised, but is prefigured by the deep structural tensions of global modernity, both within and between states. This is so not least because unlike Kant in *Perpetual Peace* (1970 [1795]), Hegel was clear that the world of international relations did not exhibit the shape of ethical life, but is beholden to the "higher stage" of World History which remains indefinitely open. Similarly, we can say that the future of global citizenship remains far from guaranteed. This allows for multiple possibilities, from global federalism to a multi-layered conception of citizenship (like that suggested by Benhabib, (2011)).

I resort to a Hegelian conception of "ethical life" because I need a way to mediate "the liberty of the ancients" and "the liberty of the moderns." Hegel believed that the liberty of the

moderns continues to be worth fighting for, due to the simple and intuitive fact (which is not simple at all) of the struggle of slaves. We don't need expansive metaphysical reasons to fight for emancipation, as worthwhile and crucial as these are. The fact remains that slaves fought for freedom, and so any fight for the expansion of citizenship rights can be grounded in the historical memory of the struggle against slavery. It is this memory and its implications that Hegelian philosophy is contending with. As Allan Wood writes, Hegel sees that the "struggle against slavery is always a struggle to 'achieve recognition of eternal human rights' . . . Slaves always have the 'absolute right' to 'free themselves'" (1990, p. 98). The task remains, then, how to best preserve and expand the freedom from slavery in institutional embodiments, in the shared social and political world of the polis. This will require much more work than liberalism alone can provide. And furthermore, all human struggles and protests for emancipation prefigure a more ethical life, a more actual polis, in which the memory of slavery is more fully recognised in the shape of background norms, institutions, relations, and habits.

Like Hegel, neo-republicanism is concerned with providing an alternative theory of freedom to that offered by liberalism. As Philip Pettit writes:

> The republican tradition is unanimous in casting freedom as the opposite of slavery, and in seeing exposure to the arbitrary will of another, or living at the mercy of another, as the great evil. The contrary of the *liber* or free person in Roman, republican usage was the *servus* or slave. (1997, p. 31-32)

This is an alternative to the liberal understanding of freedom as non-intervention. Against a privatised notion of non-intervention, republicanism offers freedom as non-domination, which while it remains a negative liberty, is a more substantive one in that it addresses the political and social conditions that allow for the exercise of freedom. Also, unlike the liberal conception, republicanism looks at freedom as a common and social good: "Freedom as non-domination requires the freedom of the city, not the freedom of the heath" (Pettit, 1997, p. 122). The neo-republicanism of Skinner and Pettit offers an example of political thinking that can be used to critique existing institutions. This model is grounded in the idea of "contestatory citizenry," that is, the institutionalisation of plural arenas of citizen contestations, ultimately realised in a "mixed constitution" (Pettit, 2012, pp. 11-13). This differentiates the ideal from its "populist" cousin, insofar as it is not participation per se that is the normative focus, but the institutional arenas that

enable expansive participation and virtue. Pettit quotes Machiavelli's comment on the desires of citizens: "A small part of them wishes to be free in order to rule, but all the others, who are countless, wish freedom in order to live in security. For in all republics, in whatever way organised, positions of authority cannot be reached by even forty or fifty citizens" (quoted in Pettit, 1997, p. 28).

Neo-republicanism offers a rigorous and substantive alternative to liberal notions of "non-intervention" without idealising the "community" or the "people." Rather the focus is on the kind of social and political world that would enable citizens to dissent and contest arbitrary legislation. Normative weight is given to freedom from domination, which is defined — like in Hegel's thinking — in opposition to slavery. It also allows a conception of freedom that is more open to other ideals to realise it, namely equality and solidarity. To be clear, the "republican" tradition proper had elitist tendencies, and its ideals relied for their existence on actual slavery. As Alex Gourevitch writes:

> There is almost a sleight of hand whereby the formal acknowledgement that the republican theory originates in and draws its inspiration from slavery excuses the need for any further reflection regarding how, in the classical republics, the freedom of citizens *presupposed* the unfreedom of slaves. (2015, p. 14)

Nevertheless, Gourevitch offers a way out of this conundrum, by drawing from a longer history of arguments that shaped "labour republicanism" or "socialist republicanism." He reminds us: "Marx was one of those nineteenth-century thinkers who inherited and realised the republican tradition" (2015, p. 186). And not only Marx, but also his most important students in political thought, Karl Kautsky and Rosa Luxembourg. What unites these thinkers is a project of taking on the challenge of building a polity or republic, where the freedom from the arbitrary will of the other — including freedom from "wage-slavery" — can be maintained and preserved.

The two influences discussed here — Hegel and contemporary neo-republicanism — allow me parallel and related modes of thinking about the philosophy of "human rights." Firstly, against the dominant trends of natural right or neo-Kantianism, this is a conception of rights that is already historical, relational, and social; it is a conception that takes seriously the idea that right and freedom are only realised through the mutual recognitions of persons. Secondly, I

needed a conception of human rights that addresses itself to the concrete causes of tyranny, inequality, and alienation. Thirdly, I needed a conception that can provide some thin image of the good, to be able to compete with communitarianism and virtue ethics. Finally, I needed a conception that draws together my double interest in both power and ethics, and the relationship between the two.

I am not alone in noticing a republican strain of thinking and practice among Arab dissidents. Charles Tripp (2015) has touched upon this theme in his work on the Tunisian uprising, and in particular, on the role of the city and urban assembly in formenting claims for rights, pluralism and agonism. Tripp defines the republican ideal thus: "coming together of citizens in a joint enterprise and the reclaiming of the republican order from the hands of the small elite who made it a vehicle for the domination of the majority" (2015, p. 9). I am interested in the intellectual sources of such sensibility, and the varied ways it combined with other intellectual and political concerns. Although I do mention intellectuals and figures from other Arab countries, my focus on Egypt is motivated by two reasons, other than the fact that it is my most familiar context. Firstly, I need to anchor my investigation in some kind of coherent narrative thread, and so, looking at the history of the Egyptian human rights movement helps concretize and specify my analysis. Secondly, I was personally intrigued and interested in how the development of this political attitude may have aided or stood in the way of later revolutionary activity in 2011. This is significant, because it helps clarify the relationship between the rhetoric of rights and other kinds of mobilizations. Although I don't discuss the uprising until the conclusion, the questions and themes it throws up could be perceived in the background of my retrospective narrative. The uprising shapes the kind of questions I bring to the material I discuss.

So, guided primarily by this background conception of *Sittlichkeit* and republican freedom, the dissertation will proceed as a constellation of dialogues, debates, and critical interventions around multiple themes: intellectuals, history, cosmopolitanism, civil society, secularism, law, and torture. In each stage, I undertake an illicit reading of the material, reading between the lines in order to tease out different iterations and articulations of the kind of understandings I outlined here. At each level, I wear the masks of my interlocutors and stage a dialogue among them, with the explicit desire of laying the ground for a critical theory of the

Arab uprisings. Ultimately, I will show how "human rights" acts as a placeholder for *something else*.

The Uses of Intellectual History

The history of the Arab human rights movement can be located within a larger global context, and two processes in particular are pertinent. First is the spread of "democracy promotion" ideals, strategies, and policies across the world, an "industry" mostly dominated by American and European expertise, and heavily informed by third-wave democratisation theory, within the context of Cold War foreign policy.[11] The "rise" of human rights in the Arab world among nationalists and Marxist intellectuals — following decades of scepticism from those same currents — was intimately connected to this period when democratisation became a central concern across the Global South. In the Arab context most significantly, human rights acted as a placeholder for a much wider array of demands and projects than can be captured by the framework of international law alone. It is this aspect of the spread of "human rights" to which critical histories of human rights, such as that of Moyn (2010) or Douzinas (2007), pay the least attention. Indeed, the spread of human rights was linked to a renewed significance attached to the specificity of police and military practices of authoritarian and/or totalitarian regimes in Latin America, Eastern Europe, and the Arab world. However, at least from the point of view of the intellectuals and activists in the Arab world, the focus on practices was not in isolation from a concern with the total despotic political structure. On the contrary, the interest in human rights — with their usually narrow focus on regime practices — went hand in hand, sometimes harmoniously and other times problematically, with a general interest in the problem of democracy and authoritarianism. This is why, for example, these organisations were more interested in becoming leaders of a new civic culture, educated intensively in the new global language of civil society, civil disobedience, and democratic transition. In other words, the history of human rights cannot be narrated separately from the new "democratic consciousness" that developed gradually and in parallel to the decline in "utopian ideology" charted by Moyn.

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[11] For a critical history of the Cold War industry of democracy promotion, see Guilhot (2005).

The second relevant process is neoliberalism. And yet, the relationship is not so direct that it "explains" the rise of the human rights movement. The growth of the human rights movement coincided with a "crisis of legitimation" faced by the Egyptian state in the wake of its adoption of structural adjustment policies since 1991 (Roccu 2013, pp. 40-41). Privatisation, deregulation, and the increasing erosion of "corporatist bodies" such as trade unions, professional associations, and political parties, led to a significant weakening of the already precarious hegemonic leadership of the Egyptian regime and its postcolonial nationalist legitimation. The political effects of such an erosion of legitimation and integration mechanisms were the gradual increase of political protest, especially in the form of workers' strikes, as well as a parallel rise in "securitisation" and police violence in order to maintain tight regime control over the fallout from economic liberalisation. In fact, the very first case that the Egyptian Organisation for Human Rights worked on was the police arrests of striking steel workers in August 1986 (Hicks 2006, p. 76).

It could thus be argued that the human rights movement emerged out of two intersecting but autonomous (and contradictory) "globalisations." On the one hand, the globalisation of political democracy and third-wave democratisation theory attracted formerly radical, nationalist, and Islamist intellectuals, lawyers, journalists, and political activists to adopt a new platform for opposing the regime, around a new civic model constituted by organisations working independently of — and usually in opposition — to the state. Of course, the global "industry" of democracy promotion enabled the development of such a civic model, especially in terms of providing discursive and financial resources (for example, the UN, the European Union, the National Endowment for Democracy, Ford Foundation, Open Society). Yet many of the critical decisions and strategies adopted by these organisations developed independently from the direct impact of such a global industry, as I try to illustrate. The second globalisation, that of "economic liberalism," did not lead to a withdrawal of the state from society, but rather a shift in the social contract and in the mode through which the regime consolidated its power, tending towards increasing securitisation at the expense of social or political integration of different groups and classes. Such a change in the mode of governance paradoxically created the opportunity for autonomous civic and political organising, once the regime had sacrificed much of its hegemonic quality.

The human rights movement in Egypt played a crucial role in the two decades preceding the Egyptian uprising of 2011 (Pratt 2001, Chase 2006, Chase and Hamzawy 2006, Moustafa 2006, Chase 2012, 2017). On any first impression, the emergence of the human rights project marked a shift from explicitly "political" opposition to the regime (through organising, mobilising, and producing alternative political projects), to new supposedly "non-political" methods such as advocacy, legal assistance, and ethical discourse. Yet, behind the scenes, or from within the interstices of these discursive developments, the organisations provided spaces out of which new modes of dissent crystallised and gathered force. As I will explain, there is a connection between the human rights organisations and new political groups that prepared the way and precipitated the 2011 uprising. The precise role that these shifts in narrative and practice have played in both conceptions and practices of protest and revolt (such as the Arab Spring) has yet to be analysed. Moreover, literature on human rights focuses predominantly on issues of international law, and therefore neglects more local questions regarding the relationship between the normative discourses around human rights on the one hand, and protest, revolution, and transformation on the other. Egypt provides a remarkable case for exploring this relationship between human rights and revolution. The human rights movement was heavily imbricated with the revolutionary moment. Human rights activists and organisations were involved in articulating a specific narrative about what was occurring, and their practices and spaces also provided a point at which normative and political critique was produced. The relationship between the "human rights imaginary" and protest must thus be explored and interrogated, in order to reflect on the contemporary politics of human rights in terms of both its history and its effects.

Three related "origins" are given to the turn towards human rights activism in Egypt by its protagonists: 1) partial, controlled liberalisation; 2) the prison experience; 3) ideological rupture. Mustapha Kamel Al-Sayyid (1997) writes that the mid-1970s and late 1980s were a time both of economic liberation and partial political liberalisation in which some Arab governments (Egypt, Tunisia, and Morocco) tolerated the emergence of new NGOs. Parallel to this was the prison experience of radical students, nationalists, and political Islamists in the 1980s. Veteran human rights activist Bahey al-Din Hassan (2006) describes the shared prison experience as particularly formative to the later development of a human rights movement (37-38, also Chase, 2012, 29-31). It allowed radicals, nationalists, and Islamists to enter into a dialogue shaped by their common struggles against torture and humiliation at the hands of the security state. These

developments occurred alongside a rupture with previously dominant political frameworks, namely Marxism and postcolonial nationalism (Chase 2012, pp. 37-38, Dwyer 1991, Yefet 2015, p. 20).

A dominant theme in this empirical literature addresses the ways local human rights work channels the global spread of human rights norms. Anthony Chase, for example, argues that the Egyptian human rights movement must be located in the "transnational normative flows" of human rights that subvert the rigid boundaries between "universal" and "particular" (2012, p. 3). Nevertheless, specific challenges or problems emerge. An-Na'im for example coins the term "human rights dependency" to describe the dependency of local NGOs on Western assistance, in terms of funding and/or diplomatic pressure against their own governments (2001, pp. 702-703). The second prevailing theme addresses how human rights activism evokes confrontations around the definitions of identity and security. As Nicola Pratt (2001, 2004) demonstrates, human rights discourses are demonised due to their challenge to a particular essentialist, nationalist, and hegemonic conception of identity. Moreover, this identity politics is then framed as a question of security, where identity is conceived as the performance of national sovereignty. The third theme relates to the criticism of the over-professionalisation of NGOs, which is seen to intensify the pressures of dependency, elitism, and political isolation (Abdelrahman 2004).

This history of the human rights movement, and its location within the political economy of global human rights promotion, culminates in the theme I want to address in my research. A key debate in the literature concerns the function of human rights activism, and whether it may lead to social and political mobilisation or not. It is a question posed by the activists themselves (Crystal 1994, Stork 2011). I want to extend this theme — of a trade-off between "politicisation" and "neutralisation" — in relation to the Egyptian uprising of 2011. There is a remarkable gap in the literature in how human rights advocacy is discussed without looking into its connections with the revolutionary mobilisations of 2011, and how revolution and human rights impacted one another. Relevant to this discussion is Asef Bayat's recent book *Revolution without Revolutionaries* (2017) in which he describes the Egyptian revolution as a combination of reformist demands — embodied and supported by professional NGOs and Western discourses — and radical mobilisations. Bayat attributes the failure of the uprising to this contradictory combination. He also attributes this mixture of reform and revolution, which he describes using

the portmanteau "refolution," to a neoliberal governmentality that channels radical-democratic activism into reformist political imaginaries. In order to study this contradictory effect, I want to analyse the discourses used by human rights activists as they describe the relationship of their advocacy work to the possibility of revolutionary mobilisation, in order to fully understand the possibilities and limitations of this mix between a human rights imaginary and radical uprising. Yet, I do not aim to focus on the direct mobilising efforts of human rights discourses and organisations. Rather, I want to reconstruct the normative and conceptual background of the uprisings formed by this local human rights imaginary and its constellation of related idioms. No such philosophical and sociological work has been done on the Arab uprisings and their precursors and inspirations.

The historical side of my analysis will not focus on organisations per se, although they lie in the background. Instead, the story I tell follows intellectuals and their role in contributing to the stock of normative, political, and legal strategies that were mobilised by organisations. To be sure, these intellectuals did coalesce around and form organisations, but I will be looking at their contributions in their own right. So, I focus on the biographies of intellectuals, their most influential writings or interventions, the networks they formed and into which they inserted themselves, and the sort of alliances they made with other intellectuals from the Arab world. In the next chapter, I will expand on what I mean by "intellectuals" and why I resort to this methodology. As it turns out, the most formative figures in this story will be those who were formerly steeped in some sort of pan-Arab (Nasserist) or Marxist milieu. My contention is that these influences never really disappeared, and I will show how they were (consciously or unconsciously) smuggled (and transformed) into the most "liberal" of agendas. In all its diversity, and with a few exceptions, this was no simplistic lapse into post-Cold War liberal internationalism. Rather, it was a strategic attempt to revise and reorder the ideological and philosophical frameworks of the 20th century, to make them responsive to new needs and insights. I will tell the story of how disillusioned pan-Arab and Third Worldist thinkers read this call for human rights, and how Marxists political theorists appropriated the discourse of "global civil society" to allow space for a democratic socialism or "socialism with a human face" to breathe and develop. In doing so, I will consider how Muslim thinkers appropriated hermeneutical, post-structuralist, and anthropological methods to renew Islamic discourse around justice and emancipation, and how socialist lawyers developed their own distinctive

jurisprudence of rights, and how radical feminists took on the principle of "the personal is political" to explore the inner psychic darkness of oppression and torture. Human rights take on a very new meaning as we travel along this journey. Each one of these interventions bears scrutiny and appreciation in its own right, however, without reducing them all to some essential, pre-defined common denominator called "human rights."

Dissertation outline

In the next chapter, I will elaborate the methodology that will guide me throughout the rest of the dissertation. This methodology will combine perspectives from intellectual history and historiography, the sociology of critique, and recent critical theory. By combining these perspectives, I will develop a concept of *critique as practice and use*, as an alternative to "transcendental" or Kantian models of critique or judgement. This will help in formulating a more "temporalised" and "situated" notion of critique, in which universal concepts gain their normative force due to their relation to shifting political situations, moral economy, and a "tragic" concept of time.

Chapter 3, "Origins," will begin the chronology of the story. There I will look into the earliest crystallisations of the idea of a "human rights movement" as a pan-Arab moment, and the kind of influences and discourses that fed into these discussions. Attention will be directed towards the varied historiographies, narratives, and conceptions of democracy that were circulating at the time, and how these various positions were shaped by political, intellectual, and generational developments during the mid-1980s.

Chapter 4 will then look into a younger generation — the protagonists of my story — who were involved in the campus uprisings of the early 1970s. I will trace the general developments of this generation of intellectuals, their relationship to Marxism, and to debates amongst them in later years (during the nineties) around "civil society" and "national liberation." I will focus on two crucial thinkers: Mohamed al-Sayyid Said and Azmi Bishara, who went a long way in articulating a democratic socialist perspective on "civil society" and "national liberation." I will show that such a framing was made possible by a specific kind of "situated internationalism" that these two thinkers exemplified and perfected.

Chapter 5 will look into how the new human rights project engaged with another related strand: reformist Muslim thought. By comparing and contrasting these influences, I will explain how reformist Muslim thought produced a new democratic religious anthropology and devised radical moves in jurisprudence and hermeneutics that would help strengthen democratic hopes.

Chapter 6 then will look into the contribution of lawyers, and especially socialist lawyers, in practicing an original leftist jurisprudence. The origins and circumstances of this leftist jurisprudence will be explored, as well as its impact on understanding and doing "human rights."

Chapter 7 — which is not for the faint-hearted — will focus on torture and look at how the campaign against torture developed. This chapter is different from the others in that it combines more eclectic sources and has a more speculative, provisional tone. I try to use local sources and practices as a guide to developing an analysis of anti-torture discourses that avoids or corrects common neoliberal pitfalls around injury, victimhood, and dignity.

The conclusion will cover historical developments into 2011-2013, by looking at particular critiques waged against the human rights project in light of revolutionary and counter-revolutionary developments. I will argue here that the real mistake(s) have a much older history, well pre-dating 2011, mistakes which can only be clarified and illuminated from the perspective of current tragedy and defeat. I close off by presenting particular complaints and proposals to my three main groups of interlocutors: social and political theorists, global human rights advocates, and the Egyptian leftist community.

2. Intellectuals, Critique, and Tragic Time

Bruno Latour (2008) asserts that "critique has run out of steam." By this, he means that the concept of critique inherited from the Kantian tradition and its offshoots have become both outdated and overreaching. From this perspective, critique is inalterably linked to a philosophy of subjecthood and personhood in opposition to noumenal things, a position that is untenable if we take a look at the deep networks of objects as actants. Latour is not alone in announcing a "post-critical" turn in social theory.

Such a view can be challenged in a number of ways, including by drawing attention to the way that critique already permeates the everyday. It is part of the ordinary repertoire of our daily activities to form judgements, to compare, to test competing judgements, to measure, to correct, to challenge, to rebuke. How can we account for these ordinary acts of dispute? It could be the case that theoretical critique has some specifiable relationship to this ordinary state of affairs. It may be that theoretical critique — let me call it second-order critique — is a more rigorous and disciplined (rule-bound) way of reflecting on these ordinary activities. The post-critical viewpoint risks a quietism that has worrying political implications. Not only does it constrain theory's self-reflexive capacity, but more importantly it cannot adequately account for the normativity that already permeates our world and determines our experience of it.

In this methodological chapter I reconstruct the concept of critique in order to make it more amenable to an analysis that combines normative, political, and historical concerns. This does not mean a complete abandonment of the Kantian notion of critique, where reason locates its own limits in experience. Such reconstruction of the concept of critique will have implications on how I understand the role of social theory vis-à-vis the "material" with which it works.

Fortunately, Wittgensteinian and neo-pragmatist revivals (which are related) have occurred simultaneously in philosophy, social theory, and intellectual history, elucidating a different notion of critique as use and practice. Here, Robert Brandom's neo-Hegelian pragmatism can be read alongside Luc Boltanski's "pragmatic sociology of critique," the Cambridge School of intellectual history (John Pocock, Quentin Skinner, and James Tully), Reinhart Koselleck's "conceptual history," and David Scott's project on tragedy and revolution.

Anchored by the concept of critique, here I will be explicating the social theory and the historiographical perspective that will guide me throughout the analysis. The analysis presented in the following chapters aims to work on multiple levels: normative/philosophical, sociological, and historical.

Recent work in Arab intellectual history has demonstrated a growing interest in the methodological orientation delineated here. The reason for such an interest is alluded to in the title to a collected volume — *Arabic Thought against the Authoritarian Age* (Hanssen and Weiss, 2017)[12]. Authors including Koselleck, Scott, and Skinner are a common reference point and inspiration because they provide a way to re-engage typical themes in Arab thought — defeat, self-criticism, revolution, and Enlightenment — without repeating the dichotomy of "modernity" and "tradition." The intellectual historian can now re-transcribe these thematics by locating them in a specific "problem-space," a specific field of questions and interventions, a particular sort of situation, which can then be placed into dialogue with parallel problem-spaces (Hanssen and Weiss, 2017, p. 17; Bardawil, 2020, pp. 21-22). Such an approach clarifies the stakes of each mode of intervention. In addition, the kind of narrative produced may be "deflationary;" it deflates the pretences of the Enlightenment mode of criticism, with its disregard for its own historical conditions of possibility, without abandoning the interest in elucidation, judgement, and emancipation. My contribution to such a project is to clarify further its categories, and to deepen its self-reflection by putting it into dialogue with potential allies and interlocutors in other fields.

Each section of this chapter adds a level to the methodological analysis. The first section summarises the argument and links together the basic concepts. The second section clarifies the concept of the intellectual I will be using in later chapters. I justify an expanded notion of the intellectual — closer to intelligentsia — to include activists and "professionals" who may not rely chiefly on traditional media of communication but who nevertheless play a role in moral leadership. I then elucidate the concept of critique as a social practice, by drawing from Luc Boltanski and Rahel Jaeggi. The concept of critique I use refers to a social practice and concept-

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[12] Other authors and intellectual historians that I benefitted from here are Kassab (2014, 2019) and Shakry (2021).

use with a normative intent, a critique which occasions, correlates, and indexes a wider crisis in the form-of-life or moral economy to which it refers. The final section centres on the pivotal role of time in the analysis, tracking the way intellectual historians insert time as key to understanding the shape of crisis and critique.

The Methodological Perspective

A deflated concept of critique is called for because the analysis here seeks to combine a normative register — an interest in emancipation — as well as an empirical register, a documentation of an intellectual history. This means changing the concept of critique so that it is no longer the prerogative of the social theorist or analyst alone, but is already an integral and commonplace aspect of the social world that the theorist inhabits with others. What happens when the theorist and her interlocutors share the same kind of moral universe, with all its hopes and desires? Critique here will not entail imposing outside normative statements to bear on the "facts" of the social world. Nor will it mean a philosophical attitude that designates a priori criteria necessary for moral judgement. Rather it means that critique is already a participatory and collective activity that the theorist undertakes with a community of interlocutors. It also means that critique must be rearranged to refer to a certain kind of practice, a certain doing, in a setting that is already permeated with rules, criteria, and normative attitudes. Certainly, these rules are never entirely coherent or clear. The role of ordinary critique here is to clarify these rules, restate them, compare and contrast them, test their limits, check their coherence, reformulate them in clearer terms, and so on. In a sense, it is the kind of work expected of a lawyer. This process of "checking" and "testing" will go on indefinitely, since it will turn out that rules go all the way down.

Doesn't this risk painting another overly proceduralist and normativist concept of critique? That is, is critique only limited to testing "the rightness" of applied rules? And doesn't this bring us back to the Kantian starting point? Here two further concepts are useful: moral economy and form-of-life. Recent developments in critical theory and social philosophy are fruitful in this regard, and here I will draw from the work of Rahel Jaeggi. Instead of pitting questions of right against questions of the good, Jaeggi argues that any norm-related intervention

must allude to both simultaneously, and so she re-inserts ethical (Aristotelian) considerations into questions of right. In such a model, rules are linked up and refer to one another to constitute a form-of-life, a certain habitual, background way of doing things. But such complexes of rules are not always complete, if ever, and they routinely enter into disarray and confusion — in a word, crisis. Crisis and critique are intimately related, at least in their original formulation, as I describe below. Crisis is the occasion whereby judgements will be made regarding the functional and normative ends of our rules and activities. We become forced to ask ourselves: Why do we do what we do? What purpose does such a rule serve? Can it be done better? Did we misunderstand our previous goals? Crisis ensures that statements about rightness can lead to statements about ends. Understood in this way, judgements about "human rights" and "justification" could be read as indications of crisis, where ethical ends are in disarray and are in need of re-examination.

Some uses of the concept of form-of-life paint a highly conventional and quietist picture, as if practices and habits are invulnerable or inaccessible to reflection. Against this conception, I propose that we understand a form-of-life as akin to a moral economy, a certain way of arranging values, persons, and things. And like any economy, these values can prove to be untranslatable or incommensurable, or they may refer to different things at once, or the economy at large may stop working the way it is expected to. As with any economy, forms-of-life are vulnerable to blockages, moments when the values are no longer intelligible, when events do not follow expectations. This thus calls for some clarification of the sources of such misunderstanding, "blockage," or deficit of meaning.

Such a pragmatist attitude has many implications for the way critical theory is done. Firstly, we cannot locate "pure" concepts or ideals that may guide the analysis. Secondly, this practice of critique is always determined by the kind of questions posed to it by the form-of-life itself. And finally, critique here will be determined and constrained by a certain attitude towards time, by a certain set of experiences and expectations that feed into what can be said and done. This last point leads me to transpose the theoretical concept of critique-as-practice-and-use into a historiography. If read from such an angle, any critical attitude is already determined at a higher level by the problem of time, or by the task of connecting past with present in a certain

configuration. And fortunately, as it turns out, very similar theoretical moves appear at the level of intellectual history and historiography.

Intellectuals, Dissenters and Critics

It is notoriously difficult to define the intellectual, and sociologists of intellectuals usually disagree on who should be included in this category. The word was born to describe the Dreyfusards during the Dreyfus affair in the late 19th century. In this context, it was meant to evoke a certain type of persons with the courage and will to defend their moral conscience in public and therefore to act and speak as a moral guide for the "nation." As a result, the very discourse of "the intellectual" always aroused the suspicion of detractors that intellectuals are duplicitous, or have never lived up to their task — Julien Benda's 1928 *La Trahison des Clercs* [The Treason of Intellectuals] seems to be as old a trope as "intellectuals" themselves. Intellectuals are often seen as foreign, alienated from their native soil, too cosmopolitan and moralistic, and so on. Another related trope is that of "unmasking" the secret allegiances of intellectuals — never mind that this unmasking is always performed by other intellectuals. It is this trope of unmasking that I want to leave behind, because I suspect that it is underpinned by an authoritarian impulse.

The "sociology of intellectuals" — as a subfield of the "sociology of knowledge" founded by Karl Mannheim (1960) — has sought to ground the investigation into intellectual interests on a firmer theoretical footing. Perhaps the founding question of the field of the sociology of intellectuals is whether intellectuals could be said to have interests (and not just values), where these interests may lie, and how they constrain what intellectuals do or say (Kurzman & Owens, 2002). Hence, we get the well-known formulations of: free-floating intellectuals, generations, and the social situation (Mannheim); organic and traditional intellectuals (Gramsci, 1970); *homo academicus* (Bourdieu, 1988); modern legislators and postmodern interpreters (Bauman, 1987), and so on. It has been said that the very figure of the public intellectual has entered into decline or disrepute, most famously by Edward Said who warned that the public intellectual was being overshadowed by the figure of the expert (1994). Recent sociological work has also taken the lead from actor-network theory to suggest that the

borders between "intellectuals" and "experts" ("professionals") have become blurred, necessitating a re-orientation of the field in order to account for these changes (Eyal & Buchholz, 2010). Such shifts are also linked to changing media of dissemination, greater academic specialisation, a growing differentiation of the public sphere, and the increasingly technical nature of moral and political problems.

I do not define intellectuals according to their profession, the medium they use to express their ideas, nor the specific genre of expressing their ideas (the essay, the speech, the manifesto, the letter, and so on.). In some chapters, I will be speaking about intellectuals in the more traditional sense — figures who express moral opinions in written or spoken form through a public medium, and who hold some kind of moral and epistemological authority to make these kinds of statements, such as journalists or academics. I also expand the category to include figures that do this kind of public, moral activity (what Bauman calls legislation), but also in a specifically professional context. In this latter category belong lawyers, judges, and psychiatrists. I could have also spoken about them as professionals in the Durkheimian sense, and I do highlight the "civic morality" and vocational ethics they evoke (Durkheim, 2013 [1957]). Therefore, it may be idiosyncratic to place them alongside intellectuals in a single category, but it makes sense to do so in order to highlight what the two groups have in common: the performance of critique.

In my use, the intellectual is a figure who takes on a particular kind of posture and attitude, that of the critic.[13] By critic, I mean a person who performs a specific type of judgement that is backed by a public commitment and that aims at labelling, diagnosing, and intervening in a situation that is relevant to an imagined collective (say: a nation, a class, a minority). Of course, in adopting this kind of definition, I risk expanding the category to the point of obsolescence. Judgement, commitment, and demands for change are a genre of activities that are performed everyday by ordinary actors. I am not too worried about this risk, however. As

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[13] For a similar understanding of intellectual life as a form of practice, performance, and posture, see Baert (2015). The word "performance" here is meant to allude to the observation that intellectuals assume their roles and stances in a necessarily public setting, so the strategies they employ can be read as interventions that have an imagined public in mind.

Gramsci taught us, "all men [sic] are intellectuals" (1970, p. 9).[14] But there is a difference in that the critic commits herself to this kind of posture, so that she presents herself to herself and to others in terms of this kind of activity. In that sense, professionals who are not traditional public intellectuals could be seen to perform a similar role as long as they authorise themselves in terms of their public commitment to such a posture, which they aim to publicly reconcile with their professional allegiances.[15] Such a spirit of public commitment places a sort of constraint on the intellectual, a pressure to perform consistently with one's professed positions. This commitment is thus not merely a show, but also a kind of self-disciplining that the intellectual learns to nurture and demonstrate, again and again.

A clearer examination of the concept of critique is a useful prerequisite for understanding what intellectuals do, and how they relate to the world around them. Critique is another concept that has recently come in for scrutiny. Several thinkers have called for the abandonment of critique as a concept or an attitude, suggesting that we may have entered a period of "post-critique" (Anker & Felski, 2017; Latour, 2004). Critique arouses suspicion because it is too wedded to an inflated, hubristic, and self-certain Enlightenment authority. It is deemed to be too negativistic, judgmental, and sceptical. However, I believe this "post-critical" move is too premature, partially because critique is an ordinary dimension of social life that must be engaged with conceptually and politically, and partly because the ambitions of emancipation have not been completely extinguished — although they may have been overhauled. It is this overhauling of critique that needs to be formulated, which demands a working through of "left melancholia" to use Benjamin's description (also see Traverso, 2016). In the next section, I discuss different

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[14] I'm not explicitly using the differentiation between organic and traditional intellectual. The critics or dissenters I am speaking of would be considered organic insofar as they are oriented towards praxis and political change, and in this sense my analysis is in part animated by Gramsci's conception. This notion of praxis could also be invoked to justify the inclusion of professionals in the category of intellectuals. And in fact, some of the figures I write about did use Gramscian notions to describe themselves. The reason I'm not drawing heavily on Gramsci is that the concept of hegemony would greatly and unnecessarily complicate my analysis. One of the curious aspects of these intellectuals is that while they do pursue moral and political leadership, their relationship to domination and the pursuit of authority is far more ambiguous.

[15] Another similar category is the dissident or the activist, which I use occasionally, but I strategically use intellectual in order to highlight the legislative and normative innovations that these dissidents/activists make, which can be compared to the kind of legislative activity that intellectuals (are presumed to) do. For more on the history of the concept of dissent, see Bolton (2012).

ways of conceptualising critique and give a very brief genealogy of the concept. Such a genealogy is aimed at addressing these specific questions: How can we differentiate between ordinary acts of "criticism," in contrast to acts of public criticism that provides the vocation of intellectuals, and "philosophical critique" proper? Is there a way to link up these different orders of critique?

Critique, Criticism, Crisis

The words "critique" and "criticism" can allude to multiple activities and concepts. We can allude to the common, everyday activity of judging, assessing, accusing, and appealing to reason. Then, there's the philosophical, Kantian allusion, where critique is not simply a negative exercise in judgement or repudiation — what Marx later called "mere criticism" — but rather the much more substantial project of locating the conditions of possibility of cognition and morality, and thereby establishing limits to possible experience and what can be known. Admittedly, this Kantian project was always associated with the political project of the French Revolution. Indeed, Kant had specifically made this connection obvious:

> Our age is the age of criticism, to which everything must be subjected. The sacredness of religion, and the authority of legislation, are by many regarded as grounds of exemption from the examination of this tribunal. But, if they are exempted, they become the subjects of just suspicion, and cannot lay claim to sincere respect, which reason accords only to that which has stood the test of a free and public examination. (Kant, 1998, pp. 100-101)

And alternatively, in his influential *What is Enlightenment?*

> Enlightenment is man's emergence from his self-imposed immaturity. Immaturity is the inability to use one's understanding without guidance from another. This immaturity is self-imposed when its cause lies not in lack of understanding, but in lack of resolve and courage to use it without guidance from another. (Kant, 1991 [1784], p. 54)

But critique did not always carry such heavy philosophical baggage. The word "critique" can be traced back to ancient Athens as a jurisprudential term; *krisis* "[which] integrates polis, rupture, tribunal, knowledge, judgement, and repair at the same time that it links subject and object in practice" (Brown, 2009, p. 9). Talal Asad presents a slightly different etymology of the concept, *krino*, which means to separate, judge, accuse, and so on. This conception "did not aspire to conquer universal truth but to resolve particular crises justly and to correct particular virtues within a particular way of life" (Asad, 2009, p. 48).

There are two connotations of critique that I wish to allude to: the ordinary meaning and the philosophical Kantian meaning. In the first, "ordinary critique," I am referring to the commonplace activity of labeling, assessing, judging, justifying, persuading, accusing, and so on. The second meaning is the properly philosophical one, which can be understood in multiple ways derived from Kant and his legacy; these multiple philosophical meanings include dialectics, speculative philosophy, critique of political economy, ideology critique, immanent critique, critical theory, and so on. In all these philosophical connotations, the object of critique is not simply negated, but also analysed and explained with reference to its production by a subject representing itself to itself. This philosophical critique is also intimately related to an appeal to a historical process of political emancipation, a political emancipation that is made possible by the expansion of self-reflexivity into the subject's own critical capacities. These critical capacities are said to be limited or blocked by historically contingent conditions, say, by alienation or capital. Philosophical critique can further be described as a kind of meta-critique because it simultaneously lays the ground for its own capacity to know, analyse, and critique its object.

Recently, the philosophical, post-Kantian association of critique with emancipation has come under scrutiny in particular from Koselleck, Asad, and Latour. The common complaint is that it depends on notions of time, agency, and the subject that cannot be stated in the same terms today. This doubt regarding Enlightenment rationality and the historical meta-narrative that underpins it are hard to ignore, especially its association with Eurocentric discourse. If we take this complaint seriously, then we must reconstruct the concept of critique. I follow the lead of recent work in Frankfurt School-style "critical theory" and the "pragmatic sociology of critique" in proposing to use a more deflated, more practically grounded notion of critique as a social

practice. In such a conception, critique is not a property of philosophical discourse alone; rather it is a component of social life in general, whereby actors routinely exercise a capacity to evaluate norms, compare them, make judgments, demand changes, propose alternatives, and so on. Understood in this way, critique is not something that is imposed upon social life from above. Critique, instead, engages with social conflicts and controversies as themselves expressions of a routine critical capacity of making evaluations. I will explain more of what such a conception entails shortly.

My conception of "deflated critique" draws upon the "pragmatic sociology of critique" introduced by Luc Boltanski (2006, 2011, 2018) and his collaborators, Laurent Thévenot and Eve Chiapello. In my estimation, this approach shares much of the same theoretical impulse of the Cambridge School of intellectual history insofar as it also interested in reflections and critique as a certain kind of practice of problem-solving that puts concepts into use. The starting point of Boltanski's work is a critique of Pierre Bourdieu's "determinist" view of social domination, which Boltanski sees as insufficiently attentive to the capacity of actors to reflect, contest, and criticise. Boltanski points out that any conception of domination presupposes a concept of legitimation. Therefore, rather than positing his sociology as an abstract critique of domination in general, he asks: How is the social order legitimated and justified? What kind of normative modalities come into play? And what sort of principles of justice are mobilised to constitute this normative modality? (Boltanski, 2006, p. 34).

Boltanski and Thévenot build their framework on three key concepts: *The situation*: This refers to "a certain context in which the action occurs, and . . . [to] the meaning given to this context by relating it to a determinate type of action" (2011, p. 69). The action Boltanski is interested in is "dispute" because situations of dispute and normative conflict disclose the relationship between a given state of affairs and a correlative way of distributing, arranging, and assigning worth. The *test* occurs whenever principles of justice are invoked, or what Boltanski labels "principles of equivalence," in order to assess "the relative value of the beings engaged in dispute" (2011, p. 27). There are two types of test: the reality tests, in which the dispute involves a discrepancy between the principles at stake and the real distribution of beings. Other disputes are called "tests of strength," in which the tests or principles themselves are called into question and contested among actors (2018, pp. pp. 31-32). This is also the difference between reform and

revolution, which should not imply a hard and fast distinction between these two types of tests, better understood as existing in a continuum. The *polity*, or the *city*: Boltanski relies on six ideal-types that he labels cities corresponding to six modes of normative justification, worth, or "political metaphysics." These six cities are the market-place, the industrial, the inspired (city of God), the civic (the polis), the domestic, and the world of opinion and fame. Boltanski later added a seventh city, that of the art-world, as a separate order of worth. These cities are inferred from the history of political philosophy regarding the ideal polity. Individuals inhabit these worlds simultaneously, making it possible to transfer a principle of justice from one to the other, which becomes a strong source of dispute or critique (2006, pp. 214-215). Disputes are precipitated when denunciation of the injustice of a situation is articulated as a judgement on the borders between the worlds.

Procedural tests of rightness are an integral element of critique — but they are only one part. Another crucial element is the form-of-life in which critical reflection occurs. The Wittgenstein-inspired concept of form-of-life has entered into overuse so I will specify how I read it. My guide here is the work of social philosopher Rahel Jaeggi in *Critique of Forms of Life* (2018). Jaeggi opposes the tendency in liberal political theory since Kant to abandon the idea of the good in favour of the idea of rightness (2018, pp. 7-8). Jaeggi argues that this puts great limits on the critical potential of social philosophy and narrows the kind of judgements that can be made with the aim of advocating for the conditions of a good life. But Jaeggi does not make a return to Aristotelian virtue ethics, in large part because she recognises that this would risk a return to paternalism (2018, p. 9). Instead, she focuses her attention on the everyday confrontations of different forms-of-life, highlighting how criticism that is born out of crisis and conflict can also guide an investigation into the consequences of dispute on the collective organisation of our lives. This adds another dimension to criticism that looks into the stakes of validity claims and moral disputes, stakes that are rooted in the conflict over different ways of organising and conducting our lives. Claims of rightness are never entirely separable from claims of goodness. Jaeggi's definition of forms-of-life borrows from multiple thinkers ranging from Hegel, Marx, Wittgenstein, Arendt, John Dewey, and Alasdair Macintyre. By forms-of-life, Jaeggi is referring to something more than mere conduct, habits, lifestyles, customs, traditions, or institutions (codified rules) (2018, pp. 60-62). Instead, Jaeggi defines forms-of-life as clusters of practices that have a habitual, self-sustaining character, informed by the normative pressure of

expectation, but which are also purposeful in the sense that are connected to some set of real goals (2018, pp. 64-71). These practices are also governed by internal rules of validity, which are constitutive of these practices without which they fail to be what they are (2018, pp. 82-84). Such a conception need not assume organicity or a philosophy of history, but it does presuppose that there is a normative goal to these bundles of practices, that they are meant to allow us to achieve something. They are also tied to interpretations and orientations that give them unity, context, and intelligibility, so that we might say that we can judge whether a practice "fits" into the practical and interpretative nexus in which it exists (Jaeggi, 2018, p. 84-99). But such interpretative nexus is not merely a given; it is also made, so that practices can be opened to reflection and criticism in such a way that the implicit knowledge or rules governing them can be made explicit, which permits their opening up to negotiation and adjustment as a constitutive moment of maintaining them as a form-of-life (Jaeggi, 2018, pp. 110-111).

One major contribution of Jaeggi's framework is her explicit acknowledgement that conflicts over interpretation are linked to crises in the form-of-life, or put differently, that ethical justifications of practices are constitutively linked to their purposes, their ends (Jaeggi 2018, p. 149). This allows Jaeggi to explain normative disputes as "problem-solving" exercises, and so she combines a pragmatist (specifically Deweyian) analysis of disputes with a neo-Hegelian normative analysis of ethical life. The upshot of such a strategy is its insight that the "ends" of different kinds of practices are an integral part of the normative rules that govern them; the why of a practice (its end) is related in some way to its know-how. This, I think, opens up the possibility for reflection, for then we can reflect on the rules that govern social practices and ask: What is their purpose? Do these different purposes cohere with each other? Does my know-how fit the purpose of that practice? In short, questions about ethical goodness are ultimately questions about why we do what we do.

The reflections of Boltanski and Jaeggi provide some keys to analysing criticism and critique as forms of social practice, which are grounded in disputes (Boltanski) over forms-of-life (Jaeggi). I am proposing that such a framework can help contextualise the transfer and use of moral discourses, or what Boltanski refers to as "tests" (disputes over rightness) in a larger constellation of social relations, normative worlds, practices, and institutions. I would add that a form-of-life is a moral economy, a historically concrete system of organising labour,

reproduction, distribution, market exchange, and political authority with reference to plural conceptions of the just, good, right, and fair. This allows us to link moral and legal disputes to their source in moral-economic crisis — a connection that may not always be visible to the users and audience of critique. It allows for a kind of analysis that combines the insights of a very wide array of theorists (Kant, Marx, Hegel, Dewey, Wittgenstein, Polanyi, Bourdieu, Macintyre, among others) in a viable, updated, and adaptable theoretical framework. This framework need not be bogged down by the inflated assumptions of Enlightenment and liberal rationality, while it does not abandon the attempt to account for struggles for justice and political change. It can also lay the ground for an exposition of the limitations of critique-in-action, while recuperating the spirit and aspirations of the critique under examination.[16]

The use of the concept of Wittgenstein's concept of forms-of-life is often presented in a conventionalist-traditionalist reading that radically separates between what Celikates (2015) calls the internalist and externalist perspectives. In an internalist reading, actors are entirely submerged in the language-games that constitute their form-of-life, which gives rise to an understanding of their world as entirely particular to this background-ness or sheer given-ness of these rules. The possibility of reflecting on these grammars, or even making them explicit to their users, is severely restrained by this given-ness. Against such "Manichaeism" as Celikates (2015) calls it, an alternative analysis would focus its attention on disputes, tests, and attempts at problem-solving — the kind of analysis that Boltanski, Jaeggi and others have proposed and which I am reconstructing here. Certainly, the objection could be made that this recourse to reflection risks falling into an infinite-regress; if all meta-rules are put into question, then forms-of-life lose their coherence and authority. I think this objection relies on a narrow view of both rules and disputes. I do agree that there is a limit to the questioning of meta-rules, and that it is impossible to suspend all rules simultaneously. But this is a caricature of disputes: Disputes are not simply a repudiation of all rules at once, but rather they bring into view an area of ambiguity in the use of rules, generating a demand for clarification of what the rule means, where it applies, and its purpose. A response to such a demand would be either the search for "higher-order" rules that may give us an answer or an analogy, the invention of a new rule or new exception, or even the bracketing out of a certain rule by constraining its application. Rules, grammars, and

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[16] Here I am inspired by the work of Celikates (2018) and Cordero (2017).

language-games never form a seamless whole that is entirely given, immediate, or habitual. Even more importantly, the limit to our questioning and reflection on rules cannot be decided or set out in advance of the investigation. If a form-of-life is constituted by rules all the way down, then instead of a limit we should be thinking of a horizon, an ever-receding ocean floor.

This deflated notion of critique as social practice allows for a reconstruction of the philosophical task of critique on alternative grounds. The philosophical task can be carried out through a second-order critique-of-critique. This second-order critique of critique looks into the moral economy that ordinary critique produces and navigates, but which may not always be explicit to its users or audience. By moral economy, I mean a complex constellation of normative forces, concepts, evaluations, narratives, emotions, images, sounds, experiences, objects, and so on. [17] This constellation exhibits contradictory tendencies, some dominant and others marginalised, which may not always line up or fit together easily. The theorist maps out this complex moral economy, looking into the different trajectories of critique, the choices made or revised, the different ideals brought to bear on the status quo, the way these ideals contend with each other, and how this background is made implicit or explicit in critique's workings. Ultimately, this mapping of critique's moral economy will identify the historical background of critique's activity, which is not always made evident. The theorist's role here will be diagnostic or "therapeutic," to use a Wittgenstein-inspired metaphor. This does not mean that the theorist is simply an observer or chronicler of critique's operations. Rather the theorist participates in the mapping of critique's moral economy in order to locate its limits, its dilemmas, its *aporias*.

Such a deflated, weak conception of critique, I contend, can avoid the more problematic dimensions of Kantian critique because it locates critique's working at the centre of practical activity and everyday life. It does not presuppose that critique is the possession of a

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[17] I am also explicitly alluding to the meaning of moral economy provided by E.P. Thompson, and implicit in Karl Polanyi, in which moral evaluations are never separate from economic relations of production, distribution, and exchange. Ideals of justness, rightness, and fairness are deeply implicated in contests over the distribution and use of goods, land, and labour power. Even "human rights" could be interpreted in this context as a certain claim over the fair limits of market exchange, and hence a discussion of moral critique can never be separate from economic analysis. But I will remain agnostic, for now, on the extent to which contemporary market economies are said to be (dis-)embedded from/in moral customs. Hence my emphasis is on the contestation over moral economy. For more on the plural meanings of moral economy, see Fassin (2020).

philosophical consciousness alone. Philosophical consciousness rather participates in the everyday life of critique. There is no "unmasking" to be done which presupposes that philosophical consciousness can have a view that is inherently inaccessible to ordinary critique; rather philosophical consciousness derives its own view from what ordinary critique already does and is in dialogue with it. Furthermore, this deflated conception of critique can loosen the grip of eschatological, progressive notions of time, since such a framework does not assume that the goal of emancipation is guaranteed by a coming into maturity of ordinary actors. The theorist cannot know in advance how the goal of emancipation looks, nor how it might be brought about; all she can know are specific normative problems or grievances that demand explanation and address. Such a problem-solving approach must assume that an improvement over the current state of affairs is possible — because otherwise, there is no point in addressing the problem. But, any imagined solutions or final ends (telos) of the problems being addressed can only be imagined indirectly in terms of relative improvements over a current state of affairs. This telos is not guaranteed by either providence or the alleged superiority of philosophical consciousness, but is merely an anticipated (re-)solution to a specific problem or question that ordinary everyday critique has posed. The end of normative striving is a shifting goal post.

Form-of-Life and Moral Economy

It is common to think of intellectual disputes in the Arab world as a product of the age-old clash between tradition and modernity, Islam and liberalism, the indigenous and the foreign. This view must be shattered. It is premised on a refusal to pay attention to what is actually at stake. The crisis-ridden moral economy[18] or the form-of-life to which I am referring is neither traditional

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[18] I am aware that this is a very idiosyncratic understanding of "moral economy" (Cf. Fassin, 2020). The concept is usually used with a romanticist hue, alluding to pre-modern, pre-market economies. But my misuse of the concept is deliberate. I want to challenge the romanticist identification of the pre-market with the "moral," in order to draw attention to the possibility that even authoritarian market systems have a certain moral logic, for example, through the paternalistic conception of the "motherland" and the "leader," or the identification of "progress" with moral refinement. Even the market requires some rough or thin conception of fairness for it to be acceptable, or as Polanyi thought, it relies on a utopian understanding of natural self-regulation. In distancing myself from romanticist readings of moral economy, I am also proposing that the critique of modern society (including Arab society) be undertaken with respect neither to the past (romanticism/traditionalism) nor the future (utopianism), but from the vantage point of a more multilayered, sedimented time. For a sensitive application of the concept of moral economy to Arab political thought, see Tripp (2006). Tripp is also sensitive to the various ways

nor modern. Rather the moral economy here can best be summed up as: neoliberal, postcolonial authoritarianism. This "authoritarianism" is not born out of an ancient Oriental despotism; rather it is the product of a political arrangement built and consolidated by national-independence regimes. There is a global, political-economic context to this arrangement or institutional design, as well as an internal, endogenous source.

Local conditions played a role in the authoritarian direction of the developmentalist, postcolonial state. Those conditions have been expressed in familiar terms as the split between "civil and political society" (Chatterjee, 2011), the "bifurcated state" (Mamdani, 1996), or "domination without hegemony" (Guha, 1997). These different formulations address the way that colonial state institutions were sharply split between two domains: one was formal-legal, elite, urban, and restricted, while the other was customary, rural, "indirect," and racialised (or in the Arab case, sectarianised). The post-independence regime did not overcome this split, and nor did it leave it untouched. Rather it transferred this split to a different institutional level. In the Egyptian case, for example, this split was concentrated into the split between emergency rule and legal rule, or revolutionary-military rule versus bureaucratic rule. This was a different answer to the original problem of how to create "citizens" out of colonial "subjects." The answer given by the postcolonial military elite was to split citizenship itself into two dimensions: Political power is immediately transferred up to a paternalistic, revolutionary, military authority under the shadow of emergency law, while the state bureaucracy takes care of social rights and "development." The subsequent neoliberal turn entailed another twist, so that emergency rule increasingly took over many of the previous functions of state bureaucracy, but now directed towards the management of class and sectarian division, while other functions were relegated back to the semi-private spheres of kinship and the family. Of course, in both spheres, the possibilities of political participation are severely restricted, if not crushed.

Within the global context, this crisis of the postcolonial state-form correlates with the general transformation of 20th century "antisystematic" movements (Arrighi et al., 1989). Those

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capitalism articulates itself with variant institutional configurations, and the role of such variety in critical reactions to it (p. 3). But I differ with his characterization of capitalist rationality as simply relying on means-ends rationality, and consider that in frequent occasions capital must rely on moral categories. Tripp himself sometimes suggests such ambiguity, when he scrutinizes the moral critique of capitalism.

antisystematic movements are the socialist, communist and national liberation movements. These antisystematic movements have engendered the dominant post-war regimes: welfarism, state-socialism and developmentalism. The crisis of legitimation that the postcolonial developmentalist state entered into by the late 1960s and the early 1970s is far from exceptional and corresponds to a more general global crisis. This crisis has expressed itself as a confrontation between an Old Left and a New Left, as Wallerstein and Arrighi explain (1989, pp. 99-102). The Old Left stood for the post-war arrangement of the world-system into these three types (welfarism, state-socialism and developmentalism), while the New Left rebelled against the bureaucratic, tyrannical, and authoritarian character of these states. This could also be described as the tragedy of the "Bandung Era," as in Samir Amin's narrative (1994, pp. 14-15).

This is a very schematic context to the intellectual disputes I will cover. For example, these splits and bifurcations must also be related to the shifting relations between North and South, metropolis and periphery, crises of social reproduction and care, or different capital-forms — and how all this relates to shifting global regimes of value accumulation and transformation. I cannot explore this in detail; here I am merely sketching how these different institutional configurations are relevant to any analysis of the substantive stakes of intellectual statements and political disputes, including "human rights." This is a more sophisticated way of understanding the trajectory and transformations of the global Left after 1968, which is the historical point at which the anti-authoritarian impulse erupted across the world — including within the Arab left — and which explains part of the attraction to human rights discourse. It also illustrates why tragic time is an adequate frame through which to think of this generation of intellectuals who rebelled against the old promises of anti-colonial elites, but who also wished to preserve many of the emancipatory ambitions of these earlier 20th-century struggles.

Critique as History: Melancholy, Colonial Enlightenment and Tragedy

The preceding social-theoretical background can be worked into a historiographical perspective by picking up and developing a concept of time. Every practice of critique is determined by a temporal horizon, a certain way of relating past and present. In the first place, if critique is looked at as a certain type of "speech-act," then it always operates with reference to a particular

"problem-space," to follow R.G. Collingwood and Skinner. The "problem-space" refers to a precise set of questions thrown up by a particular crisis of meaning and intelligibility. For example, the "problem-space" in which the human rights discourse operates is the crisis of the postcolonial regime and its national-liberation model of legitimation. Each problem-space is further constituted by a horizon of expectation and a space of experiences — in other words, a certain way of narrating past experiences and of relating them to future expectations. This precarious temporal disjuncture between expectations and experiences is constitutive of modern crisis. The temporal fission exhibits the possibility of tragedy, that is, the possibility of rereading and re-narrating the experience of revolutionary failure in the mode of modern tragic time. Tragic time — like form-of-life in the preceding section — allows us to recuperate the experience of crisis and reorganise it at a higher level of reflexive analysis. Let me go further and suggest that tragedy is the self-reflexive attitude par excellence; it is critique at its most comprehensive, historically sensitive level.

This intellectual historiography borrows from the work of Reinhart Koselleck, Quentin Skinner, John Pockock, and David Scott. From these authors, I take intellectual statements (which include published texts, speeches, and public reports) to be speech-acts intended for communication, and which therefore rely on a background set of meanings and concepts. The intellectual statement exists in a problem-space that can be located in a longer dialogue, a dialectical question-and-answer process, that labels and describes a particular political problem and which aims to effect a change or lead an intellectual intervention into this problem through the very act of communicating it. The act of intellectual communication is also shaped by temporal sensibilities that shift and oscillate, and which depend on a certain relationship between (political) experience and expectation. The relationship between experience and expectation could be analysed in terms of genre or mood: eschatology, prophecy, romance, melodrama, melancholy, comedy, tragedy, and so. For example, I will show that certain intellectual statements could inhabit a space between tragedy and melancholy, in contrast to postcolonial melodrama, and that this shapes their understanding of major political concepts, such as human rights, citizenship, democracy and freedom.

The Cambridge School of intellectual history looks at political theory as a sort of doing, a political action that is meant to produce a certain kind of political effect. Note the link to my

prior conception of critique as a social practice. James Tully (1988) provides a useful summary of the Cambridge School approach, which poses those five questions:

> (a) What is or was an author doing in writing a text in relation to other available texts which make up the ideological context? (b) What is or was an author doing in writing a text in relation to available and problematic political action which makes up the practical context? (c) How are ideologies to be identified and their formation, criticism and change surveyed and explained? (d) What is the relation between political ideology and political action which best explains the diffusion of certain ideologies and what effect does this have on political behaviour? (e) What forms of political thought and action are involved in disseminating and conventionalising ideological change? (1988, pp. 7-8)

Here, political thought is neither a search for timeless truths, nor is it an inert history of "ideas" separate from political action. Both approaches are vulnerable to anachronism, because they either project contemporary meanings onto the thinker, or they remove the thinker from the conversation or political problem with which they were engaged. It also leads to mythologies of progress or idealism (Skinner, 1969, pp. 11-12). Such faulty approaches to intellectual history also lead to other mistakes: demonology, holding up impossible standards of consistency, or imagining intellectual systems to be closed and complete. The alternative that Skinner proposes goes something like this:

> The understanding of texts, I have sought to insist, presupposes the grasp of both what they were intended to mean, and how this meaning was intended to be taken. It follows from this that to understand both the intention to be understood, and the intention that this intention should be understood, which the text itself is an intended act of communication must at least have embodied . . . and it follows from this that the appropriate methodology for the history of ideas must be concerned, first of all, to delineate the whole range of communications which could have been conventionally performed on the given occasion by the utterance of the given utterance, and, next, to trace the relations between the given utterance and the wider linguistic context as a means of decoding the actual intention of the given writer. (1969, p. 48)

Note that the "intention" referred to here is not a psychological state of mind or something hidden beneath the text. Rather, the intention is the text understood as a certain kind of speech-act, a certain kind of communication. Built into such a communication is the intention to be understood, to produce a sort of ideological effect within a given intellectual field.

Two thinkers have influenced the Cambridge School more than any other: Collingwood and Wittgenstein. From Collingwood, it takes the idea that intellectual speech-acts are engaged in a very particular kind of conversation that takes the form of question and answer. Skinner quotes Collingwood in saying that "there are only individual answers to individual questions, with as many different answers as there are questions" (quoted in Skinner, 1969, p. 50). The implications of this are considerable, I think. It means that intellectual statements are not aimless, arbitrary series of worldviews, and nor is their development an endless, unidirectional accumulation of truth. Rather, each intellectual statement poses a certain kind of question, a problem. This problem is not fabricated from a void; it is already shaped by the intellectual and political space in which the statement is made. The answers provided by the statement are inevitably partial and limited, not only because they are the results or "products" of their time, but also they are a kind of political action or event. This is a kind of "historical pragmatics" (Tully, 1988, pp. 21-23)[19] because, following Wittgenstein, they are focused on language use as essential to the constitution of the political-intellectual field: "Political thought as a multiplicity of language acts performed by language users in historical contexts" (Pocock, 2009, p. viii). There is an added caveat: Insofar as political philosophy is language use, it is also intended to be understood by an audience, and it must manipulate the linguistic and ideological conventions of the time in order to produce a certain kind of normative effect, to make a judgement on the problem it is addressing.

While the Cambridge School offers a pragmatics of time, Koselleck offers a "semantics of time." In *Critique and Crisis* (1987*)*, Koselleck argues that Enlightenment "critique" was always semantically wedded to some experience of "crisis," and he locates the origins of such a

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[19] It is interesting to note also that Tully emphasises how Skinner and Pockock's historiography and their pragmatic outlook is already grounded in the "humanism" they historicise, so that the very history they write informs their methodological assumptions in a kind of virtuous circle (See 1988, p. 21). This is important because it provides a clue to what Scott also tries to do with Skinner and Pockock.

connection in the history of Enlightenment vis-à-vis the state. Koselleck argues that the Enlightenment grew out of a very particular condition under the Absolutist state. The Absolutist states that developed out of the religious wars instituted a strict separation between private religious conscience and political power and sovereignty centralised in the hands of the monarch. This separation between private conscience and political power had corrupted both. Morality was confined and relegated to private conscience while political power became increasingly absolutist in its conception. The clash between the two marked an endemic "crisis" of political legitimation, a difficulty in conceiving legitimate power. The Enlightenment did not just respond to such a crisis; it actively fed and benefitted from it. If the Enlightenment naturalises its own rupture between past and present, Koselleck exposes how such a temporal structure is itself produced historically and semantically. He introduces two central concepts that have proven useful in recent intellectual history: "space of experience" and "horizon of expectations."[20] Experience is "present past, whose events have been incorporated and can be remembered. Within experience a rational reworking is included, together with unconscious modes of conduct which do not have to be present in awareness" (Koselleck, 2004, p. 259). Meanwhile,

> Expectation also takes place in the today; it is the future made present; it directs itself to the not-yet, to that which is to be revealed. Hope and fear, wishes and desires, cares and rational analysis, receptive display and curiosity: all enter into expectation and constitute it. (2004, p. 259)

These two concepts reveal the ways modern "philosophy of history" (the belief in progress) is already embedded in and belied by a much less "perfect" or "simple" tense. Such plural and complex time is that of experience and expectation that intrudes into and constitutes the present in such a way that the boundaries between past and future cannot be assumed tight or secure. But Koselleck also writes that they are not symmetrical concepts:

> Past and future never coincide, or just as little as an expectation is as complete as its occasions are past; that which is to be done in the future, which is anticipated

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[20] These concepts seem to have been derived indirectly from Karl Mannheim through Jauss' "reception theory." They thus bear some connection to Mannheim's sociology of knowledge (see Koselleck, 2004, p. xvii).

in terms of an expectation, is scattered among an infinity of temporal extensions.
(2004, p. 260)

It is this asymmetry between past and future that is radicalised by modern historiography, a move that encloses and specialises experience into a space, hence "space of experience," while spreading expectation into an incomplete, ever-receding series: "a horizon of expectation" (Koselleck, 2004, p. 260). In other words, the modern experience of time is structured in such a way that the past is always definite and distinct from the present, while the future is ripped open into an indefinite not-yet. Both appear to the modern subject as torn apart from each other, and it is precisely the role of the conceptual historian to show that such a tearing apart of past and future can itself be located on the level of a "semantics of time" (Koselleck, 2004, p. 264).

David Scott's entire oeuvre can be read as an attempt to mobilise the preceding concepts in order to re-write a postcolonial history that can open up the question of the political, which has been sidestepped and replaced with questions of culture in postcolonial scholarship (See Scott, 1999, 2004, 2013). Such a move requires re-reading the history of colonial modernity in tragic, rather than melancholic, terms. This distinction is crucial, and Scott's dialogue with Talal Asad is illuminating here (Scott, 2006; also see the discussion in Iqbal, 2020). If colonial modernity "conscripts" its subjects and coerces them into an increasingly disjunctive and jarring experience of dislocated time, and if such an experience is constitutive of the modern subjectivity of these "conscripts," then the full implications of such a history could be rewritten in the register of tragedy. This would remove it from the domain of Kantian self-determination, reinsert in it a concept of action as vulnerable, unpredictable, and not fully self-determined.

Scott's exemplars of "conscripts of modernity" are Toussain Louverture, leader of the Haitian Revolution, and Louverture's most admiring historian, C.L.R James. Both figures are generally seen to be in thrall with Western universalism and the French Revolution, and they both wage their battle on such a terrain. By reconstructing James' changing narrative of Louverture in *The Black Jacobins* (1963), Scott records the ways in which James' own self-presentation and mood changes from one of romance, when the book was first published, to that of tragedy, when the second edition was published. Between the two editions, James' witnessing of the failures of the global Left had caused him to immerse himself in a Marxist study of Greek tragedy, and a careful search for how Greek and modern tragedy could again become politicised.

Scott argues that James was able to accomplish such a feat by setting up revolutionary history as tragic, and Louverture as its tragic hero. The tragic hero is one who risks action and self-determination for the good of the people, but who then faces obstacles that reveal (or are precipitated by) his inherent limitations, indecision, and finitude.

The political effect of such a tragic account is far from melancholic, and tragic catharsis is immediately political. In my understanding of Scott's project in *Conscripts*, tragedy has two advantages. Firstly, it challenges the dominant notion of Kantian autonomy and self-determination, because it restores a conception of human fragility, risk, moral luck, and failure into conceptions of ethical action and virtue (2004, 186-196). The tragic actor is very different from the Kantian subject who is immune from the consequences of her actions because she believes her actions are self-determined. Meanwhile, the tragic person risks upsetting the balance of forces and conflicting duties, and therefore must endure the consequences of the series of actions she triggers. Secondly, setting emancipatory narratives in tragic time allows them to be rendered communicable to their inheritors, so that we (contemporary readers of C.L.R James) could relate ourselves in Toussaint's (and James') struggle. Catharsis empowers the reader to risk political action again, despite the knowledge that triumph is far from guaranteed.

> What is distinctive about the prespective of tragedy, we will see, is the way it reflects upon the inversions and reversals that constitute the relationship between mastery and chance, between invulnerability and fragility, between knowledge and ignorance, between action and contingency, between achievement and failure. Tragedy poses the questions: What is the connection between, on the one hand, the indispensability of enlightenment to the resistance of tyranny and domination and, on the other hand, the inevitable costs that attend a relentless and unheeding sort of enlightenment thinking? What is the relationship between the invaluable human desire for freedom and the impoverishment that is often the consequence of the attempt to seal ourselves off completely from any risk of contingency and plurality? (Scott, 2004, pp. 175-176)

Along with Koselleck, Scott invites us to be attentive to the way historical narrative (such as that of James) is shaped by the "space of experience" and the "horizon of expectation," and how that narrative is, on a deeper level, a reflection of the collision between experience and expectation.

Scott writes that the distinction between experience and expectation is "a potential feature of any historical shift in which the prospect of old futures has faded from view and unsettled, as a consequence, our prior notions about what to do with the pasts in the present" (2004, p. 44). In other words, Scott is looking for a way in which temporal rhythm animates the way historical event is put into narrative. So, in his example, James' narrative of the Haitian Revolution is punctuated by his own reflections on the rupture between his experience and expectation (his emancipatory hopes), so that *The Black Jacobins* is also a reflection on the "futures past" of the Haitian Revolution and modern revolutionary time at large.

Meanwhile, the concept of the "problem-space" used by Collingwood and Skinner provides a way to explore the distinction between the problem James tackles in *The Black Jacobins* and the contemporary postcolonial present, and the ways both problem-spaces could be made to speak to one another. James' text can be read as a part of a longer question-and-answer process, in which his question is the location of the colonised peoples in the revolutionary struggle, and his answer is the story of the Haitian Revolution, which was all but forgotten at the time. But Scott also departs from Skinner in his insistence that such an approach need not be simply "ruminative" or interested in mere historical narration, where the past is "put on display" (2004, p. 54).

> The view that I have been commending is that the logic of question and answer — and Skinner's own restatement of it, especially, can, and should, be pressed in a more self-consciously critical and actively interventionist direction than Skinner himself is prepared to go. . . I am interested in determining whether in the current conjuncture this move [James' vindicationist view of the Haitian Revolution] continues to be a move worth making . . . Does this discursive move of vindicationist Romanticism continue to be as salient a move in our postcolonial present as it was for James in his colonial one? Does it continue to answer a warrantable question? I have a doubt about this, and this is what this book is concerned to explore. (2004, p. 55)

Scott's work is refreshing because of his agnostic attitude towards "colonial enlightenment," as it captures the dilemmas, tragedies, and risks entailed in local critique. Scott's approach permits a restoration of the questions of tyranny, emancipation, freedom, struggle, and resistance — the

kind of questions that animate the texts, authors, and activists I explore in this dissertation. These themes have not disappeared from the problem-space of local intellectuals and activists in Egypt, for obvious reasons. In the story that I'm telling, these aspirations can be directly linked to a certain kind of heritage, a certain kind of "question-and-answer" process (in Collingwood's sense), in which different kinds of interpretations of contemporary tragedy are explored and criticised. Certainly, those intellectuals/activists are exemplary "conscripts of modernity" and are caught up in a "colonial enlightenment." And yet, as I try to show, their conscription can be read similarly to how Scott reads James, as one that is haunted by the shifting modes of romance and tragedy, punctured by the terrible disjuncture between experience and expectation.

Conclusion

The choice and mapping of the problem-space is not arbitrary, but is constrained. Subjectively, it is the commitment to the social practice of critique that authorises the intellectuals to make their claims. In this sense, the intellectual commits herself to the posture, attitude, or "conscience" of critique. Moreover, the social practice of critique can also be read as a tradition. Critical practice is enabled by a changing repertoire of critical methods, perspectives, strategies, solidarities, institutional, and personal allegiances that touch upon the form and the content of intellectual statements and practice. The social practice of critique is not exclusive to intellectuals alone, but intellectuals provide an exemplary case of a much wider set of social disputes that they aim to express, concretise, explain, and give voice to. Intellectuals do not invent these disputes from a vacuum, but they do give it a concrete shape, direction, and efficacy. The dispute is a confrontation between different kinds of procedural "tests," which arises out of a particular situation that demands redress, and which concerns fundamental questions of justice. These "tests" refer to political metaphysics, a certain imagining the ideal way of arranging worth and the distribution of social goods. And sometimes, a dispute concerns the very criticisability of dominant and hegemonic meta-rules of justification.

Disputes over criticisability and tests form only one side of critique, however. The other side is that of moral economy or the form-of-life to which these tests refer. I am making a strong argument here that supposedly "moral" claims (such as human rights) inevitably face, or arise

out of, much more substantive questions over ethical life, normative grammars, social practices, and the production and distribution of social goods. The most procedural validity claims proposed by intellectuals — especially when they claim "neutrality" — are staked in a larger, more difficult context in which there is a conflict over deeper substantive practical and ethical disputes: How to assign new meanings to different objects and persons, what kind of ends our social practices will follow, how these ends relate to each other, what are the boundaries between them, and so on. Intellectuals do not always attend to the substantive, ethical practices that they rely upon implicitly, and hence it is important to draw up the basic contours of the moral economy in which disputes are set.

3. The Origins

It is commonplace in histories of human rights to register the complaint that they have replaced other radical, utopian visions, or that they have displaced the "revolutionary subject." The kind of accounts presented by Samuel Moyn (2010) and Jessica Whyte (2019) have cemented this reading of a certain complicity between the rise of neoliberalism, the decline of the social-democratic project, and the individualism of human rights and the rule of law. Enzo Traverso's description of the revolutions of Eastern Europe is appropriate here: "Instead of projecting themselves into the future, these revolutions created societies obsessed by the past" (2016, p. 4), and hence,

> the twenty-first century coincided with the transition from the "principle of hope"
> to the "principle of responsibility" . . . "The principle of responsibility" appeared
> when the future darkened, when we discovered that revolutions had generated
> totalitarian monsters, when ecology made us aware of the dangers menacing the
> planet and we began to think about the kind of world we will give to future
> generations. (2016, p. 6)

Traverso labels this general mood that haunts oppositional forces as "left-wing melancholy," recalling the prophetic figure of Walter Benjamin, who dramatised the tension between messianism and utopianism. An analysis of the contours of this melancholy exposes the limits of our political horizons. Traverso makes explicit the connection between this Eastern European experience and the Arab uprisings:

> Their memory was made of defeats: socialism, pan-Arabism, Third Worldism,
> and also Islamic fundamentalism . . . Such uprisings and mass movements are
> burdened with the defeats of the revolutions of the twentieth century, which are an
> overwhelming heaviness paralysing the utopic imagination. (Traverso, 2016, p. 4)

I do not generally disagree with this line of questioning, but I want to add to it another set of follow-up questions. My concern lies with the time not after the defeat of revolution, but in the *interregnum* between revolutions, when the meaning of the defeat is still an open political

question, and the narrative is not settled. Moreover, when I read the intellectuals I'm speaking of here, who indeed witnessed multiple devastating defeats — as well as their consequences, from arrest and torture to exile — I find their melancholy tempered by an effort to understand, diagnose, and to enact self-critique. Instead of a story of a Fall and dispersal of radical potential, though that is also present, what I see is a story of conscious realignment, driven by an earnest, patient effort to rearrange the shape of their expectations and hopes. While it may be melancholic, perhaps on the brinks of despair, it is not "obsessed" by the past as much as it attempts — with varying degrees of success — to reckon with it. And it is understood that such a reckoning can stand as a placeholder, a reservoir of critical and transformative energies, preserved through the labour of revision and chronicling, which may extend indefinitely. Beyond hope and despair, this figure is the chronicler, or Benjamin's (1969) storyteller. The chronicler is not a passive spectator to the exit of one era and the arrival of another, but tells a story that is already understood as a latent and prefigured intervention, like a message in a bottle that rearranges the divisions of time. It is from this perspective that I want to chronicle what is vaguely named the "human rights project."

This chapter traces the trajectory of on older generation of intellectuals than those who grew out of the student uprisings that I discuss in the rest of the dissertation. I call these intellectuals, who had been shaped one way or another by the national liberation moment or were part of its political and intellectual apparatus, "the vanguard generation." My focus is on a pivotal moment in 1983, when a large conference was organised to discuss "The Democratic Question in the Arab world" and in which the idea of a human rights project was crystallising. The conference is pivotal because it also coincided with the founding of the Arab Organization for Human Rights (AOHR). I use the proceedings of this conference to examine the sorts of frameworks and concepts circulating at the time, and how different historiographies (liberal-leftist, Third Worldist, radical democratic, Islamic) gave way to alternative understandings regarding the content and meaning of "democracy" and, *ipso facto*, human rights. It is curious that at no point were the two concepts treated separately, and all the thinkers I speak of here seem to be much more influenced by what I categorise as the "republican" tradition than by the properly liberal "natural right" tradition. It thus appears that from very early on, the concept of human rights was filtered through a larger constellation of ideas coalescing around democracy,

understood in an eclectic variety of ways, ranging from enlightened governance to agrarian, plebeian populism.

The Context

As I explained in the previous chapter, I am drawing heavily from David Scott's (2004) use of the concept of the "problem-space," which has recently generated much excitement in the field of Arab intellectual history (see Hanssen & Weiss, 2017; El-Shakry, 2021). To summarise, Scott defines the problem-space as

> a discursive context, a context of language. But it is more than a cognitively intelligible arrangement of concepts, ideas, images, meanings, and so on — though it is certainly this. It is a context of argument, and therefore, one of *intervention*. (2004, p. 4; italics in original)

Borrowing from Collingwood, Scott adds that it is "an ensemble of questions and answers around which a horizon of identifiable stakes (conceptual as well as ideological-political stakes) hangs" (2004, p. 4). The accent here is on the ideas of "intervention" and "movement," the kind of arguments put forward that enact something defined by the context of related questions and answers. "Problem-spaces alter historically because problems are not timeless and do not have everlasting shapes. In new historical conditions old questions may lose their salience, their bite, and so lead the range of old answers that once attached to them to appear lifeless, quaint, not so much wrong as irrelevant" (2004, p. 4). Looking at intellectual statements from this perspective enables us to relate the argument or the "movement" to its political and intellectual context without separating them ontologically as belonging to two different worlds. Rather, the argument exists in a narrative that can be retrospectively reconstructed in such a way as to also allow a perspective into the political stakes and choices involved. Another important dimension is that the speech-act is looked at as a certain kind of action, in Wittgensteinian terms, a deed, the purposes of which are defined by the public act of speaking in a specific kind of context. That is why it is understood as an "intervention," an attempt to provoke a certain kind of change within a field of possibilities.

Such a way of looking at intellectual trajectories will prove attractive to scholars of Arab intellectual history. Firstly, it allows for a promising alternative to the trope of "epistemological critique" or "ideology critique" — although it may also include a readapted version of this. Some versions of epistemology critique risk rushing too hastily towards "unmasking," and it turns out that what is being "unmasked" is an imposed, external schema that has become ossified and unconnected to the intellectual field in question. In the context of Arab intellectuals, there is the added risk that such a move, by designating these ideas as "derivative" of Western and secular thinkers, may repeat Orientalist and Eurocentric divisions. This neglects any examination into the specific questions the local intellectuals set up for themselves. Finally, Scott's approach allows for a notion of time and intellectual change that is not developmental in a predetermined sense and yet allows for the construction of a narrative of sorts, a narrative that can relate and contrast our contemporary concerns with the plural movements of the past. Such benefits can be seen, impressively, in the work of Fadi Bardawil (2020, pp. 21-22). Bardawil is interested in the "travails" of the Arab New Left in Lebanon, focusing on how their theoretical questions change with new political experiences of their generation, in response to decisive events such as the rise of pan-Arabism, Nasserism and Ba'athism, the end of Syrian-Egyptian unification in 1961, the 1967 defeat, and the civil war. The story I'm telling here intersects with Bardawil's trajectory in many fruitful ways. I, too, am looking at two generations of the New Left that were shaped by the pan-Arab and Bandung aspirations. They also faced the trauma of the 1967 defeat and the subsequent exposure of the corruption of existing regimes. Bardawil too wants to relativise the excessive focus on "crisis" and "trauma" related to the 1967 defeat by looking more squarely into the unevenness of the reactions to it, which took very conflicting forms among intellectuals locally and in the diaspora (2020, pp. 2-3).

One significant theme that emerges in Bardawil's narrative is aptly summarised in the title of one of his chapters: "Exit Marx, Enter Ibn Khaldun." Bardawil identifies a shift of theoretical focus that transposes the Marxist problematic of revolutionary praxis into a different and larger field, that of the constitution of the political itself. The protagonist here, in Bardawil's rendering, is Waddah Charara, an intellectual leader of the organisation Socialist Lebanon. Unlike many of his contemporaries:

> Charara did not substitute one ideology (Marxism) for another (liberalism). Rather, as we will soon see, he examined how the political could not extricate itself from, and carve out, an autonomous sphere outside of communal relations of solidarity. It is not the collapse of communism that eclipsed the faith in History, but the fragmentation of the revolutionary subject along communal lines that foreclosed the possibility of autonomous political practice. (Bardawil, 2020, p. 139)

In Charara's case, the problematic was that of sectarianism and civil war, which forced him to examine the troubled relationship between communal, religious solidarities and the capitalist division of labour, without falling again into a duality of "traditional" and "modern."

> The form of Charara's critiques of Eurocentrism . . . is less to show how the "universal" categories of history, social theory, and political economy cannot escape their European origins. Rather, faced with the urgent question of how to interpret wartime violence, he begins by criticizing social theory's binary distinction before turning to forging a new conceptual universe. (Bardawil, 2020, p. 147)

This is significant because it captures some similar motivations and concerns that will be detected in my narrative here. If in Charara's case, the problem of "sectarianism" took centre stage, in the Egyptian and Syrian cases examined here, the problem was twofold: 1) the failure of the national struggle; 2) the perverse authoritarianism of the modernising, developmentalist state. Usually, this was expressed as the "nationalism-democracy" dilemma, and relatedly, the "state-society" dilemma.

The "nationalism-democracy" dilemma refers to a question faced by almost all the intellectuals discussed here, and recalls the so-called "National Question" in the Marxist tradition. In the course of revolutionary transformation, which struggle takes priority, national independence or socialism? More importantly, how may they relate? The 20th-century nationalist movement had won independence but postponed the "democracy" question indefinitely, thereby excluding the masses of popular classes who had fought for and supported it. The task now, these intellectuals argued, was to critique the disjunction between the two struggles and understand why it occurred. Furthermore, "democracy" here was understood very

broadly to include both popular and liberal-representative forms. It was generally argued that even popular democracy requires some prerequisite level of constitutional structure to organise it and give it legitimacy.

Some intellectuals — especially those more immersed in Marxist literature, such as Burhan Ghalioun — went further, trying to explain the material and social structures that upheld the authoritarian, developmentalist state and its elites. This was sometimes alluded to as a certain kind of "alienation" of the state from society, again recalling Marxist themes, in a very different context from their original articulation. The argument goes something like this: The state-building project was designed to exclude the masses of people from participating, hence turning the state into a private fiefdom. There are ideological, political, and material reasons for this. Ideologically, the elites hold a certain distaste for the masses, fully internalising colonial prejudices and beliefs that the masses must be subjugated and moulded before they can enter history. Politically, the methods of state building were inherently authoritarian because they were designed to achieve the vague and impossible dream of "catching-up." Materially, the elites could not extricate themselves from their subordinate position in the world market, leading to a formal (but not real) integration into global capitalism. Such formal integration meant that the class relations and division of labour could not fully be transformed, but could only be dictated by the imperatives of global capitalist integration. The result is devastating: an increasingly eroded social and moral fabric, under constant assault from a modernising state, with an entrenched crisis of legitimacy. The greater this gulf between the "overstated" state and its social substratum, the greater the erosion of ethical bonds between social groups. The division between the possibilities of a modern "national" civic consciousness and traditionalist, communal and religious attachments becomes even more dramatised, often to a violent degree.

It is between these two problematics — the dilemmas of "nationalism-democracy" and "state-society" — and in the context of a critique of modernisation theories that the idea of "human rights" emerged. Yet, the details and style of this critique of modernisation theory varied widely, producing different historiographies, with conflicting political implications. Again, borrowing from Scott and Traverso, I will be speaking of these historiographies as alternatively *melancholic*, *romanticist*, *didactic*, or *tragic*. These labels are not meant as ideal-types, because two or more genres can determine the same story, but they do help illuminating the tensions

between different themes and within the narratives. For example, the *melancholic* and *romanticist* story may overlap in a historiography, where the present is interpreted as an inevitable arrival from a pre-determined past, yet the "masses" can somehow re-emerge — like a *deux ex machina* — to redeem the past. Alternatively, the *melancholic* can also be *didactic*: The development was inevitable, but this somehow imparts to us — the intellectual elite — lessons about how to change course and act differently in the future.

It must be clarified that I am not analysing all the modes of critique available on the Arab intellectual scene. Another mode, which also emerged after the 1967 defeat, was the *culturalist* critique where the focus is usually on the failures of the *Nahda* (Renaissance) in fully achieving the Enlightenment it was meant to instate. This culturalist narrative plays on the dualisms of "tradition" or "authenticity" versus "modernity" or "Enlightenment." An example of this kind of narrative appears among other Marxist Arab thinkers, such as Sadiq Jalal al-Azm (2011[1968]) or Abdullah Laroui (1976). This critique gets caught up in the secular-religion dualism, with little attention given to its political and social preconditions.

Unlike this culturalist mode, and sometimes against it, the rising concern for human rights and democracy appeared in strictly political terms. As Suzanne Elizabeth Kassab writes, the 1967 defeat "made the need for a radicalisation of critique ever more pressing, occurring in the midst of desperate salvational yearnings, culturalist circular reasoning, and ideological fervor. From these critical quarters came a renewed emphasis on politics" (2013, p. 28). These intellectuals did not entirely ignore the *Nahda*, but their relationship to it was greatly shaped by the post-war political experience:

> If good political governance during the time of the *nahda* primarily required constitutional rule, focused on the curbing of the power of a ruler by fundamental law, after 1967 it chiefly meant the affirmation of people's power and people's rights . . . It was no longer a question of an optional proposal to borrow good governance ideas from foreign cultures and societies, but rather, a real need to secure some level of physical and moral integrity in the face of pervasive abuse. (Kassab, 2013, p. 28)

Some aspects of this move — the critique of modernisation theory — are not exclusive to the Arab context. As Nils Gilman shows in his history of modernisation theory, the theory itself had many varieties, one of which was "authoritarian high modernism": "The category of high modernism illuminates the uncanny homologies of the centralized economic planning of the Soviet Union, the procapitalist tyranny of fascism or Nazism, and the orchestrated anarchism of the Chinese Cultural Revolution" (2003, p. 11). Paternalism was thus integral to global 20th-century social thought. "The 'developmental state,' with its paternalist assumption of responsibility for economic growth, was the third world analogue of the welfare state" (Gilman, 2003, p. 17). This is perhaps the primary reason why the rise of "human rights" is sometimes seen as a natural associate of neoliberalism, post-structuralism and "end of ideology" Cold War liberalism: because all those projects shared the same common opponent, namely the paternalism of 20th-century modernisation theory. These different post-1970s project may have entered into occasional partnerships and alliances, but these are arguably best understood as merely tactical or strategic moves, given the shared problem-space they all inhabited. Any elective affinities between these different projects should be seen in this light.

The Vanguard Generation and the pan-Arab Imaginary

There is a noteworthy intellectual and political foreshadowing to the idea of "human rights" in Arab political thought. The first translation of *The Declaration of the Rights of the Man and of the Citizen* appeared in 1901 by Lebanese writer Farah Antun, who famously entered into debate with Egyptian scholar and jurist Muhammad Abduh over secularism and Enlightenment (Manaa, 1998, p. 11). Another important moment came in 1937, when the Lebanese writer Raif Khoury published a Marxist-Leninist defence of the concept of human rights in *Human Rights: From Where to Where?* (2015 [1938]). In this book, Khoury presents a positivist history of the world that moves in stages, from rightless humanity, to humans with civil and political rights, to humans with full rights. The book was written as a forceful anti-fascist statement, and it represents a wider anti-fascist moment in 1938-42 among Arab intellectuals in Egypt, Syria, and Lebanon. The language of human rights made itself visible in the anti-fascist milieu, exemplified perhaps by the Art and Liberty Group, writers of the famous "Long Live Degenerate Art!"

manifesto, representing a fierce call to arms to defend artistic expression signed by modernist artists including Inji Aflatoun, Georges Henein and Kamel el-Telmissany.

Another important marker was the birth of the Arab Lawyers Union in 1944, headquartered in Cairo, as a pan-Arab league for lawyers' associations and syndicates across the Arab world, and as a representative of a long liberal legal tradition, which I will discuss in a later chapter. More known, perhaps, is the figure of Charles Malik (1906-1987), Christian Lebanese philosopher and diplomat, who was crucial in the drafting of the Universal Declaration of Human Rights in 1948 and was later minister of foreign affairs in Lebanon from 1956 to 1958. Malik was also Farah Antun's great nephew. Charles Malik is notorious for his role in founding the sectarian Lebanese Front in the late seventies. Nevertheless, he is important to the global intellectual history of human rights, not only because of his role in drafting the Universal Declaration, but because of the specifically Catholic theological influences he brought to bear on the text, via his association with French Catholic philosopher Jacques Maritain. The Arab reception to the Declaration was ambivalent. Raif Khoury published an article in the magazine *Al-Nazariyya* (published by the Syrian Communist Party) critiquing the lack of any strong emphasis on decolonisation (Manaa, 1998, p. 14), encapsulating the general attitude among Arab intellectuals at the time.

In 1962-1964, Gamal Abdel Nasser created three political bodies that were designed to sustain and develop the revolutionary vision of 1952: Al-Itihad al-Ishtiraki (the Aran Socialist Union), Al-Tanzim al-Tali'i (the Vanguard Organisation) and Monazamat al-Shabab al-Ishtiraki (the Socialist Youth Organisation). These three bodies were at the heart of later intellectual and political conflicts that shaped the subsequent trajectories of pan-Arabism, and the Arab human rights movement can be directly traced back to them. Al-Itihad al-Ishtiraki (the Socialist Union) was founded in 1962 after the declaration of a National Pledge by Nasser, and its goals were the building of a popular, socialist democracy and proceeding with the revolutionary process for and by the Arab masses (Shukr, 2015, p. 66). The stated aim was to build an institution that could unite the workers, peasants, and professional classes into a revolutionary organisation, to coordinate trade unions, cooperatives, and other bodies, and to begin the process of building a centralist democracy that could become the seed for criticism and self-criticism. *Al-Tanzim al-Tali'i* (the Vanguard Organisation) was founded in 1963 as a secret organisation that would act

as a leadership body for the mother organisation (the SU) and the popular revolution (Shukr, 2015, p. 68). It was composed of a network of branches that linked various Arab states. Many of its most prominent figures were later government officials during the 1960s and 1970s, and were later involved in the forming of Nasserist parties and in founding the first Arab regional human rights movement, such as Ahmad Sadqi al-Dajani (Palestine), Khair al-Din Hassib (Iraq), Adib al-Jadir (Iraq), and Muhammad Faiq (Egypt) (Shukr, 2015, p. 318). The Vanguard Organisation was ultimately dissolved in 1987, chiefly due to an internal conflict over its violent tactics and the emergence of two contending factions. In its place, former members and leadership turned towards forming public Nasserist parties (Shukr, 2015, p. 285). I will delve into the dilemmas and challenges this group of politicians and intellectuals — the vanguard generation — grappled with later in the chapter.

Monazamat al-Shabab al-Ishtiraki (the Socialist Youth Organisation) was founded in 1964 with a program for "doctrinal, intellectual, and revolutionary" training for a new cadre of nationalist, revolutionary leaders. Its membership grew to 300,000, and many came to be influential figures in Arab civil and political society (Shukr, 2004). The 1967 defeat of Arab military forces and the Israeli occupation of Sinai, Gaza, the West Bank, and the Golan Heights was a major turning point in the history of the SYO. A major rift appeared in the aftermath of the defeat between the rank-and-file membership — predominantly university students who were heavily shaped by the socialist, nationalist, and pan-Arabist outlook of the organisation — and the leadership, which was directly under the influence of the presidency. The students woke up one day to the shocking news of the defeat, fermenting a massive wave of anger, protest, and indignation, which had far-reaching implications for the reshaping of pan-Arabist thought in the following decades.

Student protests broke out across Egyptian campuses in three waves: February and November 1968, January 1972, and Autumn 1972 (see the full account in Roza, 2007). The protesting students believed that there should be a larger push for democratisation across state institutions, and greater transparency and accountability for the tragic and traumatising defeat that had shattered their hopes. They also demanded a "war economy" and preparation for mass mobilisation, to free the occupied territories and reassert national sovereignty. They wished to join military efforts as volunteers.

The student uprisings forced the term "democracy" onto the intellectual scene. It could no longer be ignored, especially by those intellectuals who received their training in the complex world of the Nasserist apparatus and its pan-Arab scope, and who remained captivated by the dream of Arab decolonisation. I will be discussing the trajectory of the generation that developed out of the student uprisings in the rest of the dissertation. But for now, I want to focus on the response of an older generation who had felt the force of this call for transformation.

The founding of the Arab Organisation for Human Rights can be traced back to the growth of intellectual networks coalescing around nationalist politicians who grew critical of the regime — chief among them Fathi Radwan, who had previously been a minister of national guidance under Nasser but later became a fierce dissident of the regime. Another overlapping network developed around the Centre for Arab Unity Studies (CAUS). Iraqi economist Khair al-Din Hassib, along with other Arab scholars and intellectuals, established the CAUS in 1975, with its main headquarters located in Beirut. Its mission was to coordinate and foster research and discussions regarding the future of the pan-Arabist project. It was and remains unaffiliated with any government and its funding comes from its publications (Shukr, 2015, pp. 315-316). The CAUS was home to strident self-criticism and revision of the pan-Arabist national liberation project. Egyptian sociologist Saad Eddin Ibrahim played a crucial role, spearheading comparative research into the pre-conditions and failures of "democracy" in the Arab world. The first traces of this research and conversation among intellectuals was in 1979, with a workshop organised by CAUS titled "Democracy and Human Rights in the Arab World" that included many major Arab intellectual figures such as Ali al-Din Helal (Egyptian political scientist), Hossam Issa (Egyptian lawyer and politician), Esmat Seif al-Dawla (Egyptian nationalist-leftist thinker), Hassan Hanafi (Egyptian philosopher), Al-Taher Labib (Tunisian sociologist), Ismail Sabri Abdallah (Egyptian and Marxist economist), and Muhammad Abed al-Jabiri (Moroccan philosopher) (CAUS, 1998).

Saad Eddin Ibrahim's biography offers a glimpse into the background of what I am calling the vanguard generation. Ibrahim had already graduated from Cairo University by the early 1960s (1960), which meant that his relationship to the Nasserist intellectual apparatus was both intimate and ambivalent (see his memoirs in Harany and Ibrahim, 2015). Indeed, a "break" with Nasserism did occur, forced upon him when he was stripped of his nationality and declared

persona non grata when a PhD student in the US. And here lies the contradiction that Ibrahim embodies in his very persona and which expresses the general dilemma of this generation. The Nasserist apparatus and its formal and informal networks enabled his entire intellectual becoming; after all, he received his scholarship due to his earlier appointment in a committee at the Ministry of Industry, as a researcher for the Five-Year Plan of 1960-1965. And before that, as an undergraduate, he had volunteered in the youth military resistance during the Suez Crisis (Harany and Ibrahim, 2015 pp. 27-28). He described himself during these days as "an Arab nationalist to his core" (2015, p. 37), who was shaken and traumatised by the end of the United Arab Republic, uniting Egypt and Syria. So on the one hand, Ibrahim was from a very early age shaped by this strong Arab nationalism and a commitment to its project:

> As a youngster I was influenced by leaders from our national history and from the "Third World" — Gandhi, Nehru, Mao, Che, and Nasser (whom I met at an early age but who later stripped me of my nationality and declared me persona non grata when I was in my 20s) . . . (Ibrahim, 2007, p. 154)

The trajectory of these influences continued during his postgraduate studies:

> I arrived in America in 1963 to attend university and became involved in the revolutions of that period. Herbert Marcuse, Martin Luther King, C. Wright Mills, Frantz Fanon — these were all influences. I became an activist along with my generation — the anti-war movement, the civil rights movement, and the second wave women's movement were extremely important for me. (Ibrahim, 2007, p. 154)

As a postgraduate student in the US studying sociology, he was president of the North American Arab Student Association. But later, in 1966, Nasser withdrew his scholarship and his nationality was revoked, due to his protest activity among Arab scholarship students. He supported himself by teaching at Indiana University, where he met his wife at an anti-Vietnam War protest. He was only allowed to go back to Egypt in 1975, and he took a position teaching at the American University in Cairo.

Like many of the youth of his age, Ibrahim had joined some of the several educational initiatives started by the 1952 revolution.

We used to receive military training at an early hour, from 6:40 to 7:45, then we would rush to school and would remain with our military uniform for the entire day, five days a week, except for two rest days on Thursdays and Fridays. This continued for two years in a row and was concluded by an exam, after which we received a certificate that would allow us to volunteer for the Popular Liberation Front. This was also part of a more general educational and propaganda effort, where we would be taught about "the enemy" we were fighting: the English occupier and Zionist Israel. (Harany and Ibrahim, 2015, p. 77)

Ibrahim would later turn against each and every cornerstone of the Nasserist doctrine he had imbibed and ritually repeated in his youth. He would not give up a very important skill, however: a striking ability to sense shifting political tides, and a habit of winning the recognition of elites and leaders of all stripes. His memoir reads like a chronicle of all the prominent figures he advised or acted as a confidante for. In this sense, Ibrahim personifies the King's Counsel, and chief among those he served was the Mubarak family itself. He was a personal friend of the First Lady Suzanne Mubarak, and had supervised her Masters at the American University in Cairo. During the 1980s, Hosni Mubarak would consult him on many issues, and Ibrahim also wrote some of the president's speeches. He was an early supporter of normalising relations with Israel and of the Camp David Accords. This happy relationship turned sour by the year 2000, due to Ibrahim's suspicion that Mubarak was planning to pass on the presidency to his son Gamal. The Mubaraks in response turned against Ibrahim — as had happened to him as a graduate student under the Nasser regime — and he was arrested and detained, receiving a jail sentence of seven years. The pretext for such a move was Ibrahim's receiving of funding from the EU for election monitoring, and he was accused of espionage and damaging the country's reputation. He was later cleared of all charges and released in 2003, following an international campaign that hailed him as a democracy activist. He was forced into exile, but remained the head of his child project, the Ibn Khaldun Centre for Development Studies, which he had founded in 1988. He would also support the 2003 Iraq war, framing this support in pro-democracy terms (Ibrahim, 2007, p. 169).

Ibrahim's trajectory and his shifting loyalties are exceptional, proving later to be something of an embarrassment for the wider democratic and human rights movement, not least because of his increasing friendliness towards the US and Israel, to the extent that he lectured in

Tel Aviv. Despite his immersion since a young schoolboy in all kinds of anti-colonial literature, he will end up being a representative neoliberal figure. It will turn out, as I said, that the key skill that stayed with him from his years as a state intellectual was a profound flair — for better or worse — for coordinating and organising political and intellectual networks. He was able to coordinate a large network of Arab intellectuals around the idea of human rights, that, importantly, remained within the parameters of the pan-Arab milieu of intellectuals trained within the Nasser apparatus.

The Birth of the AOHR

The AOHR was not the first major Arab human rights organization. This credit goes to the Tunisian League of Human Rights (see a recollection in Marzouki, 1996), which was founded in 1976. Morocco also had its share of organizations, with the most significant being the Moroccan Association founded in 1979 (Al-Banany, 1996). Another pioneer was Al-Haq, founded in 1979 in Ramallah (Allen, 2013, ch. 1; Welchmann, 2021). Each one of those episodes requires a monograph of its own. However, here I will focus on the circumstances around the founding of the AOHR for two reasons. First, because it highlights the continued legacy of a pan-Arab imaginary that was self-consciously being mobilized. Secondly, the AOHR is a case where public intellectuals or political thinkers figured more extensively than lawyers. Hence it allows for a general mapping of the intellectual coordinates at work.

Following the Israeli occupation of South Lebanon in June 1982, many intellectuals witnessed in shock the absence of any visible mass mobilisation against this latest round of colonial aggression. Commonly circulating at the time was the question of how Arab societies came to be passive and docile against a series of crushing defeats. In response, many political parties attempted to build a series of coalitions, all of which short-lived: the Egyptian Committee to Defend Freedom, the Coalition of Egyptians, and the Committee of National Forces to Defend Democracy. The last one was headed by Fathi Radwan, who in 1958 had become one of the first state intellectuals to "defect" from the Nasserist front due to disagreement with the regime. Many oppositional figures, including Radwan, were released from prison in 1982 and joined these

coalitions (Crystal, 1994, pp. 437-438). Saad Eddin Ibrahim believed that this was the first spark of the human rights project. He recalls in his memoir:

> Before the end of 1983, our colleagues in the United States had managed to obtain a donation from Abdel Mohsin al-Qattan — a Palestinian businessman — to fund a meeting of Arab thinkers and experts to have a brainstorming session around "What is to be done?" after what had happened in Lebanon in 1982. The main problem was how to meet and where and so we thought we would rely on Al-Taher Labib in Tunisia without attracting any governmental and media attention so as not to ruin our plans. We were in constant contact with Fathi Radwan after the Azhar protest in mid-June 1982. Along with Fathi Radwan, Dr [Khair al-Din] Hassib, and Dr Suad [al-Sabah], we agreed on about 30 names to join the Tunisia meeting and they all received tourist visas and we all got along with one another in the Hammamat resort . . . In my paper I spoke for the first time on the idea of "civil society" and how it is the missing key to energising the Arab street after the 1967 defeat. We wanted to join the new wave of democratic revolutions blowing from South Europe, Latin America, and East Asia. By the third day a work plan was crystallised to form the Arab Organisation for Human Rights (along similar lines to Amnesty International) and organise a large conference to discuss the "democracy crisis" in the Arab world. (Harany and Ibrahim, 2015, p. 180-181)

The AOHR was formally established in April 1983, in the Tunisian town of Hammamat. Attendees issued a "Declaration on Democratic Freedoms" (Stork, 1984). The list of signatories reads like a "who's who" of Arab intellectual life, including names such names as: Saad Eddin Ibrahim, Burhan Ghalioun (Syrian sociologist), Adonis (Syrian poet), Fatma Mernissi (Moroccan feminist sociologist), Muhammad Arkoun (Algerian Islamic thinker and reformer), Mahdi Amil (Lebanese Marxist philosopher), Nawal el-Saadawi (Egyptian feminist thinker and physician), Hisham Sharabi (Palestinian thinker), Al-Taher Labib (Tunisian sociologist), and Halim Barakat (Syrian novelist and sociologist), among others. The conveners agreed to coordinate with the Centre for Arab Unity Studies (CAUS) for a "larger conference on the crisis of democracy" but the location of such a conference was undecided. Eventually, after three governments (Egypt, Kuwait, and Jordan) refused to host the conference in their respective countries, it was held in

Limassol, Cyprus in November 1983 (more on this conference later). Ibrahim recalls the first meeting in Tunisia, amusingly — in a joke that is difficult to translate:

> A small committee was devised for drafting the declaration which included Nawal el-Saadawi and I. The declaration started with the words, "We, Arab intellectuals meeting in Hammamat." But Nawal el-Saadawi insisted we add the feminine form of the word "intellectuals" and to add feminine nouns and declensions throughout the text. In the last session, when I read the final text, the only negative comment was voiced by Fathi Radwan who said, "I do not reject the content of the declaration, at all, except the overuse of the feminine declension . . . I remind you that 'Hammamat' is also the feminine plural of *hammam* [the bathroom], and so an Arab reader will not think this is the name of a town, but that we drafted the declaration in a bathroom!" (Harany and Ibrahim, 2015, pp. 180-181)

The first paragraph of the Hammamat Declaration reads:

> The last 30 years have witnessed the complete disappearance of democratic freedoms in the Arab world. This suppression of democracy has been justified in various ways and under different pretexts. It sometimes was justified by the need to build socialism and to pursue economic development, sometimes by the need to establish Arab unity, and at other times by the requirements of defending independence and in the name of struggle against Israel, when in fact none of these objectives could be achieved without democracy. (Stork, 1984, p. 23)

And it ends on the following note:

> The conference participants underscore the need to allow a democratic society to emerge in all Arab countries, a democracy rooted in popular participation, expressed in freely-formed political parties, and based in sovereign law and the power of the people, the only true source of power and legitimacy, to elect their own representatives. (Stork, 1984, p. 23)

Following this conference, another meeting took place where the first Board of Trustees of the Arab Organisation for Human Rights was elected from the 70 attendees. The Board included 14

members led by Fathi Radwan. The presence of Radwan, who remained the director of the AOHR until his death in 1988, helped give the organisation a greater credibility and legitimacy among nationalist intellectuals who would otherwise have been more suspicious of the concept of human rights (Crystal, 1994, p. 438).

The AOHR established its first headquarters in Cairo, in a building donated by Kuwaiti poet, economist, and member of the royal family Suad al-Sabah. The organisation, however, failed to receive recognition from the government and could not host its first General Assembly in Cairo. And so it was held in Khartoum, where some AOHR members had previously joined the uprisings against the ruler Jaafar Numairy and thus enjoyed some freedom under the regime of democratically elected leader Sadiq al-Mahdi, who was present in the meeting and opened its proceedings in January 1987 (AOHR Newsletter, 1987). Some of the convening members were former statesmen who had come to reject the repressive apparatus that developed under nationalist rulers or who had become disillusioned with autocratic government policies (Said, 1997). Others were an older generation of independent nationalists and former statesmen who were persecuted by state orthodoxy, such as Fathi Radwan.

According to a survey conducted by Ibrahim Awad (1997), the Board of Trustees elected by the first General Assembly was made up of 14 nationalists, two Islamists, three Marxists, and three pan-Arabists. This ideological differentiation did not change remarkably across the years. What did change over time was the age composition; the average age of the first cohort of members was 61.6, which decreased gradually over the years. Generational difference played a role in the strategic and intellectual shifts within the organisation(s) in later years, given the attachment of the older cohort to the Nasserist legacy, while the younger members had grown out of the radical student protests. This meant that the second generation were less willing to cooperate with government and more inclined towards confrontational tactics, as opposed to the older figures who had a history of holding government positions. Another point of tension was that while the older generation was reluctant to build links with the global world of human rights advocacy, the second generation had a more cosmopolitan/internationalist posture. These two generational differences — which can be traced back to their different positions within the postcolonial intellectual universe — played a key role in determining later key controversies. Nevertheless, even among the second generation, nationalist and pan-Arabist influences were not

completely abandoned; rather a new intellectual amalgamation emerged that could loosely be described as a "liberal nationalism" which brought together a Lockean understanding of civil society as against the state, and another understanding of civil society as organically interrelated with the state (see Awad, 1997, p. 42).[21] This second conception, allowed for a certain continuity with nationalist thinking, for once civil society is understood not simply as "other" to the state, but as organically interrelated with it in a productive tension, both could be together imagined as an expression of "the nation." I expand on this discussion in the next chapter.

Since the early 1990s, and following the fall of the Berlin Wall, one can start to see a shift within the Arab human rights movement, specifically around the AOHR and EOHR (the latter was an Egyptian branch and had its first office in the Cairo AOHR building). Most notably, there was a greater willingness to open up to the global movement of human rights. For example, the AOHR received observatory status at the Council for Social and Economic Rights in 1993, and was involved in drafting the momentous Vienna Declaration in 1993, which became a cornerstone in post-Cold War human rights consciousness in countries of the Global South. The Vienna Declaration was remarkable in its conscious departure from the basic tenets of North American and European human rights advocacy. The drafters emphasised the links between political freedoms, national self-determination, economic development, and social justice. There are shades of Third Worldist thinking in the Vienna Declaration, which points to what kind of internationalist possibilities were still alive following the collapse of state socialism.

The AOHR took another "cosmopolitan" step by opening its second headquarters in Geneva in order to be closer to the UN and to support the Cairo office (Crystal, 1994, p. 443). Nevertheless, the AOHR continued to refuse to receive financial support from foreign organisations or governments, and instead it was funded by powerful patrons such as Suad al-Sabah and other Kuwaiti and Palestinian businesspeople, who contributed through donations and membership fees. The AOHR also had links with Amnesty International through Naseer Aruri, a former leader of the PLO and the Palestinian National Council who was on Amnesty's the Board

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[21] Mustapha Kamal al-Sayyid (1997) describes this second conception of civil society as "Marxist." I am not convinced that this is the best descriptor, although it could be argued that it shares some similar roots with Marxist thinking. Rather, I think this conception can be related to Hegel, Rousseau, and Montesquieu whose ideas influenced Marxist thinking primarily through Gramsci. See Charles Taylor (1990) for the typology I am drawing on.

of Directors from 1984 until 1990. It could be argued that Aruri was instrumental in attracting attention to the Palestinian struggle in New York, London, and Geneva after a period of reluctance to engage with it. Amnesty had already established a Middle East unit in the mid-1970s, but did not have a formal office, relying instead on informal networks. Under the leadership of Muhammad Faiq, the AOHR modeled itself organisationally on Amnesty, for example, by linking up and coordinating local volunteer groups, or by organising publicity campaigns. However, the AOHR was more affirmative in its endorsement and support for other democratic groups and organisations, which was a crucial difference from Amnesty's more legalistic humanitarian approach (Crystal, 1994, p. 444). The AOHR also developed connections and contacts with the Ford Foundation, the Arab Lawyers Union, the CAUS, and the Third World Forum (founded by Samir Amin in 1975). All this took place without the AOHR receiving formal government recognition from the Egyptian state where it was headquartered. It was not until 2000, after 18 years of negotiation, that the Egyptian government agreed to recognise the AOHR. This also means that by the early 2000s, the organisation had become more representative of the less confrontational style of human rights advocacy (Hicks, 2006, p. 87).

Interlude: Two Examples of Democratic Thought

Before analysing the proceedings of the AOHR-CAUS conference in Limassol, Cyprus in 1983, I want to introduce a brief background on how political thinkers had already discussed the theme of "democracy," in order to illustrate the different connotations that had attached to it. I will refer to two examples: Burhan Ghalioun and Tareq al-Bishri. Both thinkers participated in the conference and both were concerned with very similar problems and questions. Given, furthermore, that both thinkers were compelled into leading political roles following the 2011 uprisings, in Syria and Egypt respectively, it is particularly interesting to compare their work.

A question such as "why is democracy absent in the Arab world?" prima facie places an Arab thinker within the orbit of modern social thought and its Eurocentric reference points. Any historical methodology is defined by an absence that, once identified, must be addressed or corrected. This pushes the thinker and scholar into a double bind, for he — and, unfortunately, I'm here only talking about the male scholars who dominated the debates — is aware that

modernisation theories have played a role in displacing the question of political freedom and only shored up the powers of national elites (and their bureaucracies and technocracies), who used the promise of "progress" and "catching up" as a pretext for delegitimising and crushing demands for freedom. On the other hand, if the thinker wishes to ground his dissent in actuality, he must adopt the historical methodologies of classical social thinking and its assumptions about civilisational development. Neo-Marxisms and dependency theories, which were in vogue when these debates took place, do not solve these problems but exacerbate them because dependency theory simply shifts the object of criticism from "internal development" to global dependencies. The resulting conclusion was the same: National elites are structurally incapable of fulfilling their promises, and they are forced to choose lopsided and degenerated modernisation and national state-building, at the expense of political freedom. It is this double bind that animates and informs these debates, with varying degrees of awareness and reflexivity.

The Syrian sociologist Burhan Ghalioun[22] can be credited with being one of the first intellectuals to seriously put the question of "democracy" at the forefront of reflections on the postcolonial predicament in his *Bayan Min Ajl al-Dimoqratiyy*a (*Manifesto for Democracy*), published in 1978 and since enjoying a wide and continued readership. As an early and programmatic statement on the "problem of democracy," Ghalioun's *Manifesto for Democracy* can be read as a defining statement and reflection of the frame of mind of democratic intellectuals fed up with tyranny and defeat. Relentlessly angry and indignant, the text spares no one. Trained under the supervision of Nicos Poulantzas, Ghalioun is clearly affected by the spirit of the New Left and its radical democratic scepticism and suspicion of statist and nationalist platitudes. I summarise Ghalioun's early theory here because it seems to me to be both the most ambitious and the most representative of the democratic impulse in his generation, and as such offers a good starting point for critiquing other intellectual strategies of "anti-authoritarianism."

Ghalioun was born in Homs to an Arabian horse breeder, and moved to Damascus to complete his high school and university education. He was politicised from an early age. He says:

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[22] I will bracket out the question of the extent to which Ghalioun remained committed to this early vision, or whether his theory lines up with his later activism.

> We lived in the depths of political life, our generation was born into politics . . . We spent our time discussing the union, Arab nationalism, Marxism, communism, democracy. So began our adolescent lives arguing about these issues; they truly became part of us. By the time I was thirteen, we were already engaged in political battles. (Quoted in Hanano, 2011)

Three months before Hafez al-Assad became president, Ghalioun left Syria for Paris. He completed his doctorate under Poulantzas, and returned to Syria in 1974 with the hope of teaching at the University of Damascus. But the political environment proved to be too difficult: "I had to leave, it was impossible for someone like me to be a professor in the university" (Hanano, 2011). Ghalioun took up an academic position in Algeria, where he wrote the *Manifesto*. Following its publication, Ghalioun became more visible to the Syrian regime and a warrant was issued for his arrest, but he continued his resistance in exile with other Syrian intellectuals. He was finally given permission to visit Syria in 1996. More recently, Ghalioun was the controversial president of the main oppositional organisation of the Syrian revolution: the Syrian National Council (SNC) from August 2011 until June 2012.[23]

What is remarkable about Ghalioun is that his critique of Arab tyranny is articulated from within a wider critique of Arab modernity as a whole. Ghalioun has no illusions about the essential authoritarian tendencies of the project of Arab modernity itself, as expressed by all 19th-and 20th-century movements and ideologies. What those movements and ideologies shared is a fatalist understanding of their task and position within European modernity. They held the persistent dogma that their task was to build national unity, which would be a vehicle for "progress." Such a dogma fed into national essentialism, the belief that the elite or the state could be identified as a unity, a belief that retrospectively appears as fictional and illusory and that has no basis but must be imposed from above. Ghalioun divides the history of Arab modernity into three stages that correspond to stages of the Arab nationalist project (or nationalist reason): the Muhammad Ali state and the *Nahda* project of religious reform, then the independence movement which turned its focus from a religious to a regional and national modernity, and finally the Arab socialist movement which sought to use bureaucratic means to accelerate

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[23] Ghalioun recounts his experience in the SNC in *Atab al-Zat [Damage of the Self]* (2019).

unification. In all three cases, the assumption was the same: A national bourgeoisie could be identified with the masses, and could impose unity via the state with the inevitable result of increasing tyranny that suppresses class struggle and religious pluralism. This nationalist elite acted the way it did because of its position within the world-system, but they are not simply weak vis-à-vis their metropolitan counterparts; they are directly complicit in maintaining their position within this global division of labour, since their primary character is that of a leisure class. The outcome is nothing less than an internal colony of an increasingly disintegrating state and society, since the underlying class and religious realities continue to be misrecognised or unacknowledged by Arab nationalist reason and its idealist illusions, both in its secularist and religious varieties.

> The failure of the three former projects to form a national community, or resolve the national question, represents a failure of classical nationalist theory inherited from the European experience. The main assumption that was not is that national consciousness involves a consciousness of the temporal identity of nations, against traditional and religious belonging (which is seen as the source of discord, submission, or foreign dependence). It is not sufficient, it transpires, to create a rupture with the past in order to create national culture and feeling. On the contrary, this may backfire and create even more dependence and submission, insofar as it deepens the imperative of "catching up" with the developed West. (Ghalioun, 2006[1978], p. 26)

Such a theory drove Ghalioun to a defence of constitutionalism, the rule of law, and popular democracy. Ghalioun does not defend such a political position as a retrospective apologia for the pre-independence liberal nationalists. Rather, his position stems from a critique of the failures of nationalist reason to achieve its promise of unity; as such, it calls for resistance against the anti-democratic worldview of the elites and a rebuilding of destroyed social solidarities and social power upon a new basis. Constitutionalism in this radical perspective does not mean a suppression of social conflict, but allows for the greatest possibility of directly expressing class interests and acknowledging popular power.

My reading is that Ghalioun's vision is both *melancholic* and *romanticist*. It is melancholic because despite his general emphasis on the actions, strategies, and policies of the

elites, he always counters this by suggesting that these could be explained by their position in the capitalist world-system, which forces upon them a certain intellectual and political dependency. On the failure of the enlightened national bourgeoisie, he writes: "Its intellectuals and political horizons were limited by the social interests of its leaders, and determined its relationship to the popular majority: a fear of this popular majority, and the [bourgeoisie's] constant insistence on preserving its position within the balance of political, social, and intellectual forces" (1986, p. 6). On the other hand, there is a romanticist strain in his thinking, because the standpoint from which he wages this radical critique implies a certain faith in "the masses" and their "simple, spontaneous, poor religious faith" against both the religious traditionalists and the "secularists" whose secularism he describes as "the religion of the elites, which had none of what is truly secular except a rationalisation of all that is tribal, worldly, selfish, and degraded" (1986, p. 11).[24] To my mind, this double critique of the "traditionalists" and the "secularists" in the name of the "simple" religious faith of the masses betrays an ambitious attempt to make a move that is Marxian and Nietszchean at once: a revaluation of all values (secular and traditional), inflected by class struggle. As such, his celebration of "civil society" against the state carries with it an implicit rallying of "simple, spontaneous, poor religious faith" against the high authoritarian rationalism of the state (see the next chapter for a critique of this position).

Tareq al-Bishri is another crucial thinker who elaborated the theme of "democracy." Al-Bishri was born in Cairo in 1933 to a highly intellectual family. His grandfather was a sheikh at Al-Azhar, while his father, Abdel-Fattah al-Bishri, was a Court of Cassation judge (Al-Bishri and Maher, 2020, Chapter 2). Although al-Bishri never met his grandfather, he grew up in a home that combined the piety of the Azharis that his grandfather represented, and the liberal legalism of "the effendis," represented by his father. This combination of religious piety with the liberal national resistance of his predecessors would shape al-Bishri's entire career. He finished

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[24] By the secularists, Ghalioun is referring to culturalist neo-Marxists, such as Abdullah Laroui and Sadiq Jalal al-Azm, whom he describes as representatives of the new Enlightenment. "All these criticisms have the same common root. They portray Arab society as if it is a natural catastrophe, not a human society. No mention is made of social strata, contradictions, conflicting visions, contending interests, hopes, or aspirations. There is only one Zoroastrian view of the world: All that belongs to Arab society is darkness, and the light [of Enlightenment] is the salvation" (1986, p. 26).

his law degree around the time of the 1952 coup. The following year, he passed a state examination and was appointed to a legal committee overseeing land reforms, which was later integrated into the State Council (modelled after the French Conseil d'Etat) where he sat as a judge for the remainder of his career.

> The land reform laws had attracted my attention as something very important, which is that political conflict adopts legal and intellectual means to exert its power. We find individual points of view framed in legal language but they only express partial interests, and opinions reflecting opposite interests also take on legal language. With time, I came to the realisation of the holism that shapes culture and everyday life in all fields. . . That's why my method became: What is the practical function of each idea in a specific time and place? (Al-Bishri and Maher, 2020, p. 73)

It was only after al-Bishri turned 30 in 1964 that he started to dedicate more time to public writing on law and politics (Al-Bishri and Maher, 2020, p. 77). The central theme running through his work is the duality between the national struggle and democracy, which characterised his intellectual response to the 1952 apparatus:

> The conflict between nationalism and democracy continues. I am a supporter of the national and so have to turn a blind eye — despite myself — to the tyranny. And sometimes you turn a blind eye to the national and focus on tyranny. This is the dilemma that formed us as a generation, in terms of our consciousness and our emotions. (Al-Bishri and Maher, 2020, p. 78)

In the course of his studies, al-Bishri began to delve into the relationship between Copts and Muslims, a theme that captured his attention in 1969 in the aftermath of the 1967 defeat, and which led him to adopt a liberal Islamism. This brought him into friendship and dialogue with other likeminded Islamist thinkers, such as Adel Hussein, Muhammad Emara, and Abdel Wahab al-Messiry. His reputation as a liberal Islamist, a politically active jurist, and a prominent legal

historian led to his appointment on the committee for constitutional amendments immediately following the overthrow of Mubarak in February 2011.[25]

Al-Bishri's project can be read both as historiography and legal philosophy. His historiography is developed out of a narration of the trajectory of the elusive idea of the "national community" or the "national current" (*al-jama'a al-wataniyya*, or later, *tayar al-umma*) during the 20th century. Yet, what is interesting in al-Bishri's project lies in the fact that the unity of his narrative — the national community — is constantly threatened by inner splits, external threats (colonial intervention), misjudgements, and complex loyalties. It is as if the unity falls apart each time an attempt is made to constitute it. This is what gives al-Bishri's narrative historiographical and philosophical qualities. His story is at once deeply *tragic* and stridently *didactic*. It is tragic because al-Bishri is a keen historian of the contingent and the conjectural. Each conjecture is retold as a story of an unstable equilibrium of forces, and the outcome of each round of the drama solidifies and sets the stage for the next round. Nevertheless, al-Bishri can continue to argue for an unbroken thread of continuity that bridges the past and present. Here lies the "didactic" quality of his narrative, with the tragic elements of his story running parallel to a severe didacticism imparting lessons or warnings to the reader. The reader is called to abandon her presentism and its partial view of the past, and to somehow embody the task of realising the impossible unity that is the telos of all prior stages. This strategy proves to be highly unstable, because it is intended to be conservative and radical at once.

Al-Bishri mobilises this strategy as an evaluation of the Nasser regime. His study of the history of Egyptian political society is a look into the contours and origins of a "popular movement" (*haraka sha'abiyya*) and its multiple parties, "in the hopes that this little effort can reconnect what has been disconnected, to show the achievements of the popular movement in the previous era, and in order to explain both the origin and the trajectory of the July 23 [1952] regime and its distance from a past recognisable pattern of political democracy" (Al-Bishri, 2002

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[25] Al-Bishri recounts his experience with the constitutional committee in 2011 in *Thawrat Yanayer wal-Seraa Hawl al-Solta [The January Revolution and the Conflict over Authority]* (2014). Like Ghalioun, al-Bishri was compelled to take on a political role in the course of post-2011 events, which an additional reason for which he is important to my narrative, as I believe his thinking had a direct bearing on the legal twists and tragedies that followed the revolutionary uprising. In a striking ironic twist, al-Bishri ended up repeating the tragedy that is central to all his writing. I will explain this in the conclusion of the dissertation.

[1972], p. 21). Here lies the clear tension in al-Bishri's narrative: He at once wants to criticise the present by comparing it to the past, and to argue that the present has a claim to make on this past. Al-Bishri achieves this by abandoning and attacking all secularist historiography:

> The secularist, in his weaving of historical truth, cannot see that his perspective is a *wafid* [a foreign arrival], a modern *wafid*. It is an arrival that is not more than a century old. It did not grow from within Arab civilisational thought before the dawn of the 20th century. (2002 [1972], p. 32)

Such a methodological anti-secularism means that al-Bishri's story will trace the history of the increasing parting of the secular and the religious, with the plea that they should once again be reunited into the larger narrative of the "national community." This divorce of the secular and the religious is over-determined in al-Bishri's story by the older tense relationship between the modern bureaucratic state of Muhammad Ali and organic, traditional structures, although al-Bishri maintains that this state-building project was civilisational in its ambitions, carrying no clear distinction between its reformist and authentic claims. "Our modern renaissance began in the regime of Muhammad Ali, during which the link between religion and the state was a common heritage across the centuries" (2002 [1972], p. 32). The problem lies in the specific methods used by Ali in the achievement of his state-building project, where he built modern state institutions that ran parallel to older institutions, without harmonising them. This problem was then exacerbated by colonialism and the Khedive Ismail era, leading to "an organic divorce between the ruling elite and the masses, which became a common legacy since the Mamluk state" (2002 [1972], p. 34). Al-Bishri then argues that the "national movement" grew within the Muhammad Ali project, because it originally developed its national consciousness from within the ranks of his military (2002 [1972], p. 35). Al-Bishri's project is thus an attempt to trace the genealogy of these dislocations in their different configurations: secular and religious, indigenous and foreign.[26]

The 20th century carries forward these accelerated divorces with the hope of achieving unity and liberation against colonialism, but this proves to be a very delicate pursuit:

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[26] For a critique of al-Bishri's conservative historiography, see Khaled Fahmy (2018, pp. 31-35).

> Some people now try to raise the banner of political democracy in isolation from the national liberation and social liberation moment. But if it was the absence of political democracy that threatened the achievements of those two movements, then there can be no political democracy except when it is linked to the national and social liberation movements. The three together are the faces of one process of popular liberation. (Al-Bishri, 1987, pp. 141; 247)

Al-Bishri will then speak in the voice of the judge, warning us that the only way to maintain and conserve this project is to correct for its political misdevelopment by returning to the liberal-legal constitutionalist tradition and its principles: the separation of powers, the rule of law, and publicity. As I will show in the next section, al-Bishri was very concerned about the increasing tyranny of the executive against the other branches of the state, and he sought to resist such encroachment by standing in defense of the uneven legacy of the liberal-legal tradition that he practiced. He does not see this as contradicting with his other conservative tendencies; rather his justification for liberal constitutionalism is premised on the need to conserve and unite the delicate balance of forces that shape the "national community" and its tragic history. Such a theme will appear again in the proceedings of the conference which I will analyze.

The Meeting in Cyprus

The "Democratic Question in the Arab World" AOHR-CAUS[27] conference, took place in Limassol, Cyprus after three Arab governments refused to host it. The conference was organized as a response to the drafting of the founding document of the AOHR. The proceedings involved a creative intersection and confrontation between major representatives of 20th-century Arab ideologies (Marxism, liberalism, nationalism, Islamism, radical democracy), now under a common rubric: the fate and frustrated hope of a vaguely defined democracy. Human rights were debated and understood from this perspective, and therefore they received their legitimation from within these debates and revisionisms. Another remarkable feature of these discussions was the

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[27] I cannot provide individual page numbers for the quotes included in this section, since I relied on an electronic version of the conference proceedings, which are documented in CAUS, 1998.

dominance of social-scientific thinking, at the expense of philosophical or normative debate. This meant that all the main paradigmatic differences within classical social theory had a strong bearing on the parameters, assumptions, and developments of these debates. Another recurring feature was the strong desire to differentiate political, bourgeois, liberal democracy from social democracy, and to assert the necessary relationship between the two. Most of the debaters — even the "liberals" — agreed that social democracy was superior and had a claim to primacy, although the precise relationship between liberal and social democracy was unclear and remained a point of contention. This is important because it demonstrates certain differences among the discussants regarding whether their goal was to democratise and reform a really existing Arab socialism, or whether Arab post-independence regimes were built on an inherently authoritarian, pseudo-socialist makeup. A related debate then emerged about how to narrate and explain the history of the Arab post-independence regimes, and most importantly, how to precisely mark or date its departure from its promises, and whether this was inevitable or not. These debates about the nature of the post-independence regimes shaped the contending theories of transformation and/or transition — long before the importation of "transitology" into the Arab intellectual and political world.

In the opening of the 1983 CAUS conference, Saad Eddin Ibrahim explained that interest in democracy had grown dramatically since the late 1970s out of a growing awareness that the earlier independence movements developed into militaristic and despotic monstrosities — exemplified by Nasserism and Baʿathism — and were aggressively hostile to political pluralisms of any type. All efforts went to state building and modernisation at the expense of opening up the political field, with the Nasserist notion of "No voice louder than the voice of the battle" used to shut down any criticism or opposition. Arab scholars turned their attention to the new wave of democratisation in Southern Europe and South America (Portugal, Spain, Greece, Argentina, Brazil, and Chile). At the time, Ibrahim had believed that a similar process was occurring in Egypt, Tunisia, Morocco, and Jordan where a partial and limited political liberalisation was underway that saw a slow re-emergence of political parties, banned since the 1950s. Ibrahim predicted that this process would continue and he attributed it to the development of the middle and working classes during the 1950s and 1960s, which led to a rise in demands and expectations for democratisation and the sharing of political power. Ibrahim then explains that this process in Egypt came to a halt by the late 1970s, after the 1977 bread riots and the assassination of Sadat.

This triggered widespread popular resentment, and large sections of the middle classes turned their hopes towards the Islamic revival movement. It was within this context, as I described earlier, that the CAUS spearheaded studies and research on the failed "Democracy and Human Rights in the Arab World" (which was the title of the first "democracy" seminar in 1979, see CAUS, 2002), followed by the "Democratic Question in the Arab World" conference in 1983.

> One of the objective reasons for the rise of interest in the question of democracy in the Arab world is the immense impotence of the ruling regimes in opposing Israeli aggression, as was seen in the 1967 defeat and the occupation of Lebanon in 1982. Many of these regimes justified their continuous suspension of democracy under the pretext of preparing for a great battle against the enemy to liberate Palestine and all occupied territories. And the slogan "No voice louder than the voice of the battle" became a duplicitous statement, a pretext for the monopolisation of power. The irony we have seen is that the enemy was not defeated in battle after battle, and the enemy did not suspend its own internal democracy. This duplicity also applies to calls for suspending democracy in the name of development, Arab unity, or resisting Westernisation, etc. The regimes have failed in all these tasks.

Egyptian political thinker Ali al-Din Helal delivered the conference's first paper "Conceptions of Democracy in Modern Arab Thought" (CAUS, 1998, Chapter 1), in which he puts forward four theses that remained present throughout the proceedings: 1) democracy is a historical concept whose essence is determined by the principle of equality, and therefore is a tool for the oppressed to resist inequality and domination; 2) democracy was in crisis for the longest time throughout the 20th century (for example, during the Cold War and under the Weimar Republic), and therefore is always accompanied by talk of a "legitimacy crisis"; 3) it is necessary to differentiate between democracy as a historical concept and "liberal democracy" as a particular institutional regime; 4) it is necessary to recognise the task of Third World intellectuals in joining the "ideological field" of democracy.

According to Helal, liberal democracy in its Western manifestation is a compromise between two conceptions of freedom, one capitalist and/or elitist and the other popular. It is this conflict that defines and shapes the history of democracy in Europe. The European democratic revolution combined both forces — the bourgeoisie and the popular classes — and the

relationship between the two determined the conjunction of capitalism and liberal democracy. Liberalism is capitalist in form and substance, while democracy is necessarily popular. Helal then enumerates the dilemmas faced by advocates of "Third World democracy." Firstly, colonial relations imposed state institutions in postcolonial societies and therefore any integration under the concept of the "nation" is increasingly alien as long as these institutions impose it. Secondly, this leads to an endemic crisis of legitimacy in the postcolonial state, especially insofar as such a state bases its legitimacy on the ever-unfulfilled promise of "catching up" with modernity. Thirdly, the illusion of national unity clashes with the actuality of national disintegration, and this is made worse by repeated Western interventions. Fourthly, the main challenge faced by Third World intellectuals is thus to develop a conception of democracy in this embattled environment, where organic links between political institutions and society are still missing or weak.

The responses to Helal's paper focused on the division between liberal and popular democracy, or as Esmat Seif al-Dawla[28] described it, the difference between Locke and Rousseau, which translates into a difference between elite rule and popular democracy. Burhan Ghalioun, while agreeing with the general outlines of the dilemma as expressed by Helal, argued for the importance of questioning the very division between "freedom" and "equality," as a precondition for the critique of any and all totalistic conceptions of democracy.

This dualism appears under a different guise in Samir Amin's talk, delivered later during the conference (CAUS, 1998, Chapter 6). Amin also differentiates between liberal, bourgeois democracy and social democracy. The former was based on the interests of the property-owning classes, while the latter came into being as a result of the mobilisation of the labour movement and the European left. European democracy could have only come into its own during the colonial state of capitalism in the later 19th century, however, when the contradiction between the bourgeoisie and the working class reached its peak, forcing capitalist societies to expand the franchise to the popular classes at the expense of colonised societies. Meanwhile, what we see in

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[28] Esmat Seif Al-Dawla (1923-1996) was a nationalist-leftist lawyer and thinker with many publications on national liberation and democracy. He was also engaged with oppositional lawyering activities (along with Nabil al-Hilaly, who will be discussed in chapter 6). His daughter, Aida, will later co-found al-Nadeem Centre, discussed in Chapter 7.

the Arab world is economic liberalisation without the possibility of political enfranchisement. The elites are driven by a positivist, modernisation theory that prizes progress at the expense of justice or solidarity. There is no possibility of political democracy in the periphery except as a caricature, exemplified by the pre-1952 parliamentary system in Egypt. The postcolonial national independence elite inherited this problem; Amin describes them as a new military bourgeoisie that held on to a narrow concept of the national typified by technocracy and tyranny. The reason for this is the uneven global development between the metropolis and the periphery: The peripheral economy could only produce a dependent bourgeoisie in collaboration with colonial powers against the Ottoman Empire. But Amin further qualifies this narrative by differentiating the generations of national elites before and after national independence, each involved in different kinds of class alliances and political regimes. The local bourgeoisie was always stuck between the colonial powers on one side and an existential fear of the popular classes on the other. There is no surprise, then, that such double pressures would lead state and society to be in contradiction, which takes the appearance of a contradiction between "modernity" and "tradition." Amin does not absolve Arab socialism from this critique; he chides it for abandoning the peasantry and the rural question in favour of urban industrialisation, which weakened its hegemonic position. Amin concludes by proposing a vision for social democracy that would not sacrifice calls for civil rights, national self-determination, or political freedoms. It is unclear, however, how his proposals are fundamentally different from the others articulated during the conference, except perhaps his greater emphasis on a stronger alliance with the peasantry, but he does not indicate how such an alliance could be possible without falling back to vanguardism, or what sort of rural democracies he imagines.

In Ghalioun's response to Amin, he added the interesting point that there must be complementary critique of the theory and policy that inspired and informed the vanguardism of the national elite, which also applies to the Marxist theory of knowledge and its positivistic uses. In his rebuttal, Ghalioun says:

> Can the absence of democracy in social relations be explained without also referring to vanguardism or theories of mass consciousness and imputed revolutionary consciousness, imposed externally by alienated elites? These are theories that were adopted by all governments and oppositions of the past. And

also, isn't tyranny today a result of policies that favoured the centralisation of the state at the expense of society, which was perceived as tribal, sectarian, backward, unworthy of recognition?

Ghalioun is critical of all liberal, nationalist, and Marxists theories that lend themselves to vanguardism, to the illusion that an elite could become identified with "the masses" or "the nation" through superior scientific knowledge. He believes that this is the source of authoritarianism. Therefore, liberals and Marxists equally need to rethink the relationship of knowledge to power. Ghalioun seems to suggest that Amin has not gone far enough in deconstructing Marxism as a response to the fall of really existing socialisms.

What can be glimpsed from these very brief summaries is that these intellectuals were still grappling with the legacy of modernisation and dependency theories, and were struggling to find a clear way out. Liberal modernisation theories asserted that democracy had as its prerequisite socioeconomic development and the rise of a strong middle class (which is circular or explains very little). An alternative Marxian modernisation theory would present only a slight variant of the same explanation: Capitalist class relations did not develop strongly enough to push for modernisation of political institutions. Or perhaps the national bourgeoisie is structurally incapable of fulfilling its task of "unification," because of some kind of a moral failure, a strategic failure, or because of its structural dependency on colonial powers. In this latter case, democracy's failure is symptomatic of another failure — the limitation of the nationalist revolution itself. But how can the failure of the nationalist revolution be related to democracy? To be able to address this question, we must unpack the very concept of national leadership and the means of its legitimation.

Three Egyptian speakers tackled this question during the conference, looking at problems and strategies of national legitimation: Adel Hussein,[29] Saad Eddin Ibrahim, and Tareq al-Bishri. The kinds of answers they gave regarding the "legitimacy crisis" of the Arab state and Arab

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[29] Adel Hussein (1932-2001) was an Egyptian journalist known for being one of several intellectuals who made the move from Marxism to Islamism. Hints of the reasoning behind such a move can be detected in the talk he delivered during the conference. He became a leading member of the Socialist Labour Party in 1984, and he had been key force behind the party's move towards a hybrid of anti-imperialist Islamism and socialism. He was arrested and jailed between 1994-1995 on terrorism charges (See Howeidy, 2009).

modernity could be used as ideal types (or constellations) of three kinds of explanations. My impression is that these talks provoked the most interesting degree of controversy and debate during the proceedings of the conference, and so, in particular, reveal the political anxiety at the heart of all this "democracy talk." Their contributions point to what is left unsaid in the debates around political and social democracy. These discussions also indicate the different ways "intellectuals" reflected on their positions with respect to power.

Hussein begins his talk (CAUS, 1998, Chapter 5) by critiquing the entire line of thinking about democracy and liberalism in Arab thought, which he describes as characterised by "imitation" (*taqlid*) of the Western tradition, and therefore bedevilled by eclecticism and fragmentation. He begins from a different point that he believes to be more true to the Arab political tradition. He wishes to redefine all the major concepts of political philosophy, chief among them that of the "state" though aligning himself with Ibn Khaldun, who defines the state as a central authority led by a ruler with the assistance and counsel of a privileged political and intellectual elite. This does not mean, according to Hussein, that the relationship between ruler and ruled is one of tyranny or coercion, because it must also be constrained by custom, which prescribes a certain form of "justice" defined by proportionality, prudence and situated judgement[30] The relationship between ruler and ruled is imbued with customary relations, mediated by the wisdom and insight of the intellectual and political elites, especially the jurists. As such, Hussein criticises the thesis of "Oriental despotism," arguing that Muslim political orders rather than being despotic, in fact continuously produced theories of political legitimation. Hussein suggests that a theory of democracy could develop out of this understanding of the relationship between the ruler and the political/intellectual elites. Democracy in this model is the opening up of channels of communication between the ruler and the elites, thereby sustaining the stability of a governing order.

Hussein mobilises this framework in the service of a critique of the entire history of the Arab state since Muhammad Ali. He argues that the postcolonial, post-independence state was a

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[30] Hussein here makes an interesting comparison between Ibn Khaldun, Machiavelli, and Weber; all three thinkers define legitimation with reference to a certain kind of relationship between ruler and ruled. I take him to mean that there can be a comparison between *asabiyya*, *virtù*, and the ethic of responsibility. This is a suggestive remark that I am flagging as a promising line of future research.

continuation and not a dramatic rupture from this condition. The Arab state could neither rely on nor produce an intellectual and political elite that could create some sort of balance of forces between the military, the bureaucracy, and social groups. Rather, the state apparatus unified the military and the bureaucracy at the expense of intellectual and political elite competition. This was only dramatised further by the Nasserist state apparatus. Hussein proposes that a renewal of the Islamic political tradition, and its suggestions for wise and prudent political counsel, could provide a fresh starting point for uniting traditionalists and secularists in one common strategy. This would also require a certain degree of experimentation and trial and error to introduce a balance of forces between the elite and the ruler.

Most responses to Hussein were impressed by his innovative combination of ideas borrowed from Ibn Khaldun, Weber, and Machiavelli. A few responses were very harsh, however, taking Hussein to task for employing a methodology just as ahistorical and eclectic as the legacy he criticises. For example, Esmat Seif al-Dawla argued against Hussein's description of the Nasserist state as entirely militarised and bureaucratised. Al-Dawla believed that the regime took some steps towards expanding the spaces of political participation via the Youth Organisation (Monazamat al-Shabab), rural cooperatives, elected committees, and so on. As such, al-Dawla contends that the radical and liberal political forces hold some of the responsibility for introducing the rift between themselves and the state, which culminated in the dissolution of all political parties by Nasser in 1953. Meanwhile, Saad Eddin Ibrahim argued that Hussein's definition of democracy is ahistorical and elitist, since it substitutes the modern conception of popular sovereignty with the traditionalist idea of *shura* or political counsel. Ibrahim thought that Hussein's model harkens back to theories of the "enlightened tyrant" (*al-mostabed al-'adel*), which was the cornerstone of traditionalist conceptions of rule. Samir Amin offered a neo-Marxist response, which traces the failure of legitimation back to its material basis: the absence of an alliance with the peasantry. Interestingly, Burhan Ghalioun agreed with the general thrust of the research, and actually praised the turn to tradition in search for a diagnosis of the present. Yet he also agreed with the critics who saw this as a truncated description of democracy. The crux for Ghalioun lies in how Hussein's elitist conception cannot accommodate the specifically modern problem of the division and divergence of competing interests and forces; these cannot simply be dissolved away by fiat, or through the imposition of a categorical conception of justice from above (for example, by an "enlightened tyrant").

Saad Eddin Ibrahim, in his talk, (CAUS, 1998, Chapter 8) also contends that Weberian sociology can be read as an echo of Ibn Khaldun's interest in different strategies of legitimation. In contrast to Hussein, however, Ibrahim is more sensitive to the differences between legal-rational, charismatic, and traditional authorities, and so he presents the stages of Arab modernity as different combinations of the three Weberian types. So while Hussein reduces all questions of legitimacy to the contingent relations between rulers and elites, Ibrahim is more interested in specifying the means of legitimation and how they develop into different strategies of managing social conflict.

Traditional authority was gradually eroded under the Ottoman Empire with the rise of Europe in the 18th century and the growth of the European bourgeoisie, then through direct military confrontation between the Ottoman and European empires. Postcolonial national liberation movements could not solve this problem but instead relied on increasingly eclectic and uneven sources of legitimacy, specifically revolutionary and charismatic authority in the case of the Egyptian regime. This charismatic authority could not become fully institutionalised into a constitutional or rational-legal structure, since it was believed that this would come at the expense of its mobilising potential. Ibrahim positions the rising democratic movement in this schema, and specifically the National Committee for the Defence of Democracy (founded by Fathi Radwan, described earlier by Ibrahim as a precursor to the Arab human rights movement) as an organised effort to introduce legal-rational authority to the Arab state — that is, to transform its revolutionary charisma into legal legitimation.

Hussein responded to Ibrahim accusing him of relying implicitly on the concept of "Oriental despotism" which he contended is baked into Weberian sociology and its determinism. Meanwhile, Ghalioun critiqued Ibrahim for not stating clearly the exact nature of legitimacy: Is it a normative/cultural structure, or a question of contingent strategy, policy, and leadership? Also, it is unclear, according to Ghalioun, whether legitimacy can be a measurable variable; can it be identified with consensus? Or is consensus a consequence of legitimation, which would then require a more theoretical rather than empiricist approach? Alternatively, can it be ascertained by the relative stability of a regime? Ghalioun suggested that such vagueness of the concept of legitimation is symptomatic of a more general problem, which is that legitimation must be treated as a philosophical and normative problem, not simply empirically. Ghalioun seemed to

suggest that Ibrahim's typology had missed more crucial insights into the dynamics of authority because his method applies an overly schematic and formal approach to legitimation without considering the precise ways national elites envisioned their tasks and put them into practice, or how and why they failed.

It is from this perspective that Tareq al-Bishri (CAUS, 1998, Chapter 11) offers an alternative framework that is more attentive to the peculiarities of historical detail. I would describe al-Bishri's approach as a careful "sociology of constitutions" as he considers the social alliances underlying each constitutional arrangement, and how each round of constitutional change affects the social alliances presumed by the previous round. What emerges from this approach is a far more nuanced and ambivalent perspective.

Al-Bishri examines the post-independence regime from the point of view of the "constitutional question" before the 1952 revolution. He sets out to assess the trajectory of regime consolidation with respect to prior stages of a liberal constitutional tradition. It could be argued that this presupposes a nostalgic approach, which, indeed, al-Bishri's critics were quick to point out. I propose here a different reading of al-Bishri's argument that was not noticed or acknowledged by his critics. Al-Bishri is critical of the mistakes of the liberal constitutionalists, but this critique is not quite the conventional, populist one:

> Democracy does not only mean guarantees for individuals, or guarantees for individual freedoms. Its essence lies — I think — in the way a political body is organised, where the people governs itself, or participates in its governance with some efficacy. Individual freedoms represent an environment for organising democracy, but they're only one precondition not the structure of democracy itself. Moreover, the guarantee of these freedoms is tied up with the way this structure is built. This is what was describe in the history of Egyptian political thought as the "constitutional question."

The first constitutional stage, according to al-Bishri, starts with the 1919 revolution led by Saad Zaghloul. After the revolution, there developed a concern within the liberal movement (centred around the Wafd Party and the Liberal Constitutional Party) regarding the "constitutional question" and "democracy." The Wafd Party represented the nationalist wing of the liberal

movement, while the Liberal Constitutional Party was closer to Britain and the monarchy. This struggle shaped the 1923 constitution, which was retrospectively hailed as the highest achievement of the Egyptian legal elite.[31] The constitution's design revolved around the axis of nation/parliament versus monarchy. The main principle that informed its drafting was that the precise existing balance of forces between the two should be reflected in the division of power between parliament (led by the Wafd Party) and the palace. The crucial mistake, however, was that the king was given the power to dissolve parliament. This led to 30 years of political instability, as the king, supported by the British, would resort to dissolving parliament — a total of 10 times — whenever political tensions flared up. This political deadlock was also over-determined by the fact that the Wafd Party could not sustain the nationalist coalition, as it became increasingly divided between a parliamentary, bourgeoisie elite that grew more opportunistic with time, and popular forces such as labour and student groups. Al-Bishri suggests that such alienation between the parliamentary elite and its social base was written into the Constitution, insofar as the major division was between parliament/nation and palace. As such, the divergent interests within the coalition itself could not be represented.

Muhammad Naguib promulgated the post-independence 1953 Constitution, which replaced the principle of "constitutional monarchy" with "constitutional republic." The problem, al-Bishri suggests, was that the 1953 constitutional committee wished not to repeat the mistakes of the previous 1923 constitution, that is, it wished to expand the powers of the legislature against the executive. It increased parliamentary powers and sought to reflect political conflict into the structure of the parliament, rather than design a constitution that would reflect the existing balance of forces between the president and the supporting political society. In short, the liberal constitutionalists (or the "Committee of Fifty") overreached and overcorrected.

That is why, according to al-Bishri, it was unsurprising that the Free Officers, led by Nasser, would be suspicious of such a constitutional arrangement, since they believed they had a greater claim to power than what was granted to them by the drafters. Following the coup against Naguib, the Nasserist regime struck down all that remained of parliamentary life, specifically the 1953 Constitution, and dissolved all political parties. Parliamentary life was replaced by Ha'iat

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[31] Al-Bishri's narrative in another book (Al-Bishri, 2002 [1972]) underscores the reactionary impulses that lie behind the drafting of this constitution (see pp. 55-57).

el-Tahrir (Liberation Organisation), a central, corporatist body under the direct supervision of the presidency, and was said to represent and embody all popular political groups under its umbrella. It was a precursor to the Nationalist Union (1957) and the Socialist Union (1962). During the 1950s and 1960s, Nasser promulgated three constitutions: in 1956, 1958, and 1964, each one reflecting the increasing absorption of political life into the executive, corporatist apparatus.

Al-Bishri's assessment can be summarised as follows. The tragedy of the constitutionalists was that they became overly dogmatic and unrealistic, believing that they could rely solely on their accumulated knowledge in an entirely new situation. Meanwhile, the tragedy of Nasser was that he believed he could directly represent the nation in its totality and indivisibility. Democracy and Nation parted ways at this point, only coming back together, al-Bishri suggests, with the 1968 student and labour uprisings. Al-Bishri explains:

> If the negation of the thesis doesn't lead necessarily to the victory of the antithesis, and if the negation can lead to a negation of both together, then similarly the overthrow of the monarchy has brought a negation of its negation, that is, a negation of constitutionalism, the party movement, and parliament. In their stead was erected the new regime.

No speaker at the conference received as much angry criticism from the other discussants as al-Bishri. Esmat Seif al-Dawla said it was simply not feasible to use the parliamentary constitutional system prior to 1952 as a criterion with which to criticise what comes after, because the only time the parliament actually represented "the people" was in 1923 and 1924. Afterwards, all political parties conspired to rig the parliamentary game against popular forces. The parliamentarians acted consciously against the principle of "the people" since popular power would clash directly with their feudal and bourgeois interests. The blame lies wholly in the political style of the Wafd Party, which according to al-Dawla, was authoritarian from the outset. Al-Dawla argued that the entire legal tradition that grew out of the constitutional system was hostile to the popular classes, and was anti-democratic, Eurocentric, and Orientalist. He also suggested, interestingly, that such an anti-democratic sensibility reflected a more global and generalised suspicion of parliament and democracy in the 1930s and 1940s. Therefore, al-Dawla argued, it would be wrong to rely on a tradition that was never actually practiced and was hostage to political machination for most of its life. More generally, the responses were much

more critical of the parliamentary experiences, casting them as inferior to Nasserist corporatism. This was not surprising given that several of al-Bishri's respondents (such as al-Dawla) had been members and leaders of the Socialist Union and the Vanguard Organisation.

Conclusion

In this chapter, I examined the origins of the first pan-Arab human rights organization, the AOHR, and looked specifically at the kind of intellectual debates that existed at the time around "human rights." I observed that "human rights" as an intellectual and practical mission emerged in response to a critique of "national liberation" and its democratic deficit. Those thinkers, especially those who were moved by the promise of national liberation, sought to look into the causes for the absence of mass resistance against colonial aggression. This compelled them to re-examine the core assumptions of national liberation and its formative strategies, ideologies and institutions.

The problem-space that provoked the development of the idea of "human rights" had more in common with the republican framing of political thinking than with the "natural right" tradition. This sensibility set the parameters of the discussions. The result is an eclectic combination of influences: Ibn Khaldun sharing the table with the likes of Machiavelli and Rousseau, along with very diverse interpretations of the content and substance of the aspired-to "democracy." We get melancholic romanticist populism (Ghalioun and Amin), tragic didactic constitutionalism (al-Bishri), or a melancholic didactic aristocracy of the wise (Hussein).

In other words, the idea of "human rights" emerged out of the multiple indigenous critiques of Arab states and their ruling elites. This was a field of criticism that involved individuals shaped by that same legacy of the national liberation project and its heroes, manifestos, organisations, and aspirations. As I show in the next chapter, this was both the strength and the weakness of these earlier conversations. It was strength because it was ultimately an internal critique of that national-liberation heritage, an attempt to rescue it from its worst tendencies and to set it back on its rightful course. But it was also a weakness, because some older tendencies were still in effect, chief among them a certain conception of intellectual leadership as the mediator between the ruler and the masses. Of course, vanguardism was

criticised, with Ghalioun as a forerunner. But the debates I recorded and analysed here suggest that there remained the hope that intellectuals could still perform the historic mission assigned to them by the national liberation project. "Human rights" was the vague name now given to that elusive task.

4. Nowhere and Somewhere: The Cosmopolitics of (Un)civil Society

It is often imagined that the intellectual and the human rights activist speak for a disinterested cosmopolitanism, a view from nowhere, a citizenship of the world. In practice, however, this proves to be exceedingly difficult, if not impossible. One reason is that when the figure of "humanity" is stripped of all particular determinations and affiliations, nothing is left but the helpless "Other," who must remain Other if the cosmopolitan project is to remain viable. Alternatively, the intellectual may wish to claim an interest in defending an enlightened patriotism, preserving and extending all that is good and honourable in the nation's history (here Kwame Anthony Appiah comes to mind, see Appiah, 1997). She identifies herself with the intimate, the face-to-face, and the common. She does not wish to mask her interests behind the guise of disinterestedness. Rather, she points her critical weapons against all claims of disinterestedness, exposing them for hiding more parochial interests than it initially appears. But this comes at a cost, too. She may over-identify with the "local" and the "nation" to the point of losing sight of the parochialism of her own position. And once blinded to her parochialism, she sacrifices her ability to continue with the intellectual task of criticising her own affiliations.

No intellectual, scholar, or activist is immune from these dangers. I am not here speaking of the worries about "identity," "hybridity," and the like. Rather I'm thinking about the particular problems that arise when an intellectual attempts to criticise their own nation, while at the same time making an effort to maintain critical allegiance to some concrete set of interests, projects, or goals. What sorts of moves and intellectual strategies are available to maintain such a balancing act? And what happens when the intellectual becomes too anxious over her allegiances with respect to the "oppressed"? And finally, what remains unthought and unthinkable in the shadow of this anxiety?

The Arab human rights movement has since its inception been criticised for elitism, detachment, cynicism, hypocrisy, rootlessness. These are all too familiar accusations. I attempt here to tell a different story from that implied by these cliched accusations, and to explore different routes of thinking. This story, I hope, can suspend and disrupt the simple oppositions between cosmopolitanisms, internationalisms, and nationalisms. This is the story I allude to in

the title: nowhere and somewhere. "Nowhere" thinking is unencumbered by the problem of place and location, its imaginary characterised by a flattened world that can be viewed from nowhere — as per the usual caricatures of cosmopolitanism. "Somewhere" thinking, on the other hand, is intimately tied to location and history; it speaks from a particular place from which it receives its authority. Against both, I propose a "reflexive somewhere." This is a somewhere that seeks to de-provincialise and de-parochialise its own particularity. It does not directly aim for a cosmopolitan nowhere, nor does it sit untroubled in any place. Rather it navigates the jagged topography of its locale in order to redraw its mappings. It exposes the incompleteness of the "national project" in order to reclaim it in entirely new terms. That is why it is such a suspect project for its detractors — not because it is "cosmopolitan," nor because it is a disaffiliation, but because it suspends the borders that separate the local from the global, in order to expose the lines that transverse the spaces of "nowhere" and "somewhere."

The story I tell revolves around a decade-long debate around the viability of the internationalist project of human rights in the Arab world. The history of the Egyptian Organisation for Human Rights (EOHR), founded in 1985, starkly expresses multiple visions of what a human rights project could look like. Different alternatives and routes were explored, triggering various debates that greatly shaped what had become known as the "human rights organisation." I pay careful attention to the conflicts around the relationship between the organisation and the "global" advocate networks, as well as the organisational shapes that were tried and debated at the time. I also read such a history as an illustration of a wider intellectual debate that took place among the "seventies generation" (*jil al-sabi'nat*). The so-called seventies generation is a label used to describe a group of radical leftists who were involved in Egypt's student uprisings of the early to mid-1970s. The intellectual leaders of the "civil society" project were prominent members of this loose group of radicals, and they instigated a debate among their peers over the trajectory of the Egyptian Left in light of the new internationalism of "global civil society." I explore this debate, its assumptions, sources, and contours in order to demonstrate that the entry into "global civil society" was far from a smooth or unproblematic move. Beneath and beyond the anxiety over "the global" was a massive disorientation — perhaps a dissonance — over the fate of the national liberation project in general. In order to track the philosophical background of these debates, I focus in particular on the work of two thinkers: Muhammad al-Sayyid Said, who was at the centre of much of this contention, as well

as the Palestinian political philosopher Azmi Bishara. Both were thinkers with a deep knowledge of the Marxist project, who shared the desire to build a new post-Cold War "socialism with a human face." Bishara had to confront similar questions in the very different setting of the Palestinian liberation movement. There is a great deal of evidence that his philosophical interventions were in part inspired by discussions with Said, indicating a pan-Arab dimension that is usually neglected. The subtle difference between them is interesting too, and it reveals the ambiguities of their respective positions. Finally, I conclude by examining the relevance of these interventions today.

The two theoretical problems that will guide this analysis throughout are "cosmopolitanism" and "civil society".[32] There is a similarity to both concepts that I am drawing attention to here, or a shared difficulty, perhaps best encapsulated in the idea of "global civil society." The liberal – possibly Kantian – perspective presents global civil society as a moral force (or ideal) that could put a check against the anarchy of the inter-state system. But in so doing, this perspective may obfuscate and gloss over the inequalities, violence and exclusion that permeate global civil society and its circulation of commodities. In contrast to this perspective, my reading of the history and thinkers presented here could suggest a different kind of standpoint. In this standpoint, "cosmopolitanism" (and its cousin, internationalism) and "civil society" are not simply moral ideals, but forms of political practice oriented towards concrete, embedded, forms of solidarity that require local iterations. And moreover, there can be no standpoint from which this cosmopolitan view expresses itself. Rather, it emerges from a concrete, bottom-up, critique of nationalist reason. In other words, there can be no reference to cosmopolitanism or civil society without a parallel account of citizenship and the possibilities of its realization and institutionalization in solidarity. This, I hope, allows for an understanding of cosmopolitanism and civil society that have a more critical edge. It would re-orient the view from excessive focus on moral ideals, towards local contentions around post-nationalist citizenship.

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[32] There is never a scarcity of literature on cosmopolitanism and civil society, but I will only mention here the works that have influenced my view on those subjects. On cosmopolitanism, I am especially influenced by Bruce Robbins (1999, 2012) and James Ingram (2013). On the history and theory of "civil society," Arato and Cohen (1992) remains the essential reference point for a genealogical account, and I could also add Jeffrey Alexander (2008) as an influence. Yet many thinkers and works were consulted in the process: including Appiah, Nussbaum, Rorty, Walzer, Zolo, Habermas, Chatterjee, Taylor, Fine, Keane, Kaldor, Held, among others.

The Seventies Generation

The best way to represent the history of the student movement is to narrate the lives of some of its most influential members who later helped in founding or leading human rights organisations. Their names include: Ahmed Abdullah Rozza, Muhammad al-Sayyid Said, Hani Shukrallah, Ahmed Seif al-Islam, Aida Seif al-Dawla, and Magda Adly. Most of these are protagonists of later chapters, but let me provide a glimpse here of the trajectories of two whose lives give a general introduction to the campus uprisings: Rozza and Shukrallah. Both would later help in the founding of the Egyptian Organisation for Human Rights in 1985.

Rozza (1950-2006) was studying at the Faculty of Economics and Political Sciences in Cairo University and by the time of the 1972 uprising had been elected to the High National Committee of Cairo University Students. In this capacity, he played a key role in leading the demonstrations and sit-ins that erupted on the morning of January 18. These would spread across universities throughout the country, calling on President Anwar al-Sadat to instigate a war effort against the Israeli occupation, and to seriously embark on building the democracy long promised but never delivered by the Nasserist political apparatus. The two demands — democracy and national struggle — were expressed in the same breath, suggesting a highly militant conception of grassroots democracy that would push collectively for the war effort. The centre of the uprising was Cairo University, and the mobilisation of 20,000 students who would go on to occupy Tahrir Square. Before this, they had staged what would become an iconic sit-in, occupying the large Nasser Hall of the university. One of the sit-in's demands was to bring in Sadat and directly confront him over his reluctance to start the war. One story that hovers around Rozza's legacy is that Sadat used to refer to him as "the boy with the red scarf [*kuffiya*]." Sadat's response was to send in the police to raid the campus. The students would turn themselves in; led by Rozza, they walked in a long procession to the large police trucks parked outside. Most were quickly released, and only 30 remained in detention for up to 15 days. Rozza, however, was arrested again and detained during the spring and summer of 1973, and would finish his undergraduate degree in detention before his release on Sadat's orders in the lead-up to the October 1973 war. Rozza would later pursue a PhD in Political Science from Cambridge University, writing his dissertation in 1984 on the history of the Egyptian student movement,

later published as *The Student Movement and National Politics in Egypt 1923-1973*, long considered the definitive history of its subject[33].

Rozza's narrative of his generation's history and their predecessors — an account by one of its leading figures — can be read as a retrospective historiographical statement, a self-reflection on their place within a longer history that began with the 1919 national revolution. Rozza sees students as the link that connects the political elite to the masses, rousing both to decisive action along a single historical thread from the early national independence movement up to the present. The ebbs and flows of campus mobilisation are expressive of the ebbs and flows of national democratic consciousness at large. This, however, is not an idealist history; Rozza is equally attentive to the shifting economic positions of students with respect to their future employment prospects.

Shukrallah (1950-2019) describes the academic year of 1971-1972 as a flowering of campus radical activism, filled with political and intellectual forums, such as a group for socialist thought called *Al-Qadaya al-Fikriyya wal-Siyasiyya* [Intellectual and Political Issues] headed by future human rights lawyer Ahmed Seif ("Mesh Masmou'", p. 10). Shukrallah recounts the public speaking of his comrade Rozza, saying "I've never seen a better public speaker [*khatib*] than him . . . [He] would speak and rouse the public, the atmosphere was incredible" (p. 11). The campus walls and halls were covered with radical newsletters; it was a time when the campus "belonged to the communists."

The son of a diplomat, Shukrallah encountered Marxism in high school in Canada, and was especially shaped by the anti-Vietnam War protests, Che Guevara's assassination, the Black Panthers, and the 1967 defeat of the Six-Day War. He recounts his continued political development in Egypt:

> By the time I returned to Egypt in 1970, I already considered myself a Marxist
> radical. I rejected the Soviet and Chinese lines — the only available alternatives
> back then. I look for likeminded people, so I enter into the Faculty of Economics
> and Political Sciences, and it turns out, there are indeed likeminded people there.

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[33] See Arabic translation in Rozza (2007).

> I get introduced to Ahmed Abdalla [Rozza], Muhammad al-Sayyid Said, Taha
> Abdul Alim . . . And one day, I get introduced to Zein al-Abdin from the Faculty
> of Arts, who told me there was an underground militant organisation, which
> would later be called the Egyptian Communist Organisation, and later the
> Workers Party. It was the most radical Marxist party, and the first of its kind,
> formed in December 1969. This will become the centre of my life, and
> intellectual and party work." ("Mesh Masmou'", p. 9)

This effort to set a course beyond Western and Eastern Marxism will henceforth define
Shukrallah's journalistic writings and activism. The "ruthless criticism of everything in
existence" would be his motto. His writings, especially his English opinion columns, express a
strictly internationalist outlook, reflecting his broadly cosmopolitan interests, ranging from
Global South resistance, to the French Revolution and the history of the global Left. He
identified as a "Pan-Arab Marxist," always expressing an acute ambivalence towards the pan-
Arab imaginary and Gamal Abdel Nasser. This ambivalence stemmed from Shukrallah's deep
awareness of Nasser's place in the Bandung imaginary, an imaginary his generation saw
themselves inheriting, not discarding.

> How then can we begin to understand and come to terms with the experience of
> Nasser's Egypt? No less important, what remains of relevance of that experience
> today? First, we need to recognise that the fundamental aims of a people remain
> constant, while the mode of realising these aims varies from one age to another -
> - whether in terms of the means made available by the age in question, or in
> accordance with the personal characteristics of the leaders whose task it is to
> achieve them (Shukrallah and Guindi, 2000).

Shurkallah would spend the next 30 years involved in politics through the Workers Party, which
was ultimately dissolved by 2001. Shukrallah fell into journalism by accident, later becoming
managing editor of the English publication *Al-Ahram Weekly* from 1991 to 2003, and editor-in-
chief from 2003 to 2005. During his time there, *Al-Ahram Weekly* was home to opinion columns
by luminary global public intellectuals, such as Edward Said who would begin writing a regular
column after his visit to Cairo in 1993.

Shortly before his death in 2019, Shukrallah explained to me that the discourse of popular democracy, and the role of civil and political rights, was always central to the strand of radical leftism to which he belonged[34]. This theme was also central to the criticism of the Nasserist legacy. This critique would require nothing less than a radical rethinking of the Marxist tradition. Shukrallah, however, always stood apart from his contemporaries in his public worry that too much "liberalism" was being conceded in all the "civil society talk" that came to dominate during the 1990s.

The End of the National Liberation Movement

No one better represents the acute ambiguity of the "seventies generation" than Muhammad al-Sayyid Said, who will be a main protagonist of this chapter and the next. His life and writings express the pain that comes from standing at the crossroads of multiple philosophical trajectories. Eruditely engaged in the classics of Marxism, the Islamic tradition, national liberation, and liberalism, his intellectual project exposes the difficulties involved in straddling these multiple utopian projects, and the risky passion of advocating a vigilant, critical stance against the tyrannies of East and West. Upon his death in 2009, his friends described him as an exemplar of the "organic intellectual," describing how he "completely internalised this theory, from an excess of his conviction in it" (Khaled al-Anany, quoted in CIHRS, 2010, p. 46). Most interestingly, he was seen as a "liberal among the Marxists and Marxist among the liberals" (Farida al-Naqash, quoted in CIHRS, 2010, p. 6). Al-Naqash writes, "He may have been the most knowledgeable in the field of Marxism in his generation. But he also saw that deep down Marxism shared with its liberal origins the utopian dream of building the 'Kingdom of Freedom' that would transcend the 'Kingdom of Necessity'" (quoted in CIHRS, 2010, p. 46).

Born in Port Said in 1950, Said was introduced to radicalism by his older brother and mentor. It was no surprise that when he entered Cairo University he became a leader of the radical student movement. If his lifelong friend Rozza, with his fiery campus speeches, is the rhetorician of this generation, Said would be the intellectual voice of this group's aspirations and

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[34] Interview with Hani Shukrallah, conducted on 21 October 2018, Cairo, Egypt.

ideals. The other experience that greatly shaped his trajectory was fighting in the 1973 war against Israel, which compelled him to think deeply about the relationship between the military and society, and the deep militarisation of life under Nasser and Sadat. This problem became a continued dialogue between Rozza and Said, a shared terrain in which they sought to come to grips with the victories and defeats of their campus rebellion (CIHRS, 2010, p. 47). After the war, Said would pursue his PhD at North Carolina, where he wrote his dissertation on the political economy of multinationals, globalization, and "national" regimes of the South. The dissertation shows that Said was grappling with the evolution of "national liberation" and its developmentalist aims in light of a new global political economy. Said uses a world-systems analysis to diagnose the effects of global capitalist corporations on the nation-state, and specifically the capacity of states to govern the "national unit" or pursue their own developmental aims. He observes that this new situation will result in the erosion and removal of the material basis for nationalism, thus making it increasingly difficult to preserve the national project.[35] This erosion of a material basis would lead him in later years to diagnose the ideological repercussions of this new political economy.

Said decided not to pursue an academic career and returned to Cairo where he was employed as a lead researcher at the Ahram Centre for Political and Strategic Studies, a research body under the umbrella of a state-led newspaper. Said was an early member (though not a founder) of EOHR in August 1985, and was enlisted by Bahey al-Din Hassan — general secretary at the time — onto the Executive Board of the organisation. Bahey credits Said for being instrumental in shaping EOHR's vision and its activities, writing that "in this way, he may be considered one of the main founders of the organisation and the Egyptian movement for human rights" (p. 7). Bahey and Said later left EOHR (more on this below) and founded the Cairo Institute for Human Rights Studies in 1993. Said drafted the founding document of the CIHRS, which he saw as an intellectual and educational institution for building a democratic,

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[35] It is noteworthy that from very early on, Said for the most part does not centre class in his analysis. His is a "world-systems" position, whereby class relations are consequences of global trade relations and the inter-state system. The upshot of such an analytical framework is that it adds more rigour to global political economy. The downside is that even in his later intellectual developments, Said will continue to emphasise the division between "nation" and "world," and correspondingly, "state" and "society," and the way these divisions reflect and feed each other, as I explain later in this chapter. It is ironic that despite all his criticisms of Nasserism and national liberation, Said would not abandon the broad contours of the political puzzle as defined by this framework. Whether any of this can be described as "Marxist" is certainly up for debate.

emancipatory project. He continued to be the intellectual director of the CIHRS, while Bahey took on a more administrative leading role.

In the early days of the CIHRS, Said wrote what was to become an influential article published in *Al-Hayat* newspaper titled "*Nihayat Mothaqaf al-Taharor al-Watani*" [The End of the National Liberation Intellectual] (1994) (republished in Said, 2010). Here, it can be sensed that Said is extending his earlier work on political economy into the field of intellectual and ideological development, and analysing the links between the two. Said defines the "national liberation intellectual" as one who follows

> a frame of cultural practice that gives a special place to national character in global history and is attached to the idea of a "national identity" which he [sic] seeks to infuse with moral and epistemological power. The definition of national identity is posited against an Other, this Other being the hegemonic Western civilisation. Then he identifies this separate national identity with the state, and especially with the "upper echelons" of the state in the international sphere. This intellectual's relationship to state power and its strategic purposes becomes the measure of his performance and prestige (Said, 2010, p. 150).

Said could be read as describing the "vanguard generation" I spoke about in the previous chapter, those who were trained and educated in the state's intellectual and political institutions. He could also be read as describing his Nasserist colleagues with whom he had just broken, in the last controversy over EOHR that had led to his resignation. He is trying to identify the crisis that the intellectual enters once the material and symbolic capacity of the national state erodes. Said locates the end of the nationalist project in the same context as the decline and fall of the Eastern bloc, but he grants the former a much greater weight in the general "stream of global evolution" (2010, p. 153). The exhaustion of the national liberation project is traced back to both a general political economy and an inner ideological legitimation problem stemming from its particularly statist articulation. Externally, Western hegemony had qualitatively changed, its content and function shifting primarily from an interest in maintaining (neo-)colonial dependency to one of "containment" of the Third World. Western de-industrialisation played a role, permitting a more detached or devolved form of hegemonic rule than previously. The West was no longer employing strategies of direct rule to extract surplus from the world's poorest, and had shifted

towards a strategy of "absolute neglect." This means that whatever we mean by "dependency" today must be qualified by this change in hegemonic strategy, and relatedly, "de-linking" does not appear as the attractive option it used to, as evidenced by the Chinese and Southeast Asian experiences (Said, 2010, pp. 153-156). He adds that the main contemporary vehicles of hegemony are the World Bank and the IMF, which express a more clearly class-based rule than a directly "regional" geography.

> The conclusion therefore: The real content of a national liberation movement can
> no longer be in terms of a clash with the West, but can come about only through
> successful domestic development and progress, and each internal achievement in
> health, education, culture, and so on is a good step towards national liberation.
> (Said, 2010, p. 156)

There is a "negation of the negation" at play here, where the resistance to the national liberation regime entails a transformation of its form and content, while maintaining the substantive principles of "national liberation." The article concludes with a reflection on how such an intellectual practice can come about. He first mentions the possibility of an "organic intellectual" or a "politics from below" (Said, 2010, p. 166), but then goes on to say that his preference is for a "liberation intellectual with a planetary imagination" (Said, 2010, p. 167). This planetary intellectual is not burdened with the need to represent any one particular class, party, or nation, but is instead oriented towards the goal of "empowering" (*tamkeen*) others to actualise their own capacities.

> The liberation intellectual differs from the traditional Marxist concept of the
> "mass intellectual" in that he does not seek to represent or lead a "movement"
> among the masses, rather he generates a creative movement from within them.
> This intellectual explains to people the rational alternatives of reform in all
> fields: health, education, housing, work, labour relations, political decision,
> culture, and so on. He enlightens the field of choice without imposing his own
> decisions . . . He does not wish to take power or monopolise; rather, he inspires
> people to generate their own energies, talents, and capacities that move towards
> creation, not violence and clashes. That is why nonviolence and rights are his
> main drivers of political and cultural action. (Said, 2010, p. 168)

The wager Said makes here is that a global social democratic project is possible (Said, 2000a and 2000b), one that can expand social spaces beyond the monopoly of state and economy, and hence could allow for an alternative to both "de-linking" (utopianism) or complete acquiescence to the neoliberal assault on the social. And it is globalisation itself that will unleash these social spaces and generate these contradictions:

> The liberal vision speaks of globalisation as a mould that is indifferent to content, while the radical movement focuses on the "content" of these developments [in terms of power and social inequalities]. The liberal vision, therefore, ignores the logic of powers, while the radical vision neglects the possibility of a different mould and different progressive possibilities. (Said, 2000b, p. 19)

In the same vein, Said calls for a focus on the "relative inequalities" between societies as an index of the effects of economic globalisation. He appreciates the logic of "harm" that drives most protests against economic globalisation, but calls for a turn towards "collective human responsibility" in fighting poverty, and establishing a right to proportionate development between groups and nations (Said, 2000b, p. 13). This is grounded in two principles: global justice and the right to development. The principle of global justice, for Said, is best encapsulated in proposals for fair trade, non-reciprocity (access to global markets while retaining relative protections in developing countries), regulation of financial markets, transparency, and forcing multinational organisations to respect the same standards followed in their base countries (Said, 2000b, pp. 13-18). A movement for a debt jubilee is also mentioned (Said, 2000b, p. 22).

> Despite its current constraints, globalisation opens up limitless possibilities for the diffusion of new knowledges, lifestyles [*asalib haya*], and genuine internationalist solidarity. This means that it offers a platform through which its own limitations may be transcended (Said, 2000b, 24).

All of this will be shattered in Said's imagination by 9/11 and the 2003 Iraq War, and replaced with a more hesitant if not despairing tone. This can be glimpsed from editorials he wrote from

2001 onwards[36]. There will also be a gradual return to an interest in the "mass intellectual." Said later helped found the Kefaya movement, which in 2004-2006 gathered oppositional forces — liberals, leftist, nationalist, Islamists — in opposition to the Mubarak regime. But his more "mass"-oriented project emerged very late in his life, when he founded the newspaper *Al-Badil* [The Alternative] in 2007, which was intended to articulate a democratic socialist project beyond the dominance of existing leftist parties, one that could become an anchor for building a coalitional front. The details (and tensions) in Said's later shift will be explored in the next section. Generally speaking, Said's "democratic internationalism" takes on a different accent, a shift from an idea of "social empowerment" through "civil society" as a counterweight to the state and economy, to one of a direct confrontational struggle that would transform both state and society at once. What is retained is the idea that the struggle for national liberation must again unite the original link between democracy and self-determination. Yet two issues remain unclear. Firstly, how can political transformation be achieved without "capture" of political power? And secondly, what exactly is "civil society" and how is it formed?

The Conflict over Civil Society

The Arab human rights movement was tormented by internal debates regarding its geopolitical loyalties and affiliations. The quintessential case was the Egyptian Organisation for Human Rights during the late 1980s and early 1990s, which I recount here. But other examples are available; the first Gulf War divided dissidents and intellectuals involved in the Tunisian League for Human Rights, as well as Jordanian and Algerian organisations (Said, 1997, p. 23). I focus on the Egyptian case, however, due to the range of questions it brings to the fore regarding what I call the cosmo-politics of human rights.

In its first years, the EOHR was housed in a separate office of the AOHR. After Said joined the organization in 1988, the AOHR director Mohammed Faiq recommended that the Said

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[36] See especially the editorials to issues 28-32 of Rowaq Araby, the flagship journal of the Cairo Institute for Human Rights Studies (CIHRS). In those editorials, Said increasingly sounds the alarm that American unilateralism puts all democratic aspirations in danger, and stresses the demand for an internationalist movement that would place a check against American adventurism. He desperately attempts to differentiate the anti-imperialist democratic project from the neo-conservative, standardized, militarized and top-down model. His observations and critical moves in response to the Iraq War warrant a separate and detailed examination that I could not do justice to here.

leads the effort to find a separate office for the EOHR and look for an independent source of funding. According to lawyer Nejad al-Boray's account, Said faced early difficulties in bringing this vision to reality. "In my discussions with him he asserted that political tyranny had diverted Egyptians away from voluntary social activities. These activities always prompted the suspicion of the state" (Rowaq Araby, Issue 53, p. 100). However, Said was not yet demoralised. He went on a search for local sources of funding, believing that — as was the case of AOHR — there would be a class of businesspeople willing to support this kind of new independent civic activity. He enlisted the help of friends and colleagues who had connections with the business world, and met with a few businesspeople to introduce them to the idea. This was met with major disappointment. On one occasion, Said tried to influence a prospective donor by recounting the previous historic contributions of national capital in fermenting civic life: "The man put his hand in his pocket and gave me 100 pounds. I apologised respectfully and left. If he had given me the price of the vase that stood behind him, the organisation would have been well-funded for a year" (quoted by Boray, in Rowaq Araby, 2010, p. 101).

Nevertheless, the founding of EOHR went ahead, and in 1985, 50 people gathered in Cairo to establish the EOHR. With funding in its early days from AOHR, its parent organisation, EOHR held its first general assembly meeting in May 1986 (Qaoud, 1997, pp. 105-106), but it seems that from the beginning, the vision of the organisation was unclear. There were divisions and tensions over whether priority should be given to "cultural education" or advocacy work. This early tension would develop and escalate into other divisions.

During its founding in 1985, and far in the prison of Mazra'et Tora, a group of prominent Nasserist activists were sharing their jail time with Islamist activists. The Nasserist activists were released in 1987. Due to the torture these activists suffered in prison, they were attracted to the new discourse of human rights that brought attention to the cruelties faced by political dissidents. Bahey al-Din Hassan, an early figure in the organisation, recounts how these dissidents felt a new bridge or dialogue could be developed between them and Islamist groups through this shared brutal experience (despite the fact that Islamists were subjected to greater brutality) (Hassan, 2006, pp. 37-40).

The first major case EOHR publicly worked on was the Steel and Iron Workers strike of 1989. The organisation released a statement, drafted by Muhammad al-Sayyid Said, in solidarity

with workers who were arrested and detained by the police. In response, on August 24, 1989, the police arrested major activists within the organisation, especially those with more leftist leanings: Said, along with lawyers Hisham Mubarak and Amir Salem, Maged al-Sawi, Medhat al-Zahed, Kamal Khalil, and others. They were accused of creating a "communist organisation" and calling for the overthrow of the regime. Said, Mubarak, and Salem were tortured during their detention, and a growing international campaign of solidarity — especially on the part of Amnesty International, Human Rights Watch, and the Lawyers' Committee — called for their release. This was made possible by the connection EOHR had to the global network of organisations, especially through Hany Megally, who had led Amnesty's Middle East Research department at Amnesty since 1984. When they were released about two weeks later, there were clear signs of beatings. The case would become a clear precedent and an early indicator of the state's attitude towards this new grouping. It would also have repercussions on the structure of the movement. Said subsequently refused to speak of his treatment in prison to his friends and colleagues.

The early years of AOHR and EOHR brought together a very unlikely mix of individuals spanning political traditions: formerly imprisoned nationalists and Nasserists, liberals, radical democrats, and Marxists (Said, 1997, p. 79). As Muhammad al-Sayyid Said recounts:

> The strong nationalist sentiment among democratic intellectuals led them to engage with the political field in its narrow sense, that is, within the framework of party politics, instead of engaging with the broader struggle for human rights. That's why when the human rights movement started to emerge in the mid-1980s, it had to rely on an unusual mix of individuals, combining in particular two groups of people: idealist individuals who were not politicised but who believed in the cause of human rights, and political activists whose parties were going through severe conflicts. This latter group was composed of confused Nasserists and Marxists (1997, p. 79)

This mix created the conditions for the successive debates that shaped the early life of EOHR. Said divides these debates into five stages. These five debates were around: legitimacy, professionalism, foreign funding, the global regime of human rights, and the long-term development of the organisation (Said, 1997, p. 80-85). They did not only reflect the political

divisions within the organisation, but also a more general division among the so-called "seventies generation" of student dissidents who led the campus uprisings of the early 1970s, which had been characterised by much more explicitly pan-Arabist and Marxist motivations. The debates, then, could be seen as an expression of a contentious ideological shift within the broader Arab Left intellectual scene. All stages of the debate can be summed up in two interrelated questions that I tried to capture in the title of this chapter: firstly, the primacy of "civil society" against "the political," and secondly, the role of internationalism and cosmopolitanism in shaping this new intellectual movement.

In the early years, EOHR received its funding from AOHR, from 1985 until 1993. As EOHR took a more professionalised direction, this came to be insufficient, however. As recounted above, there was an early attempt to attract funding from local philanthropists, but this proved to be difficult due to the absence of fundraising capacities and the general perception that EOHR was a "Nasserist organisation" (Said, 1997, p. 84-85). Therefore, Bahey and Said started to look seriously into the prospects of applying for foreign funding. They knew that this was a risky endeavour, due to a general distrust of foreign funding and international organisations. Foreign funding was a taboo, and accepting it seen as participating in "imperialist conspiracy" against the Arab and Third Worlds. Said later reflected on this:

> It may have been unwise for the advocates of foreign funding to justify their decision only on pragmatic grounds and not from a more principled position. This was understandable for two reasons: firstly, most of the advocates of the foreign funding option had been engaged in radical movements, and therefore were more vulnerable to "moral blackmail" from this general atmosphere of suspicion. And secondly, they could not address the more general and national context of the problem, and preferred to confine it to contingent circumstances and urgent needs, rather than a theoretical question in its own right . . . This meant that the decision remained "below" the level of self-awareness. (Said, 1997, p. 86)

When the idea of accepting foreign funding first emerged, it was justified only as an urgent, pragmatic, and possibly temporary step, not something that would fundamentally change the direction of the organisation. This suggests that even those who favoured foreign funding were

reluctant and uneasy, and could not articulate a self-aware and principled position rationalising it except much later. And in fact, at no point does Said ever abandon or disparage the idea of the nation as such. Rather he says there are two visions of the nation — one defensive and the other universalist or principled (*wataniyya akhlaqiyya*). In the first worldview, nations are imagined to be in constant conflict with each other, in a process that is fundamentalist and anti-democratic. The second view sees nations as representative of particular positions in a greater cosmopolitan project:

> An enlightened nationalism is committed to real diversity in the real world, and extends a hand of friendship to other nations to build an international alliance of peace and justice in the world. . . This understanding presupposes that the world of politics is a world of conflict and selfish interests and agendas, but it is also reasonable to assume that this same empirical world of politics can provide the preconditions for the [general] good and progress. It is possible to combat Western imperialist interests in favour of democracy and justice through building alliances with social and political forces that may support such a transformation in the West. (Said, 1997, p. 87)

Said argues that this is not an abandonment of the national principle, but a call to re-examine the sources of its defeat and decay, and especially the bifurcation between its reality and the democratic aspirations associated with it. In any case, Said did not articulate this vision and argumentation at the time the idea of foreign funding was proposed. This is a retrospective rationalisation for what those who were in favour had come to implicitly accept. The board of trustees ultimately voted by a majority to receive foreign funding, but only once a set of criteria were drawn up. These conditions were: 1) funding must not influence the organisation's policy or force it to change its position on specific issues;[37] 2) relative independence from grant-giving bodies — by ensuring that funding goes to the whole organisation and not particular programs;

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[37] There was some debate over what the criteria should be. For example, Hani Shukrallah, on another occasion, wished to add new criteria: that funding must encourage volunteer work and the further democratisation of the organisation (International Aspects, 1998, p. 64). In another stricter version, he included the criteria that that it should not receive funding from governments, and that it should hold support for Palestinian organisations and the Palestinian cause as a litmus test (Interview with Shukrallah, Cairo, 2018). See the original document drafted by Shukrallah, which was republished in Rowaq Araby (Shukrallah, 1996).

and, 3) it is approved by the board (Said, 1997, p. 89). These conditions and criteria helped convince the majority of the trustees to accept this relatively new and controversial decision, despite their apprehension, and became a rough guide for other organisations who charted a similar path. EOHR's decision to accept foreign funding also marked the point at which the organisation became more connected to the global networks of human rights advocacy, deepening the development of a more internationalist orientation among the younger generation, which led to increasing contention within the board of trustees and the resignation of three members in 1993.

The final debate was over "the future" of EOHR, and is described by Said as "the most complex debate in the history of the organisation" (Said, 1997, p. 92). It could also be said that this particular debate was a culmination of the preceding debates and exposed the decisive cracks in the early vision. By the winter of 1993, three visions were proposed among trustees and the executive board regarding the future direction of EOHR. First, there was the idea of developing into a closed professional organisation that closely imitates the Western model of the human rights organisation (with Human Rights Watch as the template). The second vision was of a pro-democracy front or a platform for multiple political parties working in tandem. The third proposal was to develop into a "popular movement" for the defence of human rights. The three models reflected the dominant ideologies of the founders: the first can be described as liberal, the second comes very close to older Nasserist organisational forms, and the third is broadly Marxist-Gramscian. Hani Shukrallah drafted an important paper that summarised and contrasted the three visions and it was presented to the board for discussion.[38] In it, Shukrallah defended the third vision of creating a popular front in defense of human rights. Said says that he was happy to see the debates that emerged at the time, and especially the way discussions over the merits and resources of the leftist-radical tradition were rejuvenated. But Said also had criticisms of Shukrallah's vision:

> Democracy is the main pre-condition for the proper work of human rights organisations, but a "democratic organisation" in the leftist sense is a social alliance that is united by its goal of social democratisation. This means that a

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[38] Shukrallah later realised the unfeasibility of his previous vision, saying that it was unrealistic to imagine that such a popular movement could have emerged in the political environment of the 1990s (Interview, Cairo, 2018).

"democratic alliance" is logically politicised in a way that is distinct from its character as a human rights organisation. For example, a human rights organisation follows the principles and standards of international law, while a democratic coalition sets its own programme and principles. (1997, 94)

Meanwhile, Shukrallah (1996) believed that building this broad coalition was the only way civil and political rights could become popularised and rooted in a grassroots constituency. Such a coalition would also press for a greater focus on the "social" side of human rights, and would compel the intellectual leaders to become more accountable to the people they seek to defend.

As the membership grew — from a dozen to about 1,500 members by mid-1993 —the ideological battles between the Nasserists and Marxists became more acute as each side tried to enlist members to vote for its representatives and to outweigh the influence of the other side. The battle became quite acrimonious by the time of the fifth general assembly, when a fight broke out during the board meeting (hosted in the Journalists Syndicate) after Marxists accused Nasserists of rigging elections in their favour. Marxists then accused Nasserists, particularly the journalist Mostafa Bakry, for "politicising" the organisation and mobilising a campaign to gather outside supporters to register as members en masse just to vote for him. The Nasserists won out, pushing former Marxist and radical-democratic leaders to quit in despair and found their own independent organisations. The new leader of EOHR, Muhammad Monib, turned the organisation into a "Nasserist platform," according to Hani Shukrallah.[39]

This was when Said and Bahey moved forward with an idea to establish a platform for a "cultural and educational programme" that may breathe new life into their project. The Cairo Institute for Human Rights Studies was born, focused on cultural and educational activity, as a hub to gather intellectuals, organise knowledge, and train future leaders of the human rights movement. The CIHRS was also the first organisation to register as a research company rather than a civic association. Retrospectively, Said noted that the fate of EOHR was not an unmitigated loss. He comments that "in reality, the new Board of Trustees may not be as paralysed as many of us had expected, and this may be due to the accumulated experiences of the previous boards in sincere actions in defence of human rights" (1997, 96). Therefore, in a sense,

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[39] Interview, Cairo, 2018.

it turned out that the fear of "politicisation" was overstated at the time, and that professionalisation won out regardless of who was running the show.

Politics and Meta-Politics

In light of this experience, and the internal debate over "professionalization," Said felt obliged later to articulate a standpoint around the relationship between "human rights" and the political. The "political" dilemma faced by the human rights movement is a prominent and recurring theme in Said's writings. The human rights movement is stuck between the need to engage with political activism, while it must secure its ethical autonomy and be a "moral force." Its success depends on the outcomes of its normative or ethical efforts, and so long as ethical channels are blocked — in other words, its capacity to transform the structures of legitimation and consensus within civil society — "political channels" become more tempting and the movement mistakes itself for a political movement (Said 1996d, p. 18).

On the one hand, Said writes that one of the roles of the human rights movement is reaching out to all sectors of "political society" in order to re-enliven a dead political life; it cannot be distant from politics, meaning that it must at least cooperate with political actors in their attempts to participate and engage in such a sphere (1996b, p. 14). It should cooperate not only with political actors, but especially organisations that lie between "political life" and "civic life": professional associations, trade unions, labour unions, and so on. Only by clearly aligning itself with social and economic demands advocated by leftist political parties, can the movement be credible in the eyes of its addressees (Said 1996d, pp. 16-17). And yet, as long as the unions and leftist parties are themselves weak, the human rights movement faces the difficult dilemma of bearing the burden of having to represent sectoral and class interests, which risks further removing its legitimacy as a "normative" or "moral force" rather than a "political" force.

The calling of human rights is associated with essential dilemmas (*mo'odela*) that have not yet been resolved on the philosophical level. In contrast to political activism, the human rights movement forms itself as a moral power (*qowa akhlaqiyya*) and not a material one. Or, in other words, it depends for its moral and ethical appeals on governments and public opinions; it confirms the vitality of political and material pressure, but on the other hand, it is protective (*ghayura*) of its autonomy as a moral movement . . . This makes its effect dependent on the

positive feedback and responses to its call or appeals from the same authorities that violated the norms in the first place. Therefore the movement — in contrast to political movements — faces a crisis when authorities ignore its appeals, or when public opinion is weak to a degree that enables government to detest human rights. (Said 1996d, p. 18)

Said's diagnosis of this dilemma is astute and calls for further exploration. He acknowledges that the "politicisation" of the human rights organisation is a structural issue and not a question of choice.

> Political life has been eroded in most Arab regions, either due to a violent "removal," ossification, censorship, or inability to undertake self-renewal. With the erosion of politics as a special social domain, most of the burden fell onto civic organisations, which were therefore forced to take on the political agenda alongside civic and rights-based tasks. (1998d, p. 8)

He specifically blames the disempowerment of the trade and labour unions, and the associated trends of economic liberalisation and rising consumerism, as especially at fault for this pathological development. But Said has a deeper structural analysis as well, related to the limits of postcoloniality and "formal independence" (Said 1998a, p. 8). He argues that decolonised nations achieved a formal independence that "lacks objectivity and is open to violation, and is in general terms, fragile. . . [and] not reflected in a legal system protected by a respected and legitimated judiciary." (Said 1998a, 8) He adds that in this context it has become clear that the postcolonial state is exposed to challenges from "organic" forces with deep roots within civil society, especially tribal and religious authorities. From the outset, the postcolonial state has had a problem of "inner" legitimacy due to the inadequacy of the modernisation theory that underpinned nation-building, whereby it was assumed that national or ethnic homogenisation, coupled with industrial development were sufficient for legitimation. These processes intensified the gulf separating the state from civil society, however, leading to gradual increases in the "brutalisation of violence" (*tawahosh*). It is from this crisis of legitimation that Said is speaking and to which he is trying to respond: the double crisis of authoritarian postcoloniality on the one hand, and the erosion of any corporate bodies (political parties, unions, civic organisations) that may help in the pacification of its violence, on the other.

While Said appears to defend the "professionalised" model advocated by Bahey al-Din Hassan, and similarly wished to keep the movement free from ideological corruption, his repeated references to Weberian notions of "vocation" add a dimension that moderates his liberal "neutral" voice. The professional intellectual/activist that Said conceives is not detached, cold, or "distant." In other words, this figure is not an "expert" in any usual sense of the word. Rather, the character that Said evokes — although it is unclear whom he has in mind — is one that is committed and ethically oriented towards a cause, and hence the centrality of the idea of the "calling." This character exhibits heroic courage, the capacity to resist, and to speak truth to power, all in the name of an "ethical" rather than a "political" end. Said is thus not blind to the importance of "virtue" as a complement to right, but he is looking for a way to think of virtue not as abstracted from freedom, right, or equality, so that it does not become "elitist." Said declares his conviction that these ethical characters always exist in history and have a role to play in shifting its course (Said 1997, 2000).

Another way Said seeks to "mediate" the conflict between politicisation and professionalisation is to argue that human rights do not end or neutralise social conflicts, but rather "institutionalise" them (Said 1996d, p. 25). Human rights could be read also from an agonistic perspective:

> Each society aims towards the development of a group of cultural symbols associated with peaceful resolution of conflict, and the Islamic tradition is rich with such symbols, and yet, because of the deep roots of these distortions, this culture has turned towards a position that favours polarisation without putting into place mechanisms for peaceful conflict resolution. It is in this context that debates that occur within human rights organisations escalate and erupt to produce crises and aggressive political divisions. (Said 1996d, p. 25)

Said's term for this "function" is "humanising politics" (*ansanat al-seyasa*):

> The essence of the indirect political function of these movements is "humanising politics" which means establishing a minimum of rules in political conflicts which minimise the resort to violence, oppression, and inequality and ensure the rule of the law of equality, justice and human dignity (Said 1998a, 14).

Or:

> The human rights movement] does not establish in itself a political movement, despite the fact that it remains lifeless and powerless without such a movement. Similarly, it cannot establish a civic movement although it is a pioneer in such a formative institutionalisation process. On the other hand, within civic life and activity, it becomes a vanguard without a bloc, a leader without an army, in short, a calling without an audience (Said 1998d, p. 6).

There are two ways through which Said further elaborates the relationship between the "rights-based struggle" (*nedal huquqi*) and the democratic struggle (*nedal demoqrati*) (Said 1999, p. 7). One is the idea of civil disobedience, or the self-limiting revolution, which he dubs "the peaceful struggle" (*al-nedal al-selmi*), which unites both the rights-based and democratic struggles. The rights-based struggle and the democratic struggle are not identical although they are joined at the hip, insofar as democratic struggle must take the form of civil disobedience; and since civil disobedience is in theory more inclusive and "de-centred," it is the model most coherent with the human rights movement. This self-limiting revolution — here he is thinking of the Palestinian Intifada and Eastern European revolutions — is historically unique because it has no coherent collective "subject" but is radically decentred and leaderless. This is why the "non-class" character of these movements usually takes centre stage, and why intellectuals, religious figures, and students (the most "floating" of social groups) are most attracted to this new model. As such, Said argues, students should be actively enlisted in the human rights movement. It is also why he thinks that in this new model of the self-limiting revolution, political parties will be replaced by new actors:

> It is necessary for the rights movement to depend on social mediation that is harmonised with the idea of human rights and capable of organising a popular base for it. The closest popular organisations to this task are civic organisations in all public fields with a relationship to democracy. Labour unions and political parties will remain debilitated in Arab societies for a very long time, while there are possible popular mediations and flexible organisational platforms in other areas. Therefore contemporary democratic thought must emphasise these organisations as closer to its hopes than political parties (Said 1999, 14).

Another feature of this conception of civil disobedience is its "coalitionary character," since it enables multiple different actors to act on their interests, but it does not aim at vanguardism or any ultimate elimination of conflicts; rather it reconfigures conflicts towards new ethical directions: "the humanisation of politics."

Said was also preoccupied with questions of "pedagogy," a preoccupation no doubt deepened by his involvement in the summer school organised by CIHRS and explored in two consecutive issues of *Rowaq Arabi* (Said 1998c, d). His vision of pedagogy is remarkable in how it tries to overcome any "hierarchical" relationship between an active teacher and passive student. This "humanist" pedagogy "must focus on people and not on laws; humans are the makers of laws, they are the ones who change it, they are the ones who grant it meaning and significance" (Said 1998c, 8). This pedagogy is not separate from daily practical struggles, as it goes beyond the dichotomy of theory and practice in inviting people to be more civically engaged in their everyday lives. He calls this a practice of "economic citizenship" to highlight the centrality of the struggle against social and economic marginalisation. Economic citizenship envisions social and political actors who actively shape their lifeworlds through participation in civic and political institutions, including universities, the arts, sports, the press, and so on. All these are public domains that Said saw as the ground for a "human rights pedagogy" where a "new social contract" could be forged. He writes succinctly: "Pedagogy is a democratic act" (Said 1998c, 14).

In my interpretation, Said's retrospective justification for professionalization, or his project of "humanising politics," are not substitutes for political action. This will become clearer later on throughout the chapter, as Said himself changes the details of the project to some extent. Nor was his concept of intellectuals and professionals meant to insulate them from politics. Rather, the overarching point was a careful attempt to differentiate between two level of politics. One level is meta-politics, or what in theoretical terms we name *the political*. This is the space of institutionalized conflict that Said is referring to, along with its symbolic, ideal and normative backgrounds. This is the space Said is wishing to defend, against a concept of politics as mere competition for resources, power and leadership. Because Said sees that "civic and political" life has been eroded, its repair cannot be done through political competition alone, but requires more careful, patient, long-term work, that would prepare and ferment new kinds of solidarities across

different groupings and associations. The "human rights movement" here is the name for the kind of intellectual and practical task for this kind of meta-political activity. Later on, as I show in the next section, a more straightforwardly political articulation of the project will emerge.

Reckonings

To further clarify what is at stake in these contentions, I want to contextualise them in the larger landscape of views that emerged among the so-called "seventies generation," the generation of radical activists who were involved in the successive campus protests of 1968, 1972, and 1973. Following a peak of revolutionary activity, political life plateaued after the 1977 mass uprising. Many activists were forced underground, but the idea of creating a mass party representing this generation's political aspirations never died away[40]. It is within this context, and the debates around it, that the idea of "civil society" can be located and understood[41]. This also clarifies the tense connections between these local developments and a more global Marxism and anti-colonialism that inspired the "1968 moment" this generation of intellectuals represented. The debate is best captured by socialist-feminist writer Sanaa al-Masri's 1998 book *Tamweel wa Tatbee' [Funding and Normalisation]*. The book was a sensation within these circles because in it, al-Masri delivered a detailed exposé against Western-funded organisations, accusing them of being pro-normalisation with Israel.

Another event that animated this debate was the arrest and detention of sociologist Saad Eddin Ibrahim[42]. Ibrahim had been a key figure in the formation of the "civil society" project,

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[40] The membership of some of those students to the Workers Party (such as Shukrallah, Said and Bahey el-Din Hassan) was one attempt at realizing this vision. The story of their changing relationship to the Party is one element of this story that is still currently being researched.

[41] For an excellent further discussion around the translations and debates around "civil society" in the Arab intellectual scene during the nineties, I recommend Michaelle Browers' (2006) monograph on the subject, which I am complementing here. Browers also reports on the entry of Gramsci into Arab socialist thought, which was concurrent with the debates around the scope and meaning of "civil society" (see 2006, pp. 166-171). Also see the documentation of a 1990 conference on Gramsci and civil society which took place in Cairo (Rashid, 1990). Attendees of the conference mentioned in the dissertation: Farida al-Naqqash, Nasr Hamid Abu-Zayd, Hani Shukrallah and Al-Taher Labib.

[42] For commentary on the Saad Eddin Ibrahim case, see the discussion in Rowaq Arabi (Hassan, 2002). Generally speaking, the network around Said and Bahey faulted Ibrahim for preferring a human rights agenda more palatable for an American policy community than towards a view to the needs of local constituencies.

primarily through his organising of the debates that took place in the Centre for National Unity Studies and the establishment of the Ibn Khaldun Centre for Development Studies. But Ibrahim also stood apart from the individuals I focus on here, as I discuss in more detail in Chapter 3. Firstly, he belonged to an older generation of intellectuals, having already received his PhD from the University of Washington in 1968, so his involvement in local student politics came almost a decade earlier than the rest of the group. But another way he stood apart was his political orientation. Ibrahim had already explicitly reversed his earlier opposition to the Camp David Accords by the time of the Oslo Accords. Moreover, during the 1980s and 1990s, Ibrahim was close to the Mubarak family, and personally advised Mubarak. The first clash between them came much later, in the early 2000s, when Ibrahim started to criticise the increasing authoritarianism of the regime, its crackdown on civil society, and efforts at setting up Mubarak's son as a successor in power.

This political orientation also shaped the causes Ibrahim chose to focus on. He took particular interest in minority issues and electoral monitoring — two agendas that were heavily emphasized by American policy-making. In 1996, Ibrahim decided to break the Israel boycott and visited the country to give a talk. At the same time, Ibrahim had received European Union funding to organise a civil society campaign for monitoring parliamentary elections. This was the pretext for his arrest and subsequent detention in 2000, until international pressure led to his release in 2003.

During the legal campaign against Ibrahim, the question regarding the ambiguous politics behind the idea of "civil society" was renewed. Some believed that the Ibrahim case, and his close relations to the regime, confirmed that it was a geopolitical project designed to "tame the Arab intellectual" and the anti-imperialist energies of past decades. But former leftists who had moved towards "civil society" sought to tread a much more delicate line, maintaining that ultimately, they should be judged by the criteria they set for receiving funds and the way they used them, not by a blanket ban on any effort at building networks with European and foreign groups. Nevertheless, these activists supported Ibrahim insofar as the campaign against him was hypocritical and opportunistic, but they also stressed their divergence from his style and positions.

None of this would have persuaded a figure like Sanaa al-Masri. Al-Masri is important in her own right because she embodied a real alternative to the entire move towards liberal-leftism of the 1980s and 1990s. I take her to represent a trajectory that remains unfulfilled and untold. Al-Masri was radicalised as a student in Cairo University in the 1970s. Throughout her short political life, she was a fierce critic of the dismantling of the Nasserist welfare regime, the Westernisation of the political field, and the increasing normalisation with Israel after the Camp David Accords. Known for her uncompromising stances, she stood almost alone in defending a secularist socialist-feminist project that she saw to be threatened by the increasing Westernisation of leftist discourse and activity. Throughout her published writings, she understood the new project of civil society as a cover for the hegemony of a liberal feminism that does not represent the interests nor goals of a genuinely anti-imperialist, anti-capitalist feminism. Al-Masri refused to join any political party or write for the main leftist publications of the time. She also refused to be reinstated in her former job as a journalist in a state-run newspaper, after she was fired for her political activity. She "pursued an ascetic life and lived most of her life in inexpensive female dorms in downtown Cairo" (Hammad, 2011, p. 219). She debated Islamists on their own platforms, self-published her books, and led protests against Israel by herself. Al-Masri died in 2000, at the age of 42.

Al-Masri's position increasingly distanced her from her former friends and comrades, whom she saw as compromised. In the early 1990s, however, al-Masri encountered a group that best represented her position. Bint al-Ard (Daughter of the Land) was a Marxist-Feminist group formed outside Cairo, in Mansoura, by a group of radical women in 1982[43]. The founders also took part in the student movement, before breaking from it because it was insufficiently attentive to women's issues. This independence allowed them to articulate an alternative socialist feminism that would stand opposed to the interests of Western feminism and its bourgeois pretensions. Such a position also meant that they would increasingly become isolated from the developing Western-led discourses on "women's rights." Such a break was marked by their withdrawal in 1987 from a conference organised by Nawal el-Saadawi — an early supporter of

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[43] There is some evidence, however, that Bind al-Ard received their support from a Maoist group, "Al-Tayar al-Thawry" (The Revolutionary Current) (Interview with Elham Aidarous, July, 2021).

the group — once it was revealed that the Ford Foundation funded the conference. This position made al-Masri a natural ally.

To be clear, al-Masri's allegations of "normalisation with Israel" as a condition for foreign funding remain unclear and unverified.[44] The only concrete example she gives of such normalisation is a trip made by Saad Eddin Ibrahim to Israel in 1996, but this is almost the exception that proves the rule, because Ibrahim was severely criticised and attacked by other intellectuals for his increasingly pro-American and pro-normalisation sentiments. Yet al-Masri did not differentiate between different organisations or individuals, and all came under the same accusatory brush of the "treason of the intellectuals."

Nevertheless, there is a deeper political motif to al-Masri's highly polemical attacks[45]. She correctly sees a connection between the idea of "civil society" and the dismantling of the national liberation project that she is mourning. Her chief example here is feminism. Organisational schisms over the question of foreign funding actually occurred within feminist organisations, even before human rights organisaitons. The first person to endorse "foreign funding" was Nawal el-Saadawi. Al-Masri accuses her of abandoning her early socialism and adopting an agenda unfit for purpose, because it removes the feminist struggle from its wider anti-capitalist and anti-imperialist struggle. Al-Masri reports how earlier critics of el-Saadawi quickly followed suit and joined the foreign funding train.[46] She is unremitting in seeing this as a betrayal of the fight of her generation.

> How can these organisations be autonomous and self-determined, how can they be free if their existence and activity depends on funding associations that are linked, one way or another, to capitalist governments? These organisations travel within the orbit [of these funders] and determine their activity according to what

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[44] For a defence against al-Masri's allegations, see Muhammad al-Sayyid Said's comment (Said et al., 2001, p. 108).
[45] For a similar kind of polemic against "civil society" from a Marxist perspective, see Taha (1996).
[46] Another example here would be Al-Mara'a al-Jadida (The New Woman), which will be mentioned later in chapter 7.

the funders are interested in, and the language used does not differ from that of the funders. (1998, 38-39)[47]

Taking on the project of civil society, according to al-Masri, led to an abandonment of the political project and mass mobilisation altogether. It also implicitly supports, she argues, the ideological transformations of the era, especially privatisation and assimilation into the market (1998, pp. 38-48).

Al-Masri's book caused a sensation, and it only gained more of an aura following the death of its author. Many of the accused felt they could not defend themselves since their accuser and former comrade had died. The force of her polemic did not subside, but only increased in relevance especially during the subsequent arrest and trial of Saad Eddin Ibrahim.

In an issue of *Rowaq Arabi* (Issue 23), a special section titled "*Civil Society and Conspiracy Theory*" addresses the debate within this generation. In this section, various articles are republished in which Muhammad al-Sayyid Said responds to his friends and former comrades from the radical student movement who were, like al-Masri, uneasy with the new civil society project. There were important multiple triggers to this discussion — an event in 1997 commemorating the struggles of the 1970s, the publication of al-Masri's book, and the Saad Eddin Ibrahim trial. In the section, two figures of the seventies generation — novelist Mahmoud al-Wardani and historian Ahmad Bahaa' al-Din Sha'aban — reiterate the same worries expressed by al-Masri, of a certain "taming of the Arab intellectual" as a result of the new civil society project. Both also worry that this project comes at the expense of the effort to build a political party that would be a necessary platform for political engagement (Said et al., 2001, p. 95). According to this view, "civil society" must be viewed historically as the result of a protracted project of political struggle, and thus cannot be imported nor implanted. Al-Wardani asks: "Is this a substitute for political and intellectual resistance led by those comrades, and for which they paid dearly in their freedom and life, including Muhammad al-Sayyid Said? Or did it

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[47] It bears noting that al-Masri does not differentiate between sources of funding, so government funding (such as USAID or the European Union) is not differentiated from philanthropic funding (such as Ford or Open Society), or party-affiliated funding (such Friedrich Ebert Foundation), and the US is equated with Europe and the Gulf. The result of such a position is that she is not able to compare how the different sources of funding shape various agendas or allow for differing degrees of autonomy. This adds to the "conspiratorial" tone of al-Masri's polemic.

happen due to the degeneration of political life?" (Said et al., 2001, p. 85). Against this defanging of the intellectual, the authors call for a return to the earlier aspiration of the student movement — building a mass political party that represents this generation's struggle.

Said's response to his critics is careful and generous, maintaining an air of comradely respect throughout. Some of the points are expressed elsewhere in his writings, for example, that the idea of human rights grew out of a disappointment among Arab intellectuals in the face of Israeli aggression in Lebanon, which forced them to rethink the national project and its core assumptions (Said et al., 2001, p. 90). The answer given to the question posed in the 1980s about why the masses did not rise up against the occupation was that society had been destroyed under the weight of oppression and tyranny, and that what was needed first was civic regeneration or "social empowerment." And yet, Said concedes one crucial point to his critics. He accepts the argument that this answer was limited in some respects. He seems to have realised retrospectively that society cannot be restored or repaired without political democracy. This means that the human rights movement is now seen as a "placeholder" of sorts for a future movement that aims directly at democracy.

Again and again, the dilemma of "the civic and the political" appears in Said's interventions, which I read as an indication of a certain degree of equivocation on Said's part regarding how to break the impasse of the national-liberation project. Said is worried that a mass party would not be enough to liberate the political sphere, because the party competes over state power but cannot constitute a new political life or institute conditions for it. The search for a new foundation compels him to look elsewhere for sources of social rebuilding and repair. In response to Bahaa' al-Din Sha'aban's argument, Said asserts that a strict primacy of the political against civil society is based on an incorrect and tautological premise, because it assumes that the civic is apolitical, which Said suggests does not hold in a context of oppression (2001, p. 104). Rather, Said clarifies, civic regeneration is meant to make possible "a good experiment in developing a new political struggle, which is at the heart of the project of building a civil society that is capable of having a dynamic relationship with the political field and party life" (2001, p. 104). In this framework, the civic is categorically not a substitute for the political battle, but its partner in repairing a destroyed and ailing political life. In this schema, civil society activists create the necessary symbolic protections and context in which partisans compete and struggle

(Said et al., 2001, p. 105). Said detects in his opponents' argument a statist view of politics and the tendency to identify the political with the state. The problem is that it remains ambiguous on the theory of the state it is using, so that multiple models of the state are confused and conflated in the name of the primacy of political struggle. Said notes that the whole idea of a protracted historical struggle for democracy ultimately relies on the specific history of constitutional democracy. The view that "civil society" depends for its precondition on the struggle over the state implicitly confuses several state models at once: the Leninist, Nasserist, and constitutional state. The result of such confusion is that the idea of democracy itself is lost, the state is reduced to a mere instrument for the exercise of power, and the specific relationship between the state and society is muddled. In sum, Said expresses a disagreement with the view that civil society can be generated as a gift from above after the state is captured, observing that historically, this has only led to an increasing entrenchment of state power. The alternative is to think of the liberation of society and politics as concurrent:

> The revival of civil society ultimately leads to a view of politics in which the appropriation and exercise of state power remains beholden to democracy . . . since without democracy, people lose freedom and bread, not just freedom. And more importantly, they lose their very being, and are crushed and sacrificed under the weight of political totalitarianism and permanent state terror, which is confirmed by both the Soviet and Nasserist experience. (Said et al., 2001, p. 106)

The other key element of the disagreement concerns the definition of "civil society" itself. Said disagrees with the view that civil society is an entirely or mainly "modern" (or "postmodern") phenomenon. He defines civil society as "the general social glue, or in other words, it is the worldly source of universal visions, of culture and morality, of forms of life; it preserves social activities or adapts them to changing circumstances" (Said et al., 2001, pp. 102-103). It is worthwhile to quote Said at length here:

> The core of the idea of civil society is not separable from the idea that some
> Arab thinkers have suggested in terms of "communal society" (*al-mujtama' al-*

ahli),[48] since both express the "institutional energy" of society in its civil condition, a condition in which consent and voluntarism dominate. Civil and communal societies differ from "political society," which revolves around the state, and "religious society," which revolves around faith and divine law . . . In short, then, civil society can be made to express all the horizontal and communal bonds that preserve collective interests and set up the necessary consensual rules for protecting them. These rules can be inherited or traditional, in which case it is "communal society," or they may be voluntary and contractual, in which case it is "civil society." Communal society grows out of the structures of organic groups, like the village, the tribe, or the clan. Civil society is born out of voluntary agreements, such as the trade union or civic association . . . In other words, civil society — as per this more inclusive definition — dissolves or fractures when its roots in popular and civil groupings are destroyed. The social fabric is the ultimate barricade after political society or the state is destroyed. And this is what happened in Egypt, where civil society, exemplified in the village, the urban neighbourhood, the crafts guilds, and Sufi orders became the only remaining buffer when the state came under threat during the last Mamluki and Ottoman eras. (Said et al., 2001, p. 103)

This definition of civil society is quite eccentric to say the least. It is made possible by the fact that in Arabic, the word "*ahli*" implies multiple meanings and carries connotations of both *Gemeinschaft* (*jama'a*) and *Gesellschaft* (*mujtama'*). This slippage of meaning allows for a statement in which the difference between contractual (bourgeois) and pre-contractual (traditional) bonds is minimised (and both are expressed as "horizontal"), while the difference between "civil and communal society" and "political society" is maximised. It also allows for a more complex historical thesis regarding the origins of the separation of society from the state. Said is almost positing a direct reversal of the "Oriental despotism" thesis and its Eurocentric reiterations, because he does not centre his analysis on a divergence between East and West, but on a global and plural modernity defined by the consolidation of absolutist military

[48] Another translation of "*al-mujtama' al-ahli*" would also be "communitarian society," again a reference to *Gemeinschaft*.

bureaucracies, which led to the distinction between society (horizontal) and state (vertical) growing in intensity. This analysis is able to focus attention on both political and social inequalities by explaining and historicising their separation in the first place. And there's an added Gramscian touch to this thesis: The more the state grows in domination (coercion), the less it can achieve hegemony (consent), and the abyss between civil/popular society and political society grows wider. The result is the following:

> What happened in Egypt is that in the last 25 years, popular society in the shape of the urban neighbourhood and the village have dissolved, while modern civil society exemplified by the trade union and the civic association have come under assault, deformation, and assimilation into the state body. Therefore it [modern civil society] lost its structure and credibility and is no longer capable of disciplining social forces. This leads to an atomisation of "society," a dispersal of its energies into chaotic and random collisions vulnerable to implosion or random explosion. This was due to the complex combination of authoritarianism and state violence, as well as economic liberalisation under rentier conditions. (Said et al., 2001, p. 103)

This eclectic mix of Alexis de Tocqueville, Antonio Gramsci, and Emile Durkheim allows for a conception of "civil society" that departs from both neoliberal and authoritarian conceptions. Against neoliberal civil society, it is no longer a question of privatisation. And against authoritarianism, civil society is no longer eaten up into political society. Rather the question becomes how to restore a hegemonic project in which the dynamic reciprocity between state and society is achieved. How can both political and civil society become mutually empowering? This comes, however, at the expense of eliding crucial differences between the different theorists of civil society, and the differences between bourgeois and pre-bourgeois society. It presents *Gemeinschaft* as a prospective partner in this project, while leaving unresolved the entrenched gendered and sectarian hierarchies that constitute "communal society." It leaves unaddressed the crucial differences between thinkers of civil society, and the various readings of each one of them. For example, Gramsci scholarship remains very divided regarding the scope of "civil society" as a concept, its applicability to pre-bourgeois and non-democratic societies, and its

relationship to political society[49]. There is an argument to be made for a Leninist reading of Gramsci, in which bourgeois "civil society" is a product of the bourgeoisie's capture of the state, and similarly, in a pre-bourgeois setting, a civil society cannot emerge without a total capture of the state. In other words, no civil society (bourgeois or socialist) can emerge short of a political revolution. Said's attempt to present a possible alternative, in which political society and civil society maintain their distinction but reciprocally empower one another, leaves revolutionary capture an open-ended question.

There are important occasions when Said expresses a certain level of doubt and despair regarding his own aspiration to build a civic alternative. He usually expresses these doubts whenever he discusses increasing imperialist American assaults.

> I confess that my answers have proven to be to be lacking, after a long experience with civic struggle, today I rediscover the truth that it is almost impossible to build a strong and rich civil society (or at least as quickly as I wish) as long as democracy is absent. What I believe today is that there needs to be a minimum of political and constitutional reform as a necessary prerequisite for the repair of society and the unleashing of popular energies. (Said et al., 2001, p. 90)

So, while at first Said wished that civic struggle could become a placeholder for the democratic struggle, now "the delicate balance between these dimensions have shifted in my mind, so that democracy has become the priority" (Said et al., 2001, 90). And yet, the word revolution does not occur.

Civil Society and Nation

The first time the Palestinian political philosopher Azmi Bishara visited Egypt was on an invitation from Bahey al-Din Hassan and Muhammad al-Sayyid Said. They were worried and unsure about whether inviting a Palestinian citizen of Israel was a breach of pan-Arab normalisation rules. Bishara himself had previously refused to visit Egypt carrying an Israeli

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[49] See for example the argument in Riley (2010).

passport, expressing a principled opposition after the betrayal of the Camp David Accords between Israel and Egypt. Evidently, Hassan and Said thought that the discussion that was to be held at the CIHRS was too important, and so they went forward with the invitation and event — a not uncontroversial decision in the pan-Arab circles with which they were affiliated.

As far as I know, Bishara's is the sole obituary of Said that mentions Said's growing hesitance over his earlier formulation of a "human rights" project (see Bishara, 2009). Bishara speculates that Said's later turn towards more "mass-based" platforms — *Al-Badil* newspaper and *Kefaya* — may have been expressions of this despair. The two struck an intellectual comradeship over their shared enthusiasm for a renewed transformational project, a democratic socialism, and their qualms over the precise shape and scope of that project.

Bishara was born in 1956 into a lower-middle-class Catholic family in Nazareth who remained in their home after 1948, rendering them Palestinian citizens of Israel. His father was a communist, and so he was exposed to radical ideas as a child. Bishara studied at Haifa University and the Hebrew University of Jerusalem, and was later able to receive a doctorate in philosophy from Humboldt, enabled by his membership in the Communist Party. He wrote his PhD dissertation on the methodology of Marx's *Das Kapital*. Bishara later taught philosophy at Birzeit University in Ramallah, and in 1992 founded *Muwatin*, a research institute at the university for the study of democracy. In 1995 he founded the National Democratic Assembly party, or *Balad* for short, and was elected to the Israeli Knesset on its list. He was re-elected a number of times and then disqualified from running in 2003 due to his support of the Palestinian resistance. Although the decision was overturned by the Supreme Court of Israel, as was the later stripping of his parliamentary immunity, constant police harassment forced Bishara to resign and flee to Qatar, where he now resides and directs the Arab Centre for Research and Policy Studies and sits as a trustee of the Doha Institute. Never shying away from trouble, the move to Qatar remains controversial, particularly due to Bishara's proximity to the ruling monarchy.[50]

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[50] I realise this poses challenges to my analysis of Bishara's philosophy, and I am open to these challenges. Yet I will deliberately bracket this contemporary development for two reasons; firstly, because I refuse to participate in the general accusatory climate that intellectuals and activists routinely indulge in, and secondly, because even if I am uncomfortable with Bishara's strategy of becoming a "court intellectual," I am equally suspicious of the loyalties and allegiances of his detractors within the current geopolitical climate. This supports the general gist of my argument here — that allegiances, alliances, and loyalty are constant battles for intellectuals, thus demanding a

Towards a Critique of Civil Society [Naqd al-Mujtamaʿ al-Madani] was first published in 1996[51], in Ramallah. Bishara writes in the introduction to the book's sixth edition that its goal "was to deconstruct the excessive and popular consumption of the concept of 'civil society' and its treatment as a ready-made, unproblematic notion. This idolising, fetishistic treatment has removed its analytical power and critical effect" (2012 [1996], p. 7). Bishara sought to "uncover the philosophical origins of the concept, during early modernity, before it came to carry normative connotations after the fall of the socialist camp" (2012, p. 7). Throughout the book, Bishara exposes attempts to portray civil society as,

> corresponding to a natural society in contrast to the state, to the extent that it now represents in Arab thought everything that is not the state. It represents society as good in order to demonise the state, which removed the critical and democratic function of the concept and implicitly identified it with popular society (*al-mujtamaʿ al-ahli*). (2012, p. 8)

Bishara wishes to move the concept from its close proximity to popular society (naturalised, fetishised) in order to re-politicise it:

> The concept of "civil society" has arrived to us as equal to everything that is not political, after a long series of permutations up to Western postmodernity. This risks depoliticising the concept and forcing intellectuals to turn their back on politics and move towards social activism that depends on foreign funding. Or it forces them to be reliant on popular social structures independent from the state. In both cases, what is abandoned is the "civic" character of society, and not only statism. (2012, p. 8)

The allusions here are obvious. The book was primarily directed at "intellectuals who have adopted the idea of civil society in the 1990s as a compensation for their withdrawal from political activism following the crisis of the Left and the nationalist movement" (2012, p. 9). The Oslo Accords and the 1990 Gulf War were clear symptoms of this failure. The book represents a

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different kind of lens or criteria beyond "unmasking" or paranoid thinking. This applies across the board, to intellectuals across the entire geopolitical spectrum; no one is safe from the pitfalls of loyalty and allegiance, and "unmasking" does not add anything new or interesting.

[51] I will be using the sixth edition to the book, published in 2012.

call to intellectuals to "return to the political field, drawing on the main thesis of the book that civil society without politics and outside the field of struggle for democracy entails stripping the concept of civil society of its historical significance, critical edge, and analytical power" (Bishara, 2012, p. 9). In Bishara's analysis, further developments — the 2011 uprisings — confirmed the thesis that the only way civil society can become civil is through politicisation, that is, through the turn towards active social movements that "unite civil society and the citizenship nation" (Bishara, 2012, p. 10). Bishara posits that the main lesson to be drawn from the Arab uprisings is that civil society emerges through a creative tension with the state, not in opposition to it (2012, p. 12). This reverses the thinking predominant in the 1990s, when the success of the Solidarity movement in Poland suggested to the global Left that society could become a substitute for the state.

There are thus areas of convergence and divergence in Bishara and Said's analysis. Both agree that civil society cannot be a substitute for political struggle. Both are fundamentally trying to steer a course between neoliberalism and Leninism, but the way they present such a thesis goes in opposite directions. On the one hand, Said thinks (or thought at some point, though there is evidence he revised his thinking) that the way to restore political and civic life together is to strengthen civic life by drawing it closer to popular society, or at least by building a protective buffer between popular society and the state. Bishara took on the reverse interpretation, suggesting that civil society only becomes civic when it directly engages in a battle to democratise the state, which takes place across the field of "national citizenship" and where this bottom-up social movement comes to represent a new stage in the national struggle. These different interpretations can be traced back to the different contexts of their work: Bishara is seeking to mobilise a weakened post-Oslo Palestinian movement, both within and beyond Israel, leading to an emphasis on national self-determination, while for Said, the struggle is predominantly against the cruel tyranny of the state.

Bishara advances a Hegelian interpretation of civil society. His notion is that three concepts — civil society, state, and nation — form a totality that defines the modern polity. The nation becomes self-conscious in such a polity when it embodies itself in a state legitimated through the consensual civic structures of citizenship.

And if the nation does not find a political expression for itself in the state, or at least in a desire for the state, there would be no place for the modern nation, the *political* nation, nor for civil society. The direct relationship between the two issues discussed here [civil society and the nation] results from the fact that current Arab regimes lack civic legitimacy in the first place, and therefore, they increasingly depend on security bodies. It is impossible to find an Arab civil society opposed to tyranny, unless that civil society is located within a process that aspires to express the self-consciousness of the Arab nation in a political body . . . Pre-national affiliations do not add up to a civic consciousness based on the idea of the citizen, in which the citizen is defined as the subject who can maintain multiple roles in the private and public sphere, and eventually, in the nation. (Bishara, 2012, p. 31)

Bishara mobilises such a philosophy in order to critique what came to pass as Palestinian civil society, and to highlight its bureaucracy, professionalisation, and its absorption of former energies that had tried and failed to end the occupation (2012, pp. 33-35).

The rest of the book is a detailed genealogy of the concept of "civil society" in the history of Western political thought:

It is not necessary for civil society in our time to be limited to the ideas of Adam Smith, [Adam] Ferguson, and John Stuart Mill. Throughout its history, there was not just one Enlightenment. There were other models of civil society unlike that of Adam Smith and Ferguson, such as Montesquieu, Rousseau, and De Tocqueville, as well as Durkheim in their wake, whose understandings of civil society came directly from the principle of individuals' capacity to form social relations, outside of either the state or economic activity. (Bishara, 2012, pp. 58-59)

Bishara traces the vicissitudes of the concept from these thinkers up to its decline after Durkheim and Gramsci, and its more recent revival in the wake of Solidarity. The largest section of the book (Chapter 3) is dedicated to Hegel's philosophy of right — the concept of *bürgerlich Gesellschaft*, or bourgeois society — and Marx's radical-democratic critique. This comparison

between Hegel's *Sittlichkeit* and Marx's comment on democracy as "the riddle of all constitutions" is meant to expose the philosophical difficulties Marx runs into when he shifts his focus from political philosophy to political economy. Bishara writes about Marx that he

> does not see, nor can he see, that the contradiction he is discussing [between the individual and society] is the secret of the development of a permanent democratic order, and instead, he goes on searching for a solution to this contradiction. An examination of this history leads us not to the belief that it is possible to abolish the contradiction between the individual and humanity, however, but leads us instead to look into differentiations and varieties of rights — civil, political, and social — and to attempt to extend bridges between human individuality and humanity, without falling into the illusion that it is possible to abolish this contradiction or dualism. (Bishara, 2012, p. 191)

In this way, Bishara tries to preserve the difference between *Sittlichkeit* and Marx's radical democracy, by channeling it into ever extending "differentiations and varieties of rights" that would ease — but not abolish — the rigid contradiction between the private and the public self. The answer, according to Bishara, remains citizenship. Citizenship becomes the site of struggle for transforming the relationship between the individual and humanity towards constantly new social relations.

So far, Bishara is close to many post-Marxist thinkers of right. His key contribution lies in his reconstruction of the "nation," and the way in which his analayis of the question of nationalism affects his philosophy of civil society[52]. Bishara is keen to differentiate between the nation, nationalism, and nationalist ideology. The first is a political category, the second a cultural category, the third a historical movement. The goal of such a differentiation is to critique the ways the "nation" as a civic political body turns into a cultural issue or a cultural identity, leading nationalism to "being a substitute for the civic community" (2012, p. 244). His inspiration is Austro-Marxism and their "theories around the national question [which] have immense untapped energy, when it comes to the question of minorities and the possibility of founding multinational polities" (2012, p. 245). He is critiquing both liberal and Marxist readings

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[52] For a more elaborate presentation of Bishara's philosophy of national self-determination, see Bishara (2007).

of nationalism for not giving sufficient weight to the dialectics of the nation and "nationalism." Rationalist theories of modernity present nationalism only as an anachronism or a regress, not as a systematic possibility under modern conditions, that grows out of the intense dialectics of universalisation and particularisation (Bishara, 2012, p. 246). The nation is a polity underpinned by relations of citizenship embodied in political institutions, while nationalism is the conversion of citizenship into a particular cultural identity, a fetishisation of primordial organic ties that refuses any sense of the multiple concrete intermediations and relations that together constitute the nation.

> Nationalism wishes to be more exclusive and trump other affiliations that the individual may hold. Nationalism wishes to be empty of all real affiliations, a totalitarian body that represses all other groups. Meanwhile in reality, we can create a public imagined community only through many interrelated and plural groups; the family, the sect, the church, and so on. Can we imagine in any European country a nation is imagined without the great efforts made to socialise individuals into this community except through the many attachments to the family, the neighborhood, and the village? (Bishara, 2012, p. 277)

Such a proposal for an enlightened, republican nation as opposed to nationalism is strengthened through a critique of communitarian theorists of civil society (such as Charles Taylor and Partha Chatterjee). These theorists argue that much of modern nationalism actually relies on social contract theory, and they thus necessarily pit the modern nation against the local organic community, as an ethnic or religious form of belonging. Bishara notes that "social contract theory" is not tenable in practice, however, and that most nationalisms smuggle in notions of organic belonging that easily favour certain forms of attachment over others. Therefore, in practice, nationalism cannot be fully explained by contract theories, because it depends for its emotional energy on elevating attachments that go beyond contract relations. The real danger, then, is not simply the social contract theory that underlies much liberal and republican nationalism, but rather an inability to think of a nation that can encompass plural identifications and affiliations at once. The nation, in Bishara's conception, is a complex totality encompassing many levels of identification and non-national affiliations (family, class, community,

neighbourhood) via the mediation of civil society, the public sphere, and finally citizenship (2012, p. 278).

Such a theory of modern *Sittlichkeit* stands for a critique of colonialism:

> Colonial violence has constituted an integral part of this process of fragmentation and forced unification of communities, but colonised communities did not form into societies or democratic states alongside politically-neutralised communities. The neutralisation of communities had the opposite effect, becoming an obstacle to the formation of a civil society or democratic polity. The only institution that was capable of uniting the urban and traditional elites was the military. Meanwhile, the individual was turned into a subject of state coercion, without becoming a rights-bearing citizen. He [sic] was alone and isolated in the face of the modern state. There are commentators who try to promote the idea that there is nothing modern about such a situation, that it is merely a continuation of traditional tyranny, but there is a major difference between modern and traditional tyranny. Firstly, the old tyrannical state was incomparably weaker than the modern state in terms of its technological and spatial reach. Meanwhile, all modern states without exception — democratic or not — are actually police states. Secondly, traditional rule occurred through the many mediations between the individual and the ruler, and therefore the individual was never isolated into an atom subject to the ruler. (Bishara, 2012, p.280)

Religious and tribal communities were politically neutralised in the sense that they lost their claim against the modern state. They became naturalised, imagined to exist prior to history — an effect of colonial violence. No way was found to embed rights and obligations into a complex web of plural identifications that cut across the many spheres of social life, and so of course, there are was no founding of citizenship. Instead, the result was atomised individuals subject to the tyranny of the police state, without any remaining buffer to protect them. The outcome is "nationalism without a nation," that is, an increasing elevation of fictive attachments, imagined to be natural, given, and exclusive, without any complex mediations of concrete plural

affiliations. Nor do such exclusive nationalisms add up to a concept or reality of the rights-bearing citizen.

Such arguments are relevant in the contemporary moment because of how "civil society" is again being identified with communitarian ties, under the misconceived assumption that communitarian ties exist entirely beyond the state. Bishara warns that if Arab thinkers fall into the trap of imagining civil society as an exclusively natural and pre-political sphere, the result would be a reproduction of nationalism without a nation. It would be to repeat the consequences of colonial "fragmentation and forced unification." This situation is not exclusive to the "East" either — Bishara points out that behind American celebration of "civil society" and local identities (insofar as they are "not the state") is hidden a legacy of patriarchal white racialism and nationalism. Bishara critiques Arab scholars, including Burhan Ghalioun and Nazih Ayubi, for making a similar mistake:

> We can understand the contemporary withdrawal into society as a kind of escape from everything that is related to the repressive state, including on the part of modern non-governmental associations. Their emphasis on the traditional structures that stood up against the coercion of the state is nothing but an escape from politics as dictated by the authoritarian state. (2012, p. 313)

Such a withdrawal appears in many guises, for example, as "the masses," again naturalised as completely untainted by the effects of the history of aborted citizenship. Ultimately, "the attempt to repair the current traditionalistic structures outside this deformed modernity will only corrupt those structures from within by this same deformed modernity" (Bishara, 2012, p. 313). Nazih Ayubi makes such a mistake in his classic *Overstating the Arab State* (1995) when he calls for a revival of structures "below" the state. Bishara comments that this creates a false binary — when civil society is identified with the pre-political, politics becomes confined to the state, and hence no room is left to imagine a politics that exists between these different spheres. This mistake mirrors the claim that civil society is an entirely elitist or "modernist" sphere, engineered and imposed from above. Both claims miss the truly participatory dimension of politics, and the necessary goal of expanding the sphere of citizenship within and between the many affiliations that constitute "the nation."

> Just as the absolute identification between the state and society could lead to anti-politics . . . the contrasting identification of civil society with "community" will lead to the totalitarianism of the imagined community, a society completely detached from any concrete attachments and loyalties. (Bishara, 2012, p. 308)

To be clear, Bishara is not demanding that communitarian ties be excluded from "civil society," and nor is he making the elitist claim that they are inherently anti-democratic. The problem is rather that we should acknowledge that multiple affiliations are necessary for the existence of a polity, and that any privileging of one kind of affiliation will risk reproducing nationalism without a nation. Moreover, as long as citizenship cannot be imagined as a complex web of plural rights and affiliations, then these "communities" will only collude with the increasing policing on the part of the state, and will be rendered "incapable of protecting the individual before the tyranny of the state" (Bishara, 2012, p. 309). Whatever mediation they perform will be no more than a mediation of violence and repression.

Conclusion

If nationalism and civil society are both characterised by the dualism between the contractual and the non-contractual, Bishara and Said offer two ways to rethink this dualism. In Bishara's case, this is through a reconfiguring of citizenship. Citizenship is neither a "social contract" between individuals nor a primordial kinship that defines a nation. Rather citizenship is the historic achievement of any group of people who struggle for their self-determination. This means that civil society cannot be envisioned and defended as a replacement of the state, as this only erases the centrality of citizenship as a real relationship, and reduces civil society to either a random collection of individuals or a pre-historic, pre-political "community." Moreover, if such a reimagining of citizenship is possible, then we must not collapse the nation into nationalism, into a cultural, ethnic, or religious identity that only ignites racialisms. If citizenship indeed reshapes our understanding of the "nation," the nation need not be completely identified with the state or territory, and, in the case of the Palestinian struggle, a utopian binational horizon opens up. This is the horizon that defines Bishara's project. Whether this project proves to be viable is a wager I am willing to take.

In contrast, Said capitalises on the creative resistance of civil society against the tyrannical state, in an effort to protect and expand the few remaining solidarities still vulnerable to erosion by domination. Popular society (*al-mujtama' al-ahli*) brings together the scattered remains of "community" and "voluntary associations" in a common front that can make a concerted effort to defend against the encroachment of the authoritarian state. This is not a simplistic anti-statist, neoliberal politics. It is a politics that dwells on the constitutive *aporia* of the nation-state, cracking it open for contestability, so that an alternative relation between state and society becomes possible.

These are not alternatives. Each is informed by the respective problem they address: the non-existent state on the one hand (Palestine) and the "overstated" state on the other (Egypt). What they share, however, is an imagination that insightfully recognises that the border separating "nation" from "cosmopolis" is a refraction of the inner tensions within the imagined nation, the unresolved and inevitable tensions between different notions of collectivity. If this is right, then dwelling on these tensions allows for a "planetary" perspective that neither abandons the struggle for national liberation, nor freezes self-determination into autocratic nationalism. This is not simply a "rooted cosmopolitanism" or an "enlightened patriotism," but a form of self-reflexive allegiance and attachment that refuses to concede politics to morality.

5. The Dilemmas of Humanist Jurisprudence

In their commentary on the infamous Nasr Hamid Abu Zayd case,[53] the late Saba Mahmood (2006) and Charles Hirschkind (1995) read Abu Zayd's work in the context of a global American project to fashion an Islam more adaptable to secular and liberal sensibilities. In the case of Mahmood, she argues that his work and that of other "liberal reformists" is enabled by the global War on Terror and its discursive arm. And they both argue that these liberal reformists remove Islam's claim to eternal truth by inserting it into a historicist, progressivist conception of time with Kantian overtones. Such a move risks redrawing the boundaries between "the secular" and "the religious," which intrude upon and regulate permissible religious expressions. These thinkers are further indicted for misunderstanding the element of embodied habitus that claims to religious authority entail for the lifeworlds of adherents.

Against this reading, I will locate the "reformist" impulse of Abu Zayd and other similar thinkers in a very different setting. Firstly, Abu Zayd was not simply writing as a "Muslim Luther" aligned to American liberalism. There can be no "Muslim Luther" to begin with. The kind of authority Abu Zayd was resisting was what he would in later writings call "governmental enlightenment" (*tanwir hukumi*). In other words, Abu Zayd was offering a religious philosophy that may revive the critique of the state's absolutist monopoly over Enlightenment. His opponents were not just Islamists, but the state with which they ultimately colluded against him. Although Mahmood and Hirschkind are aware of this dimension of Abu Zayd's writings, it is not worked into their analysis. Secondly, while the "liberalism" of Abu Zayd cannot be denied, it must be understood in light of the religious anthropology that he produces. To describe such a religious anthropology as "Kantian" misses out on key details, specifically his debt to the hermeneutic and dialogical phenomenology of Hans-Georg Gadamer. Finally, and due to these two omissions, the post-secular critique completely ignores the political theology Abu Zayd and his interlocutors are trying to build, which is chiefly informed by the problem-space in which

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[53] Nasr Hamid Abu Zayd (1943-2010) was a liberal Muslim theologian who taught Islamic Studies at Cairo University. His writings on Quranic hermeneutics will be discussed in this chapter, along with the work of other thinkers. Apostasy charges were brought against Abu Zayd by Islamist lawyers, which led to him being declared a *kafir* and forcibly divorced from his wife in 1995.

they are writing. This is a political theology that aims to disarm the tyranny of absolute sovereignty, whatever historical form such tyranny may take, secular or otherwise. Only by highlighting this dimension of so-called "reformist" Muslim thinking can a comparative analysis be conducted with more "Islamist" or traditionalist thinkers, as I explain in the concluding section.

My purpose in this chapter is to complicate the discussion around the philosophical role of "humanism" in the ideology of human rights, and to show that alternative possibilities exist, which, while also committed to modernity and democracy, do not share some common assumptions regarding the subject of human rights. These alternative philosophies do not assume that the "subject" can, or should, be conceived of outside the normative and political community. The subject is always shaped and shaping the tradition-community in which it is located. The role of "right" in this understanding is to ensure that interpretive and legislative power is as diffuse as possible, so that no legal or religious interpretation is immune from criticism. It is a akin to a "right to justification" (Forst, 2011). Secondly, these philosophies do not present a facile and straightforward secularism as a cornerstone to humanism; on the contrary they seek to complicate and transcend the division between secular and religious reasoning, in order to show the political limitations of both. Thirdly, political humanism clearly emphasises that rights cannot be imagined separately from democratic activity, civic participation, or social rights. They postulate a way of thinking the unity of the different generations of rights. In short, I show that intellectuals who are most engaged with local Arab contexts have innovated ways to overcome some important critiques of human rights

This chapter will be divided into two parts. The first part is a close reading of the thought of Mohamed el-Sayyid Said during the second half of the nineties, where he was trying to build up a theory of "cultural legitimacy" for human rights. I already gave a somewhat broad overview of Said's intellectual career. But here I will focus on one particular theme in his thinking: the attempt to give a philosophical basis for his project of "civic repair." I already indicated in the last chapter that Said may have grown increasingly ambivalent regarding the details of this project, especially in response to the Iraq War, calling for a return back to some form of mass politics. However, Said did not waver on the philosophical underpinnings of his practical struggles. He still continued to define it in what he termed "*ansanat al-seyasa*" (or "humanizing

politics"). I will explore the contours of this philosophical sensibility and the kind of interventions it makes in debates around secularism, religion and the foundation of human rights.

In the second part, I expand the field of enquiry to discuss other thinkers that Said cites as his interlocutors and partners in this project: Nasr Hamid Abu Zayd, Mohammed Arkoun, Mohammed Abeld al-Jabri, and Abdullahi An-Na'im. I delve deeper into the specific theoretical moves they make, the commonalities in this "Islamic humanism" (or humanistic Islam) and the crucial differences between them. These thinkers attempt to conceptualize a different kind of religious anthropology and political theology. In terms of religious anthropology, human activity and responsibility is always located in some kind of relationship to revelation (timeless) and tradition (transmitted through time). These thinkers then try to devise different conceptual tools to de-familiarize this relationship between revelation and tradition in order to insert a critical, reflexive moment, a moment that may re-activate a kind of ethical response to new modern conditions. However, the political effects of such a move are not explicated in full by the writers. For once the thinker redefines humanism this way – what I call a "self-limiting humanism" – the consequences for modern conceptions of sovereignty, and especially popular sovereignty, are not clearly worked out. This puzzle is not confined to reformist thought alone; traditionalist and "Islamist" varieties also share the same conundrum, sometimes in strikingly similar terms (March, 2019). Nevertheless, it is perhaps this ambiguity that makes such investigation necessary.

Rowaq Arabi

The Cairo Institute of Human Rights Studies was established in 1993 by Bahey al-Din Hassan, who had previously been involved in the establishment of the first human rights organisation in Egypt, the Egyptian Organisation for Human Rights. CIHRS is considered to be one of the institutions that branched out of EOHR, after a number of activists and intellectuals left the organisation in the wake of conflict on the board about the future path of EOHR, alongside a growing recognition of the need for a variety of activities and strategies for the defence of human rights. While other organisations established in this period — such as the Legal Research and Resource Centre for Human Rights (1991) and the Hisham Mubarak Centre for Human Rights Legal Aid (1994) — centred their activity on litigation and legal advocacy, CIHRS was unique in focusing exclusively on questions of culture, education, and research, ultimately becoming a sort

of think tank for the fledgling human rights movement (Hicks 2006, p. 87). Two significant projects stand out as remarkable achievements: the Summer School on Human Rights, which ran annually from 1994 until 2016 and boasts more than 1,200 alumni, some of whom became active in the growing number of civil society organisations;[54] and a huge body of publications comprising annual reports, journals, and books covering a broad range of issues pertaining to the human rights situation in the Arab world at large, such as democratisation, "terrorism," and social movements.

CIHRS has published a non-periodical journal since 1996 titled *Rowaq Arabi*, which translates as "Arab Gallery," invoking the image of a place of assembly, debate, and dialogue. In the first issue, the journal's editor-in-chief, Muhammad al-Sayyid Said, conjures two images to capture the essence of the journal: Al-Azhar University, where students gather around the teacher at the centre of a gallery or hall, as well as the Stoa Poikile or Painted Porch of Hellenistic philosophy, especially Stoicism, as having been developed with a similar architectural-pedagogical ideal. Said presents the aim of the journal as "encouraging the development of Arab human rights thought," as well as "establishing the cultural legitimacy of an international law of human rights" (1996a, pp. 4, 9). And yet, one of the most interesting aspects of *Rowaq Arabi* is that international law is not discussed or conceptualised as separate from the wider constellation of themes that constitute its central concerns: resistance to "despotism" and "authoritarianism," as well as "critique" of all ideological dogmatism that collude with the various despotisms standing in the way of "cultural and intellectual renewal" (*ezdehar thaqafi*). In fact, Said's ambition went far beyond the simple "implantation" of international cosmopolitan culture in indigenous or national soil; rather, he sought to reconfigure the very framework of the global human rights movement in order to make this intellectual and political convergence possible (1996d, p. 11).

Said remained the editor of the journal until his death in October 2009, but I will focus here on the first five years of *Rowaq Arabi* (comprising 18 issues) because these early issues show most clearly the fresh attempt at setting a new intellectual and normative agenda, before the major political developments of the new millennium. The concerns of the early years thus

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[54] See the CIHRS website: https://cihrs.org/about-us/?lang=en

illuminate the intellectual and normative background of the human rights movement at large, as well as its continuities with what preceded it. Most importantly, analysis of the first five years permits a contextualisation of the emergent humanist discourse within Arab intellectual life. This is why I set Said in dialogue with other thinkers that he cites as inspiration: Mohammed Arkoun, Mohammad Abed al-Jabri, Abdullahi Ahmed An-Naʿim, and Nasr Hamid Abu Zayd. This reconstruction of the general "humanist trend," as Said describes it, further reveals the conceptual constellation of ideas, problems, and proposals that emerged among "dissident" intellectuals in the Arab world by the end of the previous century.

In her book *Enlightenment on the Eve of Revolution* (2019), Elizabeth Suzanne Kassab continues her earlier investigation of Arab intellectual history (2010). She shows that during the two decades that preceded the Arab revolts, a new intellectual discourse started to emerge that could be marked off from its predecessors. While 20th-century political and cultural thought was dominated by questions of collective identity in a context of modern and secularist disenchantment, cultural oppression, and general spiritual and cultural "crisis," Kassab notes a slight shift in concerns and perspectives towards what she calls a new "political humanism." Although this discourse continues to revolve around the themes of the travails of modernisation, there is a greater interest in *tanwir* (enlightenment) understood in a very specific sense:

> This political humanism calls for the free and public practice of reason in view of producing knowledge that enlightens people about the realities they find themselves in and nurtures their yearning for a dignified and free existence. Its objective is the reconstruction of the Arab human being crushed by brutal regimes. Such a reconstruction requires, according to the *tanwir* critical thinkers, the reclaiming of the right to political participation. It necessitates the collective remobilization of people after their disenfranchisement by the regimes. (Kassab 2019, p. 9)

Yet, as Kassab shows, this humanism, especially during the 1990s, was sometimes tempted to defend a "statist" or "secularist" *tanwir* — that is, to retreat to a "conciliatory attitude" towards what could be described as a "governmental enlightenment" and therefore abandon its civic-emancipatory ideals, due to its fixation on the "fundamentalist" threat. Kassab dubs this common trend whereby intellectuals wind up defending authoritarian regimes due to their elitist

tendencies the "Wahba paradox" — in reference to the exemplary case of the Egyptian liberal philosopher Mourad Wahba (2019, pp. 13-20). Some intellectuals have not fallen into this common trap, however, and two are especially relevant in my account. One is Nasr Hamid Abu Zayd, whom Kassab discusses in her book (2019, pp. 47-57), and here I add Muhammad al-Sayyid Said. In this light, I follow Kassab's schema in locating Said, as well as many of the intellectuals involved in the debates within CIHRS and on the pages of *Rowaq Arabi*, as exemplar cases of this new "political humanism." I also understand this political humanism as expanding the notion of enlightenment beyond its positivist mode (the general concern of earlier Muslim thinkers) into a civic-critical one. Such a move allowed writers and intellectuals the conceptual and normative space to not only critique Islamist movements, but also "authoritarianism" as conceived much more broadly to encompass a wide array of post-colonial institutions, movements, and ideologies, with the "national liberation" regimes as the primary but not sole antagonist.

Said's vision of political humanism takes as its primary target authoritarianism in all its forms and ideological justifications, with despotic state violence as the most prominent, and his mission is to reactivate a spirit of critique and resistance. Said stands out as the most prepared to loosen the dogmatism of secularism and to open up a dialogue with Islamist thinkers, in the hope that modern Islamic discourse would become self-critical and self-reflexive. This compelled him to abandon any "naturalistic" or "positivistic" conception of humanism. For him, human rights are historical products of collective political struggle (*nedal*). As such, they cannot simply be justified with reference to either natural or positive law abstracted from the activity of human beings, but only through the interpretation of the claims of political actors as they demand a space for political participation.[55] Said's most powerful claim is that any attempt to "impose" or "insert" an abstract moral principle without considering its historical legitimations is bound to fail or become another dogmatic authoritarianism. Instead, his approach can be described as

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[55] Compare to Esmeir's (2012) account. As Esmeir demonstrates in her account of the importation of legal positivism into legal reform projects in modern Egypt, "positivism" in such a context constructs an image of the human that is subject to a calculus of pleasure and pain, and therefore the role of law becomes the elimination or minimisation of pain. This, paradoxically, renders the "human" a subject of state violence, for it is now the law that decides which pains are to be eliminated and which justified. I am arguing that in line with the new political humanism at the turn of this century, a thinker like Said presents an alternative picture of the human, as I elaborate further in this chapter.

"universalist historicism," that is, the conviction that universal reasoning and politics are always embedded within historical-cultural traditions, and therefore can be excavated once our understanding of history itself changes. The idiom that Said uses, as well as other thinkers discussed here, for the type of reasoning and politics they themselves advocated for: a jurisprudence of *fiqh* or *ijtihad* — hence the title of this chapter. This type of jurisprudence radicalises the argument that all legal interpretation is human and situated, and so, it calls for a new way of bridging past and present through a pragmatics or hermeneutics[56] of reflexive, radical reinterpretation. This jurisprudence is radical not only because it is "rationalistic" in the sense of being strictly rule-bound and methodological, but also because it adopts a self-reflexive methodology that conceives of method itself as always sociologically, politically, and historically mediated. This allows these thinkers to adopt innovative methodological strategies to justify their humanism and break through ideological orthodoxy: deconstruction in the case of Arkoun, "critique" and democracy in the case of al-Jabri, communicative/civic reason in the case of An-Na'im, and hermeneutics in the case of Abu Zayd. Said shares this ambition of radicalising jurisprudence with an eye to the emancipatory possibilities that may emerge. Human rights, in this discourse, becomes a placeholder for a new sensibility of situated self-reflexivity and self-questioning — and all these thinkers demonstrate a connection between the need for rights, on the one hand, and this self-reflexive sensibility.

Nevertheless, this political humanism also trips up in dilemmas, which can be seen clearly in the writings of Said himself. Said's "dilemma" is the following: This humanism must be "meta-political" in the sense that it must found a new political sensibility, but it cannot be

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[56] Of course, pragmatics and hermeneutics are very different perspectives, but a version of both appears in "political humanism." The pragmatic element appears in the centrality of human activity in the construction and understanding of the normativity of the social world. The social world implied by political humanism is one in which actors are always engaged in the project of innovating, elaborating, and changing the ethical norms that bind these actors together. This means that such norms are not set once and for all, and always have a historical or situated status which is subject to change depending on experience. The hermeneutic element appears in the precisely interpretive and jurisprudential activity of these actors. These actors are not just "doing" something, but they are also reading and (re-)reading the multiple traditions that bind them together, so that they can trace paths through which these norms and ideals can be actualised again. Such a hermeneutic exercise requires moving backwards and forwards within the texture of inherited traditions, so that multiple potential meanings and actual historical contingencies can be read against each other, and new readings thus made possible. In both pragmatics and hermeneutics, it is humans who are the protagonists of their projects of self-making, but that does not mean that the "human" can assume any immutable, ahistorical characteristics, because since human beings are constituted by their political activity and projects, such activity is always pluralistic, agonistic, provisional, and fallible in principle. Political humanism takes "immutability" as the sign of dogma.

"political" in the narrow sense of actually pursuing authority or power. Politics here has two levels: There is a "meta" level, which ensures and secures the constitutional and ethical conditions of political and civic life, and then there is everyday politics, the contest over power and authority. Human rights belong to the first level, not the second — they make sure that agonistic political life does not devolve into civil war, but is constrained by some general ethical unity that enables and produces a healthy politics. The erosion of political and civic life under authoritarian regimes corrupts all attempts at pursuing political power since it necessarily turns political action into instrumentalist, self-interested action. This puts human rights organisations — and by implication, the very intellectual project he is proposing — under a double pressure. They must resist any and all attempts on the part of political actors to "instrumentalise" them, in order to preserve the integrity of the human rights project and prevent it from becoming an ideology. Yet, such a project must also bear all the burdens of the absence of political-civic life, and so must assume the role of representing particular interests (most particularly, national and class interests), otherwise it risks becoming irrelevant, elitist, and ineffectual. Said identifies different ways to "mediate" this dilemma — notably, coalition building, civil disobedience, and pedagogy — all of which illuminate the normative and political difficulties of humanism in general.

This practical problem can be restated in philosophical terms. Humanism seeks to reinstate a human subject at the centre of the political universe, but it also seeks to dissolve the authoritarian and sovereigntist pretensions of any doctrine that falsely universalises and imposes any particular image or interest in the name of the "human." In a political humanism, the human has an ethical duty to judge and legislate, but the "human" also exists in excess of any particular, authoritarian, dogmatic position that speaks in its name. The "human" has a special prerogative, but this prerogative is also self-limiting — an "empty place," to use Lefort's term. This has implications for how a new political order might be imagined beyond the arbitrary whims of absolutist sovereignty. It is, in other words, the problem of constituent power.[57]

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[57] For more on the philosophical origins of the concepts of sovereignty and constituent power, see Kalyvas (2005) and Arato (2017). I will elaborate more on the significance of this concept for my conceptual framework in Chapter 6.

The Cultural Legitimacy of Human Rights

Under Said's direction, one of the main aims of *Rowaq Arabi* was to establish "cultural legitimacy" for human rights. In the first issue, Said locates the problem within the context of a post-Cold War "war of propaganda" between a militarised Orientalism and a traditionalist orthodoxy. He argues that the very division between Orientalism and nativism in this dualistic and militarised imaginary needs to be undermined through finding a new space of engagement, not one of "neutrality" (Said 1996a, p. 1).

Nevertheless, Said is critical of any attempt to establish cultural legitimacy for human rights by "implanting" it — as seen in the approach developed by UNESCO and international organisations, as well as apologetic "cultural" interpretations of human rights, exemplified by the Cairo Declaration on Human Rights in Islam of 1990. All these attempts fall into an either/or logic: Either human rights are foreign to Arab Islamic culture, or they are original to that same culture. The former scenario takes for granted both human rights and the culture in question, hence intensifying the false confrontation between Western Orientalism and Islam. The latter scenario leaves nothing to be justified and ends up in conservative apologetics that stand in the way of genuine radical critique of political regimes (Said 1996a, p. 15). Rather than think in terms of implanting, Said adopts metaphors of "reconfiguration" and "re-assortment" of the intellectual landscape, with the goal of excavating dormant humanist and emancipatory tendencies that are blocked by forces of repression and despotism (1998a). Such an emancipatory impulse is understood by Said as a "calling" — in the Weberian sense of a "vocation," with all its religious undertones — that exists in any symbolic order but must always be renewed and translated into new contexts. This point will re-emerge with other thinkers discussed here, particularly in Arkoun's concept of "revelation." The key is that Said understands "legitimation" to entail something much more substantial than rational justification. It must also mobilise symbolic and ethical resources to allow such a new opening to emerge. Said calls this process "generation" (*tawlid*) rather than "transplantation" (*ghars*); humanism must emerge immanently from the fissures and dynamism of the existing normative landscape — it cannot be like the transplantation of an alien organ into a new body. He writes:

> What establishes the universality of human rights is the voluntary endorsement
> of peoples to them as concrete positive legislation. In this case, there is no need

for "rooting" these rights in major cultural blocs, as if they are foreign to them, or are something born out of any single civilisation. What is needed is a calling to other cultures to insert their contributions and understanding of rights from their own particular ideas and positions. (1996a, p. 15)

Said's proposal could be read as a variation on John Rawls' notion of an overlapping consensus (1999, 2005), but while Rawls' schema presupposes an original position that transcends any particular cultural or religious articulation, Said assumes neither an original position nor a fixed "overlap." Rather, there is a movement towards convergence, where both international law and particular legitimations are capable of entering into a dynamic interaction because neither are fixed nor settled.

The assumption that any culture is a total, coherent, and harmonised system of ideas, arguments, symbols, or customs is based on an epistemological fallacy. All cultures are vast reservoirs of ideas and counter-ideas, customs and counter-customs, values and counter-values, and so on. Culture is a living and symbolic experience that is open to development in all directions, and the way that one set of ideas, values, principles, and institutions comes to dominate — the sense of receiving legitimacy and recognition — entails a difficult process that relies on innovation, but mostly on *power*. Power relations always reconfigure the raw material of the different tendencies, principles, and customs in order to grant them sovereignty, which at first appears "artificial" but with time settles into the illusion of being natural insofar as it marginalises other alternatives, to the point where these alternatives appear to not have existed in the first place. (Said 1996a, p. 16)

Said here conjures an image of a fabric composed of multiple and interlaced layers, which are then rearranged in every form of life or historical era, so that cultural raw materials are subject to an unrelenting process of rearrangement. New forms of life appear in "exceptional moments" when original and creative thinkers consciously and reflexively engage with this inherent dynamism. Therefore, human rights cannot be "discovered" but they are "called," "summoned," "interpellated," or "imputed" by intellectuals and individuals who, in exceptional circumstances, are called on to respond to the deep ethical impulse reverberating through social reality and

which erupts out of the gaps and voids of their concrete situations. This can only be an act of struggle: "*nedal*."

These fissures make their appearance in the gaps between concept and practice, pointing to the inherent ambiguities of the concepts and values themselves. The most pertinent example concerns Western conceptions of liberty, which can refer to the liberty of both the victim and oppressor:

> This freedom, insofar as it gives power to the one who enjoys it, is also hostage to power, the power of political and financial sovereignty (*sultan*), which makes liberties always vulnerable, and turns human rights into vulgar liberalisms and excessive concentrations of privilege. Israel is the example here of such monopolisation of privilege and international empowerment . . .The question then is: How far did the pioneers of *tanwir* and reform go in their understanding of liberty and what is the reflection of this understanding on our concepts of all major human rights: political, civil, economic, social and cultural? (Said 1996b, p. 6).

The complicity of freedom with power renders it complex and vulnerable, with intellectuals often suspicious of it as an ideal, leading them to cleave towards ideals of community, nation, tradition, or class. And yet, not only does the hope for freedom remain, but its ambiguities haunt all these other ideals that are mobilised in a quest for "sovereignty." Meanwhile, religious systems are not spared these fissures either, so long as it is accepted that the human is always engaged as an interpreter and judge caught between the atemporal and the temporal, the sacred and the profane (Said 1996a, p. 17, 1998b, p. 6).

To support his claim, Said demonstrates that Arab-Islamic thinking has always had humanist, rationalist, and critical impulses,[58] most recently in the 19th-century *Nahda* (Arab renaissance) — iconised in the figures of Jamal al-Din al-Afghani, Muhammad Abduh, Rifa'a al-

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[58] In Said's thinking, the "humanist impulse" is possible in any cultural or religious system, but this does not mean that it always takes the same shape, nor that it always leads to the same conclusions. The humanist impulse is more original, and more dynamic, than "human rights." Human rights are a historical result, humanism is a philosophical principle.

Tahtawi, Abdel Rahman al-Kawakibi, and Ali Abdel Raziq.[59] Indeed, these thinkers are a central subject of discussion across the pages of *Rowaq Arabi*, reflecting a broader trend towards a "reassessment" of the *Nahda* among Arab intellectuals at large, also documented by Kassab (2019). What Said appreciates about the *Nahda* is the orientation towards the future rather than the past, or the attempt at building a bridge between past, present, and future to create a sense of continuity in time. He is clear that the human rights movement cannot monopolise such a project of forging a new *Nahda*, but that it must play a leading role. He describes the aim of such a project as "humanising the future of Arab society." This humanism would go beyond the dilemmas of cultural particularism (*khososiyya thaqafiyya*), and instead would trigger the:

> excavation of a special legitimacy within major cultural regimes; a cosmopolitanism that is not embedded in big metaphysical claims (such as natural law) or in teleological historical movements, rather a cosmopolitanism fabricated by humans in their historical practices, practices which include the actualisation of their hopes and dreams in their theoretical and practical struggles. (Said 1996c, pp. 9-10)

There is a quasi-Marxist emphasis on human fabrication of history in concrete situations, but Said's understanding of history abandons materialism in favour of a normative-ethical reading of the social world as a constellation of ethical and legal traditions, intersecting and coming into conflict, and enabling or constraining humans in their goals and pursuits. There is no pre-determined "telos" to such a history because humans, embedded in these normative landscapes, must continuously read the residues of the past in their contemporary situations and find new ways of reconfiguring these landscape for their purposes. Because reading is always subject to forward-looking purposes and backward-looking learning, it must be creative. This is thus a humanism that tries not to suppress the past, but to re-enliven it.

Said remains beholden to a *Nahda* conception of enlightenment, as the renewal of tradition, and not a normatively blind mechanical or functionalist story of human beginnings or ends. The human here is a subject who is always located within thick ethical and legal networks, which cannot be determined in any finality since they are also dominated by conflicts over

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[59] Hourani (1983) is considered the authority on the intellectual history of the *Nahda*.

interpretation and practical struggles (*nedal*) insofar as actors experience not only injury, but alienation (*eghterab*) that compels them to re-read their inherited landscape and find creative solutions for its problems — which is what jurisprudence ideally is. This pragmatic emphasis on human spontaneity, creativity, and capacity for interpretation allows Said to avoid both traditionalism and abstract universalism; it is this human capacity for judgement within concrete situations that frames all his thinking and writing.[60] "This cultural legitimacy [of human rights] does not yet exist, even if it can be imputed indirectly; it is an achievement of actual praxis in the present and near future" (Said 1996c, p. 10).

From where does such a jurisprudence begin? Said suggests that the answer is to be found in the "philosophical and cultural void" engendered by the suppression of critique, reflexivity, and renewal by the power of orthodoxy (state-sponsored jurisprudence), colonialism, and Zionism, all of which 19th-century Arab liberal thought was incapable of resisting or deeply reflecting on. The existence of multiple traditions alone cannot prevent the appearance of such a void. Tradition, while implicit and latent in the historical relations between people, always requires critical re-appropriation and change, or else it becomes sterile and unintelligible to its users. Such critical re-appropriation also requires pluralised and contending perspectives which exist in dynamic relations of power, and thus consensus cannot be imposed nor assumed abstractly. The human rights movement is thus summoned in a moment of philosophical and political crisis due to the lack of any authoritative moral referents; this void appears in the clash between universalism and particularism, orthodoxy and renewal, and state authoritarianism and international human rights law (Said 1996d, p. 23).

And yet, Said writes that:

> The problematic of human rights in the Arab world is more complex than the
> duality between despotic governments and miserable victims, and there are
> multiple factors that contribute to this dismal condition, such as economic and

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[60] I call this approach a philosophical pragmatism because it resembles many of the central features of American pragmatism, as presented by Joas (1993) and Bernstein (2010). Said does not describe his approach as such, but I do so in order to highlight striking commonalities between pragmatism as elaborated by Joas and Bernstein and Said's philosophical reflections — most significantly, the connection between this approach and Said's democratic sensibility.

social structures, but most importantly, the hegemonic intellectual culture . . .
The question always is: Why do these despotic regimes, without fail, find
legitimating rationales for their miserable political records among the victims
themselves? And why does this happen in the Arab world during an era of global
democratisation? (quoted by Hassan 1997, p. 5).

From the first issue of *Rowaq Arabi*, Said is clear that human rights thinking must expand
beyond legalism and ask itself deeper and more sociological questions related to legitimacy. This
turn from legality to legitimacy would allow for a broader conception of human rights as
humanist culture, and by implication, for an investigation into hegemonic structures. One avenue
of legitimation that Said is keen to emphasise is dialogue with Islamist thinkers. This was a
major point of contention within the human rights movement and on the pages of *Rowaq Arabi*.
Some writers in the journal express great scepticism regarding any attempt to develop dialogue
with Islamist groups, due to the assumption that they are inherently anti-democratic and therefore
impervious to any inner criticism or reflection regarding theory or practice. Said was opposed to
this approach, despite his severe criticisms of Islamism. Said's argument was that such a
dialogue is inevitable due to the interconnection between the intellectual hegemony of these
movements and the general political imaginary, which meant that "rights-based struggle" (*nedal
huquqi*) cannot remain intellectually neutral, or indifferently "secular," because this a priori
blocks any attempt to reconfigure and change the political imaginary (1998a, p. 14). He was thus
in search for a common ground and framework for such a philosophical dialogue, to establish
clear points of difference and agreements. If Islamist movements, rather than liberal intellectuals,
are the "gateway" to any normative restructuring of the imaginary (Said 1998a, p. 17), it follows
that any understanding of the philosophical significance of human rights must be approached
beyond the limits of what Said calls "Northern interpretations":

From the practical angle, the ending of [a] historical era where the message of
human rights moved from one direction — from the North to the South,
signalling the monopoly of the Northern human rights movement — along with
the enabling of a genuine pluralism and the foregrounding of the message of the
South, especially the message of the Arab human rights movement — all of this

requires the blossoming of a new Arab renaissance project (*Nahda*) with a humanist basis. (1996c, p. 10)

In an important issue of the journal on the relationship between human rights and religion, Said makes the strong statement that "human rights is not a religion" (1998a, p. 10). This is both a prescriptive statement and a declaration. Said notes how the clash between political Islam and human rights movements is usually presented as if both are equally "comprehensive religious worldviews." Instead of this simplistic picture, he differentiates between "theology" (the substance of religion) and "ideology" (as a product of social and political practice and power relations). In a move that parallels other humanist thinkers discussed here, Said differentiates between the sacred and profane aspects of religion, the temporal and atemporal. But while other thinkers, such as Arkoun, believe that rights always require a sacred legitimation, captured in a religious notion of the "person," Said believes that human rights are not inherently in need of sacred support, but that they address profane power relations and concrete political situations from a specific position — the procedures of the rule of law (1998a, p. 7).

The Search for Universality

In this section, I will dig deeper into the project of "political humanism" by engaging with contemporary Islamic reformist thinkers whom Said cites as reference points for such an intellectual project. More specifically, I will look at their conceptual and methodological innovations with regards to Islamic jurisprudence, in order to examine how they treat broader themes of modernity, tradition, law, and the place of human interpretation.

In the first issue of *Rowaq Arabi*, Said outlines the most common features of contemporary Islamic reformist thinking. These are: centralising the role of the human in "establishing the statutes derived from the religious system"; the return to the general principles of Shari'a, especially "justice," as a conception of the ideal community; highlighting Islamic rationalism as guideline and method, especially but not exclusively in the history of jurisprudence; a critique of jurisprudential orthodoxy and "apologetics"; seeking to respond to modernity and postmodernity; focusing on the gap between orthodoxy and modern ideals of equality and freedom; and a preoccupation with *ijtihad* understood as a "rearrangement of the

anthropology of the text." All in all, the common strategy in the thinkers whose writings I am surveying here is to find the "*maqasid al-Shari'a*," or the "ethical intent behind the judgement" and its "imputed purpose" through thinking back from particular statutes and judgements to the "general principles" of justice as outlined by the text and the tradition, while refracting it through the light of modernity (Said 1996a, pp. 27-28). In this section I will focus on four thinkers who represent the group Said describes as practicing "radical jurisprudence": Mohammed Arkoun (1994), Abdullahi An-Na'im (1990, 2008), Mohammad Abed al-Jabri (2011, 2009), and Nasr Hamid Abu Zayd (2006, 2018). I will track their proposals, contrasting their methods and arguments, across three major themes they discuss: universalism and humanism, *ijtihad* and method, and modern civil law vis-à-vis Shari'a. It is within the intersection of these three "problematics" that the problem of human rights is complicated beyond the deadlock of traditionalism and liberalism. Said summarises the philosophical tendency in these writers as follows:

> In reality, this intellectual tendency could be considered as belonging to the Enlightenment tendencies of Western Europeans, as well as the Frankfurt School and French post-structuralism. Nevertheless they present their proposals from within the fabric of Islamic thinking with the aim of restoring the traditions of Arab rationalism. In this sense, it is not only an innovation in jurisprudence but also a critique of classical jurisprudence from the standpoint of modernity and the ethical philosophies of both Islam and the West. The appeal to the *positive law of human rights* is central to this project as a whole. (1996a, p. 28, emphasis in original)

Radical jurisprudence starts from the presupposition that Islamic doctrine is inherently universalist, not only by virtue of its absolute monotheism, but also because it centralises the idea of human dignity through the concept of "*istikhlaf*," which is usually translated as the "vicegerency of Man" or "stewardship of Man" (Said 1996a, 18). This refers to the doctrine that humans are God's stewards on earth, and hence they are delegated a special duty and responsibility, as well as a concomitant power, to follow God's commands and establish justice on earth for the sake of life's continuity and endurance. Universality is also manifested in the "delicate balance of the cosmos" that is sustained by God's will; while God takes care of holding

up that delicate balance (divine law), humans, because they are rational beings, are responsible for their own political existence through the establishment of "just law" (*nezam 'adel*). This is the purpose of any political body. Some orthodox thinkers have thus proposed that justice, as opposed to freedom, equality, or solidarity is the cornerstone of the Muslim ideal. But Said disagrees, arguing that such an argument relies on a faulty, one-sided view of freedom and equality as inherently opposed to any notion of order. The Islamic ideal of a fine balance between right and duty, or freedom and order, can be maintained without abandoning the modern ideals of freedom and equality — so long as it is remembered that the modern ideals themselves require an account of duties (Said 1996a, 18-19). Al-Jabri goes so far as to say that this conception of humanity as God's viceroy on earth was a historic revolution against the existing social order akin to the bourgeois revolution: It was a revolution of the oppressed against the oppressor, precisely because it elevated a conception of "nature" (*fitra*) against the transitory and unjust social order in which it erupted (Al-Jabri, 2009, 188).

In this context, Said critiques the Orientalist and fundamentalist cliché of the "closing of the gates of *ijtihad*." According to the earliest jurisprudential thinkers, the conception of *ijtihad* presupposes the continuous activity of human reasoning to make explicit the original intents of the Shari'a — the continuation of life, dignity, reason, property, and religion — and so the "closing of the gates of *ijtihad*" is a contradiction in terms. He also critiques the Orientalist notion that in Islamic legal systems, rights are derived from or secondary to duty, while it is the balance and interrelation between the two within a coherent framework that gives Islamic law its power. "Duties are only different reformulations of rights; or stated differently, duty and right are two parts of one dialectical totality" (Said 1996a, p. 12). The difference between them, according to the Islamic account, is not their nature, but their ends: The end of duty is God, but the end of right is relative social existence, not an absolute.

Said makes the strong, striking claim that since the time of the triumph of Western rationalism in the 16th century, Islamic jurisprudence was capable of producing a coherent theory of rights that was in fact close to the spirit of social contract theory (1996a, pp. 21-22)[61]. Yet he argues that the full potential of such a jurisprudence could not be fully realised because

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[61] I have a suspicion that this argument may be derived from Peter Gran's *Islamic Roots of Capitalism*, which was popular among leftist intellectuals in the nineties. But I cannot verify the source of Said's argument.

the social and political institutions of the Ottoman Empire were far from expressing the "general principles" of any kind of jurisprudence. The notion of a gradual divergence between an irrational political reality and rational jurisprudence is one that occurs multiple times among the writers surveyed here. Said adds that since the beginning of the 19th century, *Nahda* thinkers realised that classical jurisprudence was falling behind the legal achievements of liberal social contract theory. In response to this "backwardness," they sought to "leap over" towards the "achievements" of modernity, embodied in the Napoleonic code, without the need to "wait for the complete reformation of jurisprudence." Liberal Islamic jurists of the 19th and early 20th centuries thus rushed to justify legal modernisation under the supervision of the absolutist state, and to shore up these developments with the argument that social contract theory was original to the Islamic text and expressed an "authentic" return to tradition. The problem, in Said's view, is that such an attitude was incomplete and uneven; it did not go far enough in radicalising its methods. It left many questions unanswered, with the result that the scope of jurisprudence became constrained by limits defined by the needs of contemporaneous political powers. Said describes this narrow scope of interpretation as "orthodoxy" more concerned with apologetics and the defence of the status quo than with actual change, bound by its insistence that tradition is superior to all alternative conceptions of positive law and is closer to human nature (*fitra*). Finally, due to the unevenness of this process of change, already predetermined by a global balance of power, a deficit in legitimacy ensued leading to the revivalist movement of the 1930s, which inherited many of the inconsistent assumptions of the liberal jurists.

Said's critique is clearly not limited to political Islamism. On the contrary, here he is more concerned with "official" and "statist" orthodox jurists, such as Mohamed al-Ghazali, because the framework through which they deal with the question of human rights limits the scope of jurisprudence, instrumentalises the methods of Shari'a, propagates new inequalities, and restricts any investigation into fundamental questions regarding the criteria of membership in the political community. This obscures the meaning and efficacy of the modern conception of citizenship (Said 1996a, pp. 25-26). Three issues stand out as especially controversial: the law of punishment (*hudud*), religious freedom and apostasy (*dhimma* and *rida*), and gender relations (*qawama*). In all three cases, the question of the uniqueness of modern citizenship is sidestepped or obscured, with the result that jurisprudence becomes superficially apologetic but overall irrelevant and overdetermined by political fiat.

Said locates this argument within a larger metanarrative, which can be described as a "dialectic of Islamic humanism." In this account, Arab society is made up of two opposed forces, one "humanist" and the other "legalist"; the former prioritises *ijtihad*, reflexivity, and ethics, while the latter sticks to formal, categorical, and surface readings of the law, promoted by "paternalistic rulers." Said's explanation for this dialectic relies on Ibn Khaldun's sociological theory of solidarity (*a'sabeya*) in which civilisations are understood to pass through cycles of regeneration and decline, shaped by struggles between contending forces, especially between a commercial bourgeoisie and land-owning classes. An added complication is the pressure of empire, which triggers a "defensiveness" that elevates the values of harmony, obedience, conservatism, ossification (*gumood*), and unity at the expense of legitimate contestation, pluralism, and fluidity (Said 1996a, p. 30).

Said's position is strange here, because this metanarrative falls back into a dualistic framework of progress versus reaction, while the details of his argument allow for a much more qualified and ambivalent account of the equivocality of "progress" and its determination by political contingency and compromise. Therefore, there are times when he is not sufficiently reflexive on the possible violence of humanism. To be sure, Said is all too aware of the violence of empire and the nation-state, and indeed in the very first issue of the journal writes that the Roman ideal of universal citizenship itself is suspicious: "Without an emphasis on equality, the concept of universal human freedom becomes a justification for imperial ambition and expansionism, as with the Romans, and this was the reason for the development of citizenship as a cornerstone of formal law" (1996a, p. 5). And yet, there are other occasions where this ambivalence is lost. Said's attempt to overcome the dilemma between his former radicalism (Marxism) and his political liberalism fails at the level of historiography, although this nuance is maintained in the historical details he presents.

Nasr Hamid Abu Zayd, the Egyptian Quranic thinker, is also well known for his critique of orthodoxy and his development of what he describes as a "humanist hermeneutics." Abu Zayd (2006) also places himself within the long history of "reformist" thought, but instead of focusing on Shariʿa and jurisprudential questions alone, he directs his attention to Quranic hermeneutics and their relationship to legislation. He starts out by questioning the accepted conceptualisation of Quranic hermeneutics as objective or innocent, arguing that any hermeneutics is constituted as

a "battlefield for the adversaries to situate their political, social, and theological positions" (Abu-Zayd 2006, p. 93). Controversy around the methods of interpreting Shariʻa, he argues, and the question of which method takes primacy — consensus (*ijmaʻ*) or jurisprudence (*ijtihad*), the latter including the procedures of analogy (*qiyas*) — is also historically contingent. The problem for Abu Zayd is that a "legal paradigm" was read back into the Quran to justify the decisions of the jurists, leading to a great bias towards "legalistic" over "ethical" methods of reading. Finally, the legal understanding of the Quran is derived from the legal thinking of the era of the consolidation of its books, which itself was influenced by foreign legal traditions and therefore cannot be entirely "natural" or "sacred."

How might a humanistic hermeneutics proceed? Abu Zayd critiques both the modernist and traditionalist conception of the Quranic text as a "horizontal structure" that has been gradually developed, canonised, propagated, and rigidified. He also argues that conceiving of the Quran merely as a text comes at the expense of its "discursive" dimensions as a "space of Divine and Human Communication" (2006, p. 97). Considering the Quran in its "living status" as a discourse that affects everyday life enables him to replace polemic or apologetic hermeneutics with a "humanist" one. He writes: "If we are serious about freeing religious thought from power manipulation . . . and want to empower the community of believers to formulate 'meaning', we need to construct open democratic hermeneutics" (Abu-Zayd 2006, p. 99).

Abu Zayd (2006) presents his proposal as a continuation and complement to the projects of Arkoun and An-Naʻim, as the most significant cases of "democratic," "radical" or "subversive" methods of addressing tradition. These themes recur throughout reformist writing: 1) the subversion of the idea of the "canon" and the "text," in favour of fluidity, dialogue, hybridity, and political reading; 2) the "demythologisation" of tradition through identifying a radical separation between the atemporal and temporal in dogmatic thinking. This second point is crucial: There is a recurrent argument that because "revelation" is completely transcendent and inaccessible, its translation into historical and temporal terms necessarily impacts its transmission and therefore its integrity. This radical separation between a timeless universal message ("revelation") and historicity allows these writers to question the very idea of canonical transmission as beyond critique and investigation, without entirely dismissing its ethical power. It also allows for a "political" and "sociological" reading of transmission and canonisation, in an

attempt to explore how socio-political structures shape the creation of tradition, and how tradition "sacralises" the status quo. This, again, is built on the assumption that the sacred is both radically outside history and indirectly channelled through it.

Mohammed Arkoun's project, for example, is also a critique of modernist reformism that has turned into an "apologetics" that perpetuates ethnocentrism and the absolutisation of what he calls "Islamic reason." (1994, p. ix). In its place, he wants to install a radical project that aims at reconciling a "Mediterranean" universalism with particular religious identities, without either aspect taking primacy. This universalism is postulated by the concept of "the peoples of the Book" — a designation for followers of Abrahamic monotheism — which "regenerates universalism without destroying particularity" (Arkoun 1994, p. x). This is to be achieved through an anthropology and genealogy of the history of revelation, so that no one "system" retains a monopoly on truth, but all are seen as parts of a constellation or totality of truths bridging cultures and histories. This subverts and deconstructs any image of a pure "authentic" religious identity. Such an anthropological and genealogical method — inspired by Clifford Geertz and Michel Foucault, respectively — would allow for a deconstruction of "Islamic reason" and law, in the pursuit of the marginalised truths of that history: "The unthought and the unthinkable in Islamic thought have been accumulating ever since ideologies of struggle for political liberation took over the whole of the social arena" (Arkoun 1994, p. 13). By this, Arkoun means that in order to properly critique modern postcolonial "political imaginaries," the Islamic tradition must itself be deconstructed so that the mythos and symbols appropriated by the modern era can be "desacralised." In other words, the only way to break the fetish of the modern imaginary is to desacralise its symbolic aura, thereby making the symbolic itself unfamiliar and foreign, and hence ethically relevant, precisely because of its distance. An "anthropology of revelation" is thus necessary — for it is revelation that assigns authority and meaning to symbolic structures. The erosion of symbolic unity and authority under modernity creates a "debt of meaning" which only a re-consideration of the experience of revelation, in its historical context, could somehow address, while remaining cognisant of the manipulation of its authority (Arkoun 1994, p. 19).

Such a genealogical and anthropological approach allows Arkoun to consider the question of the "person" and "human rights" within Islamic reason. Early Islam under the

Prophet inscribed the existing logic of social relations, which had been defined by a code of honour in a naturalised hierarchy, where individuals were ascribed specific functions and roles: "Values in the code of honor were preserved and even sacralized, ontologized, and transcendentalized by the discourse of revelation" (Arkoun 1994, p. 89). But the creation of the new community of believers, the *umma*, also codified a concept of the "person" which was defined by the divine covenant that founded it. Therefore the "person" was defined according to her/his status as a member of this community, and was integrated with the existing hierarchy and its legal classifications of men, women, children, and slaves. Of all the thinkers presented here, Arkoun is the least susceptible to anachronism. He does not attempt to read the modern concept of citizenship into the canon, nor does he think that this is possible or desirable.

> By subjecting Islamic thought to modern criticism, I aim to integrate it into the general flow of consciousness and elicit its position on the status of the person, not on the basis of the "orthodox" presuppositions or some version of Western philosophy but within the perspective of a general critique of the person considered as a value. (Arkoun 1994, p. 95)

Such a critique is radically "sociological" since it defamiliarises and relativises both the pre-modern and modern notions of the person without aiming at setting up either an opposition or any simple reconciliation. The modern concept of the person, found especially in declarations of human rights, is blind to this genealogy of the sacred, and hence it lends itself to a positivistic understanding of humanity.

> The West has still not succeeded in responding to growing demands for moral and spiritual values grounded in scientific truth. In other words, the problem of the person is still unresolved despite longstanding political and scientific practices based on the postulate of the inevitable withering away of religion. (Arkoun 1994, p. 101)

Arkoun cites Durkheim in support of the thesis that there is a connection between the secularisation of the "sacred" concept of the person and the rise of the modern division of labour — which leaves a lot to be desired in terms of values and social cohesion — but he is against the

secularist and positivist method by which Durkheim arrives at this conclusion because it naturalises the positivist understanding it is meant to interrogate (1994, pp. 100-101).[62]

A similar genealogy is applied to the concept of "right" in the Islamic tradition (Arkoun 1994, pp. 107-112). Right in the Quran is founded on the covenant with God which establishes the community (*umma*); this is why the Arabic word for right (*haq*) has both an epistemological dimension ("truth") and a legal one ("title"). Yet the spiritual community is splintered into sects and classified into social groups (women, children, and slaves), and it is also differentiated from other peoples of the book and foreign lands (*dar al-harb*). Rights are therefore ranked and distributed according to their relationship to divine right; that is, the duty of the believing community to its founder. The Enlightenment era introduced the idea of universal rights, which are radically dislodged from social or spiritual ranking. But this notion of universal rights, Arkoun emphasises, was only an unrealised ideal propagated by colonialism, while in the colonised world, no social group (bourgeoisie) could have carried on the mission of presenting their interests as universal. Whatever "enlightenment" that existed in the colonised world was but a faint echo of the philosophical ideal. Again, this genealogy defamiliarises and relativises both the pre-modern and the modern without collapsing them or further separating them; instead, it problematises their relationship to one another, with the acknowledgement that both are in fact limited and criticisable.

> We can think about human rights in a secular framework today only if we can intellectually and culturally get a hold on all the problems, old and new, linked to the phenomenon of revelation. This work has not yet been undertaken or even perceived in the terms and framework that I am suggesting here. It is indeed a fact that the streams of theological discourse coming from the three [Abrahamic] communities continue to function as strategies of self-justification and thus of reciprocal exclusion aimed at preserving a monopoly on control of revelation and of all the symbolic capital that flows from it. The prevalent attitudes of these religious traditions toward the origins of human rights illustrate perfectly these self-serving tendencies. Historical criticism is too often missing; all seek in particular to annex for themselves

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[62] For more on Durkheim and the concept of the person, see the classical essay by Mauss (1985), which is cited by Arkoun, and Joas (2013).

the ethical-legal privileges and the ideological functions that now more than ever are attached to the bewitching theme of human rights. (Arkoun 1994, p. 112)

Abu Zayd and Arkoun introduce a hermeneutics of the text, the former "humanist" focusing on the vertical dialogue between God and Man, where the sacred is both revealed and obscured through history, and with the latter, the tool is "deconstruction," "genealogy," and "anthropology" of Islam — the discovery of the "unthought and unthinkable." In both cases, the critical move is first and foremost directed against a sacralisation of history itself. But also in both cases, the sacred re-emerges back in a renewed and mediated way, with the hope that such a reflexive attitude would transform the relationship between the temporal and the atemporal; it would stay vigilant against any sacralisation of ideology, while enabling an ethical response to an entrenched crisis of meaning (or crisis of transmission).

Dilemmas of Method

In this section I will focus more narrowly on legal, rather than textual, method. The thought of Mohammad Abed al-Jabri and Abdullahi An-Na'im is also oriented towards the search for a new universal which may re-enliven tradition and restore its ethical and spiritual truth, but they are much more positive — compared to Abu Zayd and Arkoun — regarding the power of the legal thought embedded in that tradition, while still acknowledging its historicity. Al-Jabri and An-Na'im allow for a more specific analysis of the dilemmas of using Islamic-jurisprudential argumentation in modern conditions.

Al-Jabri is critical of the Orientalist notion of the closure of the gates of *ijtihad*. Like Said, he argues that by definition, *ijtihad* cannot "end" because it is a practice, a "mental/conceptual effort" whose authority is purely rational and methodological, unlike consensus (*ijma'*), which is traditional by comparison (2009, p. 77). According to al-Jabri's account, what happened was not an end to *ijtihad*, but that its dominant method — the use of analogical reading in the comparison of particular cases (*qiyas*) — exhausted itself on its own accord, since there were no new cases to compare so long as Arab societies were autonomous and unaffected by external influences (2009, pp. 78-79). The exhaustion of *qiyas* gave way to imitation (*taqlid*) and the preoccupation with unresolved discrepancies between the various

jurisprudential schools. There was an exception, however: in Andalusia during the 14th century, new problems emerged which required new methods. Al-Jabri focuses on the figure of Abu Ishaq al-Shatibi, a legal scholar of the Maliki school, who radicalised the logic of method: he resorts to universals (*kulliyat*) rather than the simple correlation and contrast of particular cases. By universals, al-Shatibi meant the ethical and legal intents of Shari'a, which are all guided by one overarching concept: the public good (*al-maslaha al-'amah*). Al-Jabri writes:

> Whatever the case, there can be no doubt that the public good is coloured by conditions, cultural givens, and historical developments; moreover, *ijtihad* that is based on and proceeding from the public good will lose its significance and effectiveness if it is not a dynamic and innovative *ijtihad* emanating from a dynamic and innovative mind. (Al-Jabri 2009, p. 80)

Such a dynamism requires "opening up to life itself, to the new givens that carry with them the laws governing its development" (Al-Jabri 2009, p. 80). Al-Jabri aims at reviving al-Shatibi's project of "re-rooting of the sources" (*ta'sil al-usul*) within the legal canon — of finding the general universal principles which led to particular statutes. These sources or principles were classified into three categories: necessities, needs, and improvements. Al-Jabri inserts civic rights as contemporary "needs," since they stem from the new social realities of modern life. This, for him, is the only way to renew the power of Shari'a, transforming it from a prohibitive power to one that commends empowerment and equality (Al-Jabri 2009, pp. 92-95). He writes:

> Since the good of the people is the foremost intent of the Legislator . . . the consideration of [public] good should establish the rationality of Shari'a judgements, hence that interest is the origin of all origins (*usul*). Obviously, this method has an unlimited scope of movement, which makes *ijtihad* viable in every case. (Al-Jabri 2009, pp. 82-83).

Such a consideration of the "public good" must be cognisant, however, of the differences between our contemporary age and the "Age of Historical Record" — that is, the period when jurisprudential principles were rationalised and canonised.

Nevertheless, al-Jabri does not specify what the "public good" might mean in a modern context that is dominated by the fragmentation of interests and needs. One theme he emphasises

is "Arab solidarity" or an "Islamic ethics" (2009, pp. 88, 93), but the precise relation between the unity of the "public good" and the plurality of interests and identities is never specified. This is a Rousseauian problem haunting his search for a "public good" that he does not acknowledge as such. One solution could be that the public good can only be located in contingent political situations, which would then require a multiplicity of choices and possible solutions. Al-Jabri repeatedly resorts to the political wisdom of the "Pious Ancestors," which he argues was more agile and pragmatic, and hence capable of encompassing many possibilities to mediate contingency and necessity. But he also realises that such a model is not sufficient since it relies on a concept of "faith" that can no longer be accommodated: The logic of modern civilisation is "rationality and [a] critical outlook" which necessitates a new political wisdom that de-absolutises faith in the afterlife while highlighting deed and conduct in "lived reality" (Al-Jabri 2009, p. 70).

Another possible solution lies in his conception of "democracy." In Jabri's conception, politics thrives on disagreement:

> Hence, politics is nearest to the art of managing disagreement more than anything else. Management or administration here means managing the existing disagreement or trying to create a new one. Hence, connecting religion with politics, on any level, will necessarily introduce the germ of disagreement into religion. When the disagreement in religion has a political base, it will necessarily lead to sectarianism, then to civil war (Al-Jabri 2009, p. 58).

Al-Jabri's defence of democracy does not proceed from any traditionalistic valorisation of *shura* (consultation), the principle by which *Nahda* thinkers and their orthodox interpreters understand "democracy." Al-Jabri is adamant that *shura,* the political counsel given by tribal elites to rulers, is not democracy in its Greek conception. Rather, he thinks such assertions were conservative statements meant to placate conservative *ulema* and political rulers who saw Western democracy as heretical. *Shura* is not binding, while constitutional democracy is (2009, pp. 123-125). What is missing from both liberal conceptions of democracy and Islamic *shura* is the agonistic dimension, the fact that in any democracy, there will be discrepancies and inequalities between ruler and ruled, between wealthy and poor. While other Arab intellectuals writing at the same

time were "lampooning and cursing political democracy" and cleaving instead to nationalism and socialism, al-Jabri sees that the power of democracy lies precisely in its unrealisability.

> For political democracy is a democracy of the rulers and the wealthy. However, this does not mean that we are to renounce it and fight against it, not in the slightest. If we view it from another perspective, it is a means which, if used well, can aid in clarifying the reality of the social conflict described above. In its emphasis on general freedoms, even though it is pro forma, political democracy offers many opportunities that enable one to open the people's eyes to this social conflict. In other words, it is a necessary means to raise the awareness of the masses. (2009, p. 114)

This means that political democracy must exist in a "dialectical" tension with social democracy as they engender one another: While the former is the means and the latter is the end, neither should take precedence, as both means and ends must be united (Al-Jabri 2009, p. 115). It is only once this is understood, he suggests, that religion will cease to be a cover for socio-economic power and privilege (Al-Jabri 2009, p. 58).

Al-Jabri is suspicious of any invocation of "secularism" since it appears foreign and anachronistic from the point of view of Islamic tradition, and wishes to replace it with the concepts of democracy and rationality — that is, the separation of religion from the arbitrary exploitation (irrationality) of politics (2009, pp. 56, 64). Abdullahi An-Naʿim (1990, 2008), on the other hand, understands secularism in precisely the opposite way — not as the separation of religion from politics (which is impossible from an Islamic view), but the separation of religion from the state. While al-Jabri believes that Shariʿa necessitates the presence of a political authority with the task of enforcing its judgements, An-Naʿim thinks that Shariʿa only commends political authority in the abstract, but does not specify the shape or structure of such an authority, nor its distribution of power.

In general, this confusion between "the state" and "politics" is the crux, and the limit, of radical jurisprudence, and it parallels the problem of "meta-politics" and "politics" that I described in relation to Said's critique of the Egyptian human rights movement. In both cases, the relationship between constituent and constituted power, between "the political" and

"politics," between power as creative, communicative action and power as strategic and instrumental action, becomes difficult to disentangle. These authors wish to found a political order that is premised on an ethical and legal unity and which may govern and constrain the arbitrary imposition of dogma, ideology, and tyranny, in other words, a political order that may put a check on the manipulation of law by the powerful. They all understand that under modern conditions and with the dissolution of legitimacy, such a risk is much greater and corrupts any attempt at imposing an abstract notion of "pre-modern" ideals. They can clearly see that tradition is never immune from power, and that such a corruption is greater now than ever before, precisely because of the power of the modern state. They thus seek to insert the dialectic of "meta-politics" and "politics" into debates around hermeneutics and jurisprudence. The desire of radical jurisprudence to escape the arbitrariness of both modern sovereignty and pre-modern tradition — by elevating a self-reflexive rational-legal method — ends up producing the same dilemma in the very conception of human power being advocated.

An-Naʿim argues that Shariʿa must be obeyed voluntarily, that it cannot be enforced through a monopoly on violence, but must be freely consented to in the public domain. "If such enactment and enforcement is attempted, the outcome will necessarily be the political will of the state and not the religious law of Islam" (An-Na'im 2008, p. 1). He calls this view "fundamentally Islamic" because "religious compliance must be completely voluntary according to personal pious intention (*niyah*), which is necessarily invalidated by coercive enforcement of those obligations. In fact, coercive enforcement promotes hypocrisy (*nifaq),* which is categorically and repeatedly condemned by the Quran" (An-Na'im 2008, p. 4).

The separation of Islam and the state, in this view, does not mean the separation of religion from politics, as long as politics is understood to go beyond the power of the state. Such a separation is "neither necessary nor desirable" (An-Na'im 2008, p. 5) because believers must be free to bring their religious motivations and faith into the public domain. Otherwise the secular state An-Naʿim is advocating would suffer from a deficit in legitimacy. Indeed, the entire purpose of An-Naʿim's project is an "Islamic" defence of the secular state in order to make it more acceptable to those generally suspicious of "secularism."

An-Naʿim works with a dichotomy of political and moral authority, which he emphasises must not be confused. His view of Islamic history is that it has always maintained this separation

through the distinction between the ruler and the *ulema*. The ruler enjoys the legitimacy granted to him by the jurists, but he does not exercise moral authority directly; only the Prophet could have fused the two. Political authority addresses power, decision, and force, which are unpredictable and require an efficiency not afforded by moral reasoning. The entire history of the *umma* could be read as located on a spectrum between these two extremes of the fusion of authority (in the charismatic authority of the Prophet) and the institutionalised distribution of authority between the caliphate and the *ulema*. This makes the idea of a modern Islamic government incoherent, specifically because it confuses the traditional political arrangement with a modern concept of state sovereignty.

> The coercive power of the state, which is now more extensive and effective than ever before in human history, will be counterproductive when exercised in an arbitrary manner or for corrupt or illegitimate ends. That is why it is critically important to keep the state as neutral as humanly possible. (An-Na'im 2008, p. 5)

The only acceptable way, An-Naʻim argues, to mediate Shari'a and policy is through democratic "civic reason." Drawing on Rawls (2005) and Habermas (1995), he argues that policy can be considered legitimate insofar as it is accepted by the public and exposed to open and accessible reasoning (An-Na'im 2008, p. 7). But drawing on Habermas, and against Rawls, he does not see that believers must shed their "comprehensive worldviews" once they enter public reason. Rather, they must be capable of translating the demands of Shari'a into ethical and legal concepts that can make them acceptable to others. This allows for the possibility of dissensus: "Maintaining the possibilities of dissent is the only way for the tradition to remain responsive to the needs of believers" (An-Na'im 2008, p. 30), which he argues is only possible within a constitutional framework.

This new conception of a "constitutionalist" dimension of Shari'a relies on An-Naʻim's earlier work on *ijtihad*, where he also argues that jurisprudence must be renewed so that it can accommodate new developments in constitutional theory — precisely the demand that legitimacy be based on the voluntary consent of the people (An-Na'im 1990). He argues that *shari'a* does not have a solid constitutional framework, rather a patchwork of rules that do not add up to a coherent political theory of how political authority should be legitimated. The result is always that political power instrumentalises jurisprudence to legitimise itself through coercion,

not a political process of consensual will-making. He argues that "constitutionalism" is more consistent with the doctrine of the vicegeneracy of Man than existing political theology: because it is "Man," not the ruler, who is sovereign. Any violation of this conception of humanity would lead to the ruler becoming the legislator, rather than God, which is idolatrous.

For this constitutional process to be possible, he argues that certain fundamental principles of Shari'a must be negotiated: the exclusive monopolisation of jurisprudential authority by the official *ulema*, the preference for consensus and precedent at the expense of the universal "intents of shari'a" (*maqasid al-shari'a*), ahistorical and anachronistic readings of past rulings, and most interestingly, a rethinking of the boundaries of legal membership within the polity by questioning the sovereignty of Muslims over non-Muslims (*dhimma*). This last point is crucial and depends on the teachings of An-Na'im's mentor, Mahmoud Taha, who argued that the "universal" ethical message of the revelation (which is addressed to the entire world) must be separated from its particularistic, ethnic identification with a specific community of believers. An-Na'im justifies an "Islamic" conception of civic association through the ethic of reciprocity (*mu'wada*) (2008, p. 35). He argues that only from within such a non-secular understanding of civic association can human rights be possible: the Two paradigms must be mutually supportive (An-Na'im 2008, p. 33).

An-Na'im sat on the editorial board of *Rowaq Arabi*, and his work is discussed and debated multiple times in the early issues covered in this chapter. In one interesting "review article" of An-Na'im's earlier work, the writer Ahmed Atef (1996) is deeply critical of An-Na'im's proposals. He specifically critiques the translation of the idea of Man as a "viceroy" as a justification for the modern state because it confuses legislative with executive power. A viceroy, in this understanding, is not a legislator but an executor of the ruler's (God) will; he holds responsibility insofar as he obeys. But An-Na'im wants to turn the doctrine into humanism by equating it with popular will. This, Atef notes, is a very strange strategy because it converts a typical Islamist justification for the caliphate into a modernist conception of popular sovereignty, which is an ambiguity that also exists in traditionalist uses of the concept.[63] Secondly, Atef argues that the very idea of having a shari'a-inspired justification for secular, positive law is

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[63] For traditionalist uses of the same concept, see March (2019) and March (2013).

incoherent: it relies on the historicist argument that shari'a itself is like any other positive law and hence can be made commensurable with other legal systems. This immediately robs shar'ia of its force, however, given that it is accepted precisely because of its ahistoricity and universality as an expression of divine law and hence, in the eyes of its followers, superior to any positive legal system.

The Political Puzzle of Humanistic Jurisprudence

Andrew March (2019) has recently also read how Muslim and Islamist thinkers — such as Razzaq al-Sanhuri, Abu al-Ala Mawdudi, Sayyid Qutb, and Rachid al-Ghannouchi — treat the question of popular sovereignty. He shows how these thinkers insert the very modern problem of popular sovereignty, identified with a concept of a "republic of virtue," into their conceptual edifice. March also highlights their reliance on a concept of the "vicegerency of Man" (March, 2013, 32) to identify this Islamic democracy. With regard to Ghannouchi, by the time of the 2011 Tunisian revolution, it was clear that various constitutional questions could not be answered theoretically, and his thinking had to be tested and modified in response to the constitutional experiment in which he participated.

It is curious – if not ironic – that the modernists and the traditionalists could occupy the very same problem and use the exact same concepts to put forward their arguments. So the traditionalists will equate the "vicegerency of Man" with the perfectionist republic of virtue, and then reconceive – or deconstruct – "popular sovereignty" to mean the kind of pious conduct that is already legislated by *shari'a*. This is a concept of popular sovereignty that self-consciously departs from the Western, voluntaristic one – and yet, it draws its legitimacy from the sovereignty of "the people" who are now imagined to realize God's will on earth. But as March himself shows, this leaves many questions unanswered, and glosses over the practical difficulties that set in once thinkers try to shape "sovereignty" to their uses.

I would say that something similar happens with "modernist" thinkers. Unlike the traditionalists, the modernists still wish to maintain the historically-determined distinctions between the state and society, "meta-politics" and everyday politics, law and morality, etc. In this sense, and ironically, their "humanism" is much more self-limiting and restrained than the

traditionalist or perfectionist one. And yet, there's a political lacuna in their thinking that still requires more explication. While the writers discussed in this chapter do indeed successfully overcome some of the limitations set up by 19th-century *Nahda* thinking — especially in its conservative and conciliatory attitude towards the absolutist state, as well as its orthodox claim to be upholding an "authentic" tradition, which lends itself easily to rigid positivism and legalism — they do not entirely resolve the problems inherited from that tradition, either in its "liberal" or "orthodox" iterations. More specifically, the problem of the relationship between political sovereignty and law haunts their proposals and stands as an obstacle to the dialogue or change that they seek. This can be seen most clearly in the ambiguity over the doctrine of the vicegerency of Man: is Man in this case a legislator or an executive power? And where does sovereignty actually lie — with God, in the rational-legal methods of jurisprudential reasoning, or in the will of the people? Is there a need for a concept of sovereignty, to begin with?

I would argue that al-Jabri hints at an alternative non-sovereigntist, agonistic concept of democracy. In this sense, the very non-realizability of the "public interest" (*al-maslaha al-amah*) becomes an occasion for introducing a negative, regulatory ideal that keeps open and preserves the contestability of any specific political arrangement. Democracy and rights are necessary for him precisely because they are impossible to achieve as long as Arab societies are divided across class, ethnic, and religious lines. Democracy and rights "manage" such fragmentation but cannot overcome it — and neither can "the public interest." To my mind, this comes closest to a non-sovereigntist concept of politics, but as far as I know, al-Jabri does not directly state this. If this insight is developed further, then it throws a very different light on the similar philosophical projects of the other thinkers discussed here. It would suggest that the power of their humanism lies in their undermining of the idea of sovereignty itself, or the claim to sovereignty. It undermines human sovereignty itself. It would render their humanism "self-limiting," by virtue of the fact that they dwell on that difficult space between the temporal and the atemporal, revelation and tradition. They do not absolutize that space either, but they know that it is historically constituted by modern conditions, conditions that had rendered the communicability and integrity of the tradition itself questionable. This compels them to introduce conceptual techniques that de-familiarize any easy identification between the atemporal and its transmission and translation through time.

Those thinkers are usually read as "rationalists," "reformists," "secularists." I have attempted a different reading here, which qualifies their "rationalism" by highlighting the points at which their humanism renders itself self-limiting, non-sovereigntist, and vigilant against the abuses of power, human and otherwise. This thinking is at its most powerful and relevant precisely where it is most ambiguous. This thinking bears witness to the difficulties inherent in any attempt to easily "solve" the troubled relationship between past and present, the timeless and the historical, revelation and tradition. The remarkable feature of this writing lies in the subversive attempt to rescue tradition — and its social and ethical resources — from any authoritarian, instrumentalist, and sovereigntist abuses that threaten the integrity and sovereignty of the tradition itself. It thus paradoxically makes tradition available and open again, by inhabiting that space between the atemporal in tradition (its reference to an inaccessible sacred) and the temporal (its historicity). So while this is usually read as an attempt to de-mythologize, secularize, disenchant tradition, I would argue that it more powerfully disenchants sovereignty itself. Or: that its move to disenchant tradition is also an attempt to remove the sacred cloak off absolutist sovereignty. Or: that the critique of absolutist sovereignty (or the post-colonial state) requires a concomitant de-familiarization and reconfiguration of sacredness itself. This thinking is at its most powerful when it carefully examines the historical limits and difficulties of restoring any pure, sacralised notion of community, ethics, tradition, or Islamic law in a modern context. But they do not stop here. For the very techniques they use, and this heightened awareness of disenchantment, provides a possibility for a new kind of politics under new terms. This is a politics that takes the more radical and indirect route of acknowledging the impossibility of any forced welding back of the temporal and the atemporal. Whether it is the cultural "void" described by Said, the "debt of meaning" discussed by Arkoun, the deficit in legitimacy observed by An-Na'im, the lost sense of human-divine dialogue and Quranic revelation described by Abu Zayd, or the decline of "al-salafiyah" that motivates al-Jabri,[64] all these "voids" become the occasion for a new politics that does not seek to replace the lost

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[64] See Al-Jabri (2009, p. 64). Here, al-Jabri is referring not to the intellectual and political movements of the 19th or 20th century, from which the more common usage is understood, but rather from a much more specific experience in his youth in al-Maghrib (of the 1940s and 1950s), when a "salafi" referred more to the personal conduct of righteous individuals. Al-Jabri here makes a very complicated argument in which he mourns the loss of this kind of everyday traditionalism, while arguing that it cannot be restored in the same way again, due to the experience of colonialism. So "traditionalism" can still guide moral conduct and personal piety, but it cannot inform more general political and social questions.

certainties, but to radicalise this uncertainty towards a different, defamiliarised, politically richer experience of religion. Their "humanism" can be read as a humanism of absence, a self-limiting humanism, without the ressentiment that usually accompanies critiques of secularism.

6. Of Laws and Crowds

What do jurists and lawyers mean when they refer to "the rule of law"?

A natural lawyer will say the rule of law means *isonomia* — treating all persons before the law as equals — and setting in stone certain rules, for example, the right to a fair trial, due process, and legal representation, which then become moral goods in and of themselves. They are moral goods because they are the foundations of an integral freedom or privacy that cannot be interfered with. A legal positivist will then protest, saying all this talk about morality only obscures and confuses, muddles rigorous legal consciousness. The legal positivist — say Hart (2012) or Kelsen (2005) — will say the rule of law means that the law must have a certain authority if it is to be valid, and this authority is derived from a basic norm, the *Grundnorm*. But if you then try to look for the *Grundnorm* and its origin, you will be told it is nowhere, it is outside history, but must be posited for law to make sense. Is it an act of religious faith? We don't know. Let theologians decide that, in the meantime — the positivist says — let's go back to the law. Another participant in this debate might mediate those two positions, arguing that the authority of law emerges out of its *form* rather than its origin (Fuller, 1969; Bernstein, 2018). For laws to be valid, they must be general, public, prospective, clear, coherent, applicable, and constant. And it is these very qualities of legal *principle* that establish the "internal morality of law" — in other words, *the rule of law*.

This is all very good, until we come back to the messier world of actual lawyering, where laws are fierce battlegrounds of force against force, each claiming for itself the mantle of the "rule of law." In this chaotic court, it is not the validity of law that matters, even less its form. What matters, in the final analysis, is that all those in attendance — lawyers, judges, clerks, defendants, witnesses — act as if they're in the sacred presence of the law. And if all act according to this belief, the law will take care of itself and we'll all go home happy and grateful. Many, perhaps most, lawyers therefore end up as cynics.

A few, however, will have none of this. Among this minority are the idealists.[65] They're the faithful ones, who hold on to a dogmatic, relentless insistence that the law must prove itself worthy of its name. In this party of the faithful, the integrity of the law ultimately rests on the constitution. Never mind that they, more than anyone, are familiar with the bloody, and at times outright farcical, history of constitutions. But to these idealist constitutionalists, the history of the constitution matters less than its power. Here we enter the domain of religious anthropology, where the constitution's power stems more from its status as a relic than as an actual text. The constitutionalists will demand that each law prove itself valid with reference to the Holy Text, and they can waste their lives away waiting at the door of the constitutional court. They may or may not get the answer they want, but the faith is unshakable.

But there are others who live in an exciting world between idealism and cynicism. Let's call this group the constitutional *ironists* (bearing in mind that irony is not cynicism). As idealists, they take the law and the constitution very, very seriously. They dedicate their lives to studying its secrets. They're not as foolish and bright-eyed as the other constitutionalists, however. They have lived long enough among the downtrodden and oppressed to know that the law is not to be too easily trusted. But against both blind faith and totalising nihilism, they take the law to be a worthy opponent. It is an opponent because it is hostage to an oppressive, unjust, demeaning world. But it is worthy because unlike the hard-headed cruelty of the world, the law promises otherwise. It was the ironist Nietzsche, after all, who said in *The Genealogy of Morals* that the law is founded on promise, memory, and power (1964, p. 189). The ironic troublemaking constitutionalist lawyer will remind the law of its promise and seek to hold the law to account. If the law makes good on its promise, then the lawyer has achieved a victory, great or small. And if it does not, this lawyer has achieved another kind of victory in exposing the law's cruelties and illusions for everyone to see.

Since the 1980s, legal and constitutional battles have been at the forefront of Egyptian political discourse. Judges and lawyers became major political actors in their own right, and a legal consciousness emerged that challenged the post-Nasserist regime of Anwar al-Sadat and

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[65] My analysis of the role of lawyers' attitudes to legal argumentation is inspired by Marti Koskenniemi (2011), who applies the same reasoning to international lawyers.

Hosni Mubarak. This was not entirely unprecedented, as I show later during the chapter. The Egyptian legal elite had long had a dynamic, and sometimes fraught, relationship with the regime. What was perhaps new was that during this period, the regime itself had sought to capture the ideal of the "rule of law" and "liberal reform" in order to appease Western allies and attract foreign capital, creating an opportunity for the legal elite to create a fracture in the regime's hegemony. This unfolded most clearly in two areas; firstly, the rising importance of strategic litigation, or public interest litigation, ever since the Supreme Constitutional Court was founded in 1979, and secondly, the attempt by the Judges' Club to lead a battle against the violation of the principle of judicial independence by the executive and the security forces (see Younis, 2007). These two fights were waged in the name of the Rule of Law, and they sometimes intersected. I focus here on strategic litigation, and the role of lawyers (rather than judges) and the vision they articulate on the value of constitutional litigation. This, again, was not entirely a rupture; the Lawyers' Syndicate had claimed a strong liberal tradition ever since its founding, especially given that lawyers had played a leading role in the struggle for national self-determination since before the 1919 revolution. Lawyers involved in the Syndicate's activities usually exhibit pride in being part of such a tradition, whether or not they self-identify as "liberal" (as my examples show). Even the leftists and Islamists among them, who were especially active in the Lawyers' Syndicate since the 1970s, laid claim over such a legal-national tradition and sought to renew it for their time.

We are all liberals now, as legal historian Amr Shalakany argues in his history of the legal elite (2013, pp. 295-300). What he means by this is that a legal commonsense has formed among dissidents around fundamental issues; such as judicial independence, judicial review, the importance of legal training, procedural correctness, the rule of law, and constitutionalism. This, then, makes it difficult, or moot, to speak of one liberalism. The judges' liberalism is different from that of the lawyers, and the lawyers differ on fundamental issues, depending on their ideological stances and references. Even Islamist lawyers differed on priorities. Some focused on regulating speech and putting into effect a moral code against religious apostasy (*rida*) and obscenity, but some shared with the leftists a battle against the emergency laws and military trials (one such lawyer is Selim al-Awa). The socialists, however, led battles on all fronts; for freedom of the press, minimum wages, social security, pensions, trade unionism, labour rights, good work conditions, farmers' rights; and against emergency courts, military trials, and

privatisations. It would thus perhaps be better to speak of "varieties of legalism," since "liberalism" seems to obscure and explain very little in this situation.

Therefore, I am interested in the "varieties of legalism" and what it means to progressive politics. I am guided by three questions: 1) Why does legalism provide an attractive avenue for progressive groups, or what are the conditions for legalism's emergence? 2) Why, and how, does legalism lend itself to conflicting orientations, attitudes and goals? 3) Does legalism spell the end of "the political"? This chapter seeks to demonstrate three arguments, which correspond to these three questions:

1) Legalism and "the political" are not *inherently* in conflict. The juridification of politics[66] leads to a simultaneous politicisation of the law. This is why progressive groups cannot evade law. Even more, it is why law becomes a powerful site for political claim-making.

2) This politicisation of the law is made possible by law's relationship to *constituent power*. Constituent power haunts legalism every step of the way. The question of the law's founding cannot be evaded, but must be engaged with. The law's founding stamps its structure or reason, and this becomes necessary in moments of legal troublemaking.

3) Legalism becomes *ideological* only when it attempts to cover up, or suppress, the problem of constituent power.

The chapter is divided into two parts. The first is a historical narrative, in which I present the story of a group of lawyers who engaged constitutional law to socialist and radical-democratic ends. I explain the historical background of their emergence, and then delve into the legal reasoning they use in their everyday practice. The second part is the theoretical counterpart to the story, in which I position myself with respect to different theories of "constituent power" and argue that constituent power always remains immanent to legal reasoning and provides a standpoint for the critique of sovereignty.

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[66] For the literature on juridification I am referring to here, see Loick (2014).

Historical background: Radical Lawyers and Constitutional Politics

The literature on "cause lawyering" defines it as an activity of "lawyers who commit themselves and their legal skills to furthering a vision of the good society because this 'moral activism' puts a humane face on lawyering and provides an appealing alternative to the value-neutral, 'hired-gun' imagery that often dogs the legal profession" (Sarat and Scheingold, 1998, p. 3). Sarat and Scheingold argue that cause lawyers "reconnect law and morality . . . as a vehicle to build a good society that helps legitimise the legal profession" (1998, p. 3). Although I accept this interpretation of the self-understanding of cause lawyers and what they do, I argue that it misses a crucial aspect of what they aim to achieve, which I contend goes further than simply "humanising" the law. Instead of looking at the personal, moral motivations of the lawyers, I want to pay more attention to the modes of legal reasoning and practice, and more precisely, how these express a political (and not just moral) dimension to law. This appears most clearly when lawyers take on constitutional battles. This means that what becomes interesting about these lawyers goes beyond their moral motivations or their benevolent dispositions (noble as these may be). Rather I want to highlight the way cause lawyers try to enact, embody, and envision a new way of connecting law, political power, and social power.[67].

Radical cause lawyering in Egypt grew out of a long legal tradition that was historicised by Amr Shalakany (2013) as "the rise and decline of the Egyptian legal elite."[68] The legal profession was first officially regulated in 1893, to organise the work of lawyers who were offering their services as part of the workings of newly established Civil Courts, which grew out of the mixed courts system during the period 1876-1883. The reputation of the lawyers rose quickly due to their role in the rising nationalist movement. Indeed, all the major figures of the nationalist movement were lawyers, such as Saad Zaghloul and Mostafa Kamel. This gave lawyers great social prestige displacing a prevailing image of them as opportunists and swindlers. Ahmed Fathy Zaghloul, Saad Zaghloul's brother, wrote the first legal textbook called *Al-Mohamaa* [*Lawyering*] and he especially emphasised professional ethics and pro bono services to the poor as the cornerstone of such a vocational ethic (Shalakany, 2013, pp. 162-167).

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[67] This is highlighted in another book by Sarat and Scheingold (2006).
[68] I thank Dina al-Khawaga for encouraging me to emphasise this point.

Generally speaking, lawyers during the late 19th and early 20th century were proud of modern legal developments and especially the creation of the Civil Courts. Meanwhile, the first professional syndicate in Egypt was the Lawyers' Syndicate, created in 1912. The first law school was founded in 1886, and it attracted a lot of students, testifying to the general prestige of lawyers. Its faculty had previously been sent to France as part of student missions, sponsored by Mohamed Ali. Its deans were usually French jurists, such as Eduard Lambert who was influenced by French radical socialism and had a huge influence on his nationalist students, chief among them Abdel Razek al-Sanhouri, who would later become a leading thinker of the national independence movement, draft many Arab civil codes and help consolidate the 1952 coup in its early years. Al-Sanhouri is especially remarkable for his attempt to introduce "sociological jurisprudence" into Egyptian legal thought, inspired by a mix of socialist, Islamic, and welfarist thinking that would become increasingly influential in the legal field post-independence (Shalakany, 2001).

Legal historians, such as Shalakany (2013), Tarek Al-Bishri (1987) and Sherif Younis (2007), trace the "duality" of the Egyptian legal system to this moment. By duality, they mean that the Egyptian legal system is built on two contradictory foundations: One is official and led by nominally independent judges under the oversight of the Council of State and the Administrative Court, while the other side constitutes a semi-judicial wing of the "security state," such as the State Security Court, High Emergency Court and Military Courts. This recalls Ernst Fraenkes's (2018) division between the "normative" and "prerogative" state. In this dual state, law is subordinated to the "security" functions of the executive, while the "normative" state operates with the function of keeping this separation intact. Younis dubs this division "law and coup" [*qanoon wa inqilab*] (2007, pp. 504-505). Shalakany (2013) believes this development led to the decline of the "legal class." Law schools became increasingly overcrowded, while the general prestige of lawyers declined and they became subservient to the needs of the rising business class. They also lost part of their major inspiration and link to the aspirations of the national political movement.

The 1980s, however, were a turning point for the legal profession, the Lawyers' Syndicate and the Judges' Club (Moustafa, 2007, p. 123; Ezzat, 2019, pp. 7-80, 20-22). Nabil al-Hilaly, Esmat Seif al-Dawla and Farid Abdel Karim founded the "Freedoms' Committee" at the

Syndicate, as a platform to reconnect lawyers to the political field and to restore the profession's lost prestige. This is why both Ezzat and Shalakany consider these lawyers to constitute an "intellectual class" and not simply a professional group defending its own corporatist interests. Their goal was to politicise law and take advantage of its constitutive "duality" of security and liberalism. The Committee represented political dissidents during the 1980s and 1990s, and it especially rose to prominence after the 1977 uprising (more on this later). They also became involved in other precedent-setting cases: the railroad workers strike in 1986, the student protests of 1982, and the Iron and Steel workers strike in 1989 (Ezzat, 2019, pp. 22-23).

This rebirth of the Syndicate was also enabled by another crucial development: the establishment of the Supreme Constitutional Court (SCC) in 1979.[69] Sadat believed that the creation of a constitutional court would promote the return of a "state of institutions" and give the impression to his allies that he was serious about liberalising the political and economic regime. The SCC helped in the revival of the Lawyers' Syndicate by striking down a law (Law 125/1981) that had ruled to dissolve its elected council. Therefore, throughout the 1980s, the Syndicate was able to become a "forum" of sorts used by intellectuals and activists to publicise their political and judicial demands (Moustafa, 2007, p. 125). For example, student protestors and activists conducted their meetings at the Syndicate headquarters' in 1982 — and among the students was future human rights lawyer Hisham Mubarak (more about him later) (Ezzat, 2019, pp. 13-14). It was in this moment that the lawyers and new intellectuals of the student movement found their common ground, though they continued to face obstacles, due to increasing state restrictions on the Syndicate's activities and elections (Moustafa, 2007, pp. 148-151).

The existence of the SCC provided an unprecedented opportunity for liberal, leftist, and Islamist lawyers to challenge the regime — in the belief that constitutionalism and judicial review could trigger a democratisation effect. The SCC seemed to share some of the judicial euphoria, albeit for different reasons. The ideology informing the role and function of this new constitutionalism was in marked contrast to what the lawyers had in mind. This new constitutionalism was mostly understood in terms of institutional and legal economics —

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[69] This does not mean that constitutional politics and strategic litigation were confined to the Supreme Constitutional Court. Many battles were waged — and still are — in the Administrative Court, which falls under the umbrella of the State Council. I thank Ahmed Ezzat for reminding me to state this point.

promoted by the World Bank — which interpreted the function of the rule of law in terms of increasing predictability, accountability, and transparency that would facilitate capital flows and foreign investments (Moustafa, 2007, pp. 24-25)[70]. This was expressed directly by Chief Justice Awad al-Murr who led the court during the period 1991-1997. Al-Murr was explicitly committed to market-friendly rulings and economic liberalisations, and he saw his mandate as achieving this progress against the more Nasserist-minded judges of his generation (Moustafa, 2007, p. 143; also see Odeh, 2011). On the one hand, the SCC ruled in favour of multiple civil and political rights: for example, in 1985, it ruled to permit opposition activists banned from public life to run for parliament, and in favour of press freedoms and loosening restrictions on trade union elections (Moustafa, 2007, pp. 115, 150). But on the other hand, the court also facilitated privatisations, through a very loose reading of "public sector" to mean "public investment" (Moustafa, 2007, p. 142). It also helped facilitate and legitimise many unpopular policies, such as an increasing sales tax, liberalising landlord-tenant relations, and removing rent controls (Moustafa, 2007, pp. 105, 140). It was in these areas that the resistance of leftist lawyers failed.

But oppositional lawyers of a range of political backgrounds were attracted to the possibility of engaging constitutional matters. By 1983, dozens of cases were transferred to the SCC protesting the ban on appealing rulings of the Emergency State Security Courts. Lawyers also increasingly used international treaties to strike down emergency laws and the jurisdiction of Military and State Security Courts. This was another area that the SCC dared not touch (Moustafa, 2007, pp. 116-118), but this did not quell the lawyers' hope of using the Supreme Constitutional Court as a battleground for their opposition.

This is when the figure of the "human rights lawyer" properly emerged, with the creation by Hisham Mubarak of the Legal Aid Centre for Human Rights (LACHR) in 1994. Hisham Mubarak had received his law degree in 1985 and was engaged with the student movement of the 1980s, especially in campaigning for Palestinian rights. After he was arrested in 1989 for his involvement in the Iron and Steel Workers strike, he was tortured and was left partially deaf.

[70] For more on new constitutionalism, see Arjomand (2007), Hirschl (2004), Gill (1998), Klug (2010), and De Sousa Santos (2005). It refers to a constellation of legal norms that elevated judicial review and constitutional courts in the service of neo-liberal economic institutionalism, competitiveness, and juristocratic "good governance." It intersects in interesting ways with the "globalisation" of neo-liberal state-making. For more on the general sociology of constitutionalism, see Thornhill (2011, 2018), Sassen (2008), and Teubner (2012).

Following his release, and inspired by the Freedoms' Committee work at the time, he joined the fledgling human rights organisations as a researcher, training at Amnesty International, the Egyptian Organization of Human Rights (EOHR) and Ibn Khaldun Center. In 1993, journalist Hani Shukrallah encouraged Mubarak to apply for an international human rights prize (the Reebok Human Rights Award), and so Mubarak was awarded the prize and travelled to New York (along with Shukrallah) and used the grant to found a new legal centre devoted to human rights advocacy, the first of its kind in Egypt.[71] Mubarak later turned to Ahmed Seif al-Islam, a veteran of the student movement, as well as younger lawyers Tarik Abdel Aal and Khaled Ali, who together established a unit inside the LACHR devoted to "strategic litigation" (Ezzat, 2019, p. 8). This team of three successfully litigated against the constitutionality of several laws related to the right to a fair trial, emergency law, death penalty, freedom of the press, and labour rights. Their first target was a law governing trade union elections, which was ruled unconstitutional in late 1997, by which time 50 cases had been brought. They also challenged another law in the penal code regarding newspaper publication offenses, as well as brought cases dealing with social insurance law (Moustafa, 2007, p. 150; Ezzat, 2019, p. 25). Some SCC judges actively encouraged the lawyers to challenge the constitutionality of many laws.

Ahmed Seif al-Islam is considered another mentor figure for socialist lawyers. He led the litigation unit and was one of the founders of the Al-Hilaly Association, a network of lawyers who sought to continue the work that was formerly done under the Freedoms Committee. The major difference, however, was a growing reliance on international human rights law. This was not entirely unprecedented, since the Freedoms Committee had used the International Covenant for Social and Economic Rights (signed by the Egyptian government in 1981), and specifically the right to strike and right to form labour unions, as a way to defend and empower worker struggles. The first time this was done was in a case related to a well-known railroad workers strike in 1986. Khaled Ali focused all his work in the litigation unit on labour struggles, and so developed such an approach into other areas: to defend professional syndicates against the intrusion of government regulation; to fight back against a strike ban that went into effect since the 1977 uprising; and towards union pluralisation. This last demand for "union pluralism"

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[71] See Hisham Mubarak's obituary in the *New York Times* (Miller, 1998). Also confirmed by Shukrallah (Interview, Cairo, October 2018).

emerged after the rise in labour strikes since 2006, in which lawyers along with different groups of workers fought against the monopoly and control of the government over their activity.

But against these early achievements, there were other challenges. The SCC refused to change its position regarding the Emergency State Security Court or Military Courts. The judges also were particularly resistant to any challenge to economic liberalisation. The Land Center for Human Rights emerged during the early 2000s in order to petition against a law that liberalised owner-tenant relations in the countryside, but this met with failure as the SCC was actively and consciously dismantling the last vestiges of Nasserist social policy (Moustafa, 2007, p. 151). Another crucial constitutional battle was waged to defeat the infamous Law 32/1964, which restricted the formation of NGOs outside government control. Following a conference hosted by the Cairo Institute for Human Rights Studies in late 1996, a coalition of human rights organisations and political parties decided to wage a constitutional campaign against the law and drafted a new bill on associations to publicise their efforts. But before this contest would reach the Court, the government issued another restrictive law that would stop the SCC from being able to strike down the law (Moustafa, 2007, pp. 153-154).

Writing immediately after the January 25 uprising, legal scholar Lama Abu-Odeh (2011) argues that the Egyptian flirtation with constitutionalism is a challenge both to the common wisdom of liberal defences of judicial review, as well as critical legal theory. She focuses especially on how the SCC's rulings against social policy and for privatisations and economic liberalisations created both a fiscal and political dilemma for the regime. The regime sought to control the pace of economic liberalisation in order to manage social resistance and to preserve some modicum of social control. The effect was devastating both to the SCC and the human rights movement at large, since the government capitalised on the division between civil rights on the one hand and social and economic demands on the other, and presented itself as a defender of the latter. The efforts of some leftist-minded lawyers to wage a battle on both fronts met a dead end, as the SCC insisted on a neo-liberal and thin conception of the "rule of law." This was not simply due to ideological obfuscation, but a result of political economy. The ambition to institute neo-liberal policy and political liberalism at the same time was doomed to failure from the outset, Abu-Odeh argues, because of "rentierism." Economic rents, such as American aid to the Egyptian government, allow the state to preserve its hold over the economy

and wealth distribution without having to reduce its size or coercive power. This means that neo-liberal policy does not need ideology, even less the thin veil of lawfulness (as proponents of critical legal theory might argue). The result is that law becomes a form of rule ("rule *by* law") informed and driven by the framework of *security*. Abu-Odeh imagines a "fantasy" scenario in which the SCC could have postponed the fight over political liberties, and instead defended some remaining Nasserist social policies (which many older jurists supported). One possible result, she suggests, is that the Court's "constituency" would have been workers and farmers, rather than lawyers. This kind of support would have been more effective in legitimising the SCC against the regime and therefore would have been empowering to it.

Abu-Odeh is partially right to argue that "rentierism" plays a role in supporting the regime's power without the need for political liberalisation, and that it helps sustain a securitised state capitalism minus the rule of law. But Abu-Odeh makes a few unwarranted assumptions. First, she naturalises "rentierism" and imagines it to be entirely divorced from labour power. Instead an alternative political economy perspective would see rent itself as the product of a *political* dispossession that runs on immense violence. Abu-Odeh imagines that rent is the cause and "security" is the effect, which misses the possibility that both are part of the same totality, or the same economy of violence that *directly* extracts value out of the coercion and dispossession of populations from land and resources. American military aid (a type of economic rent) is not natural or pre-given; it is a direct political relationship of violence, dispossession, and torture. It is a protection fee (or bribe?) that delegates a part of American security to its weaker allies. Abu-Odeh's analysis suggests that the Left could have continued to defend the "social state" without being cornered into unpopular liberal concerns. But this is based on two further assumptions: first, that "the social state" could have survived without the need to change the underlying social and political relations that sustain it, or that expanding political freedoms is not directly related to the social or developmentalist state. Although it is beyond the scope of my analysis here, I have difficulty accepting either assumption.[72]

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[72] Abu-Odeh herself shows that the "social state" was born out of a particular economic regime, import substitution industrialisation (ISI). But her analysis neglects the possibility that the failure of ISI was related to *state capacity*, and therefore may have had something to do with political relations. As such, her analysis requires that legal and political structures remain exogenous.

The demand for political and public freedoms does often come into conflict with the demands for private property. The elitist anti-democratic liberalism of the jurists could not have sustained such a vision, and therefore the alliance between the SCC and the lawyers was doomed from the start because they had very different understandings of what "political freedoms" actually substantively entailed. Labour rights are a domain in which the conflict between "property" and "participation" becomes maximally manifest. The work of the litigation unit at the Legal Aid Centre (later the Hisham Mubarak Centre) provides a lens through which to think of the relationship between violence, labour, and law, and what sort of an alternative constitutionalism may be possible from that perspective. From the beginning, the unit took its lead from Nabil al-Hilaly, Esmat Seif al-Dawla, and the rest of the Freedoms Committee at the Lawyers' Syndicate. In the next section I read one particular and influential legal defense by al-Hilaly in order to tease out the kind of socialist jurisprudence at work in this kind of lawyering.

Putting Lenin on Trial: Violence and Law

To sum up, two models of constitutionalism emerged and intersected during the 1990s. On the one hand was the neoliberal constitutionalism of the SCC. On the other were the radical lawyers, who held up a vision of constitutionalism inspired by the motivation to create spaces of political conflict. I am tempted to call the first model "new constitutionalism" and the latter "political constitutionalism." I partially agree with the legal scholars cited above — Moustafa and Abu-Odeh — who argue that the failure of new constitutionalism stemmed from a conflict over the pace of neo-liberal privatisation. But there is another possible explanation that I want to entertain. The political constitutionalism of the lawyers may have disrupted the expectations of new constitutionalism and its technocratic logic. Ultimately one constitutionalism pushed another over the edge. Indeed, new constitutionalism may have been an opportunity for the increasing reliance on "strategic litigation" by leftist and liberal lawyers, but we could look at the inverse relationship too: Strategic litigation may have proven to be too high a disruptive risk. Here I want to try to trace the logic of what I call "political constitutionalism" and how it attempts to interrupt the workings of law by inserting other political subjects. I will do this by

focusing on communist lawyer Nabil al-Hilaly and the school of praxis he pioneered and inspired.[73]

In January 1977, there was an uprising in multiple Egyptian cities protesting a decision by Sadat to remove subsidies for essential goods such as bread, rice, sugar, and tea. In response, masses of people took to the streets, and police forces failed to curb the mobilisation. It was only after Sadat ordered the deployment of army forces that the regime was able to restore order. In response, Sadat retreated from his "reforms," but he ordered the arrest of hundreds of members of communist and leftist parties: the Tagamu' Party, the Egyptian Communist Party and the Workers' Communist Party (Al-Hilaly, 2008, pp. 4-5). The mobilisations were seen by the Left at the time as a continuation of the student activism since the early 1970s, but this moment marked the beginning of a rabid anti-communist political atmosphere that brought leftist organising to a halt.

Then enters Nabil al-Hilaly (1928-2006). Al-Hilaly[74] was born to an aristocratic family and his father was the last prime minister before the 1952 coup. He became a prominent Marxist lawyer and a founding member of the Democratic Movement for National Liberation in 1948 and remained part of it until it was dissolved in 1955. He continued to be an active member of the communist movement, for which he was first imprisoned in 1959 for five years, then later in 1965 for four years. He founded the People's Socialist Party in the late 1980s with Youssef Darwish. To this day, al-Hilaly is hailed as the "saint of the Egyptian Left." His name and legacy are steeped in an aura of veneration and deep admiration. Al-Hilaly was a leading member of the legal team who volunteered to defend the 173 detained communists and socialists in 1977. The case was remarkable for many reasons, not least because of its size: 10,000 pages of documentation and minutes. Al-Hilaly contextualised the case within a general mood of "anti-communism" since the early 1970s, and yet he refused to reduce it to communism alone: "This case does not concern only a minority of destructive communists . . . but it concerns the freedom of the citizen . . . whatever his [sic] doctrine or thought. That is because the accusations could target any thought or judgment, according to the whims of the rulers" (2008, p. 12). In this way,

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[73] I will only look at one case that al-Hilaly participated in (the 1977 uprising), but there are other cases where his argumentative strategies can be explored. See al-Hilaly (1989, 2007).
   [74] See the obituary by Hossam el-Hamalawy (2008).

al-Hilaly began by equating anti-communism with anti-democracy. If communism was to be defended, it would be defended on the principle of popular democracy. Al-Hilaly placed a huge challenge before himself; he had to convince the court that communism, and by implication revolutionary thought and protest, are legitimate on both democratic and legal grounds.

The charges against the defendants were several, but chief among them was one based on the so-called "Ismail Sedky Law." This law, which was passed in 1946 by Prime Minister Ismail Sedky (despite parliamentary resistance), targets groups aiming to use "violent means to overthrow the social order with the objective of creating a rule of one class over the others." The law was used to launch a crackdown on communists in 1946, but was later extended to liberals, intellectuals, and lawyers, and it was used again after the 1952 coup to target the same groups. Al-Hilaly claimed that the law was actually borrowed from fascist Italy. It was clearly designed to target communism in particular, but the prosecution also tried to stigmatise the defendants by painting them as "atheists" and "unpatriotic." Surprisingly, most of the defendants were acquitted, except for 22 who received sentences that ranged from one to three years. This was a major victory for al-Hilaly's defense team and the leftist movement at large. It became a model strategy for civil rights and socialist lawyers ever since. Al-Hilaly's argumentation denounced the impact of the law on basic freedoms of the citizen by equating anti-communism with anti-democracy:

> Throughout history, inside or outside Egypt, democracy has been strangled in the name of protecting democracy. Patriots and democrats have been chased, in the name of chasing and casting away communism. The enmity against communism has always been, in every time and place, the slogan of the enemies of freedom. Anti-communism is the veil of smoke that hides their crimes and violations (2008, pp. 11-12).

And:

> Whenever the citizen thinks, he becomes a communist rebel. Whenever the citizen introduces himself to cosmopolitan thought, he becomes a foreign agent importing all kinds of ruinous ideas. Whenever he speaks his mind, he becomes the cause of *fitna* and *qalaqal* (strife and trouble). And whenever the citizen

"swallows his tongue and keeps it in his throat" and stays in the peace of his house, he becomes a conspirator plotting in the darkness . . . All roads lead to the cage, so that no road is left but to abandon all thinking, speaking, humanity, and humaneness (2008, p. 13).

Al-Hilaly used a variety of arguments to exonerate Marxist-Leninism, and that is why his argumentative strategy bears some reflection. Firstly, he argued that according to the same criteria of the fascist anti-communist law, the 1952 Revolution must also be put on trial. The Free Officers led a revolution against feudalism in order to substitute one ruling class with another. It was clearly a class-based movement, and therefore satisfied all the conditions that were punishable by the anti-communist law. Meanwhile, Nasser himself acknowledged this in his National Charter of 1962, which announced a continuous, permanent revolution against the forces of monopoly and capital in the name of the popular classes. So al-Hilaly put a very stark choice before the courts: Either they accepted the validity of the fascist law, or they accepted the National Pledge, but they couldn't have both.

> The prosecution places itself before a difficult choice. Either we accept that the July revolution has achieved in Egypt a complete social transformation . . . and destroyed prior decaying social relations and founded new social relations, as declared by the pledge. In this case, the articles that determine this case's accusations are annulled. Or we admit frankly that the July revolution was not a revolution, but only a military coup that has not instituted any changes — social, political, or economic — in Egyptian society. Of course, this would completely demolish the legitimating basis of the current regime since 1952 till now, and the justification of its survival. Any attempt to revive those articles [anti-communist laws] is an attempt to cancel out an entire era of our history and the history of our nation. It is an attempt to turn history 30 years backwards (Al-Hilaly, 2008, p. 44).

Then al-Hilaly defended Marxist-Leninism step by step against the charges of terrorism, atheism, internationalism, and "the dictatorship of the proletariat." And in each case, he indirectly exposed the ways all legal orders since the French Revolution, including the 1952 regime, were founded on extralegal violence that inaugurated a new social order with class hegemony.

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Marxism, meanwhile, is a *theory* of general laws of historical development over which no one, not least communists themselves, could have any control. And since social laws of development determine the trajectory of revolutionary violence, and "theory" has no bearing on outcomes, the intentions of Marxist organisations and activists are irrelevant and therefore theory cannot be penalised. Marxist theory does not *prescribe* revolutionary violence; even less does it advocate terror (he repeated this multiple times). It is only a guide to social laws of development, while the relationship between theory and practice is contingent upon historical and social conditions, so that the Marxist theory of revolutionary violence remains undecidable and not inherent to the theory.[75] And overall, Marxism wishes to inaugurate a *real* democracy, which al-Hilaly juxtaposed to the fake, deferred democracy of his time that continually delayed on fulfilling its promise of freeing politics from the hold of authoritarianism and corruption.

> If we lay out different social orders — on a global scale — we will not find in reality — and this is the greatest irony — a social order where the description of "one-class rule" applies more than to the capitalist regime. This description of a single-class rule does not apply except to those states and societies that adopt the capitalist system, where only the capitalist class wields power and control, and suppresses all other classes. Only capitalism is the regime of the single class. Meanwhile, none of the socialist states are ruled by a single class. And Marxism-Leninism does not aspire to institute rule of a single class — despite the common misconception that the Prosecution has fallen into. The socialist state is not ruled only by the proletariat (Al-Hilaly, 2008, 47).

Al-Hilaly's argument, then, shows a particular kind of Marxist jurisprudence at work, one that mobilised a defence of civil liberties as a right to resistance. And at each step of the argument, al-Hilaly would test the limits of legal doctrines in order to expose the foundational violence that inaugurates them, as when he argued that the constitutional order was founded on a revolution. This did not, however, lead him to fall into a legal nihilism. Instead he used this insight into the foundational violence of law in order to argue for the pre-emptive legitimacy of revolution itself.

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[75] It should be noted that al-Hilaly contextualises his legal arguments on grounds that are very similar to the pro-labour and pro-communist wing of the American Civil Liberties Union. Moreover, he cites the legal opinions of Supreme Court Justices Hugo Black and William O. Douglas.

We see another ironic move here. If the law of the capitalist state *pretends* that a broad plurality of classes may rule, or that law is neutral with respect to class interests, al-Hilaly turned this argument into a *hypothetical*: If there is a revolution that redistributes class power, why can't this revolution be legitimate according to the same legal criteria that currently stand? And now that the legitimacy of revolution had become a legal possibility, al-Hilaly could use it as a criterion to judge the legitimacy of current acts of protest, assembly, or revolutionary theory. But there's more. Revolution cannot be an *intention* at all, it cannot be a voluntary action of the individual, and therefore, cannot be considered criminal. Revolution is what remains outside law but also continues to push law to its limits. Therefore, revolution cannot be inferred from individual thoughts or tactics. "The criminalisation of a political organisation according to its adoption of a revolutionary theory that clashes with the current social order must also come into conflict with the primary principles of criminal law" (p. 81). This is so since strategy is different from tactics: "It is known that every party has its tactical ends and its strategic ends. Tactical ends are presented in the current praxis of the party. Strategic ends, however, can only be achieved in the very long run, at the end of an entire historical epoch" (p. 81). Those final ends cannot be criminalised because "they remain in the books" (p. 81). In the field of practice, tactics aspire to things "every democrat aspires to, in every daily newspaper and in the writings of writers, intellectuals, parliamentarians" (p. 117). The best example of this logic is the right to strike: If the purpose of the right to strike is social equality, and social equality is a professed commitment of any democracy, then they must not be criminalised (p. 149).

In a lecture he gave on Marxism and human rights, al-Hilaly says: "It is the right of the people to use their established right to resistance against injustice and tyranny. This is a natural human right. I want to clarify this point from the beginning" (1997, p. 74). This stance allowed him to criticise really existing socialism from a utopian perspective:

> We must admit that we as communists — even on a global level — and Nasserists have failed to provide a right formula for internal democracy. The democracy of the socialist Eastern Bloc is defeated, and the democracy of Western capitalism is only an alleged democracy. The defect of all these democracies is their separation of the social and the political and cancelling one of those at the expense of the other. The deliberate erosion of political

democracy in the socialist world is the root of the crisis of socialist regimes and the reason for their fall. This despite the fact that these regimes have provided unprecedented social democracy. Here we are faced with a question that still stands: What is the point of providing social and economic welfare to a citizen bound in a cage? (1997, p. 75).

Accordingly, the communist revolution puts up a mirror to the face of bourgeois law. And in making such a move, it reclaims back all the principles and ideals that bourgeois law is forced to abandon. It becomes a guardian of the promise that bourgeois law has failed to uphold. The progressive movement reclaims and transforms those ideals. It does not abolish them. "Any progressive movement on the path of renewal must preserve the already-existing values of bourgeois democracy invented by progressive legal and political thought in the last few centuries" (Al-Hilaly, 1997, p. 76).

Generally speaking, al-Hilaly's entire thinking revolves around the unity of revolution and real democracy. The utopian future that revolution summons must inform present communist tactics and strategy. Accordingly, revolution both remains the *limit* of positive law and its condition of possibility. It is the limit because revolution cannot be willed, cannot be voluntaristic, and thus remains outside criminal law. But it remains the law's condition of possibility, because only the utopian future can realise the ideals that present law claims to uphold. If the law wishes to keep up the pretense, it must continue to accept the right to resistance.

The Students

Ahmed Seif al-Islam (1951-2014)[76] was politically radicalised by his involvement in the student uprising of 1972 and the communist movement. On campus, he led a socialist reading club. Due to his militancy, he was arrested twice, in 1972 and in the summer of 1973, and was released after the October 1973 war. In the aftermath of Sadat's normalisation with Israel, he joined an underground militant organisation calling for armed struggle. In light of this increasing militant

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[76] This biography was provided to me by Seif's widow, Laila Soueif (Interview, Cairo, December 2018).

activity, the entire cell was arrested, detained, and tortured. Seif was sentenced to five years in jail, shortly after he was married to Laila Soueif, a fellow communist activist and later a mathematics professor. His imprisonment made him and his wife much more aware of the ubiquity of torture and its dynamics. He would speak with other inmates (mostly Islamists) about their experiences, and try to intercede whenever possible, or urge his wife to check on inmates' families, or send a petition to the General Prosecutor to report an instance of torture. Generally speaking, communist organisations at the time did not have insight or know-how, or any system in place, regarding what should be done when someone is imprisoned or violated by state authorities. This pushed Seif to become more curious about the way this machinery works, greatly assisted by Laila's willingness to help with the work involved in this kind of care. Here is the "seed" of a specific kind of activism dedicated to building support networks for the incarcerated, something we still see today.

Seif also decided to use his time in prison to study for another diploma. Among the limited options available, he chose to study law "almost by coincidence." He certainly did not anticipate becoming a "human rights lawyer," but believed a law degree could help him find work after his release. He was in fact familiar with the work done by leftist lawyers such as Nabil al-Hilaly and Esmat Seif al-Dawla, but he did not yet imagine following their lead. His time in prison also convinced him that his calling was not armed struggle. Due to his exposure to torture, Seif recognized that he cannot bear the immense cost of pursuing armed struggle.But he grew in the conviction that "the capacity of the state to crush people must be resisted" (Soueif, Interview). When Seif was finally released, he first worked as a commercial lawyer in a private company, willing to offer limited volunteer work during his free time to Hisham Mubarak's new organisation, the Legal Aid Centre. Seif volunteered to work on the Nasr Abu-Zayd case, for example.

In the early 1990s, one important project that Seif volunteered to assist with had to do with trade union elections, where security bodies blocked the nomination of certain individuals or scrapped names that were not put forward or favoured by the police authorities. Seif sued on their behalf, and word of mouth spread among employees regarding Seif's work, and so he ended up with thousands of cases. Hisham Mubarak urged Seif to dedicate himself full-time to this work. The principle informing this lawyering was the necessity of defending the democratic

autonomy of trade unions relative to state power, and ultimately they decided to raise the case to the Supreme Constitutional Court, in coordination with other trade union organisations (Dar al-Khadamat al-Niqabiyya) and Nabil al-Hilaly.

Out of this work, Seif created a unit in the Legal Aid Centre dedicated to strategic litigation, and he hired younger lawyers, such as Khaled Ali and Tarek Abdel Aal. Khaled Ali comments[77] that the idea of strategic litigation was not completely new: It had been used by leftist lawyers since the 1919 revolution, and was important after that in defending communists against incarceration, or Nabil al-Hilaly's work on dropping cases against striking railroad workers. Indeed, up to this point, the idea of "strategic litigation" had been harnessed by leftist lawyers like Nabil al-Hilaly and Youssef Darwish to defend dissidents, workers, and the tortured. Seif's innovation was to build an organisational infrastructure for this kind of full-time work, and to connect the Legal Aid Centre to the trade unions. This cemented the reputation of the centre as a space for hosting syndicate meetings, raising worker consciousness, and finally working for the creation of independent unions and pushing against the state's monopoly on the Egyptian Trade Union Federation. The centre would also host new protest groupings that coalesced after the 2003 Iraq war, allowing them to expand their connections to street mobilisations.

When I asked Khaled Ali whether this work "de-politicises" social movements, he disagreed with the premise. "What we work on are political rights, insofar as they are connected to social and economic rights" — this focus on "political rights" means that the lawyers' role is to enable groups to form, assemble, and organise around concrete demands or issues. If the lawyer wins a particular case, this gives those groups tools with which to articulate their demands and to raise consciousness around them. Political parties are invited to use this legal legitimation to push for mobilisation and to set agendas. This jurisprudence has a "legal realist" dimension: "Courts, in reality, do not apply legal texts in abstract," Khaled Ali says. "They apply texts according to the balance of political forces in society." But there's a caveat: If there's a certain ambiguity or difference between multiple courts regarding a certain judgement — what in critical legal theory is called the *undecidability* of law, an undecidability which reflects the multiple forces at stake — this could become an anchor for igniting public resistance and

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[77] Interview, Cairo, December 2018.

building a dissident identity. This is why Ali encourages groups involved in any given case to assemble before the court: Their presence turns the proceedings into a "legal event," and the event becomes an occasion "to expose and raise consciousness of the issue." The legal event could be a protest event or a celebratory event, but in both cases, it forms an identity around it, that may then push political parties, trade unions, and other groups to coordinate their activities.

I want to mention another of Seif's contributions that is indicative of a wider schism in the world of human rights. In August-September 2001, Seif travelled to the Durban Conference against Racism, in South Africa. Seif, along with many activists from the Global South, joined in the controversial "NGO Forum Declaration" in which Israel was described — for one of the first times in a global human rights setting — as an apartheid, racist regime. The declaration was ultimately refused by the main conference. This event is rarely discussed in histories of human rights in the Global South, obfuscating the conflicts that took place over the colonial legacy.

What interests me most about Seif is that he saw no conflict between his focus on social rights on the one hand, and civil rights on the other. That's why I take him to be, in the vein of al-Hilaly, a practitioner of a democratic-socialist jurisprudence centred on "the right to strike" as the model of dissident association and assembly. It is from this perspective that he criticised the predominance of emergency law as a system of governance. In all his legal defences arguing for the unconstitutionality of emergency courts, he traced the ways that emergency rule is an inheritance from British martial laws since 1914 (Seif, 2008c, p. 16).[78] "The extension of the state of emergency . . . for a period of almost a quarter of a century requires a revision of the argument that stipulates that the declaration of emergency is a sovereign act exempted from judicial oversight" (Seif, 2008c, p. 20).

The legal reasoning he mobilised against emergency laws can be read as an implicit critique of Schmitt's equation between constituent power and the sovereign dictatorship that I discuss below. Seif attempted to limit the power and scope of the sovereign not by eliminating it altogether, but by distributing and dispersing its power. Instead of imagining the sovereign act as an absolute, he saw it as a "continuum" that requires proportionality and procedure for

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[78] For more on the relationship between colonial rule and emergency law, see Hussain (2009).

determining the degree of danger faced, and the measure needed to counter it. Otherwise, if the emergency is imagined as absolute, it ends up being self-defeating:

> If those exceptional legislations exceed their designated purposes, this surely leads to the dissolution of the personal rights of citizens, which corrupts the entire social body . . . We must ensure that exceptional laws do not lead to absolute powers and unlimited capacities, and they must be limited by specific procedures to decide on how risks can be balanced against appropriate protective measure[s] (Seif, 2008c, p. 7).

Emergency law requires a principle to legitimise it, and this principle is that of *necessity* which cannot be decided in abstraction from the particular situation or case, he argued. In other words, for necessity to be legitimate, the decision must be distributed across different bodies. Judicial oversight is thus required:

> This oversight guarantees that the principle of legitimacy stands, and it does this by verifying the presence or absence of the exceptional circumstance itself, and secondly, the necessity of the exceptional measure, and thirdly, how far the measure is appropriate to the danger or circumstances in question, and to determine its effects on the public interest and its required duration (Seif, 2008c , p. 9).

So if the purpose of the emergency is to defend the law, then it has to somehow be conditioned by that same law and cannot remain outside it: "The emergency regime, despite being exceptional, is not absolute, but remains within the bounds of the constitution, and law specifies its limits and constraints." (Seif, 2008c, p. 19).

This could be read as a typical liberal proceduralist argument, but I'm suggesting that it should be read in the general context of Seif's work, and his direct exposure to exceptional law. It is relevant to recall here the work of Franz L. Neumann and Otto Kirchheirmer and their critique of Schmitt from a socialist perspective. Schmitt uses the contradiction between liberal ideals and their unfeasibility as a governing system in order to dismantle the legal order *tout court* and install a dictatorship. Neumann and Kirchheirmer, on the other hand, argue that there is a political economy to this infeasibility, a pattern and underlying logic to the unsustainability of

the capitalist state (Neumann et al., 1996). This rescues the ideal of security from the attacks of the right, and reclaims it for the purpose of deepening and embedding it in a socialised democracy, which must also uphold the principle of security, predictability, and publicity if it is to be worthy of its name. This is similar to the sensibility that Seif, and al-Hilaly bring to the notion of the rule-of-law. The unrealisability of the rule-of-law has a specific political economy, a pattern of domination by arbitrary will, and a *system* of discretionary rule. This does not mean that the ideal should be abandoned. Rather its Janus-face could become an occasion for disarming absolutist conceptions of sovereignty, and re-embedding the law in plural and dispersed social practices, modelled on real associative, public, and plural acts. This is why the "right to strike" and "right to association" were central to this project. This is why these lawyers always followed the lead of really existing social and political mobilisations and formations: the strike, the protest, the uprising, the militant organisation, the independent union, etc. What this lawyering does is expose the political economy underlying the rule of lawlessness, and creates a legal consciousness attuned and responsive to those spaces where new solidarities are formed, maintained, and augmented. If the rule-of-lawlessness prevails, we will not only lose whatever semblance of legality remains, but along with the semblance will melt all remaining solidarities, real and possible.

As Laila Soueif described her late husband's philosophy of law: "Seif did not look into law as individual laws, but he looked at a principle of justice. He looked at it holistically and with a concept of justice in mind. You should push law up to its logical conclusion, and you should make it very difficult to allow someone to hide behind the law. This may partially explain why this triggered a legal counter-revolution, where no one pretends to be hiding behind the law anymore." This kind of legal praxis must be put into dialogue with legal theory. I attempt to do this by surveying the literature on "constituent power" in order to understand the contemporary import of the concept. My motivation for doing this is to begin constructing a framework for understanding how rebellious acts figure in the ordinary workings of law and shape the politics of lawyers. I want to read constituent power as a *style of legal reasoning* that can be an exciting resource of socialist and radical-democratic legal theory.

Critique of Metaphysical Sovereignty

The concept and language of constituent power dates back to Abbé Sieyès' (2003 [1789]) reflections on the National Constituent Assembly in 1789. Lucia Rubinelli (2020) wrote a genealogy of the concept from Sieyès, to Carl Schmitt, Ernst-Wolfgang Böckenförde and Hannah Arendt, up to Antonio Negri, Andreas Kalyvas, Andrew Arato and Martin Loughlin. Rubinelli argues that the understanding of constituent power has shifted historically and had very contrasting functions in the thought of these thinkers. Sieyès introduced the concept as a third way between theories of sovereignty that equated it with either representative monarchy or direct democracy. Against both models, Sieyès devised the concept in order to "claim that political power lay with the people but was limited to the authorisation of the constitution-writing process, as carried out by elected representatives. Once the constitution has entered into force, the people's constituent gives way to the constituted order" (Rubinelli, 2020, p. 20). In this interpretation, constituent power acts as an antidote to two totalistic ways of conceiving sovereignty; as equal to monarchical representation or as equal to the absolutism of "the People." It was Carl Schmitt, according to Rubinelli, who popularised a distorted reading of Sieyès. Schmitt aligned his theory of sovereign decision with Sieyès' concept of constituent power in order to undermine liberal parliamentary thought *and* popular democracy. "The result is a complete overthrowing of Sieyès' theory . . . While the latter imagined constituent power as an alternative to the absolute power entailed in the idea of sovereignty, Schmitt identified in it the core of sovereignty's personal and unbounded decisional power" (Rubinelli, 2020, p. 23).

Hannah Arendt read Schmitt's formulation into that of Sieyès (which only confirmed her own worries about the French Revolution), although her position is actually closer to Sieyès insofar as she too attempts to dislodge constituent power from sovereignty by locating it in the *act* of constitution-making, the memory of which contains the promise and possibility of public action and plurality. The concept of constituent power has recently seen a revival of sorts, when Martin Loughlin and Neil Walker organised a conference on the subject of the "paradox of constitutionalism" (Loughlin and Walker, 2008). The paradox of constitutionalism refers to the observation that the constitution's authority relies on the positing of an identity — "the people" or "the nation" — which is said to authorise the constitution, leading to a self-referential circle, where the sovereign will of the people is both summoned by the law and is author of it. Different

solutions are proposed to address this paradox. Legal positivists ignore it altogether, denying it has any relevance to legal science and arguing that the authorship of the constitution exists in the domain of history and not law, strictly speaking. Legal science only deals with the rationality of the law, but not its historical origins. But of course, not many political philosophers would be satisfied with such an answer.

Some thinkers posit constitutionalism as inherently anti-democratic insofar as it aims to contain and regulate pure politics, therefore "the political" is identified completely outside the law and with popular, subaltern mobilisations — for example, in the figure of "the multitude" which defies constitutionalising (Hardt and Negri come to mind here). Other thinkers are less antinomian in their conclusions, focusing instead on the enabling tensions *between* institutionalised politics and extraordinary politics; in other words, the political exists in the dialectic between constituent power (which is identified with radical acts of popular mobilisation in the name of popular sovereignty) and constituted power (legal and political institutions). This is Andreas Kalyvas' (2005, 2009, 2018) construction. But Andrew Arato (2016, 2017) follows Arendt in completely dislodging the concept of popular sovereignty from constituent power. In this way of framing it, "sovereignty" belongs to the dead metaphysics of absolutism and must be done with. Constituent power, if we go back to Sieyès' way of formulating it, cannot be equated with sovereignty — Schmitt's misinterpretation notwithstanding. The identification of sovereignty with constituent power leads to the authoritarian (or totalitarian) conclusion that sovereignty could be embodied in a singular, collective subject with absolute *will*. Constituent power denies that such a subject could be embodied, and even less that it could be a *will*, according to Arato. Also following Arendt, Arato locates constituent power in moments of constitution-making that are based on plurality and promising, not on the imposition of a collective, sovereign will. This makes Arato more enthusiastic about the democratic potentials of new post-authoritarian transitions and costitutionalisms, since for him they exemplify "post-sovereign constitution-making."

I want to draw up a path between Arato and Kalyvas. Like Kalyvas, I want to preserve a place for extraordinary acts of political agitation. But like Arato (and before him, Arendt), I want to dislodge the concept of sovereignty from constituent power. We need to be able to think of

constituent power as a *critique of sovereignty[79] that remains immanent to law*. My intuition is that the kind of jurisprudence enacted by the lawyers I am discussing here forces us to think of law as a conceptual space in which a different kind of post-sovereign politics could be imagined and prefigured[80]. This, of course, is a highly contentious point to make in critical theory. After all, it is more common to argue that law is the ultimate tool of domination, via its technologies of regulation and subjectification (Foucault), its violent mythic qualities (Benjamin), its ideological mystifications (Marx), or its rationalisation of power (Weber). I can think of several possible explanations for the attraction of radical lawyers to law. I could argue that they're caught up in an ideological fetish or delusion. But I'm not attracted to this explanation, since it requires too much patronising on my part. I could say that they approach law cynically, in an attempt to "use" and "instrumentalise" it as a tool for their own advantages. But such a statement also presumes too much.

My contention is that legal theory itself must take seriously the understanding radical lawyers have of their own work, and join their attempt in reimagining law, by reconstructing the implicit theory that guides their activity. My strategy for achieving this reimagining is to think of radical lawyering as relying implicitly on a specific *constitutional* theory, or more accurately, a constitutional *reasoning* or jurisprudence. This constitutional jurisprudence intervenes in the middle space between ordinary legal form ("law") and extraordinary political action ("crowds"), with the purpose of augmenting and enabling free spaces of assembly and political subject-formation. In constitutional theory, this is usually discussed under the problem of "constituent power."

The distance between Arendt and Schmitt clarifies some central riddles in constitutional legal thought, and specifically, the relationship between "the political," dictatorship, and law. Like Schmitt, Arendt can be read as a critic of anti-political legalism, as a prophet of the importance of political agon, publicity, and plurality to the political world. But unlike Schmitt, Arendt would not abandon the sphere of law-making to dictatorial sovereign power and its

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[79] I borrow the idea of a "critique of sovereignty" from Loick (2018).

[80] I am indebted to a conversation with Mohammed Afshary for the term of "prefiguration" here. In his unpublished doctoral dissertation, Afshary too looks at the work of revolutionary lawyers as enacting a kind of utopian prefiguration. I thank him for suggesting this way of expressing it. See the abstract to the dissertation (2018).

exceptionalism. Rather, Arendt would push law against and beyond the limits of sovereign power in order to reimagine it as constitutive of the political world. This makes her difficult to classify. She is not defending a liberal conception of the law as a *contract* between the individual and the state; rather hers is a more imaginative conception of the *covenant* that constitutes and maintains the public world of liberty. Meanwhile, Schmitt would expose the hypocrisies of liberalism and its dictatorial tendencies, while remaining beholden to those same tendencies he repudiates.

In *On Revolution* (1963), and specifically the chapter "Foundation I: Constitutio Libertatis," Arendt puts forward her well known distinction between liberation and freedom: "There is nothing more futile than rebellion and liberation unless they are followed by the constitution of the newly won freedom" (Arendt, 1963, p. 142). Following the philosophy of the Founding Fathers across the pages of the Federalist Papers, she argues that one important insight they had was the importance of building and maintaining an institutional form to the recently won freedom. But Arendt reads the American Revolution and its constitutional inventions against the common wisdoms of liberalism, and specifically against the dominance of Locke. The main question for the Founding Fathers "was not how to limit power but how to establish it, not how to limit government but how to found a new one. The fever of constitution-making which gripped the country immediately after the Declaration of Independence prevented the development of a power vacuum, and the establishment of new power could not be based upon what had always been essentially a negative on power, that is, the bill of rights" (Arendt, 1963, p. 148). Contrasting the Founding Fathers to Sieyès, Arendt argues that the American Revolution did not install the sovereignty of the nation "into the place which had been vacated by the king," rather their founding was built on the *covenant*. Arendt reminds us of two meanings of contract: One meaning refers to the reciprocal promise made between parties that makes them into a political community, and the other meaning is the largely fictitious "social contract" between the ruler and the individual (Arendt, 1963, p. 170). Arendt is reading the American Revolution in republican rather than liberal terms, suggesting that constitution-making need not be imagined as an encroachment on the political but rather is its very condition of possibility. The promise that constitutes the political community — and I'm here suspecting an argument that harkens back to Nietzsche's reflections on law in the *Genealogy of Morals* — creates the space in which political actors could appear to each other as equals *and* different. It is true that the promise appears in an

exceptional singular moment, an event, with the arrival of the pilgrims. But Arendt underscores the fact that such a promise also has a durable quality; it may be founded on the singular moment, but it maintains itself across time by virtue of the mutual trust it generates: "We are confronted with an event of the greatest magnitude and the greatest import for the future, enacted on the spur of time and circumstance, and yet thought out and considered with the greatest care and circumspection" (1963, p. 173). Arendt's legal theory is republican to the core:

> American faith was not at all based on a semi-religious trust in human nature, but on the contrary, on the possibility of checking human nature in its singularity by virtue of common bonds and mutual promises. The hope for man in his singularity lay in the fact that not man, but men inhabit the earth and form a world between them. It is human worldiness that will save men from the pitfalls of human nature (Arendt, 1963, p. 175).

That's why I do not agree with scholars who place Arendt along with liberal constitutionalists (see Sultany, 2017, p. 297) or with populists (Pettit, 1997, p. 8). Sultany argues that Arendt's conception of the "covenant" is an expression of limited government and a manifestation of "pre-political commitments" (Sultany, 2017, p. 297), which I suggest is the opposite of what she's arguing. She is saying that constitution-making *is* the foundational political commitment, and does not "limit" government via the installation of negative liberties, but rather *constitutes* authority and distributes it in the same act. Moreover, she is not a "populist" in the ordinary sense, because she does not imagine "the people" to be a virtuous, sovereign, General Will against the elite. Rather her whole purpose is to disarm all fantasies of the sovereign collective subjective — "the nation" or "the people" — by exposing the anti-political tendencies inherent in these illusions. She did advocate for direct council democracy, but to render this "populist" or antinomian is too far-fetched. Terms like "liberalism" and "populism" obscure rather than clarify the necessary delicate distinctions necessary.

If Arendt recognises the free republic in the act of constitution-making, Schmitt can only see the dictatorship. Schmitt is relentless in reducing *pouvoir constitué (*constituted power*)* and *pouvoir constituant (*constituent power) to the commissary dictator and the sovereign dictator, respectively (2013, p. 127). He achieves this by reading a political theology of monarchical sovereignty into Sieyès, equating constituent power with "nature-creating" and constituted power

with "nature-created" (Schmitt, 2013, p. 123), and identifying the former with "the nation": "the nation is always in a natural state, runs one of Sieyès' famous statements" (Schmitt, 2013, p. 124). And further, Schmitt equates the sovereign dictatorship to the exception in order to designate it as the original condition of all law (2013, p. 128; also Schmitt, 2010). The problem with such a reading, as Rubinelli has shown, is that it forgets that Sieyès has carefully differentiated constituent power from sovereignty (Rubinelli, 2020, 33): His proposal was meant as a critique of monarchical theories of sovereignty. This put Sieyès' at odds with both populists and liberals. Sieyès' argument is that ultimate power is vested neither in an undifferentiated "people" nor with elected representatives who represent "the nation." Rather, the constitutional act "augments" power, it both limits and enables, since the *act itself* introduces the necessary distinction between extraordinary original power and ordinary legislative power, and it must bind itself to such a distinction for liberty to be possible (Rubinelli, 2020, pp. 62-77). Such a model actually confirms Arendt's insight: that the act of assembly, insofar as it enacts a promise, also *binds* itself for the purpose of augmenting liberty and power. It is not an act neither of an absolutely sovereign people nor an absolutely sovereign representative, but it introduces this distinction in the first place via its self-binding qualities.

I am well aware of the problems in Arendt's legal philosophy. She commits herself to a dangerous American exceptionalism that would have to remain blind to the racial dimensions of the "achievement," and would place such a stark contrast between the American and French Revolutions that may be unwarranted. I am not interested in defending Arendt against these critiques. What interests me here is the philosophical import of her insight. Arendt suggests that law and the political world need not be imagined as completely separated. If our conception of law is dislodged from the metaphysics of sovereignty and the nation-state, and we instead imagine it to be grounded in an act of *reciprocal promising*, then perhaps the law can in certain circumstances become a space for the appearance of a politics that pushes back against the fantasies of sovereignty. This politics, as Arendt knew too well, is fragile and conditioned.

Another question in relation to Arendt's reading is whether it can be squared with a socialist legal theory and praxis, Arendt's anti-socialist tendencies notwithstanding. Recent socialist legal thought has generated a new understanding that further specifies and clarifies the nature of the socialist critique of law without falling back into antinomianism. As Igor

Shoikhedbord (2019) has recently shown, Marx's critique of law is not an absolutist, ahistorical nullification of all law, nor is it as simplistic as the common notion that law belongs to the "superstructure," which is either an incoherent or banal point to make. Rather, Marx's critique of law shows that the dominant legal forms of capitalist society are historically conditioned, and that it may be necessary to transcend *these* specific forms in order to achieve emancipation. This neither means that the achievements of bourgeois constitutions were not important to Marx, and nor does it mean that post-capitalist societies will be lawless. Insofar as capitalist law relies on fantasies or illusions of the sovereign, atomised legal person, and insofar as the other side of this coin is the fantasy of the sovereign nation-state, then Marx and Arendt could be read together (Fine, 2001). Both commend us to imagine a law beyond capital and the nation-state, a law that is embedded in mutual recognition, political association, un-alienated public work, and common habits. We see glimpses of the utopian promises of such a law whenever the weak wield the promise of freedom and equality to make themselves heard. The raising of such a plea does not mean that the weak are deluded; rather through such acts, the weak expose the unjust abstraction of law, and prefigure a different law, a different constitutionalism, that will resonate with the richness of plural human voices and needs and the full fabric of social practices. This is the heretical insight of E.P. Thompson:

> There is a difference between arbitrary power and the rule of law. We ought to expose the shams and inequities which may be concealed beneath this law. But the rule of law itself, the imposing of effective inhibitions upon power and the defence of the citizen from power's all-intrusive claims, seems to me to be an unqualified human good. To deny or belittle this good is, in this dangerous century when the resources and pretensions of power continue to enlarge, a desperate error of intellectual abstraction (2013, p. 266).

He suggests that:

> The rhetoric and the rules of a society are something a greater more than a sham. In the same moment they modify, in profound ways, the behaviour of the powerful, and mystify the powerless. They may disguise the true realities of power, but, at the same time, they may curb that power and check its intrusions (Thompson, 2013, 265).

My interpretation of radical lawyering is premised on a reimagining of law beyond the metaphysics of sovereignty and contractualism. If law is imagined as a promise, possibly a utopian promise, then this opens up a space for a certain kind of engagement with law that prefigures a different constitutionalism. This alternative constitutionalism can be imagined as a "social constitutionalism" (Teubner, 2012) or a "post-sovereign constitutionalism." Social constitutionalism is a framework that acknowledges the existence of interdependent, overlapping and plural legal worlds. This is evident in the centrality of "trade unions" and "labour unions" in the jurisprudence of radical lawyering. At the same time, the "post-sovereign constitutionalism" takes its lead from acts of resistance, dissent, assembly and disruption, pushing against any *monopolisation* of sovereignty by the state, in defence of the unstable distinction between virtual and real sovereignty. This explains the centrality of the "right to strike" in this jurisprudence. Benjamin (1986 [1921]) was on to something when he noted the imminent intrusion of the "general strike" upon the normal workings of law: So, what if we imagine law from the point of view of the "right to strike"?

7. Wounds of the Soul

In his novel *Sharaf* ("Honour") (1996), Sonallah Ibrahim[81] narrates a particularly gruesome scene of torture suffered by the eponymous protagonist (pp. 28-36). Prior to this, Sharaf kills a foreigner who had attempted to rape him. After he is arrested, the police officers interrogating him predictably resort to torture in order to extract a confession:

> The *mukhber* attached a wire to my shoulder and placed something beneath my feet, and I heard a voice say: "The plug is not working" [. . .] Slow moments had passed and then suddenly I felt a stick of fire penetrate my leg and I screamed. This was repeated with the other leg. I moaned and suddenly felt I was jumping from where I was sitting and flying in the air. Then I lost consciousness. (1996, p. 32)

> I heard the officer say: "Pick a girl's name to call you by." I said: "Why? I have a name!" "What do you think of Sharifa? Or Fatheya?" "Please, have mercy…" "Do what we say or we'll get your sister and strip her" "No! Anything but this! Please, I'm prepared to do anything. I beg you." (1996, p. 33)

The scene emphasises the entwinement of masculinity (or emasculation), sexuality, and torture, revealing the complex psychic dynamics of honour involved in state control over the body — and soul. The rest of the novel locates these dynamics in the complex social structure of the prison itself, where the prison is portrayed as a "total institution" that reflects the class and status divisions outside. In the "Acknowledgements" page after the end of the narrative, Ibrahim thanks his friends who inspired the story. He especially thanks Ahmed Seif al-Islam, as well as Al-Nadeem Centre which "permitted him to consult some of their archival documents" (Ibrahim, 1996, p. 545). This chapter is about Al-Nadeem Centre.

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[81] The novel is part of a broader literary trend in Arab novels, usually called "prison literature." Other writers who wrote similar accounts, some of which are autobiographical, are Nawal el-Saadawi, Saadallah Wannous, and Abdulrahman Munif. Munif wrote the first "prison novel," *East of the Mediterranean*, published in 1975 (See Kassab, 2010, p. 30; and Hafez, 2002).

The human rights imaginary is saturated with stories of unspeakable cruelty. Indeed, the history of this imaginary can be read as a long record of such evils. Take torture, for instance. It was only with the rise of the Enlightenment, and Western European voices, such as Voltaire and Cesare Beccaria, that a new spirit and sense of humanitarianism advocated the abolition of torture on both moral and practical grounds. Morally, it was deemed a sign of barbarism, but more crucially, it was newly perceived as ineffective, if not downright self-defeating. Lynn Hunt attributes the popularity of this humanitarian sensibility, and the creation of an audience for the French Enlightenment specifically, to the rise of the 18th-century epistolary novel that intended to induce sentimental education and the cultivation of sympathy for suffering (see Hunt, 2007, pp. 81-82).

There is no denying that the global discourse on torture inherits and diffuses this humanitarian rage against "barbarism." There is reason to be sceptical of humanitarian impulses, as Michel Foucault and his disciples have taught us. One way to understand the humanitarian impulse as a desire for classifying, calculating, differentiating, labelling, and distributing bodies and souls according to schemas of governmentality and biopower. Torture is no exception in this regard. In fact, as Talal Asad suggests, definitions of torture and "cruel treatment" have the discursive effect of classifying cruelties and their perpetrators according to degrees of inflicted pain. Of course, this turns out to be a strange exercise in turning pain into a private, internal affair, sort of like a property of the human, and it carries with it the normative prescription or legitimation of other forms of violence. I will explain this argument further throughout this chapter.

Nevertheless, I want to push this critique further. To put it rather bluntly, I think the "humanitarian standpoint" is not only wrong because it upholds governmentality; I think it is wrong in a much deeper sense. The humanitarian standpoint misses the point entirely and systematically. I also cannot resist the suspicion that torture persists because we continue to misunderstand it. Because we mistake the problem of torture as a problem of pain, we miss its full anthropological, historical, and psychic significance. Too much is at stake in the question of cruelty that moral revulsion alone will not do.

In this chapter, I will look at one example of anti-torture work. Al-Nadeem Centre for the Rehabilitation of Victims of Violence (henceforth shortened to Al-Nadeem) is a clinic in Cairo

that was founded in 1993 by a group of psychiatrists and doctors who dedicated their life, work, and writing to exposing and combatting torture[82]. The clinic was set up to offer services to victims of torture, specifically clinical rehabilitative therapy, pro bono legal advocacy, and political campaigning. Al-Nadeem is a good starting point for disentangling torture from the humanitarian standpoint and teasing out alternative ways of narrating it. First of all, and in line with a recurrent theme in my dissertation, the individuals who founded the centre were Marxists and feminists, and the connection between these two strands of their thinking and its relation to their anti-torture work suggests an alternative reading of torture that I will attempt here. Secondly, despite the fact that Al-Nadeem modelled itself on other campaigns of humanitarian psychiatry — in terms of the scope of its mission — other modes of thinking and practice came to add more layers and complexity to the project that "humanitarianism" cannot capture. To this end, I will attempt to tease out another philosophy of torture, or at least to begin a conversation with this project that may guide the path towards such a philosophy. I rely on annual reports and publications that give an overview of Al-Nadeem's history and activity, publications by doctors who worked there, and a long interview with one of its founders, Aida Seif Al-Dawla.[83] I also place Al-Nadeem in an intellectual context by bringing in other Arab voices who spoke about torture and its evils, particularly Tunisian physician and later president Moncef Marzouki and Syrian physician and writer Yassin al-Haj Saleh. I do not think it is a coincidence that all these figures studied medicine, and the connection between the medical profession and a concern about torture is something should be acknowledged. It transpires that, medicine — like law — is a space of critique in the classical sense. It is also not a coincidence that many of the terms used to describe critical activity — diagnosis, prescription, and "social pathology" — have their origins, for better or worse, in medicine.

I wrote this chapter out of disappointment — a double disappointment. I am increasingly uncomfortable with the ways torture is simultaneously exceptionalised and banalised in

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[82] For more on the history of torture in Egypt, see Kandil (2004), and Fahmy (2018, especially ch. 5). For a global history of torture, which informs my analysis, see Hajjar (2013), Rejali (2009) and Khalili (2012). I want to highlight here that I do not read "torture" as simply confined to "authoritarian regimes" or disconnected from a global history of violence. Rather the kind of torture exercised by authoritarian regimes is connected to travelling technologies and strategies, and which were constituted by systems of slave or courvée labor. Contemporary torture is a continued manifestation of this global modernity.

[83] The interview was conducted in Cairo, Egypt on November 5, 2018.

contemporary discourses. It is made exceptional insofar as it becomes tied to a certain medieval horror that offends modern sensibilities. It is made to stand outside the normal workings of domination. It stands for oppressions that happen "out there," beyond modern, secular time. Torture almost comes to speak of unspeakable metaphysical horror that cannot be represented. In this way, it becomes separate from other clear forms of political violence: warfare, incarceration, and displacement. At the same time, I am equally uncomfortable with the way torture is banalised as simply a matter of rules, procedures, definitions, classifications, and proofs, as I go on to describe. I do not mean that these technicalities do not matter, but rather that their functions can only be properly appreciated within a wider framework and account of the ethical significance of moral injury. The problem with the proceduralisation of torture is that it, paradoxically, colludes in making torture an exceptional event, entirely cut off from the normal circuits of domination.

It is my goal in this chapter to push against these two collusive tendencies, which are, I suggest, related to the "humanitarian standpoint" as I explain throughout the dissertation.[84] The humanitarian standpoint separates the spectator of violence from its object, thus rendering the object (the victim) completely beyond the mode of politics. Secondly, the humanitarian standpoint is particularly sensitive and is offended by gratuitous pain, in such a way that the victim of pain is reduced to the pain they suffer. Thirdly, the more the humanitarian standpoint is offended by the cruelty it witnesses, the more it devises new rules and rationalities to put an end to the excessive violence it cannot face. The unintended consequence of such rule-making machinery is to make it harder to listen and respond and it narrows the imaginative possibilities of what "trauma" can demonstrate.

I put forward two arguments in this chapter. Keeping with a recurring theme of the dissertation, first argument is that anti-torture practice can point towards a "neo-republican" conception in which torture is understood as having a collective dimension. Torture, in such a conception, is a stark example of a more wider circulation of sovereign violence that reproduces

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[84] For a critique of the "humanitarian standpoint" that inspired much of the content in this chapter, see Wendy Brown (2004, p. 453). Brown argues against the "minimalism" of the human rights imaginary – exemplified by Ignatieff – and which then puts limits on radical demands and buttresses governmental powers. This is what I refer to as the "humanitarian standpoint." Being sympathetic to Brown's worry, I will try to formulate a different kind of perspective on injury and its victims.

itself in multiple forms and across different spheres. By tackling torture, these socialists and feminists were pointing towards the centrality of sovereign violence in maintaining a more wider structure of inequality that manifests itself in physical, psychic and existential forms. The torture scene extends beyond the individual event, mapping out a more philosophical dimension pertaining to "sovereign violence." The second argument is that such a conception helps redefine the related notions of "trauma" and "dignity." The reflections and work of anti-torture intellectuals and professionals throw light on how individual trauma reflects a wider dynamic of collective meaning(lessness), and they help explore important questions regarding the role of memory and narrative in critiquing sovereign violence. Moreover, those reflections throw up questions regarding the meaning of "dignity" and the function it plays in normative and political struggles. In turn, those reflections on dignity and trauma will strengthen the original thesis: of a need to think beyond the humanitarian standpoint, and instead to think of torture as an exemplary case of sovereign violence that has collective, symbolic, aesthetic and metaphysical dimensions as well. And more contentiously, because torture exemplifies the intertwinement of sovereign power with citizenship – what could be called "sovereign citizen-subjects" – it negatively mirrors the cracks within citizenship itself, and possibly pushes us to re-examine the *aporias* of citizenship itself – aporias that may generate an anti-sovereign politics.

Birth of a Clinic

Al-Nadeem was founded in August 1993, in a small flat in Ein Shams on the outskirts of Cairo by three psychiatrists involved with the Egyptian Organisation of Human Rights (EOHR): Aida Seif al-Dawla, Suzanne Fayyad and Abdullah Mansour. Another doctor, Magda Adly, later joined the founding group. The team initially expected they would receive political victims of torture, but to their surprise, did not receive this kind of case until the year 2000 during the second Intifada and especially in 2003 during the demonstrations against the Iraq war. Rather, the majority of cases they received were patients uninvolved in politics who were tortured in police stations or prisons, or their family members suffering from secondary trauma, along with lawyers and people who work regularly with victims of violence. They also offer their services to victims of collective violence, such as crackdowns entire villages or neighborhoods that are ransacked by the state. Seif al-Dawla commented on the founding moment, saying:

We thought we were the "political activists" who understood the country. We discovered that we knew nothing. The main commonality among torture victims is that they are poor — and that when they clash with the police, they have no one to contact. And most people are not tortured to get confessions, rather they are tortured to, for example, accede a piece of land or give up an apartment they're living in. Or as a service to a third-party. That's it. We did not start receiving street activists until 2000, specifically with the Intifada. But this does not mean that there was no "political" torture.[85]

The biographies of two of the founders — Aida Seif el-Dawla and Magda Adly — underline some of the influences that went into their work[86]. Magda Adly was born to a family with no relation to politics, but she participated in summer camps organised by the government during the 1960s, which gave her a kind of appreciation of the Nasser regime and she joined Tanzim al-Shabab (The Youth Organisation) in her first year of secondary school. Like many of her contemporaries, the 1967 defeat forced her to recognise that "liberation of land without allowing people to participate in the decision-making process will not work." (Al-Mehdawy, 2016). She joined the 1968 student protests, and then decided to leave the Youth Organisation and in 1971 joined the Workers Party, because she shared its opinion that the Nasserist regime represented state capitalism. She studied medicine at Al-Azhar and volunteered to aid soldiers during the 1973 war. She was detained twice, and it was in prison that she saw the extent and scope of torture for the first time. She recounts how "women came to her to tell their stories of being subject to beatings and sexual assault, although they had nothing to do with politics or jihadist activities, but simply for being the wives of Islamists." (Al-Mehdawy, 2016).

Meanwhile, Aida Seif el-Dawla's father, mentioned in the previous chapter, was a leftist lawyer and prominent nationalist thinker. Aida was moved to leftism in no small part by witnessing her father being arrested when she was still a schoolgirl. She was at the margins of the student movement in 1972, but later became more active and also joined the Workers Party. She co-organised a feminist-socialist reading group dedicated to reading the history of

[85] Interview with Aida Seif al-Dawla, Cairo, 2018.

86 See Al-Mehdawy (2016) for a biography of Adly. Also confirmed in interview, September 2, 2021.

revolutionary feminism in Latin America and Russia, and out of this reading group emerged a feminist organisation, Al-Mara'a al-Jadida (The New Woman) in 1984.

The idea for Al-Nadeem first emerged after the 1989 workers' strike at the Helwan Iron and Steel Company when many workers were arrested, along with members of EOHR (including Mohammad Sayyid al-Said) and many former members of the student movement. Seif al-Dawla recounts:

> When they got out, we found out that they had all been tortured. I had three personal friends who were tortured. Two other doctors and I tried to help. We all worked at a hospital and therefore were able to do so. But we were not able to examine them or write a report, once it became known that the injuries resulted from police torture. (Interview)

The idea initially was for Al-Nadeem to remain part of EOHR, but this became increasingly difficult as the director at the time, Bahey al-Din Hassan, was concerned that there was a conflict of interests given that the doctors were members of the Workers' Party. He demanded access to whatever data they collected for research purposes but since most of the data would be protected by principles of medical and psychiatric confidentiality, they felt that this was not feasible and created Al-Nadeem as a separate body from EOHR.

In January 1995, the group decided to expand to another flat in the centre of Cairo that would be more accessible. They hired an executive director and a general practitioner, created a legal unit, started conducting fieldwork, medical assistance, and monitoring, and published annual reports (Al-Nadeem, 1997, pp. 10-12). Since 1998, the organisation struggled with intensifying attempts on the part of the government to crack down on civil society organisations, in particular through a controversial NGO draft law that placed great restrictions on their activities. In 1999, Seif al-Dawla was at the forefront of a nationwide campaign against the draft law, and held a one-week hunger strike to lobby parliament to reconsider the law (HRW, 2003). In August 2003, the government rejected Al-Nadeem's application to register as an NGO, and so they continued their operations as a private clinic. Seif al-Dawla is also the founder and the chairperson of the Egyptian Association Against Torture. Al-Nadeem receives its funding from the Dignity Institute Against Torture in Denmark and Medico International in Germany

(Interview[87] and has collaborated with the International Council for Rehabilitation of the Victims of Torture (Al-Nadeem, 2009, p. 5).[88]

It is difficult to ascertain the extent to which the feminism of Al-Nadeem's founders shaped the project. Seif al-Dawla, for example, told me she thinks the project cannot be labelled as "feminist," though it offers some women-only services. A feminist sensibility can be seen in their choice to call the clinic a centre for the rehabilitation of "victims of violence" rather than of torture. This enabled them to include domestic and gendered violence under Al-Nadeem's scope, and in 2000, an extra programme was developed dedicated solely to women and violence against women, but it received separate funding. Nevertheless, Aida denies that "feminist" adequately captures this dimension of Al-Nadeem's work. Magda Adly's writings on torture, however, reveal a clear feminist impetus. For example, she begins her booklet on torture with a reminder of the centrality of the body to any psychic and moral experience, beginning from the agonising separation from the mother and the severance of the bond between mother and child (Adly, 2007, pp. 7-8). She notes that the violence of torture extends and reproduces itself in the private sphere, thereby disrupting the borders that separate private from public violence:

> Violence extends to the private sphere to include wider and weaker social strata in the social body. The child is subject to a gratuitous amount of violence at school, at home, in the workshop, in social services. The woman also receives her share of violence in her father's home, her husband's home, at work, in the street, on public transportation. (Adly, 2007, p. 61)

There is a notable radical-feminist line of thinking here, particularly in the emphasis on the articulation of patriarchy with law and the centrality of the family in the reproduction of violence (Adly, 2007, pp. 66-68).

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[87] Interview with Aida Seif al-Dawla, Cairo, 2018.

[88] Since the 2013 coup, the organization has faced increasing harassment from the military regime. In November 2016, a travel ban was imposed on Seif al-Dawla. In February of the same year, the centre was presented with an order for closure from district authorities for "breaching license conditions." In February 2017, the offices were sealed off by the police, and the building janitor arrested. They have been harassed by the state through a high-profile case (Case 173, also known as the NGO foreign funding case). In June 2018, one of the co-founders, Magda Adly, was interrogated and released on bail. Al-Nadeem remain shut at the time of writing and the travel bans on Al-Nadeem staff are still in effect. In January 2018, the centre was awarded the Amnesty International Germany Human Rights Awards.

Al-Nadeem and its work can be situated in a global context. The first major organisations to work with people who had been tortured were the International Rehabilitation Council for Torture Victims (IRCT) in Denmark, founded by Inge Genefke in 1982, and the Medical Foundation for the Care of Victims of Torture in the UK (later Freedom from Torture), founded in 1985 by British psychotherapist Helen Bamber (Kelly, 2011, pp. 71-78). Both groups developed out of Amnesty International medical groups that were focused on providing assistance and advocacy for refugees, and later contributed to the construction of torture as a specific and singular field of clinical knowledge. This clinical field was crucial in establishing trauma and PTSD not only as a source of moral authority for the campaign against torture, but also as a method for extracting and producing legal facts. The symptom, then, comes to provide evidence for the event, inevitably creating a tension between care and litigation as priorities and fields of work. Al-Nadeem is aware of such a tension in its work:

> We may face a dilemma between the duty to treat the injuries caused by torture for the sake of the patient's health, and the worry about providing such treatment prior to the transferal of the patient to the forensic authority to formally document the injuries. Another dilemma is that between preserving the confidentiality of the information provided and the necessity of exposing violations. And since there are no decisive texts regarding these issues, doctors must place the interests of the patient prior to all other considerations, and must act according to the dictates of their professional ethics and conscience, taking into account the patient's opinion, as someone fully eligible and mature, and the doctor must make clear the available options and alternatives. (Al-Nadeem, 2009, p. 7)

The Al-Nadeem team are also careful to differentiate between clinical work, human rights work, and political activism — but they believe these must be related to each other for the simple reason that violence is irreducibly political:

> Over the years, we discovered that torture victims are not "classical patients." We realised that they must be full partners in the process of rehabilitation. Because in the end, you work, you go home, you're safe and sound. While they have to go back to the same house or the same neighbourhood where they were arrested. So, there had to be an agreement on what could be done and what could

not be done. Also, they do not see themselves as "ill," and rightly so. They were subject to something extraordinary and their reaction is natural. And hence we started to change the framework of the "clinic" and expanded the concept of rehabilitation, so rehabilitation is every activity that would help the person restore some of their "feeling of dignity." For those who wanted to publish their testimonials, we did this. If someone wanted to publish in the press, we assisted them. If someone wanted to talk to the media, we helped them. If someone wanted to litigate, we brought them lawyers. So, the concept of rehabilitation expanded greatly throughout the years.[89]

The humanitarian standpoint and its critics

While Al-Nadeem's work shares some features of humanitarian psychiatry, it also recalls other traditions of political-leftist psychiatry, such as the work of Frantz Fanon and Erich Fromm. As I explain further in the chapter, the signs of leftist influences are: the intense focus on the political structuring of trauma (which Al-Nadeem usually describes as a "state policy"), the specific ways it inserts existential themes around alienation and guilt into its analyses, and the insight into the ways intersubjective violence travels and reproduces itself across the private and public spheres. These features indicate that something more than humanitarian "rescue" is going on. Nevertheless, this work shares with humanitarian psychiatry a strict refusal to assign meaning to violence, that is, a refusal to consign violence to theodicy or myth — whether religious, political, or both. In this section I elaborate on what I mean by the "humanitarian" in "humanitarian psychiatry," before going on to situate Al-Nadeem's work within this debate in the following section.

The rise of an anti-torture sensibility must be differentiated into two stages. The early modern hostility towards torture was concerned with issues of due process, as well as the ineffectiveness and impracticality of torture procedures. Meanwhile the second stage can be dated back to 1973, with Amnesty International's 1973 publication of its *Report on Torture*, and

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[89] Interview with Aida Seif al-Dawla, Cairo, 2018.

the interest in "prisoners of conscience" especially in countries of the Eastern Bloc, as well as Latin American dictatorships, including Pinochet's Chile (Kelly, 2011, pp. 35-38). As Samuel Moyn notes, the rise of anti-torture advocacy and campaigning is a relatively recent moral phenomenon that stands in sharp contrast to the general indifference to torture during colonialism (2014, pp. 78-79). According to Tobias Kelly, Amnesty International's campaigns against authoritarian regimes were a specifically new "political form" in the 20th century (2011, p. 8). Even in the drafts submitted in the 1940s during the formulation of the Universal Declaration of Human Rights, torture was not singled out as a special violation; more attention was given to the right to life, freedom from arbitrary arrest, freedom from slavery, and the right to a fair trial. Crucial figures, such as René Cassin and Charles Malik, even thought that the term was too vague to be of any use, and Malik wondered whether torture includes "forced labor, unemployment or dental pain" (Kelly, 2011, p. 29). Amnesty International was "very significant in putting the prohibition of torture on the international agenda" (Kelly, 2011, p. 35), especially through its annual reports on torture around the world, which inspired Elaine Scarry and Judith Shklar's important theoretical interventions (more on these below), as well as intense advocating for political prisoners. Important features of the new anti-torture movement differentiate it from its early modern ancestor: 1) the effort at establishing and implementing international norms, standards, and conventions for prohibition rather than addressing the direct political causes of torture; and 2) emergence of pain and psychological suffering as the central motives for opposition, rather than the legal issues regarding due process that concerned someone like 18th-century Italian philosopher and jurist Cesare Bonesana di Beccaria (Kelly, 2011, pp. 8, 27, 38). The new anti-torture movement treated pain and suffering in the abstract, as objects that call for international solidarity and redress, rather than as effects of the larger issue of an absent rule of law.

Meanwhile, the therapeutic reading of torture emerged from multiple sources. First was the growth of refugee populations in a number of places, including the UK and US: "In many places, the anti-torture movement became a torture rehabilitation movement, focused on providing therapeutic services" (Kelly, 2011, p. 9). For example, the Medical Foundation for the Care of Victims of Torture, which grew out of the Amnesty International medical group and is the main UK organisation in this field, primarily provides therapeutic services using a "holistic approach" that combines medical, psychiatric, legal, and logistical assistance (Kelly, 2011, p.

78). A large group of international experts in law, health, and human rights led a three-year collective effort to produce a set of guidelines, which ultimately became an official UN document in 1999 as the Istanbul Protocol. It standardised correct procedures for the monitoring, documentation, investigation, and assessment of torture cases to be a guide to activists, lawyers, forensic experts, and governments. The first attempt at adding rigour to torture claims through the use of probabilistic assessment, the Istanbul Protocol grew out of the torture rehabilitative movement.

This activism also led to the development of new, supposedly better, international-legal definitions of torture. While the Universal Declaration of Human Rights condemns "torture or cruel, inhuman or degrading treatment or punishment" in Article 5, it did not specify the meanings of these terms or how they are to be assessed. The later UN Convention Against Torture (adopted on 10 December 1984) contains a much more expanded and precise definition of torture. The drafting of the Convention was initiated soon after the "Torture Declaration" issued by the General Assembly in 1975. The key characteristics in this new definition of torture — derived from Amnesty International's definition — were that torture entails severe mental or physical pain "intentionally inflicted" on a person, and that this pain is inflicted by a public official or with the "consent or acquiescence" of a public official or a person acting in an official capacity. The definition also differentiates torture from pain or suffering "arising only from, inherent in, or incidental to, lawful sanctions." The Convention obliges governments to take all measures necessary to prevent torture. The prohibition is absolute and does not allow legal absolution from responsibility on the grounds of following orders from superiors, in line with the reasoning and precedent set by the Nuremburg Trials.

The ban on torture has not rooted out torture. Rather, as Darius Rejali argues in his encyclopedic *Torture and Democracy* (2009), the early and late modern bans on torture transformed the logic, models, technology, and enactment of torture. Rejali hypothesises that torture was transformed from being a public spectacle — such as, the brutal execution of regicide Damiens notoriously narrated by Foucault in the first chapter of *Discipline and Punish* (1995 [1975]) — to "covert torture" that takes place in dark rooms and is carefully hidden from sight and so is much more difficult to track or verify. This means that by the early 20th century, liberal democratic states had not weeded out torture, but on the contrary, had transformed its

technological efficacy, notably the effort to leave as few scars as possible. This is not to say that torture's modern history and development entirely follows a "technological" rationality, because other contingent motives come into play in, for instance in the choices made by torturers in their styles and techniques, taking in convenience, cost, multifunctionality, and habit. It does mean, however, that torture has become significantly more sophisticated all around the world.

Pain is so central to this infrastructure around torture that one of the most important reflections on the phenomenon is dedicated to proposing a philosophy of pain. In her renowned *Body in Pain*, essayist Elaine Scarry asserts, "Physical pain does not simply resist language but actively destroys it, bringing about an immediate reversion to a state anterior to language, to the sounds and cries a human being makes before language is learned" (1987, p. 4). This makes pain an "unreliable narrator of bodily events" (1987, p. 6), as doctors know all too well — pain cannot tell us what is happening in the body, or why. Pain, according to Scarry, is invisible and impossible to express concretely that it must be objectified in something, an external object, a malfunction, a symptom, but it can never remain itself, it can never remain "pain." This makes pain inherently unstable as a verbal or communicative sign, and it must always be framed and reframed, linked to some other causes or circumstances from which pain is inferred as residing in, a "cause" for the pain that is then identified with it. This is problematic, according to Scarry, since it spatially separates the pain from the body and displaces it to an outside cause or agent (1987, p. 17). Scarry is concerned with precisely the way in which pain is removed from the body and becomes "a cause," which then obscures the power in question that must resort to pain. Pain is objectified, embodied, in some external agent (say, the electroshock device, or the whip), which then distracts attention from the general context of torture.

> While torture contains language, specific human words and sounds, it is itself a language, an objectification, an acting out. Real pain, agonising pain, is inflicted on a person; but torture, which contains specific acts of inflicting pain, is also itself a demonstration and magnification of the felt experience of pain. It is the very processes it uses to produce pain within the body of the prisoner, it bestows visibility on the structure and enormity of what is usually private and incommunicable, contained within the boundaries of the sufferer's body. (1987, p. 27)

It is precisely this incommunicability of pain proper, pain-in-itself as the language of the mute and the indecipherable, that makes it both "incontestably real" as pain, but highly contestable as power. It can only speak for itself as real; it cannot compensate for the contestability of the power that tortures. It cannot help, therefore, in verifying that what actually took place is communicable. It only adds uncertainty to the power of the regime, and hence, to the very event that represents the reality of the regime's power: "Torture is a grotesque piece of compensatory drama" (1987, p. 28).

Scarry's book was inspired by Amnesty International's reports and accounts of torture from around the world. Moyn credits it with being a great galvanising force among America's cultural and intellectual elite in making torture and pain subjects of concern (2014, pp. 81-82). Scarry was interested in translating the narratives she read into an essay on pain, on how pain unmakes the world of the tortured, narrows it down to concentrated agony in a body part or an "object" or instrument of torture, thereby adding instability to the regime or "structure" of the torture scene, with its many actors, instruments, messages, and so on. The irony, however, which Moyn notes, is that Scarry has fallen prey precisely to the myth she is contesting. According to Moyn, Scarry was the first scholar to place torture at the centre of her moral system, but the problem is that she never saw it as a concrete social and political event with concrete implications. Echoing Judith Schklar's (1986) judgment of the book, Moyn argues that Scarry does not see torture as a political phenomenon at all. She ignores the world of perpetrators, victims, and the political worlds that bring them together, and instead focuses on a highly abstract concept of pain: "Scarry's critique of torture reflects a failure of constructive political imagination in a way that makes her a representative thinker of our pain" (2014, p. 87).

The most interesting critiques of the discourse around torture, such as those of Moyn and Talal Asad, take Scarry's book as their point of departure. *The Body in Pain* is significant because it reflects a common, if not hegemonic, conceptualisation of torture as a problem of imposed severe pain. This leads to questions such as: How to define torture? How to measure pain? How "severe" is the severe pain that qualifies as torture? This is not simply a conceptual exercise, but a legal and forensic one. As Kelly shows, the legal debate around torture increasingly concerns the measurement of pain, how it qualifies as "torture," and the relationship between pain and intention (2011, pp. 10-11). This leads to an increasing formalisation and

legalisation of the definitions of torture and the way in which it is spoken about, which narrows the scope of questions that can be asked about what torture is and what it does. Effectively, this way of speaking about torture, as a problem of pain, cannot philosophically differentiate between torture and a toothache. And therefore, as I show here, while pain may be the most obvious and immediate starting point for understanding torture (pain as the "incontestably real"), it is also the most vaporous and uninteresting.

Scarry puts forward two major claims crucial to her argument about the moral specificity of pain. One is the "incommunicability" or "invisibility" of pain — pain as intimately tied to private language — and the second is about the effects of such a deeply private experience. Pain, according to Scarry, destroys the world of the victim by concentrating her attention and experience of the world into the object or cause of her pain, thus granting the torturer absolute sovereignty or absolute power. The problem with such a reading of torture is that it mischaracterises pain. Talal Asad (2003) describes such an understanding as representative of a secular understanding of pain as the most private experience and hence as the origin of some sort of certainty or immediate truth that is absolutely internal to its subject. Asad follows Ludwig Wittgenstein's argument in *Philosophical Investigations* that pain is a public relationship, tied to a background grammar with a set of language-games, exemplified by conventional expressions of pain: the scream, the baby's cry, "ouch!" Asad writes: "Indeed, if doubt about another's pain were always irresolvable, as Scarry claims it is, the repeated infliction of cruelty on victims of torture would be hard to understand — unless the *repeated* infliction of suffering is to be accounted for as an epistemological obsession" (2003, p. 81, emphasis in original). Asad is critical of any attempt to frame pain, cruelty, or suffering within a model of a continuous, single, agential body against a world of objects. The duality between interior and exterior, incommunicable and communicable, visible and invisible, informs the Western, secular view of the self as an intentional subject with private sensations, thoughts, and desires which are subject to the intricate confessional power of knowledge that aims to insert itself within this interior and inaccessible space. Asad is critical of any "ownership" model of agency, in which the self has ownership of its sensations and representations of itself. Another related argument is that the duality between a controlled reason and uncontrolled passion, which is at stake in creating the binary between private pain and its representation, is arbitrary.

> The person who suffers because of another's pain doesn't first assess the evidence presented to her and then decide on whether and how to react. She lives a relationship. Pain is located in "modes of living a relationship." The ability to live such relationships over time transform pain form a passive experience into an active one, and thus defines one of the ways of living sanely in the world. (Asad, 2003, p. 84)

The moral sensibility regarding pain, and the desire to minimise it, is particular to modern secular society, according to Asad. "The idea of cruelty in modern discourse has distinctive characteristics, and . . . in describing them one is also identifying aspects of the secular" (Asad, 2003, p. 101). Asad scrutinises the modern effort to abolish torture since the Enlightenment, and specifically Article 5 of the Universal Declaration of Human Rights. Asad is wary of any portrayal of this history as a narrative of progress, a story of how punishment and law became "humanised." He shows that the abolition of torture also carries with it a prescriptive normative and legal judgment about pain and suffering. More precisely, it prescribes a certain way of looking at pain as something measurable and classifiable, and thus capable of carrying moral truth. The modern dedication to the elimination of pain and suffering then becomes paradoxical or arbitrary, for it cannot explain why juridical torture is qualitatively different from the pain of regular punishment. This gives rise to the question of why "cruel, inhuman, and degrading treatment or punishment" is never applied to warfare or collective forms of controlling entire populations (Asad, 2003, p. 116). The abolition of torture, or the desire to eliminate pain, thus has a more narrow function, which is to legitimate the scope of acceptable, lawful pain — a scope that appears arbitrary insofar as it presupposes and naturalises the property model on which it depends. Moreover, this desire to make pain calculable and measurable adds to scope and intesity the technologies of the modern state, and removes any alternative way of conceiving suffering or duty. In contrast to the story of Enlightenment humanitarian reason, Asad follows John Langbein's argument that the abolition of juridical torture was the contingent result of the decline of the Roman canon law of proof and the increasing admissibility of circumstantial evidence (Asad, 2003, pp. 107-108).

Asad's critique touches upon a crucial issue that haunts anti-torture discourse: What is the ground for opposing torture? Can "pain" play such a role? Can pain provide a foundation for

a moral mission of eliminating suffering? Asad argues persuasively that it cannot, since the measurement of pain is an arbitrary exercise that hides a more fundamental Western misunderstanding. Nevertheless, in framing the question as one of the elimination of suffering, Asad is implicitly accepting the argument that the abolition of torture is actually about pain or "severe pain." He implicitly accepts the utilitarian, Benthamite logic, or Scarry's reasoning, as the only one that could explain the moral relevance of pain. But in fact, the very history of the attempt at legal abolition shows that an abstract conception of pain is only one possible foundation for grounding a morality opposed to torture. As Tobias Kelly argues, the crucial feature of torture claims is "not the quality or nature of the pain that singles out torture survivors but the specific cause of their pain. In a broader sense, such notions of causation play an important role in many contemporary methods for distinguishing between different types of suffering" (2011, p. 73). In both law and philosophy, pain seems to be a dead end for precisely the reasons Asad elaborates, in that it places an arbitrary quantitative threshold that cannot justify, let alone regulate, what it seeks to address. A good example of this would be the reasoning used in the "Torture Memos" by the Office of Legal Counsel in the US under the George Bush administration, and the "Torture Memo" drafted by John Yoo and signed by Assistant Attorney General Jay Bybee which authorising so-called "enhanced interrogation techniques" and defined the limit of permissible violence used during interrogation as those that fell short of resulting in organ failure or death (Khalili, 2012, p. 164; Waldron, 2005, p. 1707). Such reasoning leads to a justification of torture and its absolution from criminal responsibility. This legal conception of law registers pain and suffering instrumentally only insofar as it fits its categories and classifications, its distribution of rights and obligations, but it cannot do the work of acknowledging suffering and pain as such. This process leads to a narrow political imagination that leads directly to the juridification and moralisation of victimhood as a space monopolised by legal measurements, definitions, and formalities.

Asad's points parallel a very similar argument made in *The Empire of Trauma* (2009), in which Didier Fassin and Richard Rechtman present a comprehensive history and anthropology of trauma and PTSD and the many fields in which these concepts play an increasing role, focusing in particular on humanitarian psychiatry. Fassin and Rechtman argue that the entry of PTSD as a defined, psychiatric diagnosis (marked by its entry into the DSM-III in 1980) was the result of profound normative change in the US and Europe, brought about by multiple events and

processes, particularly the mobilisation of US feminist groups working against sexual violence and Vietnam war veterans, along with new refugee flows into Europe that caught the attention of humanitarian psychoanalysts and psychiatrists. These came together to create a shift in the psychiatric and psychological understanding of trauma. While the previously prevailing Freudian psychoanalytic models gave primacy to the unconscious as the source and agent of traumatic symptom and narrative, political mobilisation in the US — coupled with a gradual and slow awareness of the truth of the Holocaust — marked a shift towards a language and sensibility that was more attuned to the experiences of victims of violence, atrocity, and war. This new sensibility achieved multiple normative changes. It brought a new centrality to the event as the source of the neurosis, instead of unconscious repression, thus removing much of the stigma or incredulity directed towards victims of violence and abuse. Secondly, it added much to the epistemological authority of the traumatic narrative and the symptom as a source of fact or truth:

> Trauma was indeed the locus of inconvertible fact . . . . [T]estimony to trauma — independently of any individual narrative, but also of any moral evaluation . . . holds ethical truth that clinical practice can finally confirm; trauma is itself the proof of an unbearable experience. (Fassin & Rechtman, 2009, p. 93)

This provided an opportunity for a new politics of truth, testimony, and reparation that came to play an increasing role in humanitarian and human rights practice and law. Fassin and Rechtman contend that "trauma constructs a different landscape, where we can see neither martyr nor combatant, nor even ordinary people, but rather the intimate suffering of victims" (2009, p. 198). In this view, the language of trauma personalises the history of the sufferer by elevating the emotional effect of suffering at the expense of its collective, historical, and structural sources. Fassin and Rechtman describe this as a process of "myth-making" and "histories without history," since it reduces the "different, complex and polysemic experiences" of oppression and terror into the clinical model of suffering, along with its constellations of definitions, classifications, symptoms, and solutions, all of which may be super-imposed on the experience in question, thereby sidelining alternative framings of suffering with different symbolic emphases and significations (Fassin & Rechtman, 2009, pp. 211-214). "Trauma culture" evokes a tragic view of time in which misfortune is equated with violence and danger, and therefore it magnifies a view of politics and history as a series of dangerous events from which individuals need to be

secured. In this way, trauma can exclude context, variations, and the singularity of experiences, as it abstracts particular testimonies into ready-made classifications of victim, perpetrator, symptom, and legal fact. In the case of humanitarian psychiatry, this leads to a tension between the focus on torture or political violence as a concrete, structural, and contextual political question, and the focus on its afterlife for individuals, in terms of symptoms and trauma. This split marks a transition from a politics of mourning to a politics of psychotherapeutic intervention (2009, pp. 238-239). As Fassin and Rechtman note in the case of Médecins Sans Frontières (MSF):

> If we think of Palestine, the period of dictatorships in Latin America, or, longer ago, the period of decolonisation in Africa, there were other words, other readings, other methods of resolution that were used. The focus was not so much on trauma as on violence. The talk was of the resistance of fighters rather than the resilience of patients. Those who were being defended were always oppressed, often heroes, never victims. The focus was on understanding not the experience of people suffering, but the nature of social movements. No one thought in terms of psychological care; they campaigned for national liberation movements. (2009, p. 106)

My question here is: could an alternative politics of cruelty be imagined? My guide here is eminent political theorist Judith Shklar, who deemed her political philosophy of "putting cruelty first" (1982) a "liberalism of fear" (the title of her well-known article, see 1989). Shklar offers an interesting and different take on the relationship between the secular sensibility Asad criticises and the interest in "cruelty." Shklar does not deny that this philosophy of fear and cruelty is central to the secular modern imaginary, but she does show that if we look at its history and origins in the thought of figures such as Beccaria, Montesquieu, and Montaigne, we will see that it is not as anti-political as its advocates or detractors make it out to be. This is for several reasons. Firstly, Shklar argues that the interest in cruelty captures the constant dangers of arbitrary power (tyranny) and its related effects on the capacity of citizens for political action. This means that the fear of the erosion of the political is never far from the denunciation of cruelty, as I suggest later. Secondly, Shklar argues that the prioritisation of cruelty for these writers has something to do with another familiar move they make: the prioritisation of vice over

virtue. It should be remembered that the classical political tradition gave priority to the *summmum bonum* that is to be reflected and embodied in the city. Now, these secular Enlightenment figures reverse the hierarchy of importance in order to give priority to vice over virtue, not least because they lived in particularly dangerous times that called for pessimistic and measured responses. It transpires, then, that the fear of cruelty grows out of an intellectual attitude constantly vigilant against the anti-political forces of "ordinary vices," which perfectionism alone cannot guard against, especially when perfectionism and piety slide into self-deception (Shklar, 1984).

> When one begins with cruelty, an enormous gap between private and public life seems to open up. It begins with the exposure of the feebleness and pettiness of the reasons offered for public enormities, and goes on to a sense that governments are unreal and remote from the actualities about which they appear to talk. It is not that private life is better than public: both are equally cruel. It is rather that one has a sense of the incoherence and discontinuity of private and public experience. Montesquieu knew that it was impossible that the good man and the good citizen should ever be the same. The two were inherently incompatible. The demands of social life and those of personal morality are simply different. This may cause us much unhappiness, but it cannot be altered. (Shklar, 1982, p.25)

Shklar's explicit inspiration for her well-known essay "The Liberalism of Fear" is also the torture narrative: "If I sound like Cesare Beccaria, or some other refugee from the eighteenth century, it may well be that I have read the sort of reports they read about the ways of government. The foreign news in the *New York Times* suffice" (1989, p. 38). The liberalism of fear is an attempt to ground liberal morality in something more in touch with the horrors and cruelties of modern politics, a way of furnishing liberal morality with a missing, or forgotten, motivational and affective memory or narrative. Shklar's liberal morality does not depend a priori on reason or procedure, but the memory of what cruelties must be feared in the absence of the rule of law:

> Liberalism's deepest grounding is in place from the first, in the conviction of the earliest defenders of toleration, born in horror, that cruelty is an absolute evil, an offense against God or humanity. It is out of that tradition that the political

liberalism of fear arose and continues amid the terror of our time to have relevance. (1989, p. 23).

In this way, Shklar grounds her liberal morality in a tradition of feeling, a record of horrors past, rather than a philosophical defense of the bounded, propertied subject. By prioritising this "structure of feeling," so to speak, she attempts to demonstrate that liberalism has a universal and political (rather than simply morally individualistic) viability:

> The fear we fear is of pain inflicted by others to kill and maim us, not the natural and healthy fear that merely warns us of avoidable pain. And when we think politically, we are afraid not only for ourselves but for our fellow citizens as well. We fear a society of fearful people. (Shklar, 1989, p. 29)

Shklar mobilises this fear of fear as a motivation for proposing a memory for liberalism and a renewed philosophy of liberal political virtue and action in place of the lost *summum bonum*. It is a call for active participation in political life by citizens who share the memory of horror and who fear the intimidation of the strong. In place of Carl Schmitt's division of friend and enemy as the ground of the political, Shklar prioritises the strong and the weak, and the logic of liberalism becomes "freedom from the abuse of power and intimidation of the defenseless that this difference invites" (1989, p. 27). This is not just a subscription to the division between negative and positive liberality; limited government is a necessary but insufficient condition for such a politics.

Shklar's intervention is an interesting one because of her implicit partial agreement and disagreement with the critique of humanitarianism. She does agree that cruelty must remain, first and foremost, a political problem that is vigilantly aware of the danger of arbitrary power — and here she comes very close to a neo-republican style of reasoning. But unlike Asad, Shklar offers us reason to be wary of the ways perfectionism evades or confuses the problem of cruelty by again removing it from the realm of the political (not unlike humanitarianism). In the coming sections, I take on Shklar's challenge — of "putting cruelty first" — and look at how a neo-republican theory of torture can be constructed today, a theory that reframes the problem in such a way that does not lend itself easily to the utilitarian fixation on pain, the Hobbesian justification of absolute sovereignty, or the anti-politics of humanitarian empathy.

Summoning Kafka: Or a Political Economy of Violence

I take Franz Kafka to be the foremost philosopher of the relationship between meaning and law; Kafka's world manifests the loss of access to tradition (understood as aura and authority) and the related unintelligibility of suffering, law, and guilt. This unintelligibility exhibits itself in the figures of the uncanny, the irredeemable, the accused, and sovereign violence (think of "In the Penal Colony"). It is my argument here that torture provides an exemplary site to explore a political economy of violence, which at the same time expresses the specific mythic-rationality that structures modern sovereignty, one that is haunted by the memory of dispossession. Torture thus becomes an exemplary negative image of what citizenship freed from sovereignty (or freed from the traces of dispossession and slavery) might be imagined and fought for. If the economy of torture appears "unthinkable" or "meaningless," or "mute," can this meaninglessness be thought, narrated, theorised?

If torture is a "state policy" — as I explain further below, a widescale violence enacted in the darkness of the police station and the prison cell, or even against whole populations — what precisely is it a microcosm of? What is the specific nature of this sovereign violence? What kind of economy underlies its mythos? This evocation of tropes such as the scapegoat, class, status, open secrecy, speech, stigmata, etc. demonstrates a wider global history — a connected history — of travelling techniques of demarcating citizens from subjects, or more accurately, of creating the line that separates citizens from subjects, and policing this border. But it entails a paradox, for although the tortured are deemed outside the realm of citizenship, becoming "subjects" or "bare humans," in the very re-enactment of this drama of misrecognition, it fabricates a specific kind of elusive citizen-subject held hostage by this border, under the mercy of a sovereign power that promises and withholds recognition. In this scenario, citizenship is a gift bestowed upon obedient subjects, and is not an inter-subjective achievement of equals. This is why the torture scene is never far off from projects of state-building and sovereignty-making. It is also why the realities of class and status are always at stake. This reading of torture relates to the general argument of this chapter, since it shows that torture encapsulates a certain kind of historical ontology that forces theorists to look beyond "pain" as the crucial issue.

Let me clarify here that I do not intend to produce a "phenomenology of torture." Rather, I want to see how anti-torture writing understands torture as a sign of collective violence. To this end, my examination of the reporting of the psychic effect of torture also carries with it an acknowledgement of the ways in which trauma has a collective component, one that hints at the type of inter-subjective dynamics involved in "sovereign violence" at large.

In a 2006 Al-Nadeem report, the first subtitle is "Torture in Egypt: A State Policy," under which we read: "There are several indicators that torture is the official policy of the state and not the responsibility of this or that officer," (Al-Nadeem, 2006, p. 2). Basma Abdel Aziz,[90] a psychiatrist, novelist, and researcher who has worked extensively with Al-Nadeem, writes that torture

> is not just an exceptional behaviour that rises to the surface every once in a while, and it is not confined to the direct actor or the one acted upon, but it is composed of multiple components that go beyond the individual to encompass wider and more total levels: the act itself, the behaviour of the perpetrator, the motivations of those who issue the orders, the regime that resorts to the practice, its goals both hidden and visible, the way it maintains itself, as well as the victim, her relationship to the torturer, and the bystanders and how they react to the event. (2007, p. 9)

The structural features of torture determine its entire mechanism, from its spread, the rationalisations used by the state, and the complicity of forensic and medical doctors to the reaction of the prosecutor and the court, the reactions of bystanders and witnesses, and representations in the media. This happens on multiple levels. Firstly, the justification for torture

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[90] Basma Abdel Aziz is an Egyptian psychiatrist and novelist who has worked at Al-Nadeem and has dedicated her research and writing to addressing the treatment and rehabilitation of torture victims. She has written two books based on her PhD on the topic, *Ma Waraa Al-Ta'zib* [What is Behind Torture] (2014) and *Zakerat Al-Qahr* [The Memory of Oppression] (2014). The two books offer a close look at a psychiatrist's perspective and her reflections on this work. Abdel Aziz's writings combine psychiatric knowledge with political commentary, thereby allowing a reading of the normative grammar that lies behind Al-Nadeem's work from the point of view of psychiatry, and specifically with regards to its use of the concepts of trauma and PTSD. She is also a columnist and novelist, and her novel *Al-Tabour* (published in 2016) and translated in English as *The Queue*, tells the story of a group of individuals in a queue waiting to enter "The Gate," a mysterious dystopian totalitarian agency. Abdel Aziz has confirmed in an interview that her influences include Sonallah Ibrahim, and of course, Kafka (See Underwood, 2016). This is one of several reasons why I evoke Kafka as a theoretical authority here.

cannot be exclusively utilitarian and strategic, but is part of an ideological and symbolic machinery that represents the sufferer either as an existential threat to the nation or a lower-status disposable body. The existential threat — of the terrorist, the heretic, the delinquent, the communist, etc. —must be warded off with a heroic, stoical, cold-hearted violence that is brave enough to use any means necessary, including exceptionally gruesome means from which the perpetrator must not flinch, as a dramatic demonstration of great loyalty to the nation. Abdel Aziz argues that this could in fact be a fourth Weberian ideal-type of legitimation: the heroic authority of a ruthless saviour (2014, pp. 200-201). The othering and stigmatisation of the victim is a classical instance of the scapegoat mechanism as described and theorised by Girard (1996).[91] It is a sacrificial mechanism that arbitrarily selects individuals who are made to stand in for, or embody, the dangerous excess of violence in the social body, and who must be purified or completely ejected so that the façade of social order and legitimacy can be (temporarily) restored. This is an instance of "total control, but more precisely, an invasion and purification of the mind, forcing the body to speak only that which corresponds to the torturer's vision of reality. It's an experiment in moulding the body and soul" (Al-Nadeem, 2009, pp. 280-281).

Each act of political violence is a replaying of a Girardian drama of mimetic rivalry, mimetic crisis, the scapegoat mechanism, and temporary equilibrium. This mimetic rivalry is literal, not metaphorical. The institutionalisation of torture follows a highly ritualised pattern whereby police officers are introduced to the practice through watching and observing their superiors outdoing each other in their exhibitionism of cruelty. This becomes a source of rank and status, loyalty, fraternal solidarity and esprit de corps, but also possible rivalry and an obsessive fixation on receiving prestige and recognition. All torture cases seem to exhibit intense sense of status awareness, often in overly sexualised terms that emasculate and feminise the victim, and emphasise the virility and potency of the perpetrator (and by implication, the virility of the state against a feminised, penetrated subject).[92]

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[91] This is my addition to make sense of the analysis, and does not come from the sources I cite.

[92] The best scholarly work I've seen that truly captures the symbolic and ideological structure of torture as I describe here is Marnia Lazreg's *Torture and the Twilight of Empire* (2016). Drawing from the archives of French colonial military theory, as well as reports and diaries from Algeria, Lazreg's study underlines the relationship between torture and the ideological construction of the nation (or empire), how this is institutionalised in the status hierarchy between military and civilian, how this relationship presents itself as an existential one warding off an existential

This erotic drama is not a methodological exercise in rational-legal authority; it is symbolic all the way down. Nevertheless, it must be supported by a broad structure of bureaucratic and legal means of cover-up and complicity. Forensic reports are forged in collusion and agreement with officers. Many cases are dismissed on the grounds that the cause of death was heart failure or asphyxiation caused by prior medical conditions (Al-Nadeem, 2009, pp. 11-12). The Public Prosecution Office fulfils a double role in the Egyptian legal system: It is both a judicial authority with the capacity to press charges and an investigative authority that decides whether evidence warrants admittance to court or not. This opens the gates for collusion with the police, who usually have exclusive access to evidence and so exercise a great deal of direct or indirect control over the investigation. Victims cannot appeal a decision of non-referral to the court because legal cases involving state employees are exempted from civil appeal (Al-Nadeem, 2010, pp. 73-74). This effectively means that cases take an incredibly long time to make it to court, and if they do, sentences are mild due to the nature of the laws that cover torture. The penal code limits torture to those acts that aim to extract confessions (a minority of cases), while other acts are treated separately and carry a maximum of just one year of imprisonment, which may be even less if judges argue that the perpetrators were forced by the duty of their job to resort to exceptional means (Al-Nadeem, 2010, pp. 66-77). Furthermore, the legal system places the burden of proof on the victim, not the police, which makes it very difficult to produce valid evidence that can be admitted to court (Al-Nadeem, 2010, p. 72). This apparatus amounts to a large, elaborate system of social denial that diffuses any criminal, let alone political, responsibility. This extends the social denial by bystanders, who share in this mechanism of ideological and institutional rationalisation. The bystander (through the media, for example) is called upon to identify with this mythical universe, in which the existential duty of saving the nation justifies the mobilisation of unremitting force and unshakable obedience to the justice of power alone (Abdel-Aziz, 2007, pp. 62-63, 294-295; 2014, p. 295).

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danger, the aesthetics of purification and taboo that this relationship evokes, and the overly eroticised and homosocial/fraternal attachments that it must rely on. Lazreg combines a psychoanalytic with a sociological-Hegelian reading that goes to the heart of the dark ideological world of torture. Another interesting anthropological account is Alan Feldman's *Formations of Violence* (1991), which underscores the sacrificial, mimetic, ritualistic, and dramaturgical dimensions of torture, drawing from Northern Ireland.

This complicity, or even conscious denial, is described as a "pathology" and an "ugliness that denies humans the capacity to be of the most cultivated creatures." (Al-Nadeem, 1997, p. 3). Al-Nadeem describes its work as probing this wound that "no one wishes to see, and if they see it, they find justifications as if there could be a crime proportionate to this violence" (Al-Nadeem, 1997, p. 3). There is nothing private, let alone privatising or depoliticising, in this view.

> Although torture is an effective means to isolate the person from social life, and deprive him of communication with others, through the destruction of body and soul, there's another deeper purpose, which is breaking the will and dignity of an entire society. This way, torture is a message to an entire society, and not just an individual victim. (Abdel Aziz, 2007, p. 51)

Torture is meant as a message, a communication with a medium and an addressee. Moreover, this is not just about scaring political opponents, but even removing the distinction between outright political opposition and the mere, commonplace capacity to resist, which is seen in the many stories where the police would use torture against "apolitical" citizens, or even entire poor neighbourhoods (Abdel Aziz, 2014, pp. 278-279).

> Note here the necessarily communicative aspect of torture; torture is a "message" to society. It is a symbolic structure, but also a speech-act mediated through the body.

> When torture occurs on a wide scale to the poor, the rich, the well-off, the suspects and the innocents, to the political opponents and the students and the journalists and the lawyers and the human rights activists, the message sent is that an entire society has conspired to turn a blind eye and follow orders. With time, individuals lose not only the power for independent, free action but the ability to resist, to say "No," which eventually kills the spontaneous free spirit of humanity, the spirit for initiative, change and creativity. What is being demanded is for everything to stay the same, the stability of the social order as seen by those in power. (Al-Nadeem, 2009, p. 28)

One of the most interesting aspects of Al-Nadeem's work and method is that it does not fall in line with the kind of humanitarian reasoning, exemplified by MSF and other Western organisations. Al-Nadeem does not view torture as a personal, emotional history. Torture is

always represented as indicative of a wider structure of arbitrary and absurd violence. The political universe that this kind of anti-torture work inhabits is not one of individual perpetrators, individual sufferers, and good, humanitarian witnesses. Rather it resembles a Kafkaesque world, where the individual suffers through a labyrinth of absurd violence that is relentless from the moment of the occurrence of violence to the sufferer's inability to get the event acknowledged by the state and the courts, amid total social denial, silence, and complicity. It is the social life of torture itself, and not the discourse against torture, that disenchants violence and removes it from the realm of heroic myth (martyrdom, resistance, heroes) and instead produces lonely, alienated, confused and scarred subjects. This is a collective experience, not a private one, but state violence makes such a mechanism invisible since it is greatly successful at isolating and fragmenting all the social bonds that persons can fall back on to endure this onslaught of meaninglessness, as suggested by the Al-Nadeem paragraph just quoted.

What sort of humanism is this? Does it simply express the autonomy of the property owner, the one who suspiciously claims ownership over her representations, emotions, and desires? Or is it the human in the eyes of the humanitarian worker, who sees only bare bodies and traumatised, sick psyches that call for rescue and careful eyewitnesses? Or is it the human whose capacity for resistance is intimately and precariously tied up with her vulnerability, a vulnerability that is socially constituted from the beginning? Many shades of the human co-exist in this moral universe, and they all share in the complex landscape of torture and its enemies.

As Fassin and Rechtman argue, the moral universe of humanitarianism is not one of heroes or martyrs, and there seems to be very little compensatory work that weaves together a mythic story or theodicy that can give moral or collective meaning to this violence. Aida Seif Al-Dawla does not overlook this point:

> We had previously believed that the person who comes out of detention or who is tortured is a hero (*batal*) — no one was asking what torture does to the person. So those friends [who had just been released] started talking about the rage, the feeling of humiliation, and the self-responsibility ('Could we have resisted more?'). So, two colleagues and I decided to establish a clinic to rehabilitate torture victims. (Interview with Aida Seif el-Dawla, December 2018)

Fassin and Rechtman seem to be disappointed by this absence of collective myth-making around violence. The language of trauma sends its subjects to the clinic, but it cannot make heroes out of them, and offers no place for consolatory mourning. The Kafkaesque world these subjects inhabit is far too bleak and barren to produce consolatory myth or theodicy. There is absolutely no reason or meaning to the suffering endured, and that is, in large part, why it is "trauma." Had there been a compensatory, ideological framework, the suffering could be registered as a necessary sacrifice for something greater. There is an ambivalence here that should be obvious. But it seems to me that there is a certain wisdom to this refusal of the language of heroism that must be appreciated. This resistance to heroism signals an important principle. Any rationalising of violence and suffering must be refused, even the rationalisation used by its political opponents, on the grounds that it risks masking the full horror of the violence as anti-reason.[93] Once this violence enters into a mythic narrative of heroic resistance against the forces of oppression, it immediately has justificatory reason, as sacrifice. The entire moral universe of the resistance to torture is founded on an absolute ban on the dialectics of sacrificial and theodical logic, at all costs, even if it risks disenchanting the world from all meaningful suffering.[94]

This is a theme the Syrian intellectual, doctor, and former prisoner Yassin al-Haj Saleh has touched upon in his reflections on the torture perpetrated by the brutal regime of Bashar al-Assad. Saleh was in a Syrian prison for 16 years, where he was directly subjected to horrors I need not name. Inspired also by Hannah Arendt, Simone Weil, and Jean Améry, Saleh has written important columns from his exile in Istanbul (and later Berlin) probing the preconditions necessary for a political and ethical response to narratives of torture and trauma (See Al-Haj Saleh, 2020a&b). On the one hand, Saleh takes torture to be a "radical evil" (not banal):

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[93] My analysis here may be influenced by the line of thinking developed by Theodor W. Adorno and Max Horkheimer in the first chapter of *Dialectic of Enlightenment* (2002). In their reading of Homer's *Odyssey*, Adorno and Horkheimer point to the parallels between the formal structure of myth, reason, and sacrifice, with reason bought at the cost of the sacrifice of the particular and the concrete. This is the grounds for Adorno's later refusal to concede anything to post-Auschwitz theodicies that would assimilate the horror into the structure of reason and rationality. There is a similar sensibility in the refusal of anti-torture psychiatry to assimilate political violence into any myth, although this time, in the name not only of ethical truth (as Adorno would suggest), but in the name of clinical integrity as well.

[94] This disenchantment and individualisation of pain is commented upon by Bernstein (see 2015, pp. 30-31). Modern moral philosophy disenchants pain by removing it from the realm of the ordained and bringing it to the realm of clinical knowledge. This disenchantment, Bernstein concedes, risks removing the moral valence of pain, which he tries to account for as I explain in the next section.

> Torture could be a point of departure for the study of evil in a way more that surpasses other evil practices . . . Torture is a primal evil since it's creative harm, a specialisation of the best in human — creativity — in the service of its worst, breaking the other (Saleh, 2020a).

The specific evil enatiled here has something to do with human sociality: "The essence of the torture relationship is the destruction of the human bond, or the exit of two persons from it." The torturer elevates himself to the status of a sovereign, a God, while the tortured is reduced to a mere body. Society as a whole is eroded. It is a meeting of deified people with mere things, not humans encountering humans." (Saleh , 2020a) But he also notes that it entails a certain kind of making and fabricating, the making of a specific kind of commodity and body, a "factory of politics" that also displaces politics into a very different realm. What is this realm? In another article, he calls it the "realm of meaning" — "or more specifically, in the relationship between suffering and meaning. Politicising the wounds then is a politicisation of suffering, making it visible and exposing its meaning." But note here, too, that such a politicisation of meaning does not entail myth-making. On the contrary, the point is to break the monopoly of the state on myth and meaning: The question or task becomes how each generation can appropriate the meaning of suffering for itself, without borrowing from others. This is the only way to resist the monopolisation of meaning on the part of the regime: "Those who worked for our destruction also work for the destruction of its meaning. They narrate a story that denies us our case . . . The struggle for meaning is one of the faces of self-representation."

There's a dialectical reversal at play. The refusal of consolatory myth is bought out at the risk of disenchanting suffering, except — and here's the rub — it could become meaningful again insofar as it exposes and disrupts the state monopoly on meaning (and meaninglessness).[95] The capacity to narrate becomes a politically significant act, an appropriation, merely by virtue of its refusal to concede narrative power to the state. Therefore, beneath the clinical techniques

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[95] Compare to Asad, who also comments on the secularisation of pain in modern humanitarianism: "Tragedy (like pain itself) can be actively lived as a necessary form of life, one that no amount of social reform and individual therapy can eliminate forever." (2003, p. 98). I agree that tragedy is formative of virtue and habitus, and I agree that therapy cannot remove this, but I think that Asad doesn't give sufficient attention to the narratives conferred upon pain and tragedy, and the role of the state in creating meaning or meaninglessness. Nor does he consider the possibility that a different kind of subject could emerge out of the struggle over meaning.

of the psychiatrist-activist and her refusal of hero-making myths, lies the possibility of a different kind of subject. This subject could stake her traumatised exposure to nihilistic violence against the secret nihilism of heroic state myth, thereby transforming the sick relationship between meaning and suffering hitherto rationalised by state sovereignty.

The Social Life of Trauma

Now this argument, that "torture" is an example of a kind of collective violence, extends also to the conceptualization of trauma. It also has implications for the political reaction to trauma. Trauma escapes the overbearing power of the psychiatrist, the state, and humanitarian agencies. At least in the case of torture, trauma is an effect of the active (or to use al-Haj Saleh's word, "creative") production of meaninglessness and nihilism, only loosely covered up by the myths of the state. And yet, because it remains proof of this nihilism, because it resists any control or monopoly over the narrative process, and in keeping the question of meaning suspended, it gathers up a force beyond the confines and circuits of legal-clinical capital. This makes the vocation of the psychiatrist highly precarious, but it also allows for surprising political interpretations. Here, too, the limits of humanitarian interpretations can be seen. One such surprising political intervention lies in Al-Nadeem's interesting reflections on the politics of alienation.

Abdel Aziz underlines the specificity of trauma that is caused by torture. Torture is absolute, degrading, uncertain, and can continue indefinitely. Its primary goal is not obtaining confessions, but terrorising its victims. Most torture has no instrumental reason other than terror itself, which comes by surprise to the victims, undermining their basic background cognitive assumptions. According to this psychological point of view, the background cognitive assumption of any person is that the world is predictable, ordered, and lawlike and that one can trust that guilt and punishment go together.[96] Torture destroys this worldview, because it ruptures

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[96] See also the recent work of Vivienne Mathies-Boon on counterrevolutionary trauma (2017). I credit Mathies-Boon with inspiring me to consider more seriously the intersubjective qualities of trauma and anti-trauma.

any connection between punishment and actual guilt, and it defies any sense of predictability or order. It appears like a random, wrathful force of fate. That is why it hits at its victims' sense of self; they experience their utter impotence in protecting those closest to them let alone themselves. They experience the limits of their ability to fulfill their duties and moral obligations, since morality itself loses its intelligibility. Torture strikes at the person's trust in the very capacity to live, to be acknowledged by others as capable, which points to why one of the major marks of traumatic response to torture is suspicion of family members and how they see the traumatised victim. Torture aims not only at terror, but at breaking the will of the victim — total submission. The victim, as a result, may form a very strong attachment to their torturers, because they perceive the extent to which torture establishes total control over everything, especially basic needs, pain, hope, and life (Abdel Aziz, 2007, p. 57, 2014, p. 80).

Torture is characterised by utter incomprehensibility, because it rearranges the environment and context in such a way as to produce maximum levels of unfamiliarity and bewilderment to its victims, through total control of the body's vital functions (eating, sitting, standing, moving, sleeping, defecating, etc.). This is a control that is exercised unpredictably, arbitrarily, and often in total isolation leading to sensory deprivation. "The victim's capacity to form any logical meaning to what is happening to her is diminished, which leads to a total inability to comprehend it or adapt to it" (Abdel-Aziz, 2014, p. 77). This condition proves inescapable, a complete destruction of hope, a complete loss of control over the body and its involuntariness, and therefore a failure at all attempts at pleasing or acceding to the demands of the perpetrator (Abdel-Aziz, 2014, p. 81). This loss of control of the bodily functions adds to the sense of shame and humiliation (Abdel-Aziz, 2007, p. 55).

Trauma is actively produced in the victim's psyche; it is the intention and motivation of the perpetrator of atrocity. There is technique to producing trauma: The victim is weakened through the construction of a situation that leads to exhaustion and despair, so they come to question their judgments, their responses, and those around them. It destroys self-image through the creation of an inner strife or division between a person's expectation that they can navigate and move in an environment and that they can have control over their body, and the reality that they are denied this capacity. Another division is that between "reasonable experience" and meaning, which is the ability to order one's perceptions into narrative form and cause-effect

sequences, and the utter meaninglessness or absurdity of the situation, to a point where the victim is incapable of distinguishing between reality and fiction. "The body becomes separate from the ego, and cognition is incapable of acting as a whole, which leads to a split between the existence of the person and their self-consciousness" (Al-Nadeem, 2009, pp. 28-29). This psychic division then leads to all the well-known symptoms of trauma: hallucinations, paranoia, suicidal ideational, feeling persecuted by friends and family, shame, guilt, despair, panic attacks, detachment, dissociation from work and home life. The more clinical definition of PTSD refers to a definite set of symptoms: the compulsive repetition of the traumatic event, nightmares, insomnia, restless sleeping, risk of a nervous breakdown, over sensitivity to stimuli, depression, behavioural changes, and personality and mental disorders (Al-Nadeem, 2009, p. 30).

Shame, guilt, and mistrust are the most common affective conditions experienced by victims of torture. Shame can be understood to result from the disruption between the voluntary will and the body, which is arguably central to the any person's sense of self. Shame can also be understood historically, however, as a reminder of the cultural association of torture with purification of guilt through confession, and its connection to the status hierarchy in society (Abdel-Aziz, 2014, p. 28). Torture is a mechanism of making status distinctions that are experienced by individuals as feelings of pride versus shame. Guilt, on the other hand, relates to the inability to do anything to confront the perpetrator, to resist. Guilt is the mark of the loss of moral autonomy and the capacity to act Trauma is described in this literature as a condition of alienation (*eghterab*), a loss of connection to the world:

> The dissolution of social and emotional ties between persons is an integral part of the torture experience and one of its traumatic facets. The victim is detained away from society, while the torturers (*jaladun*) make threats of detaining or harming family and friends, possibly killing or raping them, or other means of causing harm. And regardless of the degree of political consciousness or principled opposition to the state, there remains a hope and a desire inside the victim. This is the hope that the state continues to embody the paternal characteristics expected from it, like providing security and protection to its citizens. This is a hope that the state will eventually disappoint the doubts, suspicions, and bad experiences

the individual holds against it. And yet, this betrayal of positive hopes counts as the cornerstone of torture's trauma. (Abdel-Aziz, 2014, p. 78)

The person tortured by the state and its institutions feels a sense of betrayal, for these institutions may have represented a big family with the right to discipline and punish. It might even go a bit far in its punishments, but it does not harm its children to the point of destruction. Here, harm is translated as a real loss of imagined family bonds, a painful rupturing of all bonds with the world, both material and symbolic (Abdel-Aziz, 2014, pp. 78-79).

Trauma escapes the confines of symptomology and becomes a political phenomenology. The evocation of alienation here suggests that much more is going on than behavioural or cognitive reaction to pain. Instead, the reference to social bonds, attachments, trust, the capacity to make meaning, and the manipulation by the torturer of familial, sexual, and gendered honour indicates that the whole world of social solidarities comes into force in the torture scene. This brings into focus a certain ambiguity in the concept of "dignity," for if the target of such psychic destruction is an assault on the common world of attachments and mutual recognitions, could it be that "dignity" is not only a reference to a metaphysical property inherent to humans, like "sanctity," but refers to something social as well?

Dignity between taboo and status

Arab writers speaking against torture always rely on an implicit notion of "*karama*" (dignity) or "*hurma*" (sanctity). And yet, the power and significance of the concept is still evasive, not the least because it refers to multiple registers at once. This section is going to be more speculative, owing to the difficulty of the subject – "dignity." And it seems to me that the normative (visceral) power of the word "dignity" can partially be attributed to this elusiveness of meaning. Yet I wish to highlight three dimensions of dignity that work together: a non-secular dimension, as referring to "sanctity"; a civic dimension, as referring to "status," and an aesthetic dimension, referring to a certain kind of image or memory of humiliation. The three, together, and despite the tensions between them, may point towards a kind of ontology that is material (social), normative and symbolic at once, the kind of ontology that "torture" relies on and effaces.

The Arabic word for dignity (*karama*) and the associated ideal of the sanctity of the body (*hurma*) is almost a constant in Arab intellectual and activist writings in opposition of torture. Tunisian physician and intellectual, and former president of Tunisia (2011-2014), Moncef Marzouki wrote *Al-Insan Al-Haram* [The Sacred Human] (2006) reflecting on the Universal Declaration of Human Rights from a historical and philosophical point of view. In the book, Marzouki adopts multiple voices and styles to convey conflicting interpretations of the Declaration, in a spiraling dialogue between hypothetical sceptics and believers. The cornerstone of his argument is that the supposed universality of human rights, if read closely through the rhetoric of the Declaration, is precarious at best and untenable at worst. The universal foundation of rights is left hanging without justification in the Declaration, and different notions are inserted to uphold the principles: interest, scarcity, individual freedom, etc. Marzouki shows that each one of these justifications is contingent upon the relation between the strong and the weak, the state and the individual, etc. The more that the drafters of the Declaration sought to avoid clear philosophical justification for what "Everyone has a right to…" or "No one shall…," the more the Declaration appears to be an arbitrary or illusory imposition open to questioning and scepticism, not least because such rights are far from obvious or applied. Marzouki therefore argues that the universality of human rights must, by necessity, become a question of faith in an inherent sanctity or sacredness of the human. It amounts to a metaphysical or sacred prohibition on particular actions that embodies the quality of a taboo. The abolition of torture requires a new vision that liberates culture from the dialectic between "dogmatic individualism and dogmatic collectivism" (Marzouki, 2006, p. 35), replacing it with the "sacred human" (*al-insan al-haram*) through literature, philosophy, and art. This perspective enables a critique of all separation between the individual and the collective and any alienation of the individual or their subordination to collective ideals: "Emancipatory political praxis is a constant exposure of the deception that underlies alienation, and doing so requires a deconstruction of the idea of the collective good that justifies the violation of our rights and dignity" (Marzouki, 2006, p. 37). His model or example is medicine, and particularly the development in medical ethics of an awareness of the harms done in the name of science and truth[97].

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[97] See also Marzouki (1998) for an historicization of the relationship between torture and medical ethics.

For Marzouki, such a metaphysical conception has the strength of directly referring back to a historical memory of suffering. It registers a history or narrative of previous injustices that ought to be taboo. More importantly, this "sacred" quality of human universality turns it into a set of duties and responsibilities that can be enforced directly, and it calls upon each individual to recognise the sanctity of the other. For Marzouki, this is the only possible way to ground the universality of rights. Otherwise it falls into egotistical individualism and instrumentality that erodes any higher, transcendental values that may constrain the ego. An example that Marzouki returns to repeatedly is the prohibition of torture, which he argues can only be justified as a duty that carries the status of a prohibition — a taboo — generated by the memory of injustice and oppression.

There is an advantage to giving a non-secular reading of "dignity" as Marzouki does, since it connects dignity to a sense of "ban" (taboo) that may still attach itself to the human body, and especially its privacy (as I mention later, the Islamic opposition to torture lies in a notion of privacy). But could it risk mystifying torture even further? This is a question with which I continue to grapple. There is a certain ambiguity to dignity that I want to highlight here, an ambiguity that lies in the way that dignity can be given both a metaphysical/theological and social rendering. I do not want to explain away this ambiguity, but rather to suggest that it may be indicative of the dual normative and material status of torture, trauma, and violence. If dignity refers to a transcendental moral ban, as well as social hierarchies or differentials of values, then it may be that both meanings are more connected than usually assumed, or that the "secular" and the "non-secular" meet at precisely this point where embodiment on the one hand and value, status, and esteem, on the other, form one ontological level.[98]

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[98] This suggestion — of a possible translation of dignity between transcendental ban and social status (or web of value) — should be read in light of Talal Asad's reflections in *Secular Translations*. Dignity offers to me a good example of a translation that cannot easily be classified in the secular or the non-secular, and therefore, I am posing the question of whether some instances of translation could also refer to an ontological level in which those differentiations are no longer stable. But Asad argues that the liberal imaginary's egalitarianism necessarily translates the metaphysics of dignity into notions of private property, mixed with possibly authoritarian notions of honour (see Asad, 2018, pp. 32-33). I actually see something else going on, at least in this case. I see the evocation of notions of *haram* along with *karama* something more than property. I see it as an implicit acknowledgement that esteem can only be realised through relational solidarities (the same solidarities denied by torture), and that those relations have both a normative and a material basis simultaneously. The fact that *karama* and *hurma* maintain this double-ness indicates to me that the translation produces a new ethical-political possibility.

In contrast to this metaphysical reading, dignity can also be a form of conduct or a character trait that corresponds to certain social expectations, as in "this person has dignity," or a person carries themselves with self-respect, grace, composure, and authority. A related meaning is connected to aesthetics; when something is "dignified," this means that it is perceived as elevated, beautiful, and praiseworthy because it is represented as such. Finally, dignity can also be a kind of inherent worth of a person or object, a value or worth (in Kantian terms, *Würde*) that inheres in a person and which cannot be exchanged for another value. These connotations intersect with and refer to one another in contemporary usage, but the history of dignity belies such easy commensurability between these plural meanings. The Christian meaning of dignity, for example, seen most clearly in medieval scholasticism and in the thought of Thomas Aquinas, did have a notion of dignity as value, but it did not imagine such value to imply egalitarianism or equality; rather it signified the purpose of each person or object with respect to God. It was only with Immanuel Kant that "dignity" came to have egalitarian connotations. As Jeremy Waldron argues, Kant's egalitarianism dislodged the concept from its source in rank and status, thereby removing its connection with images of "highness," "high-bearing," and "walking upright," and instead proposed an economic metaphor of value beyond price (2013, pp. 217-218, 229).

The words Kant used is "*Würde*" or "*würdig*," which have the double meaning of "valuable" and "deserving" (Rosen, 2012, p. 19). Kant's use is marked by the distinction between the fungible value of something, and its unconditional, nonexchangeable worth. Only human beings carry unconditional worth. Humanity, for Kant, enjoys intrinsic dignity or value of a very specific kind, which is morality, the capacity to universalise their own maxims and act autonomously from the laws of nature. It is this capacity for moral agency that grounds humanity's dignity (Rosen, 2012, pp. 20-22, 109-110). There is still a conflict of interpretation, however, because it is unclear whether dignity for Kant is the ground of all rights or one particular inviolable right, in other words, whether humans "claim" their dignity as a particular right for free choice, or it is a quality that determines the source of their rights. Kant's thinking marks a clear departure from Aquinas and Catholic thought in general. For Aquinas, it is clear that intrinsic value is determined by humanity's place in God's purpose and creation, not any inherent capacities or goodness on their part, let alone rights they carry (Rosen, 2012, p. 17). Catholicism transformed the meaning of dignity inherited from antiquity and Stoicism; it was no longer a matter of differential social status and its corresponding codes of conduct, but rather

different kinds of dignities that inhere in objects and persons in nature. Dignity continues to play a role in modern Catholic thought. Previously, it was linked with piety, but ever since the Second Vatican Council, it has been re-aligned to develop a specifically Christian metaphysics of human rights — also known as the *Dignitas humanae* (Rosen, 2012, p. 92).

The Islamic notion of dignity (*karama*) also means honour and esteem, and is related to prestige (*'izz*) and sanctity (*hurma*) — for example, "*hurmat al-mayet*" or "*karamet al-mayet*" can both mean the dignity of the dead or the sanctity of the dead. Dignity can also refer to status and rank (*manzila*) or inalienable worth (*qima*). The classical sources connect all these images of human dignity, and are recurring motifs across multiple sources (Shah, 2017, p. 109). According to Shah, the Qu'ranic position sought to do two things at once. It "levelled up" the concept of honour by disconnecting the association between honour, prestige, and rank on the one hand, and ethnicity, lineage, and wealth on the other. This challenging of the pre-Islamic status quo led to a greater generalisation of the concept to contain a wider group of people, but this did not directly entail social egalitarianism. Nor was this dignity derived from any notion of "*imago Dei*" (being created in the likeness of God), as it was in Christian thought.

> In Islam, the pre-Islamic ideals of *hasab* (pedigree) and *nasab* (lineage) did retain their symbolic importance as paradigms of merit and excellence, but from a more general perspective of the law, these ideals had little impact with regards to rights and privileges, although genealogical qualifications did become a prerequisite for caliphal office. (Shah, 2017, p. 117)

Nevertheless, in the history of the practice of torture in medieval Islamic societies, *hurma* came to be restricted to a military and administrative elite, the "*khawass*" or "men of the regime" (Lange, 2008, p. 30). This customary notion of *hurma* protected the elite from public shaming through corporeal penalty (*tashhir*), which occupied a central place in the punitive system of the Saljuq Empire in the 11th and 12th centuries, for instance. This was a conundrum, however, for the jurists of the time, who sought to rein in the arbitrariness of this kind of exhibitionism, which they saw as being in direct conflict with any notion of *hurma*. One solution was to argue that *tashhir* (or public corporeal punishment) was justified as a way of restoring the violated or injured honour of the ruler; therefore *hurma* (sanctity) or its loss was again conditional upon a

certain distribution of an injurable honour (also see Fahmy, 2018). This honour had an irreducibly public quality to it, not least in the way that it reflected clear status differentials.

Dignity is a unique kind of concept. Unlike "rights," dignity escapes the urge of procedural reasoning. It has a moral charge that cannot be entirely contained by procedural rules and norms. Rather it seems to operate, first and foremost, aesthetically and affectively.[99] As I showed in the previous section, "dignity" can also indicate the way the body carries itself, how it is positioned with respect to its environment and to others, and what kind of status is conferred upon the body in return through the perception of posture and standing. Only when such aesthetic judgement is acknowledged or used can the metaphysics of dignity make full sense.

This is perhaps linked to why so many narratives of victims of torture can be read as phenomenologies of embodiment *in extremis*. Think of the way the bodies are stripped naked, made to bend down or kneel, stand for indefinite periods of time to the point of exhaustion, the confinement of movement, and the sensory deprivation. These are not simply descriptions of pain or fear, and perhaps "trauma" captures only particular dimensions of it. Torture signifies the point at which the boundary between voluntary and involuntary motion is destroyed; the body has nothing left but involuntary reflexes to make itself present. Making such a statement requires an aesthetic sensibility, one sensitive to the contours of the body and how it makes itself present in space. This is a form of aesthetic statement about how something looks to the imagination that conceptual reasoning alone cannot deliver or address. Let me make an even more contentious claim: The liberal metaphysics of autonomy and agency are ultimately based on such an aesthetics, on a certain statement or judgement about how bodies should carry themselves, how bodies can make themselves present in space or get overwhelmed by their surroundings, how bodies can stand or break. The language of autonomy is only one way of trying to make such an intuition communicable and intelligible. This dimension is even clearer in the case of a concept like "bodily integrity." Moral judgement must depend on an aesthetics of the body and its presence in space.

Jay Bernstein (2015) puts forward one version of this kind of argument in his book *Torture and Dignity*. Bernstein's goal is to critique the general tendency in modern moral

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[99] For more on the political possibilities of aesthetic judgment in relation to moral reasoning, see Ferrara (2008).

philosophy of adopting a procedural and rule-based outlook on what it means to act morally. This focus on rules, rationality, and practical reason misses the substance of ethical life — the way everyday life is actually lived, in terms of practices, habits, needs, relationships, commitments, etc. This allows rule-based moral philosophy to miss entirely the role of vulnerability, dependence, and suffering in making moral judgement: "It is not moral rules or principles or commandments that are broken when morally wrongful things happen: it is persons — their flesh, their bones, their sense of inner worth — that get bruised and broken" (2015, p. 2). Bernstein replaces this approach with a concept of "moral injury" and "moral harm," in order to offer a modern substitute for Aristotle's antiquated metaphysical naturalism: "The primary phenomenon of modern moral life is *moral injury*" (2015, p. 4). Only attention to this kind of moral charge or aura that the body carries can explain the moral authority of the rules and norms proposed by moral philosophy. This charge or aura can solely be described by reference to "the position of the victim, the person harmed by a morally wrongful act." (2015, p. 6). That is why for Bernstein, torture, along with rape, must be the exemplary cases of moral injury from which a philosophical account of victimhood and harm can become available.

To achieve this, Bernstein re-reads Beccaria's argument against judicial torture in order to rescue it from utilitarian and proceduralist readings. Beccaria, Bernstein contends, was making an ethical, substantive plea in defence of the rule of law, not only a formal one. This plea was based on a "negative ethics" that is ultimately grounded on the memory of the injustice brought about by the "law of sovereignty" (2015, pp. 7-9). Beccaria's argument against the arbitrariness of the law of sovereignty is actually an argument against inequality, about the ways in which the strong exercise illegitimate authority over the weak; it is force unconstrained by reason, a total personalisation of power (2015, pp. 35-37). The substantive rule of law Beccaria was proposing is a "determinate negation of the law of sovereign torture," (2015, p. 36), and this can only be appreciated once the inequality inherent in law of sovereignty is perceived and named as such. The rule of law is also a statement against the sacrificial logic of sovereignty, protecting personhood from being a sacrificial object subject to the dictates of sovereign rule (2015, pp. 38-39). This then provides for a thick conception of the rule of law, one that returns it to the ordinary, everyday intuition that it is better to live under rules that are clear, public, and predictable than to live subject to the arbitrary whims of uncontrollable power. This security is essentially ethical and not just formal, not only because the memory of its loss is all too available

to us (but usually forgotten by moral philosophy), but also because it is the minimal precondition for having or restoring any trust in the world and others. This is the minimalist "negative ethics" Bernstein proposes. This ordinary sense of trust that allows one to conduct one's affairs securely is a social good in and of itself. This is clear in the account of trauma I gave earlier.

Bernstein also reads Jean Améry's *At the Mind's Limits* (2009) as a phenomenological account of the moral experience of torture, from the point of view of its victim. Many of the symptoms of trauma enumerated by the clinical literature are given a philosophical background here: loss of trust in the world, a wrenching from the thick fabric of the social world, a loss of predictability in the ordinary logic of guilt and punishment, a self-consciousness of one's embodiment, an unforgiving consciousness of the distinction between being a body and having a body brought about by the loss of voluntary control over vital needs, and experiencing the profound distinction between voluntariness and involuntariness, a distinction that brings the body back to its essential animality. This is an account of trauma that is not only psychological but also normative.

> We need to say that what the medical and psychological accounts of trauma miss is that the self is a normative construction that is so constituted through its relations to others. Selves are relational beings who are inseparably dependent on others for their standing or status as a human self — as a person. (Bernstein, 2015, p. 13)

Such relations must be grounded in trust, which acts as some form of social glue that constitutes the ordinariness and predictability of everyday life and which only becomes normatively significant once it is broken. This ordinariness is so pervasive that moral philosophy cannot even begin to appreciate its value.

> Relations of trust are relations of mutual recognition. Everyday life, on this accounting, is a massive ethical edifice binding together in relations of mutual respect whose depth and force derive from the fact that they are or can be taken for granted; and when they cannot be taken for granted . . . this is felt as a wrenching tear in the social world" (Bernstein, 2015, p. 18).

This existential reading of how the pain of torture is experienced, in terms of broken inter-subjective relations and loss of trust in the world and others, could anchor a renewed concept of dignity (and its inverse, shame). Dignity is not a metaphysical property. It is an expression of a certain relation between how one experiences one's body and how an other perceives or acknowledges such a body; it indicates a relation in which the body is experienced as mine by an other, either through mere formal respect or loveability. This is not just simply a defence of private property. On the contrary, for this "mineness" of the body cannot, by definition, entail total sovereign control over the body, which is already contradictory (my experience of the world is always caught up between the voluntary and involuntary, to which there can never be a stable, fixed resolution). Rather this route suggests that bodily integrity and respect cannot be unconditional or given; they are social statuses and constructions that depend for their actuality on vulnerability. It is a concept of bodily integrity that contains within it the memory, the experience, and the constant risk of its own loss. This is, I argue, what the campaign against torture tries, and constantly fails, to express. It is the insight that gets lost in the broken feedback loop between legal-expert authority and the victim narrative.

The body has a central role to play in this account. The human body is a "figuration of rational freedom, it expresses the blurry lines between the voluntary and involuntary in its very form and shape, and this figuration or expression means that ultimately, the body cannot be mere stuff, even in death. The mark of universalism here is "the human body performing the routine actions of everyday life" (Bernstein, 2015, p. 285). This insight has profound ethical implications for modern morality, for it suggests that harm and injury are not only relevant for utilitarian, procedural, and instrumentalist reasons; in fact this would amount to a distortion of the true normative meaning of injury. Bernstein describes this distortion of the normative significance of injury as a profound crisis of "moral alienation" (2015, pp. 318-321) manifest in the way moral and legal reasoning are disconnected entirely from their source in experiential and historical (and let me add, aesthetic) knowledge. There is a modern fantasy that believes moral and legal rules concerning torture could be limited or conditioned by institutional contingencies or individual conscience, which is only one step away from pre-emptive consequentialist justification of exceptions to the norm. Bernstein is suggesting that the consequentialist justification of torture by the likes of Alan Dershowitz (but not only him, of course) is a symptom of a deeper problem in moral reasoning, whereby rules and norms are detached from the motivations and meaningful

experiences that may give them power. This fixation on procedure makes it easy to fall into treating them as mere rules, to which endless exceptions and counterfactual scenarios can be devised in advance. This is the central hypocrisy of modern legal-moral reasoning. It is why the logic of torture persists and has become even more complicated.

This is not to say that law has no place in the opposition to torture, and that only narrative and memory will do. Rather it is an argument that only a thick, substantive, principled, non-instrumentalist defence of the rule of law as a social good can be ethically meaningful. This defence of dignity and the rule of law may be a "realistic utopia" (Habermas) or a "negative ethics" (Bernstein), but this does not necessarily mean that it exhausts political possibilities or imagination. On the contrary, it can help expand the political possibility of promotion of the rule of law since it can also imply a critique of the limitations of legal instrumentality.[100]

As Aida Seif Al-Dawla told me when I asked her whether the opposition to torture is too anti-utopian:

On the contrary, if you think about it, human rights work is seen as the more utopian position, it raises its demands or voice to "history and time" when we know it cannot be true. I don't know. I don't know. Of course, the rights activist will not demand a redistribution of wealth. But for the social and economic rights listed in the Universal Declaration of Human Rights to be realised, there will have to be great redistribution. And I do not think that the human rights apparatus speaks only of survival; it talks about good survival.[101]

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[100] A slightly similar argument is offered in Jeremy Waldron's article *Torture and Positive Law*. This article was written in response to memoranda put forward by advisors to the Bush Administration that justified torture in the context of the so-called War on Terror. In the article Waldron argues, using a variation of the Dworkian distinction between principles and rules, that the ban on torture forms a background principle or archetype without which modern legal reasoning falls apart altogether. It is not one particular rule or norm, but a special one insofar as it "performs a background function" (p. 1723) to the legal system, which cannot be violated without betraying the whole spirit of the law and its general opposition to arbitrariness. The very formalism of modern legality serves a moral purpose; it constitutes the dignity it purports to defend. But Waldron does not go as far as to argue that such a defense of the rule of law needs to take account of the constitutive role of narrative, memory, and experience in order to become substantive and not just instrumental.

[101] Interview with Aida Seif al-Dawla, Cairo, November 2018.

Conclusion

Torture is never far from the history of citizenship and the polis — classical, modern, and the future-oriented. This means that torture is saturated with references to citizenship and law. Firstly, the history of torture is the history of marking and differentiating citizens from slaves; only the enslaved could be tortured, and citizens were traditionally protected from these exercises of power. Secondly, two of the three models of torture — as typified by Darius Rejali (2009)— refer to the civic world. The "civic model" describes uses of torture to build solidarity and identity between citizens against outsiders, while the "judicial model" refers to uses of torture as penal punishment. These typologies are ideal types, and any form of torture can be said to combine elements of either and all. This means that torture must refer to the symbolic civic order for its symbolic efficacy, for its "mark" to *stick*.

This reference to the civic order is not only encapsulated in the obvious denial of civic status to the body of the tortured. More importantly, torture — especially in its modern, covert forms — is a direct parody of citizenship. It particularly illustrates the dark, vicious link between citizenship and sovereign power. It replays and demonstrates the excessive awe of the sovereign figure through the creation of the stigmata on the tortured body, a kind of stigmata that indexes the strange (in-)corporeality of the body politic, insofar as the stigmata are mute and anonymous, and insofar as the body of the tortured person is made to be more corporeal. Torture is sovereign biopower in its extreme manifestation. This is another reason why the mystification of torture is dangerous, whether on the part of anti-torture campaigners or others. Rendering torture unthinkable and unrepresentable increases the supernatural powers ascribed to "the body of the king."

Torture is a ritualised and organised dramatization of a type of citizenship that is maliciously entwined with sovereignty. Let's call this "sovereign citizenship" which produces "citizens/subjects." Consider the way officers and torturers fraternise with one another, enacting a perfect social pact amongst themselves. Sometimes, even the tortured are forced to pay allegiance to the state and to prove their loyalty. Consider, also, how the capacity of the citizen for ideal speech becomes the "confession." Or consider how the attachment of citizens to each other becomes the absolute dependence of tortured and torturer. Remember, also, how the space

of torture becomes a miniscule theatre of a particularly extreme and concentrated — because confined — struggle for recognition.

Trauma is not free from the humanitarian gaze. As I show, so-called humanitarian psychiatry has capitalised on the rise of the clinical language of trauma to build its medical and humanitarian infrastructure. Nevertheless, I try to tease out various themes that point beyond the confines of humanitarian psychiatry to think of trauma in ways that recall the leftist and political psychiatry as practiced and elucidated by the likes of Frantz Fanon and Erich Fromm. From a humanitarian, clinical perspective, trauma is a clinical symptom that can be objectified, labelled, and made into a legal proof. The context that enables the discourse of trauma to appear, however, points to a political and ethical excess, insofar as trauma throws up questions around the meaning of suffering, guilt, shame, resistance, trust, alienation from others, and failed attachments. These themes break the strict confines of the cold, detached language of psychiatry and point towards an alternative reading in which trauma is the sign of the erosion of social bonds of trust between persons and the world. As it turns out, this erosion is also manifested in an erosion of meaningful suffering, that is, the loss of any ability to integrate the suffering into a myth of heroic pain endured by humans. Note how meaning and recognitive social attachments are relevant here. In any case, this poses an acute problem for leftist psychiatrists. On the one hand, there is the legitimate fear that the search for "meaning" in suffering — usually in the form of some kind of religious or political theodicy — will end up rationalising the suffering, or providing ideological cover for further violence. That is one advantage to the cold, secular language of psychiatry as opposed to non-secular accounts of suffering as a trial of the soul, or an *ibtilaa* that disciplines the pious soul and orients it towards God. The upshot is a complete, almost stoical, insistence that what is experienced as meaningless must not be rationalised, and must not lend itself to the consolatory ideologies of the state. "Trauma" is an especially pertinent effect of this problem. The downside is that no expiatory explanation is permitted that may compel the agents involved towards renewed social and political engagements. Even this is explained on the grounds that any "forcing" of political agency onto victims renders them less free to choose whether or not they wish to exercise their political powers of resistance.

And here enters dignity. The strangeness of dignity lies in how it simultaneously straddles religious and civic meanings. Dignity refers to both an inherent worth that inheres in

human beings before God, and the status they receive in virtue of their standing in society. Such double-ness can be found — despite important differences — in the Christian, Islamic, and secular traditions. As such, it offers an exit from the conundrums of myth that attach to torture. This may explain why the concept carries much currency in the world of Arab anti-torture intellectual discourses — secular and otherwise. Dignity is a good conceptual strategy to momentarily suspend the borders between these hermeneutic universes in order to address the different relevant effects they have on understanding the scope and meaning of evoking human rights.

The metaphysical connotations of dignity, especially in Arabic, do not necessarily refer to Kantian moral subjects. In fact, they come closer to the quasi-theological qualities of the Kantian sublime, though with a moral and legal twist. As I explain in the case of Tunisian writer, physician, and politician Moncef Marzouki (1998, 2006), the connection between dignity, sanctity, prohibition, and taboo offers an almost non-secular understanding of rights as transcendental ban on violating human bodies. Surprising as it may be, this account of sanctity seems to be more consistent with the medical ethics involved in the trauma-torture-industry than is usually conceded. Although I am very intrigued by this framing, I am worried about the risks of expanding the discourse of *haram* in a way that would re-mystify torture and make it exceptional in ways that I have criticised earlier.

Dignity also carries strong civic connotations that have to do with status, value, and esteem, ascriptions that predate capitalist accounts of fungible and exchangeable value. If this is correct, then we can also translate the metaphysics of dignity into a naturalist account, as Jay Bernstein (2015) has attempted. In this account, dignity refers to the thick ethical bonds and trust that attach themselves to valuable things, habits, and postures. Torture is related insofar as it refers to an exemplary injury to these attachments. Because torture isolates subjects from each other, from a world that can be trusted, and from themselves, it represents a negative image (dialectical image?) of what those bonds could become. This is not merely a speculative point. It also takes into account the fact that torture practices appear to be obsessed with disrupting the ordinary workings and movements of bodies, the usual differences between the voluntary and involuntary. Torture can sometimes seem to be an especially deranged reflection of body contortions and their normative (rule-related) significance. And so, it seems to unintentionally

confirm that these ordinary habits, movements, attachments, needs, and desires (material, corporeal, normative and symbolic at once) carry substantive ethical weight in any conceivable civic life. Torture gives a hint into how the ethical and the ordinary are more intertwined than we usually assume.

8. Conclusion

This dissertation was both an intellectual history and a political theory. As an intellectual history of Egyptian (and Arab) human rights thinking, it examined the way nationalist and socialist thinking gave way to stimulating formulations of a "human rights project," primarily through a focus on intellectuals and professionals who were shaped by leftist mobilisations in the 1970s. I was particularly interested in the way their older socialist commitments reappeared through the cracks of the new human rights project, and the extent to which these older commitments may (or may not) have reshaped their newer theory and practice. To this end, I was looking for a reconstruction of a theory of human right which may have some kind of critical edge, or which may open up the possibility of a renewed emancipatory reading of struggles for rights.

This meant that I adopted an "illicit reading" of my interlocutors — or perhaps a "strained" one. An illicit or strained reading looks at what remains unsaid and unthought in the activities and work of these figures, at moments of ambiguity and ambivalence that arise out of their daily troubles when their multiple commitments become anxious. This was my alternative to an "ideology critique" type of method. Instead of chasing after their inconsistencies — which are many — I approached them as instructive, treating them as a window into unarticulated and unresolved problems in any attempt at appropriating universal concepts (rights, internationalism, socialism, feminism, dignity, etc.). This also entailed that I would sometimes mask my own voice behind theirs — not in order to "let them speak" in any transparent way, nor to usurp their authority, but rather in order to keep the dialogue between them and myself at the forefront, as the locomotive that keeps the narrative going.

What is to be discovered from "between the lines"? This brings me back to the philosophical argument that I made in the introduction, which now can be elaborated and developed further.

There are two threads that pull and push struggles for rights and which remain in constant tension: "the ethical" and "the political." "The ethical" corresponds to what I earlier called "ethical life," a perspective on the social world that calls attention to the damaged solidarities that shape our habits and our institutions, and the corresponding demand to address these damaged solidarities and renew them. There can be no "right" without intersubjectivity, without

others who may recognise my status and my plea. Every right — even if it is merely contractual — presupposes a much wider set of background habits, promises, and relations that may guarantee it. In such a reading, the "human rights project" was a response to the violent, damaged promises of national liberation. It sought to restore a non-violent, solidaristic, and ethical anchor for liberation. This is why, for example, there was an early focus on the "associational" dimension of rights, on the necessity of protecting autonomous spaces for voluntary solidarities to develop. It is why, up to this day, activists are fighting for their right to organise themselves into associational bodies. This is one possible and partial answer to the fixation on virtue and "community." It was understood that the post-colonial state had torn deep into the tissue of the shared symbolic world essential to the cultivation of character and virtue. The very transmission of meaning across generations also became incoherent. Any response to such a situation must begin with an awareness of the tragic loss enatiled, with a vigilant, daring look into the horrors inflicted. These horrors are physical and spiritual at once. There can be no shortcut towards "virtue" without attending to the memory of horror first. And yet, as the discussion in Chapter 5 on "humanist jurisprudence" showed, the dim images of the past and tradition may still play a role in such a vision, but only insofar as our reading habits and methodologies change, and only after we examine the full scope of the problems and risks entailed.

The other sensibility, "the political," corresponds to the "neo-republican" thinking that I briefly examined in the introduction. Here, citizenship comes to the fore as a way of thinking about struggles for rights. It is an attempt to reconstitute citizenship as the necessary condition for non-domination, understood as freedom from the arbitrary power of the strong against the weak. Citizenship, too, can be understood relationally and politically, as a web of capacities that protect the weak from the strong, and as the institutional space in which these capacities can be formed. This aligns with another critique of national liberation made by my interlocutors — that it broke its promise of founding a new political order based on citizenship. The weak were left powerless against the rampant violence that oozes out of the crooks and crannies of state and society. The national liberation regime presupposed that citizenship could be a gift bestowed to loyal subjects, and so citizenship became tied up with sovereign violence — what I referred to in Chapter 6 as "sovereign citizen/subject." The new thinking sought to formulate a different perspective on citizenship, as the institutionalised space for contesting power and enacting

political struggles, and the shared symbolic space in which such contestatory citizenship would develop.

Now, certainly, it remains open to debate how these two sensibilities can relate to each other, or, how the ethical and political can be bridged. And moreover, it is far from certain whether these two sensibilities can be effective in critiquing liberalism, capitalism, or the nation-state, and indeed how far they are willing to travel in mounting a serious challenge to the global status quo. While I continue to struggle with these questions, I do want to put forward slightly modest proposals.

Regarding the first challenge — on the relationship between "the ethical" and "the political" — my interlocutors tried to formulate answers that may work as good starting points for bridging this gap. In Chapter 4, for instance, my discussion of "the meta-political" and "politics" was a partial and provisional exploration of the contours of this problem. To repeat this idea briefly: Even if it is acknowledged that political struggle is inevitable and necessary as a pre-condition for citizenship, there must also be a parallel way of imagining a form of struggle that does not give in to "instrumentality," to the idea that power is an object to be wielded, occupied, used, or disposed. The only way to ensure a non-authoritarian, non-arbitrary exercise of power is to guard the space of contestation, and to ferment a political-ethical commitment to the integrity of the very struggle for this space. This appeared in Muhaamad al-Sayyid Said's notion of "humanising politics." Far from de-politicising politics, this was an attempt to think a politics that does not instrumentalise power or lend itself to ideology. This is a form of power that guards the channels through which contestability itself can be preserved indefinitely, and in which the difference between the strong and the weak is not erased. This requires more than simply ideals on the part of the individual, and calls for a certain kind of organised, engaged cultivation as well. It requires vocation, pedagogy, coalitions between different bodies (parties, trade unions, universities, research bodies, and so on etc.), and an appreciation for the techniques of civil disobedience. Theoretically, I would be inclined to refer to the familiar terms of agonistic democracy, savage democracy, fugitive democracy, and so on, but I would qualify this by suggesting that such a perspective also recognises that the health and integrity of agonism require some kind of shared symbolic space to be realised. Conflict and consensus are not opposites. Indeed, it is my contention that the strongest lesson of the Egyptian human rights movement is

the importance of pedagogy and vocation in fermenting a different kind of political engagement, an engagement that appeared in its fullest during the uprising. The most important victory of the Egyptian human rights movement is that it created spaces in which individuals could be trained and educated in using their professional skills for collective, civic ends (especially among lawyers, journalists, university graduates, and early scholars). It trained an entire cadre of political subjects who managed to connect their political resistance to their ordinary, everyday activities. This is just one example of how the political (struggle) and ethics (commitment, character, habit) can be re-united.

Regarding the second challenge, I will concede that such a vision does not amount to a full, straightforward confrontation against the capitalist status quo or the nation-state. It is far less utopian than this. Still, I would contend that the sensibilities and experiences entailed in this vision demand the attention of "utopianists" of all stripes. My intuition is that these perspectives and practices offer a hint towards a critique of sovereignty. I alluded to this theme in my discussion of the socialist lawyers and constituent power. Once it is granted that "right" is a kind of activity that develops relationally, and is caught up in all kinds of dependencies and intersubjective relationships, this is one step closer towards a critique of sovereignty — the sovereignty of both the individual and the collective, the nation-state. Indeed, the language of "the domination of the strong against the weak" may not be sufficient to reveal the full extent of the impersonal, invisible, legal-rational power of capital and the state. And yet, visible violence and cruelty remain all-too-real, and any serious utopian vision must start from there. Any utopian perspective worth its name must think seriously about how we can arrange our political and ethical relationships in such a way that our interdependencies do not degenerate again into domination. The usual terms of political philosophy — the polis, rule of law, citizenship, domination, tyranny — are indispensable for such a project. This is a utopianism without guarantees, a utopianism fully aware of the risks involved in any exercise of power.

In contrast to the stories that centre Cold War liberalism as the motor for the rise of "human rights," I offered a story that locates dissidence in the local history of social and political resistance, within the broad framework of an as-yet-incomplete and indeterminate struggle for "national liberation." In this story, national liberation regimes are critiqued for betraying their mission by human rights dissidents and intellectuals who provide different explanations and

responses to this betrayal. Rather than a "rupture" constituted by the neoliberal moment, I draw attention to the continuities that link human rights struggles with a much older legacy of democratic national struggles.

The rise of the Arab human rights movement did not entail an importation of a "natural right" tradition. Particularly in its early days, the intellectuals understood themselves to still be standing in the tradition of pan-Arab national liberation, and this was reflected in their thinking, alliances, political positions, and priorities. This was no facile moral cosmopolitanism; rather it was a project that sought to reconstruct the philosophy of citizenship for new and darker times. In this reconstruction, citizenship is identified with the concrete solidarities and frameworks that enable mutual recognitions between peoples and persons. Such a conception of citizenship may turn out to be *post-nationalist* on some occasions, and it did demand a reconsideration of inherited notions of sovereignty, yet it remained political through and through, tethered to some notion of concrete localised emancipation from the ground-up. In this vision, local and national identities are not abandoned, nor are they idealised, but rather are called upon to become responsive to concrete realities and political needs.

I detected glimpses of the "post-sovereigntist" theme in religious thought. The imperative to imagine a conception of power that does not entail absolute and absolutist autonomy meant that there was a need for a different kind of jurisprudence. In this renewed religious anthropology, humans share in the divine governorship of the world, in a Vicegeneracy of Man. This new democratic religious anthropology proposed innovative arguments in hermeneutics and jurisprudence that proved to be very fruitful in critiquing the political tyrannies and injustices of the present. This strand of thinking must be put into dialogue with contemporary political philosophy, especially the problem of "constituent power."

I spoke about "constituent power" throughout the dissertation because I consider it to be the missing puzzle piece and a good starting point for post-sovereigntist thinking. "Constituent power" forces us to grapple with the riddle of how humans can come together to found a new polity, how they augment their power and liberty, without feeding into fantasies that their power is absolute, nor forgetting the tragedies entailed on the road to freedom. "Constituent power" is the critical moment in any kind of jurisprudence that attempts to criticise and resist the existing legal order, while simultaneously trying to imagine a new conception of law that does not rely on

arbitrary violence or the metaphysics of sovereignty. This is the legal and theological challenge that lies beneath "human rights." I also discuss "constituent power" because I take it to be key to understanding the fate and tragedy of the post-2011 moment. I will clarify my point further in the next section.

In contrast to narratives of human rights that exclude the role of radical intellectuals and lawyers, I drew attention to the key contribution of communist and socialist legal thinking to the human rights imaginary. Communist and socialist lawyers are attracted to human rights because they open up a utopian space in law, a space where the law can be resisted and articulated differently. My contention is that any serious human rights philosophy must centre its project on the "right to strike" and the "right to protest" as vital lenses from which to interpret the resonance of human rights claims on the ground.

The philosophy of human rights presented takes as its point of departure the very tangible memory of slavery, and relatedly, the memory of torture. This memory takes the shape of an aesthetics of human embodiment in space, a certain way of imagining how human bodies move or are disabled from moving, and a contention that such comportments help us visualise the "voluntary" versus the "involuntary," or "dignity" versus "indignity." This concept of dignity is understood socially, to refer to a specific kind of status and its related form of self-embodiment, which can only be represented aesthetically. Following Judith Shklar, I tried to explain how a memory of torture and such a "pessimistic" mood compels political theory to give priority to vice over virtue. This does not mean abandoning virtue, or relatedly citizen participation. Rather it means reconceiving virtue so as to make it vigilant to the ever-present threats of vice (especially cruelty), and to look squarely in the face of this vice and its social conditions. Such vigilance entails an ethical commitment, a certain way of training and disciplining the body to be more attentive to "ordinary vices." It entails a notion of vocation or ethical calling, which I tried to demonstrate when I spoke of the specific kind of labour performed by lawyers and psychiatrists.

Due to limits of space, I excluded a very central discussion regarding how dissident jurisprudence tackles the more general question of other kinds of anti-legal violence, for example jihadist activity. This was and remains a crucial area of contention. The socialist lawyers I discussed here adopted the strict principle of defending jihadists against arbitrary detention and

torture.[102] Other communist parties and groups did not take this lightly. The reasoning behind such a principle merits further commentary, not least because of its repercussions and repetitions across the global human rights movement after 9/11. Although the socialist lawyers clearly differentiated between right-wing (jihadist) and left-wing violence, they argued correctly that the state will never differentiate between the two, and hence both fall under the scope and duties of dissident lawyering. The difficulty, however, lies in determining the boundaries and ethics of solidarity, and how socialist legal thinking may avoid the trap of a Sorel-style generic advocacy of violence. This temptation was real and effectual, and warrants further criticism. Yet I also contend that the kind of socialist jurisprudence that I described and explicated provides the most persuasive criticism and antidote to such a temptation, even if its practitioners did not consistently articulate this.

Another significant lacuna in the dominant narratives of global human rights is the role of Palestine and colonialism, such as the debates that erupted during the anti-apartheid movement, and later at the World Conference against Racism in Durban. The story of how South Africa came to represent the internationalist model of campaigning against global racism is yet to be told. South Africa and Palestine are key episodes in the "Global South" innovation of human rights and internationalist solidarity, but that remain excluded and un-theorised from the Northern narratives of human rights, its metropolitan thinkers, and its metropolitan critics. How can we "decolonise" human rights before fully taking on the lessons of the global campaign against apartheid? And how can we do such work without first appreciating the role of lawyers, judges, and constitutionalist imagination in this struggle? It is worth pointing out here that the figure celebrated by Arab human rights intellectuals was more likely to be South African lawyer Albie Sachs who contributed to writing South Africa's post-apartheid constitution than Lebanese thinker Charles Malik who was a key drafter of the Universal Declaration of Human Rights.

I decided in the course of this project to limit the time period I cover to right before the 2011 uprisings. Firstly, I felt that too much has been written about the uprisings and not enough

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[102] See Nabil al-Hilaly's defense of those charged with assassinating the head of parliament Rifa'at al-Mahgub in the early 1990s, a case which ignited the wild "war on terror" against jihadist groups. The case is remarkable for setting a precedent among lawyers on the left of unapologetically defending Islamists and jihadists before the courts, especially those subjected to torture. Islamist lawyers would later imitate al-Hilaly's strategies, which is itself a subject for further research. See Al-Hilaly (2006).

about their precursors or intellectual and normative background. Secondly, I wanted to challenge the idea that the uprisings were purely miraculous events that evolved in a vacuum. Thirdly, I wanted to hint at a possible immanent critique of the trajectories of the post-2011 period, from the vantage point of the unarticulated and unrealised possibilities that remained available before the uprisings. In the next section, I will connect the story I told here to post-2011 developments in Egypt, and I will trace out what a critique of the revolutionary trajectory may look like.

The Uprising

In his *Revolution without Revolutionaries* (2017), Asef Bayat blames the disastrous failure of the Egyptian revolution on what he calls "refo-lution," a portmanteau of reform and revolution. This paradigm of revolutionary transition was carried forward from the Eastern European revolutions, and its chief characteristic is a mix of reformist liberal ends and revolutionary means. This can best be seen in the "transitology" literature that flourished before and after the Arab uprisings. The second step in his argument is to blame this "refolutionary" paradigm on "neoliberal governmentality," identified with "civil society" and its professionalised NGOs. Those professionalised non-revolutionaries pushed for reformist ends — such as the rule of law or ending corruption — and were incapable of providing the necessary leadership for the revolutionary moment. Bayat reaches this conclusion through a comparison of the Egyptian revolution with the Iranian Revolution (in which he had participated) and the Sandinista Revolution in Nicaragua.

Now contrast this Leninist critique with a very different one from political theorist Heba Raouf Ezzat. Ezzat charges that the human rights activists and intellectuals betrayed the revolutionary course, by not resisting the 2013 coup.

> Some prominent rights activists publicly supported the Tamarod Rebellion campaign, a position that politicised human rights action and raised question [sic] about the boundaries of political engagement for rights advocates and the significance of their active non-alignment or impartiality with respect to political factions and parties (Ezzat, 2018, p. 24).

Ezzat cites a press statement released by 20 rights groups against the Muslim Brotherhood government, commenting:[103]

> With their long experience in documenting violations by security agencies, they should have been aware of how such practices were committed by police and army personnel. Such an understanding would not fully exonerate the MB from using violence in some confrontations with revolutionary movements. Consequently, they should not have believed each and every accusation against the MB, especially when these allegations came from their nemeses or lacked any credible evidence (Ezzat, 2018, p. 24).[104]

Here we have a radical critique judging the organisations and leaders for not being radical enough and a conservative critique that takes the opposite stance and faults the organisations for being too radical, too "politicising," and not sufficiently neutral vis-à-vis the regime. "Human rights" are too politicising or not politicising enough. Both indictments make the same mistake of judging "the political" too narrowly. This explains why Bayat restores a vanguardist conception of the revolutionary party, and Ezzat launches a consensualist critique of partisanship. Both ignore the fact that "the political" is not reducible to the partisan, but involves a prior moment — constituent power — that cannot simply be identified with any one party, sovereignty, or will. This leads Bayat to dismiss his own prior analysis of "social non-movements," which had insightfully examined the more fluid, ambiguous, and diverse forms of

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[103] There is a distinct but related accusation against human rights organisations that they did not speak out against the Raba'a massacre in which over a thousand people at a sit-in supporting the recently deposed Muslim Brotherhood president were killed. Although very critical of the organisations, Ezzat herself documents that by the time of the Raba'a massacre, human rights organisations all took a strong position and named it for what it was: a crime against humanity (2018, pp. 25-26). The exception was the National Council for Human Rights (NCHR), which is unsurprising, given that it is a government body that only employs regime supporters. It should be noted, however, that the NCHR is still led by Muhammad Faiq, who was mentioned earlier in the dissertation as a founder of the Arab Organisation for Human Rights. Along with other members and supporters of the NCHR, such as Nasser Amin, the Nasserists turned out to be much more supportive of the new military regime, via the National Council, and their animosity to the Muslim Brotherhood was proven again. The reaction to the coup and massacre by human rights activists thus reflected the decades-old divide between leftists and Nasserists. Ezzat does not comment on the continued consequences of this ideological divide, however. Nor can she explain why the younger organisations were more severely critical of the new military regime.

[104] This statement by Ezzat certainly flies in the face of the fact that the Muslim Brotherhood leadership had cheered for police and military violence on multiple occasions. See Reem Abou el-Fadl (2013). In his prison essays, Alaa Abdel-Fattah (2020) has recently also reflected on this issue, as well as touching upon other themes that are relevant to my discussion.

street mobilisation in contemporary times, in favour of a nostalgia for the hegemony of revolutionary, intellectual leadership. The parallel conservative mistake that Ezzat makes is to completely suppress and ignore the agonism and anxiety at the heart of any constitutional moment — the revolutionary "period" being the paradigmatic case. How can a political theorist, of all people, expect "neutrality" during a revolutionary period, when the constitution of the political itself is a stake? Furthermore, neither have engaged with the lessons of post-Marxist political theorising regarding post-sovereignty.

Taking up those lessons and challenges, this dissertation was an attempt to move towards a different notion of a post-sovereign political. I argued that the human rights project as articulated by my interlocutors hinted at such a conception of the political. The relevant questions, then, are not about their "partisanship" but rather: Why couldn't this notion of the post-sovereign political be articulated more clearly? And why couldn't it be realised in practice, or why did it not contribue to shaping the post-revolutionary trajectory? I have some preliminary answers.

In the crucial period following the 18 days of street mobilisation that ended with Hosni Mubarak's ouster, the "window of opportunity" in the period between February and March 2011, an ideological gap manifested within the revolutionary bloc itself between the younger generation of activists and the older intellectual and political leaders of the transition. Effectively, the older guard crowded out the aspirations of the younger generation.

No figure better exemplifies this ideological gap than Tarik al-Bishry, whom I discussed in depth in Chapter 3. Due to his long intellectual pedigree as both a thinker and a judge, al-Bishry was appointed by SCAF to a small committee that proposed short-term constitutional amendments that were considered a "road-map" of the transitional period. This small committee recommended that parliamentary elections take place within a few months, and then parliament should select a constituent assembly tasked with drafting a new constitution.[105]

Al-Bishry's reflections on this short period are indicative (see Bishry 2014). Al-Bishry did not heed his own prior lessons, and in a most striking irony of history, repeated precisely the

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[105] This section on the politics of constitution-making draws from Arato (2017), Brown (2011, 2012, 2013), Brown and Dunne (2013), and El-Sayed (2014).

same mistake of one of his predecessors: Abd al-Razzaq al-Sanhuri. When decades earlier, the Free Officers came to power, al-Sanhuri was the foremost supporter of their attempts at "revolutionary justice." Some years later, however, al-Sanhuri sought a restoration of constitutional and parliamentary life, triggering a severe reaction from Nasser and his allies when they dismissed over 200 judges in what is known as the "Judges' Massacre." Sixty years later, al-Bishry would want to avoid this scenario. Thus, he evades at all costs the "revolutionary" trajectory of justice, lest it feed authoritarian tendencies. He pronounces a preference for the "constitutional trajectory" which would not abolish, but only suspend and amend, the existing constitutional order. Al-Bishry should have known better, however, that revolution and tragedy are bitter friends. The result of this stubborn liberal conservative[106] constitutionalism is that it completely ignores and suppresses the power machinations and struggles at hand. Al-Bishry acted like a judge when he should have acted more like a historian and legal philosopher. He wagered, wrongly, that the seat of constituent power must be "parliament" as a direct representative of sovereignty. This idealism led him to ignore three possibilities which would later come to pass: firstly, that SCAF may not cede power all that easily to parliament; secondly, that the courts will see themselves as the legitimate seat of a surviving constituent power; and thirdly, that once the genie of majoritarianism is out of the bottle it cannot be forced back in. All three disasters occurred in the period 2011-2013. SCAF continued to manipulate procedural electoral rules and "supra-constitutional principles" to gather alliances for itself. The Administrative Court dissolved the constituent assembly and then parliament, on technical procedural grounds. The second constituent assembly that was formed was threatened with dismissal by the Supreme Constitutional Court, leading to a race to the bottom between the contending forces. The Muslim Brotherhood, for its part, entered into an opportunistic, majoritarian fever in collusion with SCAF. The genie of bad constituent power will return with a vengeance in summer 2013, in a highly volatile mix of majoritarian populism and Constitutional Court activism.

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[106] I call it "liberal conservative constitutionalism" deliberately. Al-Bishry's cautious attitude to the "rule-of-law" also reflects a social conservatism. His idealisation of the "national mainstream" and its capacity for unity and consensus systematically ignores differences of gender, class, and religion. For al-Bishry, national unity always takes precedence and priority over real pluralism. This sometimes veers into sectarian territory, as his writings on Copts indicate.

Had al-Bishry reconceived "constituent power" as always-already distributed and diffuse, he could have imagined alternative political possibilities beyond the binary of a "revolutionary" versus "constitutional" track, and he would have prevented the simplistic identification of constituent power with any of these contending forces. He would have kept the genie of sovereigntism and majoritarianism back in the museum of historic curiosities. The early SCAF-appointed committee did not even bother to specify what sort of selection criteria should be used by parliament to design the constituent assembly, leaving ample room for meddling by the courts, and further creating a structural crisis of legitimacy. An alternative scenario would have created a structure of incentives that was conducive to coalition building among diverse groups, rather than the Manichean false choices between order and chaos, religion and secularism. In a word, it would have kept the imaginary republic created in January 2011 open, indefinitely.

Returning to the younger generation, the older guard crowded them out because the former did not have the necessary experience that would have allowed them to articulate their own ambivalent vision of post-sovereign constituent power. The most promising experiment during this time was an attempt by some lawyers and activists to imagine police reform, akin to similar projects that appeared following the Eastern European revolutions. But all such half-utopian speculations and experimentations became overwhelmed by the sheer violence unleashed in 2011 and beyond. The organisations entered into defensive mode too quickly, performing their role at storytelling, "witnessing," documenting, reporting, collecting names, taking care of detainees and prisoners, leading one-issue campaigns such as "No to Military Trials." Whatever utopian spaces they enabled for the brief couple of months in early 2011 closed very quickly.

Towards Possible Futures

In this concluding section, I wish to (briefly) think and imagine the future. l will divide these imagined futures to correspond to two audiences I had in mind as I was writing: social and political theorists, and the Egyptian human rights community. These are not "solutions" to any intractable problems, theoretical or otherwise. Rather, they are simply invitations or suggestions for considering hitherto unacknowledged paths.

The future of social and political theory

The pressures to decolonise social and political thought have mounted up and cannot be ignored any longer, and for good reason. The terms of such a move, however, remain unclear. Foucault is still being pitted against the post-Kantian tradition. Latin American liberation theology looms somewhere in the background. As does Afro-pessimism, the post-Anthropocene, and queer theory.

The more urgent task, however, is to re-examine the histories and tragedies of really existing decolonisations. This figures in my narrative through the critique of national liberation I charted and travelled. It is not a question of pronouncing the "Bandung moment" dead or alive, concluded or incomplete. Rather, the more important issue is the degree to which such a critique of national liberation can clarify and illuminate the unintended consequences of real struggles for national liberation. This implies inhabiting a tragic conception of time, where our desires misfire and misalign with their outcomes, where our actions prove to entail uncontrollable circumstances and passions. Unlike other models of "decolonisation," such a conception locates the theoretical dilemmas of our present back to their global histories, back to where "the political" cannot be replaced by theology, ecology, virtue, or mere transgression. What is needed is an examination of the political forms that "decolonisation" brought forth, especially subaltern nationalisms, and the ways such forms forgot and suppressed the "tragedy of the political," which could not be willed and wished away.

The unparalleled model of such an experiment remains Frantz Fanon. This is not the Fanon of the first most-read (sometimes the only-read) chapter of *The Wretched of the Earth* (2004 [1961]), but the Fanon who wrote the central chapters of the book: "The Pitfalls of National Consciousness," "On National Culture," and "On Spontaneity." While Fanon is conventionally read as celebrating spontaneous violence, the rest of the story exhibits an acute tragic awareness of the obstacles that will — and did — stand in the way of self-emancipation, and the ways that the suppressed violence invades the colonised from within to block their entry into "new humanism." Fanon is prophetically clear that such internal repression will take specific political forms, monopolised by the opportunistic nationalist bourgeoisie and its reactionary allies. This is the kind of story that must be explored further.

To be sure, such a retelling cannot afford to give up the Kantian tradition too quickly. Indeed, the tragic sensibility will be uncompromising in exposing the fictions of "autonomy" and

"self-determination," in much the same way that Hegel responds to Kant. And yet, the sublime allure of self-determination will not be sufficiently understood unless we completely identify with Kant first — and the unfinished (or not begun!) modernity he represents. This is the same modernity we are forced to inhabit. Before rushing to an illusory time "after" or "before" such modernity, what is needed is a historical and political narration of its allure and temptations, its pitfalls and unintended consequences, and the tragicomic ways we repeat the same mistakes time after time.

The future of the (Egyptian) human rights community

I cannot just yet pronounce the human rights project in Egypt dead in the aftermath of the 2013 coup. Organisations are still working under intensifying conditions of persecution and crackdown, or individuals have taken up the cause and continue to do work on a more informal, unsalaried basis. My solidarity and admiration remain unshaken. I also note the increasing centrality of issues around sexual freedoms, gender, privacy, and religious persecution. I have deliberately excluded these struggles from my account The point is that the closure of the political has not entailed the death of "human rights," but has moved the domain of intervention and contention from the public to the private. In the longer view, this is a momentous achievement, since for too long the more "national" and "universal" causes had clouded central issues of social reproduction in the private sphere. The patient, careful work of feminists receives all the credit here.

As I suggested throughout the dissertation, human rights are placeholders for something else. My most modest proposal is to give up on the name "human rights." I will not suggest alternatives here. Put simply, I do not think that our experience and struggle bear that much resemblance to the global "humanitarian standpoint" that would warrant sharing the same name. Moreover, whatever legitimacy was gained from adopting the label and its tactics and ethos was lost very quickly by the time of the 2003 Iraq War, if not before, when activists became much stigmatised and maligned as supporters of imperialist war — a grievous lie, to be sure. I am not suggesting a change in priorities and agendas or duties. I am only suggesting a change in name, and even this will have implications for the overall vision of the movement's mission.

The local human rights community desperately needs to revive the project, originally conceived by Muhammad al-Sayyid Said, of building an intellectual meeting point for a democratic emancipatory project to be articulated. With his death, such a vision receded to the background, and was replaced by the dominance of lawyers and policy researchers. The original vision must be revived somehow. Alongside lawyers, there is an urgent need for jurists, political philosophers, and artists. They will lead the imaginative work required for the tasks ahead, asking big questions and drawing up large ambitions, as Said did did in his lifetime. This will feed into the much-needed normative force behind the everyday legwork of human rights lawyers. It will reconstitute the project as a "movement" in the full sense of the word, doing the kind of theoretical innovation that leftist forces have given up or delegated.

Finally, the so-called "human rights project" has an advantage over other radical groupings in that it always-already had a more tragic than utopian sensibility. What it gave up in utopia it regained in tragic consciousness, which must not be given up just yet. Recalling Kant, rights workers can continue to do their work even in a republic of devils. Such a tragic perspective can be further cultivated and honed by taking up the model of the "chronicler" or the "storyteller," who rescues the remains and traces of the past while the surrounding city collapses. Since imageries of apocalypse are only getting stronger, the scholar and worker will need to cultivate the ethic of the "last chronicler," the one who will live to tell the story, who throws the message in a bottle to a future unknown, and will sacrifice everything in the name of saving the key to the archive. This must prevail.

Appendix

Data:

I have benefitted greatly from the archival material available via the Cairo Institute for Human Rights Studies (CIHRS). At first I accessed this archive from the American University in Cairo library, but fortunately now it is entirely available online.

Most crucial was Rowaq Araby, the flagship journal of the CIHRS. I surveyed issues 1-53 (1996-2010) in their whole. Those issues can be accessed here:

> https://cihrs.org/category/cihrs-publications/rowaq-arabi/?lang=en

In addition, the CIHRS online archive also added all publications and volumes, that were very helpful for this research. See the archive of publications here: https://cihrs.org/library/?lang=en

I also thank Aida Seif al-Dawla for sending me useful publications by Al-Nadeem Centre.

Publications by the Hisham Mubarak Centre can be found here:

> https://web.archive.org/web/20110207192216/http://www.hmlc-egy.org/publications?page=6

Finally, I benefitted from being given access to the legal archive of the Arab Foundation for Freedom of Thought and Expression (AFTE).

Interviews

I conducted about 15 conversations and interviews in total. From those, I received consent for recording and naming eight interlocutors. Most of these interviews were more than one hour long.

Hani Shukrallah –October 21, 2018, Cairo

Aida Seif al-Dawla – November 2018, Cairo

Leila Soueif – Decmber 2018, Cairo

Khaled Ali – December 2018, Cairo

Bahey al-Din Hassan – August 2019, online

Elham Aidarous – July 5, 2021, Cairo (in person)

Magda Adly – September 2, 2021 (online)

Mustapha Kamel Al-Sayyid – August 11, 2021, Cairo (in person)

Methodology

I have used a mix of thematic analysis and discursive, conceptual analysis to the research material. Coding of the data was used very briefly in the very early stages of data analysis, using NVivo.

Ethics and Risk

have completed the LSE Complex Travel Risk Assessment and the Ethics Assessment prior to data collection, during Lent and Summer 2018. A protocol was developed that was used through the fieldwork process. A consent form was furnished for the interviewees, and oral consent was required (indicating approval for the interview and to being named).

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